

Agenda Item: 9.

Memorandum

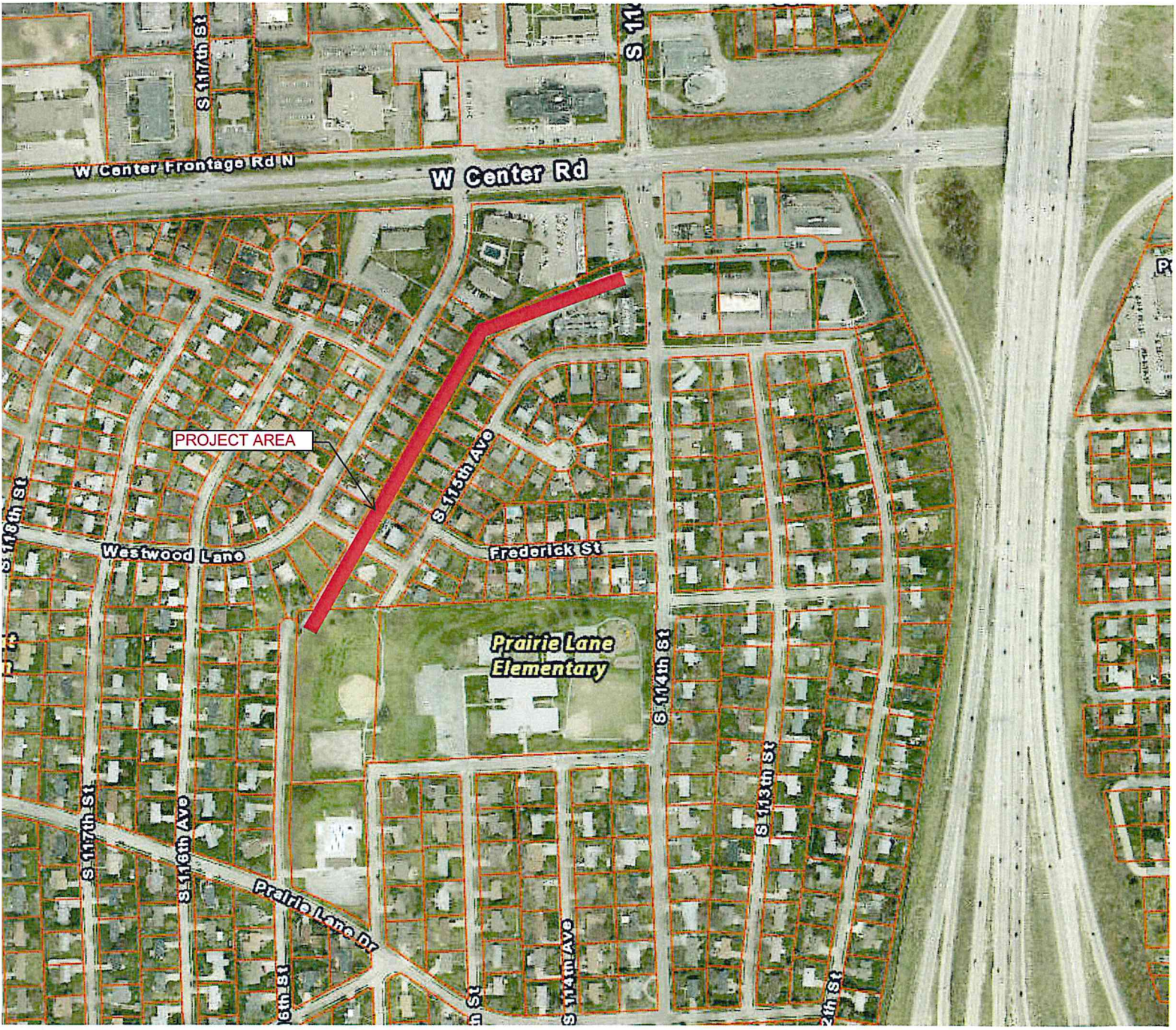
To: PPO Subcommittee
From: Amanda Grint, Water Resources Engineer
Date: June 6, 2013
Re: Interlocal Agreement with the City of Omaha for Rockbrook Mitigation Bank Credits

The City of Omaha entered in to an agreement with the District in March 2012 for cost share of the restoration of a tributary to Rockbrook Creek, near 115th and Frederick Streets, through the District's Urban Drainageway Program (see attached map). The project involves the removal of a concrete liner and restoration of approximately 1,100 linear feet of channel near Frederick Street. The purpose of the project is to provide channel stability, improve instream habitat and improve water quality. These improvements have the potential to create stream mitigation credits and the City wishes to pursue this potential.

It is necessary for an entity to have an Umbrella Instrument in order to establish credits through the Corps of Engineers that can be used for mitigation. The credits can be used for those entities other projects or sold to other agencies, individuals, etc. The District has a current Wetland and Stream Bank Umbrella Instrument approved through the Corps of Engineers to create and manage mitigation banks.

As the City decides if they should complete an Umbrella Instrument of their own, it has been proposed that the Rockbrook project be submitted under the District's Umbrella Instrument as a mitigation bank. The attached interlocal agreement for Rockbrook Mitigation Bank Credits outlines the provisions of such arrangement. Since the District's cost share in the project is 60%, it is proposed that the District would receive 60% of the credits produced. The other 40% would be reserved for the City of Omaha to use at its sole discretion. The District would administer the ledger system for the credits and all other operation, maintenance and monitoring for the project would be completed by the City of Omaha.

Staff recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Interlocal Agreement with the City of Omaha for the Rockbrook Mitigation Bank Credits, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.



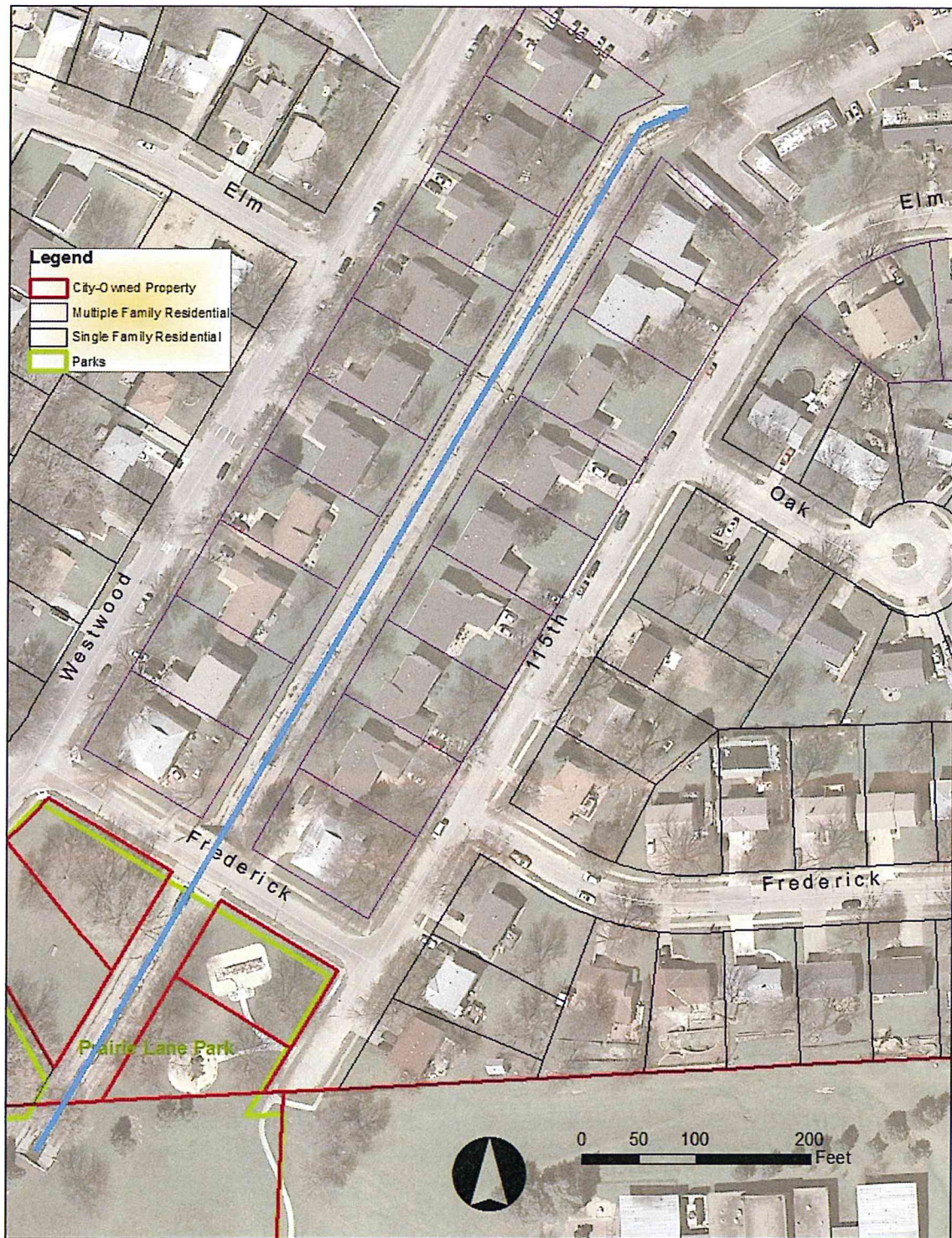


FIGURE 2
SITE MAP (WATERS OF THE U.S. SHOWN AS BLUE LINE)
Rockbrook Tributary

**INTERLOCAL COOPERATION ACT AGREEMENT
BETWEEN
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT,
AND
THE CITY OF OMAHA, NEBRASKA
FOR
ROCKBROOK MITIGATION BANK CREDITS**

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 parties entered into a March 22, 2012 Agreement under which they agreed to share the cost of a project to rehabilitate a tributary of Rockbrook Creek (“the Project”), with such Project to be performed by the City;

WHEREAS, completion and maintenance of the Project will generate stream and wetland umbrella mitigation bank credits (“Credits”); and

WHEREAS, a stream and wetland umbrella mitigation banking instrument (“Instrument”) is currently maintained between the NRD and the agencies comprising the Interagency Review Team administering such program, but the City does not currently have such an instrument in effect; and,

WHEREAS, the NRD wishes to reserve for the City, and the City wishes to receive, a proportion of the Credits generated by the Project, in the same proportion as the City’s total monetary contribution to the cost of the Project.

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. **NRD DUTIES.** The NRD shall perform all administrative tasks as required to obtain entitlement to all Credits available under its Instrument by reason of the completion and maintenance of the Project. The NRD shall perform all administrative tasks as needed to record the amount of Credits allocable to the Project and to reserve a portion of the Credits for the City's sole use under this Agreement.

2. **CITY DUTIES.** The City shall design, construct, and maintain the Project as provided in the March 22, 2012 Agreement. The City shall perform all monitoring necessary under the Instrument for establishing Project Credits and any administrative tasks as required of it to use reserved Credits under this Agreement.

3. **AMOUNT OF CREDITS.** The NRD shall reserve for the City's sole use, a percentage of the Credits generated by the entire Project, which percentage shall be the same percentage as the City's share of the costs of the Project to be paid by the City. Under the March 22, 2012 Agreement, the City's share of costs is to be 40%; so accordingly, the City shall be entitled to 40% of the Credits. If the City's cost share under the March 22, 2012 Agreement shall be amended, the City's entitlement to Credits under this Agreement shall be changed to the same amended percentage.

4. **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.

5. **CAPTIONS.** Captions used in this Agreement are for convenience and are not used in the construction of this Agreement.

6. **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.

7. **MERGER.** This Agreement shall not be merged into any other oral or written agreement, lease or deed of any type.

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

9. **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.

10. **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

11. **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.

12. 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.

13. EFFECTIVE DATE AND TERM. This Agreement shall become effective upon its execution by the Parties, and shall be perpetual in its duration.

14. 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 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
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.

15. **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.

This Agreement is executed by the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT on this ____ day of _____, 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 _____ day of _____, 2013, pursuant to resolution 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 _____, 2013, 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.

Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2013, 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.

Notary Public