
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

WATER LINE EASEMENT AGREEMENT

THIS WATER LINE 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, legally described as Lot 4 of 16 In the Southwest Quarter of Section 21, Township 6 North, Range 15 East of the Sixth P.M., Nemaha County, Nebraska, and also described in Exhibit A, attached hereto and incorporated herein by this reference ("Burdened Parcel");

WHEREAS, City desires a temporary construction easement, and a permanent easement (collectively, the "Easements" further defined below), in order to construct, install, inspect, operate, test, repair, maintain, use, rebuild, relocate, remove and replace the Pipeline Facilities (defined below) for the purpose of transporting water for the public good;

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

WHEREAS, College is willing to grant to City such temporary and permanent easements, as further defined and set forth in this Agreement.

NOW, THEREFORE, in consideration of the recitals set forth above and for \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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

A. Permanent Easement. The area covered by the Permanent Easement is shown in the attached Exhibit A. The rights, privileges and responsibilities granted to City with respect to the Permanent Easement are as follows:

- i) The permanent and perpetual right to enter upon the Permanent Easement for the purposes hereinafter set forth provided that the Permanent Easement shall terminate and all rights of City shall automatically revert back to the College upon permanent abandonment of the Permanent Easement for the purpose of transporting water for the public good.
- ii) The right to perform archeological surveys, land surveys, conduct soil tests, site preparation and other activities related to preparation for construction.
- iii) The right, at the sole cost and expense of City, to erect, construct, install, inspect, operate, test, repair, maintain, use, rebuild, relocate, remove and replace: (1) one (1) pipeline and connections for the transmission and distribution of raw and treated water; (2) air release, blow off, or in-line valves or other appurtenances, including buried vaults; (3) communication lines used to operate the Pipeline Facilities (as hereinafter defined); (4) electric lines for the transmission of electricity to operate the Pipeline Facilities (as hereinafter defined); (5) other fixtures, equipment, machinery and devices (including, without limitation, cathodic protection equipment and devices and anodes, conduit connecting junction boxes, test sites, stations, rectifier and electrical power service) used or useful in the construction, installation, operation, testing, repair, maintenance, replacement and use of such pipeline (such pipeline, connections, valves, communication lines, electric lines, fixtures, equipment, machinery and devices being herein collectively called the "Pipeline Facilities").
- iv) The Pipeline Facilities, including above-ground improvements, to be constructed in the Permanent Easement Parcel during the Initial Construction Period shall be as shown in the attached exhibit. In the event City determines to construct Pipeline Facilities including above-ground improvements which are materially different than those shown in such separate documentation, whether during the Initial Construction Period or in the future, City shall give notice to College, collaborate with College on the scope and placement of material changes, and shall give College additional reasonable compensation for same.
- v) City shall have commercially reasonable access to the Permanent Easement Parcel during the Initial Construction Period and pay the College reasonable compensation for same. In the event construction activities result in the removal of a planted crop, City shall pay additional reasonable compensation to College. Following the Initial Construction Period, City, at City's sole cost and expense, shall have commercially reasonable access to and from the Pipeline Facilities, including the ability to use

sand, gravel or other materials to support pedestrian or vehicular access on a temporary basis, provided City shall restore the property to its prior condition to the extent practical and, further, City shall pay College additional reasonable compensation for any damages resulting from such access.

- vi) City shall have the right to cut down, trim, control the growth of or eliminate trees, shrubbery and other plant growth within the Permanent Easement Parcel, which City deems appropriate to properly construct, operate and maintain the Pipeline Facilities and to eliminate present or future hazards to the use thereof; provided, however, that (1) City may not cut down any trees, shrubbery or other plant growth planted with the approval of City, except in an emergency; (2) following the Initial Construction Period as defined below, and except in the case of an emergency, City shall notify the College of any such maintenance work in advance and consult with College with respect to the time, place and method of such work; and (3) at the College's request City will refrain from the use of chemical methods of controlling vegetation.
- vii) The rights, privileges and easements granted herein are assignable and may be exercised by City, its successors and assigns, and its and their respective employees, agents and contractors and any party expressly permitted by City to exercise such rights, privileges and easements, including, without limitation, any members of City, and any such party's employees, agents and contractors, provided that any assignment shall be for water transmission and related purposes set forth in this easement and that City shall not assign its rights to any party that is not utilizing the easement to provide water for the public benefit.
- viii) The rights, privileges and easements acquired by City are and shall be subject to easements, reservations and restrictions of record, if any, existing on the date of this easement.

B. Temporary Construction Easement. College hereby grants to City a temporary construction easement ("Temporary Easement") with respect to the area labeled Temporary Easement in the attached Exhibit A. The rights, privileges and responsibilities of City with respect to the Temporary Easement are described as follows:

- i) The term of the Temporary Easement shall be for a maximum of two (2) years commencing from the date construction begins until City provides College with written notice of completion of Initial Construction (the "Initial Construction Period"). The Initial Construction Period shall begin when a significant amount of soil is removed or disturbed and does not include survey work, soil testing or other such preliminary activities. College agrees not to construct or erect any permanent buildings, fixtures or other improvements within the Temporary Easement until the Initial Construction Period is completed. The Temporary Easement shall automatically terminate upon the expiration of the Initial Construction Period.
- ii) City shall have the right, during the Initial Construction Period, to enter upon the Temporary Easement with such personnel, vehicles and equipment as City deems necessary or appropriate for construction and installation of Pipeline Facilities. City shall have the right to remove any crops, trees, bushes or improvements within the Temporary Easement necessary for initial construction purposes.

- iii) City shall provide College with advance notice of the approximate date when construction will commence on the Temporary Easement and consult with the College in regard to minimizing inconvenience and any crop loss during the Construction Period.

2. **City's Responsibility.**

A. City shall restore the surface of the construction area to its original contour and character as nearly as practicable. City shall employ accepted methods to prevent surface erosion of the construction area. City shall repair or relocate any agricultural drain tiles which require repair or relocation due to the construction of the Pipeline Facilities.

B. Unless otherwise instructed by the College, City shall cause the topsoil to be removed separately during the construction of the pipeline to a depth of up to twenty-four (24) inches or the actual topsoil depth, whichever is less, and to be replaced at the top of the backfill over the pipe trench. City shall segregate the topsoil on the Easement Parcels. City shall exercise due care with respect to the selection of backfill to be used in covering the pipe trench, and other areas affected by construction. City shall remove all excess backfill materials or, at the request of the College, deposit such excess backfill material elsewhere on the contiguous property of the College.

C. During construction suitable crossovers shall be installed over the pipe trench as needed by the College. All fences that are cut or disturbed shall be repaired by City in a good and commercially reasonable manner. Before a fence is cut by City, it shall be properly supported on either side of the contemplated opening by suitable posts and braces and temporary gates shall be provided at fence openings where required.

D. City shall provide the College with at least seven (7) days' advance notice of entry onto the Easements for purposes of maintenance or repair of the Pipeline Facilities, except in the case of an emergency, in which case City shall provide such notice as practicable under the circumstances.

E. City shall construct, install and operate the Pipeline Facilities in a good and commercially reasonable manner, and in compliance with all applicable governmental laws, ordinances, codes, rules, regulations and requirements.

F. City shall restore and maintain the pipe trench area and other areas affected by construction or City's post-construction activities on the Easements as necessary to remedy problems relating to soil compaction or otherwise attributable to the Pipeline Facilities. City shall be responsible for any reduction in crop yield caused by the initial construction or any subsequent maintenance, repair or other activities of City on the Easements after the Initial Construction Period. College may submit a claim to City on an annual basis supported by reasonable documentation and City shall promptly review and pay all valid claims.

3. **Governing Law.** This Agreement is to be construed and enforced according to and governed by the laws of the State of Nebraska.

4. **Notices.** 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.

5. **Prior Agreements and Amendments.** This Agreement, including Exhibit A 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
6. **Time.** Time is of the essence in the performance of the obligations required to be done by the parties hereto.
7. **Easements to Run With the Land.** The easements granted herein shall run with the land and shall inure to the benefit of and be binding upon College and City, and their respective heirs, representatives, successors and assigns.
8. **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.
9. **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.

10. **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.

11. **Enforcement.** The provisions of this Agreement may be enforced by an action for injunctive relief, as well as by an action for damages. 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.

IN WITNESS WHEREOF, College and Grantee have caused this Agreement to be duly executed as of the date first written above.

[Signatures on the following pages.]

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.

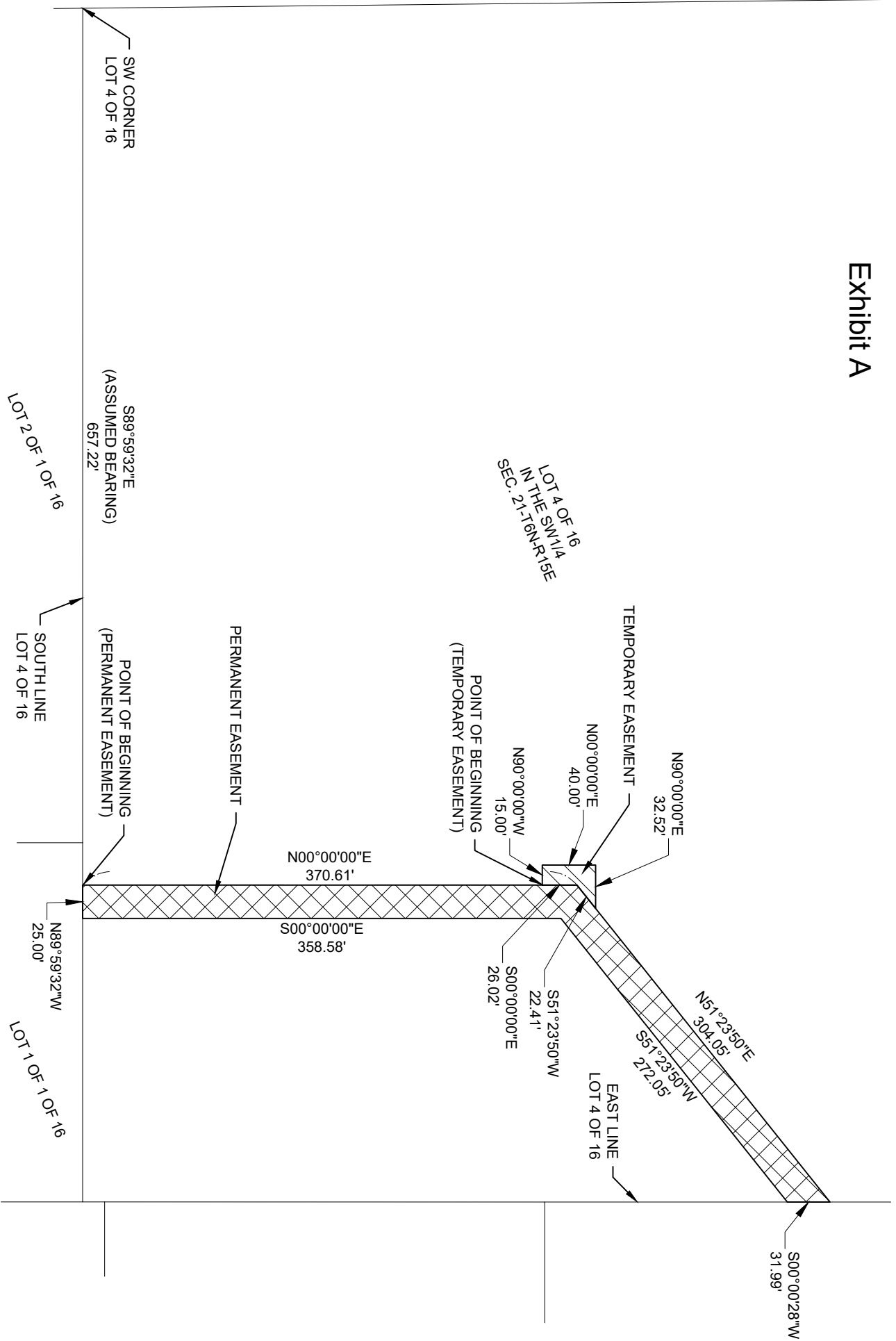
Notary Public

Affix seal here

EXHIBIT A

(Legal Description of the Easements and Engineering Drawing)

Exhibit A



LEGAL DESCRIPTIONS:

PERMANENT EASEMENT

A PARCEL OF LAND LOCATED IN LOT 4 OF 16 IN THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 6 NORTH, RANGE 15 EAST OF THE SIXTH P.M., NEMAHA COUNTY, NEBRASKA, BEING DESCRIBED AS FOLLOWS: REFERRING TO THE SOUTHWEST CORNER OF SAID LOT 4 OF 16: THENCE S89°59'32\"/>

TEMPORARY EASEMENT

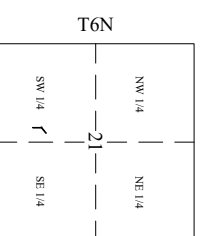
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- LEGEND**
- MONUMENT FOUND
 - MONUMENT SET
 - CALCULATED POINT
 - D DEEDED DISTANCE
 - G GOVERNMENT DISTANCE
 - M MEASURED DISTANCE
 - P PLATTED DISTANCE
 - R RECORDED DISTANCE



VICINITY SKETCH
NEMAHA COUNTY
NEBRASKA



PERMANENT WATER MAIN EASEMENT & TEMPORARY CONSTRUCTION EASEMENT

**LOT 4 OF 16
IN SW1/4
SEC. 21-T6N-R15E OF THE SIXTH P.M.
NEMAHA COUNTY, NEBRASKA**



PROJECT NO. 191141.06
DATE 9/20/2021
DRAWN BY AWH
FILE NAME 191141.06 EASEMENT PERU.dwg
FIELD BOOK NEMAHA CO. #4
FIELD CREW JG/DF
SURVEY FILE NO. TRACT 32

NOTE: ALL BEARINGS ARE ASSUMED.

