

MEMORANDUM

TO: Finance, Expenditures and Legal Subcommittee

FROM: Martin P. Cleveland, Construction Engineer

SUBJECT: Thompson Creek Levee Improvement Project –Tract 1A
Fricke Inc. ROW Purchase

DATE: March 25, 2016

The Thompson Creek Levee Improvement Project extends between 66th and 60th Street and south of Harrison Street in La Vista, NE. The levee improvement project consists of relocating levees away from the creek, constructing riverside berms and levees with 3:1 side slopes. Attached are site photos and a map related to the project.

In September 2014, the District acquired 3.961 acres of permanent levee and 4.836 acres of temporary construction easements from Fricke Incorporated for the construction, operation and maintenance of the right bank Thompson Creek Levee Improvements. The property was appraised by Thomas E. Stevens and the permanent easement had a value of \$10,000 per acre.

During Fall 2015, while constructing the right bank levee, it was determined that additional right-of-way (Tract 1A) would need to be acquired from Fricke Incorporated in order to properly construct an access from 66th Street. There is an OPPD power pole guy wire pole and 66th Street guard rail blocking access from the new levee top to 66th Street. The additional right-of-way will provide access around the pole and end of guard rail in a curved format. Fricke Incorporated has agreed to provide the additional permanent levee easement over Tract 1A at the same value per acre (\$10,000/acre) as the permanent easement right-of-way acquired in 2014. The additional easement area is 0.306 acres with a value of \$3,060. Attached is a signed purchase agreement.

It is Management's recommendation that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Purchase Agreement with Fricke Inc. for the purchase price of \$3,060 for 0.306 acres of Tract 1A permanent levee easement for Thompson Creek Levee Improvement Project, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

EASEMENT PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (“**THIS PURCHASE AGREEMENT**”) is made by and between or among: **FRICKE, INCORPORATED**, a Nebraska Corporation (hereinafter referred to collectively as “**SELLER**,” whether one or more), on the one hand, and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “**PURCHASER**”) on the other hand. In return for payment by **PURCHASER** to **SELLER** of THREE THOUSAND SIXTY DOLLARS (\$3,060.00) (hereinafter referred to as the “**PURCHASE PRICE**”), **SELLER** agrees to grant to **PURCHASER** a permanent easement in the form as attached hereto as Exhibit “**A**” and incorporated herein by reference (the “**EASEMENT**”) in, on, over, under and across the parcel(s) of land in the Northwest ¼ of the Southeast ¼ of Section 13, Township 14 North, Range 12 East of the 6th P.M, Sarpy County Nebraska, more particularly described in the legal descriptions attached to Exhibit “**A**” and consisting of an area of 0.306 acres more or less (the “**EASEMENT AREA**”).

1. **Payment.** The **PURCHASE PRICE** shall be paid by **PURCHASER** to **SELLER** by **PURCHASER’S** bank draft at the closing of this transaction (“the **CLOSING**”).

2. **The Closing.** The **CLOSING** shall occur at the office of **PURCHASER** at 8901 S. 154th Street, Omaha, NE 68138, at 10:00 o’clock, A.M. DST, on _____, 2016, or on such other date and/or at such other time or place as may be agreed upon in writing by **PURCHASER** and **SELLER**. At the **CLOSING**, **SELLER** shall execute and deliver to **PURCHASER** the **EASEMENT** over the **EASEMENT AREA**, free and clear of all liens, encumbrances, limitations, covenants, reservations, conditions, restrictions and easements, except as otherwise contemplated by or permitted in accordance with **THIS PURCHASE AGREEMENT**.

3. **Title Insurance Commitment.** Within ten (10) days after execution of **THIS PURCHASE AGREEMENT**, **SELLER** shall deliver to **PURCHASER** a commitment (the “**COMMITMENT**”) from a duly authorized title insurance company for a policy of title insurance to be issued at the **CLOSING**. The **COMMITMENT** shall be irrevocable

for a period of six (6) months and shall commit the insurer to insure the PURCHASER'S title to the EASEMENT over the EASEMENT AREA in the condition required herein for the benefit of PURCHASER, and its assigns or nominees, for the amount of the PURCHASE PRICE. The COMMITMENT shall exclude all standard exceptions to coverage shown on its Schedule B.

4. **Objections to Title.** After delivery of the COMMITMENT, PURCHASER may notify SELLER of any conditions disclosed in the COMMITMENT that are objectionable to PURCHASER. Following such notice SELLER shall promptly and diligently undertake such steps as are reasonably necessary to cure, satisfy, or remove such conditions. In the event SELLER shall fail to correct, satisfy or resolve any such condition to the reasonable satisfaction of PURCHASER within thirty (30) days from the date of PURCHASER'S delivery of written objections to SELLER, PURCHASER shall have the right to terminate THIS PURCHASE AGREEMENT.

5. **New Liens or Conditions.** As long as THIS PURCHASE AGREEMENT is in effect SELLER shall not transfer, convey, lease or otherwise dispose of any right, title or interest in the EASEMENT AREA except subject to the terms of THIS PURCHASE AGREEMENT or with written consent of PURCHASER. SELLER further agrees not to consent to or allow any new lien, encumbrance, condition reservation, easement, lease, restriction or covenant against the EASEMENT AREA, other than the lien for current real estate taxes due but not yet delinquent.

6. **Right of Entry.** Prior to the CLOSING, PURCHASER, and its duly authorized agents, shall have the right to enter the EASEMENT AREA in order to make, at PURCHASER'S expense, all surveys, measurements, soil tests, environmental studies and other tests as PURCHASER shall deem necessary.

7. **Leases and Other Interests.** At the CLOSING, no portion of the EASEMENT AREA will be subject to any agreement, right of first refusal, lease or other undisclosed or unrecorded interest, right or restriction. SELLER certifies that there will have been no labor performed, and no materials furnished to the EASEMENT AREA, by any person or entity, who has not been paid in full, for at least one hundred twenty (120)

days prior to the CLOSING. SELLER hereby agrees to indemnify and hold PURCHASER harmless from and against any such claims.

8. Hazardous Materials. SELLER represents and warrants that SELLER has not used, generated, stored or disposed of, above, in, on, under or upon the EASEMENT AREA, any “hazardous materials” as hereinafter defined, and that SELLER has no actual or constructive knowledge that there are any hazardous materials above, in, on, under or upon the EASEMENT AREA. The term “hazardous materials” means any material or substance which is listed in the United States Department of Transportation Hazardous Materials’ Table (49 CFR 172.101) as of the date of THIS PURCHASE AGREEMENT that is or has been kept, used or disposed of in or on the EASEMENT AREA in a manner and/or in quantities which do not comply with applicable laws and regulations pertaining to said materials or substances. Further, SELLER and PURCHASER agree that they will not use, generate, store or dispose, or permit the use, generation, storage or disposal, of any hazardous materials as hereinabove described over, in, on, under or upon the EASEMENT AREA at any time prior to the CLOSING. SELLER agrees to indemnify and hold PURCHASER harmless from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys fees, arising from the introduction or presence in or on any portion of the SALE PROPERTY of asbestos or any form thereof, or any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances in or on any portion of the EASEMENT AREA, including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination in or on any portion of the EASEMENT AREA (except costs and expenses relating to any such substances or materials introduced by PURCHASER or its employees, officers, contractors or agents).

9. **Tests.** Not later than five (5) days after execution of THIS PURCHASE AGREEMENT, SELLER agrees to provide to PURCHASER all soil tests, engineering reports, wetland studies and other similar drawings and technical information relating to the EASEMENT AREA that SELLER has in his, her or its possession, at no additional cost to PURCHASER.

10. **Conditions Precedent.** The obligation of PURCHASER to consummate the transactions contemplated herein is expressly subject to satisfaction as determined by PURCHASER, in its absolute discretion, of the conditions listed below.

a) **Title.** THIS PURCHASE AGREEMENT is contingent upon condition of title to the EASEMENT AREA being established in accordance with THIS PURCHASE AGREEMENT, subject only to exceptions waived or agreed to by PURCHASER.

b) **Warranties.** THIS PURCHASE AGREEMENT is contingent upon all warranties and representations of SELLER hereunder being true and correct in all material respects as of the date hereof and as of the CLOSING date.

11. **Closing Costs and Apportionments.**

a) **Real Estate Taxes.** All consolidated real estate taxes on the EASEMENT AREA that become due, and all prior years' taxes, interest and other charges related thereto, if any, shall be paid by SELLER.

b) **Greenbelt recapture.** PURCHASER shall indemnify and hold SELLER harmless from and against any greenbelt property tax recapture resulting from PURCHASER'S purchase of the EASEMENT.

c) **Special Assessments.** SELLER agrees that it shall pay and/or be responsible for all special assessments, preliminary or final, including any deficiency assessments or such assessments deferred for any reason, including agricultural deferrals, which affect the EASEMENT AREA as of the date of the CLOSING, with all such payments being made at the time of the CLOSING, or by way of escrow or bond as determined by PURCHASER which would allow for payment at the time of final assessment. In the event that special assessments for

installation of public improvements have not been levied as of the CLOSING, there shall be escrowed from the CLOSING an amount equal to the estimated amount of such special assessments. In the event the actual special assessments are greater than the estimates, SELLER shall be responsible for the difference; and, in the event that the estimated special assessments are more than the actual assessments, the balance shall be returned to SELLER.

d) **Recording Fees.** PURCHASER shall be responsible for payment of recording fees for the EASEMENT.

e) **Title Insurance.** PURCHASER and SELLER each shall pay one-half of the title insurance required by THIS PURCHASE AGREEMENT (provided that PURCHASER shall be solely responsible for the costs of any endorsement premiums for endorsements requested by PURCHASER) and each shall pay one-half of the fee charged by the CLOSING company or agent selected by PURCHASER to assist with the CLOSING.

12. **Other Documents.** SELLER agrees to execute and deliver at the CLOSING such other documents and assurances on forms as may be reasonably required by PURCHASER to affirm the EASEMENT and their superiority over other liens and encumbrances on or affecting the EASEMENT AREA, and to verify to PURCHASER'S satisfaction the conditions of THIS PURCHASE AGREEMENT, including, without limitation, an affidavit of possession, a lien and special assessment affidavit and indemnity.

13. **Payment in full.** The PURCHASE PRICE shall constitute payment in full for the EASEMENT and for any and all damages and diminishment in the value of SELLER'S remainder or other severance damages that may be sustained by SELLER by reason of the EASEMENT.

14. **Waiver.** SELLER waives compliance by PURCHASER with the notice and other provisions of the Uniform Procedure for Acquiring Private Property for Public Use (Neb. Rev. Stat. §§ 25-2501, *et seq.*)

15. **Broker and Attorney Fees.** SELLER and PURCHASER each represent to the other that they have not engaged a real estate agent or broker in this transaction.

Any party engaging such an agent or broker agrees to indemnify and hold the other party harmless from and against any such fees or commissions due to such agent or broker, including reasonable attorney fees and court costs, should any such expense arise in this transaction. Either party engaging an attorney in connection with this transaction agrees to indemnify and hold the other party harmless from and against the fees for the services of such attorney or any court costs or other expenses incurred in connection therewith.

16. **Remedies of the Parties.** If either PURCHASER or SELLER defaults in the performance of any provision of THIS PURCHASE AGREEMENT, the other party shall be entitled to any and all remedies available at law or in equity.

17. **Prior Agreements.** THIS PURCHASE AGREEMENT evidences the entire agreement of the parties, replaces any and all prior written or oral representations, offers, letters of intent or agreements made by the parties related to the EASEMENT AREA, and shall be binding upon the parties hereto, their successors and assigns. THIS PURCHASE AGREEMENT may not be changed or altered in any way, except by a written instrument signed by both parties; provided, however, PURCHASER shall have the right to assign THIS PURCHASE AGREEMENT to another governmental entity. No oral representations of any kind shall be binding upon either party unless fully set forth herein or in such a written instrument.

18. **Survival of Warranties.** Any warranties, covenants and representations herein made shall survive the execution of THIS PURCHASE AGREEMENT and any other documents, including the EASEMENT given by SELLER to PURCHASER to consummate this transaction, and THIS PURCHASE AGREEMENT shall not be merged into any such documents.

19. **Construction.** THIS PURCHASE AGREEMENT shall be construed in accordance with the laws of the State of Nebraska. Wherever possible, each provision of THIS PURCHASE AGREEMENT shall be interpreted in such manner as to be effective and valid. If any provision of THIS PURCHASE AGREEMENT shall be determined to be invalid or unenforceable, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating or otherwise affecting the remaining

provisions of THIS PURCHASE AGREEMENT. Time is of the essence of THIS PURCHASE AGREEMENT. The captions contained in THIS PURCHASE AGREEMENT are for convenience only and are not intended to limit or define the scope or effect of any provision of THIS PURCHASE AGREEMENT.

20. **Authority.** Except as may otherwise be provided in THIS PURCHASE AGREEMENT, whenever pursuant to THIS PURCHASE AGREEMENT the approval of PURCHASER is called for, the authority for any such approval shall be presumed if such approval is granted or endorsed in writing by PURCHASER'S General Manager. Furthermore, the undersigned individuals acknowledge that each person and entity executing this instrument on behalf of a party does hereby personally represent and warrant that he or she has the authority to execute this instrument on behalf of, and to fully bind, said party.

21. **Eminent Domain.** Neither THIS PURCHASE AGREEMENT, nor termination of THIS PURCHASE AGREEMENT by SELLER or PURCHASER pursuant to any provision of THIS PURCHASE AGREEMENT, shall be deemed to estop PURCHASER from instituting an action in eminent domain to acquire the SALE PROPERTY or any portion thereof.

22. **Non-waiver.** No delay or failure by either party to exercise any right under THIS PURCHASE AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein. A valid waiver by either party shall not be deemed to extend the amount of time available to perform any other act required under THIS PURCHASE AGREEMENT.

23. **Further Agreements.** Each party will, whenever and as often as the other may reasonably request, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all such further conveyances, assignments and other instruments and documents as may be necessary, expedient or proper in order to complete any and all conveyances, transfers, and assignments herein provided, and will do any and all other acts and execute, acknowledge and deliver any other documents so reasonably requested in order to carry out the intent and purposes of THIS PURCHASE AGREEMENT.

24. **Effective date** THIS PURCHASE AGREEMENT shall be effective upon its complete execution by both PURCHASER and SELLER.

25. **Recordation.** At PURCHASER'S election a Notice of Interest may be recorded with the Register of Deeds of Sarpy County, Nebraska.

26. **Notices.** All notices, demands, writings, supplements, or other documents which are required or permitted by the terms of THIS PURCHASE AGREEMENT to be given to any party shall be delivered in person, or shall be deposited in the United States Mail, postage prepaid, return receipt requested, addressed as set forth below, and shall be effective on the date of such deposit or the date of delivery, as the case may be:

To SELLER:

To PURCHASER:

John Winkler, General Manager
Papio-Missouri River Natural Resources District
8901 S. 154th Street
Omaha, NE 68138

27. **Counterparts.** THIS PURCHASE AGREEMENT may be executed in counterparts, both of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature delivered by facsimile or other similar electronic transmission (including email) shall be considered an original signature. Any Person may rely on a copy or reproduction of THIS PURCHASE AGREEMENT, and an original shall be made available upon a reasonable request.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK WITH SIGNATURES ON THE FOLLOWING PAGES]

THIS PURCHASE AGREEMENT is executed by SELLER on this 9th day of March, 2016.

FRICKE, INCORPORATED

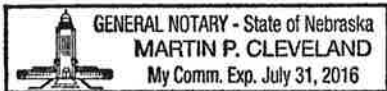
By Milton Bracke, Jr.

Milton Bracke, Jr.
Name

President
Title or Position

STATE OF NEBRASKA)
) ss.
COUNTY OF Sarpy)

On this 9th day of March, 2016, before me, a Notary Public, personally came Milton Fricke Jr., to me known to be the identical person whose name is affixed to the above and foregoing instrument, and acknowledged the same to be his or her voluntary act and deed and the voluntary act and deed of said corporation.



[Signature]
Notary Public

Upon recording, please return to:
Papio-Missouri River Natural Resources District
8901 S. 154th St
Omaha, NE 68138-3621

PERMANENT LEVEE EASEMENT

FOR AND IN CONSIDERATION of the payment of the sum of Three Thousand Sixty Dollars (\$3,060) and other good and valuable consideration, the receipt of which is acknowledged, **FRICKE, INCORPORATED, a Nebraska Corporation** (hereinafter referred to as "the Grantor"), for itself and for its successors and assigns, does hereby grant to the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as "the District"), and its successors and assigns, the easement hereinafter described, in, over and across

that portion of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 13, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, legally described in the legal description attached hereto as Exhibit "A" and incorporated herein by reference

(all said portions hereinafter being referred to collectively as "the Easement Area").

Pursuant to this Easement, the District and its successors and assigns, shall have the permanent, full, and free right, liberty and authority to enter upon and use the Easement Area for construction, operation, maintenance, repair, replacement and regulation of Thompson Creek and tributary channel flood control and channel improvements and appurtenances thereto, including, without limitation, widening, deepening, and straightening of such channels; clearing and snagging trees, brush, and other debris; construction, replacement, and repair of levees; borrow and fill of earthen materials; flowage of waters and sediment; and, for pedestrian, vehicular and machine ingress and egress, including, without limitation, the right to have the air space above the Easement Area free from obstruction to such height as will permit passage and operation of machinery, all subject to the following:

1. There is reserved to the Grantor, and its successors and assigns, the right and privilege to use the Easement Area at any time, in any manner and for any purpose not inconsistent with the full use by the District, its successors and assigns, of the rights herein granted; provided, however, no structures shall be erected, nor shall any other excavation, filling,

2. or boring, nor any dumping or storage of personal property, be performed or permitted in the Easement Area without the prior written consent of the District, or its successors or assigns.
3. The Grantor shall not be responsible for operation or maintenance of any of the improvements contemplated by this easement.
4. This Easement shall not be construed to pass to the District any fee simple interest or title to the Easement Area.
5. The consideration recited herein shall constitute payment in full for any and all damages sustained by the Grantor and its successors and assigns by reason of the exercise of any of the rights or privileges herein expressly granted or reasonably implied; and, the Grantor waives the statutory procedure for acquiring private property for public use (Neb. Rev. Stat. § 25-2501, *et seq.*),
6. The Grantor, for itself and for its successors and assigns, warrants, that it is the owner of the Easement Area and that it has good right to convey these Easements over the same; that said premises are free and clear of all liens and encumbrances, except as may be subordinated below; and, that it will defend the District's title to these easements against the lawful claims and demands of all persons whomsoever.
7. The Grantor warrants that no verbal or written representations or inducements have been made or given by the District, or by any of its officers, agents or employees, other than as may be recited in this document.
8. The Easements granted by this instrument shall run with the land and shall be binding upon and inure to the benefit of the parties to this instrument and their heirs, successors and assigns, respectively.
9. The undersigned individuals acknowledge that each person and entity executing this instrument on behalf of a party does hereby personally represent and warrant that he or she has the authority to execute this instrument on behalf of, and to fully bind, said party.

Executed by Grantor on this _____ day of _____, 2016.

FRICKE, INCORPORATED

By Milton Fricke, Jr.

Milton Fricke, Jr.
Name

President
Title or Position

LEGAL DESCRIPTION

Exhibit A

That part of the Northwest 1/4 of the Southeast 1/4, of Section 13, Township 14 North, Range 12 East, of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Northwest corner of said Southeast 1/4; thence South 02° 43' 05" East (bearing referenced to the Nebraska State Plane System, NAD 1983), along the West line of said Southeast 1/4, for a distance of 95.00 feet to a point at the Southwest Corner of a Papio-Missouri River Natural Resources District permanent levee easement recorded in Sarpy County, Nebraska as Instrument Number 2014-23235, said point also being the Point of Beginning; thence South 89° 56' 04" East along the South line of said permanent levee easement, for a distance of 197.12 feet; thence South 05° 29' 18" West, for a distance of 54.33 feet; thence South 72° 49' 48" West, for a distance of 56.26 feet; thence South 83° 20' 45" West, for a distance of 18.42 feet; thence North 89° 05' 20" West, for a distance of 116.51 feet to a point on the West line of said Southeast 1/4; thence North 02° 43' 05" West along said West line for a distance of 71.28 feet to the Point of Beginning.

Containing an area of 13,324.210 sq. ft. or 0.306 acres more or less.



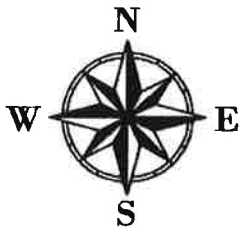
ORIGINAL EASEMENT



EXISTING LEVEE EASEMENT



PERMANENT EASEMENT



66TH STREET

NW COR., SE 1/4,
SEC. 13, T14N, R12E

POINT OF COMMENCING

S02° 43' 05"E
95.00'

POINT OF BEGINNING

S89° 56' 04"E
197.12'

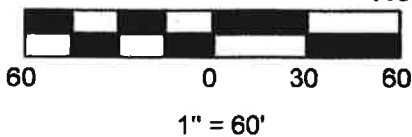
S05° 29' 18"W
54.33'

N02° 43' 05"W
71.28'

S72° 49' 48"W
56.26'

N89° 05' 20"W
116.51'

S83° 20' 45"W
18.42'

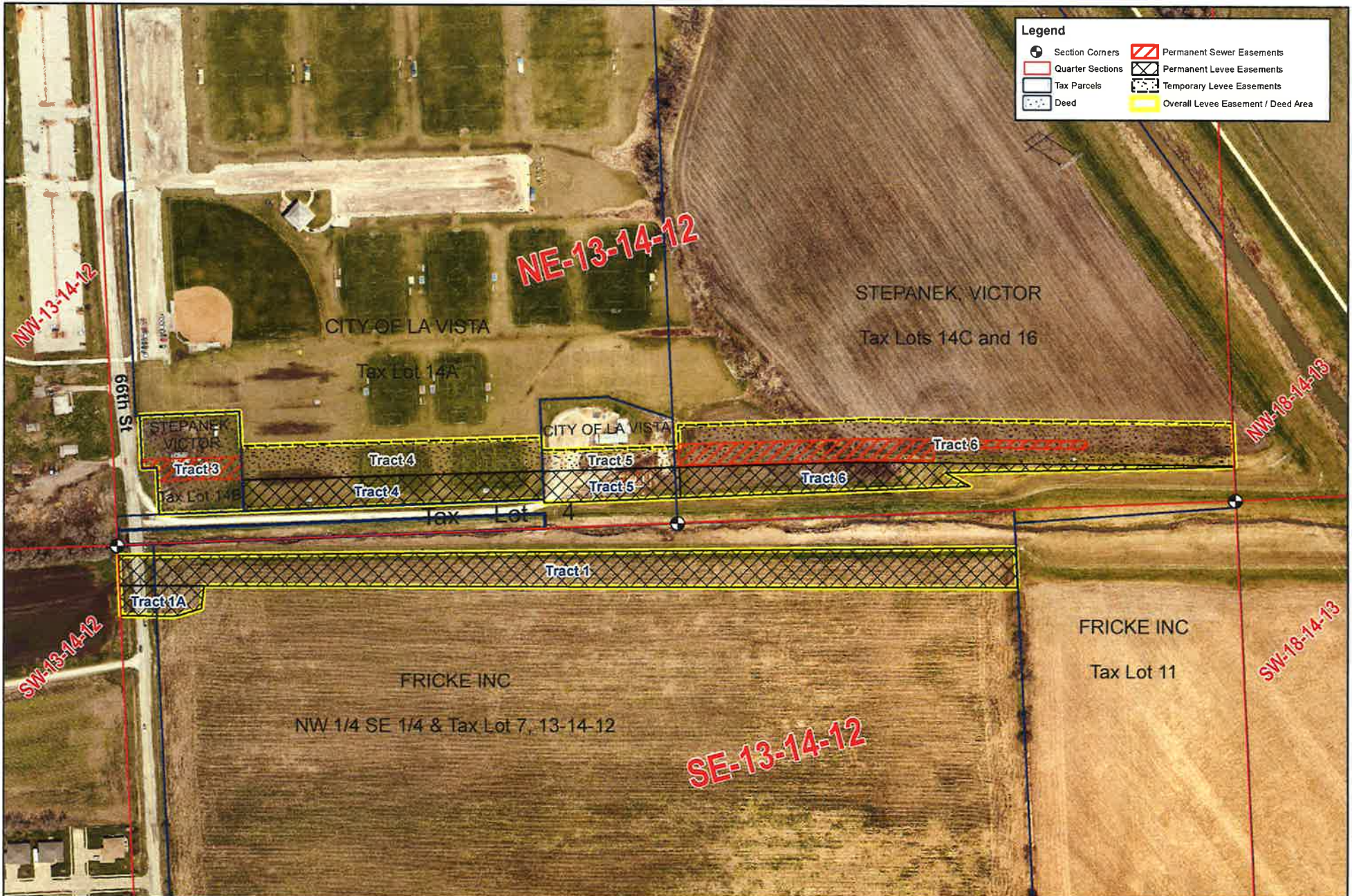


**PAPIO-MISSOURI RIVER
NATURAL RESOURCES
DISTRICT**
www.papionrd.org
8901 S. 154TH STREET
OMAHA NE. 68138-3621
OFFICE: 402-444-6222
FAX: 402-895-6543

PERMANENT LEVEE EASEMENT LOCATED
IN THE SOUTHEAST QUARTER OF
SECTION 13, TOWNSHIP 14 NORTH,
RANGE 12 EAST

PROJECT:	
DATE:	
DRAWN BY:	
SCALE:	
SHEET:	1 OF 1

Exhibit A



THOMPSON CREEK LEVEE IMPROVEMENT PROJECT

Section 13, Township 14 North, Range 12 East

OVERALL TRACT MAP

Exhibit "A"

