

RECEIVED

DEC 03 2009

LANCASTER COUNTY
CLERK

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

IN THE MATTER OF INSTITUTING)
EMINENT DOMAIN PROCEEDINGS)
Project No. C55-G-408 (3))
Tract No. 2)

RESOLUTION NO. R-09-0100

WHEREAS, pursuant to the laws of the State of Nebraska, the County of Lancaster is charged with the duty of constructing, maintaining and improving county roads and bridges within the county, and is authorized to exercise the power of eminent domain in conjunction with its performance of such duties; and

WHEREAS, the County has concluded that it is necessary for the safety and convenience of the traveling public to improve Arbor Road between North 56th Street and North 70th Street which consists of road building and grading; and

WHEREAS, certain right-of-way and easements, more particularly described and shown in Exhibit A and B, attached hereto and hereby incorporated by this reference, must be acquired in order to successfully improve Arbor Road between North 56th Street and North 70th Street; and

WHEREAS, the County has contacted Wolfe Farms, LLC, which is the record owner of said property, and all persons having or claiming any interest in said property, real names unknown, and the County has made good faith offers to purchase the needed right-of-way and easements shown and described in Exhibits A and B, attached hereto; and

WHEREAS, the County has made reasonable efforts to induce said company and individuals to accept its offers, as shown in Summaries of Contacts attached as Exhibit C, but has been unable to reach an agreement to purchase said property.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of

Lancaster County, Nebraska, that eminent domain proceedings be instituted in the County Court of Lancaster County, Nebraska, in order to acquire the needed right-of-way and easements shown and described on Exhibits A and B attached, from the above-named parties.

DATED this 8th day of December, 2009, at the County-City Building, Lincoln, Lancaster County, Nebraska.

BY THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

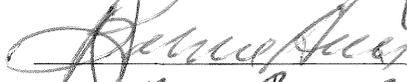
APPROVED AS TO FORM
THIS 8 day of
December, 2009.



for GARY E. LACEY
County Attorney

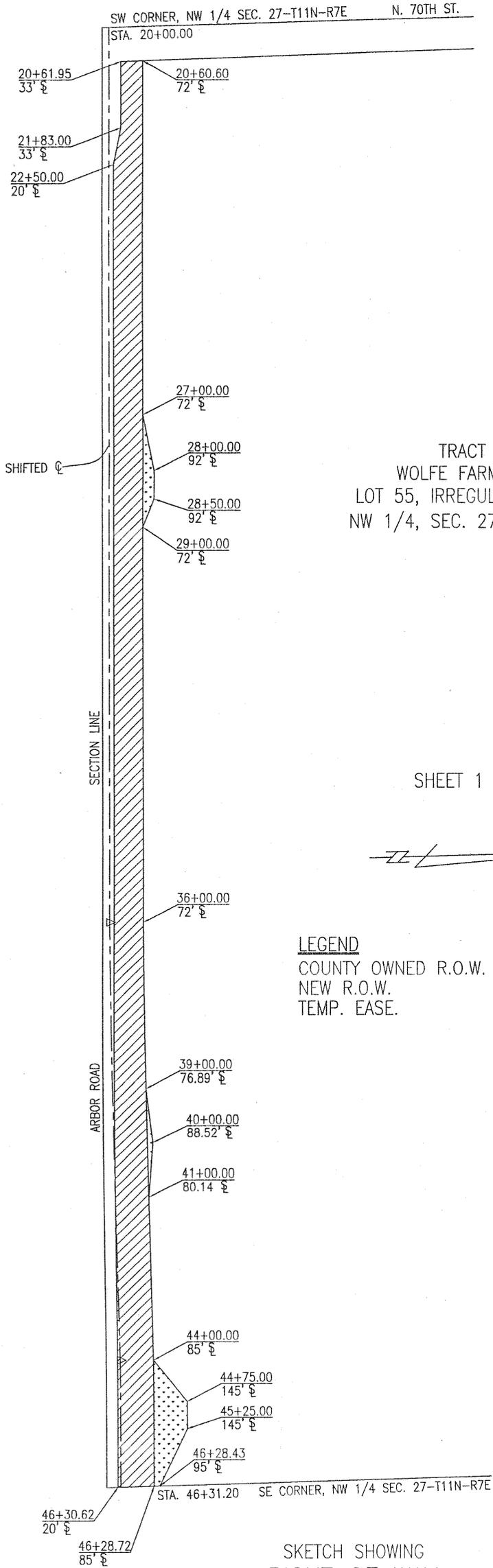
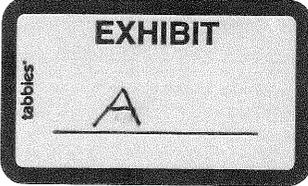








Hudkins Absent



TRACT 2
 WOLFE FARMS LLC
 LOT 55, IRREGULAR TRACTS,
 NW 1/4, SEC. 27-T11N-R7E

SHEET 1 OF 1

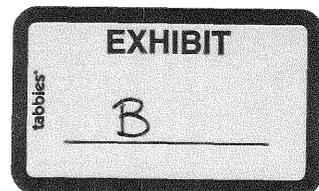


LEGEND
 COUNTY OWNED R.O.W. [white box]
 NEW R.O.W. [hatched box] 3.21 AC.
 TEMP. EASE. [dotted box] 0.28 AC.

SKETCH SHOWING
 RIGHT OF WAY
 TO BE ACQUIRED FROM LAND OWNED BY:
 Wolfe Farms LLC

TRACT NO. 2
 PROJECT NO. C55-G-408(3)

LANCASTER COUNTY ENGR. DEPT.
 LINCOLN, NEBRASKA



Project No. C55-G-408 (3)
Arbor Road (N 70th Street – East)

Tract 2

Fee Simple

From Sta. 20+60.60	to Sta. 36+00	a strip 72 ft. wide	Left side
From Sta. 36+00	to Sta. 39+00	strip 72-76.89 ft. wide	Left side
From Sta. 39+00	to Sta. 41+00	a strip 76.89-80.14 ft	Left side
From Sta. 41+00	to Sta. 44+00	a strip 80.14-85 ft wide	Left side
From Sta. 44+00	to Sta. 46+28.72	a strip 85 ft wide	Left side

A part of Lot 55, Irregular Tracts, located in the NW $\frac{1}{4}$, of Section 27, Township 11 North, Range 7 East of the 6th Principal Meridian, Lancaster County, Nebraska, more particularly described as follows:

Referring to the southwest corner of said NW $\frac{1}{4}$; thence northerly with the west line of said NW $\frac{1}{4}$, to a point, said point being located 33.00 feet north of as measured perpendicular to the south line of said NW $\frac{1}{4}$; thence easterly 33.00 feet north of and parallel with the south line of said NW $\frac{1}{4}$, to the southwest corner of said Lot 55, Irregular Tracts, said point being located 62.85 feet east of as measured perpendicular to the west line of said NW $\frac{1}{4}$, said point also being the point of beginning; thence easterly with the south line of said Lot 55, Irregular Tracts, 33.00 feet north of and parallel with the south line of said NW $\frac{1}{4}$, a distance of 120.15 feet to a point; thence southeasterly with the south line of said Lot 55, Irregular Tracts, to a point, said point being located 20.00 feet north of as measured perpendicular to the south line of said NW $\frac{1}{4}$, said point also being located 250.00 feet east of the southwest corner of said NW $\frac{1}{4}$, as measured with the south line of said NW $\frac{1}{4}$; thence easterly with the south line of said Lot 55, Irregular Tracts, 20.00 feet north of and parallel with the south line of said NW $\frac{1}{4}$, a distance of 2380.62 feet to a point of intersection with the east line of said NW $\frac{1}{4}$; thence northerly with the east line of said NW $\frac{1}{4}$, to a point, said point being located 85.00 feet north of as measured perpendicular to the south line of said NW $\frac{1}{4}$; thence westerly 85.00 feet north of and parallel with the south line of said NW $\frac{1}{4}$, to a point, said point being located 231.20 feet west of the southeast corner of said NW $\frac{1}{4}$, as measured with the south line of said NW $\frac{1}{4}$; thence southwesterly to a point, said point being located 72.00 feet north of as measured perpendicular to the south line of said NW $\frac{1}{4}$, said point also being located 1031.20 feet west of the southeast corner of said NW $\frac{1}{4}$, as measured with the south line of said NW $\frac{1}{4}$; thence westerly 72.00 feet north of and parallel with the south line of said NW $\frac{1}{4}$, a distance of 1539.40 feet to a point of intersection with the west line of said Lot 55, Irregular Tracts; thence southerly with the west line of said Lot 55, Irregular Tracts, to the point of beginning.

Containing 3.21 acres, more or less.

Temporary Easement

From Sta. 27+00	to Sta. 28+00	strip 72-92 ft. wide	Left side
From Sta. 28+00	to Sta. 28+50	a strip 92 ft. wide	Left side
From Sta. 28+50	to Sta. 29+00	a strip 92-72 ft. wide	Left side

A part of Lot 55, Irregular Tracts, located in the NW $\frac{1}{4}$, of Section 27, Township 11 North, Range 7 East of the 6th Principal Meridian, Lancaster County, Nebraska, more particularly described as follows:

Referring to the southwest corner of said NW $\frac{1}{4}$; thence easterly with the south line of said NW $\frac{1}{4}$, a distance of 700.00 feet to a point; thence northerly perpendicular to the south line of said NW $\frac{1}{4}$, a distance of 72.00 feet to the point of beginning; thence easterly 72.00 feet north of and parallel with the south line of said NW $\frac{1}{4}$, a distance of 200.00 feet to a point; thence northwesterly to a point, said point being located 92.00 feet north of as measured perpendicular to the south line of said NW $\frac{1}{4}$, said point also being located 850.00 feet east of the southwest corner of said NW $\frac{1}{4}$, as measured with the south line of said NW $\frac{1}{4}$; thence westerly 92.00 feet north of and parallel with the south line of said NW $\frac{1}{4}$, a distance of 50.00 feet to a point; thence southwesterly to the point of beginning.

AND

From Sta. 39+00	to Sta. 40+00	a strip 76.89-88.52 ft.	Left side
From Sta. 40+00	to Sta. 41+00	a strip 88.52-80.14 ft	Left side

Referring to the southeast corner of said NW $\frac{1}{4}$; thence westerly with the south line of said NW $\frac{1}{4}$, a distance of 531.20 feet to a point; thence northerly perpendicular to the south line of said NW $\frac{1}{4}$, a distance of 80.14 feet to the point of beginning; thence westerly to a point, said point being located 76.89 feet north of as measured perpendicular to the south line of said NW $\frac{1}{4}$, said point also being located 731.20 feet west of the southeast corner of said NW $\frac{1}{4}$, as measured with the south line of said NW $\frac{1}{4}$; thence northeasterly to a point, said point being located 88.52 feet north of as measured perpendicular to the south line of said NW $\frac{1}{4}$, said point also being located 631.20 feet west of the southeast corner of said NW $\frac{1}{4}$, as measured with the south line of said NW $\frac{1}{4}$; thence southeasterly to the point of beginning.

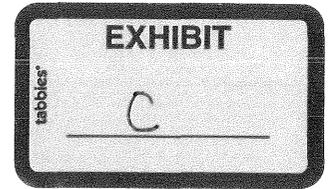
AND

From Sta. 44+00	to Sta. 44+75	a strip 85-145 ft. wide	Left side
From Sta. 44+75	to Sta. 45+25	a strip 145 ft.	Left side
From Sta. 45+25	to Sta. 46+28.43	a strip 145-95 ft	Left side

Referring to the southeast corner of said NW $\frac{1}{4}$; thence northerly with the east line of said NW $\frac{1}{4}$, to a point, said point being located 85.00 feet north of as

measured perpendicular to the south line of said NW $\frac{1}{4}$, said point also being the point of beginning; thence continuing northerly with the east line of said NW $\frac{1}{4}$, to a point, said point being located 95.00 feet north of as measured perpendicular to the south line of said NW $\frac{1}{4}$; thence northwesterly to a point, said point being located 145.00 feet north of as measured perpendicular to the south line of said NW $\frac{1}{4}$, said point also being located 106.20 feet west of the southeast corner of said NW $\frac{1}{4}$, as measured with the south line of said NW $\frac{1}{4}$; thence westerly 145.00 feet north of and parallel with the south line of said NW $\frac{1}{4}$, a distance of 50.00 feet to a point; thence southwestly to a point, said point being located 85.00 feet north of as measured perpendicular to the south line of said NW $\frac{1}{4}$, said point also being located 231.20 feet west of the southeast corner of said NW $\frac{1}{4}$, as measured with the south line of said NW $\frac{1}{4}$; thence easterly 85.00 feet north of and parallel with the south line of said NW $\frac{1}{4}$, to the point of beginning.

Containing 0.28 acres, more or less.



COPY

October 26, 2009

CERTIFIED MAIL

Wolfe Farms, LLC
8300 North 70th Street
Lincoln, NE 68521

RE: Project No. C55-G-408(3)
Arbor Road (N 56th-N 70th)
Tract 2

To Whom It May Concern:

Reference is made to our past offer of compensation for right-of-way required by Lancaster County on the above-mentioned project. Your real estate that is affected is legally described as part of Tract No. 2, consisting of 3.49 acres, more or less exclusive of existing right of ways situated in Lot 55, I.T. of the NW ¼ of Section 27, Township 11 North, Range 7 East, of the 6th Principal Meridian, Lancaster County, Nebraska.

Our last and best offer of compensation for the right-of-way to be acquired is as follows:

Fee Simple	
3.21 acre at \$ 18,000.00/acre	\$ 57,780.00
Remove and Replace Fence (Per Bid)	
Remove existing 4-SBW fence	\$ 792.00
Install Temporary Fence Allowance: Materials/Labor	\$ 4,402.01
Remove 3-SBW Temporary Fence (Use In Place)	\$ 792.00
Replace 4-SBW Permanent Fence: Materials & Labor	\$ 2,154.55
Temporary Easement:	
0.28 acre at \$ 18,000.00 x 25%	\$ 1,260.00
Title Extension Fee	\$ 60.00
Total Compensation	\$ 67,240.56

To date, our negotiator has been unable to arrive at an agreeable settlement. We would appreciate an acceptance of our offer.

However, if you do not make an attempt to contact this office in the near future towards consummating this transaction, we will assume this acquisition will have to be made through the process of Eminent Domain.

Please be assured our only purpose in initiating Eminent Domain proceedings would be to assure ourselves the right-of-way will be available to meet our construction schedule.

In the event it becomes necessary to initiate Eminent Domain proceedings, it would still be possible for you to consummate this transaction, if you so desire, at anytime prior to the holding of the hearing on the proceedings.

A further explanation of the Eminent Domain procedure is enclosed for your information.

If you have any questions, please feel free to contact this office.

Sincerely,

Don R. Thomas
Lancaster County Engineer

Enc.
DRT/JJS

LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT

OWNER: Wolfe Farms, LLC	PROJECT NO.: C55-G-408(3)
ADDRESS: 8400 North 70 th Street Lincoln, NE 68517	TRACT NO.: 2
HOME PHONE: 402	CELL PHONE:
WORK PHONE: 402	E-mail:

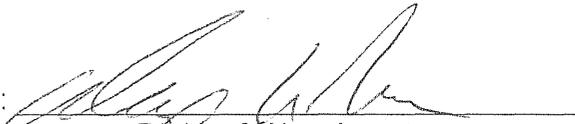
CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
5/06/2009	NA				

Alex Olson

REPORT OF DISCUSSION:

Appointment Letter Sent.

SIGNED:


Right-of-Way Agent

LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT

OWNER: Wolfe Farms, LLC	PROJECT NO.: C55-G-408(3)
ADDRESS: 8400 North 70 th Street Lincoln, NE 68517	TRACT NO.: 2
HOME PHONE: 402	CELL PHONE:
WORK PHONE: 402	E-mail:

CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
8/12/2009	NA				Alex Olson

REPORT OF DISCUSSION:

Second Appointment Letter Sent.

SIGNED: 
Right-of-Way Agent

Home 467-2012

Dave 467-1235

LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT

OWNER: Wolfe Farms, LLC	PROJECT NO.: C55-G-408(3)
ADDRESS: 8400 North 70 th Street Lincoln, NE 68517	TRACT NO.: 2
HOME PHONE: 402-467-2012	CELL PHONE: Dave:402-467-1235
WORK PHONE: 402	E-mail:

CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
8/16/2009	NA				Mrs. Wolfe Alex Olson

REPORT OF DISCUSSION:

Mrs. Wolfe called to set an appointment time. The time was set for 10:00am on the 19th of August 2009, at their place of residence.

SIGNED: _____

Right-of-Way Agent

LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT

OWNER: Wolfe Farms, LLC	PROJECT NO.: C55-G-408(3)
ADDRESS: 8400 North 70 th Street Lincoln, NE 68517	TRACT NO.: 2
HOME PHONE: 402-467-2012	CELL PHONE: Dave:402-467-1235
WORK PHONE:	E-mail:

CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
10/13/2009	NA	NA	NA	NA	Clifford Wolf Alex O.

REPORT OF DISCUSSION:

I called Mr. Wolfe to let him know we had settled with Herbert at \$18,000 and acre. Mr. Wolfe still did not seem satisfied with the amount, and went on and on about being taken in the past by other agencies.

Mr. Wolfe wants to know how much we are offering him per yard for the dirt in the easements. I informed him the contract amount is based on area and is paid by the acre. He then wanted to know the total yardages we are excavating in the temporary easement. I told him I did not have that information but would get it.

I gave Mr. Wolfe my number and asked him to call me when we could all get together and try and finish this out.

After the phone call I spoke with Doug P. and Jim P. about the issue with the dirt on Mr. Wolfe's property. Doug P. said it can be done and would work on figuring out the total yardage of removal from the temporary easement. Jim P. said he would figure the amount of money per yard for the dirt.

Doug P. also stated it would be one way or the other with no going back, meaning if he selects the payment for the yardages of dirt instead of the payment for the area and the payment for the yardage of dirt is less, Mr. Wolfe is then obligate to stay with his choice.

SIGNED:



 Right-of-Way Agent

AMERICAN FENCE CO.

14803 Frontier Rd Omaha, NE 68138 (402) 896-6722 Fax (402) 896-0689 res.sales@americafence.com	3301 N. 35th St. Lincoln, NE 68504 (402) 467-2511 Fax (402) 467-2512 lil@americafence.com	1922 Delaware Ave Des Moines, IA 50317 (515) 265-6100 Fax (515) 265-6108 dm1@americafence.com	2205 E. Hwy. 30 Grand Island, NE 68802 (308) 395-0793 Fax (308) 395-3901 gil@americafence.com	47061 Charlotte Court Sioux Falls, SD 57108 (605) 368-9929 Fax (605) 368-9939 sfl@americafence.com
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Estimate and Proposal for Fence Installation

Date <u>4-9-09</u> Phone <u>402-7-2e12</u> Fax _____		
Customer's Name <u>Wolfe Farms LLC - Clifford Wolfe</u>		
Billing Address <u>8400 N. 70th</u>		
Location of Job <u>70th & Arbor Road</u>		
City <u>Lincoln</u>	State <u>NE</u>	Zip <u>68517</u>
Cell Phone _____	Work Phone _____	Email _____

Specifications for Fencing	
Style of Fence <u>Barb-wire Fence</u>	
Overall Length <u>2500'</u>	Overall Height _____
Posts <u>Wood & metal</u>	Rails _____
Pickets / Fabric <u>Barb-wire</u>	Gates <u>2-24'</u>

DIAGRAM

*remove existing fence line
set up temporary fence for cattle
install 2500' of new fencing w/ 2 gates.
New fence work will be done after arbor road
work is completed.*

432-3529

Notes	
Fence	\$ <u>9895 tax</u>
Permit	\$ <u>included</u>
Sub-Total	\$ _____
Sprinkler Insurance	\$ _____
Dirt Removal	\$ _____
_____	\$ _____
_____	\$ _____
Total	\$ _____

*Included is one trip to set and one trip to build. Additional trips will be billed accordingly.
Plot plan or Legal survey mandatory. All footage is estimated. Final footage may vary and will be billed accordingly.*

Customer assumes full responsibility for the location of property pins, staking of the fence, and any inaccurately placed pins and/or stakes. Customer understands that AFC has staked the fence based on the proposal in the consideration of existing utilities that may not reflect the actual location of customers property. Customer agrees to defend, hold harmless and indemnify American Fence Co. from and against all claims, liabilities and expenses for trespass and other damage or loss arising out of the location of said fence. Customer hereby assumes full responsibility for the damage to any marked and unmarked underground utility, telephone, T.V., cable or sprinkler system pipes. If the customer requests, agrees or allows American Fence Company to locate the fence within 18 inches of any buried utilities; the customer agrees to defend, hold harmless and indemnify American Fence Company from and against all claims, liabilities and expenses as a result of damage to these utilities and related property. If the contract price is not paid when due, the customer agrees to allow American Fence Co. to trespass on to their property and remove the fence at the company's discretion. Furthermore, the customer agrees to indemnify and hold harmless the Company for any damage done to the property as a result of removal of the fence. Customer may not withhold payment as a result of warranty work or punchlists. AFC request 15 days to complete this work. All modifications shall be in writing and shall be affixed to the original bid. This agreement and any subsequent modification/s shall be contingent upon strikes, accidents, shortages or delays beyond the control of American Fence Co. Any time stated for installation is purely estimated. The customer agrees and accepts that AFC will not extend discounts or credits for any delays or be held responsible for interest charges on any payments made by customer. Any changes to the fence due to varying ground conditions are not the responsibility of American Fence Co. Customer to carry all necessary property insurance. This proposal cannot be withdrawn by customer after acceptance of proposal. American Fence Co. has the right to reject any bid. All legal and related fees accrued in an effort to collect on this account for whatever reason will be the responsibility of the customer. By signing this proposal, the customer has completely reviewed and agreed with the prices, specifications and conditions as stated herein. Furthermore, the customer is authorizing American Fence Co. to complete the work. The customer is financially responsible for cancellation fees and costs of special order materials in the event the customer elects to cancel the contract. TERMS: 60% Down. Balance due on date of completion. A service and handling charge of 1.5% per month-18% per annum will apply to delinquent accounts not paid within 5 days of completion.

Authorized Signature: Theron Ahlman Date: 4-9-09

Customer's Signature: _____ Date: _____

Down Payment: Office Use Only	
Date:	_____
Type:	_____
Amount:	_____

NOT RESPONSIBLE FOR SPRINKLER SYSTEMS. ESTIMATE GOOD FOR 15 DAYS.

LANCASTER COUNTY ENGINEERING DEPARTMENT

NEGOTIATOR'S CALL REPORT

Property Owner: Wolfe Farms, LLC
 Address: 8301 North 70th Street
 Lincoln, NE. 68517

Project No. C55-G-408 (3)
 Tract No. 2

Call Date/ Phone #	Time In	Time Out	Amount Offered	Visit Number	Persons Present
10/22/2009	1:00 PM		\$ 67,235.56		Jim Shotkoski, Clifford and David Wolfe

Remarks:

Today the weather was inclement, and I was fairly certain the Owners' would not be able to do any field work. As such, I telephoned Mr. Wolfe and informed him we had received a copy of the bid to remove and replace the fence.

I asked if they would have time to go over the contracts and unresolved issues. A meeting was arranged for later in the day.

The unresolved issues going into the meeting were, to wit:

- The value of the underlying fee value of the land to be acquired;
- The cost to remove and replace the existing fencing along Arbor Road;
- The last issue was whether the County would pay for the dirt to be removed during construction in the Temporary Easement area; and if so, how much?

After meeting with the Owners', the following issues are as yet unresolved, to wit;

- The value of the underlying fee value of the land. The County, based on the appraised value has offered a fee value per acre of \$ 18,000/Acre for the 3.21 Acres to be acquired in Fee Simple. The Owners' want a fee value per acre of \$ 25,000/Acre for this 3.21 Acre, or an increase of \$ 22,470.00. Their rationale is the increased amount is an offset for the increased tax liability for this part taken;
- The cost to remove and replace the existing fencing along Arbor Road. This is resolved. They would like to talk with the person who submitted the bid; however, I do not think there are any major differences;
- The Temporary Easement is unresolved. They want either to be paid for the loss of dirt, or they want the County to stockpile the excavated dirt on-site and they would move the dirt at the end of Construction to a different part of the farm. In addition, they would the Temporary Easements to be shaped so as to be farmed, in the after.

Signed: 
 Negotiator's Signature

10/22/09
 Date

Dyer Fencing

P.O. Box 61
Roca, NE 68430
(402)416-4781

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OCT 19 2009

LANCASTER COUNTY
ENGINEERING DEPT.

Estimate

Date	Estimate #
10/16/2009	83

Name / Address
Lancaster County Right Of Way Alex Olsen 444 Cherry Creek RD. BLDG. C Lincoln, NE 68528

Project

Description	Qty	Cost	Total
Wolfe Farms 70th and Arbor RD. Tear out 1/2 mile 4 wire barbed wire fence and Temp. Replace with 3 strand "Red Brand" Barbed wire. Replacing 2- 16' gates.			
Tear out and removal of existing fence.	2,640	0.30	792.00
Job Materials		2,828.51	2,828.51
Labor to install temp. fence.		1,573.50	1,573.50
Total			\$5,194.01

If you have any questions, feel free to call. Thank you.

Customer Signature _____

Dyer Fencing

P.O. Box 61
Roca, NE 68430
(402)416-4781

RECEIVED

OCT 19 2009

LANCASTER COUNTY
ENGINEERING DEPT.

Estimate

Date	Estimate #
10/16/2009	84

Name / Address

Lancaster County Right Of Way
Alex Olsen
444 Cherry Creek RD.
BLDG. C
Lincoln, NE 68528

			Project
Description	Qty	Cost	Total
Wolfe Farms 70th and Arbor RD. Tear out Temp. fence and replace with 4 strand barbed wire using materials from temp. fence.			
Tear out temp fence.	2,640	0.30	792.00
Job Materials		386.05	386.05
Install 4-wire permanent fence and 2- 16' gates.		1,768.50	1,768.50
Total			\$2,946.55

If you have any questions, feel free to call. Thank you.

Customer Signature _____