

City of Scottsbluff, Nebraska

Monday, August 29, 2016

Regular Meeting

Item Reports4

Council to consider Memorandum of Agreement with the Wyoming Water Development Commission for the Platte Alliance Water Supply, Level II Study and authorize the Mayor to execute the contract.

Staff Contact: Nathan Johnson, City Manager

**MEMORANDUM OF AGREEMENT BETWEEN
WYOMING WATER DEVELOPMENT COMMISSION
AND
CITY OF SCOTTSBLUFF, NEBRASKA
PLATTE ALLIANCE WATER SUPPLY, LEVEL II STUDY**

1. **Parties.** The parties to this Memorandum of Agreement [MOA] are the Wyoming Water Development Commission [WWDC], whose address is 6920 Yellowtail Road, Cheyenne, Wyoming 82002; and the City of Scottsbluff, Nebraska [Scottsbluff NE], whose address is 2525 Circle Drive, Scottsbluff, Nebraska 69361.

2. **Purpose.** The purpose of this MOA is to describe the terms and conditions of a joint agreement to fund and conduct the Platte Alliance Water Supply [PAWS] Level II project [Project], a regional interstate drinking water feasibility study. The Project was authorized by the Wyoming Legislature as part of the Wyoming Water Development Program, pursuant to the 2016 Wyo. Session Laws. Ch. 38. As such, the Project shall be completed in accordance with all Water Development Program statutes, criteria, and regulations.

3. **Term of MOA.** This MOA shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOA and shall remain in full force and effect until December 31, 2019.

4. **Authority.** The WWDC is authorized to enter into this MOA pursuant to Wyo. Stat. Ann. § 16-1-101. Scottsbluff NE is authorized to enter into this MOA pursuant to Neb. Rev. Stat. § 13-804. A separate legal or administrative entity is not created by this MOA.

5. **Payment.** Scottsbluff NE agrees to pay the WWDC fifty percent (50%) of the total for consultant contract services completed for the Project. WWDC agrees to pay fifty percent (50%) of the total for consultant contract services completed for the Project. The total payment by both parties for consultant contract services completed for the Project shall not exceed three hundred ninety thousand dollars (\$390,000). All payments for services completed shall be made from the Scottsbluff NE 2016 PAWS project budget and from the WWDC New Development Water Account I – 2016 PAWS Level II planning project budget. Both parties shall provide timely payment in accordance with this MOA.

6. **Data to be Furnished.** All initial, interim, and final information, memoranda, data, reports, and maps as are furnished and/or available to either party for the Project shall be furnished to the other party without charge.

7. **Responsibilities of WWDC.**

A. Project Management. In implementing, conducting, and completing the Project, the WWDC shall:

MOA BETWEEN WYOMING WATER DEVELOPMENT COMMISSION AND CITY OF SCOTTSBLUFF, NEBRASKA
PLATTE ALLIANCE WATER SUPPLY, LEVEL II STUDY

- (i) After consultation with, and advice from Scottsbluff NE, provide the Project consultant all criteria and full information regarding its requirements for the Project and project specifications, as defined by an itemized scope of services for a consultant contract.
- (ii) Allow Scottsbluff NE a role in the WWDC consultant services selection process, including review of proposals, ranking of proposals, interviews, and the final selection decision. The consultant selection will follow guidelines approved by the WWDC on August 19, 2011. Per Wyo. Stat. Ann. § 9-2-1031(a) through 9-2-1031(b), the WWDC shall make the final decision on the consultant services selection.
- (iii) After consultation with, and advice from Scottsbluff NE, enter into and execute the consultant services contract in accordance with Wyo. Stat. Ann. § 9-2-1032, and thereafter administer the contract until cessation.
- (iv) Provide day-to-day project management.
- (v) Copy and submit to Scottsbluff NE all pay invoices, documentation, and status reports for review and request of match payment for total services completed.
- (vi) Remit all invoices to the consultant upon receipt of match payment by Scottsbluff NE.
- (vii) Provide Scottsbluff NE a schedule of all project meetings and provide proper notice and invitation to unscheduled meetings.
- (viii) Provide to Scottsbluff NE all consultant-generated work products.
- (ix) Provide technical input throughout the project on all consultant-generated work products.
- (x) Share all project communication and correspondence with Scottsbluff NE.
- (xi) Examine all interim, draft, and final submittals (studies, reports, summaries, technical memoranda, graphics, estimates of construction costs, and other documents related to the project) and promptly render in writing to Scottsbluff NE the WWDC's opinions pertaining thereto, subject to Scottsbluff NE's right of approval of all final submittals as set forth in paragraph 9 below.

B. Regional/State Facilitation. The WWDC shall act as the lead governmental entity in fostering interest, soliciting partners, and introducing project concepts to potential beneficiary communities and water users in eastern Wyoming. WWDC shall also lead in communicating project concepts and opportunities to appropriate State of Wyoming governmental agencies, sub-governmental agencies/organizations, state legislature representatives, state executive branch officials, and Wyoming's U.S. congressional delegation.

8. Responsibilities of Scottsbluff NE.

A. Project Management. As a cooperating party in implementing, conducting, and completing the Project, Scottsbluff NE shall:

- (i) Provide the Project consultant and WWDC all criteria and full information regarding its requirements for the Project and project specifications, as defined and guided by an itemized scope of services for a consultant contract.
- (ii) Consult with and advise the WWDC regarding consultant selection for the Project.
- (iii) Share all project communication and correspondence with the WWDC.
- (iv) Provide technical input throughout the project on all consultant-generated work products.
- (v) Examine all interim, draft, and final submittals (studies, reports, summaries, technical memoranda, graphics, estimates of construction costs, and other documents related to the project) and promptly render in writing to the WWDC Scottsbluff NE's opinions pertaining thereto, subject to the right of approval of all final submittals as set forth in paragraph 9 below.

B. Remittance for Consultant Services Invoicing to WWDC. Upon receipt from the WWDC, in accordance with Section 7.A.(v) and (vi), matching fund payments by Scottsbluff NE to the WWDC shall be made monthly based on invoices originating from the consultant.

C. Regional/State Facilitation. Scottsbluff NE shall act as the lead governmental entity in fostering interest, soliciting partners, and introducing project concepts to potential beneficiary communities and water users in western Nebraska. Scottsbluff NE shall also lead in communicating project concepts and opportunities to appropriate State of Nebraska governmental agencies, sub-governmental agencies/organizations, state legislature representatives, state executive branch officials, and Nebraska's U.S. congressional delegation.

9. Cooperation. Recognizing that they are partners in the PAWS project, both parties agree to cooperate with the other party, provide timely communications, and information as requested. The WWDC shall consult with, and be advised by, Scottsbluff NE on decisions relating to the Project. Scottsbluff NE shall consult with, and advise the WWDC on decisions relating to the Project. In the event of disagreement the Parties shall attempt to find a resolution and compromise. If a compromise cannot be attained and there exists an inability to move the Project forward, the WWDC shall retain final decision making authority. Notwithstanding the foregoing, no final submittals (including any studies, reports, summaries, technical memoranda, graphics, estimates of construction costs, and other documents related to the project) shall be approved by the WWDC unless also approved by Scottsbluff NE.

10. Special Provisions.

A. Authority of Persons Executing Agreement. The persons and entities executing this MOA on behalf of the Parties are recognized by the Parties as those persons and entities authorized to bind the respective Parties to the terms hereof. Each person executing this MOA has the full power and authority to bind the respective party to the terms of this MOA.

B. Non-waiver. None of the provisions of this MOA shall be considered waived by any party, except when such waiver is given in writing. The failure of a party to insist in any one or more instances upon strict performance of any of the provisions of this MOA or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or its relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

C. Accounting. Both parties shall keep records of funds and expenditures provided under this MOA in accordance with generally accepted accounting practices.

D. Termination. This MOA may be terminated, without cause, by either party upon thirty (30) days written notice, which notice shall be delivered by hand or by certified mail. Both parties shall split the refund of any payment made under this MOA if such refund is received after termination. Neither party shall be liable to any invoices or fees incurred after the effective date of termination.

E. Liability. Neither Party to this MOA or any of its directors, officers, agents, employees and authorized volunteers, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by any other Party to this MOA in connection with any work, obligation, authority or any criteria arising out of this MOA.

11. General Provisions.

A. Amendments. Either party may request changes in this MOA. Any changes, modifications, revisions, or amendments to this MOA which are mutually

agreed upon by the parties to this MOA shall be incorporated by written instrument, executed and signed by all parties to this MOA.

B. Publicity. Any publicity regarding the Project, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the parties, shall identify Goshen County, Wyoming - Board of Commissioners as the Level II PAWS study sponsoring entity, and the WWDC and Scottsbluff NE as the funding partners, and shall not be released without prior written approval from the WWDC and Scottsbluff NE. The term publicity in this paragraph shall not include any articles, reports, or other journalism produced by independent third parties as a result of this MOA being discussed and considered by either party at any meeting required to be open to the public.

C. Availability of Funds. Each payment obligation of either party is taken upon the promise or availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by either party, the MOA may be terminated by either party at the end of the period for which the funds are available. Each party shall notify the other party at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to either party in the event this provision is exercised, and neither party shall be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit either party to terminate this MOA to acquire similar services from another party.

D. Entirety of Agreement. This MOA, consisting of seven (7) pages represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

E. Indemnification. Neither Party to this MOA agrees to indemnify the other party or to hold harmless the other party from liability thereunder.

F. Notice. All notices arising out of, or from, the provisions of this MOA shall be in writing and given to the Parties either by regular mail, email, or delivery in person.

G. Prior Approval. This MOA shall not be binding upon either party unless this MOA has been reduced to writing before performance begins as described under the terms of this MOA, and unless this MOA is approved as to form by the Wyoming Attorney General or his representative and the Scottsbluff NE City Attorney.

H. Severability. Should any portion of this MOA be judicially determined to be illegal or unenforceable, the remainder of the MOA shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

I. Sovereign Immunity. The State of Wyoming, WWDC, and Scottsbluff NE do not waive sovereign or governmental immunity by entering into this MOA, and

each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOA.

J. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOA shall not be construed so as to create such status. The rights, duties, and obligations contained in this MOA shall operate only between the parties to this MOA and shall inure solely to the benefit of the parties to this MOA. The provisions of this MOA are intended only to assist the parties in determining and performing their obligations under this MOA.

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12. **Signatures.** The parties to this MOA, through their duly authorized representatives, have executed this MOA on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOA as set forth herein.

The effective date of this MOA is the date of the signature last affixed to this page

WYOMING WATER DEVELOPMENT COMMISSION

Sheridan Little, Chairman

Date

Todd L. Werbelow, Secretary

Date

WITNESS:

Name Printed:

Date

CITY OF SCOTTSBLUFF, NEBRASKA

Randy Meininger, Mayor

Date

WITNESS:

Name Printed:

Date

WYOMING ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

Samantha Caselli #156638

Samantha Caselli, Assistant Attorney General

8/12/16

Date

Representing: Wyoming Water Development Commission

CITY OF SCOTTSBLUFF APPROVAL AS TO FORM

Howard P. Olsen, City Attorney
Representing: City of Scottsbluff, Nebraska

Date