

Agenda Item: 8.

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Amanda Grint, Water Resources Engineer

SUBJECT: Review and Recommendation on Interlocal Agreement with the City of Omaha for a Regional Nonpoint Source Watershed Plan

DATE: July 1, 2015

The City of Omaha and the District have been accepted for a grant from the Nebraska Department of Environmental Quality (NDEQ) to lead a Papio-Missouri River Basin Water Quality Management Plan (“Plan”) for the Omaha metropolitan area (including the Papio watershed within Douglas and Sarpy Counties, and the Missouri River tributary drainage areas within Omaha and Bellevue) and the District’s jurisdiction including some of Washington County, Burt, Thurston and Dakota Counties. Since the grant approval, the City of Omaha contracted with FYRA to develop the Project Implementation Plan (PIP) that must be approved by Environmental Protection Agency (EPA) prior to official approval of the grant. The proposed interlocal agreement for completion of the Plan is attached for consideration and is contingent upon EPA approval of the PIP.

The grant is intended to fund watershed plans that address 9 water quality elements specified by the Environmental Protection Agency (EPA). The Papio Creek Watershed Plan completed in 2009 by the Papillion Creek Watershed Partnership and updated in May 2014, did address water quality but does not meet all 9 criteria as they were not developed at the time. This grant allows for building on the original plan and also includes that level of water quality planning for the upper counties in the District in an effort to identify priority areas and priority projects that then could be eligible for NDEQ 319 funding. The costs associated with developing the Plan are broken down by area are:

	PIP (not included in grant)	Grant Funding	Local Match	Total Cost	% of Total
Omaha Metro Area	\$6,550	\$79,800	\$35,000 PCWP \$18,200 Omaha	\$139,550	42%
Papio NRD District	\$9,050	\$110,200	\$73,500 District	\$192,750	58%
Totals	\$15,600	\$190,000	\$126,700	\$332,300	

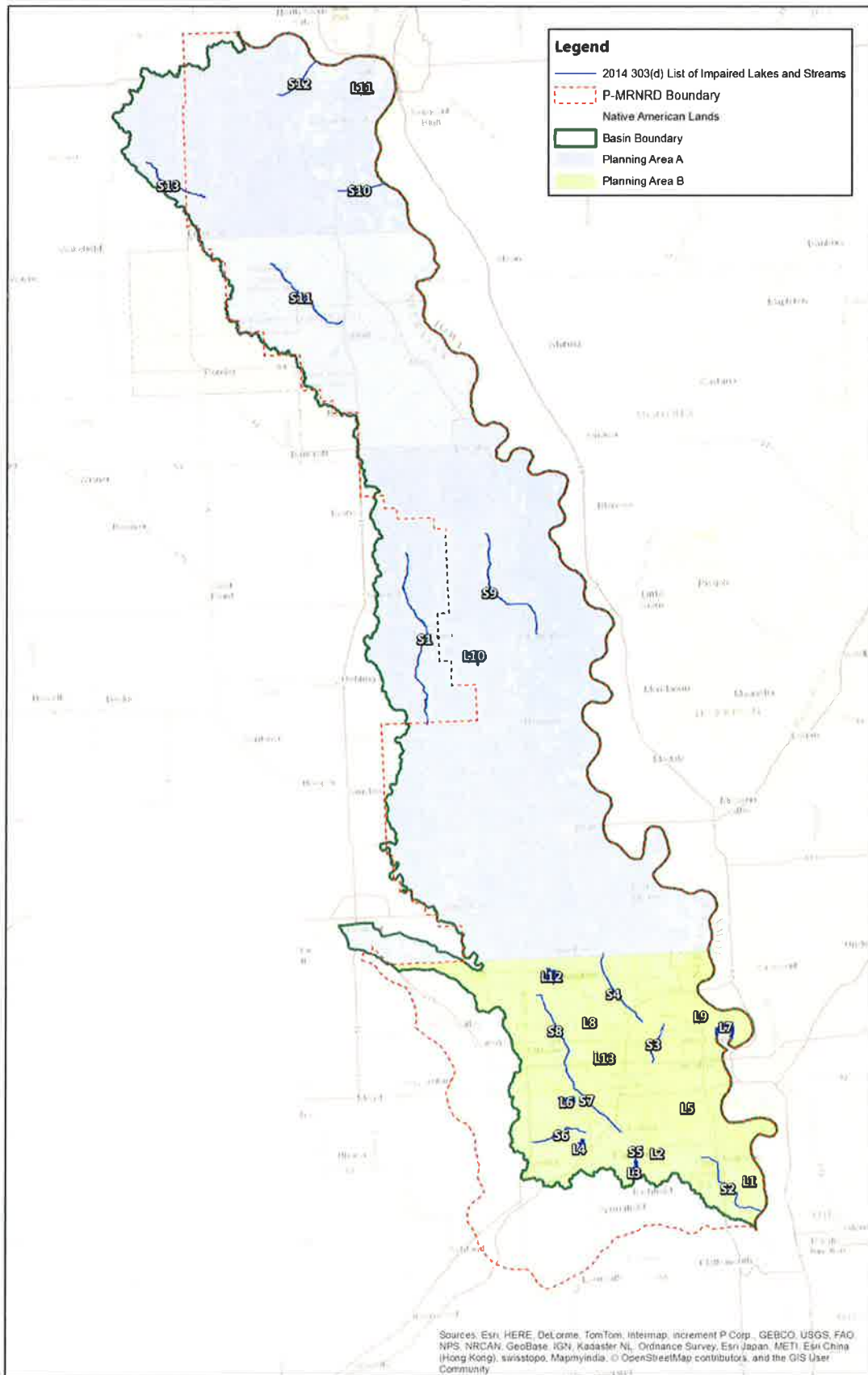
Details of the interlocal agreement are as follows:

- The District will reimburse the City of Omaha for 58% of the cost to complete the PIP which is not included in the grant award.
- The District will be the grant recipient and will contract with FYRA to complete the Plan.

- The City of Omaha will manage the Plan for the Omaha Metro Area.
- The Papillion Creek Watershed Partnership supports the Plan and will financially contribute \$35,000 to the Omaha Metro Area portion of the Plan. At the June 25, 2015 Partnership meeting the members reviewed the request and voted to approve the contribution. Voting sheet is attached.
- The City of Omaha will contribute the remaining local match of the Omaha Metro Area Plan.
- The District will manage and contribute the local match for the areas outside the Omaha Metro Area.

Staff recommends that the Subcommittee recommend to the Board that the General Manager be authorized to enter in to an interlocal agreement with the City of Omaha for the development of the Papio-Missouri River Basin Water Quality Management Plan with a District contribution not to exceed \$192,750 and that the General Manager as Administering Agent for the Papillion Creek Watershed Partnership move \$35,000 from the Partnership Fund to the District Account 01-05-187-3120 in FY16 for the Papillion Creek Watershed Partnership contribution, subject to EPA approval of the grant and subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

Figure 1 – Basin Map





**Record of Vote
June 25, 2015 - 10:00 AM to 12:00 PM – Board Room
Natural Resources Center, 8901 S. 154th Street, Omaha, NE**

Vote to support the development of and use \$35,000 from the Partnership Fund to help cover the local share of the EPA 319 Grant for the basin-wide water quality watershed management plan.

Community	Voting Representative	Vote
Bellevue		
Boys Town		
Gretna	Kris Farris	Yes
La Vista	John Kottmann	Yes
Omaha	Nina Cudahy	Yes
Papillion		
Ralston		
Sarpy County	Bruce Fountain	Yes
P-MRNRD	Marlin Petermann	Yes



INTERLOCAL COOPERATION AGREEMENT
Between
THE CITY OF OMAHA, NEBRASKA,
and
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
PAPIO-MISSOURI RIVER BASIN
WATER QUALITY MANAGEMENT PLAN

THIS AGREEMENT (hereinafter “THIS AGREEMENT”) is made by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (the “DISTRICT”), and the **CITY OF OMAHA, NEBRASKA** (the “CITY”)(collectively the DISTRICT and the CITY are referred to as the “PARTIES”), pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1997, et seq.).

WHEREAS, the PARTIES desire to develop and share in the costs of a Papio-Missouri River Basin Water Quality Management Plan for the Omaha metropolitan area (including the Papio watershed within Douglas and Sarpy Counties and the Missouri River tributary drainage areas within Omaha and the City of Bellevue, Nebraska) and a portion of the area under the DISTRICT’S jurisdiction (the “PROJECT”);

WHEREAS, the CITY and DISTRICT submitted an application which was accepted by the Nebraska Department of Environmental Quality (“NDEQ”) for a grant under the Environmental Protection Agency’s (“EPA”) § 319 of the Clean Water Act grant program (the “GRANT”);

WHEREAS, the PARTIES’ GRANT application is subject to approval by the U.S. EPA prior to the PARTIES participation in the GRANT;

WHEREAS, the CITY contracted with FRYA Engineering, LLC (“CONSULTANT”) for the preparation of the Project Implementation Plan (“PIP”), which was completed and submitted as part of the GRANT application process;

WHEREAS, if the PROJECT is approved by the EPA, the GRANT will require a forty percent (40%) local contribution for the costs of the PROJECT; and,

WHEREAS, the Papio Creek Watershed Partnership (“PCWP”) has agreed to contribute funds as part of the local contribution for the GRANT.

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

1. PROJECT BENEFITS. The PARTIES do hereby find and determine that the PROJECT will be of predominantly general benefit to the CITY and the DISTRICT, with only an incidental special benefit.

2. PROJECT PARTICIPANTS. The PROJECT shall be undertaken without any separate entity being created, and the duties and responsibilities of the PARTIES with respect to the PROJECT shall be as defined by THIS AGREEMENT.

3. THE PROJECT IMPLEMENTATION PLAN. The costs associated with the preparation of the PIP are not reimbursable under the GRANT. Within forty five (45) days of receipt of an invoice from the CITY reflecting its costs associated with its contract with CONSULTANT for the preparation of the PIP, the DISTRICT shall reimburse the CITY fifty-eight percent (58%) of those costs. The DISTRICT’S reimbursement obligation for the PIP shall not exceed nine thousand fifty dollars (\$9,050).

4. THE BASIN PLAN. The DISTRICT shall enter into an agreement with CONSULTANT (the “CONSULTING CONTRACT”) for preparation of the Papio-Missouri River Basin Water Quality Management Plan (the “BASIN PLAN”) as detailed in the PIP. The CITY shall review and approve the CONSULTING CONTRACT prior to the DISTRICT’S execution of the CONSULTING CONTRACT, such review and approval not to be unreasonably delayed or withheld. The DISTRICT shall be responsible for payment of the costs and fees associated with the CONSULTING CONTRACT. The CONSULTANT’S fees and costs under the CONSULTING CONTRACT shall not exceed three hundred sixteen thousand seven hundred dollars (\$316,700). The CONSULTING CONTRACT shall incorporate the BASIN MAP, attached hereto as Exhibit A and referred to as the BASIN MAP. The BASIN MAP divides the program area into two areas, PLANNING AREA A and PLANNING AREA B. The CONSULTING CONTRACT shall

divide the CONSULTANT'S tasks between PLANNING AREA A and PLANNING AREA B.

a) PLANNING AREA A. The DISTRICT shall be responsible for and direct the CONSULTANT'S work in PLANNING AREA A.

b) PLANNING AREA B. The CITY shall be designated as the DISTRICT'S authorized representative for the CONSULTANT'S work in PLANNING AREA B, and shall oversee, manage, and direct the CONSULTANT'S work in PLANNING AREA B. Without the DISTRICT'S prior written approval, the CITY shall not change the CONSULTANT'S scope of work or direct the CONSULTANT to undertake any tasks that will result in increased costs under the CONSULTANT CONTRACT.

5. CITY CONTRIBUTION. The CITY shall be responsible for forty two (42%) of the local share portion of the GRANT. To satisfy the CITY'S local share contribution, within forty five (45) days of receipt of an invoice from the DISTRICT, the CITY shall reimburse the DISTRICT eighteen thousand two hundred dollars (\$18,200) for the costs associated with the CONSULTING CONTRACT. Additionally, the Papio Creek Watershed Partnership ("PCWP") shall transfer thirty five thousand dollars (\$35,000) to the DISTRICT as part of the CITY'S local share contribution. The CITY shall provide its assistance and expertise as requested by the DISTRICT.

6. DISTRICT'S CONTRIBUTION. The DISTRICT shall be responsible for fifty eight (58%) of the GRANT'S local share requirement.

7. NDEQ and EPA COMMUNICATIONS. The DISTRICT shall be the managing agency for the GRANT, and shall be responsible for submission of the GRANT requirements to the NDEQ and the EPA.

8. EPA and NDEQ APPROVAL. The EPA'S approval of the PARTIES' GRANT application and acceptance of the PROJECT is a condition precedent to any of the duties and obligations for either of the PARTIES under this AGREEMENT. Additionally, it is understood by the PARTIES that the GRANT shall be for no less than one hundred ninety thousand dollars (\$190,000), and the award of the GRANT for no less than this amount shall also be a condition precedent to THIS AGREEMENT. In the

event either of the condition precedents stated in this paragraph do not occur, this AGREEMENT shall be void.

9. EFFECTIVE DATE AND TERM. THIS AGREEMENT shall be in force and effect upon and after its execution by the PARTIES hereto, and shall terminate upon the earlier of either the termination of the GRANT or the PARTIES' acceptance of the BASIN PLAN.

10. NON-DISCRIMINATION. The PARTIES hereto shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination by any of its contractors in violation of federal or state laws or local ordinances because of race, disability, color, sex, age, political or religious opinions, affiliations or national origin.

11. DRUG FREE POLICY. Each PARTY provides assurance that it has established and maintains a drug free workplace policy.

12. ENTIRE AGREEMENT. THIS AGREEMENT contains the entire agreement between the PARTIES, and each PARTY hereto agrees that neither the other PARTY, nor any of the officers, agents, employees or contractors of the other PARTY, have made any representations or promises with respect to the PROJECT not expressly contained herein.

13. TIME. Time is of the essence of THIS AGREEMENT.

14. DEFAULT. If either PARTY shall default hereunder, the other PARTY shall be entitled to enforce specific performance of THIS AGREEMENT or may have any other remedy allowed by law or equity.

15. NOTICES. All notices herein required shall be in writing and shall be served on the PARTIES at their principal offices, or at such other address as either PARTY may hereafter designate to the other PARTY in writing for service of notice to itself. The mailing of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service hereunder.

16. BINDING EFFECT. The provisions of THIS AGREEMENT shall inure to the benefit of, and shall be binding upon, the successors in interest and assigns of the respective PARTIES hereto.

17. APPLICABLE LAW. Each PARTY to THIS AGREEMENT shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance and terms of THIS AGREEMENT.

18. SEVERABILITY. In the event any portion of THIS AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any such invalidity or unenforceability shall not affect the remainder of THIS AGREEMENT, 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.

19. CAPTIONS. Captions used in THIS AGREEMENT are for convenience and not for use in the construction of THIS AGREEMENT.

20. INTERLOCAL COOPERATION ACT PROVISIONS. THIS AGREEMENT shall not create any separate legal or administrative entities. THIS AGREEMENT shall be administered jointly by the PARTIES, though 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. THIS AGREEMENT does not authorize the levying, collecting or accounting of any tax.

[SIGNATURES ON FOLLOWING PAGE]

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 _____, 2015.

THE CITY OF OMAHA

By _____

JEAN STOTHERT, Mayor

Attest:

City Clerk

The DISTRICT has executed THIS AGREEMENT on _____, 2015.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
JOHN WINKLER, General Manager

Figure 1 – Basin Map

