

Agenda Item: 9.

Memorandum

To: Programs, Projects and Operations Subcommittee
From: John Winkler, General Manager
Date: November 2, 2015
Re: Missouri River Levee Funding MOU

The District has been proactively and diligently working on the design, permitting and funding of the rehabilitation of the Missouri River Levees R 613 and R 616 (Sarpy County) in order to meet new FEMA requirements. The cost of the project is currently estimated at \$25,000,000 dollars. As outlined in the MOU the District is proposing a cost share arrangement with Sarpy County, City of Omaha, and City of Bellevue. In addition, the District is preparing an application to the State of Nebraska's Water Sustainability Fund and continues to work with the Air Force and the Department of Defense on a federal contribution to the project. It is currently anticipated that the State of Nebraska, NRD and Federal funding will contribute eighty percent (80%) of the project cost with the remaining twenty percent (20%) covered by the local agencies to this MOU. *The City of Bellevue and Sarpy County have already unanimously approved the MOU.*

The main purpose of the MOU at this time is to demonstrate to the Federal Government and the State of Nebraska the commitment of the local units of government that this project is of ultimate importance and that it will be funded and completed.

The District will submit an application to the State's Water Sustainability Fund in December of 2015 with a potential notification of award date in May of 2016.

As proposed by the MOU a more detailed and binding Inter-Local agreement, which spells out detailed terms and conditions, will be required to be adopted by each contributing entity when construction figures and funding contributions are finalized. It is the District's intent to begin seeking construction bids in July or August of 2016 with construction taking approximately 2 years to complete.

Unfortunately, projects and the dynamics associated with them do not occur in a vacuum, especially ones with local, state, federal and international implications like this one. The District has been coordinating and consulting with the highest levels of state government and the Department of Defense. In addition, the District has worked with individuals and organizations from Monterey, California to Texas to Washington D.C. on this project. During all of this communication it has become extremely clear that hundreds of millions of dollars of projects and possibly the future of Offutt Air Force Base and its various missions depend on the completion of the levee project.

Therefore, Management recommends that the subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Memorandum of Understanding to demonstrate the Districts intent to provide a cost share to the Missouri River Levee project in partnership with several funding sources outlined in the memorandum; with any changes deemed necessary by the General Manager and Legal Counsel..

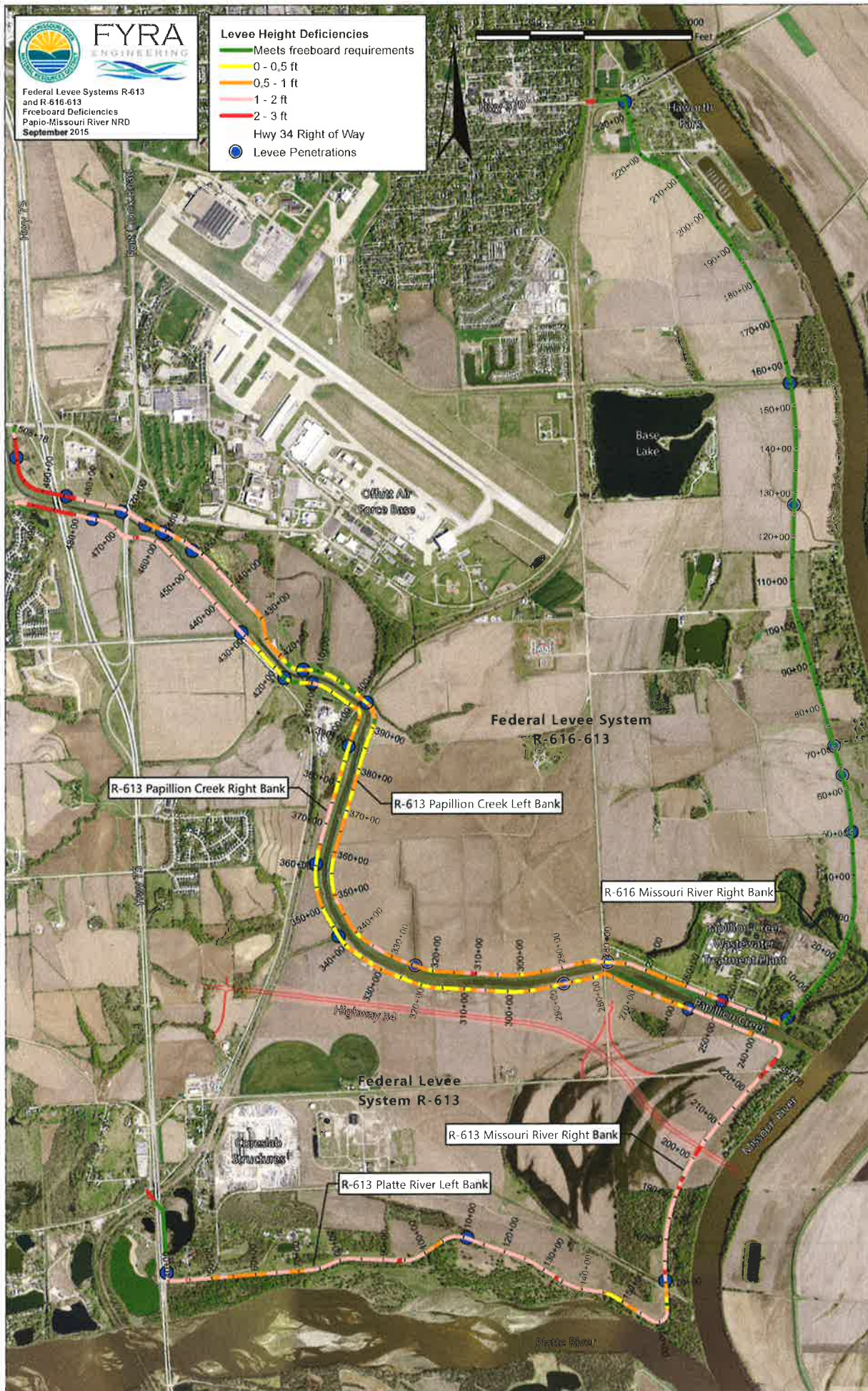


FYRA
ENGINEERING

Federal Levee Systems R-613
and R-616-613
Freeboard Deficiencies
Papio-Missouri River NRD
September 2015

Levee Height Deficiencies

- █ Meets freeboard requirements
- █ 0 - 0.5 ft
- █ 0.5 - 1 ft
- █ 1 - 2 ft
- █ 2 - 3 ft
- Hwy 34 Right of Way
- Levee Penetrations



Federal Levee System
R-616-613

R-613 Papillion Creek Right Bank

R-613 Papillion Creek Left Bank

R-616 Missouri River Right Bank

Federal Levee System R-613

R-613 Missouri River Right Bank

R-613 Platte River Left Bank

Platte River

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "Memorandum"), dated as of _____, 2015 (the "Effective Date"), by and between:

- 1) Papio-Missouri River Natural Resources District (the "NRD");
- 2) the City of Omaha, Nebraska ("Omaha");
- 3) the City of Bellevue, Nebraska ("Bellevue"); and
- 4) - Sarpy County, Nebraska (the "County").

Collectively, the NRD, the County, Omaha, and Bellevue are hereinafter referred to collectively as the "Parties." Although portions of this Memorandum will be binding upon the Parties, by signature below, the Parties understand and acknowledge that additional definitive agreements will be required as the Parties continue to explore opportunities together concerning the subject of this Memorandum. The Parties further understand and acknowledge that the provisions of this Memorandum do not contain every term and condition of the definitive agreements contemplated herein.

RECITALS

WHEREAS, the NRD, as local sponsor, operates and maintains the Missouri River Levee System Units R-616 and R-613 (the "Levee System"), 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 County, Bellevue, and Omaha;

WHEREAS, included in the area protected by the Levee System is critical infrastructure including, but not limited to, Offutt Air Force Base and Omaha's water treatment plant;

WHEREAS, the Parties have been informed by the Federal Emergency Management Agency ("FEMA") that the Levee System is at risk of losing its accreditation due to the Levee System's potential inability to be certified by the USACE;

WHEREAS, the loss of FEMA accreditation for the Levee System will significantly impact the Parties;

WHEREAS, the NRD has retained an engineer (the "Engineer") to design and develop plans for the reconstruction and upgrading of the Levee System in compliance with USACE requirements (the "Plans"); and,

WHEREAS, the Parties recognize that the Levee System will require significant reconstruction and upgrading to satisfy the USACE certification requirements and retain its FEMA accreditation (the "Project").

NOW, THEREFORE, the Parties intend to continue cooperating and negotiating toward entering into legally binding agreements as follows:

Section 1. Statement of Overall Intent. As part of a future, binding agreement, it is the intent of the Parties that each will jointly contribute, as detailed below, to the Project. The Parties currently estimate that the costs of the Project to be approximately \$25 million (\$25,000,000). The Parties intend to cooperate in securing the necessary funding for the Project.

Section 2. Individual Contributions. Currently, the Parties intend to individually contribute the following amounts to the Project:

- 1) The NRD - \$ 5,000,000
- 2) Omaha - \$ 3,000,000
- 3) Bellevue - \$ 3,000,000
- 4) The County - \$3,000,000

It is understood by the Parties that the individual contribution amounts detailed in this section for Omaha, Bellevue, and the County will not be exceeded without further agreement of the Parties. Additionally, it is understood by the Parties that the individual contribution amounts detailed in this section for Omaha, Bellevue, and the County will be paid to the NRD in the form of reimbursements for costs incurred by the NRD for the Project. It is expected that Omaha, Bellevue, and the County will be permitted to spread said reimbursements over a three (3) to four (4) year period of time.

Section 3. Federal Contribution. The Levee System protects Offutt Air Force Base, which is comprised of property owned by the U.S. Government. The NRD is currently engaged in negotiations with the U.S. Government to secure funding from it for that portion of the Project that is located on federal property as part of a Storm Water Management Plan. As of the date of the execution of this Memorandum of Understanding, the Parties have not determined the amount the U.S. Government will contribute for the Storm Water Management Plan. It is the intent of the NRD that these funds be used for the Project.

Section 4. State Contribution. The NRD shall submit an application for funds for the Project to the State of Nebraska's (the "State") Water Sustainability Fund requesting \$10 million (\$10,000,000). The Parties recognize that receiving monies from the Water Sustainability Fund will depend on acceptance of the Project by the Nebraska Natural Resources Commission.

Section 5. Project Management. The Parties agree that the NRD will manage the Project without obligation to seek approval from any individual party in regards to the Project. The NRD shall supply the Parties with a copy of the Plans for the Project.

Section 6. Interlocal Agreement. Pursuant to The Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801, *et seq.*, the Parties will negotiate and enter into an interlocal agreement that more formally details the funding of the Project. The Parties do not intend to create a separate entity related to the Project.

Section 7. Cooperation. The Parties agree and understand that cooperation and approval of certain other governmental and other third parties will be required for the Project and to otherwise carry out the intent of this Memorandum. 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 Memorandum.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Section 8. Notices. Any notices or other communications to be given hereunder shall be in writing, and sent by U.S. postage or by hand delivery, by express courier service, by facsimile with proof of transmission or electronic mail to the Parties at the addresses stated below or such other address as a Party may designate in writing to the other Party from time to time:

NRD: John Winkler, General Manager
Papio-Missouri River Natural Resources District
8901 S. 154th Street
Omaha, NE 68138-6222

With a copy to: Husch Blackwell LLP
13330 California Street Suite 200
Omaha, NE 68154
Attn: Hal Daub and David Newman

Omaha: Robert Stubbe, Director
City of Omaha
Public Works Department
1819 Farnam St., Suite 600
Omaha, NE 68183

Bellevue: Dan Berlowitz, City Administrator
City of Bellevue
210 West Mission Ave.
Bellevue, NE 68005

Sarpy County: Mark Wayne, County Administrator
Sarpy County Administration
1210 Golden Gate Drive, Suite 1126
Papillion, NE 68046

Section 9. Additional Terms and Conditions.

(a) This Memorandum is for the sole benefit of the Parties and will be governed and construed in accordance with the laws of the State of Nebraska.

(b) This Memorandum may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument. Email/scan copies or facsimile copies of this Memorandum will be deemed original copies.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the Effective Date.

**PAPIO-MISSOURI RIVER NATURAL RESOURCES
DISTRICT**

By: _____

Name: _____

Title: _____

THE CITY OF OMAHA

By: _____

Name: _____

Title: _____

THE CITY OF BELLEVUE

By: _____

Name: _____

Title: _____

SARPY COUNTY, NEBRASKA

By: _____

Name: _____

Title: _____

[SIGNATURE PAGE OF MEMORANDUM OF UNDERSTANDING]

Situational Awareness of Missouri River Levee's

History

The Missouri River Levee System Units R-613 and R616 (Levees) are federal levees providing flood risk reduction in southeast Sarpy County. The Levees were designed and constructed by the U.S. Army Corps of Engineers in the 1970's and 1980's. The protected areas behind the Levees have a reduced risk of flooding from the Missouri River, Platte River, and Papillion Creek high flows. The protected areas include significant infrastructure including Offutt Air Force Base, the City of Omaha's Papillion Creek Wastewater Treatment Plant, major transportation corridors, Hwy 34 bridge access, main lines of the Union Pacific Railroad and Burlington Northern Railroads, Industrial/commercial development areas, as well as residential, commercial, agricultural, and recreation property in the City of Bellevue. After construction of the levee's by the Corps of Engineers the operation and maintenance was turned over to first Sarpy County and then to the Papio Missouri River NRD after the formation of the NRD System by the legislature. At this time the local sponsor of the levees is the Papio-Missouri River Natural Resources District who is responsible for the operation and maintenance of the levee system. **However, the NRD's only responsibility is to operate and maintain the levees per the rules and regulations of the Secretary of the Army. The District is not obligated nor is required to satisfy any other federal requirement (i.e. FEMA) or regulation outside of the Corps of Engineers and is not required to modify or enhance the levees beyond their current constructed form.**

The Issue at Hand

The Levees provide protection consistent with Federal Emergency Management Administration (FEMA) guidelines for floods with a 1% annual chance exceedance (100 year flood) and have been included on previous Flood Insurance Rate Maps (FIRMs). The process of updating the current FIRMs (Map Modernization Program) has included a re-analysis of the flood flows and the current effectiveness of the Levees. That re-analysis indicates the need for upgrades to the Levees, primarily height increases, to continue to provide the same level of protection. Every member of the Nebraska Congressional Delegation, as well as, NRD and local Officials have attempted to either modify these requirement, waiver these requirements or challenge their practicality and validity to no avail. The simple fact is this unfunded federal mandate is the law of the land.

Administratively, FEMA has already notified the District that through FEMA's map modernization program, the District will be receiving a Provisional Accreditation Letter (PAL) for these levee systems (as all levee systems in the FEMA program do) and that the District will eventually have to complete the work to remain in compliance. FEMA is aware that the District is working on the project and supports our efforts to be proactively "getting out in front" of the schedule.

Technically, FEMA will require the District to comply with FEMA regulations which fall under Public Law section 44 CFR 65.10. In regards to FEMA, the District already has the knowledge that updated hydrology is going to require the District to raise the levees to provide more hydraulic capacity for higher discharges. Consequently, accreditation of the Levees by FEMA for inclusion on the upcoming FIRMs requires that the District certify that the Levees provide protection under these FEMA standards.

Practical Situation

As discussed, the levee system protects vitally important infrastructure to Omaha, Bellevue, Sarpy County, State of Nebraska and the United States of America. The District has proactively approached this issue as a partnership with all entities that have a whole lot to gain and a tremendous amount to lose if the levees are not recertified by FEMA. The total cost of the rehabilitation to meet FEMA standards is estimated at 25 million dollars. The NRD has proposed and is working on a cost share agreement (MOU) with the City of Omaha, City of Bellevue, Sarpy County, State of Nebraska and the U.S. Air Force to fund the needed modifications. ***It is estimated that 80 percent of the project funding will be satisfied by State, Federal and NRD funding with the remainder split between Sarpy County, City of Bellevue and City of Omaha.*** The NRD has retained independent engineering consultants (first Tetra Tech, Inc. and now FYRA Engineering.) to evaluate and analyze the problem and design the needed improvements. The Corps of Engineers is reviewing the consultants work to ensure that it meets criteria and their approval. In addition, the District has hired another independent external professional review consultant to review both the consultant's work and the Corp's work. Currently, the District is near completion on the engineering and design and has made application for 404 and 408 permits from the U.S. Army Corps of Engineers. The NRD has already spent 2 million dollars of its own funds on planning, engineering, design and permitting. The District is planning to begin construction on the levees in the late summer or early fall of 2016; construction is anticipated to take 2 years.

Risks and High Costs of Inaction

Offutt AFB provides a roughly 1.5 billion dollar annual economic impact to the metro area economy. In addition the base employs over 10,000 personnel with the potential to employ hundreds or thousands more. Currently, the base is seeking 110 million dollars in federal defense department funds to resurface the runway in addition to other capital projects. It has been discussed that a new round of BRAC (Base Realignment and Closure Process) will be initiated sometime in the next few years. It is also reported that the Air Force has 30% more infrastructure than it currently needs. If the levees are not improved the base is at risk for future flooding and this condition could be classified as a potential risk that the Department of Defense is required to mitigate by moving missions from Offutt to other installations that are safer. Furthermore, it is less likely the Department of Defense would make additional capital improvements and expenditures to Offutt AFB if in fact the facility was at risk or perceived to be at risk. Consequently, the 110 million dollar runway project would be jeopardized and Offutt AFB would be placed right in the cross hairs of base realignment and/or closure.

Papillion Creek Wastewater Treatment Facility provides sewage treatment to roughly one third of the area's population including Bellevue and Offutt AFB. The plant treats roughly 60-80 million gallons of sewage a day and if one part of the plant is taken off line by flooding or another disaster the plant can no longer treat this wastewater and then it must be discharged into local rivers and streams.

Future Commercial/Industrial Development the area protected by the R-613 and R-616 levee system is designated by Bellevue and Sarpy County as future commercial and industrial growth areas. This area is the last flat site served by rail in the entire metro area. It has been reported that over 6 billion dollars of investment has considered this area with the employment potential of over 14,000 jobs. If the levees are not improved to meet the new FEMA standards this area will no longer be developable as it will be classified in the 100 year flood plain, thus eliminating hundreds of millions of dollars of valuation and tens of thousands of potential jobs.

Residential/Agriculture areas within Bellevue City Limits and Sarpy County already exist that are protected by the levee system. If the levee system is not recertified by FEMA these citizens and their property are at increased risk of flooding, consequently, they would be required to purchase expensive flood insurance in which they are not required to do so now. Furthermore, it is estimated that they would realize a 20-25% decline in their property values as a result of residing in a floodplain.

Infrastructure such as railroad main lines, fiber optics, water and sewer distribution lines, natural gas distribution lines, telecommunications and cable, electrical distribution and substations, highways, roads, bridges etc would all be placed at greater risk of flooding.