

Agenda Item: 7.

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Martin P. Cleveland, Construction Engineer

SUBJECT: Big Papio Levee Culverts Phase 2 Rehab Project
Interlocal Cooperation Agreement with City of Omaha

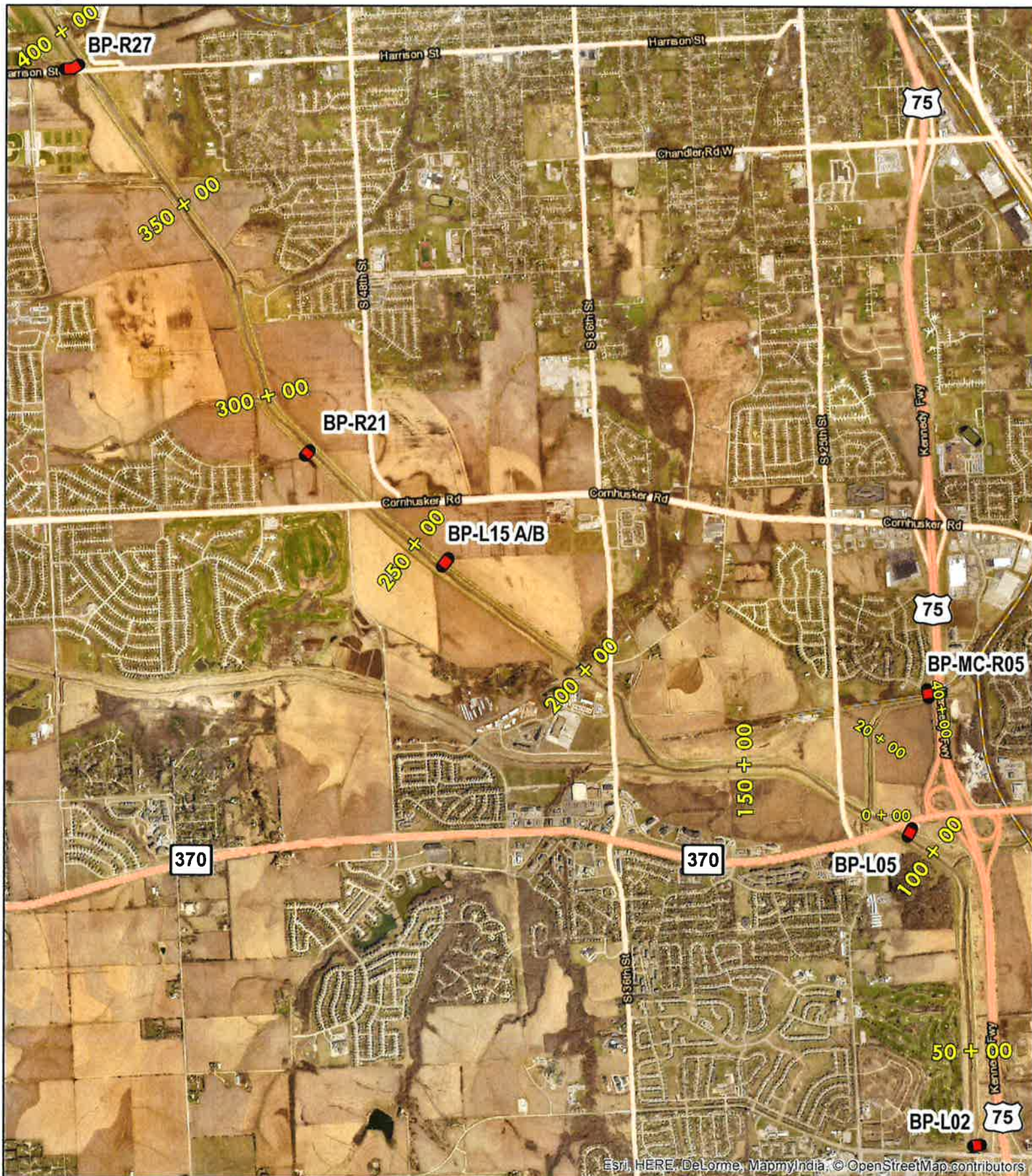
DATE: October 3, 2017

During the periodic inspection of channel and levee project culverts, the District has identified an additional 16 culverts in the Big Papio Creek System (levee/channel projects) that need to be repaired due to deficiencies, primarily with perforated flow lines. On July 13, 2017, the Board of Directors selected FYRA Engineering to provide the professional services, (permitting, design and construction administration) for the referenced project. Enclosed are location maps that show the culvert sites.

The District is ultimately responsible to maintain these culverts, due to Corps of Engineers PL 84-99 requirements for flood control projects. However, through a previous Interlocal Agreement with the District, The City of Omaha is responsible for six of the sixteen culverts that need to be repaired. The six City-owned culverts are (BP-L15A, BP-L15B, BP-L28, BP-L40, BP-R35 and BP-R54). Therefore, it is proposed that all 16 culverts be repaired under one contract and that the City reimburse the District for 40% of the costs for engineering, rights-of-way, permits, utility relocations and construction arising out the repairs of the six City culverts. This cost share by the City of 40% is consistent with District/City cost share split of 60 % District/40% City on some other District cost share programs such as Urban Drainageway and Urban Conservation Programs that the District offers to other government entities.

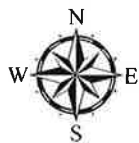
Enclosed is a proposed Interlocal Agreement with City of Omaha to provide for City reimbursement (40%) of City owned culvert repairs, which are estimated to cost \$1,180,079.40. The agreement provides for reimbursement by the City up to a maximum not to exceed amount of \$472,031.76 with payment of up to \$236,015.88 per year for 2 years (calendar years 2018 and 2019). The overall Phase 2 culvert rehabilitation project (16 culverts) is estimated to cost \$2,673,000 for engineering and construction.

Management recommends that the Programs, Projects and Operations Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Big Papio Levee Culverts Phase 2 Rehab Project Interlocal Cooperation Agreement with the City of Omaha, subject changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.



Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors

Culvert Location Map



Feet
0 1,500 3,000



**PAPIO-MISSOURI RIVER
NATURAL
RESOURCES
DISTRICT**

8901 S. 154th Street
Omaha, NE 68138-3621

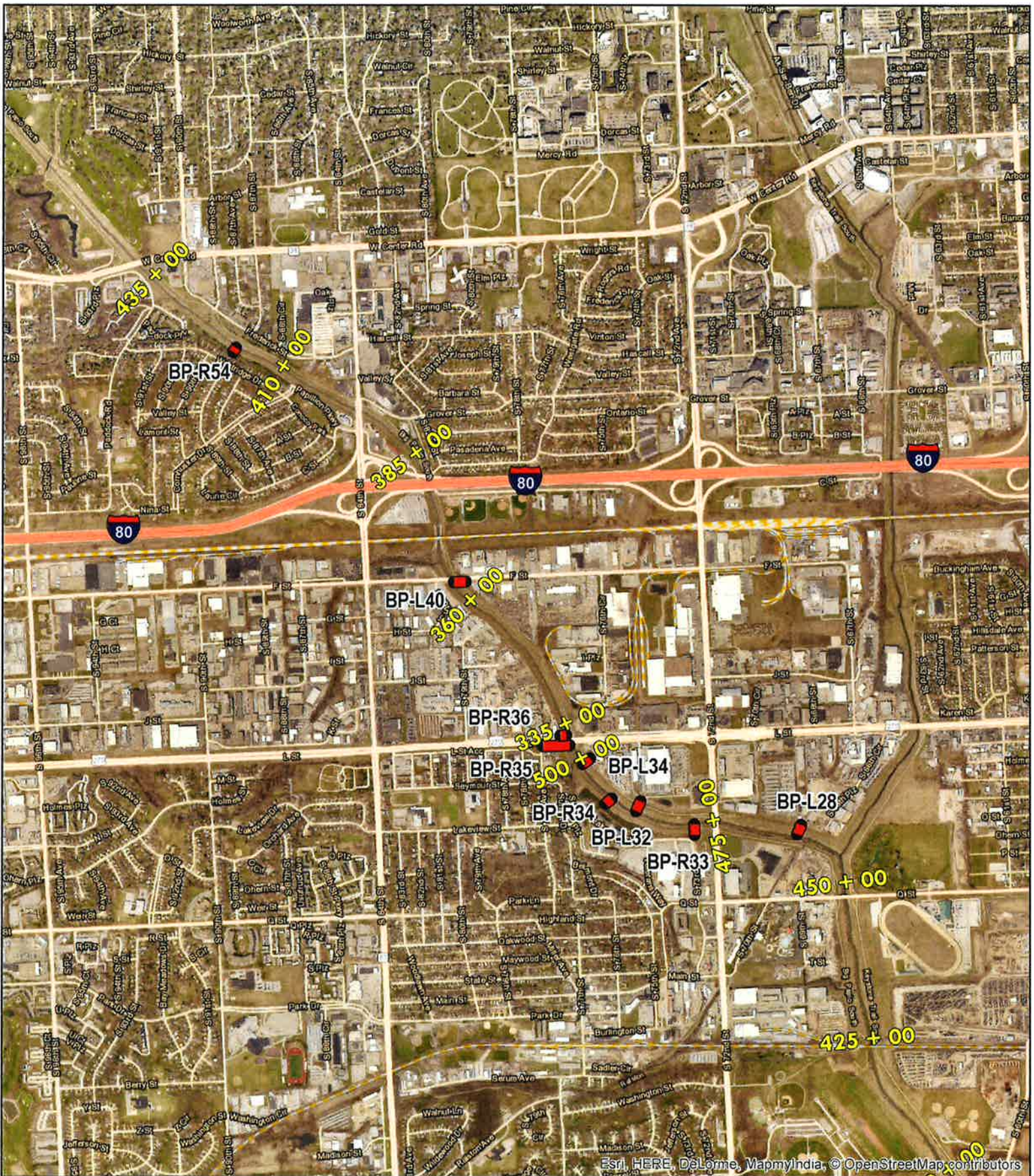
**BIG PAPIO LEVEE
CULVERTS PROJECT - PHASE 2**

**CAPEHART RD. TO
HARRISON ST.**

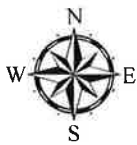
Phase 2

Sheet 1 of 2

Date: 7/3/2017



Culvert Location Map



Feet
0 1,000 2,000



**PAPIO-MISSOURI RIVER
NATURAL
RESOURCES
DISTRICT**

8901 S. 154th Street
Omaha, NE 68138-3621

**BIG PAPIO LEVEE
CULVERTS PROJECT - PHASE 2**

**W. CENTER RD. TO
"Q" ST.**

Phase 2

Sheet 2 of 2

Date: 7/3/2017

BIG PAPIO LEVEE CULVERTS - PHASE II ESTIMATE
CITY OF OMAHA CULVERTS - (pipes owned by City)

Culvert Name	Engineering	Construction	Total
BP - L15A and B	\$ 90,828.40	\$ 454,142.00	\$ 544,970.40
BP - L28	\$ 32,853.60	\$ 164,268.00	\$ 197,121.60
BP - L40	\$ 35,666.80	\$ 178,334.00	\$ 214,000.80
BP - R35	\$ 47,845.20	\$ 239,226.00	\$ 287,071.20
BP - R54	\$ 17,618.90	\$ 88,094.50	\$ 105,713.40
	\$ 224,812.90	\$ 1,124,064.50	\$ 1,348,877.40

City of Omaha culverts:

Engineering + Construction = \$ 1,348,877.40

Overall Project: 16 culverts

Engineering	\$ 445,476.20
Construction	\$ 2,227,381.00
Overall Total	\$ 2,672,857.20

October 3, 2017

17817 MC:tt File 529 Big Papio Culverts - Omaha

BIG PAPIO LEVEE CULVERTS - PHASE II
CITY OF OMAHA CULVERT COST SHARE
(60% NRD / 40% CITY)
October 3, 2017

All City Culverts:

BP-LL5A, B; BP-L28; BP-L40, BP-R54, BP-R35

Total Cost (Eng + Const.)	\$ 1,348,877.40	**
	<u>\$ (168,798.00)</u>	***
	\$ 1,180,079.40	
City Share (40%)	X 40.00%	
<hr/>		
Total City Cost Share	= \$ 472,031.76	
	/2	
<hr/>		
City Share over 2 years: per year	= \$ 236,015.88	
<hr/>		

** Assumes completing required and optional portions of
BP-L15A, BP-L15B

*** Assumes completing only the required portion of BP-R35

INTERLOCAL COOPERATION AGREEMENT
Between
THE CITY OF OMAHA, NEBRASKA
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
PHASE #2 DRAINAGE STRUCTURE REPAIR FOR
BIG PAPIO CREEK/LEVEE CHANNEL PROJECT

THIS AGREEMENT (hereinafter "**THIS AGREEMENT**") is made by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (the "**NRD**") and the **CITY OF OMAHA, NEBRASKA** (the "**CITY**"), pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13-801, et seq.).

WHEREAS, six (6) culverts along or near the Big Papio Creek Levee/Channel from Capehart Road in Bellevue to Center Street in Omaha which were installed by the CITY (Structure Nos. BP-L15A, BP-L15B, BP-L28, BP-L40, BP-R35, BP-R54 as identified on the maps marked Exhibit "1" that are attached hereto and incorporated herein) (the "**CITY CULVERTS**"), and ten (10) other culverts along or near the Big Papio Creek Levee/Channel Project from Capehart Road in Bellevue to Center Street in Omaha (Structure Nos. BP-R36, BP-L34, BP-R34, BP-L32, BP-R33, BP-R27, BP-R21, BP-MC-R05, BP-L05, BP-L02 also identified on the maps marked Exhibit "1" that are attached hereto and incorporated herein) (the "**EXCLUDED CULVERTS**", and collectively with the CITY CULVERTS, the "**CULVERTS**"), are in need of rehabilitation and repair; and,

WHEREAS, the NRD and the CITY desire to repair, rehabilitate and restore the CULVERTS (the "**PROJECT**"); and,

WHEREAS, the NRD intends to retain and compensate engineers (the "**ENGINEERS**") to design and engineer the PROJECT, and intends to retain and

compensate one or more contractors (the “**CONTRACTOR**”) to perform the construction required to complete the PROJECT; and,

WHEREAS, the NRD desires to receive cost-sharing assistance from the CITY for the costs of the PROJECT relating to the CITY CULVERTS; and,

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants of parties hereinafter expressed, the parties hereby agree as follows:

1. PROJECT BENEFITS. The parties do hereby find and determine that the PROJECT will be of predominantly general benefit to the CITY and the NRD, with only an incidental special benefit.

2. PROJECT PARTICIPANTS. The PROJECT shall be undertaken without any separate entity being created, and the duties and responsibilities of the parties with respect to the PROJECT shall be as defined by THIS AGREEMENT.

3. THE ENGINEERING CONTRACT. The NRD shall enter into a professional services contract with ENGINEERS in the form as determined by the NRD in its sole discretion, pursuant to which the ENGINEERS shall undertake tasks including the preparation and administration of contract documents and supervision and administration of the performance of construction services for the PROJECT. The cost of the ENGINEERS shall be deemed to be GENERAL COSTS of the PROJECT.

4. CITY TECHNICAL ASSISTANCE. The CITY shall provide technical assistance to the NRD and shall attend all necessary meetings regarding the PROJECT, as may be requested by the NRD.

5. RIGHTS-OF-WAY ACQUISITION. Lands, easements and rights-of-way, which the ENGINEERS and the NRD determine are necessary to effect the PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT (the “**PROJECT RIGHTS-OF-WAY**”), shall be obtained by the NRD. The costs of the PROJECT RIGHTS-OF-WAY shall be deemed to be GENERAL COSTS of the PROJECT. Any PROJECT RIGHTS-OF-WAY solely associated with CITY CULVERTS shall be obtained by the NRD on behalf of the CITY. The NRD shall obtain all other PROJECT RIGHTS-OF-WAY on its own behalf.

6. PERMITS. All necessary local, state and federal permits, which the ENGINEERS or the NRD determine are necessary to effect the PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT, shall be obtained by the NRD, which shall hold the same. The costs associated with the same shall be deemed GENERAL COSTS of the PROJECT.

7. UTILITY RELOCATIONS. The NRD shall be responsible for relocation of any utilities that are determined to interfere with the PROJECT, or with the operation, maintenance, repair, replacement, management or regulation of the PROJECT. The cost of such utility relocations shall be deemed GENERAL COSTS of the PROJECT.

8. GENERAL COSTS. The costs and billings resulting from the Engineering contract referenced in Paragraph 3, above, the PROJECT RIGHTS-OF-WAY referenced in Paragraph 5, above, the permits referenced in Paragraph 6, above, and the utility relocations referenced in Paragraph 7, above, shall constitute the GENERAL COSTS of the PROJECT.

9. CONSTRUCTION CONTRACT FOR PROJECT. Pursuant to the NRD's policies and practices, the NRD shall solicit competitive sealed bids for construction services necessary to effect the PROJECT pursuant to contract documents acceptable to the NRD.

10. COMPETITIVE BIDS. Within a reasonable time after NRD receipt and opening of sealed bids for construction of the PROJECT, the NRD shall deliver a summary thereof to the CITY, together with the identification by the NRD of the bidder who or which the NRD determines is the lowest and most responsible bidder. The NRD shall accept such bid and shall award to such bidder the contract to construct all or one or more portions of the PROJECT. In the event, the lowest responsible bid is in excess of Two Million Three Hundred Thousand Dollars (\$2,300,00.00), the NRD shall have the right, in its sole discretion, to abandon the PROJECT and void or terminate THIS AGREEMENT in its entirety. The NRD, through the CONTRACTOR, shall perform the construction services to effect the PROJECT in accordance with the NRD-approved plans and specifications. The NRD shall require line item bidding based on each of the individual

CULVERTS. The resulting contract shall constitute the CONSTRUCTION COSTS of the PROJECT.

11. CITY CONTRIBUTION. As its contribution(s) towards the aforesaid costs of the PROJECT, the CITY shall pay to the NRD forty percent (40%) of the billings rendered to the NRD for the CONSTRUCTION COSTS and GENERAL COSTS associated with or relating to the CITY CULVERTS. The CITY'S total contribution shall not exceed Four Hundred Seventy-Two Thousand and Thirty-One Dollars and 76/100 cents (\$472,031.76), without prior written approval from the CITY. The CITY'S contribution shall be made in two payments: (1) The NRD will submit an invoice to the CITY after the construction contract has been awarded for the PROJECT. Within forty-five (45) days of the CITY'S receipt of the invoice, the CITY shall pay Two Hundred Thirty-Six Thousand and Fifteen Dollars and 88/100 cents (\$236,015.88) to the NRD. (2) The NRD will submit an invoice to the CITY after substantial completion of the PROJECT. Within forty-five (45) days of the CITY'S receipt of the invoice, the CITY shall then pay to the NRD the remaining balance of forty percent (40%) of the billings rendered to the NRD for the CONSTRUCTION COSTS and GENERAL COSTS associated with or relating to the CITY CULVERTS.

12. NRD CONTRIBUTION. In addition to the costs associated with being the lead agency for the PROJECT, the NRD shall be solely responsible for the billings rendered to the NRD for the CONSTRUCTION COSTS and GENERAL COSTS associated with or relating to the EXCLUDED CULVERTS. The NRD shall also be responsible for and pay sixty percent (60%) of the billings rendered to the NRD for the CONSTRUCTION COSTS and GENERAL COSTS associated with or relating to the CITY CULVERTS.

13. OPERATION AND MAINTENANCE OF THE PROJECT. After completion of PROJECT and NRD acceptance of the PROJECT from the CONTRACTOR:

- a) the CITY, at its own and sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the CITY CULVERTS, as

the CITY determines necessary and in accordance with the applicable laws and regulations; and

- b) the NRD, at its own and sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the EXCLUDED CULVERTS, as the NRD determines necessary and in accordance with the applicable laws and regulations.

14. RISK OF LOSS. The NRD shall have the insurable interest in, and shall bear the sole risk of loss of or damage to, the EXCLUDED CULVERTS and all components associated therewith, whether such loss or damage results from flood or other casualty whatsoever. The CITY shall have the insurable interest in, and shall bear the sole risk of loss of or damage to, the CITY CULVERTS and all components associated therewith, whether such loss or damage results from flood or other casualty whatsoever.

15. INDEMNIFICATION.

A. The CITY shall indemnify the NRD and hold the NRD harmless (1) from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorney fees, for personal injuries or property damages in whole or in part arising out of or relating to the PROJECT to the extent it relates to the CITY CULVERTS; and, (2) from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorney fees, arising from the introduction or presence in or on any PROJECT RIGHTS-OF-WAY, to the extent such PROJECT RIGHT-OF-WAY relates to a CITY CULVERT (a "CITY CULVERT RIGHT-OF-WAY"), of any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, (3) from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances in or on any CITY CULVERT RIGHT-OF-WAY, and also including, without limitation, costs of any

studies and investigations necessary to determine an appropriate response to any contamination on such CITY CULVERT RIGHT-OF-WAY, but excepting costs and expenses relating to any such substances or materials introduced solely by the NRD or its employees, officers, contractors or agents.

B. The NRD shall indemnify the CITY and hold the CITY harmless (1) from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorney fees, for personal injuries or property damages in whole or in part arising out of or relating to the PROJECT to the extent it relates to the EXCLUDED CULVERTS; and, (2) from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorney fees, arising from the introduction or presence in or on any PROJECT RIGHTS-OF-WAY, to the extent such PROJECT RIGHT-OF-WAY relates to AN EXCLUDED CULVERT (an “EXCLUDED CULVERT RIGHT-OF-WAY”), of any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, (3) from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances in or on any EXCLUDED CULVERT RIGHT-OF-WAY, and also including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination on such EXCLUDED CULVERT RIGHT-OF-WAY, but excepting costs and expenses relating to any such substances or materials introduced solely by the CITY or its employees, officers, contractors or agents.

16. EFFECTIVE DATE AND TERM. THIS AGREEMENT shall be in force and effect upon and after its execution by the parties hereto. The term of THIS AGREEMENT shall expire on September 1, 2021 or when the CITY has made its full and final contributions in accordance with Paragraphs 11 and 13, whichever occurs first. THIS AGREEMENT may be terminated before its expiration by mutual agreement of the parties in writing.

17. NON-DISCRIMINATION. The parties hereto shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination by any of its 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.

18. DRUG FREE POLICY. Each party provides assurance that it has established and maintains a drug free workplace policy.

19. 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 PROJECT not expressly contained herein. THIS AGREEMENT may be amended upon mutual written consent of the parties.

20. 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.

21. 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 either party may hereafter designate to the other party 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.

22. 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.

23. APPLICABLE LAW. Each party to THIS AGREEMENT shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance and terms of THIS AGREEMENT. The parties agree that any consultants or contractors retained for the PROJECT 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.

24. 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.

25. CAPTIONS. Captions used in THIS AGREEMENT are for convenience and not for use in the construction of THIS AGREEMENT.

26. INTERLOCAL COOPERATION ACT PROVISIONS. THIS AGREEMENT shall not create any separate legal or administrative entities. It shall be administered jointly by the parties, through one representative to be designated by and on behalf of each party. Each party shall separately finance and budget its own duties and functions under THIS AGREEMENT. There shall be no jointly held property as a result of THIS AGREEMENT. Upon terminations, each party shall retain ownership of the property it owns at the time of termination. THIS AGREEMENT does not authorize the levying, collecting or accounting of any tax.

[SIGNATURES ON FOLLOWING PAGE]

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.

The CITY has executed THIS AGREEMENT on _____, 2017.

THE CITY OF OMAHA

By _____

JEAN STOTHERT, Mayor

Attest:

City Clerk

The NRD has executed THIS AGREEMENT on _____, 2017.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
JOHN WINKLER, General Manager

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.

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.