

Agenda Item: 9.

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee

FROM: Eric Williams, Natural Resources Planner

SUBJECT: La Vista Thompson Creek, Urban Drainageway Project
Interlocal Agreement

DATE: June 4, 2015

The District has collaborated with the City of La Vista on the Thompson Creek project for the past two years, and the Board of Directors has approved reimbursement for a portion of the costs as an Urban Drainageway project. La Vista has worked through design updates and financing partnerships with several agencies including Nebraska Department of Environmental Quality, and Nebraska Environmental Trust.

In order to provide reimbursement for professional services and construction on this project, an Interlocal Agreement was drafted. To date, this Agreement has not been approved and fully executed by either party. In June 2013, La Vista approved and signed the Operations & Maintenance Agreement for this project. Work has continued in order to keep the project on schedule for completion in 2016. La Vista is prepared to request reimbursement according to the DRAFT agreement and approved Urban Drainageway Program project, and is requesting that the Interlocal Agreement be approved, and executed by District Management.

It recommended that the PPO Subcommittee recommend to the Board of Directors to authorize the General Manager to sign an Interlocal Agreement with the City of La Vista for cost share reimbursement in the amount of \$712,000.00 on the Thompson Creek Urban Drainageway project, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.



March 3, 2014

Mr. Eric Williams
Natural Resources Planner
Papio-Missouri River Natural Resources District
8901 South 154th Street
Omaha, NE 68138-3621

MAR -- 4 2014

RE: Urban Drainageway Program
Thompson Creek Channel Improvement Project
Request for Revised Funding

Mr. Williams:

Thanks to you and Marlin Petermann for taking time to meet with me last Thursday to discuss the current status of our Thompson Creek Channel Improvement project. As discussed at the meeting, our project has been delayed due to the need to reach agreement with three utility companies on plans and costs to relocate their existing facilities from the creek channel. We have also received cost estimates from our consultants based on 90% complete construction plans that exceeded the preliminary estimates that were provided when grant applications were made previously. In addition, the NET and NDEQ did not award grants in the amounts we originally requested in fall of 2012 and did not approve requests for additional funds in the grant requests submitted in fall of 2013. At this time we are awaiting final relocation cost estimates from the utility companies and the consultants have identified a list of cost reductions for consideration.

In April of 2013, we received a letter from the PMRNRD notifying the City that \$60,000 would be included in the FY 14 budget and two future years of funding being anticipated subject to actual budget approvals in each year. The notification indicated we needed to use and request reimbursement by June 1, 2014. At this time, due to the delays described above, I am writing to give notice that we will not be able to use the \$60,000 by June 1, 2014. We anticipate the channel improvement work to commence in November of this year and be completed during the summer of 2015. Further, while we are doing what we can to cut costs on this project, we do need to request an increase in funds. The original anticipation was \$636,000 from the PMRNRD for 60% of the eligible local share costs. I am requesting an increase to

City Hall
8116 Park View Blvd.
La Vista, NE 68128-2198
p: 402-331-4343
f: 402-331-4375

Community Development
8116 Park View Blvd.
p: 402-331-4343
f: 402-331-4375

Fire
8110 Park View Blvd.
p: 402-331-4748
f: 402-331-0410

Golf Course
8305 Park View Blvd.
p: 402-339-9147

Library
9110 Giles Rd.
p: 402-537-3900
f: 402-537-3902

Police
7701 South 96th St.
p: 402-331-1582
f: 402-331-7210

Public Works
9900 Cornhusker Rd.
p: 402-331-8927
f: 402-331-1051

Recreation
8116 Park View Blvd.
p: 402-331-3455
f: 402-331-0299

\$712,000 over the next two years. We would like to get as much of the funding in your FY 15 budget as possible, since the majority of the construction costs are expected in that time period. However, final completion of the construction is not expected until after June 1, 2015.

From our conversation, I understood that I do not need to submit the Urban Drainageway Program application. If you need further details on the costs of this project beyond what I shared at our meeting, I will provide them.

Requested by:



John M. Kottmann

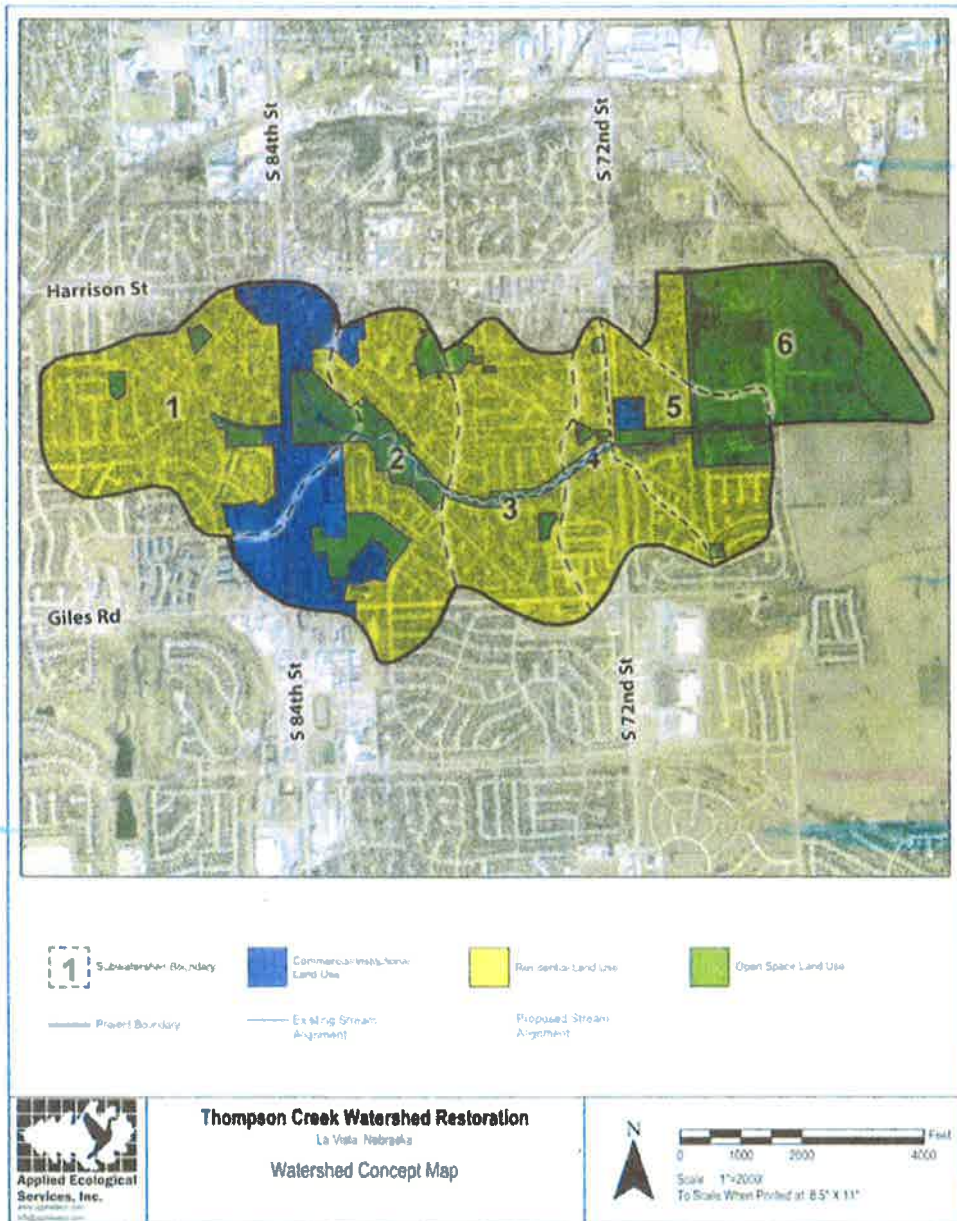
City Engineer

Cc file

H1. Project Sponsor: City of La Vista

H2. Project Name: Thompson Creek Watershed Restoration

Figure 1. Thompson Creek Watershed Restoration



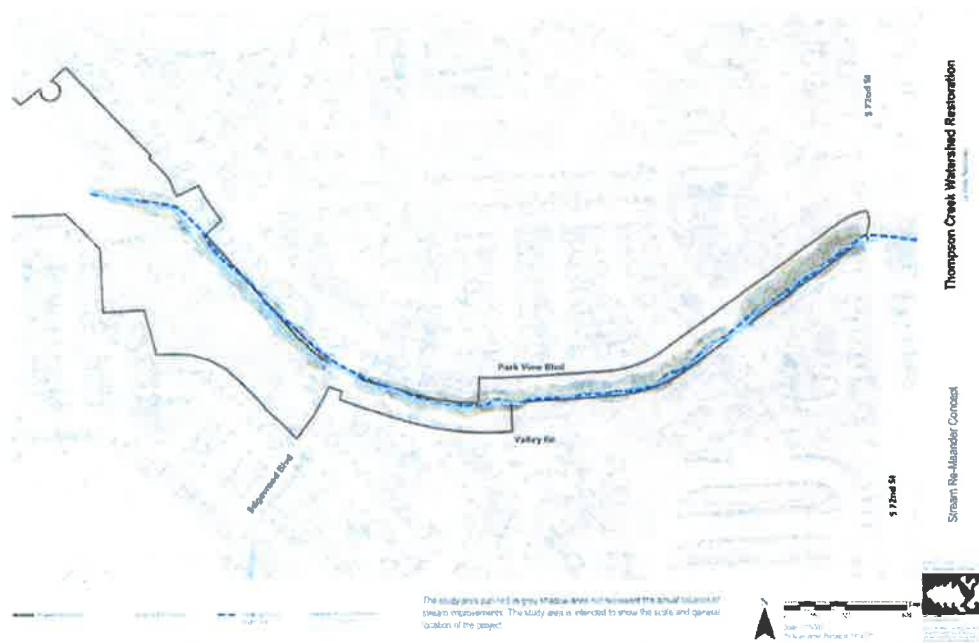


NEBRASKA ENVIRONMENTAL TRUST FUND

H1. Project Sponsor: City of La Vista

H2. Project Name: Thompson Creek Watershed Restoration

Figure 2. Thompson Creek potential project footprint, showing scale and potential extent. The final design will reflect the wishes of adjacent property owners and the City's park master planning process.



Electronic Grant Application
Revised July 2011

INTERLOCAL COOPERATION AGREEMENT

Between

THE CITY OF LAVISTA, NEBRASKA

And

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

For

THOMPSON CREEK DRAINAGEWAY PROJECT

THIS AGREEMENT (hereinafter “**THIS AGREEMENT**”) is made by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (“the **NRD**”) and the **CITY OF LAVISTA, NEBRASKA** (“the **CITY**”), pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1997, et seq.).

WHEREAS, the NRD administers the Urban Drainageway Program (the “**PROGRAM**”), which provides cost sharing with local governmental entities for the installation and maintenance of improvements to urban stream channels;

WHEREAS, the CITY desires to rehabilitate and restore the channel of Thompson Creek between 72nd Street and 78th Street in the CITY (“the **PROJECT**”);

WHEREAS, the CITY desires to receive cost-sharing assistance from the NRD for a portion of the costs of the **PROJECT** through the **PROGRAM**; and,

WHEREAS, the Board of Directors of the NRD has approved the **PROJECT** for participation in the **PROGRAM**.

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. **PROGRAM RULES AND REGULATIONS.** CITY shall comply with the rules and regulations for the Program as promulgated by the NRD and set forth in the NRD's Directors Policy Manual. This AGREEMENT and the PROGRAM'S rules and regulations shall be construed in a manner giving full effect to both. In the event there is an unavoidable conflict between a specific provision of this AGREEMENT and a specific provision of the PROGRAM'S rules and regulations, this AGREEMENT shall control.

4. **MATERIAL CHANGES FROM APPLICATION.** The CITY shall timely notify the NRD, in writing, of any material changes to the PROJECT as compared to the application and other materials submitted to the NRD for the CITY'S participation in the PROGRAM.

5. **NRD TECHNICAL ASSISTANCE.** The NRD shall provide technical assistance to the CITY regarding the PROJECT within the limits of its expertise, as may be requested by the CITY.

6. **RIGHTS-OF-WAY ACQUISITION.** Lands, easements and rights-of-way, which the CITY determines is necessary for construction of 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 CITY, which shall hold title thereto. The costs of the PROJECT RIGHTS-OF-WAY shall be deemed to be a cost of the PROJECT.

7. **PERMITS.** All necessary local, state and federal permits, which the CITY determines are necessary for construction of the PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT, shall be obtained at the sole cost and expense of the CITY, which shall hold the same.

8. UTILITY RELOCATIONS. The CITY shall be solely responsible for relocation of any utilities that are determined to interfere with construction of 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.

9. NRD CONTRIBUTION. As its contribution towards the aforesaid costs of the engineering and construction of the PROJECT, the NRD shall reimburse the CITY for the billings rendered to the CITY for the ordinary and necessary costs of the PROJECT not to exceed a total contribution sum of \$712,000 (“the **NRD CONTRIBUTION**”). Such contribution shall be paid in installments as follows, to-wit: the first such installment shall be due and payable to the CITY on June 1, 2015 or 30 days following the CITY’S submission of the invoice, detailed below, in the maximum amount of \$412,000; and, the second such installment shall be due and payable to the CITY on June 1, 2016 in the maximum amount of \$300,000. The CITY shall provide an invoice(s) to the NRD detailing all of the billings and costs for which it seeks reimbursement prior to the NRD paying its contribution(s). Under no circumstances shall the NRD CONTRIBUTION exceed the total sum of \$712,000, nor shall the NRD be responsible for paying any monies related to the PROJECT in excess of \$712,000.

The CITY shall be solely responsible to pay all other costs and expenses associated with the PROJECT, including but not limited to the operation and maintenance of the PROJECT, without any further NRD reimbursement or contribution. Any State, Federal, foundation or other grants received by either of the parties at any time for purposes of offsetting costs and expenses of the PROJECT shall be credited to both parties in equal shares against their respective obligations hereunder for costs and expenses of the PROJECT.

The CITY shall publicly acknowledge the DISTRICT’S contribution to the PROJECT on a permanent sign, plaque, or other fixture (containing at a minimum the DISTRICT’S name and logo), to be maintained by the CITY for the life of the PROJECT.

10. ABANDONMENT OF THE PROJECT. In the event the CITY abandons the PROJECT prior to its completion, the NRD shall not be responsible for

any costs, payments, or billings related to the PROJECT. If at the time of abandonment, the NRD has paid the CITY an installment of the NRD CONTRIBUTION or any other monies related to the PROJECT, the CITY shall return and refund any and all such installment(s) or monies related to the PROJECT to the NRD.

11. OPERATION AND MAINTENANCE OF THE PROJECT. After completion of PROJECT and CITY acceptance of the PROJECT from the CONTRACTOR, the CITY, at its own and sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the PROJECT during its useful life, as the CITY determines necessary, and in accordance with applicable and generally-accepted engineering practices, state and federal statutes and regulations, including but not limited to, 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.

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

13. INDEMNIFICATION. The CITY shall indemnify and hold the NRD harmless from and against all liability and damages resulting from the PROJECT, including but not limited to the design, construction, operation, or maintenance of the PROJECT, and against all demands, causes of action, and claims arising from the PROJECT, including but not limited to court costs and attorney fees, except as may be caused by the negligence of the NRD.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

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

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 LAVISTA

By _____
_____, Mayor

Attest:

City Clerk

The NRD has executed THIS AGREEMENT on _____, 2015.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
JOHN WINKLER, General Manager