



# City of Grand Island

Tuesday, January 27, 2009

Council Session

## Item G8

**#2009-17 - Approving Agreement with the Nebraska Dept. of  
Roads and Grand Island Utilities Department**

Staff Contact: Gary R. Mader; Wesley Nespor

# Council Agenda Memo

**From:** Gary R. Mader, Utilities Director  
Wesley Nespor, Asst. City Attorney/Purchasing

**Meeting:** January 27, 2009

**Subject:** Utility and Department of Roads Agreement

**Item #'s:** G-8

**Presenter(s):** Gary R. Mader, Utilities Director

## Background

In 2009, the Nebraska State Department of Roads will be re-constructing the north bound lanes of U.S. Hwy. 281 from I-80 to Nebraska Hwy. 2, north of Capital Avenue. The plan includes extending left turn lanes and creating right turn lanes at some intersections in locations along the route.

The Electric Department has overhead and underground electric lines in the existing City right-of-way and utility easements that will be affected by the construction. The Electric Department is required to relocate any of its facilities which may be in conflict with the new construction. The only conflict known at this time is the pole and underground take-off located at the southeast corner quadrant of the intersection of U.S. Hwy. 281 and 13<sup>th</sup> Street.

## Discussion

The State of Nebraska will pay for 80% of those relocation costs but requires an agreement to be signed prior to the start of construction. The agreement sets forth the parameters of bidding, construction, and payment for the work performed. The estimated cost to perform the power pole relocation is \$15,500. Nebraska Department of Roads will pay 80% of the actual cost. The agreement has been reviewed by the Legal Department.

## 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, and authorize the Mayor to sign it on behalf of the City.

### **Sample Motion**

Move to approve the agreement with the Nebraska Department of Roads and authorize the Mayor to sign it on behalf of the City of Grand Island.

## AGREEMENT

PROJECT NO. NH-34-4(131)  
STATE CONTROL NO. 42433  
CITY OF GRAND ISLAND  
STATE OF NEBRASKA, DEPARTMENT OF ROADS  
GRAND ISLAND SOUTH

THIS AGREEMENT, made and entered into by and between the City of Grand Island, hereinafter referred to as "City" and the State of Nebraska, Department of Roads, hereinafter referred to as the "State".

WITNESSETH:

WHEREAS, the State has plans for the improvement of Highway US-34 beginning 2.1 miles south Grand Island, north 4.1 miles to the north junction with US-281 and then North 4.3 miles on US-281, and

WHEREAS, said construction will be undertaken under the project designation NH-34-4(131), and

WHEREAS, the City owns and operates the power poles 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 State has acquired for the new construction, and because of the construction itself, it becomes necessary for the City to adjust some, if not all, of its facility along this project, and

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

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

WHEREAS, the State is willing to pay the City 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 City 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. The State has prepared a tabulation of all the poles belonging to the City 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 State.

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 City and are by this reference hereby made a part of this agreement.

SECTION 4. The description of work to be performed and the estimate of costs prepared by the City have been approved by the State and are hereby made a part of this agreement. These items are attached as Exhibit "B". The total amount of this estimate is \$15,515.00 of which \$12,412.00 is the 80 percent share of the cost chargeable to the State. It is expressly understood that notwithstanding this estimate the State will reimburse the City for all of its actual nonbetterment expenses less any credits for salvaged or junked materials.

SECTION 5. The City agrees, as a part of the above described estimate to advise the State 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 City. If the accounting method is not prescribed by an agency of the State or Federal Government, it shall be described in the City's estimate and be approved as a part of this agreement.

SECTION 6. The City may submit progress billings for the portions of its rehabilitation that have been completed. The City agrees not to submit progress billings for amounts less than \$2,500.00. The State will make progress payments, based upon satisfactory prosecution of work, for 95 percent of the amount billed. The State will limit its payments to 95 percent of the approved estimate referenced in Section 4 of this agreement pending the results of the final cost audit. The State will make every effort to pay the City within thirty days of receipt of the City's invoice.

SECTION 7. If the City wants to let a construction contract, the City shall do the following:

- A. Comply with State public bidding statutes. If the City solicits bids from a list of known Contractors, the list must be submitted to the State for concurrence prior to the soliciting of bids.
- B. Submit the bid proposal, plans and construction schedule to the State 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 as amended, 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. Submit a copy of the bids received and the City's recommendation of award to the State 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 as amended, and the same are incorporated herein by this reference.

SECTION 8. 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 9. In consideration of the payment as mentioned in Section 4 of this agreement the City 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 10. All traffic controls must comply with the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD). If the State furnishes the City a traffic control plan, the City must comply with the plan. The State has the right to shut down the City's work area not in compliance with the Manual on Uniform Traffic Control Devices.

SECTION 11. The City shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49 CFR, Part 21 and 27, as set forth in Exhibit "A" attached hereto and hereby made a part of this agreement.

SECTION 12The City 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.

SECTION 13. The City agrees that the billing will be prepared and submitted in a manner to allow comparison with the approved estimate.

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 City this \_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST: CITY OF GRAND ISLAND

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

\_\_\_\_\_  
Mayor

EXECUTED by the State this \_\_\_\_ day of \_\_\_\_\_, 2009.

STATE OF NEBRASKA  
DEPARTMENT OF ROADS  
Randall D. Peters, P.E.

\_\_\_\_\_  
Utilities Engineer

\_\_\_\_\_  
Planning and Project Development Engineer

AGRC5-SB

## 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 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 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 (6) 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 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 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 State, 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"





Working Together for a Better Tomorrow. Today.

December 8, 2008

State of Nebraska  
Department of Roads  
Sandy Wojtasek, Utilities Coordinator  
Planning & Project Development Division  
PO Box 94759  
Lincoln NE 68509-4759

RE: Project No. NH-34-4(131)  
Control No. 42433  
Location: Grand Island South

Dear Ms. Wojtasek:

The following is a detailed estimate of relocating the power pole at U.S. Highway 281 and 13<sup>th</sup> street here in Grand Island:

Material:	Overhead	\$ 931.60	
	Underground	\$4,264.00	
<u>Total Material</u>			\$ 5,195.60
Labor:	Overhead	\$2,600.00	
	Underground	\$3,000.00	
<u>Total Labor</u>			\$ 5,600.00
Equipment:	Overhead	\$2,920.00	
	Underground	\$1,800.00	
<u>Total Equipment</u>			\$ 4,720.00
<b>TOTAL</b>			<b>\$15,515.00</b>

*02/08 split state pays \$12,412.00*

Please note Charter Communications is also attached to the old pole. The estimate does not include any of the work required to relocate their system. Please contact them directly.

Sincerely,

*Robert H. Smith*

Robert H. Smith  
Asst. Utilities Director

RHS/pag

pc: Steve Riehle, Public Works Director  
Tom Barnes, Civil Engineering Manager, Utilities

RECEIVED BY  
UTILITIES SECTION

DEC 09 2008

City Hall • 100 East First Street • Box 1968 • Grand Island, Nebraska 68802-1968  
(308) 385-5444, Ext. 280 • FAX: 385-5488 • Emergency: 385-5461 • www.grand-island.com

Exec. *[Signature]*  
Date *12-09*

Approved  
*[Signature]*  
Date *1/7/09*

Project No. NH-34-4(131)  
Control No. 42433  
Grand Island South

EXHIBIT "B"

RESOLUTION 2009-17

WHEREAS, the City of Grand Island and the Nebraska Department of Roads (the Parties) desire to enter into an agreement for relocation of a power pole and underground take-off at the southeast corner quadrant of the intersection of U.S. Hwy. 281 and 13<sup>th</sup> Street; and

WHEREAS, the Parties agree and acknowledge the State of Nebraska will pay for 80% of those relocations costs, estimated to be \$15,500, but requires an agreement to be signed prior to the start of construction; and

WHEREAS, the Parties agree and acknowledge that the relocation of said pole and underground take-off at the southeast corner of U.S. Hwy. 281 and 13<sup>th</sup> Street needs to be done to complete the re-construction of the north bound lanes of U.S. Hwy. 281 from I-80 to Nebraska Hwy. 2, north of Capital Avenue; and

WHEREAS, the Parties desire to enter into an Agreement to facilitate the moving of the power pole and underground take-off at the corner of U.S. Hwy. 281 and 13<sup>th</sup> Streets.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized to, on behalf of the City, execute the Agreement between the City of Grand Island and the Nebraska Dept. of Roads, in accordance with the terms and conditions generally described above.

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Adopted by the City Council of the City of Grand Island, Nebraska, January 27, 2009.

\_\_\_\_\_  
Margaret Hornady, Mayor

Attest:

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

Approved as to Form    ☐ \_\_\_\_\_  
January 21, 2009        ☐ City Attorney