

## MEMORANDUM

**To:** Programs, Projects and Operations Subcommittee  
**From:** Amanda Grint, Water Resources Engineer  
**Date:** March 8, 2019  
**Re:** Review and Recommendation of Interlocal Agreement with the City of Papillion for WSF application for West Papillion Levees

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An updated flood study for the West Papillion basin, completed in 2010, resulted in increased flows and higher 100-year flood elevations throughout the basin. When the flood maps were published, the West Papillion Creek Levees that extend from approximately 42<sup>nd</sup> Street to 90<sup>th</sup> Street, did not meet the criteria of accredited levees to protect against the 100-year flood elevation. Because of that, the areas behind the levees were mapped as floodplain, which was a significant change and impact from the previous flood maps.

Phase 1 of the accreditation process is complete, and the results were presented to the Board in January 2019. The presentation outlined the needed improvements to accredit the levees and estimated those costs to be approximately \$9 million. The City of Papillion and District staff have discussed the next steps and prepared an interlocal for Phase 1A consisting of preparation and submittal of a Water Sustainability Fund (WSF) grant application. This step will be completed prior to a professional services contract for Phase 2 which would include final design and construction of the necessary improvements.

It is proposed that the City will contract with FYRA Engineering to prepare the WSF grant application and the District will provide technical support and review all invoices prior to sending to the City. The City and District will share the costs 50/50 for a maximum not to exceed contract amount of \$35,226.00. The maximum District share for this Phase 1A will be \$17,613. Additional phases will be necessary if the District and City approve moving forward with final design and levee improvements.

**Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Interlocal Agreement with the City of Papillion for Phase 1A of the West Papillion Levee Accreditation Project with a maximum not to exceed District contribution of \$17,613, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

## **INTERLOCAL COOPERATION AGREEMENT**

This INTERLOCAL COOPERATION AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the CITY OF PAPILLION, a Nebraska municipal corporation (“City”), and PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (“NRD”), a multi-county governmental political subdivision of the State of Nebraska (collectively, the “Parties”). This Agreement shall become effective upon the execution hereof by both of the Parties (the “Effective Date”).

### **RECITALS**

**WHEREAS**, the City and the NRD are both political subdivisions duly authorized and existing under the laws of the State of Nebraska; and

**WHEREAS**, in order to promote the health, safety, and welfare of the public and pursuant to the authority granted to the Parties under the Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801 to 13-827, the Parties wish to permit their local government units to make the most efficient use of their powers by enabling them to cooperate with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of government organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of such local communities; and

**WHEREAS**, the West Papillion Creek (“Creek”) flows through portions of the City, which results in those portions of the City being within high-risk flood areas as determined by a Flood Insurance Rate Map (“FIRM”); and

**WHEREAS**, recent reservoir construction and updates in methodologies related to floodplain modeling are anticipated to reduce the discharges into the Creek; therefore, reducing the flood depths along the high-risk flood areas; and

**WHEREAS**, reduced flood depths along high-risk flood areas result in more affordable levee certification; and

**WHEREAS**, the Federal Emergency Management Agency (“FEMA”) requires a professional engineer to certify a levee system as support to accredit levee-protected areas on a FIRM; and

**WHEREAS**, certifying a levee system is a multi-phase certification process; and

**WHEREAS**, FYRA Engineering (the “Engineer”) has completed Phase I: Investigation Phase of the levee accreditation process (“Phase I”) for both Parties; and

**WHEREAS**, FYRA Engineering (the “Engineer”) has submitted a proposal to the Parties for a proposed Phase IA: Water Sustainability Fund (WSF) Grant Application Phase of the levee accreditation process (“Phase IA”) for a total contract price of \$35,226.00; and

**WHEREAS**, the scope of Phase IA includes the following tasks: (1) project background, (2) technical feasibility, (3) economic feasibility, (4) environmental feasibility, and (5) application preparation and submittal; Water Sustainability Fund (WSF) grant application (all five tasks of Phase IA collectively being known as the “Scope”); and

**WHEREAS**, the Parties find that this Agreement is in their best interest, respectively, and will further the Parties’ cooperation in acquiring levee accreditation in order to help reduce the extent of the floodplain and floodway within the City along the Creek.

**NOW THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

1. Purpose and Term. The purpose of this Agreement is to specify the rights and responsibilities of the Parties hereto regarding the proposed Phase IA between the Parties and the Engineer. This Agreement shall commence on the Effective Date of this Agreement and shall terminate upon completion of Phase IA, or two (2) years after the Effective Date of this Agreement, whichever occurs first (the “Term”).

2. Technical Support Agency. The Parties agree that the NRD will be the technical support agency, and will work directly with the Engineer to assist in the preparation of all necessary documents for the levee accreditation process. The Parties agree that the Engineer shall submit monthly invoices to the NRD for review and approval. Upon the NRD’s approval of the Engineer’s invoices, the Engineer’s invoices will be submitted to the City for payment in accordance with Paragraph 4 below.

3. Professional Services Agreement Contract. The City is authorized to enter into a Professional Services Agreement contract with the Engineer for Phase IA (the “Contract”). As the technical support agency, the NRD agrees to review the proposed Contract and make a recommendation to the City as to whether such proposed Contract is appropriate.

4. Contract Amount and Payment. The total Contract amount shall not exceed \$35,226.00. The Parties shall share in the Engineer’s costs for Phase IA equally, with each Party agreeing to pay an amount not to exceed \$17,613.00. As the technical support agency, the NRD shall receive the monthly invoices from the Engineer. The NRD shall review and approve the monthly invoices. Following the NRD’s approval, the NRD will pay the City for one-half of the monthly invoice within thirty (30) days of receipt of the invoice from the Engineer. Upon receipt of the NRD’s one-half share of the monthly invoice, the City will pay the Engineer for the total amount of the monthly invoice upon approval by the City of Papillion’s City Council.

5. Modifications to the Contract. The City shall not make any modifications or amendments to the Scope of the Contract or the Contract amount without written agreement signed by the governing bodies of both Parties. If the Engineer seeks a modification to the Scope of the Contract or to the Contract amount, the NRD shall review the proposed modification as technical support agency and make a recommendation to the City as to whether such proposed modification is appropriate.

6. Indemnification. Each Party shall release, indemnify and hold harmless (“Indemnifying Party”) each other Party (“Indemnified Party”) and said Indemnified Party’s officers, officials, employees, and agents, and each of them, from and against all losses, damages, liabilities, claims, costs, and expenses whatsoever arising out of or resulting from the negligence, acts, or omissions of the Indemnifying Party, or the officers, officials, employees, agents, or contractors of the Indemnifying Party.

7. Communication and Cooperation. Each Party agrees to communicate all necessary information to the other Party and to the Engineer as deemed appropriate for the successful execution of Phase IA.

8. Miscellaneous.

a. Incorporation of Recitals. The recitals set forth above are, by this reference, incorporated into and deemed part of this Agreement.

b. No Administrative Entity. There shall be no separate legal or administrative entity created to administer this Agreement and, therefore, no separate budget established for such an entity.

c. Nondiscrimination Clause. In accordance with the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. § 48-1122, neither Party nor any of its subcontractors or agents shall discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment because of the race, color, religion, sex, disability, or national origin of the employee or applicant.

d. Drug Free Policy. Each Party hereto represents and warrants to the other that it has established and maintains a drug free workplace policy.

e. Governing Law. The Parties shall conform to all existing and applicable City ordinances, resolutions, state and federal laws, and all existing and applicable rules and regulations. Any dispute arising from this contractual relationship shall be governed solely and exclusively by Nebraska law except to the extent such provisions may be superseded by applicable federal law, in which case the latter shall apply.

f. Forum Selection and Personal Jurisdiction. Any dispute arising from this contractual relationship shall be solely and exclusively filed in, conducted in, and decided by the courts located in Sarpy County, Nebraska. As such, the Parties also agree to exclusive personal jurisdiction in the courts located in Sarpy County, Nebraska.

g. Entire Agreement. This Agreement and all exhibits and documents referenced herein, which are hereby incorporated and specifically made a part of this Agreement by this reference, express the entire agreement of the Parties and shall be binding upon the

successors and assigns of the respective Parties. Accordingly, this Agreement supersedes any prior written or oral agreement or understanding between the Parties concerning the subject matter hereof.

- h. Modification. Any modification or amendment of this Agreement, including termination, shall require a written agreement approved by the governing bodies of both Parties.
- i. Notices, Consents, and Approval. Unless expressly stated otherwise herein, all notices, requests, consents, approvals, authorizations, or other submissions required to be made by the Parties shall be in writing, whether or not so stated, and shall be deemed sufficient and served upon the other only if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

(1) For City:                      City of Papillion  
   Attn: Nicole Brown, City Clerk  
   122 East Third Street  
   Papillion, NE 68046

(2) For NRD:                        Papio-Missouri River NRD  
   Attn: Amanda Grint  
   8901 S. 154<sup>th</sup> Street  
   Omaha, NE 68138

Such addresses and contact persons may be changed from time to time upon written notice to the other Party.

- j. Headings. The headings herein are inserted for convenience and reference only and in no way define or limit the scope of any provisions hereof.
- k. Severability. In the event any portion of this Agreement may be held invalid, void, or illegal for any reason by a court of competent jurisdiction, any such holding shall in no way affect, impair, or invalidate any other provisions of this Agreement, and such other provisions shall remain in full force and effect as if the invalid, void, or illegal provision was never part of this Agreement.
- l. New Employee Work Eligibility Status. The Parties shall comply with the residency verification requirements of Neb. Rev. Stat. § 4-108 through § 4-114. The Parties are required and shall 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.

- m. Conflict of Interest. The Parties warrant to each other that they have not employed nor retained any company or person, other than a bona fide employee working solely for the Parties to this Agreement, to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person other than a bona fide employee working solely for the Parties, any fee, commissions, percentage, brokerage fees, gifts or other consideration, contingent upon or resulting from the award or making of this Agreement.
- n. Representations. Each Party hereto represents and warrants to the other that (a) it has all necessary right, power and authority to enter into this Agreement, and (b) the execution and delivery of this Agreement and the performance and observance of all obligations and conditions to be performed or observed by such Party have been duly authorized by all necessary action on behalf of such Party.
- o. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one Agreement. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto.

*(Signature on following pages.)*

**CITY OF PAPILLION,  
a Nebraska Municipal Corporation**

By: \_\_\_\_\_  
David P. Black, Mayor (date)

ATTEST:

\_\_\_\_\_  
Nicole Brown, City Clerk

(SEAL)

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT,  
a Multi-County Governmental Political  
Subdivision of the State of Nebraska**

By: \_\_\_\_\_  
John Winkler, General Manager (date)

ATTEST:

\_\_\_\_\_

Its: \_\_\_\_\_