

JJ-L 474-1153 1-27-66

THIS AGREEMENT, executed in duplicate, *March 1*, 1966, by and between MISSOURI PACIFIC RAILROAD COMPANY, a Missouri corporation, hereinafter called "Carrier", and the COUNTY OF DOUGLAS, a political subdivision of the State of Nebraska, to be addressed at Omaha, Nebraska, hereinafter called "County", WITNESSETH:

R E C I T A L S:

County, as a part of its overall program for flood control and for the solution of the public water pollution problem in the area, has entered into arrangements with the United States of America whereby the United States will clean and improve the channel of Little Papillion Creek at Omaha and County will, among other things, secure and furnish all necessary land easements or rights-of-way required in order to carry out such proposed work of cleaning and improving the aforementioned channel, as well as work incidental thereto.

Little Papillion Creek parallels Carrier's right-of-way and tracks in the vicinity of the proposed project, near Grover and 66th Streets in Omaha, Douglas County, Nebraska.

County has requested of Carrier (a) an easement in and to a specific portion of Carrier's right-of-way, lying between E.C.S. 10625+27 and 10585+78 and for which grant County is willing to pay the sum of \$2,892.00, for the purposes of cleaning, improving and thereafter maintaining the channel of said Little Papillion Creek thereat and of constructing and thereafter maintaining two proposed 6" sewer siphons beneath and across said portion of Carrier's right-of-way, as well as an easement for the latter purpose beneath and across Carrier's adjacent right-of-way, and tracks thereover, at E.C.S. 10622+67, and (b) license and permission to extend existing culverts under Carrier's right-of-way and tracks opposite channel stations 330+30 and 340+00, to all of which Carrier is agreeable solely upon the terms and conditions hereinafter set forth; the parties hereto desire to set forth in writing their agreement with respect thereto.

NOW, THEREFORE, in consideration of the premises and of the promises and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

1. Carrier hereby grants, but solely to the extent of its right, title and interest, without any warranty, express or implied, to County, its successors and assigns:

(a) for and in consideration of the sum of \$2,892.00 and other good and valuable consideration, an Easement over, along and across

JJ-L 474-1153 1-27-66

the following described property of Carrier situate in Douglas County, Nebraska, in Omaha, near Grover and 66th Streets, together with free ingress and egress to and from said property, for the purposes (i) of cleaning, improving, riprapping and thereafter maintaining the channel of Little Papillion Creek therealong between E.C.S. 10625+27 and 10585+78, southward, from the center line of Grover Street, a distance of approximately 3,950 feet, (ii) of constructing and thereafter maintaining portions of two proposed 6" sewer siphons beneath and across a portion of said property, at E.C.S. 10622+67, and (iii) of carrying out necessary work incidental thereto thereon, said property being more particularly described as follows:

Parcel "A"

Beginning at the intersection of Carrier's easterly right-of-way line and the east-west center line of Section 36, Township 15 North, Range 12 East, Douglas County, Nebraska, thence southwardly along said easterly right-of-way line, 3,951.6 ft., more or less; thence westwardly 25 feet, more or less, to a point distant 25 feet eastwardly from the center line of Carrier's main track measured at right angles thereto; thence northwardly parallel to said main track 3,950.3 feet, more or less, to said east-west center line of said Section 36, Township 15 North, Range 12 East; thence eastwardly 25 feet, more or less, to the point of beginning, containing 98,738 square feet, more or less.

Approximate location of the aforescribed longitudinal Easement is shown enclosed by green lines and designated "Parcel A" on Carrier's Omaha Division white print, File No. D-4396, prepared in Office of Assistant Engineer, Kansas City, Missouri, dated July 19, 1965, marked Exhibit "A", and attached hereto as part hereof.

(b) for and in consideration of the sum of \$1.00 and other good and valuable consideration, an Easement over and across the following described property of Carrier situate in Douglas County, Nebraska at Omaha, adjacent to the above described Parcel A, at E.C.S. 10622+67, together with free ingress and egress to and from said property, for the purpose of constructing and thereafter maintaining thereon the portions of the two above-mentioned proposed 6" sewer siphons located off of and adjacent to Parcel A and for the purpose of carrying out necessary incidental work over and across said property being more particularly described as follows:

Parcel "B"

From the intersection of the east and west center line of Section 36, Township 15 North, Range 12 East, and Carrier's easterly right of way line measure southwardly along said right of way line 225 feet; thence, at right angles to last described course, westwardly 25 feet, to the point of beginning; thence, measure westwardly along the last described course, 13 feet, to a point distant 12 feet eastwardly from the center line of Carrier's Main Track measured at right angles thereto; thence,

JJ-L 474-1153 1-27-66

southwardly 40 feet parallel to said Main Track; thence eastwardly at right angles to last described course, 13 feet, to point in westerly line of the above described Parcel "A"; thence northwardly, along said westerly line of Parcel "A", 40 feet, to point of beginning, containing 520 square feet, more or less.

Approximate location of the above described Easement property is shown enclosed by yellow lines and designated Parcel B on Exhibit "A". Said Easements hereinabove granted are sometimes hereinafter collectively referred to as "Easements". The aforescribed parcels of land and tracks thereon are sometimes hereinafter collectively referred to as "Easement Premises".

This grant of Easements is made subject and subordinate to the present and future right in Carrier, its successors and assigns, lessees and licensees, to maintain, use, operate and renew on, beneath or above the surface of Easement Premises any telephone, telegraph, power, communication or signal lines, poles and/or appurtenances, tracks, roadways, pipe lines, and other structures or facilities of similar or different character, hereinafter collectively referred to as "Improvements", as now located; and to construct, install and thereafter maintain, use, operate and renew on, beneath or above surface of Easement Premises any or all of said Improvements, provided the same do not materially interfere with or materially impair County's use of Easement Premises as hereinabove provided.

TO HAVE AND TO HOLD said Easements unto County for so long as Easement Premises shall be used for the purposes aforesaid, it being expressly stipulated, however, that if County, its successors or assigns, shall abandon the use of said Easement Premises, or any part thereof, for such purposes, the Easements herein granted, as to the portion or portions so abandoned, shall expire and terminate at the time each such portion shall be so abandoned; whereupon Carrier shall have the same complete title to Easement Premises so abandoned as though these presents had never been executed and the right to enter thereon and exclude County, its successors or assigns, therefrom.

2. Carrier, solely to the extent of its right, title and interest, without warranty, express or implied, further hereby grants and County hereby accepts license and permission for County, County's agents, employes and contractors, and the agents and employes of such contractors, to enter and be upon and across certain of Carrier's right-of-way at channel stations 330+30 and 340+00 as indicated on Exhibit "A" for the purpose of extending existing culverts at those points across and beneath said right-of-way, being a portion of Easement Premises and also a portion of said right-of-way situated adjacent to such Easement Premises, said adjacent portion of right-of-way being generally hereinafter referred to as "Licensed Premises".

The aforementioned license and permission are granted subject and subordinate to the right in Carrier, its lessees and licensees, to construct, reconstruct, operate, maintain, repair and renew on, beneath or above Licensed Premises any telephone, telegraph, power and signal lines and poles, tracks, roadways, pipe lines, structures, buildings and facilities of similar or different character as are now or in the future may be located on, beneath or above Licensed Premises.

The license and permission granted in this paragraph 2 shall begin with the date first hereinabove written and continue thereafter until completion of the work of extending said existing culverts and County shall notify Carrier in writing of such completion.

ARTICLE II

1. As to any work performed on Easement Premises or Licensed Premises by County with its own forces or by County's contractor or by County's agent, the United States of America, through its Corps of Engineers, or by said agent's contractor, County hereby agrees, without any cost or expense to Carrier, to furnish or cause to be furnished all necessary labor, materials and equipment and to perform or cause to be performed all the work (a) of cleaning, improving and riprapping the channel of Little Papillion Creek between E.C.S. 10625+27 and 10585+78 at Omaha in accordance with plans No. MPC 2-34OE 3.1 and MPC 2-34OE 4.1 prepared by the Corps of Engineers as exhibits to their contract No. DA-25-066-CIVENG-66-0037, which plans are incorporated herein by reference, and as shown on Exhibit "A", and thereafter properly maintain, repair, keep and use the channel and the channel slope, including riprap, (b) construct and thereafter properly maintain the two proposed 6" sewer siphons beneath and across Easement Premises at E.C.S. 10622+67 and (c) extend the existing culverts located under Carrier's right-of-way and tracks opposite channel stations 330+30 and 340+00, all such work to be performed in a manner satisfactory to Carrier's Chief Engineer or his authorized representative and substantially in accordance with cross-sections shown on Exhibit "A" and Exhibit "A-1", the latter being Carrier's Omaha Division white print, dated July 22, 1965, bearing file No. 1530, prepared in Office of District Engineer, Kansas City, Missouri, and attached hereto as part hereof.

2. It is the understanding of the parties hereto that no alterations of railroad facilities by Carrier will be required in connection with this project; however, should such alterations become necessary, County hereby agrees that all such work shall be performed by Carrier at the sole cost and expense of County and County hereby agrees to reimburse Carrier for the cost of any and all such alterations or work incidental thereto.

3. As to any work on Easement Premises or Licensed Premises performed by County with its own forces or by County's contractor or by County's agent, the United States of America, through its Corps of Engineers, or by said agent's contractor, County further hereby agrees:

(a) to see that said work is performed on Easement Premises and Licensed Premises in such a manner so as to cause the least possible interference with the adjacent property of Carrier and with the operations of Carrier and of Carrier's lessees, tenants or licensees;

(b) to see that any contractor employed to perform any of the channel improvement, sewer siphon, culvert or incidental work hereunder shall notify Carrier's General Manager or other authorized representative in writing at least 10 days in advance of commencing any work on Easement Premises or Licensed Premises and at least 24 hours in advance of starting any work which may require protection;

JJ-L 474-1153 1-27-66

(c) to cause County's contractor or its aforesaid agent's contractor to enter into a written license agreement between Carrier and said contractor or contractors prior to the crossing, if any, of any of Carrier's tracks at other than existing public crossing, with such contractor's equipment;

(d) to cause its contractor or its agent's contractor employed to perform any of the work hereunder to bear all costs of protecting Carrier's property and traffic made necessary and occasioned by such contractor's operations. Carrier agrees to furnish, at the sole cost of such contractor, such flagmen, watchmen and other protective services or devices as, in the aforesaid General Manager's opinion, are required to insure safety and continuity of traffic and operations during the contractor's operations. No provisions of this subparagraph, nor approval by Carrier as to construction and operations, shall relieve such contractor of any responsibility or liability; and

(e) to maintain contact and liaison with Carrier's General Manager or his authorized representative so as to see that work is conducted on Easement Premises and Licensed Premises in such manner, and at such times, as not to delay, interfere with, or obstruct the safe passage of Carrier's trains or the functioning of its signal and communication systems, and as well not to damage any property of Carrier, its tenants or licensees.

4. County agrees to maintain the channel of Little Papillion Creek and the adjacent riprapped slopes, and appurtenances thereto, and the two proposed sewer siphons in good condition of repair and at all times to keep said channel and siphons free and clear of sediment or other obstructive matter that might interfere with proper and efficient drainage therethrough.

5. County shall cause its contractor or its aforesaid agent's contractor, as the case may be, (a) to reimburse Carrier for any costs incurred by Carrier in the furnishing of protective services or devices as per Section 3(d) hereinabove, such costs to be computed in accordance with Carrier's customary practices, and (b) to make necessary advance arrangements with Carrier relative to the type of and cost for protective services or devices so required.

6. County agrees to see that its contractor, or to see that its agent, the Corps of Engineers, requires that its contractor or contractors, engaged or employed to perform any of the work referred to herein on or about Licensed Premises or Easement Premises, procures and keeps in effect, at contractor's sole cost and expense, during the period of such work, Railroad Protective Liability Insurance on behalf of and in the name of Missouri Pacific Railroad Company as the insured with bodily injury and property damage coverage of \$250,000/\$500,000, in form set forth by the Bureau of Public Roads Policy and Procedure Memorandum 20-12, dated March 5, 1959, as amended, said insurance to be applicable with respect to all of the work to be performed by such contractor on or about Easement Premises or Licensed Premises. Such insurance shall be in form and in a company

satisfactory to Carrier and shall not be subject to cancellation on less than 15 days' written notice to Carrier. County agrees to see that such contractor or contractors shall refrain from commencing any work on or along Easement Premises or Licensed Premises until such policy of insurance has been received and approved as to form and coverage by Carrier.

7. County hereby agrees that Carrier shall not, at any time, be required to bear or assume any cost or expense in or incident to the performance of the work to be done hereunder by County, its contractor, its agent or its agent's contractor; County expressly agrees to bear and assume all such costs and expenses. County further agrees to bear and assume all the cost and expense of repairing or replacing any property of Carrier damaged or destroyed in connection with the performance of any of the work hereunder by or for the account of County.

8. County shall and hereby agrees to assume and discharge, and to defend, indemnify and save harmless Carrier from and against, any and all liability, claims, suits, judgments, damages, losses, costs (including attorneys' fees) and expenses for injury to or death of any and all persons and damage, loss or destruction of any and all property in any manner caused by, arising out of or incident to (a) the improvement, riprapping, cleaning, maintenance, renewal, repair or use of the channel of said Little Papillion Creek on and along Easement Premises, as well as, the construction, maintenance, cleaning, renewal, repair or use of the two proposed sewer siphons beneath and across Easement Premises or the extension of the aforesaid existing culverts beneath and across a portion of Easement Premises and the Licensed Premises, or (b) any act or omission of County or its contractor, County's aforementioned agent or the agent's contractor, or of their respective agents, servants or employes, while on or about Easement Premises or Licensed Premises in the exercise of any of the rights granted hereunder; provided, however, the foregoing indemnification provision shall not apply to any liability, claims, suits, judgments, damages, losses, costs and expenses for which Carrier shall have been compensated through insurance required of the County's or its agent's contractor as per Section 6 hereof.

9. The rights herein granted are made without any warranty, express or implied, and are limited to the extent, quality and duration of Carrier's interest in the Easement Premises and Licensed Premises; it being understood that this instrument is effective only insofar as the rights of Carrier in such Premises are concerned, and that County will obtain such permission as may be necessary on account of any other existing rights. No damages shall be recoverable from Carrier because of any dispossession of County or because of failure of, or defect in, Carrier's title.

10. The provisions and conditions of this instrument shall run with the land and shall extend to and be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. Carrier or County may waive any default at any time of the other without affecting or impairing any right arising from any subsequent or other default.

11. Carrier's original hereof, when delivered executed by County, shall be accompanied by a copy of such ordinance, order or resolution, passed and approved or adopted as by law prescribed, and duly certified, as shall make this a valid and binding agreement of County.

JJ-L 474-1153 1-27-66

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement as of the day and year first hereinabove written.

ATTEST

By: [Signature]
Secretary

MISSOURI PACIFIC RAILROAD COMPANY

By: [Signature]
Vice President-Operation

ATTEST

By: [Signature]
Its County Clerk

COUNTY OF DOUGLAS, NEBRASKA

By: [Signature]
Its Chairman

STATE OF MISSOURI)
CITY OF ST. LOUIS) ss.

I, WM. J. HEROLD, the undersigned officer, a Notary Public duly qualified, commissioned, sworn and acting in and for said City in said State, hereby certify, that on this 2nd day of March, 1966:

Before me personally came J. H. Lloyd, Vice President of Missouri Pacific Railroad Company, who is personally known to me to be the identical person whose name is affixed to the above instrument as Vice President of said corporation and acknowledged the instrument to be his voluntary act and deed and the voluntary act and deed of said corporation pursuant to authority of its Board of Directors; and before me personally came the above named C. A. Rockwell, Secretary of said corporation and he stated that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal, that it was affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office the day and year last above written.



My Commission expires: February 10, 1970

[Signature]
Notary Public

Commissioned within and for the County of St. Louis, Missouri, which adjoins the City of St. Louis, Missouri, where this act was performed.

Approved: February 15, 1966
Resolution # 56
RECORDED IN COMMISSIONER'S

BOARD OF COUNTY COMMISSIONERS
DOUGLAS COUNTY, NEBRASKA

Received

WHEREAS, it is necessary that County of Douglas obtain a permanent easement from the Missouri Pacific Railroad in order to complete the construction of Phase I of the Little Papillion Flood Control Project; and,

WHEREAS, the Missouri Pacific Railroad has agreed to grant said permanent easement to County of Douglas for the sum of Two Thousand Eight Hundred Ninety-two (\$2,892.00) Dollars, and further condition that County of Douglas save harmless said Missouri Pacific Railroad for damages resulting from said construction and County of Douglas maintain the improved channel in a proper manner; and,

WHEREAS, County of Douglas has by previous contract with the Corps of Engineers agreed to maintain said channel in a proper manner and has complied with all conditions as set forth in said easement; and,

WHEREAS, the County Attorney and County Surveyor of Douglas County feel it is for the best interests of Douglas County that the easement agreement be executed on behalf of County of Douglas, and that the amount to be paid to the Missouri Pacific Railroad is fair and reasonable.

NOW, THEREFORE, BE IT RESOLVED that the Chairman of the Board of County Commissioners be, and he is, hereby, authorized to execute the agreement containing the easement between the County of Douglas and the Missouri Pacific Railroad; and further that the County Clerk of Douglas County pay to Missouri Pacific Railroad the sum of Two Thousand Eight Hundred Ninety-two (\$2,892.00) Dollars, as desired for the granting of said easement.

DATED this 15th day of February, 1966.

Motion by McCollister; Seconded by Milner

I move the adoption of the resolution.

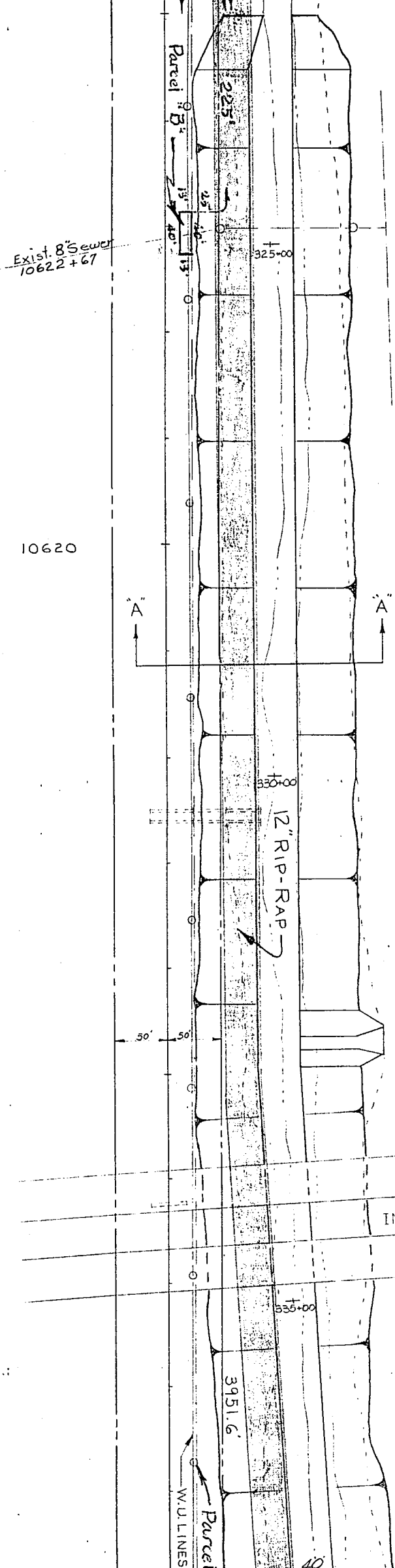
ADOPTED: February 15th, 1966.

YES: Cavanaugh, Hefflinger, Milner, McCollister, Lynch

Samuel C. Lynch
Ralph D. Hefflinger
John Cavanaugh
John W. McCollister
Wm. B. Milner
BOARD OF COUNTY COMMISSIONERS,
DOUGLAS COUNTY, NEBRASKA.

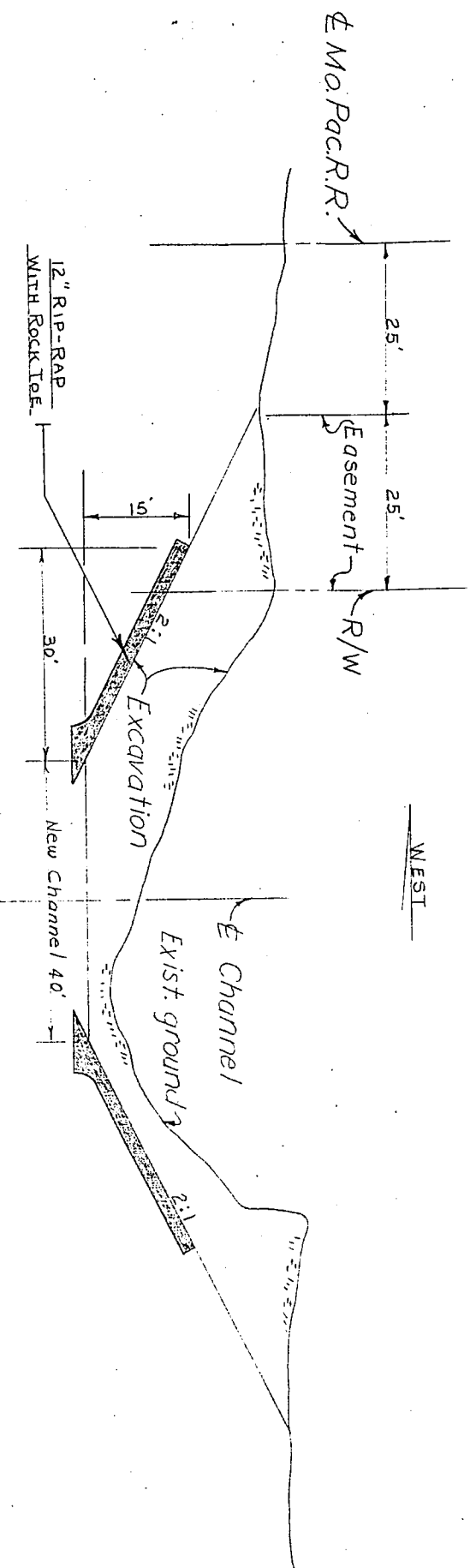
VALLEY CLERK
Valley Clerk Spellman
COUNTY CLERK
DOUGLAS COUNTY, NEBRASKA

E-W 1/4 Sec. 36 T.15N.-R.12E. GROVER ST. 10625+27 Begin Easement



10620

10610



Typical Section - Sta. 324 to 339
Scale: 1"=20'
"A-A"

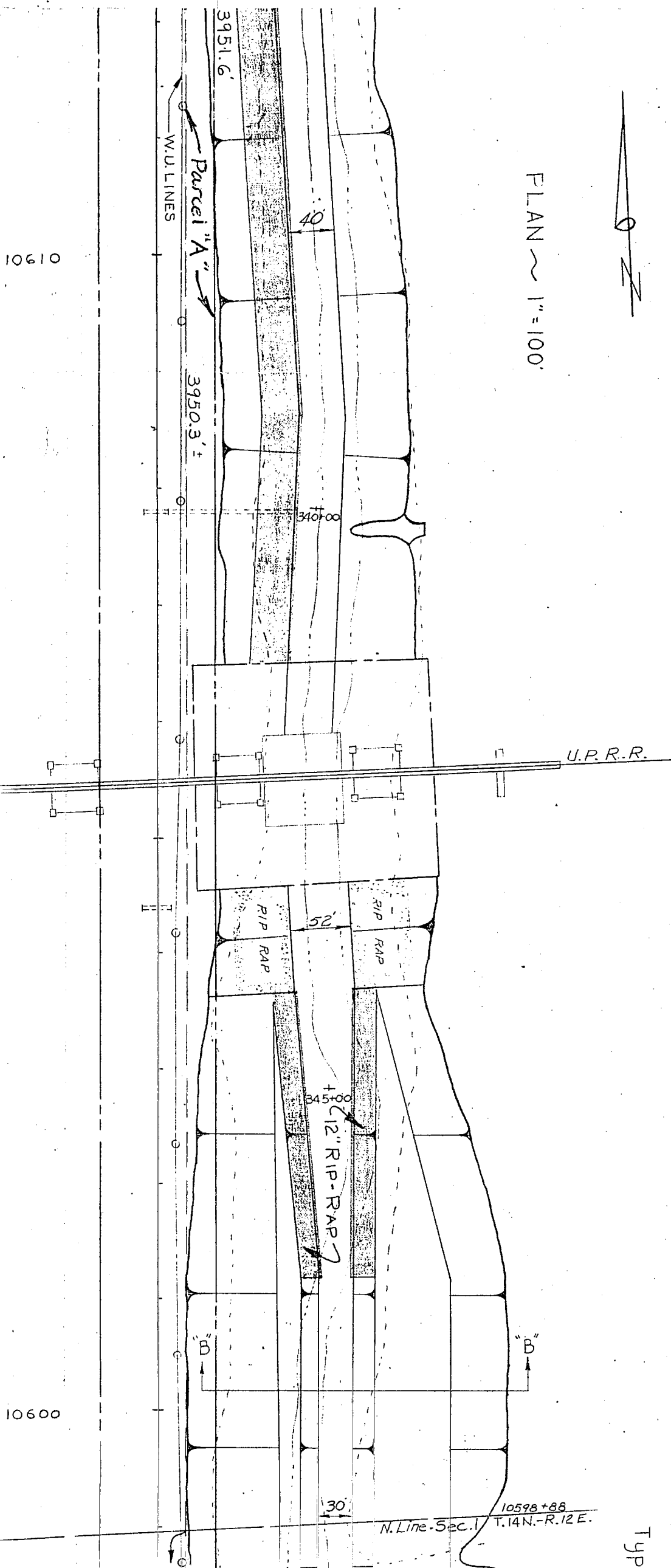
INTERSTATE 80

PLAN

S.E. 1/4, Sec. 36
T.15N.-R.12E.

10610

10600

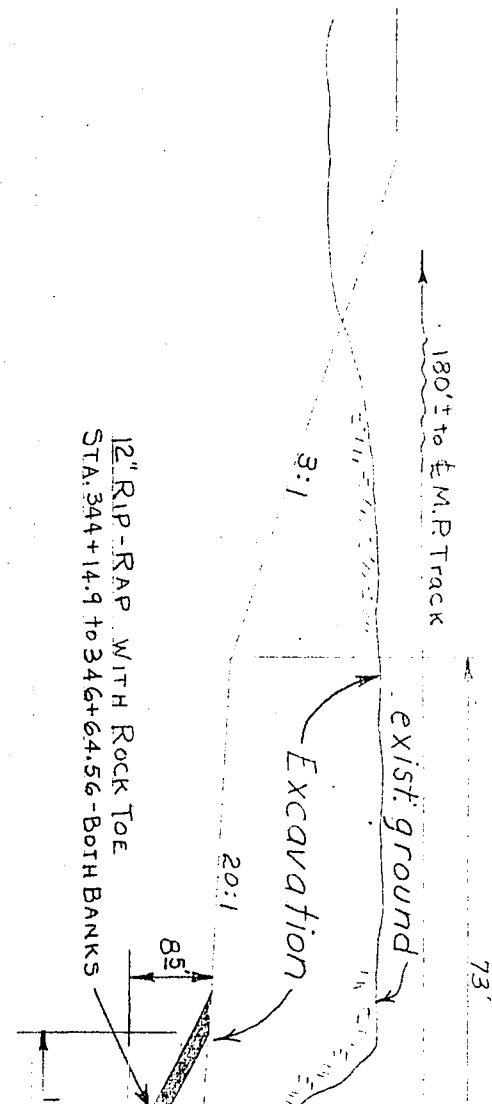


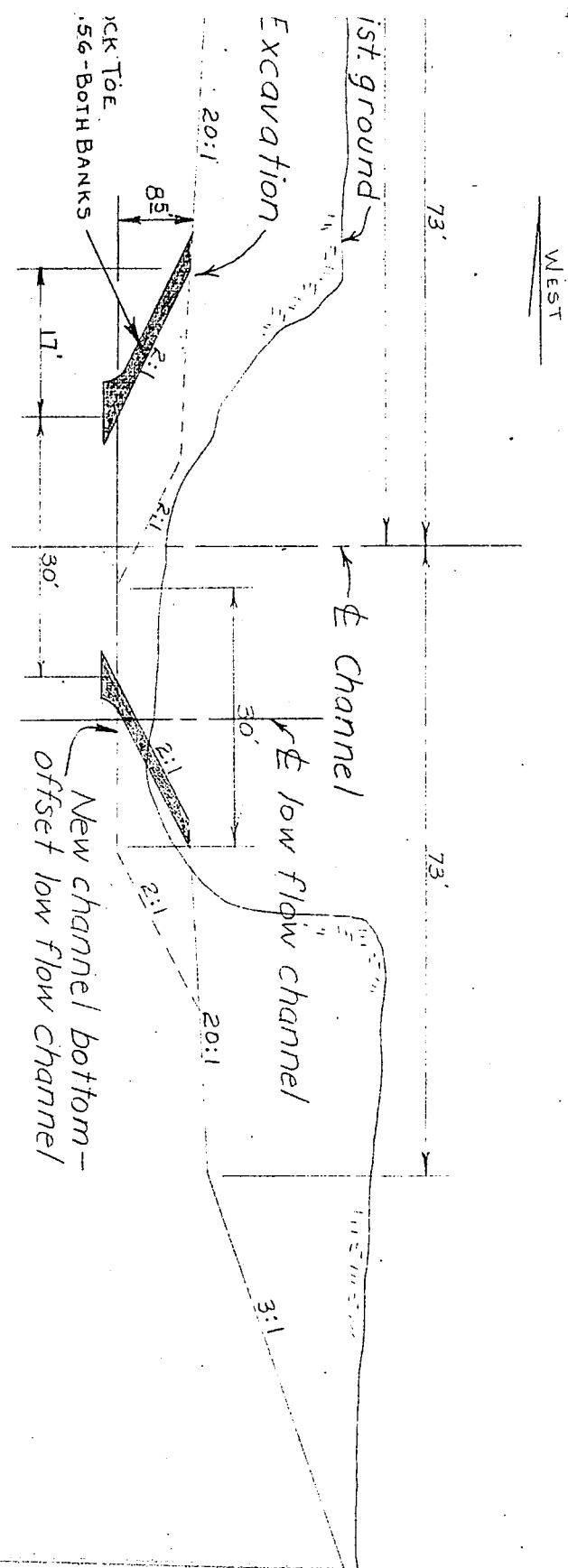
PLAN ~ 1" = 100'



S.E. 1/4, Sec. 36
T. 15N. - R. 12 E.

12" RIP-RAP WITH ROCK TOE
STA. 344+14.9 TO 346+64.56 - BOTH BANKS





Typical Section - Sta. 347 to 360
Scale: 1"=20'

"B-B"

N.E. 1/4, Sec. 1
T. 14 N. - R. 12 E.
DOUGLAS CO., NEB.

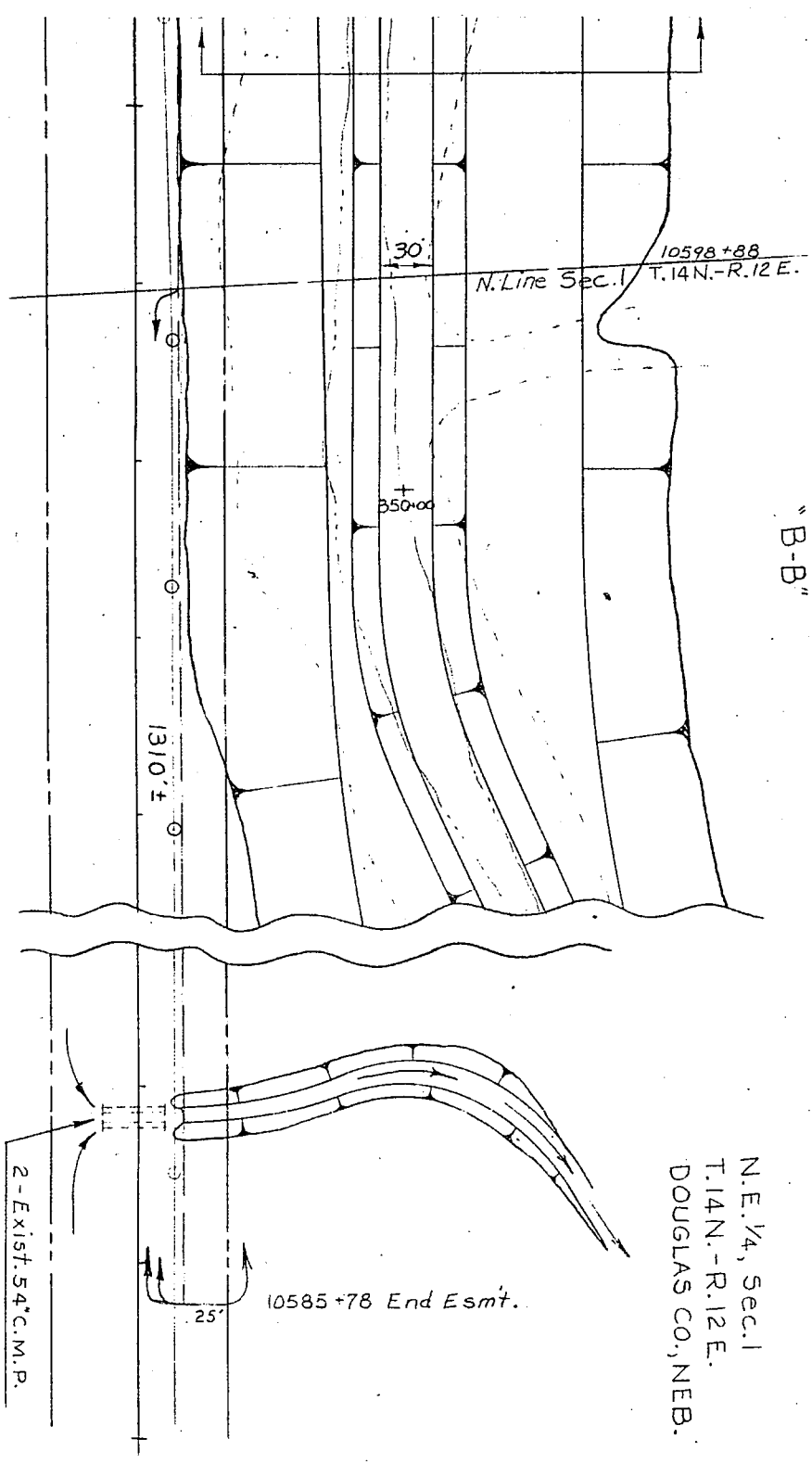
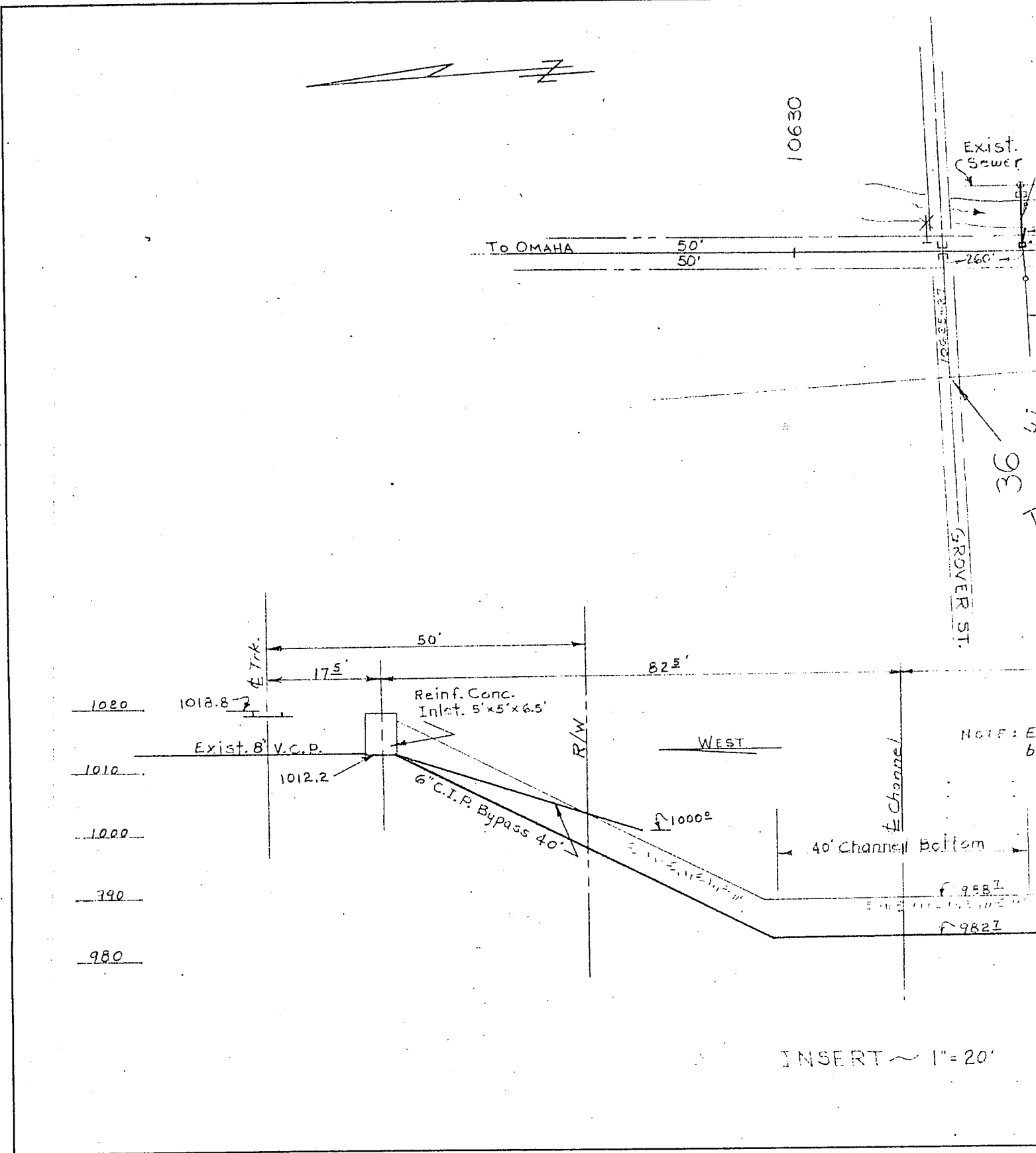


EXHIBIT "A"
MISSOURI PACIFIC RAILROAD COMPANY
OMAHA DIVISION
Proposed Easement For
DOUGLAS CO., NEB.
Grover St. and 66th
OMAHA, NEB.
OFFICE OF ASSISTANT ENGINEER, KANSAS CITY, MO.
SCALE: NOTED
DATE: 7-19-65 FILE: D-4396



S.E. 1/4 Sec. 36
DOUGLAS Co., NEB.

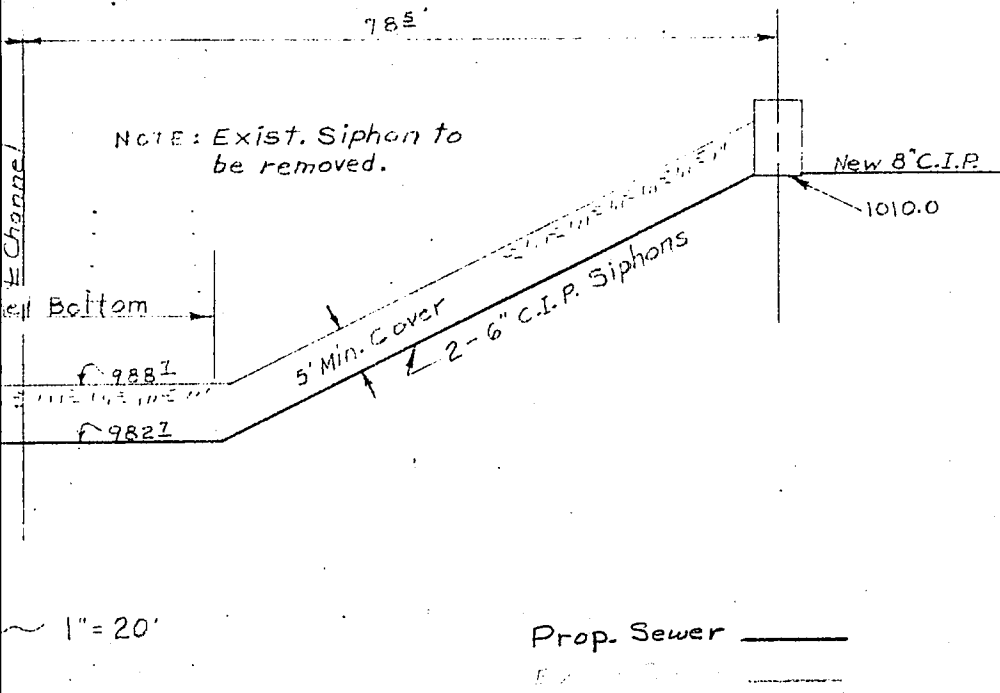
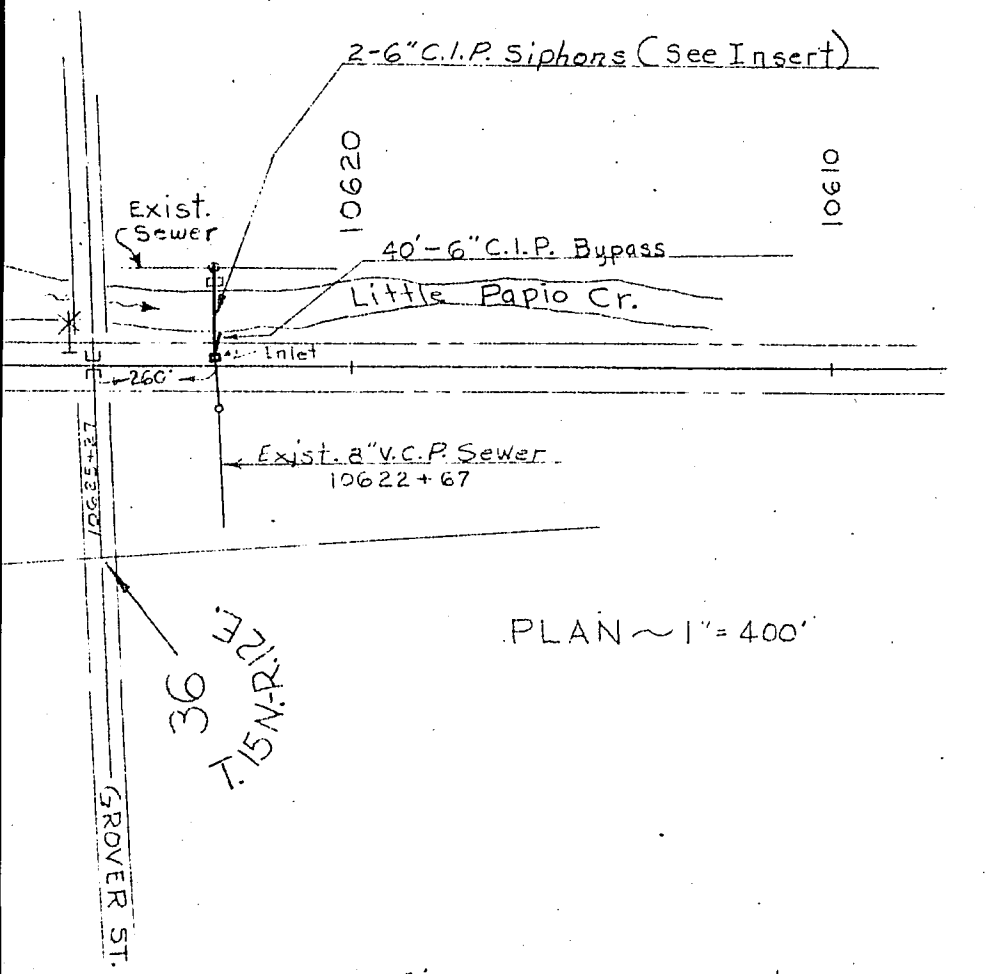


EXHIBIT A-1

MISSOURI PACIFIC RAILROAD COMPANY
OMAHA DIVISION

2-Proposed 6" C.I.P. Sewer Siphons
For
Douglas County, Neb.
OMAHA, NEB.

File No:	1530
Note Book	Page
Scale: 1 inch equals <i>Noted</i>	
Office of DIST. ENGINEER	
K.C., Mo. 7-22-65	
Draftsman	

17/12/12

THOMAS J. DOUGLAS
REGISTER OF DEEDS
DOUGLAS COUNTY, MINN.

1066 MAR 14 PM 1 41

RECEIVED

... and filed
for the purpose of the Register of
Deeds of Douglas County, and recorded in
Book 435 of misc
Page 71

[Signature]
Register of Deeds

By W. C. Commissioner
Deputy

36-15-12
1.00

Charge to -
Co. Surveyor
36-15-12