

Agenda Item: 8.

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Martin P. Cleveland, Construction Engineer

SUBJECT: Missouri River R-616 and R-613 Levee Agreement with Offutt Air Force Base

DATE: May 5, 2015

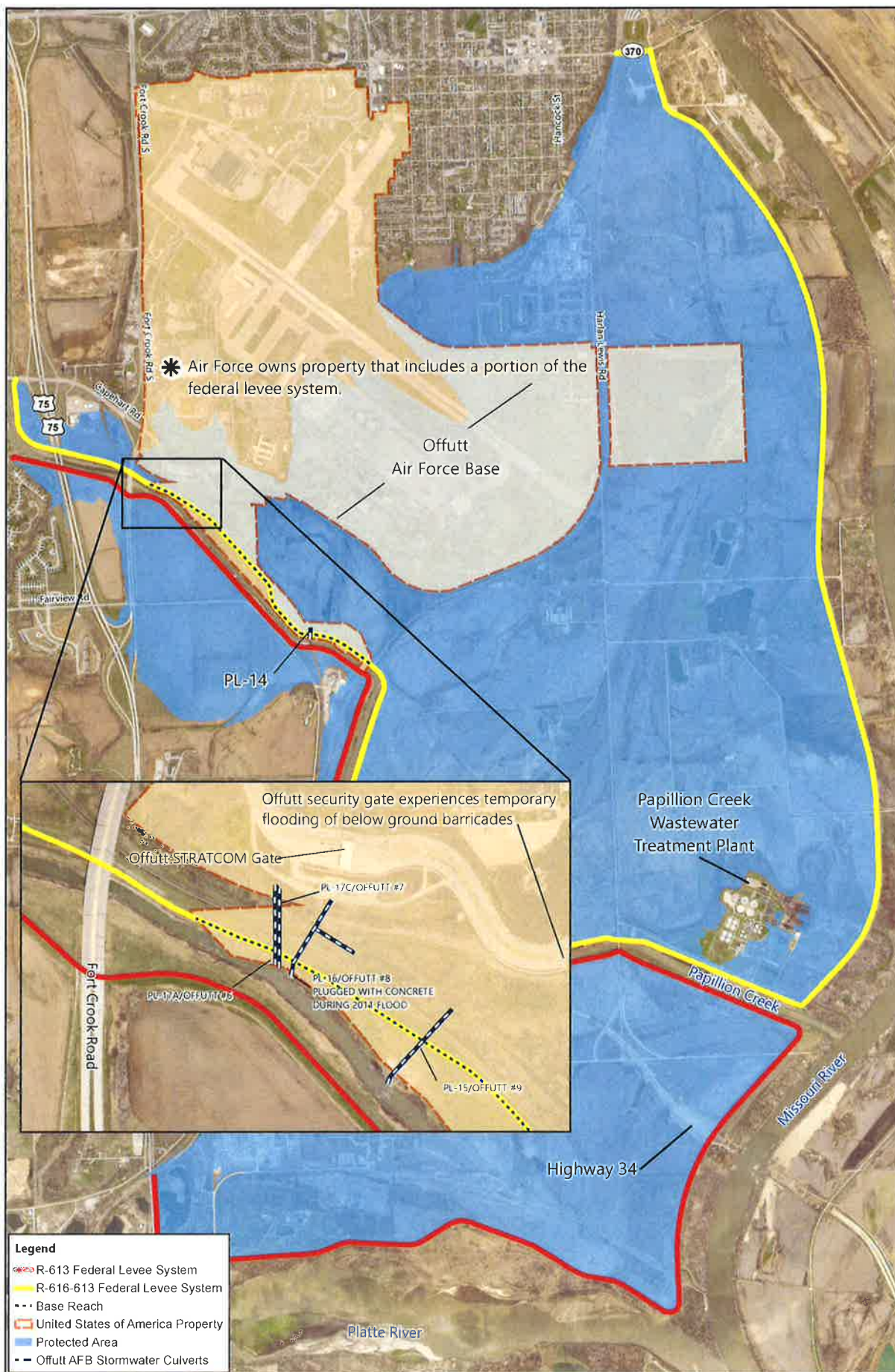
The Missouri River R-616 and R-613 Levees are located along Papio Creek from Capehart Road to Papio Creek confluence and along the Missouri River from Papio Creek confluence to Hwy 370 (Mission Avenue) in the Bellevue area, as depicted in enclosed map. The levee is adjacent to the south side of Offutt AFB and a portion of the levee is actually on Offutt AFB property. Four Offutt AFB storm sewers (Offutt #6, 7, 8 and 9) extend through the levee that is maintained by the District.

The proposed agreement provides for Offutt AFB to pay the District a lump sum payment of \$10,000,000 for the design, land acquisition, upgrade, repair and reconstruction of the levee and associated facilities (e.g. storm sewer) upgrade, repair and reconstruction in order to qualify the levee for FEMA accreditation.

In addition, the agreement provides for Offutt AFB to reimburse the District up to \$100,000 annually, for operation and maintenance of the levee and associated facilities.

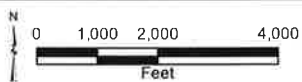
Management recommends that the Programs, Projects and Operations Subcommittee recommend to the Board of Directors that the General Manager be authorized to sign an agreement with Offutt AFB for the Missouri River R-616 and R-613 Levees, subject to changes as deemed necessary by the General Manager and approval as to form by District Legal Counsel.

Enclosures



Protected Areas Map

Federal Levee System R-613 and Federal Levee System R-616-613
Papio-Missouri River NRD





FYRA
ENGINEERING

Papillion Creek Left Bank Levee Unit R-613
PL-17A and PL-17C/Offutt #6 and #7
Penetrations
Papio-Missouri River NRD
April 2015



PL-17A/OFFUTT #6

PL-17C/OFFUTT #7

205 LF OF 60" DIA CENTRIFUGALLY CAST
CONCRETE PIPE REHABILITATION

PL-16/OFFUTT #8

CONSTRUCT 84" DIA RCP GATE
STRUCTURE WITH SLIDE GATE

CONSTRUCT 90 LF OF 60" DIA RCP

CONSTRUCT 60" DIA RCP GATE
STRUCTURE WITH SLIDE GATE

CONSTRUCT 50 LF OF 30" DIA RCP

REMOVE AND REPLACE 6" PCC TRAIL

REMOVE 25 LF OF 30" DIA RCP

REMOVE 80 LF OF 60" DIA CMP

EMBANKMENT REPAIR AREA

REMOVE EXISTING OUTFALL

REMOVE EXISTING OUTFALL

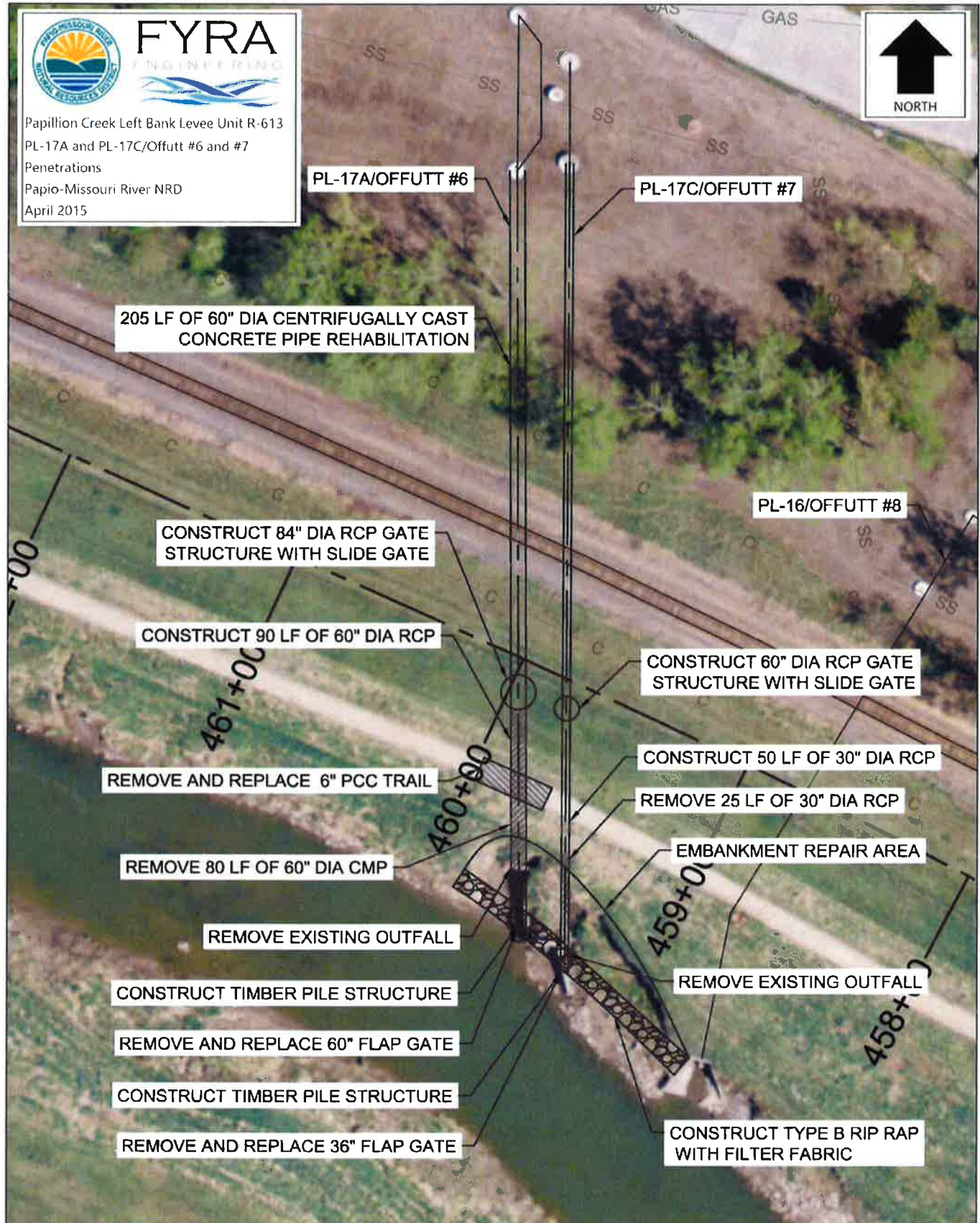
CONSTRUCT TIMBER PILE STRUCTURE

REMOVE AND REPLACE 60" FLAP GATE

CONSTRUCT TIMBER PILE STRUCTURE

REMOVE AND REPLACE 36" FLAP GATE

CONSTRUCT TYPE B RIP RAP
WITH FILTER FABRIC





MEMORANDUM OF AGREEMENT
BY AND BETWEEN
OFFUTT AIR FORCE BASE
AND
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
FOR
MISSOURI RIVER R-616 AND R-613 LEVEES

THIS MEMORANDUM OF AGREEMENT (this "AGREEMENT") is made by and between OFFUTT AIR FORCE BASE (the "BASE"), located in Sarpy County, Nebraska, and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT ("the NRD").

RECITALS:

WHEREAS, the NRD operates and maintains Missouri River Levee System Unit R-616 - 613 (the "LEVEE"), a project of the United States Army Corps of Engineers, that includes a reach of the LEVEE (the "BASE REACH") on the left bank (north side) of the Papillion Creek, running inside and generally parallel to the southwesterly boundary of the BASE.

WHEREAS, the LEVEE provides critical flood protection for the BASE, and the surrounding community.

WHEREAS, the BASE constructed and has operated and maintained storm sewers that discharge into the Papillion Creek through pipes that penetrate the LEVEE at the following locations in the BASE REACH portion of the LEVEE, to-wit:

Offutt #6 (NRD #PL-17A) located at LEVEE station 459+45L;

Offutt #7 (NRD #PL-17C) located at LEVEE station 459+16L;

Offutt #8 (NRD #PL-16) located at LEVEE station 458+44L; and,

Offutt #9 (NRD #PL-15) located at LEVEE station 452+34L

(the "STORM SEWERS"). A graphic depicting the BASE REACH and STORM SEWERS is attached hereto and labeled Exhibit A.

WHEREAS, the NRD is engaged in an effort to qualify the LEVEE for FEMA

accreditation requirements and is planning to commence construction of a project to upgrade, repair, and reconstruct several reaches of the LEVEE, including the aforesaid BASE REACH portion of the LEVEE, in order for the LEVEE to become eligible for FEMA accreditation; and, for that purpose, the NRD has retained an Engineering consulting firm (the "ENGINEER") to design such necessary repairs and reconstructions.

WHEREAS, the ENGINEER has determined that the STORM SEWERS are in poor repair and the LEVEE is inadequate based on FEMA accreditation requirements. The ENGINEER has advised that it is feasible and advisable that the STORM SEWERS be upgraded, repaired, and reconstructed and that the LEVEE and associated facilities in the BASE REACH be upgraded, repaired, and reconstructed as part of the effort to qualify the LEVEE for FEMA accreditation.

WHEREAS, the Parties desire to undertake the project of repairing, reconstructing, and maintaining the STORM SEWERS and upgrading, repairing, and reconstructing the LEVEE to the requirements necessary for acquiring FEMA accreditation (the "PROJECT").

WHEREAS, according to Air Force Instruction 32-1032, the PROJECT qualifies as a repair project; and, the terms "upgrade, repair, and reconstruction," as used in this AGREEMENT, pertains to all work required for the PROJECT.

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

1. **PURPOSE.** The purpose of this AGREEMENT is to provide for cooperative undertakings by and between the BASE and the DISTRICT, without any separate entity being created; and, the duties and responsibilities of each party shall be as defined by this AGREEMENT.
2. **PROJECT DESIGN AND ADMINISTRATION.** The NRD shall be responsible for design and engineering of the PROJECT and administration of the contract for construction of the PROJECT.
 - a) ENGINEER, or such other professional engineering consultant as the NRD may retain with approval in writing by the BASE Civil Engineer and the NRD'S General Manager, shall design and

engineer the PROJECT and administer the construction of the PROJECT.

- b) The NRD shall prepare written plans, specifications, and an operations and maintenance manual for the PROJECT (the "PROJECT PLANS"), and, prior to commencing construction of the PROJECT, shall obtain written approval thereof by the BASE Civil Engineer and the NRD'S General Manager; such approvals shall not be withheld unreasonably.

3. BASE CONTRIBUTION. Following approval of the plans, specifications, and operations and maintenance manual for the PROJECT by the BASE and NRD, as detailed above, but prior to the land acquisition and construction of the project, as detailed below, the BASE shall remit to the NRD a lump-sum payment of TEN MILLION DOLLARS (\$10,000,000) (the "BASE CONTRIBUTION"). Said payment shall constitute the only financial obligation of the BASE with regards to the PROJECT design and administration phase and land acquisition and construction phase of the PROJECT. The only remaining financial obligations of the BASE under this AGREEMENT shall be for the reimbursable expenses related to the operation and maintenance of the PROJECT as detailed in Paragraph 5, below.

4. LAND ACQUISITION AND CONSTRUCTION OF THE PROJECT. The NRD shall be responsible for acquisition of all rights-of-way necessary for construction, operation and maintenance of the PROJECT, and shall construct the PROJECT within 7 years after the execution of this AGREEMENT and receipt of the BASE CONTRIBUTION.

- a) Within a reasonable time subsequent to the execution of this AGREEMENT, the NRD shall retain or employ such appraisers, title searchers, title insurers, surveyors, attorneys, contractors, and other persons, firms and corporations as the NRD determines necessary for PROJECT design, rights-of-way acquisition and PROJECT construction pursuant to this AGREEMENT.
- b) All rights-of-way necessary for construction, operation, maintenance, and repair of the PROJECT, shall be acquired and held by the NRD. The BASE shall grant to the NRD such permits or licenses over BASE land as may be necessary for the NRD to construct the PROJECT.
- c) The NRD warrants that the PROJECT shall be constructed in accordance with the approved

PROJECT PLANS and the NRD agrees to enforce all implied and express warranties given by the contractor(s) in connection with the contract(s) for construction of the PROJECT. The NRD shall have sole discretion concerning the manner by which it enforces the implied and express warranties related to the construction of the PROJECT.

- d) The NRD shall obtain the permits, waivers, and authorities which shall be necessary for the lawful construction, operation, maintenance and repair of the PROJECT according to the approved PROJECT PLANS. The BASE shall provide reasonable assistance to the NRD in obtaining the necessary permits, waivers, and authorities upon request by the NRD.
- e) For the purpose of accomplishing the NRD'S responsibility in paragraphs 2 and 4, above, the NRD may employ and compensate surveyors, engineers, attorneys, contractors, and any other persons; may temporarily assign and employ its own employees and their supervisors; may temporarily assign and employ its own equipment, materials, supplies and fuel; may execute on its own behalf such contracts and other documents as the NRD determines necessary; and may pay such other expenses as the NRD determines necessary. Such efforts including the selection and procurement of persons and entities to employee and/or contract with for the performance of the PROJECT shall be performed in accordance with the NRD's published policies and procedures, at such times and in such manner as the NRD, in its sole discretion, determines necessary and reasonable.

5. OPERATION AND MAINTENANCE OF THE PROJECT. After completion of construction and acceptance of the PROJECT by the NRD and expiration of the construction warranties given by the NRD'S contractor(s) in connection with the contract(s) for construction of the PROJECT, the NRD shall be responsible for operating, maintaining, and repairing the PROJECT.

- a) For the purpose of operation, maintenance and repair of the PROJECT pursuant to this AGREEMENT, the NRD may employ and compensate surveyors, engineers, attorneys, contractors, and other persons, firms and corporations; may temporarily assign and employ its own maintenance employees and their supervisors; may temporarily assign and employ its own maintenance equipment, materials, supplies and fuel; may execute on its own behalf such contracts and other documents as the NRD determines necessary; and, may pay such other expenses as the NRD determines necessary. Such operation, maintenance, and repair

shall be performed in accordance with the approved operations and maintenance manual, at such times and in such manner as the NRD, in its sole discretion, determines necessary and reasonable. The NRD's selection and procurement of persons and entities for the operation, maintenance and repair of the PROJECT shall be performed in accordance with the NRD's published policies and procedures.

- b) From time to time, as actual monetary outlays or NRD employee or equipment assignments are made by the NRD for operating, maintaining, and repairing the PROJECT, the NRD shall prepare written or electronic submittal invoices, in the form as directed by the BASE, showing its expenses in operating, maintaining and repairing the PROJECT. Such invoices shall set out the following information with respect to each such outlay: the amount of such outlay, the person to whom such amount was paid, the purpose(s) for such outlay, and the date of such outlay; however, with respect to the NRD'S own maintenance personnel and their supervisors, and NRD-owned or NRD-leased equipment, materials, supplies and fuel utilized in operating, maintaining and repairing the PROJECT, the NRD may include in such invoices amounts representing the actual cost and expense to the NRD of providing such personnel, equipment, materials, supplies and fuel for the operation, maintenance and repair of the PROJECT.
 - c) Subject to the provisions of this Agreement, within 45 days after receipt of written or electronic submittal of invoices from the NRD, in the form as directed by the BASE, the BASE shall separately reimburse the NRD for all of the actual cost and expense to the NRD of providing such personnel, equipment, materials, supplies and fuel for the operation, maintenance and repair of the PROJECT. The BASE shall not be responsible for reimbursing the NRD for any invoiced amounts exceeding a total of \$100,000 annually, without the prior written approval of the BASE.
6. **FUNDS RESERVATION.** To insure that BASE funds are available to reimburse the NRD on a timely basis for the NRD'S reimbursable expenditures, the NRD shall not incur any obligations for which it is entitled to BASE reimbursement under this AGREEMENT until the NRD has requested from the BASE, and the BASE has issued to the NRD, a letter of funds reservation verifying that BASE funds are available to reimburse such obligation. Such a request for a letter of funds reservation must state the specific purposes and estimates of funds

required for the intended NRD obligations for the PROJECT. An annual Amendment of Solicitation/Modification of Contract may be used in lieu of a letter of funds reservation for each federal fiscal year for which BASE reimbursement will be sought under this AGREEMENT. The NRD shall not request reservations of BASE funds in excess of the reimbursement limits provided by this Agreement, and the BASE shall not unreasonably refuse to promptly issue letters of funds reservation requested by the NRD for BASE funds reservations within such limits. The NRD shall be excused from its obligations to maintain and operate the PROJECT in the event BASE funds are not available to reimburse the NRD.

7. DURATION. This AGREEMENT shall be effective upon the date of its execution, and shall have an initial term of seven (7) years from and after the effective date (the "INITIAL TERM"). At the expiration of the INITIAL TERM of this AGREEMENT, if this AGREEMENT shall then be in full force and effect and the BASE shall have fully performed all of its terms and conditions, the BASE shall have four (4) options to extend this AGREEMENT, upon the same terms and conditions, for periods each of seven (7) years. The words "term of this AGREEMENT" shall include and apply to the INITIAL TERM and any such seven-year extension thereof. Such options shall automatically be considered conclusively presumed to have been exercised in sequence unless, not more than ninety (90) days and not less than sixty (60) days prior to the expiration of the then current term, the BASE gives the NRD a notice of the intent of the BASE not to exercise the next such option in writing. The termination of this AGREEMENT during the INITIAL TERM shall terminate such options. The NRD shall no longer be obligated to maintain and/or operate the PROJECT following expiration or termination of this AGREEMENT.

8. LOCAL PROJECT. The PROJECT is a local project to be managed by the NRD, which shall abide by its then effective policies and procedures in managing the PROJECT, including without limitation its policies and procedures for the bidding and selection of contractors, professionals, and other persons retained by the NRD related to the PROJECT. The NRD shall not be required to utilize any general or particular procurement processes, requirements, or goals established by any federal agency.

9. TERMINATION. This AGREEMENT may be terminated by mutual agreement of the parties.

10. SEVERABILITY. In the event any portion of this AGREEMENT is held invalid or

unenforceable for any reason, it is agreed that any invalidity or unenforceability shall not affect the remainder of this AGREEMENT and 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.

- 11. ASSIGNMENT.** Neither party shall assign any portion of this AGREEMENT without the prior written consent of the other party. Nor shall any successor or assignee of either Party have any rights or obligations under this AGREEMENT without the prior written approval of the other party. No covenants in this AGREEMENT are intended to run with the land.
- 12. DISCRIMINATION.** The parties shall not, in the performance of the terms of this AGREEMENT, discriminate or permit discrimination against any parties on account of race, national origin, sex, age, or political or religious affiliations in violation of federal or state laws or local ordinances.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the dates hereinafter indicated.

Dated: _____

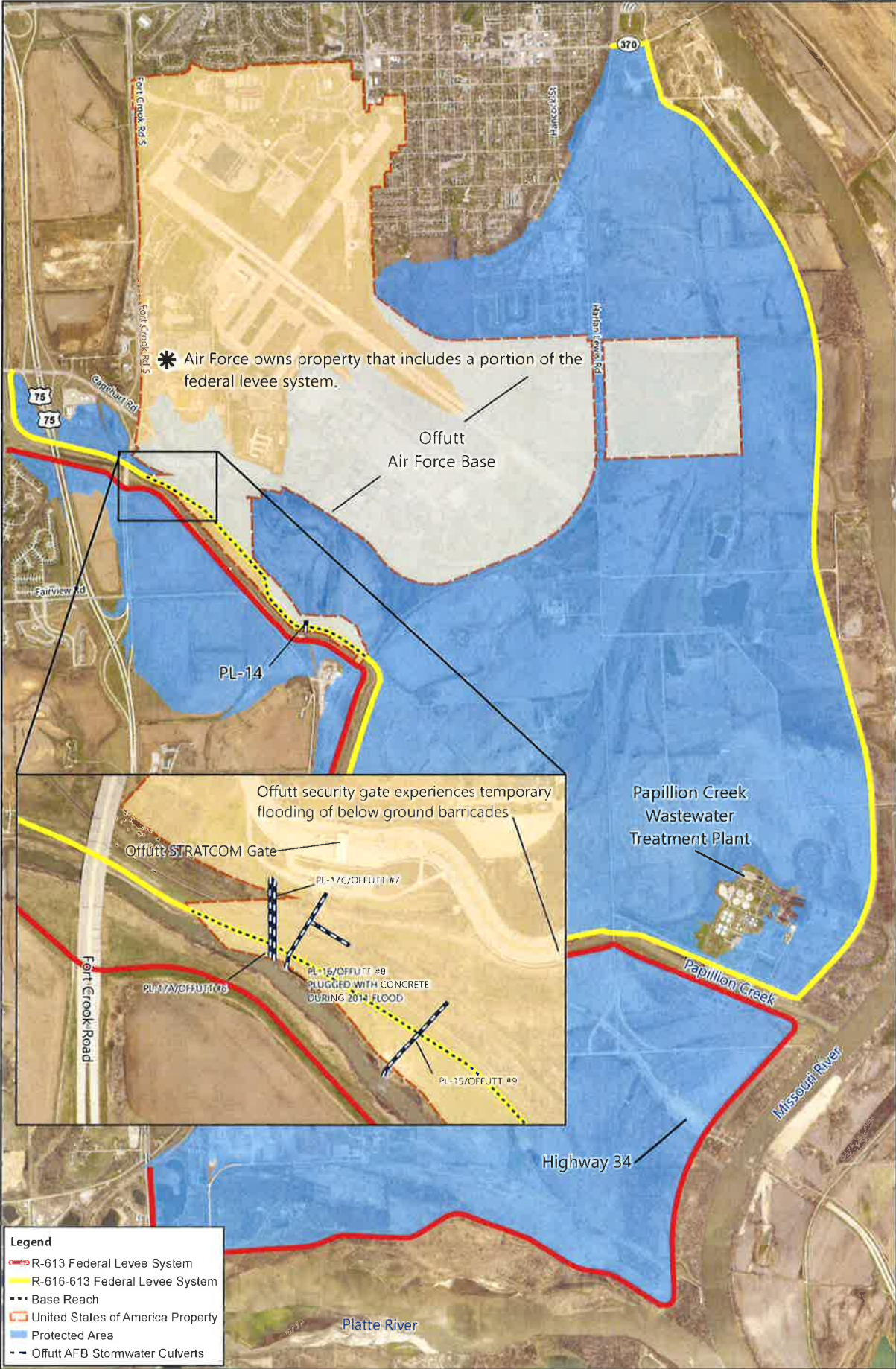
OFFUTT AIR FORCE BASE

By: _____
Installation Commander

Dated: _____

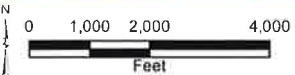
**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager



Protected Areas Map

Federal Levee System R-613 and Federal Levee System R-616-613
Papio-Missouri River NRD



MISSOURI RIVER LEVEE ACCREDITATION UNITS R-613 AND R-616 FACT SHEET

December 2014



Finding Solutions

SERVING Sarpy, Douglas, Washington, Burt, Thurston and Dakota Counties.

The NRD is governed by an elected, 11-member Board of Directors.

THE MISSION of the Papio-Missouri River NRD is to wisely conserve, manage and enhance our soil, water, wildlife and forest resources.

- *Flood Control
- *Water Quality
- *Groundwater Resources
- *Soil Conservation
- *Outdoor Recreation
- *Domestic Water Supply
- *Fish and Wildlife Habitat
- *Forest Resources
- *Environmental Education

Project Description: 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 Missouri River, Platte River, and Papillion Creek high flows. The protected areas include significant infrastructure including Offutt Air Force Base, the City of Omaha Papillion Creek Wastewater Treatment Plant, major transportation corridors, industrial development areas, as well as residential, commercial, agricultural, and recreation property. As the local sponsor of the levees, the Papio-Missouri River Natural Resources District is responsible for the operation and maintenance of the Levees.

The Levees provide protection consistent with Federal Emergency Management Administration (FEMA) guidelines for floods with a 1% annual chance exceedence (100 year flood) and have been included on previous Flood Insurance Rate Maps (FIRMs). The process of updating the current FIRMs has included a reanalysis of the flood flows and the current effectiveness of the Levees. That reanalysis indicates the need for upgrades to the Levees, primarily height increases, to continue to provide the same level of protection. Accreditation of the Levees by FEMA for inclusion on the upcoming FIRMs requires that the District certify that the Levees provide protection under FEMA standards. The District is in the process of finalizing the reanalysis and designing the improvements and will make the FEMA required modifications to the levees to ensure they are again shown as providing protection on the FIRMs.

| Item | R-613 | R-616 |
|--------------|---------------------|--------------|
| Construction | \$7,970,000 | \$11,579,000 |
| Land Rights | \$468,000 | \$125,000 |
| Engineering | \$1,688,000 | \$2,341,000 |
| Subtotals | \$10,125,000 | \$14,045,000 |
| Total | \$24,170,000 | |

Project Schedule:

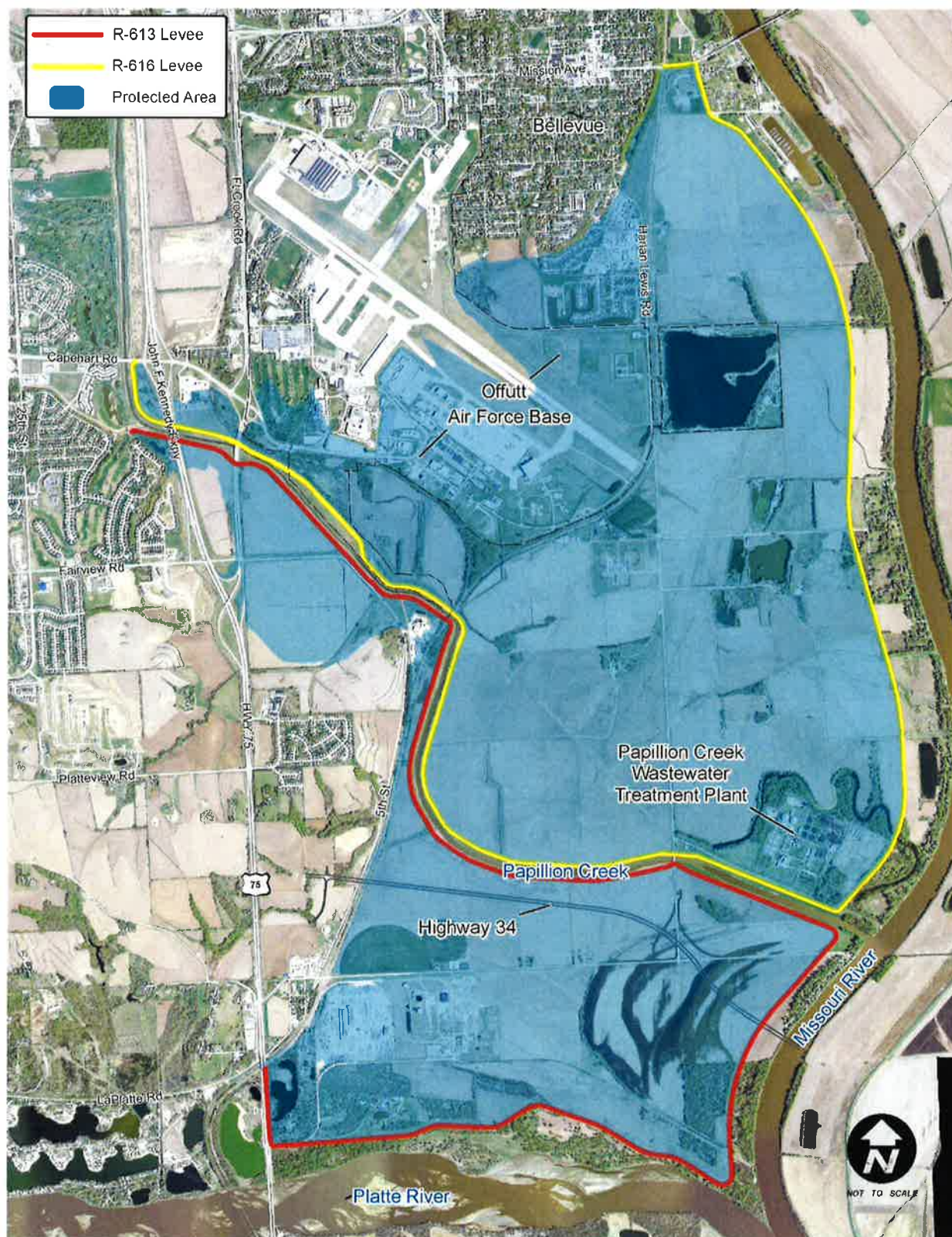
- Initial Investigation 2009
- Analysis and Design 2010-2014
- Construction 2015-2017
- FEMA Accreditation Fall 2017

Papio-Missouri River Natural Resources District Headquarters • 8901 S. 154th Street, Omaha, Nebraska 68138

Telephone 402-444-6222 • Field Offices in Blair, Tekamah, Walthill and Dakota City

MISSOURI RIVER LEVEE ACCREDITATION

December 2014



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