
City of Grand Island



Tuesday, June 14, 2011

Council Session Packet

City Council:

Larry Carney
Linna Dee Donaldson
Scott Dugan
Randy Gard
John Gericke
Peg Gilbert
Chuck Haase
Mitchell Nickerson
Bob Niemann
Kirk Ramsey

Mayor:

Jay Vavricek

City Administrator:

Mary Lou Brown

City Clerk:

RaNae Edwards

7:00:00 PM
Council Chambers - City Hall
100 East First Street

Call to Order

This is an open meeting of the Grand Island City Council. The City of Grand Island abides by the Open Meetings Act in conducting business. A copy of the Open Meetings Act is displayed in the back of this room as required by state law.

The City Council may vote to go into Closed Session on any agenda item as allowed by state law.

Invocation - Pastor Steve Warriner, Abundant Life Christian Center, 3409 West Faidley Avenue

Pledge of Allegiance

Roll Call

A - SUBMITTAL OF REQUESTS FOR FUTURE ITEMS

Individuals who have appropriate items for City Council consideration should complete the Request for Future Agenda Items form located at the Information Booth. If the issue can be handled administratively without Council action, notification will be provided. If the item is scheduled for a meeting or study session, notification of the date will be given.

B - RESERVE TIME TO SPEAK ON AGENDA ITEMS

This is an opportunity for individuals wishing to provide input on any of tonight's agenda items to reserve time to speak. Please come forward, state your name and address, and the Agenda topic on which you will be speaking.

MAYOR COMMUNICATION

This is an opportunity for the Mayor to comment on current events, activities, and issues of interest to the community.



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item E1

Public Hearing on Request from Elsy Ruth Ramos dba LA Night Club & Restaurant, 115 West 3rd Street for a Class “IB” Liquor License

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: June 14, 2011

Subject: Public Hearing on Request from Elsy Ruth Ramos dba LA Night Club & Restaurant, 115 West 3rd Street for a Class “IB” Liquor License

Item #'s: E-1 & I-1

Presenter(s): RaNae Edwards, City Clerk

Background

Section 4-2 of the Grand Island City Code declares the intent of the City Council regarding liquor licenses and the sale of alcohol.

Declared Legislative Intent

It is hereby declared to be the intent and purpose of the city council in adopting and administering the provisions of this chapter:

- (A) To express the community sentiment that the control of availability of alcoholic liquor to the public in general and to minors in particular promotes the public health, safety, and welfare;
- (B) To encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the sale and distribution thereof; and
- (C) To ensure that the number of retail outlets and the manner in which they are operated is such that they can be adequately policed by local law enforcement agencies so that the abuse of alcohol and the occurrence of alcohol-related crimes and offenses is kept to a minimum.

Discussion

Elsy Ruth Ramos dba LA Night Club & Restaurant, 115 West 3rd Street has submitted an application for a Class “IB” Liquor License. A Class “IB” Liquor License allows for the sale of alcohol on sale and beer off sale only inside the corporate limits of the city.

City Council action is required and forwarded to the Nebraska Liquor Control Commission for issuance of all licenses. This application has been reviewed by the Clerk, Building, Fire, Health, and Police Departments.

Due to concerns from the Grand Island Police Department of Angel Ramos, spouse of Elsy Ramos involvement in the business and not a citizen of the United States it is recommended this application be denied. (See attached Police Department report.)

Alternatives

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

1. Approve the application.
2. Forward to the Nebraska Liquor Control Commission with no recommendation.
3. Forward to the Nebraska Liquor Control Commission with recommendations.
4. Deny the application.

Recommendation

Based on the Nebraska Liquor Control Commission's criteria for the approval of Liquor Licenses, City Administration recommends that the Council **deny** this application.

Sample Motion

Move to **deny** the application for Elsy Ruth Ramos dba LA Night Club & Restaurant, 115 West 3rd Street for a Class '1B' Liquor License due to the involvement of Angel Ramos, spouse.

06/03/11
450
15:52
1

Grand Island Police Department

LAW INCIDENT TABLE

Page:

City : Grand Island
Occurred after : 10:19:40 05/18/2011
Occurred before : 10:19:40 05/18/2011
When reported : 10:19:40 05/18/2011
Date disposition declared : 05/18/2011
Incident number : L11052320
Primary incident number :
Incident nature : Liquor Lic Inv Liquor License
Investigation
Incident address : 115 3rd St W
State abbreviation : NE
ZIP Code : 68801
Contact or caller :
Complainant name number :
Area location code : PCID Police - CID
Received by : Vitera D
How received : T Telephone
Agency code : GIPD Grand Island Police Department
Responsible officer : Vitera D
Offense as Taken :
Offense as Observed :
Disposition : ACT Active
Misc. number : RaNae
Geobase address ID : 11226
Long-term call ID :
Clearance Code : CL Case Closed
Judicial Status : NCI Non-criminal Incident

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INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
NM	3592	05/18/11	Ramos, Angel Edilberto	Elsy's Husband
NM	13037	05/18/11	Ramos, Elsy R	Owner

LAW INCIDENT CIRCUMSTANCES:

Se Circu	Circumstance code	Miscellaneous
1	LT03	Bar/Night Club

LAW INCIDENT NARRATIVE:

I Received a Copy of a Liquor License Application from Elsy Ramos for LA Night Club.

LAW INCIDENT RESPONDERS DETAIL:

Seq	Responding officer	Unit number	Unit number
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1	Vitera D	318	Vitera D
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06/03/11

Grand Island Police Department

450

15:52

LAW INCIDENT TABLE

Page:

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LAW SUPPLEMENTAL NARRATIVE:

Seq	Name	Date
1	Vitera D	13:25:06 06/02/2011

06/03/11
450
15:52
3

Grand Island Police Department

LAW INCIDENT TABLE

Page:

318

Grand Island Police Department
Supplemental Report

Date, Time: Thu Jun 02 13:25:18 CDT 2011
Reporting Officer: Vitera
Unit #: CID

The first thing I noticed about the copy of Elsy's application is that someone from the NLCC wrote "Hot List" on it. Hot list means there is a potential problem with the applicant. I checked with the NLCC and found out that Elsy is NOT on the hot list. The location of the bar is on the list because the prior business had some pending issues with the NLCC. The next thing I noticed is that Elsy is applying for a Class IB license which would allow her to sell beer off sale. The license type is "Individual" which means that Elsy's husband (Angel) signed a Spousal Affidavit of Non-Participation.

Elsy also checked the "No" box on a question that asks, "Was this premise licensed as a liquor licensed business within the last two years?" Senor Lucky's Bar started operating at the proposed location for LA Nightclub and

Restaurant in November or December of 2009 which makes Elsy's response incorrect. The last piece of information on the application that caught my attention is the question that asks if the applicant is borrowing any money from any source (including family) to establish/operate the business. Elsy checked the "No" box.

I talked to Elsy at length on 5/31/11 and again on 6/2/11 for a short time. I told Elsy that I didn't care for her choice for the name of her club. I told her that a lot of our gang members have ties to the Los Angeles area, and I thought the name would invite a clientele that would cause problems at her club. Elsy informed me that her husband picked out the name. She also told me that her husband is a hard worker and has saved money. A lot of that money will go towards the club. Elsy also advised that her security personnel will come from APSS which stands for "Angel's Private Security Service." I told Elsy that Angel signed a Spousal Affidavit of Non-Participation, and he is to have nothing to do with the club. Elsy made it clear to me that Angel would like to be involved but was told by the NLCC that he can't because he is not a "citizen" of the United States. According to Elsy, Angel is a "resident" of the United States.

I spoke to Mary Messman at the NLCC. She advised that Elsy had to apply for an individual license and have Angel sign the non-participation agreement, or Elsy wouldn't be eligible for a license because of Angel's status as a resident instead of a citizen. I also checked with ICE, and they confirmed that Angel is a resident and not a citizen.

When I spoke to Elsy the second time, she told me that she didn't realize that the name of her proposed business might cause her problems, and she wants to change the name. She didn't tell me what she has in mind for a new name. I referred her to the NLCC.

After looking through Elsy's application, I ran some checks on her. There are no warrants for Elsy's arrest. I checked her through Spillman and NCJIS. She has numerous entries in Spillman, but most of them are in the capacity of a witness, reporting party, or victim. NCJIS records show that Elsy has five separate traffic convictions which include, speeding, no operator's license,

06/03/11

Grand Island Police Department

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15:52

LAW INCIDENT TABLE

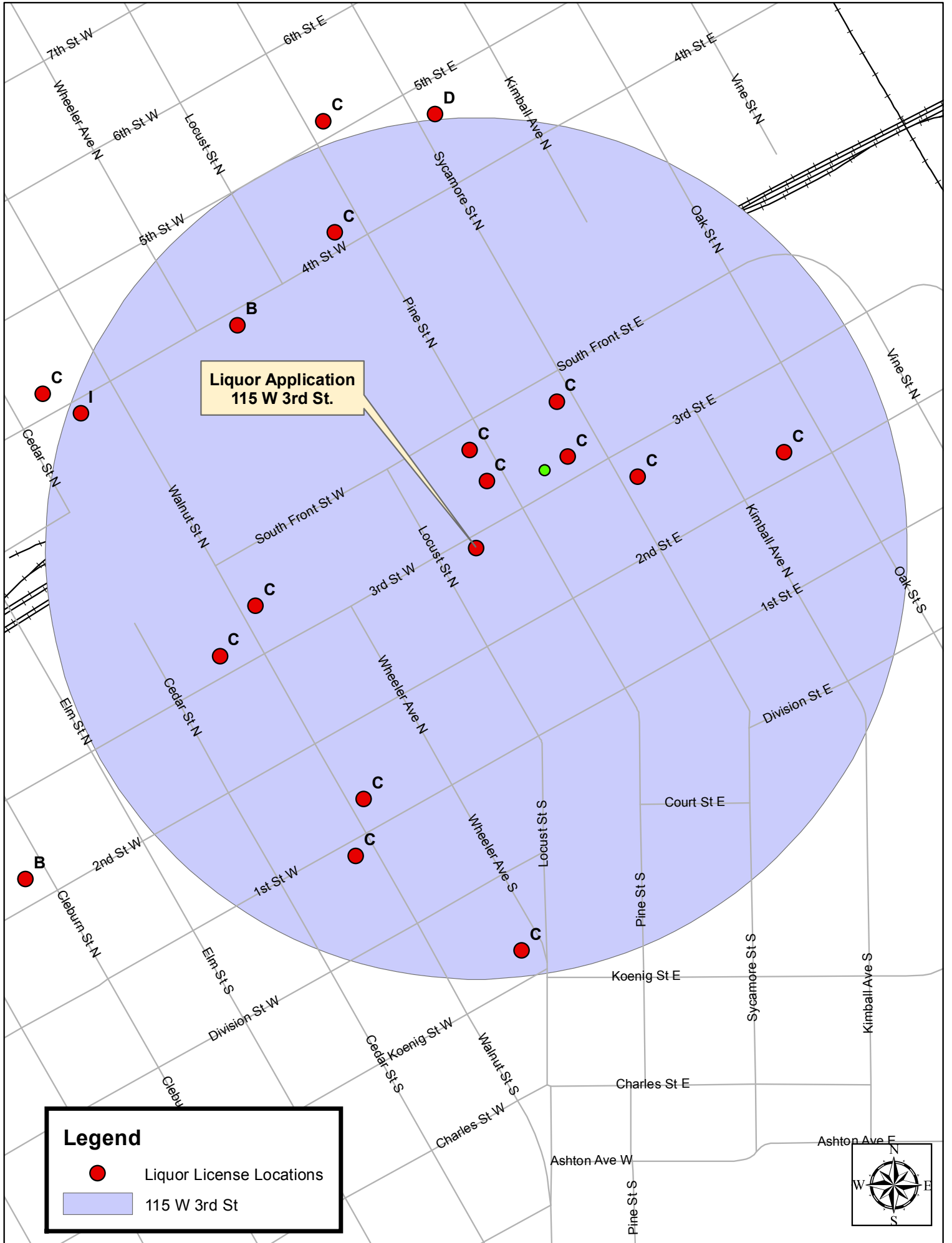
Page:

4

fail to yield right of way, and licensing a car without insurance. She didn't disclose any convictions on her application.

Angel also has numerous entries in Spillman. Most of them are as a victim or witness. However, he has an arrest in 1999 for 2nd Degree Assault on an Officer and a DUI arrest. NCJIS shows that he was convicted of DUI and Refusal to Test on 1/25/04. It also shows that he was convicted of an attempted Class IIIA or Class IV Felony and Disturbing the Peace in 1999. It appears that the assault on an officer charge was plead down to a misdemeanor through the "Attempt" conviction. He only disclosed the DUI.

In Summary, it appears that Angel is already part of this business even though he signed a Spousal Affidavit of Non-Participation form. He named the business, helped finance the business, and plans to provide security for the business. Since Angel is not eligible to receive a liquor license and he is violating the non-participation agreement, the Grand Island Police Department can not recommend an approval to the council.





City of Grand Island

Tuesday, June 14, 2011

Council Session

Item E2

**Public Hearing on Request from LaMexicana, Inc. dba Rafa's
Tacos, 811 West 2nd Street for a Class "T" Liquor License**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: June 14, 2011

Subject: Public Hearing on Request from LaMexicana, Inc. dba Rafa's Tacos, 811 West 2nd Street for a Class "I" Liquor License

Item #'s: E-2 & I-2

Presenter(s): RaNae Edwards, City Clerk

Background

Section 4-2 of the Grand Island City Code declares the intent of the City Council regarding liquor licenses and the sale of alcohol.

Declared Legislative Intent

It is hereby declared to be the intent and purpose of the city council in adopting and administering the provisions of this chapter:

- (A) To express the community sentiment that the control of availability of alcoholic liquor to the public in general and to minors in particular promotes the public health, safety, and welfare;
- (B) To encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the sale and distribution thereof; and
- (C) To ensure that the number of retail outlets and the manner in which they are operated is such that they can be adequately policed by local law enforcement agencies so that the abuse of alcohol and the occurrence of alcohol-related crimes and offenses is kept to a minimum.

Discussion

LaMexicana, Inc. dba Rafa's Tacos, 811 West 2nd Street has submitted an application for a Class "I" Liquor License. A Class "I" Liquor License allows for the sale of alcohol on sale only inside the corporate limits of the city.

City Council action is required and forwarded to the Nebraska Liquor Control Commission for issuance of all licenses. This application has been reviewed by the Clerk, Building, Fire, Health, and Police Departments.

Also included in the application was a request for liquor manager designation for Maria Ocegueda, 504 North Elm Street.

Alternatives

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

1. Approve the application.
2. Forward to the Nebraska Liquor Control Commission with no recommendation.
3. Forward to the Nebraska Liquor Control Commission with recommendations.
4. Deny the application.

Recommendation

Based on the Nebraska Liquor Control Commission's criteria for the approval of Liquor Licenses, City Administration recommends that the Council approve this application.

Sample Motion

Move to approve the application for LaMexicana, Inc. dba Rafa's Tacos, 811 West 2nd Street for a Class "I" Liquor License contingent upon final inspections and Liquor Manager designation for Maria Ocegueda, 504 North Elm Street contingent upon Ms. Ocegueda completing a state approved alcohol server/seller training program.

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Grand Island Police Department

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14:09

LAW INCIDENT TABLE

Page:

1

City : Grand Island
Occurred after : 15:10:11 05/23/2011
Occurred before : 15:10:11 05/23/2011
When reported : 15:10:11 05/23/2011
Date disposition declared : 05/23/2011
Incident number : L11053069
Primary incident number :
Incident nature : Liquor Lic Inv Liquor License

Investigation

Incident address : 811 2nd St W
State abbreviation : NE
ZIP Code : 68801
Contact or caller :
Complainant name number :
Area location code : PCID Police - CID
Received by : Vitera D
How received : T Telephone
Agency code : GIPD Grand Island Police Department
Responsible officer : Vitera D
Offense as Taken :
Offense as Observed :
Disposition : ACT Active
Misc. number :
Geobase address ID : 13162
Long-term call ID :
Clearance Code : CL Case Closed
Judicial Status : NCI Non-criminal Incident

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INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
NM	87129	06/06/11	Rafa's Tacos,	Business
Involved				
NM	166733	06/06/11	Ocegueda, Maria	Liquor Manager
NM	62723	05/24/11	Flores, Adolfo	Owner

LAW INCIDENT CIRCUMSTANCES:

Se Circu Circumstance code : Miscellaneous
1 LT21 Restaurant

LAW INCIDENT NARRATIVE:

I Received a Copy of a Liquor License Application from Adolfo Flores for Rafa's Tacos and a Copy of a Liquor Manager Application from Maria Ocegueda.

LAW INCIDENT RESPONDERS DETAIL:

Se Responding offi Unit n Unit number

1	Vitera D	318	Vitera D
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06/06/11 Grand Island Police Department

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LAW INCIDENT TABLE

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LAW SUPPLEMENTAL NARRATIVE:

Seq	Name	Date
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1  Vitera D          09:55:13 05/24/2011
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Grand Island Police Department

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LAW INCIDENT TABLE

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318

Grand Island Police Department
Supplemental Report

Date, Time: Tue May 24 09:55:24 CDT 2011

Reporting Officer: Vitera

Unit- CID

I received a copy of a liquor license application from Adolfo Flores for Rafa's

Tacos and a copy of a liquor manager application from Maria Ocegueda. Adolfo

Flores is the owner of La Mexicana and is leasing the Rafa's Tacos building from

Rafael Orozco. Adolfo is seeking a Class I License which is for beer, wine, and

distilled spirits on sale only. The main nature of the business is a restaurant

which will not have a bar separate from the dining area. The business plan

states that it is the intent of the applicant to "serve alcoholic beverages at

the request of patrons." "It is anticipated that all alcoholic beverages will

be consumed within the dinning area."

Back on 2/7/11, I spoke to Adolfo at his La Mexicana Restaurant about his lease agreement with Rafael Orozco and Rafa's Taco's. He started operating Rafa's on 2/1/11. At that time, Adolfo advised that he knew he would have to file with the NLCC for a Temporary Operating Permit (TOP) to sell alcohol off of Orozco's license and then eventually get his own. Adolfo assured me that he wouldn't sell alcohol until he had the TOP or his own license. After speaking with Adolfo, I went to Rafa's and spoke to Adolfo's finance who was managing the restaurant. She gave the same explanation about alcohol sales. I looked around the restaurant and found no evidence of alcohol sales.

After looking through Adolfo's application, I had some questions. The first thing I noticed is that on the spot on the application where it asks if anyone who is a party to the application has ever been convicted or plead guilty to any charge, Adolfo checked the "No" box. I also saw that Adolfo listed his home address as 385 N. Pine which I believe is the La Mexicana Market and tortilla factory. The last thing that grabbed my attention is that Adolfo stated he has never had a liquor license before which made me wonder why he was now seeking one for Rafa's and not La Mexicana.

On 5/24/11, I called Adolfo. I asked him about ever being convicted of anything. He said that he thought the question was intended to address serious crimes and being in jail. I told Adolfo that the question was clearly stated, and he had an attorney helping him fill out the application who should have been able to explain it to him. Adolfo had no other response other than to say he answered based on his interpretation of the question. He admitted that he plead guilty to selling alcohol to a minor and has some traffic convictions. He said the sale to a minor happened during a "sting" when he was working the Paddock at Fonner during racing season. He just said that he was so busy, he didn't ask for identification.

I also asked Adolfo why he is seeking a liquor license for Rafa's and not for La Mexicana. Adolfo said that the Rafa's customers are used to having the option to have an alcoholic beverage with their meal, so he wants to continue to offer that same level of service. He also said the he plans on eventually applying for a liquor license for La Mexicana Restaurant and Market. Adolfo advised that he has been leasing the market to his sister, but the lease agreement is almost up, and he plans on resuming the operation of it. Even though Adolfo stated on his application that he has never had a liquor license before, he said

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Grand Island Police Department

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LAW INCIDENT TABLE

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that he had a liquor license for his La Mexicana restaurants in Lexington and Gibbon and the market in Grand Island. He had no explanation as to why he didn't answer the question on the application correctly other than to say it was a mistake. Adolfo also clarified his home address as being 504 N. Elm # 104. He receives mail at the 385 N. Pine address.

Adolfo said he owned the all of the restaurants at the same time, but he got a good offer from someone to buy the Lexington and Gibbon restaurant, so he sold them. He also acknowledged that one of the reasons he hasn't had a liquor license at La Mexicana Restaurant in Grand Island is because he used to have one at that Market and had some problems with selling to minors. I checked Spillman and found records for the restaurant and market. The records go back to 2002 on the market and 2009 on the restaurant. I found no indication of alcohol issues anywhere. I also checked the NLCC website to see if I could verify the extent of Adolfo's issues with selling to minors. I was able to pull up three separate entries for La Mexicana, but they were all in Omaha and Lincoln. On 5/24/11, I called the NLCC and asked for some history on La Mexicana Restaurant and Market.

I was told by the NLCC that it would be extremely difficult and time consuming for them to locate records for Adolfo and his history of having a liquor license approximately ten years ago for his La Mexicana Market. I was told that Adolfo is NOT on their "Hot List" which they keep indefinitely and would indicate that the NLCC had problems with him before.

I looked Adolfo and Maria up in Spillman and NCJIS. Adolfo has some traffic contacts along with a selling alcohol to a minor listed in Spillman. Maria is not listed in Spillman. However, she has only lived in Grand Island since 2010. The majority of her life was spent in California, according to the application. Adolfo has twelve separate traffic convictions listed in NCJIS and the selling to a minor conviction that was also listed in Spillman. The application states that Adolfo has lived in Grand Island since 2007. He lived in Lexington before that, and according to our phone conversation, he lived in California before that. On the application, Maria stated that she was born in Mexico. The application doesn't say where Adolfo was born. However, ICE advised me that Adolfo and Maria are each Naturalized U.S. Citizens.

While Adolfo didn't fill out the application correctly by disclosing his traffic and selling to a minor conviction or disclosing that he has had liquor licenses in the past, his "criminal" history (at least in Nebraska) doesn't automatically exclude him from getting a liquor license. In addition, even though the police department has had some issues with Rafael Orozco and his liquor license at El Diamante, we have not had any issues with Rafael's liquor license at Rafa's Tacos. From my meeting with Adolfo in February and speaking to him over the phone, I don't see any reason why we would start having liquor problems at Rafa's under his control. The GIPD has no objection to Adolfo Flores receiving a liquor license for Rafa's Tacos.

Since Maria Ocegueda has only lived in Nebraska for a short time, it would be

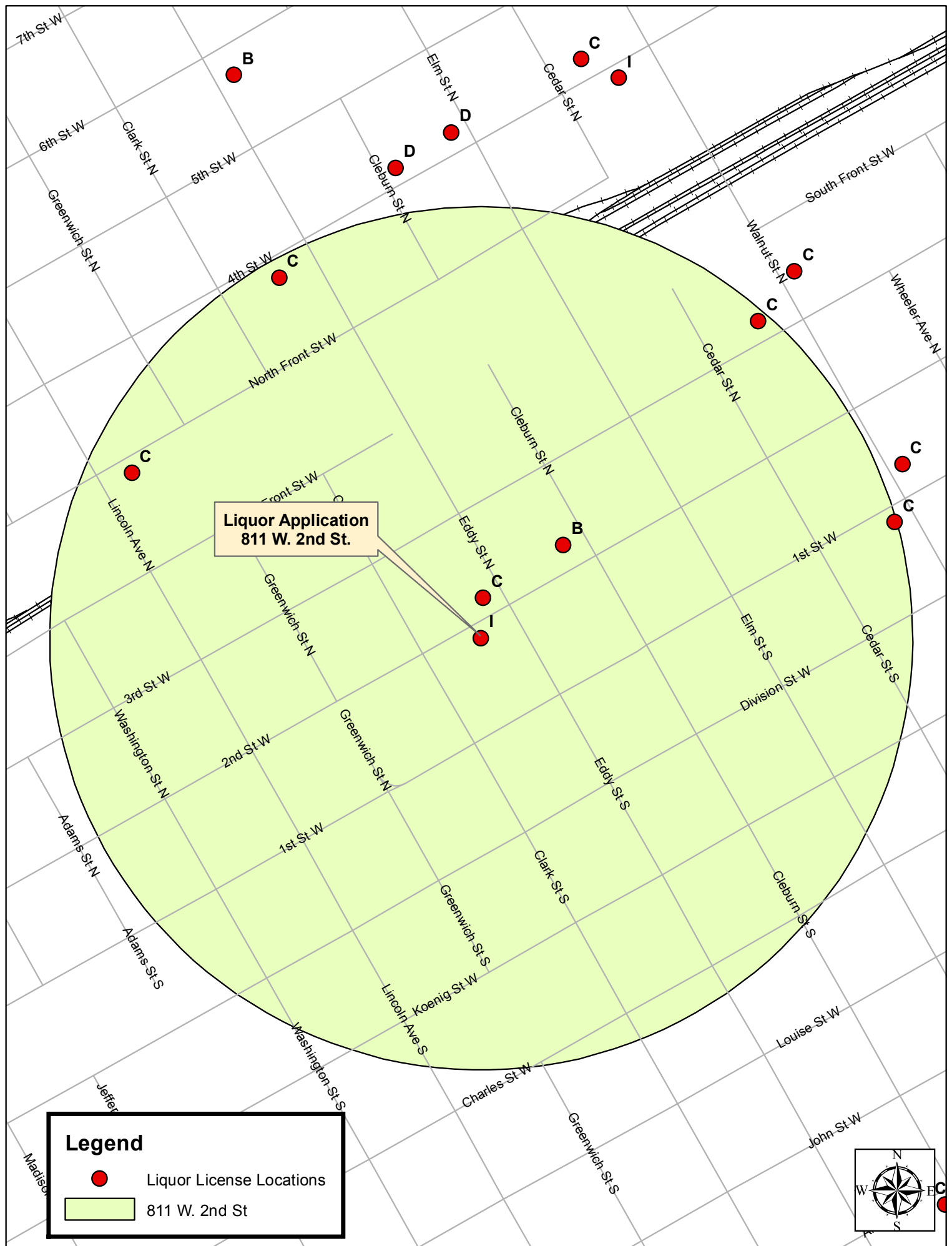
expected that she has little to no criminal history. From speaking with her back in February, she seems like she would be qualified to be a liquor manager. If the State doesn't uncover any problems with her criminal history through her fingerprint submission, the GIPD does not object to her becoming the liquor manager for Rafa's Tacos.

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14:09
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Grand Island Police Department

LAW INCIDENT TABLE

Page:





City of Grand Island

Tuesday, June 14, 2011

Council Session

Item E3

**Public Hearing on Request from Paloma Huerta Nevarez dba El
Diamante, 1600 South Eddy Street for a Class “T” Liquor License**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: June 14, 2011

Subject: Public Hearing on Request from Paloma Huerta Nevarez dba El Diamante, 1600 South Eddy Street for a Class “I” Liquor License

Item #'s: E-3 & I-3

Presenter(s): RaNae Edwards, City Clerk

Background

Section 4-2 of the Grand Island City Code declares the intent of the City Council regarding liquor licenses and the sale of alcohol.

Declared Legislative Intent

It is hereby declared to be the intent and purpose of the city council in adopting and administering the provisions of this chapter:

- (A) To express the community sentiment that the control of availability of alcoholic liquor to the public in general and to minors in particular promotes the public health, safety, and welfare;
- (B) To encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the sale and distribution thereof; and
- (C) To ensure that the number of retail outlets and the manner in which they are operated is such that they can be adequately policed by local law enforcement agencies so that the abuse of alcohol and the occurrence of alcohol-related crimes and offenses is kept to a minimum.

Discussion

Paloma Huerta Nevarez dba El Diamante, 1600 South Eddy Street has submitted an application for a Class “I” Liquor License. A Class “I” Liquor License allows for the sale of alcohol on sale only inside the corporate limits of the city.

City Council action is required and forwarded to the Nebraska Liquor Control Commission for issuance of all licenses. This application has been reviewed by the Clerk, Building, Fire, Health, and Police Departments.

Due to concerns from the Grand Island Police Department of false information on the application it is recommended this application be denied. (See attached Police Department report.)

Alternatives

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

1. Approve the application.
2. Forward to the Nebraska Liquor Control Commission with no recommendation.
3. Forward to the Nebraska Liquor Control Commission with recommendations.
4. Deny the application.

Recommendation

Based on the Nebraska Liquor Control Commission's criteria for the approval of Liquor Licenses, City Administration recommends that the Council **deny** this application.

Sample Motion

Move to **deny** the application for Paloma Huerta Nevarez dba El Diamante, 1600 South Eddy Street for a Class '1' Liquor License based on false information on the application.

06/08/11

Grand Island Police Department

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15:06

LAW INCIDENT TABLE

Page:

1

City : Grand Island
Occurred after : 15:07:23 05/23/2011
Occurred before : 15:07:23 05/23/2011
When reported : 15:07:23 05/23/2011
Date disposition declared : 05/23/2011
Incident number : L11053068
Primary incident number :
Incident nature : Liquor Lic Inv Liquor License

Investigation

Incident address : 1600 Eddy St S
State abbreviation : NE
ZIP Code : 68801
Contact or caller :
Complainant name number :
Area location code : PCID Police - CID
Received by : Vitera D
How received : T Telephone
Agency code : GIPD Grand Island Police Department
Responsible officer : Vitera D
Offense as Taken :
Offense as Observed :
Disposition : ACT Active
Misc. number : RaNae
Geobase address ID : 18419
Long-term call ID :
Clearance Code : CL Case Closed
Judicial Status : NCI Non-criminal Incident

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INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
NM	56438	06/06/11	Huerta-Perez, Baltazar	Paloma's
Husband				
NM	59404	06/06/11	Huerta-Nevez, Paloma	Liquor License
NM	100491	06/06/11	El Diamante Night Club,	Business
Involved				

LAW INCIDENT CIRCUMSTANCES:

Se Circu Circumstance code : Miscellaneous
1 LT03 Bar/Night Club

LAW INCIDENT NARRATIVE:

I Received a Copy of a Liquor License Application from Paloma Huerta Nevarez for El Diamante.

LAW INCIDENT RESPONDERS DETAIL:

Se Responding offi Unit n Unit number

1	Vitera D	318	Vitera D
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06/08/11 Grand Island Police Department

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15:06

LAW INCIDENT TABLE

Page :

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LAW SUPPLEMENTAL NARRATIVE:

Seq	Name	Date
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1  Vitera D      15:36:51 06/06/2011
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Grand Island Police Department

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LAW INCIDENT TABLE

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318

Grand Island Police Department
Supplemental Report

Date, Time: Mon Jun 06 15:37:05 CDT 2011

Reporting Officer: Vitera

Unit- CID

El Diamante is an Individual Application. The only two names on the application are Paloma Huerta Nevarez and her husband Baltazar Huerta. The Huerta's state they have lived in Grand Island since 2002 and in Nebraska since at least 2000.

I can confirm that the GIPD had contact with Baltazar in 2002. Paloma wants to

run the El Diamante. She says that the El Diamante will be used as a banquet

hall for wedding receptions, food sales, and occasional live entertainment.

According to ICE, Baltazar is a Lawful Permanent Resident Alien, and Paloma is a

Naturalized U.S. Citizen. Baltazar signed a Spousal Affidavit of Non-Participation.

I checked Paloma and Baltazar through Spillman and NCJIS. Paloma has several entries in Spillman but doesn't necessarily show anything that would indicate any convictions. Baltazar has one entry which shows that he was involved in a motor vehicle accident. Paloma only has an operator's license entry in NCJIS with no convictions. Baltazar shows three convictions for speeding. One of the convictions occurred the day after the NLCC received this application. No convictions of any kind were disclosed on the application.

On 6/6/11, I spoke to Paloma at her home. I asked her if she and her husband are currently working. Paloma advised that Baltazar works for Mud Jockies, and she is unemployed. She said that she probably has not worked for more than three to six months at one time over the past eighteen years. I asked her about funding her business. Paloma marked on her application that she is not borrowing any money from any source (including family) to establish or operate the business. Paloma said that she has to give Rafael Orozco \$12,000 up front if she gets a liquor license. Seven thousand is for two months rent, and \$5,000 is for a damage deposit. Paloma went on to say that her brother-in-law-(Isidro Huerta Perez) lives with her and is lending her \$6,000. She also said there is no formal agreement between them on repaying the money. In fact, she said if she can't repay the money, Isidro will understand and not demand repayment.

Besides the incorrect answer on her application about borrowing money, I noticed that Paloma had checked on the application that none of the furniture, fixtures, and equipment for the business will be owned by someone else. However, towards the end of the application there is "Exhibit A" that lists two pool tables, eighty circular tables, and two hundred fifty chairs. Paloma confirmed this is Rafael's property. Paloma couldn't explain why this answer was incorrect on the application especially since an attorney helped her fill it out. The only thing she could think of was that she didn't have an interpreter during one of the

meetings with her attorney when part of the application was filled out. I don't speak Spanish and was able to understand Paloma. Although, I had to ask for clarification a few times.

When asked how Paloma knows Rafael Orozco, she said she has known him for about two years. She used to go to El Diamante on Friday nights for karaoke. Rafael originally wanted to sell the business to her but after about seven months, he finally agreed to lease the building to her. Paloma would like to have a Mexican buffet that would be open from 11-2 and again from 5-7 on Friday, 06/08/11

Grand Island Police Department

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15:06

LAW INCIDENT TABLE

Page:

4

Saturday, and Sunday. She would like to come up with a couple more cooks who can cook traditional food from Guatemala and El Salvador. If she doesn't get the buffet running, she would at least like to have tacos on Friday and Saturday until 0100 hours. Paloma was reminded that having customers in her bar after 0115 is one of the issues that we had with Rafael Orozco. She understood and said everyone would be cleared out by then.

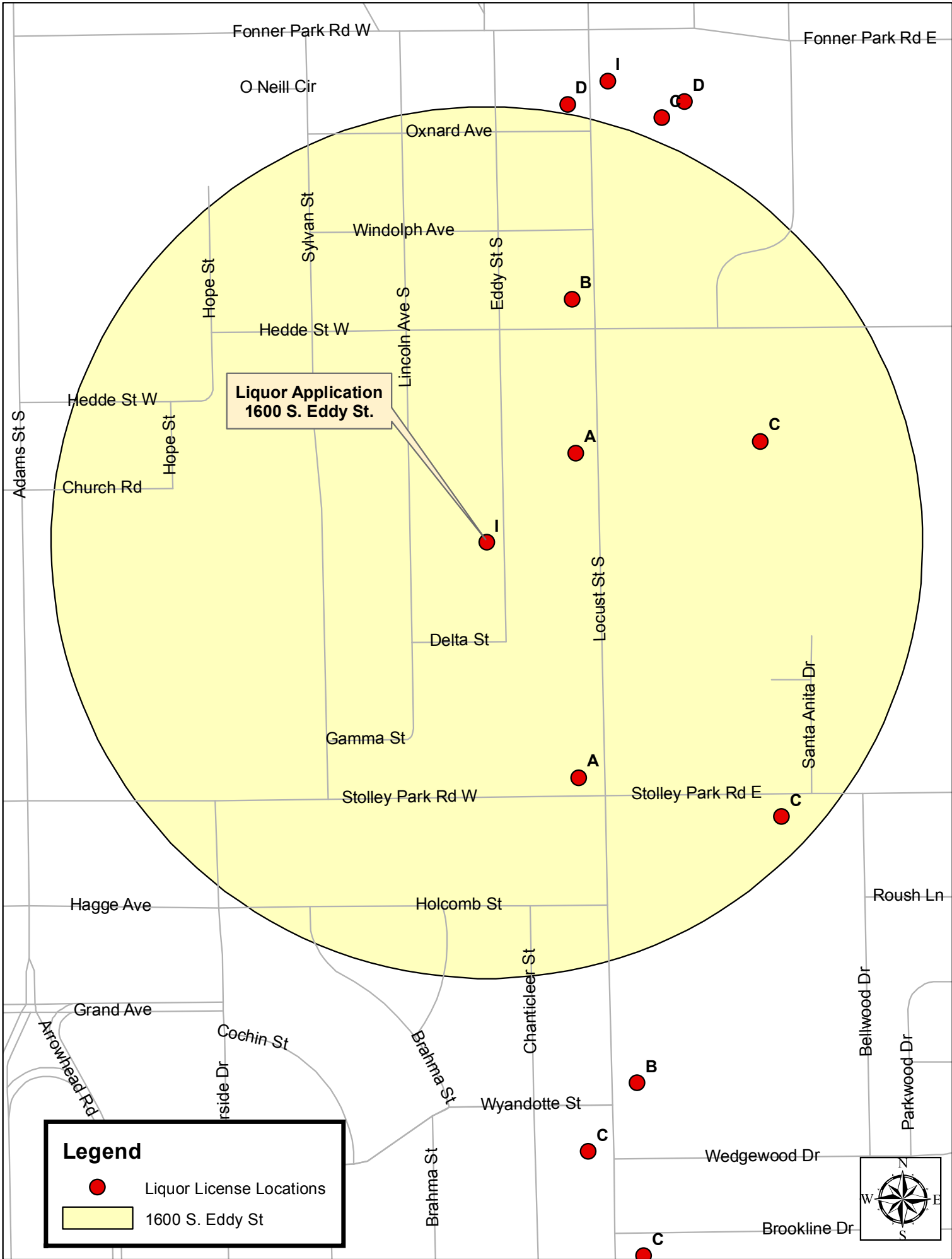
Paloma's application also says that she would like to occasionally have live entertainment. When asked about that, Paloma advised she would like to have a band maybe twice a month. Otherwise, Paloma said she will have music whether it's from a DJ or just having a CD playing. She will also have a couple of security guards when they have live music or on weekends if the club is busy. Paloma made it clear that she will be open as much as possible because she has to pay the bills.

In summary, Baltazar failed to disclose his traffic convictions, Paloma intentionally didn't disclose on the application that she is borrowing money from her brother-in-law, and Paloma answered incorrectly on the application about someone else owning some of the property in the building she is leasing.

The information stated in the preceding paragraph are examples of why this application is false according to the Nebraska Liquor Control Act (Part II Chapter 2 Section 010.01) which states:

"No applicant for a liquor license, or partner, principal, agent or employee of any applicant for a liquor license shall provide false or misleading information to the Nebraska Liquor Control Commission, its executive director, or employees. Any violation of this provision may result in denial of application for a liquor license or, in the event that a license has already been issued, suspension, cancellation or revocation of such license."

While Paloma has some limited experience working as a bartender in Texas and may have reasons for the way the application was filled out, the Grand Island Police Department recommends that the council not give local approval to this application at this time due to the application being false.





City of Grand Island

Tuesday, June 14, 2011

Council Session

Item E4

Public Hearing Concerning Acquisition of Utility Easement - West of South Blaine Street, 1/4 Mile North of Schimmer Drive - Cara J. Glade

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Robert H. Smith, Asst. Utilities Director

Meeting: June 14, 2011

Subject: Acquisition of Utility Easement – West of South Blaine Street, ¼ Mile North of Schimmer Drive – Cara Glade

Item #'s: E-4 & G-7

Presenter(s): Timothy Luchsinger, Utilities Director

Background

Nebraska State Law requires that acquisition of property must be approved by City Council. The Utilities Department needs to acquire an easement relative to the property of Cara J. Glade, located west of South Blaine Street, ¼ mile north of Schimmer Drive, in Hall County, Nebraska, in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers.

Discussion

This easement will be used to install three phase underground conduit, cable, and two pad-mounted transformers. One will be used for the office and scales, the other for the pumping equipment for the sand and gravel operation.

Alternatives

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

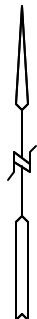
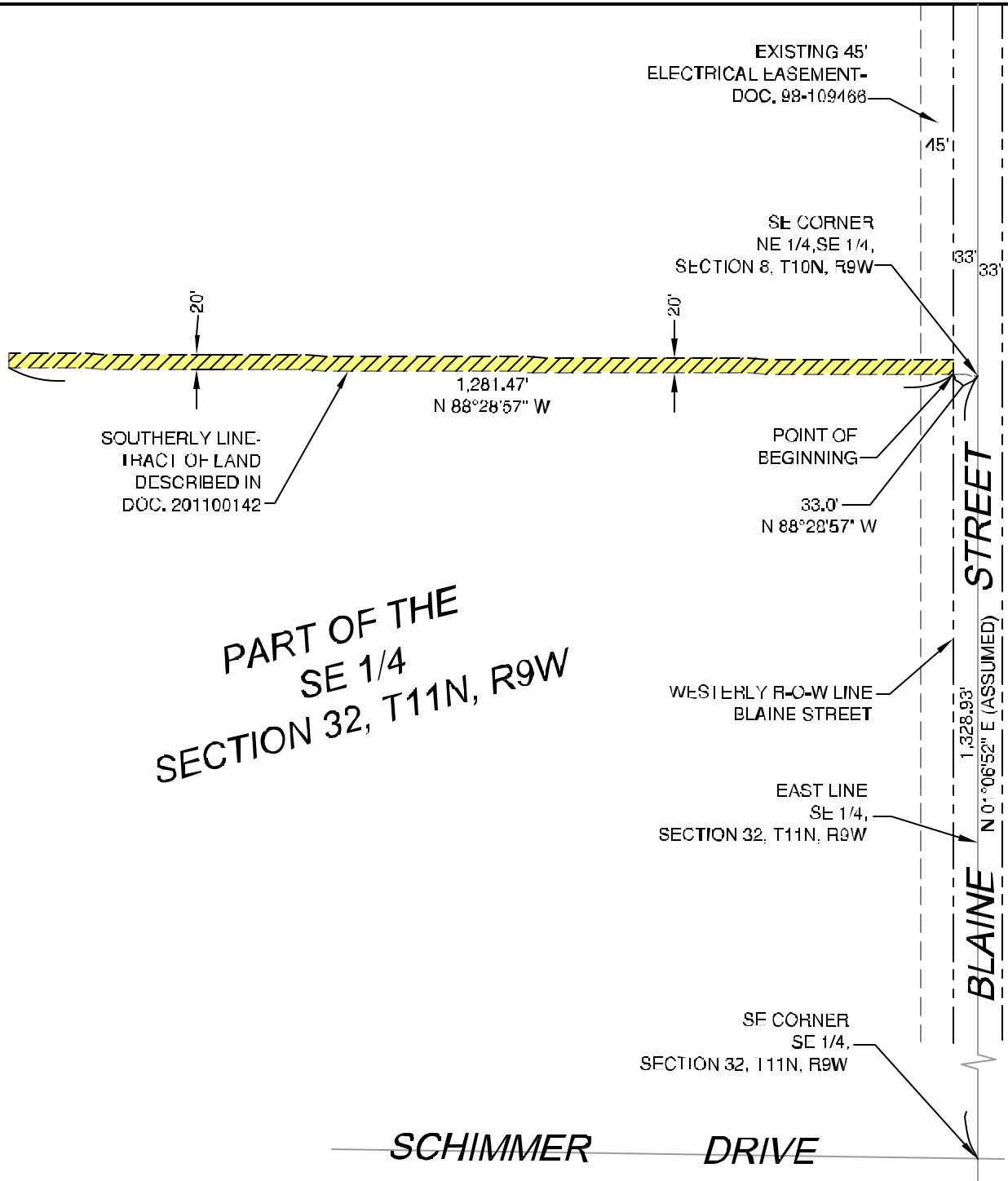
1. Make a motion to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the resolution for the acquisition of the easement for one dollar (\$1.00).

Sample Motion

Move to approve acquisition of the Utility Easement.



LEGEND



INDICATES 20' WIDE
UTILITY EASEMENT

CITY OF
GRAND ISLAND
UTILITIES DEPARTMENT

EXHIBIT "A"

DRN BY: K.J.M.

SCALE: 1"= 200'

DATE: 5/2/2011

FILE: SX 32.11.9



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item E5

Public Hearing Concerning Acquisition of Utility Easement - West of South Blaine Street, 3/4 Mile South of Wildwood Drive - Elsie & James Lilienthal

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Robert H. Smith, Asst. Utilities Director

Meeting: June 14, 2011

Subject: Acquisition of Utility Easement – West of South Blaine Street, ¾ Mile South of Wildwood Drive - Lilienthal

Item #'s: E-5 & G-8

Presenter(s): Timothy Luchsinger, Utilities Director

Background

Nebraska State Law requires that acquisition of property must be approved by City Council. The Utilities Department needs to acquire an easement relative to the property of Elsie M. Lilienthal, and James W. Lilienthal, located west of South Blaine Street, ¾ mile south of Wildwood Drive, in Hall County, Nebraska, in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers.

Discussion

This easement will be used to install three phase underground conduit, cable, and a pad-mounted transformer to provide electrical power to an irrigation well, new shop, and remodeled home.

Alternatives

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

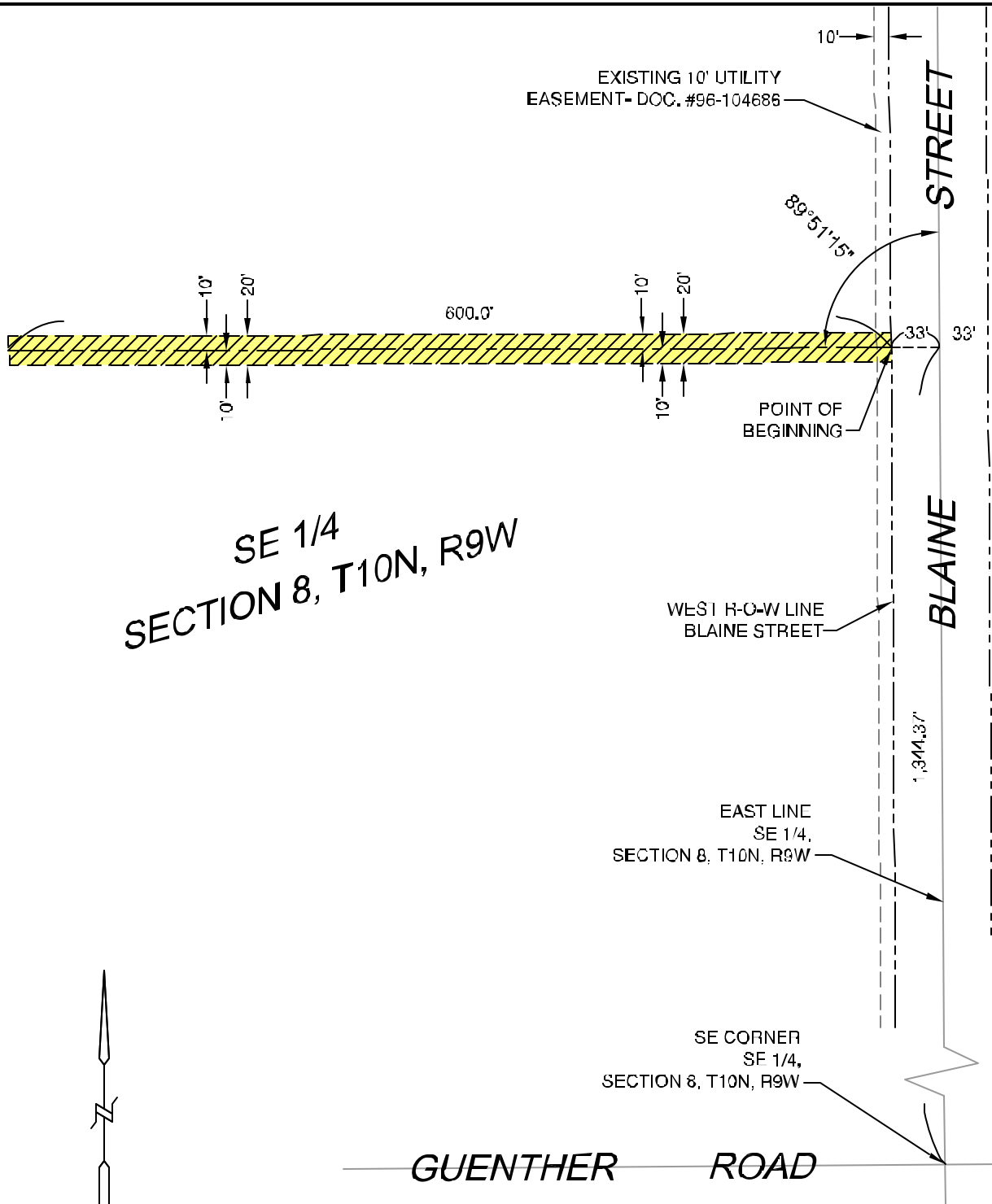
1. Make a motion to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the resolution for the acquisition of the easement for one dollar (\$1.00).

Sample Motion


Move to approve acquisition of the Utility Easement.




SE 1/4
SECTION 8, T10N, R9W



LEGEND

 INDICATES 20' WIDE
UTILITY EASEMENT

	
CITY OF GRAND ISLAND UTILITIES DEPARTMENT	
EXHIBIT "A"	
DRN BY: K.J.M.	SCALE: 1"= 100'
DATE: 4/27/2011	FILE: SEC. 8.10.9



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item E6

**Public Hearing Concerning Acquisition of Utility Easements - 1839
and 1919 East 4th Street - Ummel**

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Robert H. Smith, Asst. Utilities Director

Meeting: June 14, 2011

Subject: Acquisition of Utility Easements– 1839 & 1919 East 4th Street – Tommy Ummel Sr., and Tommy Ummel, Jr.

Item #'s: E-6 & G-9

Presenter(s): Timothy Luchsinger, Utilities Director

Background

Nebraska State Law requires that acquisition of property must be approved by City Council. The Utilities Department needs to acquire an easement relative to the property of Tommy Ummel, Sr. and Tommy Ummel, Jr. located at 1839 and 1919 East 4th Street, in the City of Grand Island, Hall County, in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers.

Discussion

The Ummel's are relocating their recycling business to a new building constructed at 1919 East 4th Street, and a new building at 1839 East 4th Street. These easements will be used to locate primary electrical conduit, cable, and a pad-mounted transformer to provide electrical power to the new buildings.

Alternatives

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

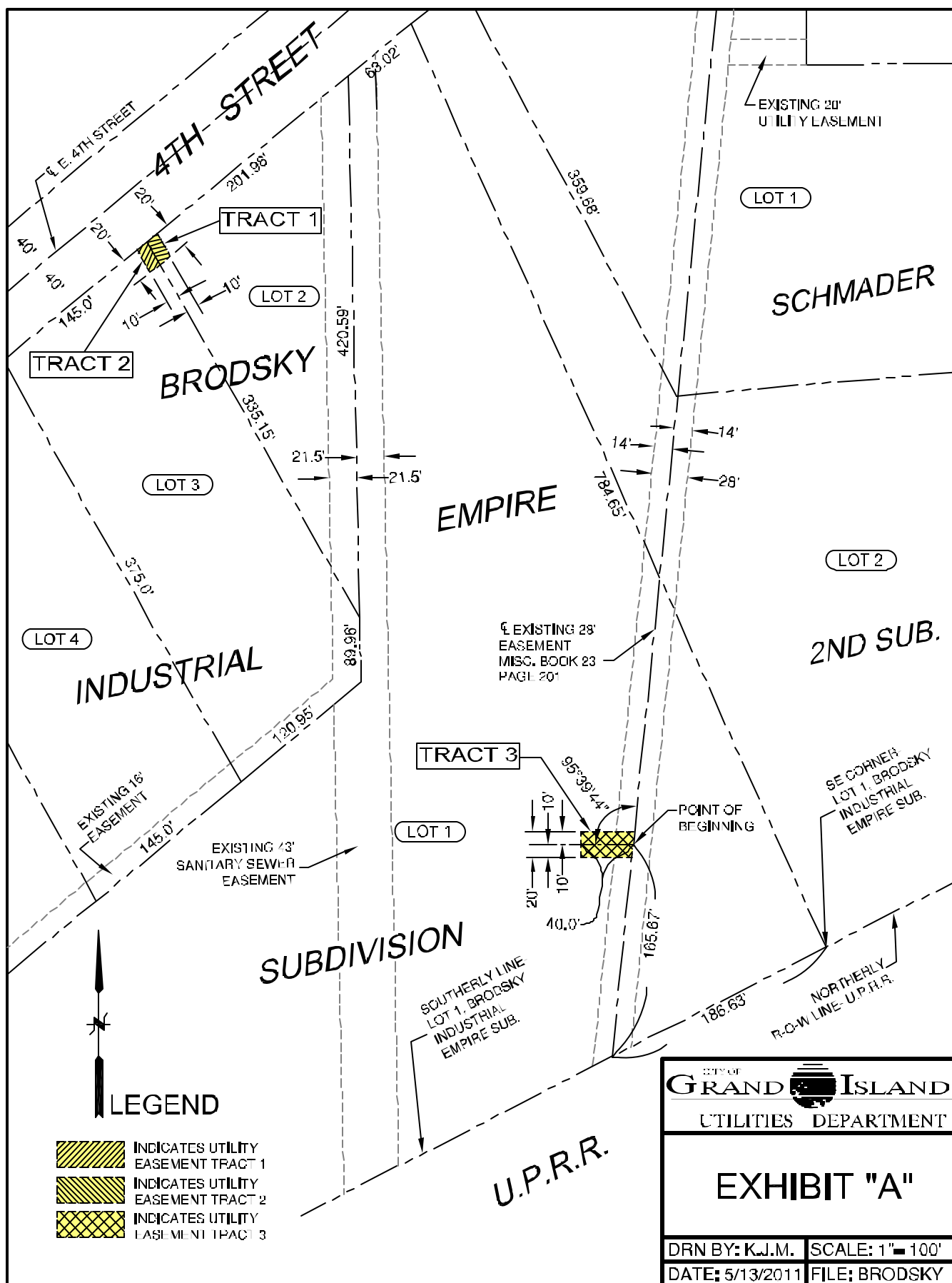
1. Make a motion to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the resolution for the acquisition of the easement for one dollar (\$1.00).

Sample Motion

Move to approve acquisition of the Utility Easement.





City of Grand Island

Tuesday, June 14, 2011

Council Session

Item E7

Public Hearing on Amendments to Chapter 36-72(B) of the Grand Island City Code Relative to Commercial RV Storage in the ME Zone by Conditional Use Permit

Staff Contact: Chad Nabity

Council Agenda Memo

From: Chad Nabity, AICP
Meeting: June 14, 2011
Subject: Changes to Chapter 36 (Zoning)
Item #'s: E-7 & F-1
Presenter(s): Chad Nabity, Regional Planning Director

Background

Concerning proposed amendments to Chapter 36 of the Grand Island City Code (Zoning) in the following area: §36-71 ME Industrial Estates. (C-06-2011GI)

Discussion

At the regular meeting of the Regional Planning Commission, held June 1, 2011 the above item was considered following a public hearing.

O'Neill opened the Public Hearing.

The changes proposed were requested by Charles Staab of Rich and Sons RV. Mr. Staab has requested that the city add Commercial RV Storage to the list of conditional uses shown in section 36-71 (B) of the Grand Island City Code as shown below:

§36-71. (ME) Industrial Estates Zone

Intent: The intent of this zoning district is to provide for a variety of manufacturing, truck, trailer, and truck/trailer parts retailing, truck, trailer, and truck/trailer parts wholesaling, warehousing, administrative and research uses within an area of comparatively high visibility and having quality standards to promote an industrial park atmosphere.

(A) Permitted Principal Uses: The following principal uses are permitted in the (ME) Industrial Estates Zoning District.

(1) Any industrial/manufacturing use found in the Zoning Matrix [Attachment A hereto] shall be permitted within this zoning district, provided, such use is in compliance with miscellaneous provisions and performance standards listed in this section, or unless specifically excluded, or a conditional use as listed below.

(2) Administrative offices for the wholesale distribution of propane when bottles are filled from bulk propane tanks not to exceed 70,000 gallons and when such tanks are installed to provide a source of heat for a building on the lot.

(B) Conditional Uses: The following uses are subject to any conditions listed in this chapter and are subject to other conditions relating to the placement of said use on a specific tract of ground in the (ME) Industrial Estates Zoning District as approved by the City Council.

(1) Explosives manufacturing

(2) Towers (radio, television, satellite, etc.)

(3) Gravel, sand or dirt removal, stockpiling, processing or distribution and batching plant

(4) Trade and vocational schools

(5) Commercial Recreational Vehicle Storage

(6) other uses found in the Zoning Matrix [Attachment A hereto]

All areas with changes are **highlighted**. Additions are ***Italicized and underlined*** and deletions are in **~~strike out~~**.

The ME zone already permits a variety of trailer storage, warehousing and construction uses. The storage of RV's at this location is already permitted based upon the existing language. Mr. Staab has requested the ability to rent space to people that wish to store their personal RV's at this site. The ability to rent space within a permitted storage lot is not specifically provided for and would require a change to city code to allow.

The proposed change as requested would not allow for the development of mini or self storage units at this site. It would not allow for commercial rental of storage space for cars or similar personal vehicles.

The change as proposed would not automatically permit the proposed use anywhere in the Platte Valley Industrial park. This use would be limited by the conditional use permit process. Standards for landscaping, fencing and access can all be controlled and enforced through the conditional use process.

The Planning Commission held a public hearing concerning the changes at their June 1st meeting. O'Neill asked if any standards or conditions would need to be required. Staab responded there would be a chainlink fence surrounding the property along with a remote gate. Those who would be renting the space would have certain criteria they would have to meet before they would be allowed use of the facility. City Code would still have to be followed as for landscaping etc. No other member of the public spoke in favor or against the proposed changes.

O'Neill closed the Public Hearing.

A motion was made by Ruge and seconded by Haskins to approve the amendments to Chapter 36-71 of the Grand Island City Code. The motion carried with 9 members present and all voting in favor (O'Neill, Ruge, Hayes, Reynolds,

Haskins, Eriksen, Bredthauer, Connelly and Snodgrass) and no members abstaining.

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 proposed changes as recommended.

Sample Motion

Move to approve the proposed changes to Chapter 36 as recommended and shown in Ordinance Number 9295.



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item E8

**Public Hearing on Request to Rezone Properties Located North of
Fairacres Lane, East of Shady Bend Road from R1 – Residential to
M1 – Light Manufacturing**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Regional Planning Commission

Meeting: June 14, 2011

Subject: Rezone Request for Properties Located East of Shady Bend Road and North of Fairacres Lane, from R1 Suburban Density Residential to M1- Light Manufacturing (C-07-2011GI)

Item #'s: E-8 & F-2

Presenter(s): Chad Nabity AICP, Regional Planning Director

Background

Concerning rezone properties located east of Shady Bend Road and north of Fairacres Lane from R1 Suburban Density Residential to M1 – Light Manufacturing. This included the old Fair Acres Dairy, the storage buildings east of there and an existing contractors yard east of the Dairy.

Discussion

At the regular meeting of the Regional Planning Commission, held June 1, 2011 the above item was considered following a public hearing.

O'Neill opened the Public Hearing.

Nabity explained this request to rezone was consistent with the City's Comprehensive Land Use Plan: The subject property is designated mostly for mixed use manufacturing uses.

Accessible to Existing Municipal Infrastructure: City water and sewer services are available and can be extended to serve all of the properties. The change to manufacturing may increase the value of these smaller properties enough to make those extensions affordable.

Has historically been used for manufacturing uses: This property all part of and adjacent to the original Fairacres Dairy Subdivision has been used for warehousing, storage and transportation services for more than 40 years. The proposed change would support the existing manufacturing uses.

Good access to transportation systems: Shady Bend Road is designated as a major arterial for both the City of Grand Island and Hall County and provides good access to both U.S Highways 30 and 34.

Significant portion of the property in this area that is used for industrial purpose is included in the application: The Orphan Grain Train as the primary applicant has worked with the neighboring property owners to submit a request for rezoning that includes the majority of the property used for industrial/manufacturing purposes in this area.

Choice of the M1 Designation: This request will allow the existing uses to continue and expand at this location but will not open the area up to heavier manufacturing uses.

Sandra Sims of 3620 E Seedling Mile Road questioned what types of manufacturing would be allowed in the area as she was a homeowner. Nabity explained it was a light manufacturing zone. There would be no ammunition plants or large manufacturing plants.

O'Neill closed the Public Hearing.

The Planning Director's recommendation to the Planning Commission is also attached to this recommendation from the Planning Commission.

Alternatives

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

1. Approve the rezoning request as presented
2. Modify the rezoning request to meet the wishes of the Council
3. Postpone the issue

Recommendation

A motion was made by Bredthauer, seconded by Connelly to approve the rezone request of properties located east of Shady Bend Road and north of Fairacres Lane, from R1 Suburban Density Residential to M1 - Light Manufacturing, as presented. A roll call vote was taken and the motion passed with 9 members present voting in favor, (O'Neill, Ruge, Hayes, Reynolds, Eriksen, Haskins, Bredthauer, Connelly, Snodgrass) no member voting against .

Sample Motion

Move to approve the rezone request for properties located east of Shady Bend Road and north of Fairacres Lane.

Agenda Item # 5

PLANNING DIRECTOR RECOMMENDATION TO REGIONAL PLANNING COMMISSION:

June 1, 2011

SUBJECT: *Zoning Change (C-07-2011GI)*

PROPOSAL: To rezone properties located east of Shady Bend Road and north of Fairacres Lane from R1 Suburban Density Residential to M1 Light Manufacturing

OVERVIEW:

Site Analysis

<i>Current zoning designation:</i>	R1 – Suburban Density Residential
<i>Permitted and conditional uses:</i>	Residential uses at a density of 4 dwelling units per acre with 35% coverage, recreational uses and agricultural uses.
<i>Comprehensive Plan Designation:</i>	Mixed Use Manufacturing. This area is planned to transition between residential uses to the south and commercial/manufacturing uses nearer to U.S. Highway 30.
<i>Existing land uses.</i>	Warehousing, Construction storage, Truck Transport.
<i>Proposed Zoning Designation</i>	M1 – Light Manufacturing – A variety of warehousing, storage, light manufacturing and office uses and no residential uses. Minimum lot size of 20,000 square feet with 50% coverage.

Adjacent Properties Analysis

<i>Current zoning designations:</i>	R1 -Suburban Density Residential and TA Transitional Agriculture.
<i>Permitted and conditional uses:</i>	M1 – Light Manufacturing – A variety of warehousing, storage, light manufacturing and office uses and no residential uses. Minimum lot size of 20,000 square feet with 50% R1 — Suburban Density Residential, Residential uses at a density of 4 dwelling units per acre with 35% coverage, recreational uses and agricultural uses. TA – Transitional Agriculture Residential uses are permitted as part of a farming operation. Minimum size for a farm is 20 acres. Green Houses, Nurseries, Veterinary Offices and other similar uses are also allowed in this zone.
<i>Comprehensive Plan Designation:</i>	North: Designated for mixed use manufacturing. East: Designated for low to medium density residential. South: Designated for low to medium density residential. West: Designated for low to medium density residential.
<i>Existing land uses:</i>	North: Farm Ground South: Residential East: Farm Ground West: Residential

EVALUATION:

Positive Implications:

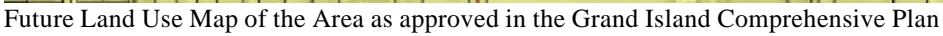
- *Consistent with the City's Comprehensive Land Use Plan:* The subject property is designated mostly for mixed use manufacturing uses.
- *Accessible to Existing Municipal Infrastructure:* City water and sewer services are available and can be extended to serve all of the properties. The change to manufacturing may increase the value of these smaller properties enough to make those extensions affordable.
- *Has historically been used for manufacturing uses:* This property all part of and adjacent to the original Fairacres Dairy Subdivision has been used for warehousing, storage and transportation services for more than 40 years. The proposed change would support the existing manufacturing uses.
- *Good access to transportation systems:* Shady Bend Road is designated as a major arterial for both the City of Grand Island and Hall County and provides good access to both U.S Highways 30 and 34.
- *Significant portion of the property in this area that is used for industrial purpose is included in the application:* The Orphan Grain Train as the primary applicant has worked with the neighboring property owners to submit a request for rezoning that includes the majority of the property used for industrial/manufacturing purposes in this area.
- *Choice of the M1 Designation:* This request will allow the existing uses to continue and expand at this location but will not open the area up to heavier manufacturing uses.

Negative Implications:

- *Approval will allow the existing uses to continue and to expand:* This property is in a transitional area that will be used for a variety of uses ranging from residential to industrial.

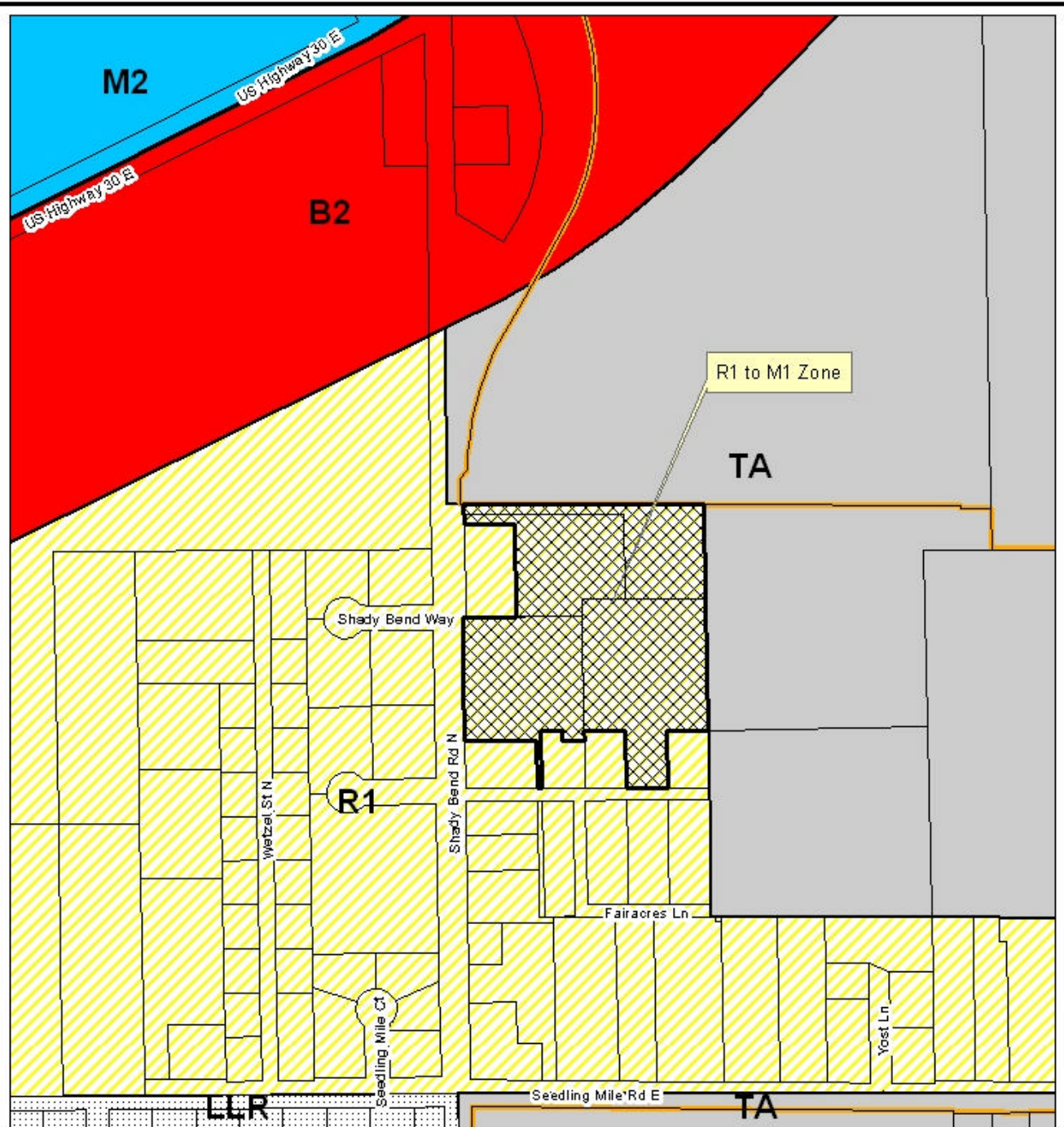
Other Considerations

The current designation as residential was likely made to force a change in use. This property has been zoned residential since the early 1970's and the uses have not changed. It is possible that those uses will not change but that the buildings will continue to deteriorate. The transition between residential and other uses will occur somewhere between this property and U.S. Highway 30 to the north whether this change is made or not.



That the Regional Planning Commission recommend that the Grand Island City Council change the zoning on this site from R1 - Residential Zone to M1- Light Manufacturing as requested and shown on the attached map.

_____ Chad Nabity AICP, Planning Director





Requested Zoning



Scale : NONE
C-07-2011 GI



-  From R1 : Suburban Residential Zone
-  to M1 : Light Manufacturing Zone





City of Grand Island

Tuesday, June 14, 2011

Council Session

Item E9

**Public Hearing on Application for Edward Byrne Memorial
Justice Assistance Grant (JAG) 2011**

Staff Contact: Steve Lamken

Council Agenda Memo

From: Chief Steven Lamken, Police Department

Meeting: June 14, 2011

Subject: Edward Byrne Memorial Justice Assistance Grant (JAG) 2010)

Item #'s: E-9 & G-15

Presenter(s): Steve Lamken, Chief of Police

Background

The Grand Island Police Department and Hall County Sheriff's Department are eligible to receive Justice Assistance Grant money from the U.S. Department of Justice under the JAG offering in 2011. The total award for Grand Island-Hall County is in the amount of \$33,601.00. The monies may be spent over a four year period. The Grand Island Police Department will serve as the fiscal agency on this grant.

The Hall County Sheriff's Department is a disparate agency and will receive twenty five percent of the award totals. The grant will be shared; \$8,400.00 to Hall County and \$25,201.00 to the City of Grand Island.

Discussion

There is a requirement that the applicant agency (Grand Island Police Department) make the grant application available for review by the governing body not less than 30 days before application. The application deadline is July 21, 2011.

There is a federal mandate that requires a public hearing regarding the application process and disbursement of the JAG funds. This hearing will take place on June 14, 2011.

The grant requires an MOU between the applicant (Grand Island) and any disparate agencies (Hall County). By definition, Hall County is a disparate agency eligible for funds. The MOU will be on the City Council agenda June 14, 2011 and the Hall County Board's agenda on June 21, 2011.

Alternatives

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

1. Approve the application and suggested disbursement of JAG funds and the MOU.
2. Reject the application and use of JAG funds

Recommendation

City Administration recommends that the Council approve the application and suggested disbursement as presented and the MOU.

Sample Motion

Move to approve the application and suggested disbursement of Justice Assistance Grant funding and the MOU between the City of Grand Island and Hall County.

ABSTRACT

City of Grand Island – Grand Island Police Department

TITLE: GIPD and HCSO 2011 JAG Equipment

Goal: Purchase police equipment toward improving police services and safety

Strategy: Purchase police equipment that will help officer's effectiveness and/or safety.

The top five project identifiers are:

- Community Policing
- Gangs
- Officer Safety
- Policing
- Court Security

Justice Assistance Grant Program Narrative

City of Grand Island
Funding Opportunity CFDA # 16.738

Grant Period: 10-1-11 to 9-30-15

Program #1: Law Enforcement Equipment Purchase – City of Grand Island, Police Department.

The City of Grand Island is proposing to purchase equipment for use in by the Grand Island Police Department to improve effectiveness and safety.

Program #2: Law Enforcement Equipment Purchase – Hall County Sheriff's Department (Disparate Agency).

The City of Grand Island is proposing to allocate 25% of the total grant to the Hall County Sheriff's Department, who proposes the purchase of police equipment to improve effectiveness and safety.

REVIEW NARRATIVE

Edward Byrne Memorial Justice Assistance Grant Program

CFDA NUMBER: 16.738

- The JAG application was made available for review by the governing body on June 14, 2011 as Council Agenda Item **XXX**.
- The application was made public and opportunity for comment was made available to citizens on the City Council meeting of June 14, 2011 as Council Agenda Item **XXX**.
- MOU is attached as a separate word document

Justice Assistance Grant Budget Detail & Narrative

City of Grand Island

Funding Opportunity CFDA # 16.738

Grant Period: 10-1-11 to 9-30-15

Total Direct Award: \$33,601.00

The City of Grand Island seeks to purchase equipment for the police department that will impact effectiveness and safety. The City share of the grant total is \$25,201.00. Also, the City will provide \$8,400.00 to Hall County for the Hall County Sheriff's Department (A disparate agency).

Program #1: Law Enforcement Equipment Purchase – City of Grand Island, Police Department. \$25,201.00

- \$15,000.00 Mobile “in-car” technology update for the mobile data system.
- \$12,201.00 to update police portable radios.

Program #2: Law Enforcement Equipment Purchase – Hall County Sheriff's Department (Disparate Agency). \$8,400.00

- Mobile “in-car” video system. \$5,000.00
- Radar equipment. \$1,900.00
- Cameras to update courthouse security. \$1,500.00

Edward Byrne Memorial Justice Assistance Grant Program

CFDA NUMBER: 16.738

THE STATE OF NEBRASKA

COUNTY OF HALL

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF GRAND ISLAND, NEBRASKA
AND COUNTY OF HALL, NEBRASKA**

2011 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

This agreement is made and entered into this 14th day of June, 2011, by and between The County of Hall, acting by and through its governing body, The Hall County Board of Supervisors, hereinafter referred to as COUNTY, and the CITY of Grand Island, acting by and through its governing body, the City Council, hereinafter referred to as CITY, both of Hall County, State of Nebraska, witnesseth:

WHEREAS, the City and County may apply for a direct award from the Justice Assistance Grant Program for \$33,601.00 and the City shall act as fiscal agent for this award and file the joint application on behalf of the City and County: and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party: and

WHEREAS, each governing body finds that the performance of this agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement: and

WHEREAS, the CITY agrees to provide the COUNTY 25% of the award; \$8,400.00 from the \$33,601.00 JAG award: and

WHEREAS, the CITY and COUNTY believe it to be in their best interests to reallocate the JAG funds.

NOW THEREFORE, the COUNTY and City agree as follows:

Section 1.

CITY agrees to pay COUNTY a total of 25% (\$8,400.00) of the 2011 JAG funds (\$33,601.00).

CFDA NUMBER: 16.738

Section 2.

COUNTY agrees to use the \$8,400.00 of JAG funds by 9-30-2015.

Section 3.

Each party to this agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

CITY OF GRAND ISLAND, NEBRASKA

COUNTY OF HALL, NEBRASKA

Mayor

Board Chairperson

ATTEST:

City Clerk

County Clerk



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item F1

#9295 - Consideration of Amendments to Chapter 36-72(B) of the Grand Island City Code Relative to Commercial RV Storage in the ME Zone by Conditional Use Permit

This item relates to the aforementioned Public Hearing item E-7.

Staff Contact: Chad Nabity

ORDINANCE NO. 9295

An ordinance to amend Grand Island City Code Section 36-71, pertaining to the ME Industrial Estates Zone; to repeal any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

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

SECTION 1. Section 36.71 of the Grand Island City Code is hereby amended to read as follows:

§36-71. (ME) Industrial Estates Zone

Intent: The intent of this zoning district is to provide for a variety of manufacturing, truck, trailer, and truck/trailer parts retailing, truck, trailer, and truck/trailer parts wholesaling, warehousing, administrative and research uses within an area of comparatively high visibility and having quality standards to promote an industrial park atmosphere.

(A) Permitted Principal Uses: The following principal uses are permitted in the (ME) Industrial Estates Zoning District.

(1) Any industrial/manufacturing use found in the Zoning Matrix [Attachment A hereto] shall be permitted within this zoning district, provided, such use is in compliance with miscellaneous provisions and performance standards listed in this section, or unless specifically excluded, or a conditional use as listed below.

(2) Administrative offices for the wholesale distribution of propane when bottles are filled from bulk propane tanks not to exceed 70,000 gallons and when such tanks are installed to provide a source of heat for a building on the lot.

(3) Bus Garaging and Equipment Maintenance, Truck and Trailer Storage, Motor Freight Terminals

(4) Other uses found in Zoning Matrix [Attachment A hereto]

(B) Conditional Uses: The following uses are subject to any conditions listed in this chapter and are subject to other conditions relating to the placement of said use on a specific tract of ground in the (ME) Industrial Estates Zoning District as approved by the City Council.

(1) Explosives manufacturing

(2) Towers (radio, television, satellite, etc.)

(3) Gravel, sand or dirt removal, stockpiling, processing or distribution and batching plant

(4) Trade and vocational schools

(5) Commercial Recreational Vehicle Storage

(C) Permitted Accessory Uses:

(1) Buildings and uses accessory to the permitted principal uses or approved permitted conditional uses.

(D) Specifically Excluded Uses:

(1) Automotive wrecking or salvage yards

(2) Billboards

(3) Churches, schools, institutions and other similar public and semi-public uses except for trade and vocational schools

(4) Concrete or cement products manufacturing and batching plants

(5) Contractor's storage yard or plant

ORDINANCE NO. 9295 (Cont.)

- (6) Milling or smelting of ores
- (7) Petroleum refining
- (8) Residential uses, any
- (9) Stock or feed yards and auction houses for livestock
- (10) Storage, dump, or yard for the collection, salvage or bailing of scrap paper, bottles, iron, rags, junk, or any other materials
- (11) Storage of explosives
- (12) Storage tanks or facilities for fuel oils, petroleum, acids, flammable liquids and chemicals
- (13) Tanning, curing, or storage of hides or skins

(E) Space Limitations:

Uses		Minimum Setbacks						
		A	B	C	D	E		
	Minimum Parcel Area (acres)	Minimum Lot Width (feet)	Front Yard (feet)	Rear Yard (feet)	Side Yard (feet)	Street Side Yard (feet)	Maximum Ground Coverage	Maximum Building Height (feet)
Permitted Uses	2.5	250	50	20	20	50	50%	50
Conditional Uses	2.5	250	50	20	20	50	50%	50

Through Lots shall require that the Front Yard Setback be met on both sides adjacent to streets.

(F) Miscellaneous Provisions:

(1) Landscaping shall be provided in the entire area of all required front yards except for necessary paving of walkways and of driveways to reach parking and loading areas in the side or rear yards, provided, that any driveways in the front yard shall not be wider than thirty (30) feet. Landscaping shall include, but is not limited to, screen plantings, lawn area, pools, trees, shrubs, fences, and walls. Crushed rock, gravel, bark chips, etc., shall not substitute for lawn area.

(2) Any outside storage of inoperable or unassembled parts or equipment shall be visually screened from the surrounding area by fences, walls, plantings, earth berm or other barrier and such screening shall be opaque.

(3) No loading facilities shall be located within a required front yard. Loading facilities located between a building and an adjacent street or residential district shall be visually screened to the same standards as any outside storage.

(4) No galvanized or other raw metal sheeting shall be used for the exterior construction of any principal or accessory building.

(5) Supplementary regulations shall be complied with as defined herein.

(6) Only one principal building shall be permitted on one zoning lot except as otherwise provided herein.

Amended by Ordinance No. 9047, effective 6-7-2006

Amended by Ordinance No. 9154, effective 1-8-2008

Amended by Ordinance No. 9294, effective 5-31-2011

Amended by Ordinance No. ____, effective ____-2011

SECTION 2. Section 36-71 as existing prior to this amendment, and any ordinances or parts of ordinances in conflict herewith, are repealed.

SECTION 3 The validity of any section, subsection, sentence, clause, or phrase of this ordinance shall not affect the validity or enforceability of any other section, subsection, sentence, clause, or phrase thereof.

ORDINANCE NO. 9295 (Cont.)

SECTION 4. That this ordinance shall be in force and take effect from and after its passage and publication in pamphlet form within fifteen days as provided by law.

Enacted: June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item F2

#9296 - Consideration of Request to Rezone Properties Located North of Fairacres Lane, East of Shady Bend Road from R1 – Residential to M1 – Light Manufacturing

This item relates to the aforementioned Public Hearing item E-8.

Staff Contact: Chad Nabity

ORDINANCE NO. 9296

An ordinance rezoning a certain tract of land within the zoning jurisdiction of the City of Grand Island; changing the land use classification of a tract of land comprising: Lots 10 and 11, Part of Lots 9 and 12, Part of the W ½ of the NW ½ of the SW ¼ of Section 12, Township 11 North, Range 9, West of the 6th P.M. that is adjacent and contiguous with the above lots in Fairacres Dairy Subdivision, Lots 1 and 2 of Fairacres Dairy Fifth Subdivision and Lot 2 of Fairacres Dairy 8th Subdivision in the City of Grand Island, Hall County, Nebraska, from R1 Suburban Density Residential Zone to M1 Light Manufacturing Zone, directing the such zoning change and classification be shown on the Official Zoning Map of the City of Grand Island; amending the zoning map pursuant to Chapter 36; and providing for publication and an effective date of this ordinance.

WHEREAS, the Regional Planning Commission on June 1, 2011, held a public hearing and made a recommendation on the proposed zoning of such area; and

WHEREAS, notice as required by Section 19-923, R.R.S. 1943, has been given to the Boards of Education of the school districts in Hall County, Nebraska; and

WHEREAS, after public hearing on June 14, 2011, the City Council found and determined the change in zoning be approved and made.

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

SECTION 1. The following tracts of land are hereby rezoned, reclassified and changed from R1 Suburban Density Residential Zone to M1 Light Manufacturing Zone:

Approved as to Form June 13, 2011	by _____ City Attorney
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ORDINANCE NO. 9296 (Cont.)

All of Lots 10 and 11 and part of Lots 9 and 12, along with part of the W ½ of the NW ½ of the SW ¼ of Section 12, Township 11 North, Range 9, West of the 6th P.M. that is adjacent and contiguous with the above lots in Fairacres Dairy Subdivision, all of Lots 1 and 2 of Fairacres Dairy Fifth Subdivision and all of Lot 2 of Fairacres Dairy 8th Subdivision in the City of Grand Island, Hall County, Nebraska.

SECTION 2. That the Official Zoning Map of the City of Grand Island, Nebraska, as established by Section 36-51 of the Grand Island City Code be, and the same is, hereby ordered to be changed, amended, and completed in accordance with this ordinance.

SECTION 3. That this ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item F3

#9297 - Consideration of Vacation of Lot 21, Block 1 of Fairway Crossings at Indianhead Golf Club First Subdivision

Staff Contact: Chad Nabity

Council Agenda Memo

From: Chad Nabity, AICP

Meeting: June 14, 2011

Subject: Application to Vacate Lot 21 Block 1 of Fairway Crossings at Indianhead Golf Club First Subdivision

Item #'s: F-3

Presenter(s): Chad Nabity, Regional Planning Director

Background

Jack Henry, representing Indianhead Golf Club Inc, has requested that the City vacate Lot 21 of Block 1 Fairway Crossings at Indianhead Golf Club First Subdivision.

Discussion

This request was made in order to allow the golf club to connect the bathroom on the back 9 to city water that has been extended up St. Andrews Circle. Connecting this bathroom to city water needs to be done to meet drinking water standards as enforced by the State of Nebraska.

It is anticipated that Mr. Henry will submit a new plat for the majority of Lot 21 at a future date but leave a finger of golf course property touching the street so that the water line does not have to cross from the public right-of-way across private property to connect to the bathrooms. This solution will meet the requirements of the State of Nebraska and will not violate any provisions of the City Code.

City staff is recommending this course of action as the best way to provide city water to the bathrooms on the back 9 of the golf course and maintain the integrity of the City Code regarding connection to the city water lines.

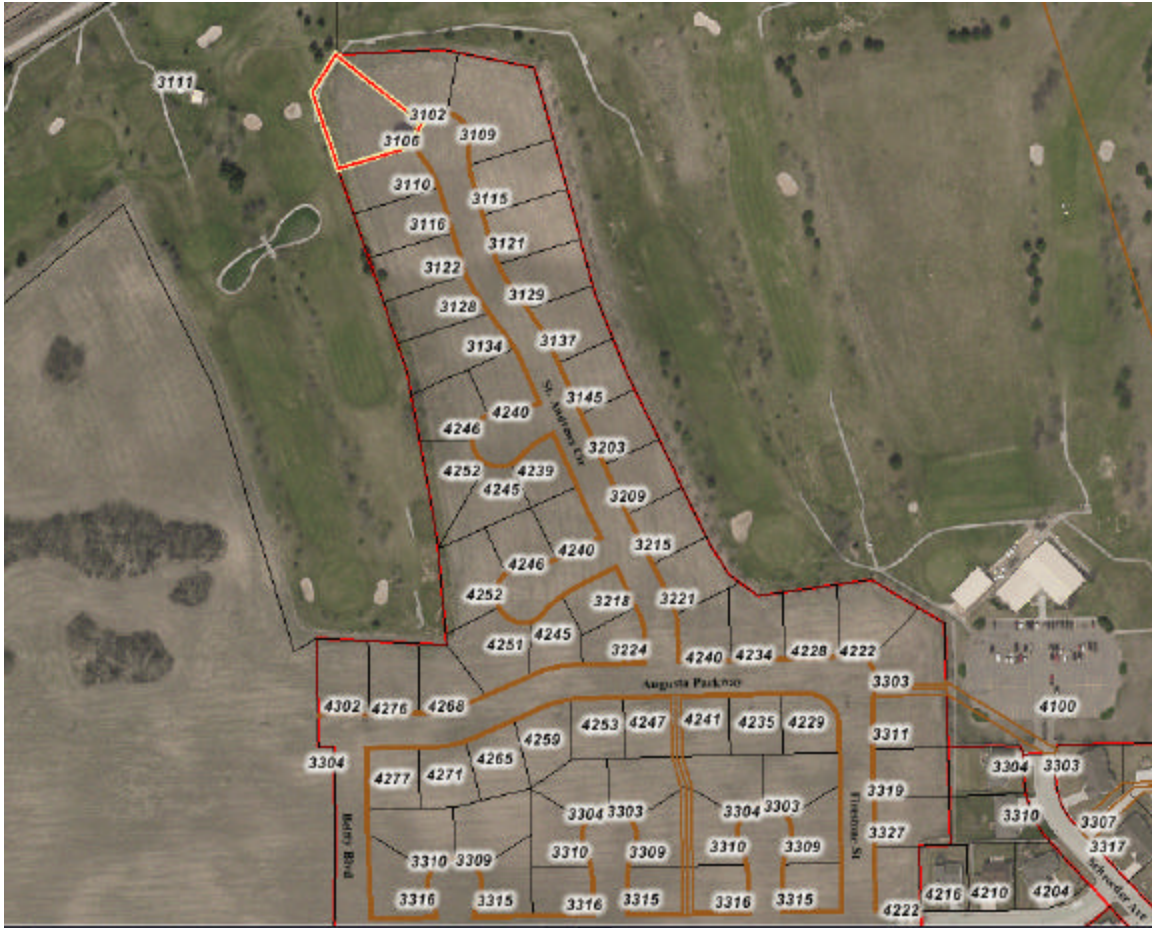


Figure 1 The highlighted lot at the northwest end of St. Andrews Circle (3106) is the lot to be vacated.

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 ordinance to vacate Lot 21 Block 1 of Fairway Crossings At Indianhead Golf Club First Subdivision

Sample Motion

Move to approve Ordinance #9297 Vacating Lot 21 Block 1 of Fairway Crossings At Indianhead Golf Club First Subdivision.



Indianhead Golf Club

4100 Husker Highway - Grand Island, NE 68803
(308) 381-GOLF • Fax (308) 389-3400

May 10, 2011

Chad Nabity, AICP
HALL COUNTY REGIONAL PLANNING DEPARTMENT
P.O. Box 1968
Grand Island, NE 68802

Re: Fairway Crossings at Indianhead Golf Club First Subdivision
Request for Vacation of Lot 21, Block One
Grand Island, Nebraska
OPCE Project No. 28105

Dear Mr. Nabity,

On behalf of Indianhead Golf Club, Inc., the undersigned owner of Lot 21, Block One of Fairway Crossings at Indianhead Golf Club First Subdivision in the City of Grand Island, Hall County, Nebraska, desire to vacate the said lot and declare that portion of the Plat of the subdivision to be no longer in force and in effect after vacation of said lot has been approved by the City Council of Grand Island, Nebraska.

The owner also requests to vacate the platted public utility easement located within Lot 21 and Lot 22, Block One. The easement is no longer needed due to an alignment revision made during construction.

The request to vacate the said lot from the plat is to return ownership to the original owner, Indianhead Golf Club in order to further develop the golf course property by providing street frontage along St. Andrews Circle.

The \$200 vacation fee is enclosed with this request letter.

Please contact my office if you have any questions regarding the vacation request or need any additional information to complete the vacation request.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Henry", with a long horizontal flourish extending to the right.

Jack Henry, President
Indianhead Golf Club, Inc.
a/k/a Indian Head Golf Club, Inc.

encl

cc: Gregory E. Perry, P.E.

* This Space Reserved for Register of Deeds *

An ordinance to vacate Lot Twenty-One (21) of Block One (1), of Fairway Crossings at Indianhead Golf Club First Subdivision in the City of Grand Island, Hall County, Nebraska; to provide for the recording of this ordinance in the office of the Register of Deeds of Hall County, Nebraska; to repeal any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

SECTION 1. That the plat dated February 4, 2009 and approved by the City of Grand Island, Nebraska, on February 17, 2009, for Lot Twenty-One (21) of Block One (1), Fairway Crossings at Indianhead Golf Club First Subdivision, in the City of Grand Island, Hall County, Nebraska, is hereby vacated.

Approved as to Form ☒ _____
June 9, 2011 ☒ City Attorney

ORDINANCE NO. 9297 (Cont.)

SECTION 3. This ordinance is directed to be filed in the office of the Register of Deeds of Hall County, Nebraska.

SECTION 4. Any ordinances or parts of ordinances in conflict herewith be, and hereby are, repealed.

SECTION 5. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item F4

**#9298 - Consideration of Amendments to Chapter 27-7 of the
Grand Island City Code Relative to Procurement Code**

Staff Contact: Jason Elev

Council Agenda Memo

From: Jason C. Eley, Interim City Attorney

Meeting: June 14, 2011

Subject: Revisions to Grand Island City Code
Chapter 27-7, Delegation to Other Officials

Item #'s: F-4

Presenter(s): Jason C. Eley, Interim City Attorney

Background

Grand Island City Code, Chapter 27-6, Authority and Duties, was deleted from City Code and incorporated within other sections of the Procurement code in the 1990's. Grand Island City Code, Chapter 27-7, Delegation to Other Officials, was not amended to reflect this change to the procurement code. Grand Island City Code, Chapter 27-7 makes reference to Grand Island City Code, Chapter 27-6, however, Grand Island City Code, Chapter 27-6 does not currently exist.

Discussion

A modification of the City Code is before you to amend Chapter 27-7, Delegation to Other Officials, to delete reference to §27-6. Section §27-6 is currently a reserved section and does not contain any provisions.

Alternatives

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

1. Move to approve the revision to the Grand Island City Code, Section 27-7, in its current form.

2. Disapprove or deny the ordinance which would revise the City Code concerning Chapter 27-7 in which event the current provisions of the Code will remain in effect.
3. Postpone the issue to a future date
4. Take no action on the issue.

Conclusion

City Administration recommends that the Council approve the revision to Chapter 27-7 of the current Grand Island City Code as recommended by city staff.

SAMPLE MOTION

Move to approve the proposed ordinance as presented to amend Grand Island City Code Section 27-7.

ORDINANCE NO. 9298

An ordinance to amend Grand Island City Code Section 27-7, pertaining to delegating authority to other officials; to repeal any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

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

SECTION 1. Section 27-7 of the Grand Island City Code is hereby amended to read as follows:

Article I. General Provisions

§27-7. Delegation To Other Officials

With the approval of the city council and the mayor, the purchasing agent may delegate authority to purchase certain supplies, services, or construction items to other City officials, if such delegation is deemed necessary for the effective procurement of those items. ~~Notwithstanding the provisions of §27-6 (Authority and Duties),~~ procurement authority with respect to certain supplies, services, or construction may be delegated to other City officials by the mayor with the approval of the city council, when such delegation is deemed necessary for the effective procurement of these supplies, services, or construction.

SECTION 2. Section 27-7 as existing prior to this amendment, and any ordinances or parts of ordinances in conflict herewith, are repealed.

SECTION 3. The validity of any section, subsection, sentence, clause, or phrase of this ordinance shall not affect the validity or enforceability of any other section, subsection, sentence, clause, or phrase thereof.

SECTION 4. That this ordinance shall be in force and take effect from and after its passage and publication in pamphlet form within fifteen days as provided by law.

Enacted: June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form June 9, 2011	<input type="checkbox"/> _____ City Attorney
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City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G1

Approving Minutes of May 24, 2011 City Council Regular Meeting

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL REGULAR MEETING

May 24, 2011

Pursuant to due call and notice thereof, a Regular Meeting of the City Council of the City of Grand Island, Nebraska was conducted in the Council Chambers of City Hall, 100 East First Street, on May 24, 2011. Notice of the meeting was given in *The Grand Island Independent* on May 18, 2011.

Mayor Jay Vavricek called the meeting to order at 7:00 p.m. The following City Council members were present: Larry Carney, Kirk Ramsey, Peg Gilbert, Mitch Nickerson, Linna Dee Donaldson, and Randy Gard. Councilmember's Chuck Haase, Bob Niemann, Scott Dugan, and John Gericke were absent. The following City Officials were present: City Administrator Mary Lou Brown, City Clerk RaNae Edwards, Interim City Attorney Jason Eley, and Public Works Director John Collins.

INVOCATION was given by Pastor Melanie Adams, Trinity United Methodist Church, 511 North Elm Street followed by the PLEDGE OF ALLEGIANCE.

MAYOR COMMUNICATION: Mayor Vavricek introduced Community Youth Council members Tori Katzberg and Stephanie Chandler. Mentioned were the following events the Mayor had attended this past week: Drug Court graduation, Peace Lutheran Church ground breaking, Fire School, Rolling Thunder motorcycle ride. Mayor recognized a plaque made by a Veteran given to him.

Finance Director Mary Lou Brown presented the April Financial Report. Revenues were weak for April. Sales tax receipts had dropped in the amount of \$100,000 to \$150,000. Interest income was down and gas receipts were down \$75,000. Mentioned were appropriations. Strong cash position due to postponement of vehicle purchases and open positions that had not been filled yet.

Meetings had been held regarding planning for water that would be coming from Wyoming into the Platte River. Flooding would be monitored by the Emergency Management Director. Highway 281 sewer extension was mentioned to move forward with the creation of a Sanitary Improvement District (SID). A consultant would be hired for approximately \$7,500. A request for sanitary sewer by Charles Staab at the May 17, 2011 Study Session was in the process as the paperwork had been filed.

PRESENTATIONS AND PROCLAMATIONS:

Recognition of Grand Island Senior High Soccer Team and Coaches for State Runner-Up in Class A Boys State Soccer Tournament. Mayor Vavricek and the City Council recognized the Grand Island Senior High Soccer team and Coach Jeremy Jensen for their success in the Class A Boys State Soccer Tournament and receiving runner-up. Coach Jensen and several soccer players were present for the recognition.

PUBLIC HEARINGS:

Public Hearing on Request from Alfredo Zamora-Gomez dba Las Vegas Bar & Grill, 316 East 2nd Street for a Class "C" Liquor License. RaNae Edwards, City Clerk reported that an application for a Class "C" Liquor License had been received from Alfredo Zamora-Gomez dba Las Vegas Bar & Grill, 316 East 2nd Street. Ms. Edwards presented the following exhibits for the record: application submitted to the Liquor Control Commission and received by the City on April 25, 2011; notice to the general public of date, time, and place of hearing published on April 30, 2011 and May 14, 2011; notice to the applicant of date, time, and place of hearing mailed on April 25, 2011; along with Chapter 4 of the City Code. Staff recommended approval contingent upon final inspections. Jerry Janulewicz, attorney representing Las Vegas Bar & Grill spoke in support. No further public testimony was heard.

CONSENT AGENDA: Consent Agenda items G-8 and G-10 were removed for further discussion. Motion by Ramsey, second by Gard to approve the Consent Agenda excluding items G-8 and G-10. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of May 10, 2011 City Council Regular Meeting.

Approving Minutes of May 17, 2011 City Council Study Session.

Approving Appointments of Karen Bredthauer, Scott Ericksen, and Julie Connelly to the Interjurisdictional Planning Commission.

Approving Re-Appointments of Bill Martin, Buzz Douthit, Kris Nolan Brown, and Scott Zana to the Business Improvement District #4 Board.

Approving Liquor Manager Designation for James D. Goodman, 2716 Apache Road for Skagway Discount Dept. Stores, Inc. 620 State Street.

#2011-123 – Approving Purchase of Traffic Signal Components for the Installation of a Traffic Signal at the Webb Road and West North Front Street Intersection with Brown Traffic Products, Inc. in an Amount of \$11,226.00 and General Traffic Controls, Inc. in an Amount of \$6,242.00.

#2011-124 – Approving Program Agreement with Nebraska Department of Roads for the Capital Avenue Widening, Webb Road to Broadwell Avenue Project for a total estimate cost of \$3,250,639.00 and the cost to the City in an amount of \$650,129.00.

#2011-126 – Approving Program Agreement with Nebraska Department of Roads for the Grand Island Historical Lighting Project on 3rd Street and Wheeler Avenue for a total estimate cost of \$189,540.00 and the cost to the Downtown Business Improvement District through funding awarded by the Community Redevelopment Authority in an amount of \$37,908.00.

#2011-128 – Approving Supplemental Agreement No. 2 with Schemmer Associates, Inc. of Lincoln, Nebraska for Engineering Consulting Services for the Walk to Walnut Project not to exceed \$26,785.81 with a revised total of \$71,309.32.

#2011-125 – Approving Program Agreement with Nebraska Department of Roads for the Various Locations in Grand Island Resurfacing Project for a total estimate cost of \$2,747,266.00 and the cost to the City in an amount of \$549,453.00. Public Works Project Manager, Scott

Gripenstroh reported this project was scheduled for the year 2013 using Federal Aid STP funds. Total project cost was \$2,747,266 with the City responsible for \$549,453.

Discussion was held concerning Asphaltic Concrete on Capital Avenue and Blaine Street. The project would consist of removing 2" of existing surfacing by cold milling and placement of 2" new Asphaltic Concrete. They would not replace curb and gutter.

Motion by Gilbert, second by Donaldson to approve Resolution #2011-125. Upon roll call vote, all voted aye. Motion adopted.

#2011-127 – Approving Designating No Parking on Portions of Elm Street, Sycamore Street, Eddy Street and Wheeler Avenue. Public Works Project Manager, Scott Gripenstroh reported that The Fire Administration has requested No Parking designation at the Elm Street, Sycamore Street and Eddy Street locations to allow Fire Emergency equipment the ability to turn around quickly. The Veterans Affairs Medical Center had requested the No Parking at Wheeler Avenue.

Dennis Wagoner representing the VA Medical Center spoke in support. Discussion was held regarding employee parking on the street. Mr. Wagoner stated there was adequate parking on the VA Medical Center property.

Motion by Gilbert, second by Ramsey to approve Resolution #2011-127. Upon roll call vote, all voted aye. Motion adopted.

RESOLUTIONS:

#2011-129 – Consideration of Request from Alfredo Zamora-Gomez dba Las Vegas Bar & Grill, 316 East 2nd Street for a Class "C" Liquor License. This item related to the aforementioned Public Hearing.

Motion by Carney, second by Nickerson to approve Resolution #2011-129 contingent upon final inspections. Upon roll call vote, all voted aye. Motion adopted.

#2011-130 – Consideration of Responding to the Request for Proposal (RFP) from the State of Nebraska for Office Lease of the One Stop Building. Building Department Director Craig Lewis reported that the State of Nebraska Department of Administrative Services, State Building Division had issued a Request for Proposal for the purpose of leasing 3,693 (+-) square feet of general office and storage space. They currently lease the building located at 1306 West 3^d Street known as the One Stop Building. The current lease will expire on June 30, 2011.

The States proposal was for the City to pay the utilities, custodial, lawn care and snow removal costs. They requested a long term lease of 6 years.

Mr. Lewis stated the request was for a portion of the office space of 3,600 to 3,750 square feet of the 14,000 square feet of office space available. Subleasing the rest would be difficult. Mentioned was selling the building. The building was bought for \$600,000 and had been remodeled in the amount of \$400,000. Since the building had been rented out it had recouped approximately \$800,000.

City Administrator Mary Lou Brown commented on the layout of the building. The back portion of the building was for City storage with the front offices used by One Stop. There was space available to be sublet. Discussion was held concerning the City paying the utilities.

Motion by Gilbert, second by Gard to approve Resolution #2011-130. Upon roll call vote, Councilmember Nickerson voted aye. Councilmember's Carney, Ramsey, Gilbert, and Donaldson voted no. Motion failed.

PAYMENT OF CLAIMS:

Motion by Donaldson, second by Ramsey to approve the Claims for the period of May 11, 2011 through May 24, 2011, for a total amount of \$2,479,390.60. Unanimously approved.

ADJOURN TO EXECUTIVE SESSION: Motion by Gilbert, second by Gard to adjourn to Executive Session at 8:18 p.m. for the purpose of union negotiation updates for the protection of the public interest. Upon roll call vote, all voted aye. Motion adopted.

RETURN TO REGULAR SESSION: Motion by Ramsey, second by Donaldson to return to Regular Session at 9:48 p.m. Upon roll call vote, all voted aye. Motion adopted.

ADJOURNMENT: The meeting was adjourned at 9:45 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G2

Approving Minutes of June 7, 2011 City Council Study Session

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL STUDY SESSION

June 7, 2011

Pursuant to due call and notice thereof, a Study Session of the City Council of the City of Grand Island, Nebraska was conducted in the Council Chambers of City Hall, 100 East First Street, on June 7, 2011. Notice of the meeting was given in the *Grand Island Independent* on June 1, 2011.

Mayor Jay Vavricek called the meeting to order at 7:00 p.m. The following Councilmember's were present: Larry Carney, Kirk Ramsey, Peg Gilbert, Mitch Nickerson, Linna Dee Donaldson, Scott Dugan, and Randy Gard. Councilmember's Chuck Haase, Bob Niemann, and John Gericke were absent. The following City Officials were present: City Administrator Mary Lou Brown, City Clerk RaNae Edwards, Interim City Attorney Jason Eley, and Public Works Director John Collins.

The PLEDGE OF ALLEGIANCE was given.

MAYOR COMMUNICATION: Mayor Vavricek introduced Community Youth Council member Dan Carlson and board member Roy Swan.

City Administrator Mary Lou Brown commented on the flooding in the western part of the state. Today the Platte River was at 5.7'. Lake McConaughy was at 97% capacity. Timing for water to reach Grand Island would be 60 hours. Water Utilities had looked at the wells south of town and would not require sand bagging. Tomorrow there was a joint meeting with Hall County and Senator Adrian Smith regarding the flooding possibilities.

PRESENTATIONS AND PROCLAMATIONS:

Recognition of Craig Lewis, Building Department Director for 30 Years of Service with the City of Grand Island. Mayor and Council recognized Craig Lewis, Building Department Director for 30 years of service with the City of Grand Island. Mary Lou Brown commented on the duties provided by the building department and thanked Mr. Lewis for a job well done. Mr. Lewis was present for the presentation and thanked the employees of his department.

OTHER ITEMS:

Discussion Concerning Residential Clean-Up Cards. Jeff Wattier, Solid Waste Superintendent gave a PowerPoint presentation concerning the Residential Clean-Up Card Program. He stated from 1992 through 2002 the City provided a "Free Week" for disposal of garbage and debris with the intent to clean and beautify the community. The City continued this program after taking over from the County. Grand Island residents disposed of items for free at the Transfer Station one designated week per year.

The following "Fee Week" problems were mentioned:

- Labor Intensive

City staff planning and organizing, Solid Waste (SW) Division overtime, volunteer labor, Hall Co. inmate labor

SW Division staff basically playing “catch-up” all week

- Widespread abuse of the program
Residents would bring multiple loads for free disposal
Banned items such as tires, appliances, etc. would be disposed of due to hectic nature of program
Many would “stockpile” waste until Free Week
Major traffic congestion and long lines to wait in

The Residential Clean-Up Card (RCC) Program was implemented in 2003. This allowed residents to dispose of two free loads (up to 800 lbs. per load) at the Transfer Station. It started at 600 lbs. per load. The General Fund reimbursed SW Enterprise Fund tonnage value.

Benefits of RCC program vs. Free Week mentioned were:

- Residents can dispose of materials at any time throughout the year at their own leisure
- Reduced traffic congestion/frustration by residents
- Much more convenient/less time-consuming to dispose of items when needed throughout the year
- SW Division staff can manage waste much easier by spreading it out through the year
- Much less staff time spent on planning and organizing RCC program vs. Free Week

Problems with RCC Program were:

- Solid Waste Division – Abuse and Lost Revenue
- Various types of abuse to the RCC:
Residents obtaining and using multiple RCC received from friends, neighbors, family members, etc.
Use of the RCC as alternative to garbage service (i.e. stockpiling their trash to bring it to the Transfer Station twice per year in lieu of garbage service)
Contractors obtaining customers’ cards to dispose of construction/demolition materials from for-hire projects
Organizations/businesses using RCC program
- No revenue from RCC loads
- Lost SW Division revenues from 2009-2010 was \$72,158
- Issuing cards becomes a very time consuming program
.3FTE for issuing the cards/keeping track of database
PW went from two FTEs in 2005, to one FTE available for issuing RCCs
- RCC ranked a Quartile 4 program in PW General Fund and SW Enterprise Fund in both 2010 and 2011 program prioritization scoring

Total cost of program was \$76,300. Mentioned were other free program provided by the Solid Waste Division such as Clean Community System, surrounding community Clean-Ups, natural disasters/weather events, grass and leaf disposal, and CSOs use cards to encourage problem properties to clean-up.

Assistant to the City Administrator Shannon Oster presented the following alternatives to the RCC Program:

1. City-Wide Clean-Up Volunteer Event
One weekend during the year at two or three locations for free drop-off
Partner with Clean Community System for planning and hosting event
Volunteers critical – directing traffic, unloading vehicles, checking IDs, verifying the items are accepted for disposal
Estimated Cost: \$84,000
2. Free Weekend by Ward/Area of City Of Grand Island Utility Bill Insert
Bring back “Free Week,” but divide the City into two separate weekends by ward or address
Require a lot of public outreach so residents understand when is their assigned weekend
Estimated Cost: \$79,200
3. Utility Bill Insert
Include a RCC as a utility bill insert in January mailing
Require the person to bring the insert and bill to Transfer Station to drop-off their RCC load
Show ID with matching name and address to utility bill
Businesses would not be allowed a RCC load
Limit to one load per year
Estimated Cost: \$49,200
4. Online
Create an online form for residents to complete, and then pick-up RCC at City Hall when they show an ID
Still need to issue RCC traditional way to accommodate citizens that do not have a computer
Does not reduce staff time or other savings
Estimated Cost: \$76,300
5. Issue Week
Restructure how cards are issued by issuing cards only one week a year, at beginning of calendar year
Would require several people to assist during the period for high customer traffic
Residents still receive a free program that can be used throughout the year
Potentially reduce load to one per year
Estimated Cost: \$56,800
6. Issued and Administered at Transfer Station
Move issuing process out of City Hall to Transfer Station
Limited space leaves no room for customer service area at Transfer Station
PT Clerk would need to become FT for issuing cards
Estimated Cost: \$91,000

7. Additional Free Yard Waste and Eliminate Card Program

Expand free disposal to trees, branches, bushes, etc at Yard Waste Site

Currently free: grass and leaf disposal

Still provides a free service for residents used at their leisure throughout the year, while eliminating the timely/costly step of issuing and receiving a card

Approximately 50% of RCCs already are used for tree/branch disposal

Estimated Cost: \$13,000

Discussion was held concerning the increase of cost per ton to cover the cost of any changes. Mr. Wattier stated he didn't have those figures currently but could get those figures for Council. Cards with bar codes issued annually were mentioned as an alternative. Mentioned was Clean Community System issuing the cards. It was stated Clean Community System was not staffed to cover this program.

Public Works Director commented on the administrative assistant time to issue these cards.

Discussion Concerning Political Signs. Building Department Director Craig Lewis reported that Grand Island City Code 31-33 specifically addresses political signs and provides regulations for the size, location, and limits the amount of time they may be displayed. Last year the duration of time specified was questioned by the American Civil Liberties Union.

Constitutional law language, appropriate sign ordinances are "time, place, and manner" restrictions on speech, as opposed to restrictions on content. Courts use the following three-part test in reviewing the constitutionality of sign ordinances:

1. Is the ordinance content-neutral?
2. Is the ordinance narrowly tailored to serve a significant Governmental interest?
3. Given the restrictions in the ordinance, are there ample, alternative channels or communication of the information?

It was recommended that City Council amend the City Code to combine Section 31-31 Free Standing ground signs and Section 31-33 Political ground signs; into one section that regulates all "Yard Signs" as to size and location.

Discussion was held concerning yard signs which included garage sale signs, rental, business, etc. Permits for signs was mentioned but not encouraged by Mr. Lewis. Time frames for campaign signs were mentioned relating to the American Civil Liberties Union. Issues with enforcement, public property and public right-of-way were mentioned.

Interim City Attorney Jason Eley commented on the legal aspects of not having a constitutional ordinance which could cost the City hundreds of thousands of dollars.

Mr. Lewis stated this issue would be brought back to Council in ordinance form for Council consideration.

Discussion Concerning City Dewatering Wells. Public Works Director John Collins gave a PowerPoint presentation explaining the history of the installation of test and monitoring wells. An agreement with Central Platte Natural Resources District (CPNRD) was entered into on December 21, 1998 and amended on October 25, 1999 for 36 months. The final report was approved by Council on September 26, 2000.

The annual cost to power these wells were \$15,000, testing \$7,200, and repair \$5,000. These pumps were nearing the end of their 15 year design life. The City had powered these 5 wells without authorization from the Council. Only a few properties benefited (most dewatering wells were private).

The following options were presented:

- Continue to operate these 5 wells
- Add additional wells
- Reconsider the NRD's proposal

The following people spoke in favor of leaving the wells turned on:

- Doug Winder, 4355 Cambridge Road
- Mike Hargens, 4360 Sherwood Road
- J. J. Wohlers, 4251 Nevada Avenue
- Don Young, 2531 West Phoenix Avenue
- Roger Lindly, 923 East Phoenix Avenue
- Francis Sindelar, 2448 La Mar Avenue
- Wayne Schroeder, 2509 West Phoenix Avenue
- Harlan Knoepfel, 2132 Viking Place

Mayor stated two letters were received for the record from Stacie Goding, 4245 Nevada Avenue and Sharon Van Dyke, 4246 Nevada Avenue.

Kevin Prior representing Olsson Associates commented that no studies had been done since 2000.

Discussion was held concerning where the water drained from the wells. Mr. Collins explained the difference between sanitary sewer systems versus storm sewer systems. Mentioned was this issue was for Council to give the Public Works Department permission to continue running the wells. Mentioned was using floats so the pumps didn't run constantly. Upkeep of the wells was discussed.

Mr. Collins stated this issue would be brought forward to Council for action in the near future.

ADJOURNMENT: The meeting was adjourned at 10:03 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G3

Approving Re-Appointments of Lisa Crumrine and Steven Beck to the Community Development Advisory Board

The Mayor has submitted the re-appointments of Lisa Crumrine and Steven Beck to the Community Development Advisory board. These appointments would become effective July 1, 2011 upon approval by the City Council and would expire on June 30, 2014.

Approval is recommended.

Staff Contact: Mayor Vavricek



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G4

Approving Appointment of Councilmember Peg Gilbert as Council Liaison to the Heartland Events Center Board

Fonner Park Exposition and Events Center, Inc. (Heartland Events Center) is a 501©(3) corporation created for the purpose of planning, designing, constructing, and financing an agricultural exposition and events center. Heartland Events Center is governed by a Board of Directors consisting of five persons, one of whom is nominated by the Mayor of the City and all of whom are subject to annual approval by the Mayor and City Council.

It is appropriate to have a Council representative to the Heartland Events Center Board. The Mayor has submitted the appointment of Peg Gilbert as Council Liaison to the Heartland Events Center Board. This appointment would become effective immediately upon approval by the City Council and would expire on December 31, 2011.

Approval is recommended.

Staff Contact: Mayor Vavricek



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G5

**Approving Liquor Manager Designation for Jared Edwards, 2203
Woodridge Place for Sam's Club #6461, 1510 Diers Avenue**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: June 14, 2011

Subject: Request from Jared Edwards, 2203 Woodridge Place for Liquor Manager Designation for Sam's Club #6461, 1510 Diers Avenue

Item #'s: G-5

Presenter(s): RaNae Edwards, City Clerk

Background

Jared Edwards, 2203 Woodridge Place has submitted an application with the City Clerk's Office for a Liquor Manager Designation in conjunction with the Class "C-86818" Liquor License for Sam's Club #6461, 1510 Diers Avenue.

This application has been reviewed by the Police Department and City Clerk's Office.

Discussion

City Council action is required and forwarded to the Nebraska Liquor Control Commission for issuance of all liquor manager designations. All departmental reports have been received. See attached Police Department report.

Alternatives

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

1. Approve the request.
2. Forward the request with no recommendation.
3. Take no action on the request.

Recommendation

City Administration recommends that the Council approve the request for Liquor Manager Designation.

Sample Motion

Move to approve the request from Jared Edwards, 2203 Woodridge Place for Liquor Manager Designation in conjunction with the Class "C-86818" Liquor License for Sam's Club #6461, 1510 Diers Avenue with the stipulation that Mr. Edwards complete a state approved alcohol server/seller training program.

05/25/11
450
12:48
1

Grand Island Police Department

LAW INCIDENT TABLE

Page:

City : Grand Island
Occurred after : 12:18:12 05/25/2011
Occurred before : 12:18:12 05/25/2011
When reported : 12:18:12 05/25/2011
Date disposition declared : 05/25/2011
Incident number : L11053391
Primary incident number :
Incident nature : Liquor Lic Inv Liquor License
Investigation
Incident address : 1510 Diers Ave N
State abbreviation : NE
ZIP Code : 68803
Contact or caller :
Complainant name number :
Area location code : PCID Police - CID
Received by : Vitera D
How received : T Telephone
Agency code : GIPD Grand Island Police Department
Responsible officer : Vitera D
Offense as Taken :
Offense as Observed :
Disposition : ACT Active
Misc. number :
Geobase address ID : 4963
Long-term call ID :
Clearance Code : O Open Case
Judicial Status : NCI Non-criminal Incident

= = = = =
= = =

INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
NM	56617	05/25/11	Sams Club,	Business
Involved				
NM	166287	05/25/11	Edwards, Jared	Liquor Manager
NM	166288	05/25/11	Edwards, Jenelle M	Jared's Wife

LAW INCIDENT CIRCUMSTANCES:

Se	Circu	Circumstance code	Miscellaneous
1	LT08	Department/Discount Store	

LAW INCIDENT NARRATIVE:

fingerprint submission and the NLCC's determination as to whether Jared is eligible to become a liquor manager. Absent any problems at the State level, the GIPD has no objection to Jared Edwards becoming the liquor manager at Sam's Club.



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G6

**#2011-131 - Approving Final Plat and Subdivision Agreement for
Platte Valley Industrial Park 7th Subdivision**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Regional Planning Commission

Meeting: June 14, 2011

Subject: Platte Valley Industrial Park 7th Subdivision – Final Plat

Item #'s: G-6

Presenter(s): Chad Nabity AICP, Regional Planning Director

Background

This property is located north of Wildwood Drive and east of Juergen Rd. This final plat proposes to create 2 lots on a tract of land comprising all of Lot Eleven (11), Platte Valley Industrial Park Third Subdivision, in the City of Grand Island, in Hall County, Nebraska, said tract containing 6.873 acres.

Discussion

The revised final plat for Platte Valley Industrial Park 7th Subdivision was considered by the Regional Planning Commission at the June 1, 2011 meeting. A motion was made by Ruge and seconded by Hayes to approve the plat as presented. A roll call vote was taken and the motion passed with 9 members present (O'Neill, Ruge, Hayes, Reynolds, Haskins, Eriksen, Bredthauer, Connelly, Snodgrass) voting in favor no member present abstaining.

Alternatives

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

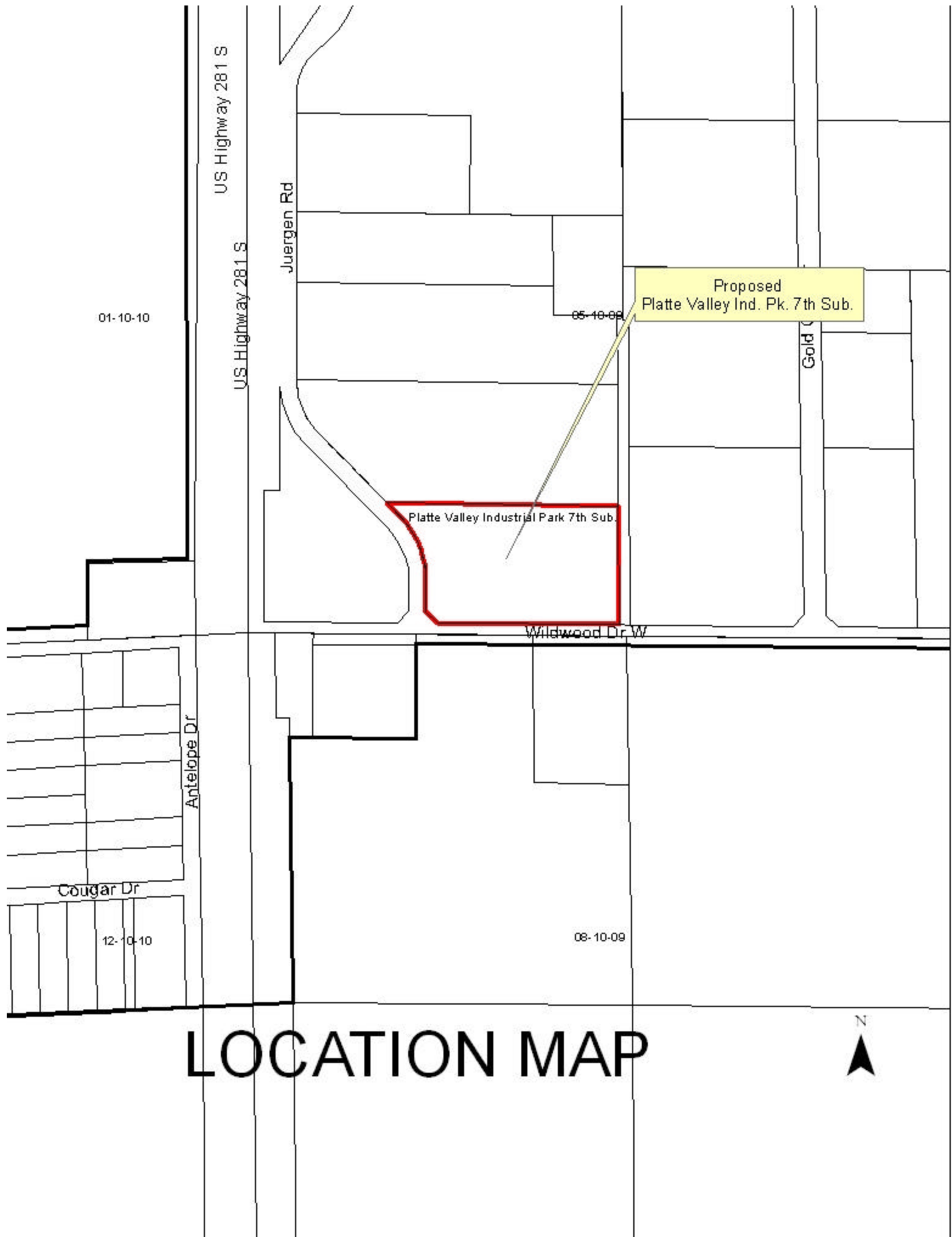
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the final plat as presented.

Sample Motion

Move to approve as recommended.



Platte Valley Industrial Park 7

Developer/Owner

BM & M, L.L.C.

1001 S 7th St.

Kansas City KS 66105

To create 2 lots north of Wildwood Drive and east of Juergen Road in the City of Grand Island, in Hall County, Nebraska.

Size: 6.873

Zoning: ME – Industrial Estates Zone

Road Access: City Roads

Water Public: City water is available

Sewer Public: City sewer is available



RESOLUTION 2011-131

WHEREAS, BM & M, L.L.C., a Limited Liability Company, being the said owner of the land described hereon, has caused same to be surveyed, subdivided, platted and designated as PLATTE VALLEY INDUSTRIAL PARK SEVENTH SUBDIVISION, to be laid out into 2 lots, a tract of land comprising all of Lot Eleven (11), Platte Valley Industrial Park Third Subdivision, in the City of Grand Island, Nebraska West of the 6th P.M., in the City of Grand Island, Hall County Nebraska, and has caused a plat thereof to be acknowledged by it; and

WHEREAS, a copy of the plat of such subdivision has been presented to the Boards of Education of the various school districts in Grand Island, Hall County, Nebraska, as required by Section 19-923, R.R.S. 1943; and

WHEREAS, a form of subdivision agreement has been agreed to between the owner of the property and the City of Grand Island.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the form of subdivision agreement hereinbefore described is hereby approved, and the Mayor is hereby authorized to execute such agreement on behalf of the City of Grand Island.

BE IT FURTHER RESOLVED that the final plat of PLATTE VALLEY INDUSTRIAL PARK SEVENTH SUBDIVISION, as made out, acknowledged, and certified, is hereby approved by the City Council of the City of Grand Island, Nebraska, and the Mayor is hereby authorized to execute the approval and acceptance of such plat by the City of Grand Island, Nebraska.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	<input type="checkbox"/> _____
June 9, 2011	<input type="checkbox"/> City Attorney



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G7

#2011-132 - Approving Acquisition of Utility Easement - West of South Blaine Street, 1/4 Mile North of Schimmer Drive - Cara J. Glade

This item relates to the aforementioned Public Hearing item E-4.

Staff Contact: Tim Luchsinger

RESOLUTION 2011-132

WHEREAS, a public utility easement is required by the City of Grand Island, from Cara J. Glade, to survey, construct, inspect, maintain, repair, replace, relocate, extend, remove, and operate thereon, public utilities and appurtenances, including lines and transformers; and;

WHEREAS, a public hearing was held on June 14, 2011, for the purpose of discussing the proposed acquisition of an easement located in Hall County, Nebraska; and more particularly described as follows:

Commencing at the southeast corner of the Southeast Quarter (SE1/4) Section Thirty Two (32), Township Eleven (11) North, Range Nine (9) West; thence northerly along the easterly line of said Southeast Quarter (SE1/4) on an assumed bearing of N01°06'52"E, a distance of one thousand three hundred twenty eight and ninety three hundredths (1,328.93) feet to the southeast corner of the Northeast Quarter of the Southeast Quarter (NE1/4, SE1/4) said Section Thirty (32); thence N88°28'57"W along the southerly line of a tract of land described in Document 201100142, recorded in the Register of Deeds Office, Hall County, Nebraska, a distance of thirty three (33.0) feet to a point on the westerly right-of-way line of Blaine Street, being the ACTUAL Point of Beginning; thence continuing westerly along the previously described course, a distance of one thousand two hundred eighty one and forty seven hundredths (1,281.47) feet.

The above-described easement and right-of-way containing a total of 0.59 acres, more or less, as shown on the plat dated 5/2/2011, marked Exhibit "A", attached hereto and incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island be, and hereby is, authorized to acquire a public utility easement from Cara J. Glade, on the above-described tracts of land.

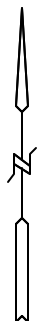
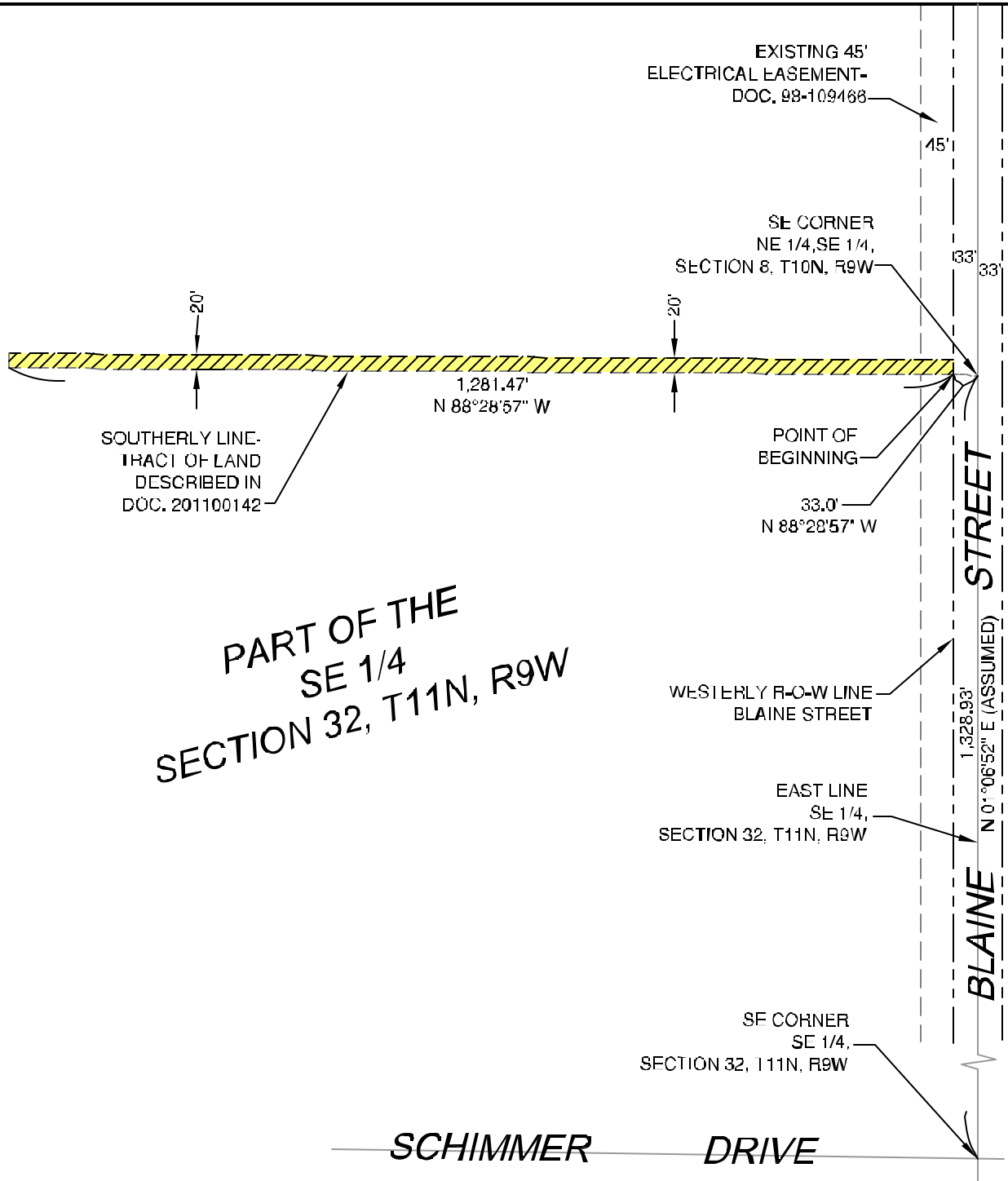
- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



LEGEND



INDICATES 20' WIDE
UTILITY EASEMENT

CITY OF
GRAND ISLAND
UTILITIES DEPARTMENT

EXHIBIT "A"

DRN BY: K.J.M.

SCALE: 1"= 200'

DATE: 5/2/2011

FILE: SX 32.11.9



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G8

#2011-133 - Approving Acquisition of Utility Easement - West of South Blaine Street, 3/4 Mile South of Wildwood Drive - Elsie & James Lilienthal

This item relates to the aforementioned Public Hearing item E-5.

Staff Contact: Tim Luchsinger

RESOLUTION 2011-133

WHEREAS, a public utility easement is required by the City of Grand Island, from Elsie M. Lilienthal and James W. Lilienthal, to survey, construct, inspect, maintain, repair, replace, relocate, extend, remove, and operate thereon, public utilities and appurtenances, including lines and transformers; and;

WHEREAS, a public hearing was held on June 14, 2011, for the purpose of discussing the proposed acquisition of an easement located in Hall County, Nebraska; and more particularly described as follows:

Commencing at the southeast corner of the Southeast Quarter (SE1/4), Section Eight (8), Township Ten (10) North, Range Nine (9) West; thence running in a northerly direction along the easterly line of the said Southeast Quarter (SE1/4), a distance of one thousand three hundred forty four and thirty seven hundredths (1,344.37) feet; thence deflecting left 89°51'15" and running in a westerly direction, a distance of thirty three (33.0) feet to a point on the westerly right-of-way line of Blaine Street, said point being the ACTUAL Point of Beginning; thence continuing in a westerly direction along the previously described line, a distance of six hundred (600.0) feet.

The above-described easement and right-of-way containing 0.276 acres, more or less, as shown on the plat dated 4/27/2011, marked Exhibit "A", attached hereto and incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island be, and hereby is, authorized to acquire a public utility easement from Elsie M. Lilienthal and James W. Lilienthal, on the above-described tracts of land.

- - -

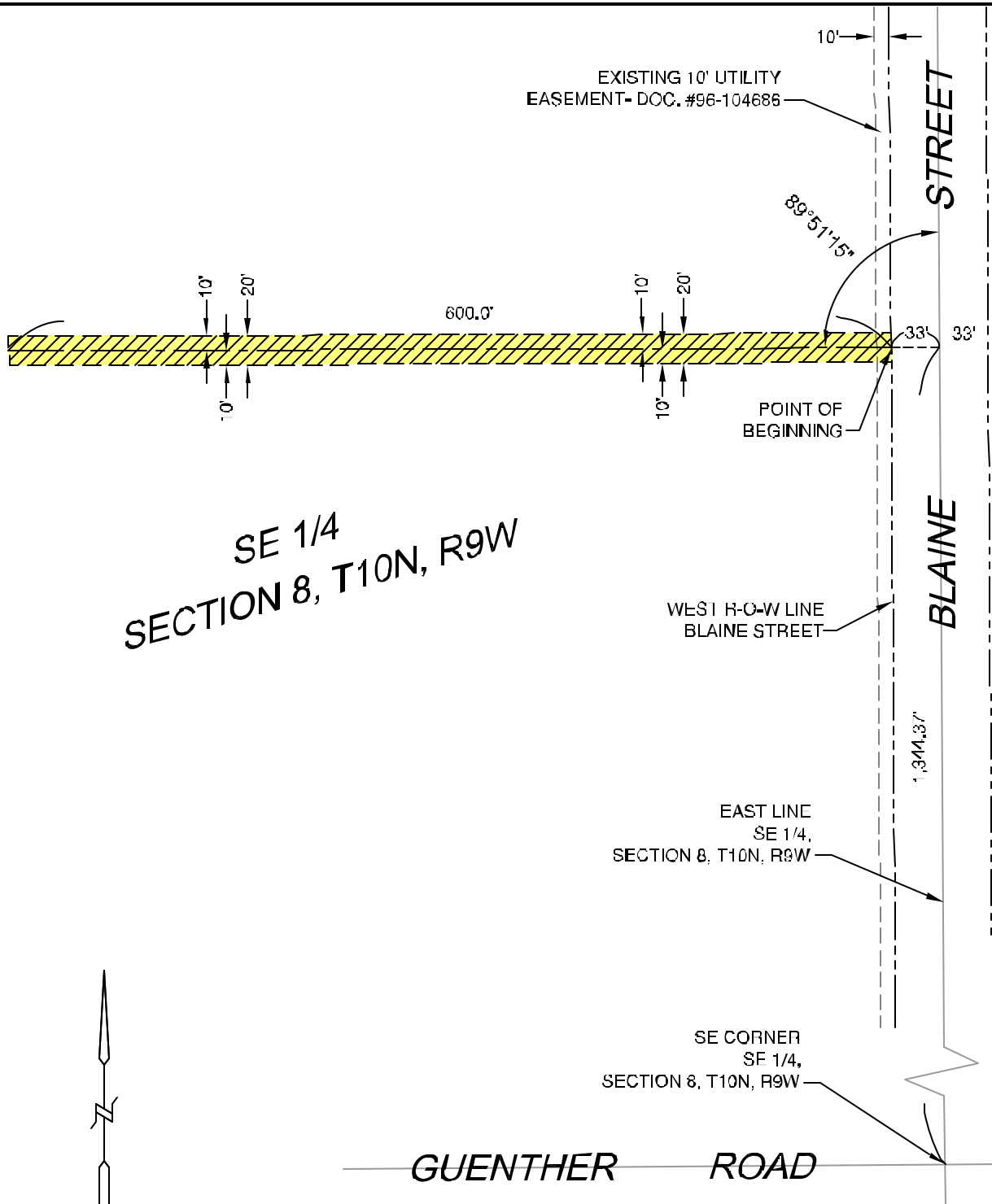
Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk


Approved as to Form	☐ _____
June 9, 2011	☐ City Attorney




SE 1/4
SECTION 8, T10N, R9W



LEGEND

 INDICATES 20' WIDE
UTILITY EASEMENT

	
CITY OF GRAND ISLAND UTILITIES DEPARTMENT	
EXHIBIT "A"	
DRN BY: K.J.M.	SCALE: 1"= 100'
DATE: 4/27/2011	FILE: SEC. 8.10.9



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G9

#2011-134 - Approving Acquisition of Utility Easements - 1839 and 1919 East 4th Street - Ummel

This item relates to the aforementioned Public Hearing item E-6.

Staff Contact: Tim Luchsinger

RESOLUTION 2011-134

WHEREAS, a public utility easement is required by the City of Grand Island, from Tommy Ummel, Sr. and Tommy Ummel, Jr., to survey, construct, inspect, maintain, repair, replace, relocate, extend, remove, and operate thereon, public utilities and appurtenances, including lines and transformers; and;

WHEREAS, a public hearing was held on June 14, 2011, for the purpose of discussing the proposed acquisition of an easement located in Hall County, Nebraska; and more particularly described as follows:

TRACT 1

The northerly twenty (20.0) feet of the westerly ten (10.0) of Lot Two (2), Brodsky Industrial Empire Subdivision.

TRACT 2

The northerly twenty (20.0) feet of the easterly ten (10.0) feet of Lot Three (3), Brodsky Industrial Empire Subdivision.

TRACT 3

The centerline of a twenty (20.0) foot wide utility easement and right-of-way tract being more particularly described as follows:

Commencing at the southeast corner of Lot One (1), Brodsky Industrial Empire Subdivision; thence westerly along the southerly line of said Lot One (1), a distance of one hundred eighty six and sixty three hundredths (186.63) feet; thence northerly along the centerline of an existing twenty eight (28.0) foot wide utility easement as described in Miscellaneous Book 23, Page 201, recorded in the Register of Deeds Office, Hall County, Nebraska, a distance of one hundred sixty five and sixty seven hundredths (165.67) feet to the ACTUAL Point of Beginning; thence deflecting left 95°39'44" and running westerly, a distance of forty (40.0) feet.

The above-described easement and right-of-way containing a combined total of 0.028 acres, more or less, as shown on the plat dated 5/13/2011, marked Exhibit "A", attached hereto and incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island be, and hereby is, authorized to acquire a public utility easement from Tommy Ummel, Sr., and Tommy Ummel, Jr., on the above-described tracts of land.

- - -

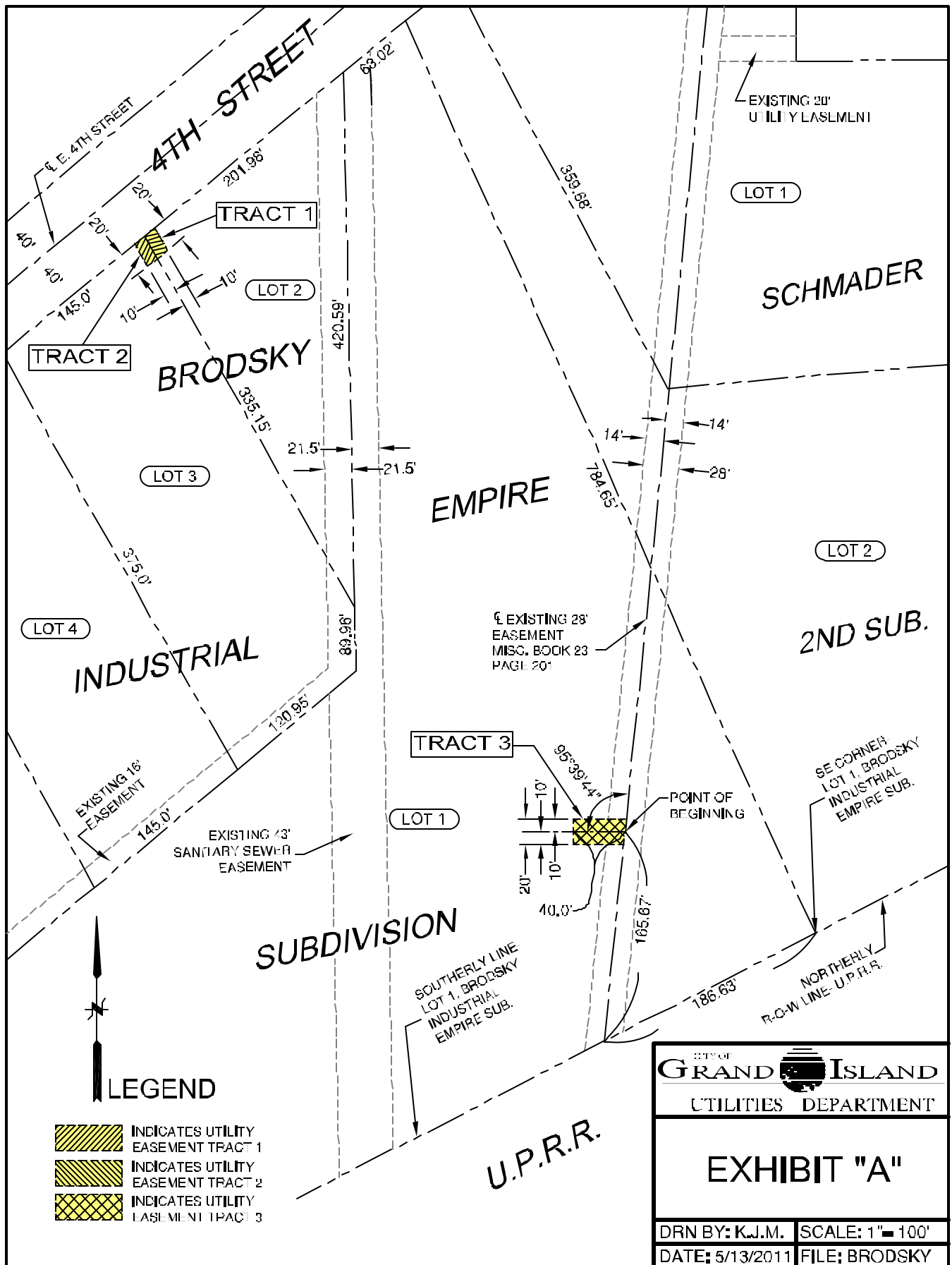
Approved as to Form	☐ _____
June 9, 2011	☐ City Attorney

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk





City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G10

#2011-135 - Approving Pipeline Crossing Agreements with Union Pacific Railroad for Water Main Project 2011-W-3 at Broadwell Avenue and Vine Street

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Tim Luchsinger, Utilities Director

Meeting: June 14, 2011

Subject: Pipeline Crossing Agreements – Water Main Project
2011-W-3 – Broadwell Avenue at the UPRR, and Vine
Street at the UPRR

Item #'s: G-10

Presenter(s): Tim Luchsinger, Utilities Director

Background

The Union Pacific Railroad tracks effectively divide the City's water distribution system into two sections. There are 12 pipelines that traverse under the tracks, tying the system together. In January of this year, the 10" diameter main in Broadwell Avenue broke under the mainline tracks. In February, the 10" main in Vine Street, extended, broke within the railroad right-of-way. Both of these pipelines were installed in the early 1930's without a protective steel outer casing, as was standard practice at that time. Due to the age of the pipes and location of the breaks, both pipelines were taken out of service until permanent repairs can be made.

Due to the pipeline failures in relation to the Union Pacific mainline tracks, it is proposed to replace both sections of pipeline. The project would provide for a directional bored 20" diameter steel casing under the tracks at Broadwell Avenue and at Vine Street, and installation of a new 10" ductile-iron water main within each of the casings, and reconnect the new piping outside of the railroad track limits.

Maps of the two crossing areas are attached for reference.

Discussion

Union Pacific has a number of requirements regarding crossing of their right-of-way by other utilities. The Department has submitted application for the construction of the crossings for the railroad's review and has received from the railroad their proposed agreement for the project.

The crossing agreement for Vine Street (Mile Post 146.52) includes a license fee payment of \$2,800.00, and the crossing agreement for the Broadwell Avenue crossing (Mile Post 147.82) is \$2,000.00.

Alternatives

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

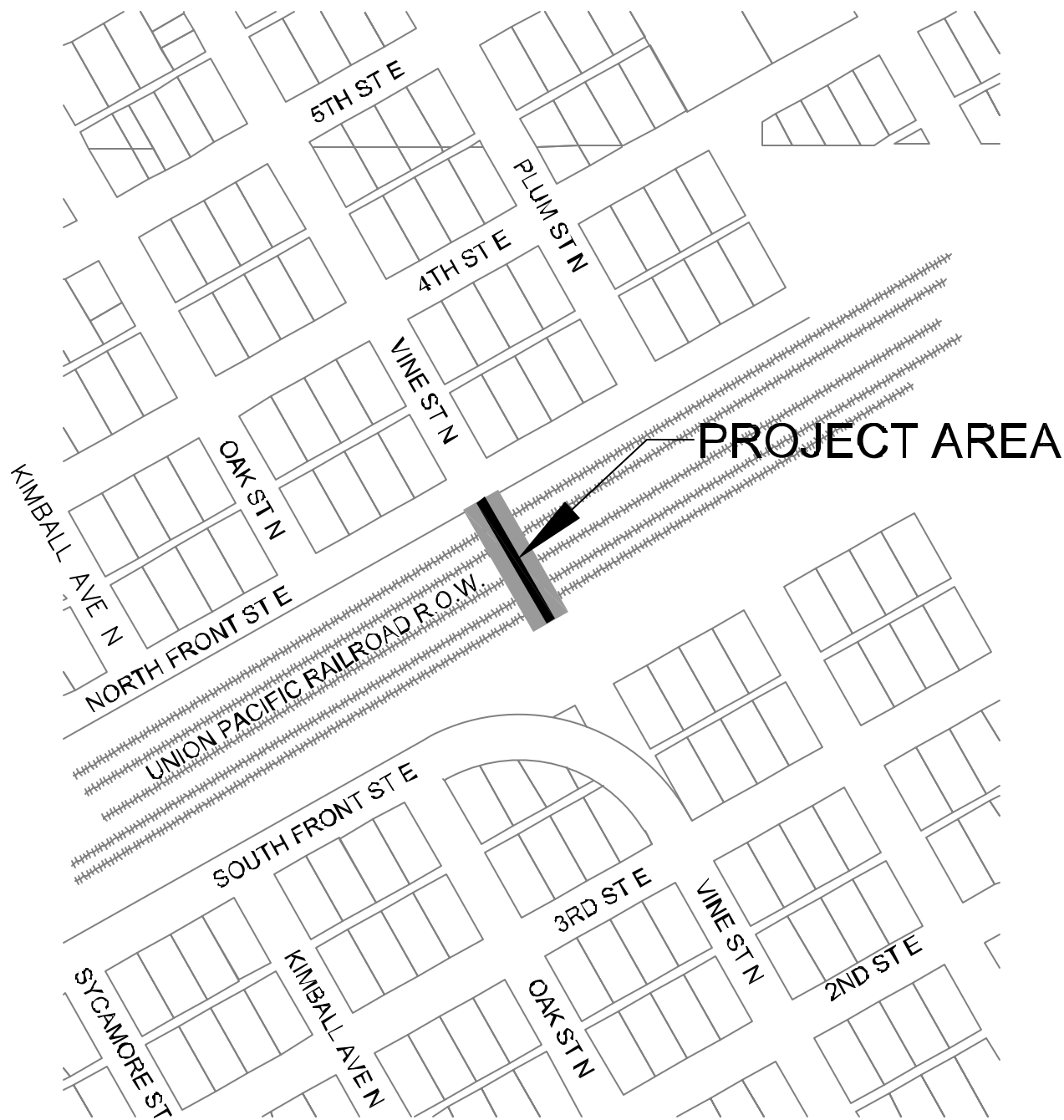
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Pipeline Crossing Agreements with Union Pacific Railroad.

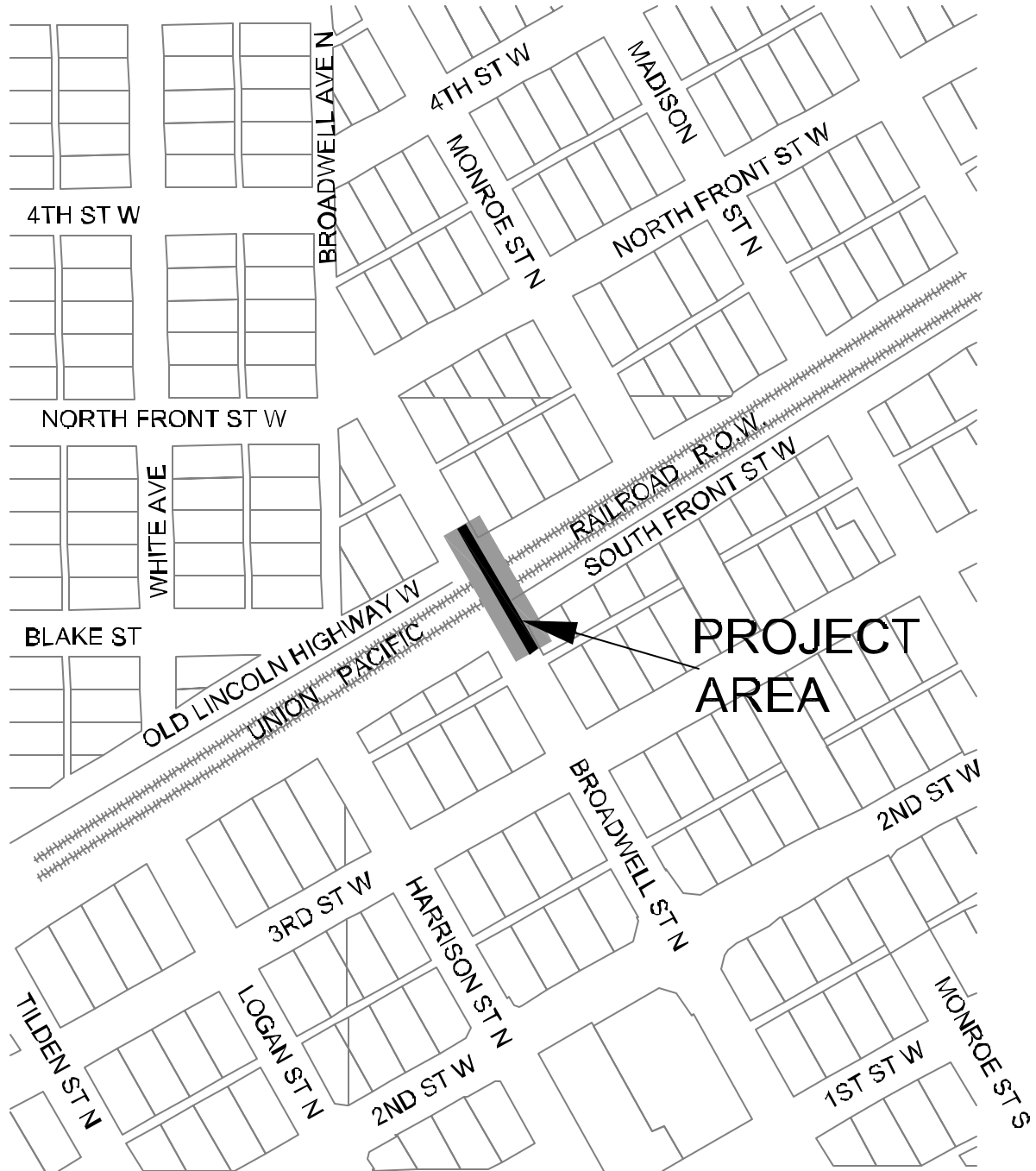
Sample Motion

Move to the Pipeline Crossing Agreements at Broadwell Avenue and at Vine Street with Union Pacific Railroad.



CITY OF
GRAND ISLAND
UTILITIES DEPARTMENT

**WATER MAIN PROJECT 2011-W-3
VINE STREET
AT THE U.P.R.R. (MP146.52)**



CITY OF
GRAND ISLAND
UTILITIES DEPARTMENT

**WATER MAIN PROJECT 2011-W-3
BROADWELL AVE
AT THE U.P.R.R. (MP 147.82)**

Vine Street

Pipeline Crossing 080808
Last Modified: 03/29/10
Form Approved, AVP-Law

Folder No. 2551-17

PIPELINE CROSSING AGREEMENT

Mile Post: 146.52, Kearney Subdivision
Location: Grand Island, Hall County, Nebraska

THIS AGREEMENT ("Agreement") is made and entered into as of April 21, 2011, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **GRAND ISLAND, CITY OF**, a Nebraska municipal corporation to be addressed at Po Box 1968, 100 E 1st Street Grand Island, Nebraska 68802 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 10 inch encased pipeline for transporting and conveying potable water only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated April 21, 2011 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying potable water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Two Thousand Eight Hundred Dollars (\$2,800.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including

initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 5. INSURANCE.

A. During the life of the Lease, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this lease, those statutes shall apply.

D. Licensee hereby acknowledges that is has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 6. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

GRAND ISLAND, CITY OF

By: _____
Senior Manager - Contracts

By: _____

Name Printed: _____

Title: _____

PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSING



ENCASED NON-FLAMMABLE PIPELINE CROSSING

FORM DR-0404-B
REV 10-22-2007
www.uprr.com
NO SCALE

NOTE: ALL AVAILABLE DIMENSIONS MUST BE
FILLED IN TO PROCESS THIS APPLICATION.

(OR LEGAL SURVEY LINE, WHERE APPLICABLE)
N LINE OF SECTION 15, TOWNSHIP 11, RANGE 9, W MERIDIAN

RR' S R/Y

← TO _____
(NEAREST R. R. TOWN)

TO _____
(NEAREST R. R. TOWN)

(DISTANCE ALONG TRACK FROM SECTION LINE CROSSING) _____ FT.

[NOTE: THIS DIMENSION REQUIRED IN ALL CASES.
AT LOCATIONS NOT USING SECTIONS, DISTANCE
TO A LEGAL SURVEY LINE IS REQUIRED)

Lat. 40.928931758128
Lon. -98.33646655082

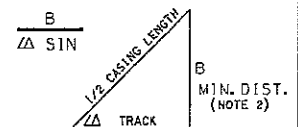
STEEL CASING WALL THICKNESS CHART

MINIMUM THICKNESS	DIAMETER OF CASING PIPE
.2500"	1 1/4" 12" OR LESS
.3125"	5/16" OVER 12"-18"
.3750"	3/8" OVER 18"-22"
.4375"	7/16" OVER 22"-28"
.5000"	1/2" OVER 28"-34"
.5625"	9/16" OVER 34"-42"
.6250"	5/8" OVER 42"-48"

OVER 48" MUST BE
APPROVED BY R.R. CO.

NOTE: THIS CHART IS ONLY FOR SMOOTH STEEL CASING PIPES WITH MINIMUM YIELD STRENGTH OF 35,000 PSI.

FORMULA TO FIGURE CASING
LENGTH WITH ANGLE OF
CROSSING OTHER THAN 90°



NOTES :

(CASING LENGTH WHEN MEASURED ALONG PIPELINE.)

- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM Q OF TRACK.
- 2) CASING TO EXTEND BEYOND THE Q OF TRACK AT RIGHT ANGLES THE GREATER OF $2D + 20$ FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
- 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, Q OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- 5) ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; Q OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
- 6) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

A) IS PIPELINE CROSSING WITHIN DEDICATED STREET ? ☐ YES; ☒ NO;

B) IF YES, NAME OF STREET OAK STREET

D) DISTRIBUTION LINE ☒ OR TRANSMISSION LINE ☐

C) CARRIER PIPE :
COMMODITY TO BE CONVEYED POTABLE WATER
OPERATING PRESSURE 75 PSI
WALL THICKNESS 0.26 ; DIAMETER 10 ; MATERIAL DUCTILE IRON

E) CASING PIPE :
WALL THICKNESS 0.375 ; DIAMETER 20 ; MATERIAL STEEL ;
NOTE : CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST
OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF
CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF
CARRIER PIPE AND INSIDE OF CASING PIPE.

F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
☒ DRY BORE AND JACK (WET BORE NOT PERMITTED);
☐ TUNNEL; OTHER _____

G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? C YES; C NO;
H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 45

1) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE DOES; DOES NOT; EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 20110405039

EXHIBIT 99 A 99

FOR RAILROAD USE ONLY

UNION PACIFIC RAILROAD CO.

Kearney

SUBDIVISION

M₀ P 146.52

E. S. 8218+114

ENCASED POTABLE WATER CROSSING AT

GRAND ISLAND	Hall	NE
(NEAREST CITY)	(COUNTY)	(STATE)

CITY OF GRAND ISLAND, NEBRASKA

RR FILE NO. 0255117 DATE 4-21-11

W A R N I N G

IN ALL OCCASIONS, U. P. COMMUNICATIONS
DEPARTMENT MUST BE CONTACTED IN ADVANCE
OF ANY WORK TO DETERMINE EXISTENCE AND
LOCATION OF FIBER OPTIC CABLE.
PHONE : 1-800-336-9193

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support,

the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

RYAN K. COLLINS
MGR TRACK MNTCE
Cell Phone: 402 289-7583

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensor whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for

such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.
- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.

- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.
- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.

- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. **IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or

materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. **AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS WHICH IS DUE TO OR ARISES FROM:**

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR,

RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

- C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C

Union Pacific Railroad Company Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement

E. Umbrella or Excess insurance. If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D

SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

Broadwell

Pipeline Crossing 080808
Last Modified: 03/29/10
Form Approved, AVP-Law

Folder No. 2545-09

PIPELINE CROSSING AGREEMENT

Mile Post: 147.82, Kearney Subdivision
Location: Grand Island, Hall County, Nebraska

THIS AGREEMENT ("Agreement") is made and entered into as of April 20, 2011, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **GRAND ISLAND, CITY OF**, a Nebraska municipal corporation to be addressed at Po Box 1968, 100 E 1st Street Grand Island, Nebraska 68802 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 10 inch encased pipeline for transporting and conveying potable water only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated April 20, 2011 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying potable water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Two Thousand Dollars (\$2,000.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including

initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 5. INSURANCE.

A. During the life of the Lease, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this lease, those statutes shall apply.

D. Licensee hereby acknowledges that it has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 6. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

GRAND ISLAND, CITY OF

By: _____
Senior Manager - Contracts

By: _____

Name Printed: _____

Title: _____

4-7-11

PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSING

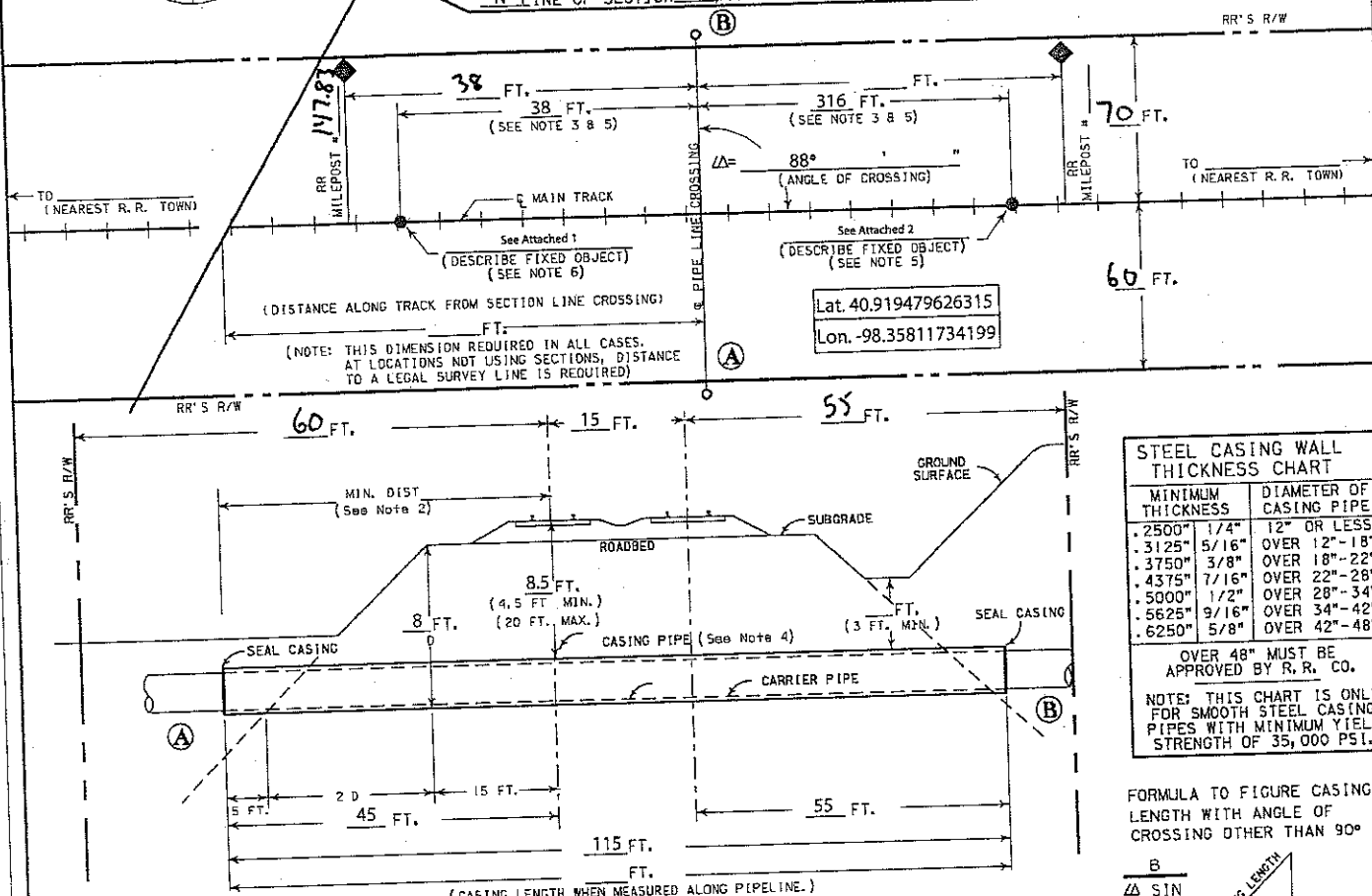


ENCASED NON-FLAMMABLE PIPELINE CROSSING

NOTE: ALL AVAILABLE DIMENSIONS MUST BE
FILLED IN TO PROCESS THIS APPLICATION.

FORM DR-0404-B
REV 10-22-2007
www.uprr.com
NO SCALE

(OR LEGAL SURVEY LINE, WHERE APPLICABLE)
N. LINE OF SECTION 16, TOWNSHIP 11, RANGE 9, W. MERIDIAN



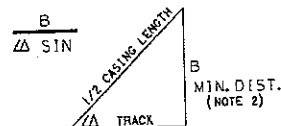
STEEL CASING WALL THICKNESS CHART

MINIMUM THICKNESS	DIAMETER OF CASING PIPE
.2500" 1/4"	12" OR LESS
.3125" 5/16"	OVER 12"-18"
.3750" 3/8"	OVER 18"-22"
.4375" 7/16"	OVER 22"-28"
.5000" 1/2"	OVER 28"-34"
.5625" 9/16"	OVER 34"-42"
.6250" 5/8"	OVER 42"-48"

OVER 48" MUST BE
APPROVED BY R. R. CO.

NOTE: THIS CHART IS ONLY
FOR SMOOTH STEEL CASING
PIPES WITH MINIMUM YIELD
STRENGTH OF 35,000 PSI.

FORMULA TO FIGURE CASING
LENGTH WITH ANGLE OF
CROSSING OTHER THAN 90°



NOTES:

- ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM C. OF TRACK.
- CASING TO EXTEND BEYOND THE C. OF TRACK AT RIGHT ANGLES THE GREATER OF 20' + 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
- MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, E. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; E. OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
- CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? ☒ YES; ☐ NO;
- B) IF YES, NAME OF STREET BROADWELL AVENUE
- C) DISTRIBUTION LINE ☒ OR TRANSMISSION LINE ☐
- C) CARRIER PIPE:
COMMODITY TO BE CONVEYED POTABLE WATER
OPERATING PRESSURE 75 PSI
WALL THICKNESS 0.26; DIAMETER 10; MATERIAL DUCTILE IRON
- E) CASING PIPE:
WALL THICKNESS 0.375; DIAMETER 20; MATERIAL STEEL
NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST
OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF
CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF
CARRIER PIPE AND INSIDE OF CASING PIPE.
- F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
☒ DRY BORE AND JACK (WET BORE NOT PERMITTED);
☐ TUNNEL; OTHER
- G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? ☐ YES; ☒ NO;
- H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 45 (30' MIN.)
- I) APPLICANT HAS CONTACTED 1-800-336-9193,
U. P. COMMUNICATIONS DEPARTMENT, AND HAS DETERMINED FIBER
OPTIC CABLE ☒ DOES; ☐ DOES NOT; EXIST IN VICINITY OF
WORK TO BE PERFORMED. TICKET NO. 20110405040

EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

Kearney

(SUBDIVISION)

M. P. 147.82

E. S. 8286+83±

ENCASED POTABLE WATER CROSSING AT

GRAND ISLAND Hall NE

(NEAREST CITY)

(COUNTY)

(STATE)

CITY OF GRAND ISLAND, NEBRASKA

(APPLICANT)

RR FILE NO. 0254509 DATE 4-20-11

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS
DEPARTMENT MUST BE CONTACTED IN ADVANCE
OF ANY WORK TO DETERMINE EXISTENCE AND
LOCATION OF FIBER OPTIC CABLE.
PHONE 1-800-336-9193

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering - Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support,

the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. **NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.**

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

RYAN K. COLLINS
MGR TRACK MNTCE
Cell Phone: 402 289-7583

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensor whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other

special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.
- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.
- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. **IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licenser in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licenser against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licenser, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licenser, then the Licensee shall pay to the Licenser an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licenser as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licenser in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licenser, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licenser.

Section 10. INDEMNITY.

- A. As used in this Section, "Licenser" includes other railroad companies using the Licenser's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licenser's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licenser, or property in its care or custody).
- B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM

ANY LOSS WHICH IS DUE TO OR ARISES FROM:

- 1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;**
 - 2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;**
 - 3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;**
 - 4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;**
 - 5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR**
 - 6. LICENSEE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.**
- C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C

Union Pacific Railroad Company Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less than \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

C. **Workers Compensation and Employers** Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. **Railroad Protective Liability** insurance. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement

E. **Umbrella or Excess** insurance. If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D

SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

RESOLUTION 2011-135

WHEREAS, the construction of Water Main Project 2011-W-3 will require crossings the Union Pacific railroad tracks at Broadwell Avenue and Vine Street; and

WHEREAS, the Union Pacific Railroad requires Pipeline Crossing Agreements to be entered into for persons crossing its property for such purposes with license fee payments of \$2,800 for the Vine Street Crossing and \$2,000 for the Broadwell Avenue crossing; and

WHEREAS, the City Attorney's office has reviewed the proposed Pipeline Crossing Agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Pipeline Crossing Agreements, by and between the City and the Union Pacific Railroad Company, for the construction and maintenance of Water Main Project 2011-W-3 at Vine Street and Broadwell Avenue, are hereby approved; and the Mayor is hereby authorized to sign such agreements on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G11

#2011-136 - Approving Pipeline Crossing Agreement with the Union Pacific Railroad for Water Main District 458T - Blaine Street, Schimmer to Wildwood Drive to Gold Core Road

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Tim Luchsinger, Utilities Director

Meeting: June 14, 2011

Subject: Pipeline Crossing Agreement – Water Main District
458T - Wildwood Drive and Blaine Street

Item #'s: G-11

Presenter(s): Tim Luchsinger, Utilities Director

Background

The Grand Island Economic Development Corporation is planning on developing an additional Industrial Park between Gold Core Drive and Blaine Street, and between Wildwood Drive and Schimmer Drive. They have applied for a grant that will facilitate installation of public water mains and sewer infrastructure in the area.

The existing City water main terminates just east of the Gold Core Drive and Wildwood Drive intersection. It is planned to extend the main easterly along Wildwood Drive to Blaine Street. As part of the construction along Wildwood, it will be necessary to cross property owned by the Union Pacific Railroad. A map, showing the crossing area, is attached for reference.

Discussion

The Utilities Department has submitted an application to the Union Pacific for construction of the water main crossing their right-of-way. The railroad has reviewed the application and has returned their proposed agreement for the project.

The crossing permit for the water main in Wildwood Drive includes a license fee payment of \$2,000.00.

Alternatives

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

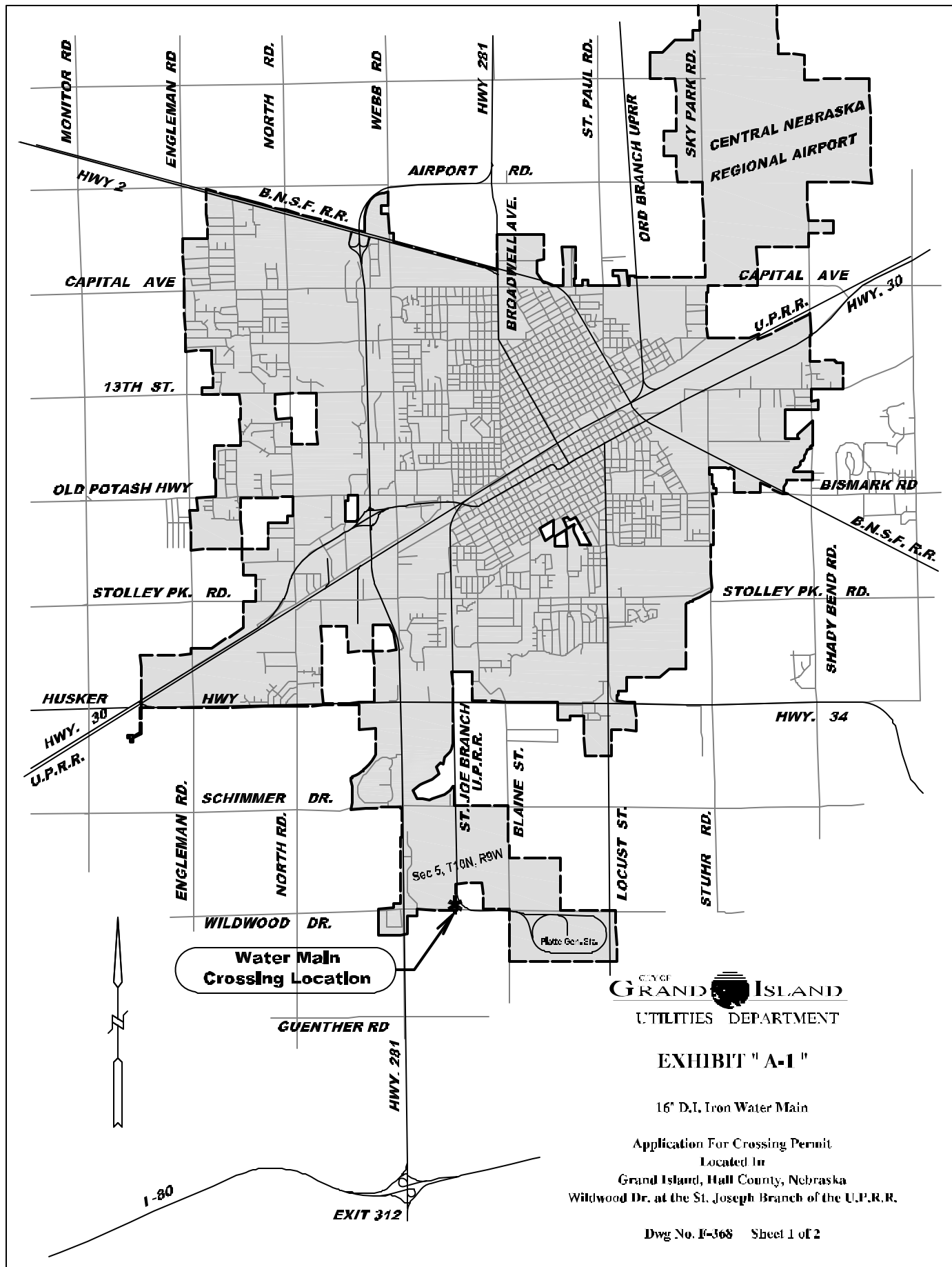
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Pipeline Crossing Agreement with the Union Pacific Railroad.

Sample Motion

Move to approve the Pipeline Crossing Agreement at Wildwood Drive with the Union Pacific Railroad.



**Water Main
Crossing Location**

**CITY OF
GRAND ISLAND**
UTILITIES DEPARTMENT

EXHIBIT "A-1"

16" D.I. Iron Water Main

Application For Crossing Permit
Located In
Grand Island, Hall County, Nebraska
Wildwood Dr. at the St. Joseph Branch of the U.P.R.R.

WMD 458T

Pipeline Crossing 080808
Last Modified: 03/29/10
Form Approved, AVP-Law

Folder No. 2663-41

PIPELINE CROSSING AGREEMENT

Mile Post: 18.27, River Ind Ld
Location: Grand Island, Hall County, Nebraska

THIS AGREEMENT ("Agreement") is made and entered into as of March 09, 2011, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **GRAND ISLAND, CITY OF**, a Nebraska municipal corporation to be addressed at Po Box 1968, 100 E 1st Street Grand Island, Nebraska 68802-1968 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 16 inch uncased pipeline for transporting and conveying potable water only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated March 09, 2011 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying potable water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Two Thousand Dollars (\$2,000.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including

initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 5. INSURANCE.

A. During the life of the Lease, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this lease, those statutes shall apply.

D. Licensee hereby acknowledges that it has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 6. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

GRAND ISLAND, CITY OF

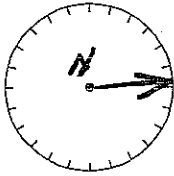
By: _____
Senior Manager - Contracts

By: _____

Name Printed: _____

Title: _____

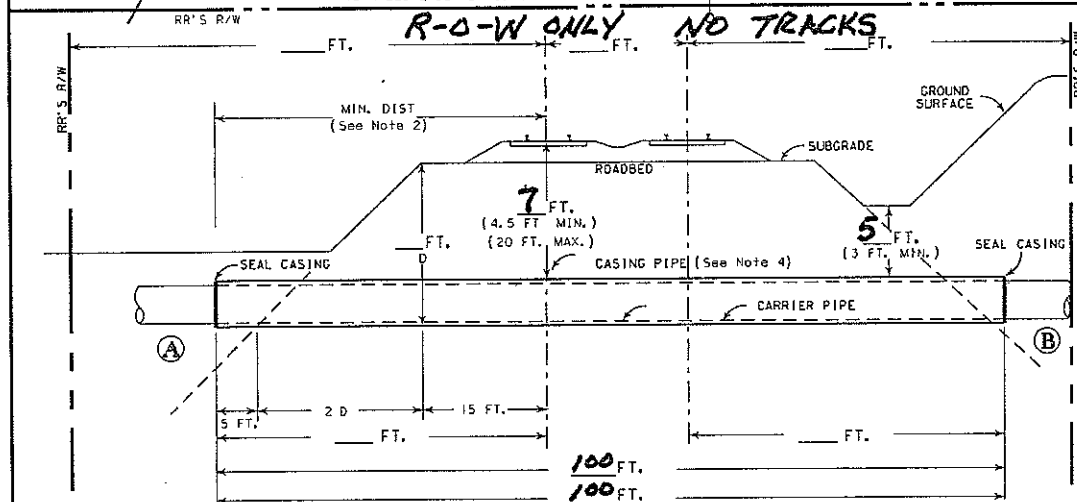
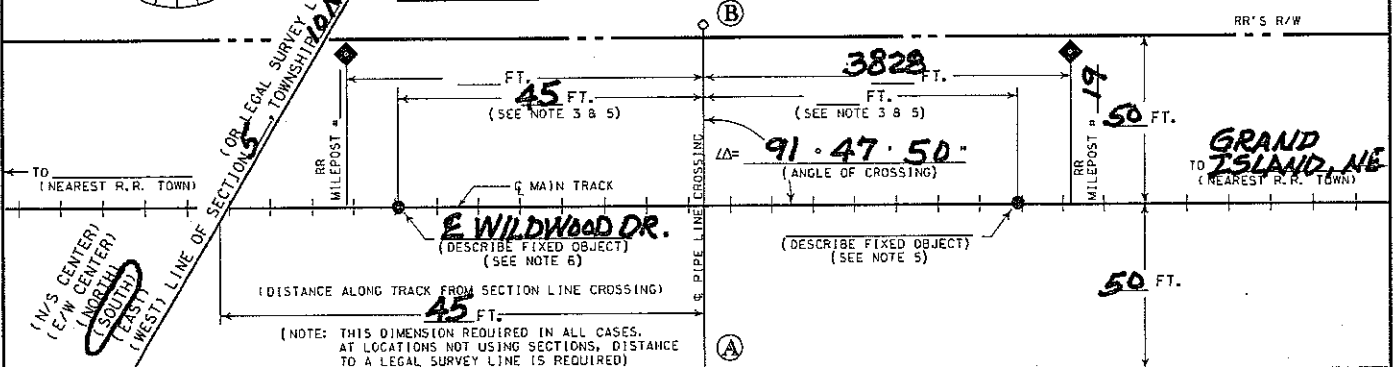
PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSING



ENCASED NON-FLAMMABLE PIPELINE CROSSING

NOTE: ALL AVAILABLE DIMENSIONS MUST BE
FILLED IN TO PROCESS THIS APPLICATION.

NO SCALE



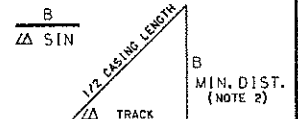
STEEL CASING WALL
THICKNESS CHART

MINIMUM THICKNESS	DIAMETER OF CASING PIPE
.2500" 1/4"	12" OR LESS
.3125" 5/16"	OVER 12"-18"
.3750" 3/8"	OVER 18"-22"
.4375" 7/16"	OVER 22"-28"
.5000" 1/2"	OVER 28"-34"
.5625" 9/16"	OVER 34"-42"
.6250" 5/8"	OVER 42"-48"

OVER 48" MUST BE
APPROVED BY R.R. CO.

NOTE: THIS CHART IS ONLY
FOR SMOOTH STEEL CASING
PIPES WITH MINIMUM YIELD
STRENGTH OF 35,000 PSI.

FORMULA TO FIGURE CASING
LENGTH WITH ANGLE OF
CROSSING OTHER THAN 90°



- NOTES:
- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM C. OF TRACK.
 - 2) CASING TO EXTEND BEYOND THE C. OF TRACK AT RIGHT ANGLES THE GREATER OF 20' + 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
 - 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, C. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
 - 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
 - 5) ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; C. OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
 - 6) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES; ☒ NO; ☒
- B) IF YES, NAME OF STREET _____
- D) DISTRIBUTION LINE ☒ OR TRANSMISSION LINE _____
- C) CARRIER PIPE:
COMMODITY TO BE CONVEYED POTABLE WATER
OPERATING PRESSURE 75 PSI
WALL THICKNESS 0.24" DIAMETER 16"; MATERIAL DUCTILE IRON;
- E) CASING PIPE:
WALL THICKNESS N/A; DIAMETER N/A; MATERIAL N/A;
NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.
- F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
☐ DRY BORE AND JACK (WET BORE NOT PERMITTED);
☐ TUNNEL; OTHER TRENCH
- G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? ☒ YES; ☐ NO;
- H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK N/A (30' MIN.)
- I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE _____ DOES; _____ DOES NOT; EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 20110207040

EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

River Ind. Lead (Abandoned)

(SUBDIVISION)

M. P. 18.27 E. S. 12944+76

ENCASED Pipeline CROSSING AT

Grand Island Hall NE

(NEAREST CITY)

(COUNTY)

(STATE)

City of Grand Island

(APPLICANT)

RR FILE NO. 2063-41 DATE 3-9-11

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS
DEPARTMENT MUST BE CONTACTED IN ADVANCE
OF ANY WORK TO DETERMINE EXISTENCE AND
LOCATION OF FIBER OPTIC CABLE.
PHONE: 1-800-336-9193

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering -- Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support,

the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

B.

~~Jody Wilkerson
2511 12th St
Columbus NE 68601
402 501-3817~~

Ryan Collins
2511 12th Street
Columbus, NE

- C. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor

Representative will determine and inform Licensor whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.
- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.
- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. **IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. **AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM**

ANY LOSS WHICH IS DUE TO OR ARISES FROM:

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

- C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C

Union Pacific Railroad Company Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

C. **Workers Compensation and Employers** Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. **Railroad Protective Liability** insurance. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement

E. **Umbrella or Excess** insurance. If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D

SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 -- latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 -- latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

RESOLUTION 2011-136

WHEREAS, the construction of Water Main District 458T will require crossing the Union Pacific railroad tracks at Wildwood Drive; and

WHEREAS, the Union Pacific Railroad requires a Pipeline Crossing Agreement to be entered into for persons crossing its property for such purposes with license fee payment of \$2,000; and

WHEREAS, the City Attorney's office has reviewed the proposed Pipeline Crossing Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Pipeline Crossing Agreement, by and between the City and the Union Pacific Railroad Company, for the construction and maintenance of Water Main District 458T at Wildwood Drive, is hereby approved; and the Mayor is hereby authorized to sign such agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G12

**#2011- 137- Approving Representative and Alternate
Representative to the Municipal Energy Agency of Nebraska
Management Committee**

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director

Meeting: June 14, 2011

Subject: Municipal Energy Agency of Nebraska Management Committee Representative

Item #'s: G-12

Presenter(s): Timothy Luchsinger, Utilities Director

Background

The City of Grand Island is signatory to the Electrical Resource Pool Agreement (ERPA) of the Municipal Energy Agency of Nebraska (MEAN). MEAN is a public entity of member communities in Nebraska, Iowa, Wyoming and Colorado that organized to allow a collective agency to negotiate and provide electric power for its members. Each member of the ERPA is allowed a Representative and an Alternate Representative on the MEAN Management Committee. The Management Committee establishes the electric rates to be paid by the members, and the representatives are appointed by the governing body of the member city. Retired Utilities Director Gary Mader was the Grand Island Representative and current Utilities Director Timothy Luchsinger is the Alternate Representative. There is now a vacancy in the current Grand Island Representative position on the Committee.

Discussion

In order to meet the City's responsibilities of participation in the Municipal Energy Agency of Nebraska, Utilities Director Timothy Luchsinger and the Assistant Utilities Director responsible for electric transmission, Travis Burdett, are recommended to be appointed as the City's Representative and Alternate Representative, respectively, to the MEAN Management Committee.

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 appointment of Utilities Director Timothy Luchsinger as the Representative, and the appointment of Assistant Utilities Director Travis Burdett as the Alternate Representative for Grand Island to the Municipal Energy Agency of Nebraska Management Committee.

Sample Motion

Move to approve the appointment of Timothy Luchsinger as Representative and the appointment of Travis Burdett as Alternate Representative to the Municipal Energy Agency of Nebraska Management Committee.

RESOLUTION 2011-137

WHEREAS, the City of Grand Island is signatory to the Electrical Resource Pool Agreement of the Municipal Energy Agency of Nebraska; and; and

WHEREAS, retired Utilities Director was a Representative of the Municipal Energy Agency of Nebraska Management Committee and Timothy Luchsinger served as the Alternate Representative; and

WHEREAS, the retirement of Gary Mader leaves a vacancy in the Representative position of the Committee, and

WHEREAS, is has been recommended by the City Council that current Utilities Director, Timothy Luchsinger be named as the new Representative of the Municipal Energy Agency of Nebraska Management Committee, and Assistant Utilities Director, Travis Burdett be named as the Alternate Representative.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that Timothy Luchsinger, Utilities Director for the City of Grand Island, be appointed as the Representative, and that Travis Burdett be appointed as the Alternate Representative of the Municipal Energy Agency of Nebraska Management Committee.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
June 10, 2011	☐ City Attorney



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G13

**#2011- 138- Approving Certificate of Final Completion for
Installation of Ball Field Lighting at the Veterans Athletic Field
Complex**

Staff Contact: Steve Paustian

Council Agenda Memo

From: Steve Paustian, Park and Recreation Director

Meeting: June 14, 2011

Subject: Certificate of Final Completion-Furnishing and Installation of Ball Field Lighting at the Veterans Athletic Field Complex

Item #'s: G-13

Presenter(s): Steve Paustian, Park and Recreation Director

Background

A contract was entered into with Ensley Electric on October 13, 2009 in the amount of \$231,277.00 for the furnishing and installation of Ball Field Lighting at the Veterans Athletic Field Complex. The scope of the project was increased by \$8,370.00 by Change Order #1. The final contract price is \$239,647.00.

Discussion

All work associated with this contract has been completed. Major components of the work included the installation of ball field lighting for eight fields and associated wiring required for the operation of scoreboards and parking lot lighting.

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 certificate of final completion and make final payment to Ensley Electric in the amount of \$11,504.44.

Sample Motion

Move to close out the contract with Ensley Electric and make final payment in the amount of \$11,504.44.

CERTIFICATE OF FINAL COMPLETION AND ACCEPTANCE

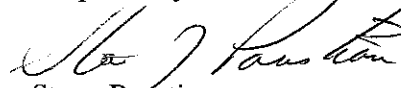
**FURNISHING AND INSTALLATION OF BALL FIELD LIGHTING
VETERANS ATHLETIC FIELD COMPLEX**

**CITY OF GRAND ISLAND, NEBRASKA
JUNE 14, 2011**

**TO THE MEMBERS OF THE COUNCIL
CITY OF GRAND ISLAND
GRAND ISLAND, NEBRASKA**

This is to certify that the Furnishing and Installation of Ball Field Lighting at the new Veterans Athletic Field Complex has been fully completed by **Ensley Electrical Services, Inc.** from Grand Island, Nebraska under contract dated **October 13, 2009**. The scope of the project was increased by \$8,370.00. All other work has been completed in accordance with the terms, conditions, and stipulations of said contract and complies with the contract, the plans, and the specifications. The work is hereby accepted for the City of Grand Island, Nebraska, by the Parks and Recreation Director in accordance with the provisions of the terms of the above said contract.

Respectfully submitted,



Steve Paustian
Parks & Recreation Director

**TO THE MEMBERS OF THE COUNCIL
CITY OF GRAND ISLAND
GRAND ISLAND, NEBRASKA**

I hereby recommend that the Certificate of Final Completion and Acceptance be approved and warrants issued from Account Number 40044450-90122 to **Ensley Electrical Services, Inc.** in the final payment amount of **\$11,504.44**.

Respectfully submitted,

Jay Vavricek
Mayor

RESOLUTION 2011-138

WHEREAS, the Parks and Recreation Director of the City of Grand Island has issued his Certificate of Final Completion for Furnishing and Installation of Ball Field Lighting at the Veterans Athletic Field Complex, certifying that Ensley Electrical Services, Inc. from Grand Island, Nebraska, under contract dated October 13, 2009, has completed such project according to the terms, conditions, and stipulations for such improvements; and

WHEREAS, the Parks and Recreation Director recommends the acceptance of the final completion; and

WHEREAS, the Mayor concurs in the Parks and Recreation Director's recommendation.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that:

1. The Parks and Recreation Director's Certificate of Final Completion for Furnishing and Installation of Ball Field Lighting is hereby confirmed.
2. That a warrant be issued from Account Number 40044450-90122 in the total amount of \$11,504.44 payable to Ensley Electrical Services, Inc. for the final amount due the contractor.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
June 10, 2011	☐ City Attorney



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G14

**#2011-139 - Approving Certificate of Final Completion for
Installation of the Synthetic Court Flooring at the Fieldhouse**

Staff Contact: Steve Paustian

Council Agenda Memo

From: Steve Paustian, Park and Recreation Director

Meeting: April 14, 2011

Subject: Certificate of Final Completion-Providing and Installation of Synthetic Court Flooring Community Fieldhouse

Item #'s: G-14

Presenter(s): Steve Paustian, Park and Recreation Director

Background

A contract was entered into with Midwest Floor Covering Inc. in the amount of \$69,894.00 for the providing and installation of a synthetic court floor. The contract was modified and increased by \$34,159.00 to allow for the installation of a vapor barrier. The final contract price was \$104,053.00.

Discussion

Funding for the additional \$34,159.00 require to pay for the vapor barrier was provided by the Reynolds Foundation. The floor installation has been completed and all work associated with this contract has been finished.

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 certificate of final completion and make final payment to Midwest Floor Covering, Inc. in the amount of \$55,762.00.

Sample Motion

Move to close out the contract with Midwest Floor Covering Inc. and make final payment in the amount of \$55,762.00.

CERTIFICATE OF FINAL COMPLETION AND ACCEPTANCE

**PROVIDING AND INSTALLATION SYNTHETIC COURT FLOORING
COMMUNITY FIELDHOUSE**

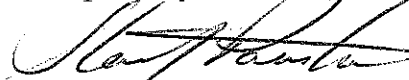
CITY OF GRAND ISLAND, NEBRASKA

JUNE 14, 2011

TO THE MEMBERS OF THE COUNCIL
CITY OF GRAND ISLAND
GRAND ISLAND, NEBRASKA

This is to certify that the Providing and Installation of Synthetic Court Flooring at the Community Fieldhouse has been fully completed by **Midwest Floor Covering, Inc.** from Lincoln, Nebraska under contract dated **June 22, 2010**. The scope of the project was increased by \$34,159.00. All other work has been completed in accordance with the terms, conditions, and stipulations of said contract and complies with the contract, the plans, and the specifications. The work is hereby accepted for the City of Grand Island, Nebraska, by the Parks and Recreation Director in accordance with the provisions of the terms of the above said contract.

Respectfully submitted,



Steve Paustian

Parks & Recreation Director

TO THE MEMBERS OF THE COUNCIL
CITY OF GRAND ISLAND
GRAND ISLAND, NEBRASKA

I hereby recommend that the Certificate of Final Completion and Acceptance be approved and warrants issued from Account Number 29544401-85028 to **Midwest Floor Covering, Inc.** in the final payment amount of **\$55,762.00**.

Respectfully submitted,

Jay Vavricek

Mayor

RESOLUTION 2011-139

WHEREAS, the Parks and Recreation Director of the City of Grand Island has issued his Certificate of Final Completion for Providing and Installation of a Synthetic Court Flooring, certifying that Midwest Floor Covering, Inc. from Lincoln, Nebraska, under contract dated June 22, 2010, has completed such project according to the terms, conditions, and stipulations for such improvements; and

WHEREAS, the Parks and Recreation Director recommends the acceptance of the final completion; and

WHEREAS, the Mayor concurs in the Parks and Recreation Director's recommendation.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that:

1. The Parks and Recreation Director's Certificate of Final Completion for Providing and Installation of a Synthetic Court Flooring is hereby confirmed.
2. That a warrant be issued from Account Number 29544401-85028 in the total amount of \$55,762.00 payable to Midwest Floor Covering, Inc. for the final amount due the contractor.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G15

**#2011-140- Approving Application for Edward Byrne Memorial
Justice Assistance Grant (JAG) 2011**

This item relates to the aforementioned Public Hearing item E-9.

Staff Contact: Steve Lamken

RESOLUTION 2011-140

WHEREAS, the Grand Island Police Department has received notification that they are eligible to apply for \$33,601.00 in grant funds under the Byrne Justice Assistance (JAG) Program and the Hall County Sheriff's Department has been named as a disparate agency; and

WHEREAS the Grand Island Police Department as the applicant will act as the fiscal agent;
and

WHEREAS, the Grand Island Police Department will be allocated \$25,201.00 of the grant funds; and

WHEREAS the Hall County Sheriff's Department will be allocated \$8,400.00 of the grant funds; and

WHEREAS, a public hearing was held on June 14, 2011, as required to discuss the proposed use of such funds; and

WHEREAS, it is proposed that the grant funds allocated to the Grand Island Police Department be used to purchase equipment for police services to improve effectiveness and safety.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that approval is hereby granted to use grant funds received from the Justice Assistance Grant program to purchase police equipment toward improving police services and safety, and to provide \$8,400.00 to the Hall County Sheriff's Department.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
June 9, 2011	☐ City Attorney



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item G16

**#2011-141 - Approving Award of Proposal for Consulting Services
for Geospatial Data Collection of Grand Island's Public
Stormwater Conveyance System**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Scott Sekutera, Storm Water Technician

Meeting: June 14, 2011

Subject: Approving Award of Proposal for Consulting Services for Geospatial Data Collection of Grand Island's Public Stormwater Conveyance System

Item #'s: G-16

Presenter(s): John Collins, Public Works Director

Background

A Request for Proposals (RFP) for consulting services for Geospatial Data Collection of Grand Island's Public Stormwater Conveyance System was advertised in the Grand Island Independent on May 4, 2011. The RFP was also sent to five (5) potential proposers by the Engineering Division of the Public Works Department.

The collection of this geospatial data for the City's public stormwater conveyance system will assist the City's Stormwater Technician with mapping the stormwater as part of the requirement of the National Pollution Discharge Elimination System (NPDES) stormwater permit. The mapping will also give the City information on locations and elevations of all stormwater structures. This information will be utilized for stormwater hydraulic modeling, comprehensive drainage planning, required mapping for compliance with permit to identify Illicit Detection Discharge Elimination (IDDE) and stormwater capital improvement planning. This survey will provide an accurate, electronic, easily-accessible storm sewer map and database from which the staff can quickly access valuable physical and historical information regarding the storm sewer system.

Discussion

Three (3) proposals were opened on May 18, 2011 and reviewed and scored by Larry Cornelius and Milton Loeb, Engineering Technicians; and Pat Larson, GIS Specialist. The proposals were evaluated by the selection committee based on the evaluation criteria.

- Firm & Team experience on similar work. (25%)
- Team experience (25%)

- Approach (25%)
- Proposed schedule and fees. (25%)

The estimate for this work was \$24,000. Funds for the consulting services are in the approved 2010/2011 budget and paid for using the LB 1226 Stormwater Grant fund through Nebraska Department of Environmental Quality (NDEQ). This work supports the City of Grand Island's Stormwater Management Plan.

The proposal submitted by JEO Consulting Group, Inc of Lincoln, NE was scored as the best firm to complete the required work. The agreement will be for surveying 450 stormwater structures at \$50.00 each for a grand total of \$22,500. Previous surveys have completed 1,205 stormwater structures, which equates to approximately 60% of the City's overall structures.

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 award of the proposal to JEO Consulting Group, Inc of Grand Island, Nebraska.

Sample Motion

Move to approve the award of the proposal.



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL
FOR
CONSULTING SERVICES FOR GEOSPATIAL DATA COLLECTION
OF GI PUBLIC STORM WATER CONVEYANCE SYSTEM**

RFP DUE DATE: May 18, 2011 at 4:00 p.m.

DEPARTMENT: Public Works

PUBLICATION DATE: May 4, 2011

NO. POTENTIAL BIDDERS: 5

SUMMARY OF PROPOSALS RECEIVED

JEO Consulting Group, Inc.
Lincoln, NE

Olsson Associates
Grand Island, NE

Miller & Associates
Kearney, NE

cc: John Collins, Public Works Director
Mary Lou Brown, City Administrator
Jason Eley, Purchasing Agent

Catrina DeLosh, PW Admin. Assist.
Scott Sekutera, PW Storm Water Tech.

P1476

AGREEMENT

THIS AGREEMENT made and entered into this 14th day of **June, 2011**, by and between **JEO CONSULTING GROUP, INC.** hereinafter called the Consultant, and the **City of Grand Island, Nebraska**, hereinafter called the City.

WITNESSETH:

THAT, WHEREAS, in accordance with law, the City has caused agreement documents to be prepared and an advertisement of a **Request for Proposals for Professional Engineering Consulting Services for Geospatial Data Collection of Grand Island's Public Stormwater Conveyance System for the City of Grand Island**, and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined, and canvassed the proposals submitted, and has determined that the aforesaid Consultant submitted the best proposal based on the evaluation criteria listed in the Request For Proposals, a copy thereof being attached to and made a part of this agreement, and has duly awarded to the said Consultant an agreement therefore, for the sum or sums named in the **Geospatial Data Collection Proposal Form** with terms & conditions submitted by the Consultant, a copy thereof being attached to and made a part of this agreement;

NOW, THEREFORE, in consideration of the compensation to be paid to the Consultant and of the mutual agreements herein contained, the parties have agreed and hereby agree, the City for itself and its successors, and the Consultant for itself, himself, or themselves, and its, his (hers), or their successors, as follows:

ARTICLE I. That the Consultant shall (a) furnish all tools, equipment, superintendence, transportation, and other construction materials, services and facilities; (b) furnish, as agent for the City, all materials, supplies and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and (d) in a good substantial and workmanlike manner and in accordance with the requirements, stipulations, provisions, and conditions of the agreement documents as listed in the attached **Request for Proposals for Professional Engineering Consulting Services for Geospatial Data Collection of Grand Island's Public Stormwater Conveyance System for the City of Grand Island** and in the attached **Geospatial Data Collection Proposal Form** as Submitted by the Consultant; said documents forming the agreement and being as fully a part thereof as if repeated verbatim herein, perform, execute, construct and complete all work included in and covered by the City's official award of this agreement to the said Consultant, such award being based on the acceptance by the City of the Consultant's proposal;

ARTICLE II. That the City shall pay to the Consultant for the performance of the work embraced in this agreement and the Consultant will accept as full compensation therefore the sum (subject to adjustment as provided by the agreement) of **TWENTY TWO THOUSAND FIVE HUNDRED Dollars (\$22,500.00)** for all services, materials, and work covered by and included in the agreement award and designated in the foregoing Article I; payments thereof to be made in cash or its equivalent in the manner provided in the agreement.

ARTICLE III. The Consultant hereby agrees to act as agent for the City in purchasing materials and supplies for the City for this project. The City shall be obligated to the vendor of the materials and supplies for the purchase price, but the consultant shall handle all payments hereunder on behalf of the City. The vendor shall make demand or claim for payment of the purchase price from the City by submitting an invoice to the Consultant. Title to all materials and supplies purchased hereunder shall vest in the City directly from the vendor. Regardless of the method of payment, title shall vest immediately in the City. The Consultant shall not acquire title to any materials and supplies incorporated into the project. All invoices shall bear the consultant's name as agent for the City. This paragraph will apply only to these materials and supplies actually incorporated into and becoming a part of the

finished product of attached **Request for Proposals for Professional Engineering Consulting Services for Geospatial Data Collection of Grand Island's Public Stormwater Conveyance System for the City of Grand Island.**

ARTICLE IV. That the Consultant shall start work as soon as possible after the agreement is signed.

ARTICLE V. The Consultant agrees to comply with all applicable State fair labor standards in the execution of this agreement as required by Section 73-102, R.R.S. 1943. The Consultant further agrees to comply with the provisions of Section 48-657, R.R.S. 1943, pertaining to contributions to the Unemployment Compensation Fund of the State of Nebraska. During the performance of this agreement, the Consultant and all Sub Consultants agree not to discriminate in hiring or any other employment practice on the basis of race, color, religion, gender, national origin, age or disability. The Consultant agrees to comply with all applicable Local, State and Federal rules and regulations.

ARTICLE VI. The City of Grand Island, Nebraska operates on a fiscal year beginning October 1st and ending on the following September 30th. It is understood and agreed that any portion of this agreement which will be performed in a future fiscal year is contingent upon the City Council adopting budget statements and appropriations sufficient to fund such performance.

ARTICLE VII. GRATUITIES AND KICKBACKS: City Code states that it is unethical for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or an agreement or sub agreement, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a Sub Consultant under an agreement to the prime Consultant or higher tier Sub Consultant or any person associated therewith, as an inducement for the award of a Sub Consultant to order.

ARTICLE VIII. FAIR EMPLOYMENT PRACTICES: Each proposer agrees that they will not discriminate against any employee or applicant for employment because of age, race, color, religious creed, ancestry, handicap, sex or political affiliation.

ARTICLE IX. LB 403: Every public consultant and his, her or its subconsultants who are awarded an agreement by the City for the physical performance of services within the State of Nebraska shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CONSULTANT

By _____

Title _____

CITY OF GRAND ISLAND, NEBRASKA,

By _____
Jay Vavricek, Mayor

Attest: _____
RaNae Edwards, City Clerk

The agreement is in due form according to law and is hereby approved.

Jason Eley, Asst. City Attorney

APPENDIX A – TITLE VI NON-DISCRIMINATION -

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

- (1) **Compliance with Regulations:** The consultant shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.
- (2) **Nondiscrimination:** The Consultant, with regard to the work performed by it during the agreement, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subconsultants, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the consultant for work to be performed under a subagreement, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the consultant of the consultant's obligations under this agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Grand Island or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information the consultant shall so certify to the City of Grand Island, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the consultant's noncompliance with the nondiscrimination provisions of this agreement, the City of Grand Island shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the consultant under the agreement until the consultant complies, and/or
 - (b.) cancellation, termination or suspension of the agreement, in whole or in part.
- (6) **Incorporation of Provisions:** The consultant shall include the provisions of paragraphs (1) through (6) in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The consultant shall take such action with respect to any subagreement or procurement as the City of Grand Island or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the consultant may request the City of Grand Island to enter into such litigation to protect the interests of the City of Grand Island, and, in addition, the consultant may request the United States to enter into such litigation to protect the interests of the United States.

RESOLUTION 2011-141

WHEREAS, the City Of Grand Island invited proposals for consulting services for Geospatial Data Collection of Grand Island's Public Stormwater Conveyance System, according to the Request For Proposals on file with the Engineering Division of the Public Works Department; and

WHEREAS, on May 18, 2011 proposals were received, reviewed, and evaluated in accordance with established criteria in the RFP; and

WHEREAS, JEO Consulting Services, Inc of Grand Island, Nebraska submitted a proposal in accordance with the terms of the Request for Proposals and all statutory requirements contained therein and the City Procurement Code with the work performed at \$50.00 each for 450 units for a total of \$22,500.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal of JEO Consulting Services, Inc of Grand Island, Nebraska for consulting services for Geospatial Data Collection of Grand Island's Public Stormwater Conveyance System 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, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	<input checked="" type="checkbox"/> _____
June 10, 2011	<input checked="" type="checkbox"/> City Attorney



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item I1

**#2011-142 - Consideration of Request from Elsy Ruth Ramos dba
LA Night Club & Restaurant, 115 West 3rd Street for a Class “IB”
Liquor License**

This item relates to the aforementioned Public Hearing item E-1.

Staff Contact: RaNae Edwards

RESOLUTION 2011-142

WHEREAS, an application was filed by Elsy Ruth Ramos doing business as LA Night Club & Restaurant, 115 West 3rd Street for a Class "IB" Liquor License; and

WHEREAS, a public hearing notice was published in the *Grand Island Independent* as required by state law on June 4, 2011; such publication cost being \$15.18; and

WHEREAS, a public hearing was held on June 14, 2011 for the purpose of discussing such liquor license application.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that:

_____ The City of Grand Island hereby recommends approval of the above-identified liquor license application contingent upon final inspections.

_____ The City of Grand Island hereby makes no recommendation as to the above-identified liquor license application.

_____ The City of Grand Island hereby makes no recommendation as to the above-identified liquor license application with the following stipulations: _____

_____ The City of Grand Island hereby recommends denial of the above-identified liquor license application for the following reasons: _____

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
June 9, 2011	☐ City Attorney



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item I2

#2011-143 - Consideration of Request from LaMexicana, Inc. dba Rafa's Tacos, 811 West 2nd Street for a Class "T" Liquor License and Liquor Manager Designation for Maria Ocegueda, 504 North Elm Street

This item relates to the aforementioned Public Hearing item E-2.

Staff Contact: RaNae Edwards

R E S O L U T I O N 2011-143

WHEREAS, an application was filed by LaMexicana, Inc. doing business as Rafa's Tacos, 811 West 2nd Street for a Class "T" Liquor License; and

WHEREAS, a public hearing notice was published in the *Grand Island Independent* as required by state law on June 4, 2011; such publication cost being \$14.73; and

WHEREAS, a public hearing was held on June 14, 2011 for the purpose of discussing such liquor license application.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that:

_____ The City of Grand Island hereby recommends approval of the above-identified liquor license application contingent upon final inspections.

_____ The City of Grand Island hereby makes no recommendation as to the above-identified liquor license application.

_____ The City of Grand Island hereby makes no recommendation as to the above-identified liquor license application with the following stipulations: _____

_____ The City of Grand Island hereby recommends denial of the above-identified liquor license application for the following reasons: _____

_____ The City of Grand Island hereby recommends approval of Maria Ocegueda, 504 North Elm Street as liquor manager of such business upon the completion of a state approved alcohol server/seller training program.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
June 9, 2011	☐ City Attorney



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item I3

**#2011-144 - Consideration of Request from Paloma Huerta
Nevarez dba El Diamante, 1600 South Eddy Street for a Class “T”
Liquor License**

This item relates to the aforementioned Public Hearing item E-3.

Staff Contact: RaNae Edwards

RESOLUTION 2011-144

WHEREAS, an application was filed by Paloma Huerta Nevarez doing business as El Diamante, 1600 South Eddy Street for a Class "T" Liquor License; and

WHEREAS, a public hearing notice was published in the *Grand Island Independent* as required by state law on June 4, 2011; such publication cost being \$15.18; and

WHEREAS, a public hearing was held on June 14, 2011 for the purpose of discussing such liquor license application.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that:

_____ The City of Grand Island hereby recommends approval of the above-identified liquor license application contingent upon final inspections.

_____ The City of Grand Island hereby makes no recommendation as to the above-identified liquor license application.

_____ The City of Grand Island hereby makes no recommendation as to the above-identified liquor license application with the following stipulations: _____

_____ The City of Grand Island hereby recommends denial of the above-identified liquor license application for the following reasons: _____

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
June 9, 2011	☐ City Attorney



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item I4

#2011-145 - Consideration of Approving Appointment of City Attorney Robert Sivick

Staff Contact: Mayor Vavricek

Council Agenda Memo

From: Mayor Jay Vavricek

Meeting: June 14, 2011

Subject: Council Approval of the Appointment of Robert Sivick as City Attorney

Item #'s: I-4

Presenter(s): Mayor Jay Vavricek

Background

Former City Attorney Dale Shotkoski resigned his position as of January 14, 2011. Grand Island City Code §2-30 states the following: **Officers; Appointive:** The following shall constitute the statutory officers of the City of Grand Island which shall be appointed by the mayor and approved by the council. These officers shall hold office until the end of the mayor's term and until their successors are appointed and qualified. These appointive officers may be removed at any time by the mayor, with the approval of a majority of the council: City Administrator, City Attorney, City Clerk, City Engineer/Public Works Director, City Treasurer/Finance Director.

Discussion

My recommendation for the person to fill the position of City Attorney is Mr. Robert Sivick. Bob is suitably experienced. He has both extensive private sector and governmental law experience. He has worked four years while serving as a county attorney and a village attorney with an extensive background as a legal professional with nearly two decades of private law practice experience in a metropolitan city.

Mr. Sivick is sufficiently educated and accredited to serve the City of Grand Island. He graduated from the University of Pittsburg at Johnstown, PA., with a Bachelor's degree in History and Political Science. He attended law school and graduated at Creighton University School of Law and received a Juris Doctorate. Sivick is a member of the Nebraska Bar Association and respected by other legal professionals.

Sivick's law practice includes nearly 20 years of experience in Omaha before accepting the appointment to serve the previously vacated County Attorney position in Howard County, Nebraska. He served in that role nearly four years during the balance of its elected term of office. Since then, he currently serves as the Attorney for Greeley, Nebraska while accepting the recommendation to be appointed as the City Attorney in Grand Island.

Mr. Sivick uniquely comprehends the demands to serve as a legal professional in public service. He knows the importance of the position and understands the public scrutiny associated with government of matters sensitive to taxpayers and the laws of Nebraska as directed by elected officials.

Bob served as a member of the Omaha City Council and grasps the matters of a major city government and the people it serves. As an elected official and as a county attorney, he understands being accessible to citizen concerns on Main Street to rural patrons with accountability to elected leadership. He has been respected within Nebraska as a Commissioner for the State of Nebraska Accountability and Disclosure Commission.

Pending City Council approval, Sivick's first day of service to the people of Grand Island will commence Wednesday, June 15. His starting salary will be, at step five of the eight step salary plan which is \$94,141.22. As City Attorney, Sivick will develop, plan, and implement department goals and objectives; recommend and administer policies and city procedures and monitor and interpret legislation impacting or affecting the city or its operations and activities. The City Attorney assists negotiations of collective bargaining agreements with the city's four labor unions; reviews the city's many complex utilities department agreements, drafts ordinances, resolutions, contracts, deeds, leases and other legal documents; assists in formulating proposed legislation for enactment by the State Legislature in regard to matters of interest to the City and to perform other duties as defined and potential future city government reform recommendations.

Bob has detailed knowledge of Nebraska municipal law and a strong desire to serve with many unique qualities necessary for the success of our community while serving as the City Attorney. I am confidently assured; Bob is the person today who can best achieve long term success in the position. He was the strongest candidate of the pool of applicants with the widest background and most experienced the City received in its recruitment and I ask the City Council's approval to appoint Robert Sivick as City Attorney of the City of Grand Island for the best long term interests of the people of Grand Island.

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 Robert Sivick as City Attorney as Grand Island City Code allows.

Sample Motion

Move to approve Robert Sivick as City Attorney.

RESOLUTION 2011-145

WHEREAS, under Neb. Rev. Stat., §16-308, the office of City Attorney for the City of Grand Island, Nebraska, is an appointed position; and

WHEREAS, under Grand Island City Code, §2-30, the office of City Attorney for the City of Grand Island, Nebraska shall be appointed by the mayor and approved by the council; and

WHEREAS, the Mayor has recommended the appointment of Robert Sivick as the City Attorney effective June 15, 2011: and

WHEREAS, Mr. Sivick will be compensated at step five of the City Attorney pay scale in compliance with the City Personnel Rules: and

WHEREAS, this position appointed by the Mayor and confirmed by the City Council shall hold the position to which they may be appointed until the end of the Mayor's term of office and until their successors are appointed and qualified; and

WHEREAS, this position appointed by the Mayor may be removed at any time by the Mayor with approval of a majority of the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, Robert Sivick is hereby duly appointed the City Attorney for the City of Grand Island, Nebraska, until the end of the Mayor's term of office.

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item I5

#2011-146 - Consideration of First Amendment to Display Agreement with the Central Nebraska Humane Society

Staff Contact: Mary Lou Brown

Council Agenda Memo

From: Mary Lou Brown, City Administrator

Meeting: June 14, 2011

Subject: Amendment to the Display Agreement with the Central Nebraska Humane Society

Item #'s: I-5

Presenter(s): Mary Lou Brown, City Administrator

Background

In 2002, the City of Grand Island and the Central Nebraska Humane Society entered into an agreement for the Humane Society to hold an annual light display at Stolley Park as a fundraiser. In 2003, by resolution 2003-265, the City agreed to pay for the cost of the electrical power installation for the light display as a loan to the Humane Society. The total cost of the project was \$39,512.80, paid by the City in December 2003. According to the original agreement, an annual 15% payback of the fundraiser's net proceeds would be paid to the City with no interest until paid in full.

The Humane Society discontinued the light display and therefore has not had the means to make payments established in the original agreement. There is an outstanding balance of \$28,704.47, due to the City. The City received payments from the Humane Society in 2004, 2005, 2006, and 2008, for a total of \$10,808.33. There was no payment in 2007, 2009, and 2010.

Discussion

In order to address the outstanding debt of \$28,704.47, and ensuring future repayments, officials from the City and Humane Society met this spring in order to negotiate a modified payment plan. The proposed Amendment to the Agreement revises the payment schedule, but it does not change the loan balance. The revised payment plan acknowledges the Humane Society's current financial position and also the timing coincides with future cash flows. The plan is as follows: \$100 annually starting in 2011 until 2013; and \$10,000 annual payments beginning in 2014 until the City is paid in full. The alternative option is for the City Council to elect to waive the remaining balance in

recognition of the services provided to the citizens of Grand Island. This action would result in a write off of the loan balance.

Alternatives

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

1. Move to approve
2. Postpone the issue to future date

Recommendation

City Administration recommends that the Council approve the First Amendment to the Display Agreement between the City of Grand Island and the Central Nebraska Humane Society.

Sample Motion

Move to approve the First Amendment to the Display Agreement between the City of Grand Island and the Central Nebraska Humane Society.

**FIRST AMENDMENT
TO
DISPLAY AGREEMENT BETWEEN
THE CITY OF GRAND ISLAND
AND
THE CENTRAL NEBRASKA HUMANE SOCIETY**

THIS AMENDMENT to the Agreement between the City of Grand Island, Nebraska, “City” and The Central Nebraska Humane Society, “Humane Society”, entered into on _____, _____, 2011 amends the payment obligations herein for the Agreement that was entered into by the Parties in order for the Humane Society to hold fundraisers at Stolley Park, Grand Island, NE beginning in 2003.

1. Pursuant to the display agreement, paragraph five (5), the City would pay to install electrical power and the Humane Society agreed to reimburse the City’s expense for such on an annual basis. The payments were to be 15% of the Humane Societies net proceeds until the debt was paid in total.

2. As of the above-referenced date, the outstanding payments amount to \$28,704.47.

3. Upon negotiations between the parties, it has been agreed that the Humane Society shall pay one hundred dollars (\$100.00) on an annual basis for three years, first payment becoming due on or before the first day of July 1, 2011. Payments shall increase to ten thousand dollars (\$10,000.00) annually in the fourth year until the outstanding debt is paid in total. All payments will be due on July 1.

IN WITNESS WHEREOF the parties have executed this Amendment to the original agreement on the ____ day of _____, 2011.

The Central Nebraska Humane Society,

By: _____

Attest:

CITY OF GRAND ISLAND, NEBRASKA,
A Municipal Corporation,

RaNae Edwards, City Clerk

By: _____
Jay Vavricek, Mayor

Approved as to form by City Attorney _____
Approved by Resolution 2011 - _____

R E S O L U T I O N 2011-146

WHEREAS, on November 26, 2002, by Resolution 2002-369, the City Council of the City of Grand Island agreed to allow the Central Nebraska Humane Society to use a portion of Stolley Park to provide a light display as an annual fund raiser for the organization and the Central Nebraska Humane Society agreed to pay for electrical junction box hookups for such displays; and

WHEREAS, the city provided such junction boxes and there is still outstanding and due, twenty eight thousand seven hundred four dollars and forty seven cents (\$28,704.47) and it has been determined that modifications to the payment schedule are necessary; and

WHEREAS, such modifications have been incorporated into FIRST AMENDMENT TO DISPLAY AGREEMENT BETWEEN THE CITY OF GRAND ISLAND AND THE CENTRAL NEBRASKA HUMANE SOCIETY; and

WHEREAS, the result of such modification will not affect the contract price, however, the contract payment schedule shall be amended to reflect a revised payment schedule as follows: one hundred dollar (\$100.00) payments during the years 2011, 2012, and 2013 and ten thousand dollar (\$10,000.00) payments annually, starting 2014 and continuing until full payment is received by the City of Grand Island with payments due on July 1 of each year.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor be, and hereby is, authorized and directed to execute amendment to the display agreement between the City of Grand Island and the Central Nebraska Humane Society to provide the modifications in payment schedule as set out above.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form <input type="checkbox"/> _____ June 10, 2011 <input type="checkbox"/> City Attorney



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item J1

Approving Payment of Claims for the Period of May 25, 2011 through June 14, 2011

The Claims for the period of May 25, 2011 through June 14, 2011 for a total amount of \$5,792,447.66. A MOTION is in order.

Staff Contact: Mary Lou Brown



City of Grand Island

Tuesday, June 14, 2011

Council Session

Item X1

Update Concerning Union Negotiations

The City Council may vote to go into Executive Session as required by State law to discuss AFSCME, IAFF, FOP, IBEW (Utilities) (Finance) (WWTP) and (Service/Clerical) Union Negotiations for the protection of the public interest.

Staff Contact: Brenda Sutherland