



# City of Grand Island

Tuesday, August 26, 2014

Council Session - Updated

## Item G-17

**#2014-247 - Approving Agreement for Utility Relocation Services to be performed by NorthWestern Energy for the Capital Avenue – Webb Road to Broadwell Avenue Project**

Staff Contact: John Collins, P.E. - Public Works Director

# Council Agenda Memo

**From:** Terry Brown PE, Assistant Public Works Director

**Meeting:** August 26, 2014

**Subject:** Approving Agreement for Utility Relocation Services to be performed by NorthWestern Energy for the Capital Avenue – Webb Road to Broadwell Avenue Project

**Item #'s:** G-17

**Presenter(s):** John Collins PE, Public Works Director

## Background

All agreements must be approved by the City Council.

The Capital Avenue – Webb Road to Broadwell Avenue widening project will consist of removal of the existing 24' wide asphalt roadway and construction of new concrete pavement on Capital Avenue from Webb Road through Broadwell Avenue. The new roadway will consist of five lane curbed concrete pavement. Other improvements include construction of sidewalks and a concrete hike/bike trail, updated street lighting, and construction of new storm sewer. A pedestrian signal will be constructed approximately 1000' east of Webb Road to provide for safe crossing for users of the hike/bike trail.

This project will be coordinated with the North Interceptor Sanitary Sewer project.

This project will receive federal funding through the Surface Transportation Program (STP), which has typically been applied on an 80/20 basis. However, due to changes brought about by the new federal highway bill, the Moving Ahead for Progress in the 21st Century Act (MAP-21), federal funding for this project has been capped. Reference is made to Resolution 2013-141 approved by City Council on May 14, 2013.

The improvements require that utilities owned by the City of Grand Island, Northwestern Energy and CenturyLink are relocated due to the roadway widening and the construction of the hike/bike trail.

## **Discussion**

During the project design process, Public Works staff and the design team from Olsson Associates met with officials from NorthWestern Energy to review impacts the roadway improvement would have on their gas line and associated facilities. Through these meetings, it was determined where aboveground structures will be in conflict with the roadway improvements and where underground gas line will need to be relocated.

The estimated cost for the relocation work of NorthWestern Energy's facilities is \$620,000.00. Since the facilities resided in a private easement formerly owned by NorthWestern Energy on the north side of Capital Avenue, the relocation work is a project cost and eligible for federal aid. The Nebraska Department of Roads Local Projects Division developed the agreement for utility relocation services.

The Capital Improvements Program will fund the utility relocation costs, and the City will be reimbursed 80% of the actual costs.

Final design plans have been submitted by Olsson Associates to the Nebraska Department of Road for review. Acquisition of right-of-way and easements has been completed. Construction of this project is anticipated to begin in 2015.

## **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 agreement for Utility Relocation Services to be performed by NorthWestern Energy for the Capital Avenue – Webb Road to Broadwell Avenue Project.

## **Sample Motion**

Move to approve the agreement.

**A G R E E M E N T**

CITY OF GRAND ISLAND  
NORTHWESTERN ENERGY  
PROJECT NO. URB-5436(5)  
CONTROL NO. 42707  
CAPITAL AVE FROM WEBB TO BROADWELL

THIS AGREEMENT, made and entered into by and between NorthWestern Corporation d/b/a NorthWestern Energy hereinafter referred to as the "Utility" and the City of Grand Island, hereinafter referred to as the "LPA".

WITNESSETH:

WHEREAS, the Project has plans for the relocation of 5,175 ft. of NorthWestern Energy's 8" steel main, rebuild a regulator station near Custer Avenue as a replacement for the regulator station at Capital and Broadwell, tie in the new regulator station to the service lines south of Capital Avenue, abandon the 6" steel line and remove the regulator station at Capital Avenue and Broadwell Avenue; and

WHEREAS, said engineering will be undertaken under the project designation URB-5436(5), and

WHEREAS, the Utility owns and operates a gas line and associated facilities along and adjacent to a portion of this project, some of which is resting outside of the limits of the old highway right of way and on private property, and

WHEREAS, because of the widened right of way which the LPA has acquired for the new construction, and because of the construction itself, it becomes necessary for the Utility to adjust some, if not all, of its facilities along this project, and

WHEREAS, the Utility is willing to rehabilitate its facility where necessary in accordance with the conditions hereinafter provided in this agreement, and

WHEREAS, the LPA is willing to reimburse the Utility for its nonbetterment costs to rehabilitate its facilities when the Utilities facility is presently located outside of the old public right-of-way and on private property, and

WHEREAS, the LPA is willing to pay the Utility for eligible nonbetterment expenses incurred in connection with the rehabilitation of its facilities as provided by Federal-Aid Policy Guide 23 CFR 645A, "Utility Relocations, Adjustments and Reimbursement", and Federal-Aid Policy Guide, 23 CFR 645B, "Accommodation of Utilities" issued by the Federal Highway Administration.

NOW THEREFORE, in consideration of these facts, the parties hereto agree as follows:

SECTION 1. The Utility hereby agrees to furnish, or cause to be furnished, all of the tools, labor, equipment and materials necessary for the rehabilitation of its facility as made necessary by construction.

SECTION 2. This section is applicable only if overhead facilities belonging to the Utility are part of the work covered under this Agreement. Where, applicable, the LPA has prepared a tabulation of all the poles belonging to the Utility along and adjacent to this project, showing the poles which will have to be moved and indicating in the "Remarks" column by means of the word "Pay" that the moving of such poles will be eligible for payment from the LPA. If overhead facilities belonging to the Utility are involved, a copy of the tabulation is attached as "B" and hereby made part of this Agreement.

SECTION 3. Prints of the construction plans for this project, showing the location of the poles referred in the above tabular form, have been forwarded to the Utility and are by this reference hereby made a part of this agreement.

SECTION 4. The Utility, upon receipt of construction plans, shall furnish detailed plans, specifications, and estimates based upon plans furnished by the LPA. If the Utility plans to use consultant engineering service for any part of the work, the Utility shall notify the LPA in advance of commencement of work. The LPA will inform the Utility of requirements and documentation needed for the consultant costs to be eligible for reimbursement. The Utility shall include the following with its plans, specifications, and estimates:

- A. Its tentative work schedule and construction phasing plan.
- B. A statement describing whether the work is to be done by force account, a continuing contract or if a contract is to be let. If the Utility plans to use a contractor under an existing written continuing contract, the Utility shall furnish the State a copy of all pertinent parts of the contract.
- C. A statement that plans, specifications, and estimates are part of this agreement.
- D. Betterment disclaimer or cost sharing percentage if Utility work includes a betterment.
- E. Explanation of why the Utility's costs are eligible for reimbursement.

Approval by the State and, when applicable, the Federal Highway Administration, of plans, specifications, and estimates constitutes a binding agreement between the parties for work made necessary by the individual projects. If applicable, the LPA will send plans to the Federal Highway Administration for review as part of the approval process. Any utility rehabilitation excluding utility engineering costs, done by the Utility prior to authorization by the LPA will be done at the expense of the Utility.

SECTION 5. The description of work to be performed and the estimate of costs prepared by the Utility have been approved by the LPA and are hereby made a part of this agreement. These items are attached as Exhibit "B". The total amount of this estimate is \$620,000.00 of which \$620,000.00 is the share of the cost chargeable to the LPA. It is expressly understood that notwithstanding this estimate the LPA will reimburse the Utility for 100% of its actual nonbetterment expenses less any credits for salvaged or junked materials.

SECTION 6. The Utility agrees, as a part of the above described estimate to advise the LPA as to the method which will be used in accumulating the actual costs. If this method is prescribed by a Federal or State regulatory body, a statement to that effect shall be made by the Utility. If the accounting method is not prescribed by an agency of the State or Federal Government, it shall be described in the Utility estimate and be approved as a part of this agreement.

SECTION 7. The Utility may submit progress billings for the portions of its rehabilitation that have been completed. The Utility agrees not to submit progress billings for amounts less than \$2,500.00. The LPA will make progress payments, based upon satisfactory prosecution of work, for 95 percent of the amount billed. The LPA will limit its payments to 95 percent of the approved estimate referenced in Section 5 of this agreement pending the results of the final cost audit. The LPA will make every effort to pay the Utility within thirty days of receipt of the Utility's invoice.

SECTION 8. If the Utility wants to let a construction contract, the Utility shall do the following:

- A. If the Utility solicits bids from a list of known Contractors, upon request the list must be submitted to the LPA for concurrence.
- B. Upon request, submit the bid proposal, plans and construction schedule to the LPA for approval prior to letting a contract.
- C. Require the Contractor to abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb.Rev.Stat. §48-1101 through 48-1126 (Reissue 2004), as amended, provisions of the 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 Exhibit "A" attached hereto and made a part of this agreement.
- D. Upon request, submit a copy of the bids received and the Utility's recommendation of award to the LPA for concurrence prior to any award.
- E. Require any Contractor or subcontractor engaged under this agreement to fully comply with the provisions of the Nebraska Employment Security Law as

provided by Neb.Rev.Stat. §48-610 through 48-671 (Reissue 2004), as amended, and the same are incorporated herein by this reference.

SECTION 9. It is agreed and understood by the parties hereto that Federal-Aid Policy Guide 23 CFR 645A, "Utility Relocations, Adjustments and Reimbursement", and Federal-Aid Policy Guide, 23 CFR 645B, "Accommodation of Utilities" issued by the U.S. Department of Transportation, Federal Highway Administration, as supplemented, revised or updated heretofore, is hereby expressly made a part of and incorporated into this agreement by this reference.

SECTION 10. In consideration of the payment as mentioned in Section 5 of this agreement the Utility agrees to relinquish or subordinate sufficient property rights or interests that it may have in property upon which it has an easement or similar right that will be occupied by the proposed highway improvement as are necessary for the construction, operation and maintenance of the highway facility.

SECTION 11. All traffic controls must comply with the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD). If the LPA furnishes the Utility a traffic control plan, the Utility must comply with the plan. The LPA has the right to shut down a Utility work area not in compliance with the Manual on Uniform Traffic Control Devices.

SECTION 12. The Utility shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49 CFR, Parts 21 and 27, as set forth in Exhibit "A" attached hereto and hereby made a part of this agreement.

SECTION 13. The Utility agrees that it and any Contractor or subcontractor engaged under this agreement will fully comply with the provisions of the Nebraska Employment Security Law as provided by Neb.Rev.Stat. §48-601 through 48-671 (Reissue 2004).

SECTION 14. The Utility agrees that the billing will be prepared and submitted in a manner to allow comparison with the approved estimate.

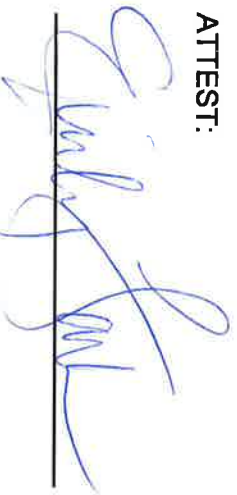
SECTION 15. Each party shall indemnify, hold harmless and defend the other party and its officers, directors and employees from any and all claims, demands, litigation, fines, expenses or liabilities (including costs and attorneys' fees) arising from or incident to the performance of the Utility Work for injuries to or the death of any third parties, damage to third party property, violations of applicable law or other breach of legal duty arising from performance of the Utility Work. In the event any claim, demand, litigation, fine, expense or liability is caused by the joint or concurrent negligence of the parties, the loss shall be borne by each party in proportion to its degree of negligence. The parties understand that no federal or state funds will be used to hold the Utility harmless under this provision.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the Utility this 18<sup>th</sup> day of August, 2014.

ATTEST:

Northwestern Energy



EXECUTED by the LPA this 18<sup>th</sup> day of August, 2014.

ATTEST:

City of Grand Island

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AGR167



NONDISCRIMINATION CLAUSES

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- (1) Compliance with Regulations: The Contractor will 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 contract.
- (2) Nondiscrimination: The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the basis of disability, race, color, sex, religion or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will 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.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.
- (4) Information and Reports: The Contractor will 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 the State Highway Department or the Federal Highway Administration 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 Contractor shall so certify to the Project Owner, State Highway Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Project Owner, State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to,
  - a) withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The Contractor will include the provisions of paragraph (1) through (5) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the Project Owner, State Highway Department or the Federal Highway Administration 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 Project Owner subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interests of the Project Owner, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT "A"



NorthWestern Corporation  
d/b/a NorthWestern Energy  
515 W 3rd Street  
Grand Island NE 68801  
Telephone: (308) 385-4519  
Facsimile: (308) 382-1105  
[www.northwesternenergy.com](http://www.northwesternenergy.com)

CONFIDENTIAL – Capital Avenue Road Move

July 10, 2013

Matthew M. Rief, P.E.  
Olsson Associates  
201 East 2<sup>nd</sup> Street  
Grand Island, NE 68801

Matt,

In review of the preliminary prints dated June 13, 2013 and our onsite meeting of the same day, I have worked up a scope of work and estimate based on the project scope as so defined. Estimated cost is \$620,000.

The widening of Capital Ave will affect NorthWestern's 8" steel line on the north of Capital and 6" steel under Capital Ave in the south lane. There may also be some service lines not yet identified but are expected to be minor and handled under the contingency funds.

The scope of work is to relocate 5,175 ft of NorthWestern's 8" steel main, rebuild a regulator station near Custer Ave as a replacement for the reg station at Capital and Broadwell, tie in the new reg station to the service lines south of Capital, abandon the 6" steel line and remove the reg station at Capital and Broadwell (at the VFW Hall).

Scope for reimbursable costs as described below.

- Utilize the existing 8" steel crossing of Capital Ave at Station 102+50 to 105+75
- Set an 8" bottom-out at approximate station 104+25
- Begin new pipe at station 104+45 thru 156+50
- There is no conflict with;
  - The new culvert at station 104+00 the wing wall.
  - The UGEMH at station 127+75
  - The inlet structure at station 128+00.
  - The proposed UGEMH at 133+10
  - The proposed UGEMH at 140+00
  - Storm sewer crossing at station 154+00
  - No conflict with any other storm inlet structures.
- If there is a conflict during construction a change order needs to be agreed upon.
  - Bore
    - 128+50 to 132+50 = 400ft
    - 139+50 to 141+00 = 150 ft
    - 144+50 to 145+50 = 100 ft
    - 148+50 to 149+50 = 100 ft

EXHIBIT "B"  
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- 151+50 to 152+50 = 100 ft
- 153+50 to 156+50 = 300 ft
- Set an 8" bottom-out at approximate station 156+50
- Tie-in and end construction at station 156+50
- An above ground reg station will be installed at approximate station 125+00. The City approves above ground structure approximately 20 ft in length by 10 ft wide. Install a 6" bottom out at Custer Avenue
- Bore Capital Ave with a new 6" steel main at approximate station 125+25
- Abandon 8" and 6" steel in-place.
- Remove reg station at Broadwell and Capital
- Install a 4" stopper between Grand Island Ave N and Huston Ave N
- New utility of easement to be granted by the City
- It is expected that the ROW will be cleared for the sewer installation and North Western will have minimal, if any, obstacles or other utilities to contend with.
- ROW to be seeded but no sod after construction
- Local inspection for 1 month during construction
- Third party contractor to complete construction with North Western over-site and assistance during tie-over's.
- Steel prices are based on \$27.50/ft for 8" steel pipe, coated and delivered.
- Contractor prices provided from North Western's blanket contractor. Prices could vary depending on time of year, scope change and any unforeseen circumstances.

North Western requests a written agreement to reimburse for actual construction costs.

Sincerely,

Dennis A. Placke, P.E.  
 515 W 3<sup>rd</sup> Street  
 Grand Island, NE 68801  
 (308) 385-4519  
 Large Projects Engineer

# Project Summary

Capital Road Move Estimate rev July 10  
7/15/2013  
8:36 AM

MAOP  
Project: Replace 8" Capital Ave, remove, abandon 6" and replace Reg Sta

Type	Project Summary	Total Cost
*	Northwestern's Labor Cost	\$ 31,615.95
*	Northwestern's Labor Overhead Cost	\$ 18,191.82
*	Contractor's Labor Cost	\$ 221,697.48
*	Contractor's Labor Overhead Cost	\$ 65,844.15
*	Gas Reg Station Material Cost	\$ 10,407.03
*	Gas Reg Station Material Overhead Cost	\$ 520.35
*	Gas Sectionalizing Valveset Material Cost	\$ -
*	Gas Sectionalizing Valveset Material Overhead Cost	\$ -
*	Gas Mainline Material Cost	\$ 216,330.74
*	Gas Mainline Material Overhead Cost	\$ 10,816.54
*	Gas Service Material Cost	\$ -
*	Gas Service Material Overhead Cost	\$ -
*	Other Cost	\$ 44,843.52
<b>Grand Total \$</b>		<b>620,267.57</b>

ORDINANCE NO. 9213

AN ORDINANCE OF THE CITY OF GRAND ISLAND, NEBRASKA, GRANTING TO NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY, THE NON-EXCLUSIVE RIGHT AND PRIVILEGE TO CONSTRUCT, MAINTAIN AND OPERATE A SYSTEM OF MAINS, PIPES, SERVICES AND OTHER APPLIANCES IN, UPON, OVER, ACROSS AND ALONG THE STREETS, AVENUES, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE CITY OF GRAND ISLAND, NEBRASKA, FOR THE TRANSMISSION, TRANSPORTATION, DISTRIBUTION, AND SALE OF NATURAL GAS FOR DOMESTIC, COMMERCIAL, INDUSTRIAL AND OTHER USES IN THE CITY; PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH THE COMPANY IS TO OPERATE; TO REPEAL ORDINANCE NO. 6873 (AS AMENDED) AND ALL OTHER ORDINANCES AND RESOLUTIONS OR PARTS THEREOF IN CONFLICT HERewith; AND TO PROVIDE FOR PUBLICATION IN PAMPHLET FORM BY THE AUTHORITY OF THE CITY COUNCIL AND EFFECTIVE DATE OF THE ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA

**Section 1. Grant of Franchise.** In consideration of the benefits to be derived from the installation and operation of a natural gas distribution system in the City of Grand Island, Nebraska (hereinafter sometimes designated as "City") by City and its inhabitants, there is hereby granted to Northwestern Corporation, doing business as Northwestern Energy, (hereinafter sometimes designated as "Grantee" or "Company"), the non-exclusive right, permission and authority to lay, install, maintain and operate a natural gas transmission and distribution system (hereinafter sometimes designated as "gas system within the limits of City, as the same now exists or may be hereafter extended, for a period of twenty (20) years from and after the effective date of this Ordinance and for such extended term as City may grant pursuant to the provisions of Section 4 hereof, and for this purpose there is hereby further granted to Grantee the right, permission and authority during said period to lay, install, maintain, and operate in, upon, over, across and along all of the streets, avenues, alleys, bridges and public places of City all mains, services, pipes, conduits, and/or appliances (Grantee's "Infrastructure") necessary for transmitting, transporting, distributing, and supplying natural gas for heating, industrial power, and other purposes for which natural gas may be used, and for the purpose of transmitting, transporting and conveying such gas into, through or beyond the immediate limits of City to other cities, villages, and customers.

The right and privilege to use and occupy such streets, alleys, public ways, and places for the purposes herein set forth, shall not be exclusive, and the City of Grand Island reserves the right to grant a similar use of such streets, alleys, public ways, and places, to any person or corporation at any time during the Grant of Authority. The laying or installation of additional pipe within the City for transmission of natural gas beyond City limits shall require a permit for that purpose.

Approved as to Form    
 March 23, 2009  City Attorney

ORDINANCE NO. 9213 (Cont.)

**Section 2. Obligation to Provide Natural Gas Service.** Grantee shall furnish a natural gas system, natural gas supply and infrastructure which is safe, adequate, efficient, reliable, and low-cost. Grantee shall maintain and operate the same in a manner to meet the necessities and requirements of City (including City-owned electric generating plants within the City's corporate limits), its inhabitants and industries, and in a manner consistent with the State Natural Gas Regulation Act (the "Act") and with the rules and regulations of the Nebraska Public Service Commission (the "Commission").

**Section 3. Limitation on Obligation.** Grantee shall provide to City and its inhabitants requesting natural gas service reliable natural gas service.

**Section 4. City Right to Extend Terms of Franchise.** City may extend the term of this franchise by an additional five (5) years beyond the term hereof upon the same terms and conditions as herein set forth, upon giving Grantee sixty (60) days notice of its intent to exercise such right of extension. City may, but need not, conduct a public hearing in conjunction with such an extension. If requested by City to do so, Grantee shall promptly furnish to City such information as City may reasonably request in connection with City's deliberations as to whether to exercise such right of extension.

**Section 5. Installation of Infrastructure.** All infrastructure which shall be laid or installed under this grant shall be located in public right-of-way and shall be located and laid so as not to obstruct or interfere with any existing or planned water pipes, drains, sewers, paving, or other structures, and all such infrastructure shall be laid in place subject to the approval of City or subject to the approval of such representative as City may from time to time provide, and, in compliance with City policies, regulations and manuals. Grantee shall in doing any work in connection with infrastructure, avoid, so far as may be practical, interfering with the use of any street, alley, or other highway, and where paving or surface of the street is disturbed, Grantee shall, as its own expense and in a manner satisfactory to the duly authorized representative of City, replace and compact soils and reconstruct such paving or surface of the street or alley in as good condition as before said work was commenced in accordance with specifications of City, and Grantee shall ensure that the paving or surface of the street or alley is maintained free from any defects caused by Grantee or its employees or agents for a period of two (2) years from the time the work was completed.

**Section 6. Use of Streets, Alleys and Other Public Right-of-Way.** Grantee's Infrastructure to be placed in any public right-of-way or other public property shall be located, constructed, installed, maintained, renovated or replaced in accordance with applicable rules and regulations of City. Grantee shall acquire necessary permits, if any, required by City and City may inspect the manner of such work and requires such remedies as may be necessary to assure compliance. The replacement and restoration of the public right-of-way or other public property shall be completed as promptly as practical. Should Grantee not promptly and satisfactorily perform and complete the necessary work to restore the public right-of-way or other public property, the City shall notify Grantee of such restoration steps needed to be taken, and if Grantee fails to take such steps within the prescribed period of time given in the notice, and if shall have the right to do so at the expense of Grantee. If City, after proper notice and Grantee's failure to cure, exercises its right to restore the public right-of-way or other public property,

ORDINANCE NO. 9213 (Cont.)

Grantee shall reimburse City for the reasonable cost incurred for the work performed by City or its agents.

1. Use. All Infrastructure laid or placed by Company on public property shall, be so located in the streets, alleys or other public places in the City as not to obstruct or interfere with any water pipes, sewers, drains or other structures already installed under existing City policies. Company shall, when practical, avoid interfering with the use of any street, alley or other highway where the paving or surface of the street would be disturbed.
2. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced, and shall maintain the restoration free from any defects caused by Grantee or its employees or agents for a period of two (2) years from the time the work was completed.

If City elects to alter or change the grade of or otherwise improve any street, alley, public way, public property or public right-of-way, or construct, repair, or reconstruct any sewer, water, or other City owned system therein or thereon for a public purpose, Grantee, upon reasonable notice by City, shall remove, relay, and relocate its Infrastructure at the cost and expense of the Grantee. However, in the event of City's vacation or transfer of any public right-of-way or other public property in which Grantee's Infrastructure is placed to any third-party, such vacation or transfer shall be conditioned upon and subject to Grantee's right to use and occupy such with its Infrastructure, and the Grantee shall be entitled to a permanent easement to maintain such use and occupancy in perpetuity. In the event the City orders Grantee to relocate its Infrastructure for any nonpublic purpose where a vacation or transfer of public right-of-way will not occur, Grantee shall be entitled reimbursement from the City for the reasonable cost of a relocation of Grantee's Infrastructure.

**Section 7. Emergency Repairs.** It is understood that the work provided by Grantee as authorized in this Franchise involves the health, safety and welfare of the City and that certain emergency circumstances make the prior acquisition of a permit not feasible. In such instances, Grantee may take such immediate unilateral actions as it determines are necessary to protect the public health, safety and welfare; however, Grantee shall notify the City Administrator or City Communication Center of such emergency action as soon as practical.

**Section 8. Standard Equipment.** Grantee, in the construction, operation and maintenance of the natural gas system in the City, shall use only Infrastructure that meet applicable federal, state, and local construction and safety codes. Grantee shall also use all necessary safety devices to protect City and its residents from injury as required by federal, state and local laws and regulations. The Infrastructure materials used may be subject to City inspection at the option of the City.

**Section 9. Construction and Extension of Mains.** Subject to the Regulation of the Nebraska Public Service Commission, Grantee shall make such reasonable extensions of its

ORDINANCE NO. 9213 (Cont.)

mains and shall install services to parties located within City who have requested and received from Grantee approved applications therefore; provided, however, that no obligation shall extend to, or be binding upon Grantee, through no fault of its own, if it is unable to obtain delivery of an adequate supply of natural gas at or near the corporate limits of City to warrant the construction or extension of its mains and Grantee shall notify the City of its inability to furnish any requested service within five (5) business days of its decision; provided, further, that when the amount of natural gas supplied to Grantee at or near the City limits is insufficient to meet the additional firm requirements of connected or new customers, Grantee shall have the right to prescribe reasonable rules and regulations for allocating the available supply of natural gas for such additional firm requirements to domestic, commercial and industrial consumers, in that order of priority. Grantee agrees to conform to its tariffs filed with the Nebraska Public Service Commission as it relates to service line extensions.

**Section 10. Grantee Holds City Harmless.** It is expressly understood and agreed by and between Grantee and the City of Grand Island that Grantee shall save City harmless, indemnify, and become responsible for any and all claims, demands, losses, judgments, decrees, costs or expenses whatsoever, including reasonable attorneys' fees, which the City may legally suffer and/or incur, or which may be legally obtained against the City, to the extent said claims, demands, losses, judgments, decrees, costs or expenses accrue or result from the use and/or occupation of any street, alley, avenue or other public place in the City by Grantee pursuant to the terms of this Franchise, or which legally result or accrue from the exercise by Grantee of the privileges granted by this Franchise to Grantee; provided, however, that Grantee need not save harmless the City from claims, demands, losses, expenses and liabilities arising solely out of the negligence of City, its employees or agents.

**Section 11. Acceptance of Franchise.** Within thirty (30) days after the passage of this Ordinance: (a) Grantee shall prepare and file a written acceptance of this Ordinance with the City Clerk; and (b) the City shall furnish a certified copy of the Ordinance to the Grantee and the Grantee shall file the certified copy of the Ordinance with the Nebraska Public Service Commission. Failure of Grantee to so accept this Ordinance within said period of time shall be deemed a rejection thereof by Grantee and the rights and privileges herein granted shall after the expiration of said period of thirty (30) days, if not so accepted, absolutely cease and terminate, unless said period of time shall be extended by further Ordinance duly passed for that purpose.

**Section 12. Inspection of Records.** For the purpose of affording City the opportunity to enforce and collect any and all fees, taxes or other assessments imposed by City, Grantee shall provide all reasonable requested data and information necessary to ascertain or verify correctness and accuracy of all such fees and taxes paid. Grantee shall further permit City to inspect and audit during regular business hours, the relevant books and records kept by Grantee in the ordinary course of business.

**Section 13. Municipal Regulations.**

1. **Municipal Rules.** The right is hereby reserved to City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as may be necessary in the exercise of the police power, or any other



ORDINANCE NO. 9213 (Cont.)

statutory authority, provided such regulations, by ordinance or otherwise shall not be in conflict with the laws of the State of Nebraska.

Grantee shall, at all times during the life of the Grant of Authority, be subject to the lawful exercise of the police power by City and all reasonable regulations which may now or hereafter be prescribed in ordinance or resolution with respect to the use of public streets, alleys, avenues, or other public places in the City.

2. Inspection. City shall have the right to inspect all construction and installation work performed subject to the provisions of the ordinance as it shall find necessary to insure compliance with governing ordinances.

**Section 14. Rates Made Public.** Upon request of City, Grantee shall make available to the public in the office of the City Clerk of the City a current copy of the tariffs, including rates and terms and conditions of service, as filed with the Nebraska Public Service Commission. In addition, Grantee shall maintain a current copy of the tariffs, including rates and terms and conditions of service, as filed with the Nebraska Public Service Commission, in its office in the City.

**Section 15. Transferability.** This Franchise and the rights created hereby are specific to Grantee and may not be assigned, transferred or any interest herein otherwise disposed of without the prior written consent of the City Council of the City, with the City to have ninety (90) days to review any proposed assignment, except in cases involving a reorganization or change of control (as defined by the Act) approved by the Nebraska Public Service Commission.

**Section 16. Breach/Revocation/Termination.** If Grantee or City fails to fulfill any of their respective obligations under this Franchise, the City or the Grantee, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without the action necessary to formally amend the Franchise.

If the Grantee fails to perform any of the terms of this Franchise, the rights under this Franchise may be revoked by the City after giving written notice specifying the provision(s) claimed to be in default and allowing ninety (90) days for the Grantee to fully comply with the terms of this Franchise, and after a finding supporting such breach following a public hearing before the City Council.

**Section 17. Occupation Tax.** Grantee shall be required and, by acceptance of this Franchise, does agree to pay an occupation tax to the City as specified by Article I, "Natural Gas Companies", Sections 23-1 through 23-9 of the Grand Island City Code, as may be amended from time to time, so long as imposition of such tax is allowed under state law, or in the event of the replacement of such occupation tax with another form of franchise tax, to pay such franchise tax to the City, upon adoption of the City of an appropriate ordinance to impose such tax.

ORDINANCE NO. 9213 (Cont.)

**Section 18. Grantees' Duties.** Grantee shall maintain a local office within the corporate limits of the City during the term of this Franchise. Grantee agrees to respond to any emergencies within one (1) hour of notification for the protection of the public safety. All employees of the Grantee in working with the public and citizens of Grand Island outside of Grantee's facilities shall have on their person either a uniform issued by Grantee that clearly indicates that they are an employee of the Grantee or a clearly recognizable identification badge issued by the Grantee showing the name of the employee and their identification reflecting that they are an employee of the Grantee.

**Section 19. Invalidity.** If any term of this Franchise or its application to any circumstances is held invalid, or the ability to collect an occupation tax is repealed, the City shall have the option of either:

1. declaring the Franchise to continue in force as modified by deletion of the invalid provisions; or
2. terminating the Franchise.

City shall exercise such option by written notice to Grantee given within sixty (60) days of finality of the court proceedings, including any appeal thereof, in which the determination of invalidity was made.

**Section 20. No Waiver.** Failure of either the City or the Grantee to seek compliance by the other to any of the terms of this Franchise shall not be considered a waiver of that term and the non-complying party shall not be excused from complying with the term.

**Section 21. Notices.** All notices from Grantee to the City pursuant to or concerning this Franchise shall be delivered to the City Clerk, 100 East First Street, P.O. Box 1968, Grand Island, NE 68802-1968. All notices from the City to Grantee pursuant to or concerning this Franchise shall be delivered to the Operations Manager at Grantee's local office in the City, 515 W. Third Street, Grand Island, NE 68801, with a copy delivered to: Corporate Counsel/Regulatory Affairs, 3010 West 69<sup>th</sup> Street, Sioux Falls, SD 57108.

**Section 22. Compliance with Laws.** Grantee agrees to conduct its business under the terms of this Franchise in such a manner that it does not violate any federal, state or local laws or regulations applicable to the conduct of its operations under the terms of this Franchise agreement ordinance. This Ordinance shall be construed in accordance with the laws of the State of Nebraska.

**Section 23. Repealer.** To repeal Ordinance No. 6873 and all other ordinances and resolutions or part of ordinances and resolutions in conflict herewith are also hereby repealed.

**Section 24. Effective Date.** This Ordinance shall constitute a binding contract between the City of Grand Island, Nebraska and NorthWestern Corporation, doing business as NorthWestern Energy, as approved by the City, and shall be in full force and take effect (after acceptance by Grantee in accordance with the provisions of Section 11 above) upon passage,

ORDINANCE NO. 9213 (Cont.)

approval, publication and filing with the Nebraska Public Service Commission, in accordance with Nebraska law, unless it is determined by the Commission to be contrary to the provision of the Act. This Ordinance shall be published in pamphlet form by the authority of the Mayor and Council.

PASSED AND APPROVED THIS 24th DAY OF MARCH, 2009.

  
Margaret Homady, Mayor

ATTEST:

  
RaNaë Edwards, City Clerk

RESOLUTION 2014-247

WHEREAS, the City of Grand Island is developing a transportation project for which it intends to obtain Federal funds; and

WHEREAS, the City of Grand Island as a sub-recipient of Federal-Aid funding is charged with the responsibility of expending said funds in accordance with Federal, State and local laws, rules, regulations, policies and guidelines applicable to the funding of the Federal-aid project; and

WHEREAS, the City of Grand Island and Northwestern Energy wish to enter into a Utility Services Agreement to provide utility relocation services for the Federal-aid project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Utility Services Agreement between the City of Grand Island and Northwestern Energy is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement.

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Adopted by the City Council of the City of Grand Island, Nebraska, August 26, 2014.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

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

Approved as to Form	☐ _____
August 25, 2014	☐ City Attorney