
City of Grand Island



Tuesday, November 08, 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 Scott Jones, Third City Christian Church, 4100 West 13th Street

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, November 08, 2011

Council Session

Item C1

Recognition of Dr. Rebecca Steinke, 2011 Physician Volunteer of the Year and Dr. Jama Obermiller, 2011 Dentist Volunteer of the Year

The Mayor and City Council will recognize Dr. Rebecca Steinke, 2011 Physician Volunteer of the Year and Dr. Jama Obermiller, 2011 Dentist Volunteer of the Year. Our thanks go to these two Doctor's for their outstanding service and contribution to our community.

Staff Contact: Mayor Vavricek



Certificate of Recognition

Awarded to

“Dr. Rebecca Steinke”

for 2011 Physician Volunteer of the Year.

Mayor, Jay Vavricek



City Clerk, RaNae Edwards



Certificate of Recognition

Awarded to

“Dr. Jama Obermiller”

for 2011 Dentist Volunteer of the Year.

Mayo, Jay Vavricek



RaNae Edwards
City Clerk, RaNae Edwards



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item C2

Recognition of the Nebraska National Guard

In recognition of Veterans Day this Friday, November 11, 2011 the Mayor and City Council will recognize those men and women from Nebraska serving in the Nebraska National Guard. Our thanks and appreciation go to these courageous individuals and others from all branches of service, both past and present for their dedication and service to our country.

Staff Contact: Mayor Vavricek



Certificate of Recognition

Awarded to the

“Nebraska National Guard”

in appreciation for the courageous service of the men and women from Nebraska.

Mayor, Jay Vavrick

City Clerk, RaNae Edwards



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item D1

2011-BE-6 - Consideration of Determining Benefits for Water Main District 456T - Engleman Road from 13th Street to Old Potash Hwy., and Old Potash Hwy., east of Engleman Road for 600'

Staff Contact: Timothy Luchsinger

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director
Jason Eley, Assistant City Attorney/Purchasing

Meeting: November 8, 2011

Subject: Board of Equalization
Determining Benefits for Water Main District 456T

Item #'s: D-1 & G-6

Presenter(s): Timothy Luchsinger, Utilities Director

Background

Water Main District 456T is along Engleman Road from 13th Street to Old Potash Highway and in Old Potash Highway, east of Engleman Road for 600 feet. The project included installation of a 20" diameter main along the westerly side of the water system to resolve hydraulic deficiencies to the northwest area of the City.

Discussion

The project was completed by the Diamond Engineering Company of Grand Island, in accordance with the terms, conditions, and stipulations of the contract, plans and specifications. The final Contract was price was \$537,854.24. The Engineer's Certificate of Final Completion is attached.

The work was done as a connection fee district, which is the Department's standard method for large main extensions. The connection fees are computed by taking the total chargeable amount and dividing it by the District's frontage. This arrives at a per front foot fee of \$46.120794. The connection fees will be collected when the properties within the District's boundary connect to (tap) the water main for service.

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 set the connection fees for the properties within Water Main District 456T as tabulated on the attached listing.

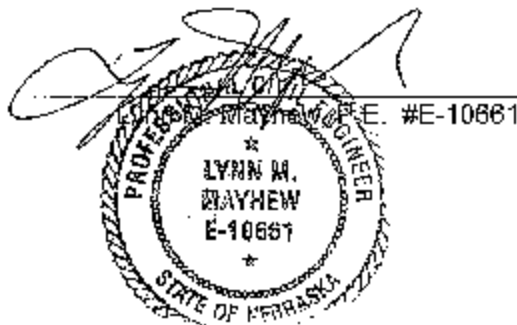
Sample Motion

Move to approve the connection fees for the properties within Water Main District 456T.

ENGINEER'S CERTIFICATE OF FINAL COMPLETION


Water Main District 456T

Water Main District 456T, located in the City of Grand Island, NE., along Engleman Road from 13th Street to Old Potash Hwy; and in Old Potash Hwy – east of Engleman Rd for 600' has been fully completed in accordance with the terms and conditions of the contract and complies with the plans and specifications.



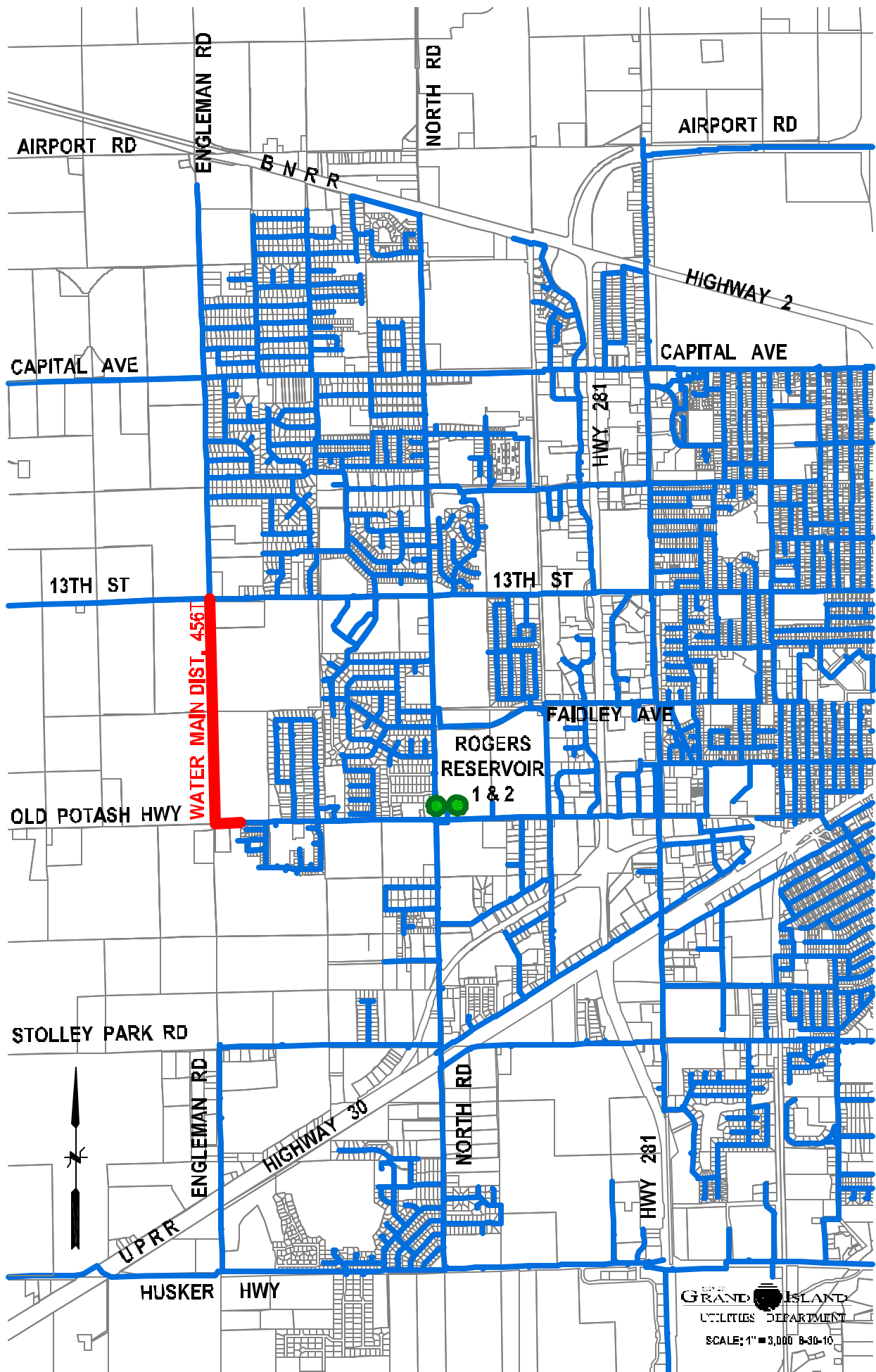
9/12/2011
Date

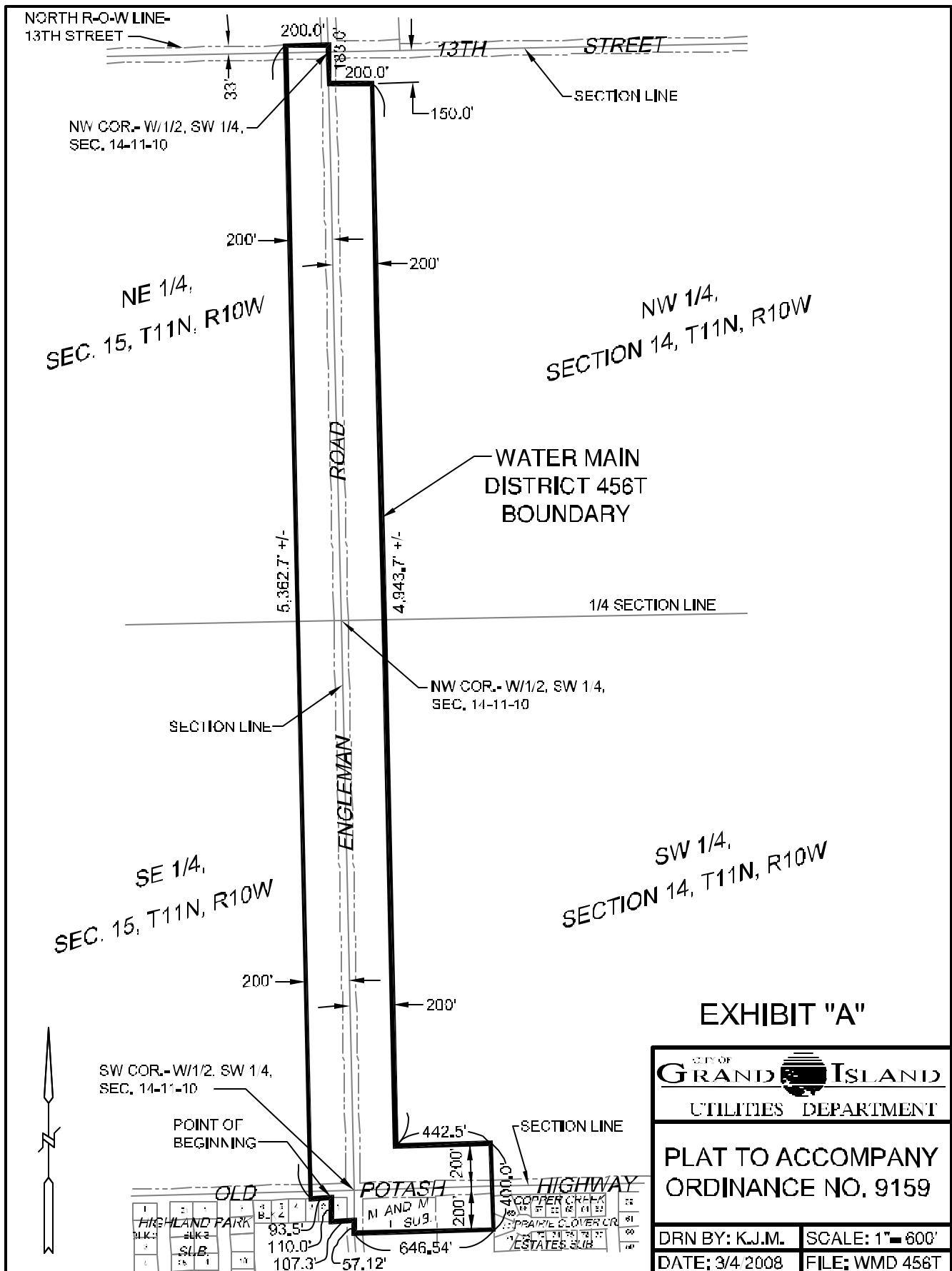
I hereby authorize Water Main District 456T be placed in service and incorporation into the City of Grand Island water system.



Tim Luchsinger, Utilities Director

9-12-11
Date





Water Main District 456T
Water Work Order #22652
Contractor: Diamond Engineering
20" Main- Engleman Road- Old Potash Highway to 13th Street

ITEM	DESCRIPTION	QTY	EST	UNIT \$	TOTAL EST \$	Unit \$	Total \$	PLACED	COMPLETED \$
C.1.01	32" Dia x 0.500" Steel Casing	73.0	LF	360.00	26,280.00	383.10	27,966.30	73.00	LF 27,966.30
C.1.02	20" D.I. Pipe (sj)	6,043.7	LF	70.00	423,059.00	61.50	371,687.55	6,038.70	LF 371,380.05
C.1.03	20"x 20"x 16"x 16" Cross (mj)	1.0	EA	2,200.00	2,200.00	1,093.00	1,093.00	1.00	EA 1,093.00
C.1.04	20"x 20"x 20" Tee (mj)	1.0	EA	1,500.00	1,500.00	2,300.00	2,300.00	1.00	EA 2,300.00
C.1.05	20"x 20"x 6" Tee (mj)	7.0	EA	1,000.00	7,000.00	827.00	5,789.00	7.00	EA 5,789.00
C.1.06	20"x 12" Reducer (mj)	1.0	EA	750.00	750.00	497.00	497.00	1.00	EA 497.00
C.1.07	20"x 22.5" Ell (mj)	4.0	EA	1,000.00	4,000.00	732.00	2,928.00	2.00	EA 1,464.00
C.1.08	20"x Plug (mj)	1.0	EA	300.00	300.00	418.00	418.00	1.00	EA 418.00
C.1.09	20" Sleeve Coupling	13.0	EA	1,000.00	13,000.00	946.00	12,298.00	12.00	EA 11,352.00
C.1.10	16" Sleeve Coupling	3.0	EA	800.00	2,400.00	225.00	675.00	1.00	EA 225.00
C.1.11	20" Butterfly Valve	6.0	EA	3,600.00	21,600.00	4,180.00	25,080.00	6.00	EA 25,080.00
C.1.12	16" Butterfly Valve	1.0	EA	2,900.00	2,900.00	2,800.00	2,800.00	1.00	EA 2,800.00
C.1.13	6"x24" Hydrant Offset Adapter (mj)	1.0	EA	500.00	500.00	532.00	532.00	0.00	EA 0.00
C.1.14	Valve Box	7.0	EA	200.00	1,400.00	136.00	952.00	8.00	EA 1,088.00
C.1.15	Fire Hydrant Assembly	6.0	EA	3,000.00	18,000.00	1,330.00	7,980.00	6.00	EA 7,980.00
C.1.16	Thrust Block	14.0	EA	300.00	4,200.00	510.00	7,140.00	12.00	EA 6,120.00
C.1.17	8 Mil Polyethylene	6,142.0	LF	4.00	24,568.00	0.95	5,834.90	6,142.00	LF 5,834.90
C.1.18	Remove & Reinstall Fire Hydrant	1.0	EA	1,000.00	1,000.00	430.00	430.00	1.00	EA 430.00
C.1.19	Remove & Reinstall 6" Gate Valve & Box	1.0	EA	300.00	300.00	203.00	203.00	1.00	EA 203.00
C.1.20	Remove & Reinstall 6" x90° Ell	1.0	EA	100.00	100.00	200.00	200.00	1.00	EA 200.00
C.1.21	Saw Cut	131.0	LF	5.00	655.00	3.85	504.35	170.00	LF 654.50
C.1.22	Remove Asph Roadway	207.0	SY	7.00	1,449.00	6.65	1,376.55	137.70	SY 915.71
C.1.23	Replace Asph Roadway	207.0	Ton	60.00	12,420.00	35.25	7,296.75	137.70	Ton 4,853.93
C.1.24	Remove & Replace Field Driveway	4.0	EA	1,000.00	4,000.00	160.00	640.00	4.00	EA 640.00
C.1.25	Roadway Seeding & Mulching	4.7	AC	3,000.00	14,100.00	1,730.00	8,131.00	4.70	AC 8,131.00
C.1.26	Salvage 16"x16"x12"x12" Cross (mj)	1.0	EA	300.00	300.00	167.00	167.00	1.00	EA 167.00
C.1.27	Salvage 20"x8" Reducer (mj)	1.0	EA	100.00	100.00	133.00	133.00	1.00	EA 133.00
C.1.28	Salvage 8"x6" Reducer (mj)	1.0	EA	100.00	100.00	133.00	133.00	1.00	EA 133.00
C.1.29	Salvage 12" Cap & Retainer Gland	1.0	EA	200.00	200.00	100.00	100.00	1.00	EA 100.00
C.1.30	Salvage 12" Butterfly Valve & Box	1.0	EA	300.00	300.00	180.00	180.00	1.00	EA 180.00
C.1.31	Salvage 12" Sleeve Coupling	2.0	EA	100.00	200.00	107.00	214.00	2.00	EA 214.00
C.1.32	Salvage 16" D.I. Pipe (sj)	12.0	LF	5.00	60.00	12.30	147.60	12.00	LF 147.60
C.1.33	Salvage 12" D.I. Pipe (sj)	93.0	LF	5.00	465.00	11.00	1,023.00	93.00	LF 1,023.00
C.1.34	Salvage 6" D.I. Pipe	10.0	LF	5.00	50.00	10.65	106.50	10.00	LF 106.50
C.1.35	Remove & Dispose Conc Blocking	2.0	EA	100.00	200.00	185.00	370.00	2.00	EA 370.00
C.1.36	Restoration of Easement Area	1.0	Sum	5,000.00	5,000.00	0.00	0.00	1.00	Sum 0.00
C.1.37	Traffic Control	1.0	Sum			0.00	0.00	1.00	Sum 0.00
					594,656.00		497,326.50		
Contract Amount									
Amount Completed									489,989.48

Geotechnical Services	\$985.00	\$985.00
Johnson Appraisal, LLC	\$3,000.00	\$3,000.00
Van Kirk Sand & Gravel (16" Romac Pipe Couplings)	\$791.35	\$791.35
Hall County Sheriff's Office	\$71.49	\$71.49
Robin Irvine Easement	\$5,500.00	\$5,500.00
Hawkins, Inc. (Chlorine)	\$319.85	\$319.85
Diamond Engineering Fill Dirt / Concrete	\$5,221.57	\$5,221.57
Water Department Materials Ticket #1865 & #1858	\$10,588.10	\$10,588.10
Water Department Labor & Overhead	\$108.45	\$108.45
Engineering Labor & Overhead	\$21,278.95	\$21,278.95
	\$47,864.76	

TOTAL DISTRICT COSTS: \$537,854.24

CONNECTION FEE FOR WATER MAIN DISTRICT 456T		Price per linear foot=	\$46.120794
OWNER	DESCRIPTION	FOOTAGE	FEE
Thomas & Elizabeth Lea Baxter, H & W	Pt. E 1/2, NE 1/4 Sec. 15-11-10 (see attached sheet)	5,230.70	\$241,244.04
Ted Lechner	Pt. N 1/2, NW 1/4, NW1/4 Sec. 14-11-10 (see attached sheet)	511.70	\$23,600.01
Ted Lechner & Jacqueline Hanover	Pt. S 1/2, NW 1/4 Sec. 14-11-10 (see attached sheet)	1,985.20	\$91,559.00
Robin & Barbara M. Irvine	Pt. W1/2, SW1/4 Sec. 14-11-10 (see attached sheet)	3,223.40	\$148,665.77
Copper Creek Estates	Pt. W1/2, NW1/4 Sec. 23-11-10 (see attached sheet)	260.00	\$11,991.41
Midland Ag Service, Inc.	Lot 1, M and M Subdivision	340.86	\$15,720.73
Shirley Klingensmith	Lot 1, Block 1, Highland Park Subdivision	110.00	\$5,073.29
		11,661.86	\$537,854.25

Thomas and Elizabeth Baxter, H & W
4461 W Capital Ave
Grand Island, NE 68803

Part of the NE 1/4, and SE 1/4, Section 15, T11N, R10W

Front Footage - 5230.7'

Connection Fee - \$241,244.04

Beginning at the intersection of the southerly right-of-way line of Thirteenth (13th) Street and the westerly right-of way line of Engleman Road, Hall County, Nebraska; thence southerly along the said westerly right-of-way line of the Engleman Road, a distance of five thousand two hundred thirty and seven tenths (5,230.7) feet to the northerly right-of-way line of Old Potash Highway; thence westerly along the northerly right-of-way line of said Old Potash Highway, a distance of one hundred sixty seven (167.0) feet; thence northerly parallel with the westerly right-of-way line of said Engleman Road, to the southerly right-of-way line of said Thirteenth (13th) Street; thence easterly along the southerly right-of-way line of said Thirteenth (13th) Street, a distance of one hundred sixty seven (167.0) feet to the said Point Of Beginning.

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Teddy Lechner
4311 W 13th Street
Grand Island, NE 68803

Part of the NW 1/4, Section 14, T11N, R10W

Front Footage - 511.7'

Connection Fee - \$23,600.01

Commencing at the intersection of the southerly right-of-way line of Thirteenth (13th) Street and the easterly right-of way line of Engleman Road, Hall County, Nebraska; thence southerly along the easterly right-of-way line of said Engleman Road, a distance of one hundred seventeen (117.0) feet to the Actual Point Of Beginning; thence continuing southerly along the easterly right-of-way line of said Engleman Road, a distance of Five Hundred eleven and seven hundredths (511.7) feet to the northerly line of the south half of the Northwest Quarter of the Northwest Quarter (S 1/2, NW 1/4, NW 1/4) Section Fourteen (14) Township Eleven (11) North, Range Ten (10) West of the 6th PM Hall County, Nebraska; thence easterly along the northerly line of the south half of the Northwest Quarter of the Northwest Quarter (S 1/2, NW 1/4, NW 1/4) said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet; thence northerly parallel with the easterly right-of-way line of said Engleman Road, a distance of Five Hundred eleven and seven hundredths (511.7) feet; thence westerly parallel with the northerly line of said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet to the said Point Of Beginning.

Teddy Lechner
4311 W 13th Street
Grand Island, NE 68803
and
Jacqueline Hanover
1104 N North Rd

Part of the NW 1/4, Section 14, T11N, R10W

Front Footage - 1985.2'

Connection Fee - \$91,559.00

Commencing at the intersection of the southerly right-of-way line of Thirteenth (13th) Street and the easterly right-of-way line of Engleman Road, Hall County, Nebraska; thence southerly along the easterly right-of-way line of said Engleman Road, a distance of six hundred twenty eight and seven tenths (628.7) to the Actual Point Of Beginning; thence continuing southerly along the easterly right-of-way line of said Engleman Road, a distance of one thousand nine hundred eighty five and two tenths (1,985.2) feet to the southerly line of the Northwest Quarter (NW 1/4) Section Fourteen (14) Township Eleven (11) North Range Ten (10) West of the 6th PM, Hall County, Nebraska; thence easterly along the southerly line of the Northwest Quarter (NW 1/4) said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet; thence northerly parallel with the easterly right-of-way line of said Engleman Road, a distance of one thousand nine hundred eighty five and two tenths (1,985.2) feet to the northerly line of the south half of the Northwest Quarter of the Northwest Quarter (S 1/2, NW 1/4, NW 1/4) said Section Fourteen (14); thence easterly along the northerly line of the south half of the Northwest Quarter of the Northwest Quarter (S 1/2, NW 1/4, NW 1/4) said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet to the said Point Of Beginning.

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Robin and Barbara Irvine, H and W
56520 310th Ave
Ravenna, NE 68869

Part of the SW 1/4, Section 14, T11N, R10W

Front Footage - 3223.4'

Connection Fee - \$148,665.77

Beginning at the intersection of the northerly right-of-way line of Old Potash Highway and the easterly right-of-way line Engleman Road; thence northerly along the easterly right-of-way line of said Engleman Road to the northerly line of the Southwest Quarter (SW 1/4) Section Fourteen (14) Township Eleven (11) North Range Ten (10) West of the 6th PM, Hall County , Nebraska; thence easterly along the northerly line of the Southwest Quarter (SW 1/4) said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet; thence southerly parallel to the easterly right-of-way line Engleman Road, a distance of two thousand four hundred forty six and nine tenths (2,446.9) feet; thence easterly parallel with the southerly line of said Section Fourteen (14), a distance of four hundred forty two and five tenths (442.5) feet; thence southerly a distance of one hundred sixty seven (167.0) feet to the northerly

right-of-way line of said Old Potash Highway; thence westerly along the northerly right-of-way line of said Old Potash Highway, a distance of six hundred nine and five tenths (609.5) feet to the said Point Of Beginning.

Copper Creek Estates – Grand Island, LLC
1116 E Hwy 30
Cozad, NE 69130

Part of the NW 1/4, Section 23, T11N, R10W

Front Footage - 260.0'

Connection Fee - \$11,991.41

Commencing at the Northwest corner of Section Twenty Three (23) Township Eleven (11) North Range Ten (10) West of the 6th PM,, Hall County, Nebraska; thence easterly along the northerly of said Section Twenty Three (23), a distance of three hundred eighty and eighty six hundredths (380.86) feet to the Northeast corner of M And M Subdivision; thence southerly along the easterly of said M And M Subdivision, a distance of thirty three (33.0) feet to a point on the southerly right-of way line of Engleman Road being the Actual Point Of Beginning; thence continuing southerly along the easterly of said M And M Subdivision, a distance of one hundred sixty seven (167.0) feet; thence easterly parallel with the northerly line of said Section Twenty Three (23), a distance of two hundred sixty (260.0) feet to a point on the westerly line of Copper Creek Estates Subdivision; thence northerly along the westerly line of said Copper Creek Estates Subdivision, a distance of hundred sixty seven (167.0) feet to a point on the southerly right-of way line of said Engleman Road; thence westerly along the southerly right-of way line of said Engleman Road, a distance two hundred sixty (260.0) feet to said Point Of Beginning.

Midland Ag Services, Inc.
1012 Shady Bend Rd
Grand Island, NE 68801

Lot One (1) M And M Subdivision

Front Footage - 340.86

Connection Fee - \$15,720.73

Shirley Klinginsmith
521 Sheridan St
St Paul, NE 68873

Lot One (1) Block One (1) Highland Park Subdivision

Front Footage - 110.0'

Connection Fee - \$5,073.29

RESOLUTION 2011-BE-6

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, sitting as a Board of Equalization for Water Main District 456T, after due notice having been given thereof, that we find and adjudge:

That the benefits accruing to the real estate in such district to be the total sum of \$537,854.25; and

Such benefits are equal and uniform; and

According to the area of the respective lots, tracts, and real estate within such Water Main District No. 456Tm such benefits are the sums set opposite the several descriptions as follows:

Name	Description	Connection Fee
Thomas and Elizabeth Baxter, Husband & Wife	Beginning at the intersection of the southerly right-of-way line of Thirteenth (13th) Street and the westerly right-of way line of Engleman Road, Hall County, Nebraska; thence southerly along the said westerly right-of-way line of the Engleman Road, a distance of five thousand two hundred thirty and seven tenths (5,230.7) feet to the northerly right-of-way line of Old Potash Highway; thence westerly along the northerly right-of-way line of said Old Potash Highway, a distance of one hundred sixty seven (167.0) feet; thence northerly parallel with the westerly right-of-way line of said Engleman Road, to the southerly right-of-way line of said Thirteenth (13th) Street; thence easterly along the southerly right-of-way line of said Thirteenth (13th) Street, a distance of one hundred sixty seven (167.0) feet to the said Point of Beginning.	\$241,244.04
Teddy Lechner	Commencing at the intersection of the southerly right-of-way line of Thirteenth (13th) Street and the easterly right-of way line of Engleman Road, Hall County, Nebraska; thence southerly along the easterly right-of-way line of said Engleman Road, a distance of one hundred seventeen (117.0) feet to the Actual Point Of Beginning; thence continuing southerly along the easterly right-of-way line of said Engleman Road, a distance of Five Hundred eleven and seven hundredths (511.7) feet to the northerly line of the south half of the Northwest Quarter of the Northwest Quarter (S 1/2, NW 1/4, NW 1/4) Section Fourteen (14) Township Eleven (11) North, Range Ten (10) West of the 6th PM Hall County, Nebraska; thence easterly along the northerly line of the south half of the Northwest Quarter of the Northwest Quarter (S 1/2, NW 1/4, NW 1/4) said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet; thence northerly parallel with the easterly right-of-way line of said Engleman Road, a distance of Five Hundred eleven and seven hundredths (511.7) feet; thence westerly parallel with the northerly line of said Section Fourteen (14), a distance of one hundred	\$23,600.01

	sixty seven (167.0) feet to the said Point Of Beginning.	
Name	Description	Connection Fee
Teddy Lechner and Jacqueline Hanover	Commencing at the intersection of the southerly right-of-way line of Thirteenth (13th) Street and the easterly right-of way line of Engleman Road, Hall County, Nebraska; thence southerly along the easterly right-of-way line of said Engleman Road, a distance of six hundred twenty eight and seven tenths (628.7) to the Actual Point Of Beginning; thence continuing southerly along the easterly right-of-way line of said Engleman Road, a distance of one thousand nine hundred eighty five and two tenths (1,985.2) feet to the southerly line of the Northwest Quarter (NW 1/4) Section Fourteen (14) Township Eleven (11) North Range Ten (10) West of the 6th PM, Hall County, Nebraska; thence easterly along the southerly line of the Northwest Quarter (NW 1/4) said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet; thence northerly parallel with the easterly right-of-way line of said Engleman Road, a distance of one thousand nine hundred eighty five and two tenths (1,985.2) feet to the northerly line of the south half of the Northwest Quarter of the Northwest Quarter (S 1/2, NW 1/4, NW 1/4) said Section Fourteen (14); thence easterly along the northerly line of the south half of the Northwest Quarter of the Northwest Quarter (S 1/2, NW 1/4, NW 1/4) said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet to the Said Point of Beginning.	\$91,559.00
Robin and Barbara Irvine, Husband and Wife	Beginning at the intersection of the northerly right-of-way line of Old Potash Highway and the easterly right-of-way line Engleman Road; thence northerly along the easterly right-of-way line of said Engleman Road to the northerly line of the Southwest Quarter (SW 1/4) Section Fourteen (14) Township Eleven (11) North Range Ten (10) West of the 6th PM, Hall County, Nebraska; thence easterly along the northerly line of the Southwest Quarter (SW 1/4) said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet; thence southerly parallel to the easterly right-of-way line Engleman Road, a distance of two thousand four hundred forty six and nine tenths (2,446.9) feet; thence easterly parallel with the southerly line of said Section Fourteen (14), a distance of four hundred forty two and five tenths (442.5) feet; thence southerly a distance of one hundred sixty seven (167.0) feet to the northerly right-of-way line of said Old Potash Highway; thence westerly along the northerly right-of-way line of said Old Potash Highway, a distance of six hundred nine and five tenths (609.5) feet to the Said Point of Beginning	\$148,665.77
Copper Creek Estates – Grand Island, LLC	Commencing at the Northwest corner of Section Twenty Three (23) Township Eleven (11) North Range Ten (10) West of the 6th PM., Hall County, Nebraska; thence easterly along the northerly of said Section Twenty Three (23), a distance of three hundred eighty and eighty six hundredths (380.86) feet to the Northeast corner of M And M Subdivision; thence southerly along the easterly of said M And M Subdivision, a distance of thirty three (33.0) feet to a point on the southerly	\$11,991.41

	right-of way line of Engleman Road being the Actual Point Of Beginning; thence continuing southerly along the easterly of said M And M Subdivision, a distance of one hundred sixty seven (167.0) feet; thence easterly parallel with the northerly line of said Section Twenty Three (23), a distance of two hundred sixty (260.0) feet to a point on the westerly line of Copper Creek Estates Subdivision; thence northerly along the westerly line of said Copper Creek Estates Subdivision, a distance of hundred sixty seven (167.0) feet to a point on the southerly right-of way line of said Engleman Road; thence westerly along the southerly right-of way line of said Engleman Road, a distance two hundred sixty (260.0) feet to Said Point of Beginning.	
Midland Ag Services, Inc.	Lot One (1) M And M Subdivision	\$15,720.73
Shirley Klinginsmith	Lot One (1) Block One (1) Highland Park Subdivision	\$5,073.29

BE IT FURTHER RESOLVED that the special benefits as determined by this resolution shall not be levied as special assessments, but shall be certified by this resolution to the Register of Deeds, Hall County, Nebraska, pursuant to Section 16-6,103,R.R.S. 1943. A connection fee in the amount of the above benefit accruing to each property in the district shall be paid to the City of Grand Island at the time such property becomes connected to the water main. No property benefited as determined by this resolution shall be connected to the water main until the connection fee is paid. The connection fees collected shall be paid into the fund from which construction costs were made to replenish such fund for the construction costs.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item E1

**Public Hearing on Request from Bosselman Pump & Pantry, Inc.
dba Pump & Pantry #43, 1222 South Locust Street for a Class "D"
Liquor License**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: November 8, 2011

Subject: Public Hearing on Request from Bosselman Pump & Pantry, Inc. dba Pump & Pantry #43, 1222 South Locust Street for a Class “D” 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

Bosselman Pump & Pantry, Inc. dba Pump & Pantry #43, 1222 South Locust Street has submitted an application for a Class ‘D’ Liquor License. A Class ‘D’ Liquor License allows for the sale of alcohol 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.

Also submitted with the application was a request from Susan McAfee, 1863 7th Avenue, Dannebrog, Nebraska for a Liquor Manager designation.

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 Bosselman Pump & Pantry, Inc. dba Pump & Pantry #43, 1222 South Locust Street for a Class "D" Liquor License contingent upon final inspections and Liquor Manager designation for Susan McAfee, 18963 7^h Avenue, Dannebrog, Nebraska contingent upon Ms. McAfee completing a state approve alcohol server/seller training program.

11/02/11
450

Grand Island Police Department

11:18
1

LAW INCIDENT TABLE

Page:

City	: Grand Island
Occurred after	: 10:40:00 10/31/2011
Occurred before	: 10:40:00 10/31/2011
When reported	: 10:40:00 10/31/2011
Date disposition declared	: 10/31/2011
Incident number	: L11104038
Primary incident number	:
Incident nature Investigation	: Liquor Lic Inv Liquor License
Incident address	: 1309 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 : RaNae

Geobase address ID : 4967

Long-term call ID :

Clearance Code : CL Case Closed

Judicial Status : NCI Non-criminal Incident

= = = = =

INVOLVEMENTS:

Px	Record #	Date	Description	Relationship

LW	L11104040	11/02/11	Liquor Lic Inv	Related
NM	5453	10/31/11	Bosselman, Brandi K	Secretary
NM	17868	10/31/11	Bosselman, Charles D Jr	President
NM	22099	10/31/11	McAfee, Larry Scott	Susan's Spouse
NM Spous	23148	10/31/11	Bosselman, Laura	Charles Jr.'s
NM Spouse	51098	10/31/11	Bosselman, Janet K	Charles'
NM Spouse	65426	10/31/11	Lofing, James D	Brandi's
NM	94953	10/31/11	McAfee, Susan R	Manager
NM	114562	10/31/11	Bosselman, Charles D	Chairman
NM	171097	10/31/11	Pump & Pantry # 44,	Business

LAW INCIDENT CIRCUMSTANCES:

Se Circu Circumstance code

Miscellaneous

-- -----

1 LT07 Convenience Store

LAW INCIDENT NARRATIVE:

I Received a Copy of a Liquor License Application from Pump & Pantry and a

Liquor Manager Application from Susan McAfee.

Date, Time: Tue Nov 01 15:06:07 CDT 2011

Reporting Officer: Vitera

Unit- CID

Bosselman Pump & Pantry bought the Byco Stores at 1222 S. Locust and 1309 N.

Diers. They are currently selling alcohol on a Temporary Operating Permit (TOP)

issued by the NLCC. Each new Pump & Pantry has applied for a Class D corporate

liquor license which is for beer, wine, and distilled spirits off sale only.

Members of the corporation are: Charles Bosselman (Chairman), Charles Bosselman

Jr. (President), and Brandi Bosselman (Secretary/Treasurer). Spouses listed

are: Janet Bosselman, Laura Bosselman, and James Lofing.

On the application, it clearly asks "Has anyone who is a party to this

application, or their spouse, ever been convicted of or plead guilty to any

charge. Charge means any charge alleging a felony, misdemeanor, violation of a

federal or state law, a violation of a local law, ordinance or resolution."

The "No" box was checked. It also asks that the charges be associated to the

person convicted if there is more than one person on the application.

I checked all parties through NCJIS and found that Charles has an undisclosed

speeding conviction from 2000, Janet was convicted of speeding on '98 and 2002,

Charles Jr. was convicted of DUI in 1983 and speeding in 2009, Brandi was

convicted of a stop sign/fail to yield violation in '06, and James was convicted

of speeding in 1998.

The information stated in the preceding paragraph are examples of why this

application is technically 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."

The traffic convictions would fall under state law or local ordinance. Either

way, the convictions are an infraction or a misdemeanor that do not rise to the

level of a Class I Misdemeanor in a specified crime under Nebraska State Statute

Chapter 28 that would automatically nullify the liquor license.

I also checked Susan and Larry McAfee through NCJIS in regard to the manager

application. Larry signed a Spousal Affidavit of Non Participation form. They

each disclosed multiple traffic convictions. I found one undisclosed traffic

conviction for each of them. Susan has been listed on many manager applications

for Pump & Pantry. The new convictions are fairly recent. It appears that she

just hasn't updated her application.

As far as I know, the GIPD has not had any significant problems with the

numerous Pump & Pantry stores in Grand Island, nor are there any issues with

Susan McAfee.

The applicants should be cautioned about reading and filling out the application

completely and keeping it updated, but the Grand Island Police Department has no

objection to the issuance of a liquor license for the new Pump & Pantry stores

or to Susan McAfee being the liquor manager.



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item E2

**Public Hearing on Request from Bosselman Pump & Pantry, Inc.
dba Pump & Pantry #44, 1309 Diers Avenue for a Class "D"
Liquor License**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: November 8, 2011

Subject: Public Hearing on Request from Bosselman Pump & Pantry, Inc. dba Pump & Pantry #44, 1309 Diers Avenue for a Class “D” 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

Bosselman Pump & Pantry, Inc. dba Pump & Pantry #44, 1309 Diers Avenue has submitted an application for a Class ‘D’ Liquor License. A Class ‘D’ Liquor License allows for the sale of alcohol 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. (See attached Police Report under Public Hearing item E-1.)

Also submitted with the application was a request from Susan McAfee, 1863 7th Avenue, Dannebrog, Nebraska for a Liquor Manager designation.

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 Bosselman Pump & Pantry, Inc. dba Pump & Pantry #44, 1309 Diers Avenue for a Class "D" Liquor License contingent upon final inspections and Liquor Manager designation for Susan McAfee, 18963 7th Avenue, Dannebrog, Nebraska contingent upon Ms. McAfee completing a state approve alcohol server/seller training program.



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item E3

**Public Hearing on Request from Pamela D. Hall dba BT's Lounge,
2320 South Locust Street for a 12' x 26' Addition - Beer
garden to Liquor License "C-24627"**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: November 8, 2011

Subject: Public Hearing on Request from Pamela D. Hall dba BT's Lounge, 2320 South Locust Street for an Addition of a Beer Garden to Class "C-24627" Liquor License

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

Presenter(s): RaNae Edwards, City Clerk

Background

Pamela D. Hall dba BT's Lounge, 2320 South Locust Street has submitted an application for a Beer Garden, an addition to their Class "C-24627" Liquor License. The request includes an area of approximately 12' x 26' to be added to the southwest side of the existing building. (See attached drawing.)

Discussion

Chapter 2, Section 012.07 of the Nebraska Liquor Control Commission Rules and Regulations define 'Beer garden' as "an outdoor area included in licensed premises, which is used for the service and consumption of alcoholic liquors, and which is contained by a fence or wall preventing the uncontrolled entrance or exit of persons from the premises, and preventing the passing of alcoholic liquors to persons outside the premises" 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, and Health Departments.

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 the application.

Sample Motion

Move to approve the request for a 12' x 26' Beer Garden addition to Pamela D. Hall dba BT's Lounge, 2320 South Locust Street, Liquor License "C-24627" contingent upon final inspections.

NORTH

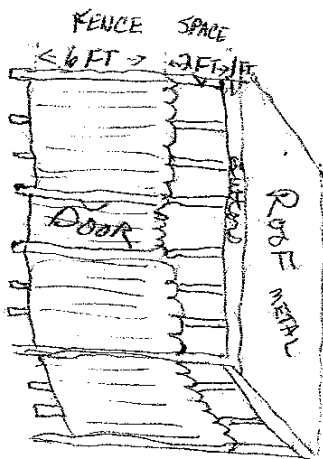
RECEIVED

SEP 28 2011

NEBRASKA LIQUOR
CONTROL COMMISSION

OTHER
BUSINESS'S

TOTAL 150 FT



WOODEN
FENCE

WHAT IT
LOOKS LIKE

area
already
paved

< 12 FT >

< 26 FT >

12 FT

1 BT'S LOUNGE

< 30 FT >

FRONT
DOOR

< 60 FT >



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item F1

#9339 - Consideration of Annexation for Property Located South of Airport Road/US Highway 281 and the West Side of Broadwell Avenue North of the Burlington Northern Santa Fe Tracks Including Eagle Scout Park and the Veterans Field (Annexation Area 3a) (Se

Staff Contact: Chad Nabity

Council Agenda Memo

From: Hall County Regional Planning Department

Meeting: November 8, 2011

Subject: Annexation Areas Identified as 3a, 6, 7, 12, and 13
(Second Reading)

Item #'s: F-1, F-2, F-3, F-4, and F-5

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

Background

At the March 22, 2011 meeting of the Grand Island City Council a resolution was passed that directed the planning department and other city staff as follows:

- to proceed with preparing annexation plans (as required and defined by statute),
- to notify property owners and school districts as required by law, and
- to forward the annexation plans to the Regional Planning Commission for review

The annexation plans for 6 of the 8 eight identified areas are complete and were considered by the Regional Planning Commission after a public hearing at their meeting held July 6, 2011. At the October 25, 2011 City Council meeting, the Council did not approve annexation area 14. The attached map identifies those areas under consideration at this meeting. Annexation plans for areas identified as 3a, 6, 7, 12, and 13 are available from the City Clerk. On October 11, 2011 the Grand Island City Council passed a resolution of intent to annex these areas, approving the annexation plans as presented and setting public hearings regarding annexation of these areas for October 25, 2011. The public hearings were held on October 25, 2011.

Discussion

Nebraska Revised Statute §16-117 provides for the process of annexation. In following the process approved by Council on March 22nd, 2011 annexation plans have been prepared by staff and referred to the Regional Planning Commission for recommendation. The Planning Commission has made their recommendation and Council has passed a

resolution of intent to annex these areas. Council held the public hearings. These areas were approved on first reading at the October 25, 2011 City Council meeting. Annexation ordinances must be read on three separate occasions. Tonight the ordinances will be considered on second reading.

Alternatives

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

1. Approve the Ordinances on Second Reading
2. Choose not to approve the Ordinances.
3. Modify the ordinance to change the areas under consideration for annexation.
4. Postpone the issue

Recommendation

That Council approve the ordinances for annexation of Areas 3a, 6, 7, 12, and 13 as presented.

Sample Motion

Move to approve the ordinances on second reading for annexation of Areas 3a, 6, 7, 12, and 13.

From the July 6th 2011 Planning Commission Minutes

4. **Public Hearing – Concerning annexation of properties identified as:**
Annexation Area 3a south of Airport Road/U.S. Highway 281 and on the west side of Broadwell Avenue north of the Burlington Northern Santa Fe tracks. Eagle Scout Park and the Veterans Field Complex are in this area. **Annexation Area 6** located north of Bismark Road to the east side of Stuhr Road. **Annexation Area 7** located north of U.S. Highway 34 on the east side of South Locust Street. **Annexation Area 12** located north of Husker Highway to the west side of U.S. Highway 281 and Prairieview Street. **Annexation Area 13** located south of Old Potash Highway on the west side of North Road. **Annexation Area 14** located south of 13th Street on the east and west sides of North Road and north of Faidley Avenue (C-05-2011GI).

O'Neill opened the Public Hearing.

Nabity briefly talked about the process of annexation; he explained City Council had charged Regional Planning to look at eligible areas for Annexation. City Council had selected eight areas and six of those plans were brought forward to Regional Planning. The remaining two may be brought forward for the August meeting.

Annexation Area 3a - U.S. Highway 281 and Broadwell Ave

This property is located in the north central part of the community. It is south of Airport Road/U.S. Highway 281 the west side of Broadwell Avenue north of the Burlington Northern Santa Fe tracks. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There is about 210 acres of property included in the area that is currently used for agricultural purposes. There are no houses and no businesses included in this area. Eagle Scout Park and the Veterans Field Complex are in this area and maintained by the City Parks Department.

Annexation Area 6 - Bismark Road and Stuhr Road

This property is located in the southeast part of the community. It is mostly north of Bismark Road the east side of Stuhr Road. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There is about 50 acres of property included in the area that is currently used for agricultural purposes. There are no houses and no businesses included in this area.

Nabity stated he had received a call from Tom Pirnie who owns the majority of the land in this area and he was in support of the annexation.

Annexation Area 7 - U.S. Highway 34 and South Locust Street (Vanosdal Fields)

This property is located in the southeast part of the community. It is north of U.S. Highway 34 on the east side of Locust Street. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There are about 65 acres of property included in the area. The property is currently used for agricultural and residential purposes. There are 3 houses included in this area.

Nabity stated one homeowner Heidi Aken and she was in favor of this annexation.

Janel Laub, 380 E. Highway 34, said she and her husband bought land there in 1996 to farm next to his parents. If the land were annexed into city limits, their children would no longer be eligible for school driving permits, could not have more numerous flocks of ducklings and they would be subject to higher taxes on farm equipment they purchase.

Their land would also eventually cease to be part of the Northwest School District, which has a more rural focus. Two of their children want to be farmers, and a third wants to be a veterinarian, Laub said.

If their land were to be annexed, "our whole way of life changes," she told the commission.

Evie Laub, 450 E Hwy 34, said the annexation would also separate the farm homestead from the farm ground, which runs to the east to Stuhr Road.

Commissioner John Amick of Doniphan concurred. He moved to annex just the western half of the proposed area, which includes the former ball fields and the Heidi Aken house that fronts onto Highway 34. Aken had previously spoken in favor of annexation.

Amick said water and sewer is available to the western portion of Area 7, (Aken property) but not to the Laub farmsteads on the east. The entire 65 acres is also not surrounded completely by city limits and the annexation, as originally proposed by the city, would substantially change the rural lifestyle the Laubs have, he said.

Annexation Area 12 - U.S. Highway 281 and Husker Highway

This property is located in the southwest part of the community. It is north of Husker Highway the west side of U.S. Highway 281 and Prairieview Street. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There is about 200 acres of property included in the area that is currently used for agricultural purposes. There is one house and

no businesses included in this area.

Annexation Area 13 - Old Potash Highway and North Road

This property is located in the northwest part of the community. It is south of Old Potash Highway on the west side of North Road. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There is about 120 acres of property included in the area that is currently used for agricultural purposes. There are no houses and no businesses included in this area.

Eric Pollock owns this property and was questioning what exactly this meant. Naby explained his property was surrounded by the city limits and Council is looking to get rid of the “islands” that have been formed. Sewer and water are available. Pollock questioned if there was a utility plan for the drainage because in the northwest quarter there is a drainage issue.

Area 3a: U.S. Highway 281 and Broadwell Ave

This has 210 acres located south of Airport Road/U.S. Highway 281 and on the west side of Broadwell Avenue north of the Burlington Northern Santa Fe tracks. City sewer and water is available. It includes the Veterans Athletic Field Complex and Eagle Scout Park and is mostly city-owned so there is no property valuation and no property tax revenue. City annexation would clarify that city police have jurisdiction at the Athletic Complex, which is on ground leased by the city from the state.

A motion was made by Hayes to approve the Area 3a Annexation plan as submitted and seconded by Amick.

The motion carried with 9 members present and 9 voting in favor (Amick, O’Neill, Ruge, Hayes, Reynolds, Haskins, Bredthauer, Connelly and Snodgrass) and no member present abstaining.

Area 6: Bismark Road and Stuhr Road

This has 50 acres located north of Bismark Road to the east side of Stuhr Road. City sewer and water is available. Estimated tax base is \$100,053. Estimated annual property tax for all political subdivisions is \$2,181.

A motion was made by Reynolds to approve the Area 6 Annexation plan as submitted and seconded by Brethauer.

The motion carried with 9 members present and 9 voting in favor (Amick, O’Neill, Ruge, Hayes, Reynolds, Haskins, Bredthauer, Connelly and Snodgrass)

and no member present abstaining.

Area 7: U.S. Highway 34 and South Locust Street (Vanosdal Fields)

This property is located in the southeast part of the community. It is north of U.S. Highway 34 the east side of Locust Street. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There are about 65 acres of property included in the area. The property is currently used for agricultural and residential purposes. There are 3 houses included in this area.

A motion was made by Amick to approve the Area 7 Annexation plan with the changes made to the annexation area to remove the Laub properties and to just include the Vanosdal property and the Aken property. This was seconded by Haskins.

Finding of Facts noted by Amick were this proposed annexation did not have sewer and water services available. This homestead was used as an ag use home property. Annexation of this property would adversely affect the families. Haskins agreed with Amick's findings.

The motion carried with 9 members present and 9 voting in favor (Amick, O'Neill, Ruge, Hayes, Reynolds, Haskins, Bredthauer, Connelly and Snodgrass) and no member present abstaining.

Area 12: U.S. Highway 281 and Husker Highway

This is about 200 acres of farmland located north of Husker Highway and to the west side of U.S. Highway 281 and Prairieview Street. City sewer and water is available. Estimated tax base is \$481,334 and estimated property tax revenue is \$10,495 a year.

A motion was made by Bredthauer to approve the Area 12 Annexation plan as presented and was seconded by Reynolds.

Findings of fact noted by Bredthauer were water and sewer service is available and annexing of this property would have little or no impact to the owners.

The motion carried with 9 members present and 8 voting in favor (Amick, O'Neill, Hayes, Reynolds, Haskins, Bredthauer, Connelly and Snodgrass) and 1 member present voting against (Ruge) and no members abstaining.

Area 13: Old Potash Highway and North Road

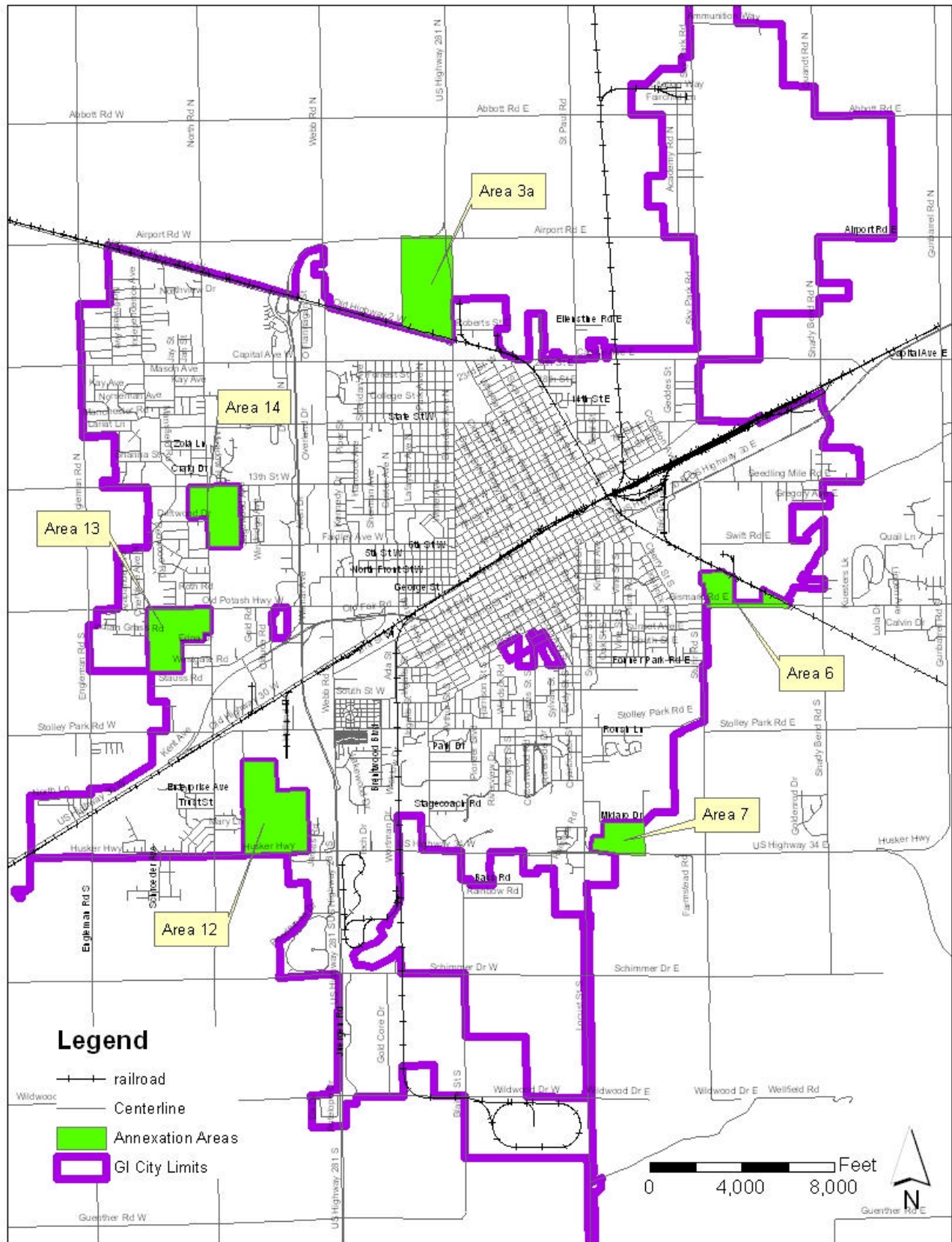
This property is located in the northwest part of the community. It is south of Old Potash Highway on the west side of North Road. The City of Grand Island

provides electric services to the area. Sewer and water are both available to this property. There is about 120 acres of property included in the area that is currently used for agricultural purposes. There are no houses and no businesses included in this area.

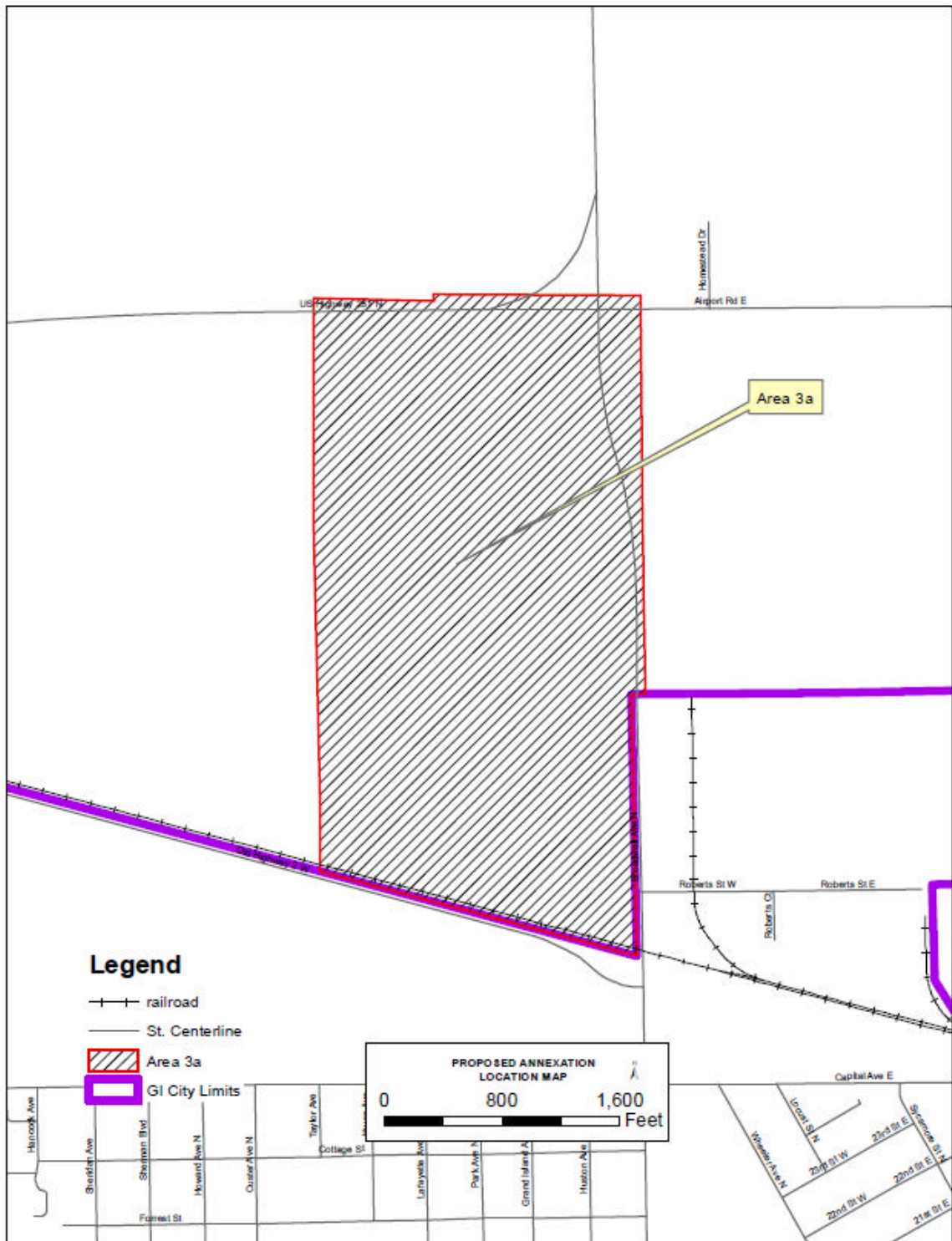
A motion was made by Bredthauer to approve the Area 13 Annexation plan as presented and was seconded by Amick.

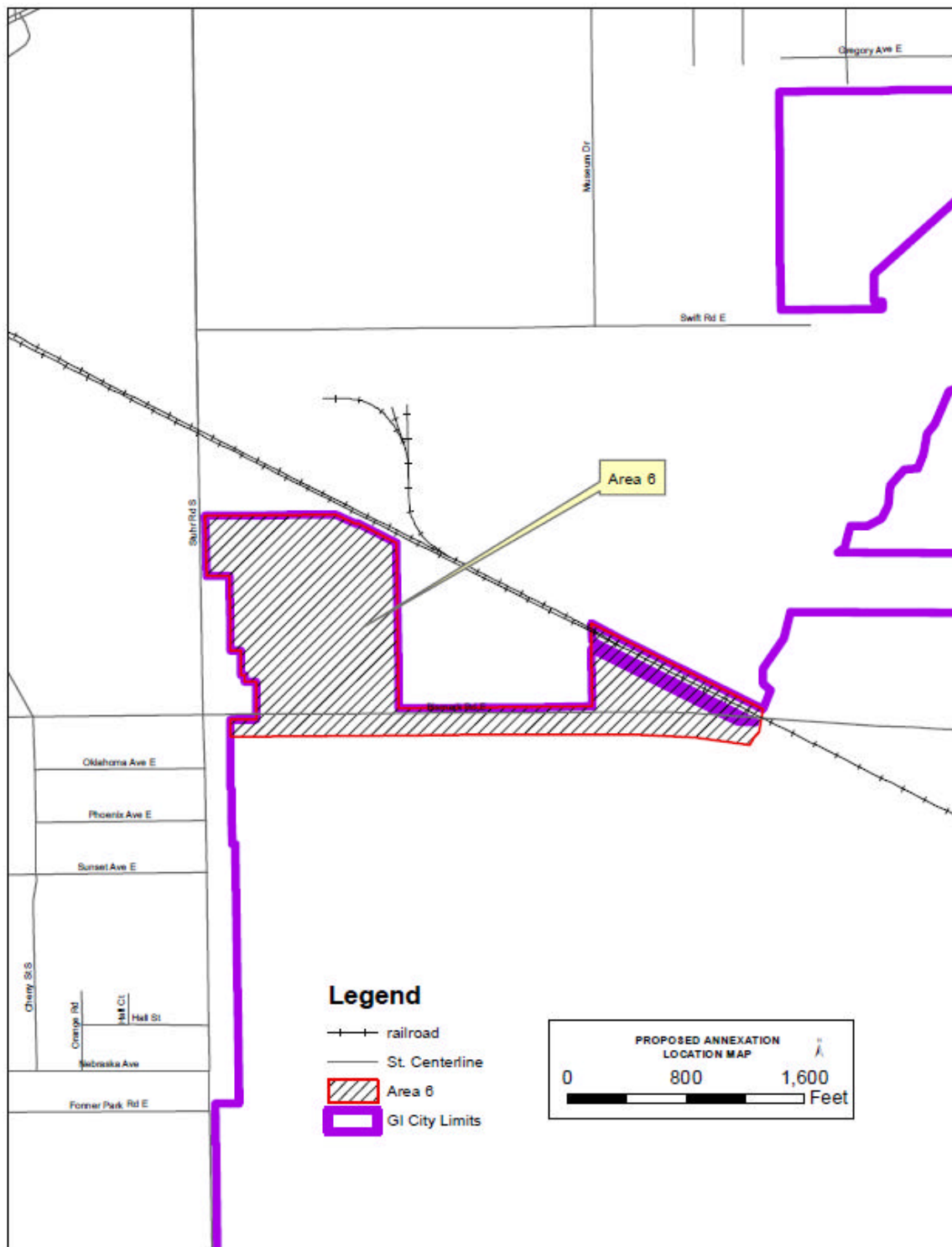
Findings of fact noted by Bredthauer were water and sewer service is available and annexing of this property would have little or no impact to the owners.

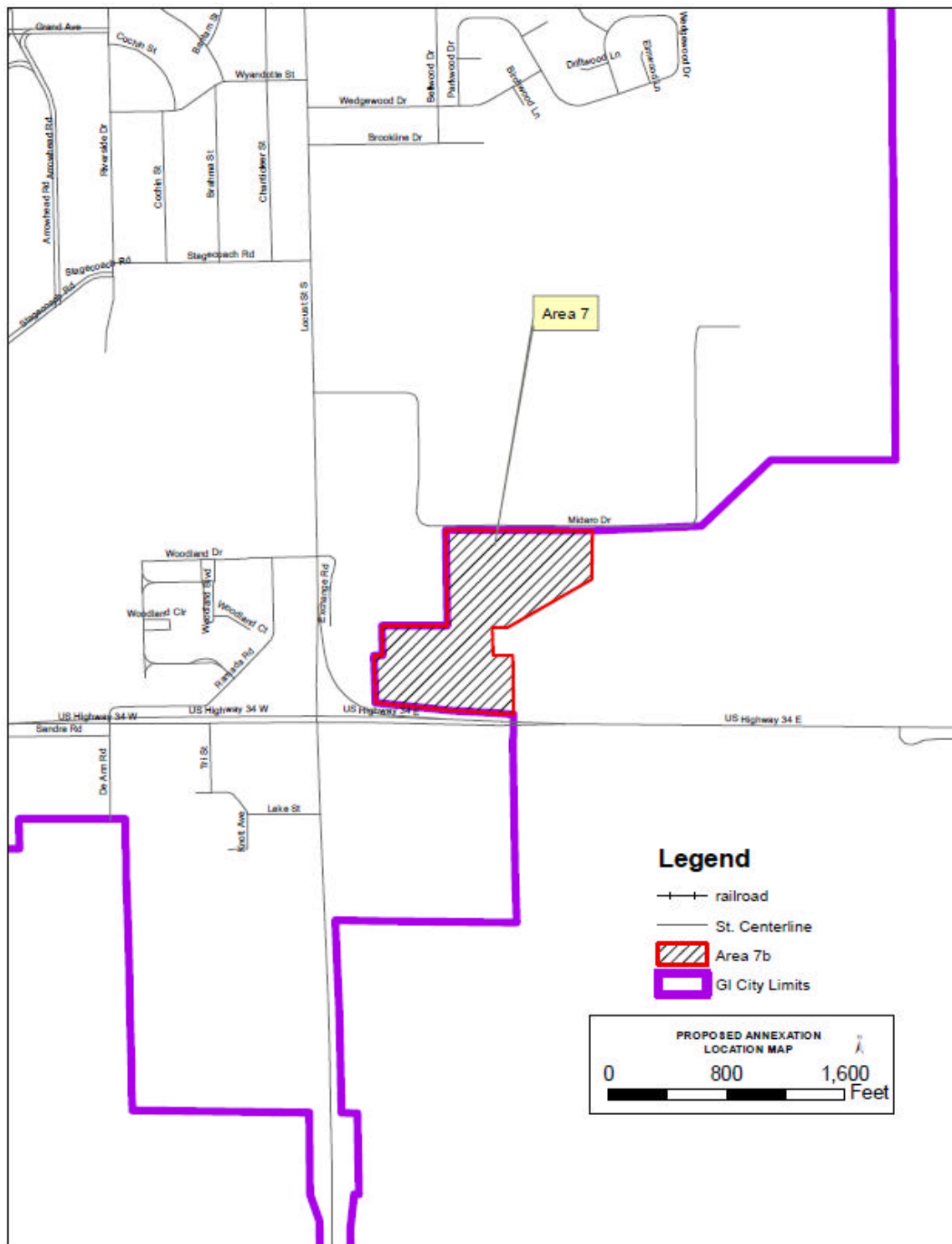
The motion carried with 9 members present and 7 voting in favor (Amick, O'Neill, Ruge, Haskins, Bredthauer, Connelly and Snodgrass) and 2 members present voting against (Reynolds, Hayes) and no members abstaining.

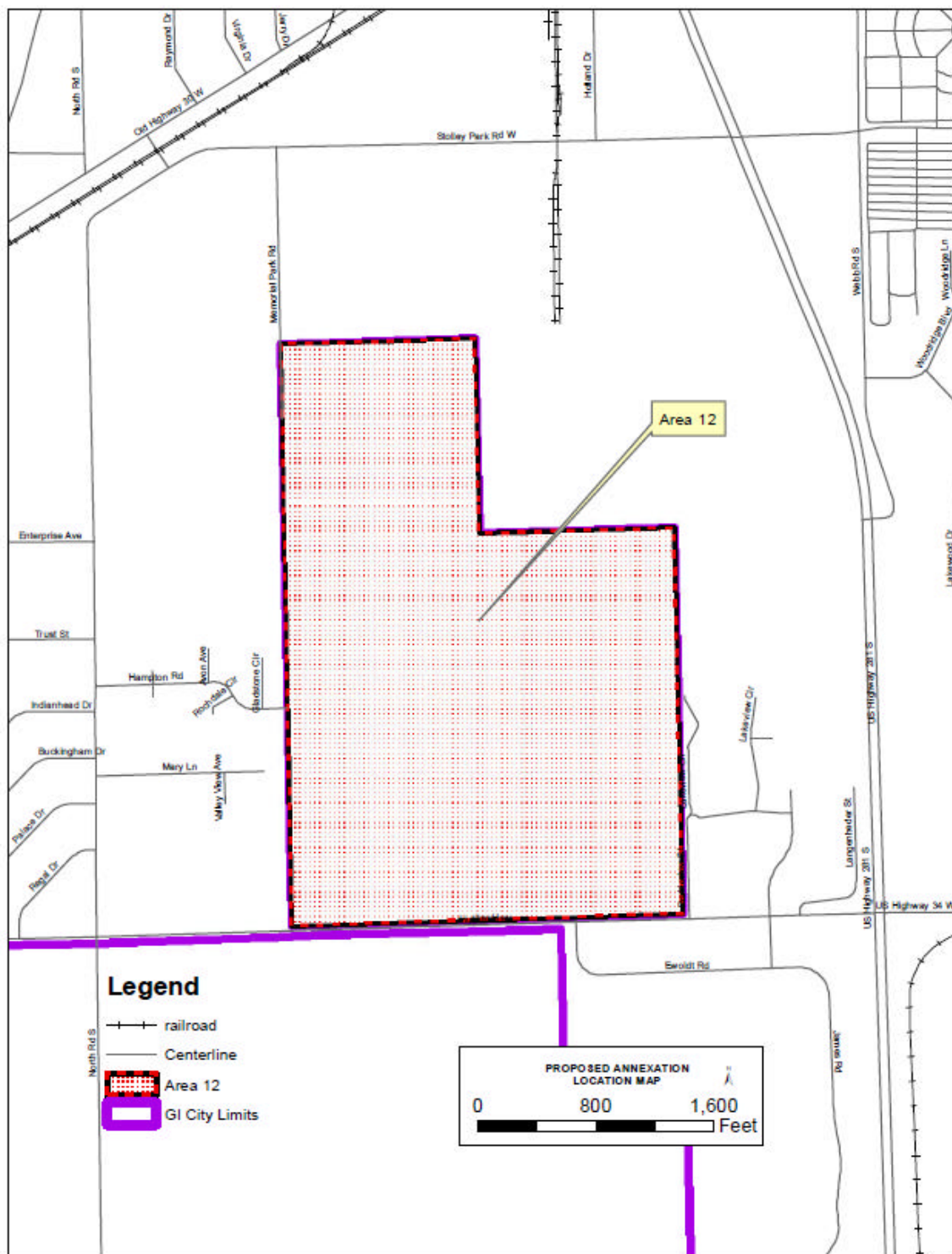


Area 7 has been modified to include fewer properties than shown on this map, but the general area of town remains the same.









* This Space Reserved For Register of Deeds *

ORDINANCE NO. 9339

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, a tract of land west of U.S. Highway 281 and south of Airport Road along with all adjoining public Right-of-Way in Hall County, Nebraska referenced as annexation area “3a” as more particularly described hereinafter and as shown on Exhibit “A” attached hereto; to provide service benefits thereto; to repeal any ordinance or resolutions or parts of thereof in conflict herewith; to provide for publication in pamphlet form; and to provide the effective date of this ordinance.

WHEREAS, after public hearing on July 6, 2011, the Regional Planning Commission recommended the approval of annexing into the City of Grand Island, the following tract of land in Hall County, Nebraska:

Beginning At A Point On The North Line Of Airport Road, U.S. Highway 281 Said Point Being 2,544.35’ West Of And 86.51’ North Of The Northeast Corner Section 5-11-9 Thence Easterly On A Line 86.51’ North Of And Parallel To The North Of Section 5-11-9 And Section 4-11-9 To A Point On The West Line Of Homestead Second Subdivision Thence Southerly On A Line To The South Right Of Way Line Of Airport Road Thence Southwesterly To The East Right Of Way Line Of Broadwell Avenue Thence Southerly On The East Right Of Way Line Of Broadwell To A Point On The South Line Of Northwest Quarter Of Northwest Quarter Section 4-11-9 Thence Westerly On Said South Line Northwest Quarter, Northwest Quarter Section 4-11-9 To The West Line Of Section

Approved as to Form	<input type="checkbox"/> _____
November 4, 2011	<input type="checkbox"/> City Attorney

ORDINANCE NO. 9339 (Cont.)

4-11-9 Thence Southerly On The West Line Of Section 4-11-9 To A Point On The South Right Of Way Line Of The Burlington Northern Santa Fe Railroad Thence Northwesterly On The South Right Of Way Line Of The Burlington Northern Santa Fe Railroad To A Point On The West Line Of Southeast Quarter Section 5-11-9 Thence Northerly On The West Line Of Southeast Quarter And Northeast Quarter Section 5-11-9 To The Point Of Beginning.

WHEREAS, after public hearing on October 25, 2011, the City Council of the City of Grand Island found and determined that such annexation be approved; and

WHEREAS, on October 25, 2011, the City Council of the City of Grand Island approved such annexation on first reading.

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

SECTION 1. It is hereby found and determined that:

(A) The above-described tracts of land are urban or suburban in character, and that the subject properties are contiguous or adjacent to the corporate limits of said City.

(B) The subject lands will receive the material benefits and advantages currently provided to land within the City's corporate limits including, but not limited to police, fire, emergency services, street maintenance, and utilities services upon annexation to the City of Grand Island, Nebraska, and that City electric, water and sanitary sewer service is available, or will be made available, as provided by law.

(C) The various zoning classifications of the land shown on the Official Zoning Map of the City of Grand Island, Nebraska, are hereby confirmed and that this annexation will have no impact on the extraterritorial zoning jurisdiction.

(D) There is unity of interest in the use of the said tract of land, lots, tracts, highways and streets (lands) with the use of land in the City, and the community convenience

ORDINANCE NO. 9339 (Cont.)

and welfare and in the interests of the said City will be enhanced through incorporating the subject land within the corporate limits of the City of Grand Island.

(E) The plan for extending City services is hereby approved and ratified as amended.

SECTION 2. The boundaries of the City of Grand Island, Nebraska, be and are hereby extended to include within the corporate limits of the said City the contiguous and adjacent tract of land located within the boundaries described above.

SECTION 3. The subject tract of land is hereby annexed to the City of Grand Island, Hall County, Nebraska, and said land and the persons thereon shall thereafter be subject to all rules, regulations, ordinances, taxes and all other burdens and benefits of other persons and territory included within the City of Grand Island, Nebraska.

SECTION 4. The owners of the land so brought within the corporate limits of the City of Grand Island, Nebraska, are hereby compelled to continue with the streets, alleys, easements, and public rights-of-way that are presently platted and laid out in and through said real estate in conformity with and continuous with the streets, alleys, easements and public rights-of-way of the City.

SECTION 5. That a certified copy of this Ordinance shall be recorded in the office of the Register of Deeds of Hall County, Nebraska and indexed against the tracts of land.

SECTION 6. Upon taking effect of this Ordinance, the services of said City shall be furnished to the lands and persons thereon as provided by law, in accordance with the Plan for Extension of City Services adopted herein.

SECTION 7. That all ordinances and resolutions or parts thereof in conflict herewith are hereby repealed.

ORDINANCE NO. 9339 (Cont.)

SECTION 8. This ordinance shall be in full force and effect from and after its passage, approval and publication, in pamphlet form, as provided by law.

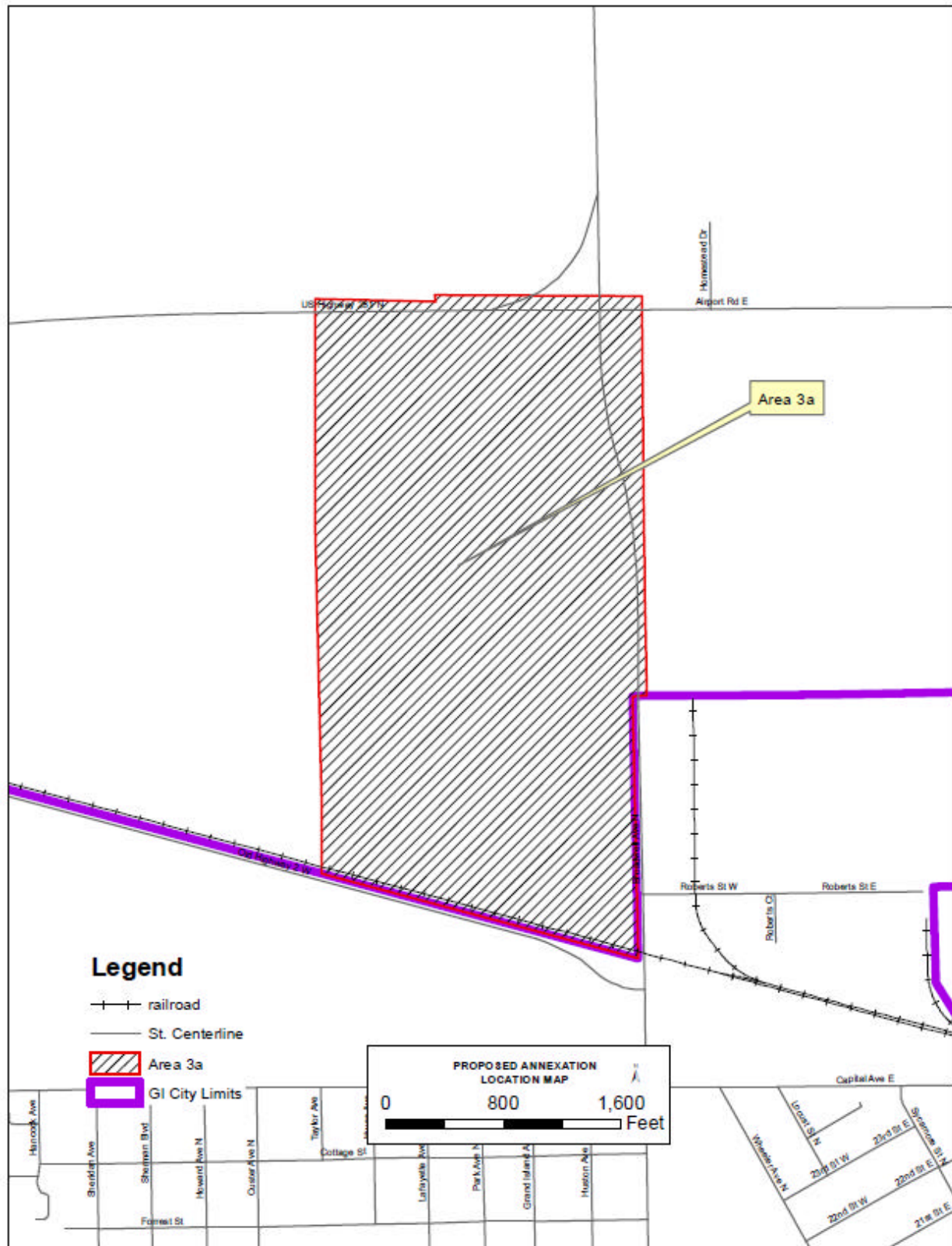
Enacted: November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

ORDINANCE NO. 9339 (Cont.)





City of Grand Island

Tuesday, November 08, 2011

Council Session

Item F2

#9340 - Consideration of Annexation of Property Located North of Bismark Road on the East Side of Stuhr Road (Annexation Area 6) (Second Reading)

This item relates to the aforementioned Ordinance item F-1.

Staff Contact: Chad Nabity

* This Space Reserved For Register of Deeds *

ORDINANCE NO. 9340

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, a tract of land east of Stuhr Road and north of Bismark Road along with all adjoining public Right-of-Way in Hall County, Nebraska referenced as annexation area “6” as more particularly described hereinafter and as shown on Exhibit “A” attached hereto; to provide service benefits thereto; to repeal any ordinance or resolutions or parts of thereof in conflict herewith; to provide for publication in pamphlet form; and to provide the effective date of this ordinance.

WHEREAS, after public hearing on July 6, 2011, the Regional Planning Commission recommended the approval of annexing into the City of Grand Island, the following tract of land in Hall County, Nebraska:

Beginning At A Point 33’ South Of And 183’ East Of Northwest Corner 23-11-9 Said Point Being On The South Line Of Bismark Road Thence Continuing Easterly On The South Line Of Bismark Road For A Distance Of 177.5’ Thence Northerly On A Line 360.5’ East Of And Parallel To The West Lines Of Section 23-11-9 And 14-11-9 Thence Westerly On A Line 191.1’ North Of And Parallel To The South Line Of Section 14-11-9 For A Distance Of 73.63’ Thence Northerly On A Line 286.87’ East Of And Parallel To The West Line Of Section 14-11-9 For A Distance Of 43.30’ Thence Westerly On A Line To A Point 260’ East Of West Line Section 14-11-9 And 234.4’ North Of South Line Of Section 14-11-9 Thence Northerly On A Line 260.0’ East Of And Parallel To The West

Approved as to Form	<input type="checkbox"/>	_____
November 1, 2011	<input type="checkbox"/>	City Attorney

ORDINANCE NO. 9340 (Cont.)

Line Of Section 14-11-9 For A Distance Of 170.0' Thence West On A Line To A Point 191.10' East Of And 404.4' North Of The South Line Of Section 14-11-9 Thence Northerly On A Line 191.1' East Of And Parallel To The West Line Of Section 14-11-9 For A Distance Of 539.47' Thence Westerly on A Line 943.87' North Of And Parallel To The South Line Of Section 14-11-9 To The East Line Of Stuhr Road Thence Northerly On The East Line Of Stuhr Road To The Southwest Corner Of Lot 101 Industrial Addition Thence Easterly On The South Line Of Lot 101, 100 & 90 Industrial Addition For A Distance of 884.63' Thence Southeasterly On The Southwest Line Of Lot 99 Industrial Addition For A Distance Of 146.53' Thence Northeasterly On The East Line Of Lot 99 Industrial Addition For A Distance Of 50' To The Southerly Line Of The Burlington Northern Santa Fe Railroad Right Of Way Thence Southeasterly On Said Southerly Line Of Burlington Northern Santa Fe Railroad To The Northwest Corner Lot 102 Industrial Addition Thence Southerly On The West Line Of Lots 102, 110, 111 & 118 Industrial Addition To The Southwest Corner Of Lot 118 Industrial Addition Thence Easterly On The South Line Of Lots 115, 116, 117 & 118 Industrial Addition To The Southeast Corner Of Lot 115 Industrial Addition Thence Northerly On The East Line Of Lots 114 & 115 For A Distance of 380' ± Thence South Easterly On A Southerly Line Of Lot 114 Industrial Addition To The Southeast Corner Of Lot 114 Industrial Addition Thence Easterly On The South Line Of Lot 114 Industrial Addition To The Southerly Line Of The Burlington Northern Santa Fe Railroad Right Of Way Thence Southeasterly On Said South Line Of The Burlington Northern Santa Fe Railroad To A Point Of The South Line Of Bismark Road Thence Southwesterly On A Line For A Distance Of 166.5'± Thence Northwesterly On A Line For A Distance Of 330' To A Said Point Being 169.4' South Of The North Line Of Section 23-11-9 Thence Westerly On A Line For A Distance of 418.9' To A Point Being 161' South Of The North Line Of Section 23-11-9 Thence Continuing Westerly On A Line For A Distance Of 1000' To A Point Being 151' South Of The North Line Of Section 23-11-9 Thence Continuing Westerly On A Line For A Distance Of 587.6' To A Point 149.63' South Of The North Line Of Section 23-11-9 Thence Continuing Westerly On A Line For A Distance Of 912.4' To A Point Being 148' South Of The North Line Of Section 23-11-9 Thence Westerly On A Line Being 148' South Of And Parallel To The North Line Of Section 23-11-9 For A Distance Of 224.6' Thence Northerly On A Line For A Distance Of 115' To The Point Of Beginning.

WHEREAS, after public hearing on October 25, 2011, the City Council of the City of Grand Island found and determined that such annexation be approved; and

WHEREAS, on October 25, 2011, the City Council of the City of Grand Island approved such annexation on first reading.

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

ORDINANCE NO. 9340 (Cont.)

SECTION 1. It is hereby found and determined that:

(A) The above-described tracts of land are urban or suburban in character, and that the subject properties are contiguous or adjacent to the corporate limits of said City.

(B) The subject lands will receive the material benefits and advantages currently provided to land within the City's corporate limits including, but not limited to police, fire, emergency services, street maintenance, and utilities services upon annexation to the City of Grand Island, Nebraska, and that City electric, water and sanitary sewer service is available, or will be made available, as provided by law.

(C) The various zoning classifications of the land shown on the Official Zoning Map of the City of Grand Island, Nebraska, are hereby confirmed and that this annexation will have no impact on the extraterritorial zoning jurisdiction.

(D) There is unity of interest in the use of the said tract of land, lots, tracts, highways and streets (lands) with the use of land in the City, and the community convenience and welfare and in the interests of the said City will be enhanced through incorporating the subject land within the corporate limits of the City of Grand Island.

(E) The plan for extending City services is hereby approved and ratified as amended.

SECTION 2. The boundaries of the City of Grand Island, Nebraska, be and are hereby extended to include within the corporate limits of the said City the contiguous and adjacent tract of land located within the boundaries described above.

SECTION 3. The subject tract of land is hereby annexed to the City of Grand Island, Hall County, Nebraska, and said land and the persons thereon shall thereafter be subject

ORDINANCE NO. 9340 (Cont.)

to all rules, regulations, ordinances, taxes and all other burdens and benefits of other persons and territory included within the City of Grand Island, Nebraska.

SECTION 4. The owners of the land so brought within the corporate limits of the City of Grand Island, Nebraska, are hereby compelled to continue with the streets, alleys, easements, and public rights-of-way that are presently platted and laid out in and through said real estate in conformity with and continuous with the streets, alleys, easements and public rights-of-way of the City.

SECTION 5. That a certified copy of this Ordinance shall be recorded in the office of the Register of Deeds of Hall County, Nebraska and indexed against the tracts of land.

SECTION 6. Upon taking effect of this Ordinance, the services of said City shall be furnished to the lands and persons thereon as provided by law, in accordance with the Plan for Extension of City Services adopted herein.

SECTION 7. That all ordinances and resolutions or parts thereof in conflict herewith are hereby repealed.

SECTION 8. This ordinance shall be in full force and effect from and after its passage, approval and publication, in pamphlet form, as provided by law.

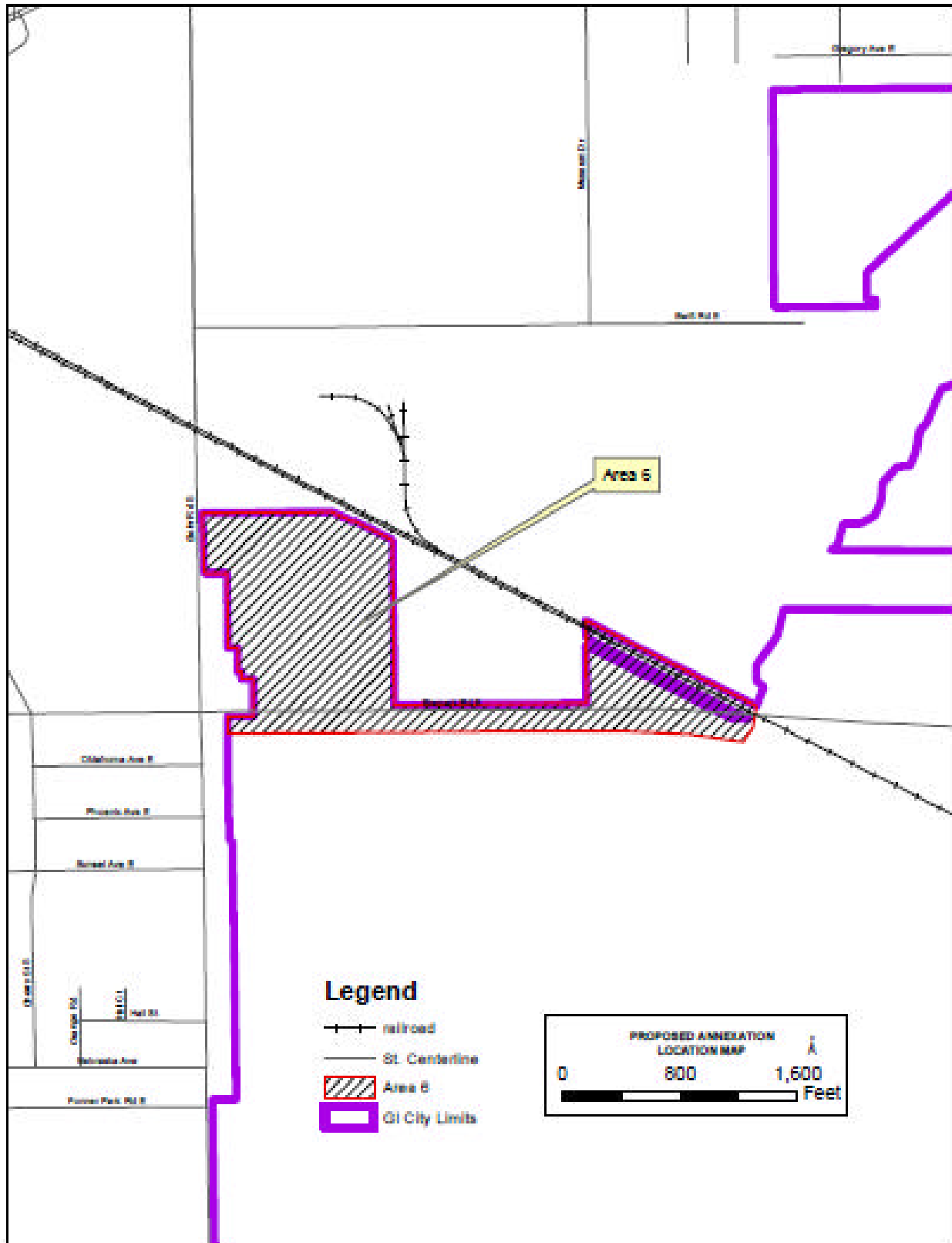
Enacted: November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

ORDINANCE NO. 9340 (Cont.)





City of Grand Island

Tuesday, November 08, 2011

Council Session

Item F3

**#9341 - Consideration of Annexation of Property Located North of
US Highway 34 on the East Side of South Locust Street
(Annexation Area 7) (Second Reading)**

This item relates to the aforementioned Ordinance item F-1.

Staff Contact: Chad Nabity

* This Space Reserved For Register of Deeds *

ORDINANCE NO. 9341

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, a tract of land east of Locust Street and north of U.S. Highway 34 along with all adjoining public Right-of-Way in Hall County, Nebraska referenced as annexation area “7” as more particularly described hereinafter and as shown on Exhibit “A” attached hereto; to provide service benefits thereto; to repeal any ordinance or resolutions or parts of thereof in conflict herewith; to provide for publication in pamphlet form; and to provide the effective date of this ordinance.

WHEREAS, after public hearing on July 6, 2011, the Regional Planning Commission recommended the approval of annexing into the City of Grand Island, the following tract of land in Hall County, Nebraska:

Beginning At The Southeast Corner Of Desert Rose Subdivision Thence North On The East Line Of Desert Rose Subdivision For A Distance Of 323.6’ Thence Easterly On The South Line Of Desert Rose Sub For A Distance Of 55’ Thence Northerly On The East Line Of Desert Rose Subdivision For A Distance Of 201’ To The Northeast Corner Of Desert Rose Subdivision Thence Easterly On An Extension Of The North Line Of Desert Rose Subdivision For A Distance Of 445’ ± Thence Northerly On A Line For A Distance Of 669.4’ ± To The South Line Of Firethorne Estates Subdivision Thence Easterly On The South Line Of Firethorne Estates Subdivision For A Distance Of 1,223.6’ ± Thence Southerly On A Line For A Distance Of 327.5’ ± Thence Southwesterly On A Line For A

Approved as to Form	<input type="checkbox"/> _____
November 1, 2011	<input type="checkbox"/> City Attorney

ORDINANCE NO. 9341 (Cont.)

Distance Of 654.1'± Thence Westerly On A Line For A Distance Of 106' Thence Southerly On A Line For A Distance Of 193.6'± Thence Easterly On A Line For A Distance Of 106' Thence South On A Line To A Point On The North Line Of the U.S. Highway 34, Husker Highway Thence Westerly On The South Line Of Said U.S. Highway 34, Husker Highway To The West Line Of Northeast Quarter Of Northwest Quarter Section 34-11-9 Thence Northerly On The West Line Of Northeast Quarter, Northwest Quarter Section 34-11-9 To The North Line Of Section 34-11-9 Thence Continuing Northerly On The West Line Of The Southeast Quarter Of Southwest Quarter Section 27-11-9 To The North Line Of U.S. Highway 34, Husker Highway Thence Westerly And Northerly On The North Line Of U.S. Highway 34, Husker Highway To The Point Of Beginning

WHEREAS, after public hearing on October 25, 2011, the City Council of the City of Grand Island found and determined that such annexation be approved; and

WHEREAS, on October 25, 2011, the City Council of the City of Grand Island approved such annexation on first reading.

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

SECTION 1. It is hereby found and determined that:

(A) The above-described tracts of land are urban or suburban in character, and that the subject properties are contiguous or adjacent to the corporate limits of said City.

(B) The subject lands will receive the material benefits and advantages currently provided to land within the City's corporate limits including, but not limited to police, fire, emergency services, street maintenance, and utilities services upon annexation to the City of Grand Island, Nebraska, and that City electric, water and sanitary sewer service is available, or will be made available, as provided by law.

ORDINANCE NO. 9341 (Cont.)

(C) The various zoning classifications of the land shown on the Official Zoning Map of the City of Grand Island, Nebraska, are hereby confirmed and that this annexation will have no impact on the extraterritorial zoning jurisdiction.

(D) There is unity of interest in the use of the said tract of land, lots, tracts, highways and streets (lands) with the use of land in the City, and the community convenience and welfare and in the interests of the said City will be enhanced through incorporating the subject land within the corporate limits of the City of Grand Island.

(E) The plan for extending City services is hereby approved and ratified as amended.

SECTION 2. The boundaries of the City of Grand Island, Nebraska, be and are hereby extended to include within the corporate limits of the said City the contiguous and adjacent tract of land located within the boundaries described above.

SECTION 3. The subject tract of land is hereby annexed to the City of Grand Island, Hall County, Nebraska, and said land and the persons thereon shall thereafter be subject to all rules, regulations, ordinances, taxes and all other burdens and benefits of other persons and territory included within the City of Grand Island, Nebraska.

SECTION 4. The owners of the land so brought within the corporate limits of the City of Grand Island, Nebraska, are hereby compelled to continue with the streets, alleys, easements, and public rights-of-way that are presently platted and laid out in and through said real estate in conformity with and continuous with the streets, alleys, easements and public rights-of-way of the City.

SECTION 5. That a certified copy of this Ordinance shall be recorded in the office of the Register of Deeds of Hall County, Nebraska and indexed against the tracts of land.

ORDINANCE NO. 9341 (Cont.)

SECTION 6. Upon taking effect of this Ordinance, the services of said City shall be furnished to the lands and persons thereon as provided by law, in accordance with the Plan for Extension of City Services adopted herein.

SECTION 7. That all ordinances and resolutions or parts thereof in conflict herewith are hereby repealed.

SECTION 8. This ordinance shall be in full force and effect from and after its passage, approval and publication, in pamphlet form, as provided by law.

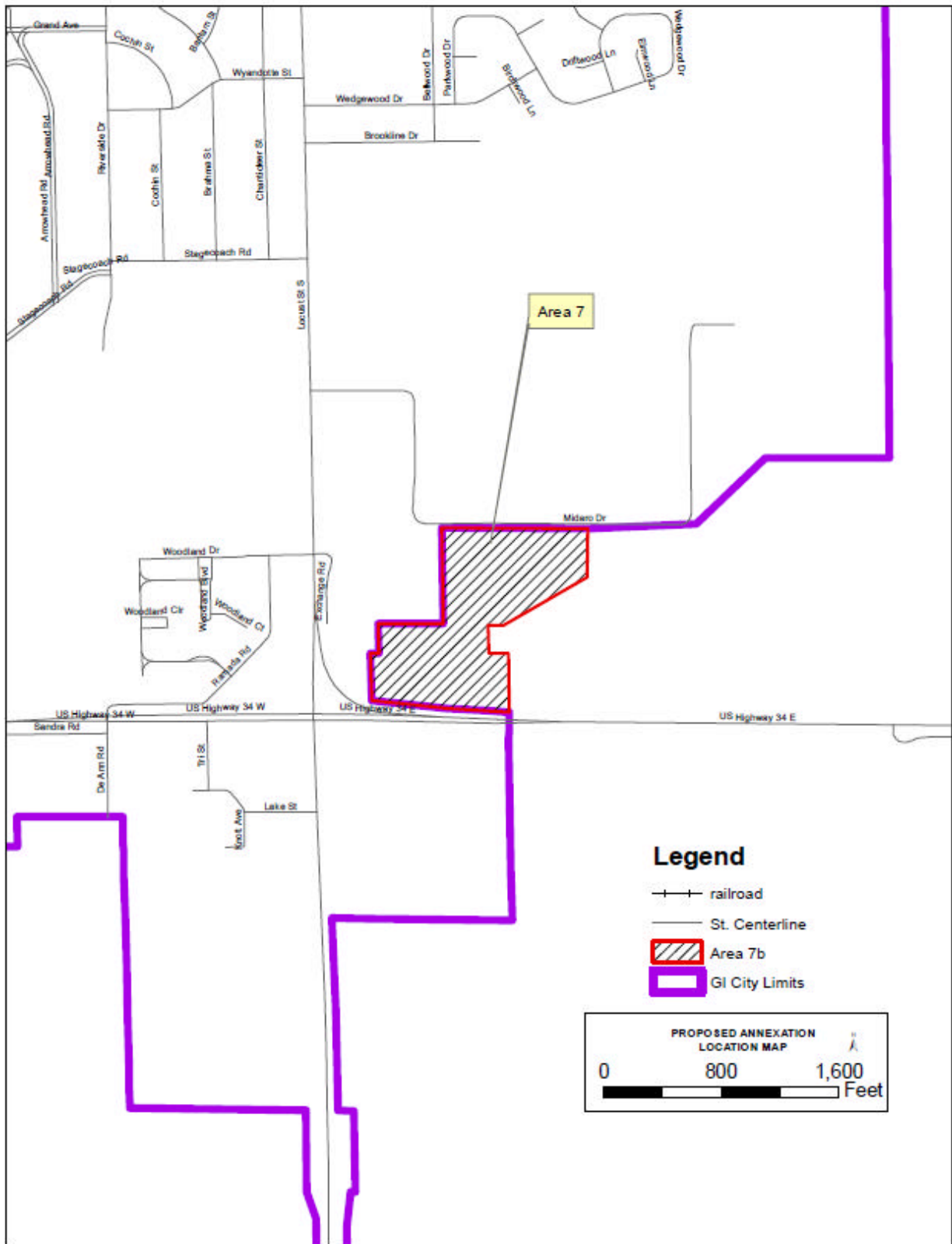
Enacted: November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

ORDINANCE NO. 9341 (Cont.)





City of Grand Island

Tuesday, November 08, 2011

Council Session

Item F4

**#9342 - Consideration of Annexation of Property Located North of
Husker Highway to the West Side of US Highway 281 and
Prairieview Street (Annexation Area 12) (Second Reading)**

This item relates to the aforementioned Ordinance item F-1.

Staff Contact: Chad Nabity

* This Space Reserved For Register of Deeds *

ORDINANCE NO. 9342

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, a tract of land west of U.S. Highway 281 and north of U.S. Highway 34 along with all adjoining public Right-of-Way in Hall County, Nebraska referenced as annexation area “12” as more particularly described hereinafter and as shown on Exhibit “A” attached hereto; to provide service benefits thereto; to repeal any ordinance or resolutions or parts of thereof in conflict herewith; to provide for publication in pamphlet form; and to provide the effective date of this ordinance.

WHEREAS, after public hearing on July 6, 2011, the Regional Planning Commission recommended the approval of annexing into the City of Grand Island, the following tract of land in Hall County, Nebraska:

Beginning At The Southwest Corner Of Pedcor Subdivision Thence Continuing Southerly On An Extension Of The West Line Of Pedcor Subdivision To The West Line Of Pedcor Subdivision To The Southerly Line Of U.S. Highway 34, Husker Highway Thence Westerly On The South Line Of Said Highway To A Point On The West Line Of The Northeast Quarter Of The Northwest Quarter Section 36-11-10 Thence Northerly On The West Line Of Northeast Quarter, Northwest Quarter Section 36-11-10 To The Northwest Corner Of Northeast Quarter, Northwest Quarter Section 36-11-10 Said Point Also Being The Southwest Corner Of Southeast Quarter Of Southwest Quarter Section 25-11-10 Thence Continuing Northerly On The West Line Of The Southeast Quarter,

Approved as to Form	<input type="checkbox"/>	_____
November 1, 2011	<input type="checkbox"/>	City Attorney

ORDINANCE NO. 9342 (Cont.)

Southwest Quarter, Northeast Quarter, Southwest Quarter And The Southeast Quarter Northwest Quarter Section 25-11-10. To The Northwest Corner Of Southeast Quarter, Northwest Quarter Section 25-11-10 Thence Easterly On The North Line Of Southeast Quarter, Northwest Quarter Section 25-11-10 To The Northeast Corner Of Southeast Quarter, Northwest Quarter Section 25-11-10 The Southerly On The East Line Of Southeast Quarter, Northwest Quarter Section 25-11-10 To The Southeast Corner Of Southeast Quarter, Northwest Quarter Section 25-11-10 Said Point Also Being The Center Of Section 25-11-10 Thence Easterly On The North Line Of Southeast Quarter Section 25-11-10 To The Northwest Corner Of Pedcor Second Subdivision Thence Southerly On The West Line Of Pedcor Second Subdivision and Pedcor Subdivision To The Point Of Beginning

WHEREAS, after public hearing on October 25, 2011, the City Council of the City of Grand Island found and determined that such annexation be approved; and

WHEREAS, on October 25, 2011, the City Council of the City of Grand Island approved such annexation on first reading.

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

SECTION 1. It is hereby found and determined that:

(A) The above-described tracts of land are urban or suburban in character, and that the subject properties are contiguous or adjacent to the corporate limits of said City.

(B) The subject lands will receive the material benefits and advantages currently provided to land within the City's corporate limits including, but not limited to police, fire, emergency services, street maintenance, and utilities services upon annexation to the City of Grand Island, Nebraska, and that City electric, water and sanitary sewer service is available, or will be made available, as provided by law.

(C) The various zoning classifications of the land shown on the Official Zoning Map of the City of Grand Island, Nebraska, are hereby confirmed and that this annexation will have no impact on the extraterritorial zoning jurisdiction.

ORDINANCE NO. 9342 (Cont.)

(D) There is unity of interest in the use of the said tract of land, lots, tracts, highways and streets (lands) with the use of land in the City, and the community convenience and welfare and in the interests of the said City will be enhanced through incorporating the subject land within the corporate limits of the City of Grand Island.

(E) The plan for extending City services is hereby approved and ratified as amended.

SECTION 2. The boundaries of the City of Grand Island, Nebraska, be and are hereby extended to include within the corporate limits of the said City the contiguous and adjacent tract of land located within the boundaries described above.

SECTION 3. The subject tract of land is hereby annexed to the City of Grand Island, Hall County, Nebraska, and said land and the persons thereon shall thereafter be subject to all rules, regulations, ordinances, taxes and all other burdens and benefits of other persons and territory included within the City of Grand Island, Nebraska.

SECTION 4. The owners of the land so brought within the corporate limits of the City of Grand Island, Nebraska, are hereby compelled to continue with the streets, alleys, easements, and public rights-of-way that are presently platted and laid out in and through said real estate in conformity with and continuous with the streets, alleys, easements and public rights-of-way of the City.

SECTION 5. That a certified copy of this Ordinance shall be recorded in the office of the Register of Deeds of Hall County, Nebraska and indexed against the tracts of land.

SECTION 6. Upon taking effect of this Ordinance, the services of said City shall be furnished to the lands and persons thereon as provided by law, in accordance with the Plan for Extension of City Services adopted herein.

ORDINANCE NO. 9342 (Cont.)

SECTION 7. That all ordinances and resolutions or parts thereof in conflict herewith are hereby repealed.

SECTION 8. This ordinance shall be in full force and effect from and after its passage, approval and publication, in pamphlet form, as provided by law.

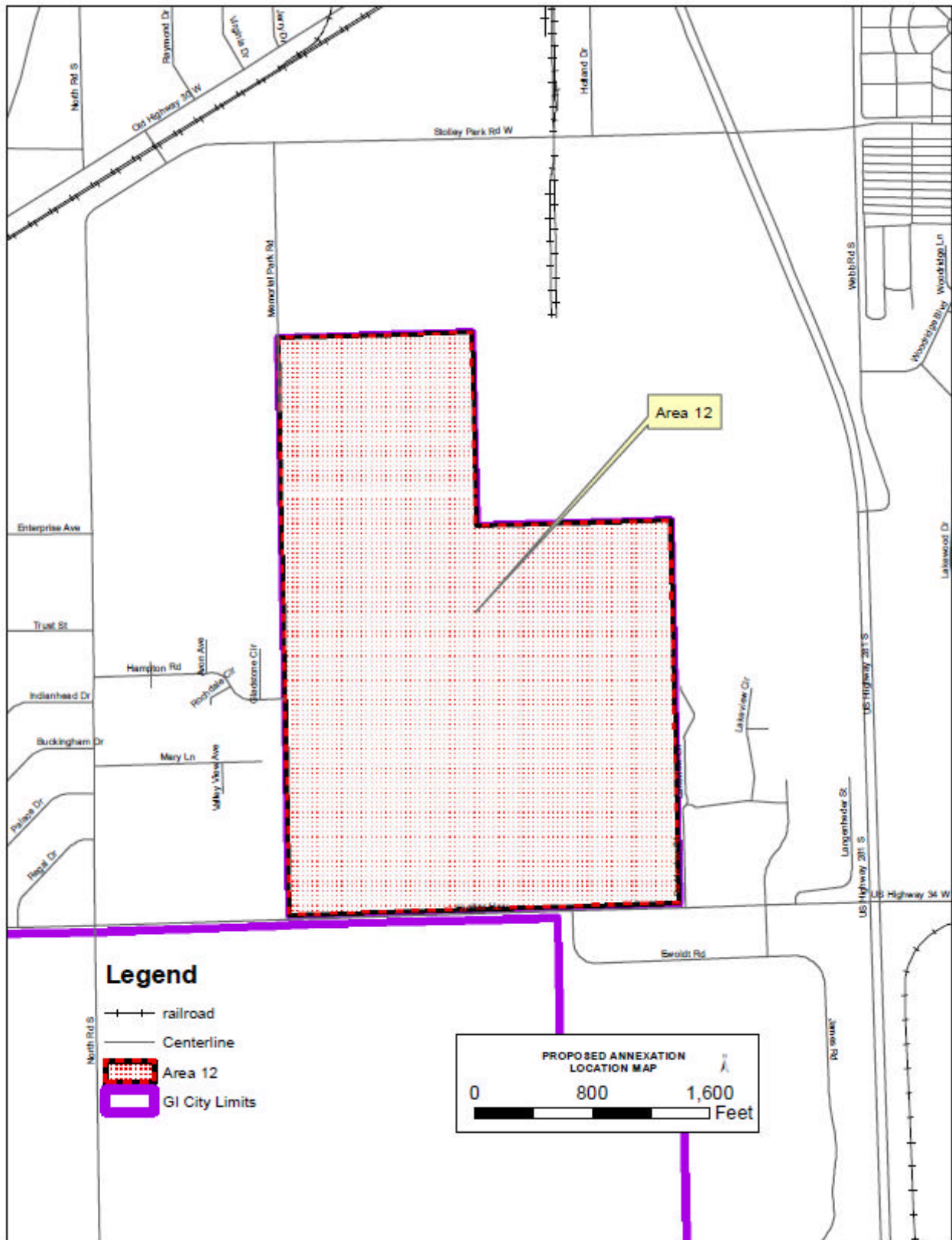
Enacted: November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

ORDINANCE NO. 9342 (Cont.)





City of Grand Island

Tuesday, November 08, 2011

Council Session

Item F5

#9343 - Consideration of Annexation of Property Located South of Old Potash Highway on the West Side of North Road (Annexation Area 13) (Second Reading)

This item relates to the aforementioned Ordinance item F-1.

Staff Contact: Chad Nabity

* This Space Reserved For Register of Deeds *

ORDINANCE NO. 9343

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, a tract of land west of North Road and south of Old Potash Highway along with all adjoining public Right-of-Way in Hall County, Nebraska referenced as annexation area “13” as more particularly described hereinafter and as shown on Exhibit “A” attached hereto; to provide service benefits thereto; to repeal any ordinance or resolutions or parts of thereof in conflict herewith; to provide for publication in pamphlet form; and to provide the effective date of this ordinance.

WHEREAS, after public hearing on July 6, 2011, the Regional Planning Commission recommended the approval of annexing into the City of Grand Island, the following tract of land in Hall County, Nebraska:

Beginning At The Northeast Corner Section 23-11-10 Thence Southerly On The East Line Of Said Section 23-11-10 To A Point 300' North Of The Southeast Corner Of Northeast Quarter Of Northeast Quarter section 23-11-10 Thence West On A Line For A Distance Of 333' Thence Southerly On A Line For A Distance Of 300' To A Point On The North Line Of Gosda Subdivision Thence Westerly On The North Line Of Gosda Subdivision To The Northwest Corner Of Gosda Subdivision Thence Southerly On The West Line Of Gosda Subdivision, Springdale Subdivision And Springdale Second Subdivision To The North Line Of Garland Subdivision Thence Westerly On The North Line Of Garland Subdivision To The Northwest Corner Of Garland Subdivision Also

Approved as to Form	<input type="checkbox"/>	_____
November 1, 2011	<input type="checkbox"/>	City Attorney

ORDINANCE NO. 9343 (Cont.)

Being The Southwest Corner Northeast Quarter Section 23-11-10 Thence Continuing Westerly On The South Line Of The Northwest Quarter Section 23-11-10 For A Distance Of 35' Thence Northerly On A Line To The Southeast Corner Of Copper Creek Estates Subdivision Thence continuing Northerly On The East Line Of Copper Creek Estates Subdivision To The Northeast Corner Of Copper Creek Estates Subdivision Being On The North Line Of Section 23-11-10 To The Point Of Beginning

WHEREAS, after public hearing on October 25, 2011, the City Council of the City of Grand Island found and determined that such annexation be approved; and

WHEREAS, on October 25, 2011, the City Council of the City of Grand Island approved such annexation on first reading.

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

SECTION 1. It is hereby found and determined that:

(A) The above-described tracts of land are urban or suburban in character, and that the subject properties are contiguous or adjacent to the corporate limits of said City.

(B) The subject lands will receive the material benefits and advantages currently provided to land within the City's corporate limits including, but not limited to police, fire, emergency services, street maintenance, and utilities services upon annexation to the City of Grand Island, Nebraska, and that City electric, water and sanitary sewer service is available, or will be made available, as provided by law.

(C) The various zoning classifications of the land shown on the Official Zoning Map of the City of Grand Island, Nebraska, are hereby confirmed and that this annexation will have no impact on the extraterritorial zoning jurisdiction.

(D) There is unity of interest in the use of the said tract of land, lots, tracts, highways and streets (lands) with the use of land in the City, and the community convenience

ORDINANCE NO. 9343 (Cont.)

and welfare and in the interests of the said City will be enhanced through incorporating the subject land within the corporate limits of the City of Grand Island.

(E) The plan for extending City services is hereby approved and ratified as amended.

SECTION 2. The boundaries of the City of Grand Island, Nebraska, be and are hereby extended to include within the corporate limits of the said City the contiguous and adjacent tract of land located within the boundaries described above.

SECTION 3. The subject tract of land is hereby annexed to the City of Grand Island, Hall County, Nebraska, and said land and the persons thereon shall thereafter be subject to all rules, regulations, ordinances, taxes and all other burdens and benefits of other persons and territory included within the City of Grand Island, Nebraska.

SECTION 4. The owners of the land so brought within the corporate limits of the City of Grand Island, Nebraska, are hereby compelled to continue with the streets, alleys, easements, and public rights-of-way that are presently platted and laid out in and through said real estate in conformity with and continuous with the streets, alleys, easements and public rights-of-way of the City.

SECTION 5. That a certified copy of this Ordinance shall be recorded in the office of the Register of Deeds of Hall County, Nebraska and indexed against the tracts of land.

SECTION 6. Upon taking effect of this Ordinance, the services of said City shall be furnished to the lands and persons thereon as provided by law, in accordance with the Plan for Extension of City Services adopted herein.

SECTION 7. That all ordinances and resolutions or parts thereof in conflict herewith are hereby repealed.

ORDINANCE NO. 9343 (Cont.)

SECTION 8. This ordinance shall be in full force and effect from and after its passage, approval and publication, in pamphlet form, as provided by law.

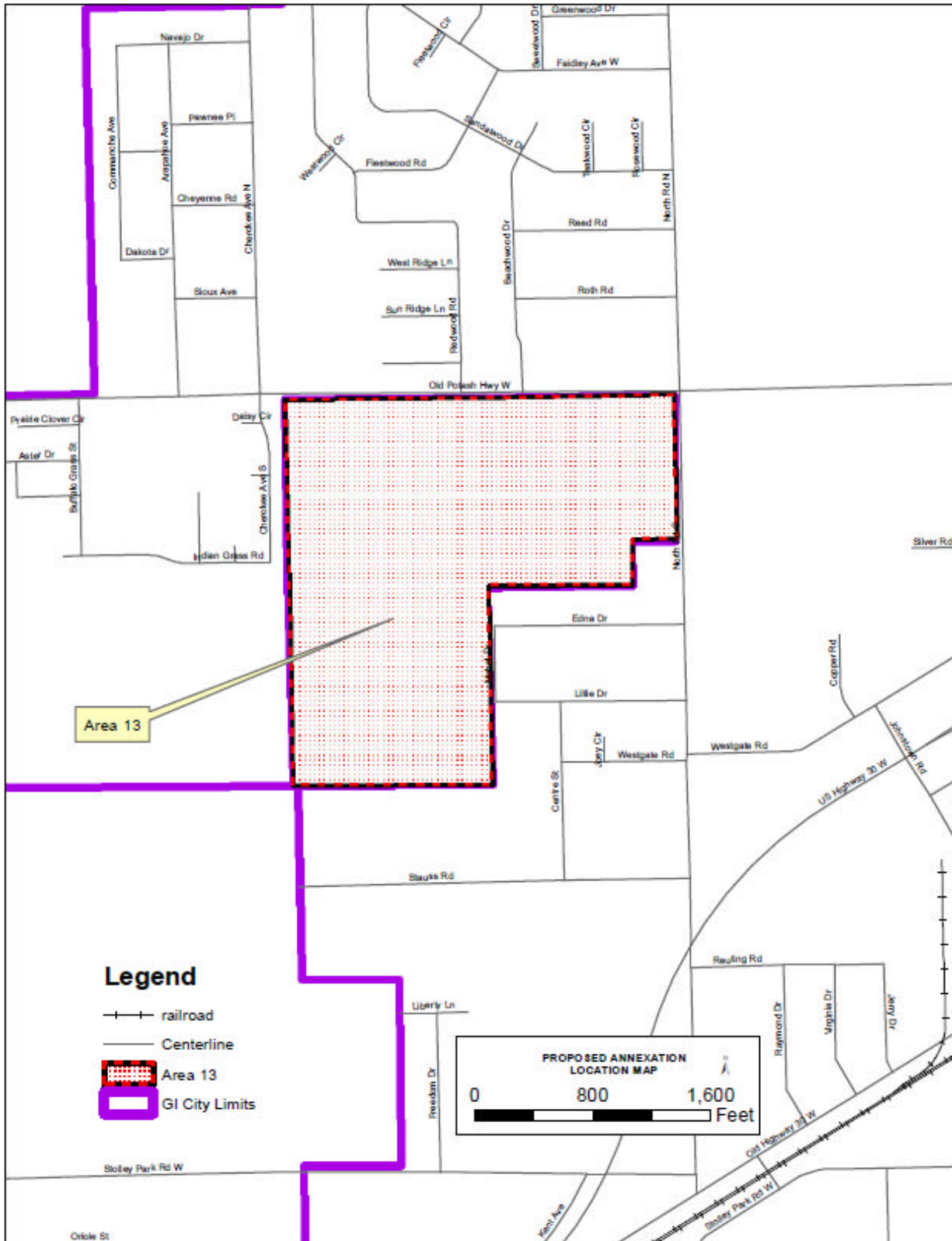
Enacted: November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

ORDINANCE NO. 9343 (Cont.)





City of Grand Island

Tuesday, November 08, 2011

Council Session

Item F6

**#9345 - Consideration of Proposed Modifications to City Council
Ward Boundaries Resulting from Redistricting**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Chad Nabity, AICP

Meeting: November 8, 2011

Subject: Consideration of Proposed Modifications to City Council Ward Boundaries Resulting from Redistricting

Item #'s: F-6

Presenter(s): Chad Nabity, AICP

Background

At the August 23, 2011 meeting the Grand Island City Council approved Mayor Jay Vavricek's appointments by to serve on a redistricting committee. The charge of this committee was to examine the existing City Council ward boundaries and to make a recommendation to the City Council about redrawing these boundaries to best equalize the population in each ward based on data provided by the 2010 U.S. Census of Population and Housing. In a representative democracy each member of the legislative body (City Council) should represent approximately the same number of people in the community to preserve the concept of equality (one person, one vote.) Generally, the equal-population requirement for state legislative and other districts is satisfied as long as the population of the smallest district and the population of the largest district do not vary by more than 10 percent.

Based on the 2010 Census each ward would ideally represent 9,704 people. The Census counts people, not voters, so districts need to be split based on the number of people in each district. Another reason to count people instead of voters is to insure that children are equally represented. They are a constituency that is entitled to representation but without the ability to vote.

Discussion

The Grand Island City Council is required to consider redistricting and adopt new legislative districts if necessary within six months from the date that the Nebraska Unicameral adjourned from their regular session. The ordinance presented tonight will allow Council to meet that requirement.

The population of the wards as currently drawn is as follows:

Ward	Population	% Deviation
Ward 1	10743	10.74
Ward 2	9432	-2.74
Ward 3	8949	-7.79
Ward 4	10012	3.25
Ward 5	9374	-3.74

The City of Grand Island Redistricting Committee included the following members:

Hall County Republican Designee	Jerry Piccolo
Hall County Democrat Designee	Glen Murray
Hall County Independent Designee	Gary Rosacker
Community Youth Council Member	Alex Wirth
Community Youth Council Member	Ashley Bykerk
City Council Representative	Bob Nieman
City Council Representative	Linna Dee Donaldson
At Large Community Representative	Anita Lewandowski Brown
Staff Member (Chairman)	Chad Nabity

The members of this committee along with Pat Larson, the Grand Island GIS Coordinator and Dale Baker, the Hall County Election Commissioner met and used the GIS system to try a variety of different options for Council wards that would achieve the population goals and minimize the number of ballot faces that need to be printed at election time.

The committee presented the map recommended for adoption to the City Council at a study session in October. The map as presented would set the boundaries of the wards and the population of each ward as follows:

Ward	Population	% Deviation
Ward 1	9833	1.33
Ward 2	9438	-2.74
Ward 3	9716	0.12
Ward 4	9600	-1.07
Ward 5	9935	2.38

The proposed population of each ward is well within the 5% deviation allowed from the ideal number. The ward boundaries break in logical areas based on precinct boundaries and other election boundaries. The proposed changes will not be negatively impacted by any proposed or pending annexation actions that Council may or may not approve.

The first map shows the current Council wards and the population of each ward

The second map shows the committee recommendation for new ward boundaries and the population of each ward (This is the map attached to the Ordinance and subject to approval). No sitting Council members will be moved from their district with the new boundaries as proposed.

Alternatives

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

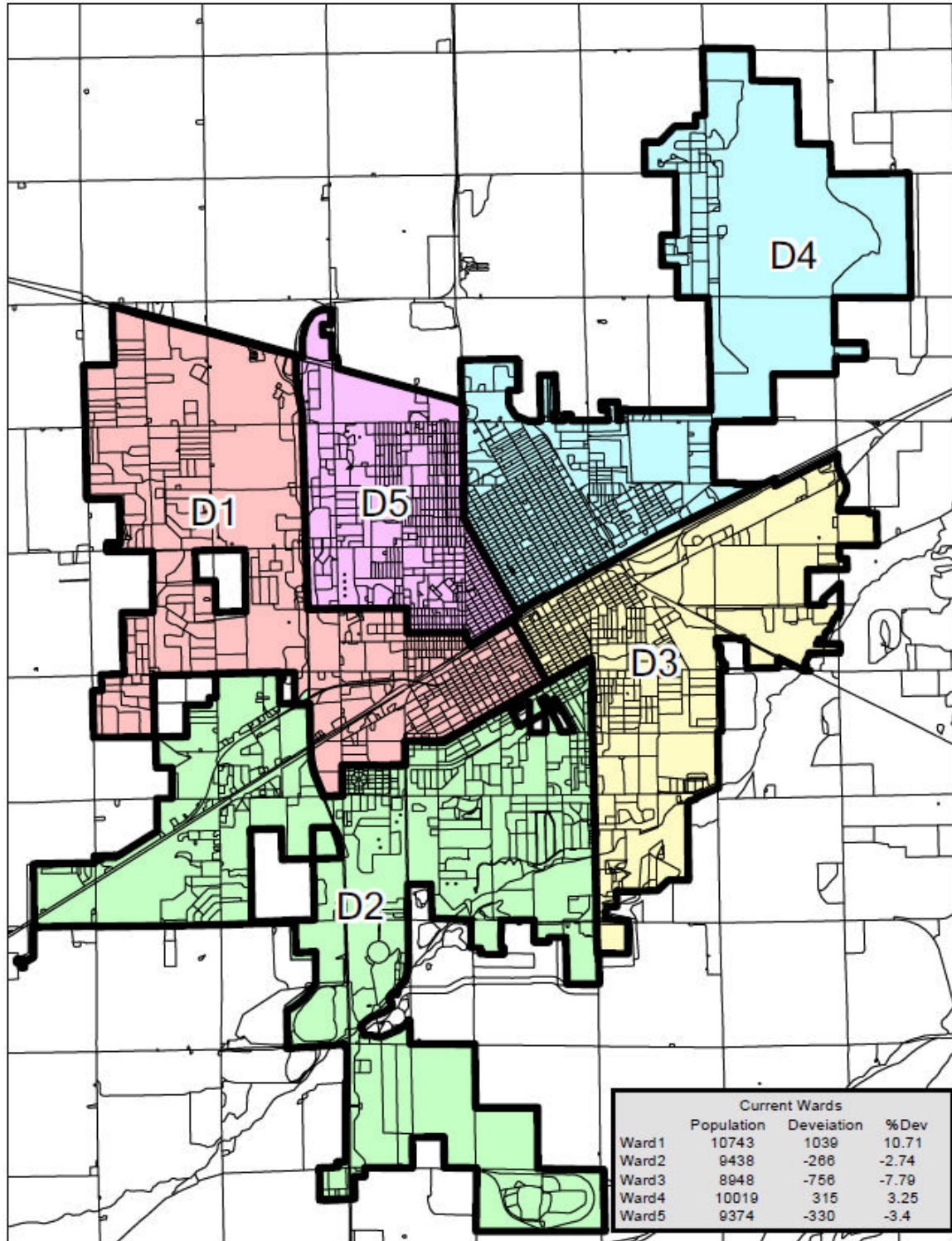
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

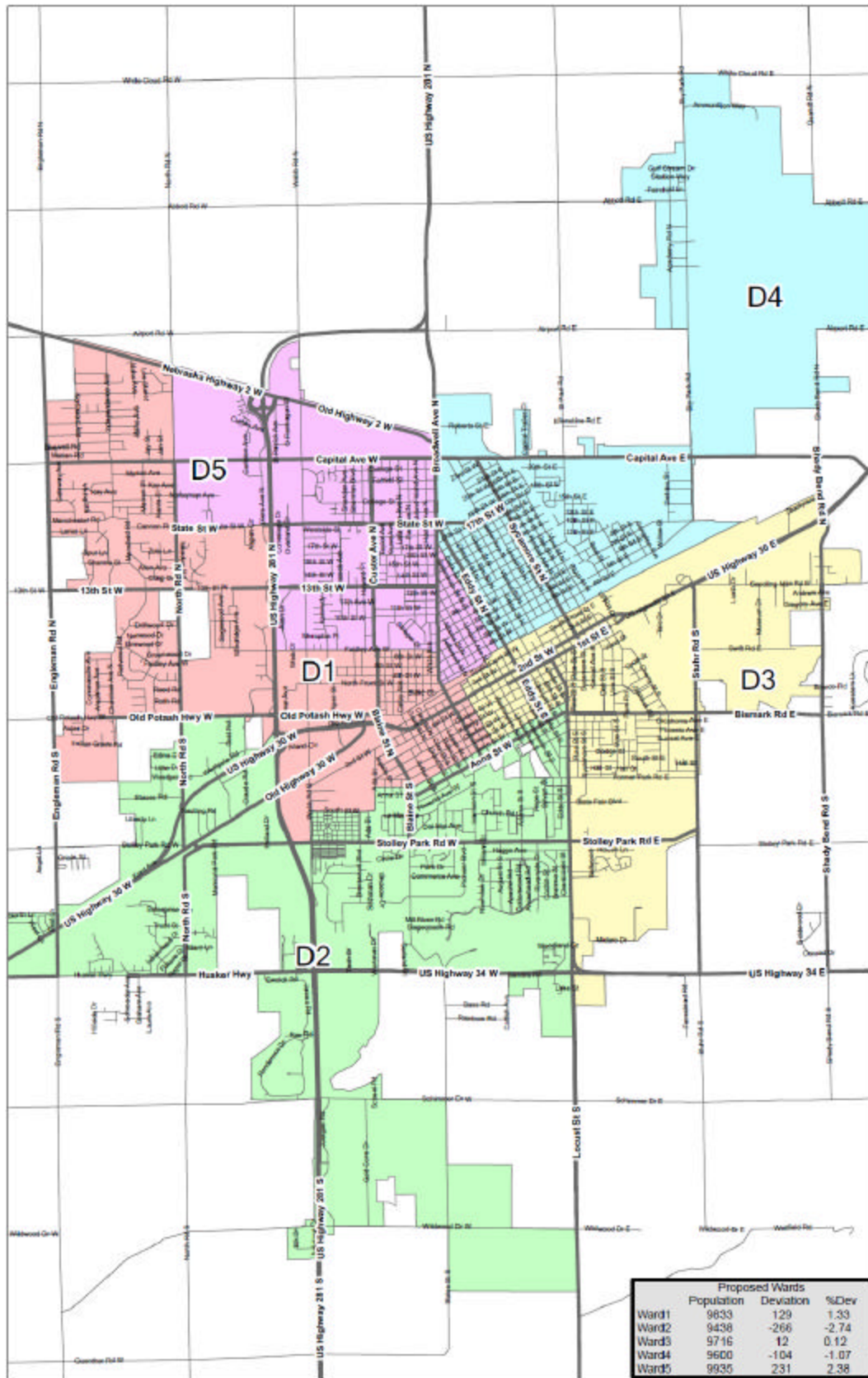
City Administration recommends that the Council approve the Ordinance and the new Ward Map as presented.

Sample Motion

Move to approve the Ordinance as presented.



Current City Council Wards and Population based on 2010 Census



Election Ward Map of the City of Grand Island Nebraska, November 8, 2011

ORDINANCE NO. 9345

An ordinance to amend Grand Island City Code Chapter 14, §14-3 pertaining to Elections; to amend §14-3 pertaining to election wards and their boundaries; to define the boundaries of the wards in the City of Grand Island; to adopt a revised map of such wards; to repeal Grand Island City Code §14-3 as it presently exists; and to provide for the publication and effective date of this ordinance.

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

SECTION I. Grand Island City Code §14-3 is hereby amended to read as follows:

§14-3. Wards; Boundaries

The City of Grand Island, Nebraska, is hereby divided into five wards, numbered 1 through 5, the boundaries of such wards defined as shown on the drawing entitled, "*Election Ward Map of the City of Grand Island, Nebraska.*" The Election Ward Map of the City of Grand Island, Nebraska, shall be kept current and on file in the office of the City Clerk.

SECTION 2. Grand Island City Code §14-3 as it presently exists is hereby repealed.

SECTION 3. 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: November 8, 2011.

Jay Vavricek, Mayor

ATTEST:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 4, 2011	☐ City Attorney



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G1

Approving Minutes of October 25, 2011 City Council Regular Meeting

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL REGULAR MEETING

October 25, 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 October 25, 2011. Notice of the meeting was given in *The Grand Island Independent* on October 19, 2011.

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

INVOCATION was given by Father Chuck Peek, St. Stephen's Episcopal Church, 422 West 2nd Street followed by the PLEDGE OF ALLEGIANCE.

MAYOR COMMUNICATION: Mayor Vavricek introduced Community Youth Council members Michael Hollman and McKenzie Reed and Board member Jennifer Cramer. Mentioned was the State Fair newsletter on their web-site, Chili Cook-Off here at City Hall for the United Way and several other events taking place this week.

PRESENTATIONS AND PROCLAMATIONS:

Recognition of Grand Island Senior High Girls Golf Team for Class "A" State Championship. Mayor Vavricek and the City Council recognized the Grand Island Senior High Girls Golf Team and Coach Kelli Jeffries for their win in the Class "A" Girls Golf State Championship. Ms. Jeffries and the girl's team members: Abbie Otto, Tori Peers, Zandria Cole, Leigh Uhing, and Jennifer Wetzel were present for the recognition.

Proclamation "National Adoption Month" November, 2011. Mayor Vavricek proclaimed the month of November, 2011 as "National Adoption Month". Yolanda Nuncio and Marge Creason were present to receive the proclamation.

Recognition of Tim Luchsinger, Utilities Director for 25 Years of Service with the City of Grand Island. Mayor Vavricek and the City Council recognized Utilities Director Tim Luchsinger for his 25 years of service with the City of Grand Island. City Administrator Mary Lou Brown commented on Mr. Luchsinger's service. Mr. Luchsinger was present for the recognition.

PUBLIC HEARINGS:

Public Hearing on Request from Zoul Hospitality, LLC dba Willman's Bottle Shop, 1201 South Locust Street for a Class "CK" Liquor License. RaNae Edwards, City Clerk reported that an application for a Class "CK" Liquor License had been received from Zoul Hospitality, LLC dba Willman's Bottle Shop, 1201 South Locust Street. Ms. Edwards presented the following exhibits for the record: application submitted to the Liquor Control Commission and received by the City on October 5, 2011; notice to the general public of date, time, and place of hearing published on October 15, 2011; notice to the applicant of date, time, and place of hearing mailed on October 5, 2011; along

with Chapter 4 of the City Code. Staff recommended approval contingent upon final inspections. Dan Thayer, Attorney for the applicant spoke in support. No further public testimony was heard.

Public Hearing on Request from Simara Y. Rodriguez dba El Trancazo Bar, 413 West 4th Street for a Class "I" Liquor License. RaNae Edwards, City Clerk reported that an application for a Class "I" Liquor License had been received from Simara Y. Rodriguez dba El Trancazo Bar, 413 West 4th Street. Ms. Edwards presented the following exhibits for the record: application submitted to the Liquor Control Commission and received by the City on October 6, 2011; notice to the general public of date, time, and place of hearing published on October 15, 2011; notice to the applicant of date, time, and place of hearing mailed on October 6, 2011; along with Chapter 4 of the City Code. Staff recommended denial based on the Police Department report of Horacio Rodriguez, spouse of Simara Rodriguez undisclosed convictions and not a United States citizen. No public testimony was heard.

Public Hearing on Acquisition of Utility Easement located at 232 Wilmar Avenue (Texas Roadhouse). Utilities Director Tim Luchsinger reported that acquisition of a utility easement located at 232 Wilmar Avenue was needed in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers for the purpose of placing underground conduit, high voltage cable and a single phase pad-mounted transformer to provide electricity to two new homes to be built on adjacent lots. Staff recommended approval. No public testimony was heard.

Mayor Vavricek recused himself due to a potential conflict of interest and Council President Peg Gilbert conducted the meeting for the following item:

Public Hearing on Request to Rezone Properties Located West of Webb Road, South of Faidley Avenue and North of West North Front Street from LLR – Large Lot Residential to B2 – General Business Zone. Regional Planning Director Chad Nabity reported that an application had been submitted to rezone properties located west of Webb Road, south of Faidley Avenue and north of West North Front Street from LLR – Large Lot Residential to B2 – General Business Zone. Staff recommended approval. No public testimony was heard.

Mayor Vavricek resumed the meeting.

Public Hearing on Annexation for Property Located South of Airport Road/U.S. Highway 281 and the West Side of Broadwell Avenue North of the Burlington Northern Santa Fe Tracks Including Eagle Scout Park and the Veterans Field being Platted as Olson Subdivision (Annexation Area 3a). Regional Planning Director Chad Nabity reported that property located south of Airport Road/U.S. Highway 281 and the west side of Broadwell Avenue north of the Burlington Northern Santa Fe Tracks including Eagle Scout Park and the Veterans Field being Platted as Olson Subdivision was being considered for annexation. Staff recommended approval. No public testimony was heard.

Public Hearing on Annexation of Property Located North of Bismark Road on the East Side of Stuhr Road (Annexation Area 6). Regional Planning Director Chad Nabity reported that property located north of Bismark road on the east side of Stuhr Road was being considered for annexation. Staff recommended approval. Bill Mowinkel, School Superintendent at Northwest spoke in opposition. No further public testimony was heard.

Public Hearing on Annexation of Property Located North of U.S. Highway 34 on the East Side of South Locust Street (Annexation Area 7). Regional Planning Director Chad Nabity reported that

property located north of U.S. Highway 34 on the east side of South Locust Street was being considered for annexation. Staff recommended approval. No public testimony was heard.

Public Hearing on Annexation of Property Located North of Husker Highway to the West Side of U.S. Highway 281 and Prairieview Street (Annexation Area 12). Regional Planning Director Chad Nabity reported that property located north of Husker Highway to the west side of U.S. Highway 281 and Prairieview Street was being considered for annexation. Staff recommended approval. Bill Mowinkel, School Superintendent at Northwest spoke in opposition. No further public testimony was heard.

Public Hearing on Annexation of Property Located South of Old Potash Highway on the West Side of North Road (annexation Area 13). Regional Planning Director Chad Nabity reported that property located south of Old Potash Highway on the west side of North Road was being considered for annexation. Staff recommended approval. Bill Mowinkel, School Superintendent at Northwest spoke in opposition. No further public testimony was heard.

Public Hearing on Annexation of Property Located South of 13th Street on the East and West Side of North Road and North of Faidley Avenue (Annexation Area 14). Regional Planning Director Chad Nabity reported that property located south of 13th Street on the east and west side of North Road and north of Faidley Avenue was being considered for annexation. Staff recommended approval. Bill Mowinkel, School Superintendent at Northwest and Floyd Leiser, 3550 Engleman Road spoke in opposition. No further public testimony was heard.

Public Hearing on Acquisition of Public Sanitary Sewer Utility Easement in the SE 1/4 of Section 23-11-1 (Chief Industries, Inc.). Public Works Director John Collins reported that a public sanitary sewer utility easement was needed in the Southeast Quarter of Section 23-11-10 to accommodate public utilities. The easement would allow for the construction, operation, maintenance, extension, repair, replacement, and removal of public utilities within the easement. The 20' easement would provide for extending sanitary sewer to the new Green Line Equipment dealership on the north side of Stolley Park Road and US Highway 30, plus allow for future development in this area. Staff recommended approval. No public testimony was heard.

ORDINANCES:

#9334 – Consideration of Annexation of Olson Subdivision Located South of Airport Road and North and West of US Highway 281 (Final Reading)

Regional Planning Director Chad Nabity reported this was the final of three readings for the annexation of Olson Subdivision.

Motion by Gilbert, second by Dugan to approve Ordinance #9334 on final reading. Upon roll call vote all voted aye. Motion adopted.

Mayor Vavricek recused himself due to a potential conflict of interest and Council President Peg Gilbert conducted the meeting for the following item:

Councilmember Nickerson moved “that the statutory rules requiring ordinances to be read by title on three different days are suspended and that ordinance numbered:

#9338 – Consideration of Request to Rezone Properties Located West of Webb Road, South of Faidley Avenue and North of West North Front Street from LLR – Large Lot Residential to B2 – General Business Zone

be considered for passage on the same day upon reading by number only and that the City Clerk be permitted to call out the number of this ordinance on second reading and then upon final passage and call for a roll call vote on each reading and then upon final passage.” Councilmember Dugan second the motion. Upon roll call vote, all voted aye. Motion adopted.

Regional Planning Director Chad Nabity reported this item related to the aforementioned Public Hearing.

Motion by Dugan, second by Gard to approve Ordinance #9338.

City Clerk: Ordinance #9338 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

City Clerk: Ordinance #9338 on final passage. All those in favor of the passage of this ordinance on final passage, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

Council President Gilbert: By reason of the roll call votes on first reading and then upon final passage, Ordinance #9338 is declared to be lawfully adopted upon publication as required by law.

Mayor Vavricek resumed the meeting.

#9339 – Consideration of Annexation of Property Located South of Airport Road/US Highway 281 and the West Side of Broadwell Avenue North of the Burlington Northern Santa Fe Tracks Including Eagle Scout Park and the Veterans Field (Area 3a) (First Reading)

Motion by Dugan, second by Gericke to approve Ordinance #9339 on first reading.

City Clerk: Ordinance #9339 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

#9340 – Consideration of Annexation of Property Located North of Bismark Road on the East Side of Stuhr Road (Annexation Area 6) (First Reading)

Motion by Gilbert, second by Donaldson to approve Ordinance #9340 on first reading.

A lengthy discussion was held regarding the reasons for the City to annex these areas at this time. Mr. Nabity stated these were areas that would clean up the City limits, were eligible for annexation, and Council had recommended we move forward with annexation on these areas. Mr. Mowinkel commented on the loss of property tax to the Northwest School District. Virgil Harden, Grand Island Public School Superintendent commented on State Aid to schools and how that is equalized with the property tax.

Comments were made that the City provides services to these areas and do not generate revenue from them as they are not in the City limits. Police Chief Steve Lamken commented about calls to these areas. City Attorney Robert Sivick reported that these agricultural areas were suburban in nature and not rural as they were surrounded by the City.

City Clerk: Ordinance #9340 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, Councilmember's Haase, Niemann, Gilbert, Donaldson, Gard, and Gericke voted aye. Councilmember's Carney, Nickerson, and Dugan voted no. Motion adopted.

#9341 – Consideration of Annexation of Property Located North of US Highway 34 on the East Side of South Locust Street (Annexation Area 7) (First Reading)

Motion by Gard, second by Dugan to approve Ordinance #9341 on first reading.

City Clerk: Ordinance #9341 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

#9342 – Consideration of Annexation of Property located North of Husker Highway to the West Side of US Highway 281 and Prairieview Street (Annexation Area 12) (First Reading)

Motion by Gard, second by Gilbert to approve Ordinance #9342 on first reading.

City Clerk: Ordinance #9342 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, Councilmember's Haase, Carney, Niemann, Gilbert, Donaldson, Gard, and Gericke voted aye. Councilmember's Nickerson and Dugan voted no. Motion adopted.

#9343 – Consideration of Annexation of Property Located South of Old Potash Highway on the West Side of North Road (Annexation Area 13) (First Reading)

Motion by Gard, second by Gilbert to approve Ordinance #9343 on first reading.

City Clerk: Ordinance #9343 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, Councilmember's Haase, Carney, Niemann, Gilbert, Gard, and Gericke voted aye. Councilmember's Nickerson, Donaldson, and Dugan voted no. Motion adopted.

#9344 – Consideration of Annexation of Property Located South of 13th Street on the East and West Side of North Road and North of Faidley Avenue (Annexation Area 14) (First Reading)

Motion by Gilbert, second by Gard to approve Ordinance #9344 on first reading.

City Clerk: Ordinance #9344 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, Councilmember's Niemann, Gilbert, and Gard voted aye. Councilmember's Haase, Carney, Nickerson, Donaldson, Dugan, and Gericke voted no. Motion failed.

CONSENT AGENDA: Consent Agenda items G-9 and G-10 were pulled for further discussion. Motion by Gericke, second by Haase to approve the Consent Agenda excluding items G-9 and G-10. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of October 11, 2011 City Council Regular Meeting.

Approving Minutes of October 18, 2011 City Council Study Session.

Approving Refuse Hauler Permit for Scott's Hauling, 3230 Westside Street.

#2011-311 – Approving Final Plat and Subdivision Agreement for Olson Subdivision. It was noted that Phil and Linda Mader, owners had submitted the Final Plat and Subdivision Agreement for Olson Subdivision for the purpose of creating 1 lot on property located north and west of US Highway 281 and south of Airport Road in the two mile extraterritorial jurisdiction containing 1.879 acres.

#2011-312 – Approving Acquisition of Utility Easement located at 232 Wilmar Avenue (Texas Roadhouse Holdings, LLC).

#2011-313 – Approving Bid Award for Transmission Line Construction – 115 kV Interconnection with NPPD at St. Libory with IES Commercial, Inc. (Kayton Electric) of Holdrege, Nebraska in an Amount of \$3,732,714.50.

#2011-314 – Approving Acquisition of Public Sanitary Sewer Utility Easement in the SE 1/4 of Section 23-11-10 (Chief Industries, Inc.).

#2011-315 – Approving Union Pacific Railroad Pipeline Crossing Agreement for Southwest Drainage Project No. 2011-D-1; Central Community College to the Wood River.

#2011-316 – Approving Amending the City of Grand Island Police Officers' Retirement System Plan and Trust for Changes in the Applicable Tax Laws. Interim Finance Director Jaye Monter reported this was an amendment to the current Retirement System Plan and Trust for changes in the applicable tax laws.

Motion by Gericke, second by Haase to approve #2011-316.

Discussion was held concerning sections 6, 9, 11, and 12 that do not apply to the City. Ms. Monter stated this was boiler plate amendments as recommended by Wells Fargo and there was no financial impact to the City. Mr. Sivick stated we should check with Wells Fargo before we pulled any of these items out of the plan.

City Administrator Mary Lou Brown recommended we have Wells Fargo come to our next Study Session on November 1, 2011 to explain these changes.

Motion by Nickerson, second by Haase to refer Resolution #2011-316 to the November 8, 2011 City Council meeting. Upon roll call vote, all voted aye. Motion adopted.

#2011-317 – Approving Amending the City of Grand Island Firefighters' Retirement System Plan and Trust for Changes in the Applicable Tax Laws. Interim Finance Director Jaye Monter reported this was an amendment to the current Retirement System Plan and Trust for changes in the applicable tax laws.

Motion by Gericke, second by Haase to approve #2011-316.

Discussion was held concerning sections 6, 9, 11, and 12 that do not apply to the City. Ms. Monter stated this was boiler plate amendments as recommended by Wells Fargo and there was no financial impact to the City. Mr. Sivick stated we should check with Wells Fargo before we pulled any of these items out of the plan.

Motion by Nickerson, second by Haase to refer Resolution #2011-316 to the November 8, 2011 City Council meeting. Upon roll call vote, all voted aye. Motion adopted.

City Administrator Mary Lou Brown recommended we have Wells Fargo come to our next Study Session on November 1, 2011 to explain these changes.

RESOLUTIONS:

#2011-318 – Consideration of Request from Zoul Hospitality, LLC dba Willman’s Bottle Shop, 1201 South Locust Street for a Class “CK” Liquor License and Liquor Manager Designation for Zachary Zoul, 3333 Ramada Road. This item related to the aforementioned Public Hearing.

Motion by Haase, second by Gericke to approve Resolution #2011-318. Upon roll call vote, all voted aye. Motion adopted.

#2011-319 – Consideration of Request from Simara Y. Rodriguez dba El Trancazo Bar, 413 West 4th Street for a Class “T” Liquor License. This item related to the aforementioned Public Hearing. Simara Rodriguez spoke in support and stated her husband was in the process of becoming a US citizen. Police Chief Lamken commented on Ms. Rodriguez owning the business and not having a temporary operating permit.

Motion by Gilbert, second by Haase to deny Resolution #2011-319 based on the Police Department Report of Horacio Rodriguez, spouse of Simara Rodriguez undisclosed convictions and not a United States citizen. Upon roll call vote, all voted aye. Motion adopted.

#2011-320 – Consideration of Designating No Parking on 2nd Street, Between Walnut Street and Cedar Street. Public Works Director John Collins reported that a request from St. Steven’s Episcopal Church was received to remove parking between Walnut Street and Cedar Street, on the north side of 2nd Street.

Motion by Carney, second by Dugan to approve Resolution #2011-320.

Discussion was held regarding a loading zone versus a no parking zone. City Administrator Mary Lou Brown commented on the Public Works Department working with the church on this request.

Motion by Carney, second by Nickerson to amend Resolution #2011-320 item #1 to loading/no parking zone.

Police Chief Lamken recommended this be designated a loading zone which would be limited to 20 minutes.

Motion by Gericke, second by Carney to refer Resolution #2011-320 to the November 8, 2011 City Council meeting. Upon roll call vote, all voted aye. Motion adopted.

#2011-321 – Consideration of Advancement of the US Highway 281 Sanitary Sewer Extension to Interstate 80 Project. City Administrator Mary Lou Brown clarified the \$350,000 JBS settlement. Money applied to this project would reduce the cost to the City and increase the cash balance of the Wastewater Treatment Plant which could be used for other projects.

Jeremy Collinson representing the Central District Health Department spoke in support.

Comments were made regarding the cost to the City to extend the sanitary sewer which would benefit the City in the future. Mr. Sivick explained that Sanitary Improvement District's (SID's) were created by property owners and in this case where farm ground was not in need of the sanitary sewer immediately they could tap in at a later date. Mr. Nabity commented on the future development along Highway 281 and at that time would pay a tap fee when they hooked up to the sewer. If a business went under then the other property owners in the district would pick up the cost.

Motion by Gilbert, second by Niemann to approve Resolution #2011-321. Upon roll call vote, all voted aye. Motion adopted.

PAYMENT OF CLAIMS:

Motion by Dugan, second by Nickerson to approve the Claims for the period of October 12, 2011 through October 25, 2011, for a total amount of \$3,272,015.40. Unanimously approved.

ADJOURNMENT: The meeting was adjourned at 9:20 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G2

Approving Minutes of November 1, 2011 City Council Study Session

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL STUDY SESSION

November 1, 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 November 1, 2011. Notice of the meeting was given in the *Grand Island Independent* on October 26, 2011.

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

INVOCATION was given by Community Youth Council member Kaitlin Hehnke followed by the PLEDGE OF ALLEGIANCE.

MAYOR COMMUNICATION: Mayor Vavricek introduced Community Youth Council members Kaitlin Hehnke and Andrea Voss.

OTHER ITEMS:

Discussion Concerning Closed Sessions. City Administrator Mary Lou Brown introduced Executive Director Lynn Rex with the Nebraska League of Municipalities for a presentation concerning Closed Sessions and the Open Meetings Act.

Ms. Rex complimented Grand Island for the excellent job the city does with its agenda's and conducting meetings with regards to the Open Meetings Act.

Reviewed were State Statutes §84-1410 Closed Session. Mentioned was the following two reasons to go into closed session: 1) protect the public interest; or 2) for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting.

Mentioned was that no vote could be taken in closed session but council could give direction/guidance on negotiating issues. Confidentiality of closed sessions was discussed.

Discussion was held concerning what constituted public records.

Discussion Concerning Amending the City of Grand Island Police Officer's and Firefighters' Retirement System Plan and Trust for Changes in the Applicable Tax Laws. Interim Finance Director Jaye Monter introduced Greg Anderson Vice-President Trust Officer with Wells Fargo. Mr. Anderson clarified the role of Wells Fargo as trustee for both the Police Officer's and

Firefighters' Retirement System Plans. Mentioned was that the amendments to the plans were required by the Federal Tax Code.

Mr. Anderson stated the amendment as presented would have no change to the current plans. Ms. Monter stated this item would come before the City Council on November 8, 2011.

ADJOURNMENT: The meeting was adjourned at 8:40 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G3

#2011-322 - Approving Greater Nebraska Cities Membership

Staff Contact: Mary Lou Brown

Council Agenda Memo

From: Mary Lou Brown, City Administrator

Meeting: November 8, 2011

Subject: Greater Nebraska Cities Membership

Item #'s: G-3

Presenter(s): Mary Lou Brown, City Administrator

Background

The Quad Cities of Grand Island, Hastings, North Platte and Kearney have met on a periodic basis for at least twelve years. These meetings have typically included the respective Mayors and City Administrators/Managers and have consisted of topic discussions common to the four cities.

Earlier this year, Council had discussions regarding the City's legislative efforts. At that time, Council comments indicated a willingness to continue with the existing approach and not implement any changes such as hiring a lobbyist. The proposal before Council represents a continuation of the existing approach: continued membership and participation in the League, collaboration with our neighboring cities and no additional professional services. The alliance will serve as an extension of views expressed to the League on an individual basis.

Discussion

It is clear that on a combined basis the cities have a unique opportunity to collectively impact legislation when speaking with one voice. As a result, the Quad Cities are proposing an increase to the group to five members with the addition of Lexington. The plan is to continue to communicate and collaborate for the furtherance of our common interests. In addition, the group is proposing a revision of the name to the Greater Nebraska Cities (GNC). When appropriate, the GNC will evaluate and respond to legislative issues of mutual concern in a timely manner and with a unified voice. This will give the legislators a greater understanding of our needs.

The cities of Hastings, Lexington and Kearney have already brought this item to their Councils for action; each has approved their cities to participate in the alliance.

This effort will not impact our membership in the League; in fact, the belief is that it will help the League in more fully understanding the issues of out-state Nebraskans. There may be several other regions within the State that will also be proposing such alliances.

There will be no membership fees associated with the GNC.

Alternatives

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

1. Move to approve the City of Grand Island's membership in the Greater Nebraska Cities and authorizing the Mayor to represent the City
2. Postpone the issue to a future meeting.
3. Take no action.

Recommendation

City Administration recommends that the Council approve the City of Grand Island's membership in the Greater Nebraska Cities and authorize the Mayor to represent the City.

Sample Motion

Move to approve the City of Grand Island's membership in the Greater Nebraska Cities and authorize the Mayor to represent the City.

RESOLUTION 2011-322

WHEREAS, the City of Grand Island, Nebraska desires to establish and further communication and collaboration with similar cities in Nebraska; and

WHEREAS, the City of Grand Island, Nebraska desires to preserve local control and represent the interests of and improve the quality of life of their citizens; and

WHEREAS, the City of Grand Island, Nebraska desires to share and evaluate best practices in city management and strategies for addressing issues of common concern; and

WHEREAS, the City of Grand Island, Nebraska desires to monitor, evaluate and respond to legislative issues of mutual concern to similar cities in a timely manner with a unified voice; and

WHEREAS, the City of Grand Island, Nebraska wishes to join with the cities of Lexington, Kearney, Hastings and North Platte to form the Greater Nebraska Cities to take such actions; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor be authorized and directed to proceed with the formulation of any and all guidelines, documents or other memoranda between the City of Grand Island and the Greater Nebraska Cities so as to effect acceptance of membership to the organization.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G4

#2011-323 - Approving Bid Award - Transmission Distance Relays

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Tim Luchsinger, Utilities Director

Meeting: November 8, 2011

Subject: Purchase of Nineteen (19) Transmission Distance Relays

Item #'s: G-4

Presenter(s): Tim Luchsinger, Utilities Director

Background

The Grand Island Electric System utilizes seven substations connected by a 115,000 volt transmission loop (see attached drawing). Substation J, shown in red, is planned for 2013. The loop will consist of eight segments that connect each substation with the next. In addition, four connections with Nebraska Public Power District (NPPD) are located around the loop. This system provides a reliable source of electricity for each substation with the ability to have at least one segment of the loop out of service at a time without any customer outages. Each segment of the loop is protected by several relays that monitor and isolate that segment in the event of a lightning strike or other problem on the line. The protective relaying system utilizes a primary and backup relay or set of relays. These relays are currently absolute electro-mechanical relays or first generation electronic relays.

The Department is planning on replacing the protection relays with those meeting current industry standards to allow for compliance with developing federal reliability standards. Failure to comply with these standards can result in fines or other enforcement action.

The consultant for the Department for the replacement protective relaying project, Advantage Engineering, developed specifications to issue for bid for new backup relaying, or distance relays, for all eight segments of the transmission loop (sixteen relays, two per line segment) and three spares. In addition to providing backup protective relaying of the transmission segments, the new relays can be programmed for additional protective functions such as synch check, breaker failure, and reclosure operations. The primary protective relays, or differential relays, will be procured under separate specifications.

Discussion

The specifications for the distance relays were advertised in accordance with City procurement requirements. Specifications were sent to six regional distributors and three local distributors. Bids were publicly opened at 2:15 p.m., on October 13, 2011. The following bids were received.

Bidder / Manufacturer	Exceptions	Bid Price
Power Delivery Services, Inc., Omaha, NE	Yes	\$132,145.00
RFL Electronics, Boonton Twp., NJ	Yes	\$138,670.93
Siemens, Wendell, NC	Yes	\$157,232.22
Schweitzer Eng. Laboratories, Inc., Fairview Heights, IL	Yes	\$161,521.85

All bids include appropriate sales tax.

The four bids were evaluated based upon price and conformance to the specifications by Advantage Engineering and Department engineering staff. The bid received from Power Delivery Services, Inc., met all functional specifications and contained only minor exceptions regarding communication protocol which were evaluated to be acceptable. The bids received from RFL Electronics and Siemens contain exceptions that are related to the functional specifications which would create issues with implementation. These bids determined not to be compliant with the specifications. The bid received from Schweitzer Engineering Laboratories, Inc., met all functional specifications and their exception, also regarding communication protocol, was acceptable.

Alternatives

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

The Council may:

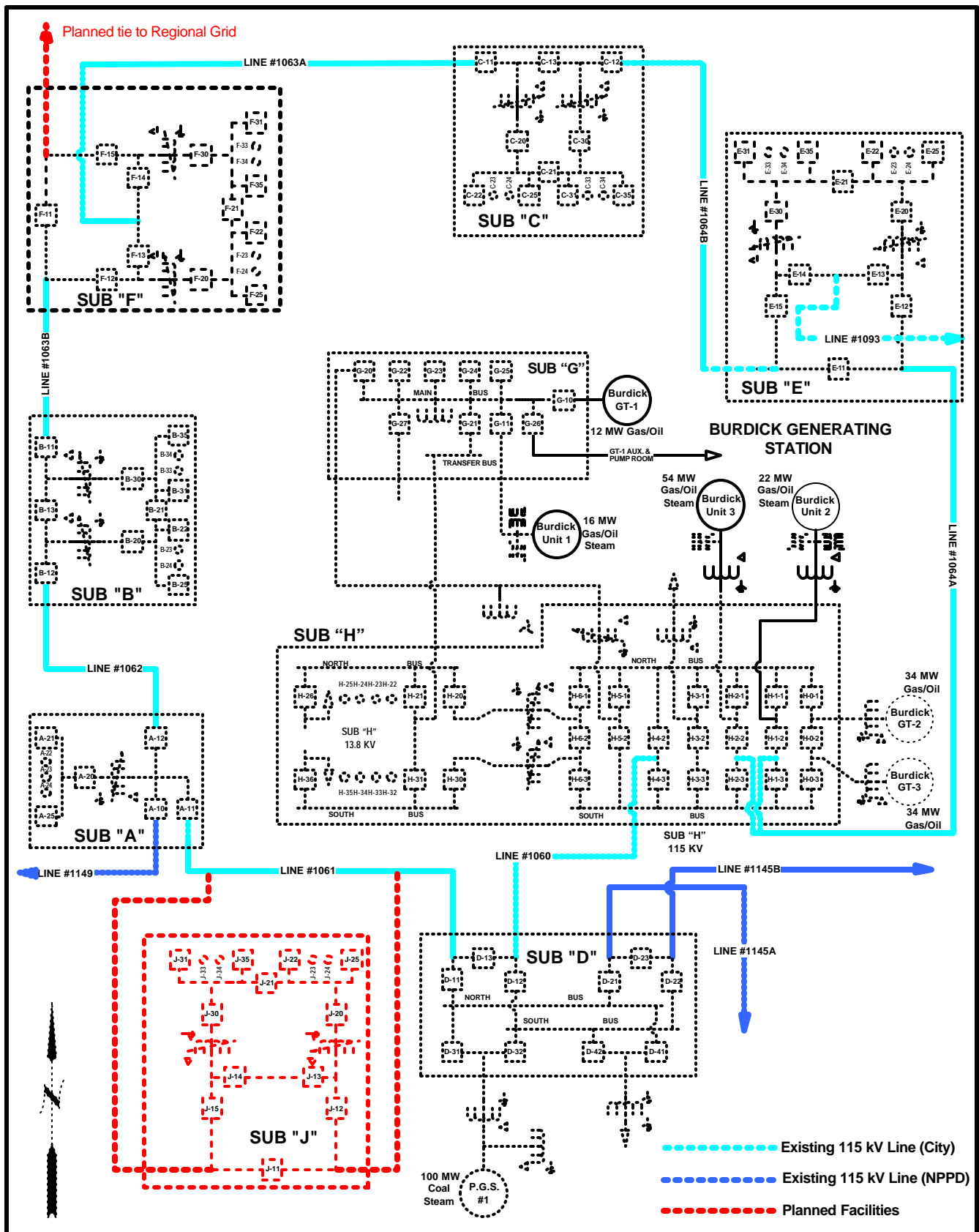
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to a future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the bid from Power Delivery Services, Inc., of Omaha, Nebraska, for Nineteen (19) Transmission Distance Relays in the amount of \$132,145.00.

Sample Motion

Move to approve the bid from Power Delivery Services, Inc., for Nineteen (19) Transmission Distance Relays in the amount of \$132,145.00.



Purchasing Division of Legal Department
INTEROFFICE MEMORANDUM



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

BID OPENING

BID OPENING DATE: October 13, 2011 at 2:15 p.m.
FOR: (19) Transmission Distance Relays
DEPARTMENT: Utilities
ESTIMATE: \$150,000.00
FUND/ACCOUNT: 520
PUBLICATION DATE: September 26, 2011
NO. POTENTIAL BIDDERS: 9

SUMMARY

Bidder:	<u>Schweitzer Eng. Laboratories, Inc.</u>	<u>RFL Electronics, Inc.</u>
	Fairview Heights, IL	Boonton Twp., NJ
Bid Security:	Fidelity & Deposit Co.	International Fidelity Ins. Co.
Exceptions:	Noted	Noted
Bid Price:	\$150,955.00	\$129,599.00
Sales Tax:	\$ 10,566.85	- -
Total Bid:	\$161,521.85	\$129,599.00

Bidder:	<u>Siemens</u>	<u>Power Delivery Services, Inc.</u>
	Wendell, NC	Omaha, NE
Bid Security:	Federal Insurance Co.	Liberty Mutual Ins. Co.
Exceptions:	Noted	Noted
Bid Price:	\$146,946.00	\$123,500.00
Sales Tax:	- -	\$ 8,645.00
Total Bid:	\$146,946.00	\$132,145.00

cc: Tim Luchsinger, Utilities Director
Jason Eley, Purchasing Agent
Mary Lou Brown, City Administrator

Bob Smith, Assist. Utilities Director
Pat Gericke, Utilities Admin. Assist.
Travis Spiehs, Electrical Engineer

P1514

RESOLUTION 2011-323

WHEREAS, the City of Grand Island invited sealed bids for Transmission Distance Relays, according to plans and specifications on file with the Utilities Department; and

WHEREAS, on October 13, 2011, bids were received, opened and reviewed; and

WHEREAS, Power Delivery Services, Inc., of Omaha, Nebraska, submitted a bid in accordance with the terms of the advertisement of bids and plans and specifications and all other statutory requirements contained therein, such bid being in the amount of \$132,145.00; and

WHEREAS, the bid of Power Delivery Services, Inc., is less than the estimate for the Transmission Distance Relays.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Power Delivery Services, Inc., of Omaha, Nebraska in the amount of \$132,145.00, for Transmission Distance Relays, is hereby approved as the lowest responsible bid.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 2, 2011	☐ City Attorney



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G5

#2011-324 - Approving Certificate of Final Completion - Water Main Project 2011-W-3 - Broadwell Avenue at the Union Pacific Railroad Tracks, and Vine Street at the Union Pacific Railroad Tracks

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Tim Luchsinger, Utilities Director

Meeting: November 8, 2011

Subject: Certificate of Final Completion – Broadwell Ave. and Vine St. - Water Main Project 2011-W-3

Item #'s: G-5

Presenter(s): Timothy Luchsinger, Utilities Director

Background

Earlier this year, the 10" water mains in Broadwell Avenue and Vine Street broke where they cross under the Union Pacific Railroad tracks. They were both installed directly in soil without protective casings approximately 80 years ago. Due to the age of the pipes and potential damage to railroad property, both sections were taken out of service until permanent repairs could be completed.

Discussion

The contract for Water Main Project 2011-W-3 provided for boring new 20" diameter protective steel outer casings and replacement of the water mains at both crossing locations.

The Engineer's Certificate of Final Completion is attached signifying that the project was completed by the Diamond Engineering Company of Grand Island, in accordance with the terms, conditions, and stipulations of the contract plans and specifications. The final Contract amount was \$184,392.80.

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 for Water Main Project 2011-W-3 at the Union Pacific Railroad tracks at Broadwell Avenue and Vine Street.

Sample Motion

Move to accept the Certificate of Final Completion for Water Main Project 2011-W-3, at the Union Pacific Railroad tracks at Broadwell Avenue and Vine Street.

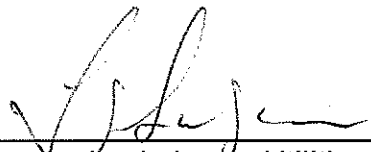
INTEROFFICE MEMORANDUM



*Working Together for a
Better Tomorrow. Today.*

DATE: October 26, 2011
TO: Mayor and Council Members
FROM: Timothy Luchsinger, Utilities Director
SUBJECT: Water Main Project 2011-W-3

This memo is to certify that Water Project 2011-W-3 (located in two separate areas being generally in the central area of the City of Grand Island. The first area is within Broadwell Avenue, commencing at South Front Street and extending northerly under the Union Pacific Railroad (UPRR) tracks, to Old Lincoln Highway. The second area is located in Vine Street extended from South Front Street, northerly under the UPRR tracks to North Front Street), has been fully completed. All work was done in accordance with the terms and conditions of the contract, and complies with the plans and specifications. The water main project has been placed into service.



Timothy Luchsinger, Utilities Director

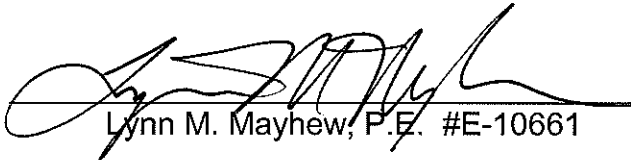
TGL/pag

pc: Bob Smith
Tom Barnes
Ruben Sanchez
Darren Buettner

ENGINEER'S CERTIFICATE OF FINAL COMPLETION

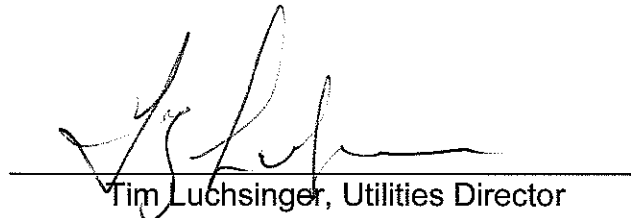
Water Main Project 2011-W-3

Water Main Project 2011-W-3 is located in two separate areas being generally in the central part of the City of Grand Island. The first area is within Broadwell Avenue, commencing at South Front Street and extending northerly under the Union Pacific Road (UPRR) tracks, to Old Lincoln Highway. The second area is located in Vine Street extended from South Front Street, northerly under the UPRR tracks to North Front Street. The work on this project has been fully completed in accordance with the terms and conditions of the contract and complies with the plans and specifications.


Lynn M. Mayhew, P.E. #E-10661

10/25/2011
Date

I hereby authorize Water Main Project 2011-W-3 to be incorporation into the City of Grand Island water system.


Tim Luchsinger, Utilities Director

10-26-11
Date

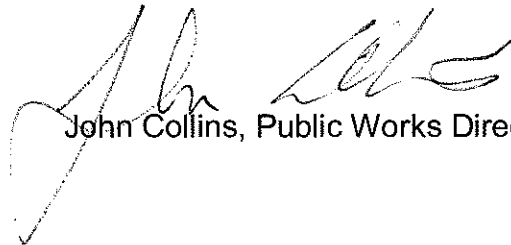
ENGINEER'S CERTIFICATE OF FINAL COMPLETION

WATER MAIN PROJECT 2011-W-1

November 8, 2011

Water Main Project 2011-W-3 is located in two separate areas being generally in the central area of the City of Grand Island. The first area is within Broadwell Avenue, commencing at South Front Street and extending northerly under the Union Pacific Railroad (UPRR) tracks, to Old Lincoln Highway. The second area is located in Vine Street extended from South Front Street, northerly under the UPRR tracks to North Front Street. The work on this project, as certified to be fully completed by Timothy Luchsinger, Utilities Director, is hereby accepted for the City of Grand Island, by me as Public Works Director in accordance with the provision on Section 6-650, R.R.S., 1943.

Respectfully submitted



John Collins, Public Works Director

WATER MAIN PROJECT 2011-W-3

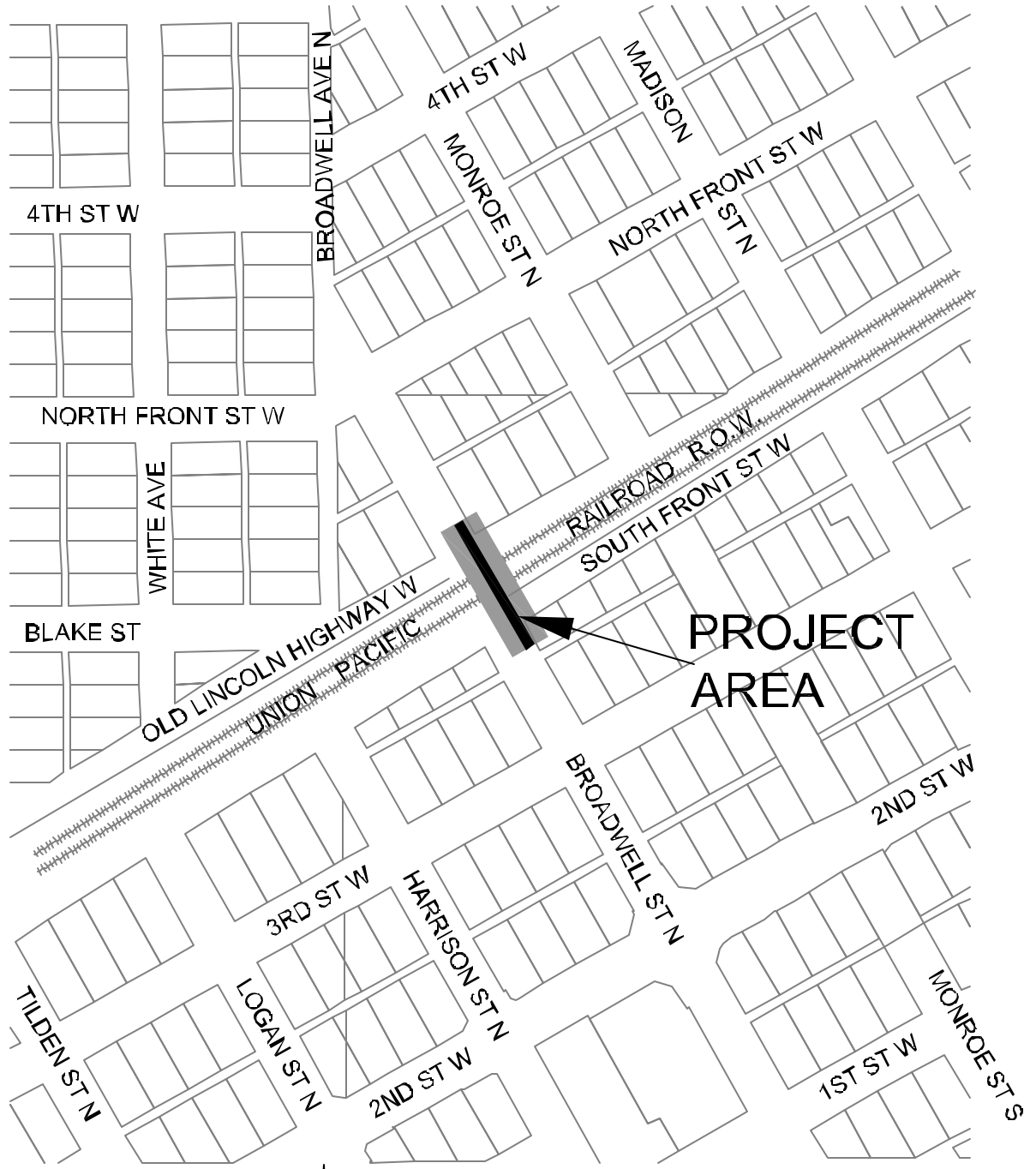
November 8, 2011

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

I hereby recommend that the Engineer's Certificate of Final Completion for Water Main Project 2011-W-3 be approved.

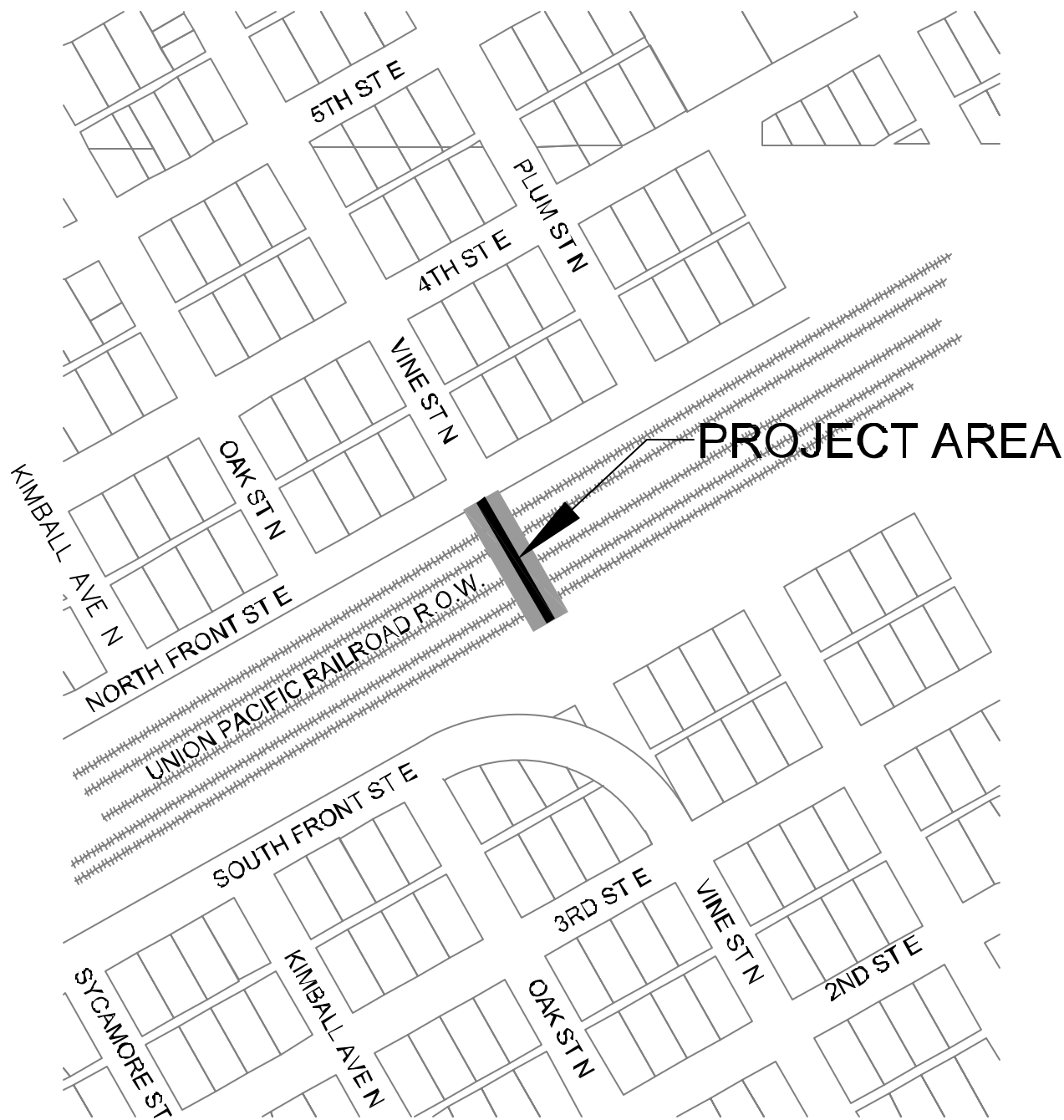
Respectfully submitted,

Jay Vavricek, Mayor



CITY OF
GRAND ISLAND
UTILITIES DEPARTMENT

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



CITY OF
GRAND ISLAND
UTILITIES DEPARTMENT

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

RESOLUTION 2011-324

WHEREAS, the City Engineer/Public Works Director for the City of Grand Island has issued a Certificate of Final Completion for Water Main Project 2011-W- 3 (Broadwell Avenue at the Union Pacific Railroad tracks and Vine Street at the Union Pacific Railroad tracks) certifying that the Diamond Engineering Company of Grand Island, Nebraska, under contract, has completed the water main installation portion of such project according to the terms, conditions, and stipulations for such improvements; and

WHEREAS, the Public Works Director recommends the acceptance of the project; and

WHEREAS, the Mayor concurs with the recommendations of the Utilities Director and the Public Works Director.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Certificate of Final Completion for Water Main Project 2011-W-3 is hereby accepted.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G6

#2011-325 - Approving Benefits for Water Main District 456T - Engleman Road from 13th Street to Old Potash Hwy., and Old Potash Hwy., East of Engleman Road for 600'

This item relates to the aforementioned Board of Equalization item D-1.

Staff Contact: Tim Luchsinger

This Space Reserved for Register of Deeds

R E S O L U T I O N 2011-325

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the special benefits as determined by Resolution 2011-BE-6 shall not be levied as special assessments but shall be certified by this resolution to the Register of Deeds, Hall County, Nebraska, pursuant to Section 16-6,103, R.R.S. 1943. A connection fee in the amount of the benefit identified below accruing to each property in the district shall be paid to the City of Grand Island at the time such property becomes connected to the water main. No property benefited as determined by this resolution shall be connected to the water main until the connection fee is paid. The connection fees collected shall be paid into the fund from which construction costs were made to replenish such fund for the construction costs.

According to the front foot and area of the respective lots, tracts, and real estate within such Water Main District 456T, such benefits are the sums set opposite the descriptions as follows:

Name	Description	Connection Fee
Thomas and Elizabeth Baxter, Husband & Wife	Beginning at the intersection of the southerly right-of-way line of Thirteenth (13th) Street and the westerly right-of-way line of Engleman Road, Hall County, Nebraska; thence southerly along the said westerly right-of-way line of the Engleman Road, a distance of five thousand two hundred thirty and seven tenths (5,230.7) feet to the northerly right-of-way line of Old Potash Highway; thence westerly along the northerly right-of-way line of said Old Potash Highway, a distance of one hundred sixty seven (167.0) feet; thence northerly parallel with the westerly right-of-way line of said Engleman Road, to the southerly right-of-way line of said Thirteenth (13th) Street; thence easterly along the southerly right-of-way line of said Thirteenth (13th) Street, a distance of one hundred sixty seven (167.0) feet to said Point of Beginning.	\$241,244.04
Teddy Lechner	Commencing at the intersection of the southerly right-of-way line of Thirteenth (13th) Street and the easterly right-	\$23,600.01

Approved as to Form <input checked="" type="checkbox"/> _____ November 2, 2011 <input checked="" type="checkbox"/> City Attorney

	<p>of way line of Engleman Road, Hall County, Nebraska; thence southerly along the easterly right-of-way line of said Engleman Road, a distance of one hundred seventeen (117.0) feet to the Actual Point Of Beginning; thence continuing southerly along the easterly right-of-way line of said Engleman Road, a distance of Five Hundred eleven and seven hundredths (511.7) feet to the northerly line of the south half of the Northwest Quarter of the Northwest Quarter (S 1/2, NW 1/4, NW 1/4) Section Fourteen (14) Township Eleven (11) North, Range Ten (10) West of the 6th PM Hall County, Nebraska; thence easterly along the northerly line of the south half of the Northwest Quarter of the Northwest Quarter (S 1/2, NW 1/4, NW 1/4) said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet; thence northerly parallel with the easterly right-of-way line of said Engleman Road, a distance of Five Hundred eleven and seven hundredths (511.7) feet; thence westerly parallel with the northerly line of said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet to the said Point Of Beginning.</p>	
Teddy Lechner and Jacqueline Hanover	<p>Commencing at the intersection of the southerly right-of-way line of Thirteenth (13th) Street and the easterly right-of-way line of Engleman Road, Hall County, Nebraska; thence southerly along the easterly right-of-way line of said Engleman Road, a distance of six hundred twenty eight and seven tenths (628.7) to the Actual Point Of Beginning; thence continuing southerly along the easterly right-of-way line of said Engleman Road, a distance of one thousand nine hundred eighty five and two tenths (1,985.2) feet to the southerly line of the Northwest Quarter (NW 1/4) Section Fourteen (14) Township Eleven (11) North Range Ten (10) West of the 6th PM, Hall County, Nebraska; thence easterly along the southerly line of the Northwest Quarter (NW 1/4) said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet; thence northerly parallel with the easterly right-of-way line of said Engleman Road, a distance of one thousand nine hundred eighty five and two tenths (1,985.2) feet to the northerly line of the south half of the Northwest Quarter of the Northwest Quarter (S 1/2, NW 1/4, NW 1/4) said Section Fourteen (14); thence easterly along the northerly line of the south half of the Northwest Quarter of the Northwest Quarter (S 1/2, NW 1/4, NW 1/4) said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet to the Said Point of Beginning.</p>	\$91,559.00
Robin and Barbara Irvine, Husband and Wife	<p>Beginning at the intersection of the northerly right-of-way line of Old Potash Highway and the easterly right-of-way line Engleman Road; thence northerly along the easterly right-of-way line of said Engleman Road to the northerly line of the Southwest Quarter (SW 1/4) Section Fourteen (14) Township Eleven (11) North Range Ten (10) West of the 6th PM, Hall County , Nebraska; thence easterly along the northerly line of the Southwest Quarter (SW 1/4) said Section Fourteen (14), a distance of one hundred sixty seven (167.0) feet; thence southerly parallel to the easterly</p>	\$148,665.77

	right-of-way line Engleman Road, a distance of two thousand four hundred forty six and nine tenths (2,446.9) feet; thence easterly parallel with the southerly line of said Section Fourteen (14), a distance of four hundred forty two and five tenths (442.5) feet; thence southerly a distance of one hundred sixty seven (167.0) feet to the northerly right-of-way line of said Old Potash Highway; thence westerly along the northerly right-of-way line of said Old Potash Highway, a distance of six hundred nine and five tenths (609.5) feet to the Said Point of Beginning	
Copper Creek Estates – Grand Island, LLC	Commencing at the Northwest corner of Section Twenty Three (23) Township Eleven (11) North Range Ten (10) West of the 6th PM., Hall County, Nebraska; thence easterly along the northerly of said Section Twenty Three (23), a distance of three hundred eighty and eighty six hundredths (380.86) feet to the Northeast corner of M And M Subdivision; thence southerly along the easterly of said M And M Subdivision, a distance of thirty three (33.0) feet to a point on the southerly right-of way line of Engleman Road being the Actual Point Of Beginning; thence continuing southerly along the easterly of said M And M Subdivision, a distance of one hundred sixty seven (167.0) feet; thence easterly parallel with the northerly line of said Section Twenty Three (23), a distance of two hundred sixty (260.0) feet to a point on the westerly line of Copper Creek Estates Subdivision; thence northerly along the westerly line of said Copper Creek Estates Subdivision, a distance of hundred sixty seven (167.0) feet to a point on the southerly right-of way line of said Engleman Road; thence westerly along the southerly right-of way line of said Engleman Road, a distance two hundred sixty (260.0) feet to Said Point of Beginning.	\$11,991.41
Midland Ag Services, Inc.	Lot One (1) M And M Subdivision	\$15,720.73
Shirley Klinginsmith	Lot One (1) Block One (1) Highland Park Subdivision	\$5,073.29
TOTAL		\$537,854.25

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G7

**#2011-326 - Approving Change Order No. 2 for Grand Island
Quiet Zone Project No. 2012-QZ-1**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Scott Griepenstroh, PW Project Manager

Meeting: November 8, 2011

Subject: Approving Change Order No. 2 for Grand Island Quiet Zone Project No. 2012-QZ-1

Item #'s: G-7

Presenter(s): John Collins, Public Works Director

Background

The Diamond Engineering Company of Grand Island, Nebraska was awarded a \$247,718.25 contract by the City Council on September 13, 2011 for the Grand Island Quiet Zone; Project No. 2012-QZ-1.

Change Order No. 1, for incorporating Union Pacific Railroad Special Provision for City of Grand Island Projects into the contract, was approved by the City Council October 11, 2011. Change Order No. 1 was a “no cost” change order.

Discussion

Prior to commencing with boring of conduit and installation of electrical cable for the Wayside Horn System at the Walnut Street Crossing, the City of Grand Island is required to enter into Wireline Crossing Agreements with UPRR. These agreements stipulate responsibilities and obligations of the City with respect to the work associated with design, construction, installation, operation, maintenance and repair of underground power wirelines for the Wayside Horn System at the Walnut Street crossing.

As per the Wireline Crossing Agreements, Diamond Engineering is required to comply with all the terms and provisions relating to the work of installing both underground wireline crossings. These requirements are listed below.

- Insurance requirements as per Exhibit C
- Compliance with Interim Guidelines for Horizontal Directional Drilling (HDD) Under Union Pacific Railroad Right of Way

- Receipt of approval by the UPRR Assistant Vice President Engineering Design prior to commencement of work
- Compliance with requirements as per Exhibit B, including but not limited to Railroad Flagging, Commencement of Work, Supervision, Safety, Protection of Utilities and Restoration of UPRR Property
- Compliance with Safety Standards as per Exhibit D

Attached for reference are copies of the Wireline Crossing Agreements. The agreement referenced as Folder No. 2683-12 is for 105 feet of conduit and electrical cable between the Wayside Horns that will be installed north and south of the UPRR two mainline tracks and two siding tracks. The agreement referenced as Folder No. 2683-13 is for 90 feet of conduit and electrical cable to be installed under the tracks used by Peavey Grain that will provide power to the Wayside Horn System.

This is a “no cost” change order; therefore the contract amount will not increase. Actual unanticipated costs incurred by the Contractor for providing documents as required for the Wireline Crossing Agreement, and other associated work, will be compensated in a subsequent change order.

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 Change Order No. 2 for the Grand Island Quiet Zone Project No. 2012-QZ-1.

Sample Motion

Move to approve the resolution.

City of Grand Island
100 East 1st Street
Grand Island, Nebraska 68801

CHANGE ORDER NUMBER 2

Date of Issuance: November 8, 2011

PROJECT: Grand Island Quiet Zone Project No. 2012-QZ-1

CONTRACTOR: The Diamond Engineering Company

CONTRACT DATE: September 13, 2011

To incorporate requirements as per the Wireline Crossing Agreements for Mile Post 146.95, Kearney Subdivision located in Grand Island into the Grand Island Quiet Zone Project No. 2012-QZ-1 contract with The Diamond Engineering Company of Grand Island, Nebraska. Diamond Engineering is required to comply with all the terms and provisions relating to the work of installing both underground wireline crossings at the Union Pacific Railroad Crossing at Walnut Street.

The Wireline Crossing Agreements UPRR Folder Numbers are 2683-12 and 2683-13.

Requirements are listed below.

- Insurance requirements as per Exhibit C
- Compliance with Interim Guidelines for Horizontal Directional Drilling (HDD) Under Union Pacific Railroad Right of Way
- Receipt of approval by the UPRR Assistant Vice President Engineering Design prior to commencement of work
- Compliance with requirements as per Exhibit B, including but not limited to Railroad Flagging, Commencement of Work, Supervision, Safety, Protection of Utilities and Restoration of UPRR Property
- Compliance with Safety Standards as per Exhibit D

Actual unanticipated costs incurred by the Contractor for providing documents as required for the Wireline Crossing Agreement, and other associated work, will be compensated in a subsequent change order.

Contract Price Prior to This Change Order \$247,718.25

Net Increase/Decrease Resulting from this Change Order..... \$ 0.00

Revised Contract Price Including this Change Order \$ 247,718.25

Approval Recommended:

By _____
John Collins, Public Works Director

Date _____

The Above Change Order Accepted:

The Diamond Engineering Company
Contractor

By _____

Date _____

Approved for the City of Grand Island:

By _____
Jay Vavricek, Mayor

Attest: _____
RaNae Edwards, City Clerk

Date _____

WIRELINE CROSSING AGREEMENT

Mile Post: 146.95, Kearney Subdivision
Location: Grand Island, Hall County, Nebraska

THIS AGREEMENT ("Agreement") is made and entered into as of October 18, 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 100 East First 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 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 underground power wireline

across Licensor's track(s) and property (the "Wireline") in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated August 04, 2011, marked Exhibit "A" attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Wireline for a purpose other than for the purpose set forth in this Article I, and the Wireline shall not be used 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 **Twenty Two Thousand Dollars (\$22,000.00).**

\$6,000.00 As PER K NESSER Oct. 24, 2011

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 Wireline (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 wireline 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.

**Article 7. INTERIM GUIDELINES FOR
HORIZONTAL DIRECTIONAL DRILLING (HDD) UNDER
UNION PACIFIC RAILROAD RIGHT-OF-WAY**

Preface: The American Railway Engineering and Maintenance-of-Way Association (AREMA) has assigned a working committee to develop a recommended railroad industry practice for horizontal directional drilling (HDD) under railroad rights-of-way. These interim guidelines are issued by the Union Pacific Railroad (UPRR) pending completion of the AREMA recommended practice, at which time UPRR will review and determine whether to adopt it.

Scope: All pipelines proposed for installation under UPRR right-of-way and trackage using HDD. Fiber optics installation under the jurisdiction of the UPRR Information Technologies (IT) Department with 10 inch or smaller diameter casing pipe shall follow the guidelines outlined in the current version of the "Fiber Optic Engineering, Construction and Maintenance" Standard Manual.

1. For all liquid or gas pipelines, only steel pipe may be installed under tracks or UPRR right-of-way utilizing HDD. The pipe may be used as a carrier pipe or a casing pipe. Plastic carrier pipe, if used, must be installed in a steel casing.
2. For fiber optics (not under the jurisdiction of UPRR IT Department) or electrical installations, plastic (PVC or HDPE) pipe may be used as a conduit.
3. For all liquid or gas installations or for nominal pipe sizes exceeding 6 in., minimum cover (measured from base of rail to top of pipe) shall be 25 ft, regardless of product. For fiber optics or electrical

installations, with casing/conduit nominal size of 6 in. or less, minimum cover shall be 15 ft. Applicant submittal shall include actual planned depth of pipe under each railroad track.

4. Applicant must provide pipe specifications. Pipe must satisfy AREMA recommendations and all applicable government and industry regulations.
5. Applicant must provide qualifications of drilling contractor including specific instances of previous successful experience in drilling under sensitive surface facilities.
6. Prior to commencement of drilling:
 - A. The contractor must submit an Installation Plan that describes the anticipated rig capacity, the proposed equipment and the method for advancing the borehole through expected soil conditions, angles, depth and exact location of the exit ditch, the pilot hole diameter, the proposed reaming plan, including the number and diameter of pre-reams/back-reams and diameter of the final reamed borehole, and the contingency equipment and plans for dealing with soil conditions that a soil engineer could reasonably expect to be encountered at the proposed HDD installation site. The Installation Plan will also address the anticipated hours of operation during the HDD borehole drilling and installation process, the minimum number of personnel, and their responsibilities on-duty and on-site during all HDD drilling operations.
 - B. The contractor must provide a detailed Fracture Mitigation (frac-out) Plan including method of monitoring and capturing the return of drilling fluids with particular attention to prevention of inadvertent escape of drilling fluids where they could undermine the Railroad tracks.
 - C. Establish a Survey Grid Line and provide a program of monitoring and documenting the actual location of the borehole during drilling operations.
7. A railroad observer and an applicant inspector are required to monitor the ground, ballast, and track for movement during the drilling, reaming, and pullback processes. All work within the Railroad right-of-way must be coordinated with the Railroad flagger. The installation process and all train movement must be immediately stopped if movement is detected. The damaged area must be immediately reported to the Railroad and immediately repaired subject to Railroad review and approval. The installation process must be reviewed and modified as required before the installation may proceed. Applicant must pay Railroad's expenses for review, observation of installation, and flagging.

8. Upon completion of the HDD installation work, the contractor shall provide an accurate as-built drawing of the installed HDD segment. As-built drawings will include both horizontal and profile plans.

Union Pacific Railroad
Office of AVP Engineering Design
26 July 2006

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: _____



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 : 1-800-335-9193

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PHONE : 1-800-335-9193

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 Wireline 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 Wireline shall be done to the satisfaction of the Licensor.

C. If the Wireline is an existing one not conforming in its construction to the above provisions of this Section 2, the Licensee shall, within ninety (90) days after the date hereof, reconstruct it so as to conform therewith.

D. The Wireline shall be designed, constructed, maintained and operated by the Licensee in such manner as not to be or constitute a hazard to aviation. With respect to the Wireline the Licensee, without expense to the Licensor, will comply with all requirements of law and of public authority, whether federal, state or local, including but not limited to aviation authorities.

E. In the operation of the Wireline, the Licensee shall not transmit electric current at a difference of potential in excess of the voltage indicated on **Exhibit A**. If the voltage indicated is in excess of seven hundred fifty (750) volts, and the Wireline is, or is to be, buried at any location on the property of the Licensor outside track ballast sections or roadbed, the Licensee shall install metallic conduit, or non-metallic conduit encased in a minimum of three (3) inches of concrete with a minimum of four (4) feet of ground cover the entire length of the Wireline on the property of the Licensor. A Wireline

buried by removal of the soil shall have, at a depth of one (1) foot beneath the surface of the ground directly above the Wireline, a six (6) inch wide warning tape bearing the warning, "Danger-High Voltage", or equivalent wording. A Wireline encased in conduit, jacked or bored under the property of the Licensor, must be identified by placing warning signs, to be installed and properly maintained at the expense of the Licensee, at each edge of the Licensor's property. The Licensee shall not utilize the signs in lieu of the warning tape where portions of the casing are installed by direct burial.

F. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Wireline, 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 Wireline, 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.

G. The Licensee shall keep and maintain the soil over the Wireline thoroughly compacted and the grade even with the adjacent surface of the ground.

H. 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 Wireline. 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 and contractors and subcontractors 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 Wireline, 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 WIRELINE.

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 Wireline, or move all or any portion of the Wireline to such new location, or remove the Wireline 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 Wireline on property of the Licensor in the location hereinbefore described shall, so far as the Wireline remains on the property, apply to the Wireline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

A. The Wireline 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 (including without limitation, its tracks, pole lines, communication lines, radio equipment, wayside and/or cab based train signal systems, advanced train control systems, positive train separation systems, and grade crossing systems), 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. In the operation and maintenance of the Wireline the Licensee shall take all suitable precaution to prevent any interference (by induction, leakage of electricity, or otherwise) with the operation of the signal, communication lines or other installations or facilities of the Licensor or of its tenants; and if, at any time, the operation or maintenance of the Wireline results in any electrostatic effects which the Licensor deems undesirable or harmful, or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be provided by the Licensor and/or its tenants, the Licensee shall, at the sole expense of the Licensee, immediately make such modifications or take such action as may be necessary to eliminate such interference. Licensee agrees to pay for any reasonable modifications, design changes, or increased costs that may be necessary now or in the future to ensure safe and reliable maintenance and operation of the facilities of Licensor and/or its tenants because of interference from the Wireline.

C. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

D. 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.

E. 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.

F. 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 CONTRACTORS, 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 Wireline, 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 Wireline, 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 Wireline 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 Wireline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore property to the same condition as the same were in 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 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 OR ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- 1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE WIRELINE OR ANY PART THEREOF;**
- 2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;**
- 3. THE PRESENCE, OPERATION, OR USE OF THE WIRELINE OR ELECTRICAL INTERFERENCE OR OTHER TYPES OF INTERFERENCE CREATED OR CAUSED BY THE WIRELINE OR ESCAPING FROM THE WIRELINE;**
- 4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED 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 WIRELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Wireline 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 Wireline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, 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 Wireline 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.

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 agent of 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)

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.

WIRELINE CROSSING AGREEMENT

Mile Post: 146.95, Kearney Subdivision
Location: Grand Island, Hall County, Nebraska

THIS AGREEMENT ("Agreement") is made and entered into as of October 18, 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 100 East First 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 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 underground power wireline

across Licensor's track(s) and property (the "Wireline") in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated August 04, 2011, marked Exhibit "A" attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Wireline for a purpose other than for the purpose set forth in this Article I, and the Wireline shall not be used 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 **Twenty Two Thousand Dollars (\$22,000.00).**

\$5,000.00 As Per KNESSLER OCT 24, 2011

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 Wireline (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 wireline 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.

**Article 7. INTERIM GUIDELINES FOR
HORIZONTAL DIRECTIONAL DRILLING (HDD) UNDER
UNION PACIFIC RAILROAD RIGHT-OF-WAY**

Preface: The American Railway Engineering and Maintenance-of-Way Association (AREMA) has assigned a working committee to develop a recommended railroad industry practice for horizontal directional drilling (HDD) under railroad rights-of-way. These interim guidelines are issued by the Union Pacific Railroad (UPRR) pending completion of the AREMA recommended practice, at which time UPRR will review and determine whether to adopt it.

Scope: All pipelines proposed for installation under UPRR right-of-way and trackage using HDD. Fiber optics installation under the jurisdiction of the UPRR Information Technologies (IT) Department with 10 inch or smaller diameter casing pipe shall follow the guidelines outlined in the current version of the "Fiber Optic Engineering, Construction and Maintenance" Standard Manual.

1. For all liquid or gas pipelines, only steel pipe may be installed under tracks or UPRR right-of-way utilizing HDD. The pipe may be used as a carrier pipe or a casing pipe. Plastic carrier pipe, if used, must be installed in a steel casing.
2. For fiber optics (not under the jurisdiction of UPRR IT Department) or electrical installations, plastic (PVC or HDPE) pipe may be used as a conduit.
3. For all liquid or gas installations or for nominal pipe sizes exceeding 6 in., minimum cover (measured from base of rail to top of pipe) shall be 25 ft, regardless of product. For fiber optics or electrical

installations, with casing/conduit nominal size of 6 in. or less, minimum cover shall be 15 ft. Applicant submittal shall include actual planned depth of pipe under each railroad track.

4. Applicant must provide pipe specifications. Pipe must satisfy AREMA recommendations and all applicable government and industry regulations.
5. Applicant must provide qualifications of drilling contractor including specific instances of previous successful experience in drilling under sensitive surface facilities.
6. Prior to commencement of drilling:
 - A. The contractor must submit an Installation Plan that describes the anticipated rig capacity, the proposed equipment and the method for advancing the borehole through expected soil conditions, angles, depth and exact location of the exit ditch, the pilot hole diameter, the proposed reaming plan, including the number and diameter of pre-reams/back-reams and diameter of the final reamed borehole, and the contingency equipment and plans for dealing with soil conditions that a soil engineer could reasonably expect to be encountered at the proposed HDD installation site. The Installation Plan will also address the anticipated hours of operation during the HDD borehole drilling and installation process, the minimum number of personnel, and their responsibilities on-duty and on-site during all HDD drilling operations.
 - B. The contractor must provide a detailed Fracture Mitigation (frac-out) Plan including method of monitoring and capturing the return of drilling fluids with particular attention to prevention of inadvertent escape of drilling fluids where they could undermine the Railroad tracks.
 - C. Establish a Survey Grid Line and provide a program of monitoring and documenting the actual location of the borehole during drilling operations.
7. A railroad observer and an applicant inspector are required to monitor the ground, ballast, and track for movement during the drilling, reaming, and pullback processes. All work within the Railroad right-of-way must be coordinated with the Railroad flagger. The installation process and all train movement must be immediately stopped if movement is detected. The damaged area must be immediately reported to the Railroad and immediately repaired subject to Railroad review and approval. The installation process must be reviewed and modified as required before the installation may proceed. Applicant must pay Railroad's expenses for review, observation of installation, and flagging.

8. Upon completion of the HDD installation work, the contractor shall provide an accurate as-built drawing of the installed HDD segment. As-built drawings will include both horizontal and profile plans.

Union Pacific Railroad
Office of AVP Engineering Design
26 July 2006

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: _____

7-12-11

PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSING

UNDERGROUND WIRELINE CROSSING

750 VOLTS OR LESS

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

FORM DR-0404-F

REV 10-26-2007

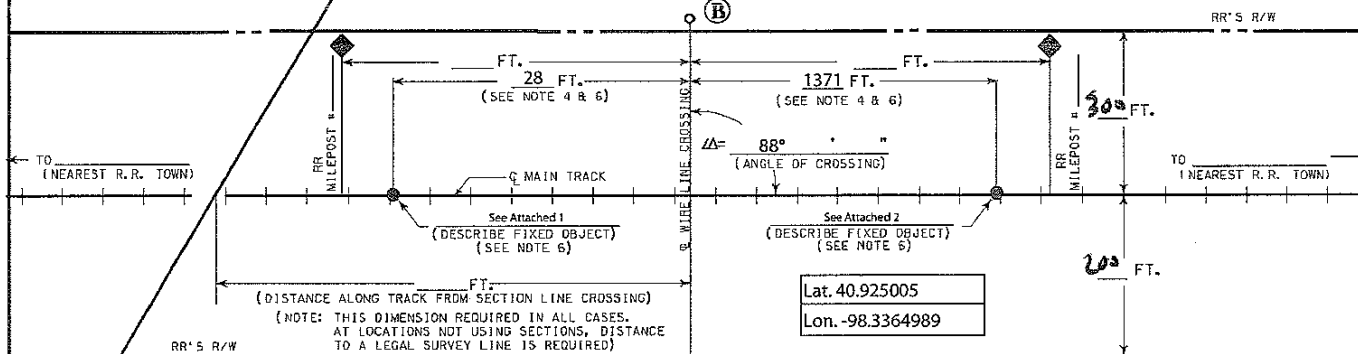
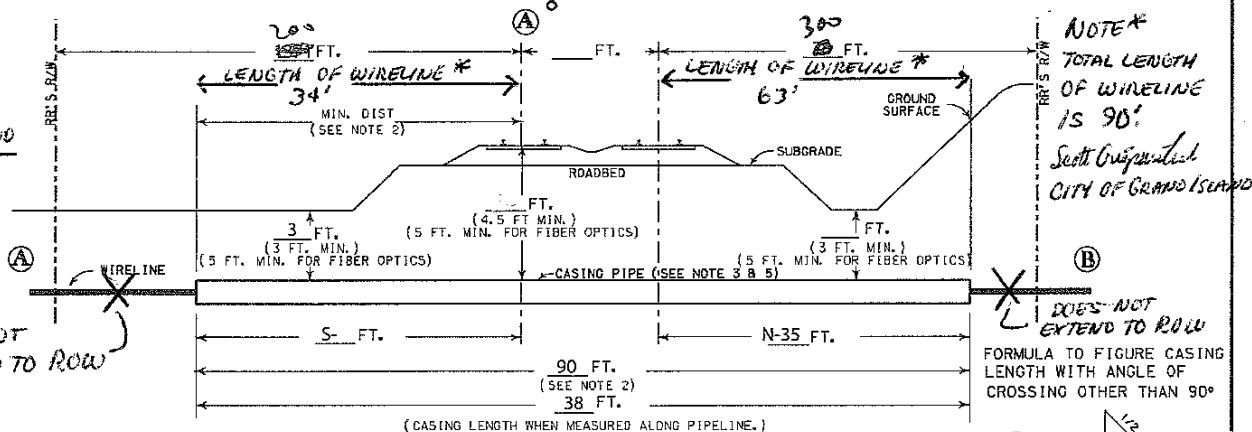
www.uprr.com

NO SCALE

(OR LEGAL SURVEY LINE, WHERE APPLICABLE)

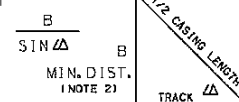
N LINE SECTION 16, TOWNSHIP 11, RANGE 9, W MERIDIAN

RR'S R/W

ALL
WIRELINE
IS
UNDERGROUNDNOTE*
TOTAL LENGTH
OF WIRELINE
IS 90'Scott Crispin
CITY OF GRAND ISLANDDOES NOT
EXTEND TO ROWDOES NOT
EXTEND TO ROW
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, EXCEPT AS NOTED.
- 2) CASING MUST EXTEND A MINIMUM OF 30' OUT FROM C. OF TRACK, MEASURED AT RIGHT ANGLES.
- 3) CASING MATERIAL: STEEL, RIGID METALLIC CONDUIT (NO PVC).
- 4) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, C. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- 5) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- 6) ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; C. OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR C. OF CULVERTS.
- 7) 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 WIRELINE CROSSING WITHIN DEDICATED STREET? ☒ YES; ☐ NO;
- B) IF YES, NAME OF STREET WALNUT STREET
- C) TYPE WIRELINE CROSSING: ☐ TELEPHONE; ☐ TELEVISION; ☐ FIBER OPTIC; OTHER: Electrical
- D) VOLTAGE TO BE CARRIED UNDER TRACK 120 NO. OF WIRES 4
- E) CASING TYPE TO BE INSTALLED RIGID METALLIC CONDUIT
- F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
☐ DRY BORE AND JACK (WET BORE NOT PERMITTED);
☐ TUNNEL; OTHER Directional Bore
- G) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK (30' MIN.)
- H) DISTANCE TO NEAREST ROAD CROSSING WITH SIGNAL LIGHTS OR GATES (IF LESS THAN ONE MILE) _____
- 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. 20130513047

EXHIBIT "A"

(FOR RAILROAD USE ONLY - DO NOT WRITE IN THIS BOX)

UNION PACIFIC RAILROAD CO.

Kearney

(SUBDIVISION)

M. P. 146.45 E. S. 842+22t

UNDERGROUND WIRELINE CROSSING

GRAND ISLAND

(NEAREST RR STATION)

Hall

(COUNTY)

NE

(STATE)

FOR CITY OF GRAND ISLAND

(APPLICANT)

RR FILE NO. 0268313 DATE 8-4-11

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 Wireline 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 Wireline shall be done to the satisfaction of the Licensor.

C. If the Wireline is an existing one not conforming in its construction to the above provisions of this Section 2, the Licensee shall, within ninety (90) days after the date hereof, reconstruct it so as to conform therewith.

D. The Wireline shall be designed, constructed, maintained and operated by the Licensee in such manner as not to be or constitute a hazard to aviation. With respect to the Wireline the Licensee, without expense to the Licensor, will comply with all requirements of law and of public authority, whether federal, state or local, including but not limited to aviation authorities.

E. In the operation of the Wireline, the Licensee shall not transmit electric current at a difference of potential in excess of the voltage indicated on **Exhibit A**. If the voltage indicated is in excess of seven hundred fifty (750) volts, and the Wireline is, or is to be, buried at any location on the property of the Licensor outside track ballast sections or roadbed, the Licensee shall install metallic conduit, or non-metallic conduit encased in a minimum of three (3) inches of concrete with a minimum of four (4) feet of ground cover the entire length of the Wireline on the property of the Licensor. A Wireline

buried by removal of the soil shall have, at a depth of one (1) foot beneath the surface of the ground directly above the Wireline, a six (6) inch wide warning tape bearing the warning, "Danger-High Voltage", or equivalent wording. A Wireline encased in conduit, jacked or bored under the property of the Licensor, must be identified by placing warning signs, to be installed and properly maintained at the expense of the Licensee, at each edge of the Licensor's property. The Licensee shall not utilize the signs in lieu of the warning tape where portions of the casing are installed by direct burial.

F. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Wireline, 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 Wireline, 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.

G. The Licensee shall keep and maintain the soil over the Wireline thoroughly compacted and the grade even with the adjacent surface of the ground.

H. 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 Wireline. 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 and contractors and subcontractors 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 Wireline, 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 WIRELINE.

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 Wireline, or move all or any portion of the Wireline to such new location, or remove the Wireline 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 Wireline on property of the Licensor in the location hereinbefore described shall, so far as the Wireline remains on the property, apply to the Wireline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

A. The Wireline 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 (including without limitation, its tracks, pole lines, communication lines, radio equipment, wayside and/or cab based train signal systems, advanced train control systems, positive train separation systems, and grade crossing systems), 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. In the operation and maintenance of the Wireline the Licensee shall take all suitable precaution to prevent any interference (by induction, leakage of electricity, or otherwise) with the operation of the signal, communication lines or other installations or facilities of the Licensor or of its tenants; and if, at any time, the operation or maintenance of the Wireline results in any electrostatic effects which the Licensor deems undesirable or harmful, or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be provided by the Licensor and/or its tenants, the Licensee shall, at the sole expense of the Licensee, immediately make such modifications or take such action as may be necessary to eliminate such interference. Licensee agrees to pay for any reasonable modifications, design changes, or increased costs that may be necessary now or in the future to ensure safe and reliable maintenance and operation of the facilities of Licensor and/or its tenants because of interference from the Wireline.

C. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

D. 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.

E. 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.

F. 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 CONTRACTORS, 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 Wireline, 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 Wireline, 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 Wireline 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 Wireline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore property to the same condition as the same were in 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 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 OR ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- 1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE WIRELINE OR ANY PART THEREOF;**
- 2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;**
- 3. THE PRESENCE, OPERATION, OR USE OF THE WIRELINE OR ELECTRICAL INTERFERENCE OR OTHER TYPES OF INTERFERENCE CREATED OR CAUSED BY THE WIRELINE OR ESCAPING FROM THE WIRELINE;**
- 4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED 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 WIRELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Wireline 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 Wireline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, 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 Wireline 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.

Approved: Insurance Group
Created: 9/23/05
Last Modified: 03/29/10
Form Approved, AVP-Law

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.

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 agent of 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)

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.

R E S O L U T I O N 2011-326

WHEREAS, on September 13, 2011, by Resolution 2011-242, the City of Grand Island awarded The Diamond Engineering Company of Grand Island, Nebraska the bid in the amount of \$247,718.25 for the Grand Island Quiet Zone Project No. 2012-QZ-1; and

WHEREAS, Change Order No. 1 was approved by City Council through Resolution 2011-302 on October 11, 2011 and incorporated the Union Pacific Railroad Special Provision for City of Grand Island Projects into the Grand Island Quiet Zone Project No. 2012-QZ-1 contract with The Diamond Engineering Company of Grand Island, Nebraska; and

WHEREAS, it has been determined that modifications to the work to be performed by The Diamond Engineering Company are necessary; and

WHEREAS, such modifications have been incorporated into Change Order No. 2; and

WHEREAS, the result of such modifications will not change the contract amount of \$247,718.25.

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 Change Order No. 2 between the City of Grand Island and The Diamond Engineering Company of Grand Island, Nebraska to provide the modifications.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form <input type="checkbox"/> _____ November 2, 2011 <input type="checkbox"/> City Attorney



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G8

**#2011-327 - Approving Continuation of Sanitary Sewer District
No. 529, Westwood Park Subdivision**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services

Meeting: November 8, 2011

Subject: Approving Continuation of Sanitary Sewer District No. 529, Westwood Park Subdivision

Item #'s: G-8

Presenter(s): John Collins, Public Works Director

Background

Sanitary Sewer District No. 529 was created by the City Council on September 13, 2011 and will serve the remainder of the Westwood Park Subdivision (see attached sketch). Legal notice of the creation of the District was published in the *Grand Island Independent* on September 19, 2011.

Discussion

The district completed the 30-day protest period at 5:00 p.m., Thursday, October 20, 2011. There were protests filed against this District by 9 abutting property owners. These owners represented 1,070.80 front feet, or 18.34% of the total District frontage of 5,837.37 feet.

Alternatives

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

1. Approve the continuation of Sanitary Sewer District 529.
2. Refer the issue to a Committee.
3. Postpone the issue to a future date.
4. Take no action on the issue.

Recommendation

City Administration recommends that the Council approve the continuation of Sanitary Sewer District 529.

Sample Motion

Move to approve the continuation of Sanitary Sewer District 529.

RESOLUTION 2011-327

WHEREAS, Sanitary Sewer District No. 529, Westwood Park Subdivision, was created by Ordinance No. 9324 on September 13, 2011; and

WHEREAS, notice of the creation of such sewer district was published in the Grand Island Independent, in accordance with the provisions of Section 16-667.01, R.R.S. 1943; and

WHEREAS, Section 16-667.01, R.R.S. 1943, provides that if the owners of record title representing more than 50% of the front footage of the property abutting upon the streets, avenues, or alleys, or parts thereof which are within such proposed district shall file with the City Clerk within thirty days from the first publication of said notice written objections to such district, said work shall not be done and the ordinance shall be repealed, and

WHEREAS, the protest period ended on October 20, 2011, and protests representing 18.34% of the total District frontage were received.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that insufficient protests have been filed with the City Clerk against the creation of Sanitary Sewer District No. 529, therefore such district shall be continued and constructed according to law.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 2, 2011	☐ City Attorney



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G9

#2011-328 - Approving the Wireline Crossing Agreement between the Union Pacific Railroad Company and the City of Grand Island

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Scott Griepenstroh, Public Works Project Manager

Meeting: November 8, 2011

Subject: Approving the Wireline Crossing Agreement between the Union Pacific Railroad Company and the City of Grand Island

Item #'s: G-9

Presenter(s): John Collins, Public Works Director
Scott Griepenstroh, Public Works Project Manager

Background

The purpose of the Grand Island Quiet Zone Improvement Project, Phase I is to construct improvements at the Union Pacific Railroad (UPRR) crossings at Oak Street, Pine Street, Walnut Street and Elm Street so that train horns will not need to be activated for these crossings. "Silent" crossings will be created at Oak Street and Pine Street by constructing concrete medians and concrete curb to narrow the streets at the crossing approaches. Walnut Street will have a Wayside Horn System installed and concrete curb will be constructed to narrow the street. The crossing at Elm Street will be closed after improvements are completed at the other crossings.

Discussion

Prior to commencing with construction of the Wayside Horn System at the Walnut Street Crossing, the City of Grand Island is required to enter into the Wireline Crossing agreement with UPRR. The agreement stipulates responsibilities and obligations of the City with respect to the use of the wireline. The wireline shall not be used for any purpose other than the Wayside Horn System.

This agreement will allow the City's contractor, The Diamond Engineering Company of Grand Island, Nebraska, to install conduit under the railroad tracks for the Wayside Horn System cable. Change Order No. 2 is being presented to City Council at tonight's meeting, which allows this additional work to be incorporated into the contract with The Diamond Engineering Company.

For reference the Wireline Crossing Agreements; Folder No. 2683-12 and Folder No. 2683-13 are attached.

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 Council approve the resolution authorizing the Mayor to sign the Wireline Crossing Agreements between the Union Pacific Railroad Company and the City of Grand Island.

Sample Motion

Move to approve the resolution.

WIRELINE CROSSING AGREEMENT

Mile Post: 146.95, Kearney Subdivision
Location: Grand Island, Hall County, Nebraska

THIS AGREEMENT ("Agreement") is made and entered into as of October 18, 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 100 East First 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 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 underground power wireline

across Licensor's track(s) and property (the "Wireline") in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated August 04, 2011, marked Exhibit "A" attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Wireline for a purpose other than for the purpose set forth in this Article I, and the Wireline shall not be used 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 **Twenty Two Thousand Dollars (\$22,000.00).**

\$6,000.00 As Per K NESSER Oct. 24, 2011

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 Wireline (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 wireline 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.

**Article 7. INTERIM GUIDELINES FOR
HORIZONTAL DIRECTIONAL DRILLING (HDD) UNDER
UNION PACIFIC RAILROAD RIGHT-OF-WAY**

Preface: The American Railway Engineering and Maintenance-of-Way Association (AREMA) has assigned a working committee to develop a recommended railroad industry practice for horizontal directional drilling (HDD) under railroad rights-of-way. These interim guidelines are issued by the Union Pacific Railroad (UPRR) pending completion of the AREMA recommended practice, at which time UPRR will review and determine whether to adopt it.

Scope: All pipelines proposed for installation under UPRR right-of-way and trackage using HDD. Fiber optics installation under the jurisdiction of the UPRR Information Technologies (IT) Department with 10 inch or smaller diameter casing pipe shall follow the guidelines outlined in the current version of the "Fiber Optic Engineering, Construction and Maintenance" Standard Manual.

1. For all liquid or gas pipelines, only steel pipe may be installed under tracks or UPRR right-of-way utilizing HDD. The pipe may be used as a carrier pipe or a casing pipe. Plastic carrier pipe, if used, must be installed in a steel casing.
2. For fiber optics (not under the jurisdiction of UPRR IT Department) or electrical installations, plastic (PVC or HDPE) pipe may be used as a conduit.....
3. For all liquid or gas installations or for nominal pipe sizes exceeding 6 in., minimum cover (measured from base of rail to top of pipe) shall be 25 ft, regardless of product. For fiber optics or electrical

installations, with casing/conduit nominal size of 6 in. or less, minimum cover shall be 15 ft. Applicant submittal shall include actual planned depth of pipe under each railroad track.

4. Applicant must provide pipe specifications. Pipe must satisfy AREMA recommendations and all applicable government and industry regulations.
5. Applicant must provide qualifications of drilling contractor including specific instances of previous successful experience in drilling under sensitive surface facilities.
6. Prior to commencement of drilling:
 - A. The contractor must submit an Installation Plan that describes the anticipated rig capacity, the proposed equipment and the method for advancing the borehole through expected soil conditions, angles, depth and exact location of the exit ditch, the pilot hole diameter, the proposed reaming plan, including the number and diameter of pre-reams/back-reams and diameter of the final reamed borehole, and the contingency equipment and plans for dealing with soil conditions that a soil engineer could reasonably expect to be encountered at the proposed HDD installation site. The Installation Plan will also address the anticipated hours of operation during the HDD borehole drilling and installation process, the minimum number of personnel, and their responsibilities on-duty and on-site during all HDD drilling operations.
 - B. The contractor must provide a detailed Fracture Mitigation (frac-out) Plan including method of monitoring and capturing the return of drilling fluids with particular attention to prevention of inadvertent escape of drilling fluids where they could undermine the Railroad tracks.
 - C. Establish a Survey Grid Line and provide a program of monitoring and documenting the actual location of the borehole during drilling operations.
7. A railroad observer and an applicant inspector are required to monitor the ground, ballast, and track for movement during the drilling, reaming, and pullback processes. All work within the Railroad right-of-way must be coordinated with the Railroad flagger. The installation process and all train movement must be immediately stopped if movement is detected. The damaged area must be immediately reported to the Railroad and immediately repaired subject to Railroad review and approval. The installation process must be reviewed and modified as required before the installation may proceed. Applicant must pay Railroad's expenses for review, observation of installation, and flagging.

8. Upon completion of the HDD installation work, the contractor shall provide an accurate as-built drawing of the installed HDD segment. As-built drawings will include both horizontal and profile plans.

Union Pacific Railroad
Office of AVP Engineering Design
26 July 2006

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: _____



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 : 1-800-335-9193

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LOCATION OF FIBER OPTIC CABLE.
PHONE : 1-800-336-9183

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 Wireline 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 Wireline shall be done to the satisfaction of the Licensor.

C. If the Wireline is an existing one not conforming in its construction to the above provisions of this Section 2, the Licensee shall, within ninety (90) days after the date hereof, reconstruct it so as to conform therewith.

D. The Wireline shall be designed, constructed, maintained and operated by the Licensee in such manner as not to be or constitute a hazard to aviation. With respect to the Wireline the Licensee, without expense to the Licensor, will comply with all requirements of law and of public authority, whether federal, state or local, including but not limited to aviation authorities.

E. In the operation of the Wireline, the Licensee shall not transmit electric current at a difference of potential in excess of the voltage indicated on **Exhibit A**. If the voltage indicated is in excess of seven hundred fifty (750) volts, and the Wireline is, or is to be, buried at any location on the property of the Licensor outside track ballast sections or roadbed, the Licensee shall install metallic conduit, or non-metallic conduit encased in a minimum of three (3) inches of concrete with a minimum of four (4) feet of ground cover the entire length of the Wireline on the property of the Licensor. A Wireline

buried by removal of the soil shall have, at a depth of one (1) foot beneath the surface of the ground directly above the Wireline, a six (6) inch wide warning tape bearing the warning, "Danger-High Voltage", or equivalent wording. A Wireline encased in conduit, jacked or bored under the property of the Licensor, must be identified by placing warning signs, to be installed and properly maintained at the expense of the Licensee, at each edge of the Licensor's property. The Licensee shall not utilize the signs in lieu of the warning tape where portions of the casing are installed by direct burial.

F. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Wireline, 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 Wireline, 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.

G. The Licensee shall keep and maintain the soil over the Wireline thoroughly compacted and the grade even with the adjacent surface of the ground.

H. 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 Wireline. 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 and contractors and subcontractors 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 Wireline, 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 WIRELINE.

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 Wireline, or move all or any portion of the Wireline to such new location, or remove the Wireline 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 Wireline on property of the Licensor in the location hereinbefore described shall, so far as the Wireline remains on the property, apply to the Wireline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

A. The Wireline 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 (including without limitation, its tracks, pole lines, communication lines, radio equipment, wayside and/or cab based train signal systems, advanced train control systems, positive train separation systems, and grade crossing systems), 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. In the operation and maintenance of the Wireline the Licensee shall take all suitable precaution to prevent any interference (by induction, leakage of electricity, or otherwise) with the operation of the signal, communication lines or other installations or facilities of the Licensor or of its tenants; and if, at any time, the operation or maintenance of the Wireline results in any electrostatic effects which the Licensor deems undesirable or harmful, or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be provided by the Licensor and/or its tenants, the Licensee shall, at the sole expense of the Licensee, immediately make such modifications or take such action as may be necessary to eliminate such interference. Licensee agrees to pay for any reasonable modifications, design changes, or increased costs that may be necessary now or in the future to ensure safe and reliable maintenance and operation of the facilities of Licensor and/or its tenants because of interference from the Wireline.

C. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

D. 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.

E. 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.

F. 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 CONTRACTORS, 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 Wireline, 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 Wireline, 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 Wireline 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 Wireline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore property to the same condition as the same were in 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 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 OR ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- 1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE WIRELINE OR ANY PART THEREOF;**
- 2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;**
- 3. THE PRESENCE, OPERATION, OR USE OF THE WIRELINE OR ELECTRICAL INTERFERENCE OR OTHER TYPES OF INTERFERENCE CREATED OR CAUSED BY THE WIRELINE OR ESCAPING FROM THE WIRELINE;**
- 4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED 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 WIRELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Wireline 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 Wireline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, 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 Wireline 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.

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 agent of 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)

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.

WIRELINE CROSSING AGREEMENT

Mile Post: 146.95, Kearney Subdivision
Location: Grand Island, Hall County, Nebraska

THIS AGREEMENT ("Agreement") is made and entered into as of October 18, 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 100 East First 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 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 underground power wireline

across Licensor's track(s) and property (the "Wireline") in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated August 04, 2011, marked Exhibit "A" attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Wireline for a purpose other than for the purpose set forth in this Article I, and the Wireline shall not be used 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 **Twenty Two Thousand Dollars (\$22,000.00).**

\$5,000.00 As Per KNESSLER OCT 24, 2011

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 Wireline (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 wireline 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.

**Article 7. INTERIM GUIDELINES FOR
HORIZONTAL DIRECTIONAL DRILLING (HDD) UNDER
UNION PACIFIC RAILROAD RIGHT-OF-WAY**

Preface: The American Railway Engineering and Maintenance-of-Way Association (AREMA) has assigned a working committee to develop a recommended railroad industry practice for horizontal directional drilling (HDD) under railroad rights-of-way. These interim guidelines are issued by the Union Pacific Railroad (UPRR) pending completion of the AREMA recommended practice, at which time UPRR will review and determine whether to adopt it.

Scope: All pipelines proposed for installation under UPRR right-of-way and trackage using HDD. Fiber optics installation under the jurisdiction of the UPRR Information Technologies (IT) Department with 10 inch or smaller diameter casing pipe shall follow the guidelines outlined in the current version of the "Fiber Optic Engineering, Construction and Maintenance" Standard Manual.

1. For all liquid or gas pipelines, only steel pipe may be installed under tracks or UPRR right-of-way utilizing HDD. The pipe may be used as a carrier pipe or a casing pipe. Plastic carrier pipe, if used, must be installed in a steel casing.
2. For fiber optics (not under the jurisdiction of UPRR IT Department) or electrical installations, plastic (PVC or HDPE) pipe may be used as a conduit.
3. For all liquid or gas installations or for nominal pipe sizes exceeding 6 in., minimum cover (measured from base of rail to top of pipe) shall be 25 ft, regardless of product. For fiber optics or electrical

installations, with casing/conduit nominal size of 6 in. or less, minimum cover shall be 15 ft. Applicant submittal shall include actual planned depth of pipe under each railroad track.

4. Applicant must provide pipe specifications. Pipe must satisfy AREMA recommendations and all applicable government and industry regulations.
5. Applicant must provide qualifications of drilling contractor including specific instances of previous successful experience in drilling under sensitive surface facilities.
6. Prior to commencement of drilling:
 - A. The contractor must submit an Installation Plan that describes the anticipated rig capacity, the proposed equipment and the method for advancing the borehole through expected soil conditions, angles, depth and exact location of the exit ditch, the pilot hole diameter, the proposed reaming plan, including the number and diameter of pre-reams/back-reams and diameter of the final reamed borehole, and the contingency equipment and plans for dealing with soil conditions that a soil engineer could reasonably expect to be encountered at the proposed HDD installation site. The Installation Plan will also address the anticipated hours of operation during the HDD borehole drilling and installation process, the minimum number of personnel, and their responsibilities on-duty and on-site during all HDD drilling operations.
 - B. The contractor must provide a detailed Fracture Mitigation (frac-out) Plan including method of monitoring and capturing the return of drilling fluids with particular attention to prevention of inadvertent escape of drilling fluids where they could undermine the Railroad tracks.
 - C. Establish a Survey Grid Line and provide a program of monitoring and documenting the actual location of the borehole during drilling operations.
7. A railroad observer and an applicant inspector are required to monitor the ground, ballast, and track for movement during the drilling, reaming, and pullback processes. All work within the Railroad right-of-way must be coordinated with the Railroad flagger. The installation process and all train movement must be immediately stopped if movement is detected. The damaged area must be immediately reported to the Railroad and immediately repaired subject to Railroad review and approval. The installation process must be reviewed and modified as required before the installation may proceed. Applicant must pay Railroad's expenses for review, observation of installation, and flagging.

8. Upon completion of the HDD installation work, the contractor shall provide an accurate as-built drawing of the installed HDD segment. As-built drawings will include both horizontal and profile plans.

Union Pacific Railroad
Office of AVP Engineering Design
26 July 2006

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: _____



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 Wireline 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 Wireline shall be done to the satisfaction of the Licensor.

C. If the Wireline is an existing one not conforming in its construction to the above provisions of this Section 2, the Licensee shall, within ninety (90) days after the date hereof, reconstruct it so as to conform therewith.

D. The Wireline shall be designed, constructed, maintained and operated by the Licensee in such manner as not to be or constitute a hazard to aviation. With respect to the Wireline the Licensee, without expense to the Licensor, will comply with all requirements of law and of public authority, whether federal, state or local, including but not limited to aviation authorities.

E. In the operation of the Wireline, the Licensee shall not transmit electric current at a difference of potential in excess of the voltage indicated on **Exhibit A**. If the voltage indicated is in excess of seven hundred fifty (750) volts, and the Wireline is, or is to be, buried at any location on the property of the Licensor outside track ballast sections or roadbed, the Licensee shall install metallic conduit, or non-metallic conduit encased in a minimum of three (3) inches of concrete with a minimum of four (4) feet of ground cover the entire length of the Wireline on the property of the Licensor. A Wireline

buried by removal of the soil shall have, at a depth of one (1) foot beneath the surface of the ground directly above the Wireline, a six (6) inch wide warning tape bearing the warning, "Danger-High Voltage", or equivalent wording. A Wireline encased in conduit, jacked or bored under the property of the Licensor, must be identified by placing warning signs, to be installed and properly maintained at the expense of the Licensee, at each edge of the Licensor's property. The Licensee shall not utilize the signs in lieu of the warning tape where portions of the casing are installed by direct burial.

F. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Wireline, 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 Wireline, 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.

G. The Licensee shall keep and maintain the soil over the Wireline thoroughly compacted and the grade even with the adjacent surface of the ground.

H. 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 Wireline. 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 and contractors and subcontractors 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 Wireline, 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 WIRELINE.

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 Wireline, or move all or any portion of the Wireline to such new location, or remove the Wireline 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 Wireline on property of the Licensor in the location hereinbefore described shall, so far as the Wireline remains on the property, apply to the Wireline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

A. The Wireline 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 (including without limitation, its tracks, pole lines, communication lines, radio equipment, wayside and/or cab based train signal systems, advanced train control systems, positive train separation systems, and grade crossing systems), 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. In the operation and maintenance of the Wireline the Licensee shall take all suitable precaution to prevent any interference (by induction, leakage of electricity, or otherwise) with the operation of the signal, communication lines or other installations or facilities of the Licensor or of its tenants; and if, at any time, the operation or maintenance of the Wireline results in any electrostatic effects which the Licensor deems undesirable or harmful, or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be provided by the Licensor and/or its tenants, the Licensee shall, at the sole expense of the Licensee, immediately make such modifications or take such action as may be necessary to eliminate such interference. Licensee agrees to pay for any reasonable modifications, design changes, or increased costs that may be necessary now or in the future to ensure safe and reliable maintenance and operation of the facilities of Licensor and/or its tenants because of interference from the Wireline.

C. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

D. 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.

E. 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.

F. 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 CONTRACTORS, 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 Wireline, 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 Wireline, 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 Wireline 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 Wireline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore property to the same condition as the same were in 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 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 OR ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- 1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE WIRELINE OR ANY PART THEREOF;**
- 2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;**
- 3. THE PRESENCE, OPERATION, OR USE OF THE WIRELINE OR ELECTRICAL INTERFERENCE OR OTHER TYPES OF INTERFERENCE CREATED OR CAUSED BY THE WIRELINE OR ESCAPING FROM THE WIRELINE;**
- 4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED 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 WIRELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Wireline 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 Wireline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, 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 Wireline 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.

Approved: Insurance Group
Created: 9/23/05
Last Modified: 03/29/10
Form Approved, AVP-Law

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.

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 agent of 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)

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 2011-328

WHEREAS, prior to commencing with construction of the Wayside Horn System at the Walnut Street Crossing the City of Grand Island is required to enter into agreements with the Union Pacific Railroad; and

WHEREAS, the agreements stipulate the responsibilities and obligations of the City with respect to the use of the wireline; and

WHEREAS, the Council has reviewed the agreements and has determined that it is in its best interest to enter into the agreements in the attached form.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized to sign the attached Wireline Crossing Agreements between the City of Grand Island and the Union Pacific Railroad Company.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 2, 2011	☐ City Attorney



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G10

**#2011-329 - Approving Change Order No. 1 for Concrete Ditch
Liner and Headwall East of Harrison Street**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services

Meeting: November 8, 2011

Subject: Approving Change Order No. 1 for Concrete Ditch Liner and Headwall East of Harrison Street

Item #'s: G-10

Presenter(s): John Collins, Public Works Director

Background

The Diamond Engineering Company of Grand Island, Nebraska was awarded a \$23,261.00 bid by the City Council on September 27, 2011 to install a concrete ditch liner and headwall east of Harrison Street.

The work consists of removing ends of existing corrugate metal pipe (C.M.P.), constructing a concrete ditch liner and headwall. The work is located east of Harrison Street, south of 1207 South Harrison Street.

Discussion

To provide a stable base for the ditch liner it was determined that a crushed rock base was necessary. The work was not anticipated in the original construction work, but is necessary to complete the contract work and was discovered subsequent to entering the contract. The contractor provided a cost for furnishing and placing the crushed rock at \$1,725.00, which increased the bid amount to \$24,986.00.

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 Change Order No. 1 for the Concrete Ditch Liner and Headwall East of Harrison Street.

Sample Motion

Move to approve the resolution.

City of Grand Island
100 East 1st Street
Grand Island, Nebraska 68801

CHANGE ORDER NUMBER 1

Date of Issuance: November 8, 2011

PROJECT: Concrete Ditch Liner and Headwall East of Harrison Street

CONTRACTOR: The Diamond Engineering Company

CONTRACT DATE: September 27, 2011

Furnishing and placing crushed rock to create a stable base for the ditch liner.

The changes result in the following adjustment to the Contract Amount:

Contract Price Prior to This Change Order\$23,261.00

Net Increase/Decrease Resulting from this Change Order.....\$ 1,725.00

Revised Contract Price Including this Change Order.....\$24,986.00

Approval Recommended:

By _____
John Collins, Public Works Director

Date _____

The Above Change Order Accepted:

The Diamond Engineering Company
Contractor

By _____

Date _____

Approved for the City of Grand Island:

By _____
Jay Vavricek, Mayor

Attest: _____
RaNae Edwards, City Clerk

Date _____

RESOLUTION 2011-329

WHEREAS, on September 27, 2011, by Resolution 2011-276, the City of Grand Island awarded The Diamond Engineering Company of Grand Island, Nebraska the bid in the amount of \$23,261.00 to install a concrete ditch liner and headwall east of Harrison Street; and

WHEREAS, it has been determined that modifications to the work to be performed by The Diamond Engineering Company are necessary; and

WHEREAS, such modifications have been incorporated into Change Order No. 1; and

WHEREAS, the result of such modifications will increase the contract by the amount of \$1,725.00, for a total contract price of \$24,986.00.

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 Change Order No. 1 between the City of Grand Island and The Diamond Engineering Company of Grand Island, Nebraska to provide the modifications.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 2, 2011	☐ City Attorney



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G11

**#2011-330 - Approving Change Order No. 1 for Sugar Beet Ditch
Piping at Suck's Lake; Drainage Project No. 2011-D-3**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services

Meeting: November 8, 2011

Subject: Approving Change Order No. 1 for Sugar Beet Ditch
Piping at Suck's Lake; Drainage Project No. 2011-D-3

Item #'s: G-11

Presenter(s): John Collins, Public Works Director

Background

The Diamond Engineering Company of Grand Island, Nebraska was awarded a \$69,664.40 contract by the City Council on September 27, 2011 to line the Sugar Beet Ditch and add piping to allow for better drainage, as well as ease in maintenance.

Discussion

Change Order No. 1 includes additional work requiring extra tree removal to improve aesthetics; removal of headwall for constructability; and relocation of area inlets with smaller concrete pads for improved drainage, which are more appropriate for this recreational area. These items were not included in the original bid documents, but are necessary to complete the project. Change Order No. 1 will increase this project cost by \$12,550.00, for a total contract amount of \$82,214.40.

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 Change Order No. 1 for the Sugar Beet Ditch Piping at Suck's Lake; Drainage Project No. 2011-D-3.

Sample Motion

Move to approve the resolution.

City of Grand Island
100 East 1st Street
Grand Island, Nebraska 68801

CHANGE ORDER NUMBER 1

Date of Issuance: November 8, 2011

PROJECT: Sugar Beet Ditch Piping at Suck's Lake; Drainage Project No. 2011-D-3

CONTRACTOR: The Diamond Engineering Company

CONTRACT DATE: September 27, 2011

This change order allows for items required to complete the project that were not included in the original bid documents, such as tree and headwall removal, grate installation, and putting in a concrete pad.

The changes result in the following adjustment to the Contract Amount:

Contract Price Prior to This Change Order\$69,664.40

Net ~~Increase/Decrease~~ Resulting from this Change Order.....\$12,550.00

Revised Contract Price Including this Change Order.....\$82,214.40

Approval Recommended:

By _____
John Collins, Public Works Director

Date _____

The Above Change Order Accepted:

The Diamond Engineering Company
Contractor

By _____

Date _____

Approved for the City of Grand Island:

By _____
Jay Vavricek, Mayor

Attest: _____
RaNae Edwards, City Clerk

Date _____

RESOLUTION 2011-330

WHEREAS, on September 27, 2011, by Resolution 2011-280, the City of Grand Island awarded The Diamond Engineering Company of Grand Island, Nebraska the contract in the amount of \$69,664.40 to line the Sugar Beet Ditch and add piping; and

WHEREAS, it has been determined that modifications to the work to be performed by The Diamond Engineering Company are necessary; and

WHEREAS, such modifications have been incorporated into Change Order No. 1; and

WHEREAS, the result of such modifications will increase the contract by the amount of \$12,550.00, for a total contract price of \$82,214.40.

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 Change Order No. 1 between the City of Grand Island and The Diamond Engineering Company of Grand Island, Nebraska to provide the modifications.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 2, 2011	☐ City Attorney



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G12

**#2011-331 - Approving Change Order No. 1 Building
Reconstruction - Lift Station No. 4; Project No. WWTP-2011-S-4**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Roger Scott, Engineering Technician

Meeting: November 8, 2011

Subject: Approving Change Order No. 1 Building Reconstruction
– Lift Station No. 4; Project No. WWTP-2011-S-4

Item #'s: G-12

Presenter(s): John Collins, Public Works Director

Background

On September 13, 2011 City Council awarded, Project WWTP-2011-S-4, Building Reconstruction Lift Station No. 4 to The Diamond Engineering Company of Grand Island, Nebraska, in the amount of \$38,372.80.

Discussion

Change Order No. 1 covers the removal of asbestos found in the roofing material by B2 Environmental, Inc. at Lift Station No. 4 The roofing material must be removed and properly disposed of by a licensed asbestos removal contractor.

The Change Order amount is an addition of \$1,840.00 resulting in a final contract amount of \$40,212.80. All other provisions of the contract remain unchanged.

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 Change Order No. 1 with The Diamond Engineering Company of Grand Island, Nebraska.

Sample Motion

Move to approve Change Order No. 1 with The Diamond Engineering Company of Grand Island, Nebraska.

**CITY OF GRAND ISLAND, NEBRASKA
WASTEWATER TREATMENT PLANT
BUILDING RECONSTRUCTION LIFT STATION NO. 4**

CITY PROJECT WWTP-2011-S-4

CHANGE ORDER NO. 1

Change Order No. 1 covers extra work for asbestos removal. An inspection and analysis of roofing material by B2 Environmental, Inc., has revealed greater than one percent asbestos containing material. Consequently the roofing material must be removed and properly disposed of by a licensed asbestos removal contractor.

The Contract Price shall change as follows as a result of the extra work to be done as described below.

ORIGINAL CONTRACT PRICE	\$38,372.80
Inspection and Analysis	\$350.00
Asbestos Removal and Disposal	<u>\$1,400.00</u>
Subtotal	\$1,750.00
Less Roof Demolition	<u>\$150.00</u>
Subtotal	\$1,600.00
Plus Overhead and Profit 15%	<u>\$240.00</u>
Total Estimated Cost	\$1,840.00
CHANGE ORDER NO. 1	\$1,840.00
REVISED CONTRACT PRICE	\$40,212.80

All other provisions of the contract remain unchanged.

Agreed to this _____ day of _____, 2011

Recommended:
Diamond Engineering Co.

Approved:
City of Grand Island

By: _____
Project Manager

By: _____

Date: _____

Date: _____

Approved as to Form _____ November 8, 2011 City Attorney
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RESOLUTION 2011-331

WHEREAS, on September 13, 2011, by Resolution Number 2011-237, the City Council of Grand Island approved a \$38,372.80 contract with The Diamond Engineering Company of Grand Island, Nebraska for Building Reconstruction – Lift Station No. 4 Project No. WWTP-2011-S-4 at the City of Grand Island; and

WHEREAS, Change Order No. 1 for an inspection and analysis of roofing material and removal of asbestos for the amount of \$1,840.00; and

WHEREAS, with the inclusion of the above modifications to the contract the revised contract price is \$40,212.80.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that Change Order No. 1 with The Diamond Engineering Company of Grand Island, Nebraska, in the amount of \$1,840.00 for Project No. WWTP-2011-S-4 Building Reconstruction Lift Station No. 4 is hereby approved

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute a change order for such work on behalf of the City of Grand Island.

Adopted by the City Council of the City of Grand Island, Nebraska, on November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G13

**#2011-332 - Approving Certificate of Final Completion for the
2011 Asphalt Resurfacing Project No. 2011-AC-1**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Scott Griepenstroh, PW Project Manager

Meeting: November 8, 2011

Subject: Approving Certificate of Final Completion for the 2011 Asphalt Resurfacing Project No. 2011-AC-1

Item #'s: G-13

Presenter(s): John Collins, Public Works Director

Background

J.I.L. Asphalt Paving Company of Grand Island, Nebraska was awarded a \$305,464.36 contract on July 12, 2011, 2010. Work on the project commenced on August 8, 2011 and was completed on October 25, 2011.

City Council approved Change Order No. 1 on September 13, 2011 to allow widening of each corner of the Capital Avenue and Sky Park intersection to better accommodate turning movements for large semitrailers. Change Order No. 1 was for \$22,788.00 resulting in a revised contract amount of \$328,252.36.

Change Order No. 2 was approved by City Council on October 11, 2011 and addressed additional work performed on Wyandotte Street and Stoeger Drive, due to delamination at the fabric layer during milling operations and also eliminated the milling operations on the section of Wyandotte Street. Change Order No. 2 resulted in a contract decrease of \$551.58, resulting in a revised contract price of \$327,700.78

Discussion

The project was completed in accordance with the terms, conditions and stipulations of the contract, plans and specifications. Work was completed at a total cost of \$333,819.07.

The project was overrun by a total of \$6,118.29, which was due to extra asphalt cement being added to reach an approved mix design. Through production testing it was confirmed that the material properties achieved performance standards. The specifications required a minimum content of 5.0%, with 5.3% being reached. Extra

flagging work to direct traffic through work zones was deemed necessary at all nine original locations, adding to the cost of the project. Initially flagging was thought only to be necessary on Stuhr Road and Claude Road.

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

Public Works Administration recommends that the Council approve the Certificate of Final Completion for Asphalt Resurfacing Project No. 2011-AC-1.

Sample Motion

Move to approve the Certificate of Final Completion for Asphalt Resurfacing Project No. 2011-AC-1.

ENGINEER'S CERTIFICATE OF FINAL COMPLETION

Asphalt Resurfacing Project No. 2011-AC-1
CITY OF GRAND ISLAND, NEBRASKA
November 8, 2011

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

This is to certify that Asphalt Resurfacing Project No. 2011-AC-1 has been fully completed by J.I.L. Asphalt Paving Company of Grand Island, Nebraska under the contract dated July 12, 2011. The work has been completed in accordance with the terms, conditions, and stipulations of said contract and complies with the contract, the plans and specifications. The work is hereby accepted for the City of Grand Island, Nebraska, by me as Public Works Director in accordance with the provisions of Section 16-650 R.R.S., 1943.

Asphalt Resurfacing Project No. 2011-AC-1

Item No.	Description	Total Quantity	Unit	Unit Price	Total Cost
Bid Section #1 - August Street					
1	Tack Coat	475.00	gal	\$1.00	\$475.00
2	Milling	3,812.00	s.y.	\$2.11	\$8,043.32
3	Type "SPL-B"	375.05	ton	\$24.45	\$9,169.97
4	Asphalt Cement	4,853.30	gal	\$3.08	\$14,948.16
Total Bid Section #1 =					\$32,636.46

Bid Section #2 - Wyandotte Street

1	Tack Coat	375.00	gal	\$1.00	\$375.00
2	Milling	0.00	s.y.	\$2.11	\$0.00
3	Type "SPL-B"	340.69	ton	\$24.45	\$8,329.87
4	Asphalt Cement	4,602.96	gal	\$3.08	\$14,177.12
Total Bid Section #2 =					\$22,881.99

Bid Section #3 - Darr Avenue

1	Tack Coat	82.00	gal	\$1.00	\$82.00
2	Milling	250.00	s.y.	\$2.11	\$527.50
3	Type "SPL-B"	75.39	ton	\$24.45	\$1,843.29
4	Asphalt Cement	921.68	gal	\$3.08	\$2,838.77
Total Bid Section #3 =					\$5,291.56

Bid Section #4 - 7th Street

1	Tack Coat	175.00	gal	\$1.00	\$175.00
2	Milling	680.00	s.y.	\$2.11	\$1,434.80
3	Type "SPL-B"	157.73	ton	\$24.45	\$3,856.50
4	Asphalt Cement	1,770.46	gal	\$3.08	\$5,453.02
Total Bid Section #4 =					\$10,919.32

Bid Section #5 - Stoeger Drive

1	Tack Coat	193.00	gal	\$1.00	\$193.00
2	Milling	750.00	s.y.	\$2.11	\$1,582.50
3	Type "SPL-B"	220.44	ton	\$24.45	\$5,389.76
4	Asphalt Cement	2,781.19	gal	\$3.08	\$8,566.07
Total Bid Section #5 =					\$15,731.32

Bid Section #6 - 9th Street

1	Tack Coat	100.00	gal	\$1.00	\$100.00
2	Milling	300.00	s.y.	\$2.11	\$633.00
3	Type "SPL-B"	96.41	ton	\$24.45	\$2,357.22
4	Asphalt Cement	1,286.30	gal	\$3.08	\$3,961.80
Total Bid Section #6 =					\$7,052.03

Bid Section #7 - Boggs Avenue

1	Tack Coat	300.00	gal	\$1.00	\$300.00
2	Milling	2,646.00	s.y.	\$2.11	\$5,583.06
3	Type "SPL-B"	283.68	ton	\$24.45	\$6,935.98
4	Asphalt Cement	3,553.85	gal	\$3.08	\$10,945.86
Total Bid Section #7 =					\$23,764.89

Bid Section #8 - Claude Road

1	Tack Coat	1,300.00	gal	\$1.00	\$1,300.00
2	Milling	4,900.00	s.y.	\$2.11	\$10,339.00
3	Type "SPL-A"	1,031.80	ton	\$24.25	\$25,021.15
4	Asphalt Cement	13,241.95	gal	\$3.08	\$40,785.21
5	Shoulder Construction	17.62	sta.	\$102.00	\$1,797.24
Total Bid Section #8 =					\$79,242.60

Bid Section #9 - Stuhr Road

1	Tack Coat	1,400.00	gal	\$1.00	\$1,400.00
2	Milling	5,900.00	s.y.	\$2.11	\$12,449.00
3	Type "SPL-A"	1,349.66	ton	\$24.25	\$32,729.26
4	Asphalt Cement	15,939.78	gal	\$3.08	\$49,094.52
5	Shoulder Construction	23.30	sta.	\$102.00	\$2,376.60
Total Bid Section #9 =					\$98,049.38

Bid Section #10 - Job Mix Design & Miscellaneous Items

1	Job Mix Design for Asphaltic Concrete, Type "SPL-A"	1.00	l.s.	\$900.00	\$900.00
2	Job Mix Design for Asphaltic Concrete, Type "SPL-B"	1.00	l.s.	\$900.00	\$900.00
3	Flagging (15 days)	62.00	l.s.	\$1,200.00	\$4,960.00
4	Mobilization	1.00	l.s.	\$500.00	\$500.00
Total Bid Section #10 =					\$7,260.00

SubTotal Total - Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, & 10=	\$302,829.54
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Change Order No. 1

CO - 1	Asphalt Concrete, Type SPL-1 (64-22)	291.21	ton	\$84.40	\$24,578.12
Total Bid Change Order No. 1 =					\$24,578.12

Change Order No. 2

CO-2A	Asphaltic Concrete Patching	933.00	s.y.	\$5.08	\$4,739.64
CO-2B	Asphaltic Concrete for Patching, Type B	32.62	ton	\$51.25	\$1,671.78
CO-2C	Milling (Wyandotte Street) - Bid Section #2	0.00	s.y.	\$2.11	\$0.00
Total Bid Section #10 =					\$6,411.42

PROJECT TOTAL =	\$333,819.08
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I hereby recommend that the Engineer's Certificate of Final Completion for Asphalt Resurfacing Project No. 2011-AC-1 be approved.

John Collins – City Engineer/Public Works Director

Jay Vavricek – Mayor

RESOLUTION 2011-332

WHEREAS, the City Engineer/Public Works Director for the City Of Grand Island has issued a Certificate of Completion for Project No. 2011-AC-1, Asphalt Resurfacing, certifying that J.I.L. Asphalt Paving Company of Grand Island, Nebraska, under contract, has completed the asphalt resurfacing; and

WHEREAS, the City Engineer/Public Works Director recommends the acceptance of the project; and

WHEREAS, the Mayor concurs with the recommendation of the City Engineer/Public Works Director; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Certificate of Final Completion for Project No. 2011-AC-1, Asphalt Resurfacing, is hereby confirmed.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G14

**#2011-333 - Approving Certificate of Final Completion for
Concrete Ditch Liner and Headwall East of Harrison Street**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services

Meeting: November 8, 2011

Subject: Approving Certificate of Final Completion for Concrete Ditch Liner and Headwall East of Harrison Street

Item #'s: G-14

Presenter(s): John Collins, Public Works Director

Background

The Diamond Engineering Company of Grand Island, Nebraska was awarded a \$23,261.00 bid by the City Council on September 27, 2011 to install a concrete ditch liner and headwall east of Harrison Street. Work on the project commenced on October 4, 2011 and was completed on October 24, 2011.

Discussion

The project was completed in accordance with the terms, conditions and stipulations of the bidding process. Work was completed at a total cost of \$24,986.00.

Change Order No. 1 is being presented to City Council tonight in the amount of \$1,725.00, which is for the furnishing and placing of crushed rock to provide a stable base for the ditch liner.

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

Public Works Administration recommends that the Council approve the Certificate of Final Completion for the Concrete Ditch Liner and Headwall East of Harrison Street.

Sample Motion

Move to approve the Certificate of Final Completion for the Concrete Ditch Liner and Headwall East of Harrison Street.

ENGINEER'S CERTIFICATE OF FINAL COMPLETION

Concrete Ditch Liner and Headwall East of Harrison Street
CITY OF GRAND ISLAND, NEBRASKA
November 8, 2011

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

This is to certify that the Concrete Ditch Liner and Headwall East of Harrison Street has been fully completed by The Diamond Engineering Company of Grand Island, Nebraska under the contract dated September 27, 2011. The work has been completed in accordance with the terms, conditions, and stipulations of said contract and complies with the contract, the plans and specifications. The work is hereby accepted for the City of Grand Island, Nebraska, by me as Public Works Director in accordance with the provisions of Section 16-650 R.R.S., 1943.

Concrete Ditch Liner and Headwall East of Harrison Street

Concrete Ditch Liner and Headwall	\$23,261.00
Change Order No. 1	\$ 1,725.00
Total Project Cost	\$24,986.00

I hereby recommend that the Engineer's Certificate of Final Completion for the Concrete Ditch Liner and Headwall East of Harrison Street be approved.

John Collins – City Engineer/Public Works Director

Jay Vavricek – Mayor

RESOLUTION 2011-333

WHEREAS, the City Engineer/Public Works Director for the City Of Grand Island has issued a Certificate of Completion for the Concrete Ditch Liner and Headwall East of Harrison Street, certifying that The Diamond Engineering Company of Grand Island, Nebraska, under contract, has completed the project; and

WHEREAS, the City Engineer/Public Works Director recommends the acceptance of the project; and

WHEREAS, the Mayor concurs with the recommendation of the City Engineer/Public Works Director; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Certificate of Final Completion for the Concrete Ditch Linder and Headwall East of Harrison Street, is hereby confirmed.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G15

#2011-334 - Approving Amending the 2011/2012 Fee Schedule

Staff Contact: Steve Lamken

Council Agenda Memo

From: Steven Lamken, Police Chief

Meeting: November 8, 2011

Subject: Amending of 2011/2012 Fee Schedule

Item #'s: G-15

Presenter(s): Steven Lamken, Police Chief

Background

The Police Department recommended that the fee for processing an application and issuing a permit to purchase a handgun be raised from \$5.00 to \$10.00 to better reflect the costs of issuing the permits. State Statute restricts the amount that we can collect for the permit process to \$5.00. We recommend amending the 2011/2012 fee schedule to return the permit fee to \$5.00.

Discussion

The Police Department recommended that the fee for processing an application and issuing a permit to purchase a handgun be raised from \$5.00 to \$10.00 based upon the costs of issuing the permits. A Police Officer is required to conduct a background check on a permit applicant before a permit can be issued. The amount of work required can vary from ten minutes to well over 30 minutes if the applicant has lived in multiple jurisdictions or had prior arrests. The City Council adopted the new fee of \$10.00 in the 2011/2012 City Fee Schedule.

We have since become aware that the fees that can be collected for processing and issuing permits to purchase a handgun are set in State Statute at \$5.00. State Statute 69-2404 sets forth a fee of \$5.00. We cannot charge more regardless of the cost of performing the service. The Police Department recommends that the Fee Schedule be amended to \$5.00 for the cost of processing and issuing a permit to purchase a handgun.

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 amend the 2011/2012 City Fee Schedule to reflect a fee of \$5.00 for processing and issuing a permit to purchase a handgun.

Sample Motion

Move to amend the 2011/2012 City Fee Schedule to have a fee of \$5.00 for services to process and issue a permit to purchase a handgun.

RESOLUTION 2011-334

WHEREAS, the 2011/2012 City Fee Schedule has a fee of ten dollars, \$10.00 for processing the application and issuing a permit to purchase a handgun; and

WHEREAS, State Statute 69-2404 sets forth a fee of \$5.00 for obtaining a permit to purchase a handgun; and

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

That the 2011/2012 City Fee Schedule be amended to have a fee of five dollars, \$5.00 for processing the application and issuing a permit to purchase a handgun.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G16

**#2011-335 - Approving Update to the Emergency
Management/Communication Center Interlocal Cooperation
Agreement with Hall County**

Staff Contact: Jon Rosenlund

Council Agenda Memo

From: Jon Rosenlund, Emergency Management Director

Meeting: November 8, 2011

Subject: Update to the Emergency Management/Comm Agreement with Hall County

Item #'s: G-16

Presenter(s): Jon Rosenlund, Emergency Management Director

Background

This proposed update to the Emergency Management and Communications Interlocal Agreement answers liability concerns raised by County Board members of that Interlocal Committee.

Discussion

At a recent meeting of the Interlocal Committee for Emergency Management and Communications, members of that committee discussed issues of liability protection. Hall County Board members brought forward a concern that the County might have liability exposure for the actions of City employees in the Emergency Management Department.

Working together, the City Attorney, County Attorney, and Director of Emergency Management proposed changes to the existing agreement that include a new “hold harmless” clause whereby the County is not held liable for the actions of City employees.

Following recommendations by both City and County Attorneys, the Interlocal Committee voted affirmatively to recommend this new draft of the Interlocal Agreement for Council approval. This replaces the existing agreement dated May 4, 2009.

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 this agreement.

Sample Motion

Move to approve this updated interlocal agreement.

**EMERGENCY MANAGEMENT/COMMUNICATIONS CENTER
INTERLOCAL COOPERATION AGREEMENT**

WHEREAS, it is in the best interests of the County of Hall to participate in a joint emergency management/communications center with the City of Grand Island; and,

WHEREAS, it is in the best interests of the City of Grand Island to participate in a joint emergency management/communications center with the County of Hall; and,

WHEREAS, the County of Hall and the City of Grand Island wish to enter into such an agreement, pursuant to the terms of the Interlocal Cooperation Act; and,

WHEREAS, the Board of Supervisors of Hall County has reviewed this agreement and has authorized the chairman of the Board of Supervisors of Hall County to sign this agreement; and,

WHEREAS, the City Council of the City of Grand Island has reviewed this agreement and has authorized the Mayor of the City of Grand Island to sign this agreement.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO THAT:

1. The term of this agreement shall be perpetual unless terminated as hereinafter provided.
2. The emergency management/communications center established pursuant to the terms of this agreement shall function as a department of the City of Grand Island, subject, however, to the terms of this agreement. The department shall be known as the "Emergency Management/Communications Center".
3. The Emergency Management/Communications Center shall be supervised by a joint committee consisting of the Chairperson of the Board of Supervisors of Hall County, the

Mayor of the City of Grand Island, two members of the Grand Island City Council and two members of the Board of Supervisors. The joint committee shall be responsible for: recommending and providing policy direction and serve as the advisory committee which govern operations of the Emergency Management/Communications Center, and recommending a budget to the Board of Supervisors of the County of Hall and the City Council of the City of Grand Island. In the event the members of the joint committee shall fail to agree as to any matter, such a matter shall be submitted to the Board of Supervisors and the City Council for determination, advising the Mayor of opposition or action.

All actions of the joint committee shall be reported in writing within seven days to the Board of Supervisors and the City Council.

4. The Director of the Emergency Management/Communications Center shall be an employee of the City of Grand Island and shall be subject to the employee policies, rules and regulations, including the disciplinary process for city employees. The Director of the Emergency Management/Communications Center shall also be entitled to the benefits of the city personnel systems as department head. The duties and responsibilities of the director shall include: direction and management of the day-to-day operations of the Emergency Management/Communications Center; attending meetings of the joint committee and giving them his/her opinion on any matter, either orally or in writing as may be required; accounting for all funds received and disbursed by the Emergency Management/Communications Center; preparing an annual budget for submission to the joint committee; and performing such other duties as may be required.

5. Employees of the Emergency Management/Communications Center below the level of the director shall be employees of the City of Grand Island and shall be subject to the

employee policies, rules and regulations, including the disciplinary process for city employees, and shall also be entitled to the benefits of the city personnel system.

6. The purpose of the Emergency Management/Communications Center shall include operation of Emergency Management functions, operation of the 911 Emergency Center, and such other duties as shall from time to time be established.

7. The Emergency Management/Communications Center shall adopt a fiscal year commencing **October 1st and terminating September 30th**.

8. On or before **June 15th** in each year, the joint committee shall submit a recommended budget to the Board of Supervisors of Hall County and the City Council of the City of Grand Island. The Board of Supervisors shall, prior to August 1st, in each year, adopt a budget for funding of the Emergency Management/Communications Center for the next fiscal year. The City Council shall, prior to July 1st, formally review a budget for funding the Emergency Management/Communications Center for the next fiscal year, and shall adopt a budget for funding the Emergency Management/Communications Center prior to August 1st.

9. The receipts, expenditures, and payroll of the Emergency Management Communications Center shall be received and disbursed through the City Clerk/Finance Director's office of the City of Grand Island. The City of Grand Island shall regularly invoice the County of Hall for 50% of the balance of actual expenses following a credit of revenues received for that same period.

10. The expenses and receipts of the Emergency Management/Communications Center shall be shared equally by the County of Hall and the City of Grand Island. These items shall include salary and fringe benefits costs; capital expenditures; receipts from sale of property; income from operations; supplies, maintenance; all emergency expenditures; claims, insurance;

and other operating income and expenses. As long as the Emergency Management/Communications Center is located in City Hall, no rent shall be charged for the space used by the Center. Any inequities resulting from the differing budget systems used to finance the Communications Center shall be adjusted between the parties in the following budget year or years.

11. All property transferred to or acquired by the Emergency Management/Communications Center shall be owned jointly by the County of Hall and the City of Grand Island. Upon disposal of any property owned by the Communications Center, the proceeds shall be divided equally between the County of Hall and the City of Grand Island. In the event that this agreement is terminated and one of the parties continues operation of the same or similar service provided hereunder, either individually or in cooperation with some other entity, it is understood and agreed that all property of the Emergency Management/Communications Center owned jointly by the parties hereto shall be transferred to such individual party without costs.

12. City agrees to indemnify and hold harmless, protect and defend the County and its elected and appointed officials, employees, agents, and representatives from any and all claims, losses, demands, suits, actions, payments and judgments, including any and all costs and expenses connected therewith, legal cost or otherwise, for any damages which may be asserted, claimed, or recovered against or from the County or its insurers because of personal injury, including bodily injury or death, or on account of property damage, including loss of use thereof, sustained by any person or persons which arises out of, is in any way connected with, or results from any and all work or activity arising out of the responsibilities of the City associated with

this agreement unless said claims, losses, damages and liabilities arise out of the sole negligence of the County.

13. This agreement shall replace the Interlocal Cooperation Agreement between the parties dated May 4, 2009, and shall continue the operations hereunder except as specifically herein provided.

14. Either party may terminate this agreement effective on **June 30th** in any year, provided, written notice of such termination is delivered to the other party prior to **March 1st** of that year.

Dated this ____ day of _____, 2011.

ATTEST:

CITY OF GRAND ISLAND, NEBRASKA,
A Municipal Corporation,

RaNae Edwards, City Clerk

By: _____
Jay Vavricek, Mayor

ATTEST:

COUNTY OF HALL, NEBRASKA,

Marla Conley, County Clerk

By: _____
Pam Lancaster, Chairperson
Hall County Board of Supervisors

RESOLUTION 2011-335

WHEREAS, it is in the best interests of the County of Hall to participate in a joint emergency management/communications center with the City of Grand Island; and,

WHEREAS, it is in the best interests of the City of Grand Island to participate in a joint emergency management/communications center with the County of Hall; and,

WHEREAS, the County of Hall and the City of Grand Island wish to update such an agreement, pursuant to the terms of the Interlocal Cooperation Act; and,

WHEREAS, the City Council of the City of Grand Island has reviewed this agreement and has authorized the Mayor of the City of Grand Island to sign this agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, to enter into an Interlocal agreement with the County of Hall according to the revised terms of the Interlocal agreement draft presented to Council, and the Mayor is hereby authorized and directed to execute such Interlocal on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 2, 2011	☐ City Attorney



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G17

**#2011-336 - Approving Certificate of Final Completion and
Scheduling the Board of Equalization for Street Improvement
District No. 1256; Capital Avenue from the Moores Creek Drain to
Webb Road**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services

Meeting: November 8, 2011

Subject: Approving Certificate of Final Completion and Scheduling the Board of Equalization for Street Improvement District No. 1256; Capital Avenue from the Moores Creek Drain to Webb Road

Item #'s: G-17

Presenter(s): John Collins, Public Works Director

Background

The contract for Street Improvement District No. 1256 was awarded to The Diamond Engineering Company of Grand Island, Nebraska on May 13, 2008. Work commenced on August 26, 2008 and was completed on May 4, 2010.

Discussion

Street Improvement District No. 1256 was completed in accordance with the terms, conditions and stipulations of the contract, plans, and specifications. The project was completed on schedule at a construction price of \$3,946,457.35. Total cost of the project, is \$4,684,331.83. Costs for the project break down as follows:

Original Bid	\$3,379,328.25
Underruns	-\$517.39
Change Order No. 1	\$351,219.24
Change Order No. 2	\$32,077.94
Change Order No. 3	\$141,330.31
Change Order No. 4	\$43,019.00
SubTotal (Construction Price)	\$3,946,457.35
<hr/>	
Additional Costs:	
Preliminary Engineering	\$278,937.48
Construction Engineering	\$458,937.00
TOTAL COST	\$4,684,331.83

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 for Street Improvement District No. 1256 and set the Board of Equalization date of December 20, 2011.

Sample Motion

Move to approve the resolution.

ENGINEER'S CERTIFICATE OF FINAL COMPLETION

STREET IMPROVEMENT DISTRICT NO. 1256

CITY OF GRAND ISLAND, NEBRASKA

November 8, 2011

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

This is to certify that construction of STREET IMPROVEMENT DISTRICT NO. 1256 has been fully completed by The Diamond Engineering Company of Grand Island, Nebraska under the contract dated May 20, 2008. The construction of this street improvement district 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 regarding this Street Improvement District is hereby accepted for the City of Grand Island, Nebraska, by me as Public Works Director in accordance with the provisions of Section 16-650 R.R.S., 1943.

District No. 1256, Capital Avenue, from Moores Creek Drain to Webb Road

Item No.	Description	Total Quantity	Unit	Unit Price	Total Cost
Bid Section "A" - Surfacing					
1	9" Concrete Pavement	26,550.00	s.y.	\$32.00	\$849,600.00
2	9" Concrete Pavement w/ 4" Foundation Course	1,315.00	s.y.	\$42.10	\$55,361.50
3	High Early Concrete Pavement	125.50	c.y.	\$25.00	\$3,137.50
4	6" Concrete Pavement	1,675.00	s.y.	\$24.60	\$41,205.00
5	6" Integral Curb	8,947.00	l.f.	\$1.45	\$12,973.15
6	8" Asphaltic Concrete Pavement	0.00	tns	\$91.50	\$0.00
7	6" Asphaltic Concrete Pavement	0.00	tns	\$115.00	\$0.00
8	6" Concrete Driveway	797.00	s.y.	\$28.00	\$22,316.00
9	8" Concrete Driveway	640.00	s.y.	\$33.00	\$21,120.00
10	Combination Curb & Gutter	1,352.00	l.f.	\$14.00	\$18,928.00
11	Combination Curb & Gutter Stem Wall	70.00	l.f.	\$25.00	\$1,750.00
12	Reinforced Combination Curb & Gutter	63.00	l.f.	\$21.50	\$1,354.50
13	5" Imprinted Colored Concrete Median Surfacing	926.00	s.y.	\$64.45	\$59,680.70
14	5" Concrete Median Surfacing	111.00	s.y.	\$37.00	\$4,107.00
15	Build Concrete Median Nose	11.00	ea.	\$710.00	\$7,810.00
16	5" Concrete Sidewalk	1,860.00	s.y.	\$26.00	\$48,360.00
17	6" Concrete Bike Trail	2,620.00	s.y.	\$32.40	\$84,888.00
18	Detectable Warning Plates	96.00	ea.	\$280.00	\$26,880.00
19	Brick Pavers	830.00	s.f.	\$20.00	\$16,600.00
20	Crushed Rock Surfacing	146.40	tns	\$26.65	\$3,901.56

21	48" Chainlink Fence	35.00	l.f.	\$45.00	\$1,575.00
22	Sod	3,239.00	s.y.	\$3.65	\$11,822.35
23	Seeding	22,981.00	s.y.	\$1.35	\$31,024.35
24	1 1/4" Corporation Stop	1.00	ea.	\$425.00	\$425.00
25	1 1/4" Curb Stop	1.00	ea.	\$325.00	\$325.00
26	1 1/4" Service Tubing	100.00	l.f.	\$21.50	\$2,150.00
27	Adjust Manhole to Grade	19.00	ea.	\$245.00	\$4,655.00
28	Adjust Valve to Grade	13.00	ea.	\$155.00	\$2,015.00
29	Remove and Relocate Fire Hydrant	6.00	ea.	\$950.00	\$5,700.00
30	Adjsut Fire Hydrant to Grade	5.00	ea.	\$700.00	\$3,500.00
31	Remove Pavement	21,458.00	s.y.	\$4.25	\$91,196.50
32	Remove Sidewalk	699.00	s.y.	\$1.95	\$1,363.05
33	Remove Concrete Swale	32.00	s.y.	\$3.25	\$104.00
34	Remove Median Surfacing	278.00	s.y.	\$5.25	\$1,459.50
35	Grind Curb	0.00	l.f.	\$8.00	\$0.00
36	Remove Sanitary Sewer Air Release Manhole	1.00	ea.	\$300.00	\$300.00
37	Remove and Salvage Light Pole	5.00	ea.	\$360.00	\$1,800.00
38	Remove Foundation	5.00	ea.	\$256.00	\$1,280.00
39	Remove and Salvage Fence	209.00	l.f.	\$5.55	\$1,159.95
40	Remove Bollard	6.00	ea.	\$45.00	\$270.00
41	Temporary Surafcing	2,907.00	s.y.	\$18.15	\$52,762.05
42	Temporary Gravel Surfacing	0.00	tns	\$15.00	\$0.00
43	Traffic Control	1.00	ls	\$70,000.00	\$70,000.00
44	Unsuitable Material Overexcavation	5,176.00	c.y.	\$16.50	\$85,404.00
45	Granular Sub-Drain	2.00	ea.	\$850.00	\$1,700.00
46	Additional Subgrade Preparation	14,279.00	s.y.	\$10.00	\$142,790.00
47	Earthwork	1.00	ls	\$210,000.00	\$210,000.00
48	Concrete Protection Barrier	780.00	l.f.	\$13.50	\$10,530.00
Total Bid Section "A" =					\$2,015,283.66

Bid Section "B" - Storm Sewer

1	Type "D" Modified Curb Inlet	35.00	ea.	\$1,480.00	\$51,800.00
2	Type "BA" Curb Inlet	4.00	ea.	\$1,815.00	\$7,260.00
3	Type "D" Modified Curb Inlet/Junction Box	8.00	ea.	\$2,700.00	\$21,600.00
4	Area Inlet	3.00	ea.	\$2,200.00	\$6,600.00
5	Storm Sewer Manhole	13.00	ea.	\$3,270.00	\$42,510.00
6	Concrete Collar	13.00	ea.	\$285.00	\$3,705.00
7	5" Concrete Flowliner	0.00	s.y.	\$32.00	\$0.00
8	15" Reinforced Concrete Flared End Section	1.00	ea.	\$485.00	\$485.00
9	30" Reinforced Concrete Flared End Section	2.00	ea.	\$830.00	\$1,660.00
10	36" Reinforced Concrete Flared End Section	1.00	ea.	\$1,115.00	\$1,115.00

11	48" Reinforced Concrete Flared End Section	1.00	ea.	\$1,885.00	\$1,885.00
12	Place Salvaged Reinforced Concrete Flared End Section	3.00	ea.	\$130.00	\$390.00
13	24" Corrugated Metal Flared End Section	1.00	ea.	\$225.00	\$225.00
14	15" Reinforced Concrete Storm Sewer Pipe	859.00	l.f.	\$33.00	\$28,347.00
15	18" Reinforced Concrete Storm Sewer Pipe	1,327.00	l.f.	\$39.00	\$51,753.00
16	24" Reinforced Concrete Storm Sewer Pipe	246.00	l.f.	\$56.00	\$13,776.00
17	30" Reinforced Concrete Storm Sewer Pipe	471.00	l.f.	\$73.00	\$34,383.00
18	36" Reinforced Concrete Storm Sewer Pipe	120.00	l.f.	\$100.00	\$12,000.00
19	42" Arch Reinforced Concrete Storm Sewer Pipe	321.00	l.f.	\$188.00	\$60,348.00
20	48" Reinforced Concrete Storm Sewer Pipe	1,068.00	l.f.	\$153.00	\$163,404.00
21	24" Corrugated Metal Storm Sewer Pipe	56.00	l.f.	\$37.50	\$2,100.00
22	Concrete For Box Culverts	63.00	c.y.	\$300.00	\$18,900.00
23	Reinforcing Steel For Box Culverts	6,899.00	lbs	\$1.20	\$8,278.80
24	Erosion Control, Class 2C	957.00	s.y.	\$16.50	\$15,790.50
25	Temporary Erosion Control	1,404.00	l.f.	\$1.90	\$2,667.60
26	Curb Inlet Sediment Filters	27.00	ea.	\$150.00	\$4,050.00
27	Area Inlet Sediment Filters	0.00	ea.	\$780.00	\$0.00
28	Tap Existing Storm Sewer Structure	5.00	ea.	\$330.00	\$1,650.00
29	Reconstruct Area Inlet to Storm Sewer Manhole	0.00	ea.	\$2,900.00	\$0.00
30	Remove Storm Sewer Pipe	624.00	l.f.	\$8.10	\$5,054.40
31	Remove & Salvage Reinforced Concrete Flared End Section	3.00	ea.	\$105.00	\$315.00
32	Remove Area Inlet	1.00	ea.	\$100.00	\$100.00
33	Remove Grate Inlet	6.00	ea.	\$100.00	\$600.00
34	Remove Curb Inlet	3.00	ea.	\$110.00	\$330.00
35	Remove Storm Sewer Manhole	1.00	ea.	\$200.00	\$200.00
36	Remove Trench Drain	25.00	l.f.	\$15.00	\$375.00
37	Dewatering	0.00	l.f.	\$0.00	\$0.00
Total Bid Section "B" =					\$563,657.30

Bid Section "C" - Sanitary Sewer Force Main

1	Air and Vacuum Release Manhole	3.00	ea.	\$11,905.00	\$35,715.00
2	12" P.V.C. Sanitary Sewer Force Main	86.00	l.f.	\$47.25	\$4,063.50
3	24" P.V.C. Sanitary Sewer Force Main	2,313.00	l.f.	\$82.85	\$191,632.05
4	Jack and Bore 36" Steel Pipe Casing	175.00	l.f.	\$392.00	\$68,600.00
5	12" Plug Valve w/ Box	2.00	ea.	\$2,617.00	\$5,234.00
6	24" Plug Valve w/ Box	2.00	ea.	\$14,250.00	\$28,500.00
7	12" M.J. Tee	0.00	ea.	\$695.00	\$0.00
8	12" M.J. Cap	2.00	ea.	\$487.50	\$975.00
9	12" M.J. Solid Sleeve	2.00	ea.	\$432.75	\$865.50

10	12' M.J. 45 Degree Bend	3.00	ea.	\$540.80	\$1,622.40
11	12" M.J. 90 Degree Bend	2.00	ea.	\$588.00	\$1,176.00
12	24" x 12" M.J. Tee	2.00	ea.	\$3,025.00	\$6,050.00
13	24" M.J. Cap	2.00	ea.	\$1,225.00	\$2,450.00
14	24" J.J. 11 1/4 Degree Bend	1.00	ea.	\$2,682.00	\$2,682.00
15	24" M.J. 22 1/2 Degree Bend	4.00	ea.	\$2,680.45	\$10,721.80
16	24" M.J. 45 Degree Bend	3.00	ea.	\$2,575.85	\$7,727.55
17	Remove 12" 90 Bend	0.00	ea.	\$69.80	\$0.00
18	Remove 12" D.I. Sanitary Sewer Force Main	840.00	l.f.	\$10.40	\$8,736.00
19	Remove & Replace Asphaltic Concrete Pavement	0.00	s.y.	\$43.75	\$0.00
20	Dewatering	2,400.00	l.f.	\$15.00	\$36,000.00
21	Connection to Existing Sanitary DIP	2.00	ea.	\$750.00	\$1,500.00
22	12" Foster Adaptor	1.00	ea.	\$412.00	\$412.00
23	24" Foster Adaptor	2.00	ea.	\$945.00	\$1,890.00
24	24" Pipe Restraint for Bell Joints	18.00	ea.	\$738.40	\$13,291.20
25	24" Pipe Restraint for Fittings	28.00	ea.	\$367.25	\$10,283.00
26	12" Pipe Restraint For Fittings	15.00	ea.	\$119.70	\$1,795.50
27	Concrete Blocking	16.00	c.y.	\$181.85	\$2,909.60
28	8" Ductile Iron Water Main	58.00	l.f.	\$76.00	\$4,408.00
29	8" M.J. 45 Degree Bends	4.00	ea.	\$432.00	\$1,728.00
30	Water Main Wet Cut-In	1.00	ea.	\$445.00	\$445.00
Total Bid Section "C" =					\$451,413.10

Bid Section "D" - Sanitary Sewer - St. Patrick Ave

1	Reconstruct Manhole to Drop Manhole	1.00	ea.	\$6,035.00	\$6,035.00
2	10" P.V.C. Sanitary Sewer Pipe	278.00	l.f.	\$38.25	\$10,633.50
3	10" P.V.C. Cap	1.00	ea.	\$185.00	\$185.00
4	Dewatering	278.00	l.f.	\$24.45	\$6,797.10
Total Bid Section "D" =					\$23,650.60

Bid Section "E" - Traffic Signal

1	Combination Mast Arm Signal and Lighting Pole, Type CMP-40-12	1.00	ea.	\$7,912.00	\$7,912.00
2	Combination Mast Arm Signal and Lighting Pole, Type CMP-45-12	1.00	ea.	\$8,145.00	\$8,145.00
3	Combination Mast Arm Signal and Lighting Pole, Type CMP-50-12	2.00	ea.	\$9,060.00	\$18,120.00
4	Combination Mast Arm Signal and Lighting Pole, Type CMP-55-12	1.00	ea.	\$10,480.00	\$10,480.00
5	Combination Mast Arm Signal and Lighting Pole, Type CMP-60-12	1.00	ea.	\$11,240.00	\$11,240.00

6	Combination Mast Arm Signal and Lighting Pole, Type CMP-65-12	2.00	ea.	\$11,613.00	\$23,226.00
7	Combination Mast Arm Signal and Lighting Pole, Type CMP-70-12	1.00	ea.	\$12,550.00	\$12,550.00
8	Street Name Sign	5.00	ea.	\$110.00	\$550.00
9	Traffic Signal Controller	3.00	ea.	\$9,750.00	\$29,250.00
10	Traffic Signal, Type TS-1, T31	3.00	ea.	\$672.00	\$2,016.00
11	Traffic Signal, Type TS-1, T36	18.00	ea.	\$765.00	\$13,770.00
12	Traffic Signal, Type TS-1LL, T51B	5.00	ea.	\$1,176.00	\$5,880.00
13	Traffic Signal, Type TS-1RR, T52	4.00	ea.	\$1,105.00	\$4,420.00
14	Traffic Signal, Type TS-1LB, T47	1.00	ea.	\$910.00	\$910.00
15	Pedestrian Signal, Type PS-1, T19	14.00	ea.	\$465.00	\$6,510.00
16	Pedestrian Push Button, Type PPB	14.00	ea.	\$147.00	\$2,058.00
17	Pull Box, Type PB-1	11.00	ea.	\$500.00	\$5,500.00
18	Pull Box, Type PB-2	4.00	ea.	\$770.00	\$3,080.00
19	Video Detection Camera	12.00	ea.	\$4,425.00	\$53,100.00
20	Vehicle Detector, Type TD-3	2.00	ea.	\$370.00	\$740.00
21	Service Meter and Pedestal	3.00	ea.	\$536.00	\$1,608.00
22	2" Conduit in Trench	2,705.00	l.f.	\$2.90	\$7,844.50
23	2" Conduit Under Roadway	0.00	l.f.	\$2.90	\$0.00
24	3" Conduit in Trench	864.00	l.f.	\$3.70	\$3,196.80
25	3" Conduit Under Roadway	0.00	l.f.	\$3.70	\$0.00
26	2/C #14 AWG, Traffic Signal Cable	589.00	l.f.	\$0.75	\$441.75
27	2/C #14 AWG, Detector Lead-in-Cable	1,908.00	l.f.	\$0.80	\$1,526.40
28	5/C #14 AWG Traffic Signal Cable	1,760.00	l.f.	\$1.30	\$2,288.00
29	7/C #14 AWG Traffic Signal Cable (Interconnect)	2,111.00	l.f.	\$1.60	\$3,377.60
30	12/C #14 AWG Traffic Signal Cable	386.00	l.f.	\$3.00	\$1,158.00
31	20/C #16 AWG Traffic Signal Cable	1,239.00	l.f.	\$4.20	\$5,203.80
32	Camera Detector Cable	1,722.00	l.f.	\$1.90	\$3,271.80
33	#6 Grounding Conductor	716.00	l.f.	\$0.95	\$680.20
34	#8 Groudning Conductor	711.00	l.f.	\$0.85	\$604.35
35	#4 Street Lighting Cable	1,352.00	l.f.	\$1.20	\$1,622.40
36	#6 Street Lighting Cable	1,224.00	l.f.	\$1.05	\$1,285.20
37	#6 Service Cable	638.00	l.f.	\$1.05	\$669.90
38	Relocate Street Name Sign	5.00	ea.	\$100.00	\$500.00
39	Relocate Luminaire	1.00	l.f.	\$126.00	\$126.00
40	Relocate Traffic Signal, Type TS-1	2.00	ea.	\$140.00	\$280.00
41	Remove Combination Mast Arm Signal and Lighting Pole, Complete	1.00	ea.	\$920.00	\$920.00
42	Remove Pull Box	4.00	ea.	\$95.00	\$380.00
43	Remove Traffic Signal Cabinet and Base, Complete	1.00	ea.	\$185.00	\$185.00

44	Temporary Traffic Signal at US-281 & Capital Ave	1.00	ea.	\$9,000.00	\$9,000.00
45	Relocate & Remove Temp Traffic Signal at Diers Ave & Capital Ave	1.00	l.s.	\$9,000.00	\$9,000.00
46	Traffic Signal Removal at US-281 & Capital Ave	1.00	l.s.	\$2,415.00	\$2,415.00
Total Bid Section "E" =					\$277,041.70

Bid Section "F" - Pavement Marking

1	4" Yellow Preformed Plastic Pavement Marking, Type 4, Grooved	3,928.00	l.f.	\$1.45	\$5,695.60
2	8" Yellow Preformed Plastic Pavement Marking, Type 4, Grooved	30.00	l.f.	\$4.20	\$126.00
3	4" White Preformed Plastic Pavmeent Marking, Type 4, Grooved	5,030.00	l.f.	\$1.40	\$7,042.00
4	8" White Preformed Plastic Pavement Marking, Type 4 Grooved	675.00	l.f.	\$4.20	\$2,835.00
5	12" White Preformed Plastic Pavement Marking, Type 4 Grooved	2,460.00	l.f.	\$5.50	\$13,530.00
6	Arrow, Preformed Plastic Pavement Marking, Type 4, Grooved	33.00	ea.	\$185.00	\$6,105.00
Total Bid Section "F" =					\$35,333.60

Bid Section "G" - Lighting

1	Street Lighting Control Center	2.00	ea.	\$1,425.00	\$2,850.00
2	Pull Box, Type PB-5	26.00	ea.	\$357.00	\$9,282.00
3	Street Lighting Unit, Type SL-D-40-15-0.25	26.00	ea.	\$2,160.00	\$56,160.00
4	Relocate Existing Lighting Unit	2.00	ea.	\$735.00	\$1,470.00
5	2" Conduit in Trench	4,654.00	l.f.	\$3.00	\$13,962.00
6	2" Conduit Under Roadway	540.00	l.f.	\$3.00	\$1,620.00
7	#4 CU THWN Street Light Cable	8,526.00	l.f.	\$1.20	\$10,231.20
8	#6 CU THWN Street Light Cable	2,128.00	l.f.	\$1.05	\$2,234.40
9	#10 Grounding Conductor	5,327.00	l.f.	\$0.45	\$2,397.15
Total Bid Section "G" =					\$100,206.75

Total of Bid Sections A, B, C, D, E, F, G =					\$3,466,586.71
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Change Order No. 1

1	Bypass Connection Manhole	1.00	ea.	\$8,099.15	\$8,099.15
2	Construct 24" dia. PVC C-905	63.00	l.f.	\$243.50	\$15,340.50
3	Build 24" dia. Plug Valve & Box	1.00	ea.	\$16,644.02	\$16,644.02
4	Build 24" x 24" x 12" Tee, M. Jt.	1.00	ea.	\$4,365.00	\$4,365.00

5	Build 24" x 24" 45 degree Bend, M.Jt.	1.00	ea.	\$3,648.30	\$3,648.30
6	Dewater Site	1.00	l.s.	\$16,252.14	\$16,252.14
7	Steel Sheeting	1.00	l.s.	\$24,469.52	\$24,469.52
8	24" dia. Pipe Restraints	1.00	ea.	\$845.07	\$845.07
9	24" dia. Pipe Restraints for Fittings	6.00	ea.	\$483.80	\$2,902.80
10	Construct 15" dia. Sanitary Sewer Main SDR #26	66.00	l.f.	\$211.91	\$13,986.06
11	Construct 27" dia. Sanitary Sewer Main SDR #26	31.40	l.f.	\$322.09	\$10,113.63
12	Construct 36" dia. Sanitary Sewer Main SDR #26	104.00	l.f.	\$357.44	\$37,173.76
13	Build 36" dia. PVC S.W. Cap Plug	1.00	ea.	\$2,965.38	\$2,965.38
14	Build 2" dia. Corporation Stop w /Saddle	1.00	ea.	\$740.59	\$740.59
15	Build 2" dia. Curb Stop & Box w/ enlarged Base	1.00	ea.	\$784.81	\$784.81
16	Construct 2" dia. Type "K" Soft Copper Serv. Line	60.00	l.f.	\$52.42	\$3,145.20
17	Build Special Manhole #1 Approx. 25.67 vft	1.00	ea.	\$43,599.52	\$43,599.52
18	Build Special Manhole #2 Approx. 22.43 vft	1.00	ea.	\$62,771.06	\$62,771.06
19	Build Special Manhole #3 Approx. 21.58 vft	1.00	ea.	\$59,812.81	\$59,812.81
20	Build Special Manhole #4 Approx. 23.59 vft	1.00	ea.	\$26,178.88	\$26,178.88
Total Change Order No. 1 =					\$353,838.20

Change Order No. 2

1	30" Fire Hydrant Extension	1.00	ea.	\$1,271.21	\$1,271.21
2	6" Ductile Iron Pipe	40.00	l.f.	\$76.00	\$3,040.00
3	8" Gate Valve & Box	2.00	ea.	\$1,721.60	\$3,443.20
4	8" Ductile Iron Coupling	3.00	ea.	\$401.32	\$1,203.96
5	Construct Shoo-fly	1.00	l.s.	\$2,538.83	\$2,538.83
6	Install Linestop	1.00	l.s.	\$4,804.32	\$4,804.32
7	Build Storm Sewer Manhole (See Item B-5)		ea.	\$3,270.00	\$0.00
8	36" RCP Precast 45 Degree Bend	1.00	ea.	\$1,732.03	\$1,732.03
9	24" RCP Flared End Section	2.00	ea.	\$998.84	\$1,997.68
10	12" Bell Joint Restraint	1.00	ea.	\$505.85	\$505.85
11	Additional Light Pole Bury	10.00	ea.	\$185.00	\$1,850.00
12	Signal Pole Extension Modification	6.00	c.y.	\$1,070.00	\$6,420.00
13	Concrete for Manhole Inverts	16.50	c.y.	\$410.00	\$6,765.00
Total Change Order No. 2 =					\$35,572.08

Change Order No. 3

1	Plug Valve Concrete Support Pad	2.00	ea.	\$593.10	\$1,186.20
2	St. Patrick Intersection Shoo-fly	1.00	l.s.	\$1,800.00	\$1,800.00

3	2" Asphaltic Concrete Pavement	137.00	ton	\$115.00	\$15,755.00
4	Concrete Protection Barrier (See Item A-48)			\$13.50	\$0.00
5	Sprinkler Labor	386.00	hr.	\$35.85	\$13,838.10
6	Sprinkler Machine	31.75	hr.	\$102.25	\$3,246.44
7	Sprinkler Fittings	10.22	l.s.	\$1,000.00	\$10,216.46
8	Shipping Extra Fittings	1.00	l.s.	\$841.50	\$841.50
9	Save Dewatering Well	1.00	l.s.	\$2,395.00	\$2,395.00
10	Remove Pavement (See Item A-31)		s.y.	\$4.25	\$0.00
11	Concrete Protection Barrier (See Item A-48)		l.f.	\$13.50	\$0.00
12	6" Concrete Pavement (See Item A-4)		s.y.	\$24.60	\$0.00
13	8" Asphaltic Concrete Pavement (See Item A-6)		ton	\$91.50	\$0.00
14	6" Asphaltic Concrete Pavement (See Item A-7)		ton	\$115.00	\$0.00
15	9" P.C. Concrete Pavement (See Item A-1)		s.y.	\$32.00	\$0.00
16	6" P.C. Concrete Pavement (See Item A-4)		s.y.	\$24.60	\$0.00
17	8" P.C. Concrete Driveway (See Item A-9)		s.y.	\$33.00	\$0.00
18	Unsuitable Material Overexcavation (See Item A-44)		c.y.	\$16.50	\$0.00
19	Additional Subgrade Preparation (See Item A-46)		s.y.	\$10.00	\$0.00
20	Crushed Concrete Backfill	665.00	ton	\$11.08	\$7,368.20
21	2" Conduit Under Roadway (See Item E-23)		l.f.	\$2.90	\$0.00
22	3" Conduit Under Roadway (See Item E-25)		l.f.	\$3.70	\$0.00
23	2" Conduit, Jacked	154.00	l.f.	\$11.81	\$1,818.74
24	3" Conduit, Jacked	299.00	l.f.	\$12.86	\$3,845.14
25	8" Tapping Tee & Valve	1.00	ea.	\$4,998.17	\$4,998.17
26	Remove Valve Manhole	3.00	ea.	\$499.52	\$1,498.56
27	Reconstruct Area Inlet to Manhole (See Item B-29)		ea.	\$2,900.00	\$0.00
28	Tap Existing Storm Sewer Structure (See Item B-28)		ea.	\$330.00	\$0.00
29	Area Inlet (See Item B-4)		ea.	\$2,200.00	\$0.00
30	Modular Block Retaining Wall	403.00	s.f.	\$36.95	\$14,890.85
Total Change Order No. 3 =					\$83,698.36

Change Order No. 4

1	Relocated Temporary Signal Pole	1.00	ea.	\$3,225.00	\$3,225.00
2	Raise Traffic Signal, Type TS-1RR, T52	2.00	ea.	\$1,050.00	\$2,100.00
3	Traffic Signal, Type TS-1L, T37 (Material Only)	2.00	ea.	\$718.50	\$1,437.00
Total Change Order No. 4 =					\$6,762.00

Grand Total - Bid Sections A, B, C, D, E, F, G, Change Order No's. 1, 2, 3, 4 =	\$3,946,457.35
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TOTAL SECTIONS A, B, C, D E, F, G	\$3,466,586.71
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CHANGE ORDER NO.'s 1, 2, 3, 4	\$ 479,870.64
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SUB TOTAL (CONSTRUCTION COST)	\$3,946,457.35
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Additional Costs:

Preliminary Engineering (Olsson Assoc.)	\$ 278,937.48
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Construction Engineering (Olsson Assoc.)	\$ 458,937.00
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TOTAL COST OF STREET IMPROVEMENT DISTRICT NO. 1256	\$4,684,331.83
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Informational Costs

Amount Assessable to Property Owners Including City Property is \$794,704.80

City Property Costs is \$138,038.23

Total City Cost is \$1,039,290.37

Respectfully submitted,

John Collins, P.E.
Public Works Director

November 8, 2011

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

I hereby recommend that the Engineer's Certificate of Final Completion for the Street Improvement District No. 1256, be approved.

I further recommend that the City Council sit as the Board of Equalization on December 20, 2011 to determine benefits and levy special assessments.

Respectfully submitted,

Jay Vavricek
Mayor

RESOLUTION 2011-336

WHEREAS, the City Engineer/Public Works Director for the City of Grand Island has issued a Certificate of Final Completion for Street Improvement District No. 1256 located in Capital Avenue, from Moores Creek Drain to Webb Road, certifying that The Diamond Engineering Company of Grand Island, Nebraska under contract date May 20, 2008, has completed such project according to the terms, conditions, and stipulations for such improvements; and

WHEREAS, the City Engineer/Public Works Director recommends the acceptance of the district; and

WHEREAS, the Mayor concurs with the City Engineer/Public Works Director's recommendations.

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

1. The City Engineer/Public Works Director's Certificate of Final Completion for Street Improvement District No. 1256 is hereby confirmed.
2. The City Council will sit as a Board of Equalization on December 20, 2011 to determine benefits and set assessments for Street Improvement District No. 1256.

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Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G18

**#2011-337 - Approving Certificate of Final Completion and
Scheduling the Board of Equalization for Sanitary Sewer District
No. 526; Lot 3 of Grand Island Plaza Subdivision**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services

Meeting: November 8, 2011

Subject: Approving Certificate of Final Completion and
Scheduling the Board of Equalization for Sanitary Sewer
District No. 526; Lot 3 of Grand Island Plaza Subdivision

Item #'s: G-18

Presenter(s): John Collins, Public Works Director

Background

Sanitary Sewer District No. 526 was created by City Council on September 8, 2008 to serve the Gordman property, at the property owner's request, in connection with the Capital Avenue Widening Project.

Discussion

Sanitary Sewer District No. 526 was completed in accordance with the terms, conditions, and stipulations of the contract, plans, and the specifications. The project was completed at a construction price of \$33,440.60. Total project, as shown below, is \$37,589.23.

Original Bid	\$22,772.80
Overruns	\$ 877.80
Change Order No. 3 (50%)	\$ 9,790.00
SUBTOTAL (Construction Price)	\$33,440.60
Preliminary Engineering Costs	\$ 1,600.00
Construction Engineering Costs	\$ 2,548.63
TOTAL COST	\$37,589.23

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 for Sanitary Sewer District No. 526 and set the Board of Equalization date of December 20, 2011.

Sample Motion

Move to approve the Certificate of Final Completion and set the Board of Equalization Hearing for Sanitary Sewer District No. 526.

ENGINEER'S CERTIFICATE OF FINAL COMPLETION

SANITARY SEWER DISTRICT No. 526
LOT 3 OF GRAND ISLAND PLAZA SUBDIVISION

CITY OF GRAND ISLAND, NEBRASKA
November 8, 2011

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

This is to certify that Sanitary Sewer District No. 526 has been fully completed by The Diamond Engineering Company of Grand Island, Nebraska under the contract dated May 20, 2008. The work has been completed in accordance with the terms, conditions, and stipulations of said contract and complies with the contract, the plans and specifications. The work is hereby accepted for the City of Grand Island, Nebraska, by me as City Engineer/Public Works Director in accordance with the provisions of Section 16-650 R.R.S., 1943.

If is further certified that the improvements as constructed include the following items and costs and that this certificate shall constitute the final payment for this work.

Sanitary Sewer District No. 526

Item No.	Description	Total Quantity	Unit	Unit Price	Total Cost
1	Reconstruct Manhole to Drop Manhole	1.00	ea.	\$6,035.00	\$6,035.00
2	10" P.V.C. Sanitary Sewer Pipe	278.00	l.f.	\$38.25	\$10,633.50
3	10" P.V.C. Cap	1.00	ea.	\$185.00	\$185.00
4	Dewatering	278.00	l.f.	\$24.45	\$6,797.10
2	St. Patrick Intersection Shoo-fly	0.50	l.s.	\$1,800.00	\$900.00
3	2" Asphaltic Concrete Pavement	68.50	ton	\$115.00	\$7,877.50
4	Concrete Protection Barrier (See Item A-48)	75.00	l.f.	\$13.50	\$1,012.50
Total =					\$33,440.60

SUMMARY OF OTHER COSTS

Preliminary Engineering \$1,600.00
Engineering \$2,548.63

TOTAL – OTHER COSTS **\$ 4,148.63**

TOTAL COST OF SANITARY SEWER DISTRICT No. 526 **\$37,589.23**

Respectfully submitted,

John Collins
City Engineer/Public Works Director

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

I hereby recommend that the Engineer's Certificate of Final Completion for Sanitary Sewer District No. 526 be approved.

I further recommend that the City Council sit as a Board of Equalization on December 20, 2011 to determine benefits and levy special assessments.

Respectfully submitted,

Jay Vavricek
Mayor

I hereby recommend that the Engineer's Certificate of Final Completion for Sanitary Sewer District No. 526 be approved.

John Collins – City Engineer/Public Works Director

Jay Vavricek – Mayor

RESOLUTION 2011-337

WHEREAS, the City Engineer/Public Works Director for the City of Grand Island has issued a Certificate of Final Completion for Sanitary Sewer District No. 526 located on Lots 3 of Grand Island Plaza Subdivision, certifying that The Diamond Engineering Company of Grand Island, Nebraska, under contract awarded May 20, 2008, has completed such project according to the terms, conditions, and stipulations for such improvements; and

WHEREAS, the City Engineer/Public Works Director recommends the acceptance of the district; and

WHEREAS, the Mayor concurs with the City Engineer/Public Works Director's recommendations..

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

1. The City Engineer/Public Works Director's Certificate of Final Completion for Sanitary Sewer District No. 526 is hereby confirmed.
2. The City Council will sit as a Board of Equalization on December 20, 2011 at 7:00 p.m. to determine benefits and set assessments for Sanitary Sewer District No. 526.

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Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G19

#2011-316 - Approving Amending the City of Grand Island Police Officers' Retirement System Plan and Trust for Changes in the Applicable Tax Laws

Staff Contact: Jaye Monter

Council Agenda Memo

From: Mary Lou Brown, City Administrator

Meeting: November 8, 2011

Subject: Amending the City of Grand Island Police Officers' Retirement System Plan and Trust for Changes in the Applicable Tax Laws.

Item #'s: G-19

Presenter(s): Jaye Monter, Interim Finance Director

Background

On October 25, 2011 the City Council referred this item to the November 8, 2011 Council meeting for further review. At the November 1, 2011 Study Session, Greg Anderson, Vice-President Trust Officer with Wells Fargo clarified the amendment to the Police Officers' Retirement System Plan and Trust.

Amendment No. 1 to the City's retirement plan documents incorporates recent changes to pension laws and regulations for which plan documents need to be updated. Following is a brief summary of each article of the amendment. Generally, requirements must be included in plan documents. However, some provisions do not apply because this is a government plan or for other reasons, as noted. All provisions nevertheless are included in the amendment to provide a record of applicable authority for reference when the plan is required to be restated in a few years.

Discussion

ART EXPLANATION

- | | |
|------------|--|
| I | General provisions regarding amendment, effective date, etc. |
| II | Summary of provisions covered in the amendment. |
| III | Specifies actuarial factors – i.e. interest rate and mortality table – that must be used to determine compliance with limitations on benefits imposed by Internal Revenue Code §415. |
| IV | Any beneficiary under a qualified plan who is not a spouse and is entitled to a benefit eligible for a rollover can directly roll the distribution over to an IRA. |
| V | After-tax contributions received in a distribution, if any, can be rolled over, as well, to certain types of retirement plans. |

- VI** Extends period for giving participants notice of distributions from 90 to 180 days. Notice of distributions must include a statement of the effect of delaying distributions and explanation of relative values of optional forms of benefit. Requirements do not apply to governmental plans.
- VII** Domestic relations order directing division of benefits upon a participant's divorce will not fail in certain cases due to the timing of issuance of the order.
- VIII** No in-service distributions are allowed upon reaching early retirement age.
- IX** Participants are allowed to elect qualified optional survivor annuity permitted under the plan. Requirements do not apply to governmental plans.
- X** Direct rollover of a lump sum distribution is permitted to a ROTH IRA.
- XI** Substitute "severance from employment", a defined term in the Internal Revenue Code, for "separation from service" for required "top heavy" nondiscrimination testing of the plan. Governmental plans are exempt from top heavy testing.
- XII** Changes to reflect new laws and regulations adopted in recent years regarding underfunded pension plans, specifically restricting optional payments and additional benefit accruals while a plan is in an underfunded state, and requiring annual reporting to plan participants. Requirements do not apply to governmental plans.
- XIII** Incorporate required changes for plan participants in military service, some of which do not apply because of unique terms of the plan.
- XIV** Incorporate certain interest rate and mortality assumptions for lump sum payouts and other plan provisions, to the extent applicable.
- XV** Reflect suspension of 2009 required minimum distributions for participants who reach the later of 70 ½ and retirement.

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 Amendment to the Police Officers' Retirement System Plan and Trust with Wells Fargo.

Motion

Move to approve the Amended Services Agreement with Wells Fargo

**CITY OF GRAND ISLAND, NEBRASKA POLICE OFFICERS'
RETIREMENT SYSTEM PLAN AND TRUST ("PLAN")**

AMENDMENT NO. 1

**ARTICLE I
PREAMBLE**

- 1.1 **Plan and amendment authority.** The City of Grand Island, a Nebraska municipality, ("City" or "Employer") maintains the City of Grand Island, Nebraska Police Officers' Retirement System Plan and Trust pursuant to Neb. Rev. Stat. Sections 16-1001 through 16-1019 and Internal Revenue Code, Sections 401(a) and 501(a), as set forth in the Adoption Agreement and corresponding Basic Municipal Employees Plan and Trust Agreement, ("Plan"), and hereby adopts and approves this Amendment No. 1 to the Plan and authorizes the Mayor or his designee to execute it below.
- 1.2 **Effective date of Amendment.** This Amendment is effective as indicated below for the respective provisions; provided, however, that an effective date shall not be earlier than the effective date of the Plan.
- 1.3 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.4 **Construction.** Provisions of this Amendment that are applicable to a defined benefit plan are included to the extent the Plan provides a minimum defined benefit. Except as otherwise provided in this Amendment, any reference to "Article" or "Section" in this Amendment refers only to articles or sections within this Amendment, and is not a reference to the Plan.
- 1.5 **Effect of restatement of Plan.** If the City of Grand Island restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated into a plan document which incorporates Pension Protection Act of 2006 ("PPA"), and other provisions herein for subsequent legislation and guidance).

**ARTICLE II
CITY ELECTIONS**

- 2.1 **Applicable Provisions.** Unless the City otherwise specifies in this Amendment, the following will apply:
 - a. The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
 - b. Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
 - c. In-Service distributions prior to Normal Retirement Age are not permitted.
 - d. Once Code Section 436 benefit restrictions no longer apply, the Amendment provides for the (1) automatic restoration of benefit accruals, and (2) no "annuity starting date"; provided, however, Code Section 436-benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and

exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being excluded from the funding requirements of Code Section 412.

- e. Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided. Distributions upon deemed severance of employment under the HEART Act are not permitted.
 - f. The applicable interest rate shall be based on the first month (lookback month) prior to the Plan Year (stability period) during which a distribution is made.
- 2.2 **Effective date of applicable mortality table set forth in Amendment Section 3.3.3(c).** The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
- 2.3 **Non-spousal rollovers (Article IV).** Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
- 2.4 **In-service distributions (Article VIII).** In-Service Distributions prior to Normal Retirement Age are not permitted.
- 2.5 **Code Section 436 Benefit Restrictions (Article XII)**

Treatment of Plan as of Close of Prohibited or Cessation Period (Section XII(h)). Unless otherwise elected below, accruals that had been limited under Code Section 436(e) will be automatically restored as of the "Section 436 measurement date" that the limitation ceases to apply; and

Accelerated Benefit Distributions (Section XII(h)). Unless otherwise elected below, (1) there is no new "annuity starting date" with respect to payments made as a result of the benefit limitations no longer being applicable, and (2) there are no optional forms of benefit that are only available for the period of the benefit restrictions;

Provided, however, the Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being excluded from the funding requirements of Code Section 412.

- 2.6 **Continued benefit accruals and distributions upon deemed severance (Article XIII).** Continued benefit accruals for the Heart Act (Amendment Section 13.2) will not apply. Further, distributions upon deemed severance of employment under the HEART Act (Amendment Section 13.4) will not be permitted.
- 2.7 **Applicable interest rate.** For purposes of Amendment Section 14.2, unless otherwise elected below, the stability period is the Plan Year during which a distribution is made and the lookback month is the first calendar month preceding the first day of the stability period.

ARTICLE III PENSION FUNDING EQUITY ACT OF 2004 AS MODIFIED BY SUBSEQUENT LEGISLATION

- 3.1 **General Rule.** This Article applies to the determination of Code Section 415 limits.

3.1.1 **Effective date.** The City adopts this Article III to reflect certain provisions of the Pension Funding Equity Act of 2004 (PFEA), as modified by the Pension Protection Act of 2006 and the

Worker, Retiree and Employer Recovery Act of 2008. Except as otherwise provided herein, effective for distributions in Plan Years beginning after December 31, 2003, the required determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with this Amendment. However, this Amendment does not supersede any prior election to apply the transition rule of section 101(d)(3) of PFEA as described in Notice 2004-78.

3.1.2 Definition of "Applicable Mortality Table." The "applicable mortality table" means the applicable mortality table within the meaning of Code Section 417(e)(3)(B) (as described in Article XIV), subject to any special effective dates specified in this Article III.

3.2 Benefit Forms Not Subject to the Present Value Rules of Code Section 417(e)(3)

3.2.1 Form of benefit. The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Section 3.2 if the form of the Participant's benefit is either:

- (a) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or
- (b) An annuity that decreases during the life of the Participant merely because of:
 - (1) The death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or
 - (2) The cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

3.2.2 Limitation Years beginning before July 1, 2007 – For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount:

- (a) the interest rate and mortality table (or other tabular factor specified in the Plan for adjusting benefits in the same form; and
- (b) a 5 percent interest rate assumption and the "applicable mortality table" defined in the Plan for that annuity starting date.

3.2.3 Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

- (a) The annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the Participant's form of benefit; and
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in the Plan for that annuity starting date.

3.3 Benefit Forms Subject to the Present Value Rules of Code Section 417(e)(3).

3.3.1 Form of benefit. The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined as indicated under this Section 3.3 if the form of the Participant's benefit is other than a benefit form described in Section 3.2.1 above.

3.3.2 Annuity Starting Date in small plans for Plan Years Beginning in 2009 and later. Notwithstanding anything in this Amendment to the contrary, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in or after 2009, and if the Plan is maintained by an eligible employer as defined in Code Section 408(p)(2)(C)(i), the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount:

- (a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and
- (b) A 5.5 percent interest rate assumption and the applicable mortality table described in Article XIV.

3.3.3. Annuity Starting Date in Plan Years Beginning After 2005. Except as provided in Section 3.3.2, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after December 31, 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

- (a) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form;
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below); and
- (c) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate for the distribution under Treasury Regulations Section 1.417(e)-1(d)(3) (determined in accordance with Article XIV for Plan Years after the effective date of that Article) and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below), divided by 1.05.

The effective date of the applicable mortality table above is for years beginning after December 31, 2008.

3.3.4 Annuity Starting Date in Plan Years Beginning in 2004 or 2005 – If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as

the participant's form of benefit, computed using whichever of the following produces the greater annual amount:

- (a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and
- (b) A 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Regulations Section 1.417(e)-1(d)(2).

However, this Section does not supersede any prior election to apply the transition rule of section 101(d)(3) of PFEA as described in Notice 2004-78.

ARTICLE IV DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION

- 4.1 **Non-spouse beneficiary rollover right (for distributions on or after January 1, 2008).** A non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Code Section 401(a)(31).
- 4.2 **Applicability of certain requirements.** For Plan Years beginning on or after January 1, 2010, any direct rollover of a distribution by a nonspouse beneficiary shall be subject to the direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B)), the notice requirements of Code Section 402(f) and the mandatory withholding requirements of Code Section 3405(c). Before that date, any such distribution shall not be subject to said requirements. Any distribution from the Plan to a non-spouse beneficiary shall not be eligible for a 60-day (non-direct) rollover.
- 4.3 **Trust beneficiary.** Subject to Section 4.1, if the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).
- 4.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary is not permitted to roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

ARTICLE V ROLLOVER OF AFTER-TAX AMOUNTS

- 5.1 **Direct rollover to qualified plan/403(b) plan (for taxable years beginning after December 31, 2006).** A Participant may elect to transfer employee after-tax contributions, if any, by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred (including interest thereon), including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

ARTICLE VI
PARTICIPANT DISTRIBUTION NOTIFICATION

- 6.1 **180-day notification period** (effective for distribution notices in Plan Years beginning after December 31, 2006). Reference to the 90-day maximum notice period requirements of Code Sections 402(f) (the rollover notice), 411(a)(11) (Participant's consent to distribution), and 417 (notice regarding the joint and survivor annuity rules), if any, is changed to 180 days.
- 6.2 **Effect of delay of distribution.** Notices given to Participants pursuant to Code Section 411(a)(11) in Plan Years beginning after December 31, 2006, if any, shall include a description of the consequences of failing to defer a distribution, including (i) for any individual account balance, a description of investment options available under the Plan (including fees) that will be available if the Participant defers distribution, (ii) for any defined benefit, how much larger benefits will be if the commencement of distributions is deferred, and (iii) the portion of the summary plan description that contains any special rules that might affect materially a Participant's decision to defer.
- 6.3 **Explanation of relative value.** Notices to Participants shall include the relative values of the various optional forms of benefit under the Plan as provided in Treasury Regulations Section 1.417(a)-3, to the extent said Regulations are applicable to the Plan. This provision is effective as of the applicable effective date set forth in Treasury Regulations (i.e., to qualified pre-retirement survivor annuity explanations provided on or after July 1, 2004; to qualified joint and survivor annuity explanations with respect to any distribution with an annuity starting date that is on or after February 1, 2006, or on or after October 1, 2004 with respect to any optional form of benefit that is subject to the requirements of Code Section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value as determined under Code Section 417(e)(3)). Provided, however, pursuant to the flush language of Code Section 401(a) and Code Section 411(e)(1)(B), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article VI, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

ARTICLE VII
QUALIFIED DOMESTIC RELATIONS ORDERS

- 7.1 **Permissible QDROs (effective on and after April 6, 2007).** For purposes of provisions of the Plan regarding domestic relations orders, if any, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order (QDRO) will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.
- 7.2 **Other QDRO requirements apply.** A domestic relations order described in Section 7.1 is subject to the same requirements and protections that apply to any other QDRO.

ARTICLE VIII
PRE-RETIREMENT PENSION IN-SERVICE DISTRIBUTIONS

- 8.1 **No age 62 in-service distributions.** As specified in Amendment Section 2.4, a Participant who has attained the specified age and who is not separated from employment may not elect to receive a distribution of his or her vested Accrued Benefit.

**ARTICLE IX
QUALIFIED OPTIONAL SURVIVOR ANNUITY**

- 9.1 **Right to Elect Qualified Optional Survivor Annuity (effective for distributions with annuity starting dates in Plan Years beginning after December 31, 2007).** A Participant who elects to waive the qualified joint and survivor annuity form of benefit under the Plan, if provided for under the Plan, shall be entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity, if required, shall explain the terms and conditions of the "qualified optional survivor annuity." Provided, however, the following rules apply in the specified circumstances:

(a) **Special Effective Date Rules.**

1. If the Plan permits retroactive annuity starting dates and a Participant elects a distribution with a retroactive annuity starting date (pursuant to Treasury Regulations Section 1.417(e)-1(b)(3)(iv)) that is before the aforementioned effective date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of applying the rules of this paragraph.

2. In the case of a plan that is subject to Code Section 401(a)(11) and that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006 (the date of enactment of PPA '06), the changes to Code Section 417 made by Section 1004 of PPA '06 apply to distributions with annuity starting dates during plan years beginning on or after the earlier of (i) January 1, 2008 or, if later, the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extensions to a collective bargaining agreement made after August 17, 2006), or (ii) January 1, 2009.

(b) **Inapplicability to Governmental Plans.** Pursuant to the flush language of Code Section 401(a) and the provisions of Code Section 411(e)(1)(A), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article IX, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

9.2 **Definition of Qualified Optional Survivor Annuity.**

(a) For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:

- (1) For the life of the Participant with a survivor annuity for the life of the Participant's spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the Participant's spouse, and
- (2) Which is the actuarial equivalent of a single annuity for the life of the Participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(b) For purposes of this Section, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the Participant and the spouse). If the survivor annuity percentage is less than seventy-five percent (75%), then the "applicable percentage" is seventy-five percent (75%). If the

survivor annuity percentage is equal to or greater than seventy-five percent (75%), the "applicable percentage" is fifty percent (50%).

ARTICLE X DIRECT ROLLOVER TO ROTH IRA

- 10.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a Participant or beneficiary may elect to roll over directly an "eligible rollover distribution" to a Roth IRA described in Code Section 408A(b); provided, however, for taxable years beginning before January 1, 2010, an individual cannot make a qualified rollover contribution from an eligible retirement plan other than a Roth IRA if, for the year the eligible rollover distribution is made, he or she has modified adjusted gross income exceeding \$100,000 or is married and files a separate return. For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in Article V, if applicable.

ARTICLE XI TOP-HEAVY PROVISIONS

- 11.1 **Severance from employment.** Effective for any Plan Year beginning after December 31, 2001, any provisions of the Plan setting forth the top-heavy provisions of Code Section 416 are modified by substituting the term "separation from service" with "severance from employment."

ARTICLE XII BENEFIT RESTRICTIONS

- (a) **Effective Date and Application of Article.**

(1) **Effective Date.** The provisions of this Article apply to Plan Years beginning after December 31, 2007.

(2) This Article only applies to single employer plans (a plan that is not a multiemployer plan within the meaning of Code Section 414(f)) and does not apply to a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers.

(A) **Multiple Employer Plans.** In the case of a multiple employer plan to which Code Section 413(c)(4)(A) applies, Code Section 436 applies separately with respect to each employer under the plan, as if each employer maintained a separate plan. Thus, the benefit limitations under Code Section 436 could apply differently to participants who are employees of different employers under such a multiple employer plan. In the case of a multiple employer plan to which Code Section 413(c)(4)(A) does not apply (that is, a plan described in Code Section 413(c)(4)(B) that has not made the election for Code Section 413(c)(4)(A) to apply), Code Section 436 applies as if all participants in the plan were employed by a single employer.

(B) **Governmental Plans.** Code Section 436 benefit restrictions and other provisions described in this Article do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being exempt from the funding requirements of Code Section 412.

(3) The limitations described in Subsections (b), (c) and (e) do not apply to the Plan for the first five (5) Plan Years of the Plan. Except as otherwise provided by the Commissioner in guidance of general applicability, the Plan Years taken into account for this purpose include the following (in addition to Plan Years during which the Plan was maintained by the Employer):

(A) Plan Years when the Plan was maintained by a predecessor employer within the meaning of Regulations Section 1.415(f)-1(c)(1);

(B) Plan years of another defined benefit plan maintained by a predecessor employer within the meaning of Regulations Section 1.415(f)-1(c)(2) within the preceding five years if any Participants in the Plan participated in that other defined benefit plan (even if the Plan maintained by the Employer is not the plan that was maintained by the predecessor employer); and

(C) Plan years of another defined benefit plan maintained by the Employer within the preceding five years if any Participants in the Plan participated in that other defined benefit plan.

(4) Notwithstanding anything in this Article to the contrary, the provision of Code Section 436 and the Regulations thereunder are incorporated herein by reference.

(5) For Plans that have a valuation date other than the first day of the Plan Year, the provisions of Code Section 436 and this Article will be applied in accordance with Regulations.

(b) Funding-Based Limitation on Shutdown Benefits and Other Unpredictable Contingent Event Benefits

(1) In general. If a Participant is entitled to an "unpredictable contingent event benefit" payable with respect to any event occurring during any Plan Year, then such benefit may not be provided if the "adjusted funding target attainment percentage" for such Plan Year (A) is less than sixty percent (60%) or, (B) sixty percent (60%) or more, but would be less than sixty percent (60%) percent if the "adjusted funding target attainment percentage" were redetermined applying an actuarial assumption that the likelihood of occurrence of the "unpredictable contingent event" during the Plan Year is one hundred percent (100%).

(2) Exemption. Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(iii).

(c) Limitations on Plan Amendments Increasing Liability for Benefits

(1) In general. No amendment which has the effect of increasing liabilities of the Plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any Plan Year if the "adjusted funding target attainment percentage" for such Plan Year is:

(A) less than eighty percent (80%), or

(B) eighty percent (80%) or more, but would be less than eighty percent (80%) if the benefits attributable to the amendment were taken into account in determining the "adjusted funding target attainment percentage."

(2) Exemption. Paragraph (c)(1) above shall cease to apply with respect to a Plan amendment upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(iv).

(3) Exception for certain benefit increases. Paragraph (1) shall not apply to any amendment as otherwise provided in Regulations Section 1.436-1(c).

(d) **Limitations on Prohibited Payments**

(1) Funding percentage less than sixty percent (60%). If the Plan's "adjusted funding target attainment percentage" for a Plan Year is less than sixty percent (60%), then a Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date."

(2) Bankruptcy. A Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" that occurs during any period in which the Employer is a debtor in a case under Title 11, United States Code, or similar Federal or State law. The preceding sentence shall not apply to payments made within a Plan Year with an "annuity starting date" that occurs on or after the date on which the enrolled actuary of the Plan certifies that the "adjusted funding target attainment percentage" of the Plan is not less than one hundred percent (100%).

(3) Limited payment if percentage at least sixty percent (60%) but less than eighty percent (80%) percent.

(A) In general. If the Plan's "adjusted funding target attainment percentage" for a Plan Year is sixty percent (60%) or greater but less than eighty percent (80%), then a Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date," unless the present value (determined in accordance with Code Section 417(e)(3)) of the portion of the benefit that is being paid in a "prohibited payment" (which portion is determined under paragraph (C)(i) below) does not exceed the lesser of:

(i) fifty (50) percent of the amount of the present value (determined in accordance with Code Section 417(e)(3)) of the benefit payable in the optional form of benefit that includes the prohibited payment; or

(ii) 100% of the "PBGC maximum benefit guarantee amount."

(B) Bifurcation if optional form unavailable.

(i) Requirement to offer bifurcation. If an optional form of benefit that is otherwise available under the terms of the plan is not available as of the "annuity starting date" because of the application of Regulations Section 1.436-1(d)(3)(i), then the Participant or Beneficiary may elect to:

(1) Receive the unrestricted portion of that optional form of benefit (determined under the rules of Regulations Section 1.436-1(d)(3)(iii)(D)) at that "annuity starting date," determined by treating the unrestricted portion of the benefit as if it were the Participant's or Beneficiary's entire benefit under the plan;

(2) Commence benefits with respect to the Participant's or Beneficiary's entire benefit under the Plan in any other optional form of benefit available under the Plan at the same "annuity starting date" that satisfies Regulations Section 1.436-1(d)(3)(i); or

(3) Defer commencement of the payments to the extent described in Regulations Section 1.436-1(d)(5).

(ii) Rules relating to bifurcation. If the Participant or Beneficiary elects payment of the unrestricted portion of the benefit as described in Regulations Section 1.436-1(d)(3)(ii)(A)(1), then the Participant or Beneficiary may elect payment of the remainder of the Participant's or Beneficiary's benefits under the Plan in any optional form of benefit at that "annuity starting date" otherwise available under the Plan that would not have included a "prohibited payment" if that optional form applied to the entire benefit of the Participant or Beneficiary. The rules of Regulations Section 1.417(e)-1 are applied separately to the separate optional forms for the "unrestricted portion of the benefit" and the remainder of the benefit (the restricted portion).

(iii) Plan alternative that anticipates election of payment that includes a "prohibited payment." With respect to every optional form of benefit that includes a "prohibited payment" and that is not permitted to be paid under Regulations Section 1.436-1 (d)(3)(i), for which no additional information from the Participant or Beneficiary (such as information regarding a Social Security leveling optional form of benefit) is needed to make that determination, rather than wait for the Participant or Beneficiary to elect such optional form of benefit, the Plan will provide for separate elections with respect to the restricted and unrestricted portions of that optional form of benefit.

(C) Definitions applicable to limited payment option. The following definitions apply for purposes of this subsection (d)(3).

(i) Portion of benefit being paid in a prohibited payment. If a benefit is being paid in an optional form for which any of the payments is greater than the amount payable under a straight life annuity to the Participant or Beneficiary (plus any Social Security supplements described in the last sentence of Code Section 411(a)(9) payable to the Participant or Beneficiary) with the same "annuity starting date," then the portion of the benefit that is being paid in a "prohibited payment" is the excess of each payment over the smallest payment during the Participant's lifetime under the optional form of benefit (treating a period after the "annuity starting date" and during the Participant's lifetime in which no payments are made as a payment of zero).

(ii) PBGC maximum benefit guarantee amount. The "PBGC maximum benefit guarantee amount" is the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under Code Section 417(e)) of the maximum benefit guarantee with respect to a Participant (based on the Participant's age or the Beneficiary's age at the "annuity starting date") under ERISA Section 4022 for the year in which the "annuity starting date" occurs.

(iii) Unrestricted portion of the benefit:

(1) General rule. Except as otherwise provided in this paragraph (iii), the unrestricted portion of the benefit with respect to any optional form of benefit is fifty percent (50%) of the amount payable under the optional form of benefit.

(2) Special rule for forms which include Social Security leveling or a refund of employee contributions. For an optional form of benefit that is a prohibited payment on account of a Social Security leveling feature (as defined in Regulations Section 1.411(d)-3(g)(16)) or a refund of

employee contributions feature (as defined in Regulations Section 1.411(d)-3(g)(11)), the unrestricted portion of the benefit is the optional form of benefit that would apply if the Participant's or Beneficiary's Accrued Benefit were fifty percent (50%) smaller.

(3) Limited to PBGC maximum benefit guarantee amount. After the application of the preceding rules of this paragraph (iii), the unrestricted portion of the benefit with respect to the optional form of benefit is reduced, to the extent necessary, so that the present value (determined in accordance with Code Section 417(e)) of the unrestricted portion of that optional form of benefit does not exceed the "PBGC maximum benefit guarantee amount."

(D) Other Rules.

(i) One time application. If a Participant with respect to whom a prohibited payment (or a series of prohibited payments under a single optional form of benefit) is made pursuant to paragraph (d)(3)(A) or (B) above, no additional prohibited payment may be made with respect to that Participant during any consecutive Plan Years for which prohibited payments are limited under this subsection (d).

(ii) Treatment of beneficiaries. For purposes of this subparagraph (d)(3), benefits provided with respect to a Participant and any Beneficiary of the Participant (including an alternate payee, as defined in Code Section 414(p)(8)) are aggregated. If the only benefits paid under the plan with respect to the Participant are death benefits payable to the Beneficiary, then paragraph (d)(3)(C)(i) of this section is applied by substituting the lifetime of the Beneficiary for the lifetime of the Participant. If the Accrued Benefit of a Participant is allocated to such an alternate payee and one or more other persons, then the "unrestricted amount" of (d)(3)(C)(iii) is allocated among such persons in the same manner as the accrued benefit is allocated, unless a qualified domestic relations order (as defined in Code Section 414(p)(1)(A)) with respect to the Participant or the alternate payee provides otherwise.

(iii) Treatment of annuity purchases and plan transfers. This paragraph (d)(3)(D)(iii) applies for purposes of applying subsections (d)(3)(A) and (d)(3)(C)(iii). In the case of a prohibited payment described in Regulations Section 1.436-1(j)(6)(i)(B) (relating to purchase from an insurer), the present value of the portion of the benefit that is being paid in a prohibited payment is the cost to the plan of the irrevocable commitment and, in the case of a prohibited payment described in Regulations Section 1.436-1(j)(6)(i)(C) (relating to certain plan transfers), the present value of the portion of the benefit that is being paid in a prohibited payment is the present value of the liabilities transferred (determined in accordance with Code Section 414(I)). In addition, the present value of the accrued benefit is substituted for the present value of the benefit payable in the optional form of benefit that includes the prohibited payment in Regulations Section 1.436-1(d)(3)(i)(A).

(4) Exception. This subsection (d) shall not apply for any Plan Year if the terms of the Plan (as in effect for the period beginning on September 1, 2005, and ending with such Plan Year) provide for no benefit accruals with respect to any Participant during such period.

(5) Right to delay commencement. If a Participant or Beneficiary requests a distribution in an optional form of benefit that includes a "prohibited payment" that is not permitted to be paid under paragraph (d)(1), (d)(2), or (d)(3) of this Article, then the Participant retains the right to delay commencement of benefits in accordance with the terms of the plan and applicable qualification requirements (such as Code Sections 411(a)(11) and 401(a)(9)).

(6) "Prohibited payment." For purposes of this subsection (d), the term "prohibited payment" means:

(A) Any payment for a month that is in excess of the monthly amount paid under a single life annuity (plus any Social Security supplements described in the last sentence of Code Section 411(a)(9)), to a Participant or Beneficiary whose "annuity starting date" occurs during any period a limitation under paragraph (d) is in effect;

(B) Any payment for the purchase of an irrevocable commitment from an insurer to pay benefits; and

(C) Any transfer of assets and liabilities to another plan maintained by the same Employer (or by any member of the Employer's controlled group) that is made in order to avoid or terminate the application of Code Section 436 benefit limitations; and

(D) Any other amount that is identified as a prohibited payment by the Commissioner in revenue rulings and procedures, notices, and other guidance published in the Internal Revenue Bulletin.

Such term shall not include the payment of a benefit which under Code Section 411(a)(11) may be immediately distributed without the consent of the Participant. Furthermore, in the case of a Beneficiary that is not an individual, the amount that is a prohibited payment is determined by substituting the monthly amount payable in installments over 240 months that is actuarially equivalent to the benefit payable to the Beneficiary, as provided in Regulations Section 1.436-1(j)(6)(ii).

(e) Limitation on Benefit Accruals for Plans with Severe Funding Shortfalls

(1) In general. If the Plan's "adjusted funding target attainment percentage" for a Plan Year is less than sixty percent (60%), benefit accruals under the Plan shall cease as of the "section 436 measurement date." If the Plan is required to cease benefit accruals under this subsection (e), then the Plan is not permitted to be amended in a manner that would increase the liabilities of the Plan by reason of an increase in benefits or establishment of new benefits. The preceding sentence applies regardless of whether an amendment would otherwise be permissible under subsections (c)(2) or (c)(3) of this Article.

(2) Exemption. Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(v).

(3) Temporary modification of limitation. In the case of the first Plan Year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, the provisions of (e)(1) above shall be applied by substituting the Plan's "adjusted funding target attainment percentage" for the preceding Plan Year for such percentage for such Plan Year, but only if the "adjusted funding target attainment percentage" for the preceding year is greater.

(f) **Rules Relating to Contributions Required to Avoid or Terminate Benefit Limitations**

The application of the Code Section 436 benefit limitations may be avoided or terminated in accordance with any of the rules set forth in Code Section 436 and Regulations Section 1.436-1(f).

(g) **Presumed Underfunding for Purposes of Benefit Limitations**

(1) **Presumption of continued underfunding.**

(A) In general. This paragraph (g)(1) applies to a Plan for a Plan Year if a limitation under subsection (b), (c), (d), or (e) applied to the Plan on the last day of the preceding Plan Year. If this paragraph (g)(1) applies to a Plan, then the first day of the Plan Year is a "Section 436 measurement date" and the presumed "adjusted funding target attainment percentage" for the Plan is the percentage under paragraph (g)(1)(B) or (C) of this subsection, whichever applies to the Plan, beginning on that first day of the Plan Year and ending on the date specified in subparagraph (g)(1)(D) of this section.

(B) **Rule where preceding year certification issued during preceding year.**

(i) General rule. In any case in which the Plan's enrolled actuary has issued a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year preceding the current Plan Year before the first day of the current Plan Year, the presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to the prior Plan Year "adjusted funding target attainment percentage" until it is changed under Regulations Section 1.436-1(h)(1)(iv).

(ii) Special rule for late certifications. If the certification of the adjusted funding target attainment percentage for the prior Plan Year occurred after the first day of the 10th month of that prior Plan Year, the Plan is treated as if no such certification was made, unless the certification took into account the effect of any unpredictable contingent event benefits that are permitted to be paid based on unpredictable contingent events that occurred, and any Plan amendments that became effective, during the prior Plan Year but before the certification (and any associated Code Section 436 contributions).

(C) **No certification for preceding year issued during preceding year.**

(i) Deemed percentage continues. In any case in which the Plan's enrolled actuary has not issued a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" of the Plan for the Plan Year preceding the current Plan Year during that prior Plan Year, the presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to the presumed "adjusted funding target attainment percentage" that applied on the last day of the preceding Plan Year until the presumed "adjusted funding target attainment percentage" is changed under Regulations Section 1.436-1(h)(1)(iii)(B) or (h)(1)(iv).

(ii) Enrolled actuary's certification in following year. In any case in which the Plan's enrolled actuary has issued the certification under Regulations Section 1.436-1(h)(4) of the adjusted funding target attainment percentage of the Plan for the Plan Year preceding the current Plan Year on or after the first day of the current Plan Year, the date of that prior Plan Year certification is a new "Section 436 measurement date" for the current Plan Year. In such a case, the presumed

adjusted funding target attainment percentage for the current Plan Year is equal to the prior Plan Year adjusted funding target attainment percentage (reduced by 10 percentage points if Regulations Section 1.436-1(h)(2)(iv) applies to the Plan) until it is changed under Regulations Section 1.436-1(h)(1)(iv). The rules of Regulations Section 1.436-1(h)(1)(ii)(B) apply for purposes of determining whether the enrolled actuary has issued a certification of the adjusted funding target attainment percentage for the prior Plan Year during the current Plan Year.

(D) Duration of use of presumed "adjusted funding target attainment percentage." If this paragraph (g)(1) applies to a Plan for a Plan Year, then the presumed "adjusted funding target attainment percentage" determined under this paragraph (g)(1) applies until the earliest of:

- (i) The first day of the 4th month of the Plan Year if paragraph (g)(2) of this section applies;
- (ii) The first day of the 10th month of the Plan Year if paragraph (g)(3) of this section applies;
- (iii) The date of a change in the presumed adjusted funding target attainment percentage under Regulations Section 1.436-1(g)(4); or
- (iv) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year.

(2) Presumption of underfunding beginning on first day of 4th month for certain underfunded plans. This paragraph (2) applies to a Plan for a Plan Year if the enrolled actuary for the Plan has not issued a certification of the "adjusted funding target attainment percentage" for the Plan Year before the first day of the 4th month of the Plan Year, and the Plan's "adjusted funding target attainment percentage" for the preceding Plan Year was either (1) at least sixty percent (60%) but less than seventy percent (70%); or (2) at least eighty percent (80%) but less than ninety percent (90%). This paragraph (2) also applies to a Plan for the first effective Plan Year if the enrolled actuary for the Plan has not issued a certification of the "adjusted funding target attainment percentage" for the Plan Year before the first day of the 4th month of the Plan Year, and the prior Plan Year "adjusted funding target attainment percentage" is at least seventy percent (70%) but less than eighty percent (80%).

(A) Presumed adjusted funding target attainment percentage. Application of this paragraph. If this paragraph (2) applies to a Plan for a Plan Year and the date of the enrolled actuary's certification of the "adjusted funding target attainment percentage" under Regulations Section 1.436-1(h)(4) for the prior Plan Year (taking into account the special rules for late certifications under Regulations Section 1.436-1(h)(1)(ii)(B)) occurred before the first day of the 4th month of the current Plan Year, then, commencing on the first day of the 4th month of the current Plan Year:

- (i) The presumed "adjusted funding target attainment percentage" of the Plan for the Plan Year is reduced by 10 percentage points; and
- (ii) The first day of the 4th month of the Plan Year is a "Section 436 measurement date."

(B) Certification for prior Plan Year. If this paragraph (2) applies to a Plan and the date of the enrolled actuary's certification of the "adjusted funding target attainment

percentage” under Regulations Section 1.436-1(h)(4) for the prior Plan Year (taking into account the rules for late certifications under Regulations Section 1.436-1(h)(1)(ii)(B)) occurs on or after the first day of the 4th month of the current Plan Year, then, commencing on the date of that prior Plan Year certification:

(i) The presumed “adjusted funding target attainment percentage” of the Plan for the current Plan Year is equal to 10 percentage points less than the prior Plan Year “adjusted funding target attainment percentage”; and

(ii) The date of the prior Plan Year certification is a “Section 436 measurement date.”

(C) Duration of use of presumed “adjusted funding target attainment percentage.” If this paragraph (2) applies to a Plan for a Plan Year, the presumed adjusted funding target attainment percentage determined under this paragraph (2) applies until the earliest of:

(i) The first day of the 10th month of the Plan Year if paragraph (3) of this section applies;

(ii) The date of a change in the presumed “adjusted funding target attainment percentage” under Regulations Section 1.436-1(g)(4); or

(iii) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the “adjusted funding target attainment percentage” for the Plan Year.

(3) Presumption of underfunding beginning on first day of 10th month. In any case in which no certification of the specific adjusted funding target attainment percentage for the current Plan Year under Regulations Section 1.436-1(h)(4) is made with respect to the Plan before the first day of the 10th month of the Plan Year, then, commencing on the first day of the 10th month of the current Plan Year:

(A) The presumed “adjusted funding target attainment percentage” of the Plan for the Plan Year is presumed to be less than sixty percent (60%); and

(B) The first day of the 10th month of the Plan Year is a “Section 436 measurement date.”

(h) Treatment of Plan as of Close of Prohibited or Cessation Period.

(1) Application to prohibited payments and accruals.

(A) Resumption of prohibited payments. If a limitation on prohibited payments under Section (d) of this Article applied to a Plan as of a “Section 436 measurement date,” but that limit no longer applies to the Plan as of a later “Section 436 measurement date,” then the limitation on prohibited payments under the Plan does not apply to benefits with “annuity starting dates” that are on or after that later “Section 436 measurement date.” Any amendment to eliminate an optional form of benefit that contains a prohibited payment with respect to an “annuity starting date” during a period in which the limitations of Code Section 436(d) and Regulations Section 1.436-1(d) do not apply to the Plan is subject to the rules of Code Section 411(d)(6).

(B) Resumption of benefit accruals. If a limitation on benefit accruals under Regulations Section 1.436-1(e) applied to a Plan as of a “Section 436 measurement date,”

but that limit no longer applies to the Plan as of a later "Section 436 measurement date," then that limitation does not apply to benefit accruals that are based on service on or after that later "Section 436 measurement date," except to the extent that the Plan provides that benefit accruals will not resume when the limitation ceases to apply. The Plan will comply with the rules relating to partial years of participation and the prohibition on double proration under Department of Labor regulation 29 CFR Section 2530.204-2(c) and (d).

(2) Restoration of options and missed benefit accruals. If elected at Amendment Section 2.5, then Participants who had an "annuity starting date" within a period during which a limitation under Regulations Section 1.436-1(d) applied to the Plan will be provided with the opportunity to have a new "annuity starting date" (which would constitute a new "annuity starting date" under Code Sections 415 and 417) under which the form of benefit previously elected may be modified, subject to applicable qualification requirements, once the limitations of Regulations Section 1.436-1(d) cease to apply. In addition, subject to the rules of Regulations Section 1.436-1(c)(3) and any election made at Amendment Section 2.5, the Plan will automatically restore benefit accruals that had been limited under Code Section 436(c) as of the "Section 436 measurement date" that the limitation ceases to apply.

(3) Shutdown and other unpredictable contingent event benefits. If unpredictable contingent event benefits with respect to an unpredictable contingent event that occurs during the Plan Year are not permitted to be paid after the occurrence of the event because of the limitations of Code Section 436(b) and Regulations Section 1.436-1(b), but are permitted to be paid later in the Plan Year as a result of additional contributions under Regulations Section 1.436-1(f)(2) or pursuant to the enrolled actuary's certification of the "adjusted funding target attainment percentage" for the Plan Year that meets the requirements of Regulations Section 1.436-1(g)(5)(ii)(B), then those unpredictable contingent event benefits must automatically become payable, retroactive to the period those benefits would have been payable under the terms of the Plan (other than Plan terms implementing the requirements of Code Section 436(b)). If the benefits do not become payable during the Plan Year in accordance with the preceding sentence, then the Plan is treated as if it does not provide for those benefits. However, all or any portion of those benefits can be restored pursuant to a Plan amendment that meets the requirements of Code Section 436(c) and Regulations Section 1.436-1(c) and other applicable qualification requirements.

(4) Treatment of Plan amendments that do not take effect. If a Plan amendment does not take effect as of the effective date of the amendment because of the limitations of Code Section 436(c) and Regulations Section 1.436-1, but is permitted to take effect later in the Plan Year as a result of additional contributions under paragraph Regulations Section 1.436-1(f)(2) or pursuant to the enrolled actuary's certification of the "adjusted funding target attainment percentage" for the Plan Year that meets the requirements of paragraph Regulations Section 1.436-1(g)(5)(ii)(C), then the Plan amendment must automatically take effect as of the first day of the Plan Year (or, if later, the original effective date of the amendment). If the Plan amendment cannot take effect during the Plan Year, then it must be treated as if it were never adopted, unless the Plan amendment provides otherwise.

(i) **Definitions.** Defined terms shall have the meaning set forth below and as contained in Regulations Section 1.436-1(j) and shall be interpreted consistent with said Regulations.

(1) The term "adjusted funding target attainment percentage" means the "funding target attainment percentage" per paragraph (A) below, and increasing each of the amounts under subparagraphs (A) and (B) of Code Section 430(d)(2) by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in Code Section 414(q)) which were made by the Plan during the preceding two (2) Plan Years.

(A) The term "funding target attainment percentage" has the same meaning given such term by Code Section 430(d)(2) and the Regulations thereunder, except as otherwise provided herein. However, in the case of Plan Years beginning in 2008, the "funding target attainment percentage" for the preceding Plan Year may be determined using such methods of estimation as the Secretary may provide.

(B) Application to plans which are fully funded without regard to reductions for funding balances.

(1) In general. In the case of a Plan for any Plan Year, if the "funding target attainment percentage" is one hundred percent (100%) or more (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)), the "funding target attainment percentage" for purposes of paragraphs (1) and (1)(A) above shall be determined without regard to such reduction.

(2) Transition rule. Subparagraph (B)(1) shall be applied to Plan Years beginning after 2007 and before 2011 by substituting for "one hundred percent (100%)" the applicable percentage determined in accordance with the following table:

In the case of a Plan Year beginning in calendar year:	The applicable percentage is:
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2008	92%
2009	94%
2010	96%

(3) Subparagraph (B)(2) shall not apply with respect to the current Plan Year unless the "funding target attainment percentage" (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)) of the Plan for each preceding Plan Year beginning after 2007 and before the current Plan Year was not less than the applicable percentage with respect to such preceding Plan Year determined under subparagraph (B)(2).

(2) Section 436 measurement date. A "Section 436 measurement date" is the date that is used to determine when the limitations of Code Sections 436(d) and 436(e) apply or cease to apply, and is also used for calculations with respect to applying the limitations of Sections (b) and (c) of this Article.

(3) Annuity starting date. The term "annuity starting date" means the annuity starting date as defined in Regulations Section 1.436-1(j)(2).

(4) Unpredictable contingent event benefit. The term "unpredictable contingent event benefit" means an unpredictable contingent event as defined in Regulations Section 1.436-1(j)(9).

ARTICLE XIII HEART ACT PROVISIONS

13.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death. Moreover, the Plan will credit the Participant's

qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

- 13.2 **Benefit accrual.** If, pursuant to Amendment Section 2.6, the City elects to apply this Section 13.2, then effective on or after the effective date specified in Section 2.6, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated said employment on the actual date of death or disability.

- (a) **Determination of benefits.** The Plan will determine the amount of employee contributions, if any, of an individual treated as reemployed under this Section 13.2 for purposes of applying Code Section 414(u)(8)(C) on the basis of the individual's average actual employee contributions for the lesser of: (i) the 12-month period of service with the employer immediately prior to qualified military service; or (ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

- 13.3 **Differential wage payments.** For years beginning after December 31, 2008:

(i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation for purposes of Code Section 415(c)(3) and Regulations Section 1.415(c)-2 (e.g. for purposes of Code Section 415, top heavy provisions of Code Section 416 and determination of highly compensated employees under Code Section 414(q)), and

(iii) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) (or any corresponding plan provisions, including, but not limited to, Plan provisions related to the average deferral percentage or average contribution percentage, to the extent applicable) by reason of any contribution or benefit which is based on the differential wage payment. Differential wage payments (as described herein) shall constitute compensation for all Plan purposes.

- (a) **Nondiscrimination Requirements.** Provided, however, for purposes of subparagraph (iii), all employees of the employer (as determined under Code Section 414(b), (c), (m) and (o)) performing service in the uniformed services described in Code Section 3401(h)(2)(A) shall be entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions, if contributions are permitted, based on the payments on reasonably equivalent terms (taking into account the provisions of Code Section 410(b)(3), (4) and (5) to the extent applicable).

- 13.4 **Deemed Severance.** As provided in Section 2.6, the Plan does not permit distribution upon deemed severance of employment.

ARTICLE XIV CHANGE IN APPLICABLE INTEREST RATE AND APPLICABLE MORTALITY ASSUMPTION

- 14.1 **Effective date.** Except as provided in regulations or other guidance by the Pension Benefit Guaranty Corporation (PBGC) and IRS, to the extent said regulations or guidance is applicable to

this Plan, the limitations of this Article shall first apply in determining the amount payable to a Participant having an annuity starting date in a Plan Year beginning on or after January 1, 2008.

- 14.2 **Applicable interest rate.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate" or "applicable mortality table" used for purposes of Code Section 417(e), any provision prescribing the use of the annual rate of interest on 30-year U.S. Treasury securities shall be implemented by instead using the rate of interest determined by the applicable interest rate described by Code Section 417(e) after its amendment by PPA. Specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) for the calendar month (lookback month) before the first day of the Plan Year in which the annuity starting date occurs (stability period). For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:
- (a) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and
 - (b) Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(ii)(II)" for "Section 412(b)(5)(B)(ii)(II)," and
 - (c) The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.
- 14.3 **Applicable mortality assumption.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate," any Plan provision directly or indirectly prescribing the use of the mortality table described in Revenue Ruling 2001-62 shall be amended to prescribe the use of the applicable annual mortality table within the meaning set forth in Code Section 417(e)(3)(B), as initially described in Revenue Ruling 2007-67.

ARTICLE XV 2009 REQUIRED MINIMUM DISTRIBUTIONS (IRC SECTION 401(a)(9)(H))


- 15.1 Notwithstanding anything in the Plan to the contrary:

(a) **Suspension of Required Minimum Distributions for 2009.** A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated "Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence; and

(b) **Direct Rollovers.** For purposes of applying the direct rollover provisions of the Plan, a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(H).

This amendment is hereby executed this _____ day of _____, 2011

CITY OF GRAND ISLAND, a Nebraska municipality

By: _____ 
_____, Mayor

RESOLUTION 2011-316

WHEREAS, the City of Grand Island currently has a contract with Wells Fargo for the Police Officers' Retirement System Plan and Trust.

WHEREAS, The City's retirement plan documents must incorporate recent changes to pension laws and regulations for which plan documents need to be updated.

WHEREAS, the City must change retirement plan documents to incorporate laws and regulations for which plan documents need to be updated at no additional cost to the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized and directed to execute an agreement for such services on behalf of the City of Grand Island. City Administration recommends that the Council approve Amendment 1 to the Police Officers Retirement System Plan and Trust with Wells Fargo.

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Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item G20

**#2011-317 - Approving Amending the City of Grand Island
Firefighters' Retirement System Plan and Trust for Changes in the
Applicable Tax Laws**

Staff Contact: Jaye Monter

Council Agenda Memo

From: Mary Lou Brown, City Administrator

Meeting: November 8, 2011

Subject: Amending the City of Grand Island Firefighters' Retirement System Plan and Trust for Changes in the Applicable Tax Laws.

Item #'s: G-20

Presenter(s): Jaye Monter, Interim Finance Director

Background

On October 25, 2011 the City Council referred this item to the November 8, 2011 Council meeting for further review. At the November 1, 2011 Study Session, Greg Anderson, Vice-President Trust Officer with Wells Fargo clarified the amendment to the Firefighters' Retirement System Plan and Trust.

Amendment No. 1 to the City's retirement plan documents incorporates recent changes to pension laws and regulations for which plan documents need to be updated. Following is a brief summary of each article of the amendment. Generally, requirements must be included in plan documents. However, some provisions do not apply because this is a government plan or for other reasons, as noted. All provisions nevertheless are included in the amendment to provide a record of applicable authority for reference when the plan is required to be restated in a few years.

Discussion

ART EXPLANATION

- | | |
|------------|--|
| I | General provisions regarding amendment, effective date, etc. |
| II | Summary of provisions covered in the amendment. |
| III | Specifies actuarial factors – i.e. interest rate and mortality table – that must be used to determine compliance with limitations on benefits imposed by Internal Revenue Code §415. |
| IV | Any beneficiary under a qualified plan who is not a spouse and is entitled to a benefit eligible for a rollover can directly roll the distribution over to an IRA. |
| V | After-tax contributions received in a distribution, if any, can be rolled over, as well, to certain types of retirement plans. |

- VI** Extends period for giving participants notice of distributions from 90 to 180 days. Notice of distributions must include a statement of the effect of delaying distributions and explanation of relative values of optional forms of benefit. Requirements do not apply to governmental plans.
- VII** Domestic relations order directing division of benefits upon a participant's divorce will not fail in certain cases due to the timing of issuance of the order.
- VIII** No in-service distributions are allowed upon reaching early retirement age.
- IX** Participants are allowed to elect qualified optional survivor annuity permitted under the plan. Requirements do not apply to governmental plans.
- X** Direct rollover of a lump sum distribution is permitted to a ROTH IRA.
- XI** Substitute "severance from employment", a defined term in the Internal Revenue Code, for "separation from service" for required "top heavy" nondiscrimination testing of the plan. Governmental plans are exempt from top heavy testing.
- XII** Changes to reflect new laws and regulations adopted in recent years regarding underfunded pension plans, specifically restricting optional payments and additional benefit accruals while a plan is in an underfunded state, and requiring annual reporting to plan participants. Requirements do not apply to governmental plans.
- XIII** Incorporate required changes for plan participants in military service, some of which do not apply because of unique terms of the plan.
- XIV** Incorporate certain interest rate and mortality assumptions for lump sum payouts and other plan provisions, to the extent applicable.
- XV** Reflect suspension of 2009 required minimum distributions for participants who reach the later of 70 ½ and retirement.

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 Amendment to the Firefighters' Retirement System Plan and Trust with Wells Fargo.

Motion

Move to approve the Amended Services Agreement with Wells Fargo.

**CITY OF GRAND ISLAND, NEBRASKA FIREFIGHTERS'
RETIREMENT SYSTEM PLAN AND TRUST ("PLAN")**

AMENDMENT NO. 1

**ARTICLE I
PREAMBLE**

- 1.1 **Plan and amendment authority.** The City of Grand Island, a Nebraska municipality, ("City" or "Employer") maintains the City of Grand Island, Nebraska Firefighters' Retirement System Plan and Trust pursuant to Neb. Rev. Stat. Sections 16-1020 through 16-1042 and Internal Revenue Code, Sections 401(a) and 501(a), as set forth in the Adoption Agreement and corresponding Basic Municipal Employees Plan and Trust Agreement, ("Plan"), and hereby adopts and approves this Amendment No. 1 to the Plan and authorizes the Mayor or his designee to execute it below.
- 1.2 **Effective date of Amendment.** This Amendment is effective as indicated below for the respective provisions; provided, however, that an effective date shall not be earlier than the effective date of the Plan.
- 1.3 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.4 **Construction.** Provisions of this Amendment that are applicable to a defined benefit plan are included to the extent the Plan provides a minimum defined benefit. Except as otherwise provided in this Amendment, any reference to "Article" or "Section" in this Amendment refers only to articles or sections within this Amendment, and is not a reference to the Plan.
- 1.5 **Effect of restatement of Plan.** If the City of Grand Island restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated into a plan document which incorporates Pension Protection Act of 2006 ("PPA"), and other provisions herein for subsequent legislation and guidance).

**ARTICLE II
CITY ELECTIONS**

- 2.1 **Applicable Provisions.** Unless the City otherwise specifies in this Amendment, the following will apply:
 - a. The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
 - b. Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
 - c. In-Service distributions prior to Normal Retirement Age are not permitted.
 - d. Once Code Section 436 benefit restrictions no longer apply, the Amendment provides for the (1) automatic restoration of benefit accruals, and (2) no "annuity starting date"; provided, however, Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and

exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being excluded from the funding requirements of Code Section 412.

- e. Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided. Distributions upon deemed severance of employment under the HEART Act are not permitted.
 - f. The applicable interest rate shall be based on the first month (lookback month) prior to the Plan Year (stability period) during which a distribution is made.
- 2.2 **Effective date of applicable mortality table set forth in Amendment Section 3.3.3(c).** The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
- 2.3 **Non-spousal rollovers (Article IV).** Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
- 2.4 **In-service distributions (Article VIII).** In-Service Distributions prior to Normal Retirement Age are not permitted.
- 2.5 **Code Section 436 Benefit Restrictions (Article XII)**

Treatment of Plan as of Close of Prohibited or Cessation Period (Section XII(h)). Unless otherwise elected below, accruals that had been limited under Code Section 436(e) will be automatically restored as of the "Section 436 measurement date" that the limitation ceases to apply; and

Accelerated Benefit Distributions (Section XII(h)). Unless otherwise elected below, (1) there is no new "annuity starting date" with respect to payments made as a result of the benefit limitations no longer being applicable, and (2) there are no optional forms of benefit that are only available for the period of the benefit restrictions;

Provided, however, the Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being excluded from the funding requirements of Code Section 412.

- 2.6 **Continued benefit accruals and distributions upon deemed severance (Article XIII).** Continued benefit accruals for the Heart Act (Amendment Section 13.2) will not apply. Further, distributions upon deemed severance of employment under the HEART Act (Amendment Section 13.4) will not be permitted.
- 2.7 **Applicable interest rate.** For purposes of Amendment Section 14.2, unless otherwise elected below, the stability period is the Plan Year during which a distribution is made and the lookback month is the first calendar month preceding the first day of the stability period.

ARTICLE III PENSION FUNDING EQUITY ACT OF 2004 AS MODIFIED BY SUBSEQUENT LEGISLATION

- 3.1 **General Rule.** This Article applies to the determination of Code Section 415 limits.

3.1.1 **Effective date.** The City adopts this Article III to reflect certain provisions of the Pension Funding Equity Act of 2004 (PFEA), as modified by the Pension Protection Act of 2006 and the

Worker, Retiree and Employer Recovery Act of 2008. Except as otherwise provided herein, effective for distributions in Plan Years beginning after December 31, 2003, the required determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with this Amendment. However, this Amendment does not supersede any prior election to apply the transition rule of section 101(d)(3) of PFEA as described in Notice 2004-78.

3.1.2 Definition of "Applicable Mortality Table." The "applicable mortality table" means the applicable mortality table within the meaning of Code Section 417(e)(3)(B) (as described in Article XIV), subject to any special effective dates specified in this Article III.

3.2 Benefit Forms Not Subject to the Present Value Rules of Code Section 417(e)(3)

3.2.1 Form of benefit. The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Section 3.2 if the form of the Participant's benefit is either:

- (a) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or
- (b) An annuity that decreases during the life of the Participant merely because of:
 - (1) The death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or
 - (2) The cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

3.2.2 Limitation Years beginning before July 1, 2007 – For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount:

- (a) the interest rate and mortality table (or other tabular factor specified in the Plan for adjusting benefits in the same form; and
- (b) a 5 percent interest rate assumption and the "applicable mortality table" defined in the Plan for that annuity starting date.

3.2.3 Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

- (a) The annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the Participant's form of benefit; and
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in the Plan for that annuity starting date.

3.3 Benefit Forms Subject to the Present Value Rules of Code Section 417(e)(3).

3.3.1 Form of benefit. The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined as indicated under this Section 3.3 if the form of the Participant's benefit is other than a benefit form described in Section 3.2.1 above.

3.3.2 Annuity Starting Date in small plans for Plan Years Beginning in 2009 and later. Notwithstanding anything in this Amendment to the contrary, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in or after 2009, and if the Plan is maintained by an eligible employer as defined in Code Section 408(p)(2)(C)(i), the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount:

- (a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and
- (b) A 5.5 percent interest rate assumption and the applicable mortality table described in Article XIV.

3.3.3 Annuity Starting Date in Plan Years Beginning After 2005. Except as provided in Section 3.3.2, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after December 31, 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

- (a) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form;
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below); and
- (c) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate for the distribution under Treasury Regulations Section 1.417(e)-1(d)(3) (determined in accordance with Article XIV for Plan Years after the effective date of that Article) and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below), divided by 1.05.

The effective date of the applicable mortality table above is for years beginning after December 31, 2008.

3.3.4 Annuity Starting Date in Plan Years Beginning in 2004 or 2005 – If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as

the participant's form of benefit, computed using whichever of the following produces the greater annual amount:

(a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and

(b) A 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Regulations Section 1.417(e)-1(d)(2).

However, this Section does not supersede any prior election to apply the transition rule of section 101(d)(3) of PFEA as described in Notice 2004-78.

ARTICLE IV DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION

- 4.1 **Non-spouse beneficiary rollover right (for distributions on or after January 1, 2008).** A non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Code Section 401(a)(31).
- 4.2 **Applicability of certain requirements.** For Plan Years beginning on or after January 1, 2010, any direct rollover of a distribution by a nonspouse beneficiary shall be subject to the direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B)), the notice requirements of Code Section 402(f) and the mandatory withholding requirements of Code Section 3405(c). Before that date, any such distribution shall not be subject to said requirements. Any distribution from the Plan to a non-spouse beneficiary shall not be eligible for a 60-day (non-direct) rollover.
- 4.3 **Trust beneficiary.** Subject to Section 4.1, if the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).
- 4.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary is not permitted to roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

ARTICLE V ROLLOVER OF AFTER-TAX AMOUNTS

- 5.1 **Direct rollover to qualified plan/403(b) plan (for taxable years beginning after December 31, 2006).** A Participant may elect to transfer employee after-tax contributions, if any, by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred (including interest thereon), including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

**ARTICLE VI
PARTICIPANT DISTRIBUTION NOTIFICATION**

- 6.1 **180-day notification period** (effective for distribution notices in Plan Years beginning after December 31, 2006). Reference to the 90-day maximum notice period requirements of Code Sections 402(f) (the rollover notice), 411(a)(11) (Participant's consent to distribution), and 417 (notice regarding the joint and survivor annuity rules), if any, is changed to 180 days.
- 6.2 **Effect of delay of distribution.** Notices given to Participants pursuant to Code Section 411(a)(11) in Plan Years beginning after December 31, 2006, if any, shall include a description of the consequences of failing to defer a distribution, including (i) for any individual account balance, a description of investment options available under the Plan (including fees) that will be available if the Participant defers distribution, (ii) for any defined benefit, how much larger benefits will be if the commencement of distributions is deferred, and (iii) the portion of the summary plan description that contains any special rules that might affect materially a Participant's decision to defer.
- 6.3 **Explanation of relative value.** Notices to Participants shall include the relative values of the various optional forms of benefit under the Plan as provided in Treasury Regulations Section 1.417(a)-3, to the extent said Regulations are applicable to the Plan. This provision is effective as of the applicable effective date set forth in Treasury Regulations (i.e., to qualified pre-retirement survivor annuity explanations provided on or after July 1, 2004; to qualified joint and survivor annuity explanations with respect to any distribution with an annuity starting date that is on or after February 1, 2006, or on or after October 1, 2004 with respect to any optional form of benefit that is subject to the requirements of Code Section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value as determined under Code Section 417(e)(3)). Provided, however, pursuant to the flush language of Code Section 401(a) and Code Section 411(e)(1)(B), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article VI, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

**ARTICLE VII
QUALIFIED DOMESTIC RELATIONS ORDERS**

- 7.1 **Permissible QDROs (effective on and after April 6, 2007).** For purposes of provisions of the Plan regarding domestic relations orders, if any, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order (QDRO) will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.
- 7.2 **Other QDRO requirements apply.** A domestic relations order described in Section 7.1 is subject to the same requirements and protections that apply to any other QDRO.

**ARTICLE VIII
PRE-RETIREMENT PENSION IN-SERVICE DISTRIBUTIONS**

- 8.1 **No age 62 in-service distributions.** As specified in Amendment Section 2.4, a Participant who has attained the specified age and who is not separated from employment may not elect to receive a distribution of his or her vested Accrued Benefit.

ARTICLE IX
QUALIFIED OPTIONAL SURVIVOR ANNUITY

- 9.1 **Right to Elect Qualified Optional Survivor Annuity** (effective for distributions with annuity starting dates in Plan Years beginning after December 31, 2007). A Participant who elects to waive the qualified joint and survivor annuity form of benefit under the Plan, if provided for under the Plan, shall be entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity, if required, shall explain the terms and conditions of the "qualified optional survivor annuity." Provided, however, the following rules apply in the specified circumstances:

(a) **Special Effective Date Rules.**

1. If the Plan permits retroactive annuity starting dates and a Participant elects a distribution with a retroactive annuity starting date (pursuant to Treasury Regulations Section 1.417(e)-1(b)(3)(iv)) that is before the aforementioned effective date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of applying the rules of this paragraph.

2. In the case of a plan that is subject to Code Section 401(a)(11) and that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006 (the date of enactment of PPA '06), the changes to Code Section 417 made by Section 1004 of PPA '06 apply to distributions with annuity starting dates during plan years beginning on or after the earlier of (i) January 1, 2008 or, if later, the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extensions to a collective bargaining agreement made after August 17, 2006), or (ii) January 1, 2009.

(b) **Inapplicability to Governmental Plans.** Pursuant to the flush language of Code Section 401(a) and the provisions of Code Section 411(e)(1)(A), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article IX, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

9.2 **Definition of Qualified Optional Survivor Annuity.**

(a) For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:

(1) For the life of the Participant with a survivor annuity for the life of the Participant's spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the Participant's spouse, and

(2) Which is the actuarial equivalent of a single annuity for the life of the Participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(b) For purposes of this Section, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the Participant and the spouse). If the survivor annuity percentage is less than seventy-five percent (75%), then the "applicable percentage" is seventy-five percent (75%). If the

survivor annuity percentage is equal to or greater than seventy-five percent (75%), the "applicable percentage" is fifty percent (50%).

ARTICLE X DIRECT ROLLOVER TO ROTH IRA

- 10.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a Participant or beneficiary may elect to roll over directly an "eligible rollover distribution" to a Roth IRA described in Code Section 408A(b); provided, however, for taxable years beginning before January 1, 2010, an individual cannot make a qualified rollover contribution from an eligible retirement plan other than a Roth IRA if, for the year the eligible rollover distribution is made, he or she has modified adjusted gross income exceeding \$100,000 or is married and files a separate return. For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in Article V, if applicable.

ARTICLE XI TOP-HEAVY PROVISIONS

- 11.1 **Severance from employment.** Effective for any Plan Year beginning after December 31, 2001, any provisions of the Plan setting forth the top-heavy provisions of Code Section 416 are modified by substituting the term "separation from service" with "severance from employment."

ARTICLE XII BENEFIT RESTRICTIONS

- (a) **Effective Date and Application of Article.**

(1) **Effective Date.** The provisions of this Article apply to Plan Years beginning after December 31, 2007.

(2) This Article only applies to single employer plans (a plan that is not a multiemployer plan within the meaning of Code Section 414(f)) and does not apply to a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers.

(A) **Multiple Employer Plans.** In the case of a multiple employer plan to which Code Section 413(c)(4)(A) applies, Code Section 436 applies separately with respect to each employer under the plan, as if each employer maintained a separate plan. Thus, the benefit limitations under Code Section 436 could apply differently to participants who are employees of different employers under such a multiple employer plan. In the case of a multiple employer plan to which Code Section 413(c)(4)(A) does not apply (that is, a plan described in Code Section 413(c)(4)(B) that has not made the election for Code Section 413(c)(4)(A) to apply), Code Section 436 applies as if all participants in the plan were employed by a single employer.

(B) **Governmental Plans.** Code Section 436 benefit restrictions and other provisions described in this Article do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being exempt from the funding requirements of Code Section 412.

(3) The limitations described in Subsections (b), (c) and (e) do not apply to the Plan for the first five (5) Plan Years of the Plan. Except as otherwise provided by the Commissioner in guidance of general applicability, the Plan Years taken into account for this purpose include the following (in addition to Plan Years during which the Plan was maintained by the Employer):

(A) Plan Years when the Plan was maintained by a predecessor employer within the meaning of Regulations Section 1.415(f)-1(c)(1);

(B) Plan years of another defined benefit plan maintained by a predecessor employer within the meaning of Regulations Section 1.415(f)-1(c)(2) within the preceding five years if any Participants in the Plan participated in that other defined benefit plan (even if the Plan maintained by the Employer is not the plan that was maintained by the predecessor employer); and

(C) Plan years of another defined benefit plan maintained by the Employer within the preceding five years if any Participants in the Plan participated in that other defined benefit plan.

(4) Notwithstanding anything in this Article to the contrary, the provision of Code Section 436 and the Regulations thereunder are incorporated herein by reference.

(5) For Plans that have a valuation date other than the first day of the Plan Year, the provisions of Code Section 436 and this Article will be applied in accordance with Regulations.

(b) Funding-Based Limitation on Shutdown Benefits and Other Unpredictable Contingent Event Benefits

(1) In general. If a Participant is entitled to an "unpredictable contingent event benefit" payable with respect to any event occurring during any Plan Year, then such benefit may not be provided if the "adjusted funding target attainment percentage" for such Plan Year (A) is less than sixty percent (60%) or, (B) sixty percent (60%) or more, but would be less than sixty percent (60%) percent if the "adjusted funding target attainment percentage" were redetermined applying an actuarial assumption that the likelihood of occurrence of the "unpredictable contingent event" during the Plan Year is one hundred percent (100%).

(2) Exemption. Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(iii).

(c) Limitations on Plan Amendments Increasing Liability for Benefits

(1) In general. No amendment which has the effect of increasing liabilities of the Plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any Plan Year if the "adjusted funding target attainment percentage" for such Plan Year is:

(A) less than eighty percent (80%), or

(B) eighty percent (80%) or more, but would be less than eighty percent (80%) if the benefits attributable to the amendment were taken into account in determining the "adjusted funding target attainment percentage."

(2) Exemption. Paragraph (c)(1) above shall cease to apply with respect to a Plan amendment upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(iv).

(3) Exception for certain benefit increases. Paragraph (1) shall not apply to any amendment as otherwise provided in Regulations Section 1.436-1(c).

(d) **Limitations on Prohibited Payments**

(1) Funding percentage less than sixty percent (60%). If the Plan's "adjusted funding target attainment percentage" for a Plan Year is less than sixty percent (60%), then a Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date."

(2) Bankruptcy. A Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" that occurs during any period in which the Employer is a debtor in a case under Title 11, United States Code, or similar Federal or State law. The preceding sentence shall not apply to payments made within a Plan Year with an "annuity starting date" that occurs on or after the date on which the enrolled actuary of the Plan certifies that the "adjusted funding target attainment percentage" of the Plan is not less than one hundred percent (100%).

(3) Limited payment if percentage at least sixty percent (60%) but less than eighty percent (80%) percent.

(A) In general. If the Plan's "adjusted funding target attainment percentage" for a Plan Year is sixty percent (60%) or greater but less than eighty percent (80%), then a Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date," unless the present value (determined in accordance with Code Section 417(e)(3)) of the portion of the benefit that is being paid in a "prohibited payment" (which portion is determined under paragraph (C)(i) below) does not exceed the lesser of:

(i) fifty (50) percent of the amount of the present value (determined in accordance with Code Section 417(e)(3)) of the benefit payable in the optional form of benefit that includes the prohibited payment; or

(ii) 100% of the "PBGC maximum benefit guarantee amount."

(B) Bifurcation if optional form unavailable.

(i) Requirement to offer bifurcation. If an optional form of benefit that is otherwise available under the terms of the plan is not available as of the "annuity starting date" because of the application of Regulations Section 1.436-1(d)(3)(i), then the Participant or Beneficiary may elect to:

(1) Receive the unrestricted portion of that optional form of benefit (determined under the rules of Regulations Section 1.436-1(d)(3)(iii)(D)) at that "annuity starting date," determined by treating the unrestricted portion of the benefit as if it were the Participant's or Beneficiary's entire benefit under the plan;

(2) Commence benefits with respect to the Participant's or Beneficiary's entire benefit under the Plan in any other optional form of benefit available under the Plan at the same "annuity starting date" that satisfies Regulations Section 1.436-1(d)(3)(i); or

(3) Defer commencement of the payments to the extent described in Regulations Section 1.436-1(d)(5).

(ii) Rules relating to bifurcation. If the Participant or Beneficiary elects payment of the unrestricted portion of the benefit as described in Regulations Section 1.436-1(d)(3)(ii)(A)(1), then the Participant or Beneficiary may elect payment of the remainder of the Participant's or Beneficiary's benefits under the Plan in any optional form of benefit at that "annuity starting date" otherwise available under the Plan that would not have included a "prohibited payment" if that optional form applied to the entire benefit of the Participant or Beneficiary. The rules of Regulations Section 1.417(e)-1 are applied separately to the separate optional forms for the "unrestricted portion of the benefit" and the remainder of the benefit (the restricted portion).

(iii) Plan alternative that anticipates election of payment that includes a "prohibited payment." With respect to every optional form of benefit that includes a "prohibited payment" and that is not permitted to be paid under Regulations Section 1.436-1 (d)(3)(i), for which no additional information from the Participant or Beneficiary (such as information regarding a Social Security leveling optional form of benefit) is needed to make that determination, rather than wait for the Participant or Beneficiary to elect such optional form of benefit, the Plan will provide for separate elections with respect to the restricted and unrestricted portions of that optional form of benefit.

(C) Definitions applicable to limited payment option. The following definitions apply for purposes of this subsection (d)(3).

(i) Portion of benefit being paid in a prohibited payment. If a benefit is being paid in an optional form for which any of the payments is greater than the amount payable under a straight life annuity to the Participant or Beneficiary (plus any Social Security supplements described in the last sentence of Code Section 411(a)(9) payable to the Participant or Beneficiary) with the same "annuity starting date," then the portion of the benefit that is being paid in a "prohibited payment" is the excess of each payment over the smallest payment during the Participant's lifetime under the optional form of benefit (treating a period after the "annuity starting date" and during the Participant's lifetime in which no payments are made as a payment of zero).

(ii) PBGC maximum benefit guarantee amount. The "PBGC maximum benefit guarantee amount" is the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under Code Section 417(e)) of the maximum benefit guarantee with respect to a Participant (based on the Participant's age or the Beneficiary's age at the "annuity starting date") under ERISA Section 4022 for the year in which the "annuity starting date" occurs.

(iii) Unrestricted portion of the benefit:

(1) General rule. Except as otherwise provided in this paragraph (iii), the unrestricted portion of the benefit with respect to any optional form of benefit is fifty percent (50%) of the amount payable under the optional form of benefit.

(2) Special rule for forms which include Social Security leveling or a refund of employee contributions. For an optional form of benefit that is a prohibited payment on account of a Social Security leveling feature (as defined in Regulations Section 1.411(d)-3(g)(16)) or a refund of

employee contributions feature (as defined in Regulations Section 1.411(d)-3(g)(11)), the unrestricted portion of the benefit is the optional form of benefit that would apply if the Participant's or Beneficiary's Accrued Benefit were fifty percent (50%) smaller.

(3) Limited to PBGC maximum benefit guarantee amount. After the application of the preceding rules of this paragraph (iii), the unrestricted portion of the benefit with respect to the optional form of benefit is reduced, to the extent necessary, so that the present value (determined in accordance with Code Section 417(e)) of the unrestricted portion of that optional form of benefit does not exceed the "PBGC maximum benefit guarantee amount."

(D) Other Rules.

(i) One time application. If a Participant with respect to whom a prohibited payment (or a series of prohibited payments under a single optional form of benefit) is made pursuant to paragraph (d)(3)(A) or (B) above, no additional prohibited payment may be made with respect to that Participant during any consecutive Plan Years for which prohibited payments are limited under this subsection (d).

(ii) Treatment of beneficiaries. For purposes of this subparagraph (d)(3), benefits provided with respect to a Participant and any Beneficiary of the Participant (including an alternate payee, as defined in Code Section 414(p)(8)) are aggregated. If the only benefits paid under the plan with respect to the Participant are death benefits payable to the Beneficiary, then paragraph (d)(3)(C)(i) of this section is applied by substituting the lifetime of the Beneficiary for the lifetime of the Participant. If the Accrued Benefit of a Participant is allocated to such an alternate payee and one or more other persons, then the "unrestricted amount" of (d)(3)(C)(iii) is allocated among such persons in the same manner as the accrued benefit is allocated, unless a qualified domestic relations order (as defined in Code Section 414(p)(1)(A)) with respect to the Participant or the alternate payee provides otherwise.

(iii) Treatment of annuity purchases and plan transfers. This paragraph (d)(3)(D)(iii) applies for purposes of applying subsections (d)(3)(A) and (d)(3)(C)(iii). In the case of a prohibited payment described in Regulations Section 1.436-1(j)(6)(i)(B) (relating to purchase from an insurer), the present value of the portion of the benefit that is being paid in a prohibited payment is the cost to the plan of the irrevocable commitment and, in the case of a prohibited payment described in Regulations Section 1.436-1(j)(6)(i)(C) (relating to certain plan transfers), the present value of the portion of the benefit that is being paid in a prohibited payment is the present value of the liabilities transferred (determined in accordance with Code Section 414(l)). In addition, the present value of the accrued benefit is substituted for the present value of the benefit payable in the optional form of benefit that includes the prohibited payment in Regulations Section 1.436-1(d)(3)(i)(A).

(4) Exception. This subsection (d) shall not apply for any Plan Year if the terms of the Plan (as in effect for the period beginning on September 1, 2005, and ending with such Plan Year) provide for no benefit accruals with respect to any Participant during such period.

(5) Right to delay commencement. If a Participant or Beneficiary requests a distribution in an optional form of benefit that includes a "prohibited payment" that is not permitted to be paid under paragraph (d)(1), (d)(2), or (d)(3) of this Article, then the Participant retains the right to delay commencement of benefits in accordance with the terms of the plan and applicable qualification requirements (such as Code Sections 411(a)(11) and 401(a)(9)).

(6) "Prohibited payment." For purposes of this subsection (d), the term "prohibited payment" means:

(A) Any payment for a month that is in excess of the monthly amount paid under a single life annuity (plus any Social Security supplements described in the last sentence of Code Section 411(a)(9)), to a Participant or Beneficiary whose "annuity starting date" occurs during any period a limitation under paragraph (d) is in effect;

(B) Any payment for the purchase of an irrevocable commitment from an insurer to pay benefits; and

(C) Any transfer of assets and liabilities to another plan maintained by the same Employer (or by any member of the Employer's controlled group) that is made in order to avoid or terminate the application of Code Section 436 benefit limitations; and

(D) Any other amount that is identified as a prohibited payment by the Commissioner in revenue rulings and procedures, notices, and other guidance published in the Internal Revenue Bulletin.

Such term shall not include the payment of a benefit which under Code Section 411(a)(11) may be immediately distributed without the consent of the Participant. Furthermore, in the case of a Beneficiary that is not an individual, the amount that is a prohibited payment is determined by substituting the monthly amount payable in installments over 240 months that is actuarially equivalent to the benefit payable to the Beneficiary, as provided in Regulations Section 1.436-1(j)(6)(ii).

(e) Limitation on Benefit Accruals for Plans with Severe Funding Shortfalls

(1) In general. If the Plan's "adjusted funding target attainment percentage" for a Plan Year is less than sixty percent (60%), benefit accruals under the Plan shall cease as of the "section 436 measurement date." If the Plan is required to cease benefit accruals under this subsection (e), then the Plan is not permitted to be amended in a manner that would increase the liabilities of the Plan by reason of an increase in benefits or establishment of new benefits. The preceding sentence applies regardless of whether an amendment would otherwise be permissible under subsections (c)(2) or (c)(3) of this Article.

(2) Exemption. Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(v).

(3) Temporary modification of limitation. In the case of the first Plan Year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, the provisions of (e)(1) above shall be applied by substituting the Plan's "adjusted funding target attainment percentage" for the preceding Plan Year for such percentage for such Plan Year, but only if the "adjusted funding target attainment percentage" for the preceding year is greater.

(f) **Rules Relating to Contributions Required to Avoid or Terminate Benefit Limitations**

The application of the Code Section 436 benefit limitations may be avoided or terminated in accordance with any of the rules set forth in Code Section 436 and Regulations Section 1.436-1(f).

(g) **Presumed Underfunding for Purposes of Benefit Limitations**

(1) **Presumption of continued underfunding.**

(A) In general. This paragraph (g)(1) applies to a Plan for a Plan Year if a limitation under subsection (b), (c), (d), or (e) applied to the Plan on the last day of the preceding Plan Year. If this paragraph (g)(1) applies to a Plan, then the first day of the Plan Year is a "Section 436 measurement date" and the presumed "adjusted funding target attainment percentage" for the Plan is the percentage under paragraph (g)(1)(B) or (C) of this subsection, whichever applies to the Plan, beginning on that first day of the Plan Year and ending on the date specified in subparagraph (g)(1)(D) of this section.

(B) **Rule where preceding year certification issued during preceding year.**

(i) General rule. In any case in which the Plan's enrolled actuary has issued a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year preceding the current Plan Year before the first day of the current Plan Year, the presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to the prior Plan Year "adjusted funding target attainment percentage" until it is changed under Regulations Section 1.436-1(h)(1)(iv).

(ii) Special rule for late certifications. If the certification of the adjusted funding target attainment percentage for the prior Plan Year occurred after the first day of the 10th month of that prior Plan Year, the Plan is treated as if no such certification was made, unless the certification took into account the effect of any unpredictable contingent event benefits that are permitted to be paid based on unpredictable contingent events that occurred, and any Plan amendments that became effective, during the prior Plan Year but before the certification (and any associated Code Section 436 contributions).

(C) **No certification for preceding year issued during preceding year.**

(i) Deemed percentage continues. In any case in which the Plan's enrolled actuary has not issued a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" of the Plan for the Plan Year preceding the current Plan Year during that prior Plan Year, the presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to the presumed "adjusted funding target attainment percentage" that applied on the last day of the preceding Plan Year until the presumed "adjusted funding target attainment percentage" is changed under Regulations Section 1.436-1(h)(1)(iii)(B) or (h)(1)(iv).

(ii) Enrolled actuary's certification in following year. In any case in which the Plan's enrolled actuary has issued the certification under Regulations Section 1.436-1(h)(4) of the adjusted funding target attainment percentage of the Plan for the Plan Year preceding the current Plan Year on or after the first day of the current Plan Year, the date of that prior Plan Year certification is a new "Section 436 measurement date" for the current Plan Year. In such a case, the presumed

adjusted funding target attainment percentage for the current Plan Year is equal to the prior Plan Year adjusted funding target attainment percentage (reduced by 10 percentage points if Regulations Section 1.436-1(h)(2)(iv) applies to the Plan) until it is changed under Regulations Section 1.436-1(h)(1)(iv). The rules of Regulations Section 1.436-1(h)(1)(ii)(B) apply for purposes of determining whether the enrolled actuary has issued a certification of the adjusted funding target attainment percentage for the prior Plan Year during the current Plan Year.

(D) Duration of use of presumed "adjusted funding target attainment percentage." If this paragraph (g)(1) applies to a Plan for a Plan Year, then the presumed "adjusted funding target attainment percentage" determined under this paragraph (g)(1) applies until the earliest of:

- (i) The first day of the 4th month of the Plan Year if paragraph (g)(2) of this section applies;
- (ii) The first day of the 10th month of the Plan Year if paragraph (g)(3) of this section applies;
- (iii) The date of a change in the presumed adjusted funding target attainment percentage under Regulations Section 1.436-1(g)(4); or
- (iv) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year.

(2) Presumption of underfunding beginning on first day of 4th month for certain underfunded plans. This paragraph (2) applies to a Plan for a Plan Year if the enrolled actuary for the Plan has not issued a certification of the "adjusted funding target attainment percentage" for the Plan Year before the first day of the 4th month of the Plan Year, and the Plan's "adjusted funding target attainment percentage" for the preceding Plan Year was either (1) at least sixty percent (60%) but less than seventy percent (70%); or (2) at least eighty percent (80%) but less than ninety percent (90%). This paragraph (2) also applies to a Plan for the first effective Plan Year if the enrolled actuary for the Plan has not issued a certification of the "adjusted funding target attainment percentage" for the Plan Year before the first day of the 4th month of the Plan Year, and the prior Plan Year "adjusted funding target attainment percentage" is at least seventy percent (70%) but less than eighty percent (80%).

(A) Presumed adjusted funding target attainment percentage. Application of this paragraph. If this paragraph (2) applies to a Plan for a Plan Year and the date of the enrolled actuary's certification of the "adjusted funding target attainment percentage" under Regulations Section 1.436-1(h)(4) for the prior Plan Year (taking into account the special rules for late certifications under Regulations Section 1.436-1(h)(1)(ii)(B)) occurred before the first day of the 4th month of the current Plan Year, then, commencing on the first day of the 4th month of the current Plan Year:

- (i) The presumed "adjusted funding target attainment percentage" of the Plan for the Plan Year is reduced by 10 percentage points; and
- (ii) The first day of the 4th month of the Plan Year is a "Section 436 measurement date."

(B) Certification for prior Plan Year. If this paragraph (2) applies to a Plan and the date of the enrolled actuary's certification of the "adjusted funding target attainment

percentage" under Regulations Section 1.436-1(h)(4) for the prior Plan Year (taking into account the rules for late certifications under Regulations Section 1.436-1(h)(1)(ii)(B)) occurs on or after the first day of the 4th month of the current Plan Year, then, commencing on the date of that prior Plan Year certification:

(i) The presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to 10 percentage points less than the prior Plan Year "adjusted funding target attainment percentage"; and

(ii) The date of the prior Plan Year certification is a "Section 436 measurement date."

(C) Duration of use of presumed "adjusted funding target attainment percentage." If this paragraph (2) applies to a Plan for a Plan Year, the presumed adjusted funding target attainment percentage determined under this paragraph (2) applies until the earliest of:

(i) The first day of the 10th month of the Plan Year if paragraph (3) of this section applies;

(ii) The date of a change in the presumed "adjusted funding target attainment percentage" under Regulations Section 1.436-1(g)(4); or

(iii) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year.

(3) Presumption of underfunding beginning on first day of 10th month. In any case in which no certification of the specific adjusted funding target attainment percentage for the current Plan Year under Regulations Section 1.436-1(h)(4) is made with respect to the Plan before the first day of the 10th month of the Plan Year, then, commencing on the first day of the 10th month of the current Plan Year:

(A) The presumed "adjusted funding target attainment percentage" of the Plan for the Plan Year is presumed to be less than sixty percent (60%); and

(B) The first day of the 10th month of the Plan Year is a "Section 436 measurement date."

(h) Treatment of Plan as of Close of Prohibited or Cessation Period.

(1) Application to prohibited payments and accruals.

(A) Resumption of prohibited payments. If a limitation on prohibited payments under Section (d) of this Article applied to a Plan as of a "Section 436 measurement date," but that limit no longer applies to the Plan as of a later "Section 436 measurement date," then the limitation on prohibited payments under the Plan does not apply to benefits with "annuity starting dates" that are on or after that later "Section 436 measurement date." Any amendment to eliminate an optional form of benefit that contains a prohibited payment with respect to an "annuity starting date" during a period in which the limitations of Code Section 436(d) and Regulations Section 1.436-1(d) do not apply to the Plan is subject to the rules of Code Section 411(d)(6).

(B) Resumption of benefit accruals. If a limitation on benefit accruals under Regulations Section 1.436-1(e) applied to a Plan as of a "Section 436 measurement date,"

but that limit no longer applies to the Plan as of a later "Section 436 measurement date," then that limitation does not apply to benefit accruals that are based on service on or after that later "Section 436 measurement date," except to the extent that the Plan provides that benefit accruals will not resume when the limitation ceases to apply. The Plan will comply with the rules relating to partial years of participation and the prohibition on double proration under Department of Labor regulation 29 CFR Section 2530.204-2(c) and (d).

(2) Restoration of options and missed benefit accruals. If elected at Amendment Section 2.5, then Participants who had an "annuity starting date" within a period during which a limitation under Regulations Section 1.436-1(d) applied to the Plan will be provided with the opportunity to have a new "annuity starting date" (which would constitute a new "annuity starting date" under Code Sections 415 and 417) under which the form of benefit previously elected may be modified, subject to applicable qualification requirements, once the limitations of Regulations Section 1.436-1(d) cease to apply. In addition, subject to the rules of Regulations Section 1.436-1(c)(3) and any election made at Amendment Section 2.5, the Plan will automatically restore benefit accruals that had been limited under Code Section 436(e) as of the "Section 436 measurement date" that the limitation ceases to apply.

(3) Shutdown and other unpredictable contingent event benefits. If unpredictable contingent event benefits with respect to an unpredictable contingent event that occurs during the Plan Year are not permitted to be paid after the occurrence of the event because of the limitations of Code Section 436(b) and Regulations Section 1.436-1(b), but are permitted to be paid later in the Plan Year as a result of additional contributions under Regulations Section 1.436-1(f)(2) or pursuant to the enrolled actuary's certification of the "adjusted funding target attainment percentage" for the Plan Year that meets the requirements of Regulations Section 1.436-1(g)(5)(ii)(B), then those unpredictable contingent event benefits must automatically become payable, retroactive to the period those benefits would have been payable under the terms of the Plan (other than Plan terms implementing the requirements of Code Section 436(b)). If the benefits do not become payable during the Plan Year in accordance with the preceding sentence, then the Plan is treated as if it does not provide for those benefits. However, all or any portion of those benefits can be restored pursuant to a Plan amendment that meets the requirements of Code Section 436(c) and Regulations Section 1.436-1(c) and other applicable qualification requirements.

(4) Treatment of Plan amendments that do not take effect. If a Plan amendment does not take effect as of the effective date of the amendment because of the limitations of Code Section 436(c) and Regulations Section 1.436-1, but is permitted to take effect later in the Plan Year as a result of additional contributions under paragraph Regulations Section 1.436-1(f)(2) or pursuant to the enrolled actuary's certification of the "adjusted funding target attainment percentage" for the Plan Year that meets the requirements of paragraph Regulations Section 1.436-1(g)(5)(ii)(C), then the Plan amendment must automatically take effect as of the first day of the Plan Year (or, if later, the original effective date of the amendment). If the Plan amendment cannot take effect during the Plan Year, then it must be treated as if it were never adopted, unless the Plan amendment provides otherwise.

(i) **Definitions.** Defined terms shall have the meaning set forth below and as contained in Regulations Section 1.436-1(j) and shall be interpreted consistent with said Regulations.

(1) The term "adjusted funding target attainment percentage" means the "funding target attainment percentage" per paragraph (A) below, and increasing each of the amounts under subparagraphs (A) and (B) of Code Section 430(d)(2) by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in Code Section 414(q)) which were made by the Plan during the preceding two (2) Plan Years.

(A) The term "funding target attainment percentage" has the same meaning given such term by Code Section 430(d)(2) and the Regulations thereunder, except as otherwise provided herein. However, in the case of Plan Years beginning in 2008, the "funding target attainment percentage" for the preceding Plan Year may be determined using such methods of estimation as the Secretary may provide.

(B) Application to plans which are fully funded without regard to reductions for funding balances.

(1) In general. In the case of a Plan for any Plan Year, if the "funding target attainment percentage" is one hundred percent (100%) or more (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)), the "funding target attainment percentage" for purposes of paragraphs (1) and (1)(A) above shall be determined without regard to such reduction:

(2) Transition rule. Subparagraph (B)(1) shall be applied to Plan Years beginning after 2007 and before 2011 by substituting for "one hundred percent (100%)" the applicable percentage determined in accordance with the following table:

In the case of a Plan Year beginning in calendar year:	The applicable percentage is:
2008	92%
2009	94%
2010	96%

(3) Subparagraph (B)(2) shall not apply with respect to the current Plan Year unless the "funding target attainment percentage" (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)) of the Plan for each preceding Plan Year beginning after 2007 and before the current Plan Year was not less than the applicable percentage with respect to such preceding Plan Year determined under subparagraph (B)(2).

(2) Section 436 measurement date. A "Section 436 measurement date" is the date that is used to determine when the limitations of Code Sections 436(d) and 436(e) apply or cease to apply, and is also used for calculations with respect to applying the limitations of Sections (b) and (c) of this Article.

(3) Annuity starting date. The term "annuity starting date" means the annuity starting date as defined in Regulations Section 1.436-1(j)(2).

(4) Unpredictable contingent event benefit. The term "unpredictable contingent event benefit" means an unpredictable contingent event as defined in Regulations Section 1.436-1(j)(9).

ARTICLE XIII HEART ACT PROVISIONS

13.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death. Moreover, the Plan will credit the Participant's

qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

- 13.2 **Benefit accrual.** If, pursuant to Amendment Section 2.6, the City elects to apply this Section 13.2, then effective on or after the effective date specified in Section 2.6, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated said employment on the actual date of death or disability.

- (a) **Determination of benefits.** The Plan will determine the amount of employee contributions, if any, of an individual treated as reemployed under this Section 13.2 for purposes of applying Code Section 414(u)(8)(C) on the basis of the individual's average actual employee contributions for the lesser of: (i) the 12-month period of service with the employer immediately prior to qualified military service; or (ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

- 13.3 **Differential wage payments.** For years beginning after December 31, 2008:

(i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation for purposes of Code Section 415(c)(3) and Regulations Section 1.415(c)-2 (e.g. for purposes of Code Section 415, top heavy provisions of Code Section 416 and determination of highly compensated employees under Code Section 414(q)), and

(iii) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) (or any corresponding plan provisions, including, but not limited to, Plan provisions related to the average deferral percentage or average contribution percentage, to the extent applicable) by reason of any contribution or benefit which is based on the differential wage payment. Differential wage payments (as described herein) shall constitute compensation for all Plan purposes.

- (a) **Nondiscrimination Requirements.** Provided, however, for purposes of subparagraph (iii), all employees of the employer (as determined under Code Section 414(b), (c), (m) and (o)) performing service in the uniformed services described in Code Section 3401(h)(2)(A) shall be entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions, if contributions are permitted, based on the payments on reasonably equivalent terms (taking into account the provisions of Code Section 410(b)(3), (4) and (5) to the extent applicable).

- 13.4 **Deemed Severance.** As provided in Section 2.6, the Plan does not permit distribution upon deemed severance of employment.

ARTICLE XIV CHANGE IN APPLICABLE INTEREST RATE AND APPLICABLE MORTALITY ASSUMPTION

- 14.1 **Effective date.** Except as provided in regulations or other guidance by the Pension Benefit Guaranty Corporation (PBGC) and IRS, to the extent said regulations or guidance is applicable to this Plan, the limitations of this Article shall first apply in determining the amount payable to a

Participant having an annuity starting date in a Plan Year beginning on or after January 1, 2008.

- 14.2 **Applicable interest rate.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate" or "applicable mortality table" used for purposes of Code Section 417(e), any provision prescribing the use of the annual rate of interest on 30-year U.S. Treasury securities shall be implemented by instead using the rate of interest determined by the applicable interest rate described by Code Section 417(e) after its amendment by PPA. Specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) for the calendar month (lookback month) before the first day of the Plan Year in which the annuity starting date occurs (stability period). For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:
- (a) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and
 - (b) Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(ii)(II)" for "Section 412(b)(5)(B)(ii)(II)," and
 - (c) The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.
- 14.3 **Applicable mortality assumption.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate," any Plan provision directly or indirectly prescribing the use of the mortality table described in Revenue Ruling 2001-62 shall be amended to prescribe the use of the applicable annual mortality table within the meaning set forth in Code Section 417(e)(3)(B), as initially described in Revenue Ruling 2007-67.

ARTICLE XV 2009 REQUIRED MINIMUM DISTRIBUTIONS (IRC SECTION 401(a)(9)(H))

- 15.1 Notwithstanding anything in the Plan to the contrary:

- (a) **Suspension of Required Minimum Distributions for 2009.** A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated "Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence; and
- (b) **Direct Rollovers.** For purposes of applying the direct rollover provisions of the Plan, a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(H).

This amendment is hereby executed this _____ day of _____, 2011

CITY OF GRAND ISLAND, a Nebraska municipality

By:

_____, Mayor



RESOLUTION 2011-317

WHEREAS, the City of Grand Island currently has a contract with Wells Fargo for the Firefighters' Retirement System Plan and Trust.

WHEREAS, The City's retirement plan documents must incorporate recent changes to pension laws and regulations for which plan documents need to be updated.

WHEREAS, the City must change retirement plan documents to incorporate laws and regulations for which plan documents need to be updated at no additional cost to the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized and directed to execute an agreement for such services on behalf of the City of Grand Island. City Administration recommends that the Council approve Amendment 1 to the Firefighters' Retirement System Plan and Trust with Wells Fargo.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item I1

#2011-338 - Consideration of Request from Bosselman Pump & Pantry, Inc. dba Pump & Pantry #43, 1222 South Locust Street for a Class "D" Liquor License and Liquor Manager Designation for Susan McAfee, 1863 7th Avenue, Dannebrog, Nebraska

This item relates to the aforementioned Public Hearing item E-1.

Staff Contact: RaNae Edwards

RESOLUTION 2011-338

WHEREAS, an application was filed by Bosselman Pump & Pantry, Inc. doing business as Pump & Pantry #43, 1222 South Locust Street for a Class "D" Liquor License; and

WHEREAS, a public hearing notice was published in the *Grand Island Independent* as required by state law on October 29, 2011; such publication cost being \$; and

WHEREAS, a public hearing was held on November 8, 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 Susan McAfee, 1863 7th Avenue, Dannebrog, Nebraska as liquor manager of such business contingent upon completing a state approved alcohol server/seller program.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 2, 2011	☐ City Attorney



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item I2

#2011-339 - Consideration of Request from Bosselman Pump & Pantry, Inc. dba Pump & Pantry #44, 1309 Diers Avenue for a Class "D" Liquor License and Liquor Manager Designation for Susan McAfee, 1863 7th Avenue, Dannebrog, Nebraska

This item relates to the aforementioned Public Hearing item E-2.

Staff Contact: RaNae Edwards

RESOLUTION 2011-339

WHEREAS, an application was filed by Bosselman Pump & Pantry, Inc. doing business as Pump & Pantry #44, 1309 Diers Avenue for a Class "D" Liquor License; and

WHEREAS, a public hearing notice was published in the *Grand Island Independent* as required by state law on October 29, 2011; such publication cost being \$; and

WHEREAS, a public hearing was held on November 8, 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 Susan McAfee, 1863 7th Avenue, Dannebrog, Nebraska as liquor manager of such business contingent upon completing a state approved alcohol server/seller program.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	<input type="checkbox"/> _____
November 2, 2011	<input type="checkbox"/> City Attorney



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item I3

#2011-340 - Consideration of Request from Pamela D. Hall dba BT's Lounge, 2320 South Locust Street for a 12' x 26' Addition - Beer Garden to Liquor License "C-24627"

This item relates to the aforementioned Public Hearing item E-3.

Staff Contact: RaNae Edwards

RESOLUTION 2011-340

WHEREAS, an application was filed by Pamela D. Hall, doing business as BT's Lounge, 2320 South Locust Street for an addition of a Beer Garden to their Class "C-24627" Liquor License; and

WHEREAS, a public hearing notice was published in the *Grand Island Independent* as required by state law on October 29, 2011; such publication cost being \$; and

WHEREAS, a public hearing was held on November 8, 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, November 8, 2011.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 2, 2011	☐ City Attorney



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item I4

#2011-341 - Approving Confidentiality Agreement with Municipal Energy Agency of Nebraska (MEAN) to Provide Southwest Power Pool Marketing Service Agreement Proposal

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director

Meeting: November 8, 2011

Subject: Confidentiality Agreement with the Municipal Energy Agency of Nebraska (MEAN) to Provide Southwest Power Pool Marketing Service Agreement Proposal

Item #'s: I-4

Presenter(s): Timothy Luchsinger, Utilities Director

Background

Electric generation plants are connected to a national electric transmission grid for the distribution of electricity to users. The national grid is broken into several regional control groups that balance generation with demand among the region's individual electric utility organizations, as well as the transfer of power to other regional grids. As part of controlling the transfer of electricity, these groups are also involved in the economic aspect of these transfers and the conditions of the sales and purchases. This has evolved from previous informal or formal agreements between utilities to the current point of a free market where power transactions are priced according to what buyers and sellers bid. The electric markets are implementing highly regulated systems for the control and dispatching of power from each plant and are similar to commodity or equity markets, in that they have complex requirements for conducting business transactions.

The regional grid that Grand Island is located in is the Southwest Power Pool (SPP). At this time, Grand Island is not a member of SPP and transfers of power are arranged through interconnected utilities, Nebraska Public Power District (NPPD) and the Municipal Energy Agency of Nebraska (MEAN). MEAN conducts marketing of our share of the Whelan 2 plant in Hastings through an agreement with our inter-local body, the Public Power Generation Agency (PPGA). We also conduct sales from our share of the Nebraska City 2 through Omaha Public Power District. These utilities are registered members of SPP and have the qualified staff and systems needed to conduct transactions in the SPP market.

The SPP market is evolving from one that looks at current pricing to one that will include conducting transactions a day ahead in order to better balance supply and demand. This will impact our operations as we will go from looking at real-time market conditions to

also evaluating market conditions a day in advance and take into consideration hedging our needs and resources as the markets pan out.

To participate in future power sales from our units in Grand Island, we will be required to register our generating units in SPP and either become a member of SPP, or use another member to conduct transactions and dispatch power using the SPP control network. At this time, we have neither the staff nor systems necessary to conduct transactions in the SPP market, so we have contacted MEAN and NPPD regarding proposals to become our broker until we determine whether to do these functions internally. Part of these proposals may also include some sort of a commission or other compensation to use their resources to help us determine long and short term strategies.

Discussion

MEAN has provided the attached Confidentiality Agreement that they require to be executed prior to providing their proposal. This agreement is applicable to the SPP market assistance proposal from MEAN, and does not bind or exclude the City to any other agreements. Utilities Department and Legal staff have reviewed the agreement and recommend that it be executed by the City.

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 execution of the Confidentiality Agreement between the City of Grand Island Utilities Department and the Municipal Energy Agency of Nebraska (MEAN) to provide Southwest Power Pool Marketing Service Agreement Proposal.

Sample Motion

Move to approve execution of the Confidentiality Agreement between the City of Grand Island, Utilities Department, and the Municipal Energy Agency of Nebraska (MEAN) to provide Southwest Power Pool Marketing Service Agreement Proposal.

NON-DISCLOSURE CONFIDENTIALITY AGREEMENT

This Agreement is made and entered into this ____ day of _____, 20____ (the “Effective Date”) by and between the Municipal Energy Agency of Nebraska, (hereinafter referred to as “MEAN”) and Grand Island Utilities, acting for and on behalf of the City of Grand Island, Nebraska (hereinafter referred to as “Utility”).

WHEREAS, the Parties intend to enter into discussions to explore the possibility of entering into an Agreement Regarding SPP Market Assistance (“Services Agreement”) under which MEAN would provide assistance to Utility to participate in the Southwest Power Pool, Inc. imbalance market and Day Two market; and

WHEREAS, the Parties desire to protect the confidentiality of certain information contained within the Services Agreement document, regardless of whether such Services Agreement is executed or declined by the Parties.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **Confidential Information.** Confidential Information shall mean any information regarding compensation, pricing or fees contained within the Services Agreement, including, but not limited to Early Termination Fee, hourly billing rates, administrative fees, and estimated number of hours required to complete each task, except for that information specified in Section 9 below entitled “Exceptions.”

2. **Use of Confidential Information.** Unless specifically authorized in writing by MEAN, Utility will:

- a) use such Confidential Information solely for the purpose of evaluating the proposed services relationship for SPP market assistance between the Parties; and
- b) promptly return to MEAN, upon written request, any and all tangible material concerning such Confidential Information, including all copies and notes, *provided, however*, that in the event the Services Agreement is executed by and between the Parties, Utility may retain one original copy of the executed Services Agreement.

3. **Non-Disclosure.** Utility agrees to receive the Confidential Information in confidence. Utility agrees that it will treat such Confidential Information in the same manner that it treats like information of its own that it does not wish to disclose to the public, potential competition, or other carriers, but in all events it shall undertake at least a reasonable degree of care. To that end, Utility will not make a copy of any Confidential Information that is in documented form except for use by its employees and board members with a need to know.

Utility further agrees not to distribute, disclose or disseminate the Confidential Information in any way to anyone, except its employees and board members who have such need

to know. Utility further agrees not to use the Confidential Information for its own benefit or the benefit of others, except as authorized in writing by MEAN. Utility agrees that its disclosure of Confidential Information to its employees and board members who have such a need to know shall be limited to only so much of such Confidential Information as is necessary for that employee or board member to perform his/her function.

4. **Term.** This Agreement shall become effective upon execution and shall remain in effect for a term of two (2) years from the Effective Date.

5. **No License.** Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed to Utility.

6. **No Obligations.** The furnishing of Confidential Information hereunder shall not obligate either Party to enter into any further agreement or negotiation with the other or to refrain from entering into an agreement or negotiation with any other party.

7. **No Circumvention.** Utility agrees not to circumvent MEAN by using Confidential Information or contacts provided or enter into negotiations with an individual(s) or entity(s) that one Party may introduce to the other Party for a period of two (2) years from the Effective Date of this Agreement.

8. **Propriety Information.** The Parties recognize that the Confidential Information is in many respects proprietary in nature, and as such Utility agrees that for a period of two (2) years from the Effective Date of this Agreement, Utility will not use anything that it may learn from MEAN (except generic industry related information) in such a way as to compete with MEAN.

9. **Exceptions.** The obligations imposed upon the Parties herein shall not apply to Confidential Information:

- a) which becomes available to the public through no wrongful act of Utility; or
- b) which is already in the possession of Utility and not subject to an existing agreement of confidence between the Parties; or
- c) which is received from a third party without restriction and without breach of this Agreement; or
- d) which is independently developed by Utility; or
- e) which is required to be disclosed by law, order, or regulation. In such a case, Utility must first notify MEAN and must make a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

10. **Reliance.** Each Party acknowledges that neither MEAN nor any of its representatives makes any express or implied representation or warranty as to the accuracy or completeness of any Confidential Information, except as may be otherwise agreed in writing between the Parties. Neither MEAN nor its representatives shall have any liability to Utility, Utility's

representatives, or any other person, relating to or arising from the use of the Confidential Information or for any errors therein or omissions therefrom, and Utility assumes full responsibility for all conclusions such Party derives from the Confidential Information, except as may be otherwise agreed in writing between the Parties.

11. **Breach of Agreement.** The Parties acknowledge that, in the event of a threatened or actual breach of the Agreement, monetary damages may not be sufficient. Accordingly, MEAN shall be entitled to injunctive relief in the event of a threatened or actual breach of this Agreement.

12. **Arbitration.** Any dispute which shall arise as to the obligations of either Party to this Agreement or as to the interpretation of any provision of this Agreement shall be decided by arbitration in accordance with the Rules of the American Arbitration Association (“AAA”) applicable to commercial disputes. The Parties agree that in the event that arbitration is demanded by either Party, upon reasonable notice each Party shall make all non-privileged documents related to the issues in dispute available to the other Party for inspection and copying. Unless otherwise agreed, any such arbitration hearing shall be conducted in Lincoln, Nebraska. This Agreement shall be construed and any disputes arising thereunder shall be resolved in accordance with the laws of the State of Nebraska.

13. **Governing State.** This Agreement shall be governed by, construed and enforced in accordance with, the laws of the State of Nebraska.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous oral or written representations with regard to the subject matter hereof. This Agreement may not be modified except by a writing signed by both Parties.

IN WITNESS WHEREOF, the Parties have caused this Non-Disclosure Confidentiality Agreement to be executed by their respective duly authorized representatives as of the date first written above.

MUNICIPAL ENERGY AGENCY
OF NEBRASKA

GRAND ISLAND UTILITIES, ACTING
FOR AND ON BEHALF OF THE CITY
OF GRAND ISLAND, NEBRASKA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

RESOLUTION 2011-341

WHEREAS, electric generation plants are connected to a national electric transmission grid for the distribution of electricity to users; and

WHEREAS, the national grid is broken into several regional groups that balance generation with demand among the region's individual electric utility organizations, as well as transfer power to other regional grids; and

WHEREAS, the market is evolving to a free market where power transactions are priced according to what buyers and sellers bid; and

WHEREAS, the electric markets are implementing highly regulated systems for the control and dispatching of power from each plant and are similar to commodity or equity markets, in that they have complex requirements for conducting business transactions; and

WHEREAS, the regional grid that Grand Island is located in is the Southwest Power Pool (SPP), and at the time, Grand Island is not a member of SPP and transfers of power are arranged through interconnected utilities, Nebraska Public Power District (NPPD) and the Municipal Energy Agency of Nebraska (MEAN); and

WHEREAS, at this time, Grand Island Utilities has contacted MEAN and NPPD regarding proposals to become our broker until it is determined whether this functions can be done internally; and

WHEREAS, MEAN has provided a Confidentiality Agreement that is required to be executed prior to providing their proposal, and this agreement is applicable to the SPP market assistance proposal from MEAN, and does not bind or exclude the City to any other agreements; and

WHEREAS, Utilities Department and Legal staff have reviewed the agreement and recommend that it be executed by the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, the Confidentiality Agreement with the Municipal Energy Agency of Nebraska (MEAN) to provide Southwest Power Pool Marketing Service Agreement Proposal is hereby approved, and the Utilities Director is authorized to sign the agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 2, 2011	☐ City Attorney



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item I5

#2011-320 - Update Concerning Designating No Parking on 2nd Street, Between Walnut Street and Cedar Street

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services

Meeting: November 8, 2011

Subject: Update Concerning Designating No Parking on 2nd Street, Between Walnut Street and Cedar Street

Item #'s: I-5

Presenter(s): John Collins, Public Works Director

Background

Council action is required to designate No Parking on any public street.

At the October 25, 2011 Council Meeting a request from St. Steven's Episcopal Church to remove parking between Walnut Street and Cedar Street, on the north side of 2nd Street was presented.

City Council referred this item to the November 8, 2011 meeting.

Discussion

Upon further evaluation of this request The Engineering Division of the Public Works Department will need to review the request with the Nebraska Department of Roads, as 2nd Street is a State highway. This item will be presented to City Council at a later date once an agreeable solution is reached with all parties.

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 allow the Engineering Division of the Public Works Department ample time to review such request.

Sample Motion

Move to allow the Engineering Division of the Public Works Department ample time to review such request.

RESOLUTION 2011-342

WHEREAS, on October 25, 2011 a request from St. Steven's Episcopal Church to remove parking between Walnut Street and Cedar Street, on the north side of 2nd Street was presented to City Council; and

WHEREAS, further evaluation of this request needs to be completed by the Public Works Department and the Nebraska Department of Roads, as 2nd Street is a State highway; and

WHEREAS, this item will be presented to City Council at a later date once an agreeable solution is reached with all parties

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item I6

**#2011-343 - Consideration of Declaration of Intent to Issue Bonds
for Uranium Removal System**

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director

Meeting: November 8, 2011

Subject: Declaration of Intent to Issue Bonds for Uranium Removal System

Item #'s: I-6

Presenter(s): Timothy Luchsinger, Utilities Director

Background

The City's municipal water system is supplied primarily from its Platte River Well Field. This well field is comprised of 21 wells and a pumping station. Testing for State regulatory requirements indicated composite uranium levels to be approaching the Maximum Containment Level (MCL) established by the EPA. Uranium is not an acute concern but rather is a chronic concern over a lifetime of exposure, and sampling and testing of the Grand Island water system thus far show full compliance with the EPA regulation. Testing of individual wells for uranium has indicated most wells exceed this MCL. To allow use of these wells during high water system demand periods, additional piping was installed in the past year for blending with lower uranium concentration wells. Recent testing of uranium concentrations in the wells indicated a trend towards increasing levels, reducing the effectiveness of well blending to reduce overall levels, therefore, based on Department recommendations, the Utilities Department was authorized by Council on February 22, 2011, to proceed with the procurement and installation of the large-scale pilot uranium removal system. Based on the multiple phase structure of the uranium engineering services RFP, HDR, the City's consultant on this project, was directed to provide a proposal for preparing specifications to issue for bids for an adsorptive media pilot plant. On June 28, 2011, Council awarded the contract for the Uranium Removal System – Equipment Procurement to Water Remediation Technology.

On August 23, 2011, Council approved the proposal of HDR Engineering, Inc., of Lincoln, Nebraska, for Uranium Removal Water Plant – Task Order No. 2. This task order authorized the detailed engineering services which included preparation of specifications for bidding of a new building and foundations, underground piping, well modifications, and installation of the uranium removal equipment. On October 11, 2011, Council awarded the contract for Uranium Removal Water Treatment Plant - Building Construction to Chief Construction of Grand Island, Nebraska, in the amount of

\$324,857.30 for the building and foundations that will be required for installation and operation of the uranium removal system.

Discussion

As previously proposed to Council, it is estimated that the capital cost of this project will be \$3,000,000, to be funded by bonding, with an annual operating cost of approximately \$800,000, which is to be funded by a rate adjustment resulting in additional annual revenue of about 20%. Until the bonding is in place, our bond underwriter, Ameritas, has advised that the City should declare their intention to use bond revenue to fund the capital improvements of adding the uranium removal system. This will allow bond proceeds to be used for costs of the uranium removal system prior to the bonds being issued and the funds are received.

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 declaration of intent to issue bonds to reimburse expenses resulting from the procurement and installation of a uranium removal system for the City's water system.

Sample Motion

Move to approve the declaration of intent to issue bonds to reimburse expenses resulting from the procurement and installation of a uranium removal system for the City's water system.

RESOLUTION 2011-243

WHEREAS; the Mayor and Council of the City of Grand Island hereby find and determine that it is necessary and appropriate to declare their official intent to issue tax-exempt bonds on behalf of the City, and in addition, the City's reasonable expectations to reimburse certain expenditures with the proceeds of such bonds as proposed to be issued by the City in connection with the proposed project as described below.

WHEREAS; this Resolution shall stand as a statement of the City's official intent under Regulation Section 1.150-2 of the regulations of the United States Treasury and for such purpose the following information is hereby given:

1. A general functional description of the project for which expenditures may be made and reimbursement from bond proceeds provided is as follows:

The procurement and installation of a uranium removal system for improvements to the City's water system.

2. The maximum principal amount of debt expected to be issued for such project is \$3,000.000.00.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the declaration of intent to issue bonds to reimburse expenses resulting from the procurement and installation of a uranium removal system for improvements to the City's water system is hereby approved.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, November 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, November 08, 2011

Council Session

Item J1

Approving Payment of Claims for the Period of October 26, 2011 through November 8, 2011

The Claims for the period of October 26, 2011 through November 8, 2011 for a total amount of \$3,803,152.42. A MOTION is in order.

Staff Contact: Jaye Monter