

Memorandum

To: Programs, Projects and Operations Subcommittee

Subject: Keystone East Trail – Interlocal Agreement with Omaha

Date: June 28, 2010

From: Gerry Bowen

In February, 2009, the District entered into an agreement with the City of Omaha for the design, construction, and future operation and maintenance of the Keystone East Trail connecting the Keystone East Trail at Karen Park and the Field Club Trail.

The agreement covered the segments of the trail into two sections; Karen Park to 45th & D Streets and 45th & D Streets to the Field Club Trail. The City is responsible for the right of way acquisition on the western portion of the trail and the District has this responsibility for the eastern portion. The City also is responsible for consultant design services and construction of the trail. The agreement called for the City to pay for the design and construction of the western portion of the trail and for the District to pay for these items on the eastern portion of the trail.

The City was approved for TE funding on the western portion of the trail. Because of delays and increased costs associated with TE Funding and the Federal Highway Administrations inability to approve projects in a timely and reasonable manner, the eastern portion of the trail is proposed for all District funding.

In order to expedite trail construction and to keep the responsibilities of the City and the District as close as possible on both trail segments, it is proposed that the City acquire all rights-of-way for the entire project. The District would reimburse the City for these costs. Appraisals of the properties involved are currently underway.

The draft amendment is attached for your review.

- **It is recommended that the Subcommittee recommend to the Board that the amendment to the Keystone East Interlocal Agreement with the City of Omaha be approved subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.**

AMENDMENT TO AGREEMENT

This Amendment to the Agreement between the CITY OF OMAHA (hereinafter referred to as "City") and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (hereinafter referred to as ("P-MRNRD") dated February 10, 2009 is hereby made and entered into this _____ day of August 2010.

WHEREAS, the City of Omaha and P-MRNRD entered into an Agreement for the development and construction of Phases I through III of the Keystone East Trail on February 10, 2009; and,

WHEREAS, pursuant to the terms of such Agreement, the P-MRNRD is to acquire, at its cost, certain real property for Phases II and III of such proposed Keystone East Trail; and,

WHEREAS, P-MRNRD has proposed that the City acquire such real property and that the P-MRNRD reimburse City for the cost thereof; and,

WHEREAS, it is necessary to amend such Agreement to set forth such changes in the duties and obligations of the parties; and,

WHEREAS, such Agreement provides that any amendments thereto must be done in writing and signed by the authorized representatives of the parties.

NOW, THEREFORE, in consideration of these mutual covenants, the parties do hereby agree to amend the attached Agreement as follows:

1. That the attached agreement dated February 10, 2009, is hereby incorporated by reference.
2. That paragraph 6. of Article III. encaptioned "Rights Duties and Obligations of City" is amended to read as follows:
 6. acquire any additional right of way necessary for Phase I of the Trail at City's cost and acquire any real property necessary for Phases II and III of the Trail for Trail use;
3. That paragraph 6. of such Article III. as heretofore existing is hereby deleted.

4. That paragraph 3 of Article IV. encaptioned "Rights Duties and Obligations of P-MRNRD" is amended to read as follows:

3. pay the costs incurred by City in acquiring any real property necessary for Phases II and III of the Trail for Trail use. Such reimbursement shall be made by P-MRNRD within forty-five (45) days of receipt of invoices from City accompanied by satisfactory documentation, demonstrating the necessary and reasonable costs incurred in acquiring such real property;

5. That paragraph 3. of such Article IV. as heretofore existing is hereby deleted.

6. That all other provisions of such Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Omaha and P-MRNRD have executed this Amendment to Agreement as of the day and year first written above.

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

WITNESS

By _____
John Winkler, General Manager Title

CITY OF OMAHA, A Municipal
Corporation,

City Clerk of the City of Omaha

By _____
Jim Suttle, Mayor of the City of Omaha

APPROVED AS TO FORM:

Deputy City Attorney

AGREEMENT

THIS AGREEMENT is hereby made and entered into this 10th day of February, 2008, 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") and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a natural resource district organized and existing under the laws of the State of Nebraska, (hereinafter referred to as "P-MRNRD"). As used herein, the terms "the Parties" or "the parties" refer to City and P-MRNRD collectively. The Parties sometimes are referred to herein individually as a "Party" or "party".

WHEREAS, the City of Omaha currently owns and operates two public recreational trails, commonly known as the Keystone Trail and the Field Club Trail; and,

WHEREAS, the City and the P-MRNRD are desirous of linking such two trails to enhance the recreational trail system in metropolitan Omaha area and have collaborated to initiate Phase I of such connector trail; and,

WHEREAS, P-MRNRD and City desire to set forth the terms and conditions of their agreement for completion of Phase I and development of Phases II and III of such connector trail, which will collectively be known as the "Keystone East Trail"; and,

WHEREAS, in order to serve their mutual interests and pursuant to the authority granted 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 development, construction, operation and maintenance of Phases I, II and III of the Keystone East Trail.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the City and P-MRNRD 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 City and P-MRNRD will design, develop, construct, operate and maintain a public recreational trail to be known as the "Keystone East Trail" (hereinafter "Trail") as more fully described on the attached Exhibit "A", which is incorporated by this reference as if wholly set forth herein, on parcels of real property to be acquired by or currently owned by City and/or P-MRNRD, generally extending from Karen Park on the west to the southern terminus of the Field Club Trail on the east (hereinafter "Property").

City and P-MRNRD specifically acknowledge that their obligations hereunder with regard to Phases II and III of the Trail project are contingent upon receipt of private funding. It is anticipated by the parties that the Trail will be operational in approximately Summer 2010. The Parties hereby find, determine and agree that the Keystone East Trail project will constitute a public recreational project that will be predominantly of general benefit to the City and the P-MRNRD with only an incidental special benefit.

II. TERM

This term of this Agreement shall be approximately ten (10) years commencing on the date of execution and ending on December 31, 2018; provided that in the event the City or P-MRNRD is unable to secure private funding for Phases II and/or III of such Trail project such Agreement will terminate as to such privately unfunded phase upon notification by City or P-MRNRD to the other of such failure.

III. RIGHTS DUTIES AND OBLIGATIONS OF CITY

City agrees to:

1. act as the lead administrator for development of the Trail project, as more specifically set forth herein;
2. retain Big Muddy Workshop, the design consultant hired by City for Phase I of the Keystone East Trail, to perform design and bidding services as well as construction administration for Phases I, II and III of the Trail, and to hire and compensate any other landscape architect, architects, engineers and other design professionals as the Parties may agree shall be necessary to design and prepare construction documents for the Trail and oversee the construction of the Trail;
3. publicly bid and construct Phases I through III of the Trail project in accordance with the plans, specifications and construction documents approved by P-MRNRD, selecting one or more contractors to build the Trail, and compensate same;
4. prior to bidding and construction of the Trail provide plans and specifications and construction documents for Phases I through III of the Trail to the P-MRNRD for review and approval;
5. maintain accounting records for each Phase of the Trail, including receipt and application of private funds;
6. acquire any additional right of way necessary for Phase I of the Trail at City's cost;

7. use the Transportation Enhancement funding previously authorized by the Nebraska Department of Transportation exclusively for Phase I of the Trail and provide one-half of the local match of twenty percent (20%) i.e., ten percent (10%) for such Phase I;
8. initiate discussion with representatives of the Peter Kiewit Foundation to secure funding from such entity for Phases II and III of the Trail;
9. use any private funding secured for Phases II and III of the Trail, whether secured by City or P-MRNRD, for such purposes only;
10. 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; and,
11. retain and/or hold title to the Property upon acquisition and exercise any license, right of entry, or other similar authority, if provided by P-MRNRD pursuant to Article IV.3., 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 P-MRNRD

P-MRNRD agrees to:

1. timely review and approve plans and specifications and construction documents for Phases I through III of the Trail provided by City, such approval(s) to not be withheld unreasonably;
2. provide one-half of the local match of twenty percent (20%), i.e., ten percent (10%) of the City's necessary and reasonable costs incurred for design, construction, and construction administration of Phase I of the Trail;
3. acquire any additional real property necessary for Phases II and III of the Trail, at P-MRNRD's cost, and transfer fee title ownership of such Property to City, at no cost to City, for Trail use, provided that if P-MRNRD is required to use eminent domain to obtain any such portion of the Property, P-MRNRD shall not be required to transfer fee title ownership of such parcels of the Property so acquired to City but shall provide City a license, right of entry or other similar authorization to enter upon such parcels of the Property and to develop, construct operate, and maintain portions of the Trail thereon;

4. reimburse City, within 45 days after receipt of invoices from City accompanied by satisfactory documentation, demonstrating the necessary and reasonable costs incurred, for planning, design, engineering, bidding, construction, and construction administration of Phases II and III of the Trail; and,
5. provide to City any private funding secured by P-MRNRD for Phases II and III of the Trail, to be used for such purposes only.

V. PROJECT ADMINISTRATOR

No separate legal or administrative entity is created by this Agreement. City shall serve as the administrator of the Project and shall be responsible for the administrative work necessary for the development, design, construction, funding, operation and maintenance of the Keystone East Trail Project as more fully set forth herein.

VI. INDEMNIFICATION

- A. P-MRNRD covenants and agrees to indemnify and hold harmless the City of Omaha, 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 action of any kind and nature asserted by P-MRNRD 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 P-MRNRD in connection with its obligations hereunder or ownership of the Property and P-MRNRD further agrees to pay all expenses in defending against any claims made against the City; provided, however, that P-MRNRD 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. P-MRNRD and the 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 either party.
- B. City covenants and agrees to indemnify and hold harmless P-MRNRD, 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 action of any kind and nature asserted by City 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 City on the Property or in connection with its obligations hereunder or ownership, operation or maintenance of the Property and City further agrees to pay all expenses in defending against any claims made against the P-MRNRD; provided, however, that City shall not be liable for any injury, damage or loss occasioned by the comparative negligence or willful misconduct of the P-MRNRD, its agents or employees. P-MRNRD and the 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 either party.

VII. INDEPENDENT CONTRACTOR

It is understood and agreed by and between P-MRNRD and City that any and all acts undertaken by P-MRNRD and 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 P-MRNRD shall each act in their individual capacities and not as agents, employees, partners, joint venturers 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:

- A. Neither P-MRNRD nor its personnel, employees, agents, contractors, or servants shall be entitled to any City benefits. The City shall not provide any insurance coverage to P-MRNRD or its employees including, but not limited to, workers' compensation insurance. P-MRNRD 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. P-MRNRD shall have no authority to bind the City by or with any contract or agreement, nor to impose any liability upon the City. All acts and contracts of P-MRNRD shall be in its own name and not in the name of the City, unless otherwise provided herein.
- B. Neither City nor any of its personnel, employees, agents, contractors, or servants shall be entitled to any P-MRNRD benefits. The P-MRNRD shall not provide any insurance coverage to City or its employees including, but not limited to, workers' compensation insurance. 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. City shall have no authority to bind P-MRNRD by or with any contract or agreement, nor to impose any liability upon P-MRNRD. All acts and contracts of City shall be in its own name and not in the name of P-MRNRD, unless otherwise provided herein.

VIII. GENERAL CONDITIONS

A. NONDISCRIMINATION

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

B. CAPTIONS

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

C. 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.

D. 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.

E. INTEREST OF THE P-MRNRD

P-MRNRD 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.

F. 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.

G. 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.

H. 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."

I. 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.

J. ASSIGNMENT

Neither P-MRNRD nor City may assign its rights under this Agreement without the express prior written consent of the other.

K. 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.

L. AUTHORIZED REPRESENTATIVE

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

1. City of Omaha
Steve Scarpello, Director
Parks, Recreation and Public Property Department
Omaha/Douglas Civic Center
1819 Farnam Street, Suite 701
Omaha, NE 68183
2. Papio-Missouri River Natural Resources District
John Winkler, General Manager
8901 S. 154th St.
Omaha, NE 68138-3621

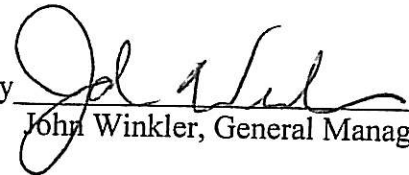
EXECUTED this 5th day of January, 2008⁹.

ATTEST:

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT



Steve Scarpello, Director

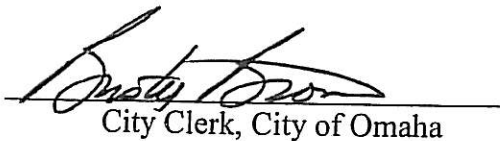
By 

John Winkler, General Manager

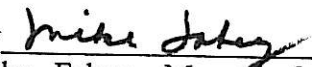
EXECUTED this 12 day of February, 2008⁹.

CITY OF OMAHA, a Municipal
Corporation

ATTEST:

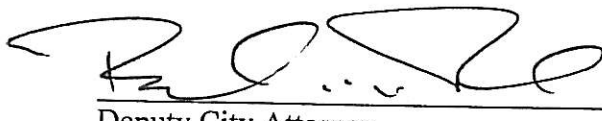


Dorothy Brown
City Clerk, City of Omaha

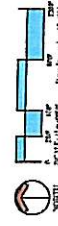
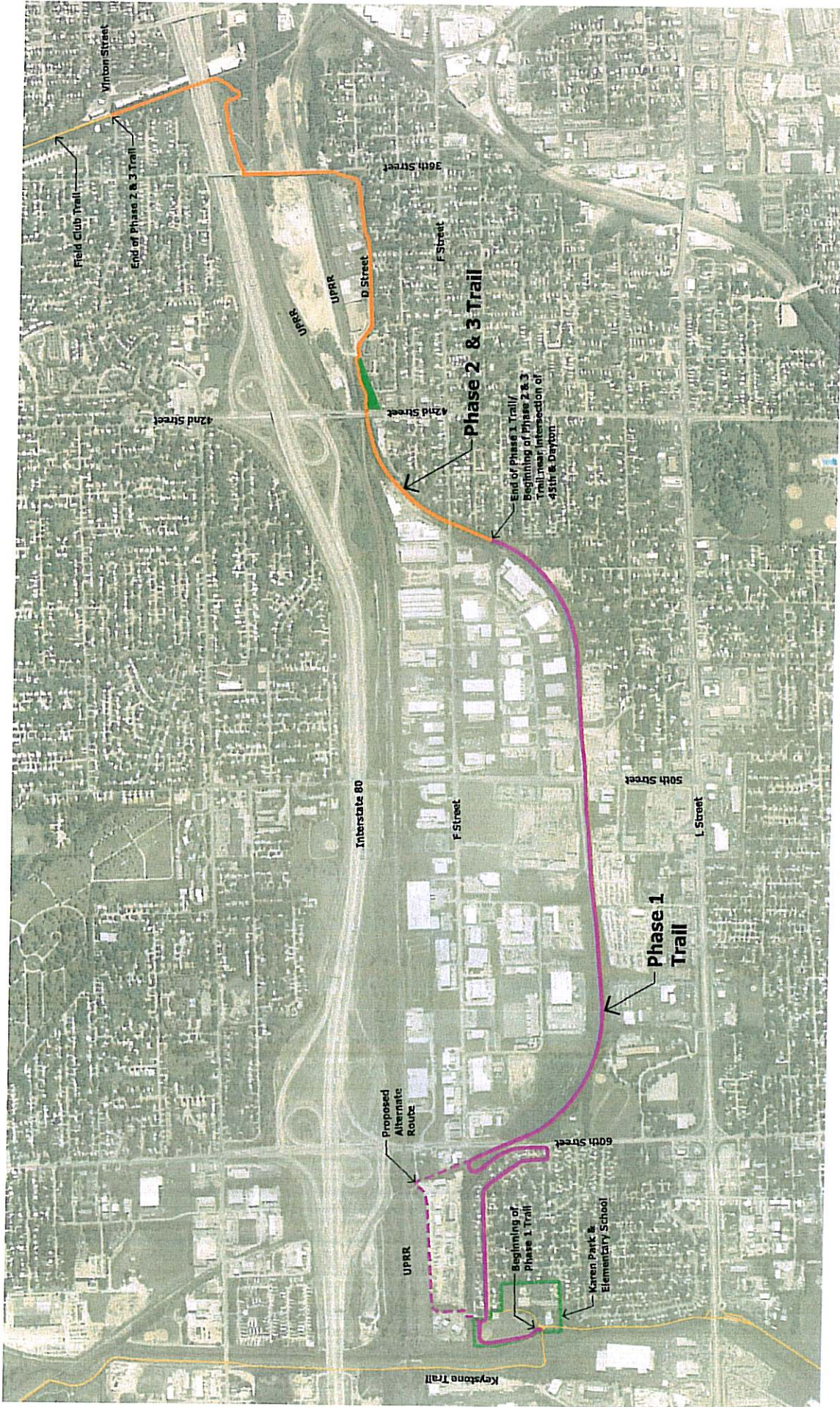
By 

Mike Fahey, Mayor of the City of
Omaha

APPROVED AS TO FORM:



Deputy City Attorney
1/22/09
A3sf



Attachment "A" Keystone Trail East Connector - Phases 1, 2 & 3 Omaha, Nebraska