



Memorandum

Date: July 19, 2019
To: Each Director
From: Paul Zillig 
Subject: Executive Subcommittee Meeting – Background Information

The Executive Subcommittee will meet at 6:15 pm on Wednesday, July 24th (just prior to the Board Meeting) in the NRD Office in Lincoln. There is one action item they will consider. Listed below is some background information.

#7a. Consideration of a Representation Agreement with Water Strategies, LLC. I have attached a copy of a proposed 2-year representation agreement, both Lower Platte North NRD and Papio-Missouri River NRD are also participants in the agreement. Water Strategies' contacts within the US Army Corps of Engineers are very helpful along with contacts with other federal agency leadership, tracking federal legislation, coordinating communication with Congress, and reports on weekly and monthly federal issues and actions.

Our previous 3-year agreement between the same 3 NRDs and Water Strategies has expired and Papio Missouri River NRD (our designated "Lead NRD") coordinated and negotiated the proposed new 2-year agreement. The fees are split evenly between the 3 NRDs. For FY'20 the fee is \$5,400/month (\$1,800/NRD/month) and for FY'21 the fee is \$5,700/month (\$1,900/NRD/month).

The other NRDs are in the process of considering approval of this agreement. The Executive Subcommittee will consider this agreement at their meeting on the 24th.

Enc. 1

pc: Steve Seglin
Corey Wasserburger

REPRESENTATION AGREEMENT

This representation agreement is among Lower Platte North Natural Resources District, Lower Platte South Natural Resources District, and Papio-Missouri River Natural Resources District, three Nebraska natural resources districts (together, the "LOWER PLATTE NRDs"), and WATER STRATEGIES, a District of Columbia limited liability company ("WATER STRATEGIES").

The LOWER PLATTE NRDs are local government entities with responsibilities to protect Nebraska's natural resources. The LOWER PLATTE NRDs are interested in furthering and supporting water development projects and improving their interactions with the U.S. Army Corps of Engineers (Army Corps).

WATER STRATEGIES is qualified and experienced in managing, promoting, tracking, and advocating for federal legislation and agency programming solutions on water-related issues involving the U.S. Congress, the Army Corps, other federal agencies, and organizations that work in western water.

It is in the best interests of all three LOWER PLATTE NRDs to share in the costs and combine their efforts of advocating for federal legislation on water-related issues.

This agreement is made pursuant to authority provided in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13-801 to 13-827) and whenever possible, this agreement shall be constructed in conformity therewith.

The parties therefore agree as follows:

1. **SCOPE OF SERVICES.** WATER STRATEGIES shall advocate on behalf of the LOWER PLATTE NRDs with federal agencies and Congress during the term of this agreement. Duties will include the following:
 - a. *Federal Advocacy.* Meeting on behalf of the LOWER PLATTE NRDs with federal agency leadership in Washington, DC; and meeting on behalf of the LOWER PLATTE NRDs with key members of Congress and committee staff in Washington, DC.
 - b. *Bill Tracking.* Monitoring and reporting to the LOWER PLATTE NRDs on proposed relevant water legislation and regulatory developments.
 - c. *Communications.* Informing Congress and the Army Corps about the LOWER PLATTE NRDs' work, positions, needs, and concerns; strengthening the current working relationship between the LOWER PLATTE NRDs and the Army Corps; and drafting and delivering letters and briefing materials to Congress, federal agencies, and other organizations as needed.
 - d. *Reporting.* Providing a monthly report to the LOWER PLATTE NRDs.

2. **LEAD NRD.** The LOWER PLATTE NRDs will designate in writing to Water Strategies a Lead NRD who will be responsible for administration of this agreement on behalf of the LOWER PLATTE NRDs. The Lead NRD will make monthly payments to Water Strategies and receive reimbursement from the other two LOWER PLATTE NRDs. It is expressly agreed to as between the LOWER PLATTE NRDs that they shall share equally in all payments associated with this agreement unless agreed to otherwise in writing hereafter. Reimbursements to the Lead NRD shall be made by the other two LOWER PLATTE NRDs on or before the next billing period.
3. **PAYMENT FOR SERVICES.** For and in consideration of the services to be provided by WATER STRATEGIES, the LOWER PLATTE NRDs shall pay WATER STRATEGIES as follows:
 - a. A monthly retainer fee shall be rendered by the LOWER PLATTE NRDs on or before the 15th of each month according to the following schedule:
 - \$5,400.00 from July 1, 2019, to June 30, 2020;
 - \$5,700.00 from July 1, 2020, to June 30, 2021;
 - b. Reimbursement, preapproved by the Lead NRD, of necessary expenses at actual cost, including, but not limited to: document production, overnight delivery, courier services, business meals, and out-of-town travel. In-town travel will not be billed for, with the exception of those expenses required to accompany LOWER PLATTE NRDs members. Provided, however, that preapproval shall not be necessary for expenses totaling less than \$150.00 during a billing period.
4. **TERM OF AGREEMENT.** The term of this agreement is the period beginning on July 1, 2019, and ending on June 30, 2021. This agreement automatically extends on a month-to-month basis after June 30, 2021, unless the LOWER PLATTE NRDs or WATER STRATEGIES provides 30 days advance written notice to the non-canceling party of intent to cancel or modify this agreement. On termination, WATER STRATEGIES will be paid for all authorized work and authorized expenses incurred up to the termination date.
5. **STATUS OF PARTIES.** This agreement does not constitute a principal and agent relationship, an employment contract, or a joint venture between the parties. The status of WATER STRATEGIES as to this agreement is that of an independent contractor. The LOWER PLATTE NRDs shall not be responsible for withholding taxes with respect to the WATER STRATEGIES' compensation. The Lead NRD will provide an IRS Form 1099 to Water Strategies each January.
6. **CANCELLATION OF AGREEMENT.** Each of the parties, the LOWER PLATTE NRDs and WATER STRATEGIES, may cancel this agreement at any time and for any reason by giving thirty day's written notice of the cancellation. At their sole discretion, the LOWER PLATTE NRDs will determine whether to require that WATER STRATEGIES perform its services for the LOWER PLATTE NRDs during the notice period. If the LOWER PLATTE NRDs require WATER STRATEGIES to perform services during the notice period, WATER STRATEGIES will receive full compensation for the duration of the notice period.

7. **COMPLIANCE WITH FEDERAL LAW.** WATER STRATEGIES agrees to comply with registration, reporting, recusal, and other requirements of federal or other applicable laws arising from the performance of this agreement.
8. **COMPLIANCE WITH THE LAWS OF THE STATE OF NEBRASKA.** The LOWER PLATTE NRDs agree to comply with the requirements of the State of Nebraska or other applicable laws arising from the performance of this agreement.
9. **LIMITATION OF LIABILITY.** WATER STRATEGIES agrees, to the fullest extent permitted by law, to not seek damages, liabilities, and costs where recoverable by law from the LOWER PLATTE NRDs, their officers and employees, but only to the extent to which the damages, liabilities, or costs are caused by an act of negligence or negligent omission, recklessness, or intentionally wrongful conduct of WATER STRATEGIES in the performance of services under this agreement.

The LOWER PLATTE NRDs agree, to the fullest extent permitted by law, to not seek damages, liabilities, and costs where recoverable by law from WATER STRATEGIES, its employees and subcontractors, but only to the extent to which the damages, liabilities, or costs are caused by an act of negligence or negligent omission, recklessness, or intentionally wrongful conduct of the LOWER PLATTE NRDs in the performance of this agreement.

10. **WAIVER.** No waiver of satisfaction of a condition or failure to comply with an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation.
11. **SEVERABILITY.** The provisions of this agreement are severable. In the event that any provision of this agreement is found to be legally unenforceable, the unenforceability of such a provision shall not prevent enforcement of any other provision of this agreement.
12. **SUCCESSORS AND ASSIGNS.** Neither the LOWER PLATTE NRDs nor WATER STRATEGIES will assign or delegate any part of their rights or responsibilities under this agreement unless the other party agrees in advance in writing to the assignment or delegation. In the event of dissolution of all of the LOWER PLATTE NRDs, this agreement will terminate. In the event of any merger, consolidation, or reorganization involving any of the LOWER PLATTE NRDs, this agreement becomes an obligation of any legal successor or successors to the said LOWER PLATTE NRDs.
13. **NOTICE.** Any notice required under this agreement shall be given in writing, either by personal service or by registered or certified mail, postage prepaid, addressed to the respective party at its then principal place of business.

If such notice is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice is given by mail, such notice shall be conclusively deemed given five business days after deposit in the United States mail addressed to the

party to whom such notice is to be given as follows:

WATER STRATEGIES: Kris Polly
President
Water Strategies LLC
4 "E" Street, Southeast
Washington, DC 20003

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

The parties may change their respective addresses and to whom notice shall be given for purposes of this paragraph by written notice given in the manner provided above.

- 14. GOVERNING LAW.** The laws of the State of Nebraska, without giving effect to its principles of conflicts of law, govern all adversarial proceedings arising out of agreement.
- 15. COMPLETE AGREEMENT.** This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement this and supersedes all other agreements, whether written or oral, between the parties.
- 16. EFFECTIVENESS; DATE.** This agreement will become effective when the parties have signed it. The date of this agreement will be the date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).
- 17. DUPLICATE COUNTERPARTS / AUTHORITY TO EXECUTE.** This agreement may be executed in any number of counterparts, each of which shall be an original, but all such counterparts shall constitute one and the same instrument. This agreement is hereby approved and executed by the following parties on the dates shown below. The undersigned individuals represent and warrant that they are expressly and duly authorized by their respective entities to execute this agreement and to legally bind their respective entities as set forth in this agreement.

LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT

BY: _____

PRINT NAME & TITLE: _____

DATE: _____

LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT

BY: _____

PRINT NAME & TITLE: _____

DATE: _____

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

BY: _____

PRINT NAME & TITLE: _____

DATE: _____

WATER STRATEGIES LLC

BY:  _____

PRINT NAME & TITLE: President & CEO

DATE: July 1, 2019