



City of Grand Island

Tuesday, July 12, 2005

Council Session

Item G10

#2005-197 - Approving Agreement with NRCS for Flood Damage Repair Work, Ditch Repair East of North Road and Cofferdam Repair along Capital Avenue

Staff Contact: Steven P. Riehle, Public Works Director

Council Agenda Memo

From: Steven P. Riehle, Public Works Director

Meeting: July 12, 2005

Subject: Approving Cooperative Agreement and Assurances
Relating to Real Property Acquisition with NRCS for
Flood Damage Repair Work

Item #'s: G-10

Presenter(s): Steven P. Riehle, Public Works Director

Background

On May 11th and 12th of 2005, Grand Island experienced severe flooding. There are a number of areas that are in need of repairs due to the flood. Two projects have been approved for federal funding from the United States Department of Agriculture Natural resource Conservation Service (NRCS). They are as follows:

NRCS Project Number GI-1

Repair and protect slopes of channel and armor side slopes with riprap. Remove sediment deposition. Estimated construction cost of \$27,000.

NRCS Project Number GI-2

Repair and protect water control structure with sheet pile and riprap on Capital Avenue Outfall Ditch. Estimated construction cost of \$88,380.

Discussion

The cooperative agreement with the NRCS will allow the city to install emergency watershed protection measures and receive reimbursement from the NRCS. The agreement also requires the city to certify that the necessary right-of-ways and easements are in-place for the projects by signing an "Assurances Relating To Real Property Acquisition" form.

The city will be required to contribute in-kind services or a cash match up to 25% of construction costs.

Alternatives

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

1. Approve the agreement with the NRCS for flood damage repair work.
2. Refer the issue to a Committee.
3. Postpone the issue to a future date.
4. Take no action on the issue.

Recommendation

City Administration recommends that the Council approve a resolution authorizing the Mayor to sign an agreement with the NRCS for flood damage repair work.

Sample Motion

Move to approve entering into an agreement with the NRCS.

STATE: Nebraska
PROJECT: City of Grand Island EWP Project
AGREEMENT NO. _____

UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

COOPERATIVE AGREEMENT
LOCALLY LED CONTRACTING

THIS AGREEMENT is hereby entered into by and between the City of Grand Island, Public Works Department hereinafter called the Sponsor; and the Natural Resources Conservation Service, United States Department of Agriculture, hereinafter called NRCS.

WITNESSETH THAT:

WHEREAS, under the provisions of Section 216 of the Flood Control Act of 1950, Public Law 81-516, U.S.C. 701b-1 Emergency Watershed Protection Program, and Section 403 of the Agricultural Credit Act of 1978, Public Law 95-334 as amended by section 382 of the Federal Agricultural Improvement and Reform Act of 1996, Public law 104-127, 16 U.S.C. 2203, NRCS is authorized to assist the Sponsor in relieving hazards created by natural disasters that cause a sudden impairment of a watershed, and

WHEREAS, NRCS and the Sponsor agree to install emergency watershed protection measures to relieve hazards and damages created by floods on May 11 -12, 2005.

NOW, THEREFORE, in consideration of the premises and of the several promises to be faithfully performed by the parties hereto as set forth, the Sponsor and NRCS do hereby agree as follows:

A. It is agreed that the following-described work is to be constructed at an estimated cost of \$115,380.

<u>DSR No.</u>	<u>Description of Work</u>	<u>Estimated Cost</u>
GI-1	Repair and protect slopes of channel and armor side slopes with riprap. Remove sediment deposition	\$27,000
GI-2	Repair and protect water control structure with sheet pile and riprap.	\$88,380

B. The Sponsor will:

1. Provide 25 percent (cash) of the cost of constructing the emergency watershed protection measures described in Section A. This cost to the sponsor is estimated to be \$28,845.
2. Provide in-kind contribution (list applicable in-kind services, i.e. to design the project, develop specifications and drawings, let and administer contracts, and inspect work performed).¹ The maximum value of in-kind contribution will not exceed 25 percent of the *actual* cost of constructing the emergency watershed protection measures described in Section A. The value of the in-kind contribution is estimated to be \$11,538.00. The Sponsor will retain records to support costs incurred by the Sponsor equal to the amount of the in-kind contribution.
3. The following individual is designated as the liaison between the sponsor and NRCS.

Steven Riehle P.E.
100 East First Street
PO Box 1968
Grand Island, NE. 68802-1968
308-385-5444 Ext. 260

4. Prepare a design, construction specifications, and drawings in accordance with standard engineering principles and be in compliance with programmatic requirements. The construction plans shall be reviewed and approved by the Sponsor prior to submittal to NRCS. The construction plans for measures other than stream debris removal and disposal will be reviewed and approved by a Professional Engineer registered in State of Nebraska prior to submittal to NRCS.
5. Provide certification that real property rights have been obtained for installation of emergency watershed protection measures prior to advertising. Certification will be provided on Form SCS-ADS-78, Assurances Relating to Real Property Acquisition, as amended (no attorney's opinion is required).
6. Accept all financial and other responsibility for excess costs resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits, and licenses needed for the emergency watershed protection measures described in Section A.

7. Contract for construction of the emergency watershed protection measures described in Section A in accordance with applicable state requirements.
8. Comply with the applicable requirements in Attachments A and B to this agreement.
9. Ensure that all contracts for construction of emergency watershed protection measures include the provisions contained in Attachment B to this agreement.
10. Provide copies of site maps to appropriate Federal and State agencies for environmental review. Sponsor will notify NRCS of environmental clearance, modification of construction plans, or any unresolved concerns prior to award of the contract(s) for construction of the emergency watershed protection measures.
11. Ensure that requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.
12. Pay the contractor as provided in the contract(s). Submit billings for reimbursement to NRCS on Form SF-270, Request for Advance or Reimbursement.
13. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract(s) awarded under this agreement. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, and litigation that may result from the project. Such actions will be at the expense of the sponsor including legal expenses.
14. Arrange for and conduct final inspection of completed emergency watershed protection measures. Certify that the project was installed in accordance with contractual requirements.
15. Upon acceptance of the work from the contractor(s), assume responsibility for operation and maintenance.
16. Hold and save NRCS free from any and all claims or causes of action whatsoever resulting from the obligations undertaken by the sponsor under this agreement or resulting from the work provided for in this agreement.

17. Retain all records dealing with the award and administration of contract(s) for 3 years from the date of the sponsor's submission of the FINAL Request for Reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the 3-year period, the records are to be retained until the litigation is resolved or the end of the 3-year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the U.S. Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcripts.

C. NRCS will:

1. Provide 75 percent of the cost of constructing the emergency watershed protection measures described in Section A. This cost to NRCS is estimated to be \$86,535.
2. Provide the value of the Sponsor in-kind contribution not to exceed 25 percent of the *actual* cost of constructing the emergency watershed protection measures described in Section A.
3. Not be substantially involved with the technical or contractual administration of this agreement. However, NRCS will provide advice and counsel as needed.
4. Review and approve constructions plans as identified in Section B4. of this agreement.
5. Make payment to the Sponsor covering NRCS's share of the cost upon receipt and approval of Form SF-270, Request for Advance or Reimbursement.
6. Be available to conduct progress checks and participate in final inspections.
7. The following individual is designated as the liaison between the Sponsor and NRCS.

Timothy Haakenstad P.E.
Federal Building Room 152
100 Centennial Mall N.
Lincoln, NE. 68508
402-437-4038

Agreement No. _____

D. It is mutually agreed that:

1. This agreement is effective the date it is fully executed by all parties to the agreement. It shall become null and void 90 calendar days after the date NRCS has executed this agreement if a contract has not been awarded.
2. The furnishing of financial and other assistance by NRCS is contingent upon the continuing availability of appropriations by Congress from which payment may be made and shall not obligate NRCS if Congress fails to so appropriate.
3. This agreement may be temporarily suspended by NRCS if NRCS determines that corrective action by the Sponsor is needed to meet the provisions of this agreement. Further, NRCS may suspend this agreement when it is evident that a termination is pending.
4. NRCS may terminate this agreement in whole or in part if it is determined by NRCS that the Sponsor has failed to comply with any of the conditions of this agreement. NRCS shall promptly notify the sponsor in writing of the determination and reasons for the termination, together with the effective date. Payments made by or recoveries made by NRCS under this termination shall be in accord with the legal rights and liabilities of NRCS and the Sponsor.
5. This agreement may be renegotiated, amended, extended, or modified by a written amendment as mutually agreed by both parties.
6. The program or activities conducted under this agreement will be in compliance with the nondiscrimination provisions contained in the Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration act of 1987 (Public Law 100-259); and other nondiscrimination statutes: namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975. They will also be in accordance with regulations of the Secretary of Agriculture (7 CFR-15, Subparts A & B), which provide that no person in the United States shall on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the U.S. Department of Agriculture or any agency thereof.

SPONSOR

By: _____

Title: _____

Date: _____

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This action authorized at an
official meeting of

on the _____ day of _____,

19__, at _____

State of _____.

(Signature)

(Title)

UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

By: _____

Title: _____

Date: _____

¹ Examples of in-kind contribution include DSR investigations, design, inspection and contracting. This will be discussed between the Sponsor and NRCS to determine the amount of work and the percentage of in-kind contribution that will be credited to the Sponsor.

ASSURANCES RELATING TO REAL PROPERTY ACQUISITION

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- A. **PURPOSE** — This form is to be used by sponsor(s) to provide the assurances to the Natural Resources Conservation Service of the U.S. Department of Agriculture which is required in connection with the installation of project measures which involve Federal financial assistance furnished by the Natural Resources Conservation Service.
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- B. **PROJECT MEASURES COVERED** —

Name of project _____

Identity of improvement or development _____

Location _____

- C. **REAL PROPERTY ACQUISITION ASSURANCE** —

This assurance is applicable if real property interests were acquired for the installation of project measures, and/or if persons, businesses, or farm operations were displaced as a result of such installation; *and* this assurance was not previously provided for in the watershed, project measure, or other type of plan.

If this assurance was not previously provided, the undersigned sponsor(s) hereby assures they have complied, to the extent practicable under State law, with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601-4655), as implemented in 7 C.F.R. Part 21. Any exceptions taken from the real property acquisition requirements under the authority of 42 U.S.C. 4655 because of State law have been or is hereby furnished to the Natural Resources Conservation Service along with the opinion of the Chief Legal Officer of the State containing a full discussion of the facts and law furnished.

- D. **ASSURANCE OF ADEQUACY OF REAL PROPERTY RIGHTS** —

The undersigned sponsor(s) hereby assures that adequate real property rights and interests, water rights if applicable, permits and licenses required by Federal, State, and local law, ordinance or regulation, and related actions have been taken to obtain the legal right to install, operate, maintain, and inspect the above-described project measures, except for structures or improvements that are to be removed, relocated, modified, or salvaged before and/or during the installation process.

This assurance is given with the knowledge that sponsor(s) are responsible for any excess costs or other consequences in the event the real property rights are found to be inadequate during the installation process.

Furthermore, this assurance is supported by an attorney's opinion attached hereto that certifies an examination of the real property instruments and files was made and they were found to provide adequate title, right, permission and authority for the purpose(s) for which the property was acquired.

If any of the real property rights or interests were obtained by condemnation (eminent domain) proceedings, sponsor(s) further assure and agree to prosecute the proceedings to a final conclusion and pay such damages as awarded by the court.

(Name of Sponsor)

By: _____

Title: _____

Date: _____

This action authorized
at an official meeting _____

_____ on _____

day of _____, 19____, _____

at _____

State of _____

Attest: _____

(Name)

(Title)

(Name of Sponsor)

By: _____

Title: _____

Date: _____

This action authorized
at an official meeting _____

_____ on _____

day of _____, 19____, _____

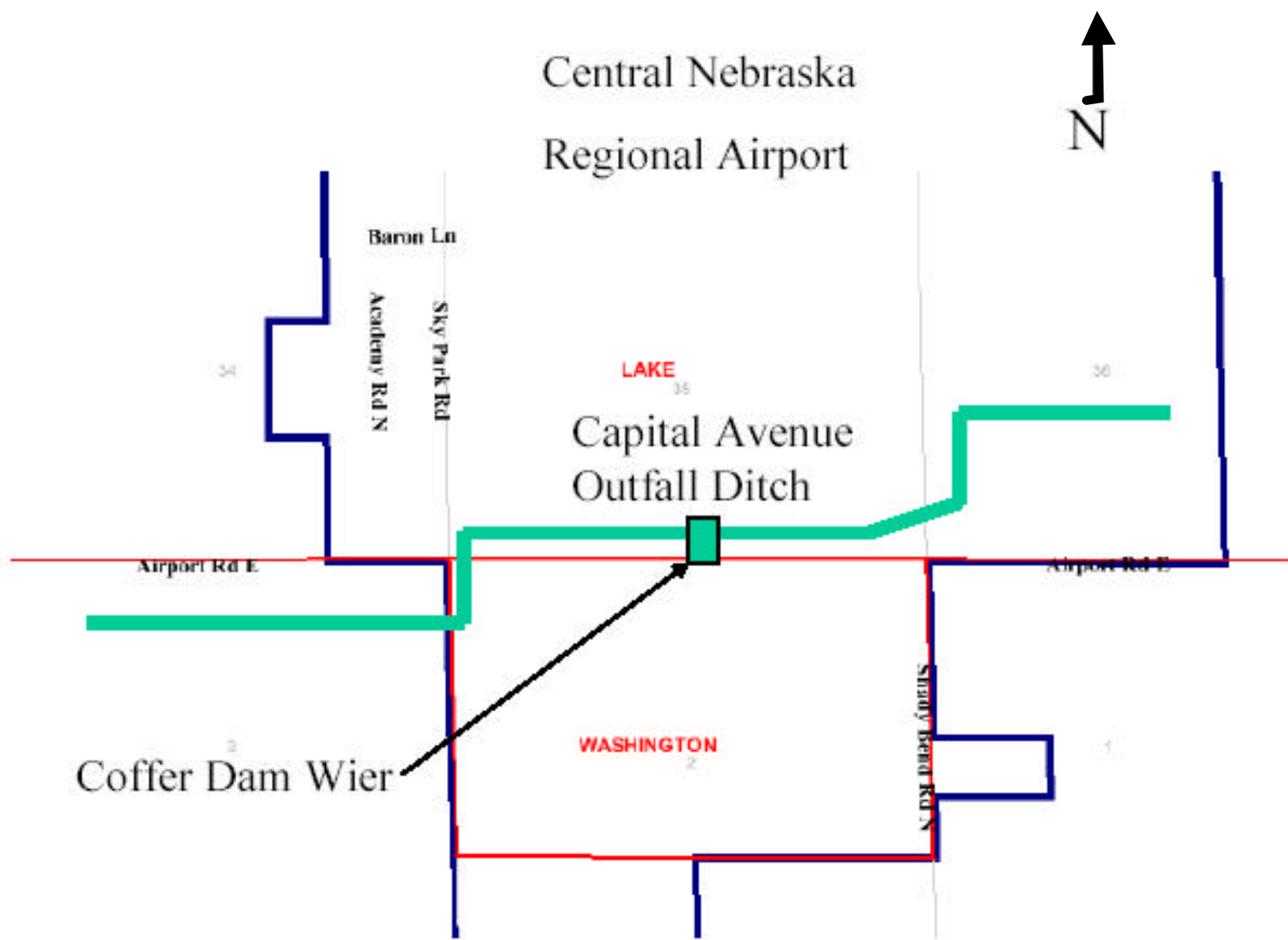
at _____

State of _____

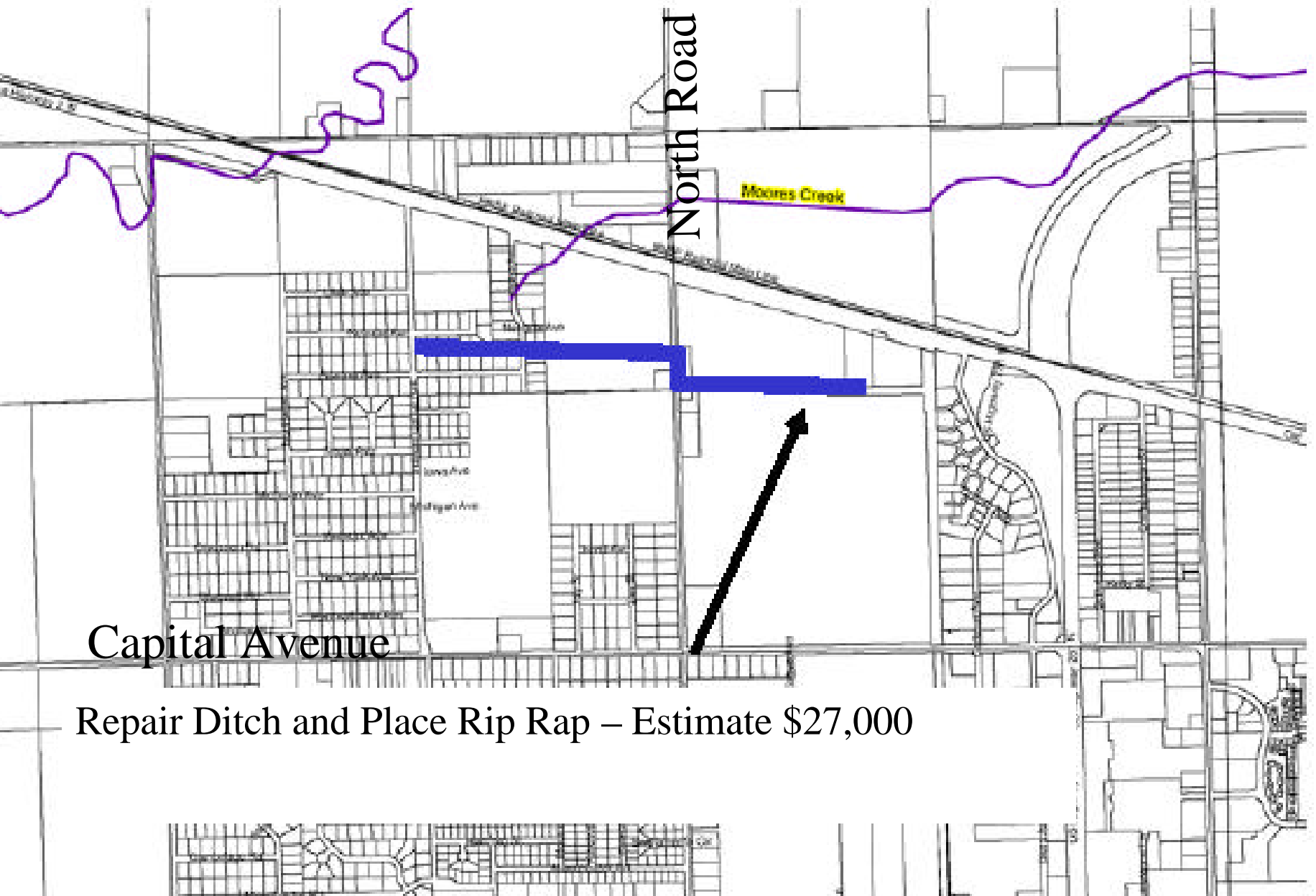
Attest: _____

(Name)

(Title)



Coffer Dam Wier, estimated damages of \$88,380
Located at Capital Ave and east of Sky Park Rd



Capital Avenue

North Road

Moors Creek

Repair Ditch and Place Rip Rap – Estimate \$27,000

RESOLUTION 2005-197

WHEREAS, on May 11 and 12, 2005, the city of Grand Island experienced heavy rain and severe flooding; and

WHEREAS, city infrastructure is in need of repairs as a result of such heavy rain and flooding; and

WHEREAS, the following two projects have been approved for federal funding from the United States Department of Agriculture, Natural Resources Conservation Service:

NRCS Project Number GI-1: Repair and protect slopes of channel and armor side slopes with riprap. Remove sediment deposition. Estimated construction cost - \$27,000.

NRCS Project Number GI-2: Repair and protect water control structure with sheet pile and riprap on Capital Avenue Outfall Ditch. Estimated construction cost - \$88,380.

WHEREAS, the City is responsible for certifying that necessary right-of-ways and easements are in place for the projects, and is required to contribute in-kind services or a cash match of up to 25% of construction costs; and

WHEREAS, a Cooperative Agreement setting out the terms and conditions of such repair work and funding thereof has been reviewed and approved by the City Attorney's office.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Cooperative Agreement, between the City and the Natural Resources Conservation Service, United States Department of Agriculture to install emergency watershed protection measures to relieve hazards and damages created by floods on May 11-12, 2005, is hereby approved.

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

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Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2005.

RaNae Edwards, City Clerk

Approved as to Form	<input type="checkbox"/>	_____
July 7, 2005	<input type="checkbox"/>	City Attorney