

**ACCESS AGREEMENT
REGARDING WILDERNESS PARK UNDERCROSSINGS**

This Access Agreement (“Agreement”) is made and entered as of the date fully executed below by and between the City of Lincoln, Nebraska, a municipal corporation and political subdivision of the State of Nebraska (“City”) and the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska (“County”).

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 *et seq.* (Reissue 2012), permits units of local government in the State of Nebraska to cooperate with other localities on the basis of mutual advantage and thereby provide services in a manner that will best serve local communities.

WHEREAS, City and County both have responsibility for the mobility and quality of life of Lincoln and Lancaster County residents.

WHEREAS, general supervision and control of the public roads of County is vested in the Board of County Commissioners pursuant to Neb. Rev. Stat. § 39-1402. County has responsibility for providing road improvement and maintenance to roads and bridges located in the County right-of-way.

WHEREAS, City, along with other private and governmental organizations, has responsibility for the development of the commuter and recreational trail system in the County.

WHEREAS, City and County have cooperated on projects in the past for the public good. In particular, City and County have cooperated in the management and development of Wilderness Park through the 1966 agreement, approved by City Executive Order No. 3965 on August 1, 1966 recorded in Book 1, Page 321, establishing the park, and through the 1985 interlocal agreement, approved by City Resolution A-69935 on Feb 25, 1985 and by County Resolution C-2772 on March 19, 1985, further defining the duties and responsibilities of the parties.

WHEREAS, the aforementioned interlocal agreements defined the roles and responsibilities of City and County for the growth, development and maintenance of Wilderness Park, specifically designating the responsibility for maintenance of the park to the City Parks and Recreation Department.

WHEREAS, the earthen trails in Wilderness Park were planned and constructed by City and volunteers in the 1970s and 1980s, and have been maintained by City since that time.

WHEREAS, these trails in Wilderness Park were designated as part of the National Recreational Trails Program in 1977.

WHEREAS, at several points roadways cross Wilderness Park and intersect with trails. When this occurs, grade separated crossings of roadways provide the safest condition for both trail users and drivers on the roadways.

WHEREAS, Wilderness Park has an earthen pedestrian and bicycle trail under Pioneers Boulevard named County Bridge C005514015 (O-175) on the east bank of Salt Creek, and under Old Cheney Road named County Bridge C005514210 (O-37) on both the west and east banks (collectively “the Bridges”). While the undercrossing of County Bridge C005514015 (O-175) appears to have been in the engineered drawings of that bridge, the crossings under County Bridge C005514210 (O-37) do not appear in any drawings. A depiction of the undercrossings under the Bridges that currently exist are attached hereto as Exhibit A and Exhibit B and incorporated herein by this reference. An aerial of the location of the Bridges is attached hereto as Exhibit C and incorporated herein by this reference.

WHEREAS, it is unclear when the trails began accessing the area underneath Bridges at Pioneers Boulevard and Old Cheney Road; however, these routes have been reflected in park trail maps for at least twenty (20) years.

WHEREAS, the existing interlocal agreement does not address the use and maintenance of these undercrossings, which are beyond the boundary of Wilderness Park and are in the public way, nor do the plans for the Old Cheney Road County Bridge C005514210 (O-37) include a platform for the trail undercrossings.

NOW, THEREFORE, City and County wish to enter into an agreement to define the roles and responsibilities of each and to allow for the safe public use of grade separated undercrossings on the east bank of Salt Creek at Pioneers Boulevard and on both banks of Salt Creek at Old Cheney Road under the Bridges, in consideration of the mutual covenants contained herein. It is agreed between the parties as follows:

1. Term and Termination. This Agreement shall be in full force and effect from the date of execution until termination. Any party has the right to terminate this Agreement if the other party fails to perform as required in this Agreement. Termination rights under this section may be exercised only after the non-breaching party notifies the breaching party of the failure to perform in writing, giving the breaching party thirty (30) days to cure any breach to prevent termination.

Within the thirty (30) day cure period, the parties may mutually agree to an extension of the period to cure in the event such failure cannot, in the exercise of reasonable diligence, reasonably be cured within such thirty (30) day period. The parties may also mutually agree to terminate this Agreement. If the aforementioned interlocal agreements are terminated or abandoned, then this Agreement may be terminated after review and mutual agreement by the parties.

2. Access Granted by County. County agrees to allow public access for non-motorized vehicles, pedestrians, and equestrian trail users on the earthen trails on the undercrossings established under the Bridges. County agrees to allow maintenance access for City employees and contractors employed by City. The County Engineer will notify City no less than five (5) business days prior to conducting any construction or maintenance on the Bridges that may require the temporary closure of the trail undercrossings in order to allow City to inform trail users. The County Engineer will also provide profile plans showing the trail undercrossings under the Bridges so that City may reference those plans and ensure that the profile is being maintained as designed. For the Pioneers Boulevard County Bridge C005514015 (O-175), the profile to be maintained by the City under the bridge is depicted in Exhibit A. For the Old Cheney Road County Bridge C005514210 (O-37), the profile to be maintained by the City under the bridge is depicted in Exhibit B.

3. Maintenance by City. City accepts responsibility for maintenance of the trail surface, including any repairs to the surface that may be required as part of normal maintenance. Maintenance may include removal of trash and debris, smoothing of trail surface, and removal of vegetation. City agrees not to conduct any maintenance activity that may change the profile of the land under the Bridges without first consulting with and obtaining permission from the County Engineer. City agrees no surface material, rock, soil, concrete or other material placed on the bank or under the Bridges will be removed by City employees or contractors without first consulting with and obtaining permission from the County Engineer. City agrees no surface material, rock, soil, concrete, or other material will be deposited on the bank or under the Bridges by City employees or contractors employed by City without first consulting with and obtaining permission from the County Engineer. City will be responsible for the cost of any improvements or repairs that are the direct result of the use of the embankment for the trail undercrossings. City shall verify that the lateral extents of the trail and relative clearance ranges are in conformance with this Agreement and with the Exhibits provided by the County herein upon completion of any said

repair or maintenance activity performed by City or its contractors. City shall be responsible for installing and maintaining signs that shall be affixed to the Bridges directly above the trails from both sides notifying equestrian users to dismount for travel under the Bridges as a warning of the low profile under the Bridges.

4. Mutual Obligations. Each party agrees not to interfere with the activities of the other party as provided herein, nor undertake any action which would endanger human health or the environment. In the event of any interference or damage, the party with knowledge shall inform the other party within three (3) days of the knowledge of the occurrence. The parties agree to conduct all activities in compliance with applicable federal, state, and local laws, rules and regulations, including obtaining any necessary permits, approvals, or notifications.

5. Indemnification. To the fullest extent permitted by law, each party shall indemnify, defend and hold harmless every other party, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of Service Provider, or anyone for whose acts any of them may be liable. 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. The parties do not waive their governmental immunity by entering into this Agreement and fully retain all immunities and defenses provided by law. This section survives any termination of this Agreement.

6. Equal Employment Opportunity. In connection with the carrying out of the activities provided herein, none of the parties shall discriminate against any bidder, employee, applicant for employment, or any other person because of race, color, religion, sex, disability, national origin, age, marital status or receipt of public assistance.

7. Integration, Amendments, Assignment, Severability, Nebraska Law. This Agreement represents the entire agreement between the parties and all prior negotiations and

representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party. Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement and invalidity of any section of this Agreement shall not invalidate any other section thereof.

EXECUTED this _____ day of _____, 20__, by LANCASTER COUNTY, NEBRASKA.

By: _____
Chair
Lancaster County Board of Commissioners

APPROVED AS TO FORM:

County Attorney's Office

EXECUTED this ^{4th}~~20~~ day of March, 2019, by CITY OF LINCOLN, NEBRASKA.

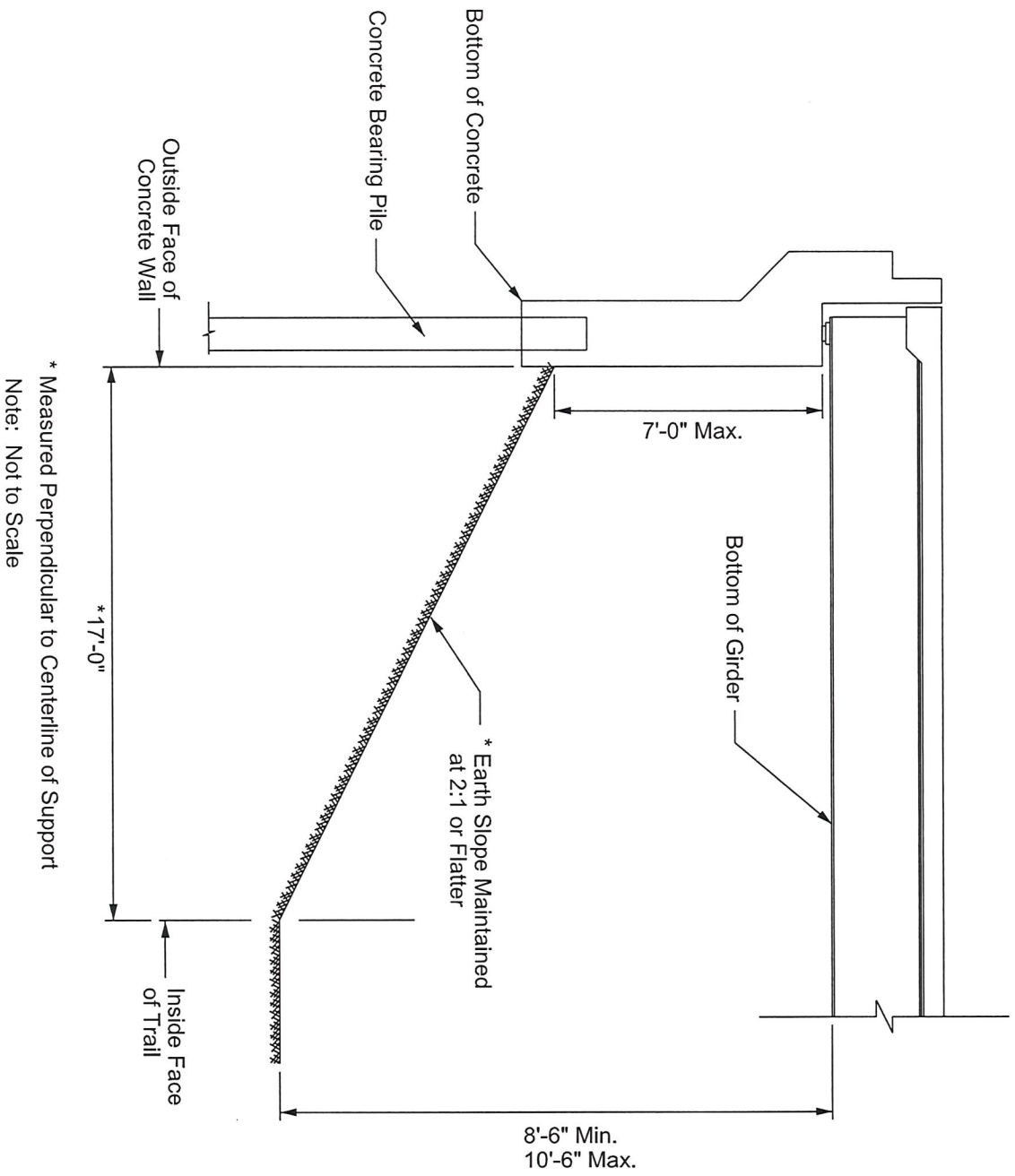
By: 
Mayor, City of Lincoln

APPROVED AS TO FORM:



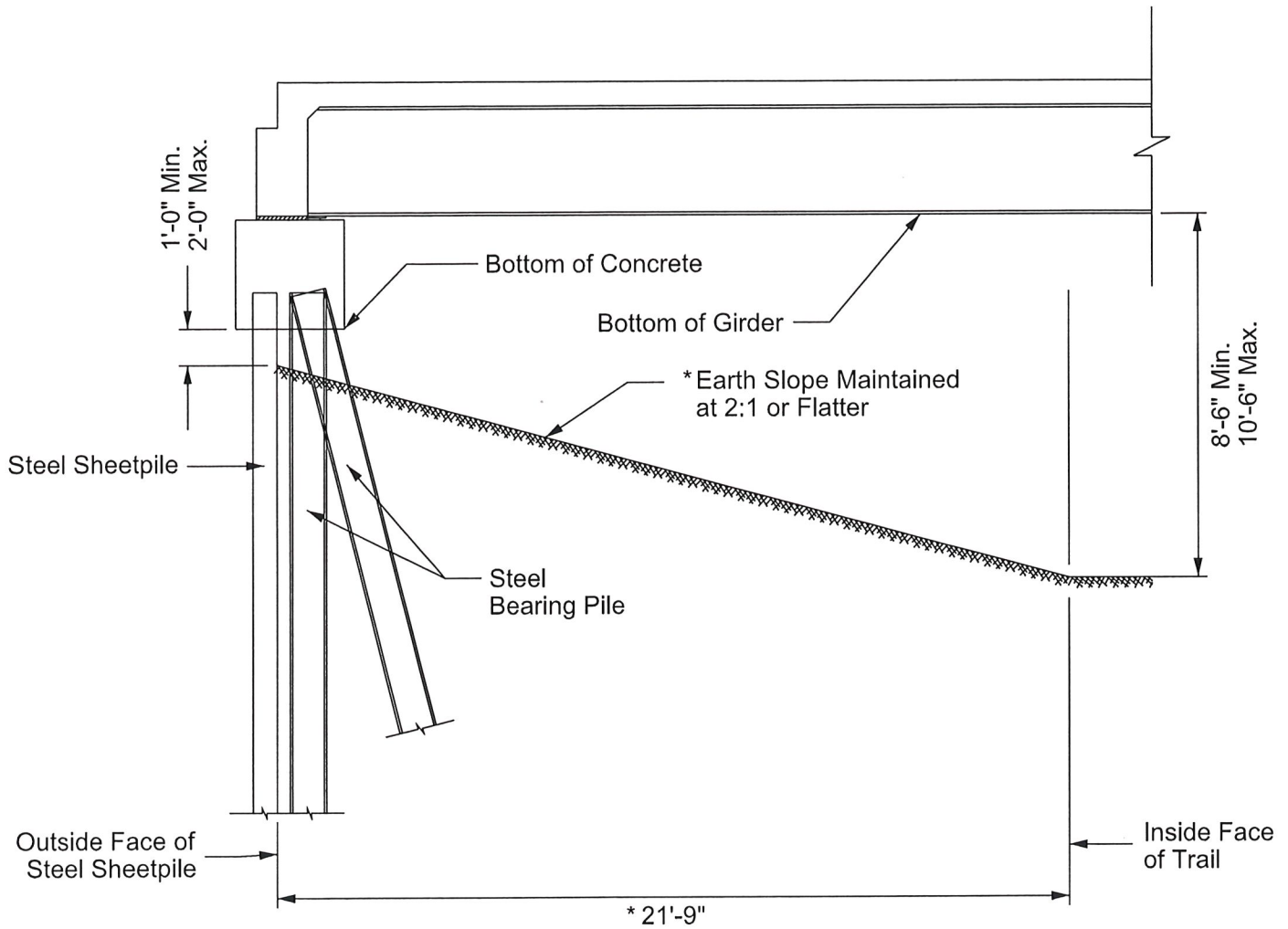
City Attorney's Office

Exhibit "A"



O-175
(West Pioneers Boulevard)

Exhibit "B"



* Measured Perpendicular to Centerline of Support

Note: Not to Scale

O-37

(West Old Cheney)

Exhibit "C"



Exhibit "C"

