



## LOWER PLATTE SOUTH natural resources district

3125 Portia Street | P.O. Box 83581 • Lincoln, Nebraska 68501-3581

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### Memorandum

**Date:** August 21, 2020  
**To:** Urban Subcommittee  
**From:** Jared Nelson, District Engineer  
**Subject:** Urban Subcommittee Meeting Minutes – August 2020

The Urban Subcommittee met at 5:30pm, on Thursday, August 20, 2020. Subcommittee members participating included Mike DeKalb, Karen Amen, Robert Andersen, Tom Green, Greg Osborn, Milt Schmidt and Ray Stevens. Members absent include Anthony Schutz. Others participating included NRD staff Paul Zillig, Dave Potter, Mike Murren, Al Langdale, Tracy Zayac and Jared Nelson; Sara Hartzell with City of Lincoln Parks & Recreation Department; and Brad Marshall and Brian Schuele with Olsson. Director DeKalb called the meeting to order at 5:30pm, gave a brief welcome, and reviewed the agenda. There were three items the Subcommittee took action on and a couple of reports discussed as described below.

**(a.) Consideration of Amendment #1 to the 2006 Wilderness Hills South and Wilderness Commons Settlement Agreement.** – Sara Hartzell referred to the attached information beginning with a letter from Lynn Johnson, the Director of Parks and Recreation for City of Lincoln. She described that back in 2006, there was a Settlement Agreement which was agreed upon as a package between the City, NRD, and the developer of Wilderness Hills. She discussed how in addition to establishing the City/NRD conservation easement located northwest of S 40<sup>th</sup> & Rokeby Rd, the Settlement Agreement also contained provisions between the City and developers regarding parkland and trails and a planned S. 34<sup>th</sup> St crossing.

She went on to describe that the City and developer are proposing an amendment to the 2006 Settlement Agreement, and the changes proposed relate to the trail, parkland, and revisions to S. 34<sup>th</sup> St crossing, but no changes were proposed to the conservation easement itself. She discussed that due to high costs and impacts to the floodplain, a trail crossing over the conservation easement is now proposed instead of the S. 34<sup>th</sup> St roadway crossing. She also discussed changes to trail configurations, and moving the location of the proposed 5-acre City park to be next to the new school instead of in the conservation easement.

DeKalb asked about the legal aspect of this amendment, and Zillig described how legal counsel advised that that the NRD needs to take action on this since they were a party to the original Settlement Agreement. Amen asked about the rationale in 2006 to obtain the conservation easement, and Zillig responded it was established to protect the stream corridor and area not mapped as floodplain at that time.

**It was moved by Osborn, seconded by Stevens, and unanimously approved by the Subcommittee to recommend that the Board of Directors approve Amendment #1 to the Settlement Agreement with the City of Lincoln, Lincoln Federal Bankcorp, INC, and Wilderness Commons, LLC, for the Wilderness Hills Conservation Easement, pending legal counsel review.**

**(b.) Consideration of a Preliminary Engineering Services Agreement with BNSF Railway Company to review bridge plans for the Deadmans Run Flood Reduction Project.** – Jared Nelson, staff, described that currently the Deadmans Run Flood Reduction Project (DMRFRP) plans to build a concrete flume under the Burlington Northern Santa Fe (BNSF) railroad bridge at Deadmans Run to increase conveyance. He said a different option is also being discussed to alternatively replace the BNSF bridge altogether with a larger one, and BNSF is wanting to understand more in order to make a decision. He added that the City is interested in this new bridge option, and had Olsson develop preliminary plans of a new bridge structure.

Nelson described how BNSF needs to review the plans to learn more, and is requesting the NRD enter into an agreement with them, in order for a third-party engineering firm to review the plans on behalf of BNSF. Nelson explained that the intended outcome is that BNSF can decide if they want to move forward with a bridge or not. If they do, the higher costs of a bridge (vs. flume) would likely necessitate that BNSF contribute to the project cost or take the lead on building a new bridge.

Green asked what the benefits of a bridge are, and Zillig said there are benefits to the public, trail, and increased conveyance of flood flows. Stevens asked if a flume option was chosen, would we need BNSF to approve the flume as part of the DMRFRP project; have we looked if the flume would work; and what are the cost implications. Zillig responded the flume is proposed on BNSF property so they would need to approve it, and Nelson also added that BNSF would need to review the flume design. Zillig discussed that if the DMRFRP project doesn't build a flume, then the City/NRD could participate on the bridge cost. Zillig said the cost of this proposal, like all DMRFRP aspects, would be split 50/50 with the City.

**It was moved by Schmidt, seconded by Osborn, and approved by the Subcommittee (with Green voting 'no') to recommend that the Board of Directors approve the Preliminary Engineering Services Agreement with BNSF Railway Company, to review bridge plans for the Deadmans Run Flood Reduction Project, at a cost not to exceed \$8,000, pending legal counsel review.**

**(c.) Review of FY20 Measurable Goals and acceptance of FY21 Measurable Goals for inclusion in the FY2021 Long Range Implementation Plan.** – Dave Potter, staff, discussed the Measurable Goals which were sent to all Board members. Potter then led the Subcommittee through the discussion of 12-month review of the Urban Subcommittee's Measurable Goals from FY 20 and the proposed Measurable Goals for FY 21.

**It was moved by Stevens, seconded by Amen, and unanimously approved by the Subcommittee to accept the FY21 Measurable Goals for the Urban Subcommittee and submit the Goals to the Finance & Planning Subcommittee for inclusion in the FY2021 Long Range Implementation Plan.**

**(d.) Reports.** – Nelson gave a report on the DMRFRP Flume model, and UNL is close to having the model complete. He said by mid-to-late September, the flume should be up and running. Next, Al Langdale, staff gave an update on the Salt Creek Levee USACE PL84-99 Repair project and said the contractor keeps progressing but is behind schedule. He said the final completion date is September 10<sup>th</sup>, but the contractor will not likely finish by then, so the USACE will assess Liquidated Damages to the contractor if work is not completed by then.

There being no further business the meeting adjourned at approximately 6:15 pm.

JN/jn

Enclosures;



**LINCOLN PARKS & RECREATION DEPARTMENT**  
 3131 "O" Street, Suite 300, Lincoln, NE 68510-1514  
 402-441-7847 fax: 402-441-9249 lincoln.ne.gov

Board of Directors  
 Lower Platte South NRD  
 3125 Portia St.  
 Lincoln, NE 68521

Dear Directors,

The City has been working for some time with the developers of Wilderness Hills South and Wilderness Commons, both of which lie adjacent to a Conservation Easement held jointly by the City and the NRD northwest of the corner of S. 40<sup>th</sup> St. and Rokeby Rd. When this Conservation Easement was negotiated in 2006, a planned trail in the area, as well as parkland along the north side of Rokeby Rd, were part of the discussion and subsequent Settlement Agreement. In coordination with the developer's applications for City zoning and annexation, the City and developer are proposing an amendment to the Settlement Agreement to reflect the supported plan.

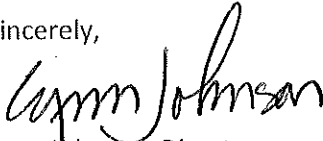
The changes are being made to four sections of the agreement as well as an update of the lot numbers and owner names, as some of those have changed over time.

1. Paragraph B of the original agreement allowed for the trail to be moved from the west to the east side of Channel C in exchange for the developer constructing, at their expense, a stream crossing which was required due to the relocation. There was a bond amount set in the agreement of \$25,000. The amendment would update the bond amount to \$125,000, set timing for posting of the bond, and timing for construction of Crossing B. In addition, the developer no longer intends to construct the S. 34<sup>th</sup> Street connection to Rokeby Road, but will be constructing a pedestrian bridge, at their expense, within the original alignment of that roadway. The amendment sets a bond of \$125,000, timing for that bond and timing for construction of Crossing C and associated connecting trails and sidewalks (Trail B and Trail C). See Exhibit 4.
2. Paragraph 5, subsection (a) of the original agreement allowed for 5.01 acres of a total 8.06 acres of parkland to be located within the Conservation Easement area. This section is being amended to reflect the donation of the parkland to be relocated to an area adjacent to the planned elementary school property shown on Exhibit 5. The amendment describes responsibility of the developer and sets timing for the dedication.
3. Paragraph 6 of the original agreement set a price of \$172,155 for additional 3.05 acres of parkland to be located outside the Conservation Easement area and described the method of payment for this land. The Amendment clarifies that the parkland shown on Exhibit 5 will be donated at no cost to the City.
4. Paragraph 7 of the original agreement described an area for a proposed communications tower, outside of the Conservation Easement area, with right-in, right-out access off of S. 40<sup>th</sup> Street, alternative uses of the property, and described a financial settlement that the City would provide should agreement on uses not be reached. The amendment specifies that the use of

this property shall be addressed through the City's Planned Unit Development process and not the Settlement Agreement.

We would ask that the Directors consider these changes, which we feel do not negatively impact the Conservation Easement, and may, in the case of removal of the roadway connection of S. 34<sup>th</sup> across the easement, even benefit the easement area. The planned changes have been drafted by the City Attorney's office and reviewed by the City Parks and Recreation, Lincoln Transportation and Utilities, and Planning Departments and have their support.

Sincerely,

A handwritten signature in black ink that reads "Lynn Johnson". The signature is written in a cursive style with a large, looped initial "L".

Lynn Johnson, Director  
Lincoln Parks and Recreation Department  
3131 O Street, Suite 300  
Lincoln, NE 68510

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## AMENDMENT NO. 1 TO SETTLEMENT AGREEMENT

This Amendment No. 1 to Settlement Agreement is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between LINCOLN FEDERAL BANCORP, INC. (“Lincoln Federal”); WILDERNESS COMMONS, LLC, a Nebraska limited liability company (“Wilderness Commons”) (which is successor in interest to and formed by Lincoln Federal by the following parties: Assurity Life Insurance Company, a Nebraska corporation who merged with Security Financial Life Insurance Co., B & J Partnership, Ltd., a Nebraska limited partnership, and Allen R. Hoehensee and Susan K. Hohensee, husband and wife); the CITY OF LINCOLN, NEBRASKA (“City”); and the LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT (“NRD”), collectively referred to herein as the “Parties.”

### RECITALS

#### I.

The Parties entered into the Settlement Agreement, authorized by Executive Order No. 76448 on May 31, 2006, regarding Lot 41, Irregular Tract, located in the east half of Section 30, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, hereinafter referred to as “Lot 41,” in addition to property referred to as Lots 42, 43, 46 in the Agreement that have since been replatted, all of which shall still be collectively known as the “Property.”

#### II.

The Property has continued to be developed and built for commercial and residential purposes since the entry of the Settlement Agreement, with consideration for the proposed conservation easements, public trail, crossing structures, and dedication of parkland. The Conservation Easements have been filed in accordance with the terms of the Settlement Agreement with the Lancaster County Register of Deeds, Instrument #2006028386.

### III.

Circumstances have arisen since the approval of the Settlement Agreement, namely a change in the roadway plan to delete a street connection and reconfiguration of the trail and crossings, that requires amendment to the Settlement Agreement to address these current issues.

### IV.

Since the execution of the Settlement Agreement, Buffalo Grass, LLC ceased to be an active limited liability company in 2015 due to failure to file its biennial occupation tax report with the State of Nebraska and is no longer one of the Parties. Wilderness Commons, LLC, a Nebraska limited liability company, was created in 2019 as the successor in interest by the parties listed above.

### V.

NOW, THEREFORE, in consideration of the mutual exchange of the covenants and agreements hereinafter set forth, in accordance with the foregoing Recitals, the sufficiency of which is hereby acknowledged, the Parties agree to the Amendment No. 1 of the Settlement Agreement as follows:

Paragraph 3 regarding relocation of the trail shall be amended and shall supersede and completely replace the prior terms and conditions in Paragraph 3 as follows:

3. City has agreed to relocation of the crossings and trails as generally shown on Exhibit 4. Construction of the crossing structures shall allow the trail to cross back over the channel of Drainageway C so that the trail may proceed west to 27th Street and east to 40th Street. The location of the trails and crossing structures shall be as generally shown on Exhibit 4, attached hereto and incorporated herein by this reference, with the final location to be determined at the time of final design. City shall be responsible at its cost and expense to construct and maintain the crossing structure referred to as Crossing A and the ten foot (10') wide trail referred to as Trail A, as both shown on Exhibit 4.

Wilderness Commons shall, at its own cost and expense, design and construct the crossing structure referred to as Crossing B, as shown on Exhibit 4.

Lincoln Federal shall, at its own cost and expense, design and construct the crossing structure referred to as Crossing C, the eight foot (8') wide connector trail referred to as Trail B, and the five foot (5') wide sidewalk referred to as Trail C, as shown on Exhibit 4. Construction of Crossing C shall allow for the deletion of a SW 34<sup>th</sup> Street from the original plan.

Crossings B and C shall be built by Wilderness Commons and Lincoln Federal respectively to meet AASHTO standards, not overtop during the 2-year storm event, and meet all applicable floodplain regulations. Wilderness Commons and Lincoln Federal shall submit any Letter of Map Revisions necessary for construction of Crossings B and C.

Prior to the first final plat of a buildable lot that includes a part of Lot 41 I.T., south of Wilderness Hills Blvd, ( Wilderness Commons PUD), Wilderness Commons shall provide the City with a bond, escrow, or other security agreement approved by the City Law Department in the amount of \$125,000 to guarantee construction of Crossing B. Prior to the first final plat that includes a part of Lot 69 I.T.,(Wilderness Hills South PUD), Lincoln Federal shall provide the City with a bond, escrow, or other security agreement approved by the City Law Department in the amount of \$125,000 to guarantee construction of Crossing C. Lincoln Federal and Wilderness Commons shall proceed through the City's executive order construction process for the crossing structures and trails and shall be responsible for all the aforementioned costs of construction, regardless of whether costs are higher than projected. City will maintain the crossing structures A, B, and C and Trails A and B once completed and accepted by City. Lincoln Federal, or its successors, shall maintain the sidewalk shown as Trail C once completed. The crossing structures and trails shall be completed by not later than January 1, 2030, or within one (1) year of notice from City that Trail A will be constructed, whichever occurs first, unless otherwise agreed to in writing by the Parties.

Paragraph 5, subsection (a) regarding dedication of the parkland shall be amended and shall supersede and replace the prior terms and conditions in Paragraph 5(a) as follows:

5(a). Lincoln Federal shall donate three (3) lots to be dedicated as City parkland as shown on Exhibit 5. The Conservation Easements and terms shall remain the same. Lincoln Federal shall be responsible for adjacent street paving, utilities, sidewalks, and street trees adjacent to the parkland in the three lots as shown on Exhibit 5. The parkland shall be dedicated by not later than January 1, 2027, but not more than one (1) year before that date. Within one (1) year of the parkland being dedicated, City will make best efforts to construct the park. If necessary, the Parties shall cooperate to amend the Conservation Easements to adjust the property boundaries.

Paragraph 6 regarding compensation for the parkland shall be amended and shall supersede and completely replace the prior terms and conditions in Paragraph 6 as follows:

6. City shall have no financial obligation to provide compensation for the dedicated parkland described above and shown on Exhibit 5 due to other consideration exchanged between the Parties as provided herein.

Paragraph 7 regarding the access drive off of South 40<sup>th</sup> Street shall be amended and shall supersede and replace the prior terms and conditions in Paragraph 7 as follows:

7. The Parties agree to address any access drive off South 40<sup>th</sup> Street through an amendment to any approved Planned Unit Development plans or other amended plans approved by the Lincoln-Lancaster County Planning Department.

The Parties agree that this Amendment No. 1 to Settlement Agreement shall be duly filed by the City and NRD with the Lancaster County Register of Deeds upon execution and acceptance by the City and NRD.

The Settlement Agreement shall continue to operate under the same terms and conditions as provided in therein, unless otherwise provided in writing herein.

IN WITNESS WHEREOF, the Parties hereto hereby execute this Amendment No. 1 as of the date set forth above.

LINCOLN FEDERAL BANCORP, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

WILDERNESS COMMONS, LLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

CITY OF LINCOLN, NEBRASKA

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor Leirion Gaylor Baird

LOWER PLATTE SOUTH NATURAL  
RESOURCES DISTRICT

By: \_\_\_\_\_  
Paul Zillig, General Manager



STATE OF NEBRASKA            )  
  ) ss:  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, \_\_\_\_\_ of Lincoln Federal Bancorp, Inc., on behalf of said corporation.

(S E A L)

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) ss:  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, \_\_\_\_\_ of Wilderness Commons, LLC, a Nebraska limited liability company, on behalf of said company.

(S E A L)

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) ss:  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska on behalf of the City of Lincoln, Nebraska.

(S E A L)

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) ss:  
COUNTY OF LANCASTER        )



The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Paul Zillig, General Manager, on behalf of the Lower Platte South Natural Resources District.

(S E A L)

\_\_\_\_\_  
Notary Public

DWG: F:\2020\0001-0500\020-0500\40-Design\Exhibits\Park Area Exhibits\Parks LPS Exh\_GNCV\_0200500.dwg  
 DATE: May 29, 2020 10:58am XREFS: C\_PBASE\_82877 C\_XBASE\_SURROUND\_82877 C\_XBASE\_82877  
 USER: mgreufe

**LEGEND**

-  RIGHT-OF-WAY/PROPERTY LINE
-  EASEMENT
-  ROADWAY CENTERLINE
-  BACK OF CURB
-  CONSERVATION EASEMENT
-  MIN FLOOD CORRIDOR
-  CITY PARKLAND DEDICATION



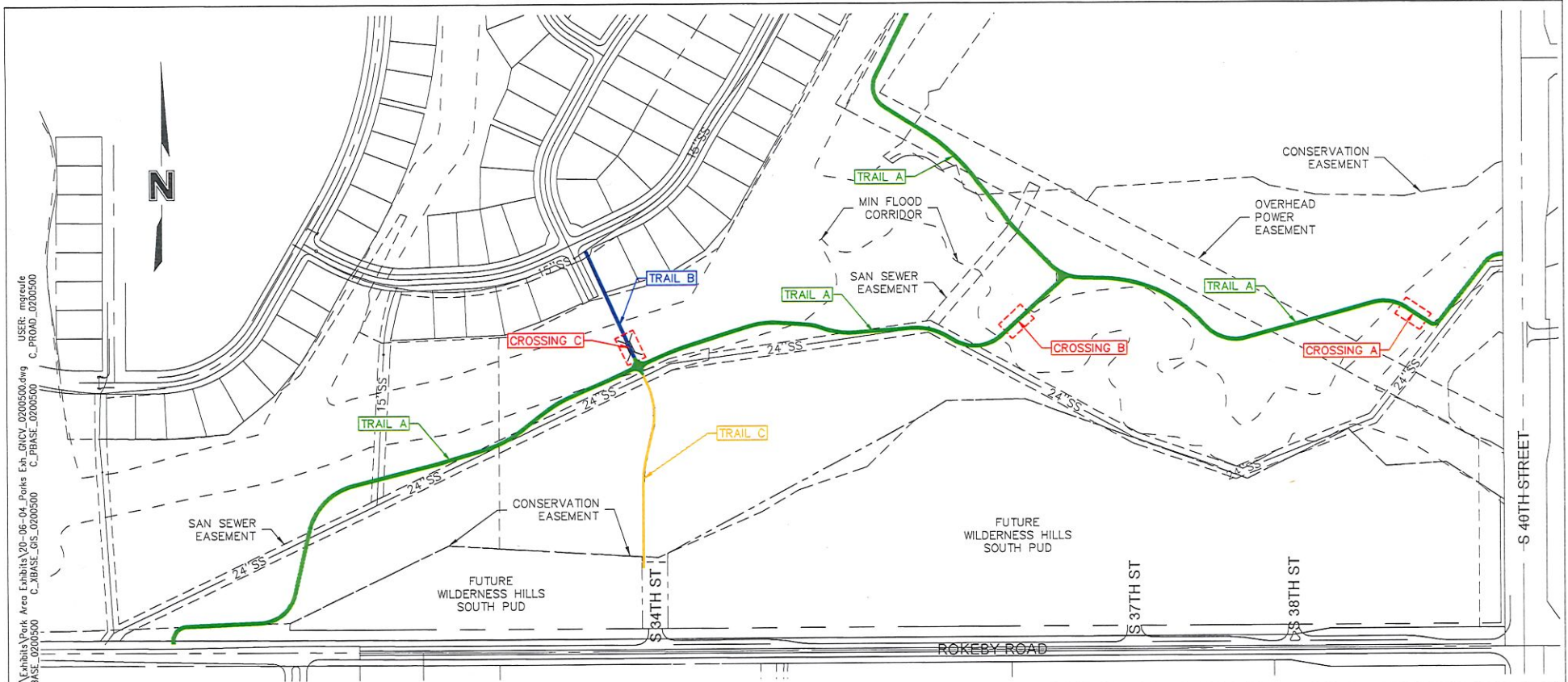
PROJECT NO: 018-2877  
 DRAWN BY: MRG  
 DATE: 05/29/20

**WILDERNESS HILLS  
 LPS PARK LOTS**

**olsson**  
 601 P Street, Suite 200  
 P.O. Box 84608  
 Lincoln, NE 68508  
 TEL 402.474.6311

EXHIBIT  
**5**

USER: mstreule  
 C\_PROJNO\_0200500  
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 DATE: Jun 04, 2020 12:48pm  
 REF: C\_XBASE\_0200500



LEGEND	
-----	RIGHT-OF-WAY/PROPERTY LINE
-----	EASEMENT
-----	ROADWAY CENTERLINE
-----	BACK OF CURB
-----	24"SS
-----	SANITARY SEWER
-----	CONSERVATION EASEMENT
-----	MIN FLOOD CORRIDOR

LEGEND	
TRAIL A:	TO BE CONSTRUCTED AND MAINTAINED BY PARKS AND RECREATION
TRAIL B:	8' CONNECTER TRAIL TO BE CONSTRUCTED BY LINCOLN FEDERAL BANCORP AND MAINTAINED BY PARKS AND RECREATION
TRAIL C:	5' SIDEWALK TO BE CONSTRUCTED AND MAINTAINED BY LINCOLN FEDERAL BANCORP
CROSSING A:	TO BE CONSTRUCTED AND MAINTAINED BY PARKS AND RECREATION
CROSSING B:	TO BE CONSTRUCTED BY WILDERNESS COMMONS AND MAINTAINED BY PARKS AND RECREATION
CROSSING C:	TO BE CONSTRUCTED BY LINCOLN FEDERAL BANCORP AND MAINTAINED BY PARKS AND RECREATION

\*TRAIL AND CROSSING ALIGNMENTS ARE PRELIMINARY AND SUBJECT TO CHANGE BASED ON FINAL DESIGN

PROJECT NO: 020-0500  
 DRAWN BY: MRG  
 DATE: 06/04/2020

PROPOSED TRAIL AND CROSSINGS

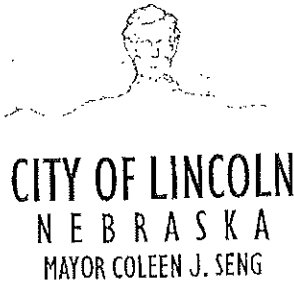
**olsson**  
 501 P Street, Suite 200  
 P.O. Box 84808  
 Lincoln, NE 68506  
 TEL 402.474.6311

EXHIBIT  
 4



76448

Smart # 06050198  
5/19/06/law/tb



EXECUTIVE  
ORDER

NO. 076448

b/2

BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of Lincoln,  
Nebraska:

BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of  
Lincoln, Nebraska:

The attached Settlement Agreement between the City of Lincoln and Lincoln  
Federal Bancorp, Buffalo Grass, Security Financial Life Insurance Co., B&J Partnership, Allen  
R. and Susan K. Hohensee, and the Lower Platte South Natural Resources District with regard  
to conservation easements and location of trails within the development of Wilderness Hills  
generally located at 40th Street and Rokeby Road upon the terms and conditions as set forth in  
the Settlement Agreement, is hereby approved and I have executed the same on behalf of the  
City.

The City Clerk is directed to return two originals to Rick Peo, City Attorney's  
Office, for transmittal to the Owners and the NRD.

Dated this 31<sup>st</sup> day of May, 2006.

\_\_\_\_\_  
Coleen J. Seng, Mayor

Approved as to Form & Legality:

\_\_\_\_\_  
Chief Asst. City Attorney

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**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into as of this 31<sup>st</sup> day of May, 2006, by and between LINCOLN FEDERAL BANCORP, INC., ("Lincoln Federal"); BUFFALO GRASS, a Nebraska limited liability company, ("Buffalo Grass"); SECURITY FINANCIAL LIFE INSURANCE CO., a Nebraska corporation, ("Security Financial"); B & J PARTNERSHIP, LTD., a Nebraska limited partnership, ("B & J"); ALLEN R. HOHENSEE and SUSAN K. HOHENSEE, husband and wife, as joint tenants with right of survivorship, ("Hohensee"); the CITY OF LINCOLN, NEBRASKA (the "City") and the LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT ("NRD"), collectively referred to herein as the "Parties."

**RECITALS****I.**

Lincoln Federal, Buffalo Grass, Security Financial, B & J, and Hohensee are collectively the owner in fee simple of Lot 41, Irregular Tract, located in the east half of Section 30, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, hereinafter referred to as "Lot 41."

**II.**

Lincoln Federal is the owner in fee simple of Lots 42, 43, 46 and the Southeast Quarter of the Southwest Quarter, all located in Section 30, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, hereinafter referred to as "Lot 42," "Lot 43," and the "SE 1/4 SW 1/4," respectively.

**III.**

Lincoln Federal, Buffalo Grass, Security Financial, B & J, and Hohensee are hereinafter collectively referred to herein as "Owners."



#### IV.

Lot 41, Lot 42, Lot 43, Lot 46, and the SE 1/4 SW 1/4 are hereinafter collectively referred to herein as the "Property."

#### V.

The City and NRD desire to acquire permanent conservation easements over the Property, which are located within the 100-year floodprone area as designated in the Southeast Upper Salt Creek Watershed Master Plan dated October 2003. The conservation easement areas to be acquired over Lot 41, Lot 42, Lot 43, Lot 46, and the SE 1/4 SW 1/4 are individually referred to as the "Lot 41 Easement Area," "Lot 42 Easement Area," "Lot 43 Easement Area," and "SE 1/4 SW 1/4 and Lot 46 Easement Area," respectively. The Lot 42 Easement Area, Lot 43 Easement Area, and the SE 1/4 SW 1/4 and Lot 46 Easement Area are hereinafter collectively referred to as the "Combined Easement Area." The Combined Easement Area and the Lot 41 Easement Area are collectively referred to herein as the "Conservation Easements."

#### VI.

Owners have proposed to develop the Property for commercial and residential uses under a use permit and preliminary plat. The proposed development and platting of the Property will require the dedication of easements for a public trail and sanitary sewer and the dedication of 8.06 acres of parkland.

#### VII.

Owners have requested the City to relocate the public trail to the east side of Drainageway B as identified in the Conservation Easement Agreements. The City is willing to relocate the trail as requested by Owners provided Owners agree to build a bridge to allow the trail to cross back over the channel over Drainageway C so that the trail can proceed west to 27th Street and east to 40th Street.

#### VIII.

Owners are willing to grant the Conservation Easements in exchange for the following consideration: (a) \$172,155.00 for the value of the parkland dedicated to the City; (b) \$277,500.00 cash; (c) inclusion of 5.01 acres of the 8.06 acres of parkland within the Conservation Easements; (d) inclusion of the trail and sanitary sewer easements within the Conservation Easements to the maximum extent practicable; and (5) approval of a use permit and preliminary plat that includes the

General Compatible Uses and Specific Permitted Uses and Practices set forth in the Conservation Easement Agreements.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual exchange of the covenants and agreements hereinafter set forth, in accordance with the foregoing Recitals, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Owners hereby grant the Conservation Easements to the City and NRD, in the form attached hereto as Exhibit 1 (Lot 41 Easement Area) and Exhibit 2 (Combined Easement Area) and incorporated herein by this reference over the Property restricting its future use.

2. Owners shall dedicate to the City as part of any final plat of the Property 8.06 acres of land for park purposes.

3. The City agrees to relocate the trail from the west side to the east side of Drainageway B and Owners agree, at Owners' own cost and expense, to build a bridge, designed to meet AASHTO standards and flood standards to allow the trail to cross back over the channel over Drainageway C so that the trail may proceed west to 27th Street and east to 40th Street. Owners shall provide the City with a bond, escrow, or other security agreement approved by the City Law Department in the amount of \$25,000 to guarantee construction of said bridge prior to approval of the first final plat of Lots 41, 42, and 43 or any portion thereof. The final location of the trail and bridge will be determined at the time of construction.

4. Within thirty (30) days of the date this Settlement Agreement is executed, City shall pay Owners \$277,500.00 cash as the initial element of consideration for the Conservation Easements.

5. As an additional, future element of the total consideration due Owners, Owners' use permit and final plat, as approved by the City, shall include or reflect the following: (a) placement of 5.01 acres of the 8.06 acres of required parkland within the Conservation Easements; (b) placement of the trail and sanitary sewer easements within the Conservation Easements to the maximum extent practicable as presently reflected on Exhibit C attached to each Conservation Easement Agreement; and (c) the General Compatible Uses and Specific Permitted Uses and Practices set forth in the Conservation Easement Agreements.

6. In addition to the consideration set forth in Paragraphs 4 and 5, City shall compensate Owners in the amount of \$172,155.00 for the parklands described above. Such compensation shall be made first from Neighborhood Park & Trail Impact Fees to the extent the City's Impact Fee Ordinance is valid and enforceable. The reimbursement shall be repaid from Neighborhood Park and Trail Impact Fees collected first from the Property and second from the same benefit district in which the Property is located. In no event shall reimbursement exceed the impact fees that would otherwise be due for the entire development of the Property. Any reimbursement to be paid from impact fees shall not constitute a general obligation or debt of the City. No reimbursement shall be made prior to and unless the Impact Fee Ordinance is finally determined to be valid and enforceable. Notwithstanding the park land dedication requirements in Lincoln Municipal Code §26.23.160, and the foregoing provisions of this Paragraph 6, Owners shall be compensated in cash for the parklands described above if the Impact Fee Ordinance is found to be invalid or unenforceable by a court of competent jurisdiction. Such cash payment shall be made within ninety (90) days of the date on which a final order is entered finding the Impact Fee Ordinance invalid or unenforceable.

7. In addition to the consideration set forth in Paragraphs 4, 5 and 6 above, the City agrees that if the cell tower or another low traffic use approved by the City is located outside the Lot 41 Easement Area and in the area designated as Proposed Communications Tower on Exhibit 3, the City will allow a right-in and right-out access drive off of South 40th Street for such use, provided the use does not exceed ten (10) trips per day (unless otherwise approved by the City) and the driveway may be graded and constructed without encroaching into the Lot 41 Easement Area. In the event the City does not substantially approve the Specific Permitted Uses and Practices set forth in the Conservation Easement Agreements as required by Paragraph 5(c), City shall pay, and Owners shall accept in full satisfaction only of that element of the total consideration due Owners, the sum of \$792,300.00. All other obligations binding on the City under this Settlement shall remain binding. Such payment shall be made within ninety (90) days of the date on which a use permit or final plat is acted upon.

8. Following acquisition of the Conservation Easements, City shall accept any offered donation of fee title ownership and maintenance obligations over that portion of the Combined Easement Area south of Drainageway C, except for the Wetland Mitigation Area, as shown on the attached Exhibit 3.



9. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, devisees, personal representatives, successors, and assigns.

10. Governing Law. This Settlement Agreement shall be interpreted according to the laws of the State of Nebraska.

11. This Settlement Agreement may only be amended or modified in a writing signed by all the Parties to this Settlement Agreement.


12. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the Parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this agreement.

13. The Parties agree that this Settlement Agreement shall be duly filed by the City and NRD with the Lancaster County Register of Deeds upon execution and acceptance by the City and NRD.

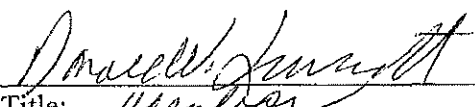
14. This Settlement Agreement and attachments hereto, along with the Conservation Easement Agreements attached as Exhibits 1 and 2, constitute the entire agreement among the Parties regarding the Conservation Easements. In the event of a conflict among this Settlement Agreement and the Conservation Easements, this Settlement Agreement is controlling.

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement as of the date set forth above.

LINCOLN FEDERAL BANCORP, INC.

By:   
Title: PRESIDENT

BUFFALO GRASS, LLC.,  
a Nebraska limited liability company

By:   
Title: Member

SECURITY FINANCIAL LIFE  
INSURANCE CO., a Nebraska corporation

By: William R. [Signature]  
Title: Vice President

B & J PARTNERSHIP, LTD.,  
a Nebraska limited partnership

By: Clay F. Smith  
Title: General Partner

Allen R. Hohensee  
ALLEN R. HOHENSEE

Susan K. Hohensee  
SUSAN K. HOHENSEE

Attest:

Jan E. Rose  
City Clerk



CITY OF LINCOLN, NEBRASKA

By: Coleen J. Seng  
Mayor Coleen J. Seng

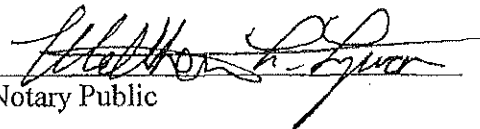
LOWER PLATTE SOUTH NATURAL  
RESOURCES DISTRICT

By: Glenn D. Johnson  
Glenn D. Johnson, General Manager

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF LANCASTER )

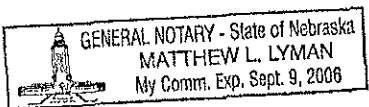
The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of May, 2006, by Leo J. Schumacher, President of Lincoln Federal Bancorp, Inc., on behalf of said corporation.

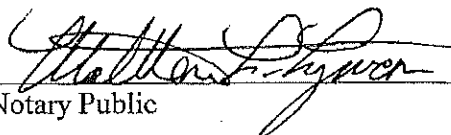
(SEAL) 

  
Notary Public

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of May, 2006, by Donald W. Linscott, President of Buffalo Grass, LLC, a Nebraska limited liability company on behalf of said limited liability company.

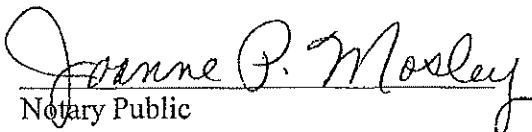
(SEAL) 

  
Notary Public

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF LANCASTER )

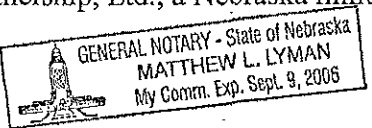
The foregoing instrument was acknowledged before me this 11 day of May, 2006, by William R. Schmeeckle VP-CIO of Security Financial Life Insurance Co., a Nebraska corporation, on behalf of said corporation.

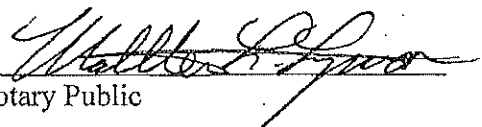
(SEAL) 

  
Notary Public

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of May, 2006, by Clay F. Smith, General Partner of B & J Partnership, Ltd., a Nebraska limited partnership, on behalf of said limited partnership.

(SEAL) 

  
Notary Public

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of May, 2006, by Allen R. Hohensee and Susan K. Hohensee, husband and wife.

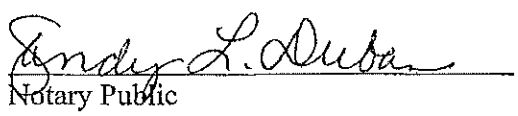
(SEAL) 

  
Notary Public

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of May, 2006, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska on behalf of the City of Lincoln, Nebraska.

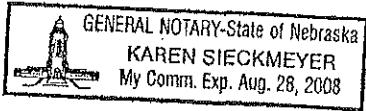
(SEAL) 

  
Notary Public

STATE OF NEBRASKA            )  
  ) ss:  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this 19 day of May, 2006, by Glenn D. Johnson, General Manager, on behalf of the Lower Platte South Natural Resources District.

(SEAL)



Karen Sieckmeyer  
Notary Public

## PRELIMINARY ENGINEERING SERVICES AGREEMENT

**BNSF File No.: BF10016874**  
**Mile Post 56.7**  
**Line Segment 2**  
**U.S. DOT Number N/A**  
**Creston Subdivision**

This Agreement (“**Agreement**”), is executed to be effective as of \_\_\_\_\_ (“**Effective Date**”), by and between BNSF RAILWAY COMPANY, a Delaware corporation (“**BNSF**”) and the LOWER PLATTE SOUTH NATURAL RESOURCE DISTRICT, a political subdivision of the State of Nebraska (“**Agency**”).

### RECITALS

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Lincoln, Lancaster County, Nebraska;

WHEREAS, Agency has stated its intention to proceed initially with a project to install a flume under an existing BNSF bridge or help fund a new bridge (**the “Project”**);

WHEREAS, Agency has requested that BNSF perform certain engineering services with respect to its railroad facilities located at or near the Project site to facilitate Agency’s evaluation of the feasibility of proceeding with the Project (**the “Work”**);

WHEREAS, BNSF is agreeable to performing the Work, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **1. Scope of Work.**

As used herein, the term “**Work**” includes all work performed by BNSF pursuant to this Agreement, whether performed by BNSF employees or by BNSF’s contractors, consultants or other agents, including, but not necessarily limited to, on-site visits, preliminary engineering services, developing cost estimates for construction of the Project, and reviewing and/or providing comments on preliminary layouts or other designs, plans, and/or documents in connection with the Project.

## **2. Payment for Work.**

Agency authorizes BNSF to proceed with the Work relating to the Project. Agency shall pay and reimburse BNSF for all actual costs and expenses that BNSF incurs in performing the Work, including but not limited to, labor, supplies, and material; direct and indirect labor or contractor additives; delivery charges; and BNSF additives and overhead, as such are in effect on the date BNSF prepares the final bill; and taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes. BNSF estimates the cost for Work on this Project to be eight thousand and no/100 dollars (**\$8,000.00**), but said estimate shall not be a limitation on the Work to be performed or costs and expenses which Agency shall reimburse to BNSF in full.

During its performance of the Work pursuant to this Agreement, BNSF will send Agency progressive invoices detailing the costs of the Work performed by BNSF. Agency must reimburse BNSF for completed work within thirty (30) days of the date of the invoice for such work. Upon completion of the Work, BNSF will send Agency a detailed invoice of final costs. Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.]

## **3. Scope of Agreement**

The Parties acknowledge that by entering into this Agreement, neither BNSF nor Agency are obligated to authorize or participate in the construction of the Project. If Agency seeks to proceed with development of the Project after the Work is performed, the Project will be subject to further review and approval by BNSF in BNSF's sole discretion. BNSF and Agency shall be required to enter into negotiations for construction of the Project and other activities on terms acceptable to BNSF.

Notwithstanding anything to the contrary in this Agreement, BNSF's review, approval, and/or other participation in the Project or any element thereof, including the Work performed by BNSF or its contractors hereunder, is expressly limited, and intended and understood by the parties to be in furtherance of BNSF's railroad purposes, and not in furtherance of Agency's purposes in undertaking the Project. All of the Work performed hereunder is intended for use in the evaluation of the impact of the Project on BNSF's railroad and the costs to Agency associated therewith. The Work is provided in consideration of the subjective standards of BNSF for its railroad purposes only, and shall in no way be construed or deemed to be a condition or direction to Agency, or an opinion or approval that the plans and specifications or any work intended or completed on the Project is appropriate for any other purpose including highway purposes, is structurally

sound, or that such plans, specifications, or intended or completed work meet applicable standards, regulations, laws, statutes, local ordinances, and/or building codes. No benefits to Agency or any third party are provided, intended or implied herein. Agency shall at all times be solely responsible for the adequacy and compliance of all design elements of the Project for highway and other public purposes, and shall waive and release BNSF for any and all claims which may or could result from the Work performed hereunder, and if applicable to the fullest extent permitted by law, indemnity and hold BNSF harmless for the same.

#### **4. Disclaimer**

BNSF GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY, QUALITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER, OF THE WORK PERFORMED PURSUANT TO THIS AGREEMENT OR ANY REPORT OR OTHER DELIVERABLE WHICH BNSF MAY FURNISH TO AGENCY PURSUANT TO THIS AGREEMENT. BNSF SHALL BE IN NO WAY RESPONSIBLE FOR THE PROPER RELIANCE UPON, INTERPRETATION OF, OR OTHER USE OF THE WORK BY AGENCY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

#### **Lower Platte South Natural Resource District**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Attest: \_\_\_\_\_

#### **BNSF Railway Company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Accepted and effective this \_\_\_ day of \_\_\_\_\_, 2020.



## FY 2020 - Measurable Goals or Outcomes

### 12-Month Review (June 30, 2020)

As directed in the LPSNRD 2019 Master Plan, a list of measurable goals or outcomes was identified for each standing and ad hoc subcommittee. In preparation for the following year's LRIP, these identified goals or outcomes should be rated on progress being made. It's important to note that these goals or outcomes are guidance for the staff, subcommittees and Board, and do not represent all of the possible goals or outcomes, nor does it indicate any error or false information on behalf of the staff, subcommittees and Board if they are not achieved.

#### Urban

##### *Community Assistance Program*

- Complete four community assistance projects – Awarded four new projects in FY20. Completed seven projects that were included in FY19 LRIP, as well as two projects awarded in FY20.

##### *Operation and Maintenance Stormwater Facilities*

- Complete at least 5 Salt Creek Levee projects identified in the SWIF – Stream stabilization 27th to Superior Street was slowed by approved PL 84-99 USACE repair project covering a portion of this work. Drainage structure repairs near Park Avenue & Van Dorn had 408 approved by USACE on December 20th and project can now move forward. Erosion repairs near Park Avenue and Van Dorn, station 82+50R location now being repaired under PL 84-99, design underway for station 76+56R repair. Encroachments and project O/M addendums are on-going project with JEO. Beal Slough Tieback project is underway. Oak Creek Weir repair near 14th Street was submitted to USACE for 408 permit in September, 2019 and we're waiting for USACE response. The 2020 annual SWIF report was sent to the USACE on May 31, 2020 and now waiting on their response.

##### *Stormwater Management*

- Complete project SSC#4 – Project awarded to TJ Osborn. City the lead. Stream stabilization portion of the project to begin fall 2020.
- Complete at least two Rainscaping projects in the District – New Rain-Ready Landscapes Program launched March 2, 2020. One application received as of end of FY20.

## FY 2021 - Measurable Goals or Outcomes

As directed in the LPSNRD 2019 Master Plan, a list of measurable goals or outcomes was identified for each standing and ad hoc subcommittee. In preparation for the following year's LRIP, these identified goals or outcomes should be rated on progress being made. It's important to note that these goals or outcomes are guidance for the staff, subcommittees and Board, and do not represent all of the possible goals or outcomes, nor does it indicate any error or false information on behalf of the staff, subcommittees and Board if they are not achieved.

### Urban

#### *Community Assistance Program*

- Complete four community assistance projects

#### *Operation and Maintenance Stormwater Facilities*

- Complete at least 5 Salt Creek Levee projects identified in the SWIF

#### *Stormwater Management*

- Complete project SSC#4
- Complete at least three Rainscaping projects in the District
- Complete model update and final design on phase 1 and 50% design on phase 2