

MEMORANDUM

TO: Finance, Legal and Expenditure Subcommittee

FROM: Martin P. Cleveland, Construction Engineer

SUBJECT: Thompson Creek Levee Improvement Project
Permanent Easement Agreement with City of LaVista

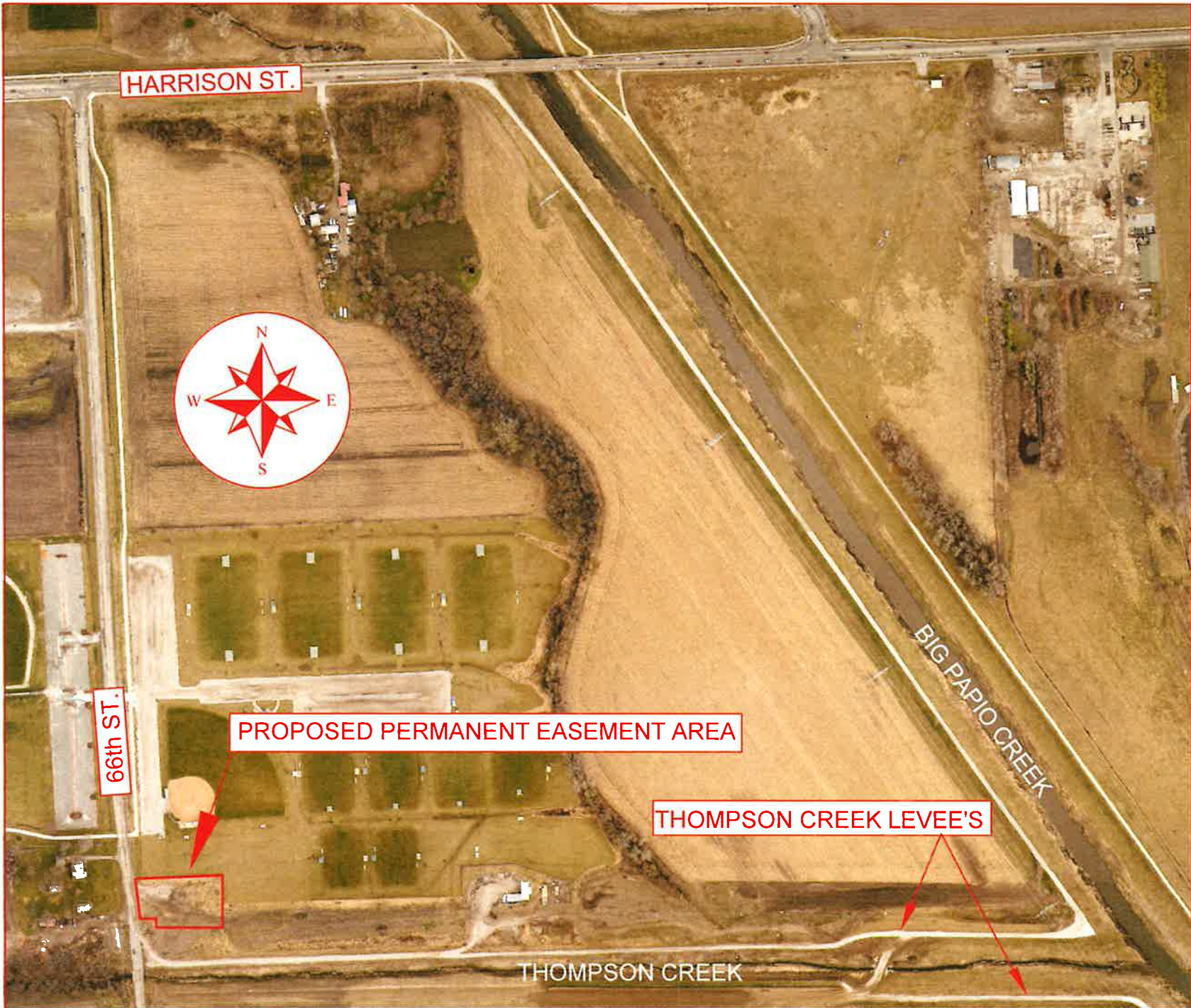
DATE: August 2, 2018

The Thompson Creek Levee Improvement Project is located in Sarpy County, Nebraska, as shown on the enclosed location map. The 2,000 linear feet levee project located on both sides of Thompson Creek is immediately south and adjacent to the City of LaVista's Sports Complex east of 66th Street and south of Harrison Street. The Thompson Creek Levee Improvement Project was undertaken in 2014 and completed in 2017 in response to a Corps of Engineers mandate that levee deficiencies needed to be addressed in order to remain in good standing in the Public Law 84-99 assistance program.

The City of LaVista and District executed an interlocal cooperation agreement in 2014 for the levee improvement project. The agreement provided that the City grant 1.34 acres of temporary easement and 1.64 acres of permanent easement for the levee project at no cost; donate 20,000 cubic yards of soil for levee construction at no cost; and allow the District to relocate 2,000 linear feet of City sanitary sewer away from the creek and levee onto other City property (soccer field area). The permanent easement allowed the levee improvements to be constructed in a setback format away from the creek and located on former soccer field areas.

As part of the right-of-way acquisition for the Thompson Creek Levee Improvement Project, the District acquired (deed) a 1.61 acre parcel of property with a house(acreage). The parcel was larger than needed for the levee improvement project but was acquired in whole due to the levee project impact on the parcel of land. The home was removed and the levee project built, but there is a 0.812 acre portion of the 1.61 acre parcel that is beyond the levee footprint and is now considered as surplus area. The City of LaVista has requested the use of this 0.812 acre parcel for recreational area use (e.g. parking or sports field use) to help offset some of the sports field loss (1.64 acres) that occurred with the District permanent easement acquisition in 2014. A proposed permanent easement agreement providing for the City of LaVista to utilize this surplus area for recreational uses at no cost is attached. Staff recommends approval of the permanent easement agreement.

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 Thompson Creek Permanent Easement Agreement with the City of LaVista, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.



HARRISON ST.



66th ST.

PROPOSED PERMANENT EASEMENT AREA

THOMPSON CREEK LEVEE'S

BIG PAPIO CREEK

THOMPSON CREEK

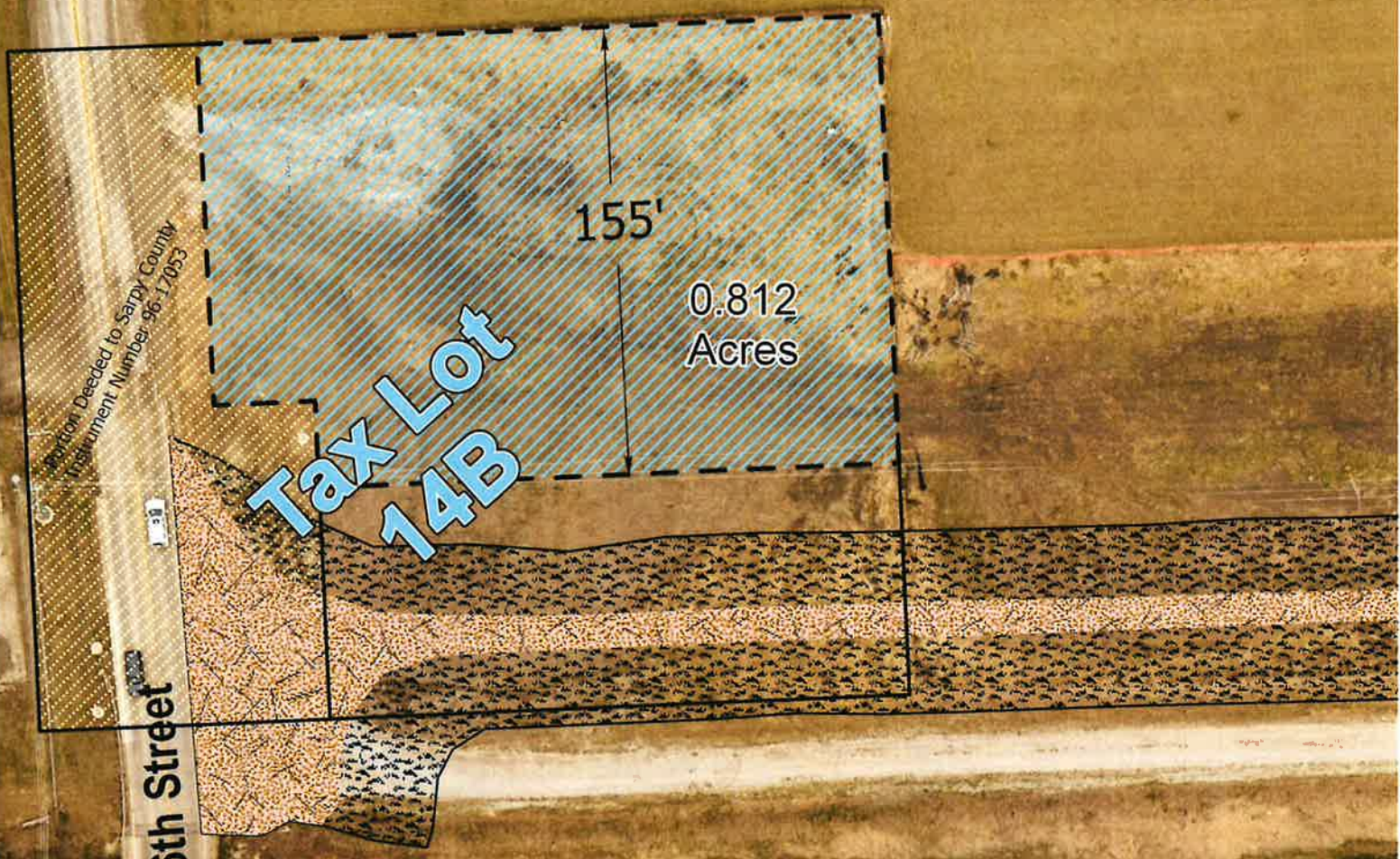
NO SCALE



PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

TITLE
THOMPSON CREEK
EASEMENT FOR CITY OF LAVISTA
8/5/2018

PROPOSED LA VISTA PERMANENT EASEMENT LOCATION MAP



Portion Deeded to Sarpy County
Instrument Number 96-17053

66th Street





Thompson Creek


Tax Lot
14B

155'

0.812
Acres

LEGEND Date: 6/25/2018

-  Excepted portion Inst. No. 96-17053
-  Existing Levee Top
-  Proposed Easement to La Vista
-  Levee Toe Footprint

0 30 60 120 Feet 

THOMPSON CREEK

PERMANENT EASEMENT AGREEMENT

This Agreement is entered into by and between the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a governmental subdivision of the State of Nebraska, (hereinafter called "the DISTRICT") and City of La Vista, Nebraska, a municipal corporation of the State of Nebraska (hereinafter called "the GRANTEE").

WHEREAS, the GRANTEE desires to install, operate, maintain and replace certain improvements, to-wit:

Recreational fields, parking lots and appurtenances thereto.

(herineafter called "the Construction") in that portion of the DISTRICT's parcel of land in Sarpy County, Nebraska, more fully described and depicted in the attached Exhibit "A" (such portion of the DISTRICT's parcel hereinafter being called "the EASEMENT AREA"); and,

WHEREAS, the DISTRICT is agreeable to grant a permanent easement for the Construction within the Easement Area in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of their mutual covenants herein expressed, the sufficiency of which is hereby acknowledged, the DISTRICT and the GRANTEE agree as follows:

1. The DISTRICT does hereby grant to the GRANTEE, its successors and assigns, the permanent right to install, operate, maintain, repair and replace the Construction, in, under and through the EASEMENT AREA, in accordance with the plans and specifications for the Construction to be provided and approved by the DISTRICT before any installment of the Construction commences. The DISTRICT will have sole discretion in approving the Construction as depicted in the plans and specifications and such approval shall not be unreasonably withheld.

2. GRANTEE shall be solely responsible for any and all damages and/or alterations to the DISTRICT's property, facilities, and appurtenances thereto, which are damaged or altered as a result of the installation, operation, maintenance, repair or replacement of the Construction, and the GRANTEE, at its sole cost and expense, shall properly and immediately restore the same to their "as built" condition, to the satisfaction of the DISTRICT in its sole discretion. This shall include but not be limited to the following:

- a) excavations shall be backfilled with same or comparable material and compacted to a density at least equal to that of the adjacent property;
- b) seeded areas which are disturbed shall be re-seeded and a vegetative cover acceptable to the DISTRICT shall be established; and

- c) unnecessary materials, pipe, debris and other construction materials shall be removed.

3. The GRANTEE agrees to and shall pay the reasonable cost of all repairs of damages or rectification of alterations to the DISTRICT's property necessitated or caused by or arising out of the installation, operation, maintenance, repair or replacement of the Construction, or the use of the property by the GRANTEE and/or its contractors. In the event any such facilities are not restored to their "as-built" condition in accordance with Paragraph 2, above, within sixty (60) days after the DISTRICT has demanded the same in writing, the DISTRICT shall be authorized to commission such repairs at GRANTEE's sole cost and expense.

4. The GRANTEE agrees to indemnify and hold the DISTRICT harmless from and against any and all liability, causes of action, claims and expense for personal injury or property damage arising out of or occasioned by the use of the EASEMENT AREA by the GRANTEE pursuant to this Easement Agreement, except as may be caused solely by the negligence or intentional acts of the DISTRICT, its agents and employees.

5. Except as provided herein, the GRANTEE shall be responsible for obtaining rights of ingress and egress to and from the EASEMENT AREA.

6. The GRANTEE agrees to and shall notify the DISTRICT at least twenty-four (24) hours prior to beginning any work in the EASEMENT AREA.

7. Upon completion of installation of the Construction or any replacements thereof, the GRANTEE shall furnish to the DISTRICT two copies of "as built" plans for the Construction or replacement.

8. In the event the DISTRICT determines that it shall be necessary to re-shape, relocate, or re-build its property improvements in the EASEMENT AREA, and in the event, in the determination of the DISTRICT, such work shall necessitate the removal, re-installation, replacement, relocation and/or alteration of the Construction, the GRANTEE agrees to and shall reimburse the DISTRICT upon demand for that part of the DISTRICT's cost for such work that shall be determined by the DISTRICT to be attributable to such removal, installation, replacement, relocation and/or alteration of the Construction.

9. The GRANTEE shall maintain the Construction in a manner which will not interfere with the continued operation and maintenance of the DISTRICT's property. The level of flood protection afforded by the DISTRICT's property shall not be interfered with by the GRANTEE and is to be maintained at all times.

10. GRANTEE assumes the entire risk of loss or damage to the Construction, all GRANTEE's items, material, equipment and machinery stored within the EASEMENT AREA from all causes

whatsoever, including flood or other natural disaster or act of God, and excluding only loss or damage caused solely by the negligence or intentional acts of the DISTRICT or its officers and employees.

11. The DISTRICT and GRANTEE agree that this instrument contains the entire agreement of the parties; that there are no other or different agreements or understandings, except a Temporary Construction Easement, between the DISTRICT and GRANTEE and their agents. In executing and delivering this instrument, the DISTRICT and GRANTEE have not relied upon any promises, inducements, or representations of the other party, except as are set forth herein.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; SIGNATURE
PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement on the respective dates shown, such agreement to be effective upon the date the same has been signed by all parties.

DISTRICT
Papio-Missouri River Natural Resources
District

John G. Winkler, General Manager

STATE OF NEBRASKA)
) SS
COUNTY OF SARPY)

On this _____ day of _____, 20____, before me, a Notary Public in and for said County, personally came the above named JOHN G. WINKLER, General Manager of the Papio-Missouri River Natural Resources District, and he acknowledged the execution of the above Easement Agreement as his voluntary act and deed and the voluntary act and deed of said District.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

GRANTEE
City of La Vista, Nebraska, a municipal
corporation of the State of Nebraska

Address: 8116 Park View Blvd
La Vista, NE 68128

By _____

Name

Title

STATE OF NEBRASKA)
) SS
COUNTY OF SARPY)

On this _____ day of _____ 20____, before me, a Notary Public in and for said County, personally came the above named BRENDA GUNN, City Administrator of the City of La Vista, Nebraska, a Municipal Corporation of the State of Nebraska, and she acknowledged the execution of the above Easement Agreement as her 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

Depiction and Legal Description of EASEMENT AREA

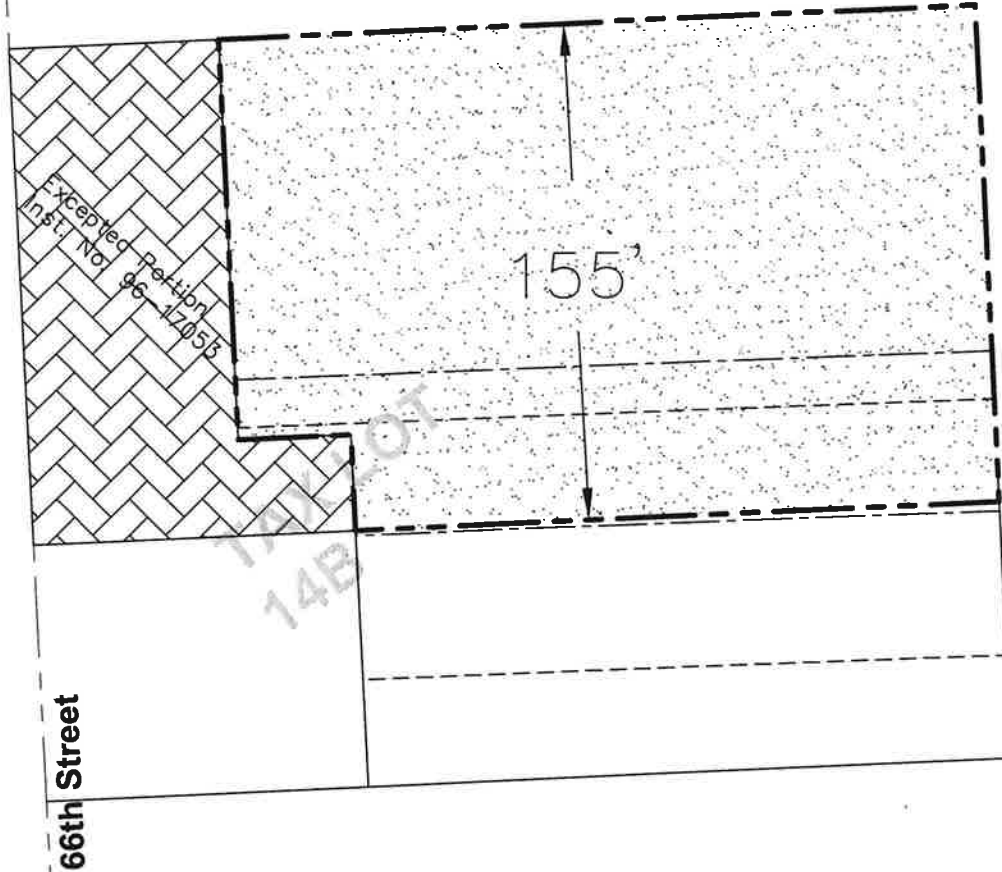
PERMANENT EASEMENT

LEGAL DESCRIPTION

The North 155 feet of Tax Lot 14B in the Southwest Quarter, of the Northeast Quarter, of Section 13, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska;





EXCEPT that portion deeded by Warranty Deed to Sarpy County filed August 22, 1996 as Instrument Number 96-17053

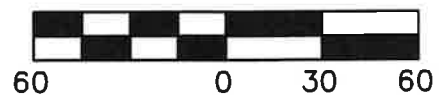
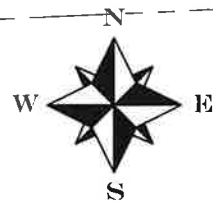
Said North 155 feet contains an area of 35374.60 sq. feet or .812 acres more or less



Southwest corner, of the Southwest $\frac{1}{4}$, of the Northeast $\frac{1}{4}$, of Section 13-T14N-R12E



-  — SANITARY SEWER EASEMENT
-  — OPPD EASEMENT
-  — PERMANENT EASEMENT
-  — EXCEPTED PORTION



1" = 60'



PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
 6901 S. 154TH STREET
 OMAHA NE 68138-3621
 OFFICE: 402-444-6222
 FAX: 402-895-6543
www.papionrd.org

PERMANENT EASEMENT LOCATED IN TAX LOT 14B
 IN THE SW $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ SECTION 13, T14N, R12E

PROJECT: THOMPSON CREEK
 DATE: 6-25-2018
 DRAWN BY: SMM
 SCALE: 1" = 60'
 SHEET: 1 OF 1