

## Memorandum

To: Programs, Projects and Operations Subcommittee

Subject: 240<sup>th</sup> Street/Elkhorn River – Interlocal Agreement with Sarpy County

Date: February 4, 2011

From: Gerry Bowen

In January, 2011, the Board directed Management to select and negotiate a professional services agreement with a consultant to design a solution to the bank erosion along the Elkhorn River in Sarpy County near the Graham, Gilmore, and Kelsay properties (see attached map). Since the main public benefit would be to protect 240<sup>th</sup> Street, management was also directed to seek an interlocal agreement with Sarpy County to share the costs of the project.

A draft interlocal agreement is attached that calls for Sarpy County to share the costs of the engineering project to determine the most cost effective, long-term solution to protect 240<sup>th</sup> Street from Elkhorn River streambank erosion.

Sarpy County will be considering this agreement at their February 8, 2011 meeting.

Management recommends approval.

- **It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute an Interlocal Cooperation Act agreement with Sarpy County for the 240<sup>th</sup> Street Bank Stabilization Project, pending approval by Sarpy County and subject to changes deemed necessary by the General Manager and accepted as to form by District legal counsel.**

**INTERLOCAL COOPERATION ACT AGREEMENT**

**COUNTY OF SARPY, NEBRASKA,**

**And**

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

**For**

**240<sup>th</sup> STREET EROSION PROTECTION**

THIS AGREEMENT (“**THIS AGREEMENT**”) is entered into by and between the **COUNTY OF SARPY, NEBRASKA** (“the **COUNTY**”) and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (“the **DISTRICT**”).

The **COUNTY** and the **DISTRICT** are referred to collectively hereinafter as “the **PARTIES**” and individually as a “**PARTY**”.

**RECITAL:**

**WHEREAS**, pursuant to authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.), the **PARTIES** desire to cooperatively commission engineers to perform design work (“the **DESIGN WORK**”) necessary to determine the most cost-effective design for a future project (“the **PROJECT**”) to prevent 240<sup>th</sup> Street in Sarpy County from being lost to foreseeable and continued Elkhorn River bank erosion.

**NOW, THEREFORE**, for and in consideration of the foregoing recital and the mutual covenants of the parties hereinafter expressed, the **PARTIES** agree as follows:

1. **BENEFITS.** The PARTIES do hereby find, determine and agree that the DESIGN WORK will be of general benefit to the DISTRICT, with only incidental special benefits.

2. **PARTICIPANTS.** The DESIGN WORK shall be undertaken by a consulting engineering firm retained on behalf of the PARTIES, as provided herein, without any separate entity being created, and the duties and responsibilities of the PARTIES with respect to the DESIGN WORK shall be as defined by THIS AGREEMENT.

3. **THE ENGINEERS.** The DISTRICT, with prior approval by the COUNTY, shall retain the ENGINEERS to perform the DESIGN WORK.

4. **DESIGN CRITERIA.** Written criteria for the DESIGN WORK shall be specified by the DISTRICT in accordance with the DISTRICT'S usual engineering practices, subject to the written approval by the COUNTY, which approval shall not be withheld or delayed unreasonably.

5. **STUDY AREA.** The area studied in the DESIGN WORK shall consist of the NE ¼ and the N ½ of the SE ¼ of Section 16, Township 14 North, Range 10 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, unless, on the recommendation of the ENGINEERS and the approval of the PARTIES, the study area is expanded.

6. **RIGHTS-OF-ENTRY.** Rights-of-entry that the ENGINEERS and the DISTRICT determine are necessary for performance of the DESIGN WORK shall be obtained by the DISTRICT at its sole cost or expense, to which rights-of-entry the DISTRICT shall hold title.

7. **PERMITS.** The DESIGN WORK shall include preparation of applications for state and federal permits that the ENGINEERS and the DISTRICT determine are necessary for performance of the PROJECT.

8. **DEADLINE FOR COMPLETION.** The DESIGN WORK provided for in THIS AGREEMENT shall be completed prior to December 31, 2011, and shall be subject to acceptance by both the NRD and the COUNTY.

9. **COST-SHARING.** Each PARTY shall pay one-half of the contract fees due to the ENGINEERS for the DESIGN WORK. The NRD shall pay such fees when they are due and shall invoice the COUNTY for the COUNTY'S share, which shall be paid to the NRD within 45 days after invoice date.

10. **INVOICES.** Invoices referred to herein shall set out the following information with respect to each cost being invoiced for partial reimbursement, to-wit:

- a) amount of such cost,
- b) date such cost was incurred,
- c) person to whom such amount was paid, and,
- d) purpose(s) for such cost.

11. **AUTHORITY FOR APPROVALS.**

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

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

**12. EFFECTIVE DATE AND DURATION.** THIS AGREEMENT shall be in force and effect from and after its execution by the PARTIES and shall have permanent duration.

**13. 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.

**14. APPLICABLE LAW.** The PARTIES shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance and terms of THIS AGREEMENT.

**15. 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.

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

**IN WITNESS WHEREOF**

The COUNTY has executed THIS AGREEMENT on \_\_\_\_\_, 2011,  
pursuant to resolution duly adopted by its Board of Commissioners.

**THE COUNTY OF SARPY, NEBRASKA**

By \_\_\_\_\_  
**Chairperson, Board of County  
Commissioners**

**Attest:**

\_\_\_\_\_  
**County Clerk**

The DISTRICT has executed THIS AGREEMENT on \_\_\_\_\_, 2011,  
pursuant to resolution duly adopted by its Board of Directors.

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

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