

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee
FROM: Eric Williams, Natural Resources Planner
SUBJECT: Amendment to Trail License Agreement with Quest Property, LLC
DATE: June 8, 2018

The District acquired abandoned railroad right of way from Union Pacific along the West Papio Creek as a corridor to be used to complete the West Papio Trail. In February 2016, prior to beginning design for the West Papio Trail, Giles Road to Millard project, the District entered into a License Agreement with Quest Property, LLC. This agreement allowed use of the District property for parking connected to an adjacent property, as well as describing details about how a trail head parking lot would be constructed by Quest Property for use by the public. The public trail head parking lot was to be constructed by the time the trail was completed.

Since the original agreement was executed, the District has contracted for design of the West Papio Trail, and construction began in early 2018. During the design and bidding process, Quest Property agreed to reimburse the District for the portion of the costs from the complete construction contract related to construction of the trail head, rather than constructing separately.

Language in the original agreement relating to how the reimbursement will now be carried out needs to be updated to more accurately reflect details which became available during the design, and construction process. The Amendment to Trails License Agreement (attached) clarifies the reimbursement procedure, and operations and maintenance responsibilities in the area of the trail head.

- **It is recommended that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the Amendment to Trail License Agreement with Quest Property, LLC for use of District right of way along Harry Andersen Ave at Q Street, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.**

**AMENDMENT TO
TRAIL LICENSE AGREEMENT**

This Amendment (“Amendment”) is intended to and does amend the Trail License Agreement (the “Original License Agreement”) between Quest Property, LLC, a Nebraska limited liability company (the “Licensee”) and the Papio-Missouri River Natural Resources District, a political subdivision of the State of Nebraska (the “Licensor”) executed and entered into on March 10, 2016.

AMENDMENTS TO THE ORIGINAL LICENSE AGREEMENT:

- a. Paragraph B of the PRELIMINARY STATEMENTS is hereby deleted in its entirety and replaced with the following:

B. Licensor desires to construct, maintain and operate and/or to have constructed, maintained and operated a trail within a thirty (30) foot wide corridor on and along the Right-of-Way (the “**Trail**”) for use by the general public, which Trail will be integrated with the City of Omaha trail system. Portions of the Trail may be located within areas of public right-of-way in coordination with the City of Omaha, as depicted on **Exhibit C**, attached hereto and incorporated herein by reference..

- b. Paragraph D of the PRELIMINARY STATEMENTS is hereby deleted in its entirety and replaced with the following:

D. Licensee wishes to license that portion of the Right-of-Way that is adjacent to the Licensee Property depicted and more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the “**Licensed Premises**”) to use, maintain and operate a shared-use parking lot on that portion of the Licensed Premises as depicted in **Exhibit C**, (as the “**Parking Lot**”), and to use, maintain and operate the Trail as depicted in **Exhibit C**, and to otherwise use the Licensed Premises for such other purposes and subject to the terms and conditions described and set forth in this Agreement, and Licensor wishes to grant such use to Licensee subject to the terms and conditions described and set forth in this Agreement.

- c. The following clause shall be added under paragraph D of the PRELIMINARY STATEMENTS section and shall state:

E. The Parties agree that, currently, the most efficient way to construct the Parking Lot and Trail is for the contractor, already retained by the Licensor to construct portions of the West Papillion Creek recreation trail, to construct the Parking Lot and Trail to be located on or

along the Licensed Premises. Licensee will then reimburse the Licensor for the construction costs of the Parking Lot and Trail located in or along the Licensed Premises pursuant to the terms set forth in this Agreement.

- d. Section 1.1, contained in Article 1 of the Original License Agreement, is hereby deleted in its entirety and replaced with the following:

1.1 License. In consideration for Licensee reimbursing the construction costs for the Parking Lot and Trail, operating and maintaining the Parking Lot, Trail, landscaping and other covenants of Licensee set forth herein, Licensor hereby grants a license to Licensee for the Term and authorizes Licensee to:

- (a) Enter upon and exit from the Licensed Premises to use, operate and maintain that portion of the Trail that is on the Licensed Premises;
- (b) Enter upon and exit from the Licensed Premises to use, operate and maintain the Parking Lot;
- (c) Provide, on a non-exclusive basis, parking and pedestrian and vehicular access and parking on the Parking Lot for the business Licensee operates on the Licensee Property and, at Licensee's discretion, for adjacent businesses, during normal business hours. For the avoidance of doubt, the Parking Lot shall also remain open and able to be used for parking and pedestrian and vehicular access by the general public to, among other things, gain access to the Trail;
- (d) Provide, on a non-exclusive basis, parking and pedestrian and vehicular access and parking on areas where the Parking Lot has been expanded, as depicted and more particularly described on **Exhibits B-1 and B-2** attached hereto and incorporated herein by reference, for the business Licensee operates on the Licensee Property and, at Licensee's discretion, for adjacent businesses, during normal business hours. Any expansion of the Parking Lot on the Licensed Premises will require the approval by the Licensor. Prior to construction of any expansion of the Parking Lot, Licensor must approve the expansion; such approval shall not be unreasonably withheld. The design and construction of any expansion to the Parking Lot shall be paid by the Licensee. Licensee shall also operate and maintain any expansion to the Parking Lot.
- (e) Enter upon and exit from the Licensed Premises to install and maintain landscaping (the "**Landscaping**").

- e. Section 1.3, contained in Article 1 of the Original License Agreement, is hereby deleted in its entirety and replaced with the following:

1.3 Services. Subject to Section 1.2 of this Agreement, Licensee shall, at no cost to Licensor: (a) reimburse the Licensor for the construction costs for the Trail that is on or along the Licensed Premises, operate and maintain the Trail that is on and along the Licensed Premises in a

reasonable manner mutually satisfactory to the Parties; (b) reimburse the Licensor for the construction costs for the Parking Lot that is on the Licensed Premises, and operate and maintain the Parking Lot in a reasonable manner mutually satisfactory to the Parties; and, (c) install and maintain the Landscaping in a reasonable manner mutually satisfactory to the Parties. The reimbursement of costs by the Licensee to the Licensor under this section shall be paid within thirty (30) days of receiving the written invoice from the Licensor. Notwithstanding anything to the contrary in this Agreement, Licensee is not responsible for snow removal on the Trail that is part of or along the Licensed Premises. For the avoidance of any doubt, the Parking Lot shall be constructed and maintained in a manner such that it is sufficient to serve as a trailhead for the Trail, including a sufficient number of ADA compliant parking stalls. The Trail shall be constructed and maintained in a manner that is ADA compliant.

- f. Section 10.1, contained in Article 10 of the Original License Agreement, is hereby deleted in its entirety and replaced with the following:

10.1 Licensee's Default. The occurrence of any of the following shall constitute a default (a "Default") by Licensee under this Agreement: (a) Licensee effects or attempts to effect a transfer of any type (including, but not limited to, a sublicense), all or any part of the Licensed Premises, without the prior written consent of Licensor (b) Licensee fails to perform any provision of this Agreement and such failure is not cured within thirty (30) days after written notice thereof is given to Licensee (or immediately if the failure involves a hazardous or dangerous condition that may present immediate danger as determined by Licensor in Licensor's sole discretion), (c) any action or inaction that is a default and/or violation under (i) the Trails Use Decision, (ii) the Trails Use Agreement and/or (iii) the Trails Act, (d) any voluntary or involuntary proceedings are filed by or against Licensee under any bankruptcy, insolvency or similar laws and, in the case of any involuntary proceedings, are not dismissed within sixty (60) days after filing, (e) Licensee's failure, for any reason, to reimburse the construction costs associated with the Parking Lot and Trail and such failure is not cured within thirty (30) days after written notice thereof is given to Licensee, or as otherwise amended and agreed to by the Parties.

g. **NO OTHER CHANGES.** The provisions of the Original License Agreement not specifically referenced in this Amendment remain in full force and effect and are not amended, changed, or altered by this Amendment.

IN WITNESS WHEREOF, the Parties have executed this Amendment.

LICENSEE:

QUEST PROPERTY LLC,
a Nebraska limited liability company

By: _____
Name: Mike Sharif
Title: _____
Date: _____

LICENSOR:

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

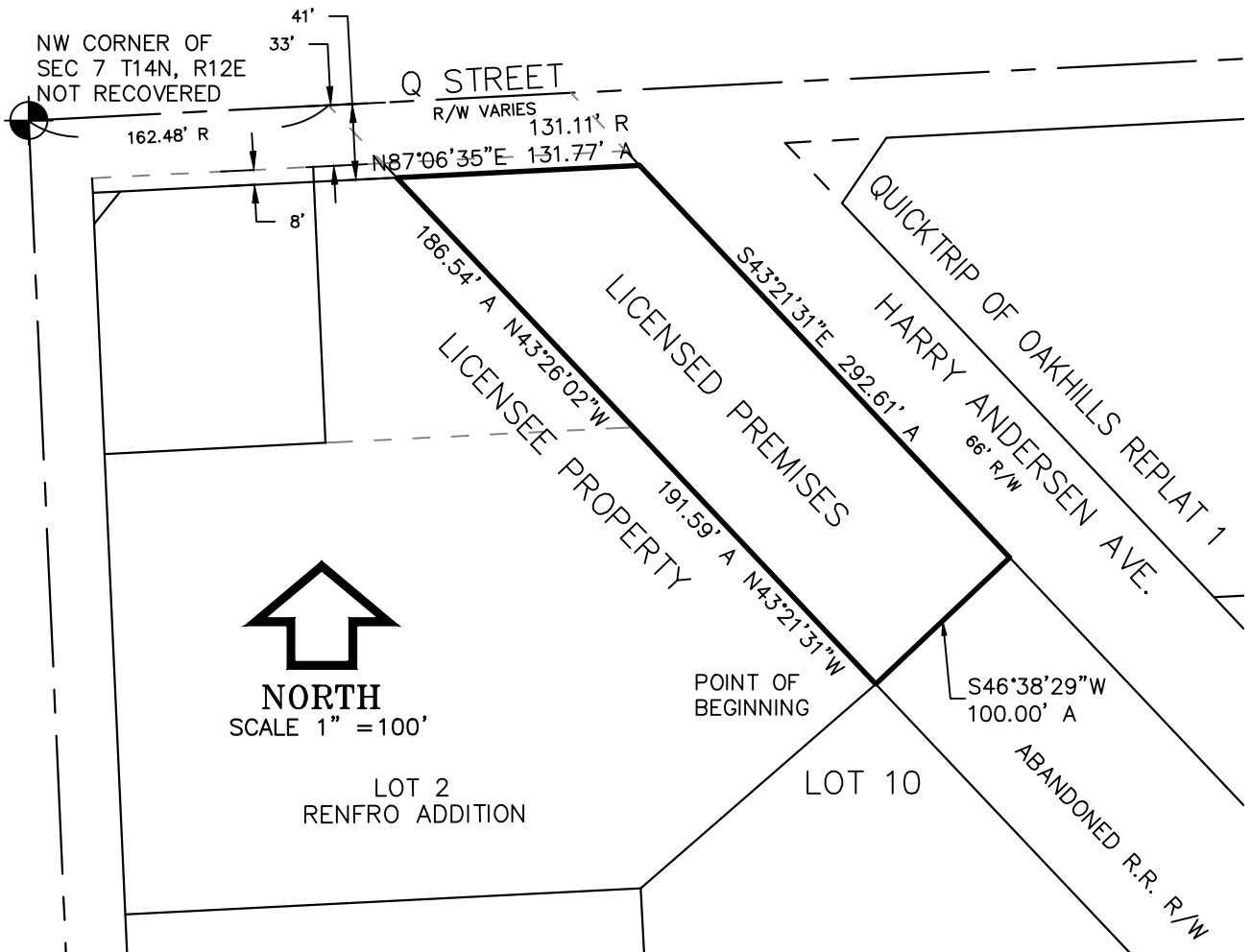
By: _____
Name: John Winkler
Title: General Manager
Date: _____

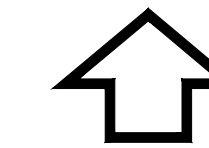
DESCRIPTION & SKETCH

LEGAL DESCRIPTION: LICENSED PREMISES

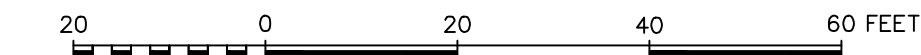
A PORTION OF THE ABANDONED UNION PACIFIC RAIL ROAD RIGHT-OF-WAY LYING IN THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE EASTERNMOST CORNER OF LOT 2, RENFRO ADDITION LYING ON THE WEST RIGHT-OF-WAY LINE OF THE AFORESAID ABANDONED RAIL ROAD RIGHT-OF-WAY; THENCE NORTH 43°21'31" WEST ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 191.59 FEET; THENCE NORTH 43°26'02" WEST ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 186.54 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF "Q" STREET; THENCE NORTH 87°05'23" EAST ON SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 131.77 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF THE AFORESAID ABANDONED RAIL ROAD RIGHT-OF-WAY ALSO BEING THE WEST RIGHT-OF-WAY LINE OF HARRY ANDERSEN AVENUE; THENCE SOUTH 43°21'31" EAST ALONG SAID EAST RAIL ROAD RIGHT-OF-WAY LINE, A DISTANCE OF 292.61 FEET; THENCE SOUTH 46°38'29" WEST, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING. CONTAINING 33,549 SQUARE FEET (0.7702 ACRES), MORE OR LESS.





NORTH
SCALE 1" = 20'



NOTE:
UNDERGROUND UTILITY LOCATIONS SHOWN ARE FROM INFORMATION PROVIDED TO US FROM UTILITY COMPANIES. UTILITY COMPANIES MAKE NO WARRANTIES OR GUARANTEES REGARDING THE ACCURACY OF THE INFORMATION CONTAINED IN THEIR DOCUMENTS AND PROVIDES IT ONLY AS GENERAL INFORMATION TO THE RECEIVER, FOR SPECIFIC LOCATIONS DURING CONSTRUCTION CALL "DIGGERS HOTLINE" 1-800-331-5666 (STATEWIDE) PRIOR TO DIGGING.

LEGEND

- - PROPERTY LINE
- [Pattern] - PROPOSED 7" P.C.C. PAVEMENT
- [Pattern] - PROPOSED 6" P.C.C. SIDEWALK / TRAIL

PROJECT NO.
EGA151224

REVISIONS	NO.	DESCRIPTION	DATE	BY

**EHRHART
GRIFFIN &
ASSOCIATES**

3552 Farnam Street
Omaha, Nebraska 68131
402 / 551-0631

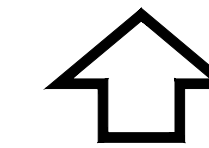
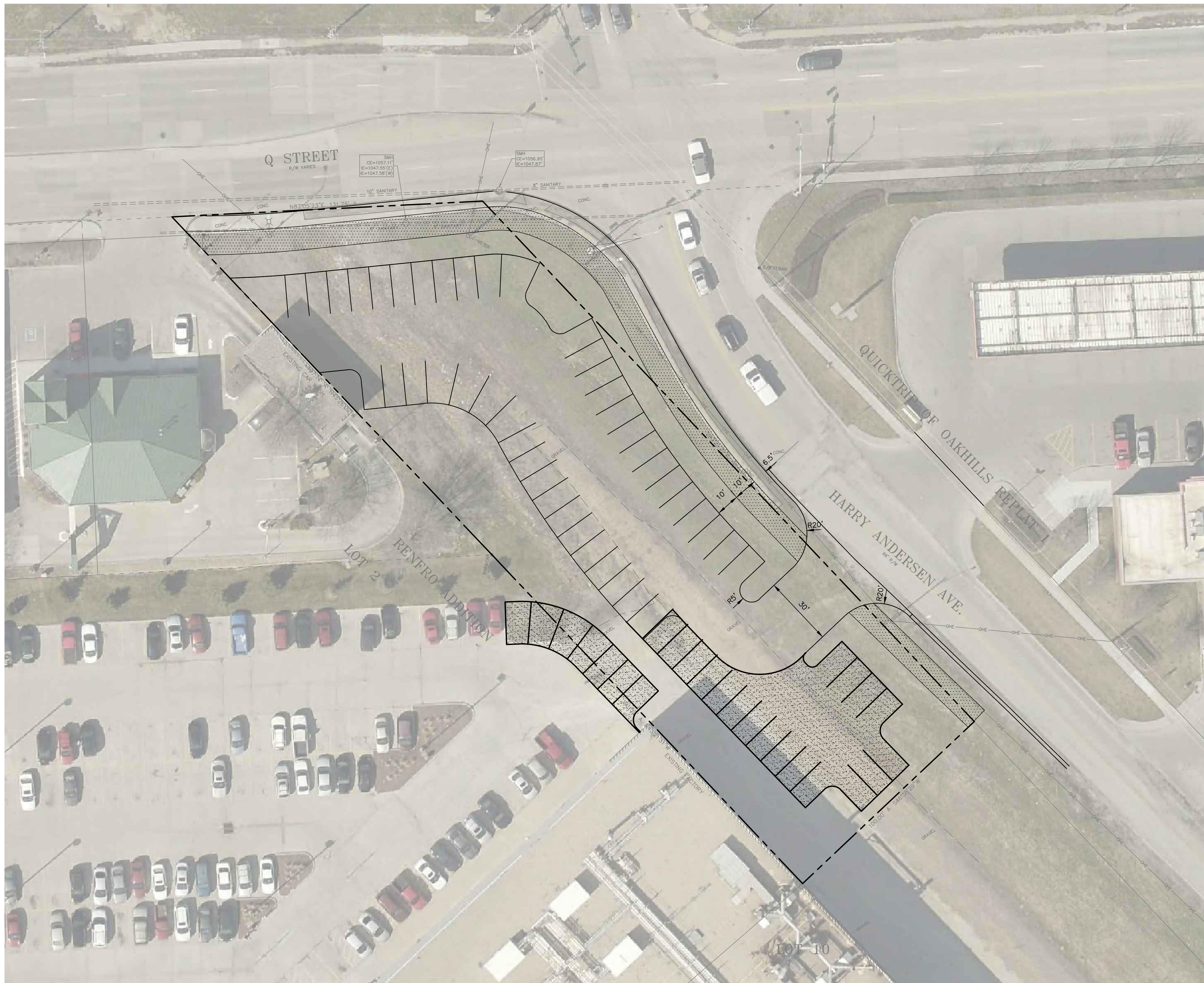
- ENGINEERING
- PLANNING
- LAND SURVEYING

**PHASE 1
CONCEPTUAL SITE LAYOUT PLAN
QUEST PROPERTIES
SW CORNER OF HARRY ANDERSON AVE. AND Q STREET
OMAHA, NEBRASKA**

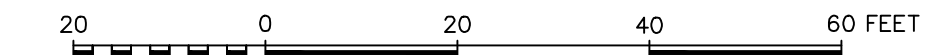
DATE: 12/17/2015
DESIGNED BY: TJC
DRAWN BY: SMW
CHECKED BY: TJC
CREW: EGA

SHEET NO.
C1.1A

EXHIBIT B-1



NORTH
SCALE 1" = 20'



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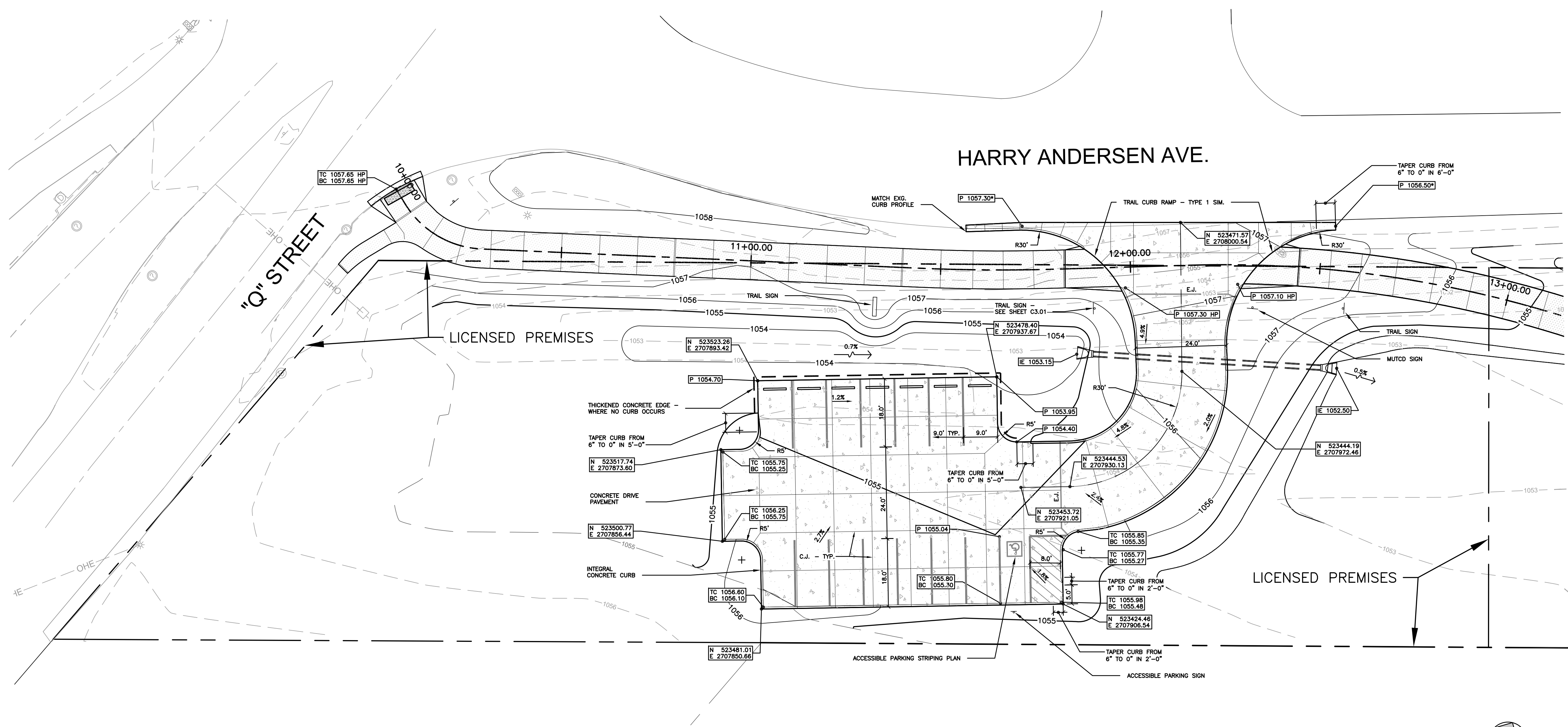
- ENGINEERING
- PLANNING
- LAND SURVEYING

**PHASE 2
CONCEPTUAL SITE LAYOUT PLAN
QUEST PROPERTIES
SW CORNER OF HARRY ANDERSON AVE. AND Q STREET
OMAHA, NEBRASKA**

DATE: 12/17/2015
DESIGNED BY: TJC
DRAWN BY: SMW
CHECKED BY: TJC
CREW: EGA

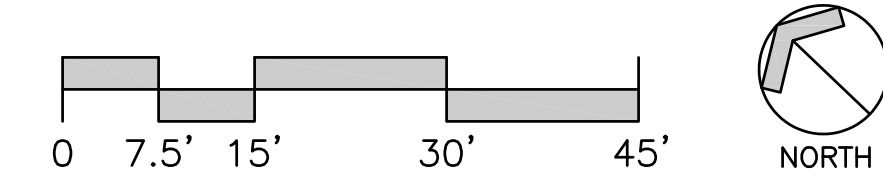
EXHIBIT B-2

SHEET NO.
C1.1B



TRAILHEAD PARKING LOT ENLARGEMENT

SCALE: 1" = 15'



GRADING & LAYOUT LEGEND

LIMIT OF CONSTRUCTION	P 1055.95 → PAVEMENT SURFACE SPOT ELEVATION
CONCRETE DRIVE PAVEMENT	P 1055.95 HP → HIGH POINT ON PAVEMENT SURFACE
CONCRETE TRAIL PAVEMENT	I/E 1055.95 → PIPE INVERT ELEVATION
N XXXXXX.XX E XXXXXX.XX → COORDINATES	P 1055.95* → ASSUMED EXISTING ELEVATION - FIELD VERIFICATION REQUIRED
TC 1056.45 → TOP OF CURB	CURB RAMP
BC 1055.95 → BOTTOM OF CURB	PROPOSED CULVERT PIPE

WEST PAPIO TRAIL
Giles Road to Millard

OWNER:
Papio-Missouri River Natural Resources District
Omaha, Nebraska

DATE	DESCRIPTION / ISSUE

TRAILHEAD PARKING LOT ENLARGEMENT

BMW PROJECT: 0830
DATE: 10/16/2017

Sheet Number

C-1