




LOWER PLATTE SOUTH

natural resources district

3125 Portia Street | P.O. Box 83581 • Lincoln, Nebraska 68501-3581 | P: 402.476.2729 • F: 402.476.6454 | www.lpsnrd.org
Memorandum

Date: February 15, 2019
To: Board of Directors
From: Ed Ubben 
Subject: Urban Subcommittee Minutes

The Urban Subcommittee met on February 13, 2019 at the District office at 5:30 pm. There was four items on the agenda. Present at the meeting was Mike DeKalb, (Chair), Bob Andersen, Debora Eagan, Tom Green, Milt Schmidt, Anthony Schutz and Ray Stevens. There was a quorum. Staff present was; Paul Zillig, Jared Nelson, Kyle Hauschild, Dave Potter and Ed Ubben. Also present was Larry Ruth, Chairman of the Board and Greg Osborn, Director.

- a. **Consideration of a proposal from Intuition & Logic for an evaluation of a stream segment on Beal Slough from 70th to near Pine Lake Road** --The City of Lincoln has received, by donation, a stream segment on Beal Slough in the area of 70th Street to near Pine Lake Road. Intuition & Logic was asked to look at this reach for stream stability. The city would like to construct a trail along Beal Slough in the future. Beal Slough was the first watershed to have a Master Plan and is now 20 years old. The proposal is attached. It was moved by Andersen, seconded by Stevens, and unanimously approved by the subcommittee to recommend the Board of Directors approve the proposal from Intuition & Logic for a stream evaluation on Beal Slough from 70th to near Pine Lake Road in the amount of \$10,860.
- b. **Consideration of a conservation easement exchange in the Wilderness Hills neighborhood, southeast of 40th & Yankee Hill.** – See attached request. The subcommittee tabled this item till next month for action.
- c. **Consideration of an engineering services agreement with FYRA Engineering, LLC for the design of a detention basin for the Deadmans Run Flood Reduction Project in Fleming Field.** – As per agreements in place the NRD will be responsible for the design and construction of a detention basin as part of the Deadmans Run Flood Reduction Project. Phase

I includes model investigation/review and preparation of Water Sustainable Fund application. This attached agreement will start that process. The proposal is attached. It was moved by Green, seconded by Schmidt, and unanimously approved by the subcommittee to recommend the Board of Directors approve the Deadmans Run Detention Cell Design Professional Services Agreement for Phase 1 – Model investigation/review and preparation of Water Sustainability Fund Application with FYRA Engineering at an estimated cost of \$63,864, pending legal counsel review.

- d. **Consideration of a Community Assistance Program (CAP) request from the Capital Beach Community Association** – Capital Beach would like to construct a trail around their neighborhood lake. To complete the circuit they will need to access the Natural Resources District’s Lincoln Saline Wetland Nature Center land. They are asking for a 50% cost-share from the NRD. The trail will be open to the public. This request is for Phase I, Planning Phase, of three phases. See attachments. It was moved by Andersen, seconded by Schmidt, and unanimously approved by the subcommittee to recommend the Board of Directors approve the Community Assistance Program request from the Capital Beach Community Association for Phase I (Planning Phase) to construct a trail through the Lincoln Saline Wetland Nature Center to complete a walking trail around Capital Beach Lake in the amount of 50% of \$7,410.

With no other business the meeting was adjourned at 6:30 pm.

Beal Slough Channel Evaluation – 70th to Pine Lake

Scope of Service

The purpose of the following scope of services is to perform a geomorphic channel evaluation on the reach of Beal Slough from 70th Street to Pine Lake Road and prepare channel improvement recommendations and supporting cost estimate.

- 1.0 Geomorphic Channel Evaluation, CIP and Cost Opinion
 - 1.1 Background Data Collection and Analysis
 - Collect and analyze available GIS, profile, H&H and other data in advance of field data collection.
 - 1.2 Parcel Owner Notification
 - I&L will provide the Lower Platte South Natural Resources District (NRD) with a GIS shapefile of the affected parcels for the NRD's use in notifying the property owners. Fieldwork will begin after the NRD confirms communication with each parcel owner.
 - 1.3 GIS Reach Setup
 - I&L will setup the fieldwork computers with the GIS data and set data point collection prompts.
 - 1.4 Field Data Collection
 - I&L will walk the project reach (as shown on the attached exhibit) and perform a geomorphic evaluation of the channel. The evaluation will include taking notes and photographs of observations; and taking Channel Condition Data Points, Reach Summary Data Points and Capital Improvement Project Data Points. I&L will collect data in GIS. While in the field, I&L will identify geomorphic based project locations for management of the reach.
 - 1.4.1 Review of Findings with NRD
 - I&L will meet with the NRD to review the initial findings from the fieldwork.
 - 1.4.2 Summary of Fieldwork
 - I&L will prepare a brief summary of the fieldwork and channel conditions.
 - 1.5 Capital Improvement Project (CIP)
 - I&L will prepare a one page CIP for the geomorphic based project recommendation. The CIP will include a project scope, estimated limits of construction, initial cost opinion and concept plan.
 - 1.5.1 Develop Project sheet
 - Project sheets shall include problem description, recommendation, discussion, cost estimate, project location map with proposed access and easements, and project site photo, among other items.
 - 1.5.2 Develop Opinion of Probable Cost
 - 1.6 Deliverables
 - I&L will submit draft sections electronically in MS Word and Adobe PDF format.
 - 1.6.1 QAQC review
 - The draft sections will be reviewed by I&L's Quality Control Manager to check that report protocols have been followed.
 - 1.6.2 Draft Sections Submittal
 - I&L will submit draft sections electronically in MS Word and Adobe PDF format


1.6.3 NRD Review and Comment

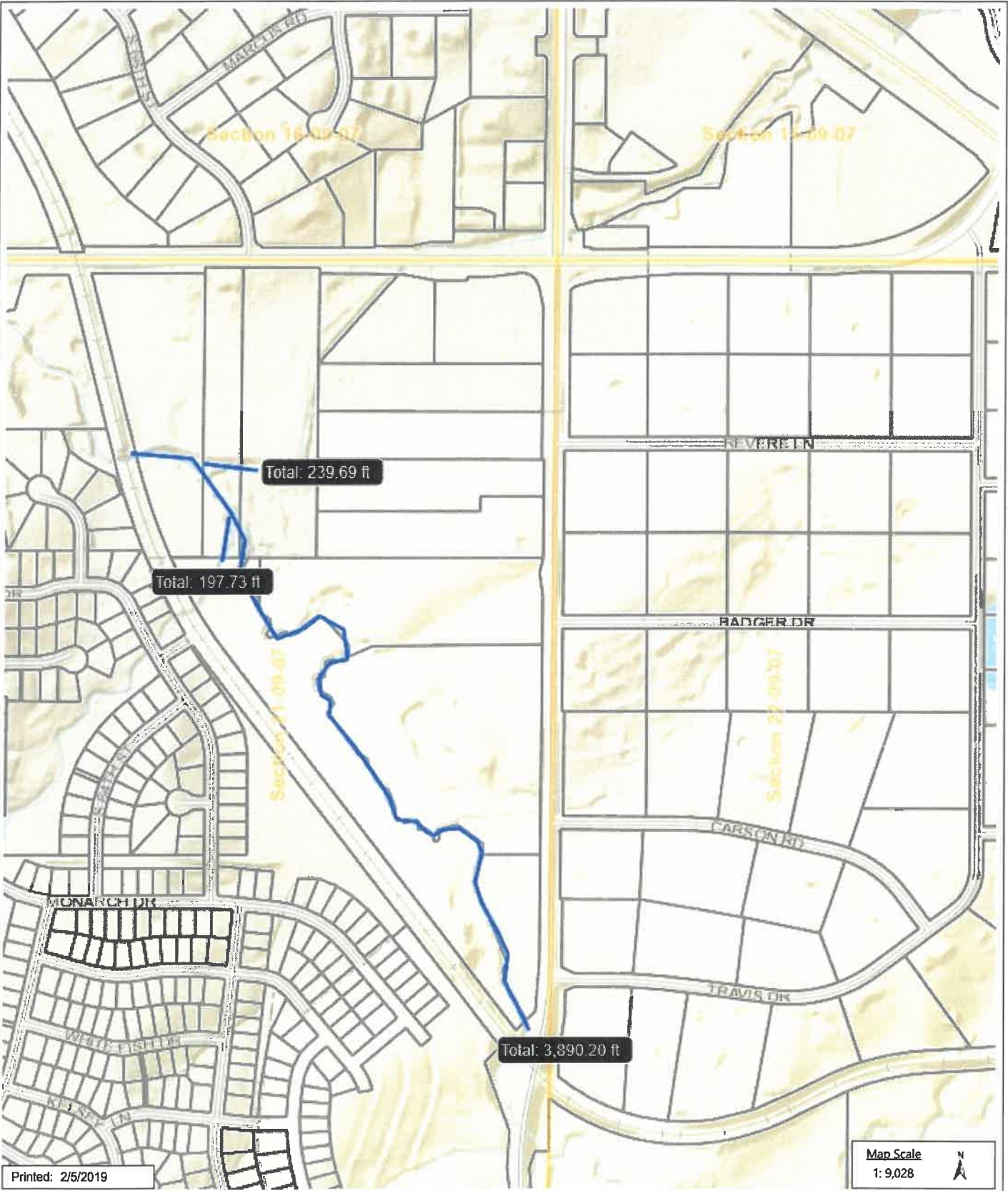
NRD will review the draft submittal and make comments. NRD to email comments back to I&L for incorporation.

1.6.4 Revised Sections Submittal

I&L will incorporate NRD comments and submit final sections for approval. Submittal will include editable electronic copies in MS Word, Excel, PowerPoint and Adobe PDF format on CD or DVD. Electronic files will include editable Arcview MXDs and jpg files for figures.

BEAL SLOUGH STABILIZATION DESIGN - 70TH TO PINE LAKE

		Personnel Type/Title	Principal	Project Manager	Engineer II	CAD / GIS Designer	Subtotal Hours	Subtotal Personnel Cost	Direct Expenses	Sub Consultant Expenses	Subtotal
Personnel Billing Rate			165.00	135.00	105.00	95.00					
PRELIMINARY DESIGN, PLANS AND COST OPINION											
		Background Data Collection and Analysis			2		2	\$ 210.00			\$ 210.00
		Parcel Owner Notification		1			1	\$ 135.00			\$ 135.00
		GIS Reach Setup		1		4	5	\$ 515.00			\$ 515.00
		Field Data Collection		16	16		32	\$ 3,840.00			\$ 3,840.00
		Review of Findings with NRD		2	2		4	\$ 480.00			\$ 480.00
		Summary of Fieldwork		4		4	8	\$ 920.00			\$ 920.00
2	\$ 500	Air Fair Round Trip, 2 people					0	\$ -	\$ 1,000.00		\$ 1,000.00
2	\$ 50	Rental Car per diem, 1 car - 2 days					0	\$ -	\$ 100.00		\$ 100.00
2	\$ 90	Hotel per diem, 2 room - 1 night					0	\$ -	\$ 180.00		\$ 180.00
4	\$ 50	Meals per diem, 2 person, 2 days.					0	\$ -	\$ 200.00		\$ 200.00
							0	\$ -			\$ -
		Capital Improvement Project (CIP)					0	\$ -			\$ -
		Develop Project Sheet		2	4	4	10	\$ 1,070.00			\$ 1,070.00
		Develop Opinion of Probable Cost		2	4		6	\$ 690.00			\$ 690.00
							0	\$ -			\$ -
		Deliverables					0	\$ -			\$ -
		QAQC Review	2				2	\$ 330.00			\$ 330.00
		Draft Sections Submittal		1	2		3	\$ 345.00			\$ 345.00
		NRD Review and Comment					0	\$ -			\$ -
		Revised Sections Submittal	1	2		4	7	\$ 815.00			\$ 815.00
							0	\$ -			\$ -
							0	\$ -			\$ -
							0	\$ -			\$ -
							0	\$ -			\$ -
1	\$ 30	Envelopes and Postage					0	\$ -	\$ 30.00		\$ 30.00
							0	\$ -			\$ -
							0	\$ -			\$ -
		Subtotal =	3	31	30	16	80	\$ 9,350.00	\$ 1,510.00	\$ -	\$ 10,860.00
Subtotal Hours			3.00	31.00	30.00	16.00	80.00	\$ 9,350.00	\$ 1,510.00	\$ -	\$ 10,860.00
Subtotal Personnel Cost			\$495	\$4,185	\$3,150	\$1,520	CHECK \$ 9,350.00				
										TOTAL = \$ 10,860.00	



Printed: 2/5/2019

Map Scale
1: 9,028



b.



January 24, 2019

Mr. Paul Zillig
General Manager
Lower Platte South Natural Resources District
3125 Portia Street
Lincoln, NE 68521

Re: Wilderness Creek / Wilderness Hills
Request for Conservation Easement Exchange
Olsson Project No. 015-0625

Dear Mr. Zillig,

On behalf of Lincoln Federal Bancorp, Inc. ("LFB"), owner of the real property legally described as a portion of Lot 68, located in the northeast quarter of Section 30, all located all located in Lancaster County, Nebraska ("the Property"). LFB is requesting an easement release of a portion of the City of Lincoln/LPSNRD Conservation Easement on the Property and a new dedicated easement is being proposed in exchange on the same Property. The proposed conservation easement is mitigating the vacated easement request at an area ratio of 2:1.

In 2006, when the easement boundary was determined, the area was designated as flood prone area. Today, the flood plain is mapped with FEMA and proposed revisions with the Wilderness Creek/Wilderness Hills developments. Exhibit 'A' shows the development area, easement release area, proposed easement area, and existing (blue) and proposed (green) flood plain limits. The development plans and drainage study have been approved by the City of Lincoln.

Enclosed find the following documents for the above-mentioned project:

1. Exhibit 'A' – Easement Release and Dedication Exhibit
2. Legal Descriptions

A majority of the flood plain is being removed in the proposed easement release area. Olsson has submitted a CLOMR to FEMA for their review and a LOMR will be submitted following the completion of the grading. The existing easement will maintain the flood plain within the easement boundary preserving the intent of the easement to be within the flood plain areas for the Southeast Upper Salt Creek Watershed.


The proposed conservation easement will be dedicated in exchange for the easement release area. The proposed easement is adjacent to the existing conservation easement and flood plain that was not originally mapped at the time the conservation easement was determined in 2006. The additional easement provides the City/NRD to obtain conservation easement that may have been requested if the easement was obtained after the flood plain was established.

The above proposal should benefit both LFB and the City/NRD. LFB has proposed to dedicate a larger easement area than being released, a ratio of 2:1.

Mr. David Cary
Page 2
January 23, 2019

We appreciate the Boards consideration of the above request and look forward to working with you on this proposed easement exchange in the Wilderness Creek / Wilderness Hills development. If you require further information or have any questions, please do not hesitate to contact me at bmarshall@olssonassociates.com or (402) 458-5672.

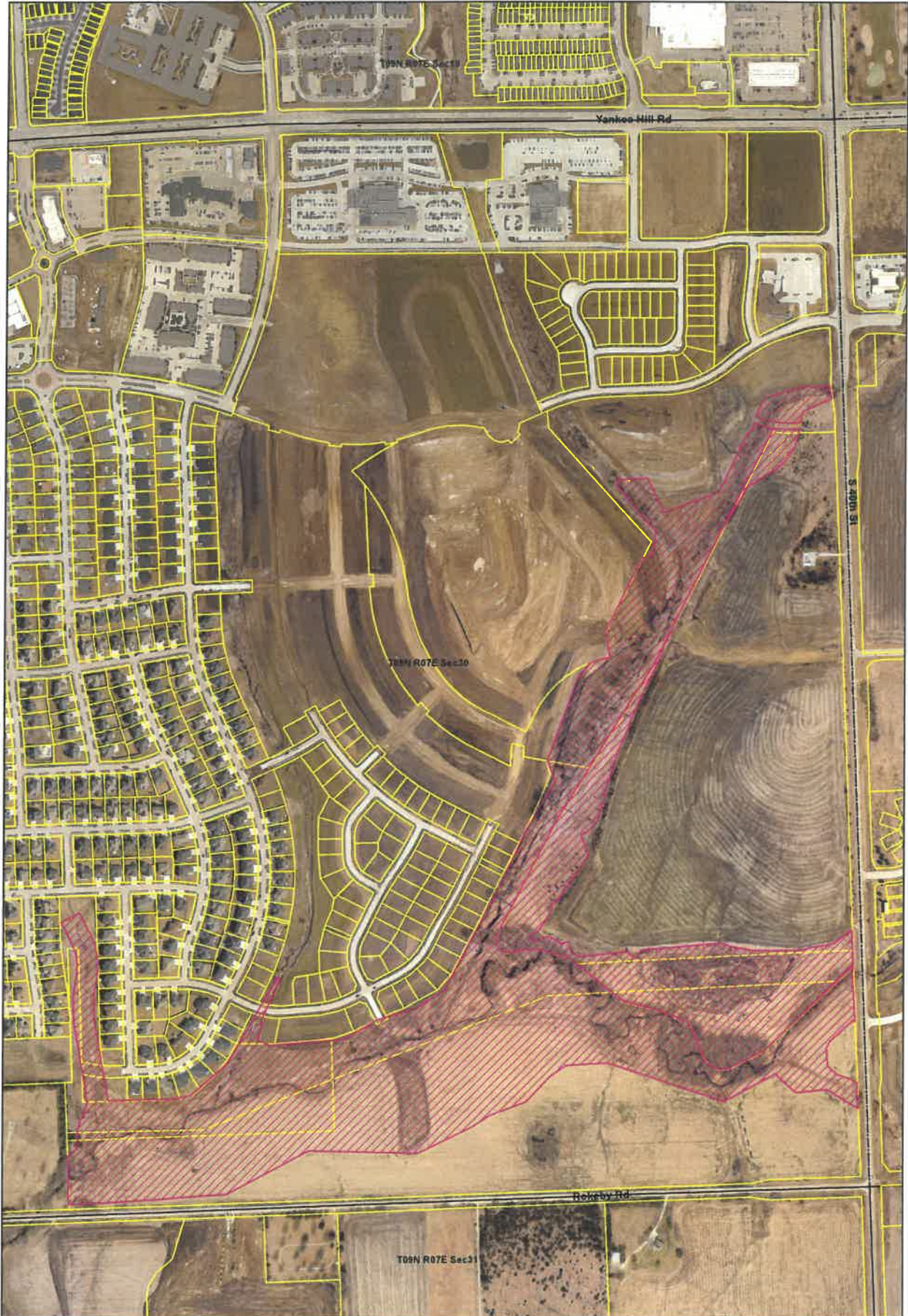
Sincerely,



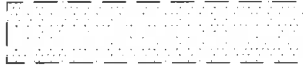


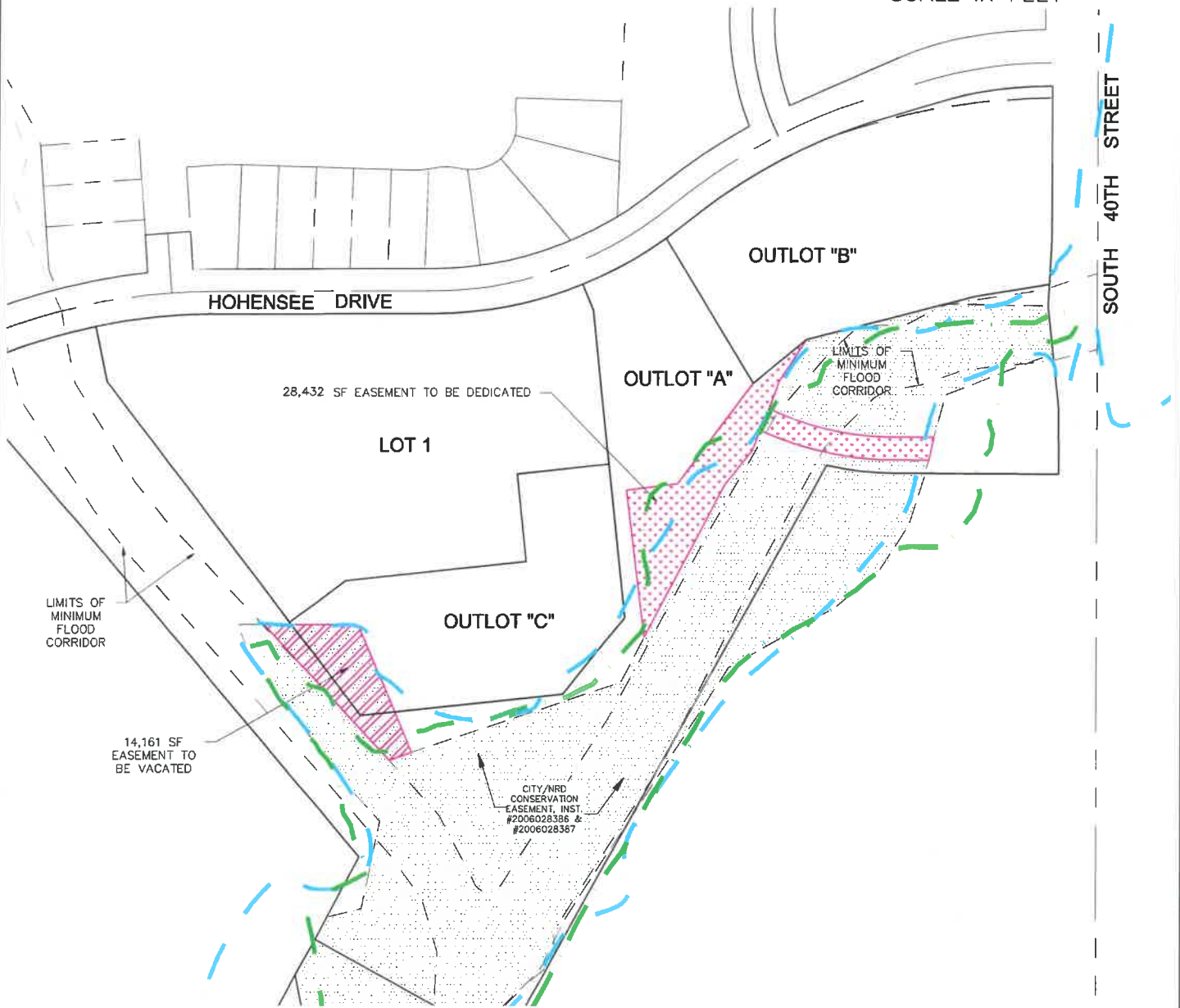
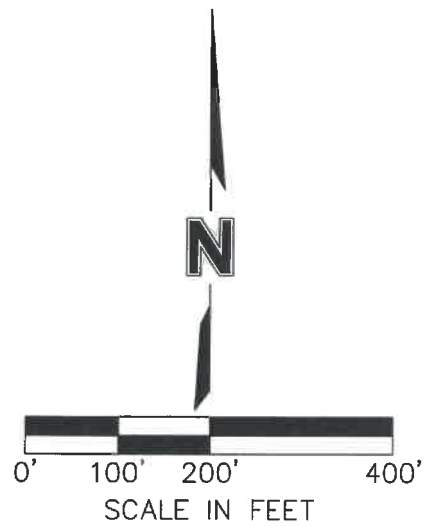
Brad J Marshall, P.E.

Enclosures.

Wilderness Hills (Lincoln Federal) Conservation Easement
NRD + City of Lincoln Joint Easement



-  EXISTING 100YR FLOOD PLAIN
-  PROPOSED 100YR FLOOD PLAIN
-  EXISTING NRD EASEMENT AREA



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PROJECT NO:	018-2636
DRAWN BY:	BAL
DATE:	1/24/19

**CONSERVATION
EASEMENT EXCHANGE**



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

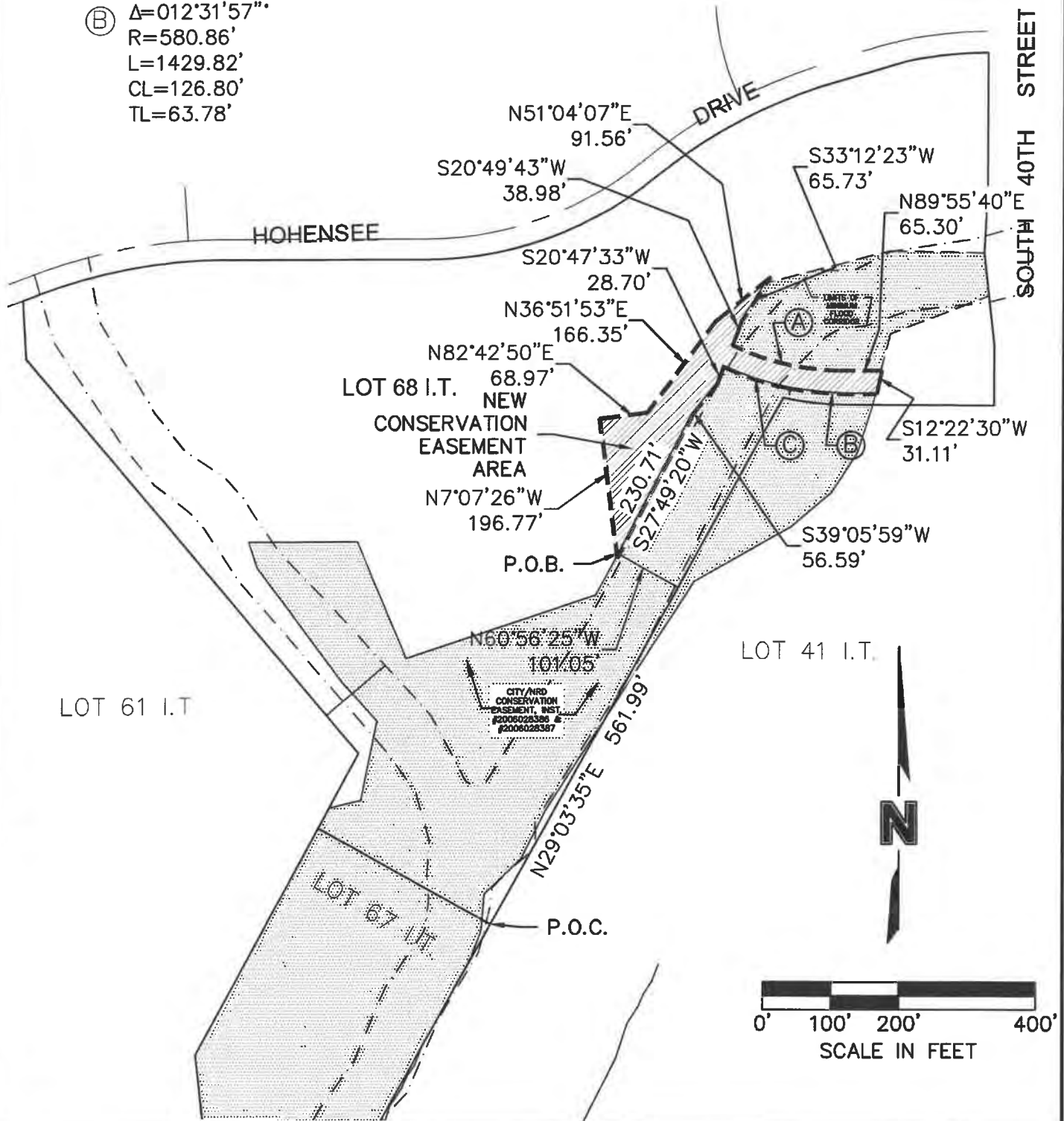
EXHIBIT
A

CURVE DATA

Ⓐ Δ=024°55'07"
 R=366.54'
 L=1429.82'
 CL=158.16'
 TL=80.99'

Ⓒ Δ=013°43'46"
 R=428.12'
 L=1429.82'
 CL=102.34'
 TL=51.54'

Ⓑ Δ=012°31'57"
 R=580.86'
 L=1429.82'
 CL=126.80'
 TL=63.78'



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PROJECT NO:	018-2636
DRAWN BY:	ALB
DATE:	01-25-19

**CONSERVATION
EASEMENT**

olsson

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

EXHIBIT	1
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CONSERVATION EASEMENT RELEASE
LEGAL DESCRIPTION

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 68 I.T., LOCATED IN THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., LINCOLN LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A SOUTHEAST CORNER OF LOT 68 I.T., SAID POINT BEING A NORTHEAST CORNER OF LOT 67 I.T. OF SAID NORTHEAST QUARTER, SAID CORNER ALSO BEING ON A WEST LINE OF LOT 41 I.T. OF SAID NORTHEAST QUARTER; THENCE NORTHWESTERLY ON AN ASSUMED BEARING OF N60°56'25"W, ON A SOUTH LINE OF SAID LOT 68 I.T., SAID LINE BEING A NORTH LINE OF SAID LOT 67 I.T., A DISTANCE OF 288.77' TO A SOUTHWEST CORNER OF SAID LOT 68 I.T., SAID POINT BEING A NORTHEAST CORNER OF SAID LOT 67 I.T., SAID POINT ALSO BEING ON AN EAST LINE OF LOT 61 I.T. OF SAID NORTHEAST QUARTER; THENCE N28°16'49"E, ON AN EAST LINE OF SAID LOT 68 I.T., A DISTANCE OF 123.87' TO A NORTHWEST CORNER OF LOT 68 I.T., SAID POINT BEING A NORTHEAST CORNER OF SAID LOT 61 I.T.; THENCE N40°11'59"W, ON A SOUTH LINE OF SAID LOT 68 I.T., SAID LINE BEING A NORTH LINE OF SAID LOT 61 I.T., A DISTANCE OF 72.92 TO A POINT; THENCE N49°48'01"E, A DISTANCE OF 113.43' TO THE TRUE POINT OF BEGINNING; THENCE N42°47'19"W, A DISTANCE OF 245.32 TO A POINT ON A NORTH LINE OF A CONSERVATION EASEMENT AGREEMENT, AS REFERRED TO IN INSTRUMENT NUMBER 2006028386, RECORDS OF LANCASTER COUNTY; THENCE N90°00'00"E, ON A NORTH LINE OF SAID CONSERVATION EASEMENT, A DISTANCE OF 124.82' TO A NORTHEAST CORNER OF SAID CONSERVATION EASEMENT; THENCE S22°57'15"E, ON AN EAST LINE OF SAID CONSERVATION EASEMENT, A DISTANCE OF 184.62' TO A POINT; THENCE S71°36'29"W, A DISTANCE OF 31.80 TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 14,161.72 SQUARE FEET OR 0.32 ACRES, MORE OR LESS.

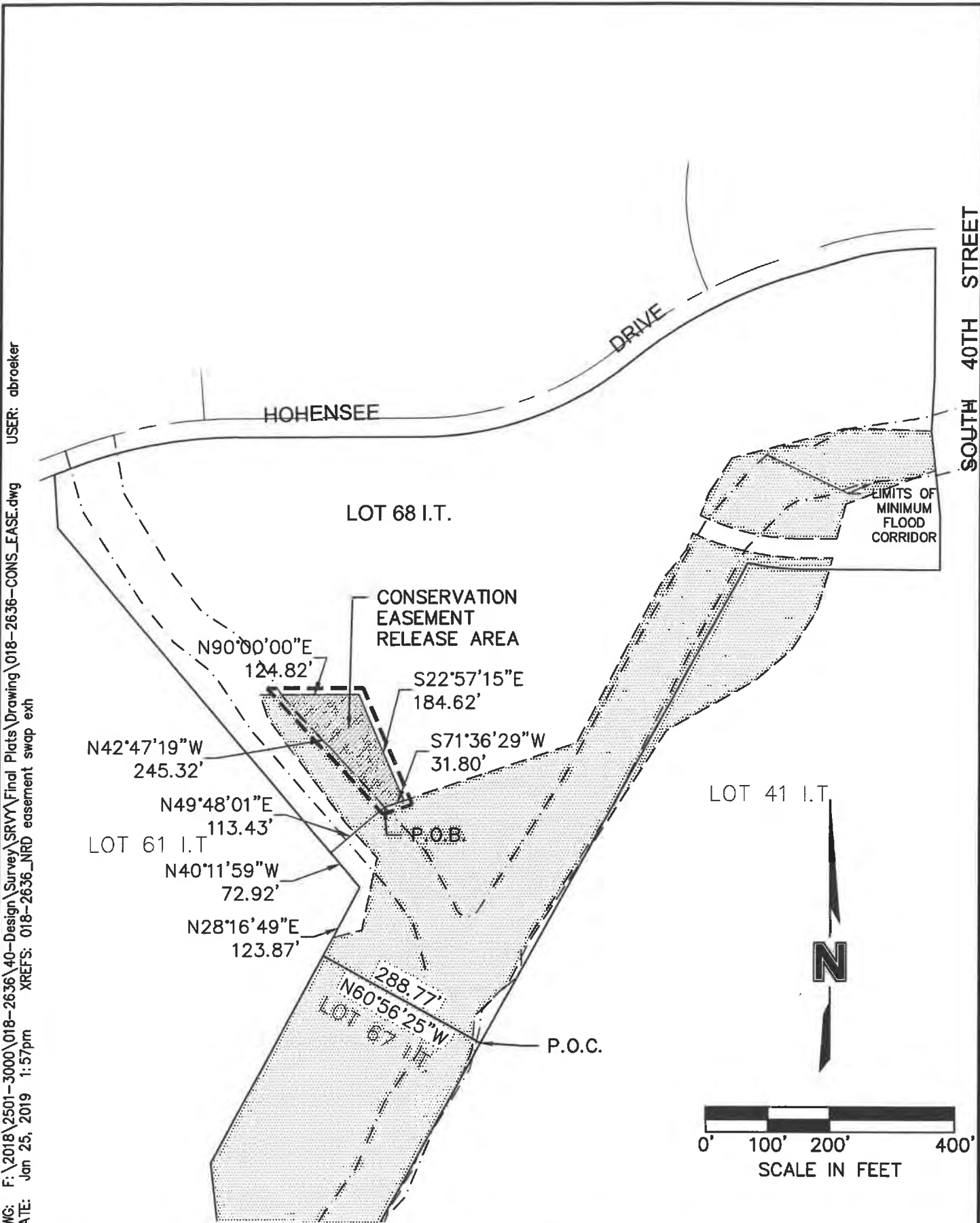
JANUARY 21, 2019

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 USER: abroeker

PROJECT NO: 018-2636	CONSERVATION EASEMENT RELEASE- LEGAL		601 P Street, Suite 200 P.O. Box 84608 Lincoln, NE 68508 TEL 402.474.6311	EXHIBIT
DRAWN BY: ALB			1	
DATE: 1-23-19				

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PROJECT NO: 018-2636
 DRAWN BY: ALB
 DATE: 01/22/19

**CONSERVATION
 EASEMENT RELEASE**

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

EXHIBIT
 1

**CONSERVATION EASEMENT
LEGAL DESCRIPTION**

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 68 I.T., LOCATED IN THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., LINCOLN LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A SOUTHEAST CORNER OF LOT 68 I.T., SAID POINT BEING A NORTHEAST CORNER OF LOT 67 I.T. OF SAID NORTHEAST QUARTER, SAID CORNER ALSO BEING ON A WEST LINE OF LOT 41 I.T. OF SAID NORTHEAST QUARTER; THENCE NORTHEASTERLY ON AN ASSUMED BEARING OF N29°03'35"E, ON AN EAST LINE OF SAID LOT 68 I.T., SAID LINE BEING A WEST LINE OF SAID LOT 41 I.T., A DISTANCE OF 561.99' TO A POINT; THENCE N60°56'25"W, A DISTANCE OF 101.05' TO THE TRUE POINT OF BEGINNING; THENCE N07°07'26"W, A DISTANCE OF 196.77' TO A POINT; THENCE N82°42'50"E, A DISTANCE OF 68.97' TO A POINT; THENCE N36°51'53"E, A DISTANCE OF 166.35' TO A POINT; THENCE N51°04'07"E, A DISTANCE OF 91.56' TO A POINT ON A NORTH LINE OF A CONSERVATION EASEMENT AGREEMENT, AS REFERRED TO IN INST. NO. 2006-28386, RECORDS OF LANCASTER COUNTY; THENCE S33°12'23"W, ON A WEST LINE OF SAID CONSERVATION EASEMENT, A DISTANCE OF 65.73' TO A POINT; THENCE S20°49'43"W, ON A WEST LINE OF SAID CONSERVATION EASEMENT, A DISTANCE OF 38.98' TO A POINT OF NON TANGENT CURVATURE; THENCE ALONG A NON TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 366.54 FEET; A DELTA ANGLE OF 24 DEGREES 55 MINUTES 07 SECONDS, AN ARC LENGTH OF 159.41 FEET, A CHORD BEARING OF SOUTH 76 DEGREES 26 MINUTES 22 SECONDS EAST, AND A CHORD DISTANCE OF 158.16 FEET TO A POINT; THENCE NORTH 89 DEGREES 55 MINUTES 40 SECONDS EAST, A DISTANCE OF 65.30 FEET TO A POINT; THENCE SOUTH 12 DEGREES 22 MINUTES 30 SECONDS WEST, A DISTANCE OF 31.11 FEET TO A NORTH LINE OF A CONSERVATION EASEMENT AGREEMENT AS REFERRED TO IN INST. NO. 2006-28387, RECORDS OF LANCASTER COUNTY, SAID POINT BEING A POINT OF NON TANGENT CURVATURE, THENCE ALONG A NON TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 580.86 FEET; A DELTA ANGLE OF 12 DEGREES 31 MINUTES 57 SECONDS, AN ARC LENGTH OF 127.05 FEET, ALONG A NORTH LINE OF SAID CONSERVATION EASEMENT, A CHORD BEARING OF NORTH 86 DEGREES 32 MINUTES 34 SECONDS WEST, AND A CHORD DISTANCE OF 126.80 FEET TO A POINT ON A NORTH LINE OF A CONSERVATION EASEMENT AGREEMENT AS REFERRED TO IN SAID INST. NO. 2006-28386, SAID POINT BEING A POINT OF NON TANGENT CURVATURE, THENCE ALONG A NON TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 428.12 FEET; A DELTA ANGLE OF 13 DEGREES 43 MINUTES 46 SECONDS, AN ARC LENGTH OF 102.59 FEET, ALONG A NORTH LINE OF A CONSERVATION EASEMENT AGREEMENT AS REFERRED TO IN SAID INST. NO. 2006-28386, A CHORD BEARING OF NORTH 72 DEGREES 09 MINUTES 54 SECONDS WEST, AND A CHORD DISTANCE OF 102.34 FEET TO A POINT; THENCE S20°47'33"W, ON A WEST LINE OF SAID CONSERVATION EASEMENT, A DISTANCE OF 28.70' TO A POINT; THENCE S39°05'59"W, ON A WEST LINE OF SAID CONSERVATION EASEMENT, A DISTANCE OF 56.59' TO A POINT; THENCE S27°49'20"W, ON A WEST LINE OF SAID CONSERVATION EASEMENT, A DISTANCE OF 230.71' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 28,431.59 SQUARE FEET OR 0.65 ACRES, MORE OR LESS.

JANUARY 25, 2019

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PROJECT NO: 018-2636	CONSERVATION EASEMENT- LEGAL		601 P Street, Suite 200 P.O. Box 84608 Lincoln, NE 68508 TEL 402.474.6311	EXHIBIT
DRAWN BY: ALB			1	
DATE: 1-25-19				



76448

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



CITY OF LINCOLN
NEBRASKA
MAYOR COLEEN J. SENG

**EXECUTIVE
ORDER**

NO. 076443

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 31st day of May, 2006.

Coleen J. Seng, Mayor

Approved as to Form & Legality:

Chief Asst. City Attorney

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of this 31st 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.

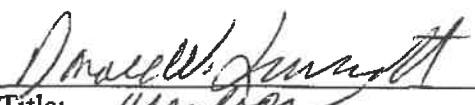
14. This Settlement Agreement and attachments hereto, along with the Conservation Easement Agreements attached as Exhibits 1 and 2, constitute the entire agreement among the Parties regarding the Conservation Easements. In the event of a conflict among this Settlement Agreement and the Conservation Easements,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

Jean E. Ross
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 10th day of May, 2006, by Leo J. Schumacher, President of Lincoln Federal Bancorp, Inc., on behalf of said corporation.

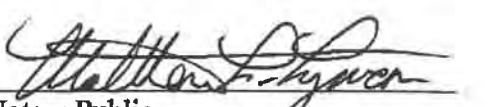
(SEAL) 


Notary Public

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 10th 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.

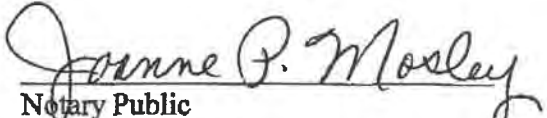
(SEAL) 


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.

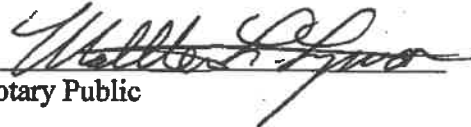
(SEAL) 


Notary Public

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 10th 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.

(S E A L)  GENERAL NOTARY - State of Nebraska
MATTHEW L. LYMAN
My Comm. Exp. Sept. 9, 2006


Notary Public

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

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

(S E A L)  GENERAL NOTARY - State of Nebraska
RICHARD L. BREDEKAMP
My Comm. Exp. Feb. 28, 2008


Notary Public

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

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

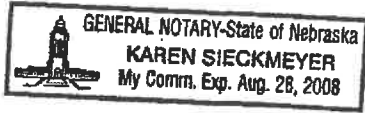
(S E A L)  GENERAL NOTARY - State of Nebraska
SANDY L. DUBAS
My Comm. Exp. Apr. 27, 2010


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.

(S E A L)



Karen Sieckmeyer
Notary Public

EXHIBIT "1"

CONSERVATION EASEMENT AGREEMENT
(Preservation of Floodprone Area)

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of this _____ day of _____, 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 ("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, (Lot 41) located in the east half of Section 30, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, including portions thereof referred to herein as the "Lot 41 Easement Area." The Lot 41 Easement Area is more particularly described as follows:

A portion 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, more particularly described as follows:

Beginning at the southeast corner of Lot 41, Irregular Tract, thence South 48° 17' 25" West a distance of 611.07 feet; thence South 65° 55' 08" West a distance of 179.00 feet; thence southwest a distance of 185.01 feet along a tangential curve concave northwest having a radius of 107.08 feet and a central angle of 98° 59' 43"; thence North 15° 05' 09" West a distance of

72.44 feet; thence North 25° 06' 19" West a distance of 103.56 feet; thence North 67° 56' 03" West a distance of 159.48 feet; thence North 73° 23' 53" West a distance of 170.43 feet; thence North 49° 57' 18" West a distance of 358.87 feet; thence North 71° 59' 35" West a distance of 139.85 feet; thence North 87° 30' 44" West a distance of 88.38 feet; thence South 77° 38' 34" West a distance of 58.14 feet; thence west a distance of 103.00 feet along a tangential curve concave north having a radius of 56.35 feet and a central angle of 104° 43' 13"; thence North 02° 21' 47" East a distance of 24.49 feet; thence North 29° 12' 10" East a distance of 23.21 feet; thence North 29° 12' 17" East a distance of 604.88 feet; thence North 34° 07' 45" East a distance of 903.63 feet; thence North 29° 03' 35" East a distance of 228.21 feet; thence South 21° 02' 12" West a distance of 28.24 feet; thence South 34° 14' 58" West a distance of 20.75 feet; thence South 24° 17' 29" West a distance of 19.92 feet; thence South 32° 45' 50" West a distance of 14.06 feet; thence South 33° 04' 17" West a distance of 16.56 feet; thence South 17° 52' 44" West a distance of 50.42 feet; thence South 26° 20' 50" West a distance of 40.39 feet; thence South 26° 20' 45" West a distance of 76.78 feet; thence South 29° 21' 28" West a distance of 91.79 feet; thence South 25° 42' 35" West a distance of 59.93 feet; thence S 27° 28' 28" West a distance of 84.53 feet; thence South 15° 15' 17" West a distance of 37.37 feet; thence South 26° 38' 27" West a distance of 131.95 feet; thence South 18° 03' 17" West a distance of 138.48 feet; thence South 27° 38' 43" West a distance of 43.28 feet; thence South 10° 41' 01" West a distance of 53.56 feet; thence South 18° 16' 01" West a distance of 124.65 feet; thence South 50° 42' 37" West a distance of 14.21 feet; thence South 42° 46' 08" West a distance of 54.49 feet; thence South 65° 19' 23" West a distance of 40.72 feet; thence South 18° 57' 15" East a distance of 104.68 feet; thence South 35° 34' 35" West a distance of 276.64 feet; thence South 76° 27' 11" West a distance of 29.89 feet; thence South 01° 23' 47" East a distance of 32.95 feet; thence South 35° 16' 35" West a distance of 123.65 feet; thence South 54° 35' 46" West a distance of 58.89 feet; thence South 53° 44' 48" East a distance of 32.23 feet; thence North 52° 17' 50" East a distance of 21.40 feet; thence North 64° 01' 51" East a distance of 8.41 feet; thence North 71° 39' 05" East a distance of 8.60 feet; thence North 82° 09' 53" East a distance of 11.34 feet; thence South 87° 10' 21" East a distance of 21.70 feet; thence South 80° 57' 13" East a distance of 10.86 feet; thence South 70° 01' 28" East a distance of 10.86 feet; thence South 59° 04' 47" East a distance of 10.86 feet; thence South 52° 04' 13" East a distance of 33.76 feet; thence South 38° 22' 30" East a distance of 9.68 feet; thence North 42° 24' 04" East a distance of 4.68 feet; thence North 71° 14' 34" East a distance of 34.21 feet; thence South 17° 13' 52" East a distance of 62.82 feet; thence South 63° 40' 53" East a distance of 40.60 feet; thence North 86° 32' 59" East a distance of 239.06 feet; thence South 52° 21' 08" East a distance of 53.02 feet; thence North 36° 09' 31" East a distance of 45.23 feet; thence North

86° 33' 20" East a distance of 405.53 feet; thence South 62° 43' 53" East a distance of 45.58 feet; thence South 78° 35' 51" East a distance of 121.40 feet; thence South 88° 45' 36" East a distance of 231.05 feet; thence North 78° 04' 14" East a distance of 72.57 feet; thence North 83° 35' 21" East a distance of 89.56 feet; thence North 52° 23' 38" East a distance of 93.41 feet; thence North 71° 32' 41" East a distance of 20.56 feet. And, also:

Beginning at the northwest corner of Lot 41, Irregular Tract, thence east a distance of 127.04 feet along a non-tangential curve concave north having a radius of 580.86 feet and a central angle of 12° 31' 54"; thence South 14° 55' 38" West a distance of 26.25 feet; thence South 17° 43' 27" West a distance of 64.90 feet; thence South 33° 01' 26" West a distance of 71.56 feet; thence South 49° 45' 50" West a distance of 76.32 feet; thence South 60° 39' 01" West a distance of 162.61 feet; thence South 33° 00' 43" West a distance of 237.91 feet.

II.

The City and NRD are authorized to accept and hold this Conservation Easement under the terms of this Agreement and the Conservation and Preservation Easements Act, Neb. Rev. Stat. § §76-2,111 through 76-2,118 (the "Act"). This conveyance is made pursuant to the Act.

III.

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

IV.

The Lot 41 Easement Area is generally located within the 100-year floodprone area as designated in the Southeast Upper Salt Creek Watershed Master Plan dated October 2003. The Lot 41 Easement Area is shown on the attached Exhibit "A", which is made a part of this agreement by this reference.

V.

The City and NRD desire to acquire and Owners are willing to convey a permanent Conservation Easement to preserve the flood storage capacity and other natural resources over the Lot 41 Easement Area.

NOW, THEREFORE, in consideration of NINETY SEVEN THOUSAND, ONE HUNDRED TWENTY FIVE AND 00/100 DOLLARS, (\$97,125.00), and other good and valuable consideration as set forth in the Settlement Agreement (to which this Agreement is attached as Exhibit 1), Owners hereby grant and convey to City and NRD for their benefit and the benefit of the public a conservation easement over the Lot 41 Easement Area to restrict the use of the Lot 41 Easement Area to open space to protect and preserve the floodprone area, drainageway, wetlands, and tree masses that occur on the land, to protect other water resources and biologic resources of the floodprone area as identified on Exhibit B, and to restrict development and future use of the Lot 41 Easement Area that will significantly impair or interfere with the open space values and natural resources of the Lot 41 Easement Area.

The terms, conditions, and covenants of the conservation easement hereby created are as follows:

1. Use of Lot 41 Easement Area.

A. General Compatible Uses. The Lot 41 Easement Area shall be used only for the purposes compatible with open space, recreational (including exercising by people and their pets), or wetlands management practices, except that areas historically in agricultural use within ten (10) years of the date the easement is acquired may continue in such use. In addition, notwithstanding subsection B, "Non-Compatible Uses," below, the following uses are compatible with the purposes of the Lot 41 Easement Area, provided that the uses are approved in advance by the Director of Public Works and Utilities and that the Lot 41 Easement Area is restored following disturbance to the maximum extent practicable.

- i. Roadway or utility crossings necessary for the functional use of adjacent lands constructed in accordance with the flood regulations.
- ii. Public sanitary sewer lines generally along the stream alignment necessary for the functional use of adjacent lands.
- iii. Trails or other public or private recreational or educational components and activities.
- iv. Stream rehabilitation and water quality projects.
- v. Protection, maintenance and enhancement of the Lot 41 Easement Area.

- vi. Lot 41 Easement Area rehabilitation necessary to protect and/or restore the natural resources listed in Exhibit B.
- vii. Removal of dead, diseased or dangerous trees or shrubs.
- viii. Temporary access and construction easements to allow installation, maintenance, repair and replacement of utilities and fences abutting the Lot 41 Easement Area.
- ix. Storm drain and outlet improvements conforming to the City's design standards necessary for the functional drainage of uses of adjacent lands.
- x. Control or removal of insects, pests and other matters that are a danger to public health while conserving the function of the Lot 41 Easement Area.
- xi. Stormwater storage facilities as shown on Exhibit D provided the facilities meet City of Lincoln regulations and design standards for stormwater detention and do not adversely impact the tree masses and/or other natural resources listed in Exhibit B.
- xii. Other uses compatible with the purposes of the Conservation Easement.

B. Non-Compatible Uses. The following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited within the Lot 41 Easement Area:

- i. Construction or placing of roadways, buildings, camping accommodations, or mobile homes, fences, commercial signs, billboards or other advertising material, or any other structure;
- ii. Filling, excavating, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials;
- iii. Building of roads, or changing in the topography of the land in any manner excepting the maintenance of the items described in subsection A above or any work approved by the City;
- iv. Dumping of ashes, trash, garbage, or other unsightly or offensive material;
- v. Changing the topography of the land by placing of soil or other substances or materials such as landfill or dredging spoils;

- vi. Commercial and residential development of any nature;
- vii. Intentional human introduction of non-native plant or animal species which may compete with and result in decline or elimination of native animal species, except for non-native plants approved in advance by the Directors of Public Works and Utilities and Parks and Recreation;
- viii. Operation of motorized vehicles except as necessary in the use of the area as provided herein;
- ix. The broadcast application of pesticides, herbicides, and insecticides at any time, except for that which is needed for areas historically in agricultural use at the time this easement is acquired. Spot application of pesticides and herbicides for the control of noxious weeds as provided by state law will be permitted;
- x. Cultivation, planting, or drilling of row crops, small grains, and forages, such as alfalfa and forage sorghum within areas not historically in agricultural use within ten (10) years of the acquisition of this easement;
- xi. Removal of tree masses.
- xii. Unreasonable sedimentation of the Lot 41 Easement Area due to grading or construction activities outside the Lot 41 Easement Area. Erosion and sediment control measures for grading and construction conducted in accordance with a federal, state, or local stormwater discharge permit shall be deemed reasonable.
- xiii. Any other act which would be detrimental to the functionality of the floodplain within the Lot 41 Easement Area.

C. Specific Permitted and Prohibited Uses and Practices. Notwithstanding subsections A (General Compatible Uses) and B (Non-Compatible Uses) above, the following specific uses and practices associated with the proposed future development of Lot 41 are permitted or prohibited within the Lot 41 Easement Area as provided below:

- i. Drainageway B. Trail Easement. A 20-foot wide public trail easement shall be shown in any preliminary plat, community unit plan, or use permit of the Property running along the east side of Drainageway B within the Lot 41 Easement Area to the maximum extent practicable as currently reflected in Exhibit C. It is anticipated that the trail easement will cross Drainageway B from the Combined Easement Area at the half mile-line street (identified as Wilderness Hills Boulevard on Exhibit D), and then will proceed generally south along the east side of Drainageway B. However, after crossing Drainageway B, the trail may be on the Lot 41 Easement Area, or may be on the Combined Easement Area depending upon the final trail location.

- ii. Drainageway C.
 - (1) Commercial Zoning. The Lot 41 Easement Area may be zoned for commercial uses on the east side of Drainageway B and on the north side of Drainageway C east of Drainageway B, as shown on Exhibit C.
 - (2) Commercial Open Space. The following uses are permitted on the north side of Drainageway C and outside of the tree mass as shown on Exhibit C: (a) manicured lawn area, (b) walking trail and related non-structural facilities, (c) an at-grade water fountain, and (d) relocation of the existing cellular telecommunication tower (but not the ground equipment compound), provided such uses are approved in advance by the Director of Parks and Recreation in conjunction with the Director of Public Works and Utilities and said improvements are maintained by the Owners. Owners understand and acknowledge that the restriction on placing the ground equipment in the Lot 41 Easement Area may preclude location of the cellular communications tower in the Lot 41 Easement Area.
 - (3) Trail. The trail easement described in i. above will cross Drainageway C at a point to be determined at the time of platting. The location of the

trail heading east to South 40th Street may be revised during the time of platting to be within the Combined Easement Area or within the Lot 41 Easement Area, once the most practicable location has been determined to facilitate an underpass at South 40th Street.

- iii. Stormwater Detention. The stormwater detention facilities shown on Exhibit D attached hereto which are located within the Lot 41 Easement Area; provided the facilities meet City of Lincoln regulations and design standards for stormwater detention. Stormwater detention facilities shown on Attachment D which are located outside the Lot 41 Easement Area are shown for illustrative purposes only.

2. **Term.** The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- i. By the City and NRD pursuant to the provisions of *Neb. Rev. Stat. § 76-2,113.*
- ii. By the Lancaster County District Court pursuant to the provisions of *Neb. Rev. Stat. § 76-2,114.*

The parties agree that termination of this Agreement may be total and affect all of the Combined Easement Area, or may be partial and result in the termination of the easement over only a portion of the Combined Easement Area.

3. **Condition of the Lot 41 Easement Area at Time of Grant.** The condition of the Lot 41 Easement Area without limiting the generality of the terms is defined to mean the open space, drainageway, wetlands, tree masses, and the functional integrity of other water resources and biologic resources of the floodprone area identified on Exhibit B, as evidenced by reports, photographs and scientific documentation on file with the City's Planning Department.

4. **Survey, Protection and Maintenance of the Lot 41 Easement Area.**

A. The City shall, at its sole cost, survey and stake the Lot 41 Easement Area within a reasonable period following execution of this Conservation Easement Agreement. The City may, at its discretion, install permanent above-ground boundary markers identifying the Lot 41 Easement Area boundary. The City shall use its best efforts to locate the boundary markers on side lot lines.

B. The Owners shall, at Owners' sole cost and expense, maintain the Lot 41 Easement Area. Maintenance shall consist of routine noxious weed control, routine weed and brush control, routine removal of trash and debris and routine non-structural maintenance of stream bed and bank stability measures following installation. If Owners fail to maintain the Lot 41 Easement Area the City and/or NRD may carry out such maintenance and bill the cost thereof to Owners. Owners shall pay said cost within thirty days from receipt of said billing.

C. Each Owner agrees to pay any real estate taxes, estate taxes or assessments levied by competent authorities on its ownership of the Lot 41 Easement Area, including but not limited to any tax or assessment affecting the easement granted herein. Owners retain the right to challenge the assessed value of the property and to challenge the validity of an any such tax or assessment. The Parties intend that Neb. Rev. Stat. § 76-2,116 govern future assessment of the Lot 41 Easement Area.

D. Owners shall cooperate with and assist the City and NRD at the City's or NRD's cost in applying for, obtaining, protecting, and enhancing any and all surface water and ground water rights and privileges related to the Lot 41 Easement Area by signing applications which the City or NRD deems necessary or desirable for the management, maintenance or development of the Lot 41 Easement Area for the purposes provided for herein.

5. Inspections and Access by City and NRD. The City and NRD shall have the right of reasonable ingress and egress to and from the Lot 41 Easement Area from public roads and streets and from the adjacent Property for its employees, contractors, vehicles and equipment for the purpose of revegetating and for inspecting, protecting or enhancing the floodprone area within the Lot 41 Easement Area, including but not limited to stream stabilization projects, as the City or NRD may deem necessary or desirable. Any such access from Lot 41 shall be used so as to not damage said adjacent areas or crops or improvements which are now or which in the future may be on said adjacent areas, and shall use public right-of-way or private streets to the fullest extent practicable. Such right of access will be modified as reasonably necessary upon subdivision or development of said adjacent areas.

6. Enforcement. The Owners, City and NRD may enforce the provisions of this Conservation Easement by any proceeding at law or in equity and may seek any remedy so available, including specific performance, and the right to require restoration of the Lot 41 Easement Area to

the condition at the time of its acquisition, except for compatible uses described in subsections A and C above. The Owners, City and NRD do not waive or forfeit the right to take any action as they deem necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. In any suit to enforce this Easement or for the alleged violation of this Easement, each party shall bear its own enforcement costs including reasonable attorney fees.

7. Title to Lot 41 Easement Area. Owners covenant that Owners are the owners of marketable title to all of the Lot 41 Easement Area, have legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

8. Transfer of Interest.

A. Owners' Title to Lot 41 Easement Area. If the land subject to this Conservation Easement Agreement or any interest therein is subsequently transferred by any Owner to a third party, said Owner shall use its best efforts to notify the City and NRD in writing prior to the transfer of the land.

B. City and NRD's Conservation Easement. The City and NRD shall have the right to transfer this Conservation Easement to any public agency, charitable organization or trust that, at the time of transfer, is an organization qualified to assume the responsibility imposed on the City and NRD by this Conservation Easement Agreement.

9. Binding Affect. The Conservation Easement granted herein shall constitute a covenant running with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Owners, City and NRD.

10. Approvals. Any approval required under this Conservation Easement Agreement shall not be unreasonably withheld.

11. Recordation. The parties agree that this Conservation Easement 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.

12. Governing Law. This Conservation Easement Agreement shall be interpreted according to the laws of the State of Nebraska.

13. Entire Agreement. This Conservation Easement Agreement and attachments hereto, along with the Settlement Agreement to which this Conservation Easement Agreement is attached, constitute the entire agreement among the Parties regarding the Conservation Easement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

LINCOLN FEDERAL BANCORP, INC.

By: _____
Title: _____

BUFFALO GRASS, LLC.,
a Nebraska limited liability company

By: _____
Title: _____

SECURITY FINANCIAL LIFE
INSURANCE CO., a Nebraska
corporation

By: _____
Title: _____

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

By: _____
Title: _____

ALLEN R. HOHENSEE

SUSAN K. HOHENSEE

Attest:

CITY OF LINCOLN, NEBRASKA

City Clerk

By: _____
Mayor Coleen J. Seng

LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT

By: 
Glenn D. Johnson, General Manager

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____ of Lincoln Federal Bancorp, Inc., on behalf of said corporation.

(S E A L)

Notary Public

Wilderness Hills - Cons. Easement

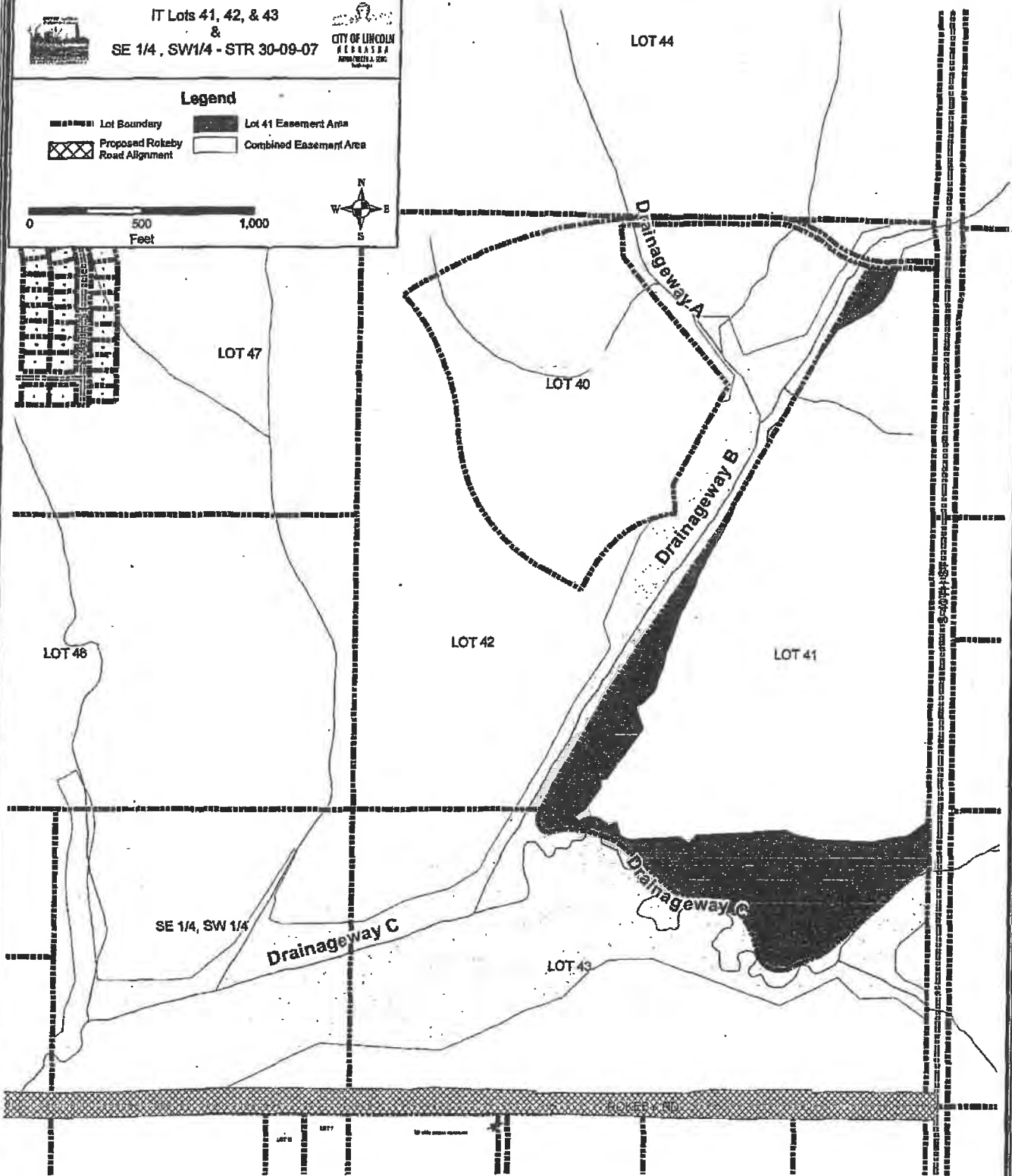
IT Lots 41, 42, & 43
&
SE 1/4, SW1/4 - STR 30-09-07



Legend

- Lot Boundary
- Proposed Rokeby Road Alignment
- Lot 41 Easement Area
- Combined Easement Area

0 500 1,000
Feet



Drawn by: [Name]
 Project No: [Number]
 Date: [Date]

APPENDIX A

NATURAL RESOURCES OF FLOODPLAINS

Floodplains that are relatively undisturbed (or have been restored to a nearly natural state) provide a wide range of benefits to both human and natural systems. These benefits take many forms: some are static conditions (like providing aesthetic pleasure) and some are active processes (like filtering nutrients). There is some ambiguity over which of these benefits are properly termed "functions," which are "resources," and where the terms overlap. A fairly well accepted (but not necessarily comprehensive) list follows. The resources and functions have been loosely grouped into three categories, and the categories have been labelled according to the primary recipient of the benefit or its relationship to a larger system. That is, "water resources" include those resources and functions of floodplains that are part of or provide a benefit to the hydrologic cycles on the earth's surface and below ground; "biologic resources" are floodplain resources and functions that benefit plants and animals; and "societal resources" are floodplain resources and functions that directly benefit human society. Throughout the Unified National Program document, the term "natural resources" is used to refer to any or all of the resources and functions listed here.

Water Resources

Natural Flood & Erosion Control

- Provide flood storage and conveyance
- Reduce flood velocities
- Reduce flood peaks
- Reduce sedimentation

Water Quality Maintenance

- Filter nutrients and impurities from runoff
- Process organic wastes
- Moderate temperature fluctuations

Groundwater Recharge

- Promote infiltration and aquifer recharge
- Reduce frequency and duration of low surface flows

Biologic Resources

Biological Productivity

- Support high rate of plant growth
- Maintain biodiversity
- Maintain integrity of ecosystem

Fish and Wildlife Habitats

- Provide breeding and feeding grounds
- Create and enhance waterfowl habitat
- Protect habitats for rare and endangered species

Societal Resources

Harvest of Wild & Cultivated Products












- Enhance agricultural lands
- Provide sites for aquaculture
- Restore and enhance forest lands

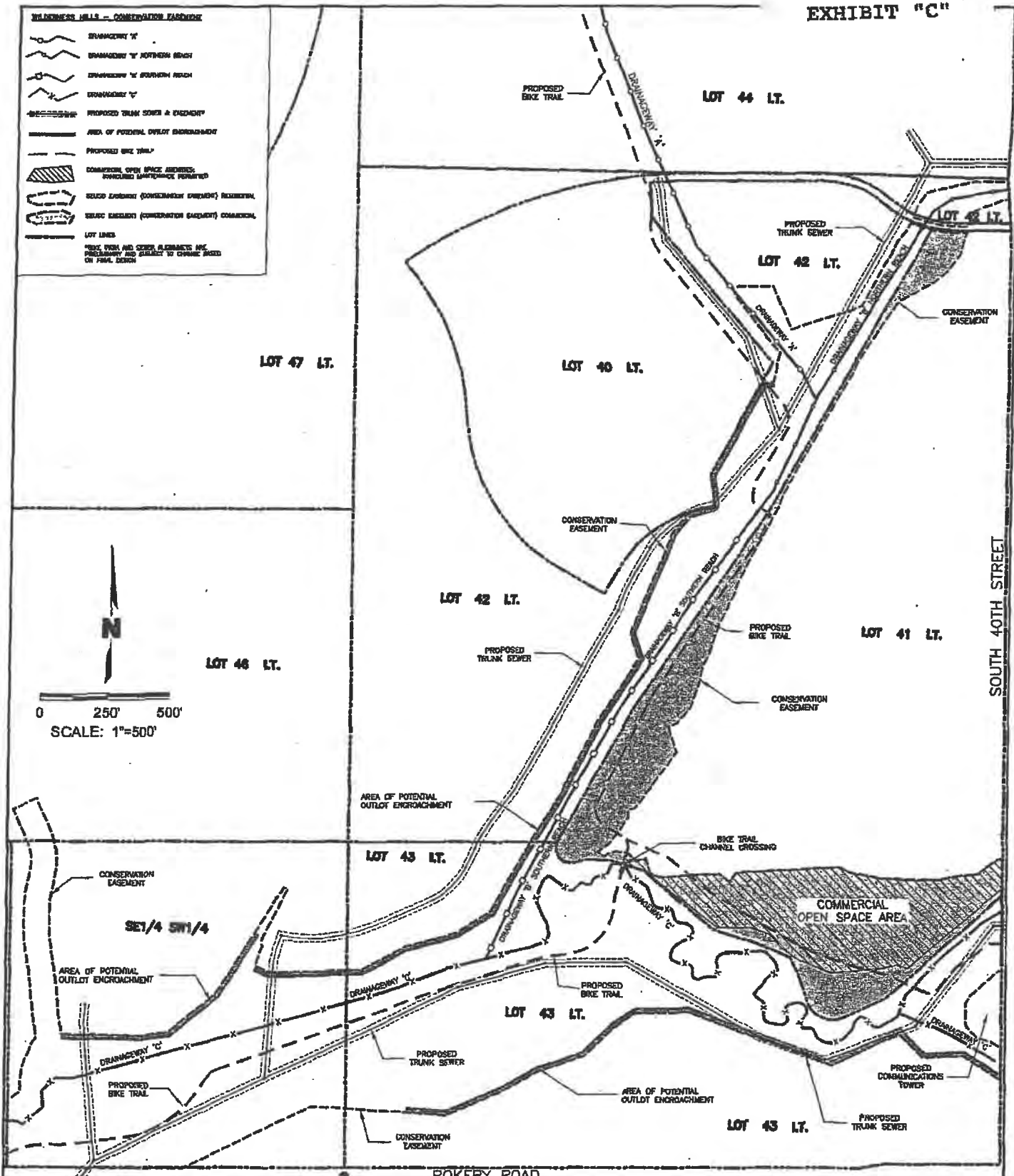
Recreational Opportunities

- Provide areas for active and passive uses
- Provide open space
- Provide aesthetic pleasure

Areas for Scientific Study and Outdoor Education

- Contain cultural resources (historic and archaeological sites)
- Provide opportunities for environmental and other studies

- WILDERNESS HILLS - CONSERVATION EASEMENT**
-  DRAINAGE WAY "A"
 -  DRAINAGE WAY "B" (NORTH END)
 -  DRAINAGE WAY "C" (SOUTH END)
 -  DRAINAGE WAY "D"
 -  PROPOSED TRUNK SEWER & ENCROACHMENT
 -  AREA OF POTENTIAL OUTLET ENCROACHMENT
 -  PROPOSED BIKE TRAIL
 -  COMMERCIAL OPEN SPACE AREA (ENCROACHMENT PERMITTED)
 -  SELF-CONTAINED (CONSERVATION EASEMENT) RESIDENTIAL
 -  SELF-CONTAINED (CONSERVATION EASEMENT) COMMERCIAL
 -  LOT LINES
- NOTE: DIMENSIONS AND OTHER ELEMENTS ARE PRELIMINARY AND SUBJECT TO CHANGE BASED ON FINAL DESIGN.



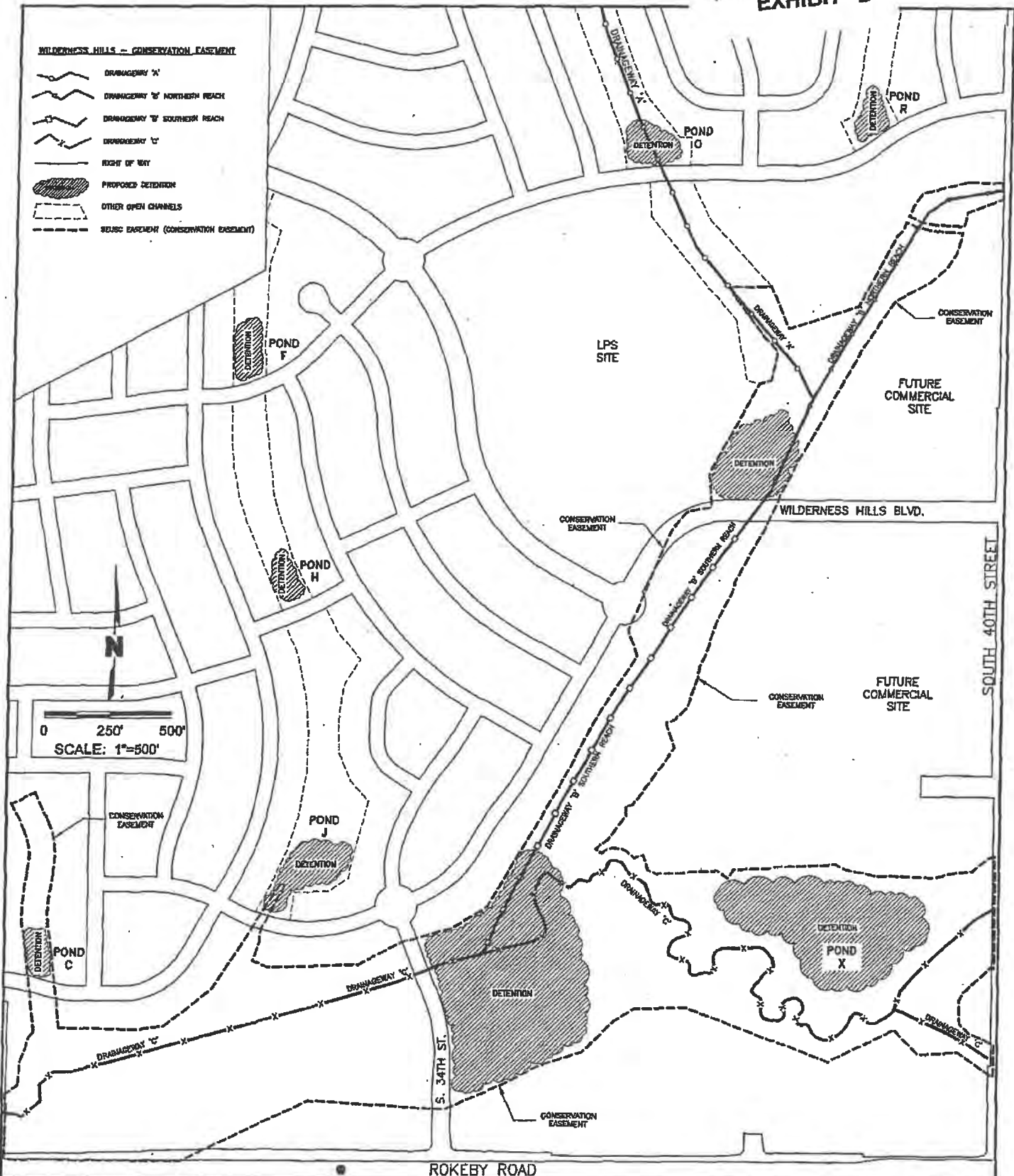
**WILDERNESS HILLS
CONSERVATION EASEMENT**

Drawn By: BMG
Dwg.: Exhibit C.dwg
Date: (04/26/2006)
Job#: 05-012-25

**SHEET
1 OF 1**

EXHIBIT "D"

- WILDERNESS HILLS - CONSERVATION EASEMENT**
- DRAINAGEWAY 'A'
 - DRAINAGEWAY 'B' NORTHERN REACH
 - DRAINAGEWAY 'B' SOUTHERN REACH
 - DRAINAGEWAY 'C'
 - RIGHT OF WAY
 - PROPOSED DETENTION
 - OTHER OPEN CHANNELS
 - WEIASC EASEMENT (CONSERVATION EASEMENT)



**WILDERNESS HILLS
DETENTION LOCATIONS**

Drawn By: BMG
Dwg.: Exhibit D.dwg
Date: (02/08/2006)
Job#: 05-012

**SHEET
1 OF 1**

**CONSERVATION EASEMENT AGREEMENT
(Preservation of Floodprone Area)**

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of this _____ day of _____, 2006, by and between LINCOLN FEDERAL BANCORP, INC., ("Lincoln Federal"), and the CITY OF LINCOLN, NEBRASKA ("City") and the LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT ("NRD"), collectively referred to herein as the "Parties."

RECITALS

I.

Lincoln Federal is the owner in fee simple of Lot 42, Irregular Tract, (Lot 42) located in Section 30, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, including those portions thereof referred to herein as the "Lot 42 Easement Area." The Lot 42 Easement Area is more particularly described as follows:

A portion of Lot 42, Irregular Tract located in the East Half of Section 30, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, more particularly described as follows:

Commencing at the southwest corner of Lot 42, Irregular Tract, thence South 89° 52' 08" East a distance of 726.21 feet to the Point of Beginning, thence North 30° 47' 26" East a distance of 237.73 feet; thence North 26° 53' 30" East a distance of 321.77 feet; thence North 32° 48' 49" East a distance of 290.04 feet; thence North 18° 36' 01" West a distance of 109.73 feet; thence North 22° 24' 24" East a distance of 428.24 feet; thence North 39° 27' 10" East a distance of 99.01 feet; thence North 73° 34' 19" East a distance of 34.90 feet; thence North 77° 34' 19" East a distance of 34.90 feet; thence North 81° 34' 20" East a distance of 34.90 feet; thence North 06° 25' 40" West a distance of 129.99 feet; thence North 28° 16' 49" East a distance of 409.20 feet; thence North 75° 57' 49" East a distance of 47.88 feet; thence North 11° 41' 22" East a distance of 118.46 feet; thence North 42° 27' 53" West a distance of 76.37 feet; thence North 36° 44' 50" West a

distance of 208.00 feet; thence North 18° 53' 09" West a distance of 40.16 feet; thence South 90° 00' 00" East a distance of 159.00 feet; thence South 22° 57' 15" East a distance of 184.62 feet; thence North 71° 36' 29" East a distance of 291.91 feet; thence North 27° 49' 20" East a distance of 298.49 feet; thence North 39° 05' 59" East a distance of 56.59 feet; thence North 20° 47' 33" East a distance of 28.70 feet; thence southeast a distance of 102.81 feet along a non-tangential curve concave northeast having a radius of 428.12 feet and a central angle of 13° 45' 35"; thence South 29° 03' 35" West a distance of 552.94 feet; thence South 33° 00' 42" West a distance of 160.39 feet; thence South 26° 33' 54" West a distance of 78.26 feet; thence South 45° 59' 16" West a distance of 74.91 feet; thence South 04° 32' 38" West a distance of 48.74 feet; thence South 11° 09' 15" West a distance of 6.83 feet; thence South 17° 21' 46" West a distance of 4.35 feet; thence South 20° 14' 37" West a distance of 33.48 feet; thence South 26° 08' 04" West a distance of 22.00 feet; thence South 29° 03' 35" West a distance of 87.62 feet; thence South 29° 08' 02" West a distance of 40.14 feet; thence South 28° 48' 33" West a distance of 11.83 feet; thence South 29° 03' 35" West a distance of 216.74 feet; thence South 34° 07' 45" West a distance of 903.63 feet; thence South 29° 12' 17" West a distance of 604.88 feet; thence North 89° 55' 50" West a distance of 121.57 feet to the Point of Beginning. And, also:

A portion of Lot 42, Irregular Tract, (Lot 42) located in the East Half of Section 30, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, more particularly described as follows:

Beginning at the northeast corner of Lot 42, Irregular Tract, thence South 06° 22' 19" East a distance of 63.10 feet; thence South 68° 51' 51" West a distance of 153.99 feet; thence South 14° 57' 45" West a distance of 57.38 feet; thence South 89° 55' 40" West a distance of 65.30 feet; thence west a distance of 159.41 feet along a non-tangential curve concave north having a radius of 366.54 feet and a central angle of 24° 55' 06"; thence North 20° 49' 43" East a distance of 38.98 feet; thence North 33° 12' 23" East a distance of 65.73 feet; thence North 75° 19' 02" East a distance of 188.41 feet.

II.

Lincoln Federal is the owner in fee simple of Lot 43, Irregular Tract, (Lot 43) located in the Southwest Quarter of Section 30, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, including those portions thereof referred to herein as the "Lot 43 Easement Area." The Lot 43 Easement Area is more particularly described as follows:

A portion of Lot 43, Irregular Tract located in the Southwest Quarter of Section 30, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, more particularly described as follows:

Beginning at the southwest corner of Lot 43, Irregular Tract thence North 00° 02' 58" East a distance of 549.92 feet; thence North 87° 51' 04" East a distance of 0.47 feet; thence North 87° 27' 08" East a distance of 57.77 feet;

thence North 62° 39' 01" East a distance of 195.90 feet; thence North 75° 03' 04" East a distance of 213.22 feet; thence North 57° 48' 01" East a distance of 157.64 feet; thence North 30° 02' 40" East a distance of 310.79 feet; thence South 89° 55' 50" East a distance of 121.17 feet; thence North 87° 36' 51" East a distance of 0.00 feet; thence South 29° 12' 10" West a distance of 23.21 feet; thence South 02° 21' 47" West a distance of 24.49 feet; thence south a distance of 103.00 feet along a tangential curve concave east having a radius of 56.35 feet and a central angle of 104° 43' 13"; thence North 77° 38' 34" East a distance of 58.14 feet; thence South 87° 30' 44" East a distance of 88.38 feet; thence South 71° 59' 35" East a distance of 139.85 feet; thence South 49° 57' 18" East a distance of 358.87 feet; thence South 73° 23' 53" East a distance of 170.43 feet; thence South 67° 56' 03" East a distance of 159.48 feet; thence South 25° 06' 19" East a distance of 103.56 feet; thence South 15° 05' 09" East a distance of 72.44 feet; thence south a distance of 185.01 feet along a tangential curve concave east having a radius of 107.08 feet and a central angle of 98° 59' 43"; thence North 65° 55' 08" East a distance of 179.00 feet; thence North 48° 17' 25" East a distance of 611.07 feet; thence South 00° 02' 06" East a distance of 274.12 feet; thence North 63° 09' 38" West a distance of 12.07 feet; thence South 49° 06' 11" West a distance of 154.27 feet; thence South 27° 51' 57" West a distance of 35.07 feet; thence South 01° 31' 16" East a distance of 90.03 feet; thence South 46° 30' 58" East a distance of 59.80 feet; thence South 70° 03' 52" East a distance of 65.60 feet; thence South 58° 50' 34" East a distance of 42.67 feet; thence South 00° 02' 07" East a distance of 128.94 feet; thence North 56° 31' 36" West a distance of 179.06 feet; thence South 86° 35' 59" West a distance of 155.56 feet; thence North 45° 17' 05" West a distance of 138.28 feet; thence South 59° 32' 43" West a distance of 14.81 feet; thence South 63° 50' 37" West a distance of 276.26 feet; thence North 69° 47' 04" West a distance of 610.61 feet; thence South 88° 52' 44" West a distance of 204.43 feet; thence South 58° 23' 16" West a distance of 93.48 feet; thence South 45° 57' 03" West a distance of 176.76 feet; thence South 71° 28' 17" West a distance of 185.98 feet; thence South 59° 48' 59" West a distance of 113.37 feet; thence South 66° 18' 22" West a distance of 291.15 feet; thence North 86° 26' 34" West a distance of 410.84 feet to the Point of Beginning.

III.

Lincoln Federal is the owner in fee simple of the Southeast Quarter of the Southwest Quarter (SE 1/4 SW 1/4) and Lot 46, Irregular Tract, located in Section 30, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, including those portions thereof referred to herein as the "SE 1/4 SW 1/4 and Lot 46 Easement Area." The SE 1/4 SW 1/4 and Lot 46 Easement Area is more particularly described as follows:

A portion of the Southeast Quarter of the Southwest Quarter and a portion of Lot 46 located in Section 30, Township 9 North, Range 7 East of the Sixth Principal Meridian, in Lancaster County, Nebraska, more particularly described as follows:

Commencing at the southwest corner of Section 30, Township 9 North, Range 7 East, thence S 89 deg. 46 min. 44 sec. E a distance of 1319.50 feet; thence N 00 deg. 01 min. 35 sec. E a distance of 56.00 feet to the point of beginning; thence N 00 deg. 07 min. 34 sec. E a distance of 238.19 feet; thence N 52 deg. 52 min. 03 sec. E a distance of 57.14 feet; thence N 04 deg. 17 min. 21 sec. E a distance of 99.52 feet; thence N 21 deg. 37 min. 34 sec. E a distance of 100.41 feet; thence N 22 deg. 09 min. 06 sec. E a distance of 32.44 feet; thence N 06 deg. 45 min. 09 sec. W a distance of 291.88 feet; thence N 08 deg. 53 min. 25 sec. W a distance of 18.73 feet; thence N 09 deg. 31 min. 33 sec. W a distance of 40.81 feet; thence N 06 deg. 29 min. 23 sec. W a distance of 40.85 feet; thence N 03 deg. 28 min. 58 sec. W a distance of 40.84 feet; thence N 00 deg. 23 min. 14 sec. W a distance of 40.80 feet; thence N 02 deg. 36 min. 41 sec. E a distance of 40.84 feet; thence N 05 deg. 40 min. 02 sec. E a distance of 40.82 feet; thence N 08 deg. 41 min. 01 sec. E a distance of 40.85 feet; thence N 11 deg. 44 min. 12 sec. E a distance of 40.82 feet; thence N 10 deg. 52 min. 55 sec. E a distance of 20.81 feet; thence N 06 deg. 10 min. 22 sec. E a distance of 20.83 feet; thence N 01 deg. 19 min. 32 sec. E a distance of 20.85 feet; thence N 03 deg. 30 min. 41 sec. W a distance of 20.82 feet; thence N 08 deg. 11 min. 01 sec. W a distance of 20.82 feet; thence N 13 deg. 00 min. 06 sec. W a distance of 20.83 feet; thence N 17 deg. 48 min. 22 sec. W a distance of 20.85 feet; thence N 22 deg. 34 min. 34 sec. W a distance of 20.82 feet; thence N 24 deg. 55 min. 47 sec. W a distance of 115.02 feet; thence N 65 deg. 04 min. 38 sec. E a distance of 100.00 feet; thence S 24 deg. 56 min. 13 sec. E a distance of 114.99 feet; thence S 22 deg. 49 min. 08 sec. E a distance of 25.94 feet; thence S 18 deg. 31 min. 53 sec. E a distance of 25.91 feet; thence S 14 deg. 18 min. 48 sec. E a distance of 25.92 feet; thence S 10 deg. 06 min. 50 sec. E a distance of 25.90 feet; thence S 05 deg. 52 min. 11 sec. E a distance of 25.94 feet; thence S 01 deg. 35 min. 59 sec. E a distance of 25.92 feet; thence S 02 deg. 40 min. 06 sec. W a distance of 25.91 feet; thence S 06 deg. 52 min. 12 sec. W a distance of 25.93 feet; thence S 11 deg. 11 min. 26 sec. W a distance of 25.92 feet; thence S 11 deg. 45 min. 25 sec. W a distance of 35.51 feet; thence S 08 deg. 41 min. 44 sec. W a distance of 35.56 feet; thence S 05 deg. 37 min. 20 sec. W a distance of 35.52 feet; thence S 02 deg. 40 min. 05 sec. W a distance of 35.53 feet; thence S 00 deg. 26 min. 40 sec. E a distance of 35.53 feet; thence S 03 deg. 26 min. 53 sec. E a distance of 35.52 feet; thence S 06 deg. 27 min. 47 sec. E a distance of 35.51 feet; thence S 09 deg. 32 min. 40 sec. E a distance of 35.54 feet; thence S 08 deg. 55 min. 04 sec. E a distance of 26.23 feet; thence S 06 deg. 45 min. 17 sec. E a distance of 181.61 feet; thence N 89 deg. 58 min. 48 sec. E a distance of 189.47 feet; thence S 89 deg. 16 min. 04 sec. E a distance of 115.96 feet; thence N 84 deg. 01 min. 32 sec. E a distance of 110.90 feet; thence N 50 deg. 31 min. 43 sec. E a distance of 243.54 feet; thence N 32 deg. 09 min. 29 sec. E a distance of 491.11 feet; thence S 69 deg. 23 min. 15 sec. E a distance of 16.35 feet; thence S 26 deg. 31 min. 29 sec. W a distance of 219.44 feet; thence S 02 deg. 02 min. 26 sec. E a distance of 29.03 feet; thence S 18 deg. 38 min. 14 sec. W a distance of 80.22 feet; thence S 64 deg. 38 min. 31 sec. E a distance of 62.92 feet; thence N 87 deg. 50 min. 52 sec. E a distance of 302.78 feet; thence S 00 deg. 02 min. 48 sec. W a distance of 549.94 feet; thence N 86 deg. 25 min. 49 sec. W a

distance of 131.16 feet; thence S 64 deg. 08 min. 20 sec. W a distance of 458.41 feet; thence S 88 deg. 55 min. 28 sec. W a distance of 94.70 feet; thence S 88 deg. 26 min. 04 sec. W a distance of 78.10 feet; thence S 88 deg. 04 min. 11 sec. W a distance of 50.80 feet; thence S 87 deg. 43 min. 04 sec. W a distance of 169.25 feet; thence S 88 deg. 19 min. 09 sec. W a distance of 112.78 feet; thence S 88 deg. 52 min. 18 sec. W a distance of 78.95 feet; thence S 89 deg. 21 min. 32 sec. W a distance of 90.23 feet; thence S 89 deg. 54 min. 41 sec. W a distance of 101.51 feet to the point of beginning of the land to be described.

IV.

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.

V.

The Combined Easement Area is generally located within the 100-year floodprone area as designated in the Southeast Upper Salt Creek Watershed Master Plan dated October 2003. The Combined Easement Area is shown on the attached Exhibit A, which is made a part of this agreement by this reference.

VI.

The City and NRD desire to acquire and Lincoln Federal is willing to convey a permanent Conservation Easement to preserve the flood storage capacity and other natural resources over the Combined Easement Area.

VII.

The City and NRD are authorized to accept and hold this Conservation Easement under the terms of this Agreement and the Conservation and Preservation Easements Act, Neb. Rev. Stat. §§ 76-2,111 through 76-2,118 (the "Act"). This conveyance is made pursuant to the Act.

NOW, THEREFORE, in consideration of ONE HUNDRED EIGHTY THOUSAND, THREE HUNDRED SEVENTY FIVE AND 00/100 DOLLARS, (\$180,375.00), and other good and valuable consideration, as set forth in the Settlement Agreement (to which this Agreement is attached as Exhibit 2), Lincoln Federal hereby grants and conveys to City and NRD for their benefit and the benefit of the public a conservation easement over the Combined Easement Area to restrict the use of the Combined Easement Area to open space to protect and preserve the floodprone area, drainageway, wetlands, and tree masses that occur on the land, to protect other water resources and

biologic resources of the floodprone area as identified on Exhibit B, and to restrict development and future use of the Combined Easement Area that will significantly impair or interfere with the open space values and natural resources of the Combined Easement Area.

The terms, conditions, and covenants of the conservation easement hereby created are as follows:

1. Use of Combined Easement Area.

A. General Compatible Uses. The Combined Easement Area shall be used only for the purposes compatible with open space, recreational (including exercising by people and their pets), or wetlands management practices, except that areas historically in agricultural use within ten (10) years of the date the easement is acquired may continue in such use. In addition, notwithstanding subsection B, "Non-Compatible Uses," below, the following uses are compatible with the purposes of the Combined Easement Area, provided that the uses are approved in advance by the Director of Public Works and Utilities and that the Combined Easement Area is restored following disturbance to the maximum extent practicable.

- i. Roadway or utility crossings necessary for the functional use of adjacent lands constructed in accordance with the flood regulations.
- ii. Public sanitary sewer lines generally along the stream alignment necessary for the functional use of adjacent lands.
- iii. Trails or other public or private recreational or educational components and activities.
- iv. Stream rehabilitation and water quality projects.
- v. Protection, maintenance and enhancement of the Combined Easement Area.
- vi. Combined Easement Area rehabilitation necessary to protect and/or restore the natural resources listed in Exhibit B.
- vii. Removal of dead, diseased or dangerous trees or shrubs.
- viii. Temporary access and construction easements to allow installation, maintenance, repair and replacement of utilities and fences abutting the Combined Easement Area.
- ix. Storm drain and outlet improvements conforming to the City's design standards necessary for the functional drainage of uses of adjacent lands.
- x. Control or removal of insects, pests and other matters that are a danger to public health while conserving the function of the Combined Easement Area.

- xi. Stormwater storage facilities shown on Exhibit D provided the facilities meet City of Lincoln regulations and design standards for stormwater detention and do not adversely impact the tree masses and/or other natural resources listed in Exhibit B.
- xii. Other uses compatible with the purposes of the Conservation Easement.

B. Non-Compatible Uses. The following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited within the Combined Easement Area:

- i. Construction or placing of roadways, buildings, camping accommodations, or mobile homes, fences, commercial signs, billboards or other advertising material, or any other structure;
- ii. Filling, excavating, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials;
- iii. Building of roads, or changing in the topography of the land in any manner excepting the maintenance of the items described in subsection A above or any work approved by the City;
- iv. Dumping of ashes, trash, garbage, or other unsightly or offensive material;
- v. Changing the topography of the land by placing of soil or other substances or materials such as landfill or dredging spoils;
- vi. Commercial and residential development of any nature;
- vii. Intentional human introduction of non-native plant or animal species which may compete with and result in decline or elimination of native animal species, except for non-native plants approved in advance by the Directors of Public Works and Utilities and Parks and Recreation;
- viii. Operation of motorized vehicles except as necessary in the use of the area as provided herein;
- ix. The broadcast application of pesticides, herbicides, and insecticides at any time, except for that which is needed for areas historically in agricultural use at the time this easement is acquired. Spot application of pesticides and herbicides for the control of noxious weeds as provided by state law will be permitted;
- x. Cultivation, planting, or drilling of row crops, small grains, and forages, such as alfalfa and forage sorghum within areas not historically in agricultural use within ten (10) years of the acquisition of this easement;

- xi. Removal of tree masses;
- xii. Unreasonable sedimentation of the Combined Easement Area due to grading or construction activities outside the Combined Easement Area. Erosion and sediment control measures for grading and construction conducted in accordance with a federal, state, or local stormwater discharge permit shall be deemed reasonable;
- xiii. Any other act which would be detrimental to functionality of the floodplain within the Combined Easement Area.

C. Specific Permitted and Prohibited Uses and Practices. Notwithstanding subsections A (General Compatible Uses) and B (Non-Compatible Uses) above, the following specific uses and practices associated with the proposed future development of Lot 42, Lot 43, and the SE 1/4 SW 1/4 (hereinafter "Property") are permitted or prohibited within the Combined Easement Area as provided below:

- i. Drainageway A. A 20-foot wide public trail easement is anticipated to be granted to the City when the Property is final platted. The trail generally will run northwest to southeast along the west side of Drainageway A from Yankee Hill Road and shall not be located within the Combined Easement Area, as shown on Exhibit C.
- ii. Drainageway B.
 - (1) A 20-foot wide outlot is anticipated to be platted adjacent to the residential lots abutting the Combined Easement Area along the west side of a portion of Drainageway B, as shown on Exhibit C. The 20-foot wide outlot may extend up to 20 feet into the Combined Easement Area and such area within the Combined Easement Area may be planted and maintained with turf grass or ornamental landscaping provided the boundary furthest away from the residential lots is demarcated by permanent boundary markers or landscaping acceptable to both parties at Lincoln Federal's own cost and expense.
 - (2) Sanitary Sewer Easement. A 30-foot wide sanitary sewer easement for a 15-inch public sanitary sewer main shall be shown in any preliminary plat, community unit plan, or use permit of the Property running along the west side of the northern reach of Drainageway B. To the maximum extent practicable, the sanitary sewer easement

may be located within the Combined Easement Area, except that the sanitary sewer easement shall be shown outside of the Combined Easement Area and within the street system west of the southern reach of Drainageway B, as shown on Exhibit C.

- (3) The 20-foot wide dedicated trail easement generally will run south along the west side of Drainageway B to the half mile-line street (identified as Wilderness Hills Boulevard on Exhibit D). The trail will cross Drainageway B at this location and proceed generally south along the east side of Drainageway B, as generally shown on Exhibit C. However, after crossing Drainageway B, the trail may be on the Combined Easement Area, or may be on the Lot 41 Easement Area depending upon the final trail location.
- (4) Final Approval of Trail and Sanitary Sewer Easements. The actual location of the above-described trail and sanitary sewer easements shall be subject to City approval.

iii. Drainageway C.

- (1) A 20-foot wide outlot is anticipated to be platted adjacent to the residential lots abutting the Combined Easement along Drainageway C. The 20-foot wide outlot may extend up to 20 feet into the Combined Easement Area along Drainageway C and such area within the Combined Easement Area may be planted and maintained with turf grass and/or ornamental landscaping provided the boundary furthest away from the residential lots is demarcated by permanent boundary markers and landscaping acceptable to the parties at Lincoln Federal's own cost and expense.
- (2) Sanitary Sewer and Trail Easements. The sanitary sewer easement described in ii. above will cross Drainageway C at the proposed north/south roadway connection to Rokeby Road. The trail easement described in ii. above will cross Drainageway C at a point to be determined at the time of platting. The location of the trail heading east to South 40th Street may be revised during the time of platting to be within the Combined Easement Area or within the Lot 41 Easement Area, once the most practicable location has been determined to facilitate an underpass at South 40th Street. The sewer and trail easements will run along the south side of

Drainageway C, both west to South 27th Street and East to South 40th Street. The 30-foot sanitary sewer easement and the 20-foot wide trail easement shall be shown on any preliminary plat, community unit plan, or use permit of the Property located within the Combined Easement Area to the maximum extent practicable as currently reflected in Exhibit C.

- (3) **Final Approval of the Trail and Sanitary Sewer Easements.** The actual location of the above-described trail and sanitary sewer easements shall be subject to City approval.
- iv. **Stormwater Detention.** The stormwater detention facilities shown on Exhibit D attached hereto which are located within the Combined Easement Area; provided the facilities meet City of Lincoln regulations and design standards for stormwater detention. Stormwater detention facilities shown on Exhibit D which are outside the Combined Easement Area are shown for illustrative purposes only.
- v. **34th Street.** A local street intersection with South 34th Street north of Rokeby Road may be located in the Combined Easement Area along with access and parking for the park on the west side of South 34th Street.

2. Term. The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- i. By the City and NRD pursuant to the provisions of *Neb. Rev. Stat. § 76-2,113*.
- ii. By the Lancaster County District Court pursuant to the provisions of *Neb. Rev. Stat. § 76-2,114*.

The parties agree that termination of this Agreement may be total and affect all of the Combined Easement Area, or may be partial and result in the termination of the easement over only a portion of the Combined Easement Area.

3. Wetland Mitigation Area. A portion of a re-aligned channel and a wetland mitigation area is included within the boundaries of the Combined Easement Area on the south side of Drainageway C as shown on Exhibit E, Wilderness Hills Wetlands Exhibit. Lincoln Federal agrees that Lincoln Federal maintains responsibility for all mitigation, monitoring, certification, and maintenance of the Wetland Mitigation Area in conformance with the 404 Permit issued by the U.S. Army Corps of Engineers, so long as such obligations continue under the 404 Permit.

4. Condition of the Combined Easement Area at Time of Grant. The condition of the Combined Easement Area without limiting the generality of the terms is defined to mean the

open space, drainageway, wetlands, tree masses, and the functional integrity of other water resources and biologic resources of the floodprone area identified on Exhibit B, as evidenced by reports, photographs and scientific documentation on file with the City's Planning Department.

5. Survey, Protection and Maintenance of the Combined Easement Area.

A. The City shall, at its sole cost, survey and stake the Combined Easement Area within a reasonable period following execution of this Conservation Easement Agreement. The City may, at its discretion, install permanent above-ground boundary markers identifying the Combined Easement Area boundary. The City shall use its best efforts to locate the boundary on side lot lines.

B. Lincoln Federal shall, at its sole cost and expense, maintain the Combined Easement Area, except that the City is willing to maintain the land south of Drainageway C (except for the mitigation, monitoring, certification and maintenance of the Wetland Mitigation Area) upon transfer of fee title to said land to the City. Maintenance shall consist of noxious weed control, routine weed and brush control, removal of trash and debris and routine non-structural maintenance of stream bed and bank stabilizing measures following installation. If Lincoln Federal fails to maintain the Combined Easement Area, the City and/or NRD may carry out such maintenance and bill the cost thereof to Lincoln Federal and Lincoln Federal shall pay said cost within thirty (30) days from receipt of said billing.

C. Lincoln Federal agrees to pay any real estate taxes, estate taxes or assessments levied by competent authorities on its ownership of the Combined Easement Area, including but not limited to any tax or assessment affecting the easement granted herein. Lincoln Federal retains the right to challenge the assessed value of the property and to challenge the validity of an any such tax or assessment. The Parties intend that Neb. Rev. Stat. § 76-2,116 govern future assessment of the Lot 41 Easement Area.

D. Lincoln Federal shall cooperate with and assist the City and NRD at the City's or NRD's cost in applying for, obtaining, protecting, and enhancing any and all surface water and ground water rights and privileges related to the Combined Easement Area by signing applications which the City or NRD deems necessary or desirable for the management, maintenance or development of the Combined Easement Area for the purposes provided for herein.

6. Inspections and Access by City and NRD. The City and NRD shall have the right of reasonable ingress and egress to and from the Combined Easement Area from public roads and streets and from the adjacent Property for its employees, contractors, vehicles and equipment for the purpose of revegetating and for inspecting, protecting or enhancing the floodprone area within the Combined Easement Area including but not limited to channel stabilization projects as the City or NRD may deem necessary or desirable. Any such access from Lincoln Federal's Property shall

be used so as to not damage said adjacent areas or crops or improvements which are now or which in the future may be on said adjacent areas, and shall use public right-of-way or private streets to the fullest extent practicable. Such right of access will be modified as reasonably necessary upon subdivision or development of said adjacent areas.

7. Enforcement. Lincoln Federal and the City and NRD may enforce the provisions of this Conservation Easement by any proceeding at law or in equity and may seek any remedy so available including specific performance and the right to require restoration of the Combined Easement Area to the condition at the time of its acquisition, except for compatible uses described in subsections A and C above. Lincoln Federal and the City and NRD do not waive or forfeit the right to take any action as they deem necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. In any suit to enforce this Easement or for the alleged violation of this Easement, each party shall bear its own enforcement costs including reasonable attorney fees.

8. Title to Combined Easement Area. Lincoln Federal covenants that it is the owner of marketable title to all of the Combined Easement Area, and has legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

9. Transfer of Interest.

A. Title to Combined Easement Area. If the land subject to this Conservation Easement Agreement or any interest therein is subsequently transferred by Lincoln Federal to a third party, Lincoln Federal shall use its best efforts to notify the City and NRD in writing prior to the transfer of the land.

B. City and NRD's Conservation Easement. The City and NRD shall have the right to transfer this Conservation Easement to any public agency, charitable organization or trust that, at the time of transfer, is an organization qualified to assume the responsibility imposed on the City and NRD by this Conservation Easement Agreement.

10. Binding Affect. The Conservation Easement granted herein shall constitute a covenant running with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Lincoln Federal, City and NRD.

11. Approvals. Any approval required under this Conservation Easement Agreement shall not be unreasonably withheld.

12. Recordation. The parties agree that this Conservation Easement 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.

13. **Governing Law.** This Conservation Easement Agreement shall be interpreted according to the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

LINCOLN FEDERAL BANCORP, INC.

By: _____
Title: _____

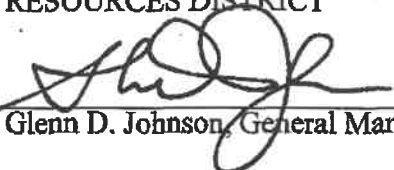
Attest:

CITY OF LINCOLN, NEBRASKA

City Clerk

By: _____
Mayor Coleen J. Seng

LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT

By: 
Glenn D. Johnson, General Manager

STATE OF _____)
COUNTY OF _____) ss:

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____ of Lincoln Federal Bancorp, Inc., on behalf of said corporation.

(SEAL)

Notary Public

Wilderness Hills - Cons. Easement



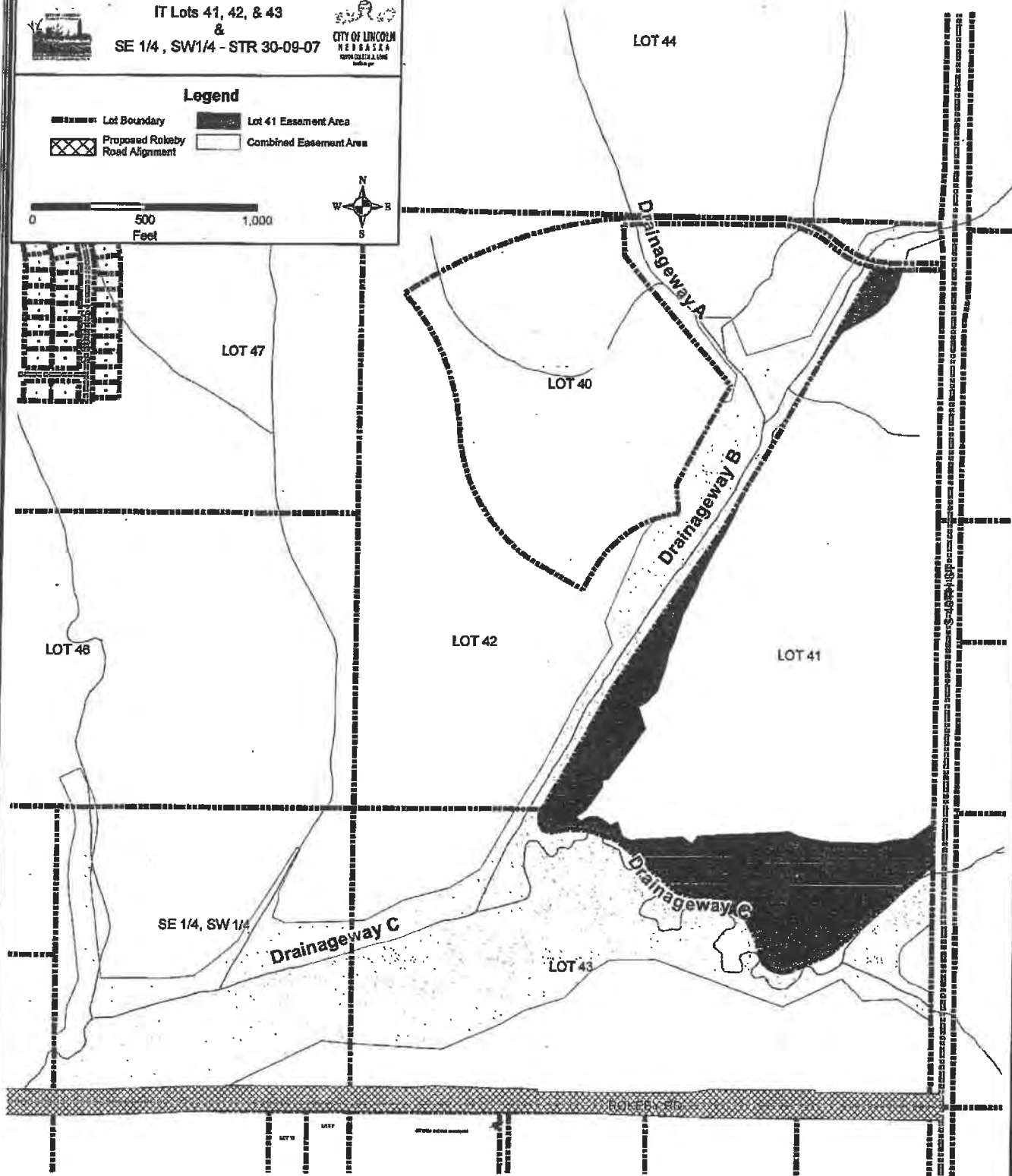
IT Lots 41, 42, & 43
&
SE 1/4, SW1/4 - STR 30-09-07



Legend

- Lot Boundary
- Lot 41 Easement Area
- Proposed Roleby Road Alignment
- Combined Easement Area

0 500 1,000
Feet



Drawn by: WOODS
Survey Data From: 12/20/04
File: 30-09-07-STR-Cons-Easement-Exhibit-A.dwg

APPENDIX A

NATURAL RESOURCES OF FLOODPLAINS

Floodplains that are relatively undisturbed (or have been restored to a nearly natural state) provide a wide range of benefits to both human and natural systems. These benefits take many forms: some are static conditions (like providing aesthetic pleasure) and some are active processes (like filtering nutrients). There is some ambiguity over which of these benefits are properly termed "functions," which are "resources," and where the terms overlap. A fairly well accepted (but not necessarily comprehensive) list follows. The resources and functions have been loosely grouped into three categories, and the categories have been labelled according to the primary recipient of the benefit or its relationship to a larger system. That is, "water resources" include those resources and functions of floodplains that are part of or provide a benefit to the hydrologic cycles on the earth's surface and below ground; "biologic resources" are floodplain resources and functions that benefit plants and animals; and "societal resources" are floodplain resources and functions that directly benefit human society. Throughout the Unified National Program document, the term "natural resources" is used to refer to any or all of the resources and functions listed here.

Water Resources

Natural Flood & Erosion Control

- Provide flood storage and conveyance
- Reduce flood velocities
- Reduce flood peaks
- Reduce sedimentation

Water Quality Maintenance

- Filter nutrients and impurities from runoff
- Process organic wastes
- Moderate temperature fluctuations

Groundwater Recharge

- Promote infiltration and aquifer recharge
- Reduce frequency and duration of low surface flows

Biologic Resources

Biological Productivity

- Support high rate of plant growth
- Maintain biodiversity
- Maintain integrity of ecosystem

Fish and Wildlife Habitats

- Provide breeding and feeding grounds
- Create and enhance waterfowl habitat
- Protect habitats for rare and endangered species

Societal Resources

Harvest of Wild & Cultivated Products

- Enhance agricultural lands
- Provide sites for aquaculture
- Restore and enhance forest lands

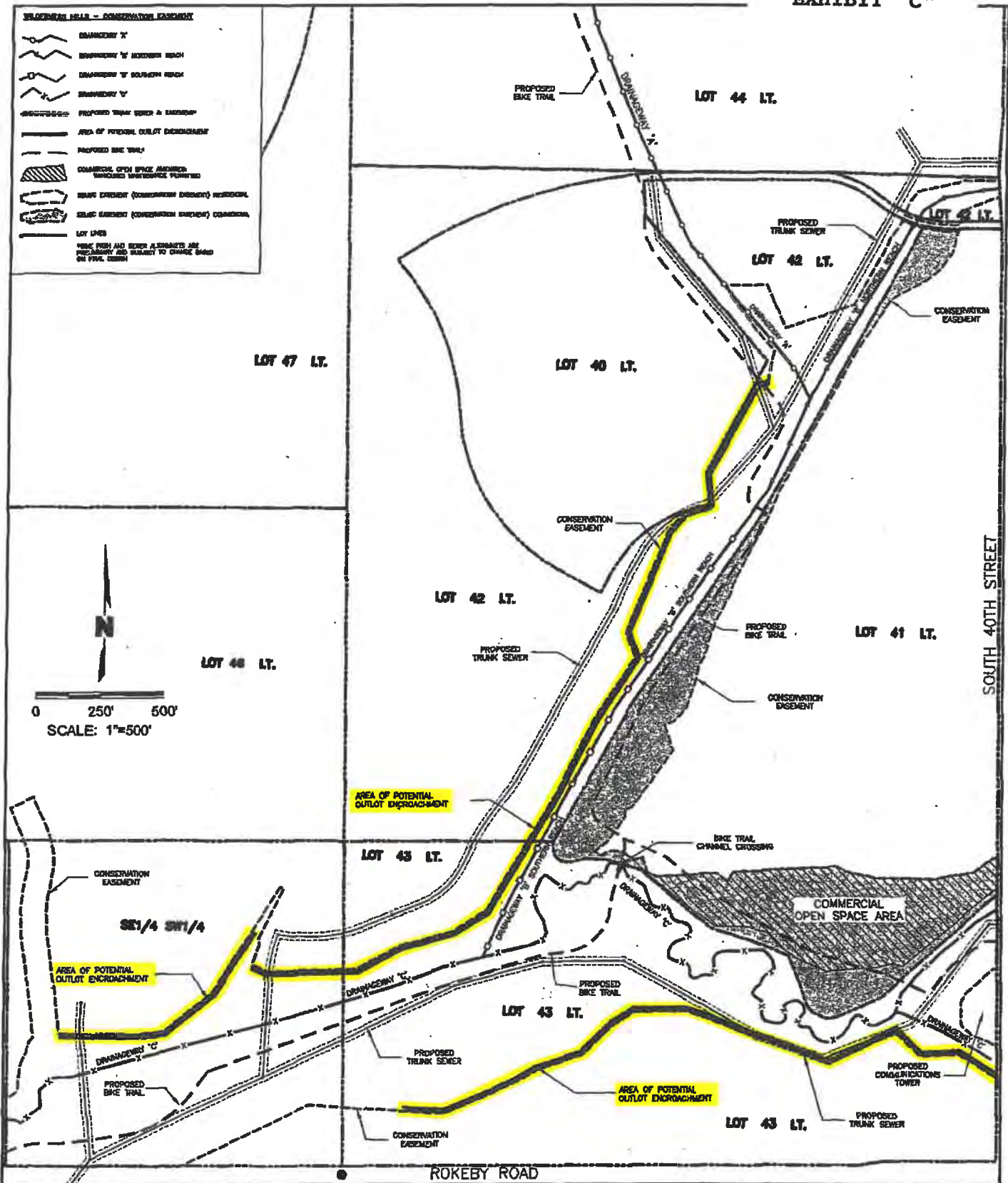
Recreational Opportunities

- Provide areas for active and passive uses
- Provide open space
- Provide aesthetic pleasure

Areas for Scientific Study and Outdoor Education

- Contain cultural resources (historic and archaeological sites)
- Provide opportunities for environmental and other studies

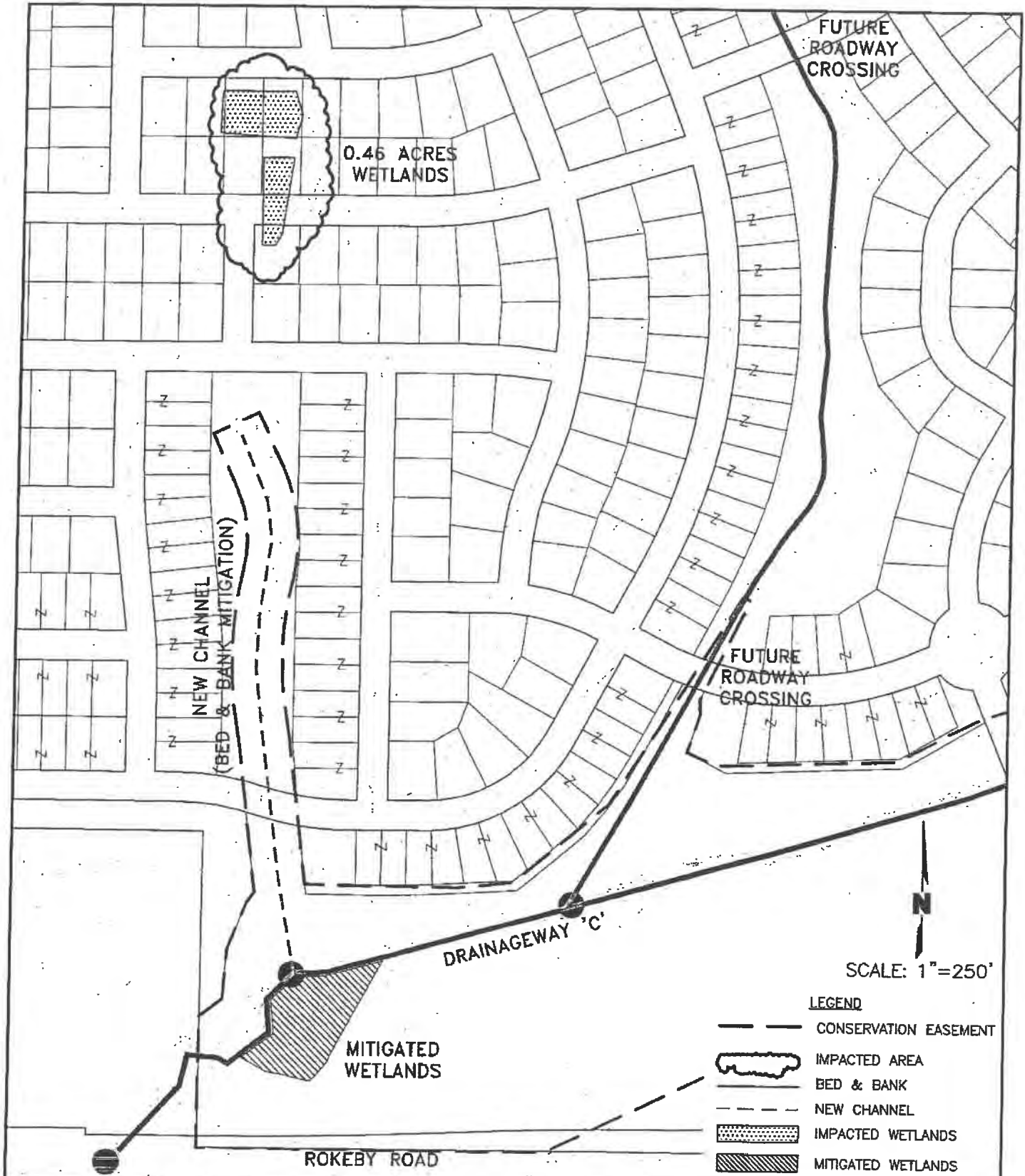
- WILDERNESS HILLS - CONSERVATION EASEMENT**
- BOUNDARY 'A'
 - BOUNDARY 'B' (SOUTHERN HIGH)
 - BOUNDARY 'C' (SOUTHERN HIGH)
 - BOUNDARY 'D'
 - PROPOSED TRUNK SEWER & EASEMENT
 - AREA OF POTENTIAL OUTLOT ENCROACHMENT
 - PROPOSED BIKE TRAIL
 - COMMERCIAL OPEN SPACE AREA WITH HATCHED PATTERN
 - WATER EASEMENT (CONSERVATION EASEMENT) WITH STIPPLED PATTERN
 - WETLAND EASEMENT (CONSERVATION EASEMENT) WITH DOTTED PATTERN
 - LOT LINES
- NOTE: FISH AND SEWER ALLEGES ARE PROBABLY AND SUBJECT TO CHANGE BASED ON FIVE (5) YEAR



**WILDERNESS HILLS
CONSERVATION EASEMENT**

Drawn By: BMG
Dwg.: Exhibit C.dwg
Date: (04/26/2006)
Job#: 05-012-25

**SHEET
1 OF 1**



FUTURE ROADWAY CROSSING

0.46 ACRES WETLANDS

NEW CHANNEL (BED & BANK MITIGATION)

FUTURE ROADWAY CROSSING







DRAINAGEWAY 'C'

MITIGATED WETLANDS

ROKEBY ROAD

SCALE: 1"=250'

LEGEND

-  CONSERVATION EASEMENT
-  IMPACTED AREA
-  BED & BANK
-  NEW CHANNEL
-  IMPACTED WETLANDS
-  MITIGATED WETLANDS



**WILDERNESS HILLS
WETLANDS
EXHIBIT E**

Drawn By: BMG
Dwg.: Exhibit E.dwg
Date: (02/13/2006)
Job#: 05-012

SHEET
1 OF 1

Wilderness Hills - Cons. Easement

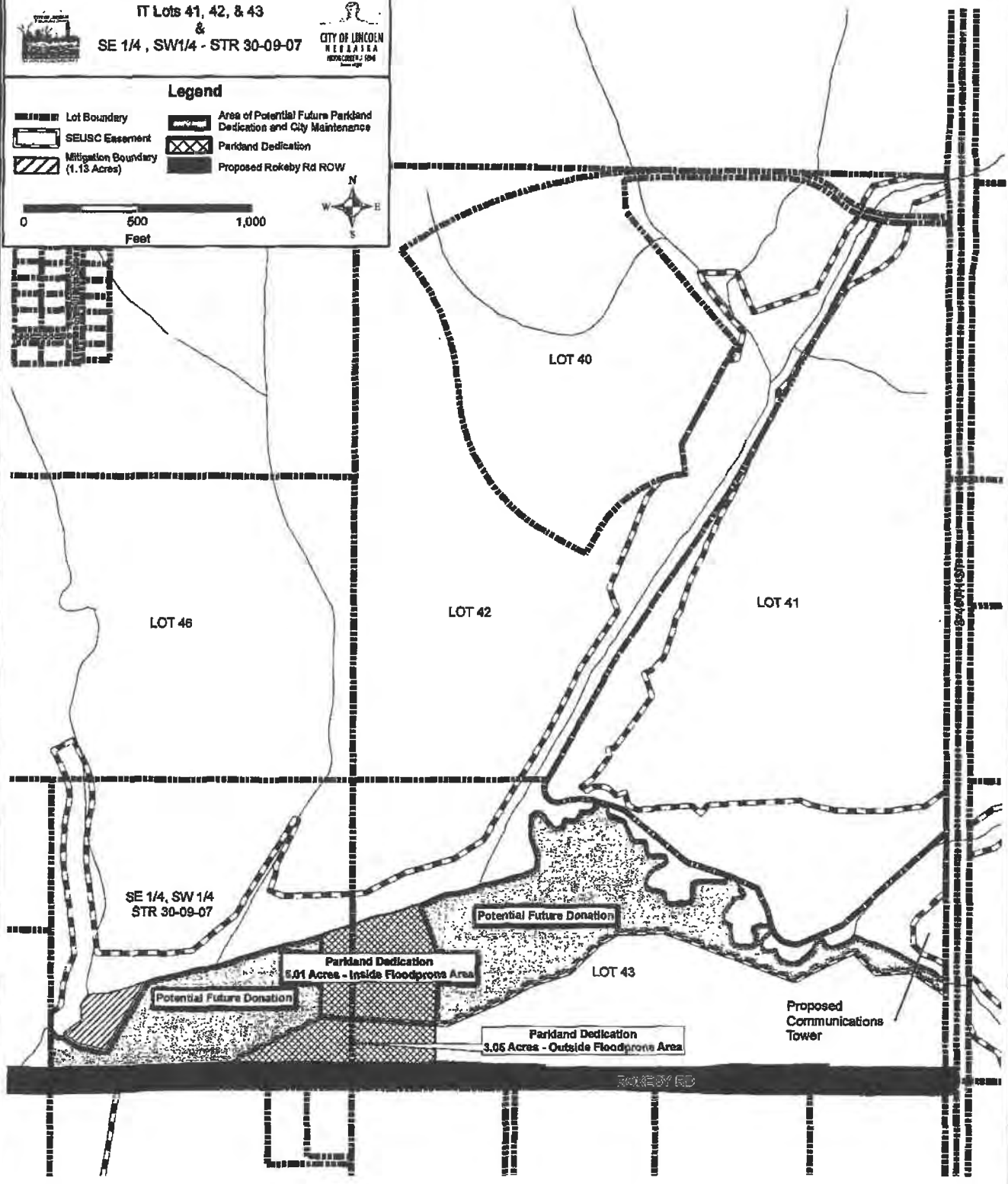


IT Lots 41, 42, & 43
&
SE 1/4, SW1/4 - STR 30-09-07




Legend

- Lot Boundary
- SEUSC Easement
- Mitigation Boundary (1.13 Acres)
- Area of Potential Future Parkland Dedication and City Maintenance
- Parkland Dedication
- Proposed Rokeby Rd ROW



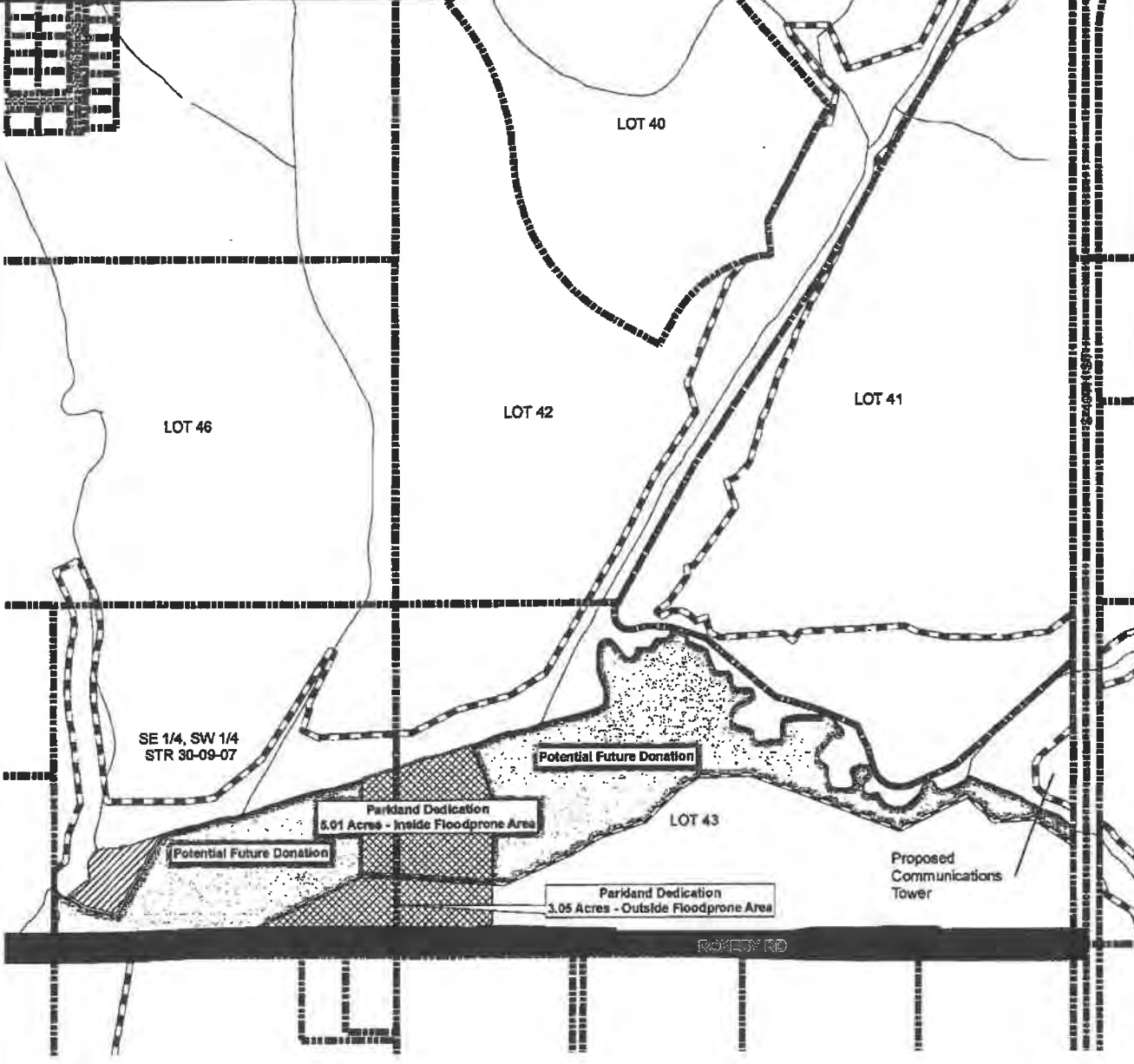
Wilderness Hills - Cons. Easement

IT Lots 41, 42, & 43
 &
 SE 1/4, SW1/4 - STR 30-09-07



Legend

-  Lot Boundary
-  SEUSC Easement
-  Mitigation Boundary (1.13 Acres)
-  Area of Potential Future Parkland Dedication and City Maintenance
-  Parkland Dedication
-  Proposed Rokeby Rd ROW





LOWER PLATTE SOUTH natural resources district

3125 Portia Street | P.O. Box 83581 • Lincoln, Nebraska 68501-3581 | P: 402.476.2729 • F: 402.476.6454 | www.lpsnrd.org

Memorandum

Date: February 12, 2019
To: Urban Subcommittee
From: Paul Zillig
Subject: Professional Services – Deadmans Run FRP, Fleming Fields Basin

The LPSNRD is responsible for the design and construction of the Fleming Fields Basin component of the Deadmans Run Flood Reduction Project (local project). The NRD followed Operating Policy G-3: Procedure for Hiring Consultants for Professional Services. In December staff prepared a "Request for Qualifications" (attached) and submitted this RFQ to all known engineering firms known to be of interest and also published it as a legal notice in the Lincoln Journal Star. This work included engineering services for the basin and also the preparation of grant applications.

I appointed a Selection Team of Kris Humphrey & Ben Higgins from the City of Lincoln, and Jared Nelson, Ed Ubben and myself from the NRD. The Selection Team individually reviewed and prioritized all 5 submittals received by the January 11th deadline. Submittals were received from Olsson, JEO, HDR, EA, and FYRA. The Selection Team determined that FYRA was the most qualified firm. Staff then met with FYRA, determined a proposed scope and negotiated the attached contract in the estimated amount of \$63,864 for Phase 1 of this project.

Enc. 2

pc: Steve Seglin

REQUEST FOR QUALIFICATIONS

The Lower Platte South Natural Resources District (NRD) invites you to submit qualifications for professional engineering services related to the survey, design, permitting, bidding, landrights, and providing construction observation services for the Deadmans Run "West Tributary/Fleming Fields" Detention Basin and also the preparation of grant applications from the Nebraska Water Sustainability Fund and potentially Federal NEMA/FEMA funding.

The "basin" is part of the Deadmans Run Flood Reduction Project which includes both a US Army Corps of Engineers Section 205 Project and several Local Projects (3 bridges and the basin). The Basin will compliment the Corps' channel conveyance component for the Section 205 Project in order to reach the flood reduction goals for the project. Corps guidance on flow reduction requirements will be provided. Corps review and approval of the final basin plans will also be required and coordination with several entities is expected.

Conceptually the proposed detention basin will need up to 90 acre-feet of flood storage capacity, built by excavating approximately 120,000 cubic yards below the existing ground, and reuse of approximately 5000 cubic yards as fill, to build an earthen embankment ranging from three (3) to seven (7) feet tall. The basin design shall include a hardened overflow weir structure to allow flows to enter the basin during a 50-year storm event, and outlet drainage structure(s) to drain the facility post flooding. For additional information please contact District Engineer, Jared Nelson jnelson@lpsnrd.org

Qualifications will be received by the Lower Platte South NRD on or before 12:00 noon, Friday, January 11, 2019 in the NRD Office located at 3125 Portia Street, Lincoln, NE 68521.

The Project selection team will review the Qualifications submitted, prioritize the applicants, and then begin negotiations with the top priority consultant.

Please publish December 26th, 2018 and January 2nd, 2019.



PROFESSIONAL SERVICES AGREEMENT

PROJECT: Deadman's Run Detention Cell Design **FYRA Engineering, LLC JOB #:** 002-18-02

CLIENT: Lower Platte South NRD

ADDRESS: 3125 Portia Street, Lincoln, NE 68521

CONTACT: Paul Zillig **TEL:** 402.476.2729 **FAX:** 402.476.6454

CONSULTANT: FYRA Engineering, LLC

ADDRESS: 12702 Westport Pkwy, Suite 300, Omaha, NE 68138

CONTACT: Michael K. Sotak, P.E. **TEL:** 402.502.7131 **FAX:** 402.932.6940

PROJECT DESCRIPTION: Phase I - Model investigation/review and preparation of WSF Application

SCOPE OF SERVICES (See Attachment)

SCHEDULE (See Attachment)

COMPENSATION:

The total compensation under this Agreement shall not exceed the dollar amount indicated herein or the amount authorized by Amendment(s) and/or Notice(s) to Proceed (NTP), whichever is the lesser.

LUMP SUM. Compensation for these services shall be a Lump Sum of \$ _____.

TIME AND MATERIALS. Compensation for these services will not exceed \$63,864.00 without written authorization and will be based on the following option (per the attached Budget or List of Hourly Rates), and Reimbursable Expenses based on actual costs incurred and approved by FYRA Engineering, LLC and as authorized in writing by Client.

Subconsultant's Direct Job Wages times a factor of _____ Budget/List of Subconsultant's Hourly Rates.

COST PLUS FIXED FEE. Compensation for these services shall be Subconsultant Cost plus a fixed professional fee, including Reimbursable Expenses.

The estimated compensation for services is \$ _____ plus a fixed fee of \$ _____ for a total of \$ _____.

COMPENSATION DETAIL (See Following Pages)

SCHEDULE OF PAYMENTS (See Following Pages)

SERVICES AUTHORIZED BY: Execution of Agreement or Amendment(s) and/or NTP

EXECUTION: Execution of this document by duly authorized representatives of FYRA Engineering, LLC and CLIENT; including FYRA Engineering LLC's Standard Conditions (reverse side) and any attachments, Additional Provisions as indicated, and addenda, represents the entire Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified by written instrument, but such instrument is valid only upon signature by both parties.

CONSULTANT: FYRA Engineering, LLC **CLIENT:** Lower Platte South NRD

BY: Michael K. Sotak, P.E. **BY:** Paul Zillig

SIGNATURE:  **SIGNATURE:** _____

TITLE: Owner/Principal Engineer **TITLE:** General Manager

DATE: 12 February 2019 **DATE:** _____



FYRA ENGINEERING, LLC STANDARD CONDITIONS

SERVICES. FYRA Engineering will perform services for the Project as set forth in attachment and in accordance with these Terms & Conditions. FYRA Engineering has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by FYRA Engineering in performing their services.

AUTHORIZED REPRESENTATIVES. The officer assigned to the Project by FYRA Engineering is the only authorized representative to make decisions or commitments on behalf of FYRA Engineering. The Client shall designate a representative with similar authority.

PROJECT REQUIREMENTS. The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards, they shall be furnished to FYRA Engineering at Project inception. FYRA Engineering will review the Client design standards and may recommend alternate standards considering the standard of care provision.

SITE ACCESS. The Client shall obtain all necessary approvals for FYRA Engineering to access the Project site(s).

PERIOD OF SERVICE. FYRA Engineering shall perform the services for the Project in a timely manner consistent with sound professional practice. FYRA Engineering will strive to perform its services according to the Project schedule set forth in attachment. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. FYRA Engineering shall be entitled to an extension of time and compensation adjustment for any delay beyond FYRA Engineering control.

COMPENSATION. In consideration of the services performed by FYRA Engineering, the Client shall pay FYRA Engineering in the manner set forth in attachment. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of FYRA Engineering.

PAYMENT TERMS. FYRA Engineering shall submit monthly invoices for services performed and Client shall pay the full invoice amount within thirty (30) days of the invoice date. Invoices will be considered correct if not questioned in writing within ten (10) days of the invoice date. FYRA Engineering shall be entitled to a 2% per month administrative charge in the event of payment delay. Client payment to FYRA Engineering is not contingent on arrangement of project financing. Invoice payment delayed beyond sixty (60) days shall give FYRA Engineering the right to stop work until payments are current. Non-payment beyond seventy (70) days shall be just cause for termination by FYRA Engineering.

ADDITIONAL SERVICES. The Client and FYRA Engineering acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, FYRA Engineering shall notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

INDEPENDENT CONSULTANT. FYRA Engineering shall serve as an independent consultant for services provided under this agreement. FYRA Engineering shall retain control over the means and methods used in performing their services and may retain subconsultants to perform certain services as determined by FYRA Engineering.

STANDARD OF CARE. Services provided by FYRA Engineering will be performed with the care and skill ordinarily exercised by members of the same profession practicing under similar circumstances. FYRA Engineering will not be liable for the cost of any omission that adds value to the Project.

COMPLIANCE WITH LAWS. FYRA Engineering shall perform its services consistent with sound professional practice and endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, FYRA Engineering shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

FYRA



PERMITS AND APPROVALS. FYRA Engineering will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

OWNERSHIP OF DOCUMENTS. Documents prepared by FYRA Engineering for the Project are instruments of service and shall remain the property of FYRA Engineering. Record documents of service shall be based on the printed copy. FYRA Engineering will furnish documents electronically; however, the Client releases FYRA Engineering from any liability that may result from documents used in this form. FYRA Engineering shall not be held liable for reuse of documents for any purpose other than those intended under the Project.

INSURANCE. FYRA Engineering will maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability policies.

<u>Workers' Compensation</u>	As required by applicable state statute.
<u>Commercial General Liability</u>	\$1,000,000 per occurrence (bodily injury including death & property damage) \$2,000,000 aggregate.
<u>Automobile Liability</u>	\$1,000,000 combined single limit for bodily injury and property damage.
<u>Professional Liability</u>	\$1,000,000 each claim and in the aggregate.

The Client shall make arrangements for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. FYRA Engineering shall be a named insured on those policies where FYRA Engineering may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

WAIVER OF SUBROGATION. FYRA Engineering, LLC affirmatively agrees to obtain waiver of subrogation against the client and name the client as an additional insured on the Commercial General Liability and Automobile policies.

INDEMNIFICATION AND HOLD HARMLESS. FYRA Engineering, LLC shall indemnify and hold harmless the Client and its employees and agents from any and all liability, settlements, loss, defense costs, and expenses in connection with any action, suit, or claim resulting from the negligent acts, errors, or omissions in services provided pursuant to this Agreement by FYRA Engineering, LLC its employees, or Subconsultants and/or subcontractors. Client shall indemnify and hold harmless FYRA Engineering, LLC and its employees and agents from any and all liability, settlements, loss, defense costs, and expenses in connection with any action, suit, or claim resulting from the negligent acts, errors, or omissions in services provided pursuant to this Agreement by the Client, its employees, or subconsultants and/or subcontractors. However, if any such liability, settlements, loss, defense costs or expenses result from the concurrent negligence of FYRA Engineering, LLC, and the Client this indemnification applies only to the extent of the negligence of FYRA Engineering, LLC.



LIMITATION OF LIABILITY. To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, Subconsultant and all other negligent entities and individuals.

LEGAL EXPENSE. In the event that either party takes legal action against the other that is not prosecuted, is dismissed, or if the decision is rendered for the other party, the party taking legal action agrees to pay the other their attorney fees, court costs, and defense expenses that are allowable under Nebraska state law, within thirty (30) days of the court action.

CONSEQUENTIAL DAMAGES. Neither the Client nor FYRA Engineering shall be liable to the other for any consequential damages regardless of the nature or fault.

ENVIRONMENTAL MATTERS. The Client warrants they have disclosed all potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, FYRA Engineering shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. The Client shall indemnify FYRA Engineering from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of FYRA Engineering.

COST OPINIONS. If included in the scope of service, FYRA Engineering shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and FYRA Engineering acknowledge that actual costs may vary from the cost opinions prepared and that FYRA Engineering offers no guarantee related to the Project cost.

INDEPENDENT COUNSEL. The Client agrees to obtain independent legal and financial counsel for the Project considering FYRA Engineering does not furnish these services.

CONTRACTOR SELECTION. FYRA Engineering may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is their sole responsibility.

SHOP DRAWING REVIEW. If included in the scope of service, FYRA Engineering shall review shop drawing submittals from the contractor solely for their conformance with the design intent of and performance criteria specified for the Project. FYRA Engineering shall not be liable for the performance of or consequential damages of any equipment furnished by the contractor under the Project.

CONSTRUCTION REVIEW. If included in the scope of service, FYRA Engineering shall observe the progress and content of the work to determine if the work is proceeding in general accordance with the Contract Documents. This construction review is intended to observe, document, and report information concerning the construction process. Observation of work at the Project site shall not make FYRA Engineering responsible for the work performed by another party; the means, methods, techniques, sequences, or procedures selected by another party; nor the safety precautions or programs of another party.

REJECTION OF WORK. FYRA Engineering may recommend that the Client reject work by construction contractors that does not conform to the requirements of the Project.

SAFETY. FYRA Engineering shall be responsible solely for the safety precautions or programs of its employees and no other party.

INFORMATION FROM OTHER PARTIES. The Client and FYRA Engineering acknowledge that FYRA Engineering will rely on information furnished by other parties in performing its services under the Project. FYRA Engineering shall not be liable for any damages that may be incurred by the Client in the use of third party information.



CONSTRUCTION RECORD DRAWINGS. If included in the scope of service, FYRA Engineering will deliver drawings to the Client incorporating information furnished by construction contractors. In that construction record drawings are based on information provided by others, FYRA Engineering cannot and does not warrant their accuracy.

FORCE MAJEURE. Neither party will hold the other responsible for damages or delay caused by Acts of God, acts of war, strikes, accidents, or other events beyond the other's control.

DISPUTE RESOLUTION. The Client and FYRA Engineering agree that they shall diligently pursue resolution of all disagreements within forty-five (45) days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. FYRA Engineering shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work.

SUSPENSION OF WORK. The Client may suspend services performed by FYRA Engineering with cause upon fourteen (14) days written notice. FYRA Engineering shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay FYRA Engineering all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, FYRA Engineering shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

TERMINATION. The Client or FYRA Engineering may terminate services on the Project upon seven (7) days written notice in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. FYRA Engineering shall submit an invoice for services performed up to the effective date of termination and the Client shall pay FYRA Engineering all outstanding invoices within fourteen (14) days. The Client may withhold an amount for services that may be in dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

GOVERNING LAW. The terms of agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

ASSIGNMENT. Neither party shall assign its rights, interests, or obligations under the Project without the express written consent of the other party.

WAIVER OF RIGHTS. The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

WARRANTY. FYRA Engineering warrants that it will deliver products under the Project within the standard of care. FYRA Engineering provides no other expressed or implied warranty.

SEVERABILITY. Any provision of these terms later held to violate any law shall be deemed void and all remaining provisions shall continue in force. In such event, the Client and FYRA Engineering will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

SURVIVAL. All provisions of these terms that allocate responsibility or liability between the Client and FYRA Engineering shall survive the completion or termination of services for the project.



Deadman's Run Detention Cell - Phase I
 Lower Platte South NRD
 Lincoln, NE
 FYRA Project No. 002-18-02

Tasks	FYRA Engineering				Vireo		WSP		Total Expenses	Total
	Hourly Rate	Hours	Amount	Amount	Hourly Rate	Hours	Amount	Amount		
No. Project Management										
1.01 NRD/City Coordination Meetings	20		\$100		10	\$50	6			
1.02 USACE Coordination Meeting	4	8								
1.03 Consultant Team Coordination	6									
1.04 IPSNRD Board/Committee Update	4		\$50							
1.05 Final Design Scoping Coordination	6	6	\$50							
Project Management Task Total	\$8,080	\$2,450	\$0	\$200	\$1,200	\$50	\$1,470	\$0	\$250	\$18,700
No. Hydrologic/Hydraulic Model Review										
2.01 HEC-RAS Model Review / Proposed Edits		12	120							
2.02 TM - Conceptual Development of Potential Model Change Effects	2	8	12							
2.03 FYRA/IPSNRD Modeling Coordination Meetings (2)	4	8	8	\$100						
Hydrologic/Hydraulic Model Review Task Total	\$1,212	\$4,900	\$14,000	\$100	\$0	\$0	\$0	\$0	\$100	\$26,312
No. Water Sustainability Fund Application Preparation										
3.01 Application Content Preparation	60	24	80							
3.02 PDF Application Preparation/Submital	4		20							
3.03 NRC Coordination / Meeting Attendance	12		\$150							
Water Sustainability Fund Application Preparation Task Total	\$15,352	\$4,200	\$10,000	\$150	\$0	\$0	\$0	\$0	\$150	\$29,852
Subtotal Hours	122	66	240		10		6			
Subtotal Costs	\$24,644	\$11,550	\$24,000	\$450	\$1,200	\$50	\$1,470	\$0	\$300	\$63,864

¹ Four FYRA and two FYRA/Vireo/WSP Coordination meetings

² One USACE Coordination meeting

³ Some Vireo/WSP Input may be needed for WSF application, but can be built into final design phase

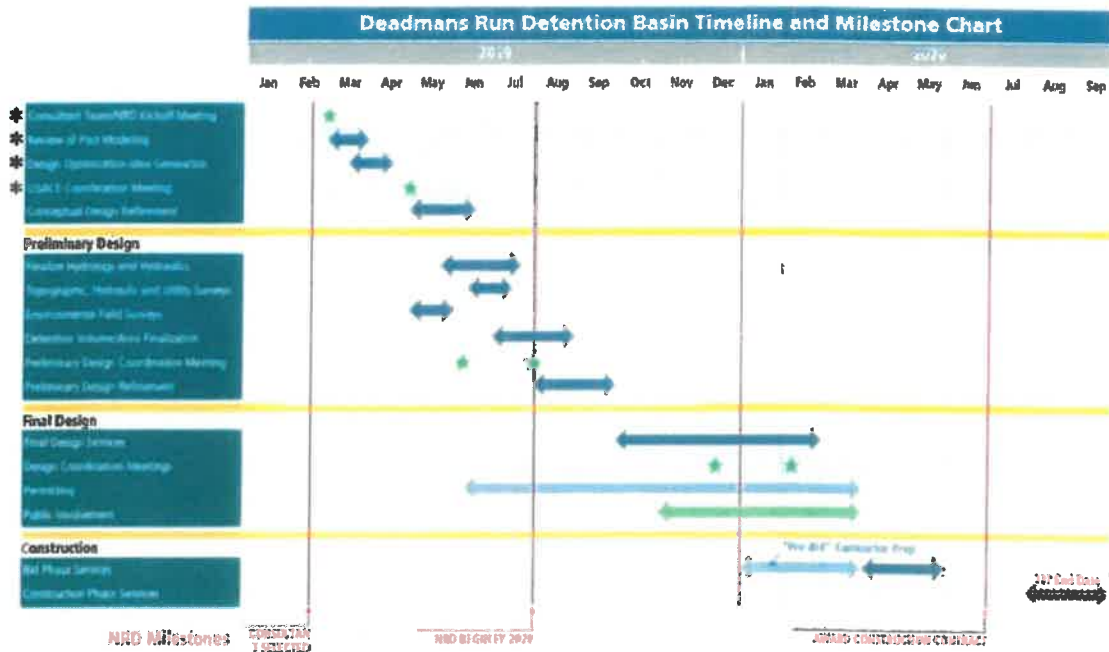
LPSNRD Deadman’s Run Detention Cell Design

“Phase I” services are proposed to cover the asterisked items in the overall project schedule below as well as the preparation of the Water Sustainability Fund (WSF) application. The WSF application period is July 16-31st of each calendar year. Detailed task descriptions are provided below;

Project Management – Non-technical duties in the management of the project’s financial and communication needs as well as stakeholder meetings. Initial coordination with the U.S. Army Corps of Engineers (USACE) as the design process pertains to the 205 Program is included.

Hydrologic/Hydraulic Model Review – detailed review of the models prepared by the USACE during the planning phase. Model suitability for final design and for exploring design options are included in this phase. An assessment of potential changes in design (compared to USACE planning report) will be developed during this task. Additional model development will be required in the preliminary design phase.

WSF Application – preparation of the required information for the WSF application, as per NRC rules. This includes all technical, environmental and financial feasibility. Most information will be re-packaged from the USACE planning report, to be supplemented by additional data collected/generated in the design work completed before the application is submitted.



The preliminary and final design phase services will be scoped upon completion of the Phase I services and generally include the non-asterisked items above. Final design and construction observation fees are likely to be in the 15-20% of construction costs range. Unless unforeseen circumstances arise, those services would likely begin after approval of a Final Design scope of services at the April LPSNRD Board meeting.

d.

CAPITOL BEACH COMMUNITY ASSOCIATION
Letter of Request for Cost Share
February 8, 2019

Capitol Beach Community Association, CBCA, is a community of 260 residences on a 380-acre lake. We are constructing a walking trail around our lake. We have completed the trail all except for an area that runs along and or may cross the saline wetland to the east of Capitol Beach Lake. This trail will have public access.

CBCA has contacted JEO Consulting Group Inc. to help with our 3 phased project. Kyle Hauschild, Paul Zilig and Dan Schultz, all with LPSNRD, with Kyle taking the lead, are all aware of the logistics of our request for the project.

CBCA IS asking LPSNRD to agree to pay for one half of the cost of our 3 phased project. The rest of the cost will be paid for by CBCA. This trail project has been approved by our community at our annual meeting and as I had stated in the first paragraph, we have completed all the trail except the area along the saline wetlands.

Our request for cost share will be in 3 phases. Currently, we are asking for 50% cost share of phase one, which is the planning phase of the project. The total cost of phase 1 is \$7410. CBCA will be returning to ask for the same assistance for phase 2, the engineering and design, and phase 3, construction as the project moves forward.

In summary, CBCA needs the financial help of LPSNRD to complete our trail project around our lake. The area of need is along and/or through the saline wetlands to the east of our lake.

Supporting documents included.

We thank the LPSNRD for the time and effort they have put in and want to thank the Board of Directors for your consideration of our trail project.

Sincerely,



Kile Johnson, President
Capitol Beach Community Association.
PO Box 81141
Lincoln, NE 68501

1 **Scope of Services**

2 **Capitol Beach Community Association – Trail Connection**

3 **JEO Project No. 181804.00**

4

5 **Project Understanding:**

6 JEO proposes to provide engineering services to assist the Community Association with conceptual
7 design alternatives for connecting the existing trail/path around the lake to the parking area and
8 residential street adjacent to the Capitol Beach residence at 626 Waterfront Pl. It is our understanding
9 the proposed design alternatives shall minimize impacts to the wetlands in the area. The considerations
10 include:

- 11 - Grading/fill adjacent to private property and concrete trail construction; or
- 12 - Boardwalk/bridge across the wetland area, in combination with concrete trail construction

13 **Scope of Services:**

14 JEO proposes to provide the following Scope of Services

15 **Task 100 – Project Management & Stakeholder Coordination**

- 16 - Perform routine project management tasks
- 17 - Prepare and update a project schedule
- 18 - Prepare progress reports
- 19 - Facilitate up to one (1) coordination meeting with adjacent property owner(s) and the
20 Community Association representatives
- 21 - Communicate with Community Association representatives to collaborate and collect data and
22 key input, outside of formal meetings

23 **Meetings:**

- 24 - One (1) coordination meeting

25 **Task Deliverables:**

- 26 - Project schedule
- 27 - Project invoices
- 28 - Meeting support material

29 **Key Understandings/Assumptions:**

- 30 - Project invoices will be provided monthly

31 **Task 200 – Survey**

- 32 - Perform topographic field survey of the project site to collect elevation and location of the
33 landscape and key features necessary to design improvements
- 34 - Include property boundaries near proposed improvements

Exhibit A

35 **Meetings:**

- 36 - None

37 **Task Deliverables:**

- 38 - Topographic and boundary survey data to be included on conceptual design drawings

39 **Key Understandings/Assumptions:**

- 40 - The Community Association will provide/coordinate permission to access adjacent properties to
41 complete the topographic survey

42 **Task 300 – Wetland Delineation**

- 43 - Prior to the site visit, JEO will identify potential threatened & endangered (T&E) species habitat
44 and elements of occurrence utilizing existing data sets
45 - JEO will conduct an on-site Preliminary Wetland/Waters of the U.S. (WOUS) Determination
46 generally consisting of an on-site investigation to identify all potential wetlands or other WOUS
47 - Delineations will be completed using guidance of the United States Army Corps of Engineers
48 (USACE) 1987 Wetland Delineation Manual and appropriate regional Supplemental Delineation
49 manual. This includes investigation and sample point collection of site hydrology, vegetation,
50 and soils.
51 - Delineated wetland boundaries will be accurately mapped with post-processed sub-meter
52 accuracy using a Trimble GeoXH hand-held GPS. Wetland delineation boundaries will be shown
53 on conceptual design drawings developed as part of Task 400.

54 **Meetings:**

- 55 - None

56 **Task Deliverables:**

- 57 - Wetland boundaries will be included on conceptual design drawings
58 - Recommendations will be provided to facilitate future final design and 404 permitting efforts

59 **Key Understandings/Assumptions:**

- 60 - Under current guidance, wetland delineations are valid for five (5) years. If the project does not
61 proceed to final design and permitting within 5 years, a new wetland delineation must be
62 conducted to complete a 404 permit application.
63 - Wetland delineation report will not be prepared as part of this project. The delineation and
64 field data will be available for report preparation during future final design phase.

65 **Task 400 – Design**

- 66 - Prepare engineering conceptual design drawings for two (2) proposed improvement
67 alternatives. Drawings are anticipated to include:
68 ○ Topographic and boundary survey information
69 ○ Wetland information
70 ○ Existing and proposed site plan

Exhibit A

- 71 ○ Typical sections and details
- 72 ○ Sediment and erosion control
- 73 - Develop conceptual construction quantities and opinions of cost for two (2) alternatives
- 74 - Develop a design memorandum that describes the proposed alternatives, potential permitting
- 75 impacts, and recommendations. Attend board meeting to present findings.

76 **Meetings:**

- 77 - Attend one (1) board meeting

78 **Task Deliverables:**

- 79 - Engineering conceptual design drawings
- 80 - Construction quantities and opinions of cost
- 81 - Design memorandum

82 **Key Understandings/Assumptions:**

- 83 - Geotechnical exploration/testing is not included
- 84 - Permitting (404, Floodplain, SWPPP, City ROW) is not included. Necessary permitting will be
- 85 included in a future phase.
- 86 - Deliverables will be provided for two (2) design alternatives (grading/fill adjacent to private
- 87 property; or boardwalk across the wetland area). Additional alternatives can be prepared upon
- 88 request but may require additional compensation.
- 89 - Deliverables will not be final sealed/signed documents and cannot be used for construction

90 **Project Fee**

91 JEO proposes to perform the described services at an hourly not-to-exceed fee as included in the
92 following schedule:

93	Task 100 – Project Management & Stakeholder Coordination.....	\$1,190
94	Task 200 – Survey.....	\$940
95	Task 300 – Wetland Delineation.....	\$675
96	Task 400 – Design.....	\$4,605
97		<u>Project Total \$7,410</u>

98 *The Project Fee schedule is an estimate of the fee distribution between tasks. JEO
99 reserves the right to invoice in excess of the individual task amount, provided the total
100 fee does not exceed the project total.

101 **Project Schedule**

102 The proposed project is expected to take approximately one (1) month

Capitol Beach Community Association Proposed Trail Location



Capitol Beach Community Association Proposed Trail Location

