

RIGHT OF ENTRY AND
MAINTENANCE AGREEMENT

NEBRASKA GAME AND PARKS COMMISSION

Lancaster County
555 South 10th Street
Lincoln, NE 68508
<http://lancaster.ne.gov/>

WAGON TRAIN LAKE STATE RECREATIONAL AREA AND WILDLIFE MANAGEMENT AREA

This Agreement is between the Nebraska Game and Parks Commission, hereinafter referred to as the "Commission" and Lancaster County, Nebraska, hereinafter referred to as "Contractor".

The purpose for this Agreement is twofold. First, it will allow Contractor to remove and reinstall two (2) under road drainage culverts using open trenching located in the southeast corner of the intersection of Hickman Rd. & S 96th St. in the Wagon Train State Recreation Area ("SRA") and Wildlife Management Area ("WMA"). Secondly it will require the Contractor to maintain two (2) drainage culverts for the span of the drainage culverts life, estimated at 50 years.

Terms and Conditions:

Commission grants permission to the Contractor with the right to construct, install, and thereafter use, operate, inspect, repair, maintain two (2) drainage culverts for the span of the drainage culverts life, estimated at 50 years on a parcel of land owned by the Commission situated in LANCASTER COUNTY, NEBRASKA:

1. Commission grants permission to the Contractor to install two (2) drainage culverts using open trench method, located in the NW ¼, Section 36, Township 8 North, Range 7 East of the 6th P.M in Lancaster County, NE within the SRA and the WMA, as shown in Exhibit "A".
2. Contractor may conduct all work required or hire a subcontractor to install two (2) drainage culverts identified in paragraph 1.
3. Contractor and its assignees shall:
 - Construct, install, and thereafter use, operate, inspect, repair, maintain two (2) drainage culverts confined to the area in paragraph 2 above and shown on the map labeled Exhibit "A".
 - Restore all vegetation and landscaping to the condition it was in prior to the installation of the two (2) drainage culverts.
 - All landscape changes that are of a permanent nature resulting from the installation of the two (2) drainage culverts shall not interfere with public access or movement on the area, except for during installation of said two (2) pipes.
 - Changes in equipment, maintenance methods, or area impacted will be submitted to the Commission for approval prior to taking place. The Commission's Realty Coordinator, (402-471-5535), will be notified prior to all activities.

4. Contractor and its assignees shall contact all applicable utility companies, prior to initiation of activities, to arrange for temporary shut-off of services or removal/relocation of service lines. The Contractor will be responsible for payment of any fees associated with removal or relocation of said drainage culverts.

5. Contractor and its assignees agrees to remove all tools, equipment and other property taken upon or placed at the SRA and WMA for the installation of the two (2) drainage culverts by the expiration date of this right of entry agreement. Any such tools, equipment or other property taken upon or placed on the SRA AND WMA by Contractor and its assignees that remain after the scheduled date of removal shall become the property of the Commission.

6. Each Party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other Party and the results thereof. Each Party therefore agrees that it will assume all risk and liability to itself, its agents or employees for any injury to persons or property resulting in any manner from the conduct of its own operations and the operations of its agents or employees under this Agreement, and for any loss, cost, or damage caused thereby during the performance of this Agreement. Further, each Party shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require either Party to indemnify or hold harmless the other Party from liability for the negligent or wrongful acts or omissions of said other Party or its principals, officers, or employees.

7. This agreement shall become effective on the date it is fully executed by both parties. The right of entry permission shall remain in effect through **January 01, 2020**. This agreement as to maintenance of the two (2) drainage culverts will remain in effect for the as long as the two (2) drainage culverts remain in place unless sooner revoked for cause by the Commission or unless sooner terminated by either party. If revoked for cause by the Commission, or if terminated by the Contractor or by mutual consent, there shall be not less than thirty (30) days written notice, unless otherwise mutually agreed in writing. This Agreement may be renewed, extended or amended by mutual written agreement on a yearly basis following the original termination date.

If there is a failure by the Contractor to comply with the terms and conditions of this Agreement, the Commission shall provide written notice to Contractor of the reasons for lack of compliance by certified mail. Said letter shall allow Contractor fifteen (15) working days from the date of receipt to address the issue of noncompliance.

8. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the Commission shall not be deemed to be employees of the Contractor, and employees of the Contractor shall not be deemed to be employees of the Commission.

9. Under Federal and/or state law, this Agreement and Contractor must not discriminate in employment in the specific performance of this Agreement on the basis of race, color, religion, sex, age, gender, marital status, national origin or political affiliation. The Contractor agrees to abide by the Nebraska Fair Employment Practices Act.

10. The Contractor agrees to have in place, during the agreement period, a Drug Free Workplace Policy stating that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the workplace is prohibited. Contractor agrees to provide a copy of its drug-free workplace policy at any time upon request by the Commission.

12. It is expressly understood that the Contractor assumes full liability for the negligent or willful acts of its employees, agents, and officers assigned to perform the Contractor's duties hereunder, and shall reimburse the Commission for any damage to Commission property, real or personal, which may be damaged by the Contractor, its employees, agents or officers. However, the

Contractor's liability shall not extend to the negligent or willful acts of the Commission, its employees, agents, and officers.

13. The Contractor assumes all risk and liability to itself, its agents or employees for any injury to persons or property resulting in any manner from the conduct of its own operations, and the operation of its agents or employees under this agreement, for any loss, cost, damage or expense resulting at any time from any and all causes due to any act or acts, negligence, or the failure to exercise proper precautions.

14. Nothing in this agreement shall be construed to be a waiver of sovereign immunity of the State or qualified immunity of any of its employees or agents.

15. Each party agrees to comply with all applicable federal, state and local laws, codes, regulations, rules, and orders.

16. Neither the Commission nor the Contractor shall assign its duties and responsibilities under this Agreement without the express written permission of the other party to this Agreement. It is expressly understood and agreed to by the parties that the Contractor may subcontract services outlined herein.

17. In accordance with Neb. Rev. Stat. § 4-108 through § 4-114, each party agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Neither party shall discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C. § 1324b. Each party shall require any subcontractor to comply with the provisions of this section

18. This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein and merges all prior discussions between them. It shall not be modified except by written agreement dated subsequent to the date of this Agreement and signed by all parties.

IN WITNESS WHEREOF the parties have affixed their signature, thus entering into this agreement, the day and year last written.

Acknowledgement/Acceptance

_____ Date _____

James Douglas, Director

Nebraska Game and Parks Commission

County of Lancaster)
)
State of Nebraska)

Before me, Notary Public, personally came James Douglas, known to me to be the Director of the Nebraska Game & Parks Commission; and the identical person who signed the foregoing instrument and acknowledge the execution thereof to be his/her voluntary act and deed and the voluntary act and deed of said Nebraska Game & Parks Commission.

WITNESS my hand and notarial seal this ____ day of _____, 20__.

Notary Signature

Executed by Lancaster County this ____ day of _____, 20__

LANCASTER COUNTY
ENGINEERING DEPARTMENT
Approved by County Engineer

LANCASTER COUNTY
BOARD OF COMMISSIONERS

Pamela L. Dingman, P.E.

APPROVED AS TO FORM

This ____ day of _____, 20__

Deputy County Attorney

State of _____ **County of** _____

Before me, a notary public qualified for said county, personally came _____

known to me to be the identical person or persons who signed the foregoing instrument and acknowledged the execution thereof to be his, her or their voluntary act and deed.

Witness my hand and notarial seal on this ____ day of _____, 20__.

Notary Public

My Commission Expires

TEMPORARY CONSTRUCTION EASEMENT

In consideration of One Dollar and Other Valuable Consideration, the undersigned, being the owner of the property described herein, hereby grants unto Lancaster County, a governmental subdivision of the State of Nebraska, a Temporary Construction Easement over the following described real estate:

A part of Lot 7, Irregular Tracts, located in the NW ¼ of Section 36, Township 8 North, Range 7 East of the 6th Principal Meridian, Lancaster County, Nebraska, more particularly described as follows:

Referring to the Northwest Corner of said NW ¼; thence with an assumed bearing of South 00 Degrees, 31 Minutes, 57 Seconds East, with the west line of said NW ¼, a distance of 33.00 feet to a point; thence North 89 Degrees, 53 Minutes, 50 Seconds East, a distance of 33.00 feet to the point of beginning; thence continuing along the same aforesaid bearing of North 89 Degrees, 53 Minutes, 50 Seconds East, and parallel with the north line of said NW ¼, a distance of 67.00 feet to a point; thence South 16 Degrees, 15 Minutes, 59 Seconds West, a distance of 69.20 feet to a point; thence South 24 Degrees, 38 Minutes, 28 Seconds West, a distance of 110.49 feet to a point, said point being located 33.00 feet east of, as measured perpendicular to, the west line of said NW ¼; thence North 00 Degrees, 31 Minutes, 57 Seconds West, and parallel with the west line of said NW ¼, a distance of 166.75 feet to the point of beginning.

Containing 0.14 acres, more or less.

The purpose of this easement is to construct, install, and thereafter use, operate, inspect, repair, maintain two (2) drainage culverts confined to the area in Paragraph 2 above and shown on the map labeled Exhibit "A".

Except as herein granted, the Nebraska Game & Parks Commission shall continue to have full use and enjoyment of the property.

The temporary construction easement shall run from the date of this document until midnight January 1, 2020.

Dated this ____ Day of _____, 20__

James Douglas, Director
Nebraska Game and Parks Commission

County of Lancaster)
)
State of Nebraska)

Before me, Notary Public, personally came Jim Douglas, known to me to be the Director of the Nebraska Game & Parks Commission; and the identical person who signed the foregoing instrument and acknowledge the execution thereof to be his/her voluntary act and deed and the voluntary act and deed of said Nebraska Game & Parks Commission.

WITNESS my hand and notarial seal this ____ day of _____, 201__.

Notary Signature

UTILITY EASEMENT

In consideration of One Dollar and Other Valuable Consideration, the undersigned, being the owner of the property described herein, hereby grants unto Lancaster County, a governmental subdivision of the State of Nebraska, a utility easement over the following described real estate:

A part of Lot 7, Irregular Tracts, located in the NW ¼ of Section 36, Township 8 North, Range 7 East of the 6th Principal Meridian, Lancaster County, Nebraska, more particularly described as follows:

Referring to the Northwest Corner of said NW ¼; thence with an assumed bearing of South 00 Degrees, 31 Minutes, 57 Seconds East, with the west line of said NW ¼, a distance of 33.00 feet to a point; thence North 89 Degrees, 53 Minutes, 50 Seconds East, a distance of 33.00 feet to the point of beginning; thence continuing along the same aforesaid bearing of North 89 Degrees, 53 Minutes, 50 Seconds East, and parallel with the north line of said NW ¼, a distance of 67.00 feet to a point; thence South 16 Degrees, 15 Minutes, 59 Seconds West, a distance of 69.20 feet to a point; thence South 24 Degrees, 38 Minutes, 28 Seconds West, a distance of 110.49 feet to a point, said point being located 33.00 feet east of, as measured perpendicular to, the west line of said NW ¼; thence North 00 Degrees, 31 Minutes, 57 Seconds West, and parallel with the west line of said NW ¼, a distance of 166.75 feet to the point of beginning.

Containing 0.14 acres, more or less.

The purpose of this easement is to construct, install, and thereafter use, operate, inspect, repair, maintain two (2) drainage culverts confined to the area in paragraph 2 above and shown on the map labeled Exhibit "A".

Except as herein granted, the Nebraska Game & Parks Commission shall continue to have full use and enjoyment of the property.

Dated this ____ Day of _____, 20__

James Douglas, Director
Nebraska Game and Parks Commission

County of Lancaster)
)
State of Nebraska)

Before me, Notary Public, personally came Jim Douglas, known to me to be the Director of the Nebraska Game & Parks Commission; and the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed and the voluntary act and deed of said Nebraska Game & Parks Commission.

WITNESS my hand and notarial seal this ____ day of _____, 201__.

Notary Signature

EXHIBIT A

