



MISC 2012116856



NOV 16 2012 08:20 P 12

Handwritten notes: 'S', '12/2', 'MWC 23.06173', 'FEE 10100 FB 0140000', 'BKP 23.153C/O COMP', 'DEL PU SCAN FV' with a signature.

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
11/16/2012 08:20:19.87



2012116856

PERMANENT SEWER EASEMENT

When recorded return to:
City of Omaha, Nebraska
Public Works Department
General Services Division
R-O-W Section

FOR OFFICE USE ONLY	
Project:	OPW 51874
City Proj. No.:	
Tract No.:	1
Address:	4 th and Marcy Streets Omaha, NE 68102

KNOW ALL MEN BY THESE PRESENTS:

THAT OMAHA PUBLIC POWER DISTRICT, a public corporation and municipal subdivision of the State of Nebraska, hereinafter referred to as GRANTOR, (whether one or more) for and in consideration of the sum of Four Hundred Fifty Thousand and NO/100 dollars (\$450,000.00) and other valuable consideration, the receipt of which is hereby acknowledged, does hereby grant and convey unto the **City of Omaha, Nebraska**, a Municipal Corporation, hereinafter referred to as CITY, and to its successors and assigns, a permanent sewer easement for the right to construct, inspect, repair, replace, maintain and operate a sewer (either for storm or sanitary purposes), the South Interceptor Force Main Sewers and appurtenances thereto together with the modification of the below grade Existing Leavenworth Sewer infrastructure, diversion pumping and diversion structures and sewers associated with such structures and construction of an above grade Electrical Building and appurtenances thereto pursuant to and in accordance with the improvement drawings attached hereto as Exhibit "B", in, through, and under the parcel of land described as follows to-wit (the "Easement Area"):

SEE ATTACHED EXHIBIT "A" PERMANENT EASEMENT LEGAL DESCRIPTION

The GRANTOR and the CITY agree as follows:

- 1) The GRANTOR grants to the CITY the right of ingress and egress across that portion of the Property (hereinafter defined) that is commonly referred to as the vacated portion of Marcy Street, East of 6th Street and further depicted on Exhibit "C" attached hereto, for the purpose of exercising its rights under this easement.
- 2) The CITY acknowledges and agrees that the GRANTOR currently has certain buildings, improvements and other structures in, on and over the Easement Area, as such buildings, improvements and other structures may be improved and modified from time to time in the future (collectively, the "Existing Improvements"). The CITY's easement granted herein shall be subordinate to the Existing Improvements and the CITY shall not cause any damage to such Existing Improvements, except for those improvements shown on the attached Exhibit "D", which are to be removed and not replaced by the CITY.
- 3) GRANTOR reserves the right, privilege and authority to make any materially new or additional improvements in the Easement Area (collectively, the "Future Improvements"); provided, that, GRANTOR shall provide prior written notice to the CITY of such improvements and; provided, further, that GRANTOR will (i) work collaboratively with the CITY in order to inform itself of the CITY's future planned improvements within the Easement Area and avoid potential conflicts in the Easement Area, and (ii) use commercially reasonable efforts to minimize the impact of such improvements on any planned improvements then-known and/or reasonably anticipated by the CITY. If any Future Improvements of the GRANTOR require modification to any of the CITY's existing improvements in the Easement Area, then the parties agree to negotiate in good faith in order to mutually agree on the implementation of such modifications and the allocation of costs associated therewith.
- 4) The Existing Improvements, any Future Improvements and any trees, grass or shrubbery placed within the Easement Area by GRANTOR shall be maintained by GRANTOR, its heirs, successors or assigns; provided, that, GRANTOR agrees not to plant any new trees over the proposed sewer improvements without the CITY's prior written consent, which consent will not be unreasonably withheld.

Handwritten note: 'City 4'

- 5) That CITY will repair, replace or rebuild, at the GRANTOR's election and at the CITY's cost and expense, any and all damage to the Existing Improvements, except for those improvements shown on the attached Exhibit "C", which will be removed and not replaced by the CITY, and/or the Future Improvements caused by the CITY, its agents, employees, contractors and/or representatives during its exercise of its rights under this Easement. Without limiting the generality of the foregoing, the CITY shall also be responsible for any damages to the Easement Area and/or the parcel(s) of real property upon which the Easement Area is located (the "Property") or improvements located thereon, caused by the CITY, its agents, employees, contractors and/or representatives.
- 6) At no point shall the CITY, its agents, employees, contractors and/or representatives store or use any hazardous materials upon the Property and/or Easement Area. The CITY acknowledges that it is aware that certain facia from the building adjacent to the Easement Area has been falling off of said building from time to time and, as a result, the CITY, its agents, employees, contractors and/or representatives agree to use commercially reasonable efforts to stay a safe distance away from the building and to implement, at the CITY's sole cost and expense, reasonable safety measures in order to protect any of its agents, employees, contractors and/or representatives during their performance of work within the Easement Area.
- 7) The CITY agrees to indemnify, defend and save the GRANTOR harmless from and against any and all damages, losses, liabilities and claims (including reasonable costs of litigation and reasonable attorney fees) alleged against or incurred by the GRANTOR, for property damage, personal injury or death to persons (including, without limitation, third parties and the GRANTOR 's servants, agents, employees, contractors and/or representatives) arising out of or in connection with the CITY's use of the Easement Area or performance under this Easement.
- 8) The CITY, its agents, employees, contractors and/or representatives shall coordinate with GRANTOR so as to not restrict the GRANTOR's access to the entire Property.
- 9) The CITY, its agents, employees, contractors and/or representatives agree to follow GRANTOR's Safety and Access Rules and Regulations for the Property, as amended by GRANTOR from time to time, at all times while on the Easement Area. Notwithstanding anything set forth herein to the contrary, the CITY shall design all of its improvements within the Easement Area to comply with AASHTO Standards of HS-20 with a turning radius of 60'.
- 10) All ingress and egress by the CITY, its agents, employees, contractors and/or representatives to the Easement Area shall be upon the Easement Area and/or across public rights-of-way or as otherwise described in Section 1 of this easement. Neither the City, nor its agents, employees, contractors or representatives shall have ingress or egress rights upon the Property other than upon the Easement Area.
- 11) The City may use contractors, agents, employees, and/or representatives in order to perform its work within the Easement Area in accordance with and subject to the conditions of this Easement.
- 12) That CITY shall cause any trench or excavation of the Easement Area to be properly refilled and the soil to be settled in order to cause the premises to be left in a neat and orderly condition in the manner and at the grade in which the property was received by the CITY; provided, that, GRANTOR acknowledges that some grades will be built above existing grade to provide minimum depth cover for the sewers.
- 13) That said GRANTORS for themselves and their heirs, executors and administrators do confirm with the said CITY and its assigns, including public utility companies and their assigns, that they, the GRANTORS are well seized in fee of the above described property and that they have the right to grant and convey this easement in the manner and form aforesaid, and that they will, and their heirs, executors and administrators, shall warrant, and defend this permanent easement to said CITY and its assigns including public utility companies and their assigns against the lawful claims and demands of all persons. This permanent easement runs with the land.
- 14) The CITY shall provide and maintain the following insurance coverage's for its provision of work on the Easement Area. Except as otherwise expressly set forth herein, the CITY shall require each of its subcontractors to provide the same insurance described in this Paragraph. The CITY and its subcontractors shall provide evidence of insurance as requested by GRANTOR to confirm that these requirements are satisfied:

- i. Commercial General Liability Insurance

The CITY shall maintain commercial general liability insurance, including coverage for rigger's liability, products and completed operations liability, contractual liability, liability from independent contractors, property damage liability, bodily injury liability, personal injury liability, and explosion collapse underground hazard (XC&U), with limits of \$1,000,000 per occurrence, and \$2,000,000 general aggregate; with umbrella liability limits of \$9,000,000 per occurrence, and \$9,000,000 general aggregate.

ii. Business Automobile Insurance

The CITY shall maintain business auto insurance for any owned, non-owned, hired, or rented vehicle with a limit of \$2,000,000 combined single limit for bodily injury and property damage liability. The limit may be satisfied by a combination of primary and excess insurance.

iii. Workers Compensation & Employers Liability Insurance

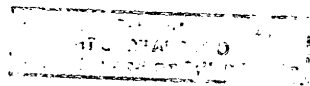
The CITY shall maintain statutory workers compensation insurance in accordance with the laws of the state where such compensation is payable. Contractor shall also maintain employers' liability insurance with limits of \$1,000,000 per accident and \$1,000,000 each employee for injury.

iv. General Requirements

GRANTOR shall be an additional insured, under the CITY's commercial general liability insurance as required under Paragraph 13(i) and an additional insured under the business automobile insurance required under Paragraph 13(ii). In the event of a loss arising out of or related to the CITY's or its subcontractor's performance of work hereunder, all insurance required under Paragraph 8 of this Section shall be primary (pay first) with respect to any other insurance which may be available to the DISTRICT, regardless of how the "other insurance" provisions may read. The CITY shall be responsible for insuring all of its own personal property, tools and equipment.

- 15) GRANTOR may assign its rights under this Easement upon written notice to the CITY. The CITY shall not be allowed to assign its rights and obligations under this Easement to any other party without the written consent of GRANTOR which consent shall not be unreasonably withheld.
- 16) That this instrument contains the entire agreement of the parties; that there are no other or different agreements or understandings, except a Temporary Construction Easement and the Second Revised Statement of Offer, between the GRANTOR and the CITY or its agents; and that the GRANTOR, in executing and delivering this instrument, has not relied upon any promises, inducements, or representations of the CITY or its agents or employees, except as are set forth herein and therein.

[Signature Pages to Follow]



IN WITNESS WHEREOF, the said party of the first part has hereunto (caused its Corporate Seal to be affixed) (the said Corporation has no Corporate Seal) and these presents to be signed by its respective officers this 2nd day of NOVEMBER, 2012.

OMAHA PUBLIC POWER DISTRICT,
a Political Corporation and Municipal Subdivision of the State of Nebraska

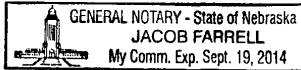
Sherry L. Hutcherson
Sherrye L. Hutcherson
Vice President - Corporate Services & CAO

STATE OF NEBRASKA)
COUNTY OF DOUGLAS)

On this 2nd day of NOVEMBER, 2012, before me, a Notary Public, in and for said County, personally came the above named: Sherrye L. Hutcherson, Vice President Corporate Services & CAO for Omaha Public Power District who is personally known to me to be the identical person whose name is affixed to the above instrument and acknowledged the instrument to be her voluntary act and deed for the purpose therein stated.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Seal:



Imprinted Seal

[Signature]
NOTARY PUBLIC

CITY OF OMAHA, a Municipal Corporation

ATTEST:
[Signature]
Buster Brown, City Clerk

By [Signature]
Jim Suttle, Mayor, City of Omaha

APPROVED AS TO FORM:

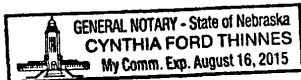
[Signature]
ASSISTANT CITY ATTORNEY

STATE OF NEBRASKA)
COUNTY OF DOUGLAS)

On this 7th day of November, 2012, before me, a Notary Public in and for said County, personally came Jim Suttle, Mayor of the City of Omaha, Nebraska, a Municipal Corporation, to me personally known to be the respective officer of said Municipal corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as Mayor and the voluntary act and deed of said Municipal Corporation.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Seal:



[Signature]
NOTARY PUBLIC

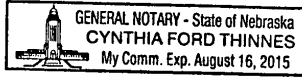
STATE OF NEBRASKA)

COUNTY OF DOUGLAS)

On this 7th day of November, 2012, before me, a Notary Public in and for said County, personally came Buster Brown, City Clerk of the City of Omaha to me personally known to be the respective officer of said Municipal corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as City Clerk and the voluntary act and deed of said Municipal Corporation.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Seal:



Cynthia Ford Thinnies
NOTARY PUBLIC

Exhibit "A"
Page 1 of 2

Legal Description

A permanent easement over that part of Lot 2, CENTRAL PARK EAST REPLAT 2, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, TOGETHER WITH that part of Government Lot 4 in the Southwest Quarter of Section 23, Township 15 North, Range 13 East of the 6th P.M., Douglas County, Nebraska, described as follows:

SE 1/4 of the

Commencing at the intersection of the west right of way line of the Burlington Northern Railroad with the north right of way line of the Union Pacific Railroad;

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Thence North 89°07'41" West (assumed bearings) for 219.25 feet along said north right of way line;

Thence North 79°18'05" West for 115.45 feet continuing along said north right of way line to the TRUE POINT OF BEGINNING;

Thence North 79°18'05" West for 127.79 feet continuing along said north right of way line;

Thence North 00°01'22" West for 241.30 feet;

Thence North 10°13'23" East for 51.20 feet;

Thence North 80°33'57" West for 56.01 feet;

Thence North 09°26'03" East for 122.75 feet;

Thence North 87°27'08" East for 75.06 feet;

Thence South 02°32'52" East for 11.91 feet;

Thence North 87°28'00" East for 148.76 feet;

Thence North 07°55'41" East for 41.53 feet;

Thence North 10°13'52" East for 91.11 feet;

Thence North 12°15'06" West for 14.01 feet;

Thence along a curve to the left (having a radius of 2980.05 feet and a long chord bearing North 18°33'15" West for 652.44 feet) for an arc length of 653.75 feet to the north line of said Lot 2;

Thence North 82°04'12" East for 41.51 feet along said north line;

Thence along a curve to the right (having a radius of 3020.05 feet and a long chord bearing South 18°33'15" East for 661.20 feet) for an arc length of 662.53 feet;

Thence South 12°15'29" East for 21.97 feet;

Thence South 10°13'52" West for 98.27 feet;

Thence South 07°55'41" West for 79.17 feet;

Thence South 05°37'30" West for 86.63 feet;

Thence South 00°00'00" West for 27.59 feet;

Thence South 45°00'00" West for 38.87 feet;

Thence North 90°00'00" West for 50.96 feet;

Thence South 09°26'03" West for 124.62 feet;

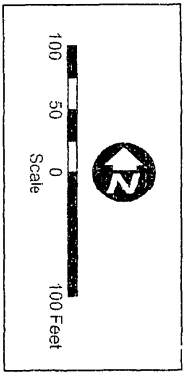
Thence South 00°15'43" East for 135.88 feet to the Point of Beginning.

Contains 107,560.07 square feet.

10-18-11

LAMP, RYNEARSON & ASSOCIATES, INC.

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OPPD PROPERTY EASEMENTS Facilities and Construction Time Frames

- Legend**
- Existing Leavenworth Sewer
 - South Interceptor 48" Forcemain (July 2013-June 2016)
 - North 54" Gravity Sewer (July 2013-Dec 2015)
 - Tunnel Diversion Structure and 144" Sewer (2021-2024)*
 - Leavenworth Lift Station Diversion Structures (Nov 2012-Mar 2013)
 - Leavenworth Lift Station Diversion Structures (Nov 2013-Mar 2014)
 - Temporary Easement (Oct 2012-June 2016)
 - Permanent Easement
- * May extend to (2024-2027)

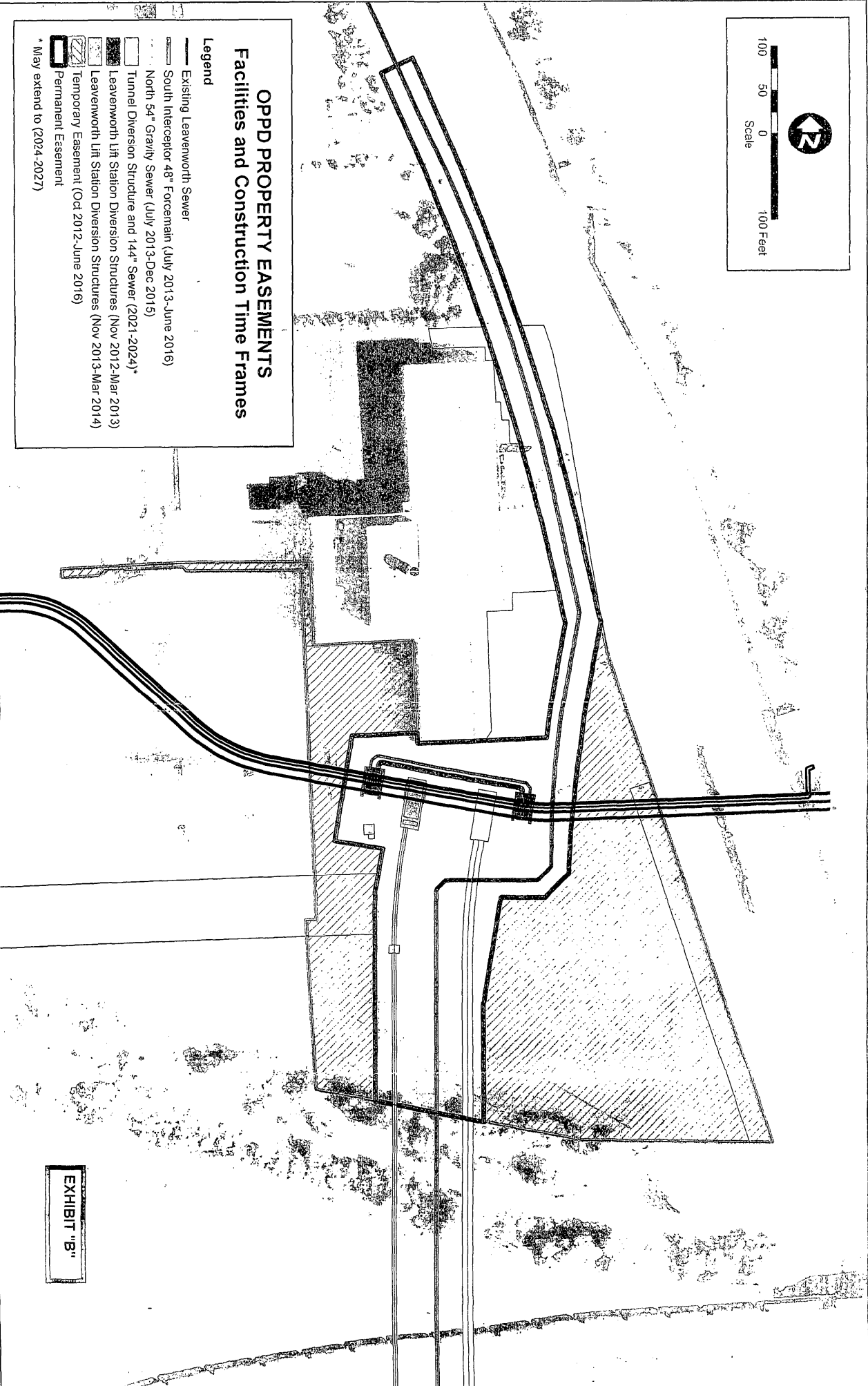
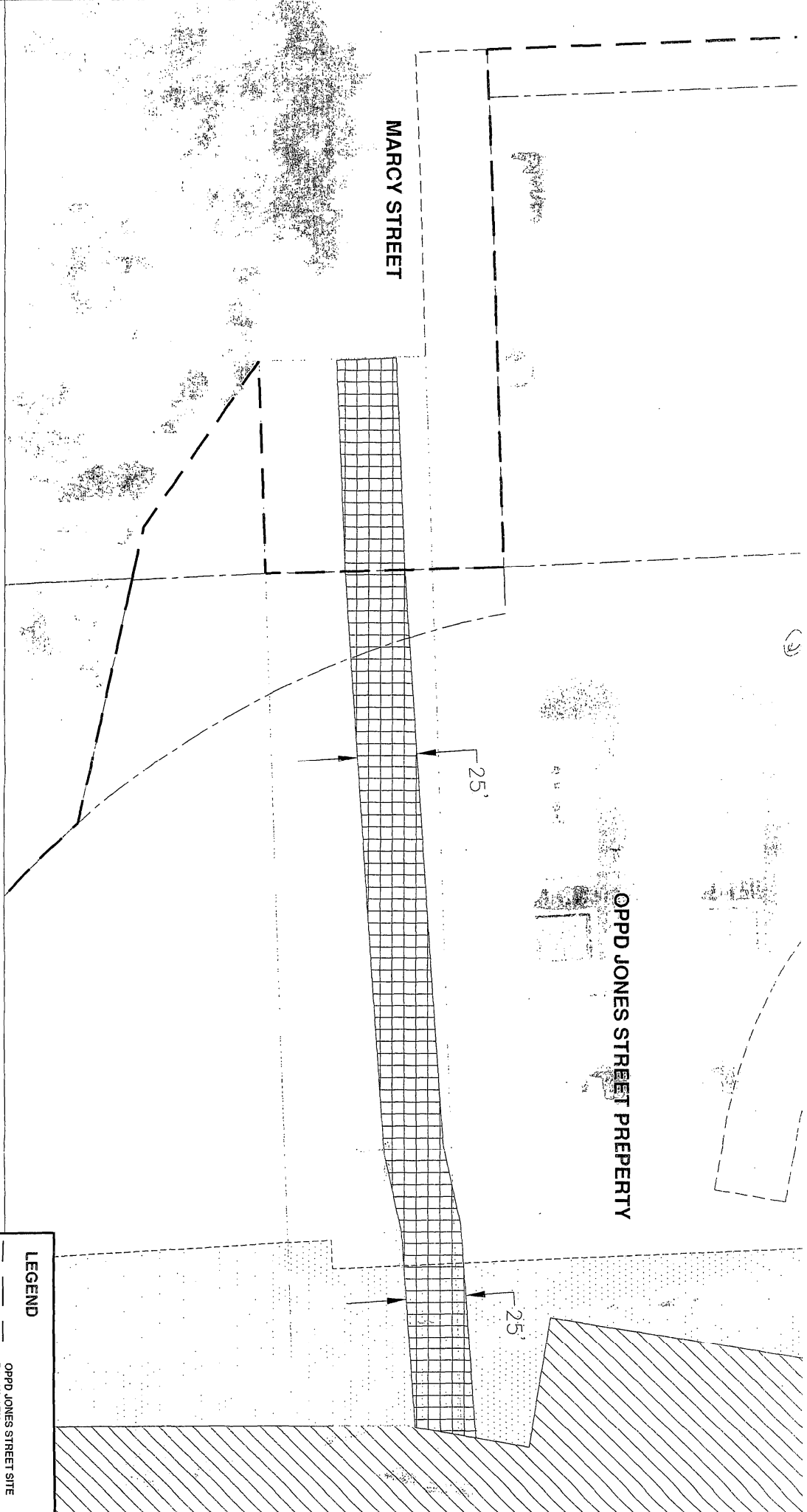


EXHIBIT "B"

(2)



MARCY STREET

OPPD JONES STREET PROPERTY

25'

25'

EXHIBIT "C"



GRAPHIC SCALE : FEET
 20 10 0 10 20

LEGEND	
	OPPD JONES STREET SITE BOUNDARY
	TEMPORARY EASEMENT
	PERMANENT EASEMENT
	PERMANENT ACCESS EASEMENT

OPPD MARCY STREET PERMANENT ACCESS EASEMENT

CITY OF OMAHA

52223

FIGURE