

# **City of Scottsbluff, Nebraska**

**Monday, November 19, 2018**

**Regular Meeting**

## **Item Reports5**

**Council to consider approval of an Interlocal Cooperation Agreement with the County for the operation of the Scotts Bluff Drain and authorize the Mayor to sign the Agreement.**

**Staff Contact: Nathan Johnson, City Manager**

# Agenda Statement

Meeting Date: November 19, 2018

**AGENDA TITLE:** Council to consider approval of an Interlocal Cooperation Agreement with the County for the operation of the Scotts Bluff Drain.

**SUBMITTED BY DEPARTMENT/ORGANIZATION:** Public Works

**PRESENTATION BY:** Nathan Johnson, City Manager

**SUMMARY EXPLANATION:** The City and County have an existing Agreement for the operation, maintenance and funding of the Scotts Bluff Drain. This proposed Interlocal Agreement is basically the same with updates or changes being made to items 3, 4, and 11. Item 3 sets the Agreement for four years with an annual option to renew thereafter. Item 4 replaces the equation to determine drain ownership with delineated area. Currently 2,658.41 acres, or 58.5%, lie in the County and 1,885.54 acres, 41.5%, are in the City. This equation is primarily used to determine maintenance costs. Item 11 allows both the City and County to acquire and dispose of property and the funding for it when needed.

The Scotts Bluff Drain Operating Committee met on November 15, 2018 and reviewed the Agreement and Exhibits. The Committee approved the By-Laws and recommend that Council approve the Interlocal Cooperation Agreement for the Operation of the Scotts Bluff Drain Basin.

**BOARD/COMMISSION RECOMMENDATION:**

The Scotts Bluff Drain Operating Committee recommends that Council approve this Interlocal Cooperation Agreement and authorize the Mayor to sign it.

**STAFF RECOMMENDATION:**

---

**EXHIBITS**

Resolution ☐

Ordinance ☐

Contract ☒

Minutes ☐

Plan/Map ☐

Please provide all visual presentation materials.

Other (specify) ☐ Copy of Agreement

**NOTIFICATION LIST:** Yes ☐ No ☐ Further Instructions ☐

---

City of Scottsbluff  
Office of the City Manager

Effective date: January 20, 2017

## **INTERLOCAL COOPERATION AGREEMENT FOR THE OPERATION OF SCOTTS BLUFF DRAIN BASIN**

This Interlocal Cooperative Agreement for Operation of Scotts Bluff County Drain Basin (“Agreement”) is made between the City of Scottsbluff, Nebraska, a municipal corporation (the “City”) and the County of Scotts Bluff, Nebraska, a body politic and corporate (the “County”).

WHEREAS, the Interlocal Cooperation Act at Nebraska Revised Statute §13-801 et.seq. provides that two or more public agencies may enter into an agreement for joint or cooperative action, and this Agreement is made and entered into pursuant to the provisions of the Act; and

WHEREAS, the City and the County have, since December 22, 1980, been parties to an Agreement in which they agreed to work cooperatively to own, inspect, operate and maintain the Scotts Bluff Drainage Basin from project SB034001 (“Scotts Bluff Drain”) which is located throughout the City and the County; and

WHEREAS, the City and the County desire to continue their relationship and to codify their actions into this Agreement to make the most efficient use of their taxing authority and other powers to enable them to cooperate with each other on the basis of mutual advantage to provide services and facilities to effectuate the most efficient way to provide for the continued operation, inspection, and maintenance of the Scotts Bluff Drain.

1. **NO SEPARATE LEGAL ENTITY.** No separate legal or joint entity shall be created by this Agreement.

2. **PURPOSE.** The purpose of this Agreement is to allow the City and the County to provide equipment, personnel and facilities and to cooperate in providing services to continue in the inspection, maintenance and operation of the Scotts Bluff Drain to promote effective transportation and drainage of surface and subsurface waters through storm water, flood water and run off in the most efficient manner and with the fewest collateral issues as is possible for the mutual benefit of the residents of the City and the County.

3. **TERM.** This Agreement shall be effective as of November 1, 2018 and shall end on December 31, 2021. This Agreement shall then be automatically renewed every year for a one year term unless written notice is provided by either the City or the County no later than six (6) months prior to the expiration of the current term.

4. **DESIGNATION OF OWNERSHIP AND INTERESTS BY THE CITY AND THE COUNTY.** At the time of this Agreement, there are a total of 4,543.95 acres of the delineated drainage basin that constitutes the Scotts Bluff Drain. Attached to this Agreement, marked as Exhibit “A” and incorporated by this reference, is a map outlining the Scotts Bluff Drain’s location within the County and the City. As of now 2,658.41 acres or 58.5% of the Scotts Bluff Drain acres are located within the County, or outside of the corporate limits of the City and 1,885.54 or 41.5% of the Scotts Bluff Drain acres are located within the City’s corporate limits.

5. OPERATING COMMITTEE FOR THE OPERATIONS AND MAINTENANCE OF THE DRAIN. This joint effort shall be administered by an Operating Committee ("Committee"). The Committee shall adopt by-laws consistent with this Agreement and for the governance of the Committee and its chairperson and may adopt by-laws for the governance of other matters pertaining to its duties. The members of the Committee shall be as follows:

- (a) A member of the City Council of the City designated by the Mayor and the City Council;
- (b) The City Manager or a designated employee of the City who is designated by the City Manager;
- (c) A member of the Board of Commissioners of the County designated by the Commissioners; and
- (d) The County Highway Superintendent or an employee of the County designated by the County Highway Superintendent.

The two members of the Committee designated by the Mayor and the City Council and the Commissioners shall serve at the pleasure of those bodies respectively. The members of the Committee shall serve without compensation.

A chairperson of the Committee shall be chosen by the members of the Committee. The chairperson shall be elected by majority vote of all members of the Committee. The term of the chairperson shall be described in the by-laws which are now adopted by the Committee. A copy of the by-laws are attached hereto marked as Exhibit "B" and incorporated by this reference. The chairperson shall serve without compensation, unless a majority of all of the members of the Committee shall vote to authorize payment of some type of compensation, and the governing bodies of the City and the County approve of the compensation. The chairperson shall be reimbursed for necessary expenses incurred in the performance of his or her duties if payment is approved by the Committee and mutually authorized by the City and County.

6. DUTIES OF THE COMMITTEE. The duties of the Committee shall be as follows:

- (a) To recommend to the City and County, on an annual basis and before May 1 of each year, a budget covering ownership, inspection, operation and maintenance of the Scotts Bluff Drain;
- (b) To make recommendations to the City and County concerning needed construction or replacement of capital improvements;
- (c) To determine generally the ownership, operation and maintenance needs, schedule work to be done for those purposes and assign such work to the City and County;

- (d) To determine the City's and County's share of the expenses for ownership, operation, maintenance and inspection and the costs of capital improvements in compliance with this Agreement; and
- (e) To perform such other duties as the City and County mutually authorize and direct.

7. PERFORMANCE OF THE OPERATION AND MAINTENANCE WORK. The chairperson, in assigning ownership, operation and maintenance work to the City and County, shall, in so far as is reasonably practical, assign the City to work on that part of the Scotts Bluff Drain and drainage facilities which are situated within the corporate limits of the City and assign to the County, that work on the part of the Scotts Bluff Drain and drainage facilities which are situated outside of the corporate limits of the City. In determining the kind and quality of work to be assigned to each, the chairperson, as far as is reasonably practical, shall assign to each a kind and quality of work such that the annual costs to the party performing the ownership, operation and maintenance will approximate that party's share of the ownership of the delineated acres of the Scotts Bluff Drain as set forth in paragraph 4. of this Agreement.

In addition, the allocation of expenses of operation shall also be based upon the percentage of ownership of the delineated acres of the Scotts Bluff Drain as set forth in paragraph 4. Provided, that if during any term of this Agreement and while this Agreement is in force and effect, there are acres of the Scotts Bluff Drain that are annexed by the City during the City's fiscal year, and if the annexations have occurred to the point where an adjustment to the ownership percentage of the City and the County as set forth in paragraph 4. is required, then in the year following the annexation, the chairperson shall note the percentage changed in this Agreement and it shall be attached as a schedule and incorporated into this Agreement.

8. REPORTS AND REIMBURSEMENT. Within fifteen (15) days from the end of each quarter ending March 1, June 30, September 30, and December 31, each party shall submit in writing to the Committee, in a form prescribed by the Committee, a detailed statement of the expenses incurred by the party in performing the ownership, operation, inspection, and maintenance work assigned to the party by the chairperson. The Committee shall review the statements and then have prepared within twenty (20) days after the end of the quarter, a compilation of such expenses, to include a showing of the amount by which the expenses incurred by one of the parties exceeded the share of their ownership or the amount by which the expenses incurred by the other party was less than the party's ownership interest as set forth in paragraph 4. The cost of the preparation of this report shall be paid equally between the parties within thirty (30) days after the Committee has delivered or mailed a copy to each party.

Within fifteen (15) days after the Committee has delivered a copy of its quarterly report to the parties, the party whose paid expenses during the quarter was less than its share of its ownership interest as set forth in paragraph 4. shall reimburse the other party by an equal amount.

9. CAPITAL IMPROVEMENTS, EXPENSES. The parties agree major improvements are and will be necessary and should be made in order to render the present Scotts Bluff Drain adequate to contain and transport surface and subsurface waters, flood water, and run off to the North Platte

River. The parties have adopted the official plan for improving the Scotts Bluff Drain and the capital improvement plan originally dated May 1, 1980 and as updated periodically since that time ("plan"). The parties agree that any proposed revisions by the Committee to the plan, from time to time, may be made by mutual agreement. The parties agree to equally share the cost of any engineering studies or improvements which they, by mutual authorization of their governing bodies may authorize.

All other improvements shall be constructed by one or both of the parties, as the parties, after receiving recommendations from the Committee, shall agree and have their governing bodies approve. All subsequent improvements made to the Scotts Bluff Drain, less the costs of any funds received by grants or other receipts, shall be paid by the parties in the same portions as their ownership interest as set forth in paragraph 4. of this Agreement.

10. FISCAL YEAR. The fiscal year for this Agreement shall be from July 1 to June 30 of every following calendar year; provided, the fiscal year ending on June 30, 2018 shall commence on the date of this Agreement.

11. MANNER OF ACQUIRING, HOLDING AND DISPOSING OF REAL AND PERSONAL PROPERTY. The City and the County shall have the authority to acquire, hold or dispose of real property or personal property as it relates to this Agreement. Any real property and personal property acquired pursuant to the Agreement shall be acquired by the party making the acquisition and shall be held in the name of that party.

12. FINANCING AND BUDGETING. This Agreement will be financed by the City and the County through their regular budgetary process. It is also anticipated that funding will be received through grants requested and other financial assistance from the State or Federal government for programs related to drain and drainage type of activities.

13. AMENDMENT OF AGREEMENT. This Agreement may only be amended upon the recommendation of the Committee and the consent of the City and the County. The amendment must be in writing and signed by both parties.

14. GOVERNING LAW. This Agreement shall be construed in accordance and governed by the laws of the State of Nebraska.

15. SEVERABILITY. If any provision of this Agreement shall be declared invalid or unenforceable by a Court of competent jurisdiction, such declaration shall not effect the validity of the remaining provisions of this Agreement.

16. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall be and constitute one in the same instrument.

17. BINDING AGREEMENT. This Agreement shall be binding upon the parties and their successors in interest. This Agreement may not be assigned by either party. All parties acknowledge

and stipulate that this Agreement shall not relieve either of the public agencies of any obligation or responsibility imposed by law.

18. NOTICE. All notices required or permitted under this Agreement shall be in writing, shall be deemed given when mailed by certified mail, return receipt requested, to the parties at their addresses as follows:

City of Scottsbluff  
2525 Circle Drive  
Scottsbluff, NE 69361

Scotts Bluff County  
c/o Scotts Bluff County Courthouse Annex  
1825 10<sup>th</sup> Street  
Gering, NE 69341

DATED: \_\_\_\_\_, 2018

CITY OF SCOTTSBLUFF, NEBRASKA,

By \_\_\_\_\_  
Randy Meininger, Mayor

ATTEST:

\_\_\_\_\_  
Clerk

SCOTTS BLUFF COUNTY, NEBRASKA,

By \_\_\_\_\_  
Mark Masterton, Chairperson of Scotts  
Bluff County Board of Commissioners

ATTEST:

\_\_\_\_\_  
County Clerk





## **BY-LAWS OF THE SCOTTS BLUFF DRAIN OPERATING COMMITTEE**

The City of Scottsbluff, Nebraska (the “City”) and the County of Scotts Bluff, Nebraska (the “County”) have entered into and renewed an Agreement to provide for the ownership, inspection, operation and maintenance of the Scotts Bluff County Drain. As part of that Agreement, an Operating Committee (“Committee”) was formed to oversee the ownership, inspection, operation and maintenance of the facilities and works of improvement that constitute the Scotts Bluff County Drain.

The members of the Committee now adopt and amend the By-Laws for the purpose of governing the Committee:

1. MEETINGS. The annual meeting of the Committee shall be held on the second Wednesday of April of each calendar year.

Special meetings may be called at any time by the chairperson of the Committee.

An agenda for the meeting will be provided and followed by the Committee and the Committee shall abide by all open meetings laws in the State of Nebraska.

Minutes of each meeting shall be written and kept by the chairperson, or a person designated by the chairperson, and shall include the date, place and time of the meeting, record of the committee members present as well as committee members who are absent, a brief statement of all matters undertaken pursuant to the agenda and any motions considered by the Committee will be recorded, together with the vote taken upon the motion.

The chairperson, in their discretion, may change the date of the annual meeting, and in the event the chairperson does change the date of the annual meeting, they shall provide at least thirty (30) days prior notice of the meeting to all members of the Committee of the change.

2. OFFICERS. The officers of the Committee shall consist of a chairperson and a vice chairperson.

The chairperson and the vice chairperson shall be elected at the annual meeting of the Committee. Nominations for the officers shall be received from those Committee members present and in attendance at the annual meeting. An election shall then be held and the candidate receiving the majority of the votes present at the annual meeting shall be elected.

Each officer shall serve for the term of one year. There shall be no limitation on the number of consecutive terms that may be served by any person in any one office.

The officers may meet on an as needed basis for the purpose of conducting the affairs of the Committee during the fiscal year. The meetings will be held as called by the chairperson and will be at such time and place as designated by the chairperson.

The chairperson shall preside at all meetings of the Committee, will provide continuous inspection of the Scotts Bluff Drain and related storm water control facilities and be in charge of the operation and maintenance of the Scotts Bluff Drain and related water control facilities including operation and maintenance during flood periods. Finally, the chairperson shall perform such other duties as the by-laws, or the Committee by resolution or motion, shall prescribe.

The vice chairperson shall be a member of the Committee and shall be elected by a majority vote of all members of the Committee. The vice chairperson shall be a person other than the chairperson. The vice chairperson shall perform the duties of the chairperson in the absence of the chairperson or in the case of the inability of the chairperson to serve and shall have such other duties of the by-laws, or the Committee by resolution or motion shall prescribe. The chairperson and vice chairperson shall serve without compensation.

3. FISCAL YEAR. The fiscal year of the Committee shall be from July 1 to June 30 of each year.

4. BUDGET. The chairperson and the vice chairperson shall prepare a proposed budget for presentation at the annual meeting. At the annual meeting, the chairperson shall propose the budget to the Committee and the Committee shall then proceed to either approve or disapprove the budget for the ensuing year. A majority of the members present at the annual meeting shall be required to approve the annual budget.

5. FISCAL POLICY. Approval by the Committee of the proposed budget as set out in paragraph 4. shall be deemed to constitute authorization by the chairperson to spend any sums as provided in the budget. Payments of any outstanding indebtedness of the Committee shall be made by the chairperson in a manner, which is in the discretion of the chairperson, shall best meet the needs of the Committee. To encourage the prompt payment of the Committee's obligations, the chairperson shall make regular billing to the City and the County based upon the pro-rata share as set out in the Agreement signed by the County and the City. Upon receiving the billing from the chairperson of the Committee, the City or the County shall make the pro-rata payment to the respective creditors within fifteen (15) days of the receipt of the billing.

In the event the expenditures of the Committee shall exceed the amount budgeted for any fiscal year, the chairperson shall call a special meeting of the Committee for the purpose of proposing a supplemental budget for completing operations for the fiscal year which budget shall be presented to the Committee for its approval or disapproval. In no event shall the chairperson authorize expenditures in excess of the budgeted amount without approval of a majority of the Committee members present at a specially called meeting of the Committee. All capital expenditures shall be based on a direct billing to the City or the County unless otherwise determined by the Committee. No capital construction obligation shall be entered into by the Committee unless the approval of the County and the City has been received.

6. INSPECTIONS. The chairperson shall, at some point during the fiscal year, schedule an annual tour of the Scotts Bluff Drain for purposes of inspecting the facilities. This annual tour shall be attended by the members of the Committee. The chairperson may, during times of flood or other emergencies, order special inspection tours for purposes necessary for the operation and maintenance of the Scotts Bluff Drain and its structures and facilities. In addition, the chairperson shall conduct continuous inspections, operation and maintenance of all of the structures and facilities of the Scotts Bluff Drain.

7. AMENDMENTS. These by-laws shall constitute the duly adopted by-laws of the Committee. The by-laws may be amended by a majority vote of the Committee present at any annual or special meeting of the Committee.

Dated: \_\_\_\_\_, 2018.

\_\_\_\_\_  
Chairperson, Operating Committee

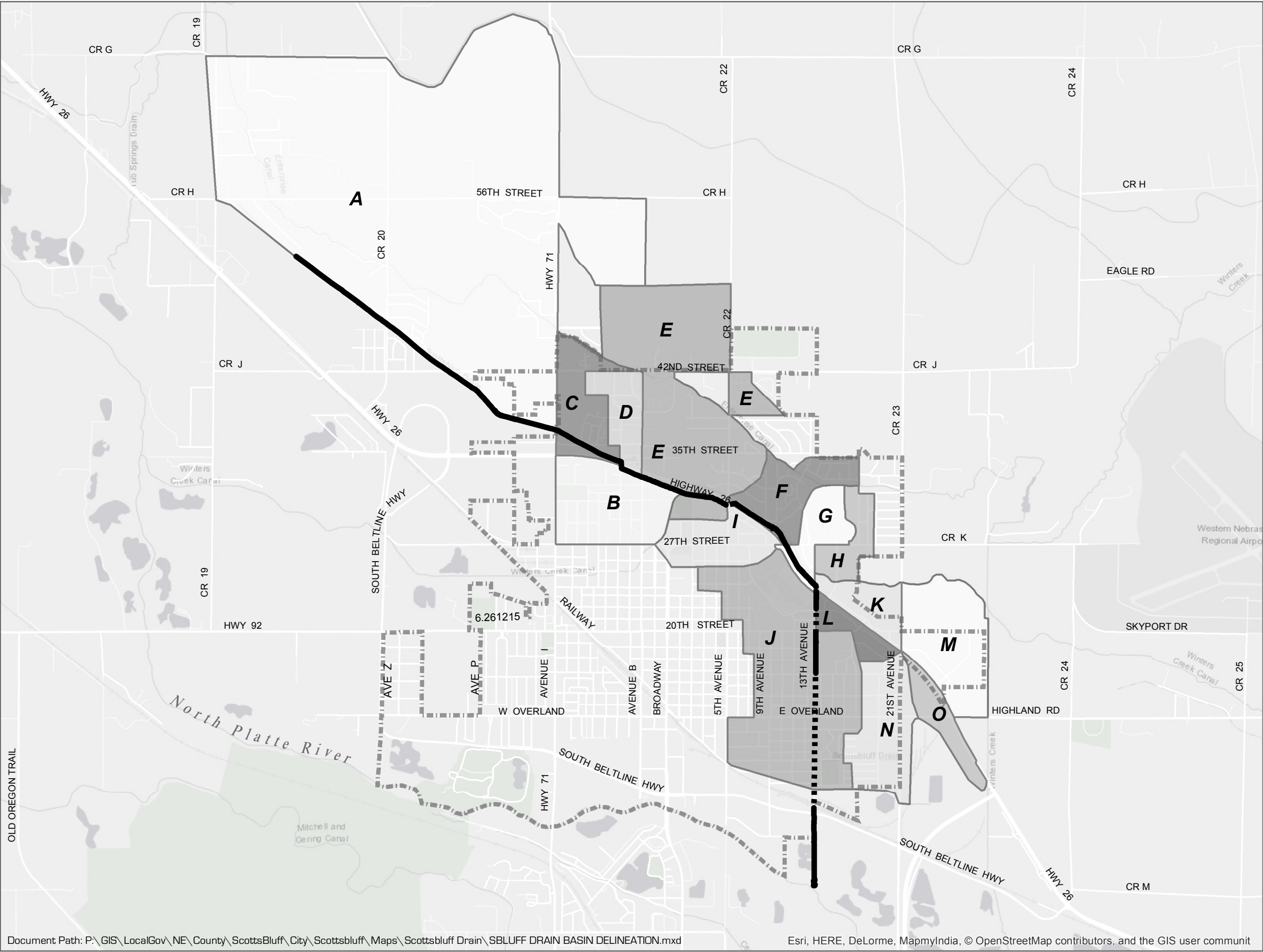
\_\_\_\_\_  
Vice Chairperson, Operating Committee

\_\_\_\_\_  
Member, Operating Committee

\_\_\_\_\_  
Member, Operating Committee



SCOTTSBLUFF DRAIN  
BASIN DELINEATION



- Scottsbluff Drain
- Scottsbluff Drain (UG)
- Corporate Limits
- Drainage Basins
  - Basin A - 2158 Acres
  - Basin B - 191 Acres
  - Basin C - 122 Acres
  - Basin D - 80 Acres
  - Basin E - 538 Acres
  - Basin F - 123 Acres
  - Basin G - 79 Acres
  - Basin H - 67 Acres
  - Basin I - 112 Acres
  - Basin J - 510 Acres
  - Basin K - 64 Acres
  - Basin L - 47 Acres
  - Basin M - 204 Acres
  - Basin N - 163 Acres
  - Basin O - 64 Acres

0 1,500 3,000 4,500 6,000 Feet



Date Saved: 11/13/2018 9:44:50 AM