

COUNCIL ACTION FORM

SUBJECT: NEW WATER TREATMENT PLANT – CONTRACT 1 EASEMENTS

BACKGROUND:

In 2010 the City Council approved a resolution declaring its intent to proceed with the new Water Treatment Plant and authorized the use of eminent domain as needed to acquire the land and easements necessary for this project. Construction of the new water plant is being performed under two separate construction contracts. Contract 1 includes the interconnecting piping between the old and new treatment plant locations, and Contract 2 includes construction of the actual treatment facilities. All land and easements for Contract 2 have been acquired. Within Contract 1, easements for the necessary piping are still needed.

Most of the pipeline route lies within property already owned by the City. However, easements are needed on the parent tract of the property at 800 and 1100 East 13th Street, which are owned by Liberty Court, LLC of Papillion, Nebraska. The easements needed include both temporary easements (7.86 acres) and permanent easements (3.86 acres) (See attached maps). This property, which is located in the floodplain, is zoned agricultural and is currently in row crop production.

Easement values are generally established by performing an appraisal to establish the “per acre” value of the land. Permanent easements are then assigned a value of 50% of the appraised per acre land value, and temporary easements are assigned a value of 10% of the appraised per acre land value.

When the design for Contract 1 neared completion, the necessary easements were identified and legal descriptions were drafted. Staff retained A&R Land Services of Ames as the City’s Right of Way (ROW) agent to assist the City with negotiating these easements. In early 2014, staff made an initial offer for the easements using the per acre price paid for the new water plant site at 1800 East 13th Street, and then adjusted the per acre price downward to account for the easement property being in the flood plain and for being zoned agricultural. That initial offer was based on a price of \$15,000 per acre, and was predicated on the City not having to undertake the time and expense for a formal appraisal and review appraisal. The property owner turned down this offer and told the City he believed the easements were worth in excess of a \$43,560 per acre.

Since the property owner and the City were so far apart in their compensation expectations, the ROW agent recommended that the City begin following the specific procedural steps outlined in Iowa Code Chapter 6B, in order to preserve the option to use eminent domain, should it become necessary. That process began by first obtaining

a “value finding appraisal” from a certified appraiser. That appraisal was completed in July 2014 by Commercial Appraisers of Iowa out of West Des Moines, Iowa, who evaluated the property and determined the fair market value to be approximately \$10,500 per acre. The appraiser also determined that the “best, highest use” for the subject property was for agricultural use, consistent with the City’s Land Use Policy Plan (LUPP). A separate review appraisal was completed that upheld the appraised fair market value of the land at \$10,500 per acre.

With that formal appraisal completed and independently confirmed, the City resumed negotiations with the property owner. Among other requirements, the State Code requires the City to make at least three “good faith offers” to voluntarily acquire the property before eminent domain may be considered. The City’s first “good faith” offer was based on the appraised land value of \$10,500 per acre. The property owner rejected the offer and counter-offered again with approximately \$43,560 per acre (\$1/sq ft). The owner indicated that he had interest from developers that put the land value even higher than this dollar amount, but did not provide evidence of any binding offer to purchase the land. City staff reviewed the counteroffer, and proposed a second “good faith” offer at \$11,600 per acre, based on the upper end range of comparable land values documented in the appraisal.

The property owner reviewed the City’s second “good faith” offer and countered with the following conditions.

- The City must agree to rezone the property from agricultural to commercial.
- The City must agree to a basis of \$18,500 per acre (\$50,246 total) for the easements.
- If the first two conditions were met, the owner would then donate to the City the easements needed for the Skunk River Recreational Trail, which is proposed to go through the east portion of the property.

Again, the City considered the owner’s counter offer. This particular tract of land was part of a proposal to amend the LUPP to allow a commercial convenience node back in 2007, which was firmly rejected 6-0 by the City Council. That decision was based in large part on the Council’s belief that a commercial use was not seen as being compatible with the surrounding land uses (cemetery, park, and lime and ash ponds), and because this particular parcel is in the floodway and floodway fringe and has an environmentally sensitive overlay designation. For those reasons, City staff was not inclined to entertain any offer that tied the easement acquisition to a rezoning of the property.

Staff presented a third “good faith” offer to the property owner, which included the following two alternatives:

- An offer of approximately \$14,000 per acre for the permanent and temporary easements related to Contract 1 for the new Water Treatment Plant. This

translated to a total payment for the permanent and temporary easements of \$37,500.

- Additionally, an alternative total amount of \$40,500 was offered if the property owner would also include the needed easements for the Skunk River Recreational Trail project.

The property owner reviewed the City's third "good faith" offer and countered with the following conditions.

- Pay an amount based on \$18,500 per acre
- Because rezoning of the property was off the table, the trail easements were no longer offered.

At this point, City staff could have moved forward with eminent domain proceedings, but thought it prudent to continue negotiations, inasmuch as the parties were less than \$13,000 apart in their total compensation offers. The staff time and costs associated with pursuing eminent domain and the continued inflation costs to the project from delayed construction would likely exceed \$13,000. Staff also believed that proceeding with eminent domain with this property owner for the water plant pipeline easements would hinder future negotiations for the trail. Since trail easements cannot be condemned, this could have meant that the Skunk River Recreational Trail segment from East 13th Street south to Lincoln Way would be left uncompleted for the foreseeable future. Staff decided to present a fourth "good faith" offer to the property owner which included the following terms.

- An offer of \$50,893.50 (based on the \$18,500 per acre price last offered by the property owner) for the permanent and temporary easements related to Contract 1 for the new Water Treatment Plant project.
- A slight increase in the number of permanent acres from 3.86 acres to 3.93 acres to allow for a connection to tie in the future well field in North River Valley Park.
- The offer also included \$3,327.50 (based on \$18,500 per acre) for 0.25 acres of permanent easement and 0.5 acres of temporary easement needed for the Skunk River Recreational Trail Project (see attached map).
- The property owner was informed that the offer of \$18,500 per acre would only be available if the owner agreed to grant the additional 0.07 acres of permanent water easement and to grant the easements needed for the trail.

At this point, Liberty Court accepted the City's offer.

The dollar amount per acre being agreed to is a significant premium (176%) above the appraised value. However, the incremental cost to the Water Utility (approximately \$13,000) may be less than the cost of pursuing eminent domain. The negotiated offer avoids condemnation, which allows the cost of the easements to remain eligible for inclusion in the project's State Revolving Fund loan. The voluntary agreement also provides an important easement for the

Skunk River Recreational Trail project. For these reasons, staff believes that the negotiated price is reasonable and is in the best interests of the City.

The Skunk River Recreational Trail project schedule is anticipated to follow an Iowa Department of Transportation Letting schedule with a project letting date in November 2015, with project construction anticipated from January to July 2016. A preliminary trail alignment has been established. However, the initial survey completed several years ago needs to be updated to confirm if adjustments are needed due to river bank movement of the Skunk River. The final plat of survey to finalize this easement is under way. Additional right of way acquisition discussions are being conducted with two additional property owners for other portions of this trail segment.

Funding for the water main easements is included in the New Water Treatment Plant project and will be financed as part of the Drinking Water State Revolving Fund loan. Funding for easements related to the Skunk River Recreational Trail project will be paid from the Shared Use Path System Expansion program in the CIP - 2013/14 Skunk River Trail Expansion (East Lincoln Way to South River Valley Park).

It should be noted that crop yield reductions and other direct impacts from construction of the interconnecting piping will be handled separately with the owner's farm tenant.

ALTERNATIVES:

1. Approve the purchase agreement to pay \$54,131 to Liberty Court L.L.C. for the necessary easements on property located at 800 and 1100 E. 13th St related to Contract 1 for the new Water Treatment Plant and to the Skunk River Recreational Trail as shown on the attached maps. The easement documents for the pipeline will be filed and recorded by staff immediately. The easement documents for the recreational trail will be filed once the updated plat of survey is completed.
2. Do not approve the purchase agreement, and direct staff to proceed with eminent domain proceedings for the necessary easements related to Contract 1 of the Water Treatment Plant, and direct staff to continue separate negotiations for the Skunk River Recreational Trail easements.

MANAGER'S RECOMMENDED ACTION:

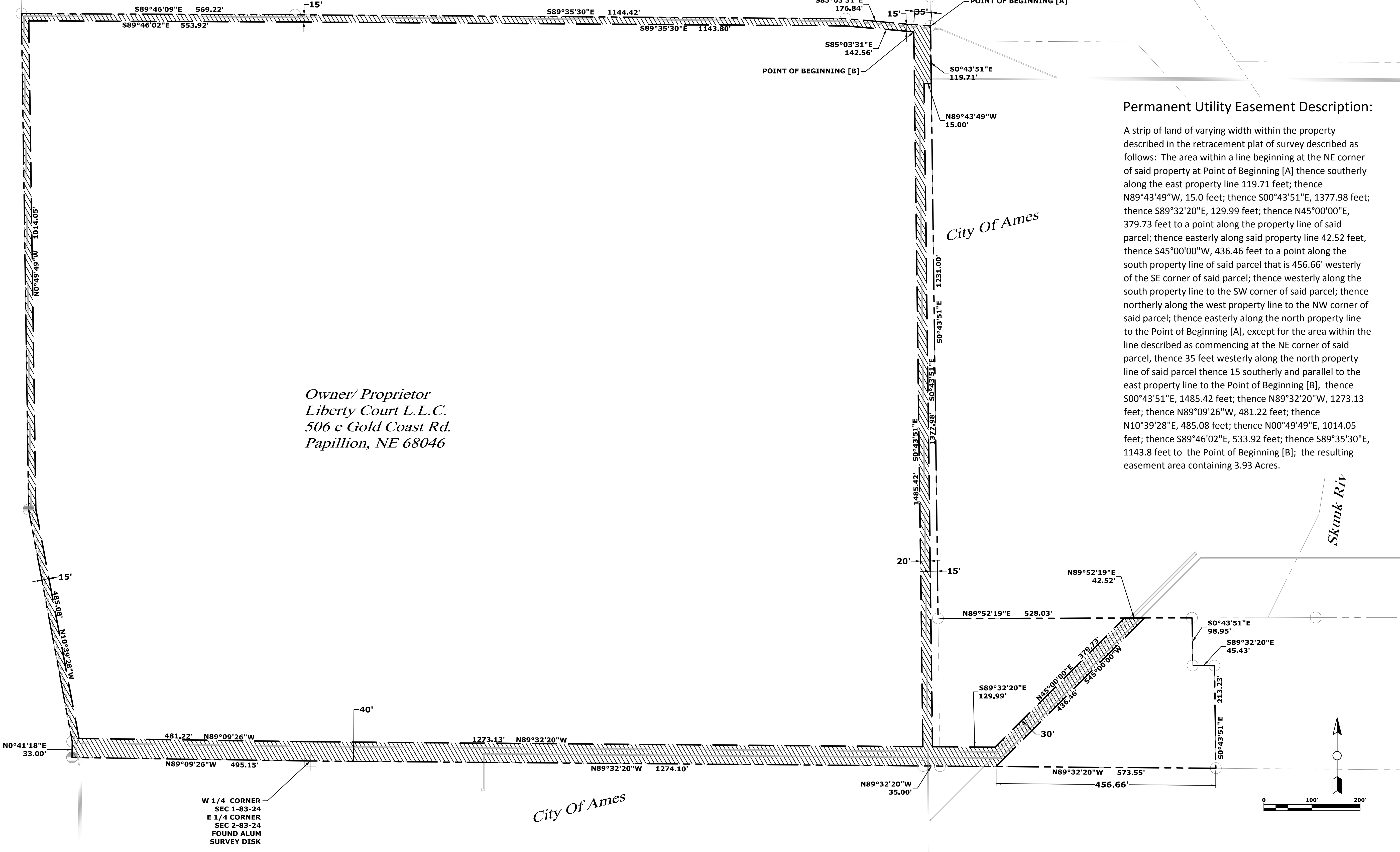
Temporary and permanent easements are needed to make the necessary piping connections between the sites of the new and old Water Treatment Plants. City staff has followed the specific procedures outlined in the Iowa Code and have made several good faith efforts to find an acceptable offer for purchase of the necessary easements. All of these offers have been at, or above, the appraised fair market value for easements on this property. While the negotiated price is significantly higher than the appraised value of the land, staff believes the offer is reasonable and is in the best interests of the City for the reasons outlined above.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving a purchase agreement in the amount of \$54,131.00 with Liberty Court L.L.C. for the easements required for Contract 1 of the Water Treatment Plant Project and easements related to the Skunk River Recreational Trail project.

E. 13TH STREET (ROW VARIES)

NW CORNER
SEC 1-83-24
NE CORNER
SEC 2-83-24
FOUND ALUM
SURVEY DISK

NE CORNER
W 1/2 NW FRL 1/4,
SEC 1-83-24
FOUND ALUM
SURVEY DISK



Permanent Utility Easement Description:

A strip of land of varying width within the property described in the retracement plat of survey described as follows: The area within a line beginning at the NE corner of said property at Point of Beginning [A] thence southerly along the east property line 119.71 feet; thence N89°43'49"W, 15.0 feet; thence S00°43'51"E, 1377.98 feet; thence S89°32'20"E, 129.99 feet; thence N45°00'00"E, 379.73 feet to a point along the property line of said parcel; thence easterly along said property line 42.52 feet, thence S45°00'00"W, 436.46 feet to a point along the south property line of said parcel that is 456.66' westerly of the SE corner of said parcel; thence westerly along the south property line to the SW corner of said parcel; thence northerly along the west property line to the NW corner of said parcel; thence easterly along the north property line to the Point of Beginning [A], except for the area within the line described as commencing at the NE corner of said parcel, thence 35 feet westerly along the north property line of said parcel thence 15 southerly and parallel to the east property line to the Point of Beginning [B], thence S00°43'51"E, 1485.42 feet; thence N89°32'20"W, 1273.13 feet; thence N89°09'26"W, 481.22 feet; thence N10°39'28"E, 485.08 feet; thence N00°49'49"E, 1014.05 feet; thence S89°46'02"E, 533.92 feet; thence S89°35'30"E, 1143.8 feet to the Point of Beginning [B]; the resulting easement area containing 3.93 Acres.

Owner/ Proprietor
Liberty Court L.L.C.
506 e Gold Coast Rd.
Papillion, NE 68046

City Of Ames

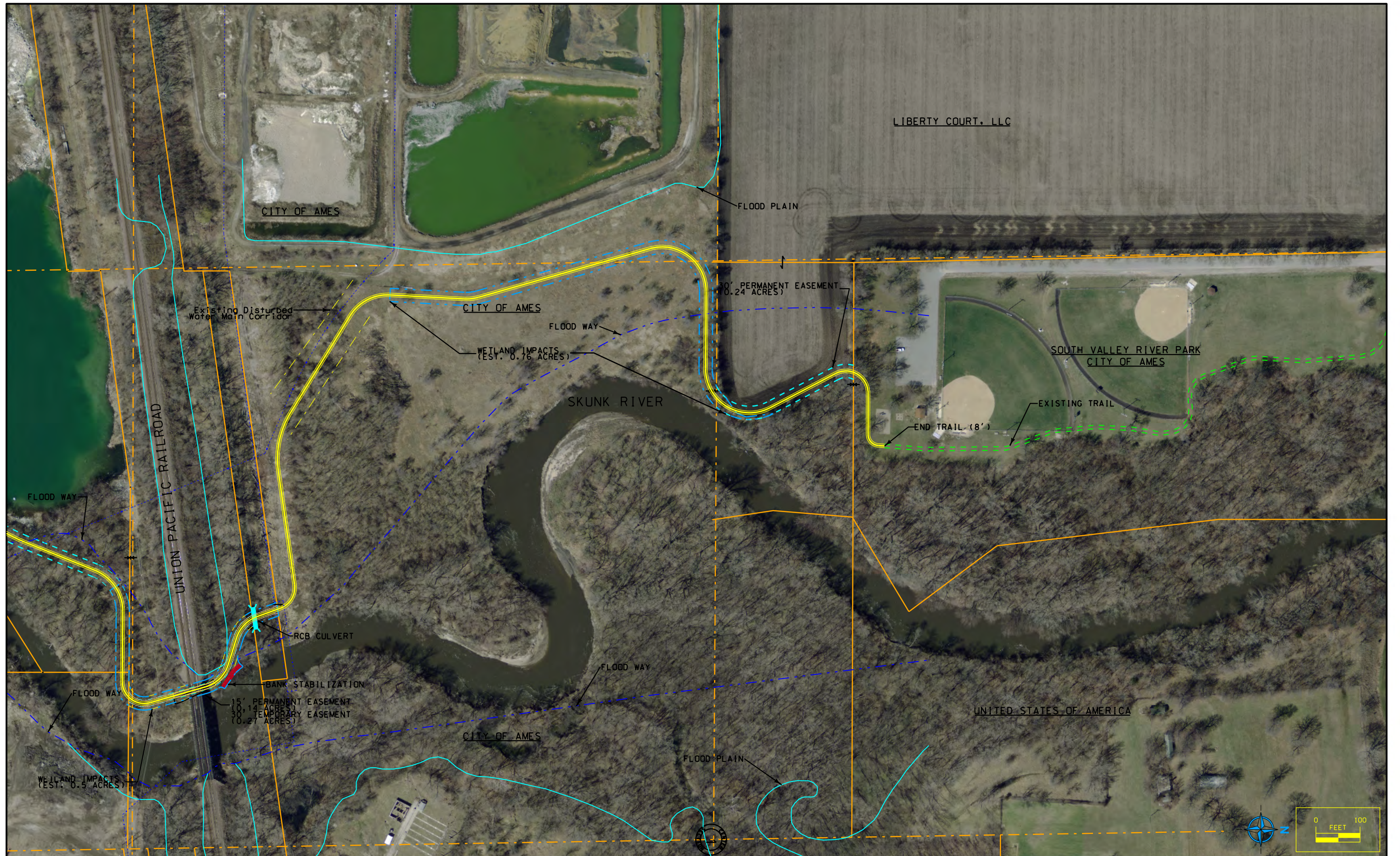
City Of Ames

City Of Ames

Skunk Riv

W 1/4 CORNER
SEC 1-83-24
E 1/4 CORNER
SEC 2-83-24
FOUND ALUM
SURVEY DISK

A	LAST UPDATE:	PROJECT NO.	FOX Engineering Associates, Inc. 414 South 17th Street, Suite 107 Ames, Iowa 50010 Phone: (515) 233-0000 FAX: (515) 233-0103	DATE	REVISION	CHECKED BY:	WATER MAIN EASEMENT FIGURE	PROJECT NO.	LAST UPDATE:	A
	06/20/14	3338-12C		AMES, IA					3338-12C	



PROJECT NO: 09A006-00
 PROJECT DATE: 01/08/2010
 CAD DATE: 3/3/2010 9:27:08 AM
 CAD FILE: X:\DM\IE\2009\09A006-00\CAD\Displays\09A006-00.pub
 DESIGNED BY: A.LASTNAME
 CHECKED BY: B.LASTNAME
 DRAWN BY: C.LASTNAME

NO	DATE	BY	REVISION DESCRIPTION



**SKUNK RIVER RECREATIONAL TRAIL
 HUNZIKER YOUTH SPORTS COMPLEX
 TO SOUTH VALLEY RIVER PARK**
 CITY OF AMES, IA

SUBJECT TO CHANGE
 PUBLIC DISPLAY
 SHEET NO. **PD.4**