

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION APPROVING INTERLOCAL COOPERATION AGREEMENT FOR
240TH STREET EROSION PROTECTION

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2012), the County has the power to do all acts in relation to the concerns of the county necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2012), the powers of the County as a body are exercised by the County Board; and,

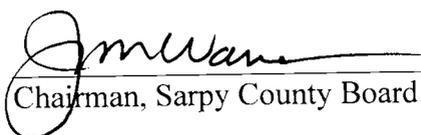
WHEREAS, general supervision and control of the public roads of each county is vested in the County Board by virtue of Ne. Rev. Stat. §39-1402 (Reissue 2007); and,

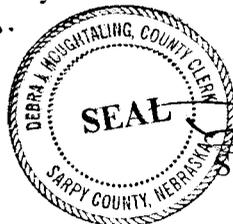
WHEREAS, an agreement pursuant to the Interlocal Cooperation Act has been proposed by which Sarpy County and the Papio-Missouri River Natural Resources District would share the costs of engineering design, construction and easement acquisition for a project to protect 240th Street from erosion by the Elkhorn River, and said agreement is in the best interest of the citizens of Sarpy County.

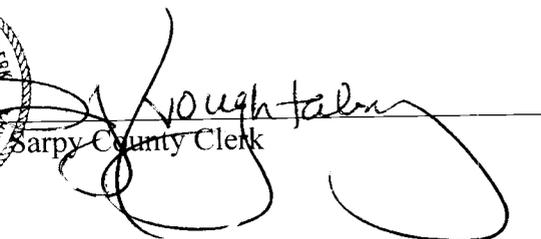
NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the Interlocal Cooperation Act Agreement with the Papio-Missouri River Natural Resources District for 240th Street Erosion Protection, a copy of which is attached hereto, is hereby approved.

BE IT FURTHER RESOLVED that the Chair and Clerk are hereby authorized to execute said Agreement on behalf of Sarpy County, Nebraska and to take such other actions as may be necessary under the terms of said Agreement.

The above and foregoing Resolution was duly approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on this 10th day of ~~June, 2012.~~ December, 2013.


 Chairman, Sarpy County Board




 Sarpy County Clerk

INTERLOCAL COOPERATION ACT AGREEMENT IV

COUNTY OF SARPY, NEBRASKA,

And

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

For

240th STREET EROSION PROTECTION

THIS AGREEMENT (“**THIS AGREEMENT**”) is entered into by and between the **COUNTY OF SARPY, NEBRASKA** (“the **COUNTY**”) and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (“the **DISTRICT**”).

The **COUNTY** and the **DISTRICT** are referred to collectively hereinafter as “the **PARTIES**” and individually as a “**PARTY**”.

RECITALS:

WHEREAS, the NE ¼ and the N ½ of the SE ¼ of Section 16, Township 14 North, Range 10 East of the 6th P.M., Sarpy County, Nebraska (“the **STUDY AREA**”), was studied by consulting engineers retained by the **DISTRICT** for the **PARTIES** (“the **ENGINEERS**”) for the purpose of determining the most feasible method of preventing a portion of 240th Street in the **STUDY AREA** from being lost to foreseeable and continued Elkhorn River bank erosion; and,

WHEREAS, pursuant to authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.), the **PARTIES** now desire to cooperatively (a) commission and compensate the **ENGINEERS** to perform final design work and construction supervision (collectively “the **FINAL DESIGN**”) on a project (“the **PROJECT**”), to relocate and rip-rap a portion of the channel in the reach of the Elkhorn River in the **STUDY AREA**; as studied by the **ENGINEERS**; and (2) commission and

compensate one or more contractors (“the **PROJECT CONTRACTORS**”) to construct such PROJECT (“the **PROJECT CONSTRUCTION**”).

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. **BENEFITS.** The PARTIES hereby jointly and severally find, determine and agree that the FINAL DESIGN and the PROJECT CONSTRUCTION will be of general benefit to the DISTRICT and the COUNTY, with only incidental special benefits.

2. **PARTICIPANTS.** The FINAL DESIGN shall be undertaken by a consulting engineering firm, and the PROJECT CONSTRUCTION shall be undertaken by the PROJECT CONTRACTORS, all being retained by the DISTRICT on behalf of the PARTIES as provided herein, without any separate entity being created, and the duties and responsibilities of the PARTIES with respect to the FINAL DESIGN and the PROJECT CONSTRUCTION shall be as defined by THIS AGREEMENT. For purposes of the Interlocal Cooperation Act, this AGREEMENT shall be administered jointly by the parties. This AGREEMENT does not contemplate acquiring, holding or disposing of joint property nor does it contemplate the levying or collecting of any tax.

3. **THE ENGINEERS.** The DISTRICT, with approval by the COUNTY, shall retain ENGINEERS to determine and engineer the FINAL DESIGN.

4. **DESIGN CRITERIA.** Written criteria for the FINAL DESIGN shall be specified by the DISTRICT in accordance with the DISTRICT’S usual engineering practices, subject to the written approval by the COUNTY, which approval shall not be withheld or delayed unreasonably.

5. **RIGHTS-OF-ENTRY.** Lands, easements and rights-of-way that the ENGINEERS and the DISTRICT determine are necessary for performance of the PROJECT CONSTRUCTION shall be obtained and permanently held by the DISTRICT.

6. **PERMITS.** The DISTRICT shall obtain and hold such state and federal permits as the ENGINEERS and the DISTRICT determine are necessary for PROJECT CONSTRUCTION.

7. **COMPLETION AND ACCEPTANCE.** The FINAL DESIGN and PROJECT CONSTRUCTION provided for in THIS AGREEMENT shall be subject to approvals and acceptance by both the DISTRICT and the COUNTY prior to implementation thereof, and such approvals and acceptances shall not be withheld or delayed unreasonably.

8. **COST-SHARING.** The PARTIES shall share the costs of the PROJECT as follows:

a) **INITIAL PROJECT CONSTRUCTION.** Each Party shall be responsible for one-half of the contract fees due from the DISTRICT to the ENGINEERS for the FINAL DESIGN, for one-half of the contract fees due from the DISTRICT to the PROJECT CONTRACTORS for PROJECT CONSTRUCTION and for one-half of the DISTRICT'S costs and expenses for the acquisitions of PROJECT lands, easements and rights-of-way; provided, however, the COUNTY'S share of the total of the ENGINEERS' and PROJECT CONTRACTOR'S fees and the DISTRICT'S costs and expenses for the acquisition of PROJECT lands, easements and rights-of-way, shall not exceed SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000) without the approval by the Sarpy County Board of Commissioners; and, provided further that, in the event the sum of the estimates and bids received by the

DISTRICT for the ENGINEERS' and PROJECT CONTRACTOR'S fees, together with the DISTRICT'S estimates of the costs and expenses for the acquisition of PROJECT lands, easements and rights-of-way, exceeds the total of \$1,300,000, the DISTRICT, after consultation with the COUNTY, may in its sole discretion determine and declare that the PROJECT is infeasible and thereupon may abandon PROJECT CONSTRUCTION. In the absence of such DISTRICT determination and declaration the DISTRICT shall proceed with FINAL DESIGN and PROJECT CONSTRUCTION and shall pay such fees, costs and expenses as they become due.

b) PROJECT MAINTENANCE. After completion and acceptance of PROJECT CONSTRUCTION, the DISTRICT, shall provide ordinary maintenance of the PROJECT in such manner and, at such times as the DISTRICT in its sole discretion determines reasonable; and from time to time shall invoice the County for a one-half share of the costs and expenses for ordinary maintenance of the PROJECT accrued as of such invoice date.

c) PROJECT REPAIR. Notwithstanding any other provision of THIS AGREEMENT, in the event the PROJECT is flanked or otherwise becomes catastrophically damaged by erosion from a flooding event that causes or results in re-direction of the major part of the ordinary and principal flow of the Elkhorn River outside the PROJECT channel; or, in the event the PROJECT is otherwise catastrophically damaged by flooding to an extent beyond what the DISTRICT in its sole discretion determines is reasonable or feasible to repair, the DISTRICT, after consultation with the COUNTY, may determine and declare that repair and further maintenance of the PROJECT, or such damaged part thereof, is not reasonable and

feasible, and thereupon may abandon further maintenance of the PROJECT or such damaged portion.

9. INVOICES. As of the 15th day of each month after the effective date of THIS AGREEMENT, the DISTRICT shall invoice the COUNTY for the COUNTY'S share of the fees, costs and expenses accrued by the DISTRICT pursuant to THIS AGREEMENT as of such invoice date, all of which invoiced amounts shall be paid by the COUNTY to the DISTRICT, without interest, within 45 days after invoice date. Invoices referred to herein shall set out the following information with respect to each PROJECT cost being invoiced to the COUNTY for partial reimbursement, to-wit:

- a) amount of such cost,
- b) date such cost was incurred,
- c) person or firm to whom such amount was or is being paid, and,
- d) purpose(s) for such cost.

10. AUTHORITY FOR APPROVALS.

a) Approvals by the COUNTY, and other COUNTY discretionary actions contemplated by THIS AGREEMENT, are authorized to be provided by the County Administrator of the COUNTY; and,

b) Approvals by the DISTRICT, and other DISTRICT discretionary actions contemplated by THIS AGREEMENT, are authorized to be provided by the General Manager of the DISTRICT.

11. EFFECTIVE DATE AND DURATION. This AGREEMENT shall be in force and effect from and after its execution by the PARTIES and shall automatically renew each year following the date of execution. This AGREEMENT may be terminated upon mutual written consent of the parties.

12. **NON-DISCRIMINATION.** The PARTIES shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination 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.

13. **APPLICABLE LAW.** The PARTIES shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance and terms of THIS AGREEMENT.

14. **SEVERABILITY.** In the event any portion of THIS AGREEMENT is held to be 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.

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

IN WITNESS WHEREOF

The COUNTY has executed THIS AGREEMENT on December 10, 2013, pursuant to resolution duly adopted by its Board of Commissioners.

THE COUNTY OF SARPY, NEBRASKA

By [Signature]
Chairperson, Board of County
Commissioners



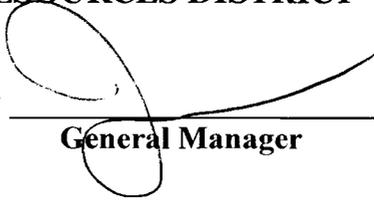
Attest:

[Signature]
County Clerk

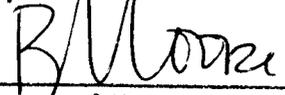
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The DISTRICT has executed THIS AGREEMENT on November 15, 2013,
pursuant to resolution duly adopted by its Board of Directors.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By  _____
General Manager

Approved as to form:



County Attorney