

Agenda Item: 7.

MEMORANDUM

TO: Finance, Legal and Expenditure Subcommittee

FROM: Martin P. Cleveland, Construction Engineer

SUBJECT: West Branch Levee/Channel Project (36th to 48th Street)
Ashford Hollow (SID 238) Trail Easement Agreement

DATE: November 28, 2016

A portion of the West Branch Channel Project is located between 36th and 48th Street in Bellevue, Nebraska as shown on the enclosed location map. Ashford Hollow (Sanitary and Improvement District No. 238 of Sarpy County) has proposed to build a trail along 42nd Street. A portion of the trail would be on levee/channel project property owned by the District. This trail would be 10 ft. wide along the backside of the 42nd Street curb.

According to Board Policy 16.6 District Property – Sales and Grants of District Real Property, the Board of Directors may grant easements with surface improvements for nominal consideration to other governmental subdivisions or agencies. Enclosed is a proposed easement agreement. It is the staff's recommendation that Sanitary and Improvement District No. 238 of Sarpy County be granted an easement for the construction, operation and maintenance of a trail on the District's West Branch Levee/Channel Project right-of-way.

Management recommends that the Finance, Legal and Expenditure Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Easement Agreement with Sanitary and Improvement District No. 238 of Sarpy County for the construction of Ashford Hollow Trail on West Branch Levee/Channel Project right-of-way near 42nd Street, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

File: 530 (WBChannel ROW FEL memo 11_28_16)

ASHFORD HOLLOW TRAIL Location Map



ASHFORD HOLLOW 42nd ST. TRAIL

RAYNOR PKWY.

WEST BRANCH CHANNEL



PROPOSED ASHFORD HOLLOW TRAIL

S 42nd St

42nd ST.



EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made and entered into by and between SANITARY AND IMPROVEMENT DISTRICT NO. 238 OF SARPY COUNTY, NEBRASKA (the "Grantee"), a Nebraska public corporation, and PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a subdivision of the State of Nebraska (the "Grantor").

WHEREAS, Grantor is currently the owner of TL 3B, Section 32, T14N, R13E, Sarpy County, NE as surveyed, platted and recorded in Sarpy County, Nebraska (the "NRD Property").

WHEREAS, Grantee is currently the owner of Lot 152 Ashford Hollow, Section 32, T14N, R13E, Sarpy County, NE as surveyed, platted and recorded in Sarpy County, Nebraska (the "Grantee's Property")

WHEREAS, the Grantee intends to construct, operate and maintain a recreational trail (the "Trail") on the NRD Property for public use and to provide trail access for area residents at the approximate location in NRD Property as shown on Exhibit "A" attached hereto (the "Trail Easement Area").

The Grantee has requested that Grantor grant to the Grantee an easement for the construction, maintenance, repair, and operation of the Trail, and Grantor is willing to grant such an easement to the Grantee on the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grantor does hereby grant and convey to the Grantee, its successors and assigns, an easement for the right to construct, maintain, repair and operate the Trail in the Trail Easement Area, together with the right of ingress and egress to and from the Trail Easement Area for the purpose of constructing, inspecting, maintaining, repairing, replacing and operating the Trail as reasonably necessary in order to perform the Grantee's duties hereunder, including without limitation, keeping the Trail in good and safe condition and repair.

2. Prior to construction of the Trail, the Grantee must obtain the Grantor's approval of the Trail's design and plans. Grantor's approval shall not be unreasonably withheld or delayed.

3. The Grantee will use its best efforts to avoid or minimize any damage to NRD Property in exercising the Grantee's rights under this Agreement, and the Grantee will promptly repair any damage to NRD Property caused by the Grantee or any of its agents, employees or contractors exercising the rights granted to the Grantee under this Agreement. If the Grantee fails to promptly repair any damage to NRD Property caused by the Grantee or any other its agents, employees or contractors, the Grantor may repair the damage and Grantee shall reimburse Grantor upon demand for costs and expenses for the repair. The Grantee shall maintain the construction of the Trail in a manner which will not interfere with the continued operation and maintenance of the NRD Property.

4. The Grantee agrees to reimburse the Grantor for any costs associated with inspection of the work permitted under this Agreement. Such costs should be itemized and forwarded by the Grantor within ninety days after their accrual.

5. The Grantee agrees to notify the Grantor twenty-four (24) hours prior to beginning construction of the Trail.

6. The Grantee will at all times maintain the Trail and the Trail Easement Area, in good and safe condition and repair.

7. In the event the Corps of Engineers or the Grantor determines that it shall be necessary to re-shape or re-build the NRD Property where the Trail is located, or in the event that the Corps of Engineers or the Grantor determines that the Trail interferes with the Grantor's operation, maintenance, repair, replacement, management or regulation of NRD Property, Grantee shall remove, relocate, replace and/or alter the Trail at Grantee's sole expense or reimburse the Grantor upon demand for the costs for the removal, relocation, replacement and/or alteration of the Trail.

8. The Grantee will indemnify, defend and hold Grantor harmless against any loss, liability, damage or expense whatsoever resulting from or arising out of, or which may result from or arise out of, third party claims or causes of action associated with or pertaining to the construction, inspection, repair, operation, use or maintenance of the Trail or the Trail Easement Area, except for liability resulting from Grantor's own gross negligence or willful misconduct.

9. The Grantee shall use the Trail and the Trail Easement Area solely for public recreational use and enjoyment.

10. This Agreement and the easement granted herein shall remain in effect until terminated in the manner specified herein. The Grantee may elect to terminate this Agreement and the easement created hereby at any time. If the Grantee wishes to do so, the Grantee shall so notify Grantor in writing. Upon notification of Grantee's desire to terminate, Grantor shall determine if it wants the Trail to remain or be removed. If Grantor determines the Trail is to be removed, the Grantee shall remove the Trail at its sole expense, repair and stabilize any other portion of NRD Property in need of repair on account of the removal of the Trail, leave the Trail

Easement Area in good and safe condition and repair, and upon completion of such work, record a notice of termination of this Agreement and the easement granted hereby in the office of the Register of Deeds of Sarpy County, Nebraska. Upon completion of such work and recording of such notice, this Agreement and the easement granted herein shall terminate. Grantee shall reimburse the Grantor upon demand for any costs that the Grantor incurs as a result of the Grantee's failure to remove the Trail and/or Grantee's failure to repair and stabilize NRD's property in need of repair on account of the removal of the Trail. This Agreement shall also terminate at the option of Grantor if the Grantee shall default in the performance of the Grantee's obligations set forth herein and fails to cure such default within sixty (60) days after written notice of such default has been delivered by the Grantor to the Grantee. If Grantor elects to terminate this Agreement and the easement created hereby, the Grantor shall notify the Grantee in care of the Grantee's Attorney at his or her principal office and record a notice of termination of this Agreement and the easement granted hereby in the office of the Register of Deeds of Sarpy County, Nebraska. Upon notice of the termination of this Agreement and notice by the Grantor that the Trail should be removed, the Grantee shall promptly remove the Trail at its sole expense, repair and stabilize any portion of NRD Property in need of repair on account of the removal of the Trail, leave the Trail Easement Area in good and safe condition and repair. Grantee shall reimburse the Grantor upon demand for any costs the Grantor incurs as a result of the Grantee's failure to remove the Trail and/or Grantee's failure to repair and stabilize NRD Property in need of repair on account of the removal of the Trail. The obligations of the Grantee to perform such work or reimburse the Grantor for such work and to indemnify the Grantor as set forth in paragraph 8 above on account of any occurrence during the term of this Agreement shall remain in full force and effect following any termination of this Agreement.

11. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

12. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth beneath their respective signatures, the later of which shall be considered the date of this Agreement for reference purposes.

[SIGNATURE PAGE TO FOLLOW]

Dated _____, 2016.

THE PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By: _____
JOHN WINKLER, General Manager

STATE OF NEBRASKA)
) ss
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me on _____,
2016, by JOHN WINKLER, General Manager of the PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT.

Notary Public

[SIGNATURE PAGE TO FOLLOW]

Dated _____, 2016.

SANITARY AND IMPROVEMENT DISTRICT
NO. 238 OF SARPY COUNTY

By: _____

Name:

Title:

STATE OF NEBRASKA)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____,
2016, by _____ of the _____.

Notary Public

Exhibit "A"

Trail Easement Area