

Agenda Item: 10.

MEMORANDUM

TO: Programs, Projects & Operations Subcommittee

FROM: Lori Ann Laster, Stormwater Management Engineer

SUBJECT: Review and Recommendation on Second Addendum to City of Omaha Interlocal Agreement for Papio Watershed Dam Site 15A

DATE: April 3, 2017

In November 2012, the District and the City of Omaha entered into an Interlocal agreement for the construction of the District's Papio Dam Site 15A (DS15A) project. The original agreement was amended in 2015 due to the City's request to extend the sanitary sewer facilities due to new development near the site.

The original plans for DS15A included building an access road to the boat ramp in the future alignment of HWS Cleveland Boulevard. Since construction of the project began, property directly to the east of the site (see attached map) has begun planning for a new subdivision. As part of this subdivision, Pier 15, the developer will be constructing several public streets from both 168th Street as well as HWS Cleveland Boulevard. Their first phase of development will construct Himebaugh Avenue and Hartman Avenue off of 168th Street. Because HWS Cleveland Boulevard improvements off of Fort Street are planned as part of the second phase of development, the City of Omaha wishes to use Himebaugh and Hartman Avenues as park access to prevent construction of a temporary access road from Fort Street to be demolished in the near future.

The developer will complete grading work for HWS Cleveland Blvd late this year to prevent disturbance of park land in the future. A portion of the trail is to be constructed along HWS Cleveland Blvd. However, the installation of this segment of the trail will be affected by the grading of the boulevard. The City has proposed that this trail segment be constructed by the developer at the same time as the grading of the boulevard so as not to delay the District's construction contractor who is scheduled to complete work in September 2017.

The proposed addendum to the interlocal agreement outlines this change as requested by the City (see attached). As part of this change in construction plans, the District would convey to the City a maximum amount of \$192,000 for the construction of the temporary access road and the trail segment along HWS Cleveland Blvd. The City would then use this money towards the construction of HWS Cleveland Boulevard when the second phase of the Pier 15 development is constructed in the future. The trail segment would be constructed before the recreation area is open to the public, currently anticipated to be in the spring of 2018.

Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute for and on behalf of the District the proposed Second Addendum to the Interlocal Agreement with the City of Omaha for Papio Watershed Dam Site 15A, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.

SECOND ADDENDUM
TO
INTERLOCAL COOPERATION ACT AGREEMENT BETWEEN
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
AND
CITY OF OMAHA, NEBRASKA
FOR
PAPIO WATERSHED DAM SITE 15A

THIS ADDENDUM (“SECOND ADDENDUM”) is intended to and does amend the interlocal cooperation act agreement (the “ORIGINAL AGREEMENT”) between PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (the “NRD”) and the CITY OF OMAHA, NEBRASKA (the “CITY”) entered into on or about December 19, 2012 and the First Addendum to Interlocal Cooperation Act Agreement Between the NRD and CITY (“FIRST ADDENDUM”) entered into on or about November 5, 2015 (collectively, the “AGREEMENT”).

a. **AMENDMENTS TO THE AGREEMENT:**

- a. The following “whereas” clauses shall be added to the AGREEMENT just prior to the paragraph that begins, “NOW, THEREFORE,” and shall state:

WHEREAS, following approval of the FINAL PLANS and the award of the CONTRACT DOCUMENTS, which has occurred, the CITY and the NRD agree that the construction of the temporary access road from Fort Street to the work site (“SOUTH ACCESS ROAD”), as called for in the FINAL PLANS and CONTRACT DOCUMENTS, should be removed from the FINAL PLANS and CONTRACT DOCUMENTS and the funds budgeted by the NRD for the construction of the SOUTH ACCESS ROAD should be allocated to costs associated with the HWS Cleveland Boulevard extension to be completed in the future.

WHEREAS, following approval of the FINAL PLANS and the award of the CONTRACT DOCUMENTS, which has occurred, the CITY and the NRD agree that the construction of a portion of the recreation trail adjacent to the HWS Cleveland Boulevard extension, as depicted in Exhibit “A,” (“HWS CLEVELAND BOULEVARD EXTENSION TRAIL”), as called for in the FINAL PLANS and CONTRACT DOCUMENTS, should be removed from the FINAL PLANS

and CONTRACT DOCUMENTS and the funds budgeted by the NRD for the construction of the HWS CLEVELAND BOULEVARD EXTENSION TRAIL should be allocated to the future final construction of the HWS CLEVELAND BOULEVARD EXTENSION TRAIL.

- b. Section 6A, contained in the FIRST ADDENDUM, is hereby deleted in its entirety and replaced with the following:

6A. CITY'S ROAD IMPROVEMENT. During the original design of the DS-15A project, the NRD provided minimal design and alignment for extensions of HWS Cleveland Boulevard between Fort and Ida Streets, and 180th Street between Ida and State Streets. Additionally, the NRD budgeted for the design and construction for a temporary access road to the worksite previously defined as the SOUTH ACCESS ROAD and for the design and construction for a portion of a recreational trail previously defined as the HWS CLEVELAND BOULEVARD EXTENSION TRAIL. Due to development of the adjacent property, the NRD and the CITY agree that the construction of the SOUTH ACCESS ROAD and HWS CLEVELAND BOULEVARD EXTENSION TRAIL are not necessary at this time. The design and construction of the SOUTH ACCESS ROAD and HWS CLEVELAND BOULEVARD EXTENSION TRAIL shall be removed from the FINAL PLANS and CONTRACT DOCUMENTS. The CITY desires, at the CITY'S sole cost and expense, to have designed and constructed an improved roadway where the SOUTH ACCESS ROAD was to be located and the improved roadway will be part of the extension of HWS Cleveland Boulevard ("CITY'S ROAD IMPROVEMENT"). Prior to incorporation of the CITY'S ROAD IMPROVEMENT into the FINAL PLANS and CONTRACT DOCUMENTS, the NRD shall either cause to be designed, at the CITY'S written request, or approve the design of the CITY'S ROAD IMPROVEMENT, such approval not to be unreasonably withheld.

- c. Section 13A contained in the FIRST ADDENDUM is hereby deleted in its entirety and replaced with the following:

13A. CHANGE ORDERS FOR THE ANCILLARY PROJECTS. Following written approval by the PARTIES of the FINAL PLANS with the incorporated ancillary projects stated in Section 12A, above, the NRD shall cause to be drafted, at the CITY'S sole cost and expense,

change order(s) for each of the individual components of the stated ancillary projects, and shall submit the change order(s) to the CITY for its written approval. The CITY shall have a period of 10 days from receipt to review the proposed change order(s). If following the 10 day period, the CITY has not expressly approved or disapproved the change order, the CITY will be deemed to have approved the proposed change order. CITY'S approval of the proposed change order(s) shall not be unreasonably withheld. In the event the CITY disapproves the proposed change order(s), the CITY shall submit proposed changes to the proposed change order(s) that, if incorporated, will make the proposed change order(s) acceptable to the CITY. The NRD shall have 10 days to review CITY'S proposed changes to the proposed change order(s), and shall either incorporate CITY'S proposed changes, or submit new proposed change order(s) to the CITY. The stated cycle of review and approval or disapproval with recommended changes shall continue until the PARTIES are in agreement, at which time, the NRD shall issue the change order(s) to the CONTRACTOR(S). In the event that either the CITY or the NRD desires to remove an individual component or a portion of an individual component of the ancillary projects from the FINAL PLANS, the requesting party shall submit a deductive change order to the other party pursuant to the cycle of review procedures and timelines set forth within this paragraph. Unless agreed to, in writing, by the NRD, construction of the ancillary projects stated in Section 12A, above, shall not be permitted to delay the completion of construction and issuance of the engineering certificate of substantial completion of the DS-15A PROJECT.

- d. Section 16(c) contained in the ORIGINAL AGREEMENT and FIRST ADDENDUM are hereby deleted in their entirety and replaced with the following:

- c) the NRD shall pay, and the CITY shall reimburse the NRD, for any and all of the actual costs incurred associated with the CITY'S SANITARY SEWER FACILITIES, EXPANDED SANITARY SEWER FACILITIES, CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS, and CITY'S ROAD IMPROVEMENT, including without limitation the costs paid by the NRD associated with the design (if performed by the ENGINEER), incorporation into the FINAL PLANS, engineering, drafting of change order(s), construction, permitting, engineering observation and administration of construction, and any delays caused by

the ancillary projects identified in this section. The NRD had budgeted for costs associated with the construction of the SOUTH ACCESS ROAD. While the NRD used a portion of the budgeted funds for the construction of the SOUTH ACCESS ROAD, the NRD did not use a total amount of \$ dollars of the budgeted funds. ("REMAINING SOUTH ACCESS ROAD BUDGETED FUNDS"). The NRD also budgeted funds for the construction of the HWS CLEVELAND BOULEVARD EXTENSION TRAIL in the amount of \$ dollars ("HWS CLEVELAND BOULEVARD EXTENSION TRAIL BUDGETED FUNDS"). Since both the NRD and the CITY agree that the construction of the SOUTH ACCESS ROAD and HWS CLEVELAND BOULEVARD EXTENSION TRAIL are no longer necessary for the DS-15A PROJECT, the NRD agrees to pay to the City the amount of the REMAINING SOUTH ACCESS ROAD BUDGETED FUNDS and the HWS CLEVELAND BOULEVARD EXTENSION TRAIL BUDGETED FUNDS, a total amount of \$ dollars. The PARTIES acknowledge and agree that the NRD's payment of the REMAINING SOUTH ACCESS ROAD BUDGETED FUNDS and HWS CLEVELAND BOULEVARD EXTENSION TRAIL BUDGETED FUNDS is a one-time lump sum payment and that any costs and/or expenses related to the CITY'S ROAD IMPROVEMENT shall be the sole responsibility of the CITY.

- b. **NO OTHER CHANGES.** The provisions of the AGREEMENT not specifically referenced in this SECOND ADDENDUM remain in full force and effect and are not amended, changed, or altered by this SECOND ADDENDUM.

IN WITNESS WHEREOF, the parties have executed THIS ADDENDUM, 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 _____, 2017.

THE CITY OF OMAHA

By _____

JEAN STOTHERT, Mayor

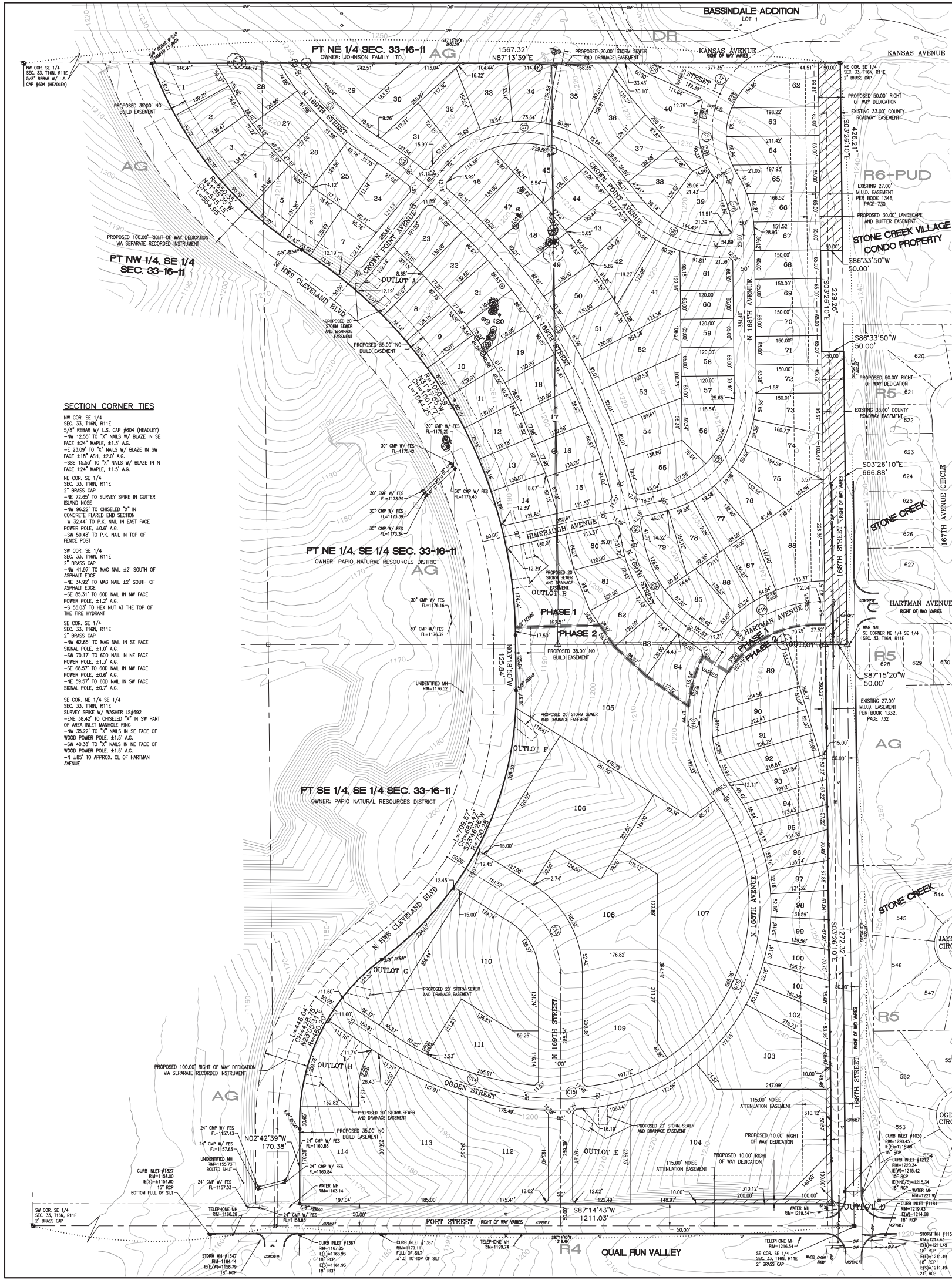
Attest:

City Clerk

The NRD has executed THIS AGREEMENT on _____, 2016.

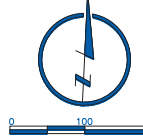
**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
JOHN WINKLER, General Manager



PIER 15

LOTS 1 THROUGH 114, INCLUSIVE AND OUTLOTS A THROUGH H, INCLUSIVE, BEING A PLATTING OF PART OF THE SE 1/4, SECTION 33, T16N, R11E, DOUGLAS COUNTY, NEBRASKA



LEGEND

- OVERHEAD POWER
- MANHOLE
- CURB INLET
- FLARED END SECTION
- FIRE HYDRANT
- WATER MANHOLE
- WATER VALVE
- GAS WARNING SIGN
- POWER POLE AND GUY
- LARGE GALVANIZED POLE
- TELEPHONE MANHOLE
- TELEPHONE RISER
- FIBER OPTIC RISER
- CABLE TELEVISION PULL BOX
- INFORMATION SIGN
- TRAFFIC SIGN
- WATER SIGN
- WOVEN WIRE FENCE
- DECIDUOUS TREE AND SIZE
- CONIFEROUS TREE AND SIZE
- VEGETATION LINE
- INVERT ELEVATION
- FLOW LINE
- CORNERS FOUND
- CORNERS SET (5/8" REBAR WITH 1 1/4" YELLOW PLASTIC CAP STAMPED LS-692)
- COMPUTED CORNER
- SECTION CORNER
- SECTION LINE
- BOUNDARY LINE
- LOT LINE
- EASEMENT LINE
- STREET DEDICATION
- FUTURE RIGHT OF WAY LINE
- PHASE LINE

LEGAL DESCRIPTION

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, ALL IN SECTION 33, TOWNSHIP 16 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, EXCEPT ROAD RIGHT OF WAY.

AND EXCEPT THAT PART CONVEYED TO DOUGLAS COUNTY, NEBRASKA, AS DESCRIBED WITHIN THE WARRANTY DEED FILED OCTOBER 4, 2004, AS INSTRUMENT NUMBER 2004130620 OF THE RECORDS OF DOUGLAS COUNTY, NE.

AND ALSO EXCEPT THAT PART CONVEYED TO THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, AS DESCRIBED WITHIN THE PARTNERSHIP WARRANTY DEED FILED JUNE 2, 2014, AS INSTRUMENT NUMBER 2014040763 OF THE RECORDS OF DOUGLAS COUNTY, NE.

OWNER/ APPLICANT

PIER 15 DEVELOPMENT LLC
TOM BECKLUS
6333 APPLIES WAY, SUITE 115
LINCOLN, NEBRASKA 68516

ENGINEER

LAMP, RYNEARSON & ASSOCIATES, INC.
14710 WEST DODGE ROAD, SUITE 100
OMAHA, NEBRASKA 68154-2027

ZONING

EXISTING: AG

PROPOSED: LOTS 1 THROUGH 88 (R4) - 24.322 ACRES
OUTLOTS A AND B (R4) - 0.965 ACRES
LOTS 89 THROUGH 102 (R5) - 3.477 ACRES
OUTLOT C (R5) - 0.383 ACRES
LOTS 103 THROUGH 114 (MU) - 17.642 ACRES
OUTLOTS D THROUGH H (MU) - 2.193 ACRES
PUBLIC RIGHT OF WAY - 10.980 ACRES
TOTAL AREA - 59.962 ACRES

POWER: OMAHA PUBLIC POWER DISTRICT
444 SOUTH 16TH STREET MALL
OMAHA, NE 68102-2247

WATER: METROPOLITAN UTILITIES DISTRICT
3100 SOUTH 61ST AVENUE
OMAHA, NE 68106-3621

GAS: METROPOLITAN UTILITIES DISTRICT
3100 SOUTH 61ST AVENUE
OMAHA, NE 68106-3621

NOTES

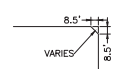
- ALL DISTANCES ARE SHOWN IN DECIMAL FEET.
- ALL DISTANCES SHOWN ALONG CURVES ARE ARC DISTANCES NOT CHORD DISTANCES.
- LOTS 104, 112 THROUGH 114, INCLUSIVE AND OUTLOT E WILL HAVE NO DIRECT VEHICULAR ACCESS TO FORT STREET.
- LOTS 105 AND 114 AND OUTLOTS A, B, F, G AND H WILL HAVE NO DIRECT VEHICULAR ACCESS TO N HWS CLEVELAND BOULEVARD.
- LOTS 62 THROUGH 75, INCLUSIVE, 88, 93-104, INCLUSIVE AND OUTLOT C WILL HAVE NO DIRECT VEHICULAR ACCESS TO 16TH STREET.
- ALL EXISTING EASEMENTS ARE NOT BEING REDEDICATED AND ARE SHOWN FOR REFERENCE ONLY.
- 16TH STREET SHALL BE RESTRICTED TO A RIGHT-IN/RIGHT-OUT ONLY MOVEMENT AT FORT STREET IN THE FUTURE.
- ALL PROPOSED STORM SEWER AND DRAINAGE EASEMENTS ARE TO SID AND CITY OF OMAHA VIA SEPARATE RECORDED INSTRUMENT.

BENCHMARK NOTE

ELEVATIONS SHOWN ARE DERIVED FROM MARN REFERENCE NETWORK, NAD83 W/ GEOID-12A AND DOUGLAS COUNTY GIS

UTILITY NOTE

THIS DRAWING INCLUDES OBSERVED EVIDENCE OF SERVICES AND UTILITIES EVIDENT AT THE TIME OF SURVEY ONLY. NO RESPONSIBILITY OR LIABILITY IS ASSUMED BY THE SURVEYOR FOR THE FAILURE TO SHOW ANY BURIED SERVICE AND/OR UTILITY LINES EVEN THOUGH THEY MAY EXIST. CONTACT "ONE CALL" (402-344-3565) PRIOR TO ANY EXCAVATION ON THIS SITE.



TYPICAL CORNER LOT CHAMFER DETAIL
NO SCALE

PARCEL AREA TABLE				CENTERLINE CURVE TABLE			
PARCEL #	AREA (SF)	PARCEL #	AREA (SF)	CURVE #	RADIUS	ARC LENGTH	CHORD LENGTH
1	13047	46	12239	C1	560.00	261.50	259.14
2	11539	47	11129	C2	1336.00	161.29	161.19
3	11372	48	11129	C3	1336.00	875.20	869.64
4	11258	49	11129	C4	1336.00	73.89	73.89
5	11128	50	11317	C5	330.00	233.92	228.04
6	10693	51	11317	C6	200.00	19.71	19.71
7	11492	52	20436	C7	240.00	425.29	371.79
8	10663	53	16480	C8	250.00	226.17	218.54
9	10746	54	13313	C9	250.00	339.63	314.11
10	11095	55	14038	C10	250.00	139.28	137.48
11	11092	56	11372	C11	200.00	197.66	189.72
12	10746	57	7788	C12	200.00	87.59	86.89
13	10665	58	7800	C13	185.00	187.16	179.28
14	11557	59	7800	C14	700.00	413.86	407.86
15	12145	60	7800	C15	700.00	50.39	50.38
16	10837	61	9415	C16	435.00	926.69	761.13
17	10838	62	15639	C17	275.00	344.80	322.66
18	10735	63	13463	C18	275.00	257.59	248.28
19	11164	64	13454				
20	10736	65	11793				
21	10837	66	10246				
22	10838	67	9765				
23	12145	68	9750				
24	12204	69	9750				
25	11369	70	9750				
26	11622	71	9750				
27	11529	72	9793				
28	14894	73	11713				
29	15660	74	13799				
30	16923	75	13538				
31	12144	76	10529				
32	12688	77	9642				
33	13870	78	10505				
34	12692	79	11482				
35	18754	80	9812				
36	13389	81	10114				
37	11115	82	10114				
38	11550	83	10114				
39	16063	84	11013				
40	22774	85	11245				
41	18718	86	8907				
42	13510	87	9298				
43	10901	88	26246				
44	10495	89	19386				
45	15496	90	11813				

OUTLOT AREA TABLE			
OUTLOT	AREA (SF)	OUTLOT	AREA (SF)
A	11559	E	29096
B	30484	F	18626
C	16690	G	21574
D	5000	H	21242

PARCEL CURVE TABLE				
CURVE #	RADIUS	CHORD BEARING	CHORD LENGTH	DELTA
C19	190.00'	S17°44'35"E	114.39'	116.19'
C20	247.50'	S6°13'55"W	55.66'	55.78'
C21	165.00'	S26°34'38"W	287.64'	349.32'
C22	315.00'	S9°23'01"W	161.91'	163.75'
C23	315.00'	S61°28'25"W	266.18'	274.81'
C24	232.00'	S15°03'39"W	376.06'	438.47'
C25	140.00'	S14°10'47"W	81.56'	82.76'
C26	262.50'	S26°39'05"W	24.09'	24.10'

LAMP RYNEARSON & ASSOCIATES
14710 West Dodge Road, Suite 100
Omaha, Nebraska 68154-2027
www.LRA-Inc.com

PIER 15 (LOTS 1 THROUGH 114 AND OUTLOTS A THROUGH H)
DOUGLAS COUNTY, NEBRASKA

PRELIMINARY PLAT

1 OF 1

**INTERLOCAL COOPERATION ACT AGREEMENT
BETWEEN
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT,
AND
THE CITY OF OMAHA, NEBRASKA
FOR
PAPIO WATERSHED DAM SITE 15A**

THIS INTERLOCAL COOPERATION ACT AGREEMENT (“**THIS AGREEMENT**”) is made pursuant to the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. Secs. 13-801 to 13-827, et seq., by and between the following parties (“the **PARTIES**”), to wit: the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (“the **NRD**”) and the **CITY OF OMAHA, NEBRASKA** (“the **CITY**”).

RECITALS:

WHEREAS, the NRD commissioned the Papillion Creek Multi-Reservoir Analysis, which was completed in September 2004 and which identified the need for flood control within the rapidly developing Papillion Creek watershed; and,

WHEREAS, the Implementation Plan of the Papillion Creek Watershed Partnership’s Watershed Plan has identified flood control projects to be completed within the three year period 2011-2013; and,

WHEREAS, such identified projects include a multi-purpose flood control and recreational dam (“the **DAM**”) and reservoir (“the **RESERVOIR**”) project, including an associated water quality basin (“the **WATER QUALITY BASIN**”), that the **PARTIES** desire to have constructed by the NRD on a site near 168th Street and Fort Street in Douglas County (collectively, “the **DS-15A PROJECT**”); and,

WHEREAS, the PARTIES desire to provide herein for the cooperative design, construction, operation, maintenance, repair, replacement, regulation and ownership of the DS-15A PROJECT and to specify the rights, duties and obligations of the PARTIES in connection therewith.

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

1. **PROJECT PARTICIPANTS.** The DS-15A PROJECT shall be undertaken by the PARTIES, as provided herein, without any separate entity being created, and the duties and responsibilities of the PARTIES with respect to the DS-15A PROJECT shall be as defined by THIS AGREEMENT.

2. **PROJECT LAND.** The DS-15A PROJECT shall be constructed on parcels of land in Sections 20, 28, 29 and 33, all in Township 16 North, Range 11 East of the 6th P.M. in Douglas County, Nebraska (“the **PROJECT LAND**”), conceptually depicted in the document attached hereto as Exhibit “A” and incorporated herein by reference.

3. **PRINCIPAL PROJECT COMPONENTS.** The DS-15A PROJECT shall consist of the design, construction, and engineering observation and administration of construction, at the NRD’S sole cost and expense, of the following principal project components, to-wit:

a) the DS-15A PROJECT DAM, RESERVOIR and WATER QUALITY BASIN on the PROJECT LAND; and,

b) wetland, channel, and riparian mitigation improvements (“the **MITIGATION IMPROVEMENTS**”) on the PROJECT LAND required by the U. S. Army Corps of Engineers (“the **CORPS**”) as a condition precedent to the issuance of a Section 404 permit for the DS-15A PROJECT; and,

c) elevated roadway and bridge improvements on the PROJECT LAND, along the current alignment of Ida Street (the “**IDA STREET IMPROVEMENTS**”), replacing the existing Ida Street road improvements that would be submerged in the RESERVOIR as the result of the filling thereof; and,

d) basic recreational improvements that the NRD desires to have constructed at its own cost and expense for its own public purposes on the PROJECT LAND (the “**NRD’S RECREATIONAL IMPROVEMENTS**”), which include a bicycle-pedestrian trail around the RESERVOIR, in-park access roads to recreational improvements, a boat ramp, two picnic areas, two shelters, two rest rooms, two parking lots and fishery enhancements .

4. CURRENT ANCILLIARY PROJECTS. During NRD design of the DS-15A PROJECT, the NRD, at CITY cost and expense, shall design sanitary sewer facilities, for construction on the PROJECT LAND (the “**CITY’S SANITARY SEWER FACILITIES**”) to the reasonable satisfaction of the CITY.

5. FUTURE ANCILLIARY PROJECTS. During the NRD’s design of the DS-15A PROJECT, the NRD, at CITY cost and expense, shall design additional recreational improvements as the CITY intends to construct in the future at CITY cost and expense for the CITY’S own public purposes on the PROJECT LAND (the “**CITY’S RECREATIONAL IMPROVEMENTS**”).

6. OTHER ANCILLIARY PROJECTS. During the NRD’s design of the DS-15A PROJECT, the NRD shall make allowances in such design as the CITY deems appropriate to facilitate future design and construction of extensions of 180th Street between Ida and State Streets and HWS Cleveland Boulevard between Fort and Ida Streets. The NRD shall grant to DOUGLAS COUNTY, its successors and assigns, such easements and rights of way over PROJECT LAND as may be needed for road improvements.

7. **GENERAL BENEFIT.** The PARTIES do hereby find and agree that the DS-15A PROJECT, as herein described, will be of general benefit to the NRD with only an incidental special benefit.

8. **THE ENGINEERS.** The NRD shall retain engineering consultants (“the **ENGINEERS**”), approved by the CITY, to design the DS-15A PROJECT and to prepare plans and specifications and contract documents for, and administer construction of, the DS-15A PROJECT.

9. **PRELIMINARY PLANS.** The ENGINEERS shall prepare preliminary plans and specifications for the DS-15A PROJECT (collectively, “the **PRELIMINARY PLANS**”), in accordance with the provisions of THIS AGREEMENT, subject to the following:

a) The PRELIMINARY PLANS shall be drawn in accordance with design criteria provided by the General Manager of the NRD.

b) The PRELIMINARY PLANS shall be in general compliance with applicable Nebraska state and federal statutes, rules and regulations.

c) The PRELIMINARY PLANS shall be in accordance with CITY design standards, rules and regulations.

d) The PRELIMINARY PLANS shall include plans, provisions or allowances for the principal components of the DS-15A PROJECT and for the CITY’S SANITARY SEWER FACILITIES.

10. **APPROVAL OF PRELIMINARY PLANS.** After the ENGINEERS’ completion of the PRELIMINARY PLANS, and approval of the same by the NRD, the PRELIMINARY PLANS shall be submitted to the CITY for its written approval, such approval to not be unreasonably withheld or delayed.

11. **PREPARATION OF FINAL PLANS.** After receipt by the NRD of the CITY’S written approval of the PRELIMINARY PLANS, the NRD shall direct the ENGINEERS to prepare final plans and specifications for the DS-15A

PROJECT (collectively, “the **FINAL PLANS**”), in accordance with the provisions of THIS AGREEMENT, subject to the following:

a) The FINAL PLANS shall be drawn in accordance with design criteria provided by the General Manager of the NRD.

b) The FINAL PLANS shall be in general compliance with applicable Nebraska state and federal statutes, rules and regulations.

c) The FINAL PLANS shall be in accordance with CITY design standards, rules and regulations.

d) The FINAL PLANS shall include plans, provisions or allowances for the principal components of the DS-15A PROJECT and for inclusion therein of the CITY’S SANITARY SEWER FACILITIES.

e) The FINAL PLANS shall include legal descriptions of the PROJECT LAND to be acquired by the NRD at the NRD’S sole cost and expense, as needed for the principal components of the DS-15A PROJECT, and for the CITY’S SANITARY SEWER FACILITIES.

f) The FINAL PLANS shall include a comparison, the result of which (the “**SANITARY SEWAGE FACILITIES FRACTION**”) may be expressed as a fraction or percentage, showing:

i) as the numerator, the ENGINEERS’ estimate of the total combined cost of design, construction and engineering observation and administration of construction of the CITY’S SANITARY SEWER FACILITIES; and,

ii) as the denominator, the ENGINEERS’ estimate of the total contract cost of construction of the DS-15A PROJECT and the CITY’S SANITARY SEWER FACILITIES.

12. APPROVAL OF FINAL PLANS FOR PROJECT. After the ENGINEERS’ completion of the FINAL PLANS and approval of the same by the

NRD, the FINAL PLANS shall be submitted to the CITY for its written approval. The CITY shall have a period of 30 days to review and approve or disapprove the same in writing or suggest amendments thereto. Such approval shall not be withheld or delayed unreasonably.

13. CONSTRUCTION CONTRACT. After receipt by the NRD of the CITY'S written approval of the FINAL PLANS, the NRD shall deliver to the CITY for its approval (such approval to not be withheld or delayed unreasonably) the NRD'S proposed contract documents ("the **CONTRACT DOCUMENTS**") for competitive bidding for construction of the DS-15A PROJECT and the CITY'S SANITARY SEWER FACILITIES. The CITY shall have a period of 10 days to review the CONTRACT DOCUMENTS and to approve or disapprove the same in writing or suggest amendments thereto. Such approvals shall not be withheld or delayed unreasonably.

14. CONSTRUCTION OF THE DS-15A PROJECT. After the CITY'S approval of the CONTRACT DOCUMENTS, and in accordance with the NRD'S purchasing regulations, the NRD will seek competitive bids for construction of the DS-15A PROJECT and the CITY'S SANITARY SEWER FACILITIES. The NRD shall award the contract for such construction to the bidder that the NRD determines provides the lowest responsible bid.

15. CONTRACTOR'S WARRANTIES. The NRD shall enforce all bonds and warranties given by the CONTRACTOR(S) and their subcontractors in the CONSTRUCTION CONTRACT(S), including without limitation bonds and warranties given in connection with or pertaining to the CITY'S SANITARY SEWER FACILITIES.

16. ALLOCATION OF COSTS. Except as otherwise provided in THIS AGREEMENT,

a) the NRD shall pay, without CITY reimbursement, all the costs of acquisition of PROJECT LAND and of design and construction of the DS-15A PROJECT;

b) the NRD shall pay, and the CITY shall reimburse the NRD for, the costs of design of the CITY'S RECREATIONAL IMPROVEMENTS, previously estimated by the ENGINEERS in the amount of \$25,154.00; and,

c) the NRD shall pay, and the CITY shall reimburse the NRD for the costs of design, construction, engineering observation and administration of construction of the CITY'S SANITARY SEWER FACILITIES, such reimbursement to be computed by multiplying the total combined actual contract cost to the NRD of construction of the DS-15A PROJECT and the CITY'S SANITARY SEWER FACILITIES by the SANITARY SEWER FACILITIES FRACTION.

17. PAYMENT OF COSTS. Reimbursement by the CITY for the actual costs of design of the CITY'S RECREATIONAL IMPROVEMENTS shall be due and payable to the NRD within sixty (60) days after the CITY'S approval of the final plans. Reimbursement by the CITY for the costs of design, construction, engineering observation and administration of construction of the CITY'S SANITARY SEWER FACILITIES, shall be due and payable to the NRD in three (3) equal annual installments, to-wit: the first installment shall be due and payable sixty (60) days after issuance of the engineering certificate of substantial completion of the DS-15A PROJECT and the CITY'S SANITARY SEWER FACILITIES; and, the second and third installments shall be due and payable on the respective subsequent anniversaries of the due date of the first installment.

18. CONSTRUCTION OBSERVATION. The NRD will provide for engineering observation and administration of construction of the DS-15A PROJECT and the CITY shall be given the opportunity to fully observe such construction at all reasonable hours and upon its request contemporaneously

receive from the NRD copies of all written communications between or issued by the NRD and/or the ENGINEERS and/or the CONTRACTOR(S) pertaining to such construction, including but not limited to statements by the ENGINEERS as to percentage of completion and substantial completion.

19. PERMITS. The NRD, at its sole cost and expense, shall obtain all of the parcels of land and all easements comprising the PROJECT LAND and all other permits and rights-of-way, including without limitation, licenses, easements, water rights, and permits or consents from the CORPS or other federal, state or local agencies, as may be required or convenient for construction, and/or for permanent operation and maintenance of the DS-15A PROJECT, except for those needed solely for the CITY'S SANITARY SEWER FACILITIES.

20. OPERATION AND MAINTENANCE. After completion of construction of the DS-15A PROJECT,

a) the NRD, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the DAM, which shall be deemed to consist of all that portion of the PROJECT LAND and all flood control improvements located within the footprint of the DAM or within the footprint of the WATER QUALITY BASIN'S structure, as the same are depicted in the FINAL PLANS; and,

b) the NRD, at its sole cost and expense, shall operate, maintain, repair, replace and regulate the MITIGATION IMPROVEMENTS during the CORPS-required monitoring period and until they are finally accepted by the CORPS. Thereafter, the CITY, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the MITIGATION IMPROVEMENTS; and,

c) the CITY, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the remaining principal

project components of the DS-15A PROJECT, including without limitation:

- i) the RESERVOIR, which shall be operated as a no-wake lake;
- ii) the NRD'S RECREATIONAL IMPROVEMENTS;
- iii) the CITY'S RECREATIONAL IMPROVEMENTS;
- iv) the WATER QUALITY BASIN, without any right or duty to dredge the same for the purposes of maintaining open water; and,
- d) the CITY, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the CITY'S SANITARY SEWER FACILITIES,

all as located on the remainder of the lands to be conveyed by the NRD to the CITY in accordance with THIS AGREEMENT.

21. INDEMNIFICATIONS. The CITY shall defend, indemnify, and hold the NRD harmless from and against all costs and expenses, including attorneys fees and court costs, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the CITY'S operation, maintenance, repair, replacement, or regulation of the principal project components of the DS-15A PROJECT (excepting the DAM), and the CITY'S SANITARY SEWER FACILITIES, and excepting such personal injuries or property damages as may be caused by the negligence of the NRD. The NRD shall defend, indemnify, and hold the CITY harmless from and against all costs and expenses, including attorneys fees and court costs, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the NRD's design or construction of the principal project components of the DS-15A PROJECT, and from the NRD'S construction, operation, maintenance, repair, replacement, or regulation of the DAM, and the

MITIGATION IMPROVEMENTS (prior to their acceptance by the CORPS), and excepting such personal injuries or property damages as may be caused by the negligence of the CITY.

22. POST-CONSTRUCTION GRANTS AND CONVEYANCES.

Upon final completion of construction of the DS-15A PROJECT, the NRD shall convey the PROJECT LAND to the CITY, except portions thereof conveyed to Douglas County for road purposes, provided however,

a) in such conveyance the NRD shall reserve for itself and for its successors and assigns the following permanent rights, to-wit:

i) the right to construct, operate, maintain, repair, replace, and regulate the DAM in the PROJECT LAND (including the WATER QUALITY BASIN'S structure),

ii) the right to have unrestricted use and access over and across the PROJECT LAND by any route or means and for any purpose referred to in THIS AGREEMENT; and,

iii) the right to flow waters and sediment upon, and inundate, all those portions of the PROJECT LAND which have a ground surface elevation lower than the elevation of the top of the DAM ("the MAXIMUM POOL"); and,

iv) The right to enforce the following permanent restrictions, to-wit:

(a) *"REGULATORY POOL STRUCTURE RESTRICTION.* The CITY shall not construct, maintain or permit structures, fixtures or other improvements, other than recreational trail improvements, lighting, landscaping, boat docking facilities and signage, in any areas of the PROJECT LAND, within the watershed of the DAM, having a ground

surface elevation lower than 1,180.5 feet above mean sea level, NAVD 1988, which elevation parties agree is approximately one foot (1') above the mean sea level elevation of the 500-year flood pool of the RESERVOIR.

(b) *REGULATORY POOL EXCAVATION AND FILL RESTRICTION.* The CITY shall not fill, nor permit filling of, any areas of the PROJECT LAND, within the watershed of the DAM, having a ground surface elevation lower than 1,180.5 feet above mean sea level, NAVD 1988, without balancing such placement with a permanent borrowing and removal of an equivalent amount of earth fill from such areas, and without the prior written approval of the NRD of the plans for such activities, such approval to not be withheld or delayed unreasonably.

(c) *MAXIMUM POOL EXCAVATION AND FILL RESTRICTION.* The CITY shall not fill, nor permit filling of, any areas of the PROJECT LAND, within the watershed of the DAM, having a ground surface elevation higher than 1,180.5 feet above mean sea level and lower than 1,187.0 feet above mean sea level, NAVD 1988 (MAXIMUM POOL), without balancing such placement with a permanent borrowing and removal of an equivalent amount of earth fill from such areas, and without the prior written approval of the NRD of the plans for such activities, such approval to not be withheld or delayed unreasonably."

b) Such conveyance(s) shall also include and be subject to the following permanent restrictions on the lands occupied by the MITIGATION IMPROVEMENTS required by the CORPS, that shall run

with the PROJECT LAND and be binding upon the parties and their heirs, successors and assigns, to-wit:

i) there shall be no construction or placement of structures or mobile homes, fences, signs, billboards or other advertising material, or other structures, whether temporary or permanent, on the PROJECT LAND;

ii) there shall be no filling, draining, excavating, dredging, mining, drilling or removal of topsoil, loam, peat, sand, gravel, rock, minerals or other materials;

iii) there shall be no building of roads or paths for vehicular or pedestrian travel or any change in the topography of the PROJECT LAND;

iv) there shall be no removal, destruction, or cutting of trees or plants, spraying with biocides, insecticides, or pesticides, grazing of animals, farming, tilling of soil, or other agricultural activity;

v) there shall be no operation of all-terrain vehicles or any other type of motorized vehicle on the PROJECT LAND, other than in roads and parking areas; and,

vi) these restrictions may be changed, modified or revoked only upon written approval of the District Engineer of the Omaha District of the CORPS and to be effective, such approval must be witnessed, authenticated, and recorded pursuant to the law of the State of Nebraska.

23. RISK OF LOSS. After completion of construction of the DS-15A PROJECT and conveyance of PROJECT LAND to the CITY, the risk of loss of or damage to components or facilities of the DS-15A PROJECT shall be borne by the

party that has an obligation hereunder to operate and maintain such components or facilities, whether such loss or damage results from flood or other casualty whatsoever.

24. APPROVALS. Wherever THIS AGREEMENT speaks of approval and/or consent:

a) such approval and/or consent by the CITY shall be provided by act of the CITY'S Mayor, Public Works Director or Parks, Recreation, and Public Property Director; and,

b) such approval and/or consent by the NRD shall be provided by act of the General Manager of the NRD.

25. NONDISCRIMINATION. The PARTIES shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, disability under the Americans with Disabilities Act, political or religious opinions, affiliations or national origin.

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

27. APPLICABLE LAW. The PARTIES to THIS AGREEMENT shall conform to all existing and applicable state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under THIS AGREEMENT.

28. MERGER. THIS AGREEMENT shall not be merged into any other oral or written agreement, lease or deed of any type.

29. MODIFICATION. THIS AGREEMENT contains the entire agreement of the PARTIES. No representations were made or relied upon by either of the PARTIES other than those that may be expressly set forth herein. No agent, employee or other representative of any PARTY is empowered to alter

and all other acts and to execute, acknowledge and deliver any other documents so requested in order to carry out the intent and purposes of THIS AGREEMENT.

34. TIME IS OF THE ESSENCE. Time is expressly declared to be of the essence of THIS AGREEMENT.

35. EFFECTIVE DATE AND TERM. THIS AGREEMENT shall become effective upon its execution by the PARTIES, and shall be perpetual in its duration.

36. FUNDING. THIS AGREEMENT shall be conditional and dependent upon the NRD'S determination that it has adequate funding for the DS-15A PROJECT.

37. NOTICES. Any notice required under the terms of THIS AGREEMENT shall be deemed to have been given within forty-eight (48) hours after written notice has been deposited in the United States mail; and:

a) Notices to the CITY provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid, addressed to:

Director of Parks, Recreation and Public Property
City of Omaha, Nebraska
1819 Farnam Street, Suite 701
Omaha, Nebraska 68183;

and to:

Director of Public Works
City of Omaha, Nebraska
1819 Farnam Street, Suite 601
Omaha, Nebraska 68183;

b) Notices to the NRD provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid addressed to:

General Manager
Papio-Missouri River NRD

any of the terms hereof unless done in writing and signed by an authorized officer of such PARTY.

30. STRICT COMPLIANCE. All provisions of THIS AGREEMENT and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from an authorized representative.

31. INVALID PROVISIONS. In the event that any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision herein contained shall not affect the validity of the remainder of the covenants, conditions or provisions of THIS AGREEMENT, which shall in all respects remain a legally binding agreement with the invalid portion being deleted; provided, however, that the validity of any such covenant, condition, or provision does not materially prejudice either of the PARTIES in its respective rights and obligations contained in the valid covenants, conditions, or provisions of THIS AGREEMENT.

32. NON-WAIVER. No delay or failure by either of the PARTIES to exercise any right under THIS AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein. A valid waiver by either of the PARTIES shall not be deemed to extend the amount of time available to perform any other act required under THIS AGREEMENT.

33. FURTHER AGREEMENTS. Each of the PARTIES will, whenever and as often as the other may request, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all such further conveyances, assignments or other instruments and documents as the requesting party may believe to be necessary, expedient or proper in order to complete any and all conveyances, transfers, and assignments herein provided and to do any

8901 South 154th Street
Omaha, Nebraska 68138-3621

or to such other respective address(s) as the PARTIES may designate to each other from time to time in writing.

38. **INTERLOCAL COOPERATION ACT PROVISIONS.** This Agreement shall not create any separate legal or administrative entity. It shall be administered jointly by the parties, through 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. There shall be no jointly held property as a result of this Agreement. Upon termination, each party shall retain ownership of the property it owns at the time of termination. This Agreement does not authorize the levying, collecting or accounting of any tax.

IN WITNESS WHEREOF

THIS AGREEMENT is executed by the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT on this 14th day of November, 2012, pursuant to resolution duly adopted by its Board of Directors.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager

THIS AGREEMENT is executed by the CITY OF OMAHA, NEBRASKA on this 19th day of December, 2012, pursuant to ordinance duly adopted by its City Council.

CITY OF OMAHA, NEBRASKA

By _____
Mayor

ATTEST:

Bruce Brown 12/19/12
City Clerk

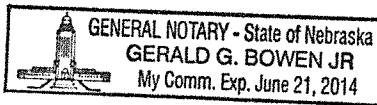
APPROVED AS TO FORM:

[Signature] -2712
DEPUTY CITY ATTORNEY

STATE OF NEBRASKA)
COUNTY OF Douglas) SS.

On this 14th day of November, 2012, before me, a Notary Public, personally came JOHN WINKLER, General Manager of the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he/she acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said district.

WITNESS my hand and Notarial Seal the date last aforesaid.

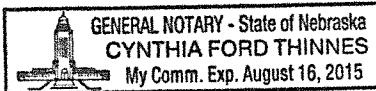


[Signature]
Notary Public

STATE OF NEBRASKA)
COUNTY OF Douglas) SS.

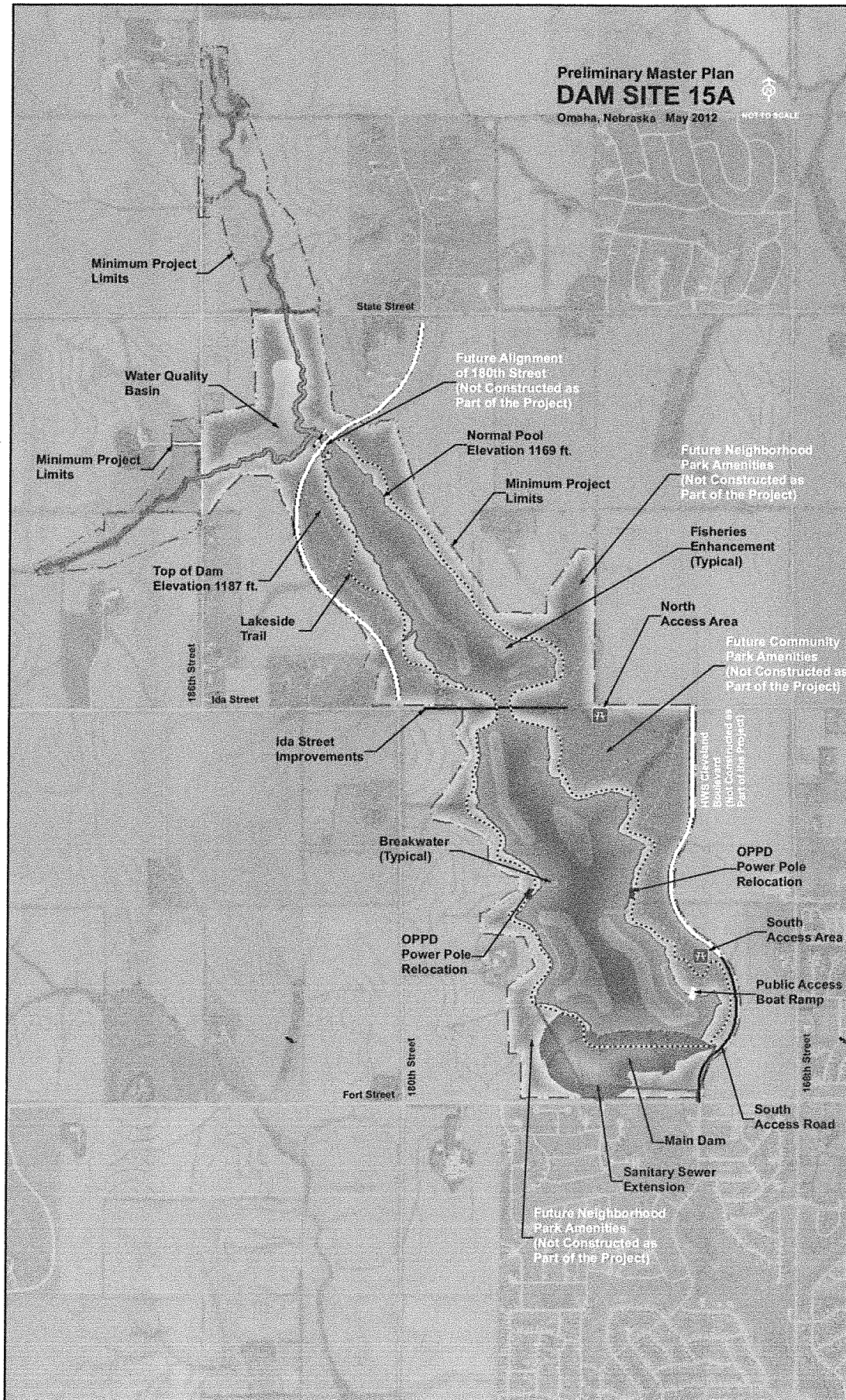
On this 19th day of December, 2012, before me, a Notary Public, personally came JAMES SUTTLE, Mayor of the CITY OF OMAHA, NEBRASKA to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said City.

WITNESS my hand and Notarial Seal the date last aforesaid.



Cynthia Ford Thinnies
Notary Public

EXHIBIT A





City of Omaha
Jean Stothert, Mayor

November 3, 2015

RECEIVED

2015 OCT 23 AM 11:14

CITY CLERK
OMAHA, NEBRASKA

Public Works Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 601
Omaha, Nebraska 68183-0601
(402) 444-5220
Fax (402) 444-5248

Robert G. Stubbe, P.E.
Public Works Director

Honorable President

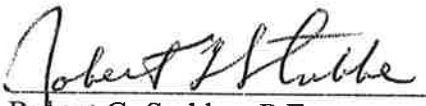
and Members of the City Council,

Transmitted herewith is a Resolution approving Addendum #1 to the Interlocal Agreement between the City of Omaha and Papio-Missouri River Natural Resources District (PMNRD), for the Papio Watershed Dam Site 15A.

This Addendum will allow for the additional design and funding of ancillary projects as a part of the construction of Dam Site 15A. These projects include the re-design and construction of sanitary sewer and roadway improvements as well as additional recreational improvements to accommodate adjacent development to the Dam Site 15A area. This development activity was not approved at the time of the original Interlocal Agreement, and now requires the outlined adjustments to the planned project. The designs for these ancillary projects will be designed and constructed as a part of the Dam Site 15A project, with requisite approvals from the City and at the sole cost of the City. These costs will be paid through the respective Departmental funds, as was determined with the passage of the original Agreement.

The Public Works Department and the Parks, Recreation and Public Property Department, requests your consideration and approval of the attached Resolution and Addendum to the Interlocal Agreement.


Respectfully submitted,


 9-30-15
Robert G. Stubbe, P.E.
Public Works Director

 10-13-15
Brook Bench, Director
Parks, Recreation & Public Property

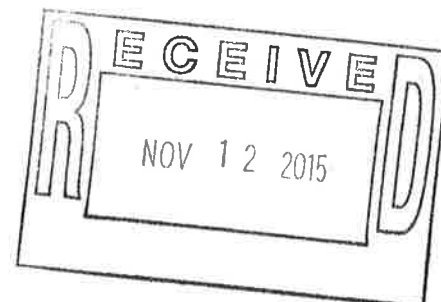
Approved as to Funding:

Referred to City Council for Consideration:

 10/7/15
Stephen B. Curtiss
Finance Director

 10/19/15
Mayor's Office

1994htp



FIRST ADDENDUM
TO
INTERLOCAL COOPERATION ACT AGREEMENT BETWEEN
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
AND
CITY OF OMAHA, NEBRASKA
FOR
PAPIO WATERSHED DAM SITE 15A

THIS ADDENDUM ("ADDENDUM") is intended to and does amend the interlocal cooperation act agreement (the "AGREEMENT") between PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (the "NRD") and the CITY OF OMAHA, NEBRASKA (the "CITY") entered into on or about December 19, 2012 as provided below.

1. AMENDMENTS TO THE AGREEMENT:

- a. The following "whereas" clause shall be added to the AGREEMENT just prior to the paragraph that begins, "NOW, THEREFORE," and shall state:

WHEREAS, following approval of the FINAL PLANS and the award of the CONTRACT DOCUMENTS, which has occurred, the CITY desires to redesign and have constructed the CITY'S SANITARY SEWER FACILITIES in a configuration other than provided for in the FINAL PLANS and CONTRACT DOCUMENTS. Additionally, the CITY desires to have designed and constructed other additional features on the PROJECT LAND.

- b. Section 4A is hereby added to the AGREEMENT, and shall state:

4A. CITY'S EXPANDED SANITARY SEWER FACILITIES. The PARTIES have approved the FINAL PLANS and CONTRACT DOCUMENTS, including the CITY'S SANITARY SEWER FACILITIES. The CITY desires, at its sole cost and expense, to expand the design of the CITY'S SANITARY SEWER FACILITIES (the "EXPANDED SANITARY SEWER FACILITIES") and to have the EXPANDED SANITARY SEWER FACILITIES constructed on the PROJECT LAND as part of the DS-15A PROJECT. Prior to incorporation of the EXPANDED SANITARY SEWER FACILITIES into the FINAL PLANS and CONTRACT DOCUMENTS, the NRD shall either cause to be designed, at the CITY'S written request, or

approve the design of the EXPANDED SANITARY SEWER FACILITIES, such approval not to be unreasonably withheld.

c. Section 4B is hereby added to the AGREEMENT, and shall state:

4B. CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS. The CITY desires, at its sole cost and expense, to have designed and constructed additional recreational improvements not included in the FINAL PLANS and CONTRACT DOCUMENTS (the "CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS"). Prior to incorporation of the CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS into the FINAL PLANS and CONTRACT DOCUMENTS, the NRD shall either cause to be designed, at the CITY'S written request, or approve the design of the CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS, such approval not to be unreasonably withheld.

d. Section 6A is hereby added to the AGREEMENT, and shall state:

6A. CITY'S ROAD IMPROVEMENT. During the original design of the DS-15A project, the NRD provided minimal design and alignment for extensions of HWS Cleveland Boulevard between Fort and Ida Streets, and 180th Street between Ida and State Streets. Additionally, the NRD budgeted for the design and construction of a South Access Road as part of the DS-15A PROJECT. The CITY desires, at the CITY'S sole cost and expense, to have designed and constructed an improved roadway in the place of the South Access Road that will be part of the extension of HWS Cleveland Boulevard (the "CITY'S ROAD IMPROVEMENT"). Prior to incorporation of the CITY'S ROAD IMPROVEMENT into the FINAL PLANS and CONTRACT DOCUMENTS, the NRD shall either cause to be designed, at the CITY'S written request, or approve the design of the CITY'S ROAD IMPROVEMENT, such approval not to be unreasonably withheld.

e. Section 10A is hereby added to the AGREEMENT, and shall state:

10A. PRELIMINARY PLANS FOR ANCILLARY PROJECTS. Upon completion of the design(s) of the EXPANDED SANITARY SEWER FACILITIES, CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS, and CITY'S ROAD IMPROVEMENT, both the CITY and the NRD shall approve, in writing, the design(s), such approval shall not be

unreasonably withheld or delayed. The individual components of the stated ancillary projects may be designed at different times or simultaneously.

f. Section 11(f) is hereby stricken, in its entirety, from the AGREEMENT.

g. Section 11A is hereby added to the AGREEMENT, and shall state:

11A. INCORPORATION OF THE ANCILLARY PROJECTS INTO THE FINAL PLANS. Following written approval by the PARTIES of the preliminary plans for the EXPANDED SANITARY SEWER FACILITIES, CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS, and CITY'S ROAD IMPROVEMENT, the NRD shall direct the ENGINEERS to incorporate said preliminary plans into the FINAL PLANS, in accordance with THIS AGREEMENT, and the provisions in Section 11, above, except for Section 11(e). The ancillary projects stated in this section shall be situated on the PROJECT LAND, and no additional lands, or real property rights, will be acquired by the NRD for the placement of or construction of these ancillary projects. The CITY shall reimburse the NRD for the costs associated with the incorporation of the stated ancillary projects into the FINAL PLANS. The individual components of the stated ancillary projects may be incorporated into the FINAL PLANS at different times or simultaneously.

h. Section 12A is hereby added to the AGREEMENT, and shall state:

12A. APPROVAL OF FINAL PLANS WITH INCORPORATED ANCILLARY PROJECTS. Following completion of the incorporation of the individual designs of the EXPANDED SANITARY SEWER FACILITIES, CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS, and CITY'S ROAD IMPROVEMENT, the PARTIES shall approve, in writing, the revised FINAL PLANS, such approval not to unreasonably be withheld or delayed. The individual components of the stated ancillary projects may be approved as part of FINAL PLANS at different times or simultaneously.

i. Section 13A is hereby added to the AGREEMENT, and shall state:

13A. CHANGE ORDERS FOR THE ANCILLARY PROJECTS. Following written approval of the PARTIES of the FINAL PLANS with the incorporated ancillary projects stated

in Section 12A, above, the NRD shall cause to be drafted, at the CITY'S sole cost and expense, change order(s) for each of the individual components of the stated ancillary projects, and shall submit the change order(s) to the CITY for its written approval. The CITY shall have a period of 10 days from receipt to review the proposed change order(s). If following the 10 day period, the CITY has not expressly approved or disapproved the change order, the CITY will be deemed to have approved the proposed change order. CITY'S approval of the proposed change order(s) shall not be unreasonably withheld. In the event the CITY disapproves the proposed change order(s), the CITY shall submit proposed changes to the proposed change order(s) that, if incorporated, will make the proposed change order(s) acceptable to the CITY. The NRD shall have 10 days to review CITY'S proposed changes to the proposed change order(s), and shall either incorporate CITY'S proposed changes, or submit new proposed change order(s) to the CITY. The stated cycle of review and approval or disapproval with recommended changes shall continue until the PARTIES are in agreement, at which time, the NRD shall issue the change order(s) to the CONTRACTOR(S). Unless agreed to, in writing, by the NRD, construction of the ancillary projects stated in Section 12A, above, shall not be permitted to delay the completion of construction and issuance of the engineering certificate of substantial completion of the DS-15A PROJECT.

j. Section 15 is hereby amended and restated in its entirety as follows:

15. CONTRACTOR'S WARRANTIES. The NRD shall enforce all bonds and warranties given by the CONTRACTOR(S) and their subcontractors in the CONSTRUCTION CONTRACT(S), including without limitation bonds and warranties given in connection with or pertaining to the EXPANDED SANITARY SEWER FACILITIES, CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS, CITY'S RECREATIONAL IMPROVEMENTS, and CITY'S ROAD IMPROVEMENT

k. Section 16(c) is hereby amended and restated in its entirety as follows:

c) the NRD shall pay, and the CITY shall reimburse the NRD for any and all of the actual costs incurred associated with the CITY'S SANITARY SEWER FACILITIES, EXPANDED SANITARY SEWER FACILITIES, CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS, and CITY'S ROAD IMPROVEMENT, including without limitation the

costs paid by the NRD associated with the design (if performed by the ENGINEER), incorporation into the FINAL PLANS, engineering, drafting of change order(s), construction, permitting, engineering observation and administration of construction, and any delays caused by the ancillary projects identified in this section.

l. Section 17A is hereby added to the AGREEMENT, and shall state:

17A. PAYMENT OF COSTS FOR ANCILLARY PROJECTS. Reimbursement by the CITY for the actual costs incurred by the NRD, as stated in Section 16(c), above, for the EXPANDED SANITARY SEWER FACILITIES, CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS, and CITY'S ROAD IMPROVEMENT shall be due and payable to the NRD within six (6) months after issuance of the engineering certificate of substantial completion of the DS-15A PROJECT.

m. Section 19A is hereby added to the AGREEMENT, and shall state:

19A. PERMITS NECESSARY DUE TO ANCILLARY PROJECTS. The CITY shall be solely responsible for the costs associated with any and all permits that are necessary for the CITY'S SANITARY SEWER FACILITIES, EXPANDED SANITARY SEWER FACILITIES, CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS, and CITY'S ROAD IMPROVEMENT. In the event any of the ancillary project identified in this section results in the necessity of amending, updating, or revising of permits previously acquired by the NRD for the DS-15A PROJECT, the CITY shall reimburse the NRD for all costs associated with the amending, updating, or revising of said permits. In the event, the permits previously acquired by the NRD for the DS-15A PROJECT cannot be amended, updated, or revised due to the ancillary projects identified in this section, said ancillary projects will not be constructed as part of the DS-15A PROJECT and shall be terminated. The NRD shall bear no responsibility and no liability for the termination of any of the ancillary projects identified in this section.

n. Section 20(c) and (d) are hereby amended and restated in its entirety as follows:

c) the CITY, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the remaining principal project components of the DS-15A PROJECT, if constructed, including without limitation:

- i) the RESERVOIR, which shall be operated as a no-wake lake;
- ii) the NRD'S RECREATIONAL IMPROVEMENTS;
- iii) the CITY'S RECREATIONAL IMPROVEMENTS;
- v) the CITY'S ROAD IMPROVEMENT; and,
- vi) the WATER QUALITY BASIN, without any right or duty to dredge the same for the purposes of maintaining open water;

d) the CITY, at its sole cost and expense, shall permanently operate, maintain, repair, replace, and regulate the following remaining components of the DS-15A PROJECT, if constructed, including without limitation:

- i) the CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS;
- ii) the CITY'S SANITARY SEWER FACILITIES, and,
- iii) the EXPANDED SANITARY SEWER FACILITIES.

all as located on the remainder of the lands to be conveyed by the NRD to the CITY in accordance with THIS AGREEMENT.

- o. The first sentence of Section 21 is hereby amended and restated in its entirety as follows, the remaining portion of Section 21 is unchanged:

21. INDEMNIFICATIONS. The CITY shall defend, indemnify, and hold the NRD harmless from and against all costs and expenses, including attorneys fees and court costs, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the CITY'S operation, maintenance, repair, replacement, or regulation of the principal project components of the DS-15A PROJECT (excepting the DAM), and the CITY'S SANITARY SEWER FACILITIES, the EXPANDED SEWER FACILITIES, and the CITY'S ADDITIONAL RECREATIONAL IMPROVEMENTS.

- p. Section 22(a)(iv)(a) is hereby amended and restated in its entirety as follows:

(a) **REGULATORY POOL STRUCTURE RESTRICTION.** The CITY shall not construct, maintain or permit structures, fixtures or other improvements, other than recreational trail improvements, lighting, landscaping, boat docking facilities and signage, in any areas of the

PROJECT LAND, within the watershed of the DAM, having a ground surface elevation lower than 1,182.8 feet above mean sea level, NAVD 1988, which elevation the parties agree is approximately one foot (1') above the mean sea level elevation of the 500-year flood pool of the RESERVOIR.

q. Section 22(a)(iv)(b) is hereby amended and restated in its entirety as follows:

(b) REGULATORY POOL EXCAVATION AND FILL RESTRICTION. The CITY shall not fill, nor permit filling of, any areas of the PROJECT LAND, within the watershed of the DAM, having a ground surface elevation lower than 1,182.8 feet above mean sea level, NAVD 1988, without balancing such placement with a permanent borrowing and removal of an equivalent amount of earth fill from such areas, and without the prior written approval of the NRD of the plans for such activities, such approval to not be withheld or delayed unreasonably.

r. Section 22(a)(iv)(c) is hereby amended and restated in its entirety as follows:

(c) MAXIMUM POOL EXCAVATION AND FILL RESTRICTION. The CITY shall not fill, nor permit filling of, any areas of the PROJECT LAND, within the watershed of the DAM, having a ground surface elevation higher than 1,182.8 feet above mean sea level and lower than 1,188.2 feet above mean sea level, NAVD 1988 (MAXIMUM POOL), without balancing such placement with a permanent borrowing and removal of an equivalent amount of earth fill from such areas, and without the prior written approval of the NRD of the plans for such activities, such approval to not be withheld or delayed unreasonably.

2. **NO OTHER CHANGES.** The provisions of the AGREEMENT not specifically referenced in the ADDENDUM remain in full force and effect and are not amended, changed, or altered by this ADDENDUM.

IN WITNESS WHEREOF, the parties have executed THIS ADDENDUM, 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 November 5, 2015.

THE CITY OF OMAHA

By Jean Stothel

JEAN STOTHERT, Mayor

Attest:



City Clerk

The NRD has executed THIS AGREEMENT on September 10, 2015.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By 

JOHN WINKLER, General Manager

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY

CITY OF OMAHA

LEGISLATIVE CHAMBER

Omaha, Nebraska

RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

WHEREAS, the City of Omaha and Papio-Missouri River Natural Resources District (PMRNRD) have entered into an Interlocal Agreement for the joint participation on the design and construction of the Papio Watershed Dam Site 15A by Ordinance No. 39537 on December 18, 2012; and

WHEREAS, the parties desire to amend this Agreement to allow for the design and construction of sewer, roadway and recreational ancillary projects, as is delineated in the attached Addendum #1 to the Original Agreement, which by this reference is made part hereof; and,

WHEREAS, this Addendum will provide for these projects, now made necessary by new development activity not approved at the time of the original Agreement, to be designed and constructed as a part of the PMRNRD's project as approved by the City's Public Works or Parks, Recreation and Public Property Departments, dependent on the project; and,

WHEREAS, these ancillary projects will be undertaken at the City's sole cost, which is to be paid from the respective Departmental funds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

THAT, as recommended by the Mayor, Addendum #1 to the Interlocal Agreement between the City of Omaha and Papio-Missouri River Natural Resources District for the construction of ancillary sewer, roadway and recreational improvements to the Papio Watershed Dam Site 15A project, located approximately northwest of 168th and Fort Streets, now necessary due to adjacent recently-approved development activity, which costs will be paid for from the related Departmental funds, is hereby approved.

1993htp

APPROVED AS TO FORM:

 10/29/2015
CITY ATTORNEY DATE

By Ben S. Gray Councilmember

Adopted NOV - 3 2015 6-0

Buster Brown City Clerk

Approved Sean Stutzel Mayor

I hereby certify that the foregoing is a true and correct copy of the original document now on file in the City Clerk's Office.

11/5/15

Buster Brown
Buster Brown, City Clerk, City of Omaha