



City of Grand Island

Tuesday, September 13, 2011

Council Session

Item G13

**#2011-238 - Approving Union Pacific Railroad/Elm Street
Crossing Closure Agreement**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Scott Griepenstroh, PW Project Manager

Meeting: September 13, 2011

Subject: Approving Union Pacific Railroad/Elm Street Crossing Closure Agreement

Item #'s: G-13

Presenter(s): John Collins, Public Works Director

Background

In order for Public Works Administration to proceed with development of agreements with UPRR (Union Pacific Railroad), NDOR (Nebraska Department of Roads) and Gavilon for their participation in costs for the closing of the Elm Street crossing, the City of Grand Island adopted Resolution 2011-99 on April 26, 2011 to close the crossing.

Any agreements must be approved by the City Council.

Discussion

An agreement for the UPRR/Elm Street crossing closure has been drawn up and is presented to City Council for approval. The agreement breaks down the financial responsibilities for each entity involved in the crossing closure and is attached for review. It is anticipated that no City funds will be required to pay for the closure.

The cost breakdown for each entity involved is as follows. The Union Pacific Railroad agrees to pay the City \$20,000 upon closure of the Elm Street crossing; The State of Nebraska Department of Roads agrees to pay the City \$5,000 for such crossing closure, and will also pay the City an amount not to exceed \$12,000 toward the cost of the closure upon the City furnishing the State documentation of the costs; Gavilon dba Peavey Gran agrees to pay the City \$2,000 for the closure, and will also pay any additional engineering costs; and if the maximum contribution from NDOR is reached Gavilon will pay the City an amount not to exceed \$13,000 toward the actual closure and associated engineering costs.

It is anticipated that all costs associated with the closing of Elm Street will be compensated.

Alternatives

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

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

Recommendation

City Administration recommends that the Council approve the agreement with UPRR, NDOR, and Gavilon for the UPRR/Elm Street railroad crossing closure.

Sample Motion

Move to approve the resolution.

FILE COPY

CROSSING CLOSURE AGREEMENT

Project No.: NFG-40 (62)

State Control No. 42713

Location: U.P.R.R./Elm St., Grand Island

County: Hall

DOT No.: 817623U

R.R.M.P. 147.08

THIS AGREEMENT made and entered into by and between the City of Grand Island, hereinafter referred to as the "Political Subdivision", Gavilon Chain, L.L.C. hereinafter referred to as "Gavilon", The Union Pacific Railroad Company, hereinafter referred to as the "Company", and the State of Nebraska, Department of Roads, hereinafter referred to as the "State":

WITNESSETH:

WHEREAS, the State of Nebraska has a special fund known as the Grade Crossing Protection Fund which was established for improvement of the safety of railroad crossings in the State, including the elimination of such crossings, and

WHEREAS, Neb. Rev. Stat. Section 74-1318 (Reissue 1996) provides that when public safety will be improved by elimination of a crossing where a road intersects with a railroad, and the political subdivision involved eliminates the grade crossing by closing the road, such political subdivision shall receive five thousand dollars (\$5,000) plus the actual cost of closure but not to exceed twelve thousand dollars (\$12,000) for a total of seventeen thousand dollars (\$17,000) from the Grade Crossing Protection Fund, and five thousand dollars (\$5,000) from the Railroad involved, and

WHEREAS, the Political Subdivision, in cooperation with the State and the Company, agree to close the public road crossing at the Company tracks located at Railroad Milepost 147.08, DOT No. 817623U as shown on attached Exhibit "A".

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

SECTION 1: The Political Subdivision, after having executed this agreement and after taking all actions necessary, including the execution of a signed resolution as set forth in

Exhibit B, to close the crossing at Railroad Milepost 147.08, DOT. No. 817623U, will submit to the State of Nebraska, Department of Roads, an itemized statement of all costs involved in this project. This statement should be mailed to the Public Transportation Engineer, Rail & Public Transportation Division, Nebraska Department of Roads, P.O. Box 94759, Lincoln, NE 68509-4759. Also, the Political Subdivision will submit an invoice to the Company for payment of the amount specified in Section 3. This invoice should be mailed to Manager Industry & Public Projects, Union Pacific Railroad, 1400 Douglas St. STOP 910, Omaha, NE 68179. Also, the Political Subdivision will submit an itemized invoice, with documentation, to Gavilon for payment of amounts specified in Section 4. This invoice should be mailed to Peavy Company, P.O. Box 687, Grand Island, NE 68802.

SECTION 2: The State hereby agrees to pay to the Political Subdivision five thousand dollars (\$5,000) for the closed crossing in accordance with Neb. Rev. Stat. Section 74-1318 (Reissue 1996). In addition to the five thousand dollars (\$5,000) at DOT No. 817623U, the State will provide up to an additional twelve thousand dollars (\$12,000) to the Political Subdivision towards the costs associated with said closure upon receipt and audit.

SECTION 3: The Company hereby agrees to pay to the Political Subdivision the sum of twenty thousand dollars (\$20,000) upon closure of the above named crossing.

SECTION 4: Gavilon agrees to pay to the Political Subdivision two-thousand dollars (\$2,000) for the closure of Elm Street and the associated costs of engineering. If the engineering costs are greater than \$2,000, Gavilon will pay those additional engineering costs. Also, if the maximum contribution from the State for the costs associated with the closure, as specified in Section 2, is reached, Gavilon shall also pay to the Political Subdivision an amount not to exceed \$13,000 toward the actual cost of closure and associated engineering costs. Gavilon's maximum contribution to the project is fifteen-thousand dollars (\$15,000).

SECTION 5: The Political Subdivision agrees, by the above considerations received that this crossing, DOT. No. 817623U, will remain closed and will not be re-opened by Political Subdivision action without the repayment of consideration received back to the State of Nebraska, Department of Roads, the Company and Gavilon.

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

EXECUTED by the Company this 26th day of July, 2011.

ATTEST:

UNION PACIFIC RAILROAD *company*

Maureen Fong Higgins

By: *John J. Donovan*

Maureen Fong Higgins
Assistant Secretary

Title: VP ENGINEERING

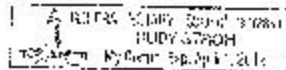
EXECUTED by Gavilon Grain this 26th day of August, 2011.

ATTEST:

GAVILON GRAIN, LLC

[Signature]

By: *Dwight O. Hanson*



Title: Vice President

EXECUTED by the City this _____ day of _____, 2011.

ATTEST:

CITY OF GRAND ISLAND

By: _____

Title: _____

EXECUTED by the State this _____ day of _____, 2011.

STATE OF NEBRASKA
DEPARTMENT OF ROADS

Ellis Tompkins, P.E.
Rail and Public Transportation Engineer

Acknowledgement

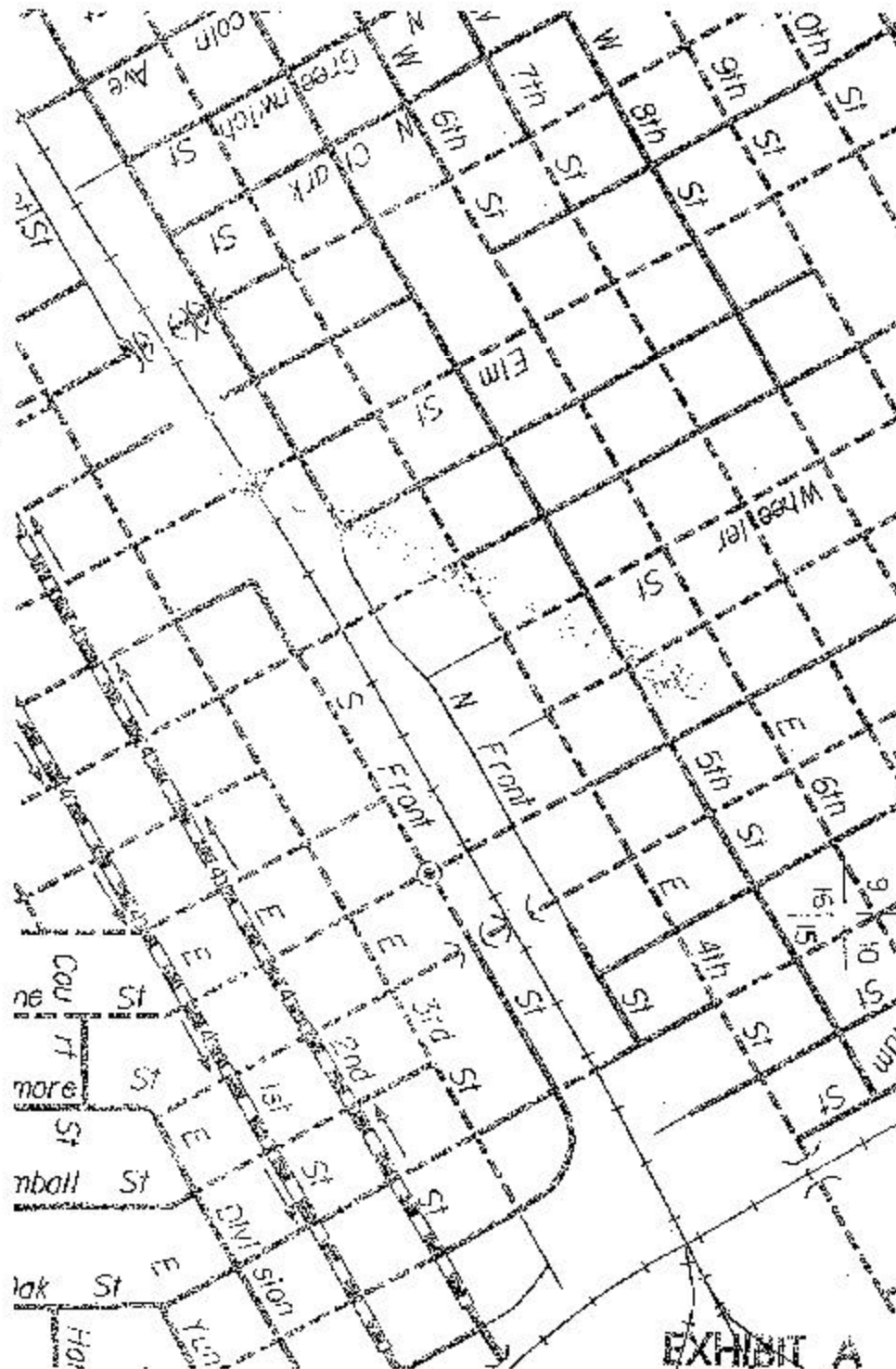
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by
Ellis Tompkins, Rail and Public Transportation Engineer for the State of Nebraska, Department of
Roads.

Notary Public

(Seal)

City of Grand Island



RESOLUTION 2011-99

WHEREAS, the Mayor and City Council of Grand Island has determined that it is in the best interest of the City to close a railroad crossing described as a public road crossing, located on Union Pacific Railroad, Kearney Subdivision, Railroad Milepost 147.08, DOT # 817623U at Elm Street in Grand Island; and

WHEREAS, the limits of the street closure shall be 25' south of the Eastbound Mainline Union Pacific Railroad Track and 25' north of Siding Track 703 as shown in Exhibit A; and

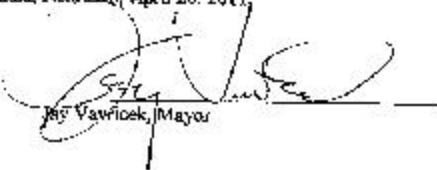
WHEREAS, the closure of Elm Street shall not occur until planned improvements are completed at Walnut Street, Pine Street and Oak Street for the Grand Island Quiet Zone Improvements project.

NOW, THEREFORE, BE IT RESOLVED the Mayor and City Council of Grand Island, agree to the permanent closure and vacation of the public crossing located on Elm Street in Grand Island on the Union Pacific Railroad, at DOT # 817623U at Railroad Milepost 147.08.

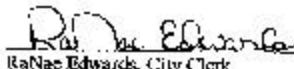
BE IT FURTHER RESOLVED, the City shall enter into an agreement with the Nebraska Department of Roads, with the Union Pacific Railroad, and with Gavilon dba Peavey Grain providing that:

1. The Union Pacific Railroad should pay the City \$20,000 upon receiving an invoice from the City in consideration for the permanent closure of the crossing and after the crossing is closed.
2. The State of Nebraska, Department of Roads (NDOR) should pay the City \$5,000 for the crossing closure, and will also pay the City an amount not to exceed \$12,000 towards the cost of the closure of DOT No. 817623U upon the City furnishing the State documentation of the costs.
3. Gavilon dba Peavey Grain should pay the City \$2,000 for the crossing closure, including costs for engineering. If the maximum contribution from NDOR is reached, Gavilon should also pay the City an amount not to exceed \$13,000 towards the cost of the closure, including costs for engineering, of DOT No. 817623U upon the City furnishing Gavilon documentation of the costs.

Adopted by the City Council of the City of Grand Island, Nebraska, April 26, 2011.


Jeff Vawter, Mayor

Attest:


RaNae Edwards, City Clerk

Agreement on Form April 25, 2011	<input checked="checked" type="checkbox"/> City Clerk <input type="checkbox"/> City Attorney
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EXHIBIT B

RESOLUTION 2011-238

WHEREAS, on April 26, 2011 by Resolution 2011-99 the Grand Island City Council agreed to the permanent closure and vacation of the public crossing located on Elm Street in Grand Island on the Union Pacific Railroad, at DOT#817623U at Railroad Milepost 147.08; and

WHEREAS, per the agreement the Union Pacific Railroad agrees to pay the City \$20,000 upon closure of such crossing; and

WHEREAS, the State of Nebraska, Department of Roads (NDOR) agrees to pay the City \$5,000 for such crossing closure, and will also pay the City an amount not to exceed \$12,000 toward the cost of the closure of DOT No. 717623U upon the City furnishing the State documentation of the costs, and

WHEREAS, Gavilon dba Peavey Grain agrees to pay \$2,000 for the closure of such crossing and the associated costs of engineering, Gavilon will also pay any additional engineering costs; and

WHEREAS, if the maximum contribution from NDOR is reached Gavilon will pay the City an amount not to exceed \$13,000 toward the actual cost of closure and associated engineering costs.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the agreement with Union Pacific Railroad, Nebraska Department of Roads, and Gavilon for the Elm Street crossing closure 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.

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Adopted by the City Council of the City of Grand Island, Nebraska, September 13, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
September 8, 2011	☐ City Attorney