

Agenda Item: 8.

MEMORANDUM

TO: Programs, Projects & Operations Subcommittee

FROM: Lori Ann Laster, Stormwater Management Engineer

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

DATE: September 2, 2015

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.

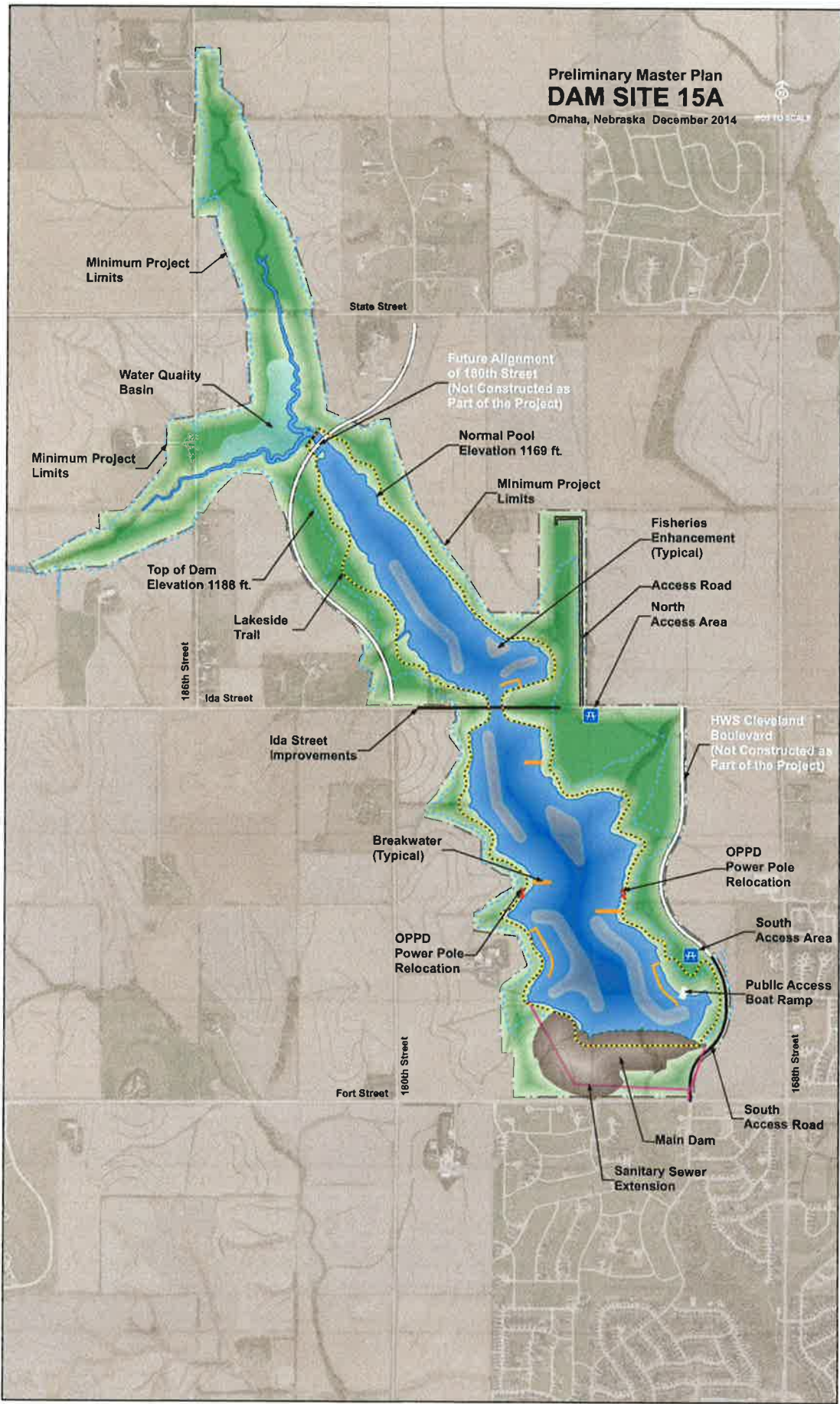
The original agreement called for the District to construct sanitary sewer facilities through the dam in order to prevent future disturbance of the embankment at the City's expense. However, the original agreement called for calculating the sewer costs based on the percentage of the engineer's estimate of the sewer improvements and the total project. The attached proposed First Addendum to the Interlocal Agreement would change this provision to require that the City pay all actual costs incurred by the District for design, construction, and construction observation and contract administration for these sanitary sewer facilities.

At the time the agreement was approved, the area surrounding DS15A was not in the City's Present Development Zone (PDZ) and it was unclear when development may occur in this area. In August 2015, the City put portions of the area surrounding DS15A in the PDZ. There has been interest from the City to construct additional sewer improvements, recreational improvements and road improvements as part of the project. The attached proposed addendum to the Interlocal Agreement will allow the City to request that these additional improvements be designed and constructed by the District at the City's sole cost and expense.

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 First 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.

Preliminary Master Plan DAM SITE 15A

Omaha, Nebraska December 2014



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 _____, 2015.

THE CITY OF OMAHA

By _____

JEAN STOTHERT, Mayor

Attest:

City Clerk

The NRD has executed THIS AGREEMENT on _____, 2015.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
JOHN WINKLER, General Manager