

INTERLOCAL AGREEMENT

LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT

CITY OF LINCOLN, NEBRASKA

FINANCING OF THE NORTHWEST 70TH STREET ROAD STRUCTURE,
OUT FLOW PIPE EXTENSION

THIS INTERLOCAL AGREEMENT ("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 the "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.

E. 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 ten (10) 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 a flood control structure designated as the Northwest 70th Street Road Structure located in the Northeast Quarter of Section 11, Township 10 North, Range 5 East, Lincoln, Lancaster County, Nebraska, requires the action of both Parties.

4. During the planning and design of this structure, the Comprehensive Plan was amended to include this area in Tier One Priority A and Tier Two Urban Growth Areas. In recognition of the potential urban growth of this area, the City requested the District and County

agree to re-locate and re-design the structure off the Section line to allow room for a future urban roadway section.

5. As part of this project, the District will modify the design to incorporate provisions for the future urban roadway by extending the outflow pipe and necessary dirt work to accommodate the pipe.

6. The District will construct the structure to this design and finance the additional cost that would be the City's portion of the project at this time.

7. Within 30 days of the date that the City of Lincoln converts Northwest 70th Street to an urban roadway, the City will reimburse the District in the amount of \$47,060.00 which includes \$38,960.00 for construction and \$8,100.00 for engineering, **provided however**, that in the event that the City has not converted Northwest 70th Street to an urban roadway at least 30 days before the end of the ten (10) term of this Agreement, then these amounts due to the District shall be due and payable no later than thirty (30) days before the expiration date of this Agreement.

8. 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.

9. 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.

10. If either Party to this Agreement believes that the other 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.

11. 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.

12. 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: _____

Sign: _____, 2007

THE CITY OF LINCOLN, NEBRASKA

By: _____

Title: Coleen J. Seng, Mayor

Sign _____, 2007