

INTERLOCAL AGREEMENT

**LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT
CITY OF LINCOLN, NEBRASKA**

**STEVENS CREEK SUPPLEMENTAL BOX CULVERT PROJECT
STREAM STABILITY PROJECT
FLECTCHER AVENUE IMPROVEMENT PROJECT**

THIS INTERLOCAL AGREEMENT (this "Agreement") is made and entered into by and between the **LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT**, a political subdivision of the State of Nebraska (hereinafter referred to as the "District") and **THE CITY OF LINCOLN, NEBRASKA**, a municipality and governmental subdivision of the State of Nebraska (hereinafter referred to as "City"). The parties hereto may collectively be referred to as the "Parties" and individually as a "Party" or "Each Party."

WITNESSETH:

RECITALS

A. The District and the City wish to work together to make the most efficient use of their powers by cooperating on a basis of mutual advantage under the auspices of *Neb. Rev. Stat.* §§ 13-801 to 13-827 and to enter into an interlocal agreement with one another for joint and cooperative action for any power or powers, privileges or authorities exercised or capable of exercise individually by such public agencies.

B. The District has the power and authority to develop and execute plans, facilities, works, and programs relating to, among others, erosion prevention and control,

prevention of damages from flood water and sediment, and drainage improvement and channel rectification, pursuant to *Neb. Rev. Stat.* § 2-3229(1), (2), and (9).

C. The City has the power and authority pursuant to *Neb. Rev. Stat.* § 15-224 to establish, alter, and change the channel of watercourses, and to wall and cover them over and pursuant to *Neb. Rev. Stat.* § 15-701 to create, open, widen or otherwise improve, vacate, control, name and rename any street, alley, or public way or ways.

D. The Parties hereto deem it to be in the best interest of the public to jointly exercise powers and authorities as hereinafter described.

F. The Parties desire to enter into this Agreement pursuant to which they will cooperate mutually to acquire the necessary right of way as agreed to below.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. This Agreement shall become effective and binding upon its approval by appropriate action of the governing bodies of Each Party pursuant to *Neb. Rev. Stat.* § 13-1804(2) and execution by the Parties hereto.

2. The term of this Agreement shall be three (3) years from the date of its adoption by the Parties, unless further extended by the mutual agreement of the Parties. This Agreement shall survive a transition of the form of government of a Party from one form to another.

3. The Parties agree that flooding of the Highway 6 and Fletcher Avenue area in the City of Lincoln is a problem which has been addressed by both Parties.

4. The District has developed a Stevens Creek Watershed Plan in 1997, one component of which is to reduce flood damages in the Highway 6/Fletcher Ave/84th Street area by installing a

supplemental box culvert to provide better drainage of the area (the “Stevens Creek Supplemental Box Culvert Project”).

5. The City, through its Watershed Management division of the Department of Public Works and Utilities, is working with the District and sharing the cost of the Stevens Creek Supplemental Box Culvert Project on a 50/50 basis.

6. The City, through its Engineering Services division of the Department of Public Works and Utilities, is planning improvements to Fletcher Avenue that will require modification to the Stevens Creek Supplemental Box Culvert Project (the “Fletcher Ave Improvement Project”).

7. The Parties have completed a Stevens Creek Basin study that identified the need to install stream stability measures in Highway 6 and Fletcher Avenue area and have agreed to share the costs of the improvements on a 50/50 basis (the “Stream Stability Project”).

8. The Parties have agreed to a final design that takes into account the Stevens Creek Supplemental Box Culvert Project, the Stream Stability Project and the Fletcher Avenue Improvement Project, collectively referred to as the “Projects.”

9. The parties agree to cooperate in acquiring the necessary right-of-way for the Projects in order to avoid the duplication of services for land acquisition and to simplify the process for the landowners.

10. The parties agree to share the land acquisition costs of the Stevens Creek Supplemental Box Culvert Project and the Stream Stability Project, on a 50/50 basis.

11. The City agrees to pay 100% of the costs of the land acquisition for the Fletcher Avenue Improvement Project.

12. The City agrees to act as the lead agency in acquiring all of the right-of-way for the Projects, as determined by a land rights map to be agreed upon by the Parties.

13. The City agrees to acquire all of the right-of-way and agrees to institute condemnation action, if necessary. The City shall pay all costs associated with acquiring the right of way and seek pro rata reimbursement from the District in accordance with Paragraphs 10 and 16.

14. Before the City agrees to finalize any right-of-way acquisition with landowners, it shall consult with the District and obtain the District's approval. If a settlement cannot be effectuated with any landowner, the City will consult with and obtain the District's approval before condemnation proceedings are initiated.

15. The District agrees to cooperate with and assist the City in acquiring the necessary right-of-way for the Projects.

16. The Parties agree that the City shall prepare an itemized statement including all costs that have been incurred as a result of the acquisition of land for the Stevens Creek Supplemental Box Culvert Project, the Stream Stability Project and the Fletcher Avenue Improvement Project and submit such statement to the District at the time that all of the right-of way has been acquired. The statement shall include the costs owed by the City and the costs to be paid by the District. The District agrees to pay its share of the costs within 30 days after receipt, unless the District gives notice to the City in writing that it disputes any of the costs on such statement. In the event of a dispute, the District shall pay the costs that are not disputed, and the disputed costs shall be resolved in accordance with paragraph 19 and 20 below.

17. Any easements acquired for the Stevens Creek Supplemental Box Culvert Project and the Stream Stability Project shall be transferred to the District, after the District pays it's pro

rata share of the cost for such easements. After such transfer, the District shall become responsible for the operation and maintenance of the Supplemental Box Culvert and Stream Stability Projects.

18. The Parties agree that the District shall permanently operate and maintain the Stevens Creek Supplemental Box Culvert Project and the Stream Stability Project and the City will permanently operate and maintain the Fletcher Ave Improvement Project.

19. Either Party may propose an amendment to this Agreement by submitting it in writing to the other Party, who shall immediately consider in good faith the proposed amendment; provided, however, that no such amendment shall, directly or indirectly, affect or impair any written contracts or agreements entered into prior to the effective date of such amendment.

20. No amendment or other modification to this Agreement shall be effective unless it is in writing and approved by Each Party. Such amendment shall become effective after all Each Party has approved and executed the same.

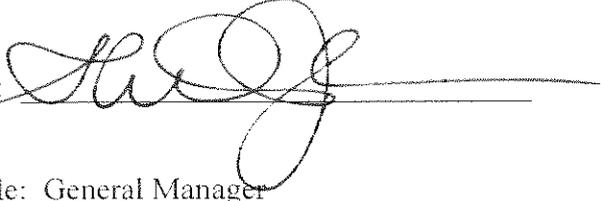
21. If either Party to this Agreement believes that the another party is in default under the terms and provisions of this Agreement, said Party shall send a written Notice of Default to such defaulting party, which Notice shall specify the default and the actions believed to be necessary in order to cure the default. Failure of the defaulting Party to cure a default under this Agreement as soon as reasonably practicable but not later than thirty (30) days after receipt of written notice thereof, shall entitle the other Party to proceed to take actions necessary to cure the default and bill the defaulting party for any and all costs associated with such cure. A default which cannot be cured within thirty (30) days shall not give rise to a right to terminate this Agreement provided that cure is commenced within thirty (30) days and diligently pursued to completion.

22. In the event any dispute or controversy arising out of or relating to this Agreement occurs, the Parties agree to exercise their best efforts to resolve the dispute as soon as possible. The Parties shall without delay continue to perform their respective obligations under this Agreement which are not affected by the dispute. Any Party may invoke the dispute resolution process set forth in this paragraph by giving to the other Party written notice of its intent to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Each Party shall designate, within five (5) working days of the notice, a representative who shall attempt to resolve the dispute. If the designated representatives of the Parties cannot resolve the dispute, the Parties shall meet within twenty (20) days thereafter, or such longer time as may be agreed upon, and attempt to resolve the dispute. If the dispute is not resolved within ten (10) business days after such meeting, the dispute shall be referred to arbitration pursuant to the Nebraska Uniform Arbitration Act, *Neb. Rev. Stat. §§ 25-2601 to 25-2622*.

23. This agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized officer as of the date and year shown below.

LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT,

By: 

Title: General Manager

Signed: January 22, 2007

THE CITY OF LINCOLN, NEBRASKA

By: _____

Title: Mayor

Signed: _____, 2007