

Agenda Item: 10.

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee

FROM: Eric Williams, Natural Resources Planner

SUBJECT: Hell Creek, City of Omaha Urban Drainageway Project  
Interlocal Agreement

DATE: July 2, 2015

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Through the Urban Drainageway Program, the City of Omaha has made significant recent improvements to both Rockbrook Creek, and Saddle Creek. Following on the success of those two projects, creek rehabilitation is planned for 3,300 linear feet along Hell Creek south of West Center Road.

The major focus of the project is removal of the existing concrete liner to provide more natural stream bed and bank conditions. While the channel's ecological condition will be greatly improved simply by removing the existing cracked and broken concrete liner, this project will also provide significant and sustainable lift in aquatic habitat quantity, quality, and diversity through design features that enhance the benthic and riparian environments. Replacement of the four road culverts will allow each of the culverts to meet their design structural load ratings and provide greater hydraulic capacity than the existing culverts.

The City of Omaha's Urban Drainageway Program application for \$900,000 (\$300,000 over the next three fiscal years) toward this \$3.8 million project was approved by the Board in April of this year. Management is recommending approval of the attached interlocal agreement with Omaha that provides for this cost share reimbursement by the District and design, operation and maintenance responsibilities of the City.

**It is recommended that the PPO Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Agreement with the City of Omaha for cost share reimbursement in the amount of \$900,000 over the next three fiscal years on the Hell Creek Urban Drainageway project, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

## Attachment 2: Project Map



**FIGURE 2 – HELL CREEK AT WESTWOOD LANE SITE MAP**



**FIGURE 3 – HELL CREEK – EXISTING CONCRETE LINED CHANNEL (LOOKING DOWNSTREAM OF WESTWOOD LANE)**



**FIGURE 4 – TYPICAL CONCRETE LINER FAILURE UPSTREAM OF C STREET**

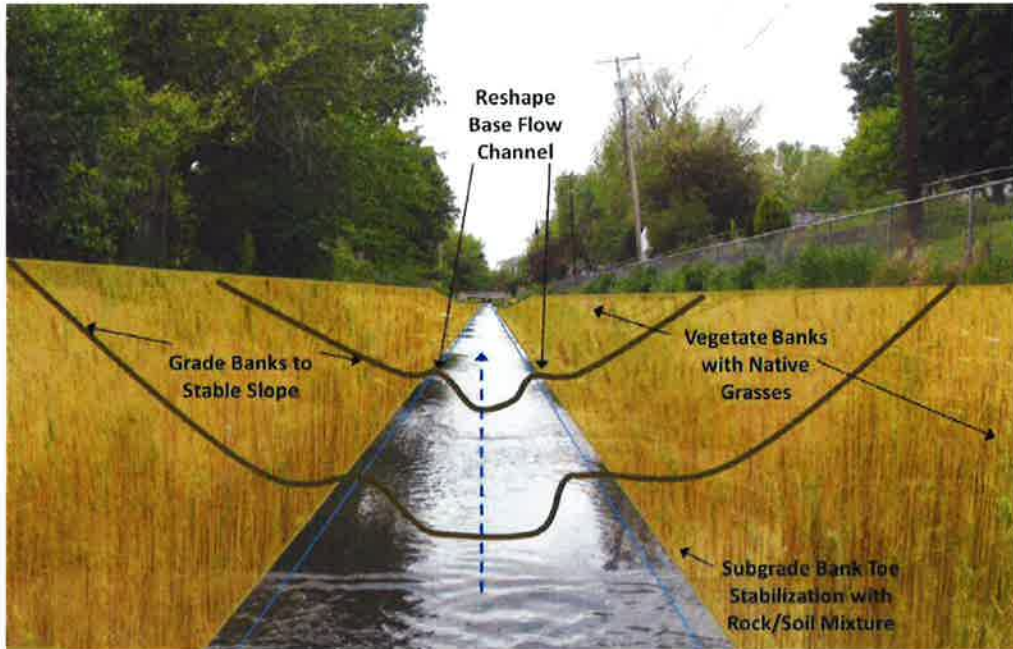




**FIGURE 6 – TYPICAL CONCRETE CRACKING AND POTHOLES ON DECK AT A STREET**



**FIGURE 7 – TYPICAL EXPOSED REINFORCING STEEL FROM DELAMINATED CONCRETE AT A STREET**



**FIGURE 10 – HELL CREEK PROPOSED TYPICAL CHANNEL CROSS SECTION**



**FIGURE 11 –HELL CREEK PROPOSED CROSS VANE ROCK GRADE CONTROL STRUCTURE AND VEGETATED BANKS (CONCEPTUAL RENDERING, LOOKING DOWNSTREAM)**

**INTERLOCAL COOPERATION AGREEMENT**

**Between**

**THE CITY OF OMAHA, NEBRASKA**

**And**

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

**For**

**HELL CREEK DRAINAGEWAY PROJECT**

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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**, the NRD administers its 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 Hell Creek 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.** The 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. **APPLICATION AND SUBMISSION OF PLANS.** The CITY'S application and documents accompanying that application to the PROGRAM are attached hereto as EXHIBIT A, and are incorporated into THIS AGREEMENT.

Prior to commencing performance of the relevant phase of the PROJECT, the CITY shall submit to the NRD the PROJECT plans, bid documents, construction contract, and implementation schedules (collectively the "DOCUMENTS"). If during any phase of the PROJECT, there are material changes to the application or the DOCUMENTS, the CITY shall timely inform the NRD, in writing, of the material change and submit an updated version of the relevant document or documents that were impacted by the material change.

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 by the CITY, which shall hold the same. The cost of such permits shall be deemed a cost of the PROJECT.

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. **CONSTRUCTION CONTRACT FOR PROJECT.** The CITY shall solicit competitive sealed bids for construction of the PROJECT pursuant to contract documents submitted to the NRD. The provisions of the CONSTRUCTION CONTRACT shall include, but not be limited to, covenants and conditions providing that the NRD shall be named as an additional insured in all insurance provided to the CITY by the CONTRACTOR.

10. **COMPETITIVE BIDS.** Within a reasonable time after CITY'S receipt and opening of sealed bids for construction of the PROJECT, the CITY shall deliver a summary thereof to the NRD, together with the identification by the CITY of the bidder whom the CITY determines is the lowest responsible bidder. The CITY 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 that the CITY selects a bidder who did not submit the lowest bid, the CITY shall provide a written explanation of its decision to select a higher bid to the NRD. The CITY, through the CONTRACTOR, shall construct the PROJECT in accordance with the plans and specifications the CITY submitted to the NRD.

11. **NRD CONTRIBUTION.** As its contribution(s) towards the aforesaid costs of the original engineering and construction and of the PROJECT ("the **NRD CONTRIBUTION**"), the NRD shall reimburse the CITY for up to a total of \$900,000 for the costs of the PROJECT. Such contribution(s) shall be paid in yearly installments each in the amount of \$300,000. The first such installment shall be paid in the NRD'S



2016 fiscal year. The second installment shall be paid in the NRD'S 2017 fiscal year. The third installment shall be paid in the NRD'S 2018 fiscal year.

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 any of the installments. Each installment shall be paid to the CITY within 45 days of the CITY'S submission to the NRD of the invoice(s) referenced above. Under no circumstances shall the NRD CONTRIBUTION exceed the total sum of \$900,000, nor shall the NRD be responsible for paying any monies related to the PROJECT in excess of \$900,000.

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.

**12. 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 installment(s) or monies related to the PROJECT to the NRD.

**13. 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.

**14. 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.

**15. 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 therefrom including court costs and attorney fees, excepts as may be caused by the negligence of the NRD.

**16. 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.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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 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**