

Agenda Item: 7.

Memo to the Programs, Projects and Operations Subcommittee

Subject: Turner Boulevard Trail – City of Omaha Interlocal Agreement

Date: October 4, 2012

From: Gerry Bowen

In 2011, the District, with input from the City of Omaha, completed a “Trail Connectivity Plan” that established a list of trail segments needed to complete trail connections in the City and with surrounding communities.

One of the segments was a continuation of the Turner Boulevard Trail which currently ends at Dodge Street, to the Riverfront. Management has been working with the City of Omaha Parks Department on making this trail a reality. The City has asked the District to fund an engineering proposal that will prepare the design and produce construction drawings and specifications for the project. A description and map of the proposed route is attached.

A proposal from Ehrhart Griffin & Associates, Inc. is attached for your review. The total cost of the engineering proposal is estimated to be \$45,710. A Construction cost estimate will be prepared upon completion of design.

A draft interlocal agreement is attached. The agreement covers the preparation of the construction documents, only. The City will be the lead agency, contract for the engineering, identify and acquire any needed right-of-way, and upon completion of construction, permanently operate, maintain and repair the trail. The District’s obligation is to reimburse the City for the cost of the engineering fees, currently estimated to be \$45,710. The agreement has a “not to exceed” amount of \$50,000 which will allow for any unforeseen additions.

It is anticipated that the design documents will be completed later this year.

Management recommends approval.

- **It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute an Interlocal Cooperation Act Agreement with the City of Omaha for the design of the Turner Boulevard Extension Trail Project, with a “not to exceed” amount of \$50,000, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.**



Turner Blvd. Trail Extension

Printed: Oct 04, 2012



www.dcgis.org/dogis

Bowen, Gerry

From: Dan Dolezal <ddolezal@ehrhartgriffin.com>
Sent: Monday, June 25, 2012 8:07 PM
To: Bowen, Gerry; dbryers@ci.omaha.ne.us
Subject: 121084_Turner Park Trail Ext,

I see the project shaping up this way:

The trail will be 8' wide and will begin at 30th/Dodge Streets, across from the existing Turner Park Trail. (We will have to discuss this crossing in great detail, as the S curve is going to be realigned and the crossing here has no traffic control and encompasses about 6 lanes of pavement). I selected the 8' dimension because Carlos Morales of the City has stated that he wants to see bike lanes on 30th Street. It should be noted that almost every intersection or major driveway will need handicapped ramps built to City standards. Please also note that the schematic layout is done without knowledge of actual City ROW or utility locations.

The 8' trail will proceed northerly along the westerly side of 30th Street, possibly meandering through the vacated ROW just north of Dodge Street. Existing sidewalk in this area is 4' wide, with a row of mature trees immediately west of the sidewalk. I would not want to disturb the trees, but rather pull the trail to the west side of the tree line. As the trail nears the hotel (Chicago Street), a retaining wall must be relocated to facilitate the trail. At this point, I envision a 2' wide strip of patterned concrete at the back of curb, with the trail adjacent to it.

The trail section will proceed northerly along 30th street until it reaches California Street. An existing bus stop at 30th/California will need to be relocated to allow the trail section pass it. From California to Burt, Creighton has already constructed a 10' wide trail to Burt Street. A traffic signal at Burt Street has achieved the necessary warrants and has been approved by the City for installation under this project.

The trail will extend to Cuming Street in preparation of a trail extension north along California, as per a request from Dennis Bryers.

Crossing Burt Street, the trail will generally utilize the existing sidewalk network in order to save funds and reduce the project scope. Bike/vehicle "sharrows" have been already painted in both lanes (although currently they are severely faded). Several substandard conditions exist in this section:

- Due to the width of the existing walk and the topographic confines of the corridor, I envision the trail to be split, with west bound occupying the north side of the street and east bound occupying the south side of the street
- There is currently no sidewalk on the north side of Burt at 30th Street. This section has a parking lot that encroaches into what would be the bike pathway. This section requires fill, a retaining wall and a fence. Creighton will most likely need to restripe their parking lot in this area.
- It is intended to remove/replace sidewalk only when there is a width less than 48" clear. This would mean that the existing concrete retaining wall (actually the former foundation of a building east of the Interstate) on the north side of Burt Street west of 24th Street would need to be removed (only to a depth of 3' below the surface) and a new segmental retaining wall be built in a location to allow for a 6' walk.
- Utility constraints and landscaping also narrow the available walk to approximately 3' at 24th/Burt Street on the NW corner. This sidewalk will need replacement and widening as well.
- At this point, I am not planning on installing any 2' patterned concrete excepting in the areas that are receiving new trail.

At 21st Street Plaza, The trail turns, runs over to the former Webster Street corridor, and joins the sidewalk system of Creighton University, where it extends easterly to 17th Street, which is the end of this project.

Creighton has a very high interest in getting the trail constructed, and will offer any necessary easements and work with everyone to plan the trail in their campus ownerships.

Please let me know if you have any comments or questions.

Thanks!

INTERLOCAL COOPERATION ACT AGREEMENT

THIS AGREEMENT is hereby made and entered into this ____ day of _____, 2012, by and between the CITY OF OMAHA, a municipal corporation organized and existing under the laws of the State of Nebraska located in Douglas County, Nebraska, (hereinafter referred to as "~~City~~the CITY") and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a natural resources district organized and existing under the laws of the State of Nebraska, (hereinafter referred to as "~~the~~ NRD"). As used herein, the terms "the Parties" or "the parties" refer to the CITY and NRD collectively. The Parties sometimes are referred to herein individually as a "Party" or "party".

WHEREAS, the CITY ~~of Omaha~~ currently owns and operates ~~the a~~ public recreational trail, commonly known as the Turner Boulevard Trail (hereinafter referred to as the "TRAIL"); and,

WHEREAS, the CITY and NRD are desirous of extending ~~such the trail~~ TRAIL to from a point on the north side of Dodge Street, opposite the existing TRAIL, north to Cuming Street, to enhance the recreational trail system in the metropolitan Omaha area and have collaborated to initiate completed Phase I of such trail, such TRAIL extension hereinafter being referred to as "the TRAIL EXTENSION"; and,

~~WHEREAS, the NRD and the City desire to set forth the terms and conditions of their agreement for design, development, and construction of Phase II of such trail, which will collectively be known as the "Turner Boulevard Trail"; and,~~

WHEREAS, in order to serve their mutual interests and pursuant to the authority granted to the parties by the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13-801 et seq.), the parties desire to enter into this Agreement to delineate and provide for their specific rights and obligations, with respect to the design of ~~Phase II, Turner Boulevard Trail~~ the TRAIL EXTENSION.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the City and NRD do hereby mutually undertake, promise, agree and contract each for itself and its successors and assigns as follows:

I. PURPOSE

The purpose of this Agreement is to specify the terms and conditions, upon which the CITY and NRD will design, ~~develop, construct, operate and maintain a public recreational trail to be known as the "Turner Boulevard Trail" (hereinafter "Trail")~~ the TRAIL EXTENSION, as more fully described on the attached Exhibit "A", which is attached hereto and incorporated by this reference as if wholly set forth herein, on parcels of real property to be acquired by or currently owned by the CITY and/or NRD, generally extending from the north side of Dodge Street, opposite the existing Turner Boulevard Trail, north to Cuming Street.

~~CITY and NRD specifically acknowledge that their obligations hereunder with regard to Phase II of the Trail project. It is anticipated by the parties that the Trail will be operational in approximately Fall of 2013.~~ The Parties hereby find, determine and agree that the Trail project TRAIL EXTENSION will constitute a public recreational project that will be predominantly of general public benefit to the CITY and NRD with only an incidental special benefit.

II. TERM

This Agreement shall be effective upon its execution by both of the Parties and shall have a perpetual term.

~~The term of this Agreement shall be the date of execution and ending on December 31, 2014, provided that in the event the NRD is unable to secure funding for such Trail project such Agreement will terminate as to such unfunded phase upon notification by the NRD to the other of such failure.~~

III. RIGHTS, DUTIES, AND OBLIGATIONS OF THE CITY

The CITY agrees to:

1. Act as the lead administrator for the development design of the Trail project TRAIL EXTENSION, as more specifically set forth herein;
2. Retain Ehrhart Griffin & Associates to provide design services and proposed construction documents for the Trail TRAIL EXTENSION, and to hire and compensate any other landscape architect, architects, engineers, and other design professionals (all hereinafter referred to collectively as the ENGINEERS) ~~Parties may mutually agree shall be necessary as the CITY determines necessary, to design and prepare construction documents for the Trail TRAIL EXTENSION. A Professional Services Agreement and scope of work is attached and labeled as Exhibit "A" (or B??);~~
3. Provide plans and specifications and construction documents for Phase II of the Trail to the NRD for review and approval copies of the design and construction documents prepared by the ENGINEERS for the TRAIL EXTENSION;
4. ~~Maintain accounting records for the Trail, including receipt and application of private funds;~~
5. ~~Acquire any real property necessary and/or additional right-of-way necessary for the Trail for public recreational use;~~
6. ~~Use any private funding secured for the Trail, whether secured by the City or NRD, for such purposes only;~~
7. ~~At its own cost and expense, permanently operate, manage, maintain, and repair the Trail for the benefit of the general public upon completion of construction, including, but not~~

~~limited to, trail and turf maintenance, trash and snow removal, repair or replacement of the trail, and development and enforcement of rules and regulations;~~

~~8. Retain and/or hold title to the Property upon acquisition and exercise any license, right of entry, or other similar authority, to develop, construct, operate, and maintain the Trail, and maintain ownership of the Trail improvements from and after their construction and installation.~~

IV. RIGHTS, DUTIES AND OBLIGATIONS OF THE NRD

The NRD agrees to

~~1. Timely review and approve plans and specifications and construction documents for the Trail provided by the City, such approval(s) to not be withheld unreasonably;~~

~~2. —~~

~~2. contribute to the CITY'S cost of preparing the aforesaid design and construction documents by reimburse-reimbursing the City, within 45 days after receipt of invoices from the City accompanied by satisfactory documentation, demonstrating in the amount of the first FIFTY THOUSAND DOLLARS (\$50,000) of the fair and reasonable costs ordinarily necessary and reasonable costs incurred and necessarily incurred or expended by the CITY, for the fees of the ENGINEEERS for the design and preparation of construction documents for the TRAIL EXTENSION planning, design, and engineering of the Trail. The total amount of such reimbursement shall not exceed \$50,000.00; and,~~

~~3. Provide to the City any private funding secured by the NRD for the Trail, to be used for such purposes only.~~

V. PROJECT ADMINISTRATOR

No separate legal or administrative entity is created by ~~the this~~ Agreement. The CITY shall serve as the administrator of the TRAIL EXTENSION ~~project~~ and shall be responsible for the administrative work necessary for the procurement of development, complete design, construction, funding, operation, and maintenance of the Turner Boulevard Trail and construction documents for the TRAIL EXTENSION.

VI. INDEMNIFICATION

~~1. The NRD covenants and agrees to indemnify and hold harmless the City, its officers, agents and employees, their successors and assigns, individually or collectively from and against all liability for any fines, claims, suits, demands, actions or causes of actions of any kind and nature asserted by the NRD or by anyone else, for personal injury or death, or property damage in any way arising out of or resulting from any activity or operation of the NRD in connection with its obligations hereunder or ownership of the property and the NRD further agrees to pay all expenses in defending against any claims made against the City; provided, however, that the NRD shall not be liable for any injury, damage, or loss occasioned by the comparative negligence or willful misconduct of the City, its~~

~~agents or employees. The NRD and City shall give prompt and timely notice of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise affects or might affect wither party.~~

The CITY covenants and agrees to indemnify and hold harmless the NRD, its officers, agents or employees, their successors and assigns, individually or collectively from and against all liability for any fines, claims, suits, demands, actions or causes of action of any kind and nature ~~asserted by the City or by anyone else~~, for personal injury or death, or property damage in any way arising out of or resulting from any design activity ~~or operation~~ of the ~~City on the Property or in connection with its obligations hereunder or ownership, operation or maintenance of the Property~~ CITY for the TRAIL EXTENSION and the CITY further agrees to pay all expenses in defending against any claims made against the NRD as a result of such activity; provided, however, that the CITY shall not be liable for any injury, damage, or loss occasioned by the comparative negligence or willful misconduct of the NRD, its agents or employees. The NRD and CITY each shall give to the other ~~shall give~~ prompt and timely notice of any claim made or suit ~~institutes~~ instituted relating to such activity which, in any way directly or indirectly, contingently or otherwise, affects or might affect either party of the Parties.

VII. INDEPENDENT CONTRACTOR

It is understood and agreed by and between the NRD and CITY that any and all acts undertaken by the NRD or CITY through their respective personnel, employees, agents, contractors, or servants, pursuant to the terms of this Agreement, shall be undertaken as independent contractors and not as employees of the other. The CITY and NRD shall each act in their individual capacities and not as agents, employees, partners, joint ventures or associates of the other. An employee or agent of one shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Accordingly:

1. The NRD, its personnel, employees, agents, contractors, or servants shall not be entitled to any ~~City~~CITY benefits. The ~~City~~CITY shall not provide any insurance coverage to the NRD or its employees including, but not limited to workers' compensation insurance. The NRD shall pay all wages, salaries and other amounts due its employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers' compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. The NRD shall have no authority to bind the ~~City~~CITY by or with any contract or agreement, nor impose any liability upon the ~~City~~CITY. All acts and contracts of the NRD shall be in its own name and not in the name of the ~~City~~CITY, unless otherwise provided herein.
2. The ~~City~~CITY its personnel, employees, agents, contractors, or servants shall not be entitled to any NRD benefits. The NRD shall not provide any insurance coverage to the ~~City~~CITY or its employees including, but not limited to, workers' compensation insurance. The ~~City~~CITY shall pay all wages, salaries and other amounts due its employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers compensation, unemployment compensation, group insurance coverage, collective bargaining

agreements or any other such similar matters. The ~~City~~CITY shall have no authority to bind the NRD by or with any contract or agreement, nor to impose any liability upon the NRD. All acts and contracts of the ~~City~~CITY shall be in its own name and not in the name of the NRD, unless otherwise provided herein.

VIII. GENERAL CONDITIONS

1. NONDISCRIMINATION.

Neither the ~~City~~CITY nor NRD shall, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws nor local ordinance because of race, color, sex, age, disability as defined under the Americans with Disabilities Act, political or religious opinions, affiliations or national origin.

2. CAPTIONS

Captions used in this Agreement are for convenience and are not used in the construction of this Agreement.

3. APPLICABLE LAW

Parties to this Agreement shall conform with all existing and applicable ~~City~~CITY ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.

4. INTEREST OF THE CITY

Pursuant to Section 8.05 of the Home Rule Charter, no elected official or any officer or employee of the ~~City~~CITY shall have a financial interest, direct or indirect, in any ~~City~~CITY contract. Any violation of this section with the knowledge of the person or corporation contracting with the ~~City~~CITY shall render the contract voidable by the Mayor or Council.

5. INTEREST OF THE NRD

The NRD covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict with its performance under this Agreement; it further covenants that, in the performance of this Agreement, no person having any such interest shall be employed.

6. MERGER

This contract shall not be merged into any other oral or written contract, lease or deed of any type. This is the complete and full agreement of the parties.

7. MODIFICATION

This Agreement contains the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of the respective parties.

8. APPROVAL OF AMENDMENTS

The parties hereto acknowledge that, as of the date of the execution of this Agreement, Section 10-142 of the Omaha Municipal Code provides as follows:

“Any amendment to contracts or purchases which taken alone increases the original bid price as awarded (a) by ten percent, if the original bid price is one hundred fifty thousand dollars (\$150,000) or more, or (b) by seventy-five thousand dollars (\$75,000) or more, shall be approved by the City Council in advance of the acceptance of any purchase in excess of such limits or the authorization of any additional work in excess of such limits. However, neither contract nor purchase amendments will be split to avoid advance approval of the City Council.

The originally approved scope and primary features of a contract or purchase will not be significantly revised as a result of amendments not approved in advance by the City Council. The provisions of this Section will be quoted in all future City Contracts. Nothing in this Section is intended to alter the authority of the Mayor under Section 5.16 of the City Charter to approve immediate purchases.”

9. STRICT COMPLIANCE

All provisions of this Agreement and each and every document that shall be attached shall be strictly complied with as written, and no ~~substation-substitution~~ or change shall be made except upon written direction from an authorized representative.

10. ASSIGNMENT

Neither the NRD nor the ~~City~~CITY may assign its rights under this Agreement without the express prior written consent of the other.

11. SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

All covenants, stipulations and agreements in this Agreement shall inure to the benefit of the parties hereto and extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

12. NEW EMPLOYEE WORK ELIGIBILITY STATUS

The Parties are required and hereby agree to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the

State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

13. AUTHORIZED REPRESENTATIVE

In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for the purposes of notice, including legal service of process, during the term of this Agreement and for the period of any statute of limitations thereafter, the following named individuals shall be the authorized representatives of the parties:

- City of Omaha
Brook Bench, Acting Director
Parks Recreation and Public Property Department
Omaha-Douglas Civic Center
1819 Farnam Street, Suite 701
Omaha, Nebraska 68183
- Papio-Missouri River Natural Resources District
John Winkler, General Manager
8901 S. 154th Street
Omaha, Nebraska 68138-3621

Executed this ____ day of _____, 2012.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
John Winkler, General Manager

ATTEST:

Executed this ____ day of _____, 2012

CITY OF OMAHA, a Municipal Corporation

By _____
Jim Suttle, Mayor of the City of Omaha

ATTEST

APPROVED AS TO FORM:

Assistant City Attorney

INTERLOCAL COOPERATION ACT AGREEMENT

THIS AGREEMENT is hereby made and entered into this _____ day of _____, 2012, by and between the CITY OF OMAHA, a municipal corporation organized and existing under the laws of the State of Nebraska located in Douglas County, Nebraska, (hereinafter referred to as “the CITY”) and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a natural resources district organized and existing under the laws of the State of Nebraska, (hereinafter referred to as “the NRD”). As used herein, the terms “the Parties” or “the parties” refer to the CITY and NRD collectively. The Parties sometimes are referred to herein individually as a “Party” or “party”.

WHEREAS, the CITY currently owns and operates a public recreational trail commonly known as the Turner Boulevard Trail (hereinafter referred to as the “TRAIL”); and,

WHEREAS, the CITY and NRD are desirous of extending the TRAIL from a point on the north side of Dodge Street, opposite the existing TRAIL, north to Cuming Street, to enhance the recreational trail system in the metropolitan Omaha area, such TRAIL extension hereinafter being referred to as “the TRAIL EXTENSION”; and,

WHEREAS, in order to serve their mutual interests and pursuant to the authority granted to the parties by the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13-801 et seq.), the parties desire to enter into this Agreement to delineate and provide for their specific rights and obligations with respect to the design of the TRAIL EXTENSION.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the City and NRD do hereby mutually undertake, promise, agree and contract each for itself and its successors and assigns as follows:

I. PURPOSE

The purpose of this Agreement is to specify the terms and conditions, upon which the CITY and NRD will design the TRAIL EXTENSION, described on Exhibit “A”, attached hereto and incorporated by this reference as if wholly set forth herein. The Parties hereby find, determine and agree that the TRAIL EXTENSION will constitute a public recreational project that will be predominantly of general public benefit to the CITY and NRD with only an incidental special benefit.

II. TERM

This Agreement shall be effective upon its execution by both of the Parties and shall have a perpetual term.

III. RIGHTS, DUTIES, AND OBLIGATIONS OF THE CITY

The CITY agrees to:

1. Act as the lead administrator for the design of the TRAIL EXTENSION, as more specifically set forth herein;
2. Retain Ehrhart Griffin & Associates to provide design services and proposed construction documents for the TRAIL EXTENSION, and to hire and compensate any other landscape architect, architects, engineers, and other design professionals (all hereinafter referred to collectively as the ENGINEERS”) as the CITY determines necessary, to design and prepare construction documents for the TRAIL EXTENSION;
3. Provide to the NRD copies of the design and construction documents prepared by the ENGINEERS for the TRAIL EXTENSION;

IV. RIGHTS, DUTIES AND OBLIGATIONS OF THE NRD

The NRD agrees to contribute to the CITY’S cost of preparing the aforesaid design and construction documents by reimbursing the City, within 45 days after receipt of invoices from the City accompanied by satisfactory documentation, in the amount of the first FIFTY THOUSAND DOLLARS (\$50,000) of the fair and reasonable costs ordinarily and necessarily incurred or expended by the CITY for the fees of the ENGINEERS for the design and preparation of construction documents for the TRAIL EXTENSION; and,

V. PROJECT ADMINISTRATOR

No separate legal or administrative entity is created by this Agreement. The CITY shall serve as the administrator of the TRAIL EXTENSION and shall be responsible for the administrative work necessary for the procurement of complete design of and construction documents for the TRAIL EXTENSION.

VI. INDEMNIFICATION

The CITY covenants and agrees to indemnify and hold harmless the NRD, its officers, agents or employees, their successors and assigns, individually or collectively from and against all liability for any fines, claims, suits, demands, actions or causes of action of any kind and nature, for personal injury or death, or property damage in any way arising out of or resulting from any design activity of the CITY for the TRAIL EXTENSION and the CITY further agrees to pay all expenses in defending against any claims made against the NRD as a result of such activity; provided, however, that the CITY shall not be liable for any injury, damage, or loss occasioned by the comparative negligence or willful misconduct of the NRD, its agents or employees. The NRD and CITY each shall give to the other prompt and timely notice of any claim made or suit instituted relating to such activity which, in any way directly or indirectly, contingently or otherwise, affects or might affect either of the Parties.

VII. INDEPENDENT CONTRACTOR

It is understood and agreed by and between the NRD and CITY that any and all acts undertaken by the NRD or CITY through their respective personnel, employees, agents, contractors, or

servants, pursuant to the terms of this Agreement, shall be undertaken as independent contractors and not as employees of the other. The CITY and NRD shall each act in their individual capacities and not as agents, employees, partners, joint ventures or associates of the other. An employee or agent of one shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Accordingly:

1. The NRD, its personnel, employees, agents, contractors, or servants shall not be entitled to any CITY benefits. The CITY shall not provide any insurance coverage to the NRD or its employees including, but not limited to workers' compensation insurance. The NRD shall pay all wages, salaries and other amounts due its employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers' compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. The NRD shall have no authority to bind the CITY by or with any contract or agreement, nor impose any liability upon the CITY. All acts and contracts of the NRD shall be in its own name and not in the name of the CITY, unless otherwise provided herein.
2. The CITY its personnel, employees, agents, contractors, or servants shall not be entitled to any NRD benefits. The NRD shall not provide any insurance coverage to the CITY or its employees including, but not limited to, workers' compensation insurance. The CITY shall pay all wages, salaries and other amounts due its employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. The CITY shall have no authority to bind the NRD by or with any contract or agreement, nor to impose any liability upon the NRD. All acts and contracts of the CITY shall be in its own name and not in the name of the NRD, unless otherwise provided herein.

VIII. GENERAL CONDITIONS

1. NONDISCRIMINATION.

Neither the CITY nor NRD shall, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws nor local ordinance because of race, color, sex, age, disability as defined under the Americans with Disabilities Act, political or religious opinions, affiliations or national origin.

2. CAPTIONS

Captions used in this Agreement are for convenience and are not used in the construction of this Agreement.

3. APPLICABLE LAW

Parties to this Agreement shall conform with all existing and applicable CITY ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.

4. INTEREST OF THE CITY

Pursuant to Section 8.05 of the Home Rule Charter, no elected official or any officer or employee of the CITY shall have a financial interest, direct or indirect, in any CITY contract. Any violation of this section with the knowledge of the person or corporation contracting with the CITY shall render the contract voidable by the Mayor or Council.

5. INTEREST OF THE NRD

The NRD covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict with its performance under this Agreement; it further covenants that, in the performance of this Agreement, no person having any such interest shall be employed.

6. MERGER

This contract shall not be merged into any other oral or written contract, lease or deed of any type. This is the complete and full agreement of the parties.

7. MODIFICATION

This Agreement contains the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of the respective parties.

8. APPROVAL OF AMENDMENTS

The parties hereto acknowledge that, as of the date of the execution of this Agreement, Section 10-142 of the Omaha Municipal Code provides as follows:

“Any amendment to contracts or purchases which taken alone increases the original bid price as awarded (a) by ten percent, if the original bid price is one hundred fifty thousand dollars (\$150,000) or more, or (b) by seventy-five thousand dollars (\$75,000) or more, shall be approved by the City Council in advance of the acceptance of any purchase in excess of such limits or the authorization of any additional work in excess of such limits. However, neither contract nor purchase amendments will be split to avoid advance approval of the City Council.

The originally approved scope and primary features of a contract or purchase will not be significantly revised as a result of amendments not approved in advance by the City Council. The provisions of this Section will be quoted in all future City Contracts.

Nothing in this Section is intended to alter the authority of the Mayor under Section 5.16 of the City Charter to approve immediate purchases.”

9. STRICT COMPLIANCE

All provisions of this Agreement and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from an authorized representative.

10. ASSIGNMENT

Neither the NRD nor the CITY may assign its rights under this Agreement without the express prior written consent of the other.

11. SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

All covenants, stipulations and agreements in this Agreement shall inure to the benefit of the parties hereto and extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

12. NEW EMPLOYEE WORK ELIGIBILITY STATUS

The Parties are required and hereby agree to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

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In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for the purposes of notice, including legal service of process, during the term of this Agreement and for the period of any statute of limitations thereafter, the following named individuals shall be the authorized representatives of the parties:

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Parks Recreation and Public Property Department
Omaha-Douglas Civic Center
1819 Farnam Street, Suite 701
Omaha, Nebraska 68183
- Papio-Missouri River Natural Resources District
John Winkler, General Manager

8901 S. 154th Street
Omaha, Nebraska 68138-3621

Executed this _____ day of _____, 2012.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
John Winkler, General Manager

ATTEST:

Executed this _____ day of _____, 2012

CITY OF OMAHA, a Municipal Corporation

By _____
Jim Suttle, Mayor of the City of Omaha

ATTEST

APPROVED AS TO FORM:

Assistant City Attorney



**CIVIL ENGINEERING AND LAND SURVEYING PROPOSAL
TURNER PARK TRAIL EXTENSION
30TH & DODGE TO 17TH & WEBSTER STREET
OMAHA, NEBRASKA**

July 24, 2012

This agreement for limited professional civil engineering and land surveying services (hereinafter referred to as "Agreement") to be provided by Ehrhart Griffin & Associates (hereinafter referred to as "A/E") for PARKS, RECREATION & PUBLIC PROPERTY (hereinafter referred to as Owner). General Conditions are attached in Exhibit "A".

ARTICLE 1

SCOPE OF SERVICES: This Scope of Services outlines the professional services required to prepare the limited boundary and topographic survey and construction drawings and specifications for the above referenced project. The following scope of services is based upon the discussions and meetings regarding the design held previously with stakeholders and the Papio-Missouri River NRD. Survey limits are shown in Exhibit "B".

Basic Scope of Services

1.1 LAND SURVEYING SERVICES will include the following:

A. Limited Boundary Survey to determine Ownership limits (City of Omaha Right of Way) and register the project shall have the following specifications:

- Signature and seal of a licensed land surveyor
- Legal Description of the tract surveyed.
- Description of corner pins found and set.
- Bearings, curve data, plat or record distances and actual field measurements.
- Ties to any section corners found or set.
- Easement(s) as defined in Title policy schedule "B" supplied by Owner.
- Encroachments.
- Scale, North direction and surveyor's certification.
- Total acreage of property surveyed.

B. Topographic Survey with the following specifications:

1. In addition to the information provided in the Boundary Survey specifications, the topographic survey shall include the following:
 - Existing grades shall be indicated on survey drawing using contours at a one-foot interval. Such grades shall be tied in with suitable benchmark.
 - Grades at edge of pavements and/or gutter line and spot elevations shall be included in the electronic drawing.
 - Above ground improvements such as: sidewalks, curbs, culverts, utility poles, signs, traffic signals, alleys, retaining walls and trees.
 - Tree lines will be established for cluster areas and isolated trees 6" diameter and greater will be located.
 - Location(s) and size(s) of storm and sanitary sewers.
 - Water, gas, electrical, telephone and other underground utility mains.
 - Service locations will be shown where information is available.
 - North will be oriented to top or right of drawing unless otherwise requested.

- Location, dimensions and brief description of existing building(s) and structure(s) on property.
- Surfaces of streets, roads, and alleys.
- Scale to be as requested.
- Street address of property (where possible).
- Building setback requirements.
- Zoning of the property.

Owner is responsible for providing A/E with:

- TITLE POLICY (Schedule "A" Legal Description and Schedule "B" Easements).
- Any COVENANTS affecting property.

Right of way acquisition documents are not anticipated to be necessary and are *EXCLUDED* from this scope of services.

1.2 GEOTECHNICAL INVESTIGATION: services including site recommendations will be provided by the Owner.

1.3 BASIC A/E DESIGN: services will include the following:

A. Provide Construction drawings and specifications for the following:

1. Site Demolition Plan for the removal of existing topographic features as necessary.
2. Site Layout Plan, defining horizontal control that locates all buildings, sidewalks, driveways, curb cuts, curb and gutter, medians, and landscaped areas, if any. Included in this item are all details necessary for construction of the curb and gutter, handicap ramps, paint striping, sidewalks, concrete pans and chase sections or other items as necessary.
3. Site Grading Plan, defining proposed contours and spot elevations with typical cut-section to establish sub-grade elevations, erosion control facilities are included in this item. NPDES permit provisions are included in this contract.
4. Trail Signage Plans in conformance with standards established on past trail projects with the Owner and the PMRNRD.
5. Retaining Wall Structural Design provisions are not included in this contract. Should retaining walls be needed, the A/E will show the proposed location and pertinent elevations on their drawings. The selected Contractor will be required to provide shop drawings signed and sealed by an Engineer registered in the State of Nebraska for review prior to the commencement of construction.
6. Incorporating traffic signal modification design for the relocation of the existing traffic signal at 20th/Burt Streets to the new location at 30th/Burt Streets.
7. Design *exclusions*, other than those not already listed are:
 - a. Public utility extensions, including sewer systems,
 - b. Public street improvements,
 - c. Site irrigation system design.
 - d. Application/permit fees. The Architect or Owner will pay for all application/permit fees in the form of a check given to the A/E prior to submittal to the governing agency.

- B. Provide and erosion control plan meeting the National Pollutant Discharge Elimination System (NPDES) Standards adopted by the City of Omaha. The Owner will be responsible for all permit fees as required for review and acceptance.

State of Nebraska (From Construction Site Storm Water General Permit)

Site shall be inspected to identify maintenance needs and/or SWPPP deficiencies once each week and within 24 hours after each precipitation event of 0.5 inch or more, except when winter freeze-up conditions preclude run-off. This minimum inspection frequency does not relieve the permittee of maintenance responsibilities during interim periods.

Permit is in effect until final stabilization has been reached. Final stabilization occurs when all soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70% of the cover of the unpaved areas not covered by permanent structures has been established.

and

City of Omaha (From Grading and Erosion Control Procedures Permit)

The engineer will maintain weekly reports while the grading and erosion control measures are being implemented. Once in place, monthly reports are to be maintained outlining the status of the erosion control devices. All sites are to be inspected by the engineer at a minimum of every seven days and within 24 hours of a storm event 0.5 inches or more. These inspections and reports are to continue for the term of the NDEQ permit.

Permit is in effect until final stabilization has been reached. Final stabilization occurs when all soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70% of the cover of the unpaved areas not covered by permanent structures has been established.

- C. Provide services during the Bidding Phase to answer questions and provide any clarifications as required.
- D. Construction observation services for public improvements will be performed under separate contract and, as such, **ARE EXCLUDED FROM THIS SCOPE OF SERVICES.**
- E. NPDES Observations as described in paragraph 1.3C will be performed under separate contract and, as such, **ARE EXCLUDED FROM THIS SCOPE OF SERVICES.**

ADDITIONAL SERVICES: Services required in addition to those listed above will be performed at the A/E's prevailing standard hourly billing rates as shown in the Standard Hourly Rate Schedule in the General Conditions - Exhibit A.

EXCLUDED SERVICES: Services not set forth above as Basic Services or Additional Services and listed in Article 1 of this Agreement are excluded from the scope of the A/E's services and the A/E assumes no responsibility to perform such services. Specifically excluded are: Application Fees, Railroad insurance, permitting or flagging fees and title policy research fees.

ARTICLE 2

FEE ARRANGEMENT & SCHEDULE

2.1 PROFESSIONAL FEES: The A/E agrees to provide the above services on a lump sum (LS), hourly basis in addition to reimbursable expenses (See 2.2) as follows:

1.1	Limited Boundary and Topographic Survey	\$ 17,250.00 LS
1.2	Not Used.	
1.3A 1-6	Construction Drawings and Specifications	\$ 15,460.00 LS
1.3A4	Trail signage	\$ 8,400.00 LS
1.3B	NPDES Erosion Control Plan	\$ 1,800.00 LS
1.3C	Services During the Bidding Phase	\$ 2,800.00 LS

2.2 REIMBURSABLE EXPENSES. Anticipated reimbursable expenses will include full size bond copies and mylars reproductions, in-house and express messenger deliveries, long distance and cellular telephone, contract and in-house reproduction, postage, mileage, airfare and subsistence.

2.3 PAYMENT. The A/E will bill the Owner on a monthly basis based on percent of work completed. Billings will be provided on dates necessary to meet the Owner payment approval schedule. Payment terms are 30 days net.

2.4 SCHEDULE: Approximately 2 to 3 weeks from notice to proceed will be required to complete survey. The schedule is somewhat dependent on weather, site conditions, and availability of utility and title information. Engineering services schedule will be identified by the Owner and must be agreed to in writing by the A/E. The Owner shall notify the A/E of any submittal constraints in a timely manner so that appropriate scheduling may take place.

2.5 CONTRACT REPRESENTATIVE. Daniel J. Dolezal of Ehrhart Griffin & Associates will serve as project manager and contact for the A/E for this project. The Owner shall designate a staff member to serve in a similar capacity.

EXHIBITS:

Exhibit A - General Conditions

Exhibit B - Survey Limits

Owner:

**CITY OF OMAHA PARKS, RECREATION &
PUBLIC PROPERTY**

Signature: _____

By: BROOK BENCH, ACTING DIRECTOR

Title: _____

Date: _____

Address: 1819 FARNAM, SUITE 701
OMAHA, NE. 68183-0701

Phone: 4402-44-5901

Fax: 402-444-4921

E-mail: _____

A/E:

EHRHART GRIFFIN & ASSOCIATES

Signature: 

By: DANIEL J. DOLEZAL, PE

Title: PARTNER

Date: August 20, 2012

Address: 3552 Farnam Street
Omaha, Nebraska 68131

Phone: 402/551-0631(phone)

Fax: 402/551-6540 (fax)

E-mail: ega@ehrhartgriffin.com

GENERAL CONDITIONS - EXHIBIT A

1. **ACCESS TO SITE:** Unless otherwise stated, the A/E will have access to the site for activities necessary for the performance of the services at all reasonable hours.

2. **INDEMNIFICATION:** Owner agrees to indemnify and hold harmless the A/E from and against any and all claims, damages, losses, and expenses arising out of or resulting from the performance of services under this Agreement, provided that any such claim, damage, loss, or expense is not due to the negligent acts, errors, or omissions of the A/E.

3. **DISPUTE RESOLUTION:** In an effort to resolve any conflicts that arise during the design or construction of the project or following completion of the project, the Owner and the A/E agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. The Owner and the A/E further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

4. **OWNERSHIP OF DOCUMENTS:** The Owner acknowledges the A/E's construction documents as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become the property of the Owner upon completion of the work and payment in full of all moneys due to the A/E. The Owner shall not reuse or make any modifications to the plans and specifications without the prior written authorization of the A/E. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the A/E from any claim, liability, or cost arising out of or allegedly arising out of any unauthorized reuse or modifications of the construction documents by the Owner or any person or entity that acquires or obtains the plans and specifications from or through the Owner without the written authorization of the A/E.

5. **CODES AND STANDARDS COMPLIANCE:** The A/E shall put forth the reasonable efforts to comply with codes, regulations, laws, and statutes in effect as of the execution of this Agreement.

6. **CONSTRUCTION OBSERVATION:** The A/E shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents.

The Owner has not retained the A/E to make detailed inspections or to provide exhaustive or continuous project review and observation services. The A/E does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier, or any other entity furnishing materials or performing any work on the project.

7. **DELAYS:** The A/E is not responsible for delays caused by factors beyond the A/E's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Owner to furnish timely information or approve or disapprove of the A/E's services or work product promptly, or delays caused by faulty performance by the Owner or by contractors of any level. When such delays beyond the A/E's reasonable control occur, the

Owner agrees the A/E is not responsible for damages, nor shall the A/E be deemed to be in default of this Agreement.

8. **LIMITATION OF LIABILITY:** In recognition of the relative risks and benefits of the project to both the Owner and the A/E, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the A/E and their sub consultants to the Owner and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the A/E and his or her sub consultants to all those named shall not exceed \$100,000 or the A/E's total fee for services rendered on this project, whichever is greater. Such claims and causes include negligence, professional errors or omissions, strict liability, breach of contract or warranty.

9. **OPINIONS OF PROBABLE COST:** In providing opinions of probable construction cost, the Owner understands that the A/E has no control over costs or the price of labor, equipment, or materials, or over the Contractors' method or pricing, and that the opinions of probable construction cost provided herein are to be made on the basis of the A/E's qualifications and experience. The A/E makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

10. **SHOP DRAWING REVIEW:** The A/E shall review and approve Contractor submittals, such as shop drawings, product data, samples and other data, as required by the A/E, but only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrications processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. The A/E's review shall be conducted with reasonable promptness while allowing sufficient time in the A/E's judgment to permit adequate review. Review of a specific item shall not indicate that the A/E has reviewed the entire assembly of which the item is a component. The A/E shall not be responsible for any deviations from the contract documents not brought to the attention of the A/E in writing by the Contractor. The A/E shall not be required to review partial submissions or those which submissions of correlated items have not been received.

11. **ADA COMPLIANCE:** The Americans with Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility for first occupancy later than January 26, 1993, that does not meet the accessibility and usability requirements of the ADA except where an entity can demonstrate that it is structurally impractical to meet such requirements. The Owner acknowledges that the requirements of the ADA will be subject to various and possibly contradictory interpretations. The A/E, therefore, will use his or her reasonable professional efforts to interpret applicable ADA requirements and other Federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project. The A/E, however, cannot and does not warrant or guarantee that the Owner project will comply with the interpretations of ADA requirements and/or requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project.

12. **HAZARDOUS MATERIALS:** It is acknowledged by both parties that the A/E's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event the A/E or any other party encounters asbestos or hazardous

or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of the A/E's services, the A/E may, at his or her option and without liability for consequential or any other damages, suspend performance of services on the project until the Owner retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrant that the job site is in full compliance with applicable laws and regulations.

13. GOVERNING LAW: The laws of the State of Nebraska will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in the courts of that State.

14. ASSIGNMENT: Neither party to this Agreement shall transfer, sublet, or assign any rights under or interest in this Agreement (including but not limited to moneys that are due or moneys that may be due) without the prior written CONSENT of the other party.

15. TERMINATION: Either the Owner or the A/E may terminate this Agreement at any time with or without cause upon giving the other party (10) calendar days prior written notice. The Owner shall within thirty (30) calendar days of termination pay the A/E for all services rendered and all costs incurred up to the

date of termination, in accordance with Article 2 of this Agreement.

16. SEVERABILITY AND SURVIVAL: Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect. Articles 2, 3, 4, and 8 shall survive the termination of this Agreement and shall remain enforceable between the parties.

17. STANDARD OF CARE: Services provided by the A/E under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

18. AMENDMENT: This Agreement shall not be amended except by written instrument signed by the parties hereto. This Agreement constitutes the entire and integrated agreement by and between the parties and supersedes any and all prior negotiations, whether written or oral.

19. AUTHORIZATION: The individual signing this agreement for and on behalf of both parties represents that he or she is a duly authorized agent of his or her respective principal.

STANDARD HOURLY RATE SCHEDULE:

Principal	150.00/hr.
Engineering Department Manager	140.00/hr.
Engineering Project Manager	140.00/hr.
Project Engineer	90.00/hr.
Design Engineer	80.00/hr.
Engineering Technician I	75.00/hr.
Engineering Technician II	65.00/hr.
Quality Assurance Manager	90.00/hr.
Construction Manager	85.00/hr.
Construction Observer I	65.00/hr.
Construction Observer II	55.00/hr.

Survey Department Manager	120.00/hr.
Professional Land Surveyor	90.00/hr.
Survey Technician	90.00/hr.
Survey Crew Party Chief	90.00/hr.
Survey Crew Tech. W/ EDM	90.00/hr.
Robotic Laser EDM	90.00/hr.
GPS Satellite Receiver	180.00/hr.
Office Clerical	55.00/hr.
Office Manager	88.00/hr.

REIMBURSABLE EXPENSES:

Federal/Airborne Express	30.00/ea.
Express Messenger	15.00/ea.
Mileage	.55/mi.
Mylar Copy (24" x 36")	7.00/ea.
Mylar Copy (30"x 42")	9.00/ea.

Bond Copy (8½x11)	0.30¢/ea.
Bond Copy (8½x14)	0.55/ea.
Bond Copy (11 x 17)	0.75/ea.
Bond Copy (24 x36)	4.00/ea.
Bond Copy (30 x 42)	5.00/ea.
Color Copy (8½x11)	1.00/ea.
Color Copy (8½x14)	1.25/ea.
Color Copy (11 x 17)	1.75/ea.
Color Copy (24x36)	4.00/ea.
Color Copy (30x42)	9.00/ea.

Note: Limits and fee
revised 5-22-12

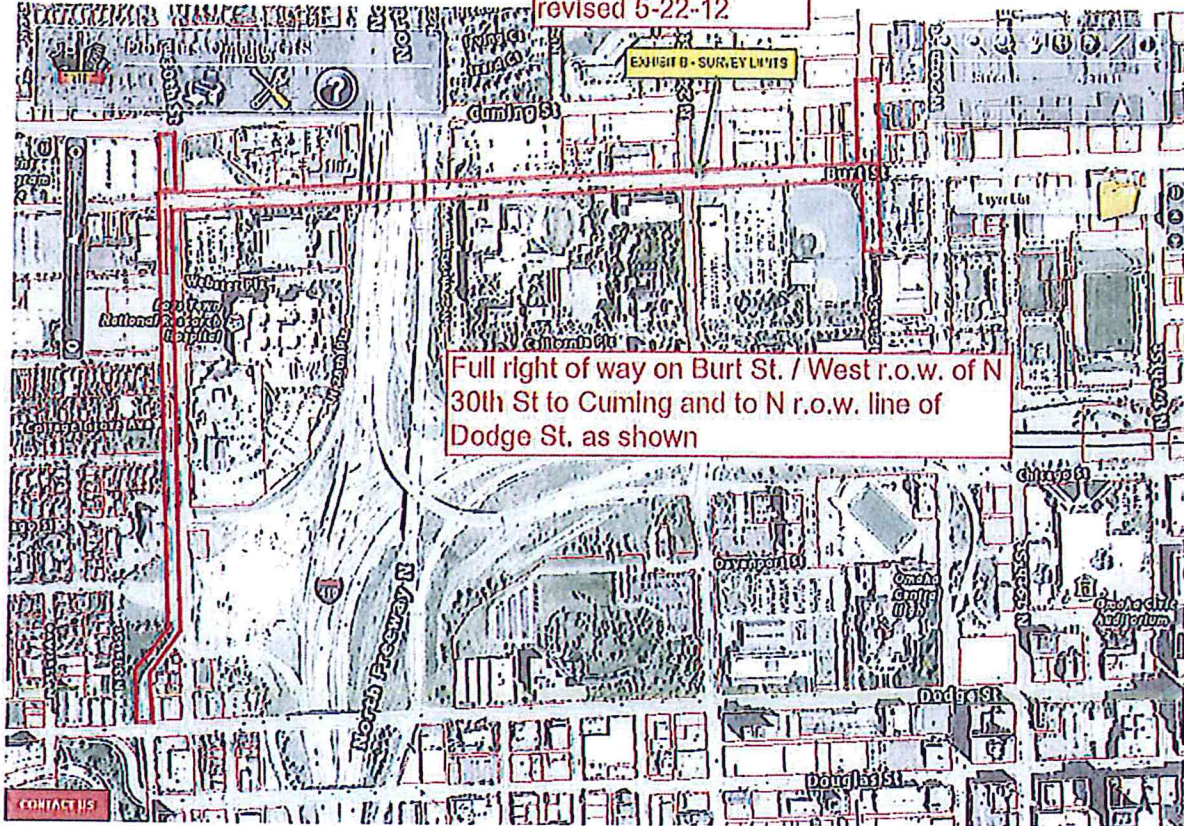


EXHIBIT B