



December 4, 2012

City of Omaha
Jim Suttle, Mayor

Public Works Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 601
Omaha, Nebraska 68183-0601
(402) 444-5220
Fax (402) 444-5248

Robert G. Stubbe, P.E.
Public Works Director

Honorable President

and Members of the City Council,

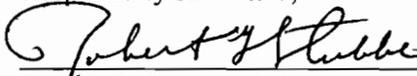
Transmitted herewith is an Ordinance approving an Interlocal Agreement between the City of Omaha and the Papio-Missouri River Natural Resource District (PMRNRD) regarding the design, construction, ownership, operation and maintenance of the proposed Damsite 15-A and related structures, located approximately northwest of 168th and Fort Streets.

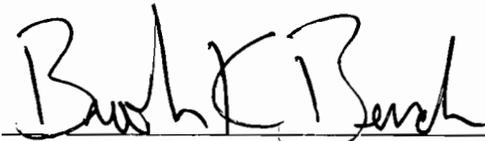
This Agreement, as approved by the PMRNRD Board of Directors on November 8, 2012, sets out responsibilities of both the City and the PMRNRD in regard to this project in which the PMRNRD will act as the lead agency for design, permitting and construction of the project structures. The Parks, Recreation and Public Property (PRPP) Department will be responsible for the cost of design of proposed Recreational Improvements for the future Community Park 26, to be paid through currently budgeted funds following approval of final design, as delineated in the attached Agreement. Construction of the designed recreational improvements for the Community Park will be by the PRPP Department as deemed appropriate upon future development at the Damsite 15-A location. The PRPP Department will furthermore take over ownership, operation and maintenance of the Damsite property and improvements constructed by the PMRNRD as designated in the Agreement.

The PMRNRD will furthermore design and construct a portion of a sanitary sewer extension which will run through a section of the dam itself. An engineering analysis deemed the proper and necessary alignment for future development required the planned alignment through the dam. This analysis furthermore demonstrated that the safest and most cost-effective method of providing this extension is to construct it as a part of the project currently proposed. The PMRNRD will design and construct the extension and the Public Works Department will be responsible for the percentage of the project cost related to the estimated cost of the sewer extension. This cost will be payable in three annual installments, the first of which will be after acceptance of final completion of the project. This cost is currently programmed to be paid from the Interceptor Sewer Fund, with payments projected in years 2015, 2016, and 2017, subject to permit issuance and construction completion timelines.

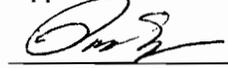
The Public Works and PRPP Departments request your consideration and approval of the attached Ordinance and Interlocal Agreement.

Respectfully submitted,

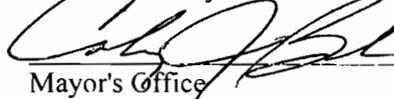
 11-14-12 and
Robert G. Stubbe, P.E. Date
Public Works Director

 11-19-12
Brook Bench, Acting Director Date
Parks, Recreation & Public Property

Approved:

 11-21-12
Pam Spaccarotella AMN Date
Finance Director

Referred to City Council for Consideration:

 11.27.12
Mayor's Office Date

ORDINANCE NO. _____

AN ORDINANCE approving an Interlocal Agreement between the City of Omaha and Papio-Missouri River Natural Resource District (PMRNRD) involving the payment of money from appropriations of more than one year in accordance with Section 5.17 of the Home Rule Charter of 1956, as amended; to provide for the terms and conditions under which Omaha and the PMRNRD will participate in a project for establishment, ownership and maintenance of the proposed Damsite 15-A and related structures, located approximately northwest of 168th and Fort Streets; to authorize the Finance Department to pay the specific cost shares of Parks, Recreation and Public Property and the Public Works Departments to the PMRNRD from the respective Departmental funds according to the disbursement terms contained within the Agreement; and to provide an effective date hereof.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. That the City Council of the City of Omaha hereby approves the Interlocal Agreement between the City of Omaha and Papio-Missouri River Natural Resource District (PMRNRD), which by this reference is made a part hereof, that outlines the terms and conditions under which Omaha and the PMRNRD, will participate in a project for the design, construction, ownership, operation and maintenance of the proposed Damsite 15-A and its related structures and facilities, located northwest of 168th and Fort Streets.

Section 2. The Finance Department is authorized to make payments to the PMRNRD for this project involving appropriations of more than one year, which is authorized in accord with Section 5.17 of the Home Rule Charter of 1956, as amended.

Section 3. That the City of Omaha shall make payments to the PMRNRD for the Parks, Recreation and Public Property and the Public Works Departments' specific cost shares in the project from the respective Departmental funds according to the disbursement terms outlined in the Agreement.

Section 4. That this Ordinance, being administrative in character shall take effect and be in full force upon the date of its passage.

INTRODUCED BY COUNCILMEMBER

APPROVED BY:

PASSED _____

MAYOR OF THE CITY OF OMAHA DATE

ATTEST:

CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

 11-27-12

CITY ATTORNEY DATE

INTERLOCAL COOPERATION ACT AGREEMENT
BETWEEN
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT,
AND
THE CITY OF OMAHA, NEBRASKA
FOR
PAPIO WATERSHED DAM SITE 15A

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 NRD commissioned the Papillion Creek Multi-Reservoir Analysis, which was completed in September 2004 and which identified the need for flood control within the rapidly developing Papillion Creek watershed; and,

WHEREAS, the Implementation Plan of the Papillion Creek Watershed Partnership’s Watershed Plan has identified flood control projects to be completed within the three year period 2011-2013; and,

WHEREAS, such identified projects include a multi-purpose flood control and recreational dam (“the **DAM**”) and reservoir (“the **RESERVOIR**”) project, including an associated water quality basin (“the **WATER QUALITY BASIN**”), that the **PARTIES** desire to have constructed by the NRD on a site near 168th Street and Fort Street in Douglas County (collectively, “the **DS-15A PROJECT**”); and,

WHEREAS, the PARTIES desire to provide herein for the cooperative design, construction, operation, maintenance, repair, replacement, regulation and ownership of the DS-15A PROJECT and to specify the rights, duties and obligations of the PARTIES in connection therewith.

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. **PROJECT PARTICIPANTS.** The DS-15A PROJECT shall be undertaken by the PARTIES, as provided herein, without any separate entity being created, and the duties and responsibilities of the PARTIES with respect to the DS-15A PROJECT shall be as defined by THIS AGREEMENT.

2. **PROJECT LAND.** The DS-15A PROJECT shall be constructed on parcels of land in Sections 20, 28, 29 and 33, all in Township 16 North, Range 11 East of the 6th P.M. in Douglas County, Nebraska (“the **PROJECT LAND**”), conceptually depicted in the document attached hereto as Exhibit “A” and incorporated herein by reference.

3. **PRINCIPAL PROJECT COMPONENTS.** The DS-15A PROJECT shall consist of the design, construction, and engineering observation and administration of construction, at the NRD’S sole cost and expense, of the following principal project components, to-wit:

a) the DS-15A PROJECT DAM, RESERVOIR and WATER QUALITY BASIN on the PROJECT LAND; and,

b) wetland, channel, and riparian mitigation improvements (“the **MITIGATION IMPROVEMENTS**”) on the PROJECT LAND required by the U. S. Army Corps of Engineers (“the **CORPS**”) as a condition precedent to the issuance of a Section 404 permit for the DS-15A PROJECT; and,

c) elevated roadway and bridge improvements on the PROJECT LAND, along the current alignment of Ida Street (the “**IDA STREET IMPROVEMENTS**”), replacing the existing Ida Street road improvements that would be submerged in the RESERVOIR as the result of the filling thereof; and,

d) basic recreational improvements that the NRD desires to have constructed at its own cost and expense for its own public purposes on the PROJECT LAND (the “**NRD’S RECREATIONAL IMPROVEMENTS**”), which include a bicycle-pedestrian trail around the RESERVOIR, in-park access roads to recreational improvements, a boat ramp, two picnic areas, two shelters, two rest rooms, two parking lots and fishery enhancements .

4. CURRENT ANCILLIARY PROJECTS. During NRD design of the DS-15A PROJECT, the NRD, at CITY cost and expense, shall design sanitary sewer facilities, for construction on the PROJECT LAND (the “**CITY’S SANITARY SEWER FACILITIES**”) to the reasonable satisfaction of the CITY.

5. FUTURE ANCILLIARY PROJECTS. During the NRD’s design of the DS-15A PROJECT, the NRD, at CITY cost and expense, shall design additional recreational improvements as the CITY intends to construct in the future at CITY cost and expense for the CITY’S own public purposes on the PROJECT LAND (the “**CITY’S RECREATIONAL IMPROVEMENTS**”).

6. OTHER ANCILLIARY PROJECTS. During the NRD’s design of the DS-15A PROJECT, the NRD shall make allowances in such design as the CITY deems appropriate to facilitate future design and construction of extensions of 180th Street between Ida and State Streets and HWS Cleveland Boulevard between Fort and Ida Streets. The NRD shall grant to DOUGLAS COUNTY, its successors and assigns, such easements and rights of way over PROJECT LAND as may be needed for road improvements.

7. **GENERAL BENEFIT.** The PARTIES do hereby find and agree that the DS-15A PROJECT, as herein described, will be of general benefit to the NRD with only an incidental special benefit.

8. **THE ENGINEERS.** The NRD shall retain engineering consultants (“the ENGINEERS”), approved by the CITY, to design the DS-15A PROJECT and to prepare plans and specifications and contract documents for, and administer construction of, the DS-15A PROJECT.

9. **PRELIMINARY PLANS.** The ENGINEERS shall prepare preliminary plans and specifications for the DS-15A PROJECT (collectively, “the PRELIMINARY PLANS”), in accordance with the provisions of THIS AGREEMENT, subject to the following:

a) The PRELIMINARY PLANS shall be drawn in accordance with design criteria provided by the General Manager of the NRD.

b) The PRELIMINARY PLANS shall be in general compliance with applicable Nebraska state and federal statutes, rules and regulations.

c) The PRELIMINARY PLANS shall be in accordance with CITY design standards, rules and regulations.

d) The PRELIMINARY PLANS shall include plans, provisions or allowances for the principal components of the DS-15A PROJECT and for the CITY’S SANITARY SEWER FACILITIES.

10. **APPROVAL OF PRELIMINARY PLANS.** After the ENGINEERS’ completion of the PRELIMINARY PLANS, and approval of the same by the NRD, the PRELIMINARY PLANS shall be submitted to the CITY for its written approval, such approval to not be unreasonably withheld or delayed.

11. **PREPARATION OF FINAL PLANS.** After receipt by the NRD of the CITY’S written approval of the PRELIMINARY PLANS, the NRD shall direct the ENGINEERS to prepare final plans and specifications for the DS-15A

PROJECT (collectively, “the **FINAL PLANS**”), in accordance with the provisions of THIS AGREEMENT, subject to the following:

a) The FINAL PLANS shall be drawn in accordance with design criteria provided by the General Manager of the NRD.

b) The FINAL PLANS shall be in general compliance with applicable Nebraska state and federal statutes, rules and regulations.

c) The FINAL PLANS shall be in accordance with CITY design standards, rules and regulations.

d) The FINAL PLANS shall include plans, provisions or allowances for the principal components of the DS-15A PROJECT and for inclusion therein of the CITY’S SANITARY SEWER FACILITIES.

e) The FINAL PLANS shall include legal descriptions of the PROJECT LAND to be acquired by the NRD at the NRD’S sole cost and expense, as needed for the principal components of the DS-15A PROJECT, and for the CITY’S SANITARY SEWER FACILITIES.

f) The FINAL PLANS shall include a comparison, the result of which (the “**SANITARY SEWAGE FACILITIES FRACTION**”) may be expressed as a fraction or percentage, showing:

i) as the numerator, the ENGINEERS’ estimate of the total combined cost of design, construction and engineering observation and administration of construction of the CITY’S SANITARY SEWER FACILITIES; and,

ii) as the denominator, the ENGINEERS’ estimate of the total contract cost of construction of the DS-15A PROJECT and the CITY’S SANITARY SEWER FACILITIES.

12. APPROVAL OF FINAL PLANS FOR PROJECT. After the ENGINEERS’ completion of the FINAL PLANS and approval of the same by the

NRD, the FINAL PLANS shall be submitted to the CITY for its written approval. The CITY shall have a period of 30 days to review and approve or disapprove the same in writing or suggest amendments thereto. Such approval shall not be withheld or delayed unreasonably.

13. CONSTRUCTION CONTRACT. After receipt by the NRD of the CITY'S written approval of the FINAL PLANS, the NRD shall deliver to the CITY for its approval (such approval to not be withheld or delayed unreasonably) the NRD'S proposed contract documents ("the **CONTRACT DOCUMENTS**") for competitive bidding for construction of the DS-15A PROJECT and the CITY'S SANITARY SEWER FACILITIES. The CITY shall have a period of 10 days to review the CONTRACT DOCUMENTS and to approve or disapprove the same in writing or suggest amendments thereto. Such approvals shall not be withheld or delayed unreasonably.

14. CONSTRUCTION OF THE DS-15A PROJECT. After the CITY'S approval of the CONTRACT DOCUMENTS, and in accordance with the NRD'S purchasing regulations, the NRD will seek competitive bids for construction of the DS-15A PROJECT and the CITY'S SANITARY SEWER FACILITIES. The NRD shall award the contract for such construction to the bidder that the NRD determines provides the lowest responsible bid.

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 CITY'S SANITARY SEWER FACILITIES.

16. ALLOCATION OF COSTS. Except as otherwise provided in THIS AGREEMENT,

a) the NRD shall pay, without CITY reimbursement, all the costs of acquisition of PROJECT LAND and of design and construction of the DS-15A PROJECT;

b) the NRD shall pay, and the CITY shall reimburse the NRD for, the costs of design of the CITY'S RECREATIONAL IMPROVEMENTS, previously estimated by the ENGINEERS in the amount of \$25,154.00; and,

c) the NRD shall pay, and the CITY shall reimburse the NRD for the costs of design, construction, engineering observation and administration of construction of the CITY'S SANITARY SEWER FACILITIES, such reimbursement to be computed by multiplying the total combined actual contract cost to the NRD of construction of the DS-15A PROJECT and the CITY'S SANITARY SEWER FACILITIES by the SANITARY SEWER FACILITIES FRACTION.

17. PAYMENT OF COSTS. Reimbursement by the CITY for the actual costs of design of the CITY'S RECREATIONAL IMPROVEMENTS shall be due and payable to the NRD within sixty (60) days after the CITY'S approval of the final plans. Reimbursement by the CITY for the costs of design, construction, engineering observation and administration of construction of the CITY'S SANITARY SEWER FACILITIES, shall be due and payable to the NRD in three (3) equal annual installments, to-wit: the first installment shall be due and payable sixty (60) days after issuance of the engineering certificate of substantial completion of the DS-15A PROJECT and the CITY'S SANITARY SEWER FACILITIES; and, the second and third installments shall be due and payable on the respective subsequent anniversaries of the due date of the first installment.

18. CONSTRUCTION OBSERVATION. The NRD will provide for engineering observation and administration of construction of the DS-15A PROJECT and the CITY shall be given the opportunity to fully observe such construction at all reasonable hours and upon its request contemporaneously

receive from the NRD copies of all written communications between or issued by the NRD and/or the ENGINEERS and/or the CONTRACTOR(S) pertaining to such construction, including but not limited to statements by the ENGINEERS as to percentage of completion and substantial completion.

19. 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 DS-15A PROJECT, except for those needed solely for the CITY'S SANITARY SEWER FACILITIES.

20. OPERATION AND MAINTENANCE. After completion of construction of the DS-15A PROJECT,

a) the NRD, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the DAM, which shall be deemed to consist of all that portion of the PROJECT LAND and all flood control improvements located within the footprint of the DAM or within the footprint of the WATER QUALITY BASIN'S structure, as the same are depicted in the FINAL PLANS; and,

b) the NRD, at its sole cost and expense, shall operate, maintain, repair, replace and regulate the MITIGATION IMPROVEMENTS during the CORPS-required monitoring period and until they are finally accepted by the CORPS. Thereafter, the CITY, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the MITIGATION IMPROVEMENTS; and,

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, 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;
- iv) the WATER QUALITY BASIN, without any right or duty to dredge the same for the purposes of maintaining open water; and,
- d) the CITY, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the CITY'S 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.

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, and excepting 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 design or construction of the principal project components of the DS-15A PROJECT, and from the NRD'S construction, operation, maintenance, repair, replacement, or regulation of the DAM, and the

MITIGATION IMPROVEMENTS (prior to their acceptance by the CORPS), and excepting such personal injuries or property damages as may be caused by the negligence of the CITY.

22. POST-CONSTRUCTION GRANTS AND CONVEYANCES.

Upon final completion of construction of the DS-15A PROJECT, the NRD shall convey the PROJECT LAND to the CITY, except portions thereof conveyed to Douglas County for road purposes, 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 PROJECT LAND (including the WATER QUALITY BASIN'S structure),

ii) the right to have unrestricted use and access over and across the PROJECT LAND by any route or means and for any purpose referred to in THIS AGREEMENT; and,

iii) the right to flow waters and sediment upon, and inundate, all those portions of the PROJECT LAND which have a ground surface elevation lower than the elevation of the top of the DAM ("the MAXIMUM 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 PROJECT LAND, within the watershed of the DAM, having a ground

surface elevation lower than 1,180.5 feet above mean sea level, NAVD 1988, which elevation parties agree is approximately one foot (1') above the mean sea level elevation of the 500-year flood pool of the RESERVOIR.

(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 1,180.5 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.

(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 1,180.5 feet above mean sea level and lower than 1,187.0 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.”

b) Such conveyance(s) shall also include and be subject to the following permanent restrictions on the lands occupied by the MITIGATION IMPROVEMENTS required by the CORPS, that shall run

with the PROJECT 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 PROJECT 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 PROJECT 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 PROJECT LAND, other than in roads and parking areas; 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.

23. RISK OF LOSS. After completion of construction of the DS-15A PROJECT and conveyance of PROJECT LAND to the CITY, the risk of loss of or damage to components or facilities of the DS-15A PROJECT shall be borne by the

party that has an obligation hereunder to operate and maintain such components or facilities, whether such loss or damage results from flood or other casualty whatsoever.

24. APPROVALS. Wherever THIS AGREEMENT speaks of approval and/or consent:

a) such approval and/or consent by the CITY shall be provided by act of the CITY'S Mayor, Public Works Director or Parks, Recreation, and Public Property Director; and,

b) such approval and/or consent by the NRD shall be provided by act of the General Manager of the NRD.

25. 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.

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

27. 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.

28. MERGER. THIS AGREEMENT shall not be merged into any other oral or written agreement, lease or deed of any type.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

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

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

36. FUNDING. THIS AGREEMENT shall be conditional and dependent upon the NRD'S determination that it has adequate funding for the DS-15A PROJECT.

37. 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 Parks, Recreation and Public Property
City of Omaha, Nebraska
1819 Farnam Street, Suite 701
Omaha, Nebraska 68183;

and 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

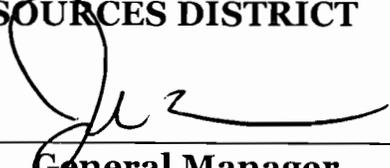
or to such other respective address(s) as the PARTIES may designate to each other from time to time in writing.

38. **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.

IN WITNESS WHEREOF

THIS AGREEMENT is executed by the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT on this 14th day of November, 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 _____, 2012, pursuant to ordinance duly adopted by its City Council.

CITY OF OMAHA, NEBRASKA

By _____
Mayor

ATTEST:

APPROVED AS TO FORM:

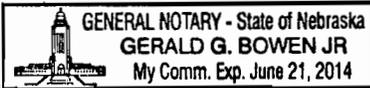
City Clerk

[Signature] 11-27-12
DEPUTY CITY ATTORNEY

STATE OF NEBRASKA)
) SS.
COUNTY OF Douglas)

On this 14th day of November, 2012, 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.



[Signature]
Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2012, 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

EXHIBIT A

