MEMORANDUM

TO: Finance, Expenditures and Legal Subcommittee

FROM: Amanda Grint, Water Resources Engineer

SUBJECT: Review and Recommendation of Transfer Deed of Prairie Queen Recreational Area to the City of Papillion

DATE: November 3, 2016

The interlocal agreement with the City of Papillion, Sarpy County and SID 290 for the West Papillion Regional Basin Number 5 (now called Prairie Queen Recreation Area) included a provision to transfer the District acquired property to the City of Papillion at the time of annexation of private land adjacent to the Prairie Queen property or June 2025 whichever date shall be earlier.

The City of Papillion annexed adjacent property in August 2015 and in October 2015, the City of Papillion officially took over maintenance of the Recreation Area. The attached transfer deed has been prepared by the District and reviewed by the City of Papillion.

On February 10, 2016, a land auction was held for the sale of the surplus property at Prairie Queen. There were two parcels for sale, one along 132nd Street and one along Highway 370. The 49 acres along 132nd Street was sold however, the 27.171 acres along Highway 370 did not meet the reserve amount and was not sold on that date. On the attached exhibit titled, Surplus Property Exhibit, Parcel 2 is the surplus property and Parcel 1 is what would be transferred with the Prairie Queen Recreation Area to Papillion.

Throughout the marketing and in negotiations after the auction, it became clear that access to a portion of the 27.171 acre surplus property along Hwy 370 was problematic. It is recommended that the Board retain ownership of the more developable western portion of the surplus tract for future land sale and transfer the remainder of the surplus property to the City of Papillion with the rest of the District acquired land. This is depicted on the attached Transfer Deed Exhibit. In summary, 15.332 acres of the previously designated surplus property would be retained by the District and the remaining 11.7 acres would be transferred to Papillion.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Transfer Deed with the City of Papillion for the Prairie Queen Recreation Area subject to changes deemed necessary by the General Manager determines necessary and approval as to form by Legal Counsel.
WARRANTY DEED, RESERVATION OF EASEMENTS,  
AND DECLARATION OF RESTRICTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS, that for good and valuable consideration, 
the sufficiency and adequacy of which is hereby acknowledged, PAPIO-MISSOURI RIVER  
NATURAL RESOURCES DISTRICT, a political subdivision of the State of Nebraska 
(“Grantor”) does convey to the CITY OF PAPILLION, NEBRASKA, a municipal corporation 
(“Grantee”) all right, title and interest of Grantor, in and to the real property in Sarpy County, 
Nebraska, more particularly described by the legal description on Exhibit A, attached hereto and 
incorporated herein by reference (the “Real Estate”), less and except the easements, reservations, 
covenants and restrictions of record, including, but not limited to, the Easements and Restrictive 
Covenants more particularly described herein below that are excepted and reserved by Grantor 
from such conveyance.

RESERVATION OF EASEMENTS; DECLARATION OF RESTRICTIVE COVENANTS

Grantor hereby reserves for itself, its successors, assigns, officers, agents, employees and 
contractors (the “Grantor Parties”), and excepts from the conveyance of the Real Estate, the 
following easements and restrictive covenants (collectively, the “Easements and Restrictive 
Covenants”) in, on, under, over and across the Real Estate:

a) Grantor hereby reserves for the Grantor Parties the permanent right and authority to 
enter the Real Estate during any time deemed to be a flood emergency by Grantor and 
during all other reasonable times and to use any and all roads in the Real Estate as 
Grantor deems reasonably necessary.

b) Grantor further hereby reserves for the Grantor Parties the permanent and exclusive 
right and authority to construct, operate, maintain, repair, replace, manage and regulate 
a multi-purpose flood control and recreational dam (the “Dam”) and reservoir 
(including two water quality basins and associated dams) (the “Reservoir”) 
constructed on the Real Estate as part of the West Papillion Creek Flood Control 
project, and the non-recreational appurtenances thereof, together with such future
flood control improvements as Grantor deems necessary and that Grantee approves in writing (such approval to not be unreasonably withheld or delayed).

Grantor further hereby reserves for the Grantor Parties the permanent right and authority to use any and all unimproved portions of the Real Estate for the borrow and fill of earthen material for use in operation, maintenance, repair, replacement of the Dam, Reservoir and/or the non-recreational appurtenances thereto.

c) Grantor further hereby reserves for the Grantor Parties the permanent right and authority to periodically flow and overflow waters, sediment, and flood debris detained by the Dam and/or the Reservoir, upon all areas within the Real Estate located within the watershed of the Dam and having a ground surface elevation lower than 1,086.5 feet above mean sea level, referenced to the North American Vertical Datum of 1988 (the “NAVD”) (such areas constituting the “Regulated Flood Pool”). The Regulated Flood Pool may not be used for the construction or maintenance of structures, fixtures or other improvements without the prior written approval of Grantor; provided, however, the Regulated Flood Pool may be used for the following activities:

i) Dredging or other removal of silt from the Regulated Flood Pool from time to time;

ii) Excavation or filling of earth or rock in the Regulated Flood Pool in order to construct, operate and maintain sheet-pilings, revetments or other temporary or permanent shoreline erosion prevention and bank protection devices or methods within the Regulated Flood Pool; or

iii) Installation of landscaping, low-voltage lighting, boat ramps, decks, docks or boat lifts in the Regulated Flood Pool.

d) Grantor further hereby reserves for the Grantor Parties the permanent right and authority to periodically flow and overflow waters, sediment, and flood debris detained by the Dam and/or the Reservoir, upon all areas within Real Estate located within the watershed of the Dam and having a ground surface elevation lower than 1,092.0 feet above mean sea level, NAVD (such areas constituting the “Maximum Pool”). No part of the Maximum Pool may be used for the placement of any earthen fill or other fill in any area of the Maximum Pool, except for limited filling in the Regulated Flood Pool as set forth and permitted in Section d(ii).

e) Grantor further hereby reserves the right to periodically adjust the elevation of the permanent pool of the Reservoir in order to perform necessary operation, maintenance, repair, or replacement of the Dam and/or Reservoir.

f) Grantee may, with Grantor’s prior written approval in each instance with respect to any particular trail or other improvement, construct a public pedestrian and bicycle trail and other recreational improvements (collectively, the “Grantee Improvements”) in, on, over and across the Dam at Grantee’s sole cost and expense. After any such
construction, Grantee may operate and maintain such improvement. Upon reasonable request by Grantor, Grantee shall relocate and/or remove, at Grantee’s sole cost and expense, any and all Grantee Improvements that Grantor reasonably deems to interfere with the Grantor’s operation, maintenance, repair, replacement, management or regulation of the Dam, Reservoir, and/or the non-recreational appurtenances thereto.

The parties intend that the Real Estate shall be conveyed subject to the Easements and Restrictive Covenants set forth herein, which Easements and Restrictive Covenants shall run with the Real Estate and be binding upon all parties having any right, title or interest in the Real Estate or any part thereof, their successors and assigns, and shall inure to their benefit.

Grantor covenants with Grantee that Grantor:

(1) is lawfully seized of such Real Estate and that it is free from encumbrances, except easements, reservations, covenants and restrictions of record, including, but not limited to, the Easements and Restrictive Covenants;

(2) has good right and lawful authority and power to convey the same; and

(3) warrants and will defend the title to such Real Estate against the lawful claims of all persons whatsoever.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, Grantor has hereunto caused its seal to be affixed and signed by its General Manager.

Dated ____________________, 2016.

THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

By: __________________________________________

JOHN WINKLER, General Manager

STATE OF NEBRASKA )
COUNTY OF SARPY ) ss

The foregoing instrument was acknowledged before me on ____________________, 2016, by JOHN WINKLER, General Manager of the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT.

_______________________________
Notary Public

IN WITNESS WHEREOF, Grantee has joined in an executed this Warranty Deed, Reservation of Easements, and Declaration of Restrictive Covenants to show its agreement with the Easements and Restrictive Covenants contained herein.

Dated ____________________, 2016.

THE CITY OF PAPILLION, NEBRASKA

By: __________________________________________

DAVID BLACK, Mayor

Attest:

_______________________________
Elizabeth Butler, City Clerk
TRANSFER DEED EXHIBIT