

Memorandum

To: Finance, Expenditures, and Legal Subcommittee

From: Eric Williams

Date: May 30, 2023

RE: Lease to the City of Valley for Western Douglas County Trail Parking Lot

The District acquired land in Valley for the purpose of constructing the federal aid funded Western Douglas County Trail project. The project was completed in 2022 and the District has received appreciation from the City of Valley, DC West Schools, the YMCA, and members of the public for the benefits this project has brought to the community.

Valley would now like to provide additional access to the trailhead by constructing a parking lot along the east side of Center Street (N 270th Street) on land which was part of the acquisition for the project. This use is aligned with the original intended purpose of the project and will provide additional benefits to the community. Due to requirements associated with land acquired through federal funding, District legal counsel has recommended, and the City of Valley has agreed, that a lease for construction and operation of a parking lot is the best arrangement.

The parking lot will be constructed, operated, and maintained by the City of Valley, in addition to the previously agreed normal operations and maintenance for the trail. The District will continue to own the land and to fulfill responsibilities for the bridge structure according to agreements for the construction of the trail and bridge.

Valley expects to proceed with construction of the parking lot in 2023 and there will be no cost to the District for construction or ongoing operations.

- **Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the Ground Lease with the City of Valley, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

GROUND LEASE

THIS GROUND LEASE (this "Lease") is entered into as of June _____, 2023 by and between PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT ("Ground Lessor") and CITY OF VALLEY, NEBRASKA ("Ground Lessee").

WHEREAS, Ground Lessor is the current owner of legal title to the property depicted on **Exhibit A-1** attached hereto, and all access points and improvements thereon (collectively, the "Premises").

WHEREAS, the Premises is located on a larger parcel of land upon which the Ground Lessor acquired as part of the Western Douglas Trail Project.

WHEREAS, Ground Lessor and Ground Lessee desire to make certain agreements relating to a lease of the Premises.

Article 1 -- Lease, Term and Rent

1.1 Lease. Ground Lessor hereby leases to Ground Lessee on the terms set forth herein the Premises. During the term of this Ground Lease, Ground Lessee shall have the right to perform the improvements set forth in **Exhibit A-2** and also have the non-exclusive right of access to and from the Premises identified on **Exhibit A-1** attached hereto.

1.2 Term. Except as otherwise provide herein, the term of this Lease shall commence on the Effective Date hereof and shall continue for a period of ninety-nine (99) years unless terminated earlier in accordance with the terms hereof.

1.3 Effective Date. This Lease shall be in full force and effect as of the date of execution hereof by the last of the parties hereto and shall continue until the earlier of the date (a) this Lease is terminated pursuant to the terms of this Lease or (b) the Term expires.

1.4 Rent. Ground Lessee shall pay to Ground Lessor as rent for the Term of this Lease the sum of \$1.00 for each "Lease Year" of the Term (the "Annual Rent"). Annual Rent shall be paid to Ground Lessor on or before the first day of each Lease Year at Ground Lessor's address set forth herein, or at such other address as Ground Lessor may specify in a written notice. The term "Lease Year" shall mean the twelve-month period beginning on January 1 of each year and ending on the following December 31st.

Article 2 -- Use of Premises

2.1 Use. The Premises shall be used for the construction and operation of a paved surface vehicle parking lot and for no other use or purpose. The parking lot is intended for the use by users of the Western Douglas Trail and for overflow parking for the users of the sports and activities fields across the street from said parking lot. Use of the Premises shall be in compliance with all applicable municipal, state and federal rules and regulations, ordinances, statutes and laws. Ground Lessor has the right to inspect the Premises at any time upon reasonable prior notice to Ground Lessee provided, however, that Ground Lessor shall not interfere with the Ground Lessee's construction and operation of the parking lot.

2.2 Parking Lot Improvements. Ground Lessee shall perform the parking lot improvements described on **Exhibit A-2** in a good and workmanlike manner, lien-free, and in accordance with applicable ordinances, laws, rules and regulations.

2.3 Fencing. Ground Lessee may install a fence around the parking lot. Ground Lessee shall be solely responsible for fence maintenance and repairs to those portions of fence adjacent to the leased area.

2.4 Other Improvements. Ground Lessee shall not make or allow to be made any other alterations, additions, or improvements to the Premises, without first obtaining Ground Lessor's written consent, which may be withheld, delayed or conditioned in Ground Lessor's sole discretion.

Article 3 -- Utilities

3.1 Utilities. During the term of this Lease, Ground Lessee shall pay or cause to be paid all charges for the furnishing of gas, electric, water, sewer, telephone services and other utilities to the Premises, if any, and for the removal of garbage and rubbish from the Premises.

Article 4 – Title /Liens

4.1 Ground Lessor's Title. Ground Lessor represents, warrants, covenants and agrees that Ground Lessor is the owner of fee simple title to the Premises and such is not subject to any other lease or use. Hereafter, Ground Lessor agrees that it will not enter into, amend, terminate or modify any easement, covenant, condition or restriction which will interfere with Ground Lessee's intended use.

4.2 Claims. At all times during the term of this Lease, Ground Lessee shall keep the Premises free and clear of all liens and claims for labor, services, materials, supplies or equipment performed on or furnished to the Premises or otherwise furnished by or through Ground Lessee. Notwithstanding anything to the contrary contained herein, Ground Lessee may at its option litigate the validity of any claim.

Article 5 – Repairs and Restoration; Ground Lessor Use

5.1 Maintenance by Ground Lessee. At all times during the Term of this Lease, Ground Lessee shall maintain the Premises (including mowing, landscaping, weed control, snow and ice removal and fence maintenance) in good condition and in compliance with all applicable laws, rules and regulations. Ground Lessee shall repair any damages to the Premises caused by it, its contractors or invitees.

5.2 Option to Terminate Lease for Destruction. Notwithstanding anything contained herein, Ground Lessee shall have the option of (i) terminating this Lease by giving Ground Lessor written notice thereof within thirty (30) days of any material casualty to the Premises which prevents its use thereof by Ground Lessee for a period in excess of 30 days, or (ii) repairing and

restoring the parking lot improvements to the condition they were in prior to the casualty event and continuing to operate the parking lot pursuant to the terms of this Ground Lease.

Article 6 – Indemnity and Insurance

6.1 **Indemnity.** Ground Lessee hereby agrees to indemnify and hold Ground Lessor harmless from all liability for any such loss, damage or injury to other persons and from all costs and expenses, including legal fees, arising from Ground Lessee's, or its employees, contractors, representatives or invitees use and occupancy of the Premises, except as occasioned by willful misconduct or negligence of Ground Lessor, its agents or employees.

6.2 **Liability Insurance.** Ground Lessee shall, at Ground Lessee's own cost and expense, secure promptly after execution of this Lease and maintain during the entire term of this Lease, liability and casualty insurance for the Premises naming Ground Lessor as an additional insured on a primary and non-contributory basis with respects to the general liability, auto liability and umbrella liability.

Article 7 -- Assignment and Subleasing

7.1 **Prohibition.** Ground Lessee may not sell, convey, assign, sublease, transfer or encumber, herein any of its interest in this Lease or Premises without the prior written consent of Ground Lessor.

Article 8 -- Termination

8.1 **Expiration.** Upon the expiration of the Term of this Lease or other termination of this Lease as provided herein or by operation of law, title to any improvements located on the Premises shall automatically, without action by the parties hereto, vest in Ground Lessor, its successors and assigns. At such time, Ground Lessee covenants and agrees that it will execute and deliver to Ground Lessor such evidence of title to said improvements as Ground Lessor may reasonably request. Notwithstanding the above, Ground Lessee retains the right to remove, subject to the rights of parties in possession, from the Premises, all improvements, trade fixtures and equipment located on the Premises and covenants and agrees to repair and restore any damages to the Premises occasioned by such removal.

8.2 **Ground Lessee's Default.** Should Ground Lessee default in the performance of any other covenant, condition or agreement contained in this Lease and the default is not cured within ninety (90) days after written notice thereof from Ground Lessor, or such longer period as may be reasonably required to effect a cure so long as Ground Lessee commences such cure with due diligence, then Ground Lessor may, at its option, cure such default (entering on the Premises for such purposes if Ground Lessor shall so elect), and Ground Lessee shall repay to Ground Lessor on demand the entire expense thereof, and any act or thing done by Ground Lessor pursuant to the provisions of this Section shall not be or be construed as a waiver of any default by Ground Lessee, or as a waiver of any covenant, term or condition herein contained or of the performance thereof, or of any other right or remedy of Ground Lessor.

8.3 Ground Lessor's Default. If at any time Ground Lessor defaults in the performance of any of Ground Lessor's covenants and obligations herein contained and the default is not cured within ninety (90) days after written notice thereof or such longer period as may be required to effect a cure, unless Ground Lessor commences such cure within said ninety (90) days and proceeds to prosecute same with due diligence, Ground Lessee shall have the right but not the obligation, in addition to any other remedies under law or at equity, to cure such default, and Ground Lessor shall repay to Ground Lessee on demand the entire expense thereof, including compensation to the agents and employees of Ground Lessee, and any act or thing done by Ground Lessee pursuant to the provisions of this Section shall not be or be construed as a waiver of any default by Ground Lessor, or as a waiver of any covenant, term or condition herein contained or of the performance thereof, or of any other right or remedy of Ground Lessee.

Article 9 -- Miscellaneous

9.1 Notices. Any notices required or desired to be given hereunder shall be in writing and shall be given by depositing such notice in the United States mail, certified and return receipt requested, addressed to the party to whom such notice is given at the address set forth below or to such other address as such party may previously have specified in a notice to the party giving notice. Any such notice shall be deemed delivered (i) upon receipt thereof, or (ii) in the event receipt of such notice is refused, at the time of such refusal.

If intended for Ground Lessor:

Papio-Missouri River Natural Resources District
Attn: General Manager
8901 S. 154th Street
Omaha, NE 68138-3621

If intended for Ground Lessee:

City of Valley, Nebraska
Attn: _____
203 N. Spruce Street
Valley, NE 68064

9.2 Governing Law. This Lease and all matters relating to this Lease shall be governed by the laws of the State of Nebraska in force at the time any need for interpretation of this Lease or any decision or holding concerning this Lease arises.

9.3 Partial Invalidity. Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions of this lease shall remain in full force and effect, unimpaired by the holding.

9.4 Nonwaiver. Failure of either party to exercise its rights under the terms of this Lease on any one occasion shall not be construed as a waiver of any requirement of this Lease or a waiver of such party's right to take advantage of any subsequent or continued breach by the other

party of any covenant contained in the Lease. All remedies herein provided shall be in addition to and not in substitution for any remedies otherwise available to the parties.

9.5 Quiet Enjoyment. Ground Lessor covenants the following during the term of this Lease, as long as Ground Lessee performs its obligations under this Lease, Ground Lessee shall have quiet and exclusive possession of the Premises free from the claims of Ground Lessor or anyone lawfully claiming through Ground Lessor.

[signatures on next pages]

Signed by the Papio-Missouri River Natural Resources District this _____ day of _____,
2023.

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT,
A Political Subdivision

By _____
JOHN WINKLER
GENERAL MANAGER

Signed by the City of Valley this _____ day of _____, 2023.

ATTEST:

CITY OF VALLEY, NEBRASKA

City Clerk

CINDY GROVE
MAYOR

CITY SEAL

EXHIBIT A-1 TO GROUND LEASE

DEPICTION OF THE PREMISES

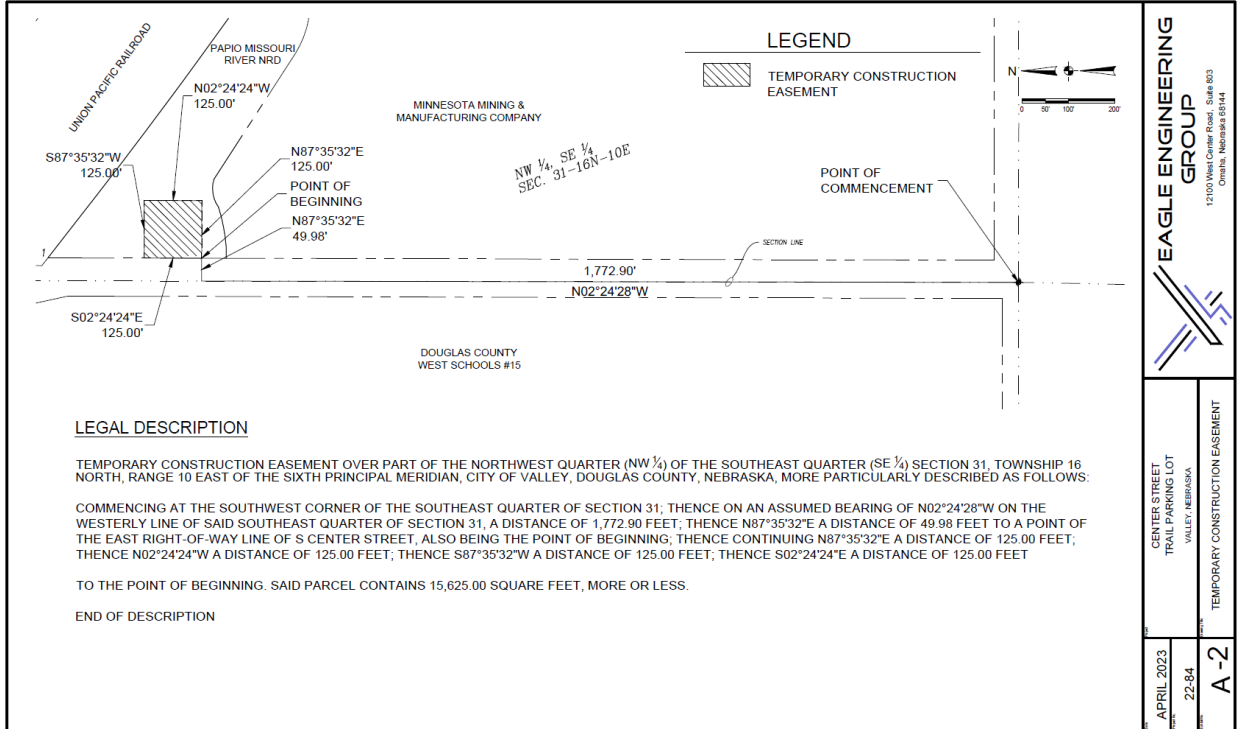


EXHIBIT A-2 TO GROUND LEASE

1. Grading for construction of parking lot surface, sidewalk to trail, and culvert.
2. Installation of a 24" culvert.
3. Preparation of area for construction of an approximately 80' x 80' concrete parking lot, including one approximately 20' wide access point from Center Street.
4. Construction of a 60' x 60' concrete parking lot, including one access point from Center Street, and sidewalk to trail.
5. Placement of wooden bollards on parking surface.
6. Planting trees around parking lot.
7. Landscaping and seeding or sod in Easement Area around parking lot.
8. Installation of signage.
9. Any other normal activities necessary to accomplish construction and/or installation of the items set forth above.