

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION APPROVING EXCHANGE AGREEMENT WITH CLEAR CREEK
L.L.C. FOR COUNTY ROAD RIGHT OF WAY

WHEREAS, pursuant to Neb. Rev. Stat. §39-1701 to 1702 (Reissue 2008), the County Board of Commissioners, may, when necessary for the safety or convenience of the traveling public, acquire interests in property, by gift or otherwise, deemed to be necessary for present or future county road purposes; and,

WHEREAS, improvements to a portion of Chandler Road require the acquisition of additional permanent right-of-way and a temporary construction easement, the owner of which has agreed to grant to the County in exchange for cash title to the right-of-way of an unimproved alley; and,

WHEREAS, it is the judgment of this Board that it is necessary for the safety or convenience of the traveling public that right-of-way for improvements to Chandler Road, as described on attached Exchange Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS that Sarpy County hereby approves the Exchange Agreement with Clear Creek L.L.C. for the acquisition of additional road right-of-way, a copy of which is attached hereto.

BE IT FURTHER RESOLVED that the Chair and Clerk are hereby authorized to sign such documents as necessary to accept the property described herein for the purposes stated in this Resolution.

DATED this 2nd day of February, 2010.

Moved by Jensen, seconded by Richards, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

[Handwritten signature]

none

none

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

ABSTAIN:

none

[Handwritten signature]
County Clerk



Approved as to form:

[Handwritten signature]
County Attorney/Deputy

EXCHANGE AGREEMENT

THIS AGREEMENT (hereinafter referred to as "this Agreement") is dated as of this ___ day of _____, 2010, by and between THE COUNTY OF SARPY, NEBRASKA (hereinafter referred to as "the COUNTY") and CLEAR CREEK HOLDINGS, LLC (hereinafter referred to as "CLEAR CREEK").

A.

The COUNTY hereby agrees to exchange and purchase and CLEAR CREEK hereby agrees to exchange and sell to the COUNTY, certain real" property upon the following terms and conditions:

A1. Property. The property of the CLEAR CREEK to be sold to and exchanged with property of COUNTY pursuant to this Agreement consists of two parcels of land in Sarpy County, Nebraska, a permanent right-of-way acquisition, herein known as "Parcel A" as described in the legal description attached hereto and incorporated herein by reference as "Exhibit A"; as well as the temporary easement, herein known as "Parcel B", described in the legal description attached hereto and incorporated herein by reference as "Exhibit B", all as shown on the diagram attached hereto as "Exhibit C".

A2. Deed. PARCEL A shall be conveyed by CLEAR CREEK to COUNTY in fee simple by Special Warranty Deed free and clear of all mortgages, liens (including real estate taxes), tenants' rights, and other encumbrances except easements and protective covenants now of record (such excepted items hereinafter being referred to collectively as "the COUNTY'S PERMITTED EXCEPTIONS"). PARCEL B shall be conveyed by CLEAR CREEK to COUNTY by the usual and customary form provided by COUNTY, and shall subject to the following terms and conditions:

- 1) Possession of said Temporary Easement by the County shall begin immediately upon the delivery of said form by CLEAR CREEK;
- 2) Said Temporary Easement shall be for the purpose of facilitating improvements to Chandler Road, as well as appurtenant drainage and safety features.
- 3) COUNTY shall be allowed to maintain possession of said Temporary Easement area for up to 90 days past the completion of the Chandler Road improvements.

B.

CLEAR CREEK hereby agrees to sell and exchange and the COUNTY hereby agrees to purchase and accept from the CLEAR CREEK, certain real property upon the following terms and conditions:

B1. Property. The property of the COUNTY to be sold to and exchanged with property of the CLEAR CREEK pursuant to this Agreement consists of the parcel of land in Sarpy County,

Nebraska, referred to as "PARCEL C," such PARCEL C being described and depicted in the legal description/diagram attached hereto and incorporated herein by reference as "Exhibit E." and

B2. Valuation/Price. For purposes of this Agreement the fair market value of PARCEL C is deemed to be less than the fair market value of PARCEL A and PARCEL B combined. In consideration thereof, COUNTY agrees to pay to CLEAR CREEK the sum One Thousand Six Hundred Thirty-Three Dollars (\$1633.00), said sum being the difference in the fair market value of the parcels being exchanged herein.

B3. Deed. PARCEL C shall be conveyed by the COUNTY TO CLEAR CREEK by Special Warranty Deed free and clear of all mortgages, liens (including real estate taxes), tenants' rights, and other encumbrances except easements and protective covenants now of record.

C.

C1. Surveys. All surveys which a party may require in connection with the closing of this transaction shall be at the expense of such party.

C2. Title insurance Premiums. Each party shall pay the premiums for the title insurance for which this Agreement calls such party to provide a title insurance commitment

C3. Closing. This transaction shall be closed upon a date and at a time to be designated in a written notice mailed by the CLEAR CREEK to the COUNTY, such closing date to be not more than 60 days following the date of this Agreement The transaction shall be closed at such time and/or place as may be agreed upon in writing by the COUNTY and the CLEAR CREEK.

C4. Delivery of possession. Possession of PARCEL A and PARCEL C shall commence immediately upon closing. Possession of PARCEL B shall be in accordance with the terms of Exhibit D.

C5. Revenue Stamps. All documentary stamp taxes shall be paid by the COUNTY to the extent that these transactions are not exempt therefrom.

C6. Recordation. This Agreement may be recorded in whole or in part.

C7. Entire agreement This instrument contains the entire agreement between the parties, and each party agrees that neither party, nor any officers, agents, or employees of the parties, have made any representation or promise with respect to, or affecting the properties subject to this Agreement, not expressly contained herein.

C8. Governing law. The provisions of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Nebraska.

C9. Captions. The captions contained in this Agreement are for convenience only and are not intended to limit or define the scope or effect of any provision of this Agreement.

C10. Time. Time is of the essence of this Agreement

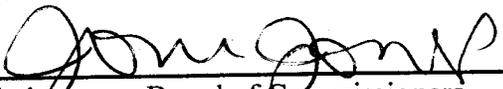
C11. Default: specific performance. If either party shall default hereunder, the other party shall be entitled to enforce specific performance of this Agreement or may terminate this Agreement.

C12. Notices. All notices herein required shall be in writing and shall be served on the parties at the addresses set out below, or at such other address as either party may hereafter designate in writing for service of notice to itself. The mailing of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service,

C13. Survival of conditions. The terms and conditions of this Agreement, and all representations, covenants, warranties, and agreements made herein, shall survive the closing of this transaction, and shall not be deemed to have merged or terminated upon closing.

C14. Binding effect. The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the successors in interest and assigns of the respective parties hereto.

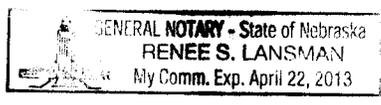
THE COUNTY OF SARPY, NEBRASKA

By 
Chairperson, Board of Commissioners

STATE OF NEBRASKA)
)SS.
COUNTY OF Sarpy)

On this 2nd day of February, 2010, before me, a Notary Public and for said County, personally came Joni Jones, Chairperson of the Board of Commissioners of Sarpy County, Nebraska, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and acknowledged the same to be her voluntary act and deed and the voluntary act and deed of said County of Sarpy

WITNESS my hand and Notarial Seal the date last aforesaid.




Notary Public

CLEAR CREEK, LLC

By _____
Title

STATE OF NEBRASKA)
)SS.
COUNTY OF _____)

On this ___ day of _____, 2010, before me, a Notary Public,
personally came _____, to me personally known to be the
identical person whose name is affixed to the above and foregoing instrument, and acknowledged
(he same to be his voluntary act and deed and the voluntary act and deed of said Clear Creek
LLC.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

C-77(99-4)

#2000026.01

TRACT No. 7

Type: Right of Way Acquisition

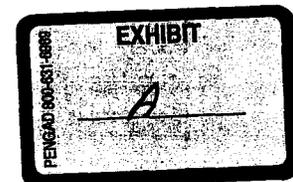
Owner: Clear Creek Holdings, LLC

LEGAL DESCRIPTION

A part of Lot 6, Block 13 Chalco, a subdivision located in the W1/2 of Section 14, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Southeast corner of the NW1/4 of said Section 14; thence S89°21'02"W (assumed bearing), along the South line of said NW1/4 of Section 14, a distance of 390.46 feet; thence N00°38'56"W, a distance of 5.12 feet to a point on the North right-of-way line of Railway Street, said point also being the Southeast corner of said Lot 6, Block 13 Chalco, said point also being the point of beginning; thence N61°03'25"W, along said North right-of-way line of Railway Street, said line also being the South line of said Lot 6, Block 13 Chalco, a distance of 146.82 feet; thence N77°59'25"W, along said North right-of-way line of Railway Street, said line also being said South line of said Lot 6, Block 13 Chalco, a distance of 12.11 feet to the point of intersection of said North right-of-way line of Railway Street and the East right-of-way line of Kearney Avenue, said point also being the Southwest corner of said Lot 6, Block 13 Chalco; thence N00°03'49"W, along said East right-of-way line Kearney Avenue, said line also being the West line of said Lot 6, Block 13 Chalco, a distance of 10.39 feet; thence S77°05'25"E, a distance of 143.90 feet to a point on the East line of said Lot 6, Block 13 Chalco; thence S00°05'01"E, along said East line of said Lot 6, Block 13 Chalco, a distance of 51.81 feet to the point of beginning.

The above described tract of land contains an area of 4,102 square feet, more or less.



C-77(99-4)

#2000026.01

TRACT No. 7

Type: Temporary Easement

Owner: Clear Creek Holdings, LLC

LEGAL DESCRIPTION

A part of Lot 6, Block 13 Chalco, a subdivision located in the W1/2 of Section 14, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Southeast corner of the NW1/4 of said Section 14; thence S89°21'02"W (assumed bearing), along the South line of said NW1/4 of Section 14, a distance of 390.46 feet; thence N00°38'56"W, a distance of 5.12 feet to a point on the North right-of-way line of Railway Street, said point also being the Southeast corner of said Lot 6, Block 13 Chalco; thence N00°05'01"W, along the East line of said Lot 6, Block 13 Chalco, a distance of 51.81 feet to the point of beginning; thence N77°05'25"W, a distance of 143.90 feet to a point on the East right-of-way line of Kearney Avenue, said line also being the West line of said Lot 6, Block 13 Chalco; thence N00°03'49"W, along said East right-of-way line of Kearney Avenue, said line also being said West line of said Lot 6, Block 13 Chalco, a distance of 17.45 feet; thence S37°49'34"E, a distance of 12.66 feet; thence S77°05'25"E, a distance of 135.94 feet to a point on said East line of said Lot 6, Block 13 Chalco; thence S00°05'01"E, along said East line of said Lot 6, Block 13 Chalco, a distance of 9.22 feet to the point of beginning.

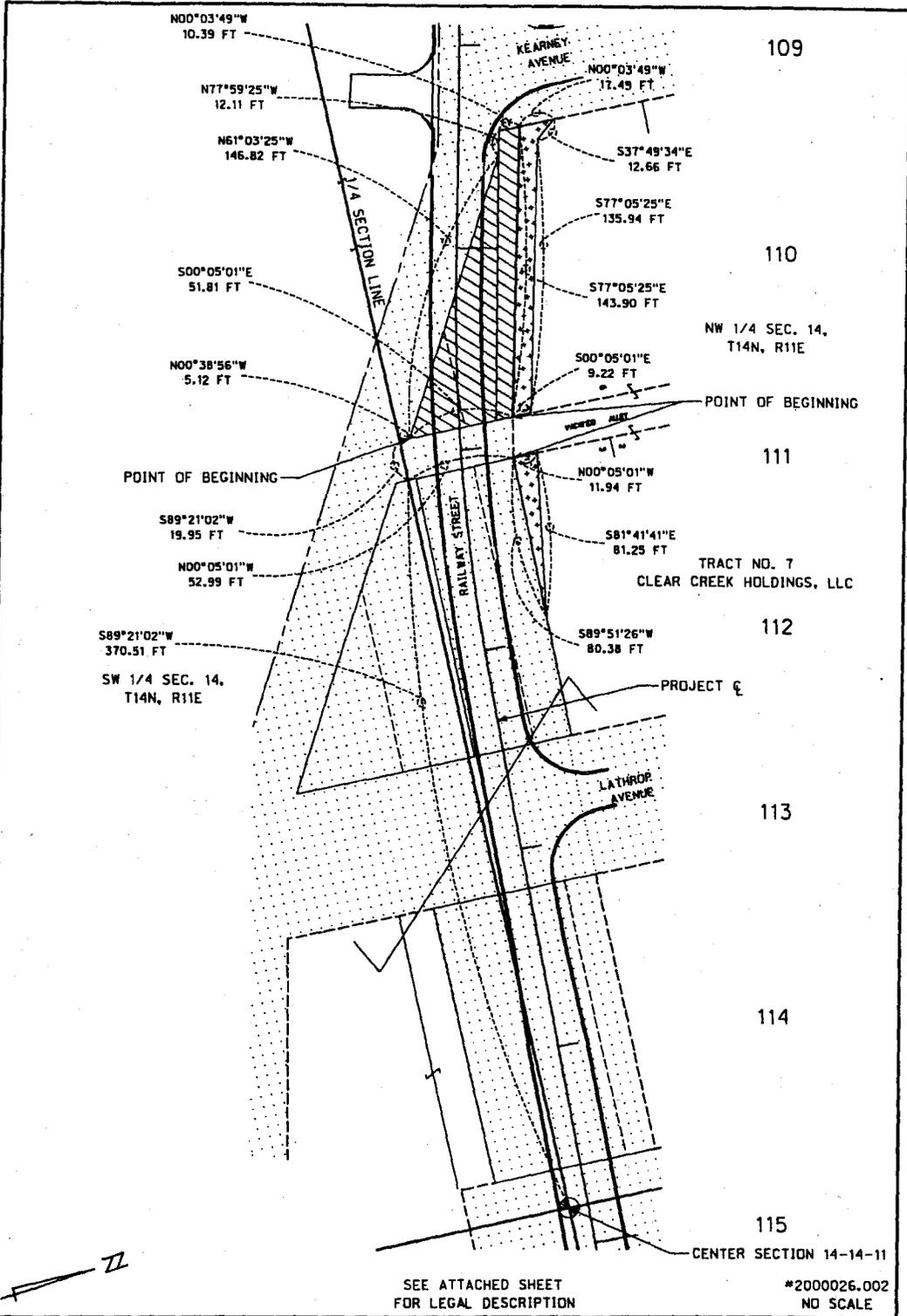
The above described tract of land contains an area of 1,325 square feet, more or less.

And also together with a part of Lot 3, Block 13 Chalco, a subdivision located in the W1/2 of Section 14, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Southeast corner of the NW1/4 of said Section 14; thence S89°21'02"W (assumed bearing), along the South line of said NW1/4 of Section 14, a distance of 370.51 feet; thence N00°05'01"W, a distance of 52.99 feet to a point on the North right-of-way line of Railway Street, said point also being the Southwest corner of said Lot 3, Block 13 Chalco, said point also being the point of beginning; thence continuing N00°05'01"W, along the West line of said Lot 3, Block 13 Chalco, a distance of 11.94 feet; thence S81°41'41"E, a distance of 81.25 feet to a point on said North right-of-way line of Railway Street, said line also being the South line of said Lot 3, Block 13 Chalco; thence S89°51'26"W, along said North right-of-way line of Railway Street, said line also being said South line of said Lot 3, Block 13 Chalco, a distance of 80.38 feet to the point of beginning.

The above described tract of land contains an area of 480 square feet, more or less.





SEE ATTACHED SHEET
FOR LEGAL DESCRIPTION

*2000026.002
NO SCALE

NEW R.D.W. ACQUISITION 	4102 SF	TRACT NO.	7
PERMANENT EASEMENT 		EXHIBIT NO.	
TEMPORARY EASEMENT 	1805 SF	PROJECT NO.	C-77(99-4)
EXISTING R.O.W. 		DATE:	10/22/2009
OWNER: CLEAR CREEK HOLDINGS, LLC		LEAD AGENCY:	SARPY COUNTY



VACATE RIGHT-OF-WAY

A portion of the alley in Block 13, together with a portion of vacated Pitman Street, original town of Chalco, as surveyed, platted and recorded in Sarpy County, Nebraska, more particularly described as follows:

All of the existing alley adjoining Lots 1 through 3 and Lots 6 and 7, Block 13, extending from a line between the Southwest corner of said Lot 3 along the new ROW of Chandler Road to the Southeast corner of said Lot 6, thence Northerly to the South ROW of vacated Pitman Street. Together with a portion of the South 1/2 of vacated Pitman Street adjoining Lots 1 and 7, Block 13, being the extension of said alley North to the center line of said vacated Pitman Street. Said tract containing 3,481.9 sqft±.

