

FILED SARPY CO. NE
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Glenn J. Dowling
REGISTER OF DEEDS

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WATERLINE EASEMENT AGREEMENT

This Waterline Easement Agreement (the "Easement") entered into this 10th day of April, 2006, by Sarpy County School District 77-0037 a/k/a Gretna Public Schools, a political subdivision ("School District") and City of Gretna, Sarpy County, Nebraska, a political subdivision of the State of Nebraska ("City").

WITNESSETH:

1. **Demise and Description of Premises.** In consideration of the mutual promises and covenants contained herein, School District hereby grants a permanent easement to City and City hereby accepts such easement from School District for a portion of the Gretna Middle School site located 11335 South 204th Street, Gretna, Nebraska, owned by the School District for the purpose of the installation, operation and use of a 12-inch water main (hereinafter "Waterline") to serve the City of Gretna, such portion of the school site subject to the easement being hereinafter referred to as the "Waterline Easement", and is legally described as follows:

PART OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH PRINCIPAL MERIDIAN, SARPY COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 31, THENCE N87°24'44"E A DISTANCE OF 1,257.90 FEET ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 TO THE POINT OF BEGINNING; THENCE N02°28'29"W A DISTANCE OF 72.03 FEET; THENCE N49°57'04"W A DISTANCE OF 113.59 FEET; THENCE N03°01'03"W A DISTANCE OF 326.06 FEET; THENCE N89°37'19"W A DISTANCE OF 576.77 FEET; THENCE S87°04'32"W A DISTANCE OF 334.29 FEET; THENCE N42°31'12"W A DISTANCE OF 102.96 FEET; THENCE S87°31'28"W A DISTANCE OF 161.53 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF 204TH STREET; THENCE N02°28'31"W A DISTANCE OF 15.00 FEET ALONG SAID EASTERLY RIGHT-OF-WAY; THENCE N87°31'28"E A DISTANCE OF 168.51 FEET; THENCE S42°31'12"E A DISTANCE OF 102.89 FEET; THENCE N87°04'32"E A DISTANCE OF 327.69 FEET; THENCE S89°37'18"E A DISTANCE OF 591.31 FEET; THENCE S03°01'03"E A DISTANCE OF 333.68 FEET; THENCE S49°57'04"E A DISTANCE OF 113.67 FEET; THENCE S02°28'29"E A DISTANCE OF 78.60 FEET TO A POINT ON THE SOUTH LINE OF THE NW 1/4 OF SAID SECTION 31; THENCE S87°24'44"W A DISTANCE OF 15.00 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 0.59 ACRES MORE OR LESS.

2. **Payment.** The City shall pay to the School District the sum of One Dollar (1.00) and other good and valuable consideration for such permanent easement. As additional consideration for easement to the premises, the City shall be responsible for the general upkeep of the Waterline Easement area, including any Waterline, and shall pay the cost of repair or reconstruction of any structures on the school district site damaged as a result of the installation, maintenance and/or repair of the Waterline or any other permissible use of the property under this Easement.

3. **Warranties of Title and Quiet Possession.** School District covenants that School District is seized of the easement area in fee simple and has a full right to make this Easement subject to easements of record, including the Easement of the Northern Natural Gas Company recorded at Book 29 of Miscellaneous, at Page 551, and defined to a 70 foot wide strip at Document No. 93-0025981, all in the Office of the Register

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Henry, Guthrie, Haase & Bossert

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of Deeds for Sarpy County, Nebraska, and the terms hereof, and City shall have quiet and peaceable possession of the Waterline Easement against the acts of all parties claiming title to or a right to the possession of the Premises through or under School District, with the exception, however, of the following:

- a. Conditions, restrictions, and limitations, if any, now appearing of record;
- b. Building and zoning laws, ordinances, state and federal regulations, provided they do not adversely affect City's intended use of the Waterline Easement; and,
- c. Any defects that may be disclosed by an accurate survey.

4. **School District's Right of Entry.** City shall permit School District and the agents and employees of School District to enter into and on the Waterline Easement area at all reasonable times for the purpose of using the Waterline Easement area during the school day or for extracurricular activities, for purpose of inspecting them, for the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to City for any loss of occupation or quiet enjoyment of the Waterline Easement thereby occasioned.

5. **Notices.** All communications, demands, notices, or objections permitted or required to be given or served under this Easement shall be in writing and shall be deemed to have been duly given or served if delivered in person to the other party or its authorized agent or if deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, or if telegraphed by prepaid telegram, and addressed to the other party to this Easement, to the address set forth next to such party's signature at the end of this Easement or if to a person not a party to this Easement, to the address designated by a party to this Easement in the foregoing manner. Any party may change its address by giving notice in writing, stating its new address, to any other party as provided in the foregoing manner. Commencing upon receipt of notice, such newly designated address shall be such party's address for the purposes of all communications, demands, notices, or objections permitted or required to be given or served under this Easement.

6. **Temporary Easement for Construction of Improvements.** During the period of construction of the Waterline and water main from the wellhead to the City water main located in the right-of-way of 204th Street to the City of Gretna, Sarpy County, Nebraska, to be constructed on the Property, the School District shall grant to the City, its contractors, subcontractors, and agents, without charge, a temporary easement on such vacant adjacent land owned by the School District as the City considers useful and necessary to provide for the construction of the installation of the waterline to the City water system, and ingress and egress and to provide for staging of construction, including temporary parking facilities and temporary storage space for building materials and equipment. The City shall have a temporary construction easement on the two parcels legally described as follows, to-wit:

PARCEL NO. 1:

PART OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH PRINCIPAL MERIDIAN, SARPY COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 31, THENCE N87°24'47"E A DISTANCE OF 1,215.40 FEET ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 TO THE POINT OF BEGINNING; THENCE N02°28'29"W A DISTANCE OF 53.33 FEET; THENCE N49°57'04"W A DISTANCE OF 113.53 FEET;

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THENCE N03°01'03"W A DISTANCE OF 347.03 FEET; THENCE S89°37'19"E A DISTANCE OF 42.57 FEET; THENCE S03°01'03"E A DISTANCE OF 326.06 FEET; THENCE S49°57'04"E A DISTANCE OF 113.59 FEET; THENCE S02°28'29"E A DISTANCE OF 71.93 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 31; THENCE S87°24'27"W A DISTANCE OF 42.50 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 0.50 ACRES MORE OR LESS.

PARCEL NO. 2:

PART OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH PRINCIPAL MERIDIAN, SARPY COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 31, THENCE N87°24'44"E A DISTANCE OF 1,272.90 FEET ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 31; THENCE N02°28'29"W A DISTANCE OF 78.60 FEET; THENCE N49°57'04"W A DISTANCE OF 113.67 FEET; THENCE N03°01'03"W A DISTANCE OF 333.68 FEET; THENCE N89°37'19"W A DISTANCE OF 591.34 FEET; THENCE S87°04'32"W A DISTANCE OF 327.66 FEET; THENCE N42°31'12"W A DISTANCE OF 102.89 FEET; THENCE S87°31'28"W A DISTANCE OF 168.51 FEET; THENCE N02°28'31"W A DISTANCE OF 35.00 FEET; THENCE N87°31'28"E A DISTANCE OF 184.82 FEET; THENCE S42°31'12"E A DISTANCE OF 102.72 FEET; THENCE N87°04'32"E A DISTANCE OF 312.20 FEET; THENCE S89°37'19"E A DISTANCE OF 605.30 FEET; THENCE S03°01'03"E A DISTANCE OF 361.34 FEET; THENCE S49°57'04"E A DISTANCE OF 113.76 FEET; THENCE S02°28'29"E A DISTANCE OF 85.16 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 31; THENCE S87°24'44"W A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 1.15 ACRES MORE OR LESS.

Upon completion of construction of the Waterline, and attendant facilities, the City shall remove the temporary construction facilities, if any, and all debris, and level off the easement and adjacent areas, returning such areas to a clean and useful condition in as near as possible the same condition as such land existed prior to the initiation of construction by the City. The City shall be liable to the School District for any damage arising out of the use of the temporary easement areas by it or its agents, contractors, or subcontractors. Further, City agrees to indemnify the School District against all claims of third persons any judgments and cost obtained against the School District by reason of such use.

7. **Alterations, improvements, and changes permitted.** City shall have the right to make such alterations, improvements, and changes to any building or improvement which may from time to time be on the Waterline Easement as City may deem necessary or to replace any such building or improvement with a new one of at least equal value, provided that prior to making any structural alterations, improvements, or changes, or prior to replacing any such building, City shall obtain School District's written approval of plans and specifications therefor. School District shall not unreasonably withhold or delay such approval, provided that the value of any such building or improvement shall not be diminished and the structural integrity of any such building shall not be adversely affected by any such alterations, improvements, or changes, or provided that any proposed new building or improvement is at least equal in value to the one which it is to replace, as the case may be. The plans shall be deemed to have been approved by School District unless it gives to City an itemized statement of objections thereto and the reasons therefor within forty (40) days of the receipt of the plans and specifications. City will in no event make any alterations, improvements, or other changes of any kind to any building or improvement on the Waterline Easement that will decrease the value of such building or improvement or that will adversely affect the structural integrity of such building or improvement.

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- a. **Ownership of new improvements.** The Waterline and all fixtures and appurtenances thereto, shall be the property of the City.
- b. **Access to Waterline :** The City shall have the right of ingress and egress to the Waterline over and across the School District's property to the extent such access is not available by way of the public roads, provided that the City shall be liable to the School District for any damage arising out of the exercise of such right of ingress and egress by it or its agents, contractors, or subcontractors.

8. **Repairs and Destruction of Improvements.**

- a. **Maintenance of improvements.** The City shall, at its own cost and without any expense to School District, keep and maintain the improvements constructed or installed in the Waterline Easement area, including any well, waterline and wellhouse, and all appurtenances thereto, in good, sanitary, lawful, and neat order, condition, and repair and, except as specifically provided herein, shall restore and rehabilitate any improvements of any kind which may be destroyed or damaged by ordinary use, fire, casualty, or any other cause whatsoever. City shall maintain all landscaped and planted areas in a condition which is reasonably acceptable to School District and in conformity with such reasonable guidelines as School District may from time to time establish. School District shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Waterline Easement or any buildings or improvements thereon. However, City shall not be responsible for the cost of restoring or rehabilitating any improvements that are destroyed or damaged during, or as a result of, School District's use of the premises.
- b. **Damage to and destruction of buildings or improvements.** The damage or destruction or partial destruction of any building or other improvement which is constructed or installed in the Waterline Easement area shall not release City from any obligation hereunder, except as hereinafter expressly provided, and in case of damage to or destruction of such building or improvement, City shall at its own expense promptly repair and restore the same to a condition as good or better than that which existed prior to such damage or destruction. Except as otherwise provided in this section, and without limiting such obligations of City, it is agreed that the proceeds of any insurance covering such damage or destruction shall be made available to City for such repair or replacement.

9. **Construction Liens.** City hereby covenants and agrees that City will not permit or allow any construction liens to be placed on School District's interest in the Waterline Easement during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on School District's interest, City shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that City may contest any such lien provided City first posts a surety bond, in favor of and insuring School District, in an amount sufficient to remove the lien pursuant to the Nebraska Construction Lien Act.

10. **Indemnification of School District.** At all times during the drilling of test wells, and the construction, installation, and maintenance of the 12-inch water main, well head, and wellhouse, and the operation of the water wells and well house, the School District shall not be liable to the City and City shall indemnify, save, hold harmless, and defend School District for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by City or by any person whosoever may at any time have an interest in structures, utilities, pipelines or appurtenances thereto also located in the Waterline Easement area, or may be using, occupying, or visiting the Waterline Easement, or be in, on, or about the

Waterline Easement, whether such loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, negligence, or intentional misconduct of City or of any occupant, visitor, or user of any portion of the Waterline Easement or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and City shall indemnify School District against all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death, or damage, including any claims of Northern Natural Gas Company arising out of the Encroachment Agreement executed between the School District and Northern Natural Gas Company for the benefit of the City, a copy of which is attached hereto as Appendix "1" and incorporated herein by this reference. City hereby waives all claims against School District for damages to any building, landscaping, or improvement which is now on or hereafter placed or built on the Waterline Easement and to the property of City in or about the Waterline Easement, from any cause arising at any time.

11. **Parties Bound.** This Lease shall be binding on and inure to the benefit of the parties hereto and their respective assigns, executors, heirs, personal representatives, and successors.

12. **Time of Essence.** Time is of the essence of this Easement, and of each and every covenant, term, condition, and provision hereof.

13. **Captions.** All captions, headings, or titles in the paragraphs or sections of this Easement are inserted for convenience of reference only and shall not constitute a part of this Easement as a limitation of the scope of the particular paragraphs or sections to which they apply.

14. **No Partnership, Joint Venture, or Fiduciary Relationship Created Hereby.** Nothing contained in this Easement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between School District and City, it being understood that the sole relationship created hereby is one of School District and City. All laws and statutes of the City of Gretna and State of Nebraska relative to School District and City relationships shall be applicable to the parties hereto.

15. **Cumulative Rights.** Except as otherwise expressly stated herein, no right or remedy herein conferred on or reserved to City or School District is intended to be exclusive of any other right or remedy hereof provided by law, but each shall be cumulative in, and in addition to, every other right or remedy given herein or not or hereafter existing at law, in equity, or by statute.

16. **Reasonable Consent.** Whenever School District's or City's consent shall be required herein, such approval or consent shall not be arbitrarily or unreasonably conditioned, delayed, or withheld. School District or City as appropriate sends written notice to the requesting party that School District or City as appropriate is denying such approval or consent, stating in such notice the reasonable grounds therefor.

17. **Severable Provisions.** Each provision, section, sentence, clause, phrase, and word of this Easement is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Easement.

18. **Entire Agreement.** This Easement contains the entire understanding of the parties hereto with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter. No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this Easement or unless mutually agreed to in writing between the parties hereto after the date hereof, and neither party has relied on any verbal representations, agreements, or understandings not expressly set forth herein.

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IN WITNESS WHEREOF, the parties hereto have executed this Easement the day and year first above written.

"School District"

SARPY COUNTY SCHOOL DISTRICT 77-0037,
A/K/A GRETNA PUBLIC SCHOOLS, a political
subdivision

By: [Signature]
Authorized Representative

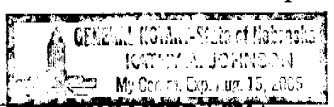
"City"

CITY OF GRETNA, SARPY COUNTY, NEBRASKA, a
political subdivision of the State of Nebraska

By: [Signature]
James Warren, Mayor, Chairman

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

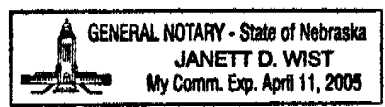
The foregoing instrument was acknowledged before me this 15th day of April, 2003 by Kevin M. Riley, an Authorized Representative of Sarpy County School District 77-0037, a/k/a Gretna Public Schools, a political subdivision, on behalf of said School District.



[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 2nd day of December, 2003, by James Warren, Chairman of the City Board of the City of Gretna, Sarpy County, Nebraska, a political subdivision of the State of Nebraska, on behalf of the corporation.



[Signature]
Notary Public