

Memorandum

To: PPO Subcommittee

Re: Interlocal Agreement with the Village of Waterloo for Levee Improvements

Date: April 4, 2009

From: Amanda Grint, Water Resources Engineer

In February 2009, the Board approved a motion for staff to draft an interlocal agreement for Subcommittee consideration with the Village of Waterloo for an equal cost share on the construction of levee improvements in an amount not to exceed \$2,000,000. Details of the proposed agreement (attached) are as follows:

- The construction cost estimate (attached) for this project is \$3.8 million and includes earthwork to raise the levee or offset the levee in some locations, construct a floodwall in certain locations, construct closure structures, intersection and utility work as well as land rights, survey and construction administration.
- The District will be invoiced monthly and pay the Village 50% of each invoice up to a maximum amount of \$2,000,000
- Any state or federal grants or funding to offset the cost of the levee improvements will be credited in equal shares to the District and the Village

On Tuesday, May 5th, the Village of Waterloo will hold its third public meeting to update the residents on the status of the project and to answer any questions on the project or the bond issue. On May 12, the Village of Waterloo will hold an election to issue bonds for this project in the amount of \$2.2 million.

It is management's recommendation that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the Interlocal Agreement with the Village of Waterloo to equally share the cost for levee improvements, up to a maximum District cost of \$2,000,000, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

Levee Improvements to Meet 100-Year Flood Elevation Plus Freeboard Requirements Village of Waterloo, NE - 60 % Plans Cost Opinion (Alternative with I-wall)				
Item	Unit	Qty. Req'd	Unit Cost (1)	Cost
Levee Embankment	CY	150,000	\$8.00	\$1,200,000.00
Levee Freeboard Floodwall (I - Wall)	LF	760	\$450.00	\$342,000.00
Bike Trail Remove	SY	750	\$12.00	\$9,000.00
*Railroad Closure Structure	LS	1	\$250,000.00	\$250,000.00
Improve Levee Closure Systems	EA	6	\$20,000.00	\$120,000.00
Clearing and Grubbing	LS	1	\$40,000.00	\$40,000.00
24" RCP Storm Sewer	LF	70	\$50.00	\$3,500.00
24" RCP F.E.S.	EA	2	\$1,500.00	\$3,000.00
27" RCP Storm Sewer	LF	80	\$55.00	\$4,400.00
27" RCP F.E.S.	EA	2	\$1,500.00	\$3,000.00
42" RCP Storm Sewer	LF	210	\$65.00	\$13,650.00
42" RCP F.E.S.	EA	2	\$1,500.00	\$3,000.00
Area Inlet	EA	1	\$2,500.00	\$2,500.00
36" CMP Culvert Extension, 2 locations	LF	35	\$70.00	\$2,450.00
42" CMP Culvert Extension	LF	25	\$75.00	\$1,875.00
36" RCP Culvert Extension	LF	15	\$70.00	\$1,050.00
Remove and Reset 36" RCP F.E.S	EA	1	\$500.00	\$500.00
Remove 42" CMP Culvert Pipe	LF	60	\$10.00	\$600.00
Pavement Removal	SY	5,290	\$14.00	\$74,060.00
9" P.C.C. Pavement	SY	3,000	\$40.00	\$120,000.00
7" P.C.C. Pavement	SY	1,750	\$35.00	\$61,250.00
Asphalt Pavement	TON	240	\$75.00	\$18,000.00
Rock Roadway Surfacing	TON	2,000	\$30.00	\$60,000.00
6" P.C.C. Pavement, Bike Trail	SY	1,000	\$26.50	\$26,500.00
Pavement Subgrade Adjustment	CY	15,000	\$10.00	\$150,000.00
Erosion Control/Embankment Protection	Acre	30	\$1,750.00	\$52,500.00
Seeding	Acre	30	\$1,375.00	\$41,250.00
Fence Removal & Replacement	LF	2,000	\$28.00	\$56,000.00
* Does not include railroad insurance				
Subtotal				\$ 2,660,085
Mobilization	Lump Sum	1	1.00%	\$ 26,601
Preliminary Construction Costs Total				\$ 2,686,687
Contingency (easement, utility relocates, etc.)	Lump Sum	1	25%	\$ 671,672
Subtotal Construction Costs				\$ 3,358,359
Additional Construction Fees				
Construction Observation	Lump Sum	1	10%	\$ 268,669
Geotech - Construction Testing	Lump Sum	1	5%	\$ 134,334
PRELIMINARY TOTAL PROJECT COSTS				\$ 3,761,362

INTERLOCAL COOPERATION AGREEMENT
Between
THE VILLAGE OF WATERLOO, NEBRASKA
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
CONSTRUCTION OF WATERLOO LEVEE IMPROVEMENTS

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

WHEREAS, in circa 1967, the United States Army Corps of Engineers ("**USACE**") constructed the Waterloo Flood Control Project (FCP) ring levee ("the **EXISTING LEVEE**") on lands and easements acquired for that purpose ("the **EXISTING RIGHTS-OF-WAY**"); and,

WHEREAS, a recent evaluation of the **EXISTING LEVEE** for conformance with the requirements of 44 CFR 65.10 was made by USACE at the request of the Federal Emergency Management Agency ("**FEMA**"), whereupon it was thereby determined that the **EXISTING LEVEE** fails to meet current FEMA freeboard requirements and is required to be improved in order for flood insurance to continue to be available to the **VILLAGE**; and,

WHEREAS, the **VILLAGE** has obtained final plans and specifications and other engineering services ("the **PRE-CONSTRUCTION ENGINEERING SERVICES**"), from JEO Consulting Group, Inc. ("the **ENGINEERS**"), for a new flood control levee ("the **NEW LEVEE**") designed to replace the **EXISTING**

LEVEE, PRE-CONSTRUCTION ENGINEERING SERVICES being funded in part by previous grant(s) to the VILLAGE from the NRD pursuant to an Interlocal Cooperation Agreement between the parties entered into in 2008 (“the **2008 AGREEMENT**”); and,

WHEREAS, the VILLAGE desires to receive NRD cost-sharing assistance for a project to construct the NEW LEVEE (“the **NEW LEVEE PROJECT**”); and,

WHEREAS, the NRD has authority under §2-3229, R.R.S., Neb., 1997, to “develop and execute, through the exercise of powers and authorities granted by law, plans, facilities, works, and programs relating to * * *, (2) prevention of damages from flood water and sediment, (3) flood prevention and control * * * ,” and the NEW LEVEE PROJECT is one of such facilities, works and programs.

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 NEW LEVEE PROJECT will be of predominantly general benefit to the VILLAGE and the NRD, with only an incidental special benefit.
2. **PROJECT PARTICIPANTS.** The NEW LEVEE PROJECT shall be undertaken by the parties hereto without any separate entity being created, and the duties and responsibilities of the parties with respect to the NEW LEVEE PROJECT shall be as defined by THIS AGREEMENT.
3. **PLAN APPROVALS.** Prior to commencing performance of the NEW LEVEE PROJECT, the VILLAGE shall submit to the NRD and obtain the NRD’S approval of NEW LEVEE PROJECT bid documents, construction contract and implementation schedules.

4. **NRD TECHNICAL ASSISTANCE.** The NRD shall provide technical assistance to the VILLAGE and attend all necessary meetings regarding the NEW LEVEE PROJECT.

5. **THE ENGINEERING CONTRACT.** The VILLAGE shall enter into a professional services contract with the ENGINEERS, in the form as determined by the VILLAGE and approved in writing by the NRD (“the **ENGINEERING CONTRACT**”), pursuant to which the ENGINEERS shall undertake tasks including the preparation and administration of bidding documents and performance of construction services for construction of the NEW LEVEE on the NEW RIGHTS-OF-WAY and EXISTING RIGHTS-OF-WAY. The provisions of the ENGINEERING CONTRACT also shall include, but shall not be limited to, covenants and conditions calling for the ENGINEERS to submit to the NRD, for its written approval and concurrence, copies of all change orders and other deliverables that the ENGINEERING CONTRACT provides for submission by the ENGINEERS to the VILLAGE

6. **INSURANCE.** The ENGINEERING CONTRACT shall provide that the NRD shall be named as an additional insured in all insurance provided to the VILLAGE by the ENGINEERS in accordance with the ENGINEERING CONTRACT.

7. **EFFECT OF NRD APPROVALS.** NRD approval(s) pursuant to THIS AGREEMENT shall not for any purpose be construed as participation by the NRD in the VILLAGE’S design processes or other ENGINEERING SERVICES, nor shall any such approvals result in liability or contribution on the part of NRD to the VILLAGE for any negligence in the design of the NEW LEVEE.

8. **RIGHTS-OF-WAY ACQUISITION.** Lands, easements and rights-of-way, which the ENGINEERS or the VILLAGE determine are necessary for construction of the NEW LEVEE (“the **NEW LEVEE RIGHTS-OF-WAY**”) or

for the permanent operation, maintenance, repair, replacement, management and regulation of the NEW LEVEE, shall be obtained by the VILLAGE, which shall hold title thereto. The costs of the NEW LEVEE RIGHTS-OF-WAY shall be deemed to be a cost of the NEW LEVEE PROJECT.

9. PERMITS. All necessary local, state and federal permits, which the ENGINEERS or the VILLAGE determine are necessary for construction of the NEW LEVEE PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the NEW LEVEE, shall be obtained at the sole cost and expense of the VILLAGE, which shall hold the same.

10. UTILITY RELOCATIONS. The VILLAGE, through its contractor, shall be solely responsible for relocation of any utilities that are determined to interfere with construction of the NEW LEVEE PROJECT, or with the operation, maintenance, repair, replacement, management or regulation of the NEW LEVEE. The cost of such utility relocations shall be deemed to be a cost of the NEW LEVEE PROJECT.

11. CONSTRUCTION CONTRACT FOR NEW LEVEE PROJECT. The VILLAGE shall solicit competitive sealed bids for construction of the NEW LEVEE PROJECT pursuant to contract documents submitted to and approved in writing by the NRD. The provisions of the ENGINEERING 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 VILLAGE pursuant to the contract for construction of the NEW LEVEE PROJECT. Within a reasonable time after VILLAGE receipt and opening of such bids, the VILLAGE shall deliver a summary thereof to the General Manager of the NRD, together with the identification by the VILLAGE of the bidder who or which the VILLAGE determines is the lowest and most responsible bidder. In the absence of good cause to the contrary being shown to the VILLAGE by the NRD, the VILLAGE shall accept such bid and shall award to such bidder the contract to construct all or one

or more portions of the NEW LEVEE PROJECT. The VILLAGE, through its contractor, shall construct the NEW LEVEE PROJECT in accordance with the NRD-approved plans and specifications.

12. NRD CONTRIBUTION. As the sole contribution of the NRD towards the aforesaid costs of the original engineering and construction and of the NEW LEVEE PROJECT (“the **NRD CONTRIBUTION**”), the NRD shall pay to the VILLAGE, in installments within 45 days after the VILLAGE’S respective written requests, one-half (50%) of each of the billings rendered to the VILLAGE for the ordinary and necessary original costs of the NEW LEVEE PROJECT; provided, however, notwithstanding any other provision of THIS AGREEMENT, the NRD shall not in any event be responsible or required to pay or reimburse to the VILLAGE more than one half (50%) of the total original costs of the NEW LEVEE PROJECT, and not in any event more than the total sum of TWO MILLION DOLLARS (\$2,000,000) additional to the contribution previously agreed to be made by the NRD pursuant to the 2008 AGREEMENT. The VILLAGE shall be solely responsible to pay all other costs and expenses associated with the NEW LEVEE without any further NRD reimbursement. 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 NEW LEVEE PROJECT shall be credited to both parties in equal shares against their respective obligations hereunder for costs and expenses of the NEW LEVEE PROJECT. The NRD’S contribution payment(s) to the VILLAGE will be made within 45 days following receipt by the NRD from the VILLAGE of a written request or invoice for the NRD’S share of actual costs incurred by the VILLAGE.

13. OPERATION AND MAINTENANCE OF THE NEW LEVEE. After completion of NEW LEVEE PROJECT and VILLAGE acceptance of the NEW LEVEE from the VILLAGE’S construction contractor, the VILLAGE, at its own and sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the NEW LEVEE during its useful life, as the

VILLAGE determines necessary, and in accordance with applicable and generally-accepted engineering practices, FEMA regulations and requirements for continuation of flood insurance, and USACE requirements necessary to preserve the eligibility of NEW LEVEE for benefits under the Public Law 84-99 maintenance program.

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

15. **INDEMNIFICATION.** Except as otherwise provided herein, the VILLAGE shall defend and indemnify the NRD and hold the NRD harmless (1) from and against any and all NEW LEVEE PROJECT costs exceeding the NRD CONTRIBUTION under THIS AGREEMENT; (2) from and against any and all claims, demands, causes of action, costs and expenses, including 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, agents or NEW LEVEE contractors, or in the design, acquisition of rights-of-way, construction, operation, maintenance, repair, replacement and regulation of or for the NEW LEVEE, other than as may be caused by the sole negligence of the NRD; and, (3) from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys fees, arising from the introduction or presence in or on any EXISTING RIGHTS-OF-WAY or NEW LEVEE RIGHTS-OF-WAY of 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 EXISTING RIGHTS-OF-WAY or NEW LEVEE RIGHTS-OF-WAY, and also including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination on the EXISTING RIGHTS-OF-WAY or NEW LEVEE RIGHTS-OF-WAY, but excepting costs and expenses relating to any such substances or materials introduced solely by the NRD or its employees, officers, contractors or agents.

16. EFFECTIVE DATE AND TERM. THIS AGREEMENT shall be in force and effect from and after its execution by the parties hereto, and shall have permanent duration.

17. 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.

18. VILLAGE APPROVALS. Approvals by the VILLAGE and other VILLAGE actions, contemplated or called for by THIS AGREEMENT, are hereby authorized to be provided by the Chairman of the VILLAGE Board.

19. NRD APPROVALS. Approvals by the NRD and other NRD actions contemplated by or called for by THIS AGREEMENT, are hereby authorized to be provided by the General Manager or Assistant General Manager of the NRD.

20. 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 NEW LEVEE PROJECT not expressly contained herein.

21. **TIME.** Time is of the essence of THIS AGREEMENT.

22. **DEFAULT.** If either party shall default hereunder, the other party shall be entitled to enforce specific performance of THIS AGREEMENT, may terminate THIS AGREEMENT, or may have any other remedy allowed by law or equity.

23. **NOTICES.** All notices herein required shall be in writing and shall be served on the parties at their respective addresses set out below, 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.

24. **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.

25. **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.

26. **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.

27. **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 VILLAGE has executed THIS AGREEMENT on _____, 2009.

THE VILLAGE OF WATERLOO
P. O Box 127, Waterloo, Nebraska 68069

By _____

Chairman, Village Board

Attest:

Village Clerk

The NRD has executed THIS AGREEMENT on _____, 2009.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**
8901 South 154th Street, Omaha, NE 68138-3621

By _____

JOHN WINKLER
General Manager