

Memorandum

To: Finance, Expenditures, and Legal Subcommittee
From: Eric Williams
Date: September 3, 2024
RE: First Right of Refusal for Surplus Land Along Beltline Trail

The District has an Interlocal Agreement with the City of Omaha outlining the responsibilities of the parties related to the design, construction, ownership, operations, and maintenance of a multi-phase project known as the Beltline Trail. In 2024, the District purchased industrial land along a former railroad corridor for the Phase 3 trail project. These parcels were purchased collectively and in their entirety to avoid remnants which would have low potential market value.

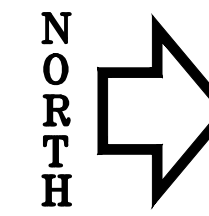
The concept of trail and recreation-oriented greenway development and opportunity for reinvestment recognizes the benefits that the Beltline Trail provides to an under-invested neighborhood. Plans for Phase 3 have made substantial progress and are nearing completion to be ready for bidding. Past community outreach about the benefits of the Beltline Trail and discussion at past Board meetings have highlighted the desire to find use for the adjacent land which will not be part of trail. District staff have received input from community organizations who have similar objectives for investment, including a proposed Right of First Refusal Agreement from inCOMMON, see attached.

Detailed legal description for the surplus land will be created with final construction plans. inCOMMON has provided the agreement covering land on two parcels as shown in the attached map to provide certainty for geotechnical and other due diligence engineering on site.

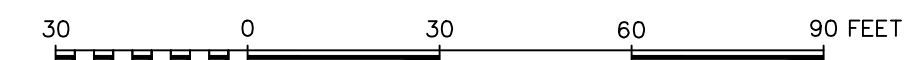
- **Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to declare approximately 2.84 acres of surplus land along the Beltline Trail and execute a Right of First Refusal Agreement and purchase agreement for the purchase of approximately 2.84 acres, verified by survey, of the Beltline Trail project lands for \$12,550 per acre, subject to terms and conditions as the General Manager determines necessary and District Legal Counsel approves as to form.**



Illustration: Trial Alignment



SCALE 1" = 30'

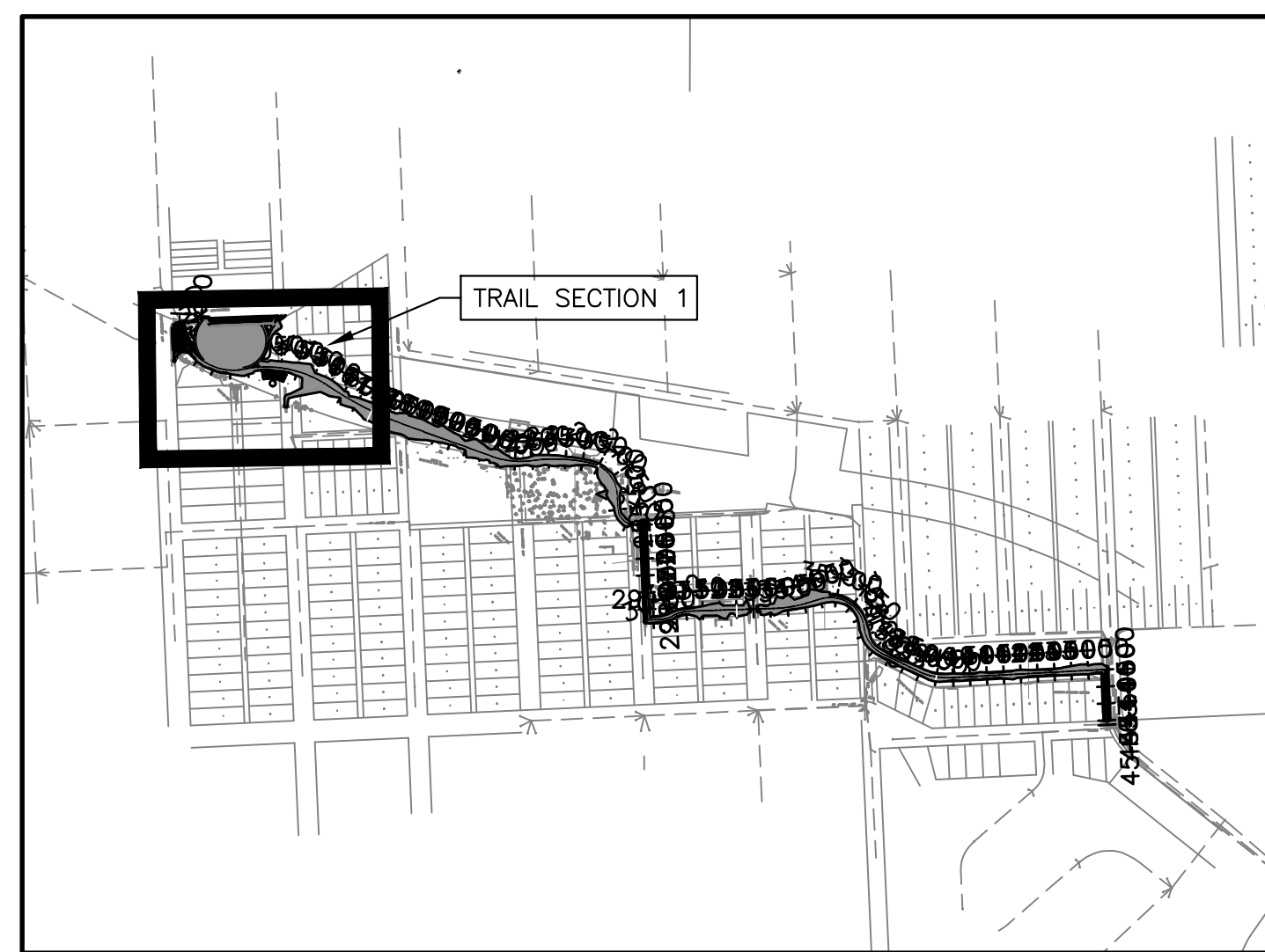
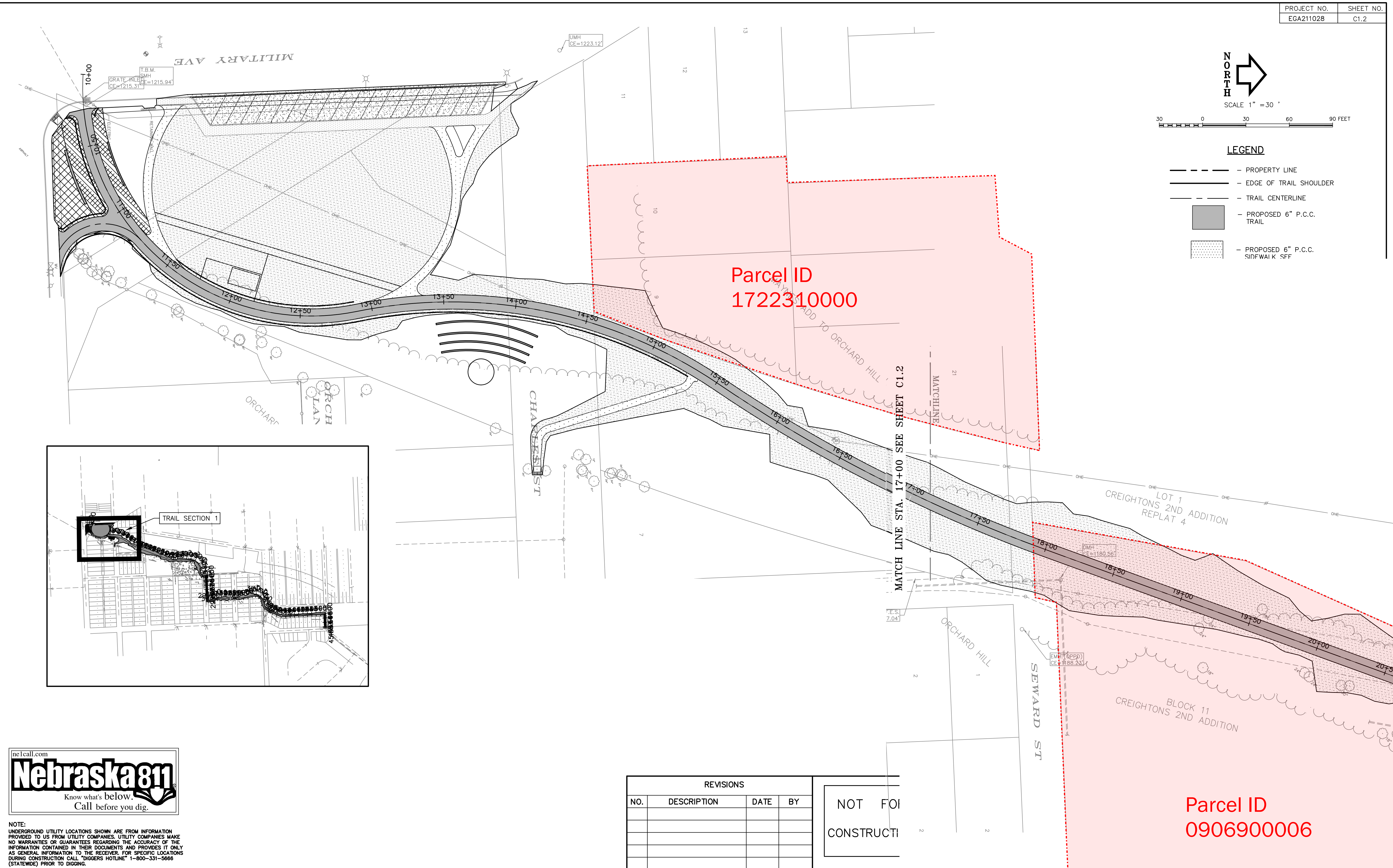


LEGEND

- PROPERTY LINE
- EDGE OF TRAIL SHOULDER
- TRAIL CENTERLINE
- PROPOSED 6" P.C.C. TRAIL
- PROPOSED 6" P.C.C. SIDEWALK SFF

Parcel ID
1722310000

Parcel ID
0906900006

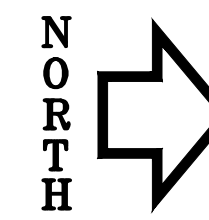


NOTE:
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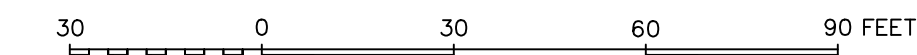
REVISIONS			
NO.	DESCRIPTION	DATE	BY

NOT FOR CONSTRUCTION

CONSTRUCT 6" PCC TRAIL				
STATION	TO	STATION	SIDE	SF
17+00	-	24+00	LT/RT	7000

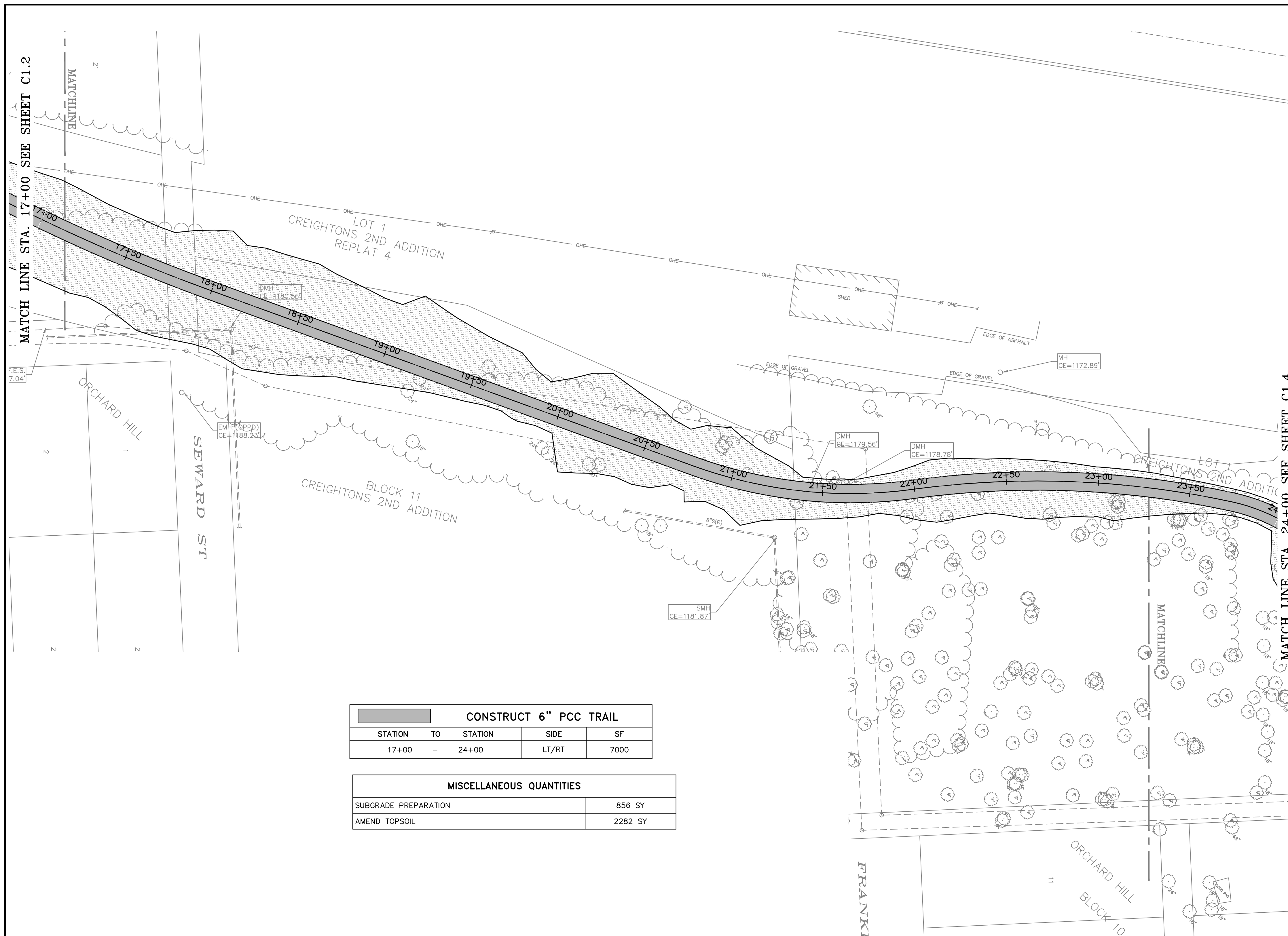


SCALE 1" = 30'



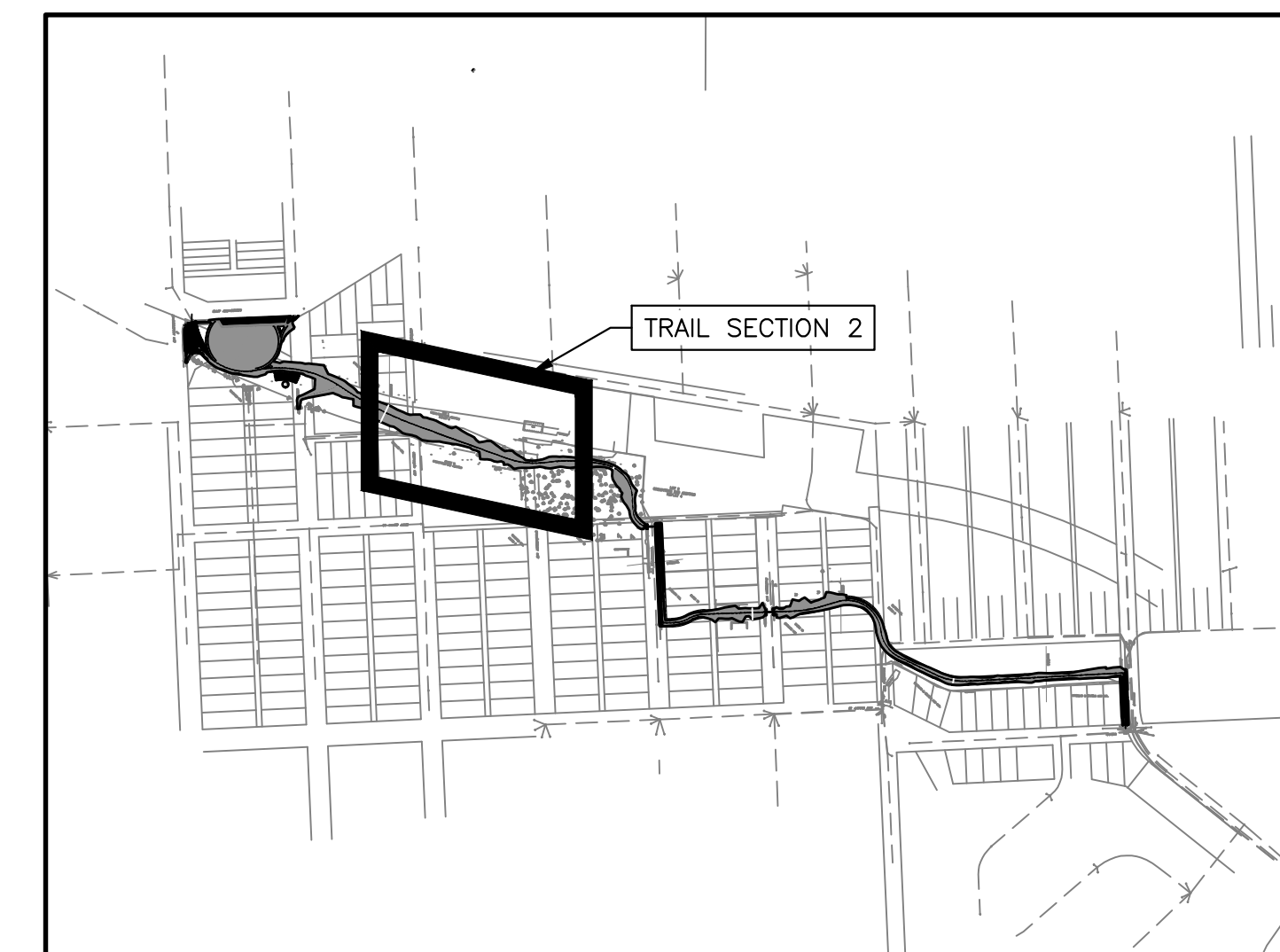
LEGEND

- PROPERTY LINE
- EDGE OF TRAIL SHOULDER
- TRAIL CENTERLINE
- PROPOSED 6" P.C.C. TRAIL



CONSTRUCT 6" PCC TRAIL				
STATION	TO	STATION	SIDE	SF
17+00	-	24+00	LT/RT	7000

MISCELLANEOUS QUANTITIES	
SUBGRADE PREPARATION	856 SY
AMEND TOPSOIL	2282 SY



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REVISIONS			
NO.	DESCRIPTION	DATE	BY

NOT FOR
CONSTRUCTION



CONSTRUCTION GEOMETRICS

RIGHT OF FIRST REFUSAL AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2024, by and between inCOMMON Housing Development Corporation, a Nebraska non-profit corporation, (“Buyer”), and the Papio-Missouri River Natural Resources District, a political subdivision of the State of Nebraska (“Seller”).

In consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration paid by Buyer to Seller as more fully set forth below, receipt of which is hereby acknowledged by Seller, the parties agree as follows:

WHEREAS, Seller is the owner of certain real property situated in Douglas County, Nebraska, informally described as:

- i. Douglas County, Nebraska Tax Parcel No. 09069000006
- ii. Douglas County, Nebraska Tax Parcel No. 1722310000

(Collectively “the Property”)

WHEREAS, Seller intends to construct the Omaha Beltline Trail upon the Property, which will not utilize the entirety of the Property.

WHEREAS, Buyer desires to obtain a first right of refusal to purchase that part of the Property not utilized by Seller in its development of the Omaha Beltline Trail.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which being acknowledged, it is agreed:

1. Seller hereby grants Buyer a first right of refusal to purchase that part of the Property that is not utilized for the development of the Omaha Beltline Trail in accordance with the terms of this Agreement. The parties acknowledge that the portion of the property to be retained by Seller for the development of the Omaha Beltline Trail has not been

determined by Seller at this time of this Agreement and therefore cannot be specifically described.

2. If Seller should be presented with a bona fide written offer/purchase agreement by a willing third party to purchase all or part of the Property within Twenty-four (24) months of the date of this Agreement which Seller intends to accept, Seller shall give written notice to Buyer in the manner provided herein, accompanied by a copy of such written offer/purchase agreement at least twenty (20) days before Seller may accept such offer.

3. Within Twenty (20) days after the receipt of a written notice from Seller as contained in Section 3, Buyer may provide Seller with written notice in the manner provided herein of its election to exercise its Right of First Refusal and purchase the Property pursuant to a separate formal purchase agreement (the "Definitive Agreement") which incorporates the terms contained in this Agreement along with the additional terms reasonably necessary to form such an agreement. Seller shall convey title to the Property under the Right of First Refusal and Definitive Agreement via special warranty deed, subject to all easements, covenants, restrictions, conditions, real property taxes and assessments then due and payable, and all other matters of record and matters which would be present upon visible inspection of the Property and/or disclosed by an accurate ALTA survey of the Property. The Property shall be conveyed by Seller to Buyer under the Definitive Agreement in its "AS-IS" and "WHERE-IS" condition with all faults and without any representation or warranty of any kind by Seller or any of Seller's employees, directors, officers, contractors, representatives or agents.

4. The purchase price for the Property under the Right of First Refusal and the Definitive Agreement shall be the greater of (a) the price set forth in the bona fide third

party offer, or (b) \$ 12,550 per acre, and the total acres to be sold shall be determined after Seller has formally approved its final plans for the Omaha Beltline Trail.

5. If Buyer fails or otherwise declines to exercise its Right of First Refusal within the period provided in Section 4 herein, or if Buyer exercises the Right of First Refusal but (a) the parties fail to enter into the Definitive Agreement within 90 days after the date Buyer exercises the Right of First Refusal, or (b) the Buyer fails to close on the purchase of the Property under the Definitive Agreement, the Right of First Refusal shall be void and of no effect, and Seller may thereafter proceed with acceptance of any third-party offer and subsequent sale of the Property.

6. As consideration for the grant of this first right of refusal by Seller, Buyer shall pay to Seller the sum of One Hundred and no/100 Dollars (\$100.00) immediately upon the execution of this agreement.

7. Seller agrees to allow Buyer to access the Property during the Twenty-four (24) month period of this Agreement for the purpose of performance of due diligence inspections, which may include any physical inspections, tests or examinations which Buyer may deem prudent to evaluate the Property, including, but not limited to, geotechnical, environmental or other feasibility studies, and a survey of the Property; provided, however, Buyer shall obtain Seller's prior written approval before conducting any intrusive testing or sampling of the Property. Buyer agrees to indemnify and hold Seller and Seller's employees, directors, contractors, representatives and agents harmless from and against all injury, death, or property damage or claims of any kind whatsoever arising out of or in any way incidental to Buyer's access to or presence on the Property in conducting its due diligence and/or otherwise exercising its rights under this Agreement, which indemnity and hold harmless obligation of Buyer shall survive

termination or the closing of the transactions contemplated by this Agreement.

8. Any notice, request, or demand provided for or given pursuant to this Agreement shall be deemed delivered, with any relevant time period provided herein commencing, upon: (a) the date of personal delivery to recipient's address provided below, (b) the date of delivery via electronic mail at recipient's electronic mail address provided below, or (c) date of receipt of a certified mailing with return receipt requested to recipient's address provided below.

9. Any notice, request, or demand to be provided under this agreement shall be provided to the parties as follows:

TO SELLER :

Papio-Missouri River Natural Resources District
c/o Eric Williams
8901 South 154th Street
Omaha, NE 68138
ewilliams@papionrd.org

TO BUYER :

inCOMMON Housing Development Corporation
c/o Christian Gray
1340 Park Avenue
Omaha, NE 68105
christian@incommoncd.org

10. This Agreement shall be governed by the laws of the State of Nebraska.

11. This Agreement may be executed simultaneously or in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12. If any term, provision, or condition of this Agreement is determined by a court or other judicial or administrative tribunal to be illegal, void or otherwise ineffective

or in violation of public policy, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

Dated: _____.

inCOMMON HOUSING DEVELOPMENT CORPORATION, BUYER

BY: _____

Christian Gray, Executive Director

Dated: _____.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, SELLER

BY: _____

John Winkler, General Manager