

Agenda Item 8.

## MEMORANDUM

TO: Finance, Expenditure & Legal Subcommittee

RE: Missouri River Trail – Phase 2 – Interlocal Cooperation Act Agreement with Douglas County.

DATE: January 3, 2007

FROM: Jim Becic

Construction of the 1.2 miles of Phase 1 of the Missouri River Trail is essentially complete. This Phase 1 segment begins at the entrance to N.P. Dodge Park and ends across Ponca Creek to the north.

Phase 2 will continue north of Ponca Creek and proceed an additional 1.5 miles up North River Road to the Washington County line where it will connect to the Boyer Chute Trail. This Phase 2 section of trail will impact portions of the County Road (North River Road) and ROW for the construction of this project.

In December 2006, the Nebraska Department of Roads (NDOR) approved a funding request by the NRD for \$500,000.00 to assist in the construction costs for this trail segment.

This attached Interlocal Cooperation Act Agreement with Douglas County – required by the NDOR - has been approved as to form by the Douglas County Attorney and will be scheduled to place it on the Douglas County Board agenda as soon as it is approved by the NRD Board.

**Management recommends that the subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Interlocal Cooperation Act Agreement between the County of Douglas, Nebraska and the Papio-Missouri River Natural Resources District for the Missouri River Trail Project - Phase 2, subject to minor changes deemed necessary by the General Manager and approved as to form by District Legal Counsel. .**

**INTERLOCAL COOPERATION ACT AGREEMENT**

**Between**

**THE COUNTY OF DOUGLAS, NEBRASKA**

**And**

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

**For**

**MISSOURI RIVER TRAIL PROJECT, PHASE II**

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

**WHEREAS**, the NRD is implementing a recreational project (hereinafter referred to as “the **PROJECT**”) to construct, operate and maintain a public bicycle and pedestrian trail along the COUNTY’S road known as North River Drive. Such trail is to extend from Ponca Road north to the boundary line between Washington and Douglas Counties, and is generally depicted in the diagram attached hereto as Exhibit “A” and incorporated herein by reference; and,

**WHEREAS**, the NRD desires to locate portions of the **PROJECT** trail on road rights of way obtained by the COUNTY for North River Drive, and on other land and rights of way adjacent to North River Drive obtained by the NRD; and,

**WHEREAS**, with respect to the portions of the **PROJECT** trails that will be located on road rights of way obtained by the COUNTY for North River Drive, the NRD’S use of such rights of way is authorized by § 2-3230, R.R.S., 1997, that provides as follows:

**“2-3230. Districts; facilities and works; powers.** Each district shall have the power and authority to construct and maintain works and establish and maintain facilities across or along any public street, alley, road, or highway and in, upon, or over any public lands which are now, or may hereafter become, the property of the State of Nebraska, and to construct works and establish and maintain facilities across any stream of water or watercourse; PROVIDED, that the district shall promptly restore any such street, highway, or other property to its former state of usefulness as nearly as may be possible, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof. In the use of streets, the district shall be subject to the reasonable rules and regulations of the county, city, or village where such streets lie concerning excavation and the refilling of excavation, the relaying of pavements, and the protection of the public during periods of construction. The district shall not be required to pay any license or permit fees, or file any bonds, but may be required to pay reasonable inspection fees.”

and,

**WHEREAS,** the COUNTY and the NRD desire to herein express the rules and regulations of the COUNTY that will apply to the NRD’S use of the COUNTY’S North River Drive road rights of way for purposes of the PROJECT, and their respective covenants with each other that are intended to govern the design, construction, operation, maintenance, repair, replacement 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:

**1. PROJECT BENEFITS.** The parties do hereby find and determine that the PROJECT will be of general public benefit, with only an incidental special benefit.

**2. THE PROJECT.** Except as otherwise provided herein, the design, construction, operation, maintenance, repair, replacement and regulation of the PROJECT will be undertaken by the NRD with NRD financing, 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. PROJECT DESIGN.** The NRD shall retain, and at its own expense compensate, engineering consultants, planners and landscape architects (hereinafter referred

to collectively as “the ENGINEERS”) to design and administer construction of the PROJECT.

**4. PROJECT PLANS.** The plans and specifications for the PROJECT shall be drawn by the ENGINEERS in accordance with criteria provided by the NRD; and, the final plans and specifications for the PROJECT shall be submitted to the COUNTY and subject to the written approval by the COUNTY, which approval shall not be withheld or delayed unreasonably.

**5. RIGHTS-OF-WAY ACQUISITION.** Any lands, easements and rights-of-way, in addition to the COUNTY’S North River Drive road rights of way, that the ENGINEERS or the NRD determine are necessary for the PROJECT shall be obtained by the NRD, at the NRD’s cost or expense, to which additional lands, easements and rights-of-way the NRD shall hold title.

**6. PERMITS.** All necessary local, state and federal permits that the ENGINEERS or the NRD determine are necessary for the PROJECT shall be obtained by the NRD, without COUNTY cost or expense.

**7. UTILITY RELOCATIONS.** The NRD shall perform the relocation of any utilities that are determined to interfere with the PROJECT, without COUNTY cost or expense.

**8. CONTRACT FOR PROJECT CONSTRUCTIONS.** Following the ENGINEER’S preparation of final plans and specifications for construction of the PROJECT, and approval of the same by the COUNTY, the NRD shall solicit competitive sealed bids for construction thereof. In the absence of good cause to the contrary being shown by the COUNTY, the NRD shall accept such lowest and best bidder’s bid and construct THE PROJECT in accordance with the COUNTY-approved plans and specifications.

**9. OPERATION AND MAINTENANCE OF PROJECT.** After completion of construction of the PROJECT and the NRD'S acceptance of the same from the NRD'S contractor, the NRD, at its own cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the non-vegetative portions of the PROJECT, as the NRD in its discretion determines necessary and in accordance with applicable and generally-accepted engineering practices, and the COUNTY, at its own cost and expense, shall permanently mow and maintain the vegetative portions of the PROJECT and periodically pickup and remove accumulated trash from the rights-of-way occupied by the PROJECT. The NRD shall control erosion on PROJECT RIGHTS-OF-WAY until permanent vegetation is firmly established.

**10. DAMAGE REPAIRS.** Any damage to the COUNTY'S road improvements in the COUNTY'S North River Drive road rights-of-way caused by the NRD in the course of construction, operation, maintenance, repair, replacement and regulation of the non-vegetative portions of the PROJECT, shall be repaired by the NRD promptly, at the NRD'S cost and expense, within a reasonable time after the occurrence of such damage. Any damage to the PROJECT improvements caused by the COUNTY in its construction, operation, maintenance, repair, replacement and regulation of road improvements in the COUNTY'S North River Drive road rights of way, or in its mowing and maintaining of the vegetative portions of the PROJECT and in its pickup and removal of accumulated trash from the rights of way occupied by the PROJECT, shall be repaired by the COUNTY promptly, at the COUNTY'S sole cost and expense, within a reasonable time after the occurrence of such damage.

**11. PROJECT RISK OF LOSS.** The NRD shall have and bear the risk of loss of or damage to the non-vegetative portions of the PROJECT, whether such loss or damage results from fire, flood or other casualty whatsoever.

**12. INDEMNIFICATION.** Except as otherwise specifically provided in THIS AGREEMENT, (a) the NRD shall defend and indemnify the COUNTY and hold

the COUNTY harmless from and against any and all costs of construction of the PROJECT, and 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 caused by or arising out of the NRD'S design, construction, operation, maintenance, repair, management or regulation of the PROJECT, except the mowing and maintenance, repair and replacement of the vegetative portions thereof; and (b) the COUNTY 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 court costs and attorneys fees, for personal injuries or property damages in whole or in part caused by or arising out of the COUNTY'S design, construction, operation, maintenance, repair, management or regulation of the improvements comprising the COUNTY'S North River Drive, or the COUNTY'S mowing and maintenance, repair and replacement of the vegetative portions of the PROJECT.

**13. DRUG FREE POLICY** All parties to this agreement assure the County that they have established and maintain a drug free workplace policy.

**14. NRD APPROVALS.** Approvals by the NRD and other NRD actions contemplated by THIS AGREEMENT may be provided by the General Manager of the NRD.

**15. EFFECTIVE DATE.** THIS AGREEMENT shall be in force and effect from and after its execution by the parties hereto.

**16. TERM.** THIS AGREEMENT shall have permanent duration.

**17. NON-DISCRIMINATION.** In accordance with the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. 48-1122, all parties to this agreement agree that they nor any of their subcontractors or agents shall discriminate against any employee, or applicant for employment to be employed in the performance of this agreement, with respect to hire, tenure, terms, conditions, or privileges of employment because of the race, color, religion, sex, disability, or national origin of the employee or applicant.

**18. 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. Each party hereto shall, whenever applicable, require performance under the Fair Labor- Standards Act.

**19. 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.

**20. 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 dates hereinafter indicated pursuant to authorizing resolutions duly adopted at regularly called meetings of their governing bodies.

The COUNTY has executed THIS AGREEMENT on \_\_\_\_\_, 200 \_\_\_\_.

**THE COUNTY OF DOUGLAS,  
NEBRASKA**

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

Attest:

\_\_\_\_\_  
**COUNTY CLERK**

The NRD has executed THIS AGREEMENT on \_\_\_\_\_, 200 \_\_\_\_.

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

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