 **COPY**

INTERLOCAL COOPERATION AGREEMENT

2020 FEB 18 PM 11:39
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Dodge Co Hwyway Dept

Agenda Item # 24c
Date 2/16/2020

This Interlocal Cooperation Agreement (hereinafter this "Agreement") is made and entered into this ___ day of February, 2020 (hereinafter the "Execution Date"), by the Lower Elkhorn Natural Resources District (hereinafter "LENRD"), the City of Scriber, Nebraska (hereinafter "Scribner"), and Dodge County, Nebraska (hereinafter "Dodge County").


WITNESSETH:

WHEREAS, the parties entered into an Interlocal Cooperation Agreement dated February 18, 2015 (hereinafter the "Project Agreement"), regarding the local costs and maintenance costs of a bank stabilization project on the Elkhorn River near Scribner (hereinafter the "Elkhorn River Bank Stabilization Project");

WHEREAS, the parties entered into an Interlocal Cooperation Agreement dated January 1, 2017 (hereinafter the "Maintenance Agreement"), under which the term of the Project Agreement was extended for as long as the Elkhorn River Bank Stabilization Project is in existence, and Scriber and Dodge County were required to perform maintenance and pay the costs related to such maintenance of the project;

WHEREAS, improvements and modifications made as part of the Elkhorn River Bank Stabilization Project (hereinafter the "Project Improvements") were damaged as a result of the floods of 2019;

WHEREAS, the cost to repair the Project Improvements has been approved by the Federal Emergency Management Agency and the federal government will pay for 75 percent of said costs;

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INTERLOCAL COOPERATION AGREEMENT

2020 FEB 12 PM 11:39
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Dodge Co Highway Dept

Agenda Item # 24c
Date 2/26/20

This Interlocal Cooperation Agreement (hereinafter this "Agreement") is made and entered into this ___ day of February, 2020 (hereinafter the "Execution Date"), by the Lower Elkhorn Natural Resources District (hereinafter "LENRD"), the City of Scriber, Nebraska (hereinafter "Scribner"), and Dodge County, Nebraska (hereinafter "Dodge County").

WITNESSETH:

WHEREAS, the parties entered into an Interlocal Cooperation Agreement dated February 18, 2015 (hereinafter the "Project Agreement"), regarding the local costs and maintenance costs of a bank stabilization project on the Elkhorn River near Scribner (hereinafter the "Elkhorn River Bank Stabilization Project");

WHEREAS, the parties entered into an Interlocal Cooperation Agreement dated January 1, 2017 (hereinafter the "Maintenance Agreement"), under which the term of the Project Agreement was extended for as long as the Elkhorn River Bank Stabilization Project is in existence, and Scriber and Dodge County were required to perform maintenance and pay the costs related to such maintenance of the project;

WHEREAS, improvements and modifications made as part of the Elkhorn River Bank Stabilization Project (hereinafter the "Project Improvements") were damaged as a result of the floods of 2019;

WHEREAS, the cost to repair the Project Improvements has been approved by the Federal Emergency Management Agency and the federal government will pay for 75 percent of said costs;

WHEREAS, the parties agree that the costs to repair the Project Improvements, due to the floods of 2019, are not maintenance costs and the allocation of said costs is not addressed in the Project Agreement and the Maintenance Agreement; and

WHEREAS, the parties wish to enter into an agreement regarding repairs to the Project Improvements warranted by the floods of 2019.

NOW, THEREFORE, the parties agree as follows:

1. DURATION. The term of this Agreement shall be from the Execution Date to the earlier of: (a) the full repair of the Project Improvements; or (b) five years from the Execution Date.
2. NO SEPARATE ENTITY. This Agreement forms no separate legal or administrative entity.
3. BUDGET. Prior to approving contracts or expenses for the repairs to the Project Improvements, each public agency, as defined in the Interlocal Cooperation Act, must approve the amounts of the same, but LENRD shall have the sole authority to award said contracts and identify the work to be done or the expenses to be paid. Once approved, LENRD will make the initial payment of all costs. Scribner will reimburse LENRD for one-third of costs not covered by FEMA, and Dodge County will reimburse LENRD for one-third of costs not covered by FEMA. There will be no other means of financing this undertaking or establishing and maintaining a budget.
4. TERMINATION. This Agreement shall terminate automatically at the end of the term specified herein. Furthermore, a party shall have the right to terminate this Agreement if:

(a) a material default in the performance of another party's obligations occurs and remains uncured; (b) the party notifies the defaulting party in writing of the default; and (c) more than 60 days expires after said notice and the defaulting party fails to cure the default, at which point the defaulting party shall be liable for breaching this Agreement.

5. ADMINISTRATOR. LENRD will be responsible for administering this cooperative undertaking.
6. PROPERTY. Any real or personal property used in the cooperative undertaking shall be titled in the name of LENRD until the termination of this Agreement. Upon termination of this Agreement, any property acquired for the cooperative undertaking shall be distributed to the parties at the discretion of LENRD.
7. PRIOR AGREEMENTS. All provisions of the Project Agreement and the Maintenance Agreement remain in full force and effect.
8. ENTIRE AGREEMENT. This Agreement constitutes the sole and only agreement of the parties hereto with respect to repairs to the Project Improvements due to the 2019 floods and supersedes any prior understandings or written or oral agreements between the parties respecting said subject matter and cannot be changed except by their written consent.
9. VENUE. Venue for any action arising under this Agreement shall be proper in Madison County, Nebraska.
10. TIME OF ESSENCE. Time is of the essence regarding the payment and performance of this Agreement.
11. ATTORNEY FEES. In the event any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach,

default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party will be entitled to recover reasonable attorneys' fees, court costs and expenses incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

12. NO WAIVER. The waiver of any party of any breach or default by any other party under any of the terms of this Agreement shall not be deemed to be, nor shall the same constitute, a waiver of any subsequent breach or default on the part of any other party.

13. SEVERABILITY. In the event any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

14. APPROVAL OF GOVERNING BODY. Each person signing this Agreement represents that appropriate action by ordinance, resolution, or other act was taken by the governing bodies of his or her respective party to approve this Agreement.

LOWER ELKHORN NATURAL RESOURCES DISTRICT

By: _____
Chairman of the LENRD Board

CITY OF SCRIBNER, NEBRASKA

By: _____
Authorized Representative

DODGE COUNTY, NEBRASKA

By: _____
Authorized Representative