

Agenda Item: 6.

Memorandum

To: PPO Subcommittee
From: Amanda Grint, Water Resources Engineer
Date: February 1, 2012
Re: Interlocal Agreement with City of Omaha for Omaha Levee Rehabilitation

The Omaha Levee consists of approximately 12 miles of earthen levee and 1 mile of floodwall along the Missouri River (see attached map). This flood control structure protects a large portion of the downtown area including the Century Link Center, TD Ameritrade Park and Eppley Airfield. As a new flood study is being completed to produce revised Federal Emergency Management Agency (FEMA) flood maps, the City of Omaha faces a similar situation as the Village of Waterloo did a few years ago. The Omaha Levee will soon be issued a Provisionally Accredited Levee (PAL) letter by FEMA. The PAL letter gives a community 2 years to accredit a levee in order to continue to show 100 year flood protection on the FEMA flood maps. Even though the flood study has been delayed, meaning a PAL letter is still a few years away from being issued, the City of Omaha realizes that more than two years is likely needed to complete rehabilitation to the Omaha levee in order to have the levee accredited.

A City representative attended the District's Master Plan public session in 2010 and indicated that they were interested in the District taking over responsibility for the Omaha Levee. As noted in the attached letter from Mayor Suttle, with the 2011 flood events the City feels that the levee is best managed by the City. They do however, request cost share assistance to help fund accreditation of the levee. It is proposed the District cost share be used for study, design or construction of improvements.

A preliminary study, jointly funded by the District and the City, was completed by HDR Engineering in 2009 to examine the Omaha Levee and the two District levees, R616 and R613, to determine deficiencies needing to be addressed for the Corps of Engineers PL-8499 program and the FEMA accreditation program. This along with a Corps of Engineers annual inspection has given the City of Omaha some guidance on the amount of work necessary to accredit the levee. Additional information was submitted by Tetra Tech to the District regarding cost estimates for levee accreditation with levees in similar situations as the City of Omaha. Those cost estimates show approximately \$3,500,000 per mile for tasks similar to what the City of Omaha is anticipating.


A proposed interlocal agreement between the City of Omaha and the District for cost sharing on the rehabilitation of the Omaha Levee is attached for review. The interlocal provides for maximum cost share assistance in the amount of \$2,000,000 over a four year period, with an annual District contribution of up to \$500,000.

Staff recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Agreement with the City of Omaha for the Omaha Levee Rehabilitation providing cost sharing assistance up to \$2,000,000 over four years, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.



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Levee Stationing	
0+00 to 112+89	Omaha Unit I
1+00 to 221+86	Omaha Levee Eppley Relocation
305+20 to 391+80	Omaha Unit I
1390+00 to 1458+00	Omaha Unit II - Section 1
0+00 to 57+23	Omaha Floodwall
482+50 to 664+53	Omaha Unit II - Section 2
40+00 to 510+00	Levee Unit R-613
0+00 to 235+47	Levee Unit R-616
Note: Stationing is approximate and may not match original stationing from O & M manuals	



1,000 500 0 1,000
Feet
Scale

Legend

-  Photo Point
-  Levee Alignment



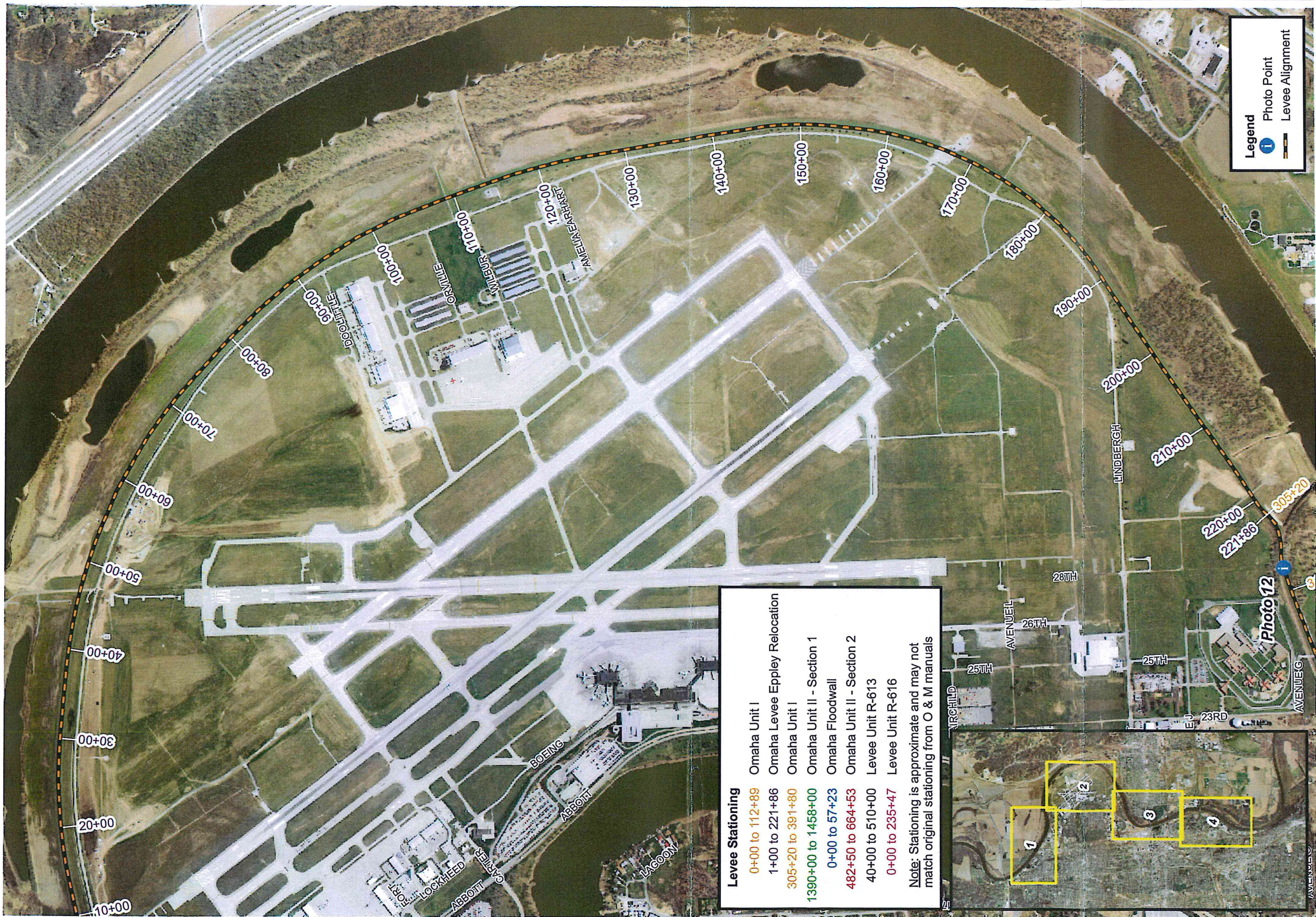
Site Map and Locations of Interest
Missouri River Levee



Work Plan for USACE PL 84-99 Program

DATE
March 2009

FIGURE
1



Levee Stationing	
0+00 to 112+89	Omaha Unit I
1+00 to 221+86	Omaha Levee Eppley Relocation
305+20 to 391+80	Omaha Unit I
1390+00 to 1458+00	Omaha Unit II - Section 1
0+00 to 57+23	Omaha Floodwall
482+50 to 664+53	Omaha Unit II - Section 2
40+00 to 510+00	Levee Unit R-613
0+00 to 235+47	Levee Unit R-616

Note: Stationing is approximate and may not match original stationing from O & M manuals



Site Map and Locations of Interest
Missouri River Levee



Work Plan for USACE PL-84-99 Program

DATE	March 2009
FIGURE	2



HDR

Site Map and Locations of Interest Missouri River Levee



Work Plan for USACE PL-84-99 Program

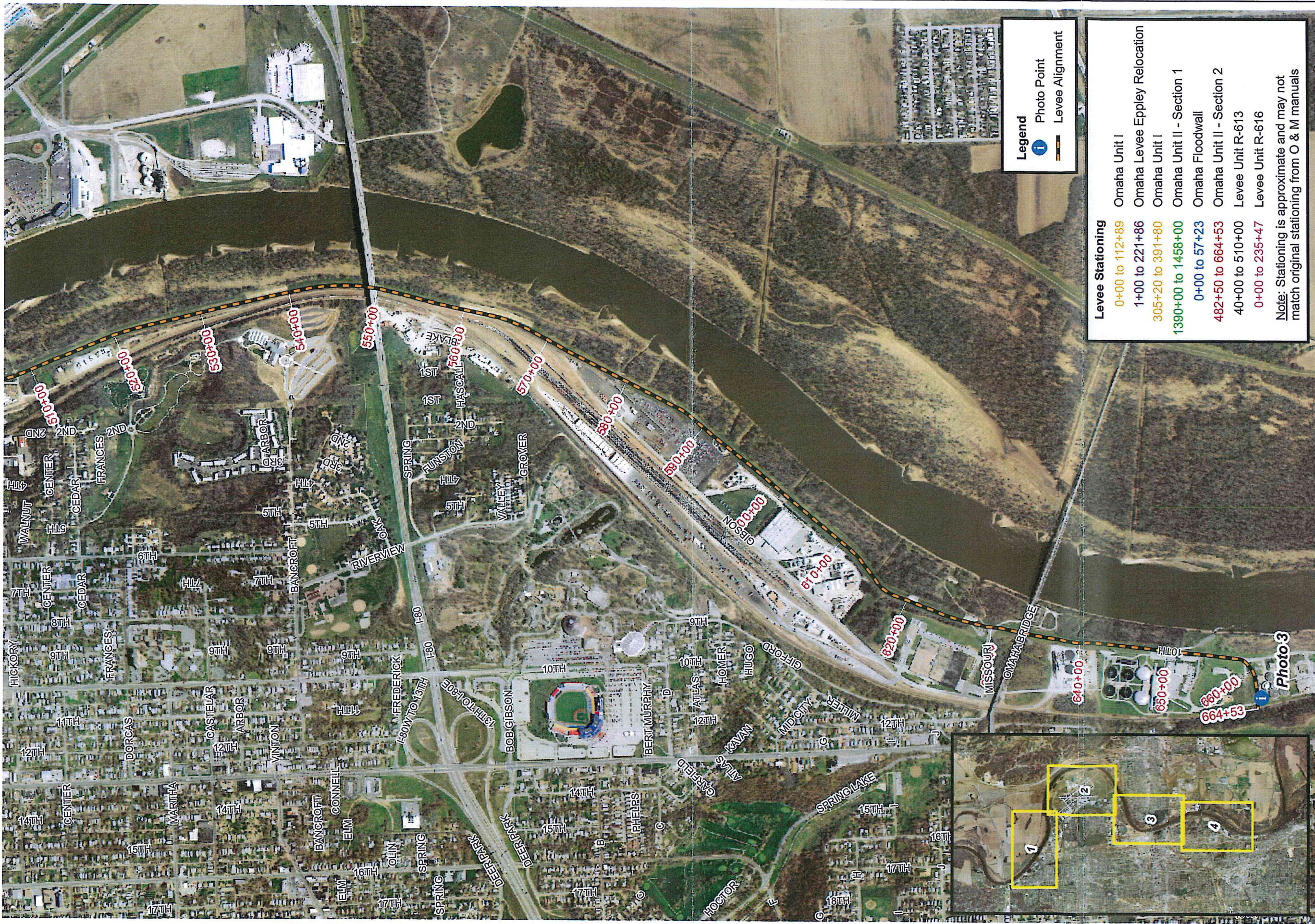


DATE

March 2009

FIGURE

3



HDR

Site Map and Locations of Interest Missouri River Levee



Work Plan for USACE PL-84-99 Program

DATE

March 2009

FIGURE

4



City of Omaha
Jim Suttle, Mayor

Office of the Mayor
1819 Farnam Street, Suite 300
Omaha, Nebraska 68183-0300
(402) 444-5000
FAX: (402) 444-6059

January 25, 2012

Chairperson Kolowski and Directors of the Papio-Missouri River NRD:

Even as we greet the New Year and look forward to the many challenges of 2012, we should reflect on the accomplishment that each of our organizations achieved with the unprecedented flooding of 2011. Thanks to efforts of our dedicated employees, consultants and contractors, our levees held and disaster was averted.

In 2010, when you were updating your Master Plan, I wrote to you asking that the responsibility to the US Army Corp of Engineers for the 13 miles of levee along the Missouri River be transitioned from Omaha to the Papio-Missouri River NRD. After the experience of 2011, however, I believe that it may be asking for too much to expect the NRD to assume so much additional responsibility. Omaha needs to maintain sponsorship of its levee in case we one day have to face such a challenge as demanding as was last year.

Although the Omaha levee proved itself by withstanding 104 days above flood stage, we are still facing a long and costly process to study, design and construct improvements that are necessary to recertify and retain FEMA accreditation of the Omaha levee system. I ask that you consider partnering with Omaha on this, and providing both technical and financial assistance in assuring that our levees remain safe and accredited.

Thank you for all the services that District provides for the region. Together, the NRD and Omaha weathered the storm that was 2011. With your support, we can continue to protect the area residents and assets.

Sincerely,

Jim Suttle
Mayor
City of Omaha

JS/mg

INTERLOCAL COOPERATION AGREEMENT
Between
THE CITY OF OMAHA, NEBRASKA
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
REHABILITATION OF THE OMAHA LEVEE

THIS AGREEMENT (“**THIS AGREEMENT**”) is made by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (“the **NRD**”) and the **CITY OF OMAHA, NEBRASKA** (“the **CITY**”), pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1997, et seq.)

WHEREAS, in circa 19 __, pursuant to the Flood Control Act of 1944, the United States Army Corps of Engineers (“the **USACE**”) constructed a Missouri River flood protection levee and floodwall system (“the **OMAHA LEVEE**”) consisting of approximately 12.5 miles of earthen levees and approximately one mile of concrete floodwall, all located on the right (west) bank of the Missouri River, extending from approximately River Mile 612 (near the South Omaha Treatment Plant) to approximately River Mile 625 (near the Minne Lusa Drain); and,

WHEREAS, in local sponsorship agreement(s) entered into by and between the **CITY** and the **USACE**, the **CITY** assumed responsibility to the **USACE** for operation, maintenance and repair of the **OMAHA LEVEE**; and,

WHEREAS, a recent flood study conducted by **USACE**, **NRD** and the Federal Emergency Management Agency (“**FEMA**”), concluded that the **OMAHA LEVEE** will require conformance with the requirements of 44 CFR 65.10; and,

WHEREAS, it was previously determined through a preliminary study conducted by HDR, Engineering, Inc., entitled, "Investigation and Evaluation Strategy for FEMA Certification Analysis of Missouri River Levees" dated March 2009, and in the USACE inspection letter and report dated November 17, 2008, that the OMAHA LEVEE fails to meet current FEMA requirements and will be required to be improved; and,

WHEREAS, the CITY desires to receive NRD cost-sharing assistance for a project to study, design and construct improvements to the existing OMAHA LEVEE ("the **PROJECT**") in order to qualify the OMAHA LEVEE for FEMA accreditation; and, the NRD desires to assist the CITY to partially finance the contracted services required to accomplish the PROJECT ("the **CONTRACT SERVICES**"); and,

WHEREAS, the NRD has authority under §2-3229, R.R.S., Neb., 1997, to "develop and execute, through the exercise of powers and authorities granted by law, plans, facilities, works, and programs relating to ***, (2) prevention of damages from flood water and sediment, (3) flood prevention and control ****," and the PROJECT is one of such facilities, works and programs.

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

1. **PROJECT BENEFITS.** The parties do hereby find and determine that the PROJECT will be of general benefit to the NRD, with only an incidental special benefit. Therefore, the NRD'S portion of the cost of the CONTRACT SERVICES may be funded using any available funds of the NRD.

2. **PROJECT PARTICIPANTS.** The CONTRACT SERVICES for the PROJECT shall be obtained by the CITY and the cost thereof partially paid by the NRD, as

provided herein, without any separate entity being created; and, the duties and responsibilities of the parties to each other with respect to the PROJECT shall be as defined by THIS AGREEMENT.

3. THE ENGINEERING CONTRACT. The CITY may enter into a professional services contract ("the **ENGINEERING CONTRACT**") with an engineering firm determined by the CITY with the approval of the NRD ("the **ENGINEERS**"), in the form as determined by the CITY and approved in writing by the NRD, pursuant to which the ENGINEERS shall undertake to perform the engineering services required for a study and the design and construction of the PROJECT, such tasks being expected to result in the determination of feasibility and costs for the PROJECT and further result in the preparation of preliminary and final plans and specifications, including bidding documents (collectively hereinafter "the **PLANS AND SPECIFICATIONS**") for construction of the PROJECT. The ENGINEERING CONTRACT also shall include, but shall not be limited to, covenants and conditions providing as follows, to-wit:

a) The ENGINEERS shall submit to the NRD, for its written approval and concurrence, copies of all deliverables that the ENGINEERING CONTRACT requires the ENGINEERS to submit to the CITY; and,

b) The NRD shall be named as an additional insured in all insurance provided to the CITY by the ENGINEERS pursuant to the ENGINEERING CONTRACT.

4. APPROVAL OF THE PLANS AND SPECIFICATIONS. Upon the ENGINEERS' completion of the PLANS AND SPECIFICATIONS, and after submission to and approval of the same by the CITY, the PLANS AND SPECIFICATIONS shall be

submitted to the NRD for its written comments and written approval, such approval to be refused only for good cause. Unless such approval is granted or refused within 30 days after the CITY'S written submission thereof to the NRD, such rights shall be deemed to have been waived. Such approval shall not for any purpose be construed as participation by the NRD in the CITY'S design processes, nor result in liability on the part of NRD for any negligence in the design of the PROJECT.

5. CONSTRUCTION CONTRACT FOR PROJECT. The CITY shall solicit competitive sealed bids for construction of the PROJECT pursuant to contract documents submitted to and approved in writing by the NRD, such approval to not be delayed or withheld unreasonably. The provisions of the CONSTRUCTION CONTRACT shall include, but not be limited to, covenants and conditions providing that the NRD shall be named as an additional insured in all insurance provided to the CITY pursuant to the contract for construction of the PROJECT. Within a reasonable time after CITY receipt and opening of such bids, the CITY shall deliver a summary thereof to the General Manager of the NRD, together with the identification by the CITY of the bidder who or which the CITY determines is the lowest and most responsible bidder. In the absence of good cause to the contrary being shown to the CITY by the NRD, the CITY shall accept such bid and shall award to such bidder the contract to construct the PROJECT. The CITY, through its contractor, shall construct the PROJECT in accordance with the NRD-approved PLANS AND SPECIFICATIONS.

6. NRD CONTRIBUTION. As the sole contribution of the NRD to the CITY towards costs of the PROJECT (hereinafter "the **NRD CONTRIBUTION**"), the NRD shall pay to the CITY in installments, within 45 days after the CITY'S respective

written demands, one-half (50%) of each of the billings rendered to the CITY for CONTRACT SERVICES for the PROJECT, provided, however, the NRD shall not be responsible under THIS AGREEMENT to pay or reimburse to the CITY more than a total of \$2,000,000 for CONTRACT SERVICES, nor provide such reimbursements at a rate greater than \$500,000 per NRD fiscal year, commencing with the NRD'S Fiscal Year 2012; and, the CITY shall be solely responsible to pay all other costs and expenses for CONTRACT SERVICES for the PROJECT without receiving any additional NRD reimbursement. Grants received by either of the parties, offsetting costs and expenses of CONTRACT SERVICES, shall be credited to both parties in equal shares against their respective obligations hereunder for costs and expenses of CONTRACT SERVICES.

7. **INDEMNIFICATION.** Except as otherwise specifically provided in THIS AGREEMENT, the CITY shall defend and indemnify the NRD and hold and save the NRD harmless

a) from and against any and all costs and expenses for design, engineering, rights-of-way acquisition, relocations, construction, patrol, management, operation, maintenance, repair and replacement of and for the OMAHA LEVEE, under the PROJECT, that exceed the NRD CONTRIBUTION;

b) from and against any and all claims, demands, damages, causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part caused by, arising out of or resulting from the design, engineering, rights-of-way acquisition, relocations, construction, patrol, management, operation, maintenance, repair and replacement of the OMAHA LEVEE under the PROJECT (except personal

injuries or property damages caused solely by the negligence of the NRD or its employees, officers, contractors or agents); and,

c) from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys fees, arising out of or resulting from the introduction or presence in or on any PROJECT rights of way of asbestos or any form thereof, or any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances in or on any PROJECT rights of way, including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination in or on the PROJECT rights of way (except costs and expenses relating to any such substances or materials introduced by the NRD or its employees, officers, contractors or agents).

8. CITY APPROVALS. Approvals by the CITY and other CITY actions, contemplated by or called for by THIS AGREEMENT, are hereby authorized to be provided by the Public Works Director of the CITY.

9. NRD APPROVALS. Approvals by the NRD and other NRD actions, contemplated by or called for by THIS AGREEMENT, are hereby authorized to be provided by the General Manager or Assistant General Manager of the NRD.

10. ENTIRE AGREEMENT. THIS AGREEMENT contains the entire agreement between the parties, and each party hereto agrees that neither the other party, nor any of its officers, agents, or employees, have made any representations or promises with respect to the PROJECT not expressly contained herein.

11. TIME. Time is of the essence of THIS AGREEMENT.

12. DEFAULT. If either party shall default hereunder, the other party shall be entitled to enforce specific performance of THIS AGREEMENT or may terminate THIS AGREEMENT.

13. NOTICES. All notices herein required shall be in writing and shall be served on the parties at the addresses set out below, or at such other address as either party may hereafter designate to the other party in writing for service of notice to itself. The mailing of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service hereunder.

14. BINDING EFFECT. The provisions of THIS AGREEMENT shall inure to the benefit of, and shall be binding upon, the successors in interest and assigns of the respective parties hereto.

15. EFFECTIVE DATE AND DURATION. THIS AGREEMENT shall be in force and effect from and after its execution by the parties hereto and shall have permanent duration.

16. APPLICABLE LAW. Each party to THIS AGREEMENT shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance and terms of THIS AGREEMENT.

17. **SEVERABILITY.** In the event any portion of THIS AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any such invalidity or unenforceability shall not affect the remainder of THIS AGREEMENT, the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of THIS AGREEMENT so as to render it valid, reasonable and enforceable.

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

19. **INTERLOCAL AGREEMENT 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 each party. There shall be no jointly held property as a result of this agreement. This agreement does not authorize the levying, collecting or accounting of any tax.

IN WITNESS WHEREOF, the parties have executed THIS AGREEMENT, 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 _____, 2012.

THE CITY OF OMAHA, NEBRASKA

By _____
Mayor

Attest:

CITY Clerk

The NRD has executed THIS AGREEMENT on _____, 2012.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**
8901 South 154th Street, Omaha, NE 68138-3621

By _____
John Winkler
General Manager