



# City of Grand Island

Tuesday, December 22, 2020

Council Session

## Item I-5

**#2020-352 - Consideration of Approving Settlement Agreement  
with Iowa Trenchless**

Staff Contact: Stacy Nonhof, Interim City Attorney

# **Council Agenda Memo**

**From:** Stacy R. Nonhof, Interim City Attorney  
**Meeting:** December 22, 2020  
**Subject:** Iowa Trenchless Settlement Agreement  
**Presenter(s):** Stacy R. Nonhof

## **Background and Discussion**

On June 10, 2014, by Resolution No. 2014-163, Van Kirk Brothers Contracting of Sutton, Nebraska was awarded a contract for Sanitary Sewer District No. 528 and 530T in the amount of \$3,374,118.70. This project extended sanitary sewer to Wildwood Subdivision, as well as south along US Highway 281 to Interstate 80. Work was commenced July 2014, with substantial completion recognized July 27, 2015 and August 12, 2015 for Sanitary Sewer District No. 528 and 530T respectively. Final completion was established July 2016. In November 2014, Van Kirk Brothers submitted a proposed Change Order in the amount of \$827,456.82 for claimed extra work by the subcontractor Iowa Trenchless. That Change Order was denied for various reasons. Since that time, the project was completed, a lawsuit was filed against the City by the subcontractor, Iowa Trenchless, and subsequently dismissed. A separate threatened action by Iowa Trenchless has been pending since May 2019.

## **Discussion**

On December 16, 2020, the Claimant, the City, and the City's liability insurance carrier participated in mediation of the claim. Through mediation, attended by the Interim City Attorney, a settlement agreement was reached whereby the Claimant would execute a full and complete release of the City of Grand Island, its officers and employees, from all claims arising out of the denied Change Order and Claimant's individual claims, in consideration of \$75,000 to be paid by the City. An exchange of the settlement release and consideration for the release was completed on December 22, 2020. A copy of the Settlement Release and the Memorandum of Understanding is included with this memo.

## **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 the Council approve the Settlement Release and the Memorandum of Understanding with Iowa Trenchless in the amount of \$75,000.00.

### **Sample Motion**

Move to approve the Resolution.

## MEMORANDUM OF UNDERSTANDING

### **1. Introduction**

This Memorandum shall set forth the understanding of the parties with regard to their respective obligations pursuant to a settlement negotiated during a remote mediation conference on the date set forth below. The parties agree that the settlement terms reflected herein are a final and enforceable settlement agreement, subject only to the preparation of the formal settlement documents incorporating all of the terms of the settlement and City Council approval of the settlement.

### **2. Payment and Release**

The Putative Defendant, The City of Grand Island, Nebraska (hereinafter "City"), and the Claimant, Iowa Trenchless, L.C. (hereinafter "Iowa Trenchless"), agree to the following terms in return for a full and complete general mutual release and settlement of all claims and counterclaims that have been asserted by the aforementioned parties, or that could have been asserted by the aforementioned parties, known or unknown, in connection with the City of Grand Island Sewer Project District 528 and 530T Sanitary Sewer Collection System Improvements (hereinafter "the Project"), including a full and complete mutual release of any and all expenses, delay damages, losses, expenses, invoices, attorney fees, litigation expenses, and any other sums of any type that the parties may claim with respect to the foregoing Project. The specific terms of the settlement are as follows:

a. The City shall pay the sum of \$75,000.00 to Iowa Trenchless within two weeks following City Council approval of the settlement. Iowa Trenchless and the City shall each mutually release each other from any and all claims that have been asserted or that could have been asserted against one another in connection with the Project. The Mutual Release and Settlement Agreement must be executed prior to the Grand Island City Council Meeting on December 22 in order for the settlement to be considered for approval at that meeting.

b. The terms of this settlement shall be contingent upon approved of the settlement by the City Council of Grand Island, Nebraska. All parties and their attorneys shall cooperate to obtain such approval.

### **3. Costs and Attorney Fees**

The parties shall each be responsible for their own fees and expenses in any way incurred or related to the dispute at issue in this settlement. The mediator's fees associated with the December 16, 2020 mediation conference shall be paid ½ by Iowa Trenchless and/or its attorneys and ½ by the City and/or its attorney or insurer.

### **4. Settlement Documents**

Counsel for the parties shall cooperate to prepare the Mutual Release and Settlement Agreement and any other documents necessary to conclude settlement of this matter. Should any disputes arise in connection with the drafting or execution of the settlement documents or any related pleadings or documents, the parties agree to use mediator Michael G. Mullin to facilitate negotiations in an attempt to resolve any and all such disputes before any party shall seek court involvement or file any actions in an attempt to try to enforce this settlement agreement.

### **5. Additional Terms**

a. **This mediation was conducted remotely and, accordingly, the attorneys and parties were not available to sign this Memorandum of Understanding. Each attorney and party hereto**

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represents and warrants that such individual has had an opportunity to review this Memorandum of Understanding, that each such individual agrees with and accepts each and every term herein, agrees that the terms herein are a binding and enforceable settlement agreement, and hereby expressly authorizes the mediator to attach a digital signature of the respective attorneys' below as evidence of their and their respective clients' acceptance of this Memorandum of Understanding as a binding and enforceable settlement agreement.

b. All attorneys and parties have reviewed the mediator's Procedures for Mediation, Agreement for Mediation, and Guidelines and Agreement for Online Mediations (each of which is available for review at the mediator's online ADR Home Page, [www.kutakrock.com/mediation/mullin](http://www.kutakrock.com/mediation/mullin)) and agree with the terms and provisions therein as if such documents were formally signed and executed by all participants to the mediation prior to the start of the remote mediation conference.

DATED this 16<sup>th</sup> day of December, 2020.

*/s/ JASON CLARK*  
AUTHORIZED REPRESENTATIVE OF  
IOWA TRENCHLESS, L.C., Claimant

*/s/STACY NONHOF*  
AUTHORIZED REPRESENTATIVE OF  
THE CITY OF GRAND ISLAND,  
NEBRASKA, the Putative Defendant

*/s/ THOMAS OLSON*  
ATTORNEY FOR THE CLAIMANT

*/s/ CHRISTOPHER TJADEN*  
ATTORNEY FOR THE PUTATIVE  
DEFENDANT

RESOLUTION 2020-352

WHEREAS, on June 10, 2014, by Resolution No. 2014-163, Van Kirk Brothers Contracting of Sutton, Nebraska was awarded a contract for Sanitary Sewer District No. 528 and 530T in the amount of \$3,374,118.70; and

WHEREAS, final completion was established July 2016; and

WHEREAS, in November 2014, Van Kirk Brothers submitted a proposed Change Order in the amount of \$827,456.82 for claimed extra work by the subcontractor Iowa Trenchless; and

WHEREAS, this proposed change order was denied on December 2, 2014; and

WHEREAS, a lawsuit was filed against both Van Kirk Brothers and the City of Grand Island by the subcontractor Iowa Trenchless; and

WHEREAS, the lawsuit against Van Kirk Brothers was settled and the suit against the City was dismissed; and

WHEREAS, a threatened separate legal action against the City by Iowa Trenchless has been pending since May 2019; and

WHEREAS, mediation on this matter was held on December 16, 2020; and

WHEREAS, a settlement agreement was reached whereby Iowa Trenchless will execute a full and complete release of the City of Grand Island from all claims arising out of the denied change order; and

WHEREAS, as part of the settlement, the City of Grand Island will pay seventy-five thousand dollars (\$75,000.00) to Iowa Trenchless.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the settlement agreement between the City of Grand Island and Iowa Trenchless in the amount of \$75,000.00 is hereby approved.

BE IT FUTHER ESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, December 22, 2020.

\_\_\_\_\_  
Roger G. Steele, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
December 18, 2020	☐ City Attorney