

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee  
FROM: Eric Williams, Natural Resources Planner  
SUBJECT: USACE Section 22 Streambed Degradation Study

- Planning Assistance to States Agreement
- Interlocal Agreement with City of Omaha

DATE: September 7, 2017

Through ongoing discussion, inspection, and collaboration on projects in and around the Omaha metro area, the District, City of Omaha, and members of the Papillion Creek Watershed Partnership (PCWP) have experienced numerous streambed degradation issues in need of additional study. Since the original letter of intent was submitted as approved by the Board in February 2017, District and City of Omaha staff have met to discuss the details of a Section 22, Planning Assistance to State (PAS) study from the United States Army Corps of Engineers (USACE).

The study will consist of two phases, the scope for Phase 1 will include a kick-off meeting, review of existing information, identifying data gaps, a scoping workshop, and development of a Project Management Plan for conducting a details technical assessment and strategy in the second phase. Work in the Phase 1 is largely to identify objectives for the more comprehensive technical, field, analysis, and management work needed across the entire watershed.

As presented to the Board in February, the USACE provides 50% of the cost of Section 22 study work. The District, City of Omaha, and PCWP will provide and document in-kind work, as well as financial contributions. The complete funding for Phase 1 and Phase 2 is broken down between all study partners as follows:

USACE	50 %	\$ 100,000
PCWP	25 %	\$ 50,000
District	12.5 %	\$ 25,000
City of Omaha	12.5 %	\$ 25,000

The attached proposed Planning Assistance to States Agreement with USACE outlines the scope of work (Appendix A) and approximate cost (Appendix B, \$34,200) for the Phase 1 study. Phase 1 is expected to be completed in around six months, at which time the scope and timeline for Phase 2 will be finalized and brought to the Board for consideration.

- **Management recommends that the PPO Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Planning Assistance to States Agreement with the Department of the Army, with the District cost for Phase 1 and Phase 2 of the Streambed Degradation Study not to exceed \$25,000, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

The District will serve as the lead agency, will document local time contributed to the study, and will provide requested reimbursement to the USACE at the completion of Phase 1. In order to request reimbursement from Omaha for their contribution up to \$25,000 toward Phase 1 and Phase 2, an Interlocal Agreement is needed. Each agency will document in-kind hours, and the District will collect, and submit documentation to the USACE.

- **Management recommends that the PPO Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Agreement with the City of Omaha for the USACE Section 22 Streambed Degradation Study, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

PLANNING ASSISTANCE TO STATES AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

THIS AGREEMENT is entered into this \_\_\_\_\_ day, of \_\_\_\_\_, 20\_\_\_\_, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and the Papio-Missouri River Natural Resources District (hereinafter the "Non-Federal Sponsor"), represented by the Chairman, executing the Agreement.

WITNESSETH, that

WHEREAS, Section 22 of the Water Resources Development Act ("WRDA") of 1974 (Public Law 93-251), as amended, authorizes the Secretary of the Army, acting through the Chief of Engineers, to assist the States, as therein defined, in the preparation of comprehensive plans for the development, utilization and conservation of water and related resources of drainage basins, watersheds or ecosystems located within the boundaries of such State;

WHEREAS, Section 319 of the WRDA of 1990 (Public Law 101-640) authorizes the Secretary of the Army to collect fees from States and other Non-Federal governmental entities for the purpose of recovering 50 percent of the cost of the program;

WHEREAS, the Non-Federal Sponsor has reviewed the State's comprehensive water plans and identified the need for planning assistance as described in the Scope of Work incorporated into this agreement;

WHEREAS, the Non-Federal Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in the study cost-sharing and financing in accordance with the terms of this Agreement; and

WHEREAS, Section 208(1) of WRDA of 1992, Public Law 102-580 (codified at 42 U.S.C. Section 1962d-16(b)(2)), authorizes the Non-Federal Sponsor to contribute up to one hundred (100) percent of the non-Federal contribution for preparation of the Scope of Work incorporated into this Agreement by the provision of services, materials, supplies or other in-kind services necessary to prepare the Scope of Work.

NOW THEREFORE, the parties agree as follows:

## ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

A. The term “Study Costs” shall mean all disbursements by the Government pursuant to this Agreement, from Federal appropriations or from funds made available to the Government by the Non-Federal Sponsor and all negotiated costs of work performed by the Non-Federal Sponsor pursuant to this Agreement. Study Costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; the costs of participation in Study Management and Coordination in accordance with Article IV of this Agreement; the costs of contracts with third parties, including termination or suspension charges; and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.

B. The term “estimated Study Costs” shall mean the estimated cost of performing the Study as of the effective date of this Agreement, as specified in Article III.A. of this Agreement.

C. The term “study period” shall mean the time period for conducting the Study, commencing with the release to the USAED Omaha District of initial Federal funds following the execution of this Agreement and ending when the USAED Omaha District provides the Planning Report to the Non-Federal Sponsor.

D. The term “Scope of Work” (SOW) means a description of the work to be performed. The SOW will be attached to this Agreement and not be considered binding on either party and is subject to change by the Government, in consultation with the Non-Federal Sponsor.

E. The term “fiscal year” shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

F. The term “negotiated costs” shall mean the costs of in-kind services to be provided by the Sponsor in accordance with the SOW.

## ARTICLE II - OBLIGATIONS OF PARTIES

A. The Government, subject to receiving funds appropriated by the Congress of the United States (Congress), using funds and in-kind services provided by the Non-Federal Sponsor and funds appropriated by the Congress, shall expeditiously prosecute and complete the Study, in accordance with the provisions of this Agreement and Federal laws, regulations, and policies.

B. In accordance with this Article and Article III.A., III.B. and III.C. of this Agreement, the Sponsor shall contribute cash and/or in-kind services equal to fifty (50) percent of Study Costs. If agreeable to all parties, in-kind services may comprise one hundred (100) percent of the Non-Federal Sponsor’s contributions. The in-kind services to be provided by the Non-Federal Sponsor, the estimated negotiated costs for those services, and the estimated schedule under which those services are to be provided are specified in the Scope of Work. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Non-Federal Sponsor understands that the schedule of work may require the Sponsor to provide cash or in-kind services at a rate that may result in the Non-Federal Sponsor temporarily diverging from the obligations concerning cash and in-kind services specified in paragraph B. of the Article. Such temporary divergences shall be identified in the quarterly reports provided for in Article III.A. of this Agreement and shall not alter the obligations concerning costs and services specified in paragraph B. of the Article or the obligations concerning payment specified in Article III of this Agreement.

D. If, upon the award of any contract or the performance of any in-house work for the Study by the Government, cumulative financial obligations of the Government and the Non-Federal Sponsor would exceed \$34,240.00, the Government and the Non-Federal Sponsor agree to defer award of that and all subsequent contracts, and performance of that and all subsequent in-house work, for the Study until the Government and the Non-Federal Sponsor agree to proceed. Should the Government and the Non-Federal Sponsor require time to arrive at a decision, the Agreement will be suspended in accordance with Article X., for a period of not to exceed six months. In the event the Government and the Non-Federal Sponsor have not reached an agreement to proceed by the end of their 6-month period, the Agreement may be subject to termination in accordance with Article X.

E. No Federal funds may be used to meet the Non-Federal Sponsor's share of Study Costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

F. The award and management of any contract with a third party in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government. The award and management of any contract by the Non-Federal Sponsor with a third party in furtherance of the Agreement which obligates funds of the Non-Federal Sponsor and does not obligate Federal appropriations shall be exclusively within the control of the Non-Federal Sponsor, but shall be subject to applicable Federal laws and regulations.

G. Notwithstanding any provision of this Agreement, this Agreement and the Government's obligations hereunder shall not be effective and will not commence until Federal funds have been appropriated and allocated to the District Engineer, U.S. Army Corps of Engineers Omaha District for the implementation of this study. In the event that Federal funds are allocated to the District Engineer for this study after the date that the parties hereto execute this Agreement, the effective date of this Agreement shall be the date that funding approval is provided to the District Engineer.

### ARTICLE III - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties, current projections of Study Costs, current projections of each party's share of Study Costs. At least quarterly, the Government shall provide the Non-Federal Sponsor a report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are \$34,240 and the Non-Federal Sponsor's share of estimated Study Costs is \$17,120. In order to meet the Non-Federal Sponsor's cash payment requirements for its share of estimated Study Costs, the Non-Federal Sponsor must provide a cash contribution currently estimated to be \$2,720. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect the scope of the study described in the SOW, projected costs, price-level changes, and anticipated inflation. Such cost estimates are subject to adjustment by the Government and are not to be construed as the total financial

responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide its cash contribution required under Article II.B. of this Agreement in accordance with the following provisions:

1. No later than 30 days prior to the scheduled date for the Government's issuance of the solicitation for the first contract for the Study or for the Government's anticipated first significant in-house expenditure for the Study, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet its share of Study Costs. No later than 15 days thereafter, the Non-Federal Sponsor shall provide the Government the full amount of the required funds by delivering a check payable to "**FAO, USAED, Omaha District & EROC**" to the District Engineer or an Electronic Funds Transfer in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Non-Federal Sponsor's share of contractual and in-house financial obligations attributable to the Study as they are incurred.

3. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its share of Study Costs, the Government shall so notify the Non-Federal Sponsor in writing. No later than 60 days after receipt of such notice, the Non-Federal Sponsor shall provide the Government with a check or an Electronic Funds Transfer for the full amount of the additional required funds.

C. Within 90 days after the conclusion of the Study Period or termination of this Agreement, the Government shall conduct a final accounting of Study Costs, including disbursements by the Government of Federal funds, cash contributions by the Non-Federal Sponsor, and credits for the negotiated costs of the Non-Federal Sponsor, and shall furnish the Non-Federal Sponsor with the results of this accounting. Within 30 days thereafter, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for the excess, if any, of cash contributions and credits provided over its required share of Study Costs, or the Non-Federal Sponsor shall provide the Government any cash contributions required for the Non-Federal Sponsor to meet its required share of Study Costs.

#### ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

To provide for consistent and effective communication, the Government's Project Manager for the Study and the Non-Federal Sponsor's designated representative shall communicate regularly until the end of the Study Period.

#### ARTICLE V - DISPUTES

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as



such costs are incurred. Such costs shall not be included in Study Costs. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of design and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits shall be included in total Study Costs and cost shared in accordance with the provisions of this Agreement.

#### ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Non-Federal Sponsor act in independent capacities in the performance of their respective rights and obligations under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

#### ARTICLE VIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

#### ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto and published in 32 C.F.R. Part 195, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

## ARTICLE X - TERMINATION OR SUSPENSION

A. This Agreement shall terminate at the conclusion of the Study Period, and neither the Government nor the Non-Federal Sponsor shall have any further obligations hereunder, except as provided in Article III.C.; provided, that prior to such time and upon 30 days written notice, either party may terminate or suspend this Agreement. In addition, the Government shall terminate this Agreement immediately upon the failure of the parties to extend the study under Article II.D. of the Agreement, or upon failure of the Non-Federal Sponsor to fulfill its obligation under Article III. of this Agreement. In the event that either party elects to terminate this Agreement, both parties shall conclude their activities relating to the Study and proceed to a final accounting in accordance with Article III.C. of this Agreement. Upon termination of this Agreement, all data and information generated as part of the Study shall be made available to both parties.

B. Any termination of this Agreement shall not relieve the parties of liability for any obligations previously incurred, including the costs of closing out or transferring any existing contracts.

## ARTICLE XI – LIMITATION ON GOVERNMENT EXPENDITURE

In accordance with Section 22 of WRDA of 1974, as amended, Government financial participation in the cooperative preparation of comprehensive plans for development, utilization, and conservation of water and related resources pursuant to said authority shall be limited to the expenditure of not more than \$2,000,000 in any one year in any one State.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which, subject to the provisions of Article II.G. of this Agreement, shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT

BY: \_\_\_\_\_  
John L. Hudson, P.E.  
Colonel, Corps of Engineers,  
Omaha District Engineer

BY: \_\_\_\_\_  
John Winkler  
General Manager, Papio-Missouri  
River Natural Resources District



# CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer for the Papio-Missouri River Natural Resources District and is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Papio-Missouri River Natural Resources District connection with the Section 22 Planning Assistance to States study, and that the persons who has executed this Agreement on behalf of the Papio-Missouri River Natural Resources District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

Signature: \_\_\_\_\_

Typed Name: Brent Meyer

Title in Full: Papio-Missouri River Natural Resources District Attorney

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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**JOHN WINKLER**  
**GENERAL MANAGER, PAPIO-MISSOURI RIVER**  
**NATURAL RESOURCES DISTRICT**

DATE: \_\_\_\_\_

**Papillion Creek Watershed, Nebraska  
Planning Assistance to States (PAS) Study Proposal  
Scope of Work**

**August 2017**

Papio-Missouri River Natural Resources District (P-MRNRD) and City of Omaha officials, in conjunction with the Papillion Creek Watershed Partnership (PCWP) members, have identified the need for comprehensive assessment of degradation issues occurring along the Papillion Creek and its tributaries throughout the watershed. PCWP member agencies include; cities of Omaha, Bellevue, Papillion, La Vista, Gretna, Ralston, Sarpy County, Boys Town, and the P-MRNRD. The P-MRNRD submitted a Letter of Request dated February 10, 2017 to the USACE, Omaha District (Corps) to conduct a Section 22 Planning Assistance to States (PAS) study to address these issues with the following goals:

- assess the level of stream degradation that has occurred since the streams were originally classified by USACE and USGS in the 1990s; and
- develop a comprehensive strategy document that identifies level of stream degradation, which assets are at greatest risk (i.e., bridges, utilities, residential and commercial development, and ecosystem), and identifies priority construction projects and potential funding sources for these projects.

The study area for the PAS study is the entire Papillion Creek Watershed, which covers approximately 402 square miles of drainage area extending from northern Washington County southward through Douglas and Sarpy Counties and ultimately discharges to the Missouri River south of Bellevue, Nebraska. The study area includes the Omaha Metropolitan Area and surrounding communities which continues to experience rapid urbanization. There are three primary creeks that form the Papillion Creek system – Little Papillion Creek, Big Papillion Creek and West Branch Papillion Creek.

While the PAS study will not in itself lead to construction of a project, it will offer the P-MRNRD and the Cooperating Agencies (City of Omaha and PCWP) the opportunity to work closely with the Corps on a technical assessment of degradation issues and trends and development of a comprehensive strategy allowing for the prioritization of construction projects that will benefit communities within the watershed. The PAS study will be conducted in two phases. The first phase will consist of a kick-off meeting, assembling and reviewing existing information, identifying data gaps, holding a scoping workshop, project management activities, and developing a Project Management Plan for conducting a detailed technical assessment and strategy in the second phase. The purpose of the Phase One scoping workshop is to identify study objectives, constraints, and collaborate on developing the study scope for Phase Two. The second phase will focus on reconciling any inconsistencies or data gaps, further analysis into stream degradation issues, identification of those assets at greatest risk, development of a master plan for long-term stream stability, and identification of priority construction projects.

The scope of work below outlines the activities which will be conducted during Phase One of the Papillion Creek Watershed Stream Degradation PAS Study:

1. **Kick-Off Meeting.** The Sponsor (P-MRNRD), Cooperating Agencies (City of Omaha and PCWP) and several Corps Project Delivery Team (PDT) members will meet to discuss team structure/skill sets necessary to conduct the study, points of contact for each agency, data sources and develop a schedule for Phase One.
2. **Consolidate Existing Data for Review & Analysis.** The Sponsor and Corps PDT assemble copies of available information such as previous stream degradation studies (CH2M), USACE/USGS Stream Classification Reports, historical photos/GIS data and other information pertinent to the intent of this study.
3. **Data Gap Analysis.** The Corps PDT will conduct a cursory technical review of the existing information to identify gaps in the information. Additionally, a general plan for additional data collection will be developed. Part of this plan will include conducting site visits along several streams in the watershed to allow for the comparison of previous assessments conducted in the 1990s with current conditions. This information will help determine the level of stream degradation that has occurred over the past 20 years.
4. **Scoping Charrette Workshop.** A scoping charrette workshop will be held between the P-MRNRD, City of Omaha, the Corps, and other stakeholders (including members of the Papillion Creek Watershed Partnership) to identify objectives, constraints, and to ensure team alignment on the scope developed for the second phase of the study. Physical site visits will be incorporated into Phase Two of the study, as necessary.
5. **Project Management Plan.** The end product of first phase of the study will be a detailed project management plan (PMP) for conduct of the second phase of the PAS study. The PMP will govern the conduct of the second phase of the study, including scope of work, schedule, budget, quality management procedures, and public involvement activities.
6. **Project Management.** This will include the overall management of the PAS study to include coordinating with technical offices and study sponsors, maintaining financial accounting, and managing schedule, budget, quality management procedures, and other administrative support throughout the study process.

## Appendix B

**Papillion Creek Watershed PAS Study  
Cost Estimate**

Task	Description	USACE			SPONSOR			Subtotal
		Hours	Rate	Subtotal	Hours	Rate	Subtotal	
1	Kick-off Meeting	8	\$ 120.00	\$ 960.00	8	\$ 120.00	\$ 960.00	\$ 1,920.00
2	Consolidate Existing Data for Review & Analysis	40	\$ 120.00	\$ 4,800.00	40	\$ 120.00	\$ 4,800.00	\$ 9,600.00
3	Data Gap Analysis	40	\$ 120.00	\$ 4,800.00	8	\$ 120.00	\$ 960.00	\$ 5,760.00
4	Scoping Charrette Workshop	32	\$ 120.00	\$ 3,840.00	48	\$ 120.00	\$ 5,760.00	\$ 9,600.00
5	Project Management Plan	32	\$ 120.00	\$ 3,840.00	8	\$ 120.00	\$ 960.00	\$ 4,800.00
6	Project / Program Management	16	\$ 100.00	\$ 1,600.00	8	\$ 120.00	\$ 960.00	\$ 2,560.00
	Total Study Cost	168		\$ 19,840.00	120		\$ 14,400.00	\$ 34,240.00
	Federal Share							\$ 17,120.00
	Sponsor Non-Federal Share							\$ 17,120.00
	Sponsor Projected In-kind							\$ 14,400.00
	Sponsor Non-Federal Cash							\$ 2,720.00

**INTERLOCAL COOPERATION ACT AGREEMENT  
USACE SECTION 22 STREAMBED DEGRADATION STUDY  
BETWEEN**

**THE CITY OF OMAHA,  
AND  
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

This Interlocal Cooperation Agreement (“Agreement”) is hereby made by and between the CITY OF OMAHA (“Omaha”), a municipal corporation organized and existing under the laws of the State of Nebraska and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (“District”), a natural resources district organized and existing under the laws of the State of Nebraska, (collectively referred to as the “Parties”).

WHEREAS, District and Omaha desire to seek funding from the United States Army Corps of Engineers (“USACE”) Section 22, Planning Assistance to States program (“Section 22 Study”); and

WHEREAS, in order to serve their mutual interests and pursuant to the authority granted to the Parties by the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13-801, *et seq.*), the Parties desire to enter into this Agreement to delineate and provide for their specific rights and obligations, with respect to funding and completion of the USACE Section 22 Study.

WHEREAS, District and Omaha anticipate that the USACE Section 22 Study will consist of two phases: Phase I and Phase II.

WHEREAS, the Papillion Creek Watershed Partnership will also make contributions to pay for the USACE Section 22 Study.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the Parties do hereby mutually undertake, promise, agree, and contract each for itself and its successors and assigns as follows:

**Section 1. Purpose.** The purpose of this Agreement is to specify the terms and conditions upon which the Parties will apply for funding, and complete the work necessary for the USACE Section 22 Study.

**Section 2. Term.** This Agreement shall commence on the date of its signing and will terminate on September 30, 2022. This Agreement may be extended, on the same terms and conditions, for an additional one (1) year term, upon mutual written agreement of the Parties. This Agreement may be terminated prior to September 30, 2022, upon mutual written agreement of the Parties.

**Section 3. Rights, Duties and Obligations of the District.** The District agrees to:

A. Enter into a Planning Assistance to States Agreement with the USACE, act as the lead administrator for the USACE Section 22 Study, and reimburse USACE for 50% of the study costs up to a maximum of one hundred thousand dollars (\$100,000);

B. Document in-kind hours expended toward the completion of the USACE Section 22 Study, and submit documentation according to USACE guidelines; and

C. Be responsible for up to a maximum of twenty-five thousand dollars (\$25,000), contribution of District funds for costs associated with the USACE Section 22 Study.

**Section 4. Rights, Duties, and Obligations of Omaha.** Omaha agrees to:

A. Document in-kind hours expended toward the completion of the USACE Section 22 Study, and submit documentation to the District; and

B. Be responsible for up to a maximum of twenty-five thousand dollars (\$25,000), reimbursement to the District for costs associated with the USACE Section 22 Study.

**Section 5. Payment of Contributions.** Contributions pursuant to this Agreement from Omaha to the District towards the costs of the USACE Section 22 Study shall be due within 45 days after receipt by Omaha of a written invoice itemizing the respective costs of the Section 22 Study for which contributions from Omaha are sought under this Agreement.

**Section 6. Cooperation.** The Parties agree and understand that cooperation and approval of certain other governmental and other third parties will be required for USACE Section 22 Streambed Degradation Study and to otherwise carry out the intent of this Agreement. The Parties agree to support one another and cooperate, in writing or as otherwise required and/or appropriate with respect to the foregoing, including with respect to any negotiations, discussions, meetings or hearings related to the foregoing and to otherwise carry out the intent of this Agreement.

**Section 7. Indemnification.** Each of the Parties agrees to indemnify and hold harmless the other Parties from and against any and all claims, demands and causes of action for damages to the person or property of third persons arising out of the comparative negligence of the indemnifying party in its performance of any of the covenants of this Agreement.

**Section 8. Additional Terms and Conditions.**

A. Nondiscrimination. The Parties hereto shall not, in the performance of this Agreement, discriminate or permit discrimination by any of their contractors in violation of federal or state laws or local ordinances because of race, disability, color, sex, age, political or religious opinions, affiliations or national origin.

B. Separate Legal or Administrative Entity. This Agreement does not establish any separate legal or administrative entity.

C. Captions. Captions used in this Agreement are for convenience.



D. Applicable Law. Parties to this Agreement shall conform with all existing and applicable city ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Parties agree that any consultants or contractors retained for the Giles Road to Millard Expansion shall comply with the Equal Opportunity Clause and LB 403 as set forth in Exhibits A-1 and A-2. Nebraska law will govern the terms and the performance under this Agreement.

E. Interest of the Parties. The Parties to this Agreement covenant that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict with their performance under this Agreement.

F. Entire Agreement. This Agreement contains the entire agreement between the Parties, and each party hereto agrees that neither the other party, nor any of the officers, agents, employees or contractors of the other party, have made any representations or promises with respect to the Giles Road to Millard Expansion not expressly contained herein.

G. Amendments. This Agreement may be amended upon the actions of the Parties if done so in writing.

H. Effective Date. This Agreement shall become effective upon execution by all Parties.

I. Binding Effect. The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the successors in interest and assigns of the respective Parties hereto.

J. Notices. All notices herein required shall be in writing and shall be served on the Parties at their principal offices, or at such other address as a Party may hereafter designate to the other Parties in writing for service of notice to itself. The mailing of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service hereunder.

K. Default. If either party shall default hereunder, the other party shall be entitled to enforce specific performance of this Agreement or may have any other remedy allowed by law or equity.

L. Severability. In the event any portion of this Agreement is held invalid or unenforceable for any reason, it is agreed that any such invalidity or unenforceability shall not affect the remainder of this Agreement, the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of this Agreement so as to render it valid, reasonable and enforceable.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement, on the respective dates hereinafter indicated, pursuant to authorizing resolutions duly adopted at regularly-called meetings of their governing bodies.

PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE CITY OF OMAHA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Exhibit A-1**

### **EQUAL OPPORTUNITY CLAUSE**

During the performance of this contract, the contractor agrees as follows:

1. The contractor shall not discriminate against any employee applicant for employment because of race, religion, color, sex, age, sexual orientation, gender identity, disability or national origin. The contractor shall ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, age, sexual orientation, gender identity, disability or national origin. As used herein, the word "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or by other means; compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. The contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.
2. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, gender identity or national origin, age, disability.
3. The contractor shall send to each representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of the contractor's commitments under the equal employment opportunity clause of the city and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor shall furnish to the human rights and relations director all federal forms containing the information and reports required by the federal government for federal contracts under federal rules and regulations, including the information required by section 10-192 to 10-194, inclusive, and shall permit reasonable access to his records. Records accessible to the human rights and relations director shall be those which are related to paragraphs (1) through (7) of this subsection and only after reasonable notice is given the contractor. The purpose of this provision is to provide for investigation to ascertain compliance with the program provided for herein.
5. The contractor shall take such actions with respect to any subcontractor as the city may direct as a means of enforcing the provisions of paragraphs (1) through (7) herein, including penalties and sanctions for noncompliance; however, in the event the contractor becomes involved in or is threatened with litigation as the result of such directions by the city, the city will enter into such litigation as is necessary to protect the interests of the city and to effectuate these provisions of this division; and in the case of contracts receiving federal assistance, the contractor or the city may request the United States to enter into such litigation to protect the interests of the United States.
6. The contractor shall file and shall cause his subcontractors, if any to file compliance reports with the contractor in the same form and to the same extent as required by the federal government for federal contracts under federal rules and regulations. Such compliance reports shall be filed with the human rights and relations director. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the contractor and his subcontractors.
7. The contractor shall include the provisions of paragraphs (1) through (7) of this section, "Equal employment opportunity clause," and section 10-193 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

## **Exhibit A-2**

### **E-VERIFY**

#### **LB 403 Contract Provisions**

##### **NEW EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:

The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).

If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.