

THIS INTERLOCAL COOPERATION AGREEMENT (the "Agreement") is entered into by and between CASS COUNTY, NEBRASKA, (hereinafter referred to as the "County"), and LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT, a political subdivision of the State of Nebraska (hereinafter referred to as the "NRD"). The parties are sometimes collectively referred to as the "Parties" and individually as a "Party."

WITNESSETH:

RECITALS

WHEREAS, Art. XV, § 18(1) of the Constitution of the State of Nebraska and the Interlocal Cooperation Act, *Neb. Rev. Stat.* §§ 13-801 through 13-827 (the "Act") authorize two or more public agencies to enter into agreements with one another for joint or cooperative action in regard to the exercise or enjoyment jointly of any power or powers, privileges, or authority exercised or capable of exercise by such public agency; and

WHEREAS, the Parties to this Agreement desire to work together to undertake and complete a connecting trail between the MoPac East Trail and the Lied Platte River Bridge, in Cass County, Nebraska, (the "Trail Connector") making the most efficient and effective use of their respective authorities and duties by cooperating on the basis of mutual advantage to enter into this Agreement with one another; and

WHEREAS, the Parties desire to identify a route for the Trail Connector that utilizes existing public right-of-way to the extent that is reasonable from a design and funding standpoint, limits the requirement for acquisition of private right-of-way, is sensitive to impacts on adjoining properties and residents, provides a safe corridor for trail users, and encourages the development of regional economic opportunities; and

WHEREAS, the Nebraska State Legislature has granted \$8.3 million to the Trail Development and Maintenance Fund, administered by the Game and Parks Commission, to provide a grant to a Natural Resources District to facilitate the completion of the Missouri-Pacific (Mo-Pac) trail between Lincoln and Omaha (LB1011).

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained herein, IT IS AGREED BY AND BETWEEN THE PARTIES HERETO, as follows:

SECTION 1: PARTIES AND DEFINITIONS

1.01 The County and the NRD are both political subdivisions of the State of Nebraska and public agencies within the meaning of *Neb. Rev. Stat.* § 13-803. Each Party consents to the

participation in this Agreement by the other Party. Each Party agrees and acknowledges that this Agreement shall become effective and binding upon each Party upon the execution of this Agreement.

SECTION 2: AUTHORITY

2.01 Each Party has made and entered into this Agreement pursuant to the authority conferred on each Party under the Act.

2.02 The County has the power and authority to lay out and alter any road running through it under *Neb. Rev. Stat.* § 23-108, to acquire land or any interest therein for county road purposes, including but not limited to roadside areas or parks adjacent to or near any county roads under *Neb. Rev. Stat.* § 39-1702, and to join with another political subdivision in ownership, operation and performance of parks or other recreation facilities under *Neb. Rev. Stat.* § 13-304.

2.03 The NRD has the power and authority to develop and execute plans, facilities, works, and programs relating to, among others, development, and management of recreational and park facilities, pursuant to *Neb. Rev. Stat.* § 2-3229.

SECTION 3: DURATION

3.01 Unless mutually extended by written agreement of the parties, the duration of this Agreement within the meaning of *Neb. Rev. Stat.* § 13-804(3)(a) shall be for a period of ten (10) years or until the construction of the Trail Connector is completed, whichever is sooner.

SECTION 4: FUNDING SOURCES

4.01 To secure up to \$8.3 million to fund the completion of the Trail Connector, the NRD has entered into a Trail Development and Maintenance Fund Project Agreement with the Nebraska Game and Parks Commission (the "NG&P Agreement"), which is attached hereto.

SECTION 5: MUTUAL PROMISES AND COVENANTS

5.01 The parties mutually agree as follows:

5.01.1 That the Trail Connector shall be constructed on a route that is approved by the governing bodies of each Party.

5.01.2 That in exchange for participating in the routing decision for the Trail Connector, the County agrees and warrants that it shall secure and provide all-existing right-of-way necessary to construct the Trail Connector along the approved route and shall ensure public access to the Trail Connector in perpetuity by executing easements

that dedicate the real estate upon which the Trail Connector is constructed to the use and benefit of the public as a trail. Such easements shall provide the NRD with the right to operate and maintain the Trail Connector in perpetuity. This Paragraph shall survive termination of this Agreement.

5.01.3 That the NRD agrees and warrants that it shall oversee and be responsible for the design, funding, and construction of the Trail Connector along the route selected by the County, and the NRD shall also operate and maintain the Trail Connector following its construction. Upon completion of the Trail Connector, the NRD will assume ownership and maintenance of all the improvements constructed. Except as otherwise provided herein, the NRD shall be responsible for the cost of the Trail Connector which exceed the funds available under the NG&P Agreement. This Paragraph shall survive termination of this Agreement.

5.01.4 That both Parties shall cooperate throughout the duration of this Agreement to ensure that all obligations and requirements under the NG&P Agreement may be met. Both Parties acknowledge that funding under the NG&P Agreement is critical to the Trail Connector and that fulfilling their respective duties and obligations under this Agreement will be integral to satisfying the requirements under the NG&P Agreement. Further both Parties acknowledge that a failure by either Party to fulfill its obligations under this Agreement may affect the availability or reimbursement of funds under the NG&P Agreement.

SECTION 6: MISCELLANEOUS PROVISIONS

6.01 No Party may assign its contractual rights under this Agreement, except to a successor public agency.

6.02 This Agreement does not create a separate legal or administrative entity and does not authorize the levying or collecting of any tax.

6.03 This Agreement shall be governed by the laws of the State of Nebraska.

6.04 This Agreement and its attachments constitute the entire agreement between the Parties with respect to the subject matter herein and merges all prior discussion between them.

6.05 This Agreement may be amended at any time in writing duly signed by each of the Parties upon appropriate action by ordinance, resolution or otherwise pursuant to the law of the governing body of each Party so that any such amendment to this Agreement may enter into force consistent with the provisions of *Neb. Rev. Stat. § 13-804(2)*. No amendment or other modification to this Agreement shall be effective unless it is in writing and approved by both Parties. Such amendment shall become effective after the Parties have executed it.

6.06 Each Party agrees to indemnify and hold harmless, to the fullest extent allowed by law, the other party and its officers, elected officials, agents, and employees from and against all

claims, demands, suits, actions, payments, liabilities, judgments, and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of the elected officials, officers, or employees of the indemnifying Party in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim by a third party for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of property, including the loss of use resulting therefrom. Further each Party shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require any Party to indemnify or hold harmless the other Party from liability for the negligent or wrongful acts or omissions of the other Party or their officers, agents, or employees. No portion of this Agreement shall be construed to constitute a waiver of the sovereign immunity of either Party. This Paragraph shall survive any termination of this Agreement.

6.07 This Agreement may be terminated in the event that any Party is in default of a material term of this Agreement and fails to cure such default, after proper notice and reasonable opportunity has been afforded to cure, as provided herein. This Agreement may also be terminated by mutual consent of both Parties for any reason.

6.08 If either Party to this Agreement believes that the other party is in default of any term or condition 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.

6.09 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 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 from the date it is determined the designated representatives cannot resolve the dispute, or such longer time as may be agreed upon, and attempt to resolve the dispute. If the dispute is still not resolved within (10) business days after such meeting, the Parties shall mutually agree on an attorney knowledgeable and experienced in mediation, who shall mediate such dispute before either Party may pursue any remedies available under the law.

6.10 If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be invalid, unenforceable, or otherwise inoperative, the remaining sections shall continue in full force and effect as if agreed to without the inoperative provisions.

6.11 All notices or other communications provided for under this Agreement shall be in writing and shall be given to the County or NRD at the addresses set forth below:

County:

Gerri L. Draper
Cass County Clerk
346 Main Street, Room 202
Plattsmouth, NE 68048

NRD:

Mike Sousek
LPSNRD General Manager
3125 Portia Street
Lincoln, NE 68521

IN WITNESS WHEREOF, the Parties have signed and executed this Agreement.

CASS COUNTY, NEBRASKA

By: _____

Alexander DeGarmo

Title: Chairman, Cass County Board of Commissioners

Signed: November 5th, 2024

LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT

By: _____

Mike Sousek

Title: General Manager, Lower Platte South Natural Resources District

Signed: November _____, 2024