

# MEMORANDUM

TO: Finance, Expenditure and Legal Subcommittee

FROM: Martin P. Cleveland

SUBJECT: Little Papio Channel Project Permanent Easement Agreements  
for City of Omaha Traffic Signal Infrastructure

DATE: March 27, 2020

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The City of Omaha has requested the following permanent easement agreements for traffic signal infrastructure at two locations:

	Tract No.	Location	Area (Square Ft.)
1.	20	SWC Pine Street and Aksarben Dr. (Ak-Sar-Ben Area)	24
2.	21	72 <sup>nd</sup> Street and Rose Blumkin Dr. (Nebraska Furniture Mart Area)	1,842

The permanent easements are proposed on District Little Papio Channel Project right-of-way. The proposed permanent easement areas currently contain traffic signal poles and/or traffic signal infrastructure, such as buried cable. This traffic signal infrastructure has very little impact on the District's operation and maintenance of the Little Papio Channel and staff recommends approval of the easement agreements.

The Board may grant easements over District-owned property to other governmental subdivisions, such as City of Omaha, for nominal consideration as per District Policy 16.6 District Property – Sales and Grants of District Real Property.

**Management recommends that the Finance, Expenditure and Legal Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Permanent Easement Agreements with the City of Omaha for Traffic Signal Infrastructure along the Little Papio Channel Project, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

## **PERMANENT TRAFFIC SIGNAL EASEMENT AGREEMENT**

### **(DONATION)**

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 Omaha, State of Nebraska (hereinafter called "the GRANTEE").

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

Traffic signal infrastructure

(herineafter called "the Construction") in that portion of the DISTRICT's parcel of land in Douglas County, Nebraska, legally described 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 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.
2. The DISTRICT does hereby grant to the GRANTEE, its successor and assigns, the right of ingress and egress to and from the EASEMENT AREA.
3. GRANTEE shall be solely responsible for any and all damages and/or alterations arising out of and/or resulting from the GRANTEE and/or its agents or other representatives, 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.

4. 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 thirty (30) 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.

5. 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 or its contractors pursuant to this Easement Agreement, except as may be caused solely by the negligence of the DISTRICT, its agents and employees.

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. 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.

9. 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 of the DISTRICT or its officers and employees.

10. 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.

11. The undersigned wish to donate a permanent traffic signal easement to the GRANTEE, for public use.

12. The undersigned was informed of the right to have said land appraised and a written offer to purchase made for said permanent traffic signal easement, and has by its voluntary act and deed waived these rights.

**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.

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Notary Public

**GRANTEE**  
**City of Omaha, State of Nebraska**

By \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

*City of Omaha, a Municipal Corporation*

ATTEST:

BY:

\_\_\_\_\_  
Elizabeth Butler  
City Clerk, City of Omaha

\_\_\_\_\_  
Jean Stothert,  
Mayor, City of Omaha

APPROVED AS TO FORM:

\_\_\_\_\_  
ASSISTANT CITY ATTORNEY

\_\_\_\_\_  
DATE

STATE OF NEBRASKA    )  
  ) SS  
COUNTY OF DOUGLAS    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me a Notary Public in and for said County, personally came Jean Stothert, Mayor of the City of Omaha, Nebraska, a Municipal Corporation, to me personally known to be the respective officer of said Municipal Corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as Mayor and the voluntary act and deed of said Municipal Corporation.

WITNESS my hand and Notarized Seal the day and year last above written.

Notary Seal:

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEBRASKA    )  
  ) SS  
COUNTY OF DOUGLAS    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, a Notary Public in and for said County, personally came Elizabeth Butler, City Clerk of the City of Omaha, to me personally known to be the respective officer of said Municipal Corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as City Clerk and the voluntary act and deed of said Municipal Corporation.

WITNESS my hand and Notarized Seal the day and year last above written.

Notary Seal:

\_\_\_\_\_  
NOTARY PUBLIC

# EXHIBIT "A"

## PERMANENT EASEMENT LEGAL DESCRIPTION

Property Description:

Outlot 2, Ak-Sar-Ben Business & Education Campus Subdivision as platted to the City of Omaha, Douglas County, Nebraska.

Property Permanent Easement Legal Description:

Beginning at the Easternmost Northeast Corner of said Outlot 1, (said point being 35.00 feet West of and 50.60 feet South of the intersection of Ak-Sar-Ben drive and Pine Street) Ak-Sar-Ben Business & Education Campus Subdivision, as platted and recorded; thence S 02°31'58" E along the East line of Said Outlot 2 (also being the West Right-of-way line of Ak-Sar-Ben drive) a distance of 6.00 feet; thence S 87°28'02" W a distance of 4.00 feet; thence N 02°31'58" W along a line 4.00 feet West of and parallel to the East line of said Outlot 2 a distance of 6.00 feet; thence N 87°28'02" E a distance of 4.00 feet to the point of beginning and containing 24 square feet, more or less.

### CITY OF OMAHA PUBLIC WORKS DEPARTMENT

Owner(s): Papio-Missouri River Natural Resources District



Permanent Easement: \_\_\_\_\_ 24 S.F.

Address:

Project No. MAPA-28(120)

Project Name: Omaha Traffic Signal Phase A1 ROW Design

Tract No. 20

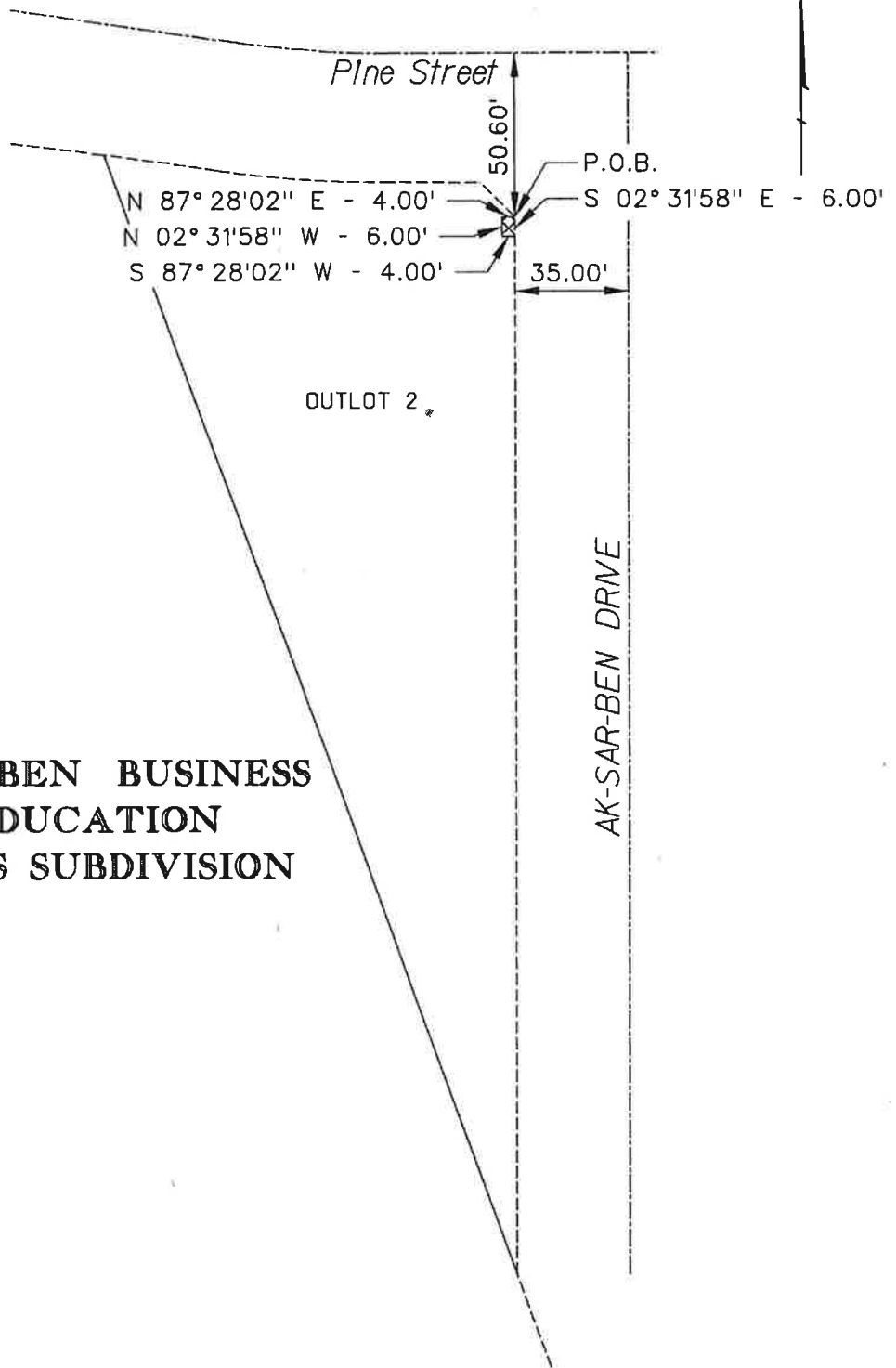
Date Prepared: 3/22/2019

Revision Date(s):

Page 1 of 3

**EXHIBIT "A"**

SHEET 2 OF 3



**AK-SAR-BEN BUSINESS  
& EDUCATION  
CAMPUS SUBDIVISION**

AK-SAR-BEN DRIVE

**CITY OF OMAHA - PUBLIC WORKS DEPARTMENT**

**olsson**



PERMANENT EASEMENT: 24 S.F.

PREPARE DATE: 3/22/2019

PROJECT NO. MAPA-28(120)

TRACT NO. 20

C.N. 22608A

OPW 52955



**EXHIBIT "A"**  
SHEET 3 OF 3

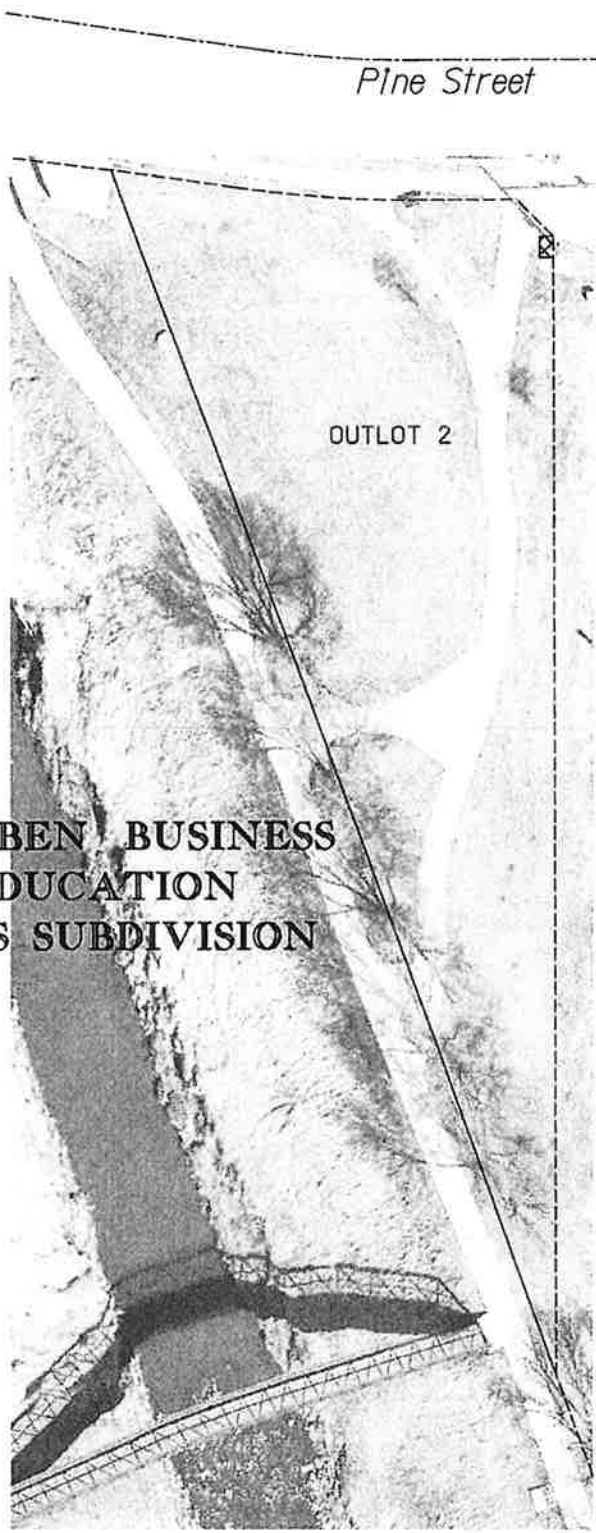


*Pine Street*

OUTLOT 2

AK-SAR-BEN DRIVE

**AK-SAR-BEN BUSINESS  
& EDUCATION  
CAMPUS SUBDIVISION**



**CITY OF OMAHA - PUBLIC WORKS DEPARTMENT**

**olsson**



PERMANENT EASEMENT: 24 S.F.

PREPARE DATE: 3/22/2019

PROJECT NO. MAPA-28(120)

TRACT NO. 20

C.N. 22608A

DPW 52955

**PERMANENT SUBSURFACE TRAFFIC SIGNAL EASEMENT AGREEMENT  
(DONATION)**

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 Omaha, State of Nebraska (hereinafter called "the GRANTEE").

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

Subsurface traffic infrastructure

(herineafter called "the Construction") in that portion of the DISTRICT's parcel of land in Douglas County, Nebraska, legally described 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 subsurface easement for the Construction 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.
2. The DISTRICT does hereby grant to the GRANTEE, its successor and assigns, the right of ingress and egress to and from the EASEMENT AREA.
3. DISTRICT and GRANTEE acknowledge and agree that GRANTEE shall have no right whatsoever to use or access the surface of the EASEMENT AREA or DISTRICT's property and

that the GRANTEE's right to use the subsurface of the EASEMENT AREA shall be strictly limited to a two (2") inch diameter horizontal conduit located within the native soils of the EASEMENT AREA. GRANTEE shall have the right, by way of its initial construction of the traffic signal interconnect and appurtenances, to locate and establish the EASEMENT AREA within District's property. GRANTEE further acknowledges and agrees that it shall have no right to use or access any subsurface areas of the DISTRICT's property other than the EASEMENT AREA.

4. This Permanent Subsurface Traffic Signal Easement Agreement is also for the benefit of any contractor, agent, employee or representative of the GRANTEE performing said Construction.

5. Notwithstanding anything set forth in this Permanent Subsurface Traffic Signal Easement Agreement to the contrary, the DISTRICT reserves unto itself, its successors and assigns all mineral rights and the right to make use of the portions of the DISTRICT's property located above the EASEMENT AREA, and make any improvements it deems desirable thereon and therein, subject to terms of this agreement. Such improvements and any plants, trees, grass or shrubbery constructed above the EASEMENT AREA shall be maintained by DISTRICT, its successors and assigns, subject to the GRANTEE's obligations set forth herein.

6. Any improvements allowed to be constructed over the EASEMENT AREA shall be subject to the following restrictions. These restrictions are intended to preserve the integrity of the traffic control interconnect and related structures, and to allow the DISTRICT the ability to liberally construct improvements over the EASEMENT AREA so long as such construction does not adversely impact the integrity of the traffic signal interconnect and related structures.

- a) Any improvements including utilities, grading and pavement shall require notice to and coordination with the GRANTEE, including the City of Omaha Public Works Department prior to commencing the work so as to protect the integrity of the traffic signal interconnect.
- b) All geotechnical investigations shall require notice to the GRANTEE, including the City of Omaha Public Works Department prior to commencing the work.
- c) Any improvements within the EASEMENT AREA shall not extend below the ground surface Elevation of 1035.70 on (North American Datum of 1988 – NAVD88) as shown on the attached Exhibit "B." An exception may be made for exploratory geotechnical investigations used to collect subsurface data.

7. GRANTEE shall be solely responsible for any and all damages and/or alterations arising out of and/or resulting from the GRANTEE and/or its agents or other representatives, 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.

8. 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 thirty (30) 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.

9. 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 or its contractors pursuant to this Easement Agreement, except as may be caused solely by the negligence of the DISTRICT, its agents and employees.

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

11. 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.

12. 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.

13. 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 of the DISTRICT or its officers and employees.





City Clerk, City of Omaha

Mayor, City of Omaha

APPROVED AS TO FORM:

\_\_\_\_\_  
ASSISTANT CITY ATTORNEY

\_\_\_\_\_  
DATE

STATE OF NEBRASKA    )  
                                  ) SS  
COUNTY OF DOUGLAS    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me a Notary Public in and for said County, personally came Jean Stothert, Mayor of the City of Omaha, Nebraska, a Municipal Corporation, to me personally known to be the respective officer of said Municipal Corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as Mayor and the voluntary act and deed of said Municipal Corporation.

WITNESS my hand and Notarized Seal the day and year last above written.

Notary Seal:

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEBRASKA    )  
                                  ) SS  
COUNTY OF DOUGLAS    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, a Notary Public in and for said County, personally came Elizabeth Butler, City Clerk of the City of Omaha, to me personally known to be the respective officer of said Municipal Corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as City Clerk and the voluntary act and deed of said Municipal Corporation.

WITNESS my hand and Notarized Seal the day and year last above written.

Notary Seal:

\_\_\_\_\_  
NOTARY PUBLIC

# EXHIBIT "A"

## PERMANENT EASEMENT LEGAL DESCRIPTION

### Property Description:

A tract of land located in the Southeast Quarter of the Southeast Quarter of Section 23, Township 15 North, Range 12 East of the 6<sup>th</sup> Principle Meridian, in the City of Omaha, Douglas County, Nebraska.

### Property Permanent Easement Legal Description:

Commencing at Southeast corner of Section 23 Township 15 North Range 12 East; thence N02°19'59"W along the East line of said Section 23 Township 15 North Range 12 East a distance of 1080.28 feet; thence N87°40'01"E a distance of 467.10 feet to a point on the South Right-of-way line of Rose Blumkin Drive and the point of Beginning; thence S25°46'14"W a distance of 10.00 feet; thence N64°13'46"W along a line 10.00 feet South of and parallel to the South Right-of-way line of Rose Blumkin Drive a distance of 61.41 feet; thence Westerly 120.45 feet along a line 10.00 feet South of and parallel to the South Right-of-way line of Rose Blumkin Drive on a 260.69 foot radius curve concave Southerly and having a chord bearing N77°19'47"W, 119.38' with central angle of 26°28'23"; thence N 00°33'59" W a distance of 10.00 feet to a point on the South Right-of-way line of Rose Blumkin Drive; thence Easterly 125.07 feet along the South Right-of-way line of Rose Blumkin Drive on a 270.69 foot radius curve concave Southerly and having a chord bearing S77°19'47"E, 123.96' with central angle of 26°28'23"; thence S64°13'46"E along the South Right-of-way line of Rose Blumkin Drive a distance of 61.41 feet to the point of beginning and containing 1,842 square feet, more or less.

## CITY OF OMAHA PUBLIC WORKS DEPARTMENT

Owner(s): Papio-Missouri River Natural Resources District



Permanent Subsurface Easement: 1,842 S.F.

Address:

Project No. MAPA-28(120)

Project Name: Omaha Traffic Signal Phase A1 ROW Design

Tract No. 21

Date Prepared: 03/22/2019

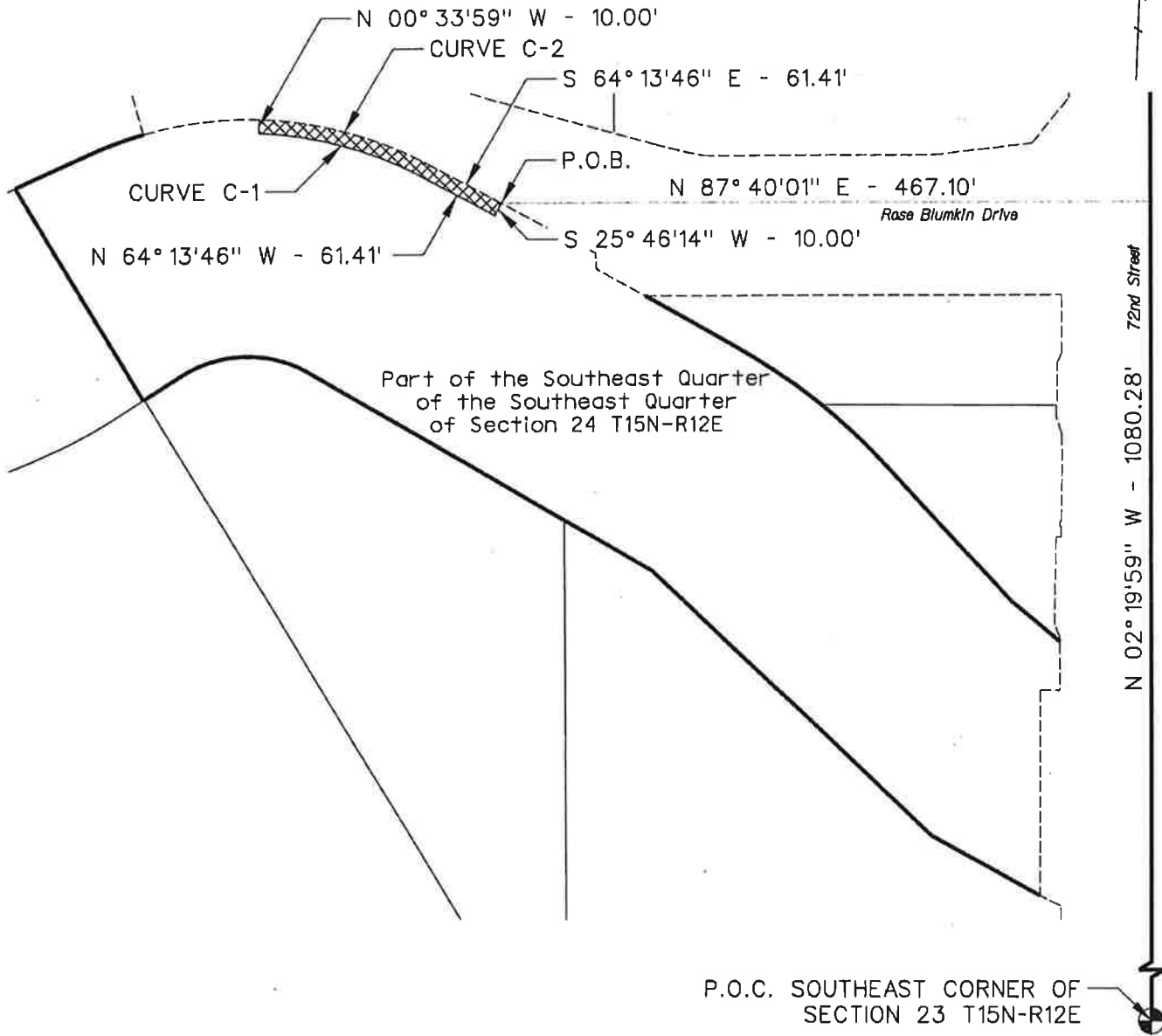
Revision Date(s):

Page 1 of 4



# EXHIBIT "A"

SHEET 2 OF 4



CURVE C-1	CURVE C-2
DELTA - 26° 28' 23"	DELTA - 26° 28' 23"
RADIUS - 260.69'	RADIUS - 270.69'
LENGTH - 120.45'	LENGTH - 125.07'
TANGENT - 61.32'	TANGENT - 63.67'
CHORD B. - N77° 19' 47" W	CHORD B. - S77° 19' 47" E
CHORD L. - 119.38'	CHORD L. - 123.96'

CITY OF OMAHA - PUBLIC WORKS DEPARTMENT

**olsson**

 PERMANENT SUBSURFACE EASEMENT: 1,842 S.F.

PREPARE DATE: 3/22/2019

PROJECT NO. MAPA-28(120)

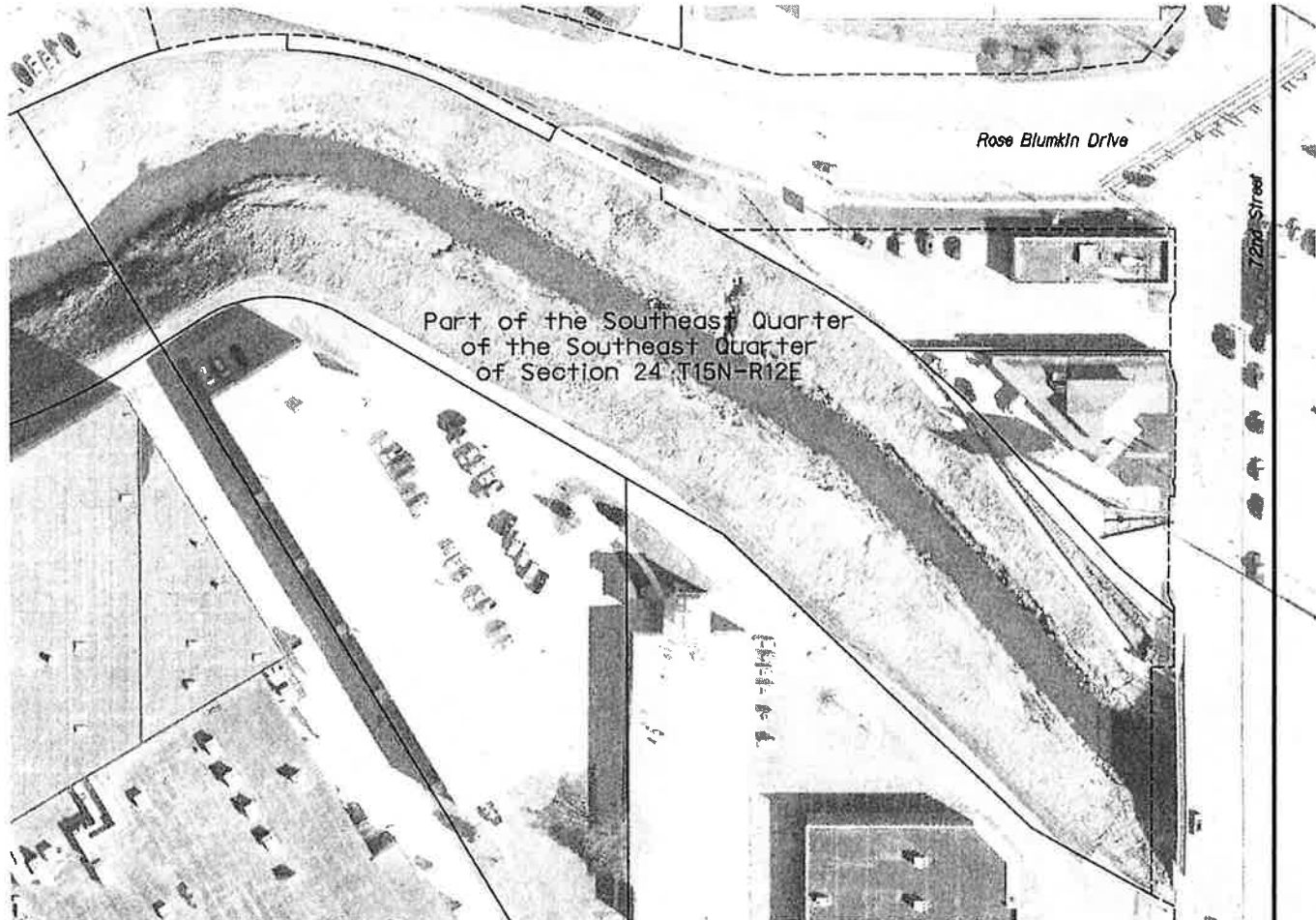
TRACT NO. 21

C.N. 22608A

OPW 52955

# EXHIBIT "A"

SHEET 3 OF 4



Part of the Southeast Quarter  
of the Southeast Quarter  
of Section 24 T15N-R12E

P.O.C. SOUTHEAST CORNER OF  
SECTION 23 T15N-R12E

CITY OF OMAHA - PUBLIC WORKS DEPARTMENT

olsson



PERMANENT  
SUBSURFACE EASEMENT: 1,842 S.F.

PREPARE DATE: 3/22/2019

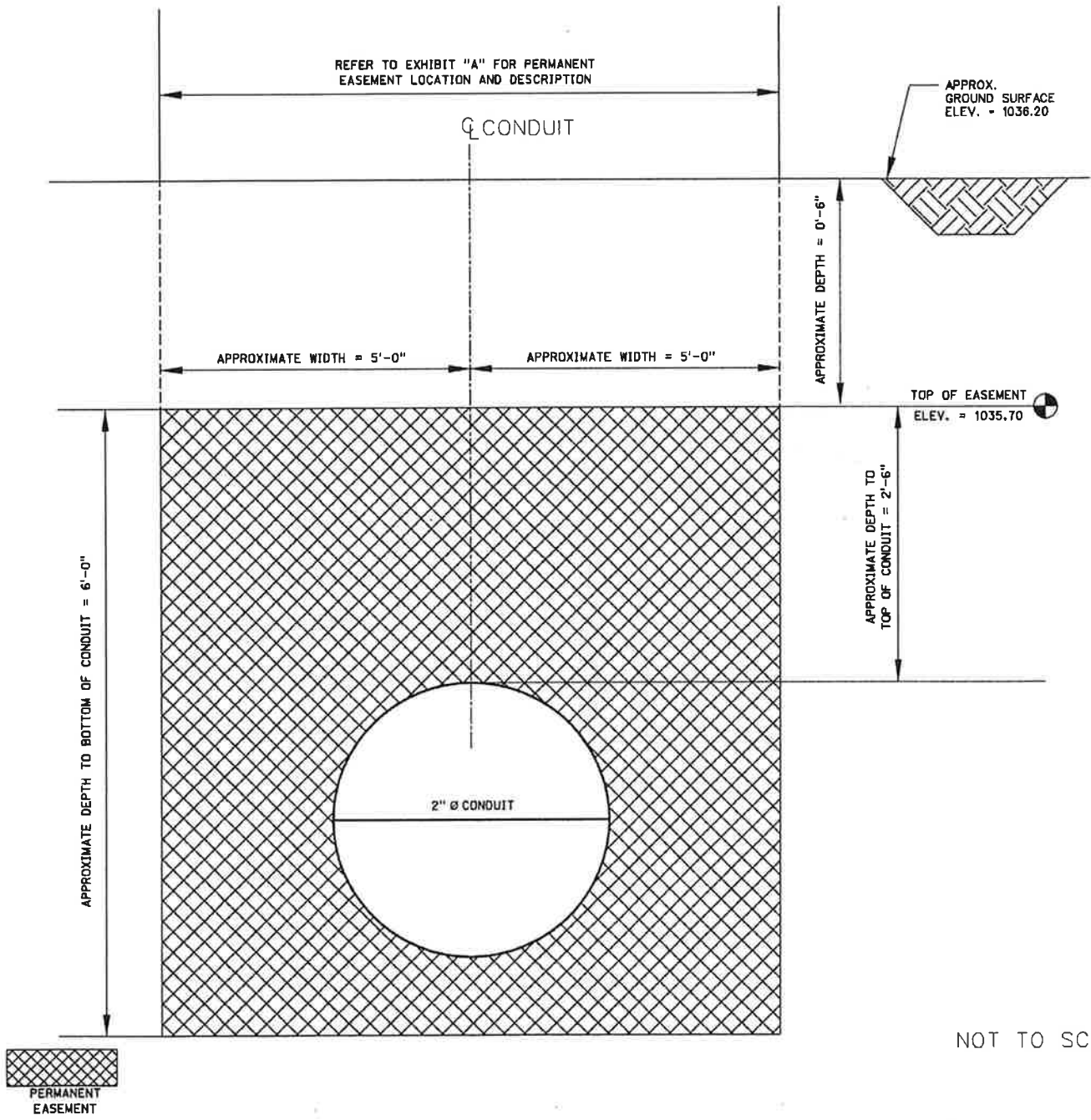
PROJECT NO. MAPA-28(120)

TRACT NO. 21

C.N. 22608A

OPW 52955

**EXHIBIT "B"**  
**PERMANENT SUBSURFACE EASEMENT**  
 SHEET 4 OF 4



NOT TO SCALE

TRACT 21: ROSE BLUMKIN DRIVE  
 PERMANENT EASEMENT

<b>CITY OF OMAHA - PUBLIC WORKS DEPARTMENT</b>		<b>olsson</b>	
	PREPARE DATE: 3/22/2019	PROJECT NO. MAPA-28(120)	
	TRACT NO. 21	C.N. 22608A	OPW 52955