

## Memorandum

**To:** Programs, Projects and Operations Subcommittee

**Re:** Elkhorn River Public Access Highway 64

**Date:** October 6, 2010

**From:** John Winkler, General Manager

Per the attached letter from Stan Benke, Village of Waterloo Board Chairman; the Village of Waterloo has requested that the District relinquish the Village from its operation, maintenance and management responsibilities for the facility and thus take over those functions.

The Village of Waterloo does not have the resources in money or man power to continue to operate and maintain the site appropriately. In addition, the recent historic flooding along the Elkhorn River will require this site to be extensively cleaned up and repaired in order for the public to be able to safely access the site and its amenities.

In coordination with District Park Staff, which operates and maintains these areas, it was determined that the day to day operation and maintenance of this facility would not require additional man power or equipment on behalf of the District.

A thorough analysis of the cost of flood clean up and repair has not been conducted at this time; although much of the work could be done by NRD personnel.

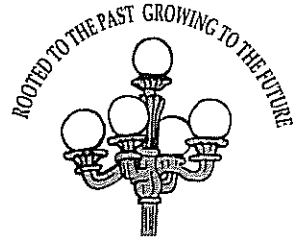
**Therefore, Management recommends that the subcommittee recommend to the Board of Directors that the General Manager be authorized to execute a First Addendum to the Interlocal Cooperation Act Agreement between the Village of Waterloo and the District for the Elkhorn River Canoe Access Site, such First Addendum calling for the District to resume responsibility for operation and maintenance of the site and containing such other terms and conditions as the General Manager determines necessary and District legal counsel approves as to form.**



# Village of Waterloo

P.O. BOX 127 • WATERLOO, NEBRASKA 68069  
(402) 779-2292 • FAX (402) 779-2292

Board of Trustees



June 30, 2010

Rick Kolowski  
Papio-Missouri River NRD  
8901 S. 154<sup>th</sup> Street  
Omaha, NE 68138-3621

RE: Elkhorn River Public Access Highway 64

Dear Rick:

Several years ago the Village of Waterloo partnered with the NRD to provide Elkhorn River canoe access improvements on a tract of land owned by the Village. We were awarded a "Recreational Trails Program" grant and as always a good partner, the NRD shared the remaining costs. We were proud of the results and the benefits to Waterloo and surrounding communities.

After completion of the project, Waterloo agreed to operate, maintain and regulate the landing. Initially, we were able to take care of the basics- mowing, trash pick-up and the restrooms. As other landings were developed along the Elkhorn, the popularity and traffic at our landing increased significantly. It soon became apparent that the upkeep, repairs and ongoing regulation needed for this area clearly exceeded our original expectations. With only one full-time maintenance employee, the landing isn't getting the consistent maintenance it requires.

Also, after the recent flooding of the Elkhorn River, the Canoe Landing will require extensive clean-up and possible repairs, which we do not have in our budget.

It is based on this that we are asking the NRD to consider relinquishing the Village of Waterloo from the responsibility for the operations, repairs, maintenance and ongoing management of the Elkhorn River Access on West Maple Road. The regulation by one agency will promote consistency and better application of federal, state and local laws and provide a safe and reputable recreational site.

Rick, please let me know if this is a possibility and how we should proceed.

Sincerely,

Stanley E. Benke, Jr.  
Waterloo Chairman of the Board

JUL - 9 2010



**FIRST ADDENDUM**  
**To**  
**INTERLOCAL COOPERATION ACT AGREEMENT**  
**Between**  
**THE VILLAGE OF WATERLOO, NEBRASKA**  
**And**  
**THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**  
**For**  
**ELKHORN RIVER CANOE ACCESS SITE**

---

**THIS ADDENDUM** (hereinafter referred to as “this **ADDENDUM**”) is entered into by and between the **VILLAGE OF WATERLOO, NEBRASKA** (hereinafter referred to as “the **VILLAGE**”) and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “the **NRD**”), all pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.)

**RECITALS:**

**WHEREAS**, pursuant to an Agreement (hereinafter referred to as “the **AGREEMENT**”) executed by the **VILLAGE** on August 24, 2004, and by the **NRD** on September 9, 2004, a true and correct copy of which is attached hereto as Exhibit “1” and incorporated herein by reference, the **NRD** and the **VILLAGE** established a project (hereinafter referred to as “the **PROJECT**”) to provide Elkhorn River canoe access improvements on a tract of land located near the West Maple Road crossing of the Elkhorn River in Douglas County, such tract of land being more particularly described in the legal description attached as Exhibit “A” to Exhibit “1” hereto, and incorporated herein by reference; and,

**WHEREAS**, also pursuant to the **AGREEMENT**, the **VILLAGE** obtained lands, easements and rights-of-way necessary for the **PROJECT** (referred to

hereinafter and in Exhibit "1" hereto as "the **PROJECT RIGHTS-OF-WAY**"); the NRD constructed the PROJECT, in conformance with VILLAGE-approved final plans and specifications; and, the VILLAGE commenced to operate, maintain, repair, replace, manage and regulate the PROJECT; and,

**WHEREAS**, the VILLAGE now has determined that it is unable to continue to operate, maintain, repair, replace, manage and regulate the PROJECT, as those responsibilities were previously undertaken by the VILLAGE in the AGREEMENT; and,

**WHEREAS**, the contracting parties now desire to modify the AGREEMENT for the purpose of providing for the transfer from the VILLAGE to the NRD of the PROJECT RIGHTS-OF-WAY and for the assumption by the NRD of the VILLAGE'S responsibility for the permanent operation, maintenance, repair, replacement, management and regulation of the 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, to wit:

**A.** That the following numbered paragraphs of the AGREEMENT should be modified in the manner as set forth as follows:

**1. PROJECT PARTICIPANTS.** The PROJECT shall be a joint undertaking by and between the NRD and the VILLAGE, without any separate entity being created, and the duties and responsibilities of the parties shall be as defined by ~~this~~ the AGREEMENT as amended by this ADDENDUM.

**7. RIGHTS-OF-WAY ACQUISITION.** Lands, easements and rights-of-way, that the ENGINEERS or the NRD determine are necessary for the PROJECT (hereinafter referred to as "the **PROJECT RIGHTS-OF-WAY**"), shall be provided by the VILLAGE, ~~which shall hold title thereto.~~

Within ten (10) days after the effective date of this ADDENDUM the VILLAGE shall transfer all PROJECT RIGHTS-OF-WAY held in fee simple to the NRD by full warranty deed, free of covenants or restrictions imposed pursuant to or by virtue of the AGREEMENT, and transfer all other PROJECT RIGHTS-OF-WAY to the NRD by grant or assignment.

**13. OPERATION AND MAINTENANCE OF PROJECT.** After completion of construction of the PROJECT; and ~~after the NRD'S acceptance of the same from the PROJECT CONTRACTOR, and until the effective date of this ADDENDUM,~~ the VILLAGE, at its sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the PROJECT, in accordance with generally-accepted engineering practices. After the effective date of this ADDENDUM, the NRD, at its sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the PROJECT, all at such time and in such manner as the NRD in its sole discretion determines reasonable and feasible.

**14. OPERATIONAL RULES AND REGULATIONS.** Prior to the effective date of this ADDENDUM ~~THE~~the operational rules and regulations adopted by the VILLAGE for the management of the PROJECT after its construction shall provide that no fee shall be required to be paid by members of the public as a condition to the use of the PROJECT, and shall contain such other rules and regulations as the VILLAGE may adopt that are consistent with state and federal laws, rules and regulations, and are approved in writing by the General Manager of the NRD. ~~If requested by the VILLAGE, the Board of Directors of the NRD shall co-adopt such operational rules and regulations.~~ On and after the effective date of this ADDENDUM, the NRD shall solely operate, manage and regulate the PROJECT, at its sole cost and expense and in such manner as the NRD in its sole discretion determines reasonable and feasible.

**15. PROJECT RISK OF LOSS.** After completion of construction of the PROJECT and the NRD'S acceptance of the same from the PROJECT CONTRACTOR, and until the effective date of this ADDENDUM, the VILLAGE, at its sole cost and expense, shall permanently have and 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; and, the VILLAGE shall pay the cost of any insurance on the PROJECT that the VILLAGE determines necessary to cover such risks; provided, however, on and after the effective date of this ADDENDUM, the NRD, at its sole cost and expense, shall have and 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.

**16. INDEMNIFICATIONS.** ~~Except as otherwise specifically provided in THIS AGREEMENT~~ (a) ~~the~~ The NRD shall defend and indemnify the VILLAGE and hold the VILLAGE harmless from and against any and all claims, demands, causes of action, costs and expenses, including without limitation court costs and attorneys fees, for personal injuries or property damages in whole or in part arising out of or caused by the negligence or other actions or inactions of the NRD, its employees, officers, contractors and agents, in design or construction of the PROJECT; arising out of the NRD'S operation, maintenance, repair, replacement, management or regulation of the PROJECT after to the effective date of this ADDENDUM. (b) ~~the~~ The VILLAGE shall defend and indemnify the NRD and hold the NRD harmless from and against any and all claims, demands, causes of action, costs and expenses, including without limitation court costs and attorneys fees, for personal injuries or property damages in whole or in part arising out of or caused by the negligence or other actions or inactions of the VILLAGE, its employees, officers, contractors and agents, in the operation, maintenance, repair,

replacement, management or regulation of the PROJECT prior to the effective date of this ADDENDUM, or arising out of the use of the PROJECT by members of the public prior to the effective date of this ADDENDUM; ~~and,~~ (c) ~~the~~ The VILLAGE shall defend and indemnify the NRD and hold the NRD harmless from and against any and all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys fees, arising from the presence in or on any PROJECT RIGHTS-OF-WAY of asbestos or any form thereof, or any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances in or on any PROJECT RIGHTS-OF-WAY, and also including without limitation costs of any studies and investigations necessary to determine an appropriate response to any contamination in the PROJECT RIGHTS-OF-WAY, but excepting costs and expenses relating to any such substances or materials introduced by the NRD or its employees, officers, contractors or agents in or on any PROJECT RIGHTS-OF-WAY.

**B.** This ADDENDUM shall be in force and effect from and after its approval and execution by the VILLAGE and the NRD.

**C.** This ADDENDUM shall have permanent duration.

**D.** Except as modified by this ADDENDUM, the AGREEMENT is ratified and confirmed in all respects.

**IN WITNESS WHEREOF**, the parties have executed this ADDENDUM pursuant to authorizing resolutions duly adopted at regularly called meetings of their governing bodies.

The VILLAGE executed this ADDENDUM on \_\_\_\_\_, 2010.

**VILLAGE OF WATERLOO, NEBRASKA**

By \_\_\_\_\_  
Mayor

**Attest:**

\_\_\_\_\_  
Village Clerk

The NRD executed this ADDENDUM on \_\_\_\_\_, 2010.

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

By \_\_\_\_\_  
General Manager