

Agenda Item: 9.

MEMORANDUM

TO: Finance, Expenditure and Legal Subcommittee

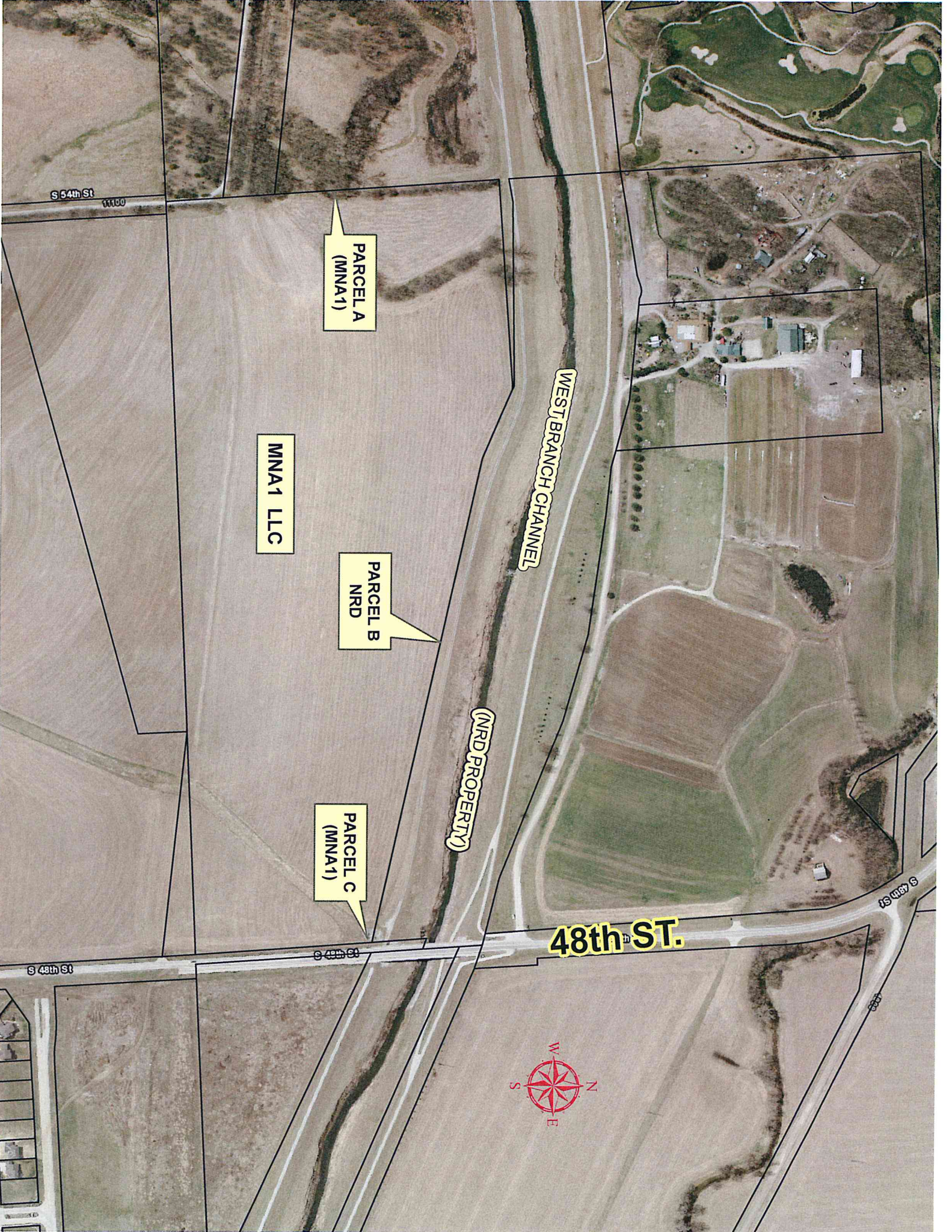
FROM: Martin P. Cleveland and Amanda Grint

SUBJECT: West Branch Channel Project/Rumsey Station Wetland Mitigation Site, Exchange Agreement with MNA1LLC

DATE: March 25, 2012

District staff have been in contact with MNA1LLC representatives (Charles and Marion Trumble) regarding the need for permanent right-of-way at the southwest corner of 48th Street bridge over West Branch Channel Project to provide for access to the West Branch Channel from 48th Street. Sarpy County plans on building an access road to the channel. In addition, there is a need for permanent right-of-way at the east edge of Rumsey Station Wetland near 54th Street (see attached location map), to divert area drainage into the Rumsey Station Wetland and improve its function as a wetland. During negotiations with MNA1LLC, they proposed an equal area land exchange with the District with no monetary payment by either party. There was a slightly larger than necessary District Channel parcel adjacent to the MNA1LLC property due to squaring off the channel project parcels in 1990's during acquisition. Enclosed is a proposed exchange agreement.

It is the Management recommendation that the Finance, Expenditure and Legal Subcommittee recommends to the Board of Directors that the General Manager be authorized to execute an Exchange Agreement with MNA1LLC for West Branch Channel Project and Rumsey Station Wetland right-of-way acquisition.



S 54th St

PARCEL A
(MNA1)

MNA1 LLC

PARCEL B
NRD

PARCEL C
(MNA1)

(NRD PROPERTY)

WEST BRANCH CHANNEL

48th ST.

S 48th St

S 48th St



EXCHANGE AGREEMENT
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
MNA1, L.L.C., a Nebraska Limited Liability Company

THIS EXCHANGE AGREEMENT ("THIS EXCHANGE AGREEMENT") is made by and between: **MNA1, L.L.C.**, a Nebraska Limited Liability Company (hereinafter referred to as "**LLC**"), on the one hand, and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as "**NRD**"), on the other hand.

In return for conveyance by LLC to NRD of the parcels of real property in Sarpy County, Nebraska, described in the legal descriptions attached hereto as Exhibits "A" and "C" and incorporated herein by reference (the "**LLC PARCELS**"), NRD agrees to convey to LLC the parcel of real property in Sarpy County, Nebraska, described in the legal description attached hereto as Exhibit B and incorporated herein by reference (the "**NRD PARCEL**"); and, in return for conveyance by NRD to LLC of the NRD PARCEL, the LLC agrees to convey to NRD the LLC PARCELS, all subject to the following:

1. **The Closing.** The aforesaid conveyances shall be made simultaneously at the closing of this transaction ("the **CLOSING**") at 9:00 o'clock, A.M., on the 1st day of May, 2012, at the NRD'S offices hereinafter described or on such other date and/or at such other time or place as may be agreed upon in writing by NRD and LLC. At the CLOSING:

a) LLC shall execute and deliver to NRD a full warranty deed conveying to the NRD the insurable, marketable fee-simple title to the LLC PARCELS, 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 EXCHANGE AGREEMENT; and,

b) NRD shall execute and deliver to LLC a full warranty deed conveying to LLC the insurable, marketable fee-simple title to the NRD PARCEL, 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 EXCHANGE AGREEMENT.

2. **Title Insurance Commitments.** Within Twenty (20) days after execution of THIS EXCHANGE AGREEMENT:

a) LLC shall deliver to NRD a commitment ("the **LLC COMMITMENT**") from a duly authorized title insurance company for a policy of title insurance to be issued at the CLOSING. The LLC COMMITMENT shall be irrevocable for a period of six (6) months and shall commit the insurer to insure the title to the LLC PARCELS in the condition required herein for the benefit of NRD, and its assigns or nominees, in the penalty amount of \$ 10,000.00. The LLC COMMITMENT shall exclude all standard exceptions to coverage shown on its Schedule B; and,

b) NRD shall deliver to LLC a commitment ("the **NRD COMMITMENT**") from a duly authorized title insurance company for a policy of title insurance to be issued at the CLOSING. The NRD COMMITMENT shall be irrevocable for a period of six (6) months and shall commit the insurer to insure the title to the NRD PARCEL in the condition required herein for the benefit of LLC, and its assigns or nominees, in the penalty amount of \$ 10,000.00. The NRD COMMITMENT shall exclude all standard exceptions to coverage shown on its Schedule B

3. **Objections to Title.** After delivery of the LLC COMMITMENT, NRD may notify LLC of any conditions disclosed in the LLC COMMITMENT that are objectionable to NRD. After delivery of the NRD COMMITMENT, LLC may notify NRD of any conditions disclosed in the NRD COMMITMENT that are objectionable to LLC. Following receipt of any such notice the party receiving the same shall promptly and diligently undertake such steps as are reasonably necessary to cure, satisfy, or remove such conditions. In the event a party shall fail to correct, satisfy or resolve any such condition to the reasonable satisfaction of the other party within thirty (30) days from the date of receipt of such written objections to LLC, the objecting party shall have the right to terminate THIS EXCHANGE AGREEMENT.

4. **New Liens or Conditions.** As long as THIS EXCHANGE AGREEMENT is in effect: LLC shall not transfer, convey, lease or otherwise dispose of any right, title

or interest in the LLC PARCELS except subject to the terms of THIS EXCHANGE AGREEMENT or with written consent of NRD; and, NRD shall not transfer, convey, lease or otherwise dispose of any right, title or interest in the NRD PARCEL, except subject to the terms of THIS EXCHANGE AGREEMENT or with written consent of LLC. LLC further agrees not to consent to or allow any new lien, encumbrance, condition reservation, easement, lease, restriction or covenant against the LLC PARCELS, other than the lien for current real estate taxes due but not yet delinquent. NRD further agrees not to consent to or allow any new lien, encumbrance, condition reservation, easement, lease, restriction or covenant against the NRD PARCEL, other than the lien for current real estate taxes due but not yet delinquent.

5. **Leases and Other Interests.** At the CLOSING, no portion of the LLC PARCELS and no portion of the NRD PARCEL will be subject to any agreement, right of first refusal, lease or other undisclosed or unrecorded interest, right or restriction. LLC certifies that there will have been no labor performed, and no materials furnished to the LLC PARCELS, by any person or entity, who has not been paid in full, for at least one hundred twenty (120) days prior to the CLOSING. LLC hereby agrees to indemnify and hold NRD harmless from and against any such claims. NRD certifies that there will have been no labor performed, and no materials furnished to the NRD PARCEL, by any person or entity, who has not been paid in full, for at least one hundred twenty (120) days prior to the CLOSING. NRD hereby agrees to indemnify and hold LLC harmless from and against any such claims.

6. **Conditions Precedent.**

a) The obligation of LLC to consummate the transactions contemplated herein is expressly subject to satisfaction as determined by LLC, in its absolute discretion, of the conditions listed below.

i) **Title.** THIS EXCHANGE AGREEMENT is contingent upon condition of title to the NRD PARCEL being established in accordance with THIS EXCHANGE AGREEMENT, subject only to exceptions waived or agreed to by LLC.

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

b) The obligation of NRD to consummate the transactions contemplated herein is expressly subject to satisfaction as determined by NRD, in its absolute discretion, of the conditions listed below.

i) **Title.** THIS EXCHANGE AGREEMENT is contingent upon condition of title to the LLC PARCELS being established in accordance with THIS EXCHANGE AGREEMENT, subject only to exceptions waived or agreed to by NRD.

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

7. **Closing Costs and Apportionments.**

a) **Real Estate Taxes.** All real estate taxes that become delinquent against the LLC PARCELS in the calendar year in which the CLOSING takes place and all prior years' taxes, interest and other charges related thereto, if any, shall be paid by LLC. All real estate taxes that become delinquent against the NRD PARCELS in the calendar year in which the CLOSING takes place and all prior years' taxes, interest and other charges related thereto, if any, shall be paid by NRD.

b) **Greenbelt recapture.** NRD shall indemnify and hold LLC harmless from and against any greenbelt property tax recapture resulting from NRD'S purchase of the LLC PARCELS.

c) **Special Assessments.** LLC 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 LLC PARCELS 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 NRD which would allow for payment at the time of final assessment.

NRD 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 NRD PARCEL 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 LLC 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.

d) **Recording Fees.** NRD shall be responsible for payment of all recording fees for the deeds of conveyance received by the parties.

e) **Title Insurance.** NRD shall pay the cost of all title insurance required by THIS EXCHANGE AGREEMENT for the property to be conveyed by both parties.

8. **Payment in full.** The property being conveyed by a party to a party shall constitute payment in full for the property being conveyed by such party, and for any and all damages and diminishment in the value of the conveying party's remainder or other severance damages that may be sustained by the conveying party.

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

10. **Broker and Attorney Fees.** LLC and NRD 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.

11. **Remedies of the Parties.** If either NRD or LLC defaults in the performance of any provision of THIS EXCHANGE AGREEMENT, the other party shall be entitled to any and all remedies available at law or in equity.

12. **Prior Agreements.** THIS EXCHANGE 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, and shall be binding upon the parties hereto, their successors and assigns. THIS EXCHANGE AGREEMENT may not be changed or altered in any way, except by a written instrument signed by both parties. No oral representations of any kind shall be binding upon either party unless fully set forth herein or in such a written instrument.

13. **Survival of Warranties.** Any warranties, covenants and representations herein made shall survive the execution of THIS EXCHANGE AGREEMENT and any other documents, including the Warranty Deeds given by the parties to consummate this transaction, and THIS EXCHANGE AGREEMENT shall not be merged into any such documents.

14. **Construction.** THIS EXCHANGE AGREEMENT shall be construed in accordance with the laws of the State of Nebraska. Wherever possible, each provision of THIS EXCHANGE AGREEMENT shall be interpreted in such manner as to be effective and valid. If any provision of THIS EXCHANGE 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 EXCHANGE AGREEMENT. Time is of the essence of THIS EXCHANGE AGREEMENT. The captions contained in THIS EXCHANGE AGREEMENT are for convenience only and are not intended to limit or define the scope or effect of any provision of THIS EXCHANGE AGREEMENT.

15. **Authority.** Except as may otherwise be provided in THIS EXCHANGE AGREEMENT, whenever pursuant to THIS EXCHANGE AGREEMENT the approval of NRD is called for, the authority for any such approval shall be presumed if such approval is granted or endorsed in writing by NRD'S General Manager.

16. **Eminent Domain.** Neither THIS EXCHANGE AGREEMENT, nor termination of THIS EXCHANGE AGREEMENT by LLC or NRD pursuant to any provision of THIS EXCHANGE AGREEMENT, shall be deemed to estop NRD from instituting an action in eminent domain to acquire the LLC PARCELS or any portion thereof.

17. **Non-waiver.** No delay or failure by either party to exercise any right under THIS EXCHANGE 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 EXCHANGE AGREEMENT.

18. **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 EXCHANGE AGREEMENT.

19. **Other Documents.** Each party agrees to execute and deliver at the CLOSING such other documents and assurances on forms as may be reasonably requested by the other party to affirm the title of the property being conveyed to the requesting party, and to verify to the other party's satisfaction, the conditions of THIS EXCHANGE AGREEMENT, including, without limitation, an affidavit of possession, a lien and special assessment affidavit and indemnity, and a full warranty deed.

20. **Effective date** THIS EXCHANGE AGREEMENT shall be effective upon its complete execution by both NRD and LLC.

21. **Notices.** All notices, demands, writings, supplements, or other documents which are required or permitted by the terms of THIS EXCHANGE 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 LLC:

~~Marion and Charles Trumble~~ *with*
5402 Hwy. 370
Papillion, NE. 68133 *MRP*

To NRD:

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

Paul F. Peters, Attorney at Law
640 Omaha Tower
2120 South 72nd Street
Omaha, NE 68124

THIS EXCHANGE AGREEMENT is executed by LLC on this 7th day
of March, 2012.

MNA1, L.L.C., a Nebraska Limited Liability
Company

By Charles W Trumble
Marion J. Trumble

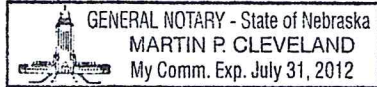
THIS EXCHANGE AGREEMENT is executed by NRD on this _____ day
of _____, 20____.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
JOHN WINKLER, General Manager

STATE OF Nebraska)
) ss.
COUNTY OF Sarpy)

The foregoing instrument was acknowledged before me this 2th day of March, 2012, by Charles and Marion Trumble,
_____ of MNA1, L.L.C., a Nebraska Limited Liability Company.



[Signature]
Notary Public

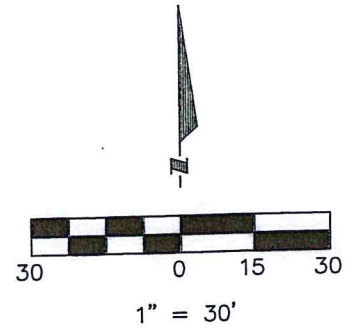
STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by JOHN WINKLER, General Manager of the NRD Papio-Missouri River Natural Resources District, for and on behalf of the district.

Notary Public

PAPIO-MISSOURI RIVER NRD

SE $\frac{1}{4}$ SECTION 30, T14N, R13E



TAX LOT 12A1A

WEST LINE OF THE
SOUTHEAST $\frac{1}{4}$ OF
SECTION 30, T14N, R13E



LAND ACQUISITION

LEGAL DESCRIPTION

Part of Tax Lot 12A1A in the Southeast $\frac{1}{4}$ of Section 30, T14N, R13E, of the 6th PM, Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Southwest corner of said Southeast $\frac{1}{4}$ of Section 30; thence N04° 08' 07"W (Assumed bearing) along the West line of said Southeast $\frac{1}{4}$ of Section 30, for a distance of 539.81 feet, to the Point of Beginning; thence continuing N04° 08' 07"W along said West line of the Southeast $\frac{1}{4}$, for a distance of 169.96 feet; thence N85° 51' 53"E for a distance of 10.00 feet; thence S04° 08' 07"E along a line 10.00 feet East of and parallel to said West line of the Southeast $\frac{1}{4}$, for a distance of 52.25 feet; thence S21° 38' 42"E for a distance of 52.56 feet; thence S50° 39' 40"E for a distance of 29.19 feet; thence S20° 48' 49"W for a distance of 33.50 feet; thence S58° 20' 03"W for a distance of 37.06 feet, to a point on said West line of said Southeast $\frac{1}{4}$, said point also being the Point of Beginning, containing an area of 3645.54 sq. ft. +/-, or 0.08 acres +/-.

S $\frac{1}{4}$ COR. SECTION
30 T14N, R13E,

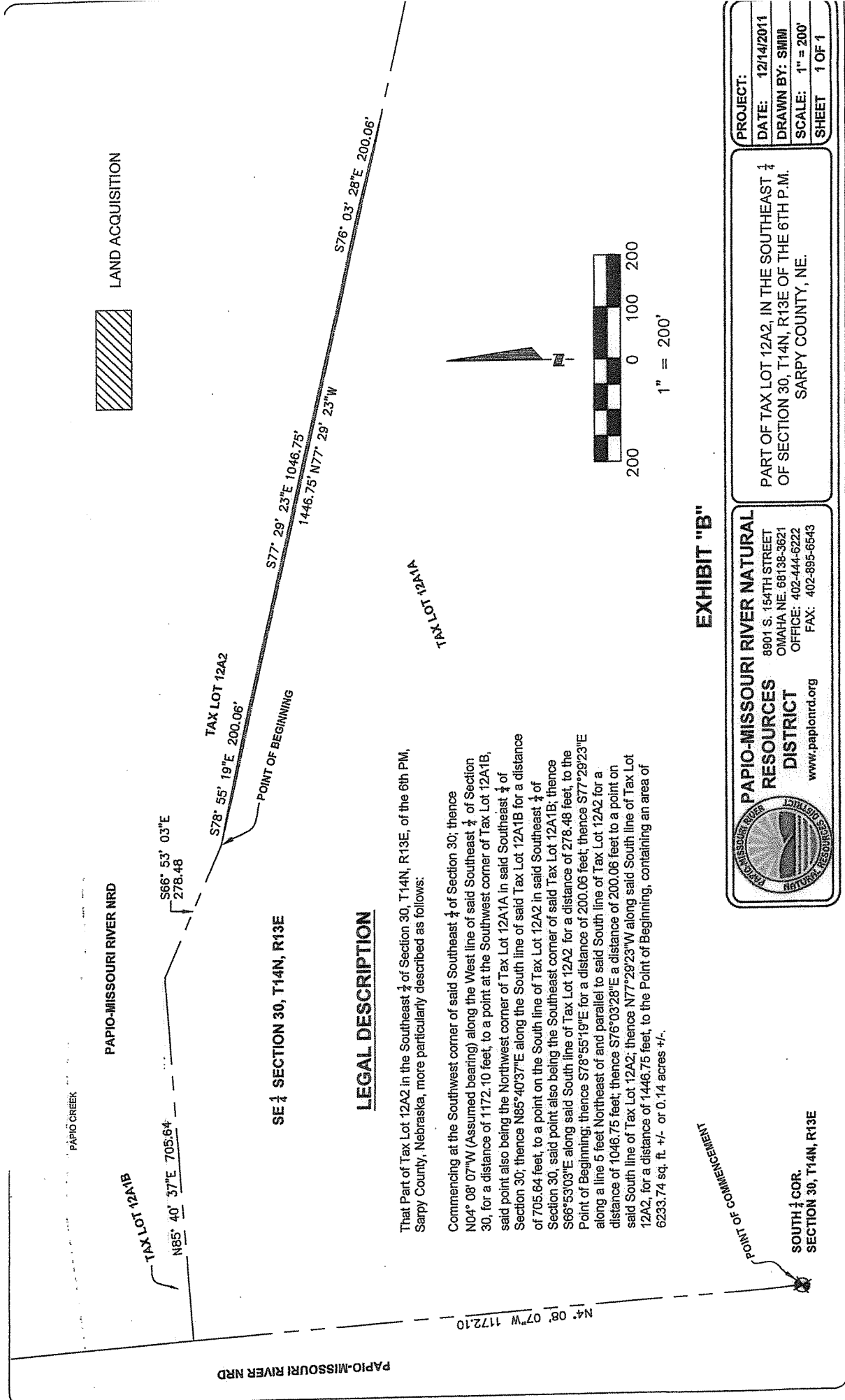
EXHIBIT "A"



**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

PART OF TAX LOT 12A1A IN THE
SOUTHEAST $\frac{1}{4}$ OF SECTION 30 T14N, R13E
OF THE 6TH P.M. SARPY COUNTY, NE.

PROJECT:
DATE: 12/06/2011
DRAWN BY: SMH
SCALE: 1" = 30'



E $\frac{1}{4}$ COR. SECTION
30 T14N, R13E,

PAPIO-MISSOURI RIVER NRD

TAX LOT 12A2

SE $\frac{1}{4}$ SECTION 30, T14N, R13E

S77° 29' 23"E 50.00'
N4° 16' 23"W 17.76'
N77° 29' 23"W 32.25'
N4° 16' 23"W 102.24'
S4° 16' 23"E 120.00'
N77° 29' 23"W 17.76'

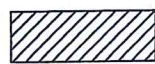
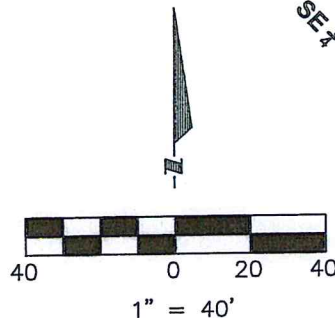
Point of Beginning

48th Street

N4° 16' 23"W 606.47'

Point of Commencing

SE COR. SECTION
30 T14N, R13E,



LAND ACQUISITION

TAX LOT 12A1A

LEGAL DESCRIPTION

Part of Tax Lot 12A1A in the Southeast $\frac{1}{4}$ of Section 30, T14N, R13E, of the 6th PM, Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Southeast corner of said Section 30; thence N4° 16' 23"W (Assumed bearing) along the East line of said Section 30, for a distance of 606.47 feet, to a point on the South Right of Way line of the Papio-Missouri River Natural Resources District; thence N77° 29' 23"W along said South line, for a distance of 34.47 feet to a point at the West Right of Way line of 48th Street, said point also being the Point of Beginning; thence S4° 16' 23"E along said West Right of Way line of 48th Street, for a distance of 120.00 feet; thence N77° 29' 23"W along a line parallel with said South line of the Papio-Missouri River Natural Resources District, for a distance of 17.76 feet; thence N4° 16' 23"W along a line 17.00 feet West of and parallel to said West Right of Way line of 48th Street, for a distance of 102.24 feet; thence N77° 29' 23"W along a line 17.00 feet Southwesterly of, and parallel to said South line of the Papio-Missouri River Natural Resources District, for a distance of 32.25 feet; thence N4° 16' 23"W along a line parallel with said West Right of Way line of 48th Street, for a distance of 17.76 feet to a point on said South Right of Way line of the Papio-Missouri River Natural Resources District; thence S77° 29' 23"E along said South Right of Way line of the Papio-Missouri River Natural Resources District, for a distance of 50.00 feet, to a point on said West Right of Way line of 48th Street, said point also being the Point of Beginning, containing an area of 2588.18 sq. ft. +/- or 0.06 acres +/-

EXISTING 33' COUNTY
ROADWAY EASEMENT

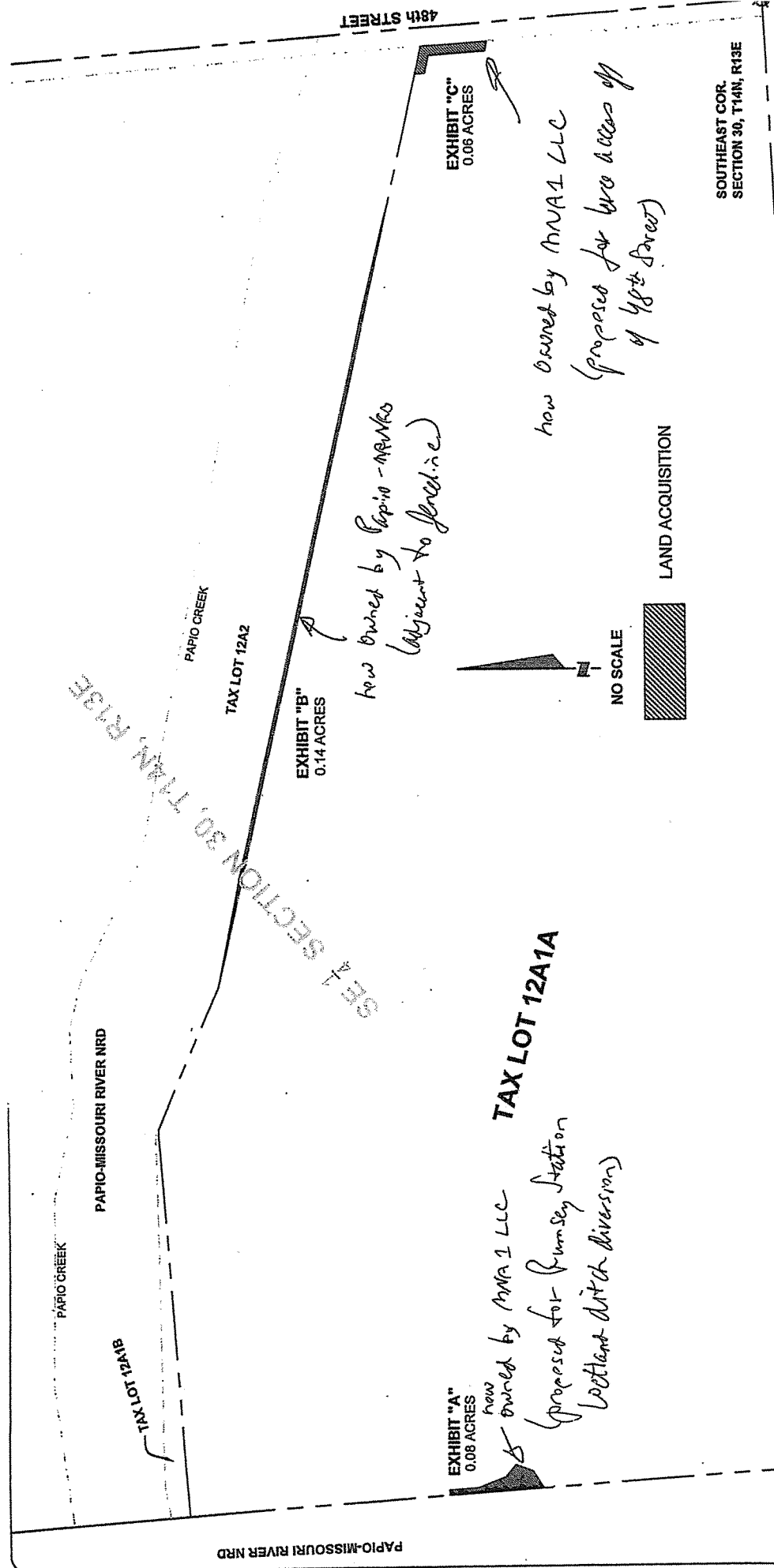
EXHIBIT "C"



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

PART OF TAX LOT 12A1A IN SECTION
30 T14N, R13E OF THE 6TH P.M. SARPY
COUNTY, NE.

PROJECT:
DATE: 12/02/2011
DRAWN BY: SMH
SCALE: 1" = 40'



PAPIO-MISSOURI RIVER NRD

8801 S. 154TH STREET
OMAHA NE 68138-3621
OFFICE: 402-444-6222
FAX: 402-895-6543
www.papionrd.org

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

PROJECT: PAPIO-MISSOURI RIVER NRD, AND PART OF T.L. 12A1A, ROW EXCHANGE., IN THE SOUTHEAST 1/4 OF SECTION 30, T14N, R13E OF THE 6TH P.M. SARP COUNTY, NE.

PROJECT:

DATE: 12/14/2011

DRAWN BY: SHIM

SCALE: NO SCALE

SHEET 1 OF 1

SOUTH 1/4 COR.
SECTION 30, T14N, R13E