

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JUNE 16, 2015 AGENDA

Subject:	Type:	Submitted By:
THOMPSON CREEK DRAINAGEWAY PROJECT, INTERLOCAL AGREEMENT WITH PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER/ASSISTANT PUBLIC WORKS DIRECTOR

SYNOPSIS

A resolution has been prepared authorizing the Mayor to execute an Interlocal Cooperation Agreement with the Papio-Missouri River Natural Resources District for the undertaking of efforts required to rehabilitate and restore the Thompson Creek channel between 72nd Street and 78th Street.

FISCAL IMPACT

The Papio-Missouri River NRD is agreeing to contribute \$712,000 towards the design and construction elements of the Thompson Creek Watershed Restoration project. This funding is allocated in the amount of \$412,000 by June, 2015 and \$300,000 by June 2016.

RECOMMENDATION

Approval

BACKGROUND

The City submitted a grant application to the Nebraska Environmental Trust in the fall of 2012 for funding of the Thompson Creek Watershed Restoration Project. A grant was awarded in the amount of \$1,000,000 over three years. The City also submitted a grant application to the NDEQ and was awarded a single year of funding in the amount of \$150,000. Additional funding will come from over \$461,000 from City sales tax and \$90,000 from annual Storm Water Grant funds. The PMRNRD funding is \$712,000 over two years as set forth in the interlocal agreement. This agreement provides for grant funding over a two year period under the Urban Drainageway Program.

RESOLUTION NO._____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT FOR THE UNDERTAKING OF EFFORTS REQUIRED TO REHABILITATE AND RESTORE THE THOMPSON CREEK CHANNEL BETWEEN 72ND STREET AND 78TH STREET.

WHEREAS, the provisions of Nebraska State Statutes Sections 13-801, et. seq., provide authority for the City of La Vista to join with other governmental agencies on a basis of mutual advantage and in a manner that will accord best with geographic, economic, population and other factors by signing an Interlocal Cooperation Agreement; and,

WHEREAS, the City of La Vista desires to rehabilitate and restore the channel of Thompson Creek between 72nd Street and 78th Street and this area is located in the City of La Vista, and;

WHEREAS, the Papio-Missouri River NRD is agreeing to provide \$712,000. Toward the design and construction elements of the Thompson Creek Watershed Restoration project, and;

WHEREAS, the FY 15 and proposed FY 16 Capital Fund Budgets contain yearly allocations for the rehabilitation and restoration of Thompson Creek, and;

WHEREAS, the participants agree that this Interlocal Cooperation Agreement in no manner expands or restricts the authority otherwise granted to them by law; and

WHEREAS, such an agreement is in the best interests of the citizens of the City of La Vista.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of La Vista, Nebraska, hereby approves and authorizes the execution of an Interlocal Cooperation with the Papio-Missouri River Natural Resources District for the undertaking of efforts required to rehabilitate and restore that Thompson Creek Channel between 72nd Street and 78th Street.

PASSED AND APPROVED THIS 16TH DAY OF JUNE, 2016.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Pamela A. Buethe, CMC
City Clerk

INTERLOCAL COOPERATION AGREEMENT
Between
THE CITY OF LAVISTA, NEBRASKA
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
THOMPSON CREEK DRAINAGEWAY PROJECT

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

WHEREAS, the NRD administers the Urban Drainageway Program (the "PROGRAM"), which provides cost sharing with local governmental entities for the installation and maintenance of improvements to urban stream channels;

WHEREAS, the CITY desires to rehabilitate and restore the channel of Thompson Creek between 72nd Street and 78th Street in the CITY ("the **PROJECT**");

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 RULES AND REGULATIONS.** CITY shall comply with the rules and regulations for the Program as promulgated by the NRD and set forth in the NRD's Directors Policy Manual. This AGREEMENT and the PROGRAM'S rules and regulations 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 rules and regulations, this AGREEMENT shall control.

4. **MATERIAL CHANGES FROM APPLICATION.** The CITY shall timely notify the NRD, in writing, of any material changes to the PROJECT as compared to the application and other materials submitted to the NRD for the CITY'S participation in the PROGRAM.

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 at the sole cost and expense of the CITY, which shall hold the same.

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. NRD CONTRIBUTION. As its contribution towards the aforesaid costs of the engineering and construction of the PROJECT, the NRD shall reimburse the CITY for the billings rendered to the CITY for the ordinary and necessary costs of the PROJECT not to exceed a total contribution sum of \$712,000 ("the **NRD CONTRIBUTION**"). Such contribution shall be paid in installments as follows, to-wit: the first such installment shall be due and payable to the CITY on June 1, 2015 or 30 days following the CITY'S submission of the invoice, detailed below, in the maximum amount of \$412,000; and, the second such installment shall be due and payable to the CITY on June 1, 2016 in the maximum amount of \$300,000. 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 its contribution(s). Under no circumstances shall the NRD CONTRIBUTION exceed the total sum of \$712,000, nor shall the NRD be responsible for paying any monies related to the PROJECT in excess of \$712,000.

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

10. 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 such installment(s) or monies related to the PROJECT to the NRD.

11. 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, including but not limited to, FEMA regulations and requirements for continuation of flood insurance, and any applicable USACE requirements necessary to preserve the eligibility of PROJECT for benefits under the Public Law 84-99 maintenance program.

12. 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.

13. 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 from the PROJECT, including but not limited to court costs and attorney fees, except as may be caused by the negligence of the NRD.

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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 CITY has executed THIS AGREEMENT on _____, 2015.

THE CITY OF LAVISTA

By _____
_____, **Mayor**

Attest:

City Clerk

The NRD has executed THIS AGREEMENT on _____, 2015.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
JOHN WINKLER, General Manager