

Agenda Item: 9.a. and 9.b.

Memorandum

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

From: Paul W. Woodward PE, Groundwater Management Engineer

Date: August 29, 2016

Re: Missouri River Levee System R-613 and R-616 Certification Project Funding Agreements

The District has applied for and been awarded \$13.7 million from the Critical Infrastructure Facilities Cash Fund pursuant to the passage of LB 957e, Sec. 21 (2016) by the Nebraska Legislature to fund the required improvements to the R-613 and R-616 Missouri River Levee System. In order to manage the funds and request reimbursement for eligible expenses, the District and Nebraska Department of Natural Resources (NDNR) have negotiated the enclosed contract. This contract specifies the funded amount, requirements for disbursement from NDNR, and the need for an annual report to be filed by the end of each calendar year.

In order to fund the remaining costs of the estimated \$28.4 million levee improvements, the District entered into a memorandum of understanding with the City of Omaha, City of Bellevue, and Sarpy County in November of 2015. An Interlocal Cooperation Act Agreement is necessary to formalize this local funding arrangement and is enclosed with this memo. The agreement would provide a total of \$9 million from these entities for the levee improvements, \$3 million each from Omaha, Bellevue and Sarpy County to be paid into a fund account in increments of \$750,000 over 4 consecutive years beginning this December. The NRD would contribute \$1.25 million per year to the fund for a total of \$5 million and also be responsible for any remainder of the total project cost. A summary of the projected timeline for costs incurred and incoming cash flow is also attached.

Management recommends that the subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed contract with the Nebraska Department of Natural Resources for the Critical Infrastructure Facilities Cash Fund for the Missouri River R-613/R-616 Federal Levee Certification Project, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

Management recommends that the subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Agreement with the City of Omaha, City of Bellevue, and Sarpy County to fund the Missouri River R-613/R-616 Federal Levee Certification Project, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

Missouri River Levee Fund Timeline and Cash Flow Summary

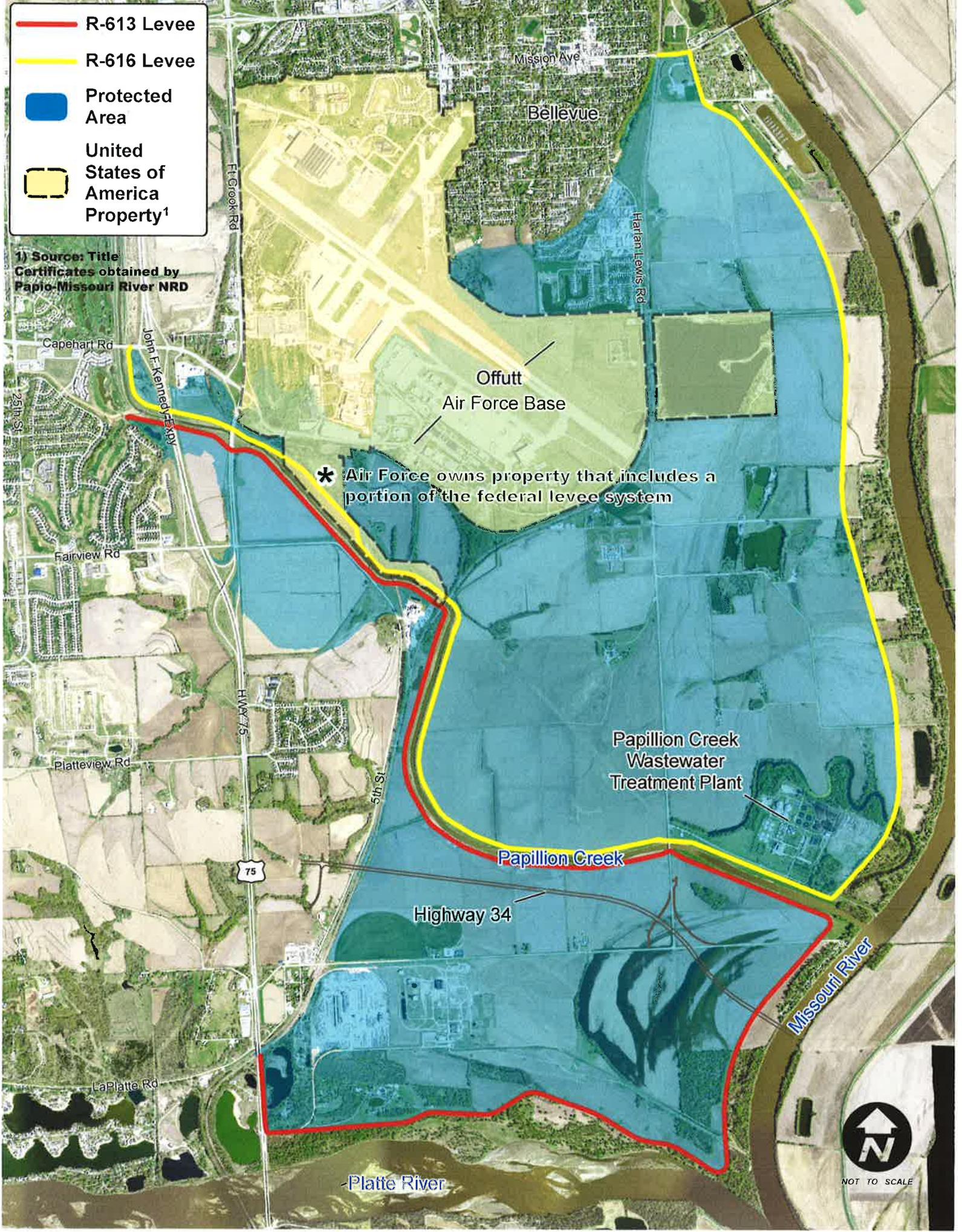
<i>Cost Item</i>	<i><July 1-16</i>	<i>FY 17 (<July 1-17)</i>	<i>FY 18 (<July 1 -18)</i>	<i>FY 19 (<July 1-19)</i>	<i>FY 20 (<July 1-20)</i>	<i>TOTAL COST</i>
Professional Services	\$ 3,840,000	\$ 460,000	\$ 480,000	\$ 480,000	\$ 140,000	\$ 5,400,000
Land Rights		\$ 1,000,000				\$ 1,000,000
Construction			\$ 11,000,000	\$ 11,000,000		\$ 22,000,000
Expense Annual Total	\$ 3,840,000	\$ 1,460,000	\$ 11,480,000	\$ 11,480,000	\$ 140,000	\$ 28,400,000
Cumulative Expense	\$ 3,840,000	\$ 5,300,000	\$ 16,780,000	\$ 28,260,000	\$ 28,400,000	

<i>Income from</i>	<i><July 1-16</i>	<i>FY 17 (<July 1-17)</i>	<i>FY 18 (<July 1 -18)</i>	<i>FY 19 (<July 1-19)</i>	<i>FY 20 (<July 1-20)</i>	<i>TOTAL INCOME</i>
City of Omaha		\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 3,000,000
City of Bellevue		\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 3,000,000
Sarpy County		\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 3,000,000
NDNR Critical Inf Fund		\$ 1,460,000	\$ 11,480,000	\$ 760,000		\$ 13,700,000
P-MRNRD	\$ 3,840,000	\$ 1,250,000	\$ 1,250,000	\$ 1,250,000	\$ (1,890,000)	\$ 5,700,000
Income Annual Total	\$ 3,840,000	\$ 4,960,000	\$ 14,980,000	\$ 4,260,000	\$ 360,000	\$ 28,400,000
Cumulative Income	\$ 3,840,000	\$ 8,800,000	\$ 23,780,000	\$ 28,040,000	\$ 28,400,000	
Balance (Income - Expense)	\$ -	\$ 3,500,000	\$ 7,000,000	\$ (220,000)	\$ -	

Reimbursement back to P-MRNRD from Levee Fund to maintain cash flow in prior years

- R-613 Levee
- R-616 Levee
- Protected Area
- United States of America Property¹

1) Source: Title Certificates obtained by Papio-Missouri River NRD



NOT TO SCALE

STATE OF NEBRASKA
CRITICAL INFRASTRUCTURE FACILITIES CASH FUND

CONTRACT BETWEEN

THE NEBRASKA DEPARTMENT OF NATURAL RESOURCES AND
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
ACTIONS TAKEN TO PROTECT CRITICAL INFRASTRUCTURE FACILITIES

THIS CONTRACT is entered into by and between the Nebraska Department of Natural Resources (“Department”) and the Papio-Missouri River Natural Resources District (“District”).

WHEREAS, the Legislature created the Critical Infrastructure Facilities Cash Fund (“Fund”) in the Department of Natural Resources’ budget with passage of LB957e, Sec. 21(2016); and,

WHEREAS, the Legislature appropriated and transferred funds to provide a grant to a natural resources district to offset costs related to soil and water improvements intended to protect critical infrastructure facilities within the district which includes military installations, transportation routes, and wastewater treatment facilities; and,

WHEREAS, the District applied to the Department for a grant from the Fund; and,

WHEREAS, the Director of the Nebraska Department of Natural Resources (Director) has determined that a means needs to exist of ascertaining which costs for which reimbursement will be requested are eligible costs for the state to grant funding from the Fund in accordance with LB957e, Sec. 21(2016), and,

WHEREAS, Fund expenditures by the Department are contingent upon the prior execution of an agreement with the District setting forth the terms and conditions for utilization of such funds.

NOW THEREFORE, the Department and District do hereby agree to the terms and conditions of the contract as follows:

1. TERM OF THE CONTRACT

This contract will become effective on the date last signed hereinafter and will remain in effect for ten years, or until all funds available for eligible reimbursements are disbursed, or unless the contract is terminated with cause. In the event either party defaults on any of its material obligations under this contract, the non-defaulting party shall notify the other party in writing, specifying in detail the nature and extent of such default. If within thirty (30) calendar days after written notice of such default, the defaulting party fails to remedy the default, this contract will terminate.

2. GRANT DISBURSEMENTS

A. Basic Conditions

All grant money disbursed to the District pursuant to this contract shall be disbursed solely for the purpose of reimbursing the District for costs necessarily incurred subsequent to the effective date of this

contract that are for soil and water improvements intended to protect critical infrastructure facilities within the District.

The funds that are the subject of this contract have been appropriated to the Department by LB956e, Sec. 25 (2016) and shall be available for reimbursement to the District for as long as the Department receives a re-appropriation of the unexpended funds and unless the Legislature's appropriation for this purpose is reduced by subsequent legislative act.

B. Statement of Costs

The District will submit no more often than quarterly an itemized and properly documented statement of costs for which reimbursement is sought pursuant to the terms of this contract. The statement shall certify 1) that costs for which reimbursement is sought are payments made directly by the District for soil and water improvements intended to protect critical infrastructure facilities within the District, 2) that such payments are not being paid by any other entity, and 3) authenticity of copies of documentation demonstrating that the payments were made for the purposes specified in this contract. This statement of costs shall be signed by the District's authorized representative. Final authority for determining which costs are eligible for reimbursement and for determining what constitutes proper documentation of such costs rests with the Director. In the absence of other direction of the Director, proper documentation shall consist of a copy of all bills or charges submitted to the District for which reimbursement is requested and a copy of a cancelled check issued in payment of such bills or charges. Regarding any real estate purchases or easements, documentation shall also include as a minimum the following: 1. Title insurance policy showing title in the seller. 2. Legal description demonstrating that property identified in 1 corresponds to property within the area encompassed within this contract. 3. Closing statement signed by both the seller and buyer for the real estate interest purchased by the District. 4. A copy of the recorded instrument (deed/easement) from the seller to the District for the specified real estate. 5. A copy of the negotiated certified or cashier's check payable to the seller for the indicated transaction. 6. If the transaction is for less than a warranty deed, then a copy of a signed and recorded subordination agreement from all lenders of record and if it is for a warranty deed, then releases of all liens of record showing that such releases have been recorded with the register of deeds/county clerk and that the District is the holder of marketable title to the real estate. The Director shall have the right to inspect any project or portion of any project that is the subject of a reimbursement request.

C. Disbursements

(1) All requests for reimbursement of costs incurred by the District will be reviewed promptly. If additional documentation of costs incurred by the District is deemed necessary by the Director, the District will be notified within thirty days after receipt of the request for reimbursement.

(2) Within forty-five days after receipt of any quarterly request deemed by the Director to be properly documented, the Department will transmit payments for reimbursement requests deemed properly documented, but payments are always subject to possible deferral due to limitations imposed by quarterly budget allotments or other causes beyond the control of the Department. In any event, the Department shall not be held responsible for delays in payment which occur as a result of causes beyond its control.

(3) Under no circumstances shall the total amount of payments under this contract exceed \$13,700,000.

3. BINDING

This contract shall inure to and bind the successors, assigns and representatives of the Parties, provided, however, this contract may not be assigned by either party without the prior written consent of the other.

4. PREVAILING LAW

This contract is governed by the laws of the State of Nebraska including the State Contract Claims Act, *Neb. Rev. Stat.* §§ 81-8,302 through 81-8,306.

5. WAIVER OF RIGHTS

It is the intention of the parties that from time to time either party may waive any of its rights under the contract. Any waiver of rights with respect to a default or any other matter arising in connection with this contract shall not be deemed to be a waiver with respect to any other default or matter.

6. STATE TO BE HELD HARMLESS

The District hereby agrees to hold and save the State of Nebraska, the Department, and their officers, agents, and employees free and harmless from any and all claims, demands, losses, costs, expenses or liability due to or in incident to either in whole or in part or whether directly or indirectly, to the design, construction, operation, repair, maintenance, assistance, or failure of the actions, projects, or any works or facilities reimbursed under this agreement.

7. AUDIT BY OFFICE OF STATE AUDITOR

Any public or private non-profit entity or political subdivision of the state serving as the recipient or sub-recipient of funds under this Agreement, except for an individual person, is subject to audit by the Office of State Auditor and must comply with requests for any information or records within three business days after an the actual receipt of the request pursuant to N.R.S. Reissue of 2015, § 84-304 (4) (a) and § 50-1213 (2).

8. ANNUAL REPORT

Beginning December 31, 2016, the District shall file a report annually with the Department summarizing the uses applied to all money received from the Fund in the calendar year and setting out a plan for uses of the Fund resources for the next calendar year.

9. CONTRACT MANAGEMENT

- A. The Department's contract manager is Kent Zimmerman.
His contact information is as follows:

Kent Zimmerman
Nebraska Department of Natural Resources
301 Centennial Mall South, 4th Floor
P.O. Box 94676
Lincoln, NE 68509-4676
Direct phone: (402) 471-0575
Email: kent.zimmerman@nebraska.gov

B. The District's contract manager and project manager is Paul Woodward. His contact information is as follows:

Papio-Missouri River NRD
8901 S. 154th Street
Omaha, NE 68138

Direct phone: (402) 351-1772
Email: pwoodward@pacionrd.org

IN WITNESS WHEREOF, the parties have executed this contract on the date last stated below.

By: John Winkler, General Manager
Papio-Missouri River Natural Resources District
8901 S. 154th Street
Omaha, NE 68138-3621

Date: _____

By: Gordon W. Fassett, P.E., Director
Department of Natural Resources
301 Centennial Mall South
P.O. Box 94676
Lincoln, NE 68509-4676

Date: _____

CITY OF OMAHA, NEBRASKA

CITY OF BELLEVUE, NEBRASKA

SARPY COUNTY, NEBRASKA

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

INTERLOCAL COOPERATION ACT AGREEMENT

MISSOURI RIVER LEVEE SYSTEM UNITS R-616 AND R-613

OFFUTT AIRFORCE BASE FLOOD PROTECTION

This Interlocal Cooperation Act Agreement (“AGREEMENT”) is hereby entered into by the CITY OF OMAHA, NEBRASKA (“Omaha”), the CITY OF BELLEVUE, NEBRASKA (“Bellevue”), SARPY COUNTY, NEBRASKA (“the County”) and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (“the NRD”) (referred to collectively as “the PARTIES”).

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, and Bellevue;

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 Papillion Creek Waste Water Treatment Plant;

WHEREAS, the Levee System is at risk of losing its Federal Emergency Management Agency (“FEMA”) accreditation status;

WHEREAS, 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 reconstruction and upgrading to satisfy the FEMA certification requirements and retain its FEMA accreditation;

WHEREAS, the NRD has retained a registered professional engineering firm (the “Engineer”) to design and develop plans for the reconstruction and upgrading of the Levee System in compliance with FEMA and USACE requirements (the “Plans”); and,

WHEREAS, this agreement (“AGREEMENT”) is made pursuant to authority provided in the Nebraska Interlocal Cooperation Act (§§ 13-801, R.R.S., 1943, et seq.), and without any separate legal entity being created, to conduct the joint and cooperative undertaking

contemplated herein, and whenever possible, this AGREEMENT shall be construed in conformity with such Act.

NOW, THEREFORE, in consideration of their mutual covenant hereinafter expressed, the PARTIES agree as follows:

Section 1. Offutt Levee Fund. The PARTIES agree to and do hereby create an Offutt Levee Fund (“OFFUTT LEVEE FUND”) to receive funds from the PARTIES to provide funding for the reconstruction and upgrading of the Levee System to satisfy FEMA and USACE requirements and retain FEMA accreditation (the “PROJECT”). The NRD shall administer the OFFUTT LEVEE FUND, for the purposes of this Agreement and for the benefit of the PARTIES and the PROJECT.

Section 2. Individual Contributions. The PARTIES agree to individually contribute the following maximum amounts to the OFFUTT LEVEE FUND for the PROJECT:

- a) NRD - \$5,000,000
- b) Omaha - \$3,000,000
- c) Bellevue - \$3,000,000
- d) 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, in proportional amounts, out of the OFFUTT LEVEE FUND in the form of reimbursements for costs incurred by the NRD for the PROJECT. The PARTIES will be permitted to spread said contributions over a four (4) year period of time as provided in Section 5, herein.

Section 3. 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 4. 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 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 5. Cost Sharing: The PARTIES do hereby adopt the following plan for paying and reimbursing the costs of the PROJECT:

On or before the first day of December 2016, 2017, 2018 and 2019 the PARTIES shall make contributions to the OFFUTT LEVEE FUND in the following amounts, to-wit:

NRD:	\$1,250,000
Omaha:	\$750,000
Bellevue:	\$750,000
County:	\$750,000

Invoices for PROJECT costs will be submitted to the OFFUTT LEVEE FUND on a monthly basis, or as necessary to facilitate timely payments as directed by the PROJECT Administrator. All invoices, payments, and other records of the OFFUTT LEVEE FUND shall be available for inspection by all PARTIES without cost.

Section 6. Indemnifications. 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 7. Effective Date of Agreement: This AGREEMENT shall become effective upon execution by all PARTIES.

Section 8. Duration of Agreement: This AGREEMENT shall have permanent duration, unless or until terminated by any of the PARTIES as provided herein.

Section 9. Termination. Upon accomplishment of the aforesaid purposes of the PROJECT, this AGREEMENT may be terminated by any of the PARTIES upon 90 days' notice to the other PARTIES. Such termination shall not affect any rights of reimbursement under this AGREEMENT for actions taken or responsibilities assumed by another of the PARTIES pursuant to this AGREEMENT.

Section 10. Disposal of Property: Upon termination of this AGREEMENT, any marketable property remaining in the hands of any of the PARTIES, that was acquired by the application of shared funds contributed by the PARTIES, shall be sold at public sale and the proceeds thereof distributed to the PARTIES in the proportions provided by this AGREEMENT for their contributions towards the shared PROJECT costs.

Section 11. Administrator: Except as may be otherwise provided herein, the General Manager of the NRD shall be the administrator of the PROJECT, on behalf and subject to the direction of the Board of Directors of the NRD.

Section 12. 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: Steve Grasz

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

Bellevue: Sabrina Ohnmacht, City Clerk
City of Bellevue
210 West Mission Avenue
Bellevue, NE 68005

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

Section 13. 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 AGREEMENT 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 AGREEMENT will be deemed original copies.

Section 14. Interlocal Cooperation Act Provisions: This AGREEMENT shall not create any separate legal or administrative entity. While the PROJECT and the OFFUTT LEVEE FUND shall be administered by the NRD, this AGREEMENT 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 termination, 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.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT 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: _____