

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is made and entered into this 8th day of August, 2022, (“Effective Date”) by and between the Fountain Creek Watershed, Flood Control and Greenway District, hereinafter referred to as (“District”), Fountain Creek Watershed Water Activity Enterprise (Enterprise), and the City of Pueblo, a Colorado municipal corporation, hereinafter referred to as (“City”). District, Enterprise, and City are collectively referred to herein as the “Parties”.

RECITALS:

1. Pursuant to C.R.S. § 32-11.5-201, the Fountain Creek Watershed, Flood Control and Greenway District (District) was created and established as a body politic and corporate and a political subdivision of the State of Colorado with the stated purpose of providing management, administration and to fund capital improvements necessary in the Fountain creek watershed to prevent and mitigate flooding, sedimentation, and erosion; improve water quality and otherwise address water quality and water quantity issues; improve drainage; fund the acquisition and protection of open space; develop public recreational opportunities, including parks, trails, and open space; and improve wildlife and aquatic habitat and restore, enhance, establish, and preserve wetlands.

2. The District established Enterprise to hold, manage and expend funds made available to District for flood control projects on Fountain Creek in El Paso and Pueblo Counties. The current funds held and managed by Enterprise are for flood control projects in the City and Pueblo County. Enterprise is a separate legal entity but is controlled by and works on projects approved by District.

3. The District, Enterprise, and the City are political subdivisions as defined in C.R.S. §29-1-201 *et seq.*, which expressly authorizes and encourages political subdivisions to cooperate and contract with another to provide goods and services as permitted by law.

4. The District and Enterprise have approved and authorized the Pueblo Levee System Floodplain Restoration Project (PLSFRP). Pursuant to the approvals, Enterprise has engaged Matrix Design Group, Inc. to provide planning and design services for the construction, administration, implementation and observation of the PLSFRP. A description of the PLSFRP is attached hereto and made a part hereof by reference labeled **Exhibit A**.

5. City has agreed to purchase a certain parcel of property owned by the Union Pacific Railroad which leads into and crosses Fountain Creek at the request of District and Enterprise to facilitate the commencement and completion of Phase II of the PLSFRP. A description of the property to be purchased by City is attached hereto and made a part hereof by reference labeled **Exhibit B**.

6. District and Enterprise agree as a condition of the City’s purchase of the property from Union Pacific Railroad that the work described as Phase II of the PLSFRP concerning the removal of the remnants and materials of the former railroad crossing will be completed in a timely

fashion.

7. The Parties have an interest in protecting the health of the Fountain Creek watershed within both El Paso County and Pueblo County.

8. In consideration of the purchase of the property as described in **Exhibit B** by the City, the District and Enterprise hereby agrees to complete Phase II of the PLSFRP as described in **Exhibit A** and now desire to enter into an Intergovernmental Agreement to bind the Parties as outlined above and as is more particularly set forth herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION, of the foregoing and the mutual promises, covenants, terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, District, Enterprise, and City agrees as follows:

I. OBLIGATIONS OF CITY:

As consideration for the performance of the District and of Enterprise hereunder, the City agrees to purchase the property from Union Pacific Railroad as described in **Exhibit B**, hereafter "Property", in order to facilitate the commencement and completion of Phase II of the PLSFRP. City agrees that upon closing of the purchase of the Property that District and Enterprise shall have full use of the Property in order to commence and complete the PLSFRP.

II. OBLIGATIONS OF DISTRICT:

In consideration of the City's agreement to purchase the property which is needed for the successful completion of the PLSFRP, District and Enterprise, jointly and severally, make the following representations and warranties to the City:

1. District and Enterprise acknowledge and understand that Pueblo City is acting in reliance upon the representations and warranties made herein in entering into the purchase agreement with Union Pacific and that but for these representations and warranties, City would not enter into the purchase agreement.
2. District and Enterprise will commence and fully complete to conclusion at their sole and separate expense the PLSFRP to include, but not be limited to:
 - a. The removal of the remnants of the railroad crossing, a portion of which has been partially removed, the restoration of the disturbed area, and the appropriate disposal in accordance with all laws and regulations of the removed remnants and materials.
 - b. The removal of the remaining railroad crossing includes removal of 4 concrete piers, the westerly bridge abutment, a railroad bridge segment, and the earth embankment that provides the westerly approach to the bridge crossing.

- c. Due to residual contaminants that have been found in the earth embankment material, most or all of the material shall be disposed of in a landfill in accordance with law and regulation.
 - d. Upon removal of the railroad crossing remnants and materials, the disturbed area shall be revegetated with native seed and plantings, including deciduous trees and shrubs, and cottonwood poles.
 - e. Areas to be revegetated shall be treated with a soil amendment and covered with an erosion control fabric to support seed growth.
 - f. The removal, disposal, and revegetation shall be conducted in accordance with the Materials Management Plan as approved by Pueblo City and Union Pacific Railroad.
3. Enterprise has entered into contracts with Matrix and Total Terrain to complete the work of the PLSFRP and Enterprise shall manage the project to its conclusion such that it satisfies all requirements of the purchase agreement between the City and Union Pacific Railroad.
 4. If Matrix and Total Terrain are unable to complete the project, Enterprise and/or District shall engage alternative contractors to complete the project.
 5. The Project shall be completed in accordance with the provisions of the Purchase Agreement and any Amendments thereto by and between Pueblo City and the Union Pacific Railroad.

III. OTHER PROVISIONS:

The Parties agree that their performance under this Agreement shall be subject to the following provisions:

1. **Term/Termination.** The term of this Agreement shall commence on the date first set forth herein and will terminate upon completion of the PLSFRP, unless terminated sooner as provided herein. City may terminate this agreement at any time and for any reason by giving thirty (30) days prior written notice to the other Parties.
2. **Liability Exposure.** Notwithstanding any other provision of this Agreement, no term or condition of this Agreement shall be construed or interpreted as a waiver by any Party of any provision of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*
3. **Complete Agreement.** This Agreement constitutes the complete Agreement on the subject hereof and supersedes and replaces all prior oral and written understandings and/or agreements of the Parties on the subject hereof.

4. **Governing Law.** This Agreement and the rights and duties of the parties shall be construed and interpreted and enforced in accordance with the laws of the State of Colorado.

5. **Modifications.** This Agreement may not be modified or amended in any manner by any Party or Parties unless the same is set forth in a written agreement making reference to this Agreement and signed by the Parties hereto. No waiver of any of this Agreement's provisions or conditions shall be binding unless made in writing and signed by the Mayor and the Chair of the Fountain Creek Watershed, Flood Control and Greenway District.

6. **Binding Agreement.** When executed by the parties, this Agreement shall constitute a binding Agreement and shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns. Any delegation or assignment of this Agreement or of any of the obligations set forth herein by any Party without the prior written consent of the other Parties shall be void and of no force and effect.

8. **Severable.** If any provision of this Agreement shall be determined to be invalid, illegal or without force by a Court of Law or rendered so by legislative act, the remaining provisions shall remain in full force and effect.

9. **Waiver.** No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder, or effect in any way any rights arising by virtue of any subsequent occurrence.

10. **Notices.** Any notice required or permitted to be given or delivered under this Agreement shall be in writing and shall be given by personal delivery, or by the United States Postal Service, by registered or certified mail, postage prepaid, or reputable national overnight courier service:

(a) If to City, addressed to:

Mayor
City of Pueblo
1 City Hall Place, 2nd Floor
Pueblo, CO 81003

with a copy to: City Attorney
1 City Hall Place, 3rd Floor
Pueblo, CO 81003

(b) If to District or Enterprise, addressed to:

Fountain Creek Watershed, Flood Control and Greenway District
Fountain Creek Watershed Water Activity Enterprise
Attn: Allison Schuch, Interim District Manager

2635 Christopher Terrace
Colorado Springs, CO 80907

or to such other address or person as any Party may from time to time specify in a writing delivered to the other Party in the manner provided in this paragraph. Any notice shall be deemed delivered on the day on which personal delivery is made or three (3) days after deposit in the mail in the case of registered or certified mail, and one (1) business day after deposit in the case of overnight courier.

11. **Captions.** Captions and headings used in this Agreement are for identification only and shall be disregarded in any construction or interpretation of the provisions of this Agreement.

12. **No Third-Party Beneficiary.** Enforcement of the terms and conditions of this Agreement shall be strictly reserved to the District, Enterprise, and City and nothing contained in this Agreement shall give or allow any claim or right of action by any other party or third person.

13. **Default.** In the event of a default in the terms and provisions of this Agreement by any Party or Parties, the other Party or Parties shall be entitled to seek all legal and equitable remedies, including specific performance as may be available or permitted under the laws of the State of Colorado. In the event of litigation under this Agreement, the prevailing Party shall be entitled to an award of costs and reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the date first above written.

ATTEST:

FOUNTAIN CREEK WATERSHED, FLOOD
CONTROL AND GREENWAY DISTRICT

By: _____
Secretary

By: _____
Chairperson, Board of Directors

ATTEST:

FOUNTAIN CREEK WATERSHED WATER
ACTIVITY ENTERPRISE

By: _____
Secretary

By: _____
Chairperson, Board of Directors

ATTEST:

CITY OF PUEBLO

City Clerk

By _____
Nicholas A Gradisar, Mayor

EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF THE 100.00 WIDE UNION PACIFIC RAILROAD RIGHT-OF-WAY LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 6, TOWNSHIP 21 SOUTH, RANGE 64 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF PUEBLO, COUNTY OF PUEBLO, STATE OF COLORADO; MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH BEARINGS REFERENCED TO A LINE CONNECTING THE NORTHWEST CORNER OF SAID SECTION 6 MONUMENTED BY A FOUND 3-1/4" BRASS CAP STAMPED "LS 29034" AND THE NORTHEAST CORNER OF SAID SECTION 6 MONUMENTED BY A FOUND LEAD PLUG IN STONE IN RANGE BOX, ASSUMED TO BEAR NORTH 89°37'46" WEST A DISTANCE OF 5,308.33 FEET:

COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 6; THENCE SOUTH 76°29'01" WEST, A DISTANCE OF 1859.55 FEET TO THE INTERSECTION OF THE SOUTHERLY LINE OF SAID UNION PACIFIC RAILROAD RIGHT-OF-WAY, BEING 50.00 FEET SOUTHERLY OF AND PARALLEL WITH THE REMNANTS OF THE CENTERLINE OF THE EXISTING TRACKS OF SAID UNION PACIFIC RAILROAD, WITH A LINE BEING 50.00 FEET EASTERLY OF AND PARALLEL WITH THE CENTERLINE OF THE BURLINGTON, NORTHERN AND SANTA FE RAILROAD TRACKS;

THENCE NORTH 26°44'48" WEST, ON SAID PARALLEL LINE, A DISTANCE OF 100.55 FEET TO THE NORTHERLY LINE OF THE OF SAID UNION PACIFIC RAILROAD RIGHT-OF-WAY BEING 50.00 FEET NORTHERLY OF AND PARALLEL WITH THE REMNANTS OF THE CENTERLINE OF THE EXISTING TRACKS OF SAID UNION PACIFIC RAILROAD TRACKS;

THENCE NORTH 69°13'44" EAST, ON SAID RIGHT-OF-WAY LINE, A DISTANCE OF 691.36 FEET TO A TANGENT 1443.79 FOOT RADIUS CURVE WHOSE CENTERS BEARS SOUTHEASTERLY;

THENCE NORTHEASTERLY, ON SAID CURVE, THROUGH A CENTRAL ANGLE OF 8°33'27" AN ARC LENGTH OF 215.64 FEET;

THENCE SOUTH 12°12'49" EAST, A DISTANCE OF 100.00 FEET TO THE PREVIOUSLY CITED SOUTHERLY LINE OF UNION PACIFIC RAILROAD RIGHT-OF-WAY, ALSO BEING A POINT ON A NON-TANGENT, 1343.79 FOOT RADIUS CURVE WHOSE CENTER BEARS SOUTH 12°12'49" EAST;

THENCE SOUTHWESTERLY, ON SAID RIGHT-OF-WAY LINE AND CURVE, THROUGH A CENTRAL ANGLE OF 8°33'27" AN ARC LENGTH OF 200.70 FEET;

THENCE SOUTH 69°13'44" WEST, ON SAID SOUTHERLY UNION PACIFIC RIGHT-OF-WAY LINE, A DISTANCE OF 680.89 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIPTION YIELDS A CALCULATED AREA OF 89,429 SQUARE FEET (2.053 ACRES), MORE OR LESS AND IS DEPICTED ON THE ATTACHED GRAPHICAL EXHIBIT FOR REFERENCE.



ROBERT L. MEADOWS, PLS
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR NO. 34977
PREPARED FOR AND ON BEHALF OF MATRIX DESIGN GROUP

Excellence by Design

SHEET 1 OF 2

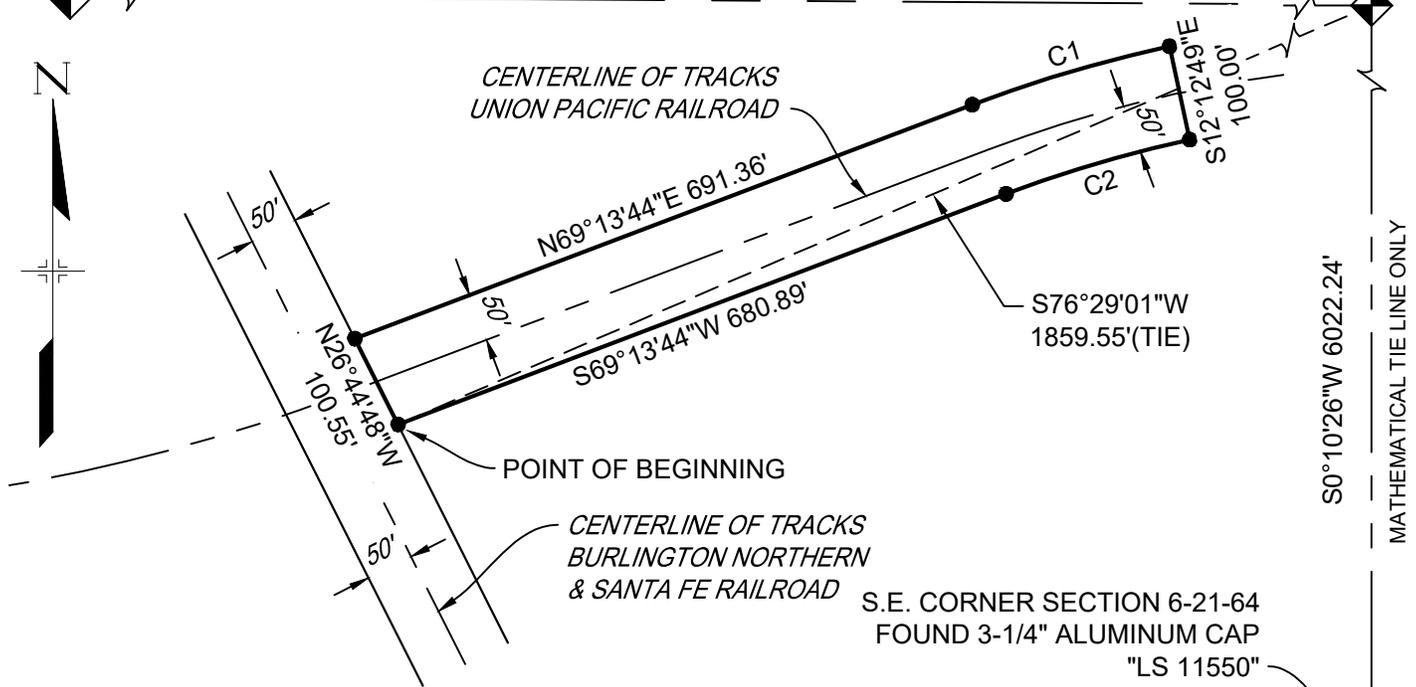
Anniston, AL | Atlanta, GA | Colorado Springs, CO | Denver, CO | Niceville, FL | Parsons, KS | Phoenix, AZ
Sacramento, CA | Tamuning, GUAM | Texarkana, TX | Washington, DC

N.W. CORNER SECTION 6-21-64
FOUND 3-1/4" BRASS CAP "LS 29034"

POINT OF COMMENCEMENT
N.E. CORNER SECTION 6-21-64
FOUND LEAD PLUG IN STONE IN RANGE BOX

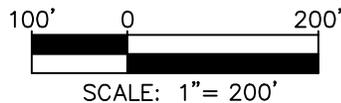
BASIS OF BEARINGS
N89°37'46"W 5308.33'

MATHEMATICAL TIE LINE ONLY BETWEEN N.W. COR. SEC. 6 AND N.E. COR. SEC. 6



CURVE TABLE

| CURVE # | ARC LENGTH | RADIUS | DELTA ANGLE | CHORD BEARING | CHORD LENGTH |
|---------|------------|---------|-------------|---------------|--------------|
| C1 | 215.64 | 1443.79 | 8°33'27" | N73°30'27"E | 215.44 |
| C2 | 200.70 | 1343.79 | 8°33'27" | S73°30'27"W | 200.52 |



AREA 89,429 SQ. FT. (2.05302 ACRES)



2435 Research Parkway, Suite 300
Colorado Springs, CO. 80920
Phone 719-575-0100
Fax 719-575-0208

LAND DESCRIPTION
NORTHEAST ONE-QUARTER SECTION 6, T21S, R64 W
CITY OF PUEBLO, COUNTY OF PUEBLO, COLORADO

EXHIBIT

CHECKED BY: RLM

DATE: FEB. 22, 2022
JN: 20.526.029

2 OF 2



LEGEND:

- SALE AREA
- UPRRCO. R/W OUTLINED
- SALE AREA = 2.05 ACRES +/-

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"
UNION PACIFIC RAILROAD COMPANY

PUEBLO, PUEBLO COUNTY, COLORADO
 M.P. 622 - ABANDONED HOISINGTON SUB.
 MAP MP V-1 / S-38A & S-38B

SCALE: 1" = 200'

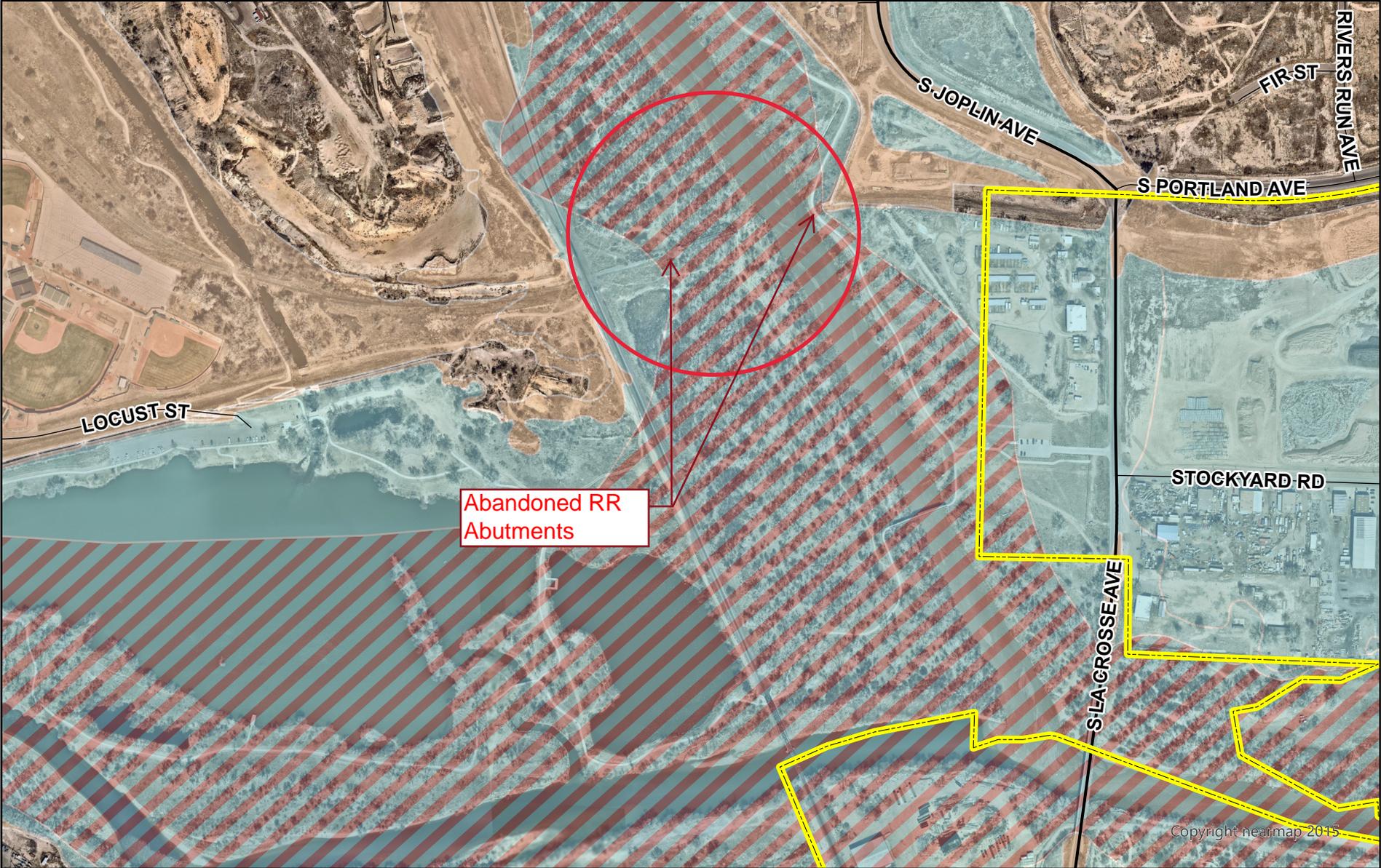
OFFICE OF REAL ESTATE
 OMAHA, NEBRASKA DATE: 1-11-2022

PJB FILE: 0245276

CADD FILENAME 0245276

SCAN FILENAME X

FEMA FLOODPLAIN EXHIBIT



Abandoned RR
Abutments

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Legend

- Flood Plain
- Flood Hazards:
 - Without BFE or Depth
 - Regulatory Floodway



The City of Pueblo, Colorado does not guarantee nor provide any warranty, expressed or implied, as to the representative completeness or accuracy of maps and data provided herein.

