

Memorandum

To: Programs, Projects and Operations Subcommittee

Subject: Carter Lake Water Quality Improvement Project – Interlocal Cooperation Act
Agreement with the City of Omaha

Date: November 3, 2009

From: Gerry Bowen

The District staff has been working with the various agencies on the Carter Lake Water Quality Improvement Project since 2006. The partners in the project are the Cities of Carter Lake and Omaha, Nebraska Department of Environmental Quality (NDEQ), Nebraska Game and Parks Commission (NGPC), Iowa Department of Natural Resources (IDNR), West Pottawatomie Soil & Water Conservation District (SWCD), and UN-L Cooperative Extension. It is anticipated that the project will improve the water quality of Carter Lake for a wide variety of recreational pursuits.

A local watershed council, the CLEAR Council (Carter Lake Environmental Assessment and Rehabilitation), was formed. A consultant (Olsson Associates) was hired to study the lake and the watershed to determine the water quality problems, and the possible sources. The overabundance of nutrients, predominantly phosphorus, was the cause of the water quality problems. The CLEAR Council set the following goals:

- Objective 1. Increase growing season median water clarity from 16 inches to 54 inches to meet the Iowa Lake Restoration Program Goal, but not to fall below 30 inches to meet the TMDL goal.
- Objective 2. Reduce growing season in-lake total phosphorus from 153 ug/l to 75 ug/l.
- Objective 3. Reduce growing season in-lake nitrogen from 2,140 ug/l to 409 ug/l.
- Objective 4. Decrease growing season median chlorophyll *a* concentrations from 59 mg/m³ to 21 mg/m³.
- Objective 5. Maintain water column average dissolved oxygen above 5.0 mg/l throughout the year.
- Objective 6. Maintain healthy aquatic habitats that support balanced populations of fish, amphibians/reptiles and invertebrates.

A consultant (Tetra Tech) was hired to evaluate the various water quality measures that could be used to meet the Council's goals. The technical committee evaluated those items and recommended a list of practices (list and map attached) to be included in the final implementation plan. The list of measures include both watershed and in-lake measures. The in-lake measures include limiting high-speed watercraft usage. Since the lake is shallow, the boating activity re-suspends solids from the lake bed, also a source of excess nutrients. A whole-lake alum treatment is planned to clear the water column of solids and the nutrients attached to those solids.

Watershed measures include the installation of settling ponds for the various storm sewers outletting to the lake.

The CLEAR Council has yet to comment on this list, however, meetings with the Council and the general public are planned for November or December to receive their input.

The estimated total cost of these measures is \$5.8 million. The anticipated funding sources are shown below:

City of Omaha	\$500,000
Nebraska Game & Parks Commission	\$1,573,000
Nebraska DEQ 319	\$855,000
Iowa DNR 319	\$382,000
Iowa Legislature Special Appropriation	\$2,490,000
Total	\$5,800,000

The City of Carter Lake is contributing “in-kind” services for the project. These services include the expenses associated with a full-time project coordinator (salary, benefits, expenses, and office accommodations).

The City of Omaha has committed \$500,000 to the project. They are asking for cost sharing from the District of half this amount or, \$250,000. The attached draft interlocal agreement calls for the District’s share to be paid in five annual installments of \$50,000 beginning this fiscal year. The first installment is included in the FY 2010 Budget.

A “sister” project is being undertaken by the two cities to stabilize the water level in the lake by drilling and operating a diagonal well under the bed of the Missouri River. The hope is to stabilize the water level at 970.3 feet msl. This level has been determined to be the “normal” lake elevation. Funding for this measure has been secured by an earmark from the Iowa Legislature. Matching funds are being provided by the Cities of Carter Lake and Omaha. The District is not being asked to participate in the funding for this measure.

- **It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute an Interlocal Agreement with the City of Omaha for the Carter Lake Water Quality Improvement Project, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.**



City of Omaha
Jim Suttle, Mayor

**Parks, Recreation &
Public Property Department**

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 701
Omaha, Nebraska 68183-0701
(402) 444-5900
FAX (402) 444-4921

October 29, 2009

NOV 2 2009

John Winkler, General Manager
Papio-Missouri River Natural Resources District
8901 S. 154th St.
Omaha, NE 68138

RE: Carter Lake Water Quality Project

Dear Mr. Winkler:

The City of Omaha, along with the P-MRNRD, has been a partner in the development of a water quality plan for Carter Lake, an oxbow lake on the eastern edge of the city. The planning process, which involved many agencies both in Nebraska and Iowa, along with a citizens watershed council, began in 2006 and was completed last year. It has now moved into the design and implementation stage.

There were approximately twenty water quality management alternatives recommended as part of the final management plan. These are now being analyzed by Tetrattech, an engineering firm, in terms of location, cost and ability to improve water quality in the lake. A final list of recommended practices has been received favorably by the technical advisory team and will be presented to the CLEAR Council for their input. We anticipate final design will begin soon after.

The City of Omaha Public Works and Parks, Recreation and Public Property Departments have committed \$250,000 toward efforts which would occur on the Nebraska side of the Lake, largely in the Levi Carter Park which surrounds the outside bend of the Lake. We request that the P-MRNRD match this amount in terms of \$250,000, or \$50,000 over each of the next five years.

We look forward to continuing our partnership with the P-MRNRD by working with you on this important project.

Sincerely,

Steve Scarpello
Acting Director, PRPP

Cc: Gerry Bowen, P-MRNRD
Pat Slaven, Park Planner II
Nina Cudahy, Public Works
Harald Flatoen, Public Works

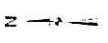
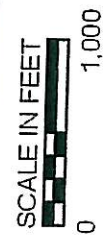
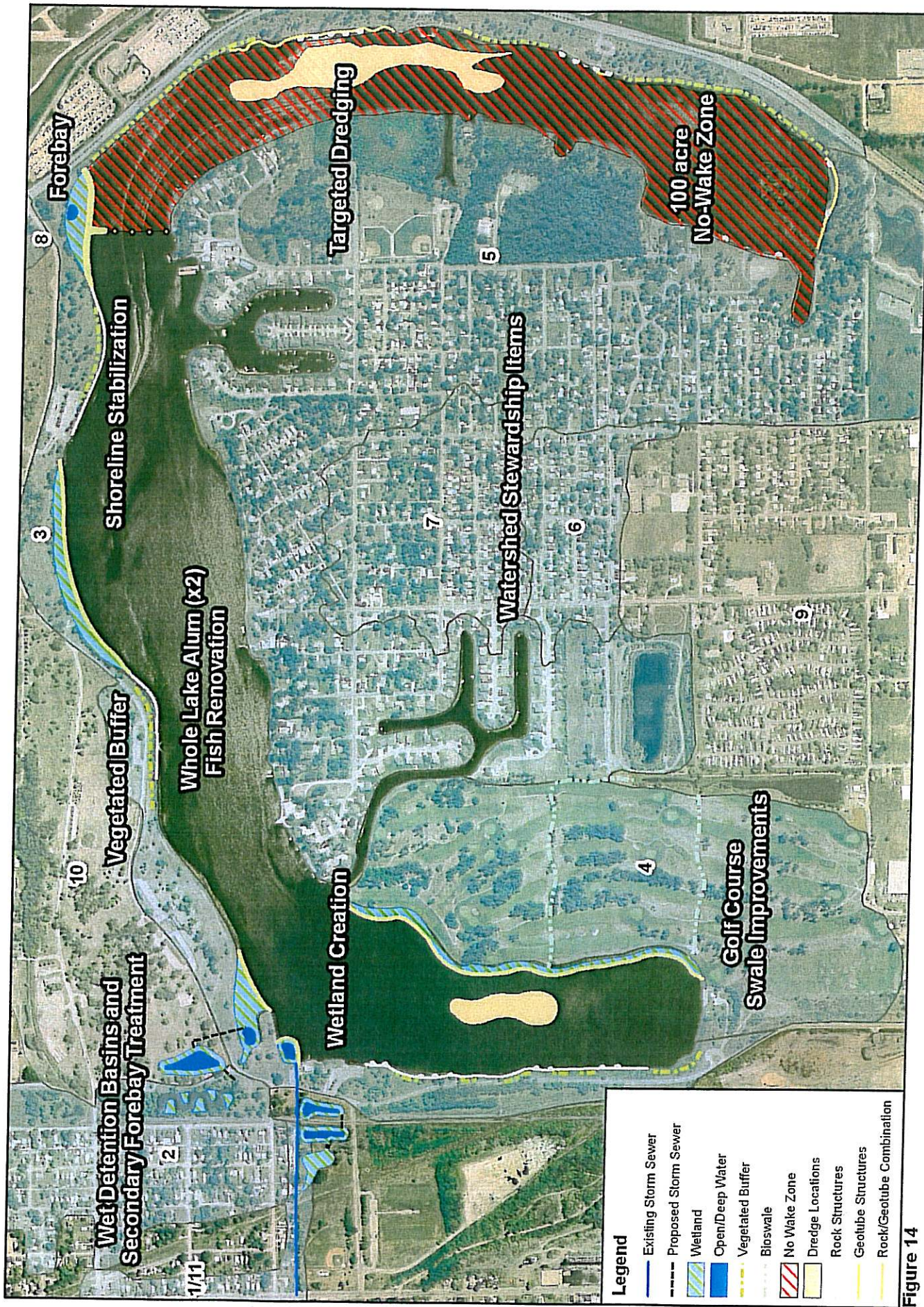
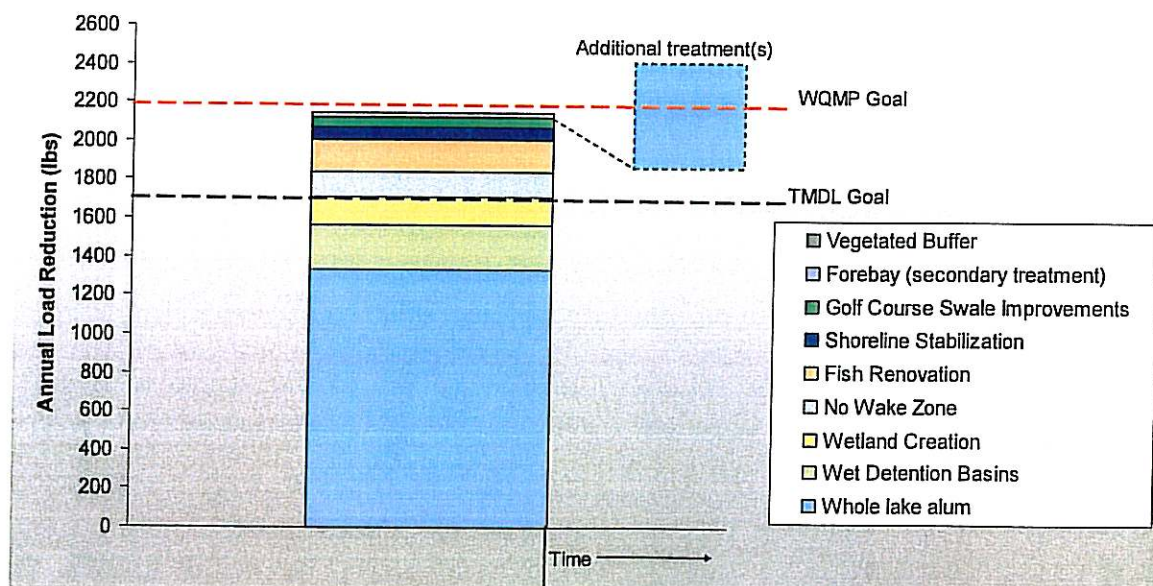


Figure 14

Final Scenario
Carter Lake Final Alternatives Analysis

Alternative	Load Reduction (lb)	Construction Cost	Cost to Benefit (\$/lb)	Notes
Whole lake alum	1336 (+)	\$1,530,000	\$1,145	Multiple alum treatments
No-Wake Zone	134	\$75,131	\$486	100 acres on east leg
Wetland Creation	140	\$1,818,867	\$13,026	
Shoreline Stabilization	65	\$898,956	\$13,933	
Targeted Dredging	0	\$292,602	---	
Fish Renovation	168	\$200,000	\$1,188	
Subwatershed 1/11 & 2-Wet Detention	230	\$611,310	\$2,652	
Subwatershed 1/11-Forebay	24	\$200,116	\$8,233	Secondary treatment
Subwatershed 2-Forebay	Included in Wetland Creation numbers			Secondary treatment
Subwatershed 8-Forebay	Included in Wetland Creation numbers			
Golf Course Swale Improvements	46	\$180,000	\$3,895	
Vegetated Buffer	2	\$2,950	\$1,543	
Watershed Stewardship Items	---	---	---	To be organized by the Project Coordinator
Load Reduction Total	2145	\$5,809,932		
Reduced Annual Load	1021			
*WQMP Annual Goal	974			

*Remaining 47 lbs need to reach the goal to be achieved through the watershed stewardship items and the load reduction from the subsequent alum treatments that cannot be estimated until analysis has been performed post application of first treatment.



AGREEMENT

THIS AGREEMENT is hereby made and entered into this ____ day of _____, 2009, by and between the CITY OF OMAHA, a municipal corporation organized and existing under the laws of the State of Nebraska located in Douglas County, Nebraska, (hereinafter referred to as "Omaha") and the Papio-Missouri River Natural Resources District, a political subdivision organized and existing under the laws of the State of Nebraska (hereinafter referred to as "PMRNRD").

WHEREAS, the City of Omaha has partnered with the State of Nebraska through its Games and Parks Commission and Department of Environmental Quality, the City of Carter Lake Iowa, the State of Iowa, Pottawattamie County, Iowa and the Metropolitan Area Planning Agency ("MAPA") to improve the water quality at Carter Lake, a lake located in the City of Omaha's Levi Carter Park and in the State of Iowa and City of Carter Lake; and,

WHEREAS, the PMRNRD is willing to assist in such endeavor with a contribution of \$250,000; and,

WHEREAS, the City of Omaha is willing to match such contribution; and,

WHEREAS, it is necessary to formalize the responsibilities of the parties in connection with such water quality improvements; and,

WHEREAS, such an agreement falls within the intent and purposes of the Interlocal Cooperation Act, Sections 13-801 through 13-827 Neb. Rev. Stat.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, Omaha and the PMRNRD do hereby mutually undertake, promise, agree and contract each for itself and its successors and assigns as follows:

I. PURPOSE

The purpose of this Agreement is to specify in detail the funding responsibilities of the PMRNRD in connection with water quality improvements at Carter Lake, including design and construction of watershed and in-lake water quality improvements ("the "Improvements") and to establish a method for billings, payments and reports associated with the provision of such funding.

II. TERM

This term of this Agreement shall be approximately five (5) year(s) commencing on the date of execution and ending on December 31, 2014.

III. RIGHTS DUTIES AND OBLIGATIONS OF PMRNRD

PMRNRD agrees to contribute Two Hundred and Fifty Thousand Dollars (\$250,000.00) ("the Contribution") for partial reimbursement of the costs of the Improvements.

PMRNRD agrees to provide such Contribution in increments of \$50,000 annually, over the term of this Agreement, payable on or before September 1 of each year beginning on March 1, 2010 and ending on March 1, 2014 as reimbursement for amounts expended by MAPA for the Improvements, upon receipt from MAPA and Omaha of documentation of such expenditures. PMRNRD will provide such reimbursement payments to Omaha within forty five (45) days of receipt of a written reimbursement request from Omaha.

IV. RIGHTS DUTIES AND OBLIGATIONS OF OMAHA

Omaha will forward to PMRNRD written reimbursement requests which it receives from MAPA detailing MAPA's payments to project contractors, consultants, or design and engineering team members retained by MAPA for the Improvements, ("the Contractors"). Such reimbursement requests shall document the expenditures in a manner satisfactory to Omaha and PMRNRD and shall have been previously reviewed by MAPA for a determination on its appropriateness and authenticity. Omaha agrees to use the Contribution received from PMRNRD solely for the Improvements and to forward such Contribution to MAPA for payment to the Contractors.

Omaha shall provide PMRNRD, either directly or indirectly through MAPA and the Contractors, with, at minimum, quarterly progress reports detailing the work performed.

V. INDEMNIFICATION

Omaha covenants and agrees to indemnify and hold harmless PMRNRD, its officers, agents and employees, their successors and assigns, individually or collectively from and against all liability for any fines, claims, suits, demands, actions or causes of action of any kind and nature asserted by Omaha or by anyone else, for personal injury or death, or property damage in any way arising out of or resulting from any act or omission of Omaha pursuant to this Agreement and Omaha further agrees to pay all expenses in defending against any such claims made against the PMRNRD; provided, however, that Omaha shall not be liable for any injury, damage or loss or the cost of defending same occasioned by the sole negligence or willful misconduct of the PMRNRD, its agents or employees. PMRNRD and Omaha shall give prompt and timely notice of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or might affect either party.

Upon receipt of notice from the PMRNRD, Omaha shall take such action as PMRNRD shall deem necessary and expedient to insure that the PMRNRD is held harmless from any liability from any cause whatsoever arising from any act or omission of Omaha's pursuant to this Agreement.

VI. INDEPENDENT CONTRACTOR

It is understood and agreed by and between PMRNRD and Omaha that any and all acts that each or its personnel, employees, agents, contractors, or servants, perform pursuant to the terms of this Agreement shall be undertaken as independent contractors and not as employees of the other. The City of Omaha and PMRNRD shall each act in their individual capacities and not as agents, employees, partners, joint venturers or associates of the other. An employee or agent of one shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Neither PMRNRD nor Omaha nor any of its personnel, employees, agents, contractors, or servants shall be entitled to any benefits of the other. Neither PMRNRD nor Omaha shall provide any insurance coverage to the other or its employees including, but not limited to, workers' compensation insurance. PMRNRD and Omaha shall each pay all wages, salaries and other amounts due its own employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers' compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. Neither PMRNRD nor Omaha shall have authority to bind the other by or with any contract or agreement, nor to impose any liability upon the other. All acts and contracts of PMRNRD and Omaha shall be in its own name and not in the name of the other, unless otherwise provided herein.

VII. RECORDS

Omaha and PMRNRD agree to prepare, keep and maintain records, in a method, location and for a time period satisfactory to the Finance Department of the other, necessary to determine that each is in compliance with the terms of this Agreement. Each shall have the right to audit and examine the records of the other during usual business hours upon reasonable advance notice to the other.

VIII. NONDISCRIMINATION

Neither party shall, 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 as defined by the Americans With Disabilities Act of 1990 and Omaha Municipal Code 13-82, political or religious opinions, affiliations or national origin.

IX. CAPTIONS

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

X. APPLICABLE LAW

Parties to this Agreement shall conform with all existing and applicable City of Omaha ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.

XI. INTEREST OF THE CITY OF OMAHA

Pursuant to section 8.05 of the Home Rule Charter, no elected official or any officer or employee of Omaha shall have a financial interest, direct or indirect, in any Omaha contract. Any violation of this section with the knowledge of the person or corporation contracting with the Omaha shall render the contract voidable by the Mayor or Council.

XII. INTEREST OF THE PMRNRD

PMRNRD covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict with the performance of services required to be performed under this Agreement; it further covenants that, in the performance of this Agreement, no person having any such interest shall be employed.

XIII. MERGER

This contract shall not be merged into any other oral or written contract, lease or deed of any type. This is the complete and full agreement of the parties.

XIV. MODIFICATION

This Agreement contains the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of the respective parties.

XV. APPROVAL OF AMENDMENTS

The parties hereto acknowledge that, as of the date of the execution of this agreement, Section 10-142 of the Omaha Municipal Code provides as follows: "Any amendment to contracts or purchases which taken alone increases the original bid price as awarded (a) by ten percent, if the original bid price is one hundred fifty thousand dollars (\$150,000) or more, or (b) by seventy-five thousand dollars (\$75,000) or more, shall be approved by the City Council in advance of the acceptance of any purchase in excess of such limits or the authorization of any additional work in excess of such limits. However,

neither contract nor purchase amendments will be split to avoid advance approval of the City Council.

"The originally approved scope and primary features of a contract or purchase will not be significantly revised as a result of amendments not approved in advance by the City Council. The provisions of this Section will be quoted in all future City contracts. Nothing in this Section is intended to alter the authority of the Mayor under Section 5.16 of the City Charter to approve immediate purchases."

XVI. 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.

XVII. ASSIGNMENT

Neither PMRNRD nor Omaha may assign its rights under this Agreement without the express prior written consent of the other.

XVIII. SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

All covenants, stipulations and agreements in this Agreement shall inure to the benefit of the parties hereto and extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

XIX. AUTHORIZED REPRESENTATIVE

In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for purposes of notice, including legal service of process, during the term of this Agreement and for the period of any applicable statute of limitations thereafter, the following named individuals shall be the authorized representatives of the parties:

- A. City of Omaha
Steve Scarpello, Acting Director
Parks, Recreation and Public Property Department
Omaha/Douglas Civic Center
1819 Farnam Street Suite 701
Omaha, NE 68183

- B. Papio-Missouri River Natural Resources District
Gerry Bowen
8901 South 154th Street
Omaha, Nebraska 68138-3621

EXECUTED this _____ day of _____, 2009.

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT, a political
subdivision

By _____
John Winkler, General Manager

EXECUTED this _____ day of _____, 2009.

CITY OF OMAHA, a Municipal
Corporation

ATTEST:

City Clerk, City of Omaha

By _____
Jim Suttle, Mayor of the City of
Omaha

APPROVED AS TO FORM:

Deputy City Attorney

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