

Agenda Item: 6.

MEMORANDUM

TO: Finance, Expenditures and Legal Subcommittee

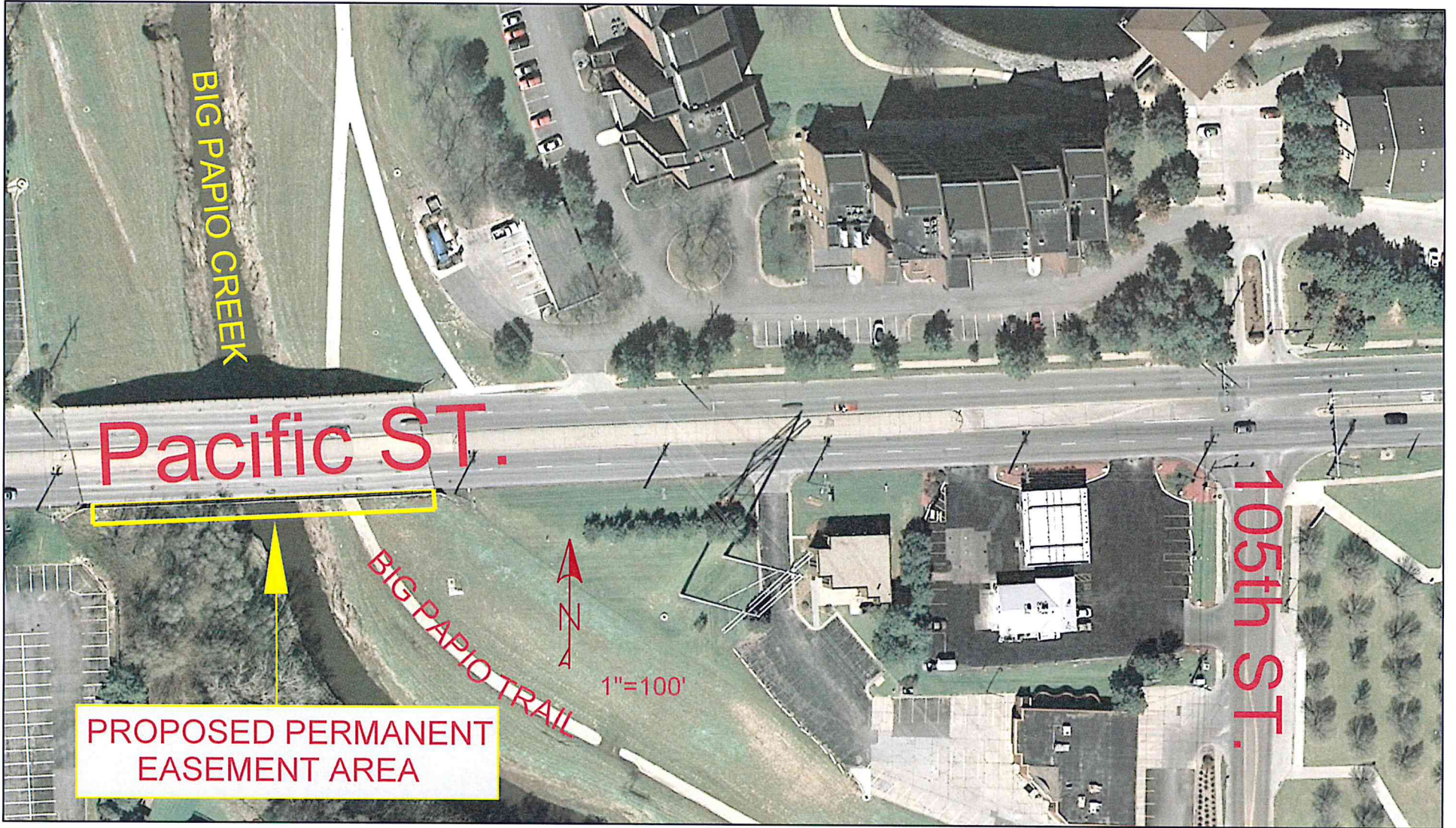
FROM: Martin P. Cleveland, Construction Engineer

SUBJECT: Big Papillion Creek – Pacific Street Bridge Widening Project
Easement for City of Omaha

DATE: April 30, 2012

The City of Omaha has planned a Pacific Street Bridge (near 106th St.) re-decking and widening project over the Big Papillion Creek. See enclosed location map. The bridge piers will be extended southward to allow for the bridge deck widening. They are adding a 11 foot wide bike/pedestrian walkway on north side of bridge and a 8 foot pedestrian walkway on the south side of the bridge. The City is seeking a permanent easement (enclosed) over District property to facilitate the pier construction.

It is Management's recommendation that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to grant a Permanent Easement to the City of Omaha for the Big Papillion Creek Pacific Street Bridge Widening Project, subject to form approved by District legal counsel.



BIG PAPIO CREEK

Pacific ST.

BIG PAPIO TRAIL

105th ST.

PROPOSED PERMANENT EASEMENT AREA



1"=100'

**EASEMENT AGREEMENT
FOR OCCUPATION OF LEVEE/CHANNEL RIGHT-OF-WAY**

This Agreement is entered into by and between the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a governmental subdivision of the State of Nebraska, with offices at 8901 South 154th Street, Omaha, Nebraska 68138-3621 (hereinafter called "the DISTRICT") and City Of Omaha (hereinafter called "the GRANTEE," whether one or more and regardless of gender).

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

The redecking and rebuilding of a bridge on Pacific St. over the Big Papio Creek at approx. 107th St. in the City of Omaha. This will require construction work on the existing abutments and piers.

(hereafter called "the Construction") in that portion of the DISTRICT's levee/channel right-of-way in Douglas County, Nebraska, described as follows, to-wit:

(See attached Exhibit "A")

(such portion of the DISTRICT's levee/channel right-of-way hereinafter being called "the Easement Area"); and,

WHEREAS, the DISTRICT is agreeable to grant an 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 DISTRICT and the GRANTEE agree as follows:

1. The DISTRICT does hereby grant to the GRANTEE, and or its successors and assigns, the permanent easement and 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 dated November 28, 2011 and prepared by E&A Consulting Group, Inc.

2. The DISTRICT's levee and channel facilities, and appurtenances thereto, which are damaged or altered as a result of the installation, operation, maintenance, repair or replacement of the Construction, shall be properly and immediately restored by the GRANTEE to their "as built" condition. 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 levee,
- b) seeded areas which are disturbed shall be re-seeded and a vegetative cover acceptable to the DISTRICT shall be established,
- c) materials, pipe, debris and other construction materials shall be removed.
- d) a new three inch (3") thick by ten foot (10') wide crushed limestone (1 ½ inch crusher run) surfacing will be placed on all traveled unpaved portions of levee roadway, unless District waives this requirement at the project final inspection.

3. The GRANTEE agrees to pay the reasonable cost of all repairs of damages or rectification of alterations to the DISTRICT's levee and channel facilities necessitated or caused by or arising out of the installation, operation, maintenance, repair or replacement of the Construction, or the use of the levee system 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 30 days after the DISTRICT shall have demanded the same in writing, the DISTRICT shall be authorized or commission such repairs and, following demand therefor, shall have an action against the GRANTEE for the reasonable cost thereof, for the DISTRICT's associated administration costs, and for such attorney fees and court costs as may be permitted by law.

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 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. Any use by the GRANTEE of the DISTRICT's levee for vehicular traffic shall be limited to the Easement Area, and shall be limited to ¾ ton rated pickups and automobiles (except in the immediate work area and the closest feasible connection between City ROW and the work area).

6. The GRANTEE agrees to reimburse the DISTRICT for all costs incurred by the DISTRICT in connection with the DISTRICT's inspection of the installation, operation, maintenance, repair and replacement work permitted under this agreement, which inspection costs shall be itemized and transmitted by the DISTRICT to the GRANTEE within ninety days after their accrual.

7. The GRANTEE agrees to notify the DISTRICT at least 24 hours prior to beginning any work in the Easement Area.

8. 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.

9. In the event the Corps of Engineers or the DISTRICT shall determine that it shall be necessary to re-shape, relocate, or re-build its levee 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 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.

10. The GRANTEE shall maintain the Construction in a manner which will not interfere with the continued operation and maintenance of the DISTRICT's levee and channel facilities, the level of flood protection afforded by the DISTRICT's levee system to be maintained at all times.

11. GRANTEE assumes the entire risk of loss or damage to the Construction, 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.

12. It is understood that this agreement does not include a warranty by the DISTRICT of its title to the Easement Area or to the interest herein conveyed.

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.

Papio-Missouri River Natural Resources District

John Winkler, General Manager

GRANTEE

City of Omaha

Address: _____

By _____
Name and Title

STATE OF NEBRASKA)
) SS
COUNTY OF _____)

On this _____ day of _____ 2012, before me, a Notary Public in and for said County, personally came the above named JOHN WINKLER, General Manager of the Papio-Missouri River Natural Resources District, and he acknowledged the execution of the above Easement Purchase Agreement as his voluntary act and deed and the voluntary act and deed of said District.

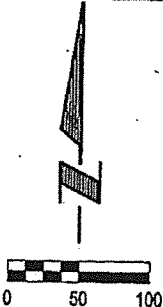
WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

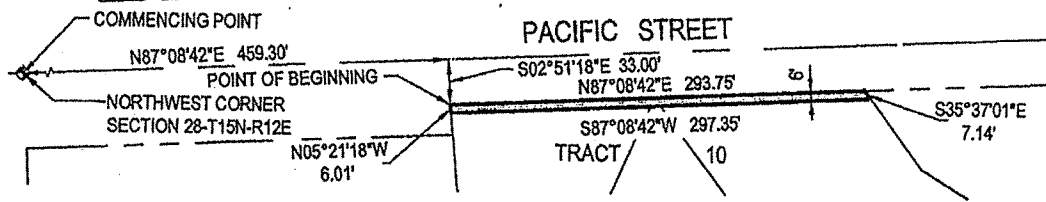
EXHIBIT "A"

TRACT 10

107TH AVENUE



Scale: 1" = 100'



LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN THE NW1/4 OF SECTION 28, TOWNSHIP 15 NORTH, RANGE 12 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 28; THENCE N87°08'42"E (ASSUMED BEARING) ALONG THE NORTHERLY LINE OF SAID NW1/4 OF SECTION 28, A DISTANCE OF 459.30 FEET; THENCE S02°51'18"E, A DISTANCE OF 33.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF PACIFIC STREET, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE N87°08'42"E ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF PACIFIC STREET, A DISTANCE OF 293.75 FEET; THENCE S35°37'01"E, A DISTANCE OF 7.14 FEET; THENCE S87°08'42"W, A DISTANCE OF 297.35 FEET; THENCE N05°21'18"W, A DISTANCE OF 6.01 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 1773 SQUARE FEET, OR 0.041 ACRES, MORE OR LESS.



E&A CONSULTING GROUP, INC.
ENGINEERING • PLANNING • FIELD SERVICES
330 NORTH 117TH STREET OMAHA, NE 68154 PHONE: (402) 855-4700

Drawn by: WAC Chkd by: Chkd by:

Job No.: P2010.058.002 Date: 11/16/2011 Book No.: XXXXX

RIGHT-OF-WAY ACQUISITION
NW1/4 OF SECTION 28, TOWNSHIP 15 NORTH,
RANGE 12 EAST OF THE 6TH P.M.,
DOUGLAS COUNTY, NEBRASKA