

BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES
ITEMS FOR DISCUSSION AND ACTION\FISCAL, FACILITIES AND AUDIT

ACTION: **Approve Easements with City of Peru for 5th Street Improvements for Peru State College**

The City of Peru, Nebraska (the "City"), is conducting an extensive street and infrastructure improvement project. In addition to replacing the existing street pavement, the City is upgrading various street related facilities and infrastructure, including, improvements to the sidewalk system, street access driveways, and the storm sewer system.

Construction initially commenced on the City's street improvement project in other areas of town, but has now reached a portion of 5th Street (and a smaller portion of Hoyt Street) running through Peru State College's campus. Due to the fact some of the City's planned improvements extend beyond the boundary of the existing street onto property owned by Peru State College (as reflected on the easement exhibits), the City requested the Board of Trustees of Nebraska State Colleges grant an easement in order to allow the City the right to construct (and thereafter operate and maintain) its planned street and related infrastructure improvements.

The City requested two easements in association with this project: (i) a permanent forty-six (46) foot wide easement that will encompass the City's permanent street, facility, and infrastructure improvements, and (ii) a temporary, larger, sixty-six (66) foot wide construction easement. The larger temporary construction easement is needed for purposes of facilitating the City's construction efforts, and will automatically terminate within one (1) year (or sooner depending on the City's completion of construction).

Peru State College is not responsible for any of the construction activities, and all costs associated with the maintenance, repair, and replacement of the City's street and related facilities will be the City's obligation.

The System Office and Peru State College recommend approval of the Easement with City of Peru for 5th Street Improvements for Peru State College.

ATTACHMENTS:

- PSC - City of Peru NE - Road Easement Agreement (PDF)

ABOVE SPACE FOR RECORDER'S USE ONLY

Upon recording, return to:

Amy L. Lawrenson
Baird Holm LLP
1700 Farnam Street, Suite 1500
Omaha, NE 68102
Phone: 402-636-8261

RIGHT-OF-WAY EASEMENT AGREEMENT

THIS RIGHT-OF-WAY EASEMENT AGREEMENT (this "Agreement") is made and entered into this ____ day of _____ 2022 (the "Effective Date"), by and between the CITY OF PERU, NEBRASKA, a political subdivision of the State of Nebraska ("City"), and THE BOARD OF TRUSTEES OF NEBRASKA STATE COLLEGES, also known as the NEBRASKA STATE COLLEGE SYSTEM, d/b/a Peru State College ("College"). City and College are collectively referred to in this Agreement as the "Parties".

RECITALS

WHEREAS, College is the fee simple owner of that certain real property in the City of Peru, County of Nemaha, Nebraska, as legally described in **Exhibit "A"**, attached hereto and incorporated herein by this reference ("Burdened Parcel");

WHEREAS, City desires a permanent non-exclusive easement in order to construct, maintain, and operate a new roadway, sidewalks, driveways, and utility facilities in, over, through, across, under, and along certain portions of the existing 5th Street and Hoyt Street roadways located on the Burdened Parcel (collectively, the "Project");

WHEREAS, the Project, together with the Project Facilities and Easements, each as defined and set forth in this Agreement, are shown and further described on **Exhibit "A-1"**, attached hereto and incorporated herein; and

WHEREAS, College is willing to grant to City such permanent non-exclusive easement, as further defined and set forth in this Agreement.

NOW, THEREFORE, in consideration of the recitals set forth above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Grant of Easement.** College hereby grants to City, for purposes of constructing, repairing, maintaining, and operating the Project infrastructure, as further provided herein, the following easements in, over, through, across, under, and along the Burdened Property:

- a. **Right-of-Way Easement.** A permanent, non-exclusive right-of-way easement forty-six (46) feet in width (the "ROW Easement"), located in that certain area legally

described and depicted in **Exhibit "B"**, attached hereto and incorporated herein, for the purposes of owning, accessing, constructing, reconstructing, installing, replacing, operating, inspecting, maintaining, and repairing a roadway for use by the general public for purposes of vehicular and pedestrian access, ingress, and egress on, over, and across the Burdened Parcel, including sidewalks, driveways, public utility facilities, and any appurtenant facilities or infrastructure located within the boundary of the Project (collectively, the "Project Facilities"), as shown on **Exhibit "A-1"**.

- b. **Temporary Construction Easement.** For the period beginning on the Effective Date and terminating on the earlier to occur of City's delivery to College of written notice of termination, which City shall deliver within a reasonable time after completion of the initial construction of the Project on the Burdened Parcel, and one (1) year after the Effective Date, a non-exclusive temporary construction easement sixty-six (66) feet in width (the "Temporary Construction Easement"), located in that certain area legally described and depicted in **Exhibit "C"**, attached hereto and incorporated herein, for the purposes of accessing, constructing, reconstructing, installing, replacing, operating, inspecting, maintaining, and repairing the Project Facilities in the ROW Easement. City shall commence construction of the Project Facilities on the Burdened Parcel as soon as practical following the Effective Date of this Agreement, and shall thereafter diligently pursue the same until completion.
- c. **Access Easement.** A non-exclusive easement in, to, through, on, over, under, and across the Burdened Parcel in the area not to exceed the area covered by the ROW Easement (the "Access Easement") as reasonably necessary for the purpose of ingress and egress to the ROW Easement and, while in effect, the Temporary Construction Easement and for all purposes necessary and at all times convenient to exercise the rights granted to City pursuant to this Agreement.

The ROW Easement, Temporary Construction Easement, and Access Easement may be collectively referred to in this Agreement as the "Easements". The Easements shall include the right to work space for equipment and personnel on the Burdened Parcel, as reasonably necessary for any future repair and maintenance of the Project Facilities located on the Burdened Parcel. After completion of initial construction, City will provide College no less than thirty (30) days' notice prior to commencement of any activities on the Burdened Parcel in connection with City's use of the Easements. Said notice requirement shall not be applicable in cases of an emergency or immediate need to perform maintenance or repair of the Project Facilities, as determined by City, to protect health, safety, welfare, or property surrounding the Project. The Easements shall remain in full force and effect unless the Parties terminate or modify them by mutual written agreement.

2. **Construction; Property of City.** The Project Facilities constructed or otherwise installed on the Burdened Parcel pursuant to this Agreement shall be at City's sole cost and expense. Notwithstanding any rule of law or equity, unless otherwise sold, bartered, or conveyed to another party, the Project Facilities shall at all times remain the property of City. If City abandons or fails to repair or maintain the Project Facilities as required under this Agreement for a period of one (1) year, College may, in College's sole discretion, terminate the Easements by delivering thirty (30) days' advance written notice to City, and all rights granted to City under this Agreement shall revert to College and this Agreement shall be of no further force and effect.

3. **No Structures.** College shall not place or install, and shall not permit any third parties to place or install, any permanent structures, obstacles, or improvements, including, without limitation, any fences or barricades, within the ROW Easement that could reasonably interfere with the general public's use of the Project Facilities or City's exercise of rights and obligations under this Agreement, without the prior written approval of City.

4. **Rights Reserved.** College hereby reserves unto itself, and to any successor owner of the Burdened Parcel, the right to utilize the Burdened Parcel for such purposes as College sees fit in its

sole discretion. Notwithstanding the foregoing, College shall not make any use of the Burdened Parcel in any manner that would unreasonably conflict with or impair the ability of City to use the Easements.

5. **Repair and Maintenance.** City shall at all times be solely responsible, at its expense, for all costs to maintain, operate, repair, and replace all or any part of the Project Facilities. City may, at its expense, trim or remove or cause to be removed all trees, roots, vines, or vegetation in the ROW Easement, that may interfere with the safe use and operation of the Project Facilities; provided, however, City, at its expense, shall re-surface such portions of the ROW Easement with reasonable landscaping that will not otherwise interfere with the use and operation of the Project Facilities. City shall coordinate with College in advance for any repair and maintenance activities that shall restrict or block vehicular and pedestrian access, ingress, and egress on, over, and across the Burdened Parcel; provided, however, City shall exercise good faith efforts to conduct all repair and maintenance in a manner to eliminate or minimize any such restrictions. City, at its expense, shall maintain the roadways constructed as part of the Project Facilities in the same manner as all other streets owned and maintained by City in the City of Peru, Nebraska, including, but not limited to, reasonable efforts to timely remove snow and ice, repair potholes, and otherwise maintain in safe and useable condition. City, at its expense, shall be responsible for the repair of any damage caused to the Burdened Parcel caused by or associated with City's use of the Easements or exercise of its rights under this Agreement.

6. **Compliance with Applicable Law.** City represents, warrants, acknowledges, and agrees that the Project Facilities shall be constructed in a first class, professional and workmanlike manner, free of material defects and otherwise constructed in accordance with all applicable laws. Notwithstanding the foregoing, each Party represents and warrants it shall comply at all times with applicable laws in its performance of its rights and obligations under this Agreement.

7. **Authorization.** College represents and warrants that it owns the Burdened Parcel in fee simple, subject to easements, covenants, and restrictions of record, and that it has the authority to enter into this Agreement. The undersigned persons executing this Agreement both represent and certify that they have been fully empowered by proper resolution, statute, and/or state directive to execute and deliver this Agreement on behalf of College and City, as applicable, and that, with respect to College, all necessary actions for granting the Easements have been completed, as provided in Neb. Rev. Stat. §§ 72-812 thru 72-815.

8. **Indemnity.** Except to the extent caused by the gross negligence or intentional misconduct of College or its agents, employees, or representatives, City shall indemnify and hold College and its officers, directors, employees, and agents harmless from and against any and all claims, actions, damages, liability, or expense (including, without limitation, attorneys' fees, consultant fees and expert fees, and damages) (collectively, "Claims") related to the loss of life, personal injury, damages to human health or the environment, and/or damage to property arising from: (a) City's use of the Easements and the construction, repair, maintenance, and continued operation of the Project Facilities, including, without limitation those related to hazardous substances, or other harmful materials in or related to the Project Facilities; (b) City's breach or default in the performance of any obligation to be performed under this Agreement ;or (c) any gross negligence or intentional misconduct of any officer, contractor, agent, or employee of City. The foregoing indemnities shall survive the expiration or earlier termination of this Agreement and the Easements granted hereunder with respect to any Claims arising under this Agreement.

9. **Enforcement.** The provisions of this Agreement may be enforced by an action for injunctive relief, as well as by an action for damages. Except as otherwise provided under Section 2, no breach of any provision of this Agreement by any party shall give the other party the right to cancel, rescind, or otherwise terminate this Agreement, but this provision shall not be deemed to affect any other rights or remedies which the non-breaching party may have, or claim to have, by reason of the breach.

10. **Miscellaneous.**

- a. **Governing Law.** The law governing this Agreement shall be that of the State of Nebraska.
- b. **Binds Successors, Assigns, and Heirs.** This Agreement shall run with the land and shall be binding upon, and inure to the benefit of the Parties hereto, their successors, assigns, personal representatives, devisees, and heirs.
- c. **Notice.** Any notice or other communication required or permitted under this Agreement shall be in writing and shall be either personally delivered, transmitted by facsimile, or transmitted by registered or certified mail, return receipt requested, postage prepaid, addressed to the Parties as follows:

City: City of Peru
Attn: _____
614 5th Street
Peru, NE 68421

College: Nebraska State College System
Attn: General Counsel
1327 H Street, Suite 200
Lincoln, NE 68508

The date of the notice or communication shall be deemed to be the date of receipt of delivered personally, the date of receipt with confirmed answer back if transmitted by electronic mail and received during business hours (or otherwise on the next business day), or the date of the receipt or refusal of delivery if transmitted by mail. Any party may change the address for notice by giving notice to the other party in accordance with this Section.

- d. **Prior Agreements and Amendments.** This Agreement, including all Exhibits attached hereto, represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment duly executed by the Parties to this Agreement.

[Signatures on the following page.]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

CITY:

CITY OF PERU, NEBRASKA, a municipal
corporation

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this ____ day of _____ 2022
by _____, in his/her capacity as _____ of CITY OF PERU, NEBRASKA, on
behalf of City.

Notary Public

Affix seal here

COLLEGE:

THE BOARD OF TRUSTEES OF NEBRASKA
STATE COLLEGES, also known as the NEBRASKA
STATE COLLEGE SYSTEM, d/b/a Peru State
College

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this ____ day of _____ 2022
by _____, in his/her capacity as _____ of THE BOARD OF TRUSTEES OF
NEBRASKA STATE COLLEGES, also known as NEBRASKA STATE COLLEGE SYSTEM, d/b/a Peru
State College, on behalf of College.

Notary Public

Affix seal here

EXHIBIT "A"

LEGAL DESCRIPTION OF BURDENED PARCEL

THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 6 NORTH, RANGE 15 EAST OF THE 6TH
P.M., VILLAGE OF PERU, NEMAHA COUNTY, NEBRASKA.

EXHIBIT "A-1"

DEPICTION AND DESCRIPTION OF PROJECT, PROJECT FACILITIES & EASEMENTS

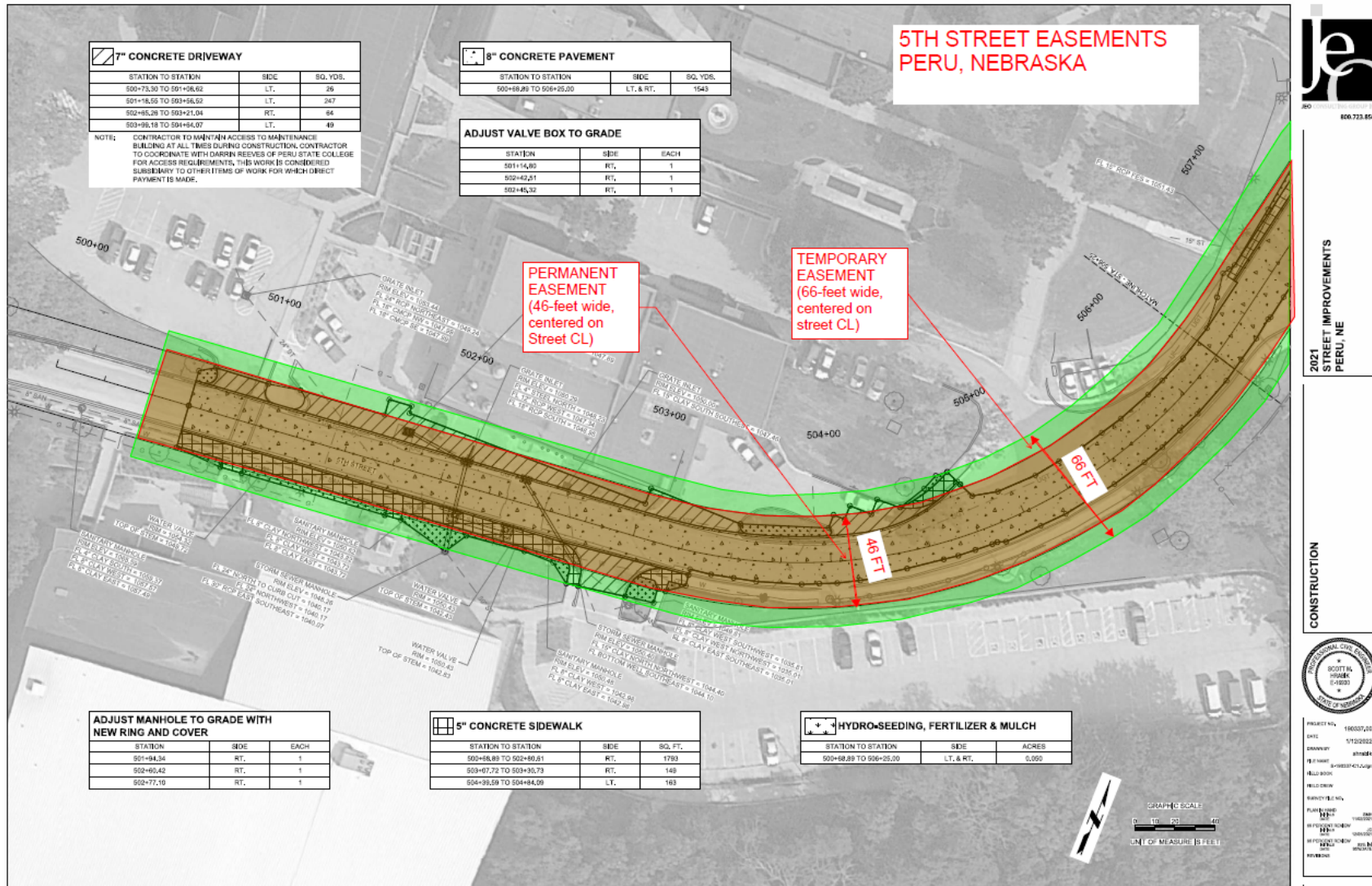


EXHIBIT "A-1" (CONTINUED)

DEPICTION AND DESCRIPTION OF PROJECT, PROJECT FACILITIES & EASEMENTS

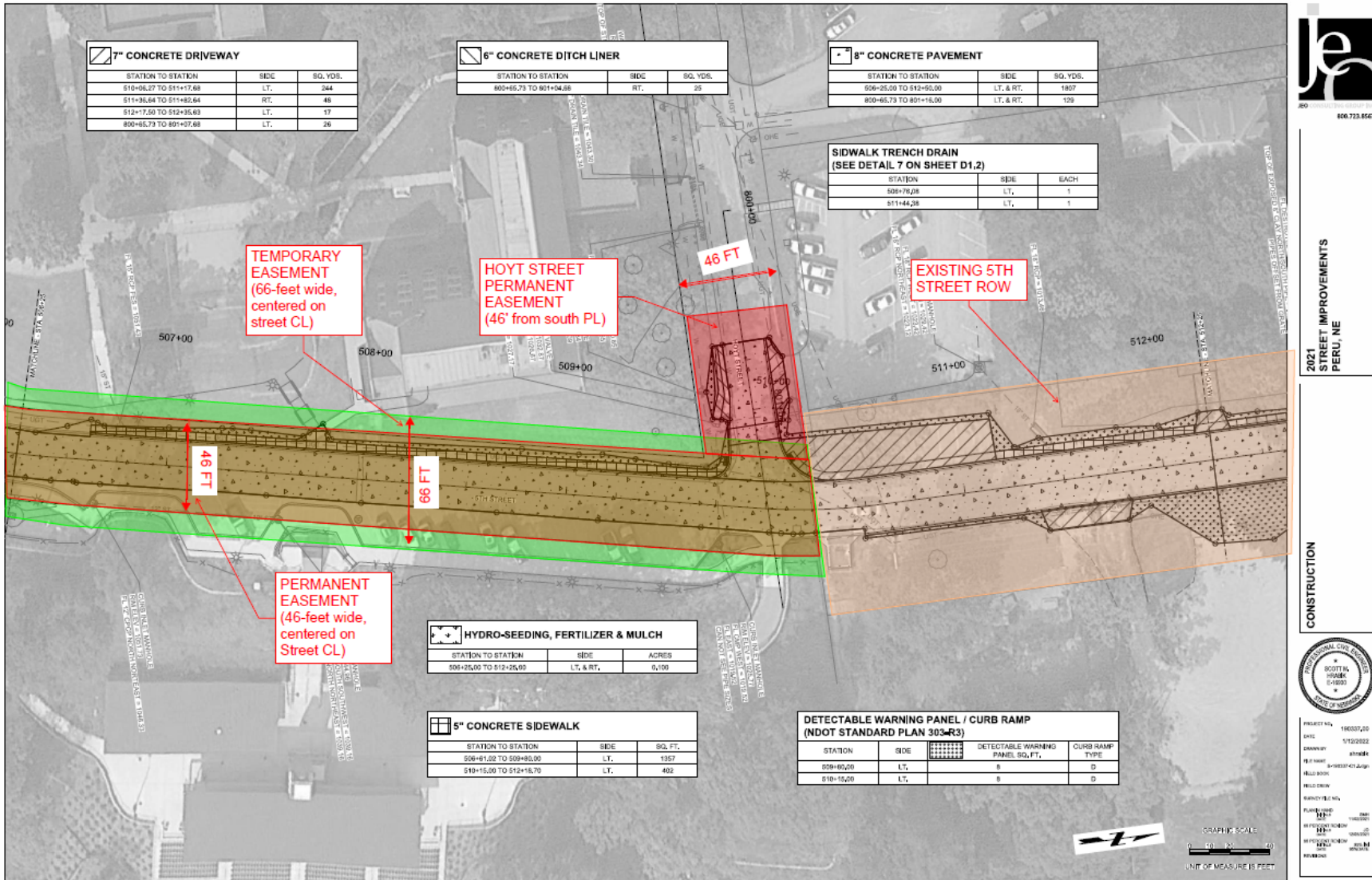
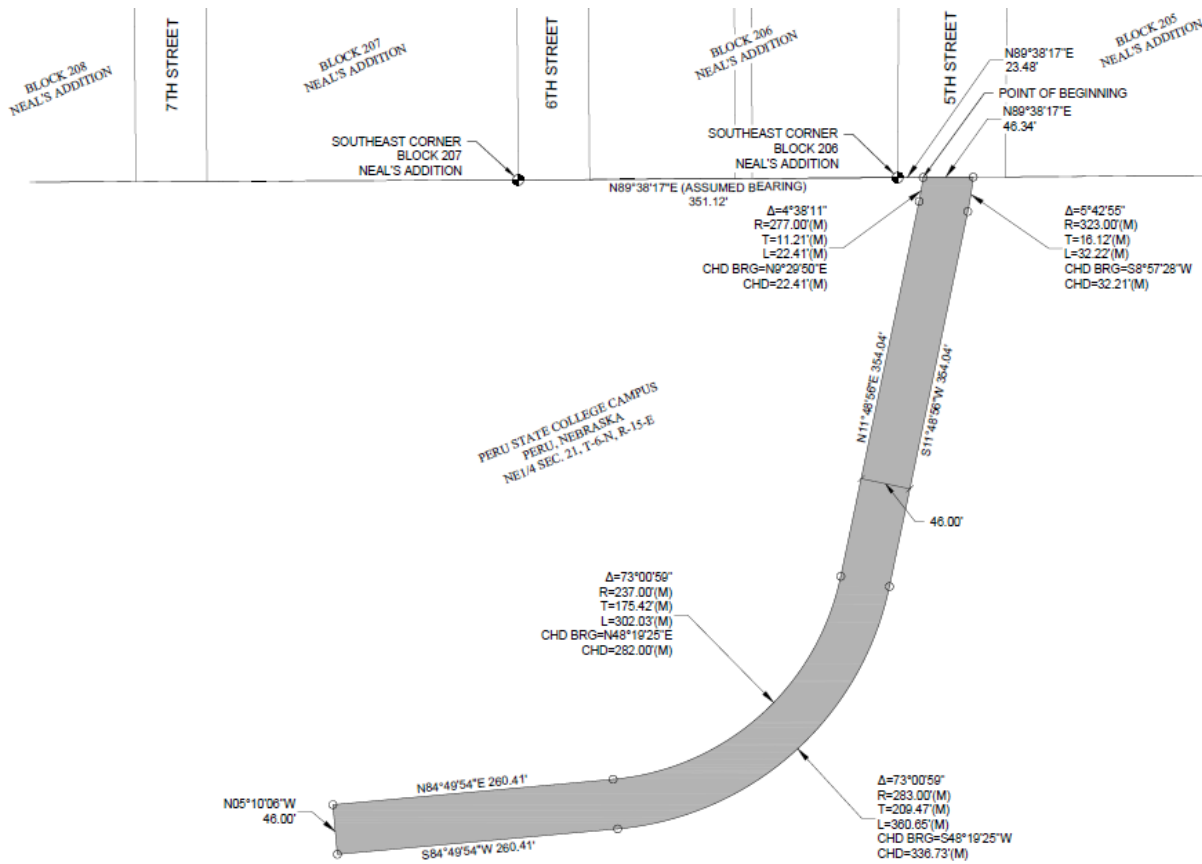


Exhibit A-1

EXHIBIT "B"

LEGAL DESCRIPTION OF ROW EASEMENT



EASEMENT EXHIBIT
PERMANENT EASEMENT

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 6 NORTH, RANGE 15 EAST OF THE 6TH P.M., VILLAGE OF PERU, NEMAHA COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 207, NEAL'S ADDITION TO THE VILLAGE OF PERU; THENCE N89°38'17"E ASSUMED BEARING ON THE SOUTH LINE OF SAID NEAL'S ADDITION, 351.12 FEET TO THE SOUTHEAST CORNER OF BLOCK 206 OF SAID NEAL'S ADDITION; THENCE CONTINUING N89°38'17"E ON SAID SOUTH LINE, 23.48 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N89°38'17"E ON SAID SOUTH LINE 46.34 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ON A 323.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 32.22 FEET, THE CHORD OF SAID CURVE BEARS S08°57'28"W, 32.21 FEET; THENCE S11°48'56"W, 354.04 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ON A 283.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 360.65 FEET, THE CHORD OF SAID CURVE BEARS S48°19'25"W, 336.73 FEET; THENCE S84°49'54"W, 260.41 FEET; THENCE N05°10'06"W, 46.00 FEET; THENCE N84°49'54"E, 260.41 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ON A 237.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF 302.03 FEET, THE CHORD OF SAID CURVE BEARS N48°19'25"E, 282.00 FEET; THENCE N11°48'56"E, 354.04 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ON A 277.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF 22.41 FEET TO THE POINT OF BEGINNING, THE CHORD OF SAID CURVE BEARS N09°29'50"E, 22.41 FEET, CONTAINING 1.03 ACRES, MORE OR LESS.

EXHIBIT NOTE:
THIS SKETCH HAS BEEN PREPARED FOR EASEMENT EXHIBIT PURPOSES ONLY AND DOES NOT CONSTITUTE A BOUNDARY SURVEY.

NOTE: ALL BEARINGS ARE ASSUMED.
GRAPHIC SCALE

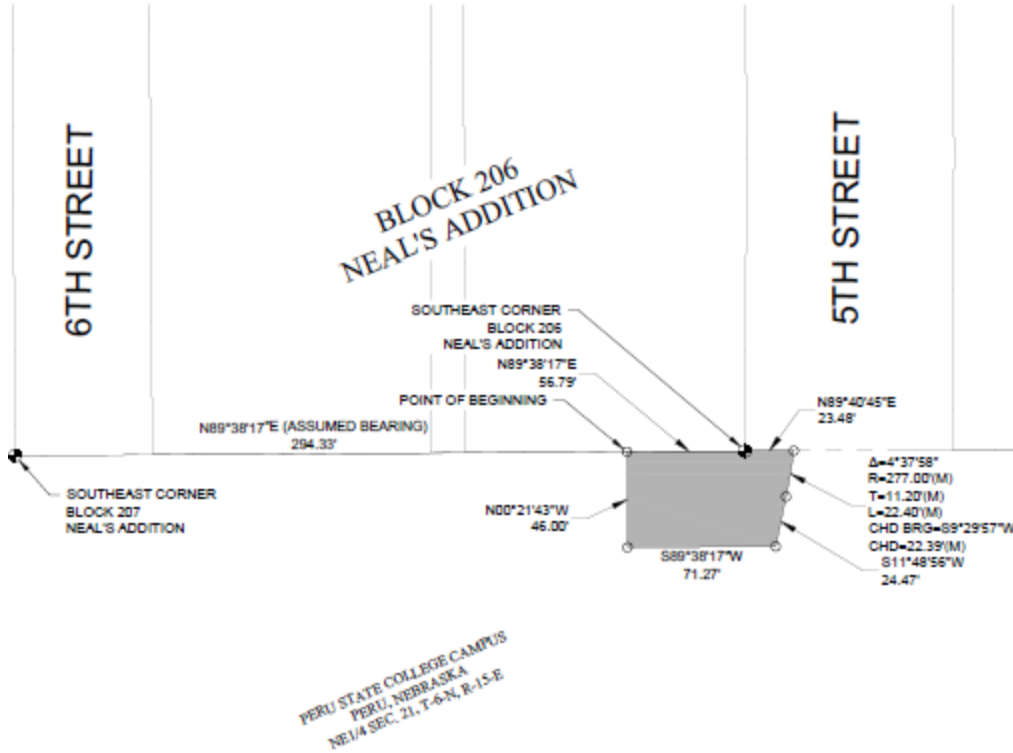


J&B CONSULTING GROUP, INC.
800.723.8567
Nebraska City, NE 402.873.6766
www.j&b.com

DATE	2/3/2022
SCALE	1" = 100'
DRAWN	RMO
DATE	2/19/2022
FIELD BOOK	NEMAHA CO.
FIELD WORK	RT/H
SHEET	1 OF 1
FILE NO.	000000

EXHIBIT "B" (CONTINUED)
LEGAL DESCRIPTION OF ROW EASEMENT

EASEMENT EXHIBIT
PERMANENT EASEMENT



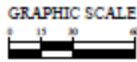
PERU STATE COLLEGE CAMPUS
PERU, NEBRASKA
NE 1/4 SEC. 21, T-6-N, R-15-E

EXHIBIT NOTE:

THIS SKETCH HAS BEEN PREPARED FOR EASEMENT EXHIBIT PURPOSES ONLY AND DOES NOT CONSTITUTE A BOUNDARY SURVEY.

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 6 NORTH, RANGE 15 EAST OF THE 6TH P.M., VILLAGE OF PERU, NEMAHA COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 207, NEAL'S ADDITION TO THE VILLAGE OF PERU; THENCE N89°38'17\"/>

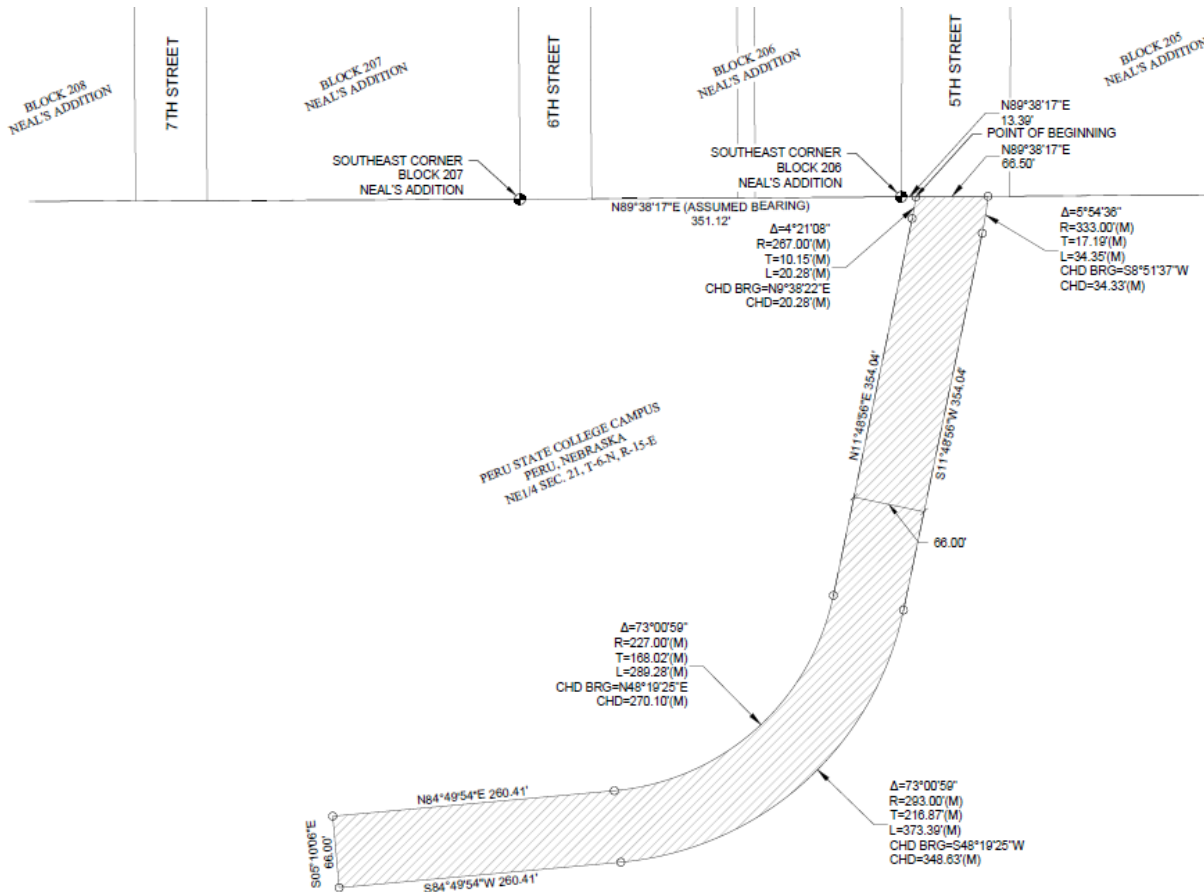


NOTE: ALL BEARINGS ARE ASSUMED.

DATE	2/3/2022
SCALE	1" = 60'
DRAWN	RMO
JOB NO.	R190337.00
FIELD BOOK	NEMAHA CO.
FIELD WORK	KTAH
SHEET	1 OF 1
FILE NO.	000000
 J&E CONSULTING & SURVEYING 800.723.8567 Nebraska City, NE 68283.6756 www.je.com	

EXHIBIT "C"

LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT



EASEMENT EXHIBIT
TEMPORARY EASEMENT

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 6 NORTH, RANGE 15 EAST OF THE 6TH P.M., VILLAGE OF PERU, NEMAHIA COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 207, NEAL'S ADDITION TO THE VILLAGE OF PERU; THENCE N89°38'17"E ASSUMED BEARING ON THE SOUTH LINE OF SAID NEAL'S ADDITION, 351.12 FEET TO THE SOUTHEAST CORNER OF BLOCK 206 OF SAID NEAL'S ADDITION; THENCE CONTINUING N89°38'17"E ON SAID SOUTH LINE, 13.39 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N89°38'17"E ON SAID SOUTH LINE 66.50 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ON A 333.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 34.35 FEET, THE CHORD OF SAID CURVE BEARS S08°51'37"W, 34.33 FEET; THENCE S11°48'56"W, 354.04 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ON A 293.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 373.39 FEET, THE CHORD OF SAID CURVE BEARS S48°19'25"W, 348.63 FEET; THENCE S84°49'54"W, 260.41 FEET; THENCE N05°10'06"W, 66.00 FEET; THENCE N84°49'54"E, 260.41 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ON A 227.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF 289.28 FEET, THE CHORD OF SAID CURVE BEARS N48°19'25"E, 270.10 FEET; THENCE N11°48'56"E, 354.04 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ON A 267.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF 20.28 FEET TO THE POINT OF BEGINNING, THE CHORD OF SAID CURVE BEARS N09°38'22"E, 20.28 FEET, CONTAINING 1.47 ACRES, MORE OR LESS.

$\Delta=73^{\circ}00'59''$
 $R=227.00'(M)$
 $T=168.02'(M)$
 $L=289.28'(M)$
CHD BRG= $N48^{\circ}19'25''E$
CHD= $270.10'(M)$

$\Delta=73^{\circ}00'59''$
 $R=293.00'(M)$
 $T=216.87'(M)$
 $L=373.39'(M)$
CHD BRG= $S48^{\circ}19'25''W$
CHD= $348.63'(M)$

EXHIBIT NOTE:
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AND DOES NOT CONSTITUTE A BOUNDARY SURVEY.

NOTE: ALL BEARINGS ARE ASSUMED.
GRAPHIC SCALE
0 25 50 100 200

DATE	2/9/2022
SCALE	1" = 100'
DRAWN BY	RMO
JOB NO.	R190337.00
FIELD BOOK	NEMAHIA CO.
FIELD WORK	NT/HH
SHEET	1 OF 1
FILE NO.	000000

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