



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: July 15, 2024
 To: Lower Platte South Natural Resources District Board of Directors
 From: Will Inselman, Resources Coordinator *WI*
 Subject: Minutes for Recreation, Forestry & Wildlife Subcommittee Meeting

On Thursday, July 11th, 2024, at 5:40 p.m., the Recreation, Forestry and Wildlife subcommittee met in the Large Conference Room. Subcommittee members present: Christine Lamberty- Chair, Anthony Schutz, Don Jacobson, John Yoakum, Seth Hawkins, and Ray Stevens. Other attendees were David Landis (Director), Greg Osborn (Director), Mike Sousek, Eric Zach, and Will Inselman.

The first item on the agenda was the consideration of a culvert replacement on the MoPac trail east of 162nd Street. LPSNRD staff was informed of a hole forming approximately 200 yards east of the 162nd St. MoPac trail crossing in early June. Upon investigation it was found that a 60” culvert under the trail had separated and material from above the culvert is falling into the culvert, causing a void under the trail and the subsequent hole. LPSNRD staff concluded that the culvert needs to be replaced. Staff requested bids from three contractors to replace the culvert. The low bid was received from Nebraska Digging of Alvo, Nebraska. Nebraska Digging is a reputable contractor that has satisfactorily completed multiple projects for the NRD over the last couple of years. Staff recommended awarding the low bid to Nebraska Digging at a total project cost of \$19,175.00.

Company Name	Bid Amount
Nebraska Digging	\$19,175.00
Gana Trucking and Excavating	\$25,449.00
Yost Excavating	\$37,550.00

It was moved by Yoakum, seconded by Stevens and unanimously approved to recommend the Lower Platte South NRD Board of Directors approve the low bid from Nebraska Digging in the amount of \$19,175.00 for a culvert replacement near 162nd Street on the MoPac Trail.

Motion Passed: 6-0

The second item on the agenda was the consideration for the approval of the acquisition of a conservation easement on the Next to Nine Mile Prairie, LLC property located in NW Lincoln. LPSNRD staff have completed the final steps for the Districts acquisition of the conservation easemnet and are requesting final approval to proceed with the purchase. The Lincoln/Lancaster County Planning and Zoning granted their approval on May

22nd, 2024 and District staff held a public hearing on June 20th, 2024. No public attended the public hearing. This acquisition is in cooperation with the NRCS Agricultural Conservation Easement Program – Agricultural Land Easement (ACEP-ALE) program which is providing 50% of the purchase price of the easement. LPSNRD was successful in receiving this grant last fall and will be responsible for paying \$300,209.00 for the acquisition. The District would be the primary holder of the conservation easement.

This conservation easement is a critical link to preserving a core of tallgrass prairie in proximity to UNL's Nine Mile Prairie in NW Lincoln. The easement will also allow the development of a trail through the property to Nine Mile Prairie. Staff indicated that the Board did give approval for staff to complete the necessary steps for acquisition in September 2023. Staff would plan to close on the property in August pending Board approval and final NRCS paperwork.

It was moved by Yoakum, seconded by Stevens and unanimously approved to recommend the Lower Platte South NRD Board of Directors authorize the General Manager to purchase a conservation easement on the Next to Nine Mile Prairie, LLC. property in Lancaster County.

Motion Passed: 6-0

Last on the agenda were staff updates. Reports/updates: Trail concept study for a segment of the Prairie Corridor on Haines Branch and completion videos of the MoPac/Homestead Bank Stabilization project.


Meeting adjourned at 5:56 p.m.

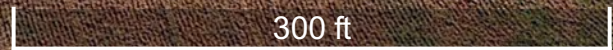
PC: RF&W subcommittee file

MoPac Culvert Separation

about 300 yards east of 162nd St.

Legend

 Culvert Location



Yost Excavating
 380 S. 66th RD
 Nebraska City, NE 68410

Invoice

Date	Invoice #
6/12/2024	632

Bill To
Lower Platte South Natural Resources Dist AL 3125 Portia St Box 83581 Lincoln, NE 68501-3581

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
			6/12/2024			

Quantity	Item Code	Description	Price Each	Amount
1	02 Site Work	Mobilization	5,000.00	5,000.00
60	02 Site Work	Install 42" Cmp Culvert	500.00	30,000.00
1	02 Site Work	Haul off old pipe	1,500.00	1,500.00
1	02 Site Work	Additional dirt per straight truck load (10-12 CY)	250.00	250.00
1	02 Site Work	1 Load of screenings over new culvert	800.00	800.00
	02 Site Work	No seeding, No additional screening add to trail to culvert	0.00	0.00
Total				\$37,550.00



2200 West Panama Rd. Martell, NE 68404 Phone (402) 794-5000 Fax (402) 794-5002

Date: 6/10/2024
Bid To: Lower Platte South Natural Resources District
Attention: Eric Zach
Email: ezach@lpsnrd.org
Project: Mopac Trail Culvert Repair East of 162nd Street
Scope: Culvert Installation

Addendum Acknowledged:

Gana Trucking and Excavating, Inc. proposes to provide the following for the project stated above.

- 1 Remove, haul off and dispose of existing culvert pipe, timbers and railroad ties.
- 2 Excavate for new culvert installation and prep base of excavation for new 42" pipe.
- 3 Install new 42" CMP culvert pipe at a length of 60'.
- 4 Backfill and cover culvert utilizing onsite excavated soils.
- 5 Import and place remainder of fill material to extend slope on South end of pipe.
- 6 Grade trail and slopes to provide proper drainage.
- 7 Restore trail with 1.5" crusher run limestone base and limestone screenings for surfacing.
- 8 Seed slopes with Type F mix and install erosion control blanket.

Total Price: \$	25,449
ADD: \$	1,205

For Installation Of Flared End Section at Inlet Side of Culvert:

Notes:

- 1 Above price assumes completion of all work in a single mobilization.
- 2 Above price assumes all excavated materials will be suitable for use as backfill material.
- 3 Above price assumes a HEL-COR corrugated metal pipe will be utilized - riveted pipe can be used for an additional \$15.68 / LF.

Exclusions: layout, grade staking, overexcavation, fencing, removal of items to be salvaged, liability for underground unknowns, removal of hazardous materials, silt fence maintenance, silt fence removal, construction entrance maintenance, construction entrance removal, utility excavation, topsoil import, seeding, footing spoil haul off, utility spoil haul off, fine grading, shoring, anything not included in the above scope of work, locating of private utilities, winter conditions, inlet protection, bonding, dewatering, curb grinding, granular material below slabs & pavement, interior building demolition, concrete washout pit installation, footing excavation, sheet piling,

Respectfully,
Gana Trucking and Excavating, Inc.

Accepted By:

Jon Miller

Name

Date



190 Main St
Alvo, NE 68304

Cody Price - (402) 658-2084
Tyler Rosenow - (402) 432-5519

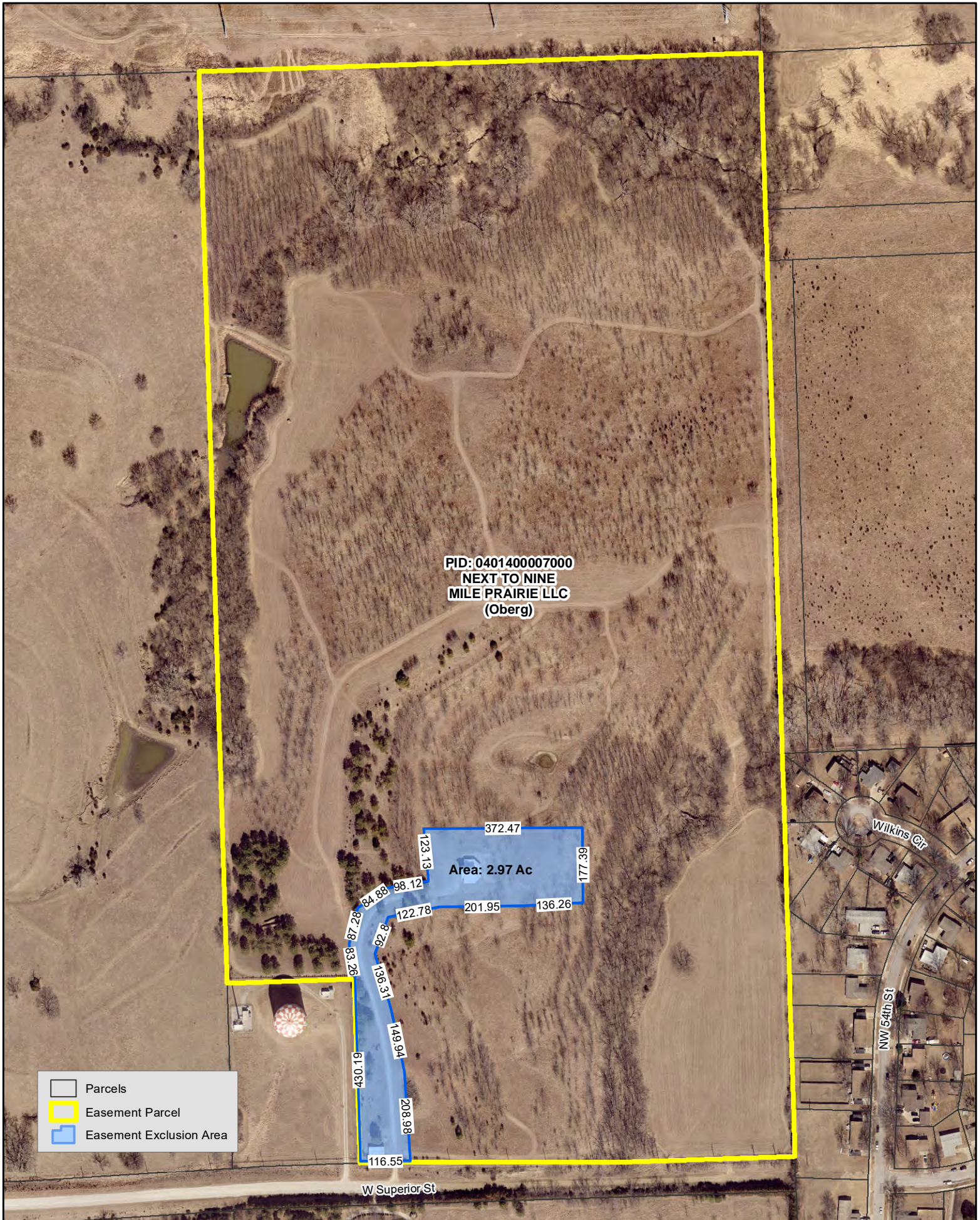
Estimate

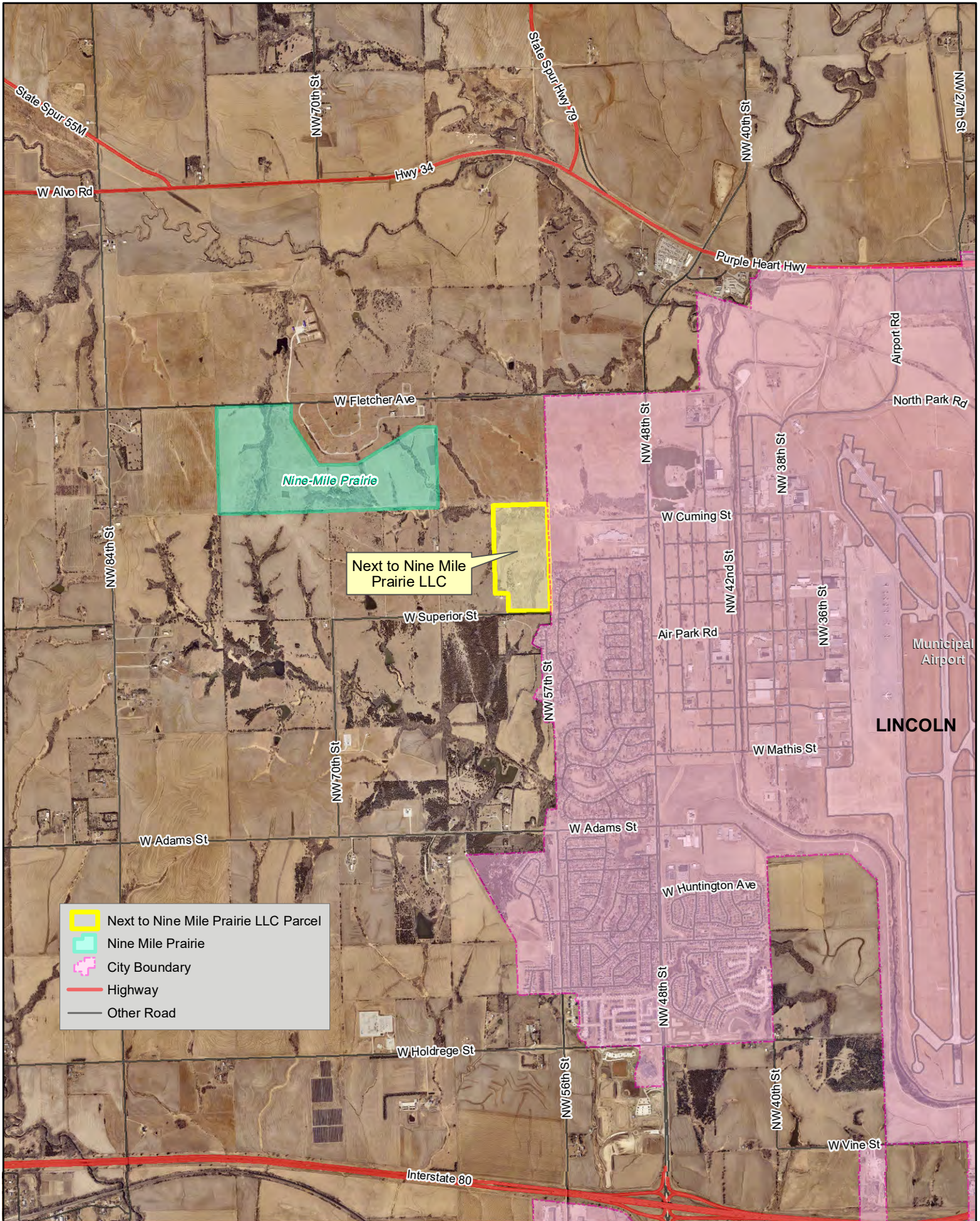
Date: June 11, 2024

Owner: LPSNRD

Project: Mopac Trail Pipe Replacement Between 162nd and 176th st

Quantity	Item	Unit	Rate	Amount
1	Mobilization and demobilization	LS	\$2,250.00	\$2,250.00
1	Railroad tie abutment removal and disposal	LS	\$1,750.00	\$1,750.00
1	Clearing and grubbing	LS	\$750.00	\$750.00
1	Remove 70" x 50' oval CMP storm sewer pipe	LS	\$650.00	\$650.00
65	42" CMP culvert pipe installation	LF	\$155.00	\$10,075.00
1	Fill dirt to cover up longer culvert	LS	\$1,250.00	\$1,250.00
1	Repair areas of trail disturbed during construction	LS	\$950.00	\$950.00
1800	Seeding and erosion control blanket	SF	\$0.70	\$1,260.00
40	Straw dike wattles around inlet and outlet	LF	\$6.00	\$240.00
			Total:	\$19,175.00





CONSERVATION EASEMENT

THIS GRANT OF A CONSERVATION EASEMENT is made by Next To Nine Mile Prairie LLC, 4111 NW 57th Street, Lincoln, NE 68524, hereinafter referred to as "Next To Nine Mile Prairie LLC," to the LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT, a political subdivision of the State of Nebraska, with its principal office located at 3125 Portia, Post Office Box 83581, Lincoln, Nebraska 68501, hereinafter referred to as "District."

1. Introductory Statement. This Conservation Easement is given pursuant to and in accordance with the Conservation and Preservation Easements Act, Neb. Rev. Stat. §§ 76-2,111 to 76-2,118 ("Act"). District is a natural resources district of the State of Nebraska organized and existing by virtue of Neb. Rev. Stat. §§ 2-3201, et seq. and is qualified and has the authority to hold a conservation easement pursuant to the Act.
2. Easement Area Description. Next To Nine Mile Prairie LLC is the owner in fee simple of certain real estate, hereinafter referred to as the "Protected Property," which is shown on Exhibit A, and in its present state has scenic beauty, wildlife habitat, prairie (including virgin prairie), open space, two ponds, woodlands (including tree plantings designed by the District Forester), and riparian stream corridor, which has not been subject to development. The Protected Property is subject to the Conservation Easement hereby granted and is described as Lot 14 in the SE quarter of Section 1, Township 10N, Range 5E, Lancaster County, Nebraska, which is further described in the metes and bounds description on Exhibit A.
3. Purchase Price. District shall pay Next To Nine Mile Prairie LLC for the Conservation Easement the sum of \$600,418.00.
4. Granting Clause. Next To Nine Mile Prairie LLC hereby gives, grants, and conveys unto District, a perpetual Conservation Easement, including a 50-foot Public Access Trail Easement ("Trail Easement") along an area in the northern portion of the Protected Property. This Conservation Easement shall extend to District's successors and assigns, provided that this Conservation Easement is assigned or transferred by District to any governmental body or charitable corporation, or trust authorized to hold such Conservation Easement pursuant to the Act and which is capable of carrying out the specific purpose for which the Conservation Easement is granted. Next To Nine Mile Prairie LLC hereby grants to District an estate and interest in the Protected Property of the nature and extent hereinafter described and covenants on behalf of themselves, their heirs, personal representatives, successors and assigns (said covenants, estates and interest to run with the land) with District and its successors and assigns, to do and refrain from doing, severally and collectively upon the Protected Property, the various acts hereinafter specified; it being agreed that such covenants, estates and interest are and will be for the benefit of District and its successors and assigns, to preserve scenic beauty, open space and natural resources, or otherwise conserve the natural beauty of the Protected Property.

5. District Acceptance. District signifies by the execution hereof the acceptance of the Conservation Easement in the Protected Property, as provided for in the Act. The acceptance by District is conditioned upon the approval of the Conservation Easement by the Lincoln-Lancaster County Planning Commission, which is the appropriate governing body with jurisdiction over the Protected Property as provided by the Act. A copy of such approval will be attached hereto as Exhibit C and incorporated herein by this reference when it is received.

6. Justification for Conservation Easement. Next To Nine Mile Prairie LLC and District recognize the natural, ecologic, scenic open space, aesthetic and special character of the region in which the Protected Property is located, and have the common purpose of conserving the natural values of the Protected Property by the conveyance to District of this Conservation Easement on, over and across the Protected Property, which shall conserve and protect the scenic beauty, wildlife habitat, prairie (including native prairie), open space, two ponds, woodlands (including tree plantings designed by the District Forester), and riparian stream corridor, or otherwise conserve and prevent the use or development of the Protected Property for any purpose or in any manner which would conflict with its scenic and open condition for both this generation and future generations. Next To Nine Mile Prairie LLC and District furthermore recognize the benefit of the Trail Easement for the purpose of providing public access and a future continuous trail connection from City of Lincoln to Nine Mile Prairie. Next to Nine Mile Prairie and the District recognize that the Protected Property has previously received District conservation easement investment and is a part of the unfragmented tallgrass ecosystem in the environs of Nine Mile Prairie, a tallgrass prairie listed on the National Register of Historic Places, and Lincoln-Lancaster County 2050 Comprehensive Plan.

7. Condition of the Protected Property at Time of Grant. The condition of the Protected Property at the time of this grant is evidenced by reports, photographs, aerial imagery, maps, and scientific documentation possessed by District. District agrees to document features of the Protected Property, including but not limited to the location of the prairie, two ponds, woodlands, and riparian stream corridor. The location of these features on the Protected Property are shown on Exhibit D.

8. Future Trail. Next To Nine Mile Prairie LLC grants authority to District and its successors and assigns for the future grading and construction of a 10-foot crushed rock trail within the Conservation Easement, of which the alignment on the Protected Property is approximately located in the northern third of the property. Next To Nine Mile Prairie LLC agrees that the trail will be within the designated area in the northern portion of the Protected Property, and would attempt to avoid any preexisting trails. The District agrees to provide concept phase trail plans to Next to Nine Mile Prairie LLC and allow changes that meet design parameters. The final alignment of the public access trail shall be determined at the time of construction at the discretion the District in consultation with Next To Nine Mile Prairie LLC based on detailed design and engineering by District and/or District's partners to determine horizontal and vertical alignment, trail cross-section, and to minimize grading and limits of construction. Next To Nine Mile Prairie LLC grants authority to the District to re-establish native prairie

within the 50-foot Trail Corridor area, and to fence the corridor for access control. The District agrees that construction of the trail would be predicated on construction of the complete trail alignment to Nine-Mile Prairie.

9. Protection and Maintenance of Protected Property.

(a) District has right to engage in construction and maintenance of trail easement.

(b) District has right to engage in management and restoration of natural resources on the Protected Property, which applies to the areas of prairie, two ponds, woodlands, and riparian stream corridor:

i. The prairie areas may be managed by burning, grazing, haying, mowing, tree removal, non-native and invasive species removal, and/or seeding with native seed mixes. Herbicide may be used for spot spraying and stump treatment to control undesirable woody and herbaceous plant material. Grazing will only be used as a management tool according to an approved grazing plan as described in section 12(b), if mutually agreed upon in advance in writing by District and Next To Nine Mile Prairie LLC. District will provide reasonable notice to Next To Nine Mile Prairie LLC prior to use of fire as a management tool.

ii. The woodlands may be managed by non-native and invasive species removal, and clearing of dead or dying trees.

iii. The ponds and riparian stream corridor may be managed by non-native and invasive species removal, and clearing of dead or dying trees.

(c) Next To Nine Mile Prairie LLC shall pay any real estate taxes, estate taxes, or assessments levied by competent authorities on the Protected Property, including but not limited to any tax or assessment affecting the Conservation Easement granted herein. Next To Nine Mile Prairie LLC shall obtain, pay for, and continuously maintain liability insurance covering the use and interest in the Protected Property by Next To Nine Mile Prairie LLC, its heirs, personal representatives, successors and assigns. District shall obtain public liability insurance covering its use and interest in the Protected Property.

(d) Next To Nine Mile Prairie LLC covenants that they are the owner of marketable title to all of the Protected Property and that such property is free and clear of all liens except easements of record, and further warrants that they will defend such Protected Property against the lawful claim of all persons whatsoever. Next To Nine Mile Prairie LLC shall take no action at any time which might restrict, jeopardize, or impair the value of the easement rights granted herein.

(e) Next To Nine Mile Prairie LLC agrees that the terms, conditions, restrictions and purpose of this grant will be inserted by them in all subsequent deeds, or other legal instrument, by which it divests itself of either the fee simple title to or any possessory interest in the Protected Property.

(f) The parties hereto may mutually agree to modify or terminate this Conservation Easement to the extent that modification and termination is consistent with the provisions of Act or any provision of law in effect at the time that such modification or termination is sought. Any modification of this

Conservation Easement must be in writing. Next To Nine Mile Prairie LLC and/or District may petition the District Court of the county where the Protected Property is located, in accordance with the Act, to modify or terminate this Conservation Easement if the petitioning party establishes that it is no longer in the public interest to hold the easement or that the easement no longer achieves the conservation or preservation purpose for which it was created.

(g) Each party shall indemnify and hold the other party harmless, including their respective agents, employees, successors, and assigns, against any and all liabilities, claims, or causes of action, including reasonable attorney's fees arising, either directly or indirectly, as a result of the negligent acts or omissions of each party and their respective agents, employees, successors, and assigns.

10. Inspections, Educational Use and Access by District. District is hereby given the right to enter the Protected Property at all reasonable times without consent, after notice to Next To Nine Mile Prairie LLC, their heirs, personal representatives, successors, or assigns, as the case may be, for the purpose of trail maintenance, management and restoration of natural resources, and for the purpose of inspecting the Protected Property to determine if Next To Nine Mile Prairie LLC, their heirs, personal representatives, successors, or assigns are complying with the covenants and purposes of the grant. District is also hereby given the right to provide access to individuals or small groups to the prairie areas, with notice as provided above, for education, study or viewing purposes. Notice in this paragraph shall mean either written notice to Next To Nine Mile Prairie LLC, their heirs, personal representatives, successors, or assigns at the address stated herein or any other address subsequently given to District or oral notice to Next To Nine Mile Prairie LLC or anyone in their immediate family or employ, their heirs, personal representatives, successors, or assigns. District shall complete an inspection and file a report on an annual basis, a copy of which shall be furnished to Next To Nine Mile Prairie LLC. District shall maintain a file of such reports that shall be available to the public.

11. Use Restrictions. This Conservation Easement shall specifically prohibit the following uses and practices, although it is acknowledged that this is not an exhaustive recital of the uses and practices that are inconsistent with the purpose of this Conservation Easement:

- (a) Construction or placing of buildings, roads, camping accommodations, or mobile homes, signs, billboards or other advertising materials, or any other structure. Notwithstanding the above, the construction of a trail as provided for in Section 8 of this Conservation Easement.
- (b) The removal, destruction or degradation of prairie or riparian habitat or plant materials, including grasslands and trees, except as provided for in Section 12 of this Conservation Easement.
- (c) Changing the topography anywhere on the Protected Property, or placement of fill material in the drainage ways, riparian areas, except as provided for in Section 8 of this Conservation Easement.
- (d) Mining removal of topsoil, sand gravel, rock minerals, or other materials.
- (e) Dumping of ashes, trash, garbage, or other unsightly or offensive material.
- (f) Residential, commercial, or industrial development of any nature.

- (g) Holding or feeding of livestock, except as provided for in Section 9 of this Conservation Easement.
- (h) Commercial hunting on the Protected Property.
- (i) Operation of motorized vehicles that are not used for maintenance, repair, management, care of livestock or care of the Protected Property.
- (j) The cultivation, planting, or drilling of row crops, small grains and forages, vegetables, fruits, sod or any other horticultural or agricultural crops.
- (k) Any other act in the reasonable opinion of District would be detrimental to the wildlife habitat, natural resources or scenic beauty of the Protected Property.

12. Uses and Practices Allowed. This Conservation Easement shall confine the use of the Protected Property to activities that are consistent with the purposes for which the Conservation Easement was granted. The following uses and practices, although not an exhaustive recital of consistent uses and practices, are consistent with this Conservation Easement and these practices may not be precluded, prevented, or limited except by mutual written consent of the parties. Next To Nine Mile Prairie LLC, their heirs, personal representatives, successors, and assigns are allowed to:

- (a) Hay the prairie areas no more than once per year.
- (b) Graze the prairie areas with ungulates at a stocking rate and duration consistent with university research guidelines based on the range condition of the Protected Property at the time it is grazed, if approved in advance in writing by District.
- (c) Construct, maintain, replace, or repair fences for the management of grazing livestock on the Protected Property.
- (d) Establish a creek and trail crossing if approved in advance in writing by District.
- (e) Harvest of timber in woodlands and riparian stream corridor according to an approved forestry management plan, if approved in advance by District.
- (f) Access the Protected Property for passive recreation uses such as walking and enjoyment of wildlife habitat.

13. Release of Easement. This Conservation Easement may be released by District, upon the approval of the governing body which approved the easement, and a finding by such body that the Conservation Easement no longer substantially achieves the conservation purpose for which it was created, in accordance with the Act, or as authorized by any other provision of law in effect at the time such release is sought.

14. Enforcement. Next to Nine Mile Prairie LLC agrees that:

- (a) District may enforce the provisions of this Conservation Easement by any proceedings at law or in equity, including but not limited to, the right to require restoration of the Protected Property to the condition at the time of this grant except as provided for herein.
- (b) District may seek an injunction restraining any person from violating the terms of this Conservation Easement without the posting of any bond whatsoever, including third-party violations of nuisance or trespass.

(c) District does not waive or forfeit the right to take any action as it deems necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act.

(d) If Next To Nine Mile Prairie LLC undertakes any activity requiring the approval of District without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement, that District shall have the right to enforce the restoration of that portion of the Protected Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of such restoration and District's cost of suit, including reasonable attorney's fees, shall be paid by Next To Nine Mile Prairie LLC, or in the event that District secures redress without a completed judicial proceeding, by Next To Nine Mile Prairie LLC or those who are otherwise determined to be responsible for the unauthorized activity. Nothing herein contained shall be construed to preclude Next To Nine Mile Prairie LLC from exhausting its legal remedies in determining whether the proposed activity to which District has objected is inconsistent with this Conservation Easement.

15. Binding Effect. The covenants agreed to and the terms, conditions, restrictions and purposes imposed with this grant shall be binding upon Next To Nine Mile Prairie LLC, their successors or assigns and all other successors to them in interest and shall continue as a servitude running in perpetuity with the Protected Property. The covenants shall also bind District and its successors and assigns.

16. Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those to which it is found to be invalid shall not be affected thereby.

17. This Conservation Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The Exhibit A is attached hereto and incorporated herein by reference and will run with the land in perpetuity. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, and as a condition of receiving ACEP funds, all present and future use of the Protected Property identified in Exhibit A is and will remain subject to the terms and conditions described in Exhibit A entitled "Minimum Terms For Agricultural Land Easements" that is appended to and made a part of this easement deed.

IN WITNESS WHEREOF, the undersigned have executed this Conservation Easement on this _____ day of _____, 2024.

X Oberg, Member

X Oberg, Member

X Leach, Member

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

On this ____ day of _____, 2024, before me a Notary Public in and for said county and state, personally came _____, Member of Next to Nine Mile Prairie LLC, to me personally known to be the identical person whose name is affixed to the above Conservation Easement and acknowledged the execution of the same to be their voluntary act and deed on behalf of Next to Nine Mile Prairie LLC, as owner of the Protected Property.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

On this ____ day of _____, 2024, before me a Notary Public in and for said county and state, personally came _____, Member of Next to Nine Mile Prairie LLC, to me personally known to be the identical person whose name is affixed to the above Conservation Easement and acknowledged the execution of the same to be their voluntary act and deed on behalf of Next to Nine Mile Prairie LLC, as owner of the Protected Property.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

On this ____ day of _____, 2024, before me a Notary Public in and for said county and state, personally came _____, Member of Next to Nine Mile Prairie LLC, to me personally known to be the identical person whose name is affixed to the above Conservation Easement and acknowledged the execution of the same to be their voluntary act and deed on behalf of Next to Nine Mile Prairie LLC, as owner of the Protected Property.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Public

ACCEPTANCE

The above Conservation Easement is hereby accepted by the Lower Platte South Natural Resources District, "District" herein, on this ____ day of _____, 2024.

LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT, a political
subdivision of the state of Nebraska,

By: _____
Mike Sousek
General Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

On this ____ day of _____, 2024, before me a Notary Public in and for said county and state, personally came Mike Sousek, General Manager of the Lower Platte South Natural Resources District, known to be the identical person whose name is affixed to the above Conservation Easement and acknowledged the execution of the same to be his voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Public

Exhibit A

CONSERVATION EASEMENT LEGAL DESCRIPTION:

Lot Fourteen (14), Irregular Tract in teh Southeast Quarter (SE1/4) of Section 1, Township 10 North, Range 5 East of the 6th P.M., Lancaster County, Nebraska

EXCLUDED AREA CONSERVATION EASEMENT LEGAL DESCRIPTION:

LOT 14 IN THE SE QUARTER OF SECTION 1, TOWNSHIP 10N, RANGE 5E LANCASTER COUNTY, NEBRASKA, EXCEPT AN IRREGULAR TRACT OF LAND MORE PARTICULARLY DESCRIBED AS FOLLOWS: REFERRING TO THE SOUTHEAST CORNER OF SAID SECTION 1; THENCE N89°39'23"W (ASSUMED BEARING) ON THE SOUTH LINE OF SAID SECTION 1, A DISTANCE OF 1024.91 FEET TO A POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EAST LINE OF IRREGULAR TRACTS LOT 16 IN SAID SECTION 1; THENCE N00°24'53"E ON SAID SOUTHERLY EXTENSION, A DISTANCE OF 68.00 FEET TO THE POINT OF BEGINNING AND THE SOUTHEAST CORNER OF SAID IRREGULAR TRACTS LOT 16; THENCE CONTINUING N00°24'53"E ON SAID EAST LINE AND ITS NORTHERLY EXTENSION OF SAID EAST LINE, A DISTANCE OF 438.19 FEET; THENCE N07°38'12"W, A DISTANCE OF 72.28 FEET; THENCE N19°33'47"E, A DISTANCE OF 84.81 FEET; THENCE N48°58'35"E, A DISTANCE OF 78.19 FEET; THENCE N77°02'53"E, A DISTANCE OF 119.35 FEET; THENCE N00°12'37"E, A DISTANCE OF 96.62 FEET; THENCE S89°47'23"E, A DISTANCE OF 375.00 FEET; THENCE S00°12'37"W, A DISTANCE OF 180.00 FEET; THENCE N89°47'23"W, A DISTANCE OF 461.78 FEET; THENCE S48°01'58"W, A DISTANCE OF 63.00 FEET; THENCE S13°43'41"W, A DISTANCE OF 48.21 FEET; THENCE S12°01'39"E, A DISTANCE OF 255.55 FEET; THENCE S02°21'08"E, A DISTANCE OF 249.03 FEET TO THE NORTH RIGHT OF WAY LINE OF WEST SUPERIOR STREET; THENCE N87°48'55"W ON SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 32.63 FEET TO A POINT OF CURVATURE; THENCE CONTINUING ON SAID NORTH RIGHT OF WAY LINE ON A 2420.86 FOOT CURVE TO THE LEFT, AN ARC DISTANCE OF 77.79 FEET, THE CHORD OF SAID CURVE BEARS N88°44'09"W, 77.79 FEET; THENCE N89°39'23"W CONTINUING ON SAID NORTH RIGHT OF WAY LINE , A DISTANCE OF 5.01 FEET TO THE POINT OF BEGINNING CONTAINING 2.97 ACRES MORE OF LESS.

EXHIBIT B

Next to Nine Mile Prairie, LLC (S1-T10N-R5E, Lot 14 SE) - Conservation Easement

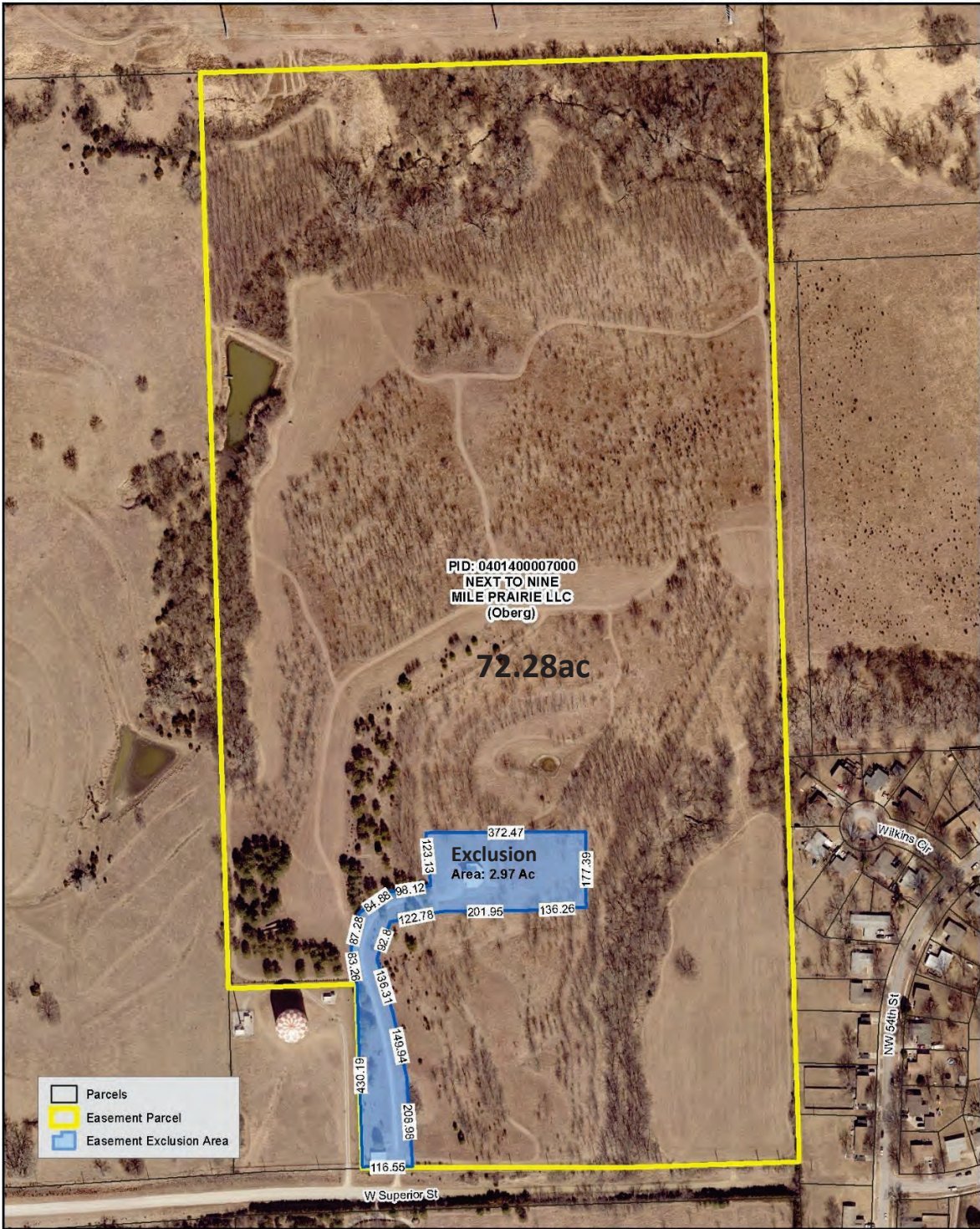


EXHIBIT X

MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS

The Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement (“ALE”), as described in this Agricultural Land Easement Deed (“ALE Deed”), on real property described in Exhibit A, hereafter referred to as “the Protected Property.” As used herein, references to the “ALE Deed” include this Exhibit, except where explicitly stated otherwise.

Next To Nine Mile Prairie LLC (collectively “Grantor”), the **Lower Platte South Natural Resources District** (collectively “Grantee”), and the **United States of America** (the “United States”), acting by and through the United States Department of Agriculture Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (jointly referred to as the “Parties”) acknowledge that the ALE is acquired by the Grantee for the purpose of (**GRASSLAND, NON-GSS**) protecting grazing uses and related conservation values by restoring or conserving the Protected Property (the “Purpose of the ALE”).

Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is appended to this easement deed as Exhibit Y.

In order to ensure compliance with the Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, the following rule of interpretation will govern any and all inconsistencies between this Exhibit and other provisions of the ALE Deed. Notwithstanding any other provision of the ALE Deed, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the terms and conditions identified in the following Sections I and II. If the terms and conditions in Sections I and II are inconsistent with terms and conditions in other portions of the ALE Deed, Sections I and II will control; provided, however, that if other portions of the ALE Deed have terms and conditions that are more restrictive to the rights of the Grantor and are consistent with the provision or intent of the terms and conditions in Section I, Paragraphs 1, 2, and 4, those more restrictive terms and conditions will control. If other portions of the ALE Deed are more restrictive to the rights of the Grantor than Section I, Paragraphs 3 and 5, and Section II, then Section I, Paragraphs 3 and 5, and Section II will control.

SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this ALE, and the restrictions and covenants of this ALE Deed will apply to the Protected Property as a whole.

The terms and conditions of the ALE Deed run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them, any and all of whom must comply with all terms and conditions of this ALE Deed, including the following:

1. Limitation on Impervious Surfaces. Impervious surfaces will not exceed Two (2) percent of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE Deed.

2. Limitations on Nonagricultural Uses. Any activities inconsistent with the Purpose of the ALE are prohibited. The provisions of this ALE Deed limit the types of agricultural operations that can occur on the Protected Property to those that promote the Purpose of the ALE. The following activities are inconsistent with the Purpose of the ALE and are specifically prohibited, subject to the qualifications stated below:

(A) *Subdivision* – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

(B) *Industrial or Commercial Uses* – Industrial or commercial activities on the Protected Property are prohibited except for the following:

(i) Agricultural production and related uses in accordance with the terms and conditions of this ALE Deed;

(ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the Purpose of the ALE and in accordance with the terms and conditions of this ALE Deed;

(iii) Temporary or seasonal outdoor activities or events that do not harm the Purpose of the ALE; and

(iv) Commercial enterprises related to agriculture or forestry including but not limited to: agritourism; processing, packaging, and marketing of farm or forest products.

(C) *Construction on the Protected Property* – Except as otherwise permitted in this **Section I, Paragraph 2(C)**, no structures or improvements, whether existing or in the future, may be constructed, replaced, or enlarged on the Protected Property.

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph 2(B)(ii)** and in this **Section I, Paragraph 3(C)** that neither individually nor collectively have an adverse impact on the Purpose of the ALE, may be located outside of the Building Envelopes with prior written approval of the Grantee.

New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and are necessary to carry out the agricultural operations or other allowed uses on the Protected Property. Any new roads must be constructed in a location and manner that is consistent with the Purpose of the ALE and will not negatively impact the habitat, species, or sensitive natural resources identified for protection in the Baseline Documentation Report.

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Purpose of the ALE and will not negatively impact the habitat, species, or sensitive natural resources identified for protection in the Baseline Documentation Report.

(D) *Granting of Easements for Utilities and Roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the Purpose of the ALE as determined by the Grantee in consultation with the Chief of NRCS.

(E) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except for the following:

(i) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement, or creation;

(ii) Erosion and sediment control pursuant to a plan approved by the Grantee;

(iii) Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the Purpose of the ALE; and

(iv) Grazing uses or grassland restoration and related conservation activities conducted in accordance with the terms and conditions of this ALE Deed.

(F) *Surface and Subsurface Mineral Exploration and Extraction* – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this ALE Deed or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited.

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property at the time this ALE Deed is executed, and their interests have not been subordinated to this ALE, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph (F). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this ALE Deed are subordinate to the terms of this ALE Deed and must incorporate by reference this ALE Deed.

(G) *Crop Cultivation* – Except for grazing uses and grassland restoration and conservation, the cultivation or production of crops, nonperennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial nongrassland agricultural product is prohibited.

3. Preserving Agricultural Uses. No uses will be allowed that violate Federal laws, including Federal drug laws, or that decrease the ALE's protection for the Purpose of the ALE. Allowed uses of the Protected Property include the specific uses allowed in Section I, Paragraph (2)(B)(i)–(v) and the following activities, subject to the qualifications stated below:

(A) *Agricultural Production* – The production, processing, and marketing of livestock and agricultural products compatible with the Purpose of the ALE are allowed provided these activities are conducted in a manner consistent with the terms of the ALE deed.

(B) *Forest Management and Timber Harvest* – Forest management and timber harvesting are allowed, provided these activities are carried out, to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property.

(C) *On-Farm Energy Production* – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits and consistent with the Purpose of the ALE.

(D) *Grassland Uses of the Protected Property* – Grantors are allowed to graze, hay, harvest for hay and noncrop seed production, mow, construct fire breaks, conduct fire suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions of this ALE Deed and the Purpose of the ALE. The term “common grazing practices” means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property. Grantors must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline. Determinations of birds whose populations are in significant decline, nesting seasons for such birds, and the areas of the Protected Property affected by this restriction will be set forth within the Baseline Documentation Report.

SECTION II - PROTECTION OF THE UNITED STATES' INTERESTS

1. United States Right of Enforcement. Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE Deed are not enforced by the Grantee. The Secretary of the United States Department of Agriculture (the “Secretary”) or the Secretary’s assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE Deed, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this ALE Deed from the Grantor, including, but not limited to, attorney’s fees and expenses related to Grantor’s violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this ALE Deed from the Grantee, including, but not limited to, attorney’s fees and expenses related to Grantee’s violations or failure to enforce the ALE Deed against the Grantor, up to the amount of the United States’ contribution to the purchase of the ALE.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE Deed. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE Deed and the United States ALE-Agreement with the Grantee, the United States will have reasonable access to the Protected Property. Prior to its inspection of the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of the ALE Deed and will give notice to Grantee and Grantor at the earliest practicable time.

2. General Disclaimer and Grantor Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee’s or Grantor’s negligent acts or omissions or Grantee’s or

Grantor's breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this ALE Deed or violations of any Federal, State, or local laws, including all Environmental Laws (defined below).

3. Environmental Warranty.

As used herein, "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

As used herein, "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee on the Protected Property; provided, however, that Grantee will be responsible

for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

4. Extinguishment, Termination, and Condemnation. The interests and rights under this ALE Deed may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this ALE, any proposed extinguishment, termination, or condemnation action that may affect the United States' interest in the Protected Property must be reviewed and approved by the United States.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the ALE is Fifty (50) percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee Fifty (50) percent of the Proportionate Share; and (b) to the United States Fifty (50) percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

5. Amendment. This ALE Deed may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the Purpose of the ALE and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE Deed, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.