



# City of Grand Island

Tuesday, October 25, 2022

Council Session

## Item G-20

**#2022-308 - Approving Agreement with Nebraska Department of Transportation (NDOT) for Grand Island & South (SB); Project No. NH-34-4(134); Control No. 42819**

Staff Contact: Keith Kurz PE, Interim Public Works Director

# Council Agenda Memo

**From:** Keith Kurz PE, Interim Public Works Director

**Meeting:** October 25, 2022

**Subject:** Approving Agreement with Nebraska Department of Transportation (NDOT) for Grand Island & South (SB); Project No. NH-34-4(134); Control No. 42819

**Presenter(s):** Keith Kurz PE, Interim Public Works Director

## Background

The Nebraska Department of Transportation (NDOT) intends to improve a portion of State Highway US-34 (south end of US Highway 281 from Stolley Park Road to Interstate 80), at no City cost. The City will bear its own costs in performing its duties under the agreement, attached for reference.

All agreements must be approved by the City Council.

## Discussion

The improvements to State Highway US-34 (south end of US Highway 281 from Stolley Park Road to Interstate 80) within City limits consist of mill and resurface southbound roadway, repair northbound and southbound bridges, and remove/replace guardrail.

The State will construct the highway improvements at no cost to the City.

## 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 a resolution authorizing the Mayor to sign the agreement.

## **Sample Motion**

Move to approve authorization for the Mayor to sign the agreement.

**MUNICIPALITY FINANCIAL AGREEMENT**  
**STATE PROJECTS**

STATE OF NEBRASKA, DEPARTMENT OF TRANSPORTATION  
CITY OF GRAND ISLAND  
PROJECT NO. NH-34-4(134)  
CONTROL NO. 42819  
IN GRAND ISLAND & SOUTH (SB)

**THIS AGREEMENT** is between City of Grand Island, a municipal corporation of the State of Nebraska ("Municipality"), and State of Nebraska, Department of Transportation ("State"), collectively referred to as the "Parties".

**WITNESSETH:**

**WHEREAS**, State intends to improve a portion of State Highway US-34 ("US-34") at the location as shown on Exhibit "A"; and

**WHEREAS**, the improvement is located within the designated urban area of Grand Island, Nebraska, and funds administered by State will be made available for the construction of this project; and

**WHEREAS**, the City Council has authorized the Mayor to execute this Agreement, as evidenced by the Resolution of City Council dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, attached as Exhibit "B", and incorporated herein by this reference; and

**WHEREAS**, this Agreement is related to the portion of the project on US-34 located within Municipality's corporate limits; and

**WHEREAS**, Parties intend that this Agreement describe certain roles and responsibilities applicable to this project; and

**WHEREAS**, upon State's acceptance of the project, Municipality will be solely responsible for the maintenance, repair and replacement, when necessary, of any curb ramps and drainage facilities along the project, in accordance with Neb. Rev. Stat. § 39-2105 and § 39-1339, including, but not limited to, subsection § 39-1339(4); and

**WHEREAS**, the project work within the corporate limits is described below in Section 2.

**NOW THEREFORE**, in consideration of these facts and the mutual promises of the Parties hereto, the Parties agree as follows:

**SECTION 1. DURATION OF THE AGREEMENT**

- 1.1 *Effective Date*** -This Agreement is effective immediately on the date it is fully executed by the Parties.
- 1.2 *Renewal, Extension or Amendment*** -This Agreement may be renewed, extended or amended by mutual agreement or as otherwise provided herein.
- 1.3 *Identifying Date*** - For convenience, this Agreement’s identifying date will be the date the State signed the Agreement.
- 1.4 *Duration*** - This Agreement will remain in full force and effect for future responsibilities of Municipality described herein, such as for parking, encroachments and maintenance, unless such responsibilities have been rescinded by State. State will treat the remainder of this Agreement as inactive upon the happening of either (1) the waiver of an audit review, or (2) the final completion of an audit review by the State or its authorized representative and the resolution of all issues identified in the audit report.
- 1.5 *Termination*** - Further, State reserves the right to terminate the Agreement as provided herein.

**SECTION 2. DESCRIPTION OF THE WORK WITHIN THE CORPORATE LIMITS**

The Parties agree State will develop plans and specifications and cause the project to be constructed at the location shown on Exhibit “A”, attached and incorporated herein by this reference, and in accordance with plans and specifications and the provisions of this Agreement.

- 2.1.1 Generally, the improvements to be constructed within the corporate limits include the following: Mill and resurface southbound roadway, repair northbound and southbound bridges, and remove/replace guardrail.

**SECTION 3. STATE RESPONSIBILITIES**

**State shall:**

- 3.1 Prepare at its sole discretion, plans and specifications for State’s proposed subject project. State will coordinate the development of the plans and specifications with Municipality. State has sole authority to modify the plans or specifications as necessary to complete the proposed improvements.

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- 3.2 Acquire all property rights for Right of Way (ROW) for the project that will not be acquired by Municipality.
- 3.3 Advertise and conduct a letting and receive bids on the proposed improvement. State has the sole authority to determine, and award the contract to, the lowest responsible bidder. State shall sign the construction contract.
- 3.4 Supervise and cause completion of the construction of the improvement as shown in the construction contract documents and modifications thereto. State has sole authority to execute any contractor change orders-supplemental agreements required for construction of the project within Municipality's corporate limit. State will notify the Municipality of any contractor change orders-supplemental agreements that increase Municipality's cost.
- 3.5 Reimburse, when applicable, Municipality for the non-betterment relocation of municipally owned utility facilities as provided in SECTION 10. UTILITY RELOCATION WORK.

#### **SECTION 4. MUNICIPALITY RESPONSIBILITIES**

**Municipality shall, with respect to the portion of the project within its corporate limits, and at no cost to State:**

- 4.1 Regulate, to the extent Municipality has authority to do so, all future development and use of property adjoining the public ROW as described in SECTION 6. MUNICIPALITY'S DUTIES AND RIGHTS REGARDING RIGHT OF WAY.
- 4.2 Require that all future entrances from private property to the highway ROW within the limits of this project receive approval of the Director-State Engineer, Department of Transportation or authorized representative, pursuant to Neb. Rev. Stat. § 39-1332 prior to Municipality approval or Municipality issuing a building permit for the site.
- 4.3 Cause the removal of all advertising signs from the existing highway ROW. Municipality also agrees to cause the removal from the existing highway ROW of other privately owned encroachments, facilities, objects, structures, or things, and to keep the existing and new highway ROW free of future encroachments, facilities, objects, structures, or things, except those authorized by permit from Municipality and approved by State and Federal Highway Administration.

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- 4.4 Comply with, for project work performed by Municipality, the provisions of the Nebraska Fair Employment Practices Act, Neb. Rev. Stat. §§ 48-1101 - 48-1126, and all regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49 CFR, Parts 21 and 27, as set forth in the SECTION 17. TITLE VI NONDISCRIMINATION CLAUSES.
- 4.5 Perform the present and future duties assigned to Municipality under this Agreement at its sole cost except when costs are specifically reimbursable under this Agreement.
- 4.6 Obtain approval of State, with Federal Highway Administration concurrence, prior to making or causing changes in the roadway geometrics, either during project construction or after the project is completed. Changes that require prior approval include but are not limited to: access control, driveways, median breaks, parking restrictions or any other traffic control items.
- 4.7 Amend ordinances, as necessary, to establish pavement or ground elevations shown in the plans when proposed construction involves a change in elevations established by a pre-existing ordinance.
- 4.8 If the Municipality procures consultant services for preliminary engineering and construction engineering for non-betterment rehabilitation of municipally owned and operated utilities by the Municipality, the Municipality agrees to comply with Chapter 4 of the "Nebraska Department of Transportation LPA Guidelines Manual for Federal-Aid Projects".
- 4.9 Upon State's acceptance of the project, Municipality will be solely responsible for the maintenance, repair and replacement, when necessary, of any curb ramps and storm drainage facilities along the project, in accordance with Neb. Rev. Stat. § 39-2105 and § 39-1339, including, but not limited to, subsection § 39-1339(4).

**SECTION 5. CONSTRUCTION SCHEDULE**

State will determine the construction schedule for this project.

**SECTION 6. MUNICIPALITY'S DUTIES AND RIGHTS REGARDING RIGHT OF WAY**

- 6.1 Encroachments: Municipality and State will cooperate to cause the removal of encroachments from public ROW, or correction or alteration in the public ROW, as necessary for the construction of the aforesaid project.

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- 6.2 Adjacent Development: Municipality understands that State highway ROW shall be held inviolate for State highway purposes pursuant to Neb. Rev. Stat. § 39-1359, and no physical or functional encroachments, structures, or uses shall be permitted within such right-of-way limits, except by written consent of State. Municipality will regulate, to the fullest extent allowed by law, the private or non-transportation related public development of property adjoining the public ROW, to prevent future encroachment or uses of the public ROW, except by written consent of State. Municipality shall not issue a building permit for an adjacent property which requires work on the State highway right of way unless State has given advanced written approval of the proposed plans.
- 6.3 Special Assessments: Municipality shall not use special assessments to defray Municipality's costs under this Agreement unless Municipality has received, in advance, written consent from State's Right of Way Division Manager.

## **SECTION 7. ROADWAY LIGHTING SYSTEM**

- 7.1 Ownership: The project roadway lighting system is the property of State.
- 7.2 Electrical Energy: Municipality shall, without any cost to State, provide and pay for the electrical energy for all the luminaires of the roadway lighting system which may be constructed as a part of this project, including the electrical energy which may be required during the construction period of the project for lamp stabilization, luminaire adjustment, and system testing. Municipality shall provide electrical energy to maintain a uniform and constant light level for dusk-to-dawn lighting.
- 7.3 Repair and Maintenance Responsibilities: Municipality shall be responsible for the inspection, maintenance, and repair of the roadway lighting system, at Municipality's cost. Municipality's duties shall include, but are not limited to, the following:
- repair or replacement of all defective and burned out lamps;
  - routine cleaning of luminaires; and
  - repair or replacement of any part of the roadway lighting system.
- 7.4 Right to Recoup Costs: Municipality shall be responsible for collecting from the responsible party all Municipality's costs for repairing damage to the lighting system.
- 7.5 Specifications and Standards: Municipality agrees that repair or replacement parts furnished by Municipality in the maintenance or repair of the roadway lighting system shall comply with State specifications and standards.



7.6 Modifications: Municipality shall not make, or allow to be made, modifications to the roadway lighting systems without the written consent of State.

**SECTION 8. TRAFFIC SIGNAL EQUIPMENT**

Pursuant to Neb. Rev. Stat. § 60-6,120, Municipality is responsible for all traffic control devices, except as provided in Section 12.

**SECTION 9. PERMISSION TO USE STATE RIGHT OF WAY**

State hereby grants to Municipality permission to use the State ROW in the vicinity where roadway lighting system and traffic signal system will be constructed, for ingress and egress for the purpose of operating, inspecting, repairing and maintaining the roadway lighting system and traffic signal system in accordance with this Agreement. Municipality further agrees to comply with SECTION 12. TRAFFIC CONTROL.

**SECTION 10. UTILITY RELOCATION WORK**

**10.1 Overview**

The Parties understand that existing Municipality and non-Municipality owned utility facilities may conflict with State’s project. State will enter into a separate agreement(s) to establish the roles, duties, and financial responsibilities for the necessary relocation of utility facilities.

**10.2 State Highway Right-of-Way**

Municipality shall obtain a permit from State for utility relocation work that occupies State Highway ROW.

**SECTION 11. MUNICIPALITY’S FINANCIAL RESPONSIBILITIES**

State will construct the highway improvements, as described in Section 2.1.1, at no cost to Municipality. Municipality shall bear its own costs in performing its duties under this Agreement.

**SECTION 12. PROJECT TEMPORARY TRAFFIC CONTROL**

12.1 All temporary traffic control devices will conform to the latest approved edition of the Manual on Uniform Traffic Control Devices and Nebraska Supplements thereto.

- 12.2 If Municipality is to perform or contract for any work on the state highway within the project limits, Municipality will develop a traffic control plan related to that work. The plan will be provided to State's Project Manager for review and acceptance. Municipality will provide, operate and maintain Municipality's traffic control devices in accordance with its accepted traffic control plan.
- 12.3 Municipality's work must comply with all traffic safety regulations, including those prescribed in the latest approved edition of the Manual of Uniform Traffic Control Devices and the Nebraska Supplement thereto. Municipality shall use caution when working in State ROW.

### **SECTION 13. PLANS AND SPECIFICATIONS**

The plans and specifications for this project will be on file in the Lincoln central headquarters office of the Nebraska Department of Transportation.

### **SECTION 14. PROJECT SCHEDULE ADJUSTMENTS AND TERMINATION**

- 14.1 The planning, environmental, design and obtaining necessary funding for this project may be a complicated and time-consuming process. Project schedule adjustments should be expected.
- 14.2 State has the sole discretion to adjust the schedule in completing of the work in part or in whole and such action on its part will in no event be deemed a breach of this Agreement by State. State will provide Municipality with updates to the project schedule and, when Municipality is sharing in the project costs or has included additional work with State's project, State will discuss in detail adjustments made to the project schedule.
- 14.3 State has the sole discretion to terminate this Agreement for any reason, and such action on its part will in no event be deemed a breach of this Agreement by State. State will provide written notification to Municipality of such termination.

### **SECTION 15. FAIR EMPLOYMENT PRACTICES ACT**

Municipality agrees to abide by the Nebraska Fair Employment Practices Act, as provided by Neb. Rev. Stat. § 48-1101 through § 48-1126.

## **SECTION 16. DISADVANTAGED BUSINESS ENTERPRISES**

16.1 **Policy:** Municipality and State further agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement.

16.2 **Disadvantaged Business Enterprises Obligation:** Municipality and State further agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, Municipality shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Municipality shall not discriminate on the basis of race, color, sex, age, disability, or national origin in the award and performance of FHWA assisted contracts.

Municipality acting as a sub-recipient of Federal-aid funds on this project agrees to adopt the Nebraska Disadvantaged Business Enterprise Unified Certification Program for the Federal-aid contracts Municipality executes on this project.

Failure of Municipality to carry out the requirements set forth above on any work performed by Municipality shall constitute breach of contract and, after the notification of the FHWA, may result in termination of the Agreement or contract by State or such remedy as State deems appropriate.

## **SECTION 17. TITLE VI NONDISCRIMINATION CLAUSES**

**During the performance of this Agreement, the Municipality, for itself, its assignees and successors in interest agrees as follows:**

17.1 **Compliance with Regulations:** The Municipality shall comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

**17.2 Nondiscrimination:** The Municipality, with regard to the work performed by it after award and prior to completion of the contract work, shall not discriminate on the basis of race, color, sex, age, religion, disability or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Municipality shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A," "B," and "C" of Part 21 of the Regulations.

**17.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Municipality for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Municipality of the Municipality's obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of race, color, sex, age, religion, disability or national origin.

**17.4 Information and Reports:** The Municipality shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Municipality shall so certify to State, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

**17.5 Sanctions for Noncompliance:** In the event of the Municipality's noncompliance with the nondiscrimination provisions of this Agreement, State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including but not limited to:

- (a) Withholding of payments to the Municipality under this Agreement until the Municipality complies, and/or
- (b) Cancellation, termination or suspension of this Agreement, in whole or in part.

**17.6 Incorporation of Provisions:** The Municipality shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Municipality shall take such action with respect to any subcontract or procurement as State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Municipality may request State to enter into such litigation to protect the interests of State, and in addition, the Municipality may request the United States to enter into such litigation to protect the interests of the United States.

**SECTION 18. ENTIRE AGREEMENT**

This Agreement is the complete and exclusive statement of the arrangement between the Parties, and supersedes all proposals, oral or written, and all other communications between the Parties relating to the subject matter thereof. It may be amended from time to time in writing by the mutual consent of the Parties hereto. The terms of existing written agreements between the Parties remain in effect, unless expressly modified herein, or when the context of this Agreement clearly requires otherwise.

**SECTION 19. SEVERABILITY**

In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, terms, conditions, or covenant shall not be construed by the other party as a waiver or a subsequent breach of the same by the other party.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the Parties hereby execute this Agreement pursuant to lawful authority as of the date signed by each party.

**EXECUTED** by Municipality this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS:

CITY OF GRAND ISLAND

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

**EXECUTED** by State this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

STATE OF NEBRASKA  
DEPARTMENT OF TRANSPORTATION  
Mick Syslo, P.E.

\_\_\_\_\_  
Roadway Design Engineer

RECOMMENDED:  
Wesley Wahlgren, P.E.

\_\_\_\_\_  
District 4 Engineer      Date

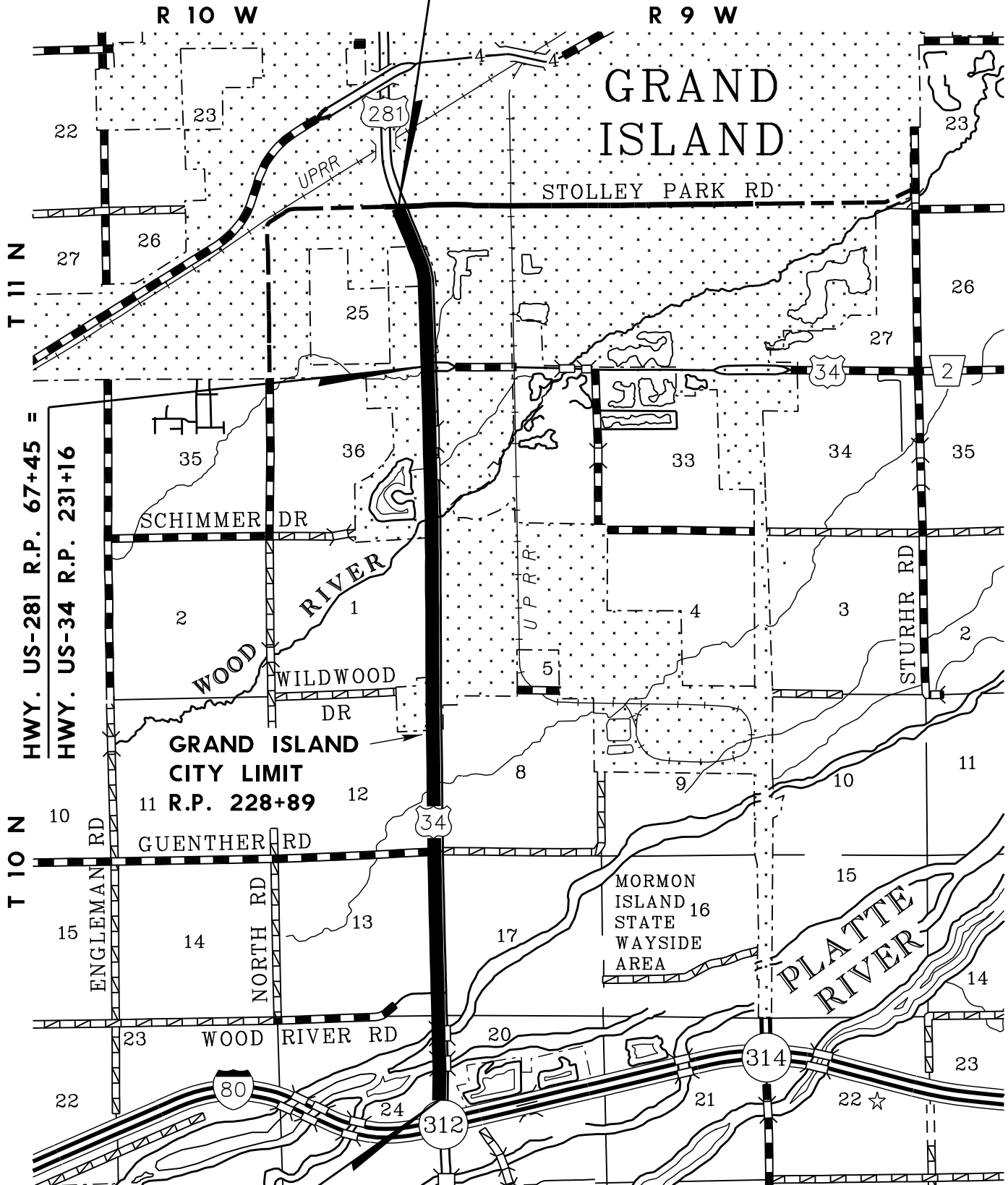
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# IN GRAND ISLAND AND SOUTH SB 34-4(134)

C.N. 42819 BOOK 6415  
HALL COUNTY

END PROJECT  
STA. 1124+27  
R.P. 68.47 HWY. US-281



BEGIN PROJECT  
STA. 844+51  
R.P. 226.78 HWY. US-34

**EXHIBIT "A"**

RESOLUTION 2022-308

WHEREAS, the Nebraska Department of Transportation intends to improve a portion of State Highway US-34 (south end of US Highway 281 from Stolley Park Road to Interstate 80), at no cost to the City on the portion within City limits; and

WHEREAS, such improvements shall consist of mill and resurface southbound roadway, repair northbound and southbound bridges, and remove/replace guardrail; and

WHEREAS, there is currently no cost of work within City limits to the City; and

WHEREAS, an agreement with the Nebraska Department of Transportation is required to proceed with this project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the agreement with the Nebraska Department of Transportation for the improvements to State Highway US-34 (south end of US Highway 281 from Stolley Park Road to Interstate 80) is hereby approved.

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, October 25, 2022.

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

Attest:

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

Approved as to Form	☒ _____
October 20, 2022	☒ City Attorney