

Memorandum

To: Pappio-Missouri River Natural Resources District
Programs Projects and Operations Subcommittee

From: Paul W. Woodward PE, Groundwater Management Engineer

Date: February 8, 2019

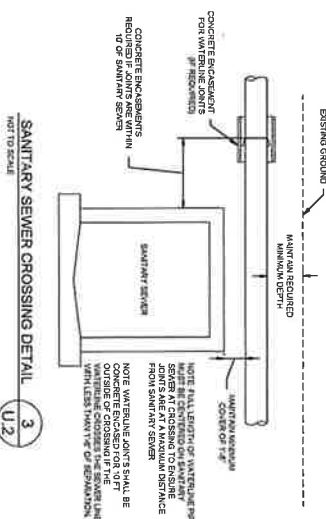
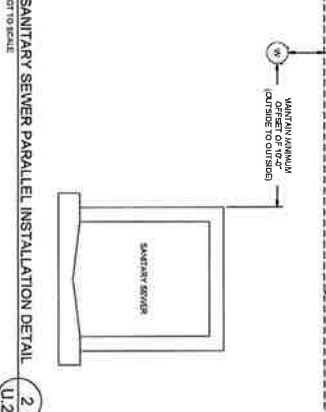
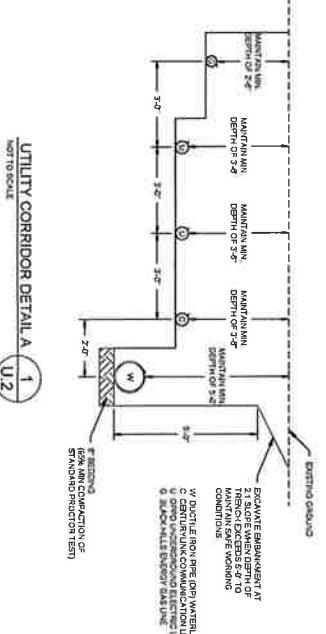
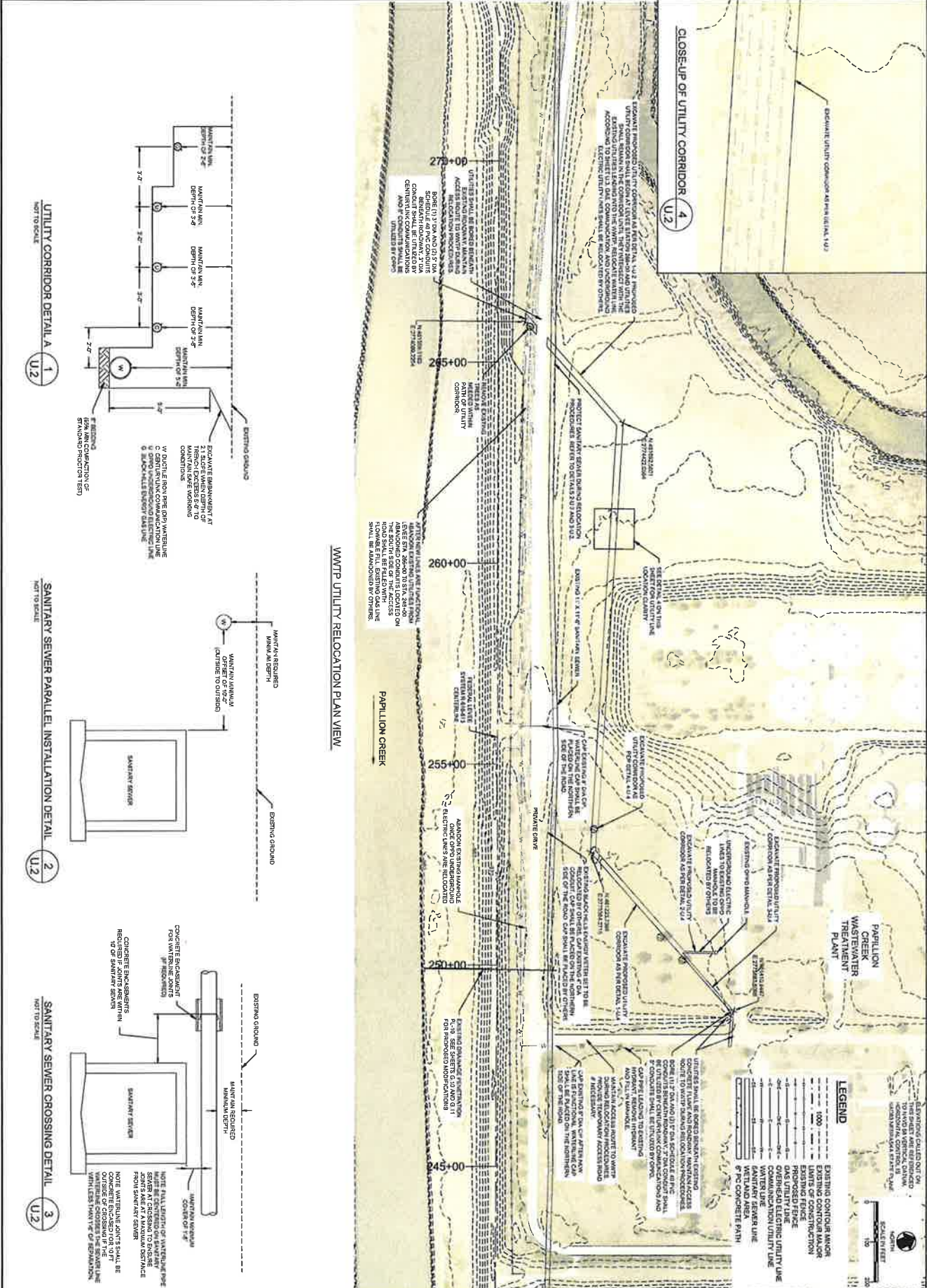
Re: Interlocal Agreement with City of Omaha – Relocation of Utilities Servicing the Papillion Creek Wastewater Treatment Plant

As a result of the Modifications to the Missouri River Levee Systems R-613-616, utilities which serve the Papillion Creek Wastewater Treatment Plant will have to be relocated from the south side of the entrance road to the north side, see attached map. This will avoid conflicts during construction and place the utilities in a location where in the future the City can maintain the utilities and the NRD can maintain the levee without conflict.

The enclosed interlocal agreement identifies which utilities the NRD will be responsible for paying to relocate (those directly impacted by the footprint of the levee), and which utilities are being relocated per the City's request and are their responsibility. The NRD will pay for the relocations as part of the levee construction project and the City will reimburse the NRD for costs associated with the gas line relocation. No exact costs are defined in the agreement, but the estimates for the work (based on recent bids) and quotes from the utility companies would be \$440,000 for the NRD and \$100,000 for the City.

Another important provision of the agreement provides the NRD access (as necessary) across City property for construction and future maintenance related to the levee system.

Management recommends that the subcommittee recommend to the Board of Directors that the General Manager be authorized to execute an Interlocal Agreement with the City of Omaha for Modifications to the Missouri River Levee System R-613-616 and Relocation of Utilities Servicing the Papillion Creek Wastewater Treatment Plant, subject to changes deemed necessary by the General Manager and approval as to form by District legal counsel.



NO. _____

REVISIONS _____

BY _____

DATE _____

ENGINEER'S SEAL

PAPILLION CREEK WWTP UTILITY RELOCATION PLAN & DETAILS

MODIFICATIONS OF FEDERAL LEVEE SYSTEM R-616-613
 R-616 MISSOURI RIVER RB AND R-613 PAPILLION CREEK LB
 PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

SARPY COUNTY, NEBRASKA 2018

1. DATE PLOTTED: 02/02/2018 2:58 PM
 2. PLOT SCALE: 1" = 10'-0" 1/8"
 3. SHEET NO.: U2

**INTERLOCAL COOPERATION ACT AGREEMENT
BETWEEN
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
AND
CITY OF OMAHA, NEBRASKA
FOR
MODIFICATIONS TO MISSOURI RIVER LEVEE SYSTEM R-613-616 AND
RELOCATION OF UTILITIES SERVICING THE PAPILLION CREEK
WASTEWATER TREATMENT PLANT**

THIS INTERLOCAL COOPERATION ACT AGREEMENT (“THIS AGREEMENT”) is made pursuant to the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801 to 13-827, by and between the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (the “NRD”) and the CITY OF OMAHA, NEBRASKA (the “CITY”; the NRD and the CITY are hereinafter individually referred to as a “PARTY”, and collectively as “PARTIES”).

WHEREAS, the CITY owns and operates the Papillion Creek Wastewater Treatment Plant located at 15705 Harlan Lewis Road, Bellevue, Nebraska, which services areas west of 42nd Street in Omaha (“TREATMENT PLANT”);

WHEREAS, the NRD, as local sponsor, operates and maintains the Missouri River Levee System Units R-616 and R-613 (the “LEVEE” or “LEVEE SYSTEM”, as applicable), a project of the United States Army Corps of Engineers (“USACE”);

WHEREAS, the LEVEE SYSTEM provides critical flood protection to portions of property within the boundaries of the NRD, the CITY, and the surrounding metropolitan area;

WHEREAS, included in the area protected by the LEVEE SYSTEM is critical infrastructure including, but not limited to, the TREATMENT PLANT;

WHEREAS, the LEVEE SYSTEM is at risk of losing its Federal Emergency Management Agency (“FEMA”) accreditation status, and the loss of FEMA accreditation of the LEVEE SYSTEM would significantly impact the PARTIES;

WHEREAS, the PARTIES recognize that the LEVEE SYSTEM will require significant construction and upgrading to satisfy FEMA certification requirements and retain its FEMA accreditation;

WHEREAS, the NRD has retained a professional engineering firm to design and develop plans for the reconstruction and upgrading of the LEVEE SYSTEM in compliance with FEMA and USACE requirements;

WHEREAS, such plans require, among other things, the relocation of certain public and private utility lines and related easements that are currently located on land owned by the CITY in an area to the south of the TREATMENT PLANT between the NRD's Pedestrian Trail and the private driveway located on the TREATMENT PLANT property (the "SUBJECT UTILITIES"); and

WHEREAS, subject to the terms of THIS AGREEMENT, the PARTIES agree to relocate the SUBJECT UTILITIES and to allocate responsibility for the direct payment or reimbursement of certain costs incurred as a result of relocation work.

NOW, THEREFORE, in consideration of the PARTIES' mutual covenants hereinafter expressed, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES agree as follows:

1. Authority. THIS AGREEMENT is an agreement for collective and cooperative action made pursuant to authority provided in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §13-801, *et seq.*), without a separate entity being created, and, whenever possible, THIS AGREEMENT shall be construed in conformity therewith.

2. Purpose. The purposes of THIS AGREEMENT is to specify the terms and conditions upon which the PARTIES will: (a) design, construct, develop and permit the relocation of the SUBJECT UTILITIES (including the gas line and related easements described in Sections 4(c) and 5(b) below); (b) design, construct, develop and permit the relocation of the existing fence located to the north of the Pedestrian Trail (2(a) and 2(b) collectively referred to as the "RELOCATION WORK"); (c) pay for the RELOCATION WORK; and (d) grant certain rights-of-way in order to allow the NRD to carry out its ongoing obligations to construct, repair and maintain the LEVEE SYSTEM.

3. Term. THIS AGREEMENT shall continue in effect in perpetuity unless mutually agreed to in writing by the PARTIES; provided, however, that such termination shall not affect (a) any rights of reimbursement under THIS AGREEMENT, (b) the rights-of-way granted by the

CITY to the NRD herein, nor (c) any actions taken or responsibilities assumed by either PARTY prior to the effective date of such termination.

4. CITY'S Responsibilities. The CITY agrees to the following:

a) Promptly review any and all plans and specifications provided by the NRD in connection with the NRD's obligations set forth in Section 5 below. The CITY's approval of such plans and specifications shall not be unreasonably withheld, delayed or conditioned. All requests by NRD under THIS AGREEMENT shall be deemed approved in the event the CITY does not respond to such requests within 30 days after NRD's written request.

b) Cooperate with the NRD on determining a reasonable relocation of the SUBJECT UTILITIES and related easements before the RELOCATION WORK commences.

c) Reimburse the NRD for the actual costs incurred by the NRD in relocating the gas line and related easements located on the TREATMENT PLANT property.

d) Effective as of the EFFECTIVE DATE, permit and grant to the NRD and to the NRD's contractors and agents the perpetual, non-exclusive right, license, rights-of-way, and permission to access and/or otherwise use the TREATMENT PLANT property for the purposes of (i) the NRD's RELOCATION WORK pursuant to THIS AGREEMENT, and (ii) the NRD's construction and ongoing operation, maintenance, and repair of the LEVEE SYSTEM located on the TREATMENT PLANT property.

5. NRD'S Responsibilities. The NRD agrees to the following:

a) Coordinate directly with the utility companies and other third parties that own or have rights to the SUBJECT UTILITIES and related easements with respect to the relocation of the SUBJECT UTILITIES and related easements in accordance with THIS AGREEMENT. The NRD acknowledges and agrees that it will obtain the prior approval of the applicable utility companies and the CITY prior to relocating the SUBJECT UTILITIES.

b) Pay for the applicable utility companies and other third parties that own or have rights to the SUBJECT UTILITIES to perform the RELOCATION WORK in accordance with plans and specifications approved by the CITY. As part of the RELOCATION WORK, the existing gas utility line and any related easements thereto will be located to a new location approved by the CITY. Except for such items for which the CITY is obligated to reimburse the NRD for certain costs and expenses, the NRD is solely responsible for all costs and expenses for the RELOCATION WORK.

c) With respect to the relocation of the fence located to the north of the Pedestrian Trail, the PARTIES acknowledge and agree that such fence shall be installed along a line that is at least 15 feet from the toe of the upgraded LEVEE located on or adjacent to the TREATMENT PLANT property.

6. Applicable Law. The PARTIES to THIS AGREEMENT shall conform to all existing and applicable state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under THIS AGREEMENT.

7. Merger. THIS AGREEMENT shall not be merged into any other oral or written agreement, license, lease or deed of any type.

8. Modification. THIS AGREEMENT contains the entire agreement of the PARTIES. No representations were made or relied upon by either of the PARTIES other than those that may be expressly set forth herein. No agent, employee or other representative of any PARTY is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of such PARTY.

9. Nondiscrimination. The PARTIES shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, disability under the Americans with Disabilities Act, political or religious opinions, affiliations or national origin.

10. Captions. Captions used in THIS AGREEMENT are for convenience and are not used in the construction of THIS AGREEMENT.

11. Effective Date. As used herein, "EFFECTIVE DATE" shall mean the date on which THIS AGREEMENT is executed by the last PARTY to sign, as indicated by the dates

beneath their signatures below.

12. Invalid Provisions. In the event that any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision herein contained shall not affect the validity of the remainder of the covenants, conditions or provisions of THIS AGREEMENT, which shall in all respects remain a legally binding agreement with the invalid portion being deleted; provided, however, that the validity of any such covenant, condition, or provision does not materially prejudice either of the PARTIES in its respective rights and obligations contained in the valid covenants and conditions of THIS AGREEMENT.

13. Non-Waiver. No delay or failure by either of the PARTIES to exercise any right under THIS AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein. A valid waiver by either of the PARTIES shall not be deemed to extend the amount of time available to perform any other act required under THIS AGREEMENT.

14. Notices. Any notice or written request required under the terms of THIS AGREEMENT shall be deemed to have been given within 48 hours after written notice has been deposited in the United States mail.

a) Notices to the CITY provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid, addressed to:

Director of Public Works
City of Omaha, Nebraska
1819 Farnam Street, Suite 601
Omaha, Nebraska 68183

b) Notices to the NRD provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid addressed to:

General Manager
Papio-Missouri River NRD
8901 South 154th Street
Omaha, Nebraska 68138-3621

or to such other respective address(s) as the PARTIES may designate to each

other from time to time in writing.

15. Indemnification. The CITY shall defend, indemnify, and hold the NRD harmless from and against all costs and expenses, including attorneys' fees and court costs, resulting from claims, demands or causes of action to the extent the same is caused by the CITY and/or the CITY's employees, contractors, representatives and/or agents in the performance of THIS AGREEMENT. The NRD shall defend, indemnify, and hold the CITY harmless from and against all costs and expenses, including attorneys' fees and court costs, resulting from claims, demands or causes of action to the extent the same is caused by the NRD and/or the NRD's employees, contractors, representatives and/or agents in the performance of THIS AGREEMENT.

16. Counterparts. THIS AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17. Interlocal Cooperation Act Provisions. THIS AGREEMENT shall not create any separate legal or administrative entity. 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. Upon termination, each party shall retain ownership of the property it owns at the time of the termination. THIS AGREEMENT does not authorize the levying, collecting or accounting of any tax.

18. Miscellaneous Provisions.

a) The Mayor of the City of Omaha shall have the authority to administer THIS AGREEMENT on behalf of the CITY and to exercise discretion with respect to those matters contained herein.

b) The NRD shall not, in the performance of this contract, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political or religious opinions, affiliations, or national origin.

c) The PARTIES to this contract shall conform to all existing and applicable CITY ordinances, resolutions, state and federal laws, and all existing and applicable rules and regulations.

d) Pursuant to Sec. 8.05 of the Home Rule Charter, no elected official or

any officer or employee of the City of Omaha shall have a financial interest, direct or indirect, in any City of Omaha contract. Any violation of this section with the knowledge of the person or corporation contracting with the City of Omaha shall render the contract voidable by the Mayor or Council.

[Signature Page to Follow]

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 _____, 2019.

THE CITY OF OMAHA

By _____
JEAN STOTHERT, Mayor

Attest:

City Clerk

The NRD has executed THIS AGREEMENT on _____, 2019.

**PAPIO-MISSOURI RIVER NATURAL RESOURCES
DISTRICT**

By _____
JOHN WINKLER, General Manager