

## MEMORANDUM

**To:** PPO Subcommittee  
**From:** Amanda Grint, Water Resources Engineer  
**Date:** June 4, 2020  
**Re:** Interlocal Agreement with the City of Omaha for Zorinsky Basin 2

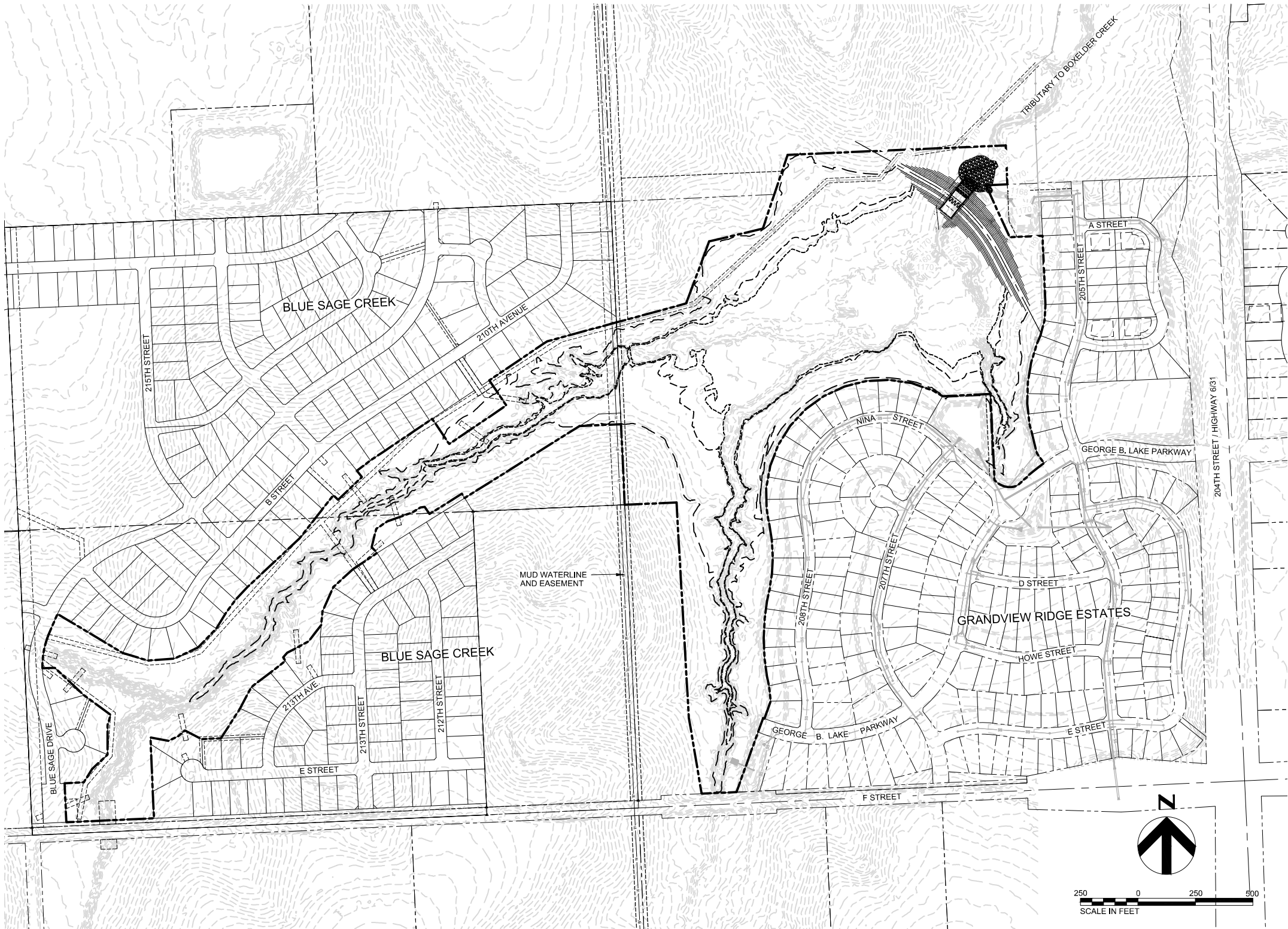
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In 2016, the District began design of Zorinsky Basin 2 (see attached map), the last of the four planned water quality basins intended to protect Zorinsky Lake from sediment. Construction of the project began in 2018 and will be completed by fall of 2020. The project is located within the City of Omaha jurisdiction and will be transferred to them upon completion as detailed in the interlocal agreement. The following is a summary of the proposed agreement:

- The land will be transferred to the City of Omaha.
- The weir, embankment and outlet pipes will be operated and maintained by the District.
- The City is limited to what can be allowed within the flood pool of the basin.

Transfer of the land would be immediate as soon as work is complete, and the City has approved the interlocal agreement.

**Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the Interlocal Agreement with the City of Omaha for the Zorinsky Water Quality Basin Number 2 project, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**



LEGEND

	TOP OF DAM ELEV. 1191.0		EASEMENTS
	SPILLWAY ELEV. 1183.0		
	NORMAL POOL ELEV. 1181.5		
	PROPERTY LIMITS		
	PROPERTY PARCELS		

GENERAL NOTES

1. TOP OF DAM AFTER SETTLEMENT SET AT ELEVATION 1191.0.
2. DESIGN SEDIMENT STORAGE AVAILABLE BELOW ELEVATION 1181.5 = 97 ACRE-FT.
3. EXISTING TOPOGRAPHY IS COMBINATION OF JUNE 2016 E&A CONSULTING GROUP, 2010 LIDAR 2-METER DEM FROM NEBRASKA DNR, AND 2016 OLSSON ASSOCIATES PROPOSED GRADING PLAN FOR GRANDVIEW RIDGE SUBDIVISION.
4. COORDINATES ARE MODIFIED STATE PLANE (MODIFIED SCALE FACTOR = 0.99961299)
2. ELEVATIONS ARE NAVD 88, NAD 1983.

STRUCTURE CAPACITY DATA			
ELEVATION (FT)	SURFACE AREA (AC)	INCREMENTAL STORAGE (AC-FT)	CUMULATIVE STORAGE (AC-FT)
DRAWDOWN → 1156	0.0	0	
		0.1	0
1158	0.1	0.3	0
1160	0.2	0.4	0
1162	0.2	0.6	0
1164	0.4	0.9	1
1166	0.5	1.2	2
1168	0.7	1.7	3
1170	1	3	5
1172	2	6	8
1174	4	11	14
1176	7	18	25
1178	11	26.5	43
1180	15.5	26.6	70
NORMAL POOL → 1181.5	20	10.5	97
1182	22	23	108
SPILLWAY CREST → 1183	24	25.5	131
1184	27	58	157
100-YR POOL - 1185.7 →	31	67	215
1186	36	77	282
1188	41	43	359
TOP OF DAM → 1191	45	46.5	402
1192	48	103	449
1194	55	117	552
1196	62		669

NOTE:  
1. STRUCTURE CAPACITY DATA BASED ON PRE-PROJECT CONDITIONS.



Date  
01-18

TRM

Designed

Date  
01-18

TRM

Drawn

Date  
01-18

JUE

Checked

Approved

RESERVOIR AREA PLAN AND CAPACITY TABLE

ZORINSKY WATER QUALITY BASIN NO. 2 DAM DOUGLAS COUNTY, NE

PAPIO - MISSOURI RIVER NATURAL RESOURCES DISTRICT

CAD file:  
00G-02.dwg

Drawing No.  
G-2

**INTERLOCAL COOPERATION ACT AGREEMENT  
BETWEEN  
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT,  
AND  
THE CITY OF OMAHA, NEBRASKA,  
FOR  
ZORINSKY WATER QUALITY BASIN #2**

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

**WHEREAS**, Papillion Creek and Tributaries Lakes Project Dam Site No. 18, also known as Zorinsky Lake, now constructed, operated and maintained on a tract of land at 156<sup>th</sup> and "F" Streets in Omaha, Douglas County, Nebraska, was and is an integral part of the Papillion Creek and Tributaries Lakes Project of the United States Army Corps of Engineers and was sponsored by the **CITY**, was intended to provide flood control for the Papillion Creek Watershed, and lays wholly within the **NRD**; and,

**WHEREAS**, to prevent pre-mature siltation of the reservoir of Dam Site No. 18, the **PARTIES** desire to enter into an interlocal agreement for the purpose of construction, operation and maintenance of a water quality basin as called for in the Papillion Creek Watershed Partnership Implementation Plan (hereinafter referred to as "the **BASIN #2 PROJECT**") intended to trap silt and other sediments and nutrients, and thus prevent the same from being carried into Dam Site 18; and

**WHEREAS**, to further prevent pre-mature siltation of the reservoir of Dam Site No. 18, the **NRD** has purchased certain parcels of land and easements over

other parcels, all in Section 36, Township 15 North, Range 10 East of the 6th P.M. in Douglas County, Nebraska (hereinafter referred to as "the **PROJECT LAND**"), depicted and legally described in the document attached hereto as Exhibit "A" and incorporated herein by reference, for the purpose of construction, operation and maintenance of the BASIN #2 PROJECT intended to trap silt and other sediments and nutrients, and thus prevent the same from being carried into Dam Site 18; and,

**WHEREAS**, the BASIN #2 PROJECT will consist of construction, operation, maintenance, repair, replacement and regulation of a dam or weir (hereinafter referred to as "the **BASIN #2 DAM**," or "the **DAM**") and an associated reservoir (herein referred to as the "**BASIN #2 RESERVOIR**," or "the **RESERVOIR**") and associated wetland, channel, and riparian mitigation improvements ("the **MITIGATION IMPROVEMENTS**") required by the U. S. Army Corps of Engineers (hereinafter referred to as "the **CORPS**") as a condition to issuance of a Section 404 permit; and,

**WHEREAS**, the PARTIES desire to provide herein for the cooperative design, construction, operation, maintenance, repair, replacement, regulation and ownership of the BASIN #2 PROJECT and to specify the rights, duties and obligations of the PARTIES in connection therewith.

**NOW, THEREFORE, IN CONSIDERATION** of the foregoing recitals and their mutual covenants, the PARTIES agree as follows:

1. **DUTIES OF THE PARTIES.** The design, construction, operation, maintenance, repair, replacement and regulation of the BASIN #2 PROJECT will be undertaken by the PARTIES without any separate entity being created, and, the duties and responsibilities of the PARTIES with respect thereto shall be as defined by THIS AGREEMENT.

2. **GENERAL BENEFIT.** The PARTIES do hereby find and agree that the BASIN #2 PROJECT will be of general benefit to the PARTIES with only an incidental special benefit.

3. **THE ENGINEERS.** The NRD has retained engineering consultants (hereinafter referred to as "the **ENGINEERS**") to design the BASIN #2 PROJECT



and to prepare plans and specifications and contract documents for, and administer construction of, the BASIN #2 PROJECT, including, without limitation, the MITIGATION IMPROVEMENTS.

4. **PRELIMINARY PLANS.** The ENGINEERS has prepared preliminary plans and specifications for the BASIN #2 PROJECT (hereinafter referred to as "the PRELIMINARY PLANS"), subject to the following:

a) The PRELIMINARY PLANS shall be drawn in accordance with design criteria provided by the General Manager of the NRD, which shall be in general compliance with applicable Nebraska state and federal statutes, rules and regulations; and,

b) The PRELIMINARY PLANS shall include plans, provisions or notations for channel, wetland and riparian mitigation to be accomplished by the NRD on PROJECT LAND at the NRD'S cost.

5. **PREPARATION OF FINAL PLANS.** Upon NRD's approval of the PRELIMINARY PLANS, the NRD shall direct the ENGINEERS to prepare final plans and specifications for the BASIN #2 PROJECT (hereinafter referred to collectively as "the FINAL PLANS"), subject to the following:

a) The FINAL PLANS shall be drawn in accordance with design criteria provided by the General Manager of the NRD, which shall be in general compliance with applicable Nebraska state and federal statutes, rules and regulations; and,

b) The FINAL PLANS shall include final plans for channel, wetland and riparian mitigation to be accomplished by the NRD on the PROJECT

LAND at the NRD'S cost; and,

c) The FINAL PLANS shall include descriptions of the PROJECT LAND to be acquired by the NRD at the NRD'S cost.

6. **THE PROJECT CONTRACTOR(s).** The NRD has retained one or more general contractors (hereinafter referred to as "the **CONTRACTOR(S)**") to construct the BASIN #2 PROJECT.

7. **CITY'S ACCESS TO FINAL PLANS AND CONSTRUCTION CONTRACT.** Upon the CITY'S request, the NRD shall deliver to the CITY copies of the contracts between the NRD and the CONTRACTOR(S) for construction of the BASIN #2 PROJECT, including, without limitation, the proposed schedules of all materials and labor compensation rates the NRD paid to the CONTRACTOR(S) for construction of the BASIN #2 PROJECT (such contract, together with the FINAL PLANS, hereinafter are referred to collectively as "the **CONSTRUCTION CONTRACT(S)**").

8. **CONTRACTOR'S WARRANTIES.** The NRD shall enforce all bonds and warranties given by the CONTRACTOR(S) and their subcontractors in the **CONSTRUCTION CONTRACT(S)**.

9. **PAYMENT OF COSTS.** Except as may otherwise be provided in **THIS AGREEMENT**, the NRD shall pay all the costs of design and construction of the BASIN #2 PROJECT.

10. **CONSTRUCTION OBSERVATION.** The NRD, at its sole cost and expense, will provide for engineering observation and administration of construction of the BASIN #2 PROJECT.

11. **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 BASIN #2 PROJECT.

12. **OPERATION AND MAINTENANCE.** After completion of construction of the BASIN #2 PROJECT, the NRD, at its sole and unreimbursed cost and expense, shall permanently operate, maintain, repair, replace and regulate the DAM (and accompanying weir); and, the CITY, at its sole and unreimbursed cost and expense, shall permanently operate, maintain, repair, replace and regulate the remainder of the BASIN #2 PROJECT, including without limitation the **RESERVOIR**, located on the remainder of the lands conveyed by the NRD to the

CITY in accordance with THIS AGREEMENT. During the term of the Section 404 permit issued by the CORPS, the NRD shall operate, maintain, repair, replace and regulate the MITIGATION IMPROVEMENTS, and, upon the expiration of the 404 permit term, the CITY shall permanently operate, maintain, repair, replace and regulate the MITIGATION IMPROVEMENTS. For purposes of this paragraph, the site of the DAM shall be deemed to consist of the portion of the PROJECT LAND within the footprint of the DAM (and accompanying weir), as the same is described and depicted in the FINAL PLANS. Recreational amenities or uses may be constructed, permitted or allowed on, or at the BASIN #2 PROJECT, provided, however, that any future recreational amenities or uses shall be at the sole cost and expense of the CITY and such amenities or uses not be within or effect the MITIGATION IMPROVEMENTS. CITY shall not be required to dredge any area of the BASIN #2 PROJECT for the purpose of maintaining open water.

13. **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 BASIN #2 PROJECT, excepting the DAM and except 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 construction of the BASIN #2 PROJECT, including the BASIN #2 DAM, the BASIN RESERVOIR, and the MITIGATION IMPROVEMENTS, operation, maintenance, repair, replacement, or regulation of the DAM, except such personal injuries or property damages as may be caused by the negligence of the CITY.

14. **POST-CONSTRUCTION GRANTS AND CONVEYANCES.** Upon final completion of construction of the BASIN #2 PROJECT, the NRD shall convey the PROJECT LAND to the CITY, 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 conveyed lands,

ii) The right to have unrestricted use and access over and across the conveyed lands by any route or means and for any purpose related to operation, maintenance, repair, replacement or regulation of the DAM;

iii) The right to flow waters and sediment upon, and inundate, all those portions of the conveyed lands which have a ground surface elevation lower than the elevation of the top of the DAM ("the MAXIMUM Flood 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 conveyed lands, within the watershed of the DAM, having a ground surface elevation lower than 1181.5 feet above mean sea level, NGVD.

(b) REGULATORY POOL EXCAVATION AND FILL RESTRICTION The CITY shall not fill, nor permit filling of, any areas of the conveyed lands, within the watershed of the DAM, having a ground surface elevation lower than 1183.0 feet above mean sea level, NGVD, 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 conveyed lands, within the watershed of the DAM, having a ground surface elevation higher than 1183.0 feet above mean sea level and lower than 1191.0 feet above mean sea level, NGVD, 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 shall also include and be subject to the following permanent restrictions on the land occupied by the **MITIGATION IMPROVEMENTS**, required by the CORPS, that shall run with the 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 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 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 land; 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.

18. **RISK OF LOSS.** After completion of construction of the BASIN #2 PROJECT and conveyance of PROJECT LAND to the CITY, the risk of loss of or damage to such BASIN #2 PROJECT components shall be borne by the party that has an obligation to operate and maintain such components or facilities, whether such loss or damage results from flood or other casualty whatsoever.

19. **NO SEPARATE LEGAL ENTITY.** No separate legal or administrative entity is created by THIS AGREEMENT.

20. **APPROVALS.** Wherever THIS AGREEMENT speaks of approval and consent by the CITY, such approval shall be manifested by act of the CITY'S Mayor or Parks, Recreation and Public Property Department Director. Wherever THIS AGREEMENT speaks of approval and consent by the NRD, such approval shall be manifested by act of the General Manager of the NRD.

21. **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.

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

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

24. **MERGER.** THIS AGREEMENT shall not be merged into any other oral or written Agreement, lease or deed of any type.

25. **MODIFICATION.** THIS AGREEMENT contains the entire agreement of the PARTIES. No representations were made or relied upon by any 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 any of the terms hereof unless done in writing and signed by an authorized officer of such PARTY.

26. **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 authorized representatives.

27. **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.

28. **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.

29. **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 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.

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

31. **COUNTERPARTS.** THIS AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

33. **NOTICES.** Any notice required under the terms of THIS AGREEMENT shall be deemed to have been given within forty-eight (48) hours after 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  
Parks, Recreation and Public Property Department  
City of Omaha, Nebraska  
1819 Farnam Street, Suite 701  
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  
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.

**IN WITNESS WHEREOF**

THIS AGREEMENT is executed by the PAPIO-MISSOURI RIVER  
NATURAL RESOURCES DISTRICT on this \_\_\_\_ day of \_\_\_\_\_.  
2020, 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 \_\_\_\_\_ day of \_\_\_\_\_ 2020, pursuant to ordinance duly  
adopted by its City Council.

**CITY OF OMAHA, NEBRASKA**

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF NEBRASKA            )  
  )SS  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, 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 City.

WITNESS my hand and Notarial Seal the date last aforesaid.

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Notary Public

STATE OF NEBRASKA       )  
                                      )SSS  
COUNTY OF                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public, personally came JEAN STOTHERT, 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.

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Notary Public



**EXHIBIT A**

**PROJECT LAND**