



City of Grand Island

Tuesday, November 6, 2018

Council Session

Item G-13

#2018-339 - Approving Agreement Between the City of Grand Island and Indianhead Golf Club, LLC Regarding Sanitary Sewer Assessments

Staff Contact: John Collins

Council Agenda Memo

From: John Collins, Public Works Director

Meeting: November 6, 2018

Subject: Agreement with Indianhead Golf Club, L.L.C. Regarding Sanitary Sewer Assessments at Fairway Crossing at Indianhead Golf Club First Subdivision

Presenter(s): John Collins, Public Works Director

Background

On February 22, 2010, Indianhead Golf Club, Inc., a/k/a Indian Head Golf Club, Inc., caused the platting of Fairway Crossings at Indianhead Golf Club First Subdivision, in the City of Grand Island, (the “Subdivision”) and entered into a Subdivision Agreement with the City of Grand Island (the “City”) for Fairway Crossings at Indianhead Golf Club First Subdivision (the “Subdivision Agreement”). Indianhead Golf Club, L.L.C, a Nebraska limited liability company, hereinafter referred to as “Subdivider,” is the successor in interest to Indianhead Golf Club, Inc., a/k/a Indian Head Golf Club, Inc.

The Subdivision Agreement provided that the Subdivider would install a sanitary sewer lift station and construct a gravity sanitary sewer main for future use from the lift station to the location where a future sanitary sewer main will be located along Husker Highway. The Subdivision Agreement further provided that the property being developed is subject to a proportionate cost share for extending public interceptor sanitary sewer in the future along Husker Highway where it abuts the Subdivision. The owner of each lot in the Subdivision is required to pay their proportionate share of the cost for the Husker Highway interceptor sanitary sewer main at the time of the application for a sanitary sewer service permit.

The City did not construct the Husker Highway Interceptor and sanitary sewer main along Husker Highway. Current City Public Works Department planning contemplates construction of a future interceptor to be constructed on an alternate route to encompass property located south of the Subdivision. However, there are no immediate plans to construct the interceptor project.

The Subdivider completed construction of a sewage force main from the lift station to the existing public sanitary sewer main. However, due at least in part to the uncertainty of the City’s project plans and schedule, the Subdivider did not construct a gravity sanitary

sewer main for future use from the lift station to the location where a future sanitary sewer main will be located along Husker Highway.

Because of the uncertainty of future City sanitary sewer construction projects and the uncertain cost of such projects, the terms of the Subdivision Agreement act as an impediment to the sale of lots within the Subdivision as the owner of each lot in the Subdivision is required to pay their proportionate share of the cost for the Husker Highway interceptor sanitary sewer main at the time of the application for a sanitary sewer service permit, yet the future of the project and the proportionate share is unknown.

Discussion

City administration proposes an agreement between the Subdivider and City by which the Subdivider shall pay \$131,250.00 to the City in lieu of future sanitary sewer assessments levied upon the lots within the Subdivision and, in consideration thereof, City will release all lots within the Subdivision from the requirement of the Subdivision Agreement regarding construction of a gravity sanitary sewer main and the payment of a proportionate share of the cost for the Husker Highway interceptor sanitary sewer main at the time of the application for a sanitary sewer service permit. The payment of \$131,250.00 represents the sum of \$400 per Subdivision lot plus the estimated cost, in current dollars, of constructing an 8-inch sanitary sewer main in a southerly direction from the lift station serving the Subdivision to Husker Highway. The Subdivider will also convey to City a perpetual public utility easement, approved by the City's Public Works Director, for future location of a sanitary sewer main.

Upon City's receipt of the payment and conveyance of the easement the City and Developer will cause to be recorded by the Hall County Register of Deeds an instrument, releasing and discharging the Subdivider and all lots within the Subdivision from the requirements, obligations, liabilities, and duties regarding construction of the sanitary sewer main and payment of assessments.

The agreement further provides that if the Subdivider's undeveloped lands west of the Subdivision are platted and subdivided and sanitary sewer mains and laterals are constructed therein at no expense to City, each lot within any such newly created subdivision shall be subject to a \$400 sanitary sewer main connection fee to be paid to City at the time of the application for a sanitary sewer service permit.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that council approve the agreement with Indianhead Golf Club, L.L.C.

Sample Motion

Move to approve Resolution 2018-339.

Above Space Reserved for Register of Deeds

**AGREEMENT BY AND BETWEEN THE CITY OF GRAND ISLAND
AND
INDIANHEAD GOLF CLUB, L.L.C.**

Whereas, on or about February 22, 2010, Indianhead Golf Club, Inc., a/k/a Indian Head Golf Club, Inc., caused the platting of Fairway Crossings at Indianhead Golf Club First Subdivision, in the City of Grand Island, (the "Subdivision") and entered into a Subdivision Agreement with the City of Grand Island (the "City") for Fairway Crossings at Indianhead Golf Club First Subdivision (the "Subdivision Agreement"); and

Whereas, Indianhead Golf Club, L.L.C, a Nebraska limited liability company, hereinafter referred to as "Subdivider," is successor in interest to Indianhead Golf Club, Inc., a/k/a Indian Head Golf Club, Inc.; and

Whereas, Paragraph 3 of the Subdivision Agreement provided as follows:

Sanitary Sewer. Public sanitary sewer is available to the subdivision and the Subdivider agrees to extend, connect and provide sanitary sewer service to all lots in the subdivision in accordance with plans and specifications approved by the Director of Public Works, and subject to the City's inspection. The Subdivider shall install a sanitary sewer lift station in an easement to be located on property located at the southwest corner of the intersection of Belfry Boulevard and Augusta Parkway. The Subdivider shall construct a sewage force main from said lift station to the existing public sanitary sewer main on Indianhead Road west of Schroeder Avenue. The Subdivider shall construct a

gravity sanitary sewer main in public street right-of-way or in a public utility easement for future use from the lift station to the location where a future sanitary sewer main will be located along Husker Highway. The property being developed is subject to a proportionate cost share for extending public interceptor sanitary sewer in the future along Husker Highway where it abuts the subdivision. The owner of each lot in the subdivision will be required to pay their proportionate share of the cost for the Husker Highway interceptor sanitary sewer main at the time of the application for a sanitary sewer service permit. The sanitary sewer lift station and sewage force main shall be built in accordance with plans and specifications approved by the Director of Public Works, and subject to the City's inspection. The City shall assume ownership and operation and maintenance of said sewer lift station and force main upon acceptance by the Department of Public Works.

The Subdivider waives the right to protest the creation of any future sanitary sewer district within or abutting the subdivision;
and

Whereas, the above-mentioned Husker Highway Interceptor and sanitary sewer main along Husker Highway has not been constructed by City. Current City Public Works Department planning contemplates construction of a future interceptor constructed on an alternate route to encompass property located south of the Subdivision; and

Whereas, Subdivider completed construction of a sewage force main from the lift station to the existing public sanitary sewer main on Indianhead Road west of Schroeder Avenue; Subdivider did not construct a gravity sanitary sewer main in public street right-of-way or in a public utility easement for future use from the lift station to the location where a future sanitary sewer main will be located along Husker Highway nor has Subdivider provided an easement for a gravity sanitary sewer main for future use from the lift station to the location where a future sanitary sewer main would be located along Husker Highway; and

Whereas, on December 6, 2011, City's Mayor and Council adopted Resolution 2011-353 to provide for amendment of the Subdivision Agreement however the proposed Amended Subdivision Agreement was not approved and executed by all necessary parties; and

Whereas, due to the uncertainty of future City sanitary sewer construction projects and the uncertain cost of such projects, the following provisions of Paragraph 3 of the Subdivision Agreement is an impediment to the sale of lots within the subdivision, to wit: "The property being developed is subject to a proportionate cost share for extending public interceptor sanitary sewer in the future along Husker Highway where it abuts the subdivision. The owner of each lot in the

subdivision will be required to pay their proportionate share of the cost for the Husker Highway interceptor sanitary sewer main at the time of the application for a sanitary sewer service permit”; and

Whereas, Subdivider and City desire to enter into an agreement whereby Subdivider shall pay a fixed amount to the City in lieu of future sanitary sewer assessments levied upon lots within the subdivision and, in consideration thereof, City will release all lots within the Subdivision from the following requirement of the Subdivision Agreement, to wit: *“The Subdivider shall construct a gravity sanitary sewer main in public street right-of-way or in a public utility easement for future use from the lift station to the location where a future sanitary sewer main will be located along Husker Highway. The property being developed is subject to a proportionate cost share for extending public interceptor sanitary sewer in the future along Husker Highway where it abuts the subdivision. The owner of each lot in the subdivision will be required to pay their proportionate share of the cost for the Husker Highway interceptor sanitary sewer main at the time of the application for a sanitary sewer service permit.”*

Now, therefore, City and Subdivider agree as follows:

1. The above recitals are incorporated into and made a part of this agreement.
2. Subdivider shall pay to City \$131,250.00 representing the sum of \$400 per subdivision lot plus the estimated cost, in current dollars, of constructing an 8 inch sanitary sewer main in a southerly direction from the lift station serving the Subdivision to Husker Highway.
3. Subdivider shall convey to City a perpetual public utility easement, approved by the City’s Public Works Director, upon the area as described and depicted in Exhibit A, attached hereto, or upon such other area as mutually agreed by Subdivider and City’s Public Works Director.
4. Upon City’s receipt of the payment described in Paragraph 2, above, and conveyance to the City of an easement as described in Paragraph 3, above, City shall cause to be recorded by the Hall County Register of Deeds an instrument, in a form approved by the Subdivider and city attorney, releasing and discharging the Subdivider and all lots within the Subdivision from the requirements, obligations, liabilities, and duties imposed by that provision of the Subdivision Agreement which states: *“The Subdivider shall construct a gravity sanitary sewer main in public street right-of-way or in a public utility easement for future use from the lift station to the location where a future sanitary sewer main will be located along Husker Highway. The property being developed is subject to a proportionate cost share for extending public interceptor sanitary sewer in the future along Husker Highway where it abuts the*

subdivision. The owner of each lot in the subdivision will be required to pay their proportionate share of the cost for the Husker Highway interceptor sanitary sewer main at the time of the application for a sanitary sewer service permit."

5. In the event the lands or any part thereof as described in Exhibit B attached hereto are platted and subdivided and sanitary sewer mains and laterals are constructed therein at no expense to City, each lot within any such subdivision shall be subject to a \$400 sanitary sewer main connection fee to be paid to City at the time of the application for a sanitary sewer service permit. Provided, however, if sanitary sewer mains, laterals, or other sanitary sewer installations are constructed by the City upon or within the lands described in Exhibit B through creation of a sanitary sewer district, in addition to the \$400 per lot sanitary sewer main connection fee to be paid to City at the time of the application for a sanitary sewer service permit lands within such district shall be subject to additional charges, fees or special assessments in proportion to the costs of the sanitary sewer project.
6. A duplicate original of this Agreement shall be presented to the Hall County Register of Deeds for recording and indexing with respect to the property described in Exhibit B.
7. The Subdivider shall continue to be bound by the terms of the Subdivision Agreement as amended, except as specifically set forth above.

Dated November __, 2018.

INDIANHEAD GOLF CLUB, L.L.C.,
a Nebraska limited liability company

By: JH HOLDINGS, INC., a Nebraska Corporation
Managing Member

By: 
Jack Henry, President

CITY OF GRAND ISLAND

By: _____
Jeremy L. Jensen, Mayor

CITY OF GRAND ISLAND/
INDIANHEAD GOLF CLUB, L.L.C.

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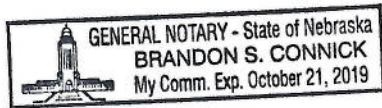
Attest:

RaNae Edwards, City Clerk

STATE OF NEBRASKA)
) ss.
COUNTY OF HALL)

The foregoing Document was acknowledged before me this 31st day of October, 2018, by Jack Henry, President of JH Holdings, Inc., Managing Member of Indianhead Golf Club, L.L.C., a Nebraska limited liability company, on behalf of the company.

(SEAL)



Brandon S. Connick
Notary Public

My Commission Expires: October 21, 2019

STATE OF NEBRASKA)
) ss.
COUNTY OF HALL)

The foregoing Document was acknowledged before me this _____ day of November, 2018, by Jeremy L. Jensen, Mayor of the City of Grand Island and RaNae Edwards, City Clerk of the City of Grand Island.

(SEAL)

Notary Public

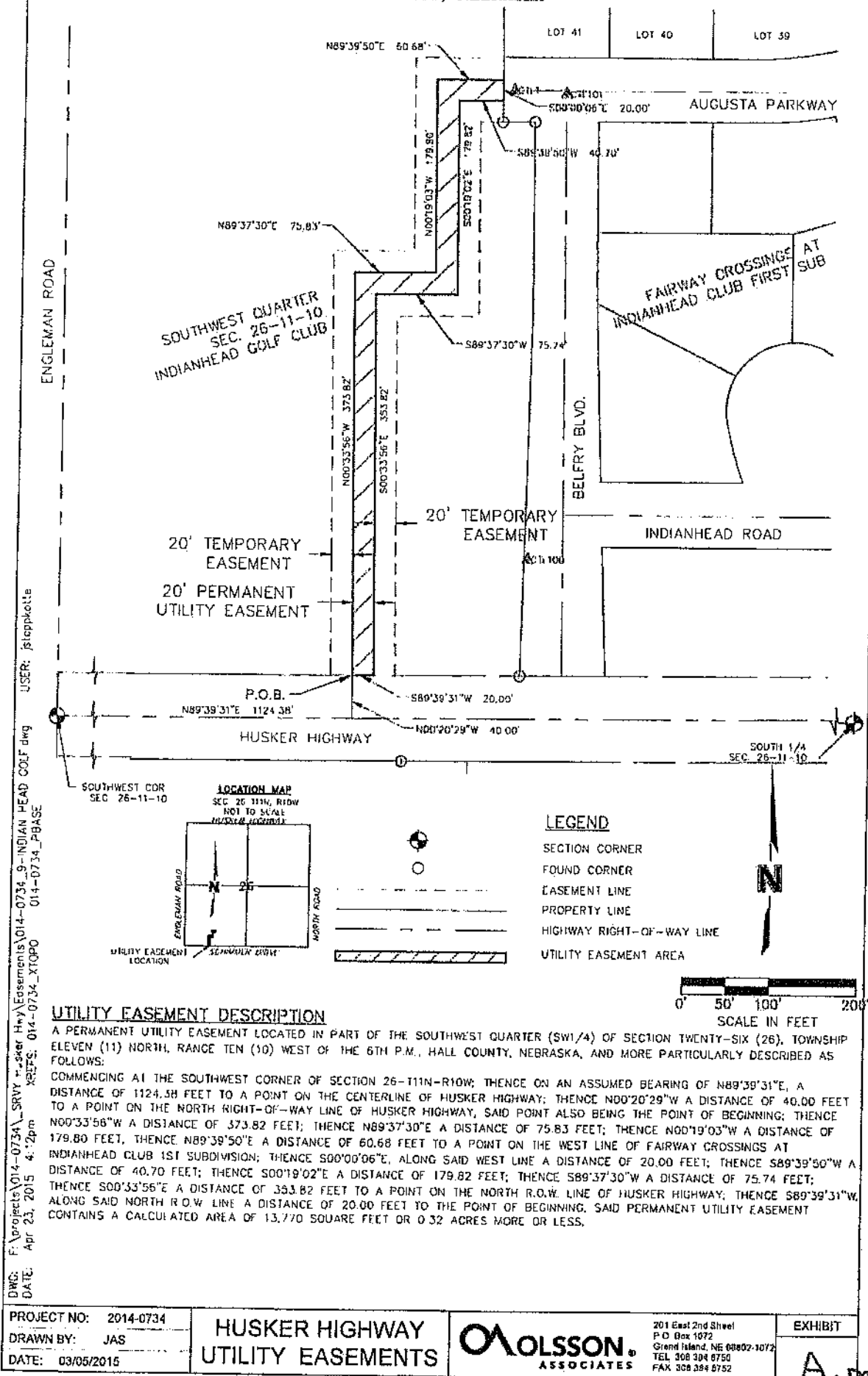
My Commission Expires: _____

Exhibit A

See Attached.

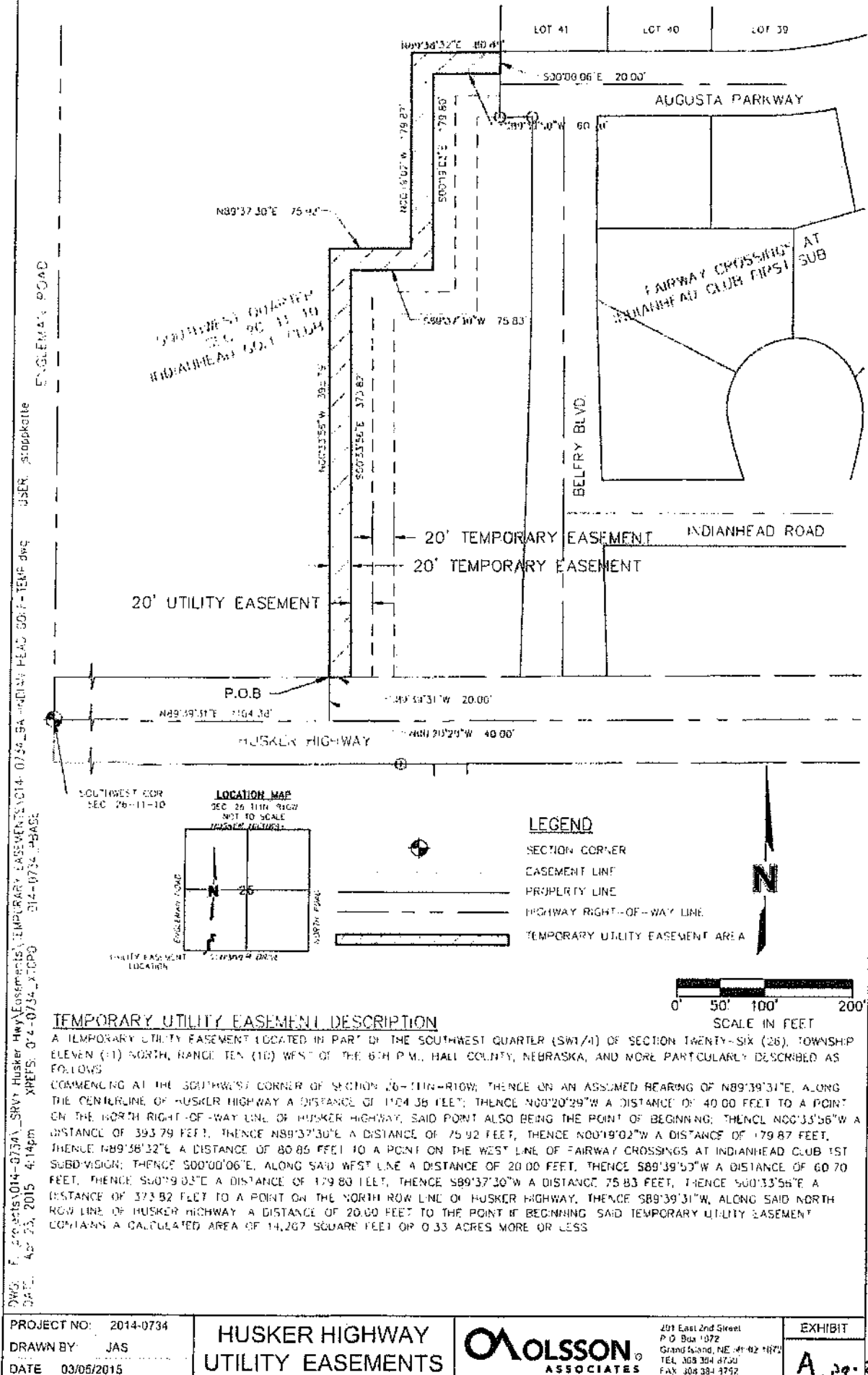
UTILITY EASEMENT

HALL COUNTY, NEBRASKA



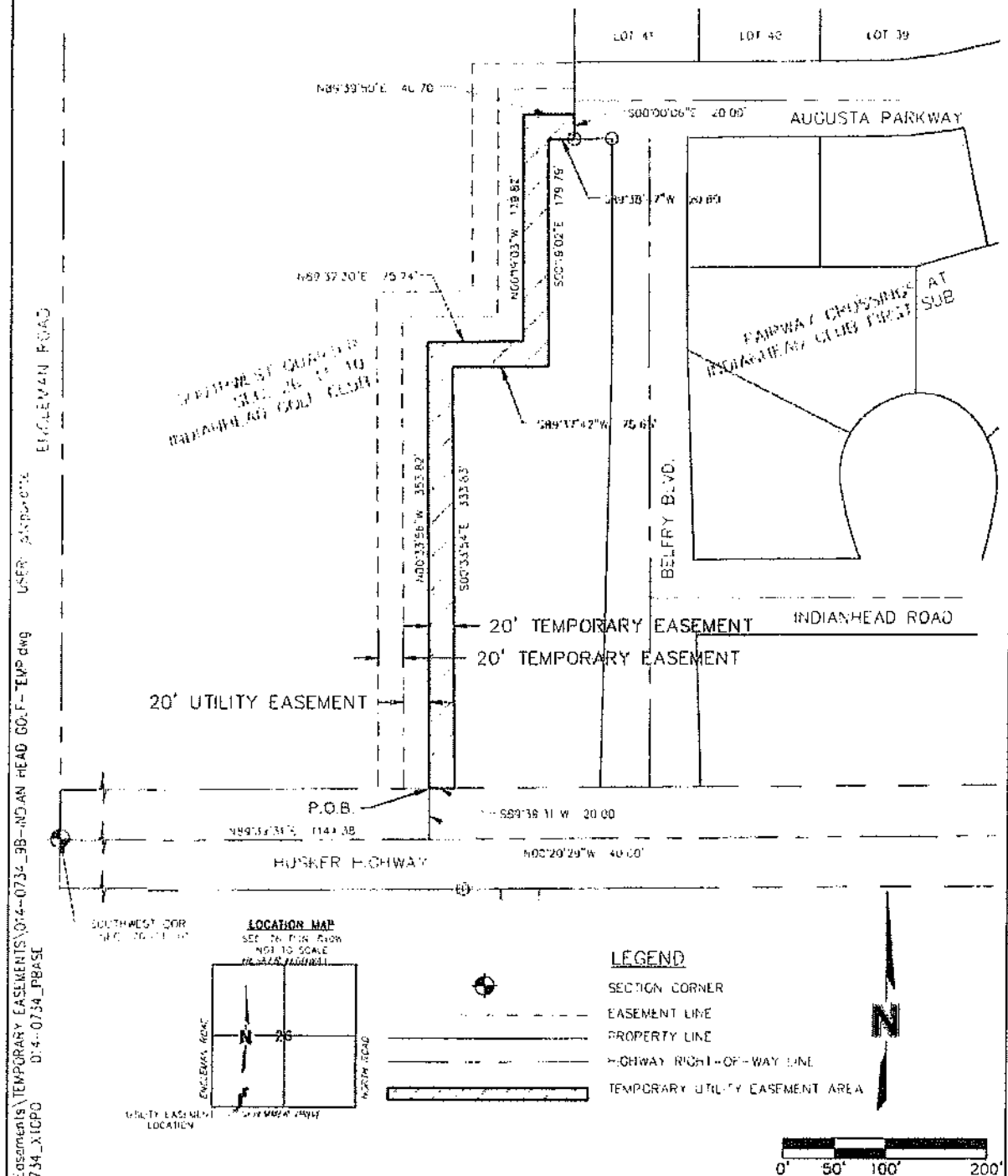
TEMPORARY UTILITY EASEMENT

HALL COUNTY, NEBRASKA



TEMPORARY UTILITY EASEMENT

HALL COUNTY, NEBRASKA



TEMPORARY UTILITY EASEMENT DESCRIPTION

A TEMPORARY UTILITY EASEMENT LOCATED IN PART OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION TWENTY-SIX (26), TOWNSHIP ELEVEN (11) NORTH, RANGE TEN (10) WEST OF THE 6TH P.M., HALL COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 26, T11N, R10W, THENCE ON AN ASSUMED BEARING OF N89°39'31"E, ALONG THE CENTERLINE OF HUSKER HIGHWAY A DISTANCE OF 1144.38 FEET, THENCE N06°20'29"W A DISTANCE OF 40.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF HUSKER HIGHWAY, SAID POINT ALSO BEING THE POINT OF BEGINNING, THENCE N00°33'56"W A DISTANCE OF 333.82 FEET, THENCE N89°37'30"E A DISTANCE OF 75.74 FEET, THENCE N00°10'03"W A DISTANCE OF 179.82 FEET, THENCE S89°39'50"E A DISTANCE OF 40.70 FEET TO A POINT ON THE WEST LINE OF FAIRWAY CROSSINGS AT INDIANHEAD CLUB 1ST SUBDIVISION, THENCE S00°00'00"E, ALONG SAID WEST LINE A DISTANCE OF 20.00 FEET, THENCE S89°38'47"W A DISTANCE OF 20.60 FEET, THENCE S00°16'27"E A DISTANCE OF 179.79 FEET, THENCE S89°37'42"W A DISTANCE OF 75.65 FEET, THENCE S00°33'54"E A DISTANCE OF 333.83 FEET TO A POINT ON THE NORTH ROW LINE OF HUSKER HIGHWAY, THENCE S89°39'31"W, ALONG SAID NORTH ROW LINE OF HUSKER HIGHWAY, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING, SAID TEMPORARY UTILITY EASEMENT CONTAINS A CALCULATED AREA OF 12,700 SQUARE FEET OR 0.29 ACRES MORE OR LESS.

PROJECT NO: 2014-0734
DRAWN BY: JAS
DATE: 03/05/2015

**HUSKER HIGHWAY
UTILITY EASEMENTS**

MOLSSON ASSOCIATES

201 East 2nd Street
P.O. Box 1072
Grand Island, NE 68802-1072
TEL: 308.384.3750
FAX: 308.384.3752

EXHIBIT

A, pg. 3

Exhibit B

Tract No. 1, a part of Section Twenty-six (26), Township Eleven (11) North, Range Ten (10) West of the 6th P.M., Hall County, Nebraska, as surveyed by Charles B. Beer dated March 22, 1990 and recorded on May 15, 1990 as document no. 90-102662 in the records of the Hall County Register of Deeds EXCEPTING lands located within the following subdivisions in the City of Grand Island, Hall County, Nebraska:

Fairway Crossing at Indianhead Golf Club First Subdivision;
Indianhead Third Subdivision; and
Indianhead Sixth Subdivision.

RESOLUTION 2018-339

WHEREAS, the City of Grand Island entered into a Subdivision Agreement with Indianhead Golf Club, Inc., a/k/a Indian Head Golf Club, Inc., concerning the platting of Fairway Crossings at Indianhead Golf Club First Subdivision (the “Subdivision Agreement”); and

WHEREAS, Indianhead Golf Club, L.L.C., is the successor in interest to Indianhead Golf Club, Inc., a/k/a Indian Head Golf Club, Inc., and

WHEREAS, the Subdivision Agreement contemplated construction of a sanitary sewer interceptor main to be constructed along Husker Highway; and

WHEREAS, the City has no immediate or future plans for the construction of a sanitary sewer interceptor main to be constructed along Husker Highway; and

WHEREAS, the terms of the Subdivision Agreement relative to the construction of a sanitary sewer interceptor main along Husker Highway act as an impediment to the sale of lots within the subdivision; and

WHEREAS, the City and Developer desire to enter into an agreement whereby the lots within Fairway Crossings at Indianhead Golf Club First Subdivision will be released from certain obligations and liabilities regarding sanitary sewer facilities as set forth in the Subdivision Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Agreement between the City of Grand Island and Indianhead Golf Club, L.L.C. is approved.

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Adopted by the City Council of the City of Grand Island, Nebraska, November 6, 2018.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 5, 2018	☐ City Attorney