

**CITY OF LA VISTA**  
**MAYOR AND CITY COUNCIL REPORT**  
**OCTOBER 18, 2022 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
INTERLOCAL AGREEMENT – APPLEWOOD CREEK TRAIL NRD PROJECT REIMBURSEMENT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAT DOWSE CITY ENGINEER

**SYNOPSIS**

A resolution has been prepared approving an Interlocal Agreement with the Papio-Missouri River Natural Resources District (NRD) for reimbursement of project costs in an amount not to exceed \$250,000 for the local match for the construction costs of the Applewood Creek Trail project.

**FISCAL IMPACT**

The FY23/FY24 Biennial Budget provides funding for the project.

**RECOMMENDATION**

Approval.

**BACKGROUND**

The City of La Vista applied for the Trails Assistance Program grant from the NRD to cover up to \$250,000 of the anticipated \$600,000 local cost share of the Applewood Creek Trail project. As the project is now being constructed, the NRD wishes to memorialize the award in an interlocal agreement as to best fit their budgeting practices.

A copy of the agreement is attached for review.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, APPROVING AN INTERLOCAL AGREEMENT WITH THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (PMNRD) FOR REIMBURSEMENT OF PROJECT COSTS IN AN AMOUNT NOT TO EXCEED \$250,000. FOR THE CONSTRUCTION COSTS OF THE APPLEWOOD CREEK TRAIL.

WHEREAS, the Mayor and Council of the City of La Vista determined the development and construction of the Applewood Creek Trail is necessary; and

WHEREAS, the FY23/FY24 Biennial Budget provides funding for the project; and

WHEREAS, the reimbursement will reduce the local cost share of the Applewood Creek Trail; and

WHEREAS, the City applied for cost-sharing assistance from the NRD for a portion of the costs of the project; and

WHEREAS, the Board of Directors of the NRD approved the project for cost-share assistance; and

WHEREAS, the NRD is requesting to enter into an Interlocal Agreement with the City of La Vista,

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of La Vista, Nebraska, authorizing an interlocal agreement with the Papio-Missouri River Natural Resources District (PMNRD) for reimbursement of project costs in an amount not to exceed \$250,000. for the construction costs of the Applewood Creek Trail.

PASSED AND APPROVED THIS 18TH DAY OF OCTOBER 2022.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, MMC  
City Clerk

**INTERLOCAL COOPERATION AGREEMENT**

**Between**

**THE CITY OF LA VISTA, NEBRASKA**

**And**

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

**For**

**APPLEWOOD CREEK TRAIL- TRAILS ASSISTANCE PROGRAM**

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THIS AGREEMENT (hereinafter “**THIS AGREEMENT**”) is made by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (“the **NRD**”) and the **CITY OF LA VISTA, NEBRASKA** (“the **CITY**”), pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§13-801, *et seq.*).

**WHEREAS**, the NRD administers its Trails Assistance Program (the “**PROGRAM**”), which provides cost sharing with local governmental entities for the development and construction of recreational trails; and,

**WHEREAS**, the CITY desires to develop and construct the Applewood Creek Trail within the CITY’s jurisdiction (“the **PROJECT**”); and,

**WHEREAS**, the CITY desires to receive cost-sharing assistance from the NRD for a portion of the costs of the PROJECT through the PROGRAM; and,

**WHEREAS**, the Board of Directors of the NRD has approved the PROJECT for participation in the PROGRAM.

**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 PROJECT will be of predominantly general benefit to the CITY and the NRD, with only an incidental special benefit.

**2. PROJECT PARTICIPANTS.** The PROJECT shall be undertaken 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. PROGRAM REQUIREMENTS.** The CITY shall comply with the requirements for the PROGRAM as promulgated by the NRD and set forth in the NRD's Directors Policy Manual. THIS AGREEMENT and the PROGRAM'S requirements shall be construed in a manner giving full effect to both. In the event there is an unavoidable conflict between a specific provision of THIS AGREEMENT and a specific provision of the PROGRAM'S requirements, THIS AGREEMENT shall control.

**4. APPLICATION AND SUBMISSION OF PLANS.** The CITY'S application and documents accompanying that application to the PROGRAM are attached hereto as EXHIBIT A, and are incorporated into THIS AGREEMENT.

Prior to commencing performance of the relevant phase of the PROJECT, the CITY shall submit to the NRD the PROJECT plans, bid documents, construction contract, and implementation schedules (collectively the "DOCUMENTS"). If during any phase of the PROJECT, there are material changes to the application or the DOCUMENTS, the CITY shall timely inform the NRD, in writing, of the material change and submit an updated version of the relevant document or documents that were impacted by the material change.

**5. NRD TECHNICAL ASSISTANCE.** The NRD shall provide technical assistance to the CITY regarding the PROJECT within the limits of its expertise, as may be requested by the CITY.

**6. RIGHTS-OF-WAY ACQUISITION.** Lands, easements and rights-of-way, which the CITY determines is necessary for construction of the PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT ("the **PROJECT RIGHTS-OF-WAY**"), shall be obtained by the CITY, which shall hold title thereto. The costs of the PROJECT RIGHTS-OF-WAY shall be deemed to be a cost of the PROJECT.

**7. PERMITS.** All necessary local, state and federal permits, which the CITY determines are necessary for construction of the PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT, shall be obtained by the CITY, which shall hold the same. The cost of such permits shall be deemed a cost of the PROJECT.

**8. UTILITY RELOCATIONS.** The CITY shall be solely responsible for relocation of any utilities that are determined to interfere with construction of the PROJECT, or with the operation, maintenance, repair, replacement, management or regulation of the PROJECT. The cost of such utility relocations shall be deemed to be a cost of the PROJECT.

**9. DESIGN CONTRACT FOR PROJECT.** The CITY shall retain an engineering firm to design the PROJECT. The cost of retaining an engineering firm for the PROJECT shall be deemed to be a cost of the PROJECT.

**10. CONSTRUCTION CONTRACT FOR PROJECT.** The CITY shall solicit competitive sealed bids for construction of the PROJECT. The provisions of the construction 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 CITY by the contractor.

**11. COMPETITIVE BIDS.** Within a reasonable time after CITY'S receipt and opening of sealed bids for construction of the PROJECT, the CITY shall deliver a summary thereof to the NRD, together with the identification by the CITY of the bidder whom the CITY determines is the lowest responsible bidder. The CITY shall accept such bid and shall award to such bidder the contract to construct all or one or more portions of the PROJECT (the "CONTRACTOR"). In the event that the CITY selects a bidder who did not submit the lowest bid, the CITY shall provide a written explanation of its decision to select a higher bid to the NRD. The CITY, through the CONTRACTOR, shall construct the PROJECT in accordance with the plans and specifications the CITY submitted to the NRD.

**12. NRD CONTRIBUTION.** As its contribution(s) towards the aforesaid costs of the original engineering and construction and of the PROJECT ("the **NRD CONTRIBUTION**"), the NRD shall reimburse the CITY for up to a total of \$250,000 for

the costs of the PROJECT. The NRD CONTRIBUTION shall be paid no earlier than NRD'S 2023 fiscal year and shall not exceed \$250,000.

The CITY shall provide an invoice(s) to the NRD detailing all of the billings and costs for which it seeks reimbursement prior to the NRD paying any of the installments. Each installment shall be paid to the CITY within 45 days of the CITY'S submission to the NRD of the invoice(s) referenced above. Under no circumstances shall the NRD CONTRIBUTION exceed the total sum of \$250,000, nor shall the NRD be responsible for paying any monies related to the PROJECT in excess of \$250,000.

The CITY shall be solely responsible to pay all other costs and expenses associated with the PROJECT, including but not limited to the operation and maintenance of the PROJECT, without any further NRD reimbursement or contribution. 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 PROJECT shall be credited to both parties in equal shares against their respective obligations hereunder for costs and expenses of the PROJECT.

The CITY shall publicly acknowledge the NRD'S contribution to the PROJECT on a permanent sign, plaque, or other fixture (containing at a minimum the NRD'S name and logo), to be maintained by the CITY for the life of the PROJECT.

**13. ABANDONMENT OF THE PROJECT.** In the event the CITY abandons the PROJECT prior to its completion, the NRD shall not be responsible for any costs, payments, or billings related to the PROJECT. If at the time of abandonment, the NRD has paid the CITY an installment of the NRD CONTRIBUTION or any other monies related to the PROJECT, the CITY shall return and refund any and all installment(s) or monies related to the PROJECT paid by the NRD to the NRD.

**14. OPERATION AND MAINTENANCE OF THE PROJECT.** After completion of PROJECT and CITY acceptance of the PROJECT from the CONTRACTOR, the CITY, at its own and sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the PROJECT during its useful life, as the CITY determines necessary, and in accordance with applicable and generally-accepted engineering practices, state and federal statutes and regulations.

**15. RISK OF LOSS.** The CITY shall have the insurable interest in, and shall 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. INDEMNIFICATION.** The CITY shall indemnify and hold the NRD harmless from and against all liability and damages resulting from the PROJECT, including but not limited to the design, construction, operation, or maintenance of the PROJECT, and against all demands, causes of action, and claims arising therefrom including court costs and attorney fees, except as may be caused by the negligence or willful misconduct of the NRD.

**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. 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 PROJECT not expressly contained herein.

**19. NOTICES.** All notices herein required shall be in writing and shall be served on the parties at their principal offices, 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.

**20. 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.

**21. APPLICABLE LAW.** Each party to THIS AGREEMENT shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance of THIS AGREEMENT. Nebraska law will govern the terms and the performance under THIS AGREEMENT.

**22. 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.

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

**24. Counterparts.** THIS AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**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 CITY has executed THIS AGREEMENT on \_\_\_\_\_, 2022.

The CITY of LA VISTA

**By \_\_\_\_\_**  
**DOUGLAS KINDIG, Mayor**

**Attest:**

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**City Clerk**  
**Approved as to Form:**

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**City Attorney**

The NRD has executed THIS AGREEMENT on \_\_\_\_\_, 2022.

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

**By \_\_\_\_\_**  
**JOHN WINKLER, General Manager**

# EXHIBIT A

## Trails Assistance Program – Application Form



Project name

APPLEWOOD CREEK TRAIL

Project location (attach location map)

101ST STREET & BRENTWOOD DRIVE, LA VISTA

Sponsor organization

CITY OF LA VISTA, NEBRASKA

Sponsor address

9900 PORTAL ROAD

City

LA VISTA

State

NE

ZIP

68128

Contact person

PAT DOWSE

Title

CITY ENGINEER

Email address

pdowse@cityoflavista.org

Daytime phone

402-331-8927

Description of project (attach additional sheets as needed)

SEE ATTACHED PROJECT DESCRIPTION & FACT SHEET.

CONSTRUCTION IS ANTICIPATED IN THE 2022 SEASON.

Total estimated cost

\$ 250,000.00

Cost share request

\$ 250,000.00

Signature

Pat Dowse

3/16/2021

Date

Title

CITY ENGINEER



March 18, 2021

Mr. Eric Williams  
Natural Resources Planner  
Papio-Missouri River Natural Resources District  
8091 S. 164<sup>th</sup> Street  
Omaha, NE 68138

Mr. Williams,

Thank you for the opportunity to submit the Applewood Creek Trail project for consideration for Trails Assistance Program. This project is also recognized as TAP-77(61); C.N. 22757 as the project is receiving TAP funding through MAPA, in which the City of La Vista is anticipating a 20% cost share of the total project costs. The project is currently in Preliminary Design, which will be moving towards Final Design upon completion of the NEPA documentation process. As it stands currently, the project is anticipated to be let in late 2021, with construction to begin in early 2022, with completion within one construction season.

There have been some adjustments in design since the Plan in Hand that took place in late 2019, namely the proposed underpass under Giles Road was proposed to be realigned as to reduce the amount of project disturbance downstream of the existing box culvert. Please see the attached fact sheet resenting the original alignment and updated aerial representing the revised alignment. As these costs are in process of being tabulated, the current project costs are being estimated at \$2,500,000.00, to which the City is requesting the program match of \$250,000.00, understanding that the cost share rate maximum of this program is 50% of the local share of the project. As the estimates are further refined and the understood local match is calculated, the City will relay these cost figures to the PMRNRD as to adjust the anticipated cost share amount.

Please feel free to let me know if you need additional information regarding this project, or if you have any questions. Thank you for the opportunity to submit for this project.

Sincerely,

Patrick M. Dowse  
City Engineer

**City Hall**  
8116 Park View Blvd.  
La Vista, NE 68128-2198  
402.331.4343 P  
402.331.4375 F

**Community Development**  
8116 Park View Blvd.  
402.593.6400 P  
402.593.6445 F

**Library**  
9110 Giles Rd.  
402.537.3900 P  
402.537.3902 F

**Police**  
7701 S. 96th St.  
402.331.1582 P  
402.331.7210 F

**Public Works**  
9900 Portal Rd.  
402.331.8927 P  
402.331.1051 F

**Recreation**  
8116 Park View Blvd.  
402.331.3455 P  
402.331.0299 F

Applewood Creek Trail  
Trail Construction Project  
TAP-77(61); C.N. 22757

**LOCATION:** The proposed *Applewood Creek Trail* project would involve construction of a new 0.70 mile trail located in the City of La Vista, Sarpy County. The trail would be located in an area defined as the Portal Greenway in the City's Parks and Recreation Master Plan. The proposed trail would connect the two existing trails in the Portal Greenway, which currently end in the Cimarron Woods and Portal Ridge neighborhoods. The trail would begin behind the home near 7602 South 101<sup>st</sup> Street and end behind the home near 8409 South 103<sup>rd</sup> Street. Construction may begin and/or end approximately 500 feet ahead of or beyond the actual project limits to accommodate transitioning the pavement.

**PURPOSE AND NEED:** The purpose of the Applewood Creek Trail project is to improve and expand alternative transportation options and recreation opportunities in the City of La Vista (City), and to improve connectivity or access to other local and regional trails. The need for the new trail project is to complete the existing trail network in the Portal Greenway by providing a connection between the existing trail segments that end in the Cimarron Woods and Portal Ridge neighborhoods. The connection would cross beneath Giles Road, providing a convenient and safe crossing to promote use of this trail.

**SCOPE OF WORK:** The improvements on this project consist of a new 10-foot wide concrete trail with earth shoulders. A 14-feet wide by approximately 70-feet long pedestrian bridge would be constructed for the trail to cross Applewood Creek. The trail would cross beneath Giles Road in a new 12-feet-wide by approximately 160-feet-long box culvert. Work would also occur at the existing box culvert at Giles Road that conveys Applewood Creek. Pavement removal and replacement would occur for sidewalks, trails, roadway (Giles Road), and curbs and gutters.

**PROJECT SCHEDULE:** The proposed project is currently in the preliminary design phase. The project is tentatively scheduled for construction in 2022.

**RIGHT-OF-WAY:** This project would require the acquisition of additional property rights, which could include new right of-way (ROW), control of access (CA), permanent easements (PE), and/or temporary easements (TE). If your property is impacted by this project, you will be contacted by a representative once the design footprint has been established. Access to adjacent properties would be maintained during construction, but may be limited at times due to construction phasing requirements.

**POTENTIAL IMPACTS:** The trail corridor is anticipated to have minor impacts to wetland resources along the project. The trail is also anticipated to impact publicly owned parks or recreation areas. The back side of this handout describes anticipated impacts to the parks and recreation areas.

**ACCOMMODATION OF TRAFFIC:** This project would be constructed under traffic with lane closures controlled by appropriate traffic control devices and practices. Phasing requirements for the trail under-crossing beneath Giles Road would temporarily impact access to nearby intersections. Giles Road traffic would be reduced to one-lane in each direction between approximately South 107<sup>th</sup> Street and South 99<sup>th</sup> Street/Val Verde Drive. Access to South 101<sup>st</sup> Street and South 103<sup>rd</sup> Street from Giles Road would be partially or fully closed during construction of the project. Alternative access is available. Details would be determined during final design.

**ESTMATED COST:** The project is estimated to cost \$2.5 million, which includes design, inspection, additional ROW, and construction costs. The project would be funded with 80% Federal Transportation funds and 20% local funds provided by the City of La Vista.



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

<i>For More Information:</i>	<i>For More Information:</i>
<b>SCHEMMER</b> <b>DOUG HOLLE</b> 1044 N. 115 <sup>th</sup> Street Suite 300 Omaha, NE 68154-4436 402-431-6206 <a href="mailto:dholle@schemmer.com">dholle@schemmer.com</a>	<b>CITY OF LA VISTA</b> <b>PAT DOWSE</b> 9900 Portal Road La Vista, Nebraska 68128 402-331-8927 <a href="mailto:pdowse@cityoflavista.org">pdowse@cityoflavista.org</a>



**SECTION 4(f) EVALUATION** – The Applewood Creek Trail project is funded with Federal transportation funds. Due to the use of these funds, the project must adhere to the National Environmental Policy Act (NEPA) and Section 4(f) of the U.S. Department of Transportation Act. Section 4(f) evaluates impacts to public parks, recreation areas and wildlife or waterfowl refuges, and historic sites during the development of transportation projects. The proposed trail is anticipated to impact portions of Portal Greenway, Sanitary Improvement District (SID) 237 Trail and Sanitary Improvement District (SID) 276 Trail which are considered Section 4(f) resources. Descriptions of anticipated impacts to each Section 4(f) resource are described further below.

**Portal Greenway** – The Portal Greenway is a planned open space greenway park along Applewood Creek that is publicly owned and open to the public, therefore, it is considered Section 4(f) property. The project would result in a use of Portal Greenway due to the trail construction. The trail would enhance the use of Portal Greenway by providing greater access to the area.

**SID 237 Trail** – The Applewood Creek Trail would connect to the existing SID 237 Trail and require reconstruction of a portion of the existing trail. The existing SID 237 trail would remain open during construction of the Applewood Creek Trail.

**SID 276 Trail** – The Applewood Creek Trail would connect to the existing SID 276 Trail and require reconstruction of a portion of the existing trail and its connection to the sidewalk along the south side of Giles Road. The connection to the SID 276 Trail from Giles Road would be closed during construction of the Applewood Creek Trail. Alternate access points to the SID 276 Trail between Giles Road and Portal Road are available and will remain open during construction of the Applewood Creek Trail

A component of NEPA and the Section 4(f) evaluation is to gather public comment on the project and comments on the anticipated impacts to these resources. Therefore, please use the comment sheets provided to comment on the project in general or on anticipated impacts to Section 4(f) resources. Comments can also be relayed to the members of the project team as identified on this information sheet.

N

Applewood Creek Trail  
LaVista, Nebraska  
TAP-77(61) CN 22757

Attachment to follow-up letter to stakeholders the week  
of December 7, 2020

Not  
to  
Scale

- Project Trail Alignment
- Proposed Trail Underpass
- Proposed Pedestrian Bridge

0 100 200  
SCALE

