

Memorandum

To: Programs, Projects and Operations Subcommittee

From: John Winkler, General Manager

Date: September 5, 2024

Re: Platte River Obstruction Funding MOU

The District has been proactively and diligently working on the design, permitting and funding for the Platte River Obstruction Removal. The Papio NRD has been awarded a federal CDBG-DR grant through the Nebraska Department of Economic Development for \$7,000,000 which will pay for 90% of the obstruction removal costs. The attached Interlocal Agreement is proposing that the District enter into a cost share arrangement with Sarpy County, Cass County, Lower Platte South NRD and SID 101 to cooperatively pay for the 10% local match that is required by the CDBG-DR funding agreement. The following is the 10% match breakout for each participating jurisdiction.

<u>PARTY</u>	<u>Not to Exceed Amount</u>	<u>Percentage</u>
P-MRNRD	\$ 340,000	49%
SARPY COUNTY	\$ 200,000	28%
SID 101	\$ 100,000	14%
LOWER PLATTE SOUTH NRD	\$ 50,000	7%
CASS COUNTY	\$ 10,000	1%

LPSNRD and Cass County have already executed the Interlocal agreement, Sarpy County and SID 101 will be voting for approval this month.

It is anticipated that final design plans for the obstruction removal will be completed in September and that Request for Proposal will be initiated and bids will be submitted to the District Board in October or November.

Therefore, Management recommends that the subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Agreement to provide the required 10% cost share for the Federal CDBG-DR grant with the funding sources and not to exceed amounts outlined in the memorandum; with any changes deemed necessary by the General Manager and Legal Counsel.

WHEREAS, the Nebraska Department of Transportation, State of Nebraska, ("**NDOT**") has coordinated with the PARTIES and has agreed to provide access rights and the right to dump rock and debris excavated from the Platte River on the property located west of Highway 75 on the north side of the Platte River, in Sarpy County, Nebraska.

WHEREAS, pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat., Section 13-801, et. seq., (Reissue 1997), each of the PARTIES governing bodies have concurred in the proposed excavation on that portion of the Platte River and have committed to share costs associated with the excavation on the terms set forth herein.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS, pursuant to Neb. Rev. Stat. Section 13-801 (1997) et. seq., as follows:

1. **PROJECT DESCRIPTION.** The project consists of excavation of rock and debris from the Platte River just east of the Highway 75 bridge due to concerns over increased flood risk and dumping of said rock and debris at an adjacent site owned by the Nebraska Department of Transportation, State of Nebraska (the "**PROJECT**").

2. **PROJECT ADMINISTRATOR.** The PARTIES hereby designate P-MRNRD as the project administrator. As project administrator, P-MRNRD will be responsible for contracting with the project engineer and contractors and the collection of federal assistance and for the payment of project costs, a portion of which shall be reimbursed by the other PARTIES according to Section 5.

3. **PROJECT COSTS.** The PARTIES acknowledge and agree that the project costs will be allocated between the US Department of Housing and Urban Development, through the Federal Community Development Block Grant ("**CDBG**"), and the PARTIES. The CDBG is responsible for ninety percent (90%) of the project

costs (the "**FEDERAL PORTION**"). The PARTIES are responsible, collectively, for ten percent (10%) of the project costs ("**LOCAL PORTION**").

4. **FEDERAL PORTION.** The FEDERAL PORTION of the PROJECT shall be a not to exceed amount of \$6,300,000.

5. **LOCAL PORTION ALLOCATIONS.** The LOCAL PORTION of the PROJECT shall be a not to exceed amount of \$700,000. Each of the PARTIES hereto agree to allocate among themselves the LOCAL PORTION of the project costs in project commitment amounts as follows:

<u>PARTY</u>	<u>Not to Exceed Amount</u>	<u>Percentage</u>
P-MRNRD	\$ 340,000	49%
SARPY COUNTY	\$ 200,000	28%
SID 101	\$ 100,000	14%
LOWER PLATTE SOUTH NRD	\$ 50,000	7%
CASS COUNTY	\$ 10,000	1%

The initial contribution of each PARTY shall be paid thirty (30) days from when the P-MRNRD enters into contractual agreement with the lowest responsible bidder to perform the debris removal.

If the FEDERAL PORTION for the PROJECT becomes unavailable, withdrawn or cancelled, the PARTIES shall be released from their obligation for the LOCAL PORTION set forth above.

6. **CHANGE ORDERS.** The P-MRNRD reserves the right to require additional contributions to the LOCAL PORTION in the event there are changes to the project after entering into the debris removal contract (each, a "**CHANGE ORDER**"). The payment of any CHANGE ORDER shall be allocated among the PARTIES in accordance with their percentage of the LOCAL PORTION. Notwithstanding the foregoing, none of the PARTIES, except for the P-MRNRD, shall be responsible to pay

any additional amounts that exceed the project commitments outlined in Section 5. For illustrative purposes, Sarpy County would be responsible for covering 28% of the Local Portion of any Change Orders, until such amounts exceed \$200,000.

7. **LAND USE.** As their contribution to the Project, NDOT shall grant the PARTIES the use of real property illustrated on Attachment 2, for the purposes of dumping the rocks and debris excavated from the Platte River for the PROJECT. The PARTIES each, separately, have the right to the excavated rock or debris for its own use. Such right is exercisable solely upon notice to the P-MRNRD. The PARTY exercising this right is responsible for all costs of shipment and delivery.

8. **TERM AND TERMINATION.** This AGREEMENT shall terminate upon completion of the PROJECT and all PARTIES have paid their LOCAL PORTION pursuant to the terms of this AGREEMENT, unless or until terminated by any of the PARTIES as provided herein. Such termination shall not affect any rights of reimbursement under this AGREEMENT for actions taken or responsibilities assumed by another of the PARTIES prior to the effective date of termination of this AGREEMENT.

9. **INDEMNIFICATIONS.** The PARTIES shall indemnify and hold harmless the other PARTIES, officers, elected officials, employees and assigns harmless from and against any and all claims, judgments, actions, loss, liability, damage or injury of any nature whatsoever, whether under the theory of tort, contract or otherwise, which may arise or result from, out of or in connection with any negligent act, error or omission of any PARTY (including any of their respective employees, agents, contractors, subcontractors or representatives) in furtherance of this AGREEMENT, including the failure to perform or properly perform as may be so required. Notwithstanding the

preceding sentence, the PARTIES shall not be obligated to defend, indemnify or hold harmless an indemnified PARTY to the extent damages arise or result from any negligent act, error or omission of the indemnified PARTY. Nothing contained herein shall waive the Nebraska Political Subdivision Tort Claims Act.

10. **NO ASSIGNMENT.** Neither this agreement nor any obligations hereunder shall be assigned without the express written consent of the PARTIES which may be withheld in any PARTY's sole discretion.

11. **NON-WAIVER.** A waiver by any PARTY of any default, breach or failure of another shall not be construed as a continuing waiver of the same or of any subsequent or different default, breach or failure.

12. **GOVERNING LAW.** This AGREEMENT shall be governed exclusively by its provisions and by the laws of the State of Nebraska except to the extent such provisions may be superseded by applicable federal law or regulation, in which case the latter shall apply.

13. **ENTIRE AGREEMENT.** This AGREEMENT and Attachments and any documents referenced in this AGREEMENT (which are intended to be and hereby are specifically made a part of this agreement whether or not so stated) express the entire understanding and all agreements of the PARTIES with respect to the project described herein. Specifically, this AGREEMENT supersedes any prior written or oral agreement or understanding between any of the PARTIES, whether individually or collectively concerning the subject matter hereof.

14. **AMENDMENTS.** This AGREEMENT may be modified only by a written agreement, executed by all PARTIES hereto; provided that the PARTIES agree, without cost to any individual party, to conform this AGREEMENT and all performance

obligations hereunder to the requirements of any applicable laws, rules, regulations, standards and specifications of any governmental agency with jurisdiction over any such matter, including any amendment or change thereto.

15. **SURVIVAL.** If any provision of this AGREEMENT or the applications of this AGREEMENT to any PARTY or circumstance shall, for any reason and to any extent, be held invalid or unenforceable, neither the remainder of this AGREEMENT nor the application of this AGREEMENT or such provision to any PARTY or circumstance or other instruments referred to in this AGREEMENT or affected provision shall be affected thereby but, rather the same shall be enforced to the fullest extent permitted by law. In the event that any provision of this AGREEMENT, or the application thereof, is held by any court of competent jurisdiction to be illegal or unenforceable, the PARTIES shall attempt in good faith to agree upon an equitable adjustment in order to overcome to the greatest extent possible the effect of such illegality or unenforceability.

16. **NON-DISCRIMINATION.** Under this Interlocal Cooperation Agreement, in performance of the requirements herein, no PARTY shall discriminate against any person(s) on account of national origin, disability, race, sex, age, or political affiliation in violation of applicable laws, rules and regulations of any government agency with jurisdiction over such matter.

17. **RELATIONSHIP OF PARTIES.** This AGREEMENT shall not create any separate legal or administrative entity. It shall be administered jointly by the PARTIES, through one representative to be designated by and on behalf of each PARTY. Each PARTY shall separately finance and budget its own duties and functions under this AGREEMENT. There shall be no jointly held property as a result of this AGREEMENT.

Upon termination, each PARTY shall retain ownership of the property it owns at the time of termination. This AGREEMENT does not authorize the levying, collecting or accounting of any tax.

18. **NOTICES.** All payments, notices, statements, demands, requests, consents, approval, authorizations or other submissions required to be made by the PARTIES shall be in writing, whether or not so stated, and shall be deemed sufficient and served upon the other only if sent by United States certified mail, return receipt requested, postage prepaid and addressed to the applicable party at the notice address shown the applicable signature page below or e-mail.

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EXECUTED BY COUNTY OF CASS, NEBRASKA ON THIS 13th
DAY OF AUGUST 2024

COUNTY OF CASS, NEBRASKA

By 

ALEXANDER DEGARMO,
Chairperson, Board of County
Commissioners

Notice Address

346 Main Street

Plattsmouth, NE 68048

Attn: Geni Draper

EXECUTED BY DEPARTMENT OF TRANSPORTATION, STATE OF
NEBRASKA ON THIS _____ DAY OF AUGUST, 2024

DEPARTMENT OF TRANSPORTATION,
STATE OF NEBRASKA

By _____

NAME: _____

TITLE: _____

Notice Address

Attn: _____

EXECUTED BY THE COUNTY OF SARPY, NEBRASKA ON THIS
_____ DAY OF AUGUST, 2024

COUNTY OF SARPY, NEBRASKA

By _____

ANGI L. BURMEISTER,
Chairperson, Board of County
Commissioners

Approval as to Form:

Sarpy County Attorney

Notice Address

1210 Golden Gate Drive

Papillion, NE 68046

Attn: _____

EXECUTED BY **SANITARY & IMPROVEMENT DISTRICT No. 101, SARPY COUNTY, NEBRASKA** ON THIS _____ DAY OF AUGUST, 2024

**SANITARY & IMPROVEMENT
DISTRICT NO. 101, SARPY COUNTY,
NEBRASKA**

By _____

DONALD STORY, Chairperson

Notice Address

Attn: _____

EXECUTED BY THE **PAPIO-MISSOURI RIVER NATURAL RESOURCES**
DISTRICT ON THIS _____ DAY OF AUGUST, 2024

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By _____

JOHN WINKLER, General Manager

Notice Address

8901 S. 154th Street

Omaha, NE 68138-3621

Attn: General Manager

EXECUTED BY THE **LOWER PLATTE SOUTH NATURAL RESOURCES**
DISTRICT ON THIS _____ DAY OF AUGUST, 2024

LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT

By _____

MIKE SOUSEK, General Manager

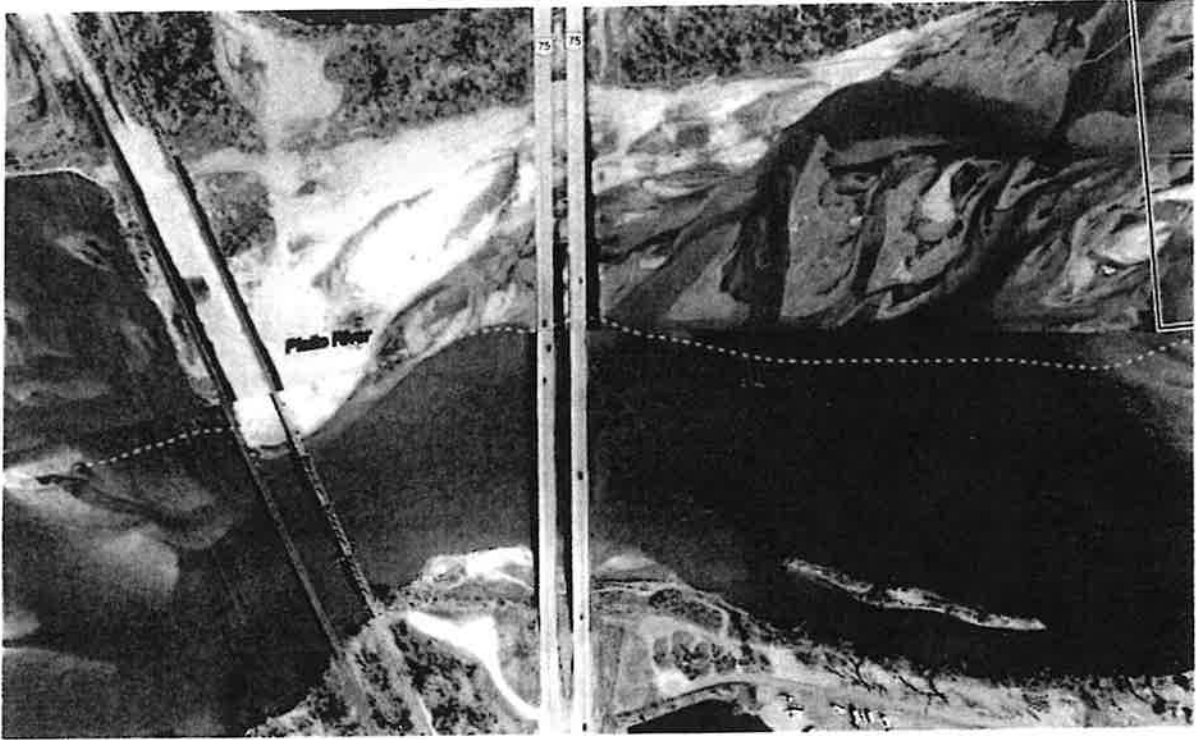
Notice Address

3215 Portia Street

Lincoln, NE 68521

Attn: General Manager

ATTACHMENT 1



ATTACHMENT 2

