
City of Grand Island



Tuesday, December 06, 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

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, December 06, 2011

Council Session

Item -1

Election of City Council President

The City Council is required to elect one Councilmember to the office of Council President. The term is for a one-year period. The Council President automatically assumes the duties of the Mayor in the event that the Mayor is absent or otherwise unable to fulfill his/her duties. Nebraska law allows the election of the Council President to be by secret ballot. The total number of votes for each candidate; however, must be stated and recorded in the Minutes. Past practice has included a run-off election between the top two nominees, if necessary. The City Clerk will prepare, distribute, and count ballots. Nominations to fill the vacancy are in order. A second is not required on nominations.

Staff Contact: Mayor Vavricek



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item E1

**Public Hearing on Request from GIPH Restaurants, LLC dba
Pizza Hut, 707 North Diers Avenue for a Class “A” Liquor License**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: December 6, 2011

Subject: Public Hearing on Request from GIPH Restaurants, LLC
dba Pizza Hut, 707 North Diers Avenue for a Class “A”
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

GIPH Restaurants, LLC dba Pizza Hut, 707 North Diers Avenue has submitted an application for a Class “A” Liquor License. A Class “A” Liquor License allows for the sale of beer on sale only inside the corporate limits of the city.

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

Also submitted with the application was a request from Scott Kemery, 4156 Vermont Avenue for a Liquor Manager designation. Due to a conviction in 1995 for procuring/sale of alcohol to a minor, this automatically disqualifies Mr. Kemery from becoming the liquor manager. The Police Department report recommends denial of the Liquor Manager Designation for Mr. Kemery based on the Liquor Control Rules and Regulations Section 53-131.01 (d).

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 GIPH Restaurants, LLC dba Pizza Hut, 707 North Diers Avenue for a Class "A" Liquor License contingent upon final inspections and **deny** the Liquor Manager designation for Scott Kemery, 4156 Vermont Avenue based on the Liquor Control Commission Rules and Regulations Section 53-131.01 as submitted by the Police Department report.

11/29/11
450

Grand Island Police Department

12:01
1

LAW INCIDENT TABLE

Page:

City	: Grand Island
Occurred after	: 11:17:18 11/21/2011
Occurred before	: 11:17:18 11/21/2011
When reported	: 11:17:18 11/21/2011
Date disposition declared	: 11/21/2011
Incident number	: L11112579
Primary incident number	:
Incident nature Investigation	: Liquor Lic Inv Liquor License
Incident address	: 707 Diers Ave N
State abbreviation	: NE
ZIP Code	: 68803
Contact or caller	:
Complainant name number	:
Area location code	: PCID Police - CID
Received by	: Viterra D
How received	: T Telephone
Agency code	: GIPD Grand Island Police Department
Responsible officer	: Viterra D
Offense as Taken	:
Offense as Observed	:
Disposition	: ACT Active
Misc. number	: RaNae

Geobase address ID : 18777
Long-term call ID :
Clearance Code : CL Case Closed
Judicial Status : NCI Non-criminal Incident

= = = = =
= = =

INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
LW	L11112580	11/21/11	Liquor Lic Inv	Related
NM	170426	11/22/11	Kemery, Scott B	Liquor Manager
NM	171726	11/22/11	Staab, Susan K	Michael's Wife
NM	171727	11/22/11	Staab, Lisa D	Curtis' Wife
NM	171728	11/22/11	Kemery, Rhonda	Scott's Wife
NM	52824	11/21/11	Staab, Curtis W	Part Owner
NM	67301	11/21/11	Staab, David W	Part Owner
NM	121900	11/21/11	Staab, Jill K	David's Wife
NM	124499	11/21/11	Staab, Michael G	Part Owner

LAW INCIDENT CIRCUMSTANCES:

Se Circu Circumstance code Miscellaneous

1 LT21 Restaurant

LAW INCIDENT NARRATIVE:

I Received a Copy of a Liquor License Application from Pizza Hut and a
Liquor

Manager Application from Scott Kemery.

11/29/11
450

Grand Island Police Department

12:01
2

LAW INCIDENT TABLE

Page:

LAW INCIDENT RESPONDERS DETAIL:

See Responding office Unit number

1 Vitera D 318 Vitera D

LAW SUPPLEMENTAL NARRATIVE:

Seq Name Date

1 Vitera D 14:53:29 11/21/2011

11/29/11
450

Grand Island Police Department

12:01
3

LAW INCIDENT TABLE

Page:

318

Grand Island Police Department

Supplemental Report

Date, Time: Mon Nov 21 14:53:42 CST 2011

Reporting Officer: Vitera

Unit- CID

Kenneth and Rose Mary Staab gifted all of their shares of common stock in Staab

PH Restaurant Operations, Inc. to David Staab, Michael Staab, Gary Staab, and

Curtis Staab. Since the makeup of the corporation has changed, a new Class A

(beer on sale only) LLC liquor license is being applied for at the South Locust

and Diers location. A Temporary Operating Permit (TOP) was applied for and

granted by the NLCC for each restaurant. A liquor manager application was also

received from Scott Kemery. His wife, Rhonda, signed a Spousal Affidavit of Non Participation form.

In reviewing the application, all of the owners have wives, and none of the

wives filled out a Spousal Affidavit of Non Participation form. David's wife is

Jill. Gary's wife is Lissi. Curtis' wife is Lisa, and Michael's wife is Susan.

David and Jill have lived in Grand Island since 1991. Gary and Lissi have

lived in Golden, Colorado and Kearney, Missouri since 2001. Curtis and Lisa

have lived in Lincoln since at least 2001, and Michael and Susan have also lived

in Lincoln since at least 2001.

On the liquor license application and the liquor manager 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." David Staab disclosed a DUI from 1986 or 1987.

No other convictions were disclosed.

I checked all of the applicants through Spillman and NCJIS. I located entries

in Spillman for David, Curtis, Michael, and Jill. David and Curtis appear to

have speeding convictions. No potential convictions were located in Spillman

for Michael or Jill.

When I checked NCJIS, I learned that David has eleven undisclosed speeding

convictions and one reckless driving conviction from 1982. Jill has no

convictions listed in NCJIS. Gary and Lissi have no entries in NCJIS. Curtis

has eight undisclosed speeding convictions in NCJIS. Lisa has no convictions

listed in NCJIS. Michael has one undisclosed speeding conviction, and Susan has

no convictions listed in NCJIS.

Since I can't run out of state criminal history checks on liquor license

investigations, fingerprint submissions by Gary and Lissi will have to determine

their eligibility.

The failure of David, Curtis, and Michael to disclose their speeding convictions

technically makes the application false according to the Nebraska Liquor Control

Act (Part II Chapter 2 Section 010.01). The undisclosed convictions would fall

under state law or local ordinance. Either way, the convictions are either

infractions or misdemeanors that don't 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. A speeding conviction here or

there is an understandable omission. However, a dozen undisclosed convictions

by David and seven by Curtis is a little hard to overlook.

Marc Julian for Staab Management is listed on the application as a person who

assisted with the application. On 11/22/11, I called Mr. Julian, left him a

voicemail, and asked him to call me.

In reviewing the liquor manager application, Scott and Rhonda Kemery moved to

Grand Island this year. Before that, they lived in Omaha since at least 1998.

Scott has an entry in Spillman for reporting a theft from Pizza Hut. Rhonda

does not have a Spillman entry. I also checked them both through NCJIS. Rhonda

has an undisclosed speeding conviction, and Scott has three undisclosed

convictions. One is for speeding, one is for improper passing, and the other is

for procure/sale of alcohol to a minor in 1995. The alcohol related conviction

appears to automatically disqualify Scott from becoming the liquor manager. The

applicable statute is 53-131.01 which reads in part...

(1) The application for a new license shall be submitted upon such forms as the

commission may prescribe. Such forms shall contain, (d) a statement that the

applicant is a citizen of the United States, that the applicant and the spouse

of the applicant are not less than twenty-one years of age, and that such

applicant has never been convicted of or pleaded guilty to a felony or been

adjudged guilty of violating the laws governing the sale of alcoholic liquor or

the law for the prevention of gambling in the State of Nebraska, except that a

manager for a corporation applying for a license shall qualify with all

provisions of this subdivision as though the manager were the applicant, except

that the provisions of this subdivision shall not apply to the spouse of a manager-applicant.

On 11/22/11, I spoke with Scott Kemery over the phone. He advised that his sale

to a minor occurred when he owned Max MaGruder's in Kearney at the Hilltop Mall.

Scott said he had no excuses, but he got caught up in a "sting." Scott also

pointed out that he has since been the liquor manager for Pizza Hut in Fremont

and currently is the liquor manager for the Pizza Hut in McCook. Question

number two on the manager application covers Scott's position in Fremont and

McCook. Question number three asks if he qualifies under 53-131.01 as a

manager. The yes box is checked, however, it doesn't appear that he technically

qualifies. I informed Scott that the police department plans on recommending to

the city council that they deny his application. I also asked him to have Marc

Julian or one of the Staabs call me.

Shortly after I got off the phone with Scott, I received a call from Marc

Julian. I explained to him what I had told Scott about the manager application.

I also told him that David and Curtis have multiple undisclosed traffic convictions. Marc said he would check with them and see if they agree and call

me back with their disclosure. He assured me that he would have the information

for me by 12/1/11.

On 11/29/11, I received a call from Marc Julian who advised that he had been in

contact with David and Curtis Staab. David and Curtis acknowledged to Marc that

they each had several undisclosed speeding convictions. I told Marc that I

would consider what they said as a full disclosure.

In summary, the Grand Island Police Department (GIPD) recommends that the city

council approve the liquor license applications from Staab Management for Pizza

Hut on Diers and South Locust. However, the GIPD recommends that the city

council deny the liquor manager application from Scott Kemery based on his sale

to a minor conviction that excludes him from being a manager according to

53-131.01.



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item E2

**Public Hearing on Request from GIPH Restaurants, LLC dba
Pizza Hut, 1608 South Locust Street for a Class “A” Liquor
License**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: December 6, 2011

Subject: Public Hearing on Request from GIPH Restaurants, LLC dba Pizza Hut, 1608 South Locust Street for a Class “A” 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

GIPH Restaurants, LLC dba Pizza Hut, 1608 South Locust Street has submitted an application for a Class “A” Liquor License. A Class “A” Liquor License allows for the sale of beer on sale only inside the corporate limits of the city.

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

Building, Fire, Health, and Police Departments. (See Police Department Report under Public Hearing item E-1.)

Also submitted with the application was a request from Scott Kemery, 4156 Vermont Avenue for a Liquor Manager designation. Due to a conviction in 1995 for procuring/sale of alcohol to a minor, this automatically disqualifies Mr. Kemery from becoming the liquor manager. The Police Department report recommends denial of the Liquor Manager Designation for Mr. Kemery based on the Liquor Control Rules and Regulations Section 53-131.01 (d).

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 GIPH Restaurants, LLC dba Pizza Hut, 1608 South Locust Street for a Class "A" Liquor License contingent upon final inspections and **deny** the Liquor Manager designation for Scott Kemery, 4156 Vermont Avenue based on the Liquor Control Commission Rules and Regulations Section 53-131.01 as submitted by the Police Department report.



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item E3

**Public Hearing Concerning Acquisition of Utility Easement - 1010
& 1040 Allen Drive - Batis Development Company**

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Robert H. Smith, Asst. Utilities Director

Meeting: December 6, 2011

Subject: Acquisition of Utility Easement – 1010 & 1040 Allen Drive – Batis Development Company

Item #'s: E-3 & G-5

Presenter(s): Timothy Luchsinger, Utilities Director

Background

Nebraska State Law requires that acquisition of property must be approved by City Council. The Utilities Department needs to acquire an easement relative to the property of Batis Development Company located at 1010 Allen and 1040 Allen Drive, in the City of Grand Island, Hall County, in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers.

Discussion

This easement will be used to locate primary electrical conduits, cable, and two pad-mounted transformers. This will provide power to the new building housing two new businesses. The conduit and cable will run through the property creating a looped system.

Alternatives

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

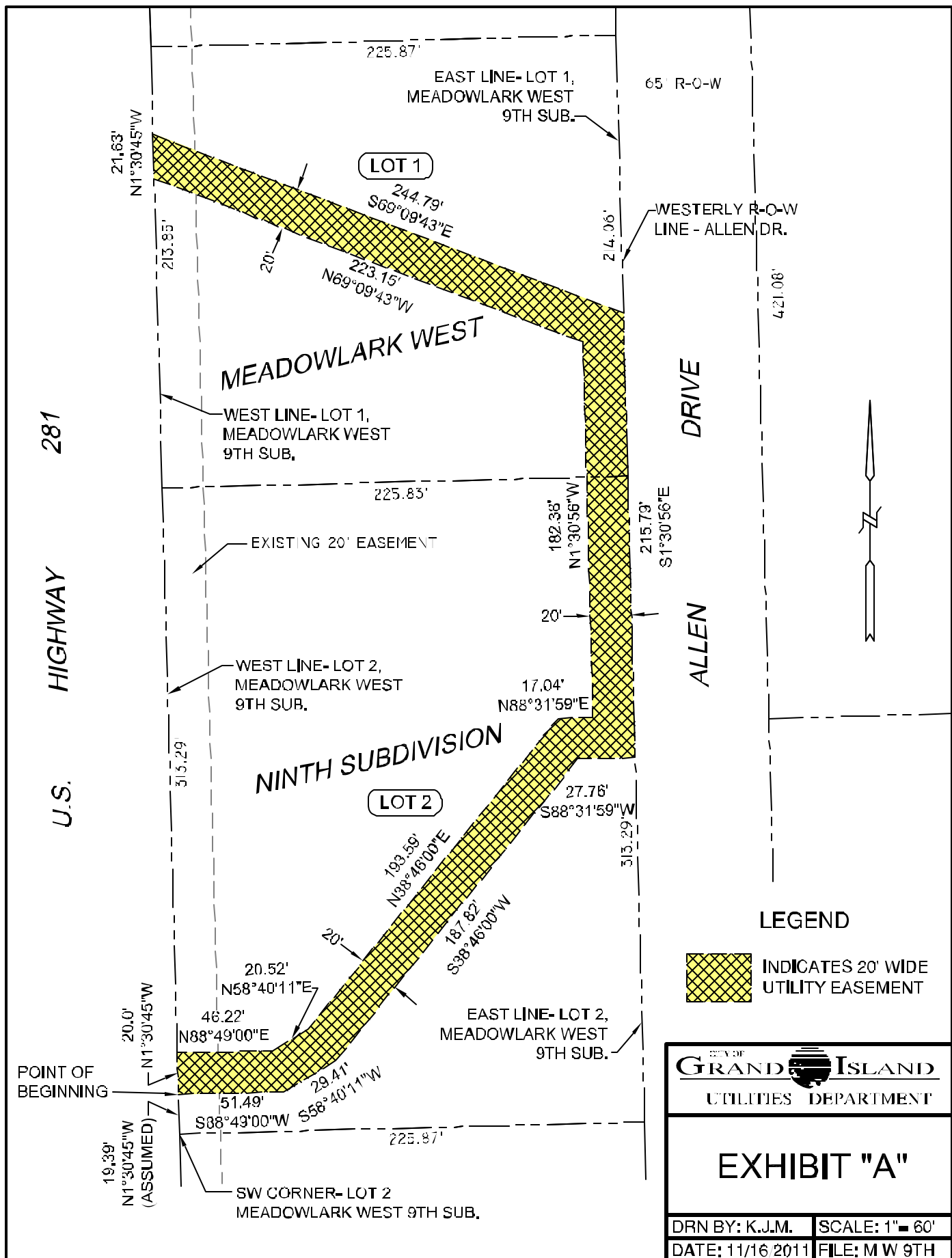
1. Make a motion to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

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

Sample Motion

Move to approve acquisition of the Utility Easement.





City of Grand Island

Tuesday, December 06, 2011

Council Session

Item F1

#9346 - Consideration of Annexation of Property Located at 1120 and 1140 South Lincoln (former Aurora Coop Site) (Second Reading)

Staff Contact: Chad Nabity

Council Agenda Memo

From: Chad Nabity, Regional Planning Director

Meeting: December 6, 2011

Subject: Annexation of Property Located North of Fonner Park Road and West of Lincoln Avenue (Former Aurora Coop Site)

Item #'s: F-1

Presenter(s): Chad Nabity, Regional Planning Director

Background

The Annexation Component of the Grand Island Comprehensive Development Plan as adopted by the Grand Island City Council on July 13, 2004 sets as the policy of Grand Island that: County Industrial Tracts should periodically be reviewed as allowed by Revised Nebraska State Statutes for consideration of annexation and that all areas encompassed by the Corporate Limits of Grand Island should be considered for annexation.

Chief Industries, Inc., a Delaware Corporation, has purchased the former Aurora Coop Site. Chief Industries owns additional property in the area including the Chief Fabrication Plant immediately to the west of this property. They have sent a request to the Hall County Board of Supervisors requesting that this property be removed from the County Industrial Tract per NRSS §13-1119. Chief made this same request for the Chief Fabrication Plant property when they purchased it more than 12 years ago. Hall County will hold a hearing on removing the property from the County Industrial Tract at their regular meeting on November 22, 2011.

Chief Industries submitted a letter to the City Clerk dated October 20, 2011 requesting that the City consider annexation of this property per NRSS §16-117 (7). The City is able to annex this property once it has been removed from the County Industrial Tract.

Based on the requests from Chief Industries to remove the property from the County Industrial Tract and to annex the property into the City, staff has prepared an ordinance for annexation that would become effective 15 days after passage on third and final reading and after the property is removed from the County Industrial Tract by the Hall County Board of Supervisors.

Discussion

Staff has prepared an ordinance in accordance with the requirements of Nebraska Revised Statute §16-117 (7). Annexation ordinances must be read on three separate occasions. This is the first reading of the ordinance. This ordinance includes exhibits showing the property to be considered for annexation and the legal descriptions of those properties.

There is no impact to the extraterritorial zoning jurisdiction of the City as the County Industrial Tracts are entirely surrounded by the municipal limits of Grand Island.

No existing residences would be added to the City as a result of this annexation. The buildings included with the Aurora Coop would be added with this annexation but it appears that Chief Industries intends to remove the existing structures to make the property available for redevelopment.

City Council approved Ordinance No. 9346 on first reading at the November 22, 2011 City Council meeting. This would be the second of three readings.

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 pass the annexation ordinance.

Sample Motion

Move to approve the annexation ordinance on second reading.

* This Space Reserved For Register of Deeds *

ORDINANCE NO. 9346

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 comprised located north of Fonner Park Road and west of Lincoln Avenue in Hall County, Nebraska 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 the Chief Industries, Inc. A Delaware Corporation as owner of the property submitted a request that the City Annex this property into the City of Grand Island; and

WHEREAS, the Annexation Component of the Comprehensive Development Plan for the City of Grand Island encourages annexation of adjacent properties into the City; and

WHEREAS, Chief Industries, Inc. A Delaware Corporation has requested that this property be removed from the Hall County Industrial Area; and

WHEREAS, Hall County is in the process of removing the property from the Hall County Industrial Area, and

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

ORDINANCE NO. 9346 (Cont.)

WHEREAS, according to NRSS §16-117 the City of Grand Island can upon petition of the property owner(s) of property contiguous and adjacent to the City Limits annex said property by ordinance; and

WHEREAS, on November 22, 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 does not extend 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.

ORDINANCE NO. 9346 (Cont.)

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.

SECTION 8. This ordinance shall be in full force and effect 15 days after its passage, and when final action is taken by Hall County to remove the property from the Hall County Industrial Area, and upon publication, in pamphlet form, as provided by law.

ORDINANCE NO. 9346 (Cont.)

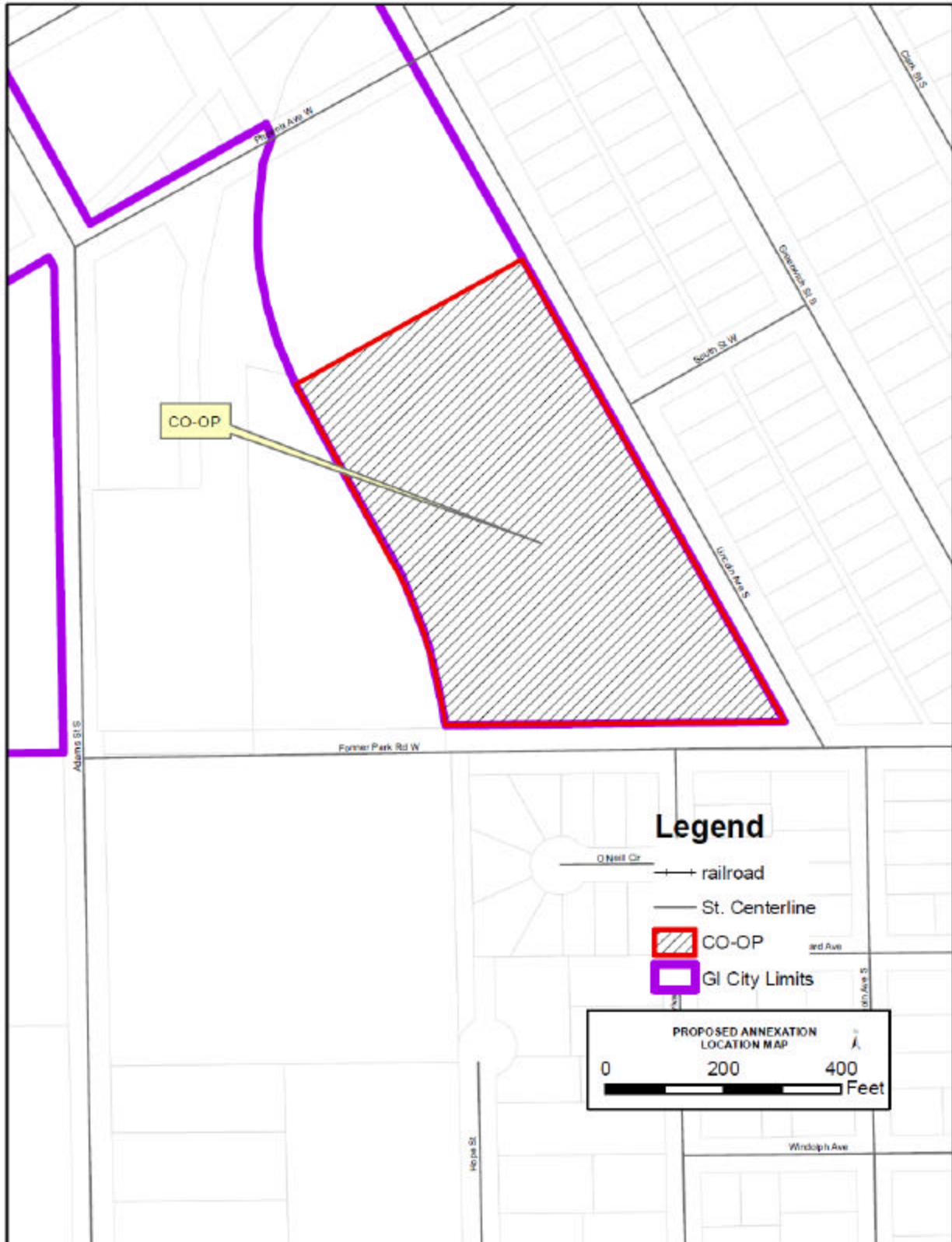
Enacted: December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

ORDINANCE NO. 9346 (Cont.)



ORDINANCE NO. 9346 (Cont.)

Exhibit A

A tract of land comprising a part of the South Half of the Northeast Quarter (S1/2 NE1/4) a Section of Twenty-One (21), Township Eleven(11) North, Range Nine (9) West of the 6th P.M., in Hall County, Nebraska more particularly described as follows:

Beginning at the intersection of the center line of Lincoln Avenue and the centerline of Fonner Park Road (also being the South line of said Northeast Quarter (NE1/4); thence Northwesterly along the centerline of said Lincoln Avenue, a distance of Nine Hundred Seventy Six and Twenty-five Hundredths (976.25) feet; thence deflecting Left 89 degrees 48'30" and running Southwesterly parallel to the centerline of Phoenix Avenue, a distance of Four Hundred Eighty Two and Two Tenths (482.2) Feet; to the centerline of Burlington Northern Track No. 33; thence deflecting Left 89 degrees 58' and running Southeasterly along said centerline of Track No. 33, a distance of Three Hundred Thirty Five and Twelve Hundredths (335.12) Feet, to a point of curvature; thence running Southwesterly along said centerline of Track No. 33, and on the arc of a curve whose radius is 763.95' (the long chord of which deflects 12 degrees 51' right from the last described course), a long chord distance of Three Hundred Forty Two and Eighteen Hundredths (342.18) feet, to the South line of said Northeast Quarter (NE1/4); thence deflecting Left 74 degrees 10' from said long chord, and running Easterly along the South line of said Northeast Quarter (NE1/4), also being the center line of said Fonner Park road, a distance of Six Hundred Forty and Five Tenths (640.5) feet to the Place of Beginning, excepting there from a tract of land more particularly describe in Corporation Warranty Deed recorded in the Register of Deeds Office as document #76-003924.



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item F2

#9348 - Consideration of Creating Sanitary Sewer Tap District No. 530T; US Highway 281 Sanitary Sewer Extension to Interstate 80

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services

Meeting: November 22, 2011

Subject: Consideration of Creating Sanitary Sewer Tap District No. 530T; US Highway 281 Sanitary Sewer Extension to Interstate 80

Item #'s: F-2

Presenter(s): John Collins, Public Works Director

Background

Council action is needed to create a sanitary sewer tap (connection) district. At the January 4, 2011 Study Session, the City Council was informed of an interest by businesses along US Highway 281 near the Interstate 80 interchange about extending City sanitary sewer to serve their property.

On January 11, 2011 the City Council approved Mayor Vavricek signing a “Letter of Intent” to the Nebraska Department of Environmental Quality (NDEQ) declaring the City’s willingness to negotiate a public/private project with these businesses to extend City sanitary sewer south along US Highway 281.

The May 17, 2011 Study Session provided an update to the City Council regarding several meetings that were conducted between the City and interested parties.

The October 18, 2011 Study Session provided an in depth examination of the entire project.

On October 25, 2011 the Council voted 9-0 to approve Resolution 2011-321 directing the Administration to move forward with the Highway 281 tap district extending south from the Wildwood Subdivision to the north channel of the Platte River.

Presently, businesses along Highway 281 south of the City limits are utilizing private wastewater facilities and leach fields to handle waste. Several of these facilities are approaching the end of their useful life, inadequate for any desired expansion of the businesses they serve, or failing. This situation has resulted in enforcement actions by the NDEQ and in one instance, the shuttering of a business. Most importantly, these private facilities are in close proximity to the City’s well fields which without action puts the City’s drinking water supply at risk of future contamination.

Discussion

The Engineering Division of the Public Works Department is drafting plans to extend sanitary sewer to the Wildwood Subdivision; Sanitary Sewer District No. 528, which passed the 30-day protest period and was approved for continuation by City Council on September 27, 2011. This district will give support to the sanitary sewer extension south along US Highway 281 past Interstate 80.

Sanitary Sewer Tap District No. 530T will allow properties not included in Sanitary Sewer District No. 528 access to City sewer with payment of a tap (connection) fee.

Passage of this ordinance will result in the protection of public health by insuring the City's drinking water supply is not polluted in the future. In addition, passage will result in future economic development along the Highway 281 corridor south of the City limits.

Alternatives

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

1. Approve the recommendation to create Sanitary Sewer District No. 530T.
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 creation of Sanitary Sewer District No. 530T.

Sample Motion

Move to approve the creation of Sanitary Sewer District No. 530T.

ORDINANCE NO. 9348

An ordinance creating Sanitary Sewer District No. 530T of the City of Grand Island, Nebraska; defining the boundaries thereof; providing for the laying of sanitary sewer mains in said district; providing for plans and specifications and securing bids; providing for the assessment of special taxes for construction such sewer and collection thereof; and providing for publication and the effective date of this ordinance.

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

SECTION 1. Sanitary Sewer District No. 530T is hereby created for the construction of an eighteen (18) inch sanitary sewer main and appurtenances thereto within the 2 mile jurisdiction of the City of Grand Island, Hall County, Nebraska.

SECTION 2. The boundaries of such sanitary sewer district shall be as follows:

BEGINNING AT A POINT WHERE THE WEST LINE OF WILDWOOD SUBDIVISION INTERSECTS THE NORTH LINE OF SECTION 12-10-10, THENCE WESTERLY ON THE NORTH LINE OF SECTION 12-10-10 TO THE NORTHWEST CORNER OF SECTION 12-10-10, THENCE SOUTHERLY ON THE WEST LINE OF SECTION 12-10-10 TO THE SOUTHWEST CORNER OF SECTION 12-10-10, THENCE EASTERLY ON THE SOUTH LINE OF SECTION 12-10-10 TO THE SOUTHEAST CORNER OF SOUTHWEST QUARTER OF SECTION 12-10-10, SAID POINT ALSO BEING THE NORTHWEST CORNER OF NORTHEAST QUARTER OF SECTION 13-10-10, SAID POINT ALSO BEING THE NORTHWEST CORNER OF AMUNDSON SUBDIVISION, THENCE SOUTHERLY ON THE WEST LINE OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 13-10-10 TO THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13-10-10, THENCE WESTERLY ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13-10-10 TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13-10-10, THENCE SOUTHERLY ON THE WEST LINE OF THE SOUTHEAST QUARTER OF SOUTHWEST QUARTER OF SECTION 13-10-10 AND THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 24-10-10 TO A POINT ON THE NORTH LINE OF THE PLATTE RIVER, THENCE NORTHEASTERLY ON THE NORTH LINE OF SAID PLATTE RIVER TO THE SOUTHWEST CORNER OF LOT 3, BLOCK 1, BOSSELVILLE SUBDIVISION, THENCE CONTINUING NORTHEASTERLY ON THE SOUTH LINE OF BOSSELVILLE SUBDIVISION AND BOSSELVILLE SECOND

ORDINANCE NO. 9348 (Cont.)

SUBDIVISION TO THE WEST LINE OF US HIGHWAY NO. 281, THENCE CONTINUING NORTHEASTERLY TO THE SOUTHWEST CORNER OF PARCEL NO. 400209551, THENCE NORTHEASTERLY ON THE SOUTH LINE OF PARCEL NO'S. 400209551, 400209543, AND 400209535 TO THE SOUTHEAST CORNER OF PARCEL NO. 400209535 IN SECTION 17-10-9 SAID POINT BEING ON THE EAST LINE OF SOUTHWEST QUARTER OF SECTION 17-10-9, THENCE NORTHERLY ON THE EAST LINE OF THE SOUTHWEST QUARTER AND THE NORTHWEST QUARTER OF SECTION 17-10-9 TO THE NORTH LINE OF SECTION 17-10-9, THENCE CONTINUING NORTHERLY ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SECTION 8-10-9 TO THE NORTHEAST CORNER OF SOUTHWEST QUARTER OF SECTION 8-10-9, THENCE WESTERLY ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SECTION 8-10-9 TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8-10-9, THENCE NORTHERLY ON THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8-10-9, THENCE WESTERLY ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8-10-9 AND AN EXTENSION THEREOF TO THE SOUTHEAST CORNER OF WILDWOOD SUBDIVISION, THENCE CONTINUING ON THE SOUTH LINE OF WILDWOOD SUBDIVISION TO THE SOUTHWEST CORNER OF WILDWOOD SUBDIVISION, THENCE NORTHERLY ON THE WEST LINE OF WILDWOOD SUBDIVISION, AND WILDWOOD SECOND SUBDIVISION TO THE POINT OF BEGINNING. THIS AREA CONTAINS ASSESSOR TRACT NO'S 400217201, 400217198, 400217244, 400217279, 4000217252, 400217228, 400217236, 400217260, 400217295, 400217341, 400217309, 400217287, 400217317, 400217325, 400217368, 400217449, 400217376, 400217392, 400389657, 400217503, 400217384, 400217465, 400218429, 400218410, 400218445, 400209551, 400209543, 400209535, 400460017, 400209322, 400460432, 400209330, 400209284.

SECTION 3. Said improvement shall be made in accordance with plans and specifications prepared by the Engineer for the City who shall estimate the cost thereof, and submit the same to the City Council, and thereafter, bids for the construction of such sanitary sewer will be taken and contracts entered into in the manner provided by law.

SECTION 4. All improvements shall be made at public costs, but the costs thereof shall be assessed upon the lots and lands in the district specifically benefited thereby as provided by law.

SECTION 5. This ordinance shall be in force and take effect from and after its passage, approval and publication, without the plate, as provided by law.

ORDINANCE NO. 9348 (Cont.)

SECTION 6. This ordinance, with the plat, is hereby directed to be filed with the office of the Register of Deeds of Hall County, Nebraska.

SECTION 7. After passage, approval and publication of this ordinance, notice of the creation of said district shall be published in the Grand Island Independent, a legal newspaper published and of general circulation in said City, as provided by law.

Enacted: December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G1

Approving Minutes of November 22, 2011 City Council Regular Meeting

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL REGULAR MEETING

November 22, 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 November 22, 2011. Notice of the meeting was given in *The Grand Island Independent* on November 16, 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, Kirk Ramsey, Peg Gilbert, Mitch Nickerson, Linna Dee Donaldson, Scott Dugan, Randy Gard, and John Gericke. 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 Pastor George Jones, Church of God of Prophecy, 1620 North Broadwell Avenue followed by the PLEDGE OF ALLEGIANCE.

MAYOR COMMUNICATION: Mayor Vavricek introduced Community Youth Council members Kuulei Hose and McKenzie Reed. City Administrator Mary Lou Brown commented on the Wastewater Treatment Plant possible Study Session on the second week of December.

PUBLIC HEARINGS:

Public Hearing on Request from Texas Roadhouse Holdings, LLC dba Texas Roadhouse, 232 Wilmar Avenue for a Class 'IK' Liquor License. RaNae Edwards, City Clerk reported that an application for a Class "IK" Liquor License had been received from Texas Roadhouse Holdings, LLC dba Texas Roadhouse, 232 Wilmar Avenue. Ms. Edwards presented the following exhibits for the record: application submitted to the Liquor Control Commission and received by the City on November 2, 2011; notice to the general public of date, time, and place of hearing published on November 12, 2011; notice to the applicant of date, time, and place of hearing mailed on November 2, 2011; along with Chapter 4 of the City Code. Staff recommended approval contingent upon final inspections. Jonus Orillo representing Texas Roadhouse and Doug Schliefert, 5805 Avenue O Place, Kearney, NE spoke in support. No further public testimony was heard.

Public Hearing on Acquisition of Utility Easement located at 3501 South Blaine Street (Andrew and Nicole Meier). Utilities Director Tim Luchsinger reported that acquisition of a utility easement located at 3501 South Blaine Street was needed in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers for the purpose of placing primary conduit, cable and a pad-mounted transformer to provide electrical service to a new home to be constructed on this lot. Staff recommended approval. No public testimony was heard.

Public Hearing to Consider Annexation for Property Located at 1120 and 1140 South Lincoln Avenue (former Aurora Coop Site). Regional Planning Director Chad Nabity reported that Chief Industries, Inc. had purchased the former Aurora Coop Site located north of Fonner Park Road

and west of Lincoln Avenue which was in a county industrial park. A request was made to annex this property into the City of Grand Island. Staff recommended approval. No public testimony was heard.

ORDINANCES:

Regional Planning Director Chad Nabity gave an update on the annexation process and reported this was the final of three readings for the annexation of properties known as Area 3a, 6, 7, 12, and 13.

#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) (Final Reading)

Motion by Gilbert, second by Niemann to approve Ordinance #9339 on final reading. 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) (Final Reading)

Motion by Gard, second by Ramsey to approve Ordinance #9340 on final reading. Upon roll call vote all voted aye. 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) (Final Reading)

Motion by Niemann, second by Carney to approve Ordinance #9341 on final reading. 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) (Final Reading)

Motion by Gilbert, second by Niemann to approve Ordinance #9342 on final reading. Upon roll call vote Councilmember's Haase, Carney, Niemann, Ramsey, 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) (Final Reading)

Motion by Gard, second by Gericke to approve Ordinance #9343 on final reading. Upon roll call vote Councilmember's Haase, Carney, Niemann, Ramsey, Gilbert, Donaldson, Gard and Gericke voted aye. Councilmember's Nickerson and Dugan voted no. Motion adopted.

#9346 – Consideration of Annexation of Property Located at 1120 and 1140 South Lincoln Avenue (former Aurora Coop Site) (First Reading)

Discussion was held concerning environmental risks to the City. Mr. Nabity stated there would be no risk to the City.

Motion by Niemann, second by Dugan to approve Ordinance #9346 on first reading. Upon roll call vote all voted aye. Motion adopted.

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

#9347 – Consideration of Amending Chapter 2 and 37 of the Grand Island City Code Relative to Community Development Division

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 Ramsey second the motion. Upon roll call vote, Councilmember’s Haase, Carney, Niemann, Ramsey, Gilbert, Nickerson, Donaldson, Dugan, and Gard voted aye. Councilmember Gericke voted no. Motion adopted.

City Administrator Mary Lou Brown reported that the Community Development Division was currently under the Planning Department. Administration had examined this matter at length and concluded the best way to achieve improved internal controls was to amend the City Code and transfer the Community Development Division and its personnel to the Finance Department.

Marlan Ferguson, 2808 Apache Road spoke in opposition. Discussion was held concerning the reasons for the change. Ms. Brown stated the auditors recommended a structural change. Ms. Brown answered questions concerning other Cities which had their Community Development Division under the Administration Department and some had it under the Finance Department.

Location of the office was mentioned along with timing, mismatch of skills, and no Finance Director at this time. Several Councilmember’s commented on the importance of having the Community Development Division under the Finance Department for better internal controls.

Motion by Gilbert, second by Niemann to approve Ordinance #9347.

City Clerk: Ordinance #9347 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, Ramsey, Gilbert, Nickerson, Donaldson, Dugan, and Gard voted aye. Councilmember’s Haase, Carney, and Gericke voted no. Motion adopted.

City Clerk: Ordinance #9347 on final passage. All those in favor of the passage of this ordinance on final passage, answer roll call vote. Upon roll call vote, Councilmember’s Niemann, Ramsey, Gilbert, Nickerson, Donaldson, Dugan, and Gard voted aye. Councilmember’s Haase, Carney, and Gericke voted no. Motion adopted.

Mayor Vavricek: By reason of the roll call votes on first reading and then upon final passage, Ordinance #9347 is declared to be lawfully adopted upon publication as required by law.

CONSENT AGENDA: Motion by Ramsey, second by Gard to approve the Consent Agenda. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of November 8, 2011 City Council Regular Meeting.

Approving Minutes of November 15, 2011 City Council Study Session.

#2011-344 – Approving Acquisition of Utility Easement located at 3501 South Blaine Street (Andrew and Nicole Meier).

#2011-345 – Approving Amendment to Arch Coal Contract for 2012.

#2011-346 – Approving Engineering Consulting Services for Water Main Project 2011-W-4 – UPRR Extension to Merrick County with Olsson Associates of Lincoln, Nebraska.

#2011-347 – Approving Bid Awards for Tree Trimming Contract 2012-TT-1 with Leetch Tree Service of Grand Island, Nebraska in an Amount of \$66,192.00 for Sections 1, 3, 4, 5, 7, 8, 9, 10, 11, and 12 and Sheffield Tree Service of Grand Island, Nebraska in an Amount of \$13,400.00 for Sections 2 and 6.

#2011-348 – Approving Community Development Block Grant 10-ED-016 Sub-Award Agreement.

RESOLUTIONS:

#2011-349 – Consideration of Request from Texas Roadhouse Holdings, LLC dba Texas Roadhouse, 232 Wilmar Avenue for a Class “IK” Liquor License and Liquor Manager Designation for Douglas Schliefert, 5808 Avenue O Place, Kearney, Nebraska. This item related to the aforementioned Public Hearing.

Motion by Haase, second by Niemann to approve Resolution #2011-349 contingent upon final inspections and Mr. Schliefert completing a state approved alcohol server/seller training program. Upon roll call vote, all voted aye. Councilmember Gard abstained. Motion adopted.

#2011-342 – Consideration of Designating Loading Zone 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. This item was referred to the November 22, 2011 meeting by City Council. After reviewing the request with St. Steven’s Episcopal Church it was decided to designate a Loading Zone that would meet their request.

Motion by Carney, second by Niemann to approve Resolution #2011-342. Upon roll call vote, all voted aye. Motion adopted.

PAYMENT OF CLAIMS:

Motion by Dugan, second by Ramsey to approve the Claims for the period of November 9, 2011 through November 22, 2011, for a total amount of \$4,339,220.52. Unanimously approved.

ADJOURNMENT: The meeting was adjourned at 7:45 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G2

Approving Minutes of November 29, 2011 City Council Study Session

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL STUDY SESSION

November 29, 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 29, 2011. Notice of the meeting was given in the *Grand Island Independent* on November 23, 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 AnnaJean Scarborough followed by the PLEDGE OF ALLEGIANCE.

MAYOR COMMUNICATION: Mayor Vavricek introduced Community Youth Council members AnnaJean Scarborough and Danny Gamboa.

OTHER ITEMS:

Discussion Concerning Burlington Northern Railroad Double Track Project Contract. Utilities Director Tim Luchsinger reported that Burlington Northern Santa Fe Railway (BNSF) was in the process of widening the tracks to a double track through Grand Island. As a result, multiple electrical, water, and sewer utility crossings by the City across BNSF right-of-way would need to be modified to accommodate the track improvement project. This would include either relocating utilities or encasement of the utilities to current railroad crossing standards.

Todd Kuhn, Manager of Engineering with BNSF gave a PowerPoint presentation explaining the overview of the project. Three projects were presented with Projects 1 and 2 construction started in October and substantial completion expected near the end of 2012. Project 3 would follow completion of Project 1 and 2.

There were 57 City of Grand Island utilities that were impacted by this project (water, sanitary, storm & power/electrical) that needed to be either adjusted, encased, or relocated in order for the 2nd track to be constructed. Many of those utilities currently were on BNSF right-of-way, some had existing railroad permits and others did not.

Due to the budgetary and resource constraints, the City would not be able to fund or perform the required utility relocations in a timeframe to support the 2nd main project. BNSF would fund 100% of all City utility relocations, including design, construction, and oversight. The savings to the City would be approximately \$1.3 million. BNSF would like to acquire portions of Utilities

Department properties adjoining BNSF property south of the JBS facility and at the Burdick Station. BNSF had offered to undertake the design and relocation of all utility crossings at their expense, in exchange for transfer of the required Utilities Department property.

BNSF would also construct new retaining walls along the west side of the right-of-way between the Union Pacific tracks and Capital Avenue. Aesthetic block treatment to the retaining wall to improve its appearance and reduce the impact of graffiti would be included.

In summary, the Master Utility Relocation Agreement would benefit both the City of Grand Island and BNSF with the following:

- The City will cooperate and refrain from causing any delays and will grant any required construction approvals.
- The City will complete work, designated to be by the City, in accordance with the project schedule.
- The City will resolve any construction issues within two business days.
- The City will provide review of all utility design by the BNSF within one week.
- The City will execute standard crossing agreements for all utilities in BNSF right-of-way within six months.
- The City will provide all property rights and temporary construction easements within one month.
- The BNSF will acquire all property rights for relocating utilities outside of BNSF right-of-way.

A Master Utility Relocation Agreement with BNSF would need to be approved by Council to proceed with the project. The following benefits to the City and BNSF were:

- City avoids significant costs (approximately \$1.3 million) of utility relocations governed by the terms of existing Railroad permits
- BNSF and City avoid significant utility relocation timelines so that the 2nd main project can be completed quickly
- BNSF and City avoid costs and timelines associated with property condemnation

Discussion was held concerning private utility relocations. Mr. Kuhn stated the majority of those had been taken care of. Permitting of the utility crossings was explained. Collins Stevens, Land Manager for BNSF answered questions concerning condemnation of land owners. Mr. Luchsinger and Public Works Director John Collins stated they were supportive of this project with little impact to City staff. Impact to Grand Island regarding construction would be minimal.

Mr. Kuhn stated this project specifically would not increase the train traffic through Grand Island. Comments were made concerning school traffic to Knickrehm School. It was stated that both tunnels would not be closed at the same time. Assistant Utilities Director Bob Smith stated there were no public sidewalks to the tunnels.

It was mentioned that the Master Agreement would end when the project was completed.

Mr. Collins stated he didn't expect any problems with the Northeast interceptor with regards to this project. If problems came up they would address them at that time.

ADJOURNMENT: The meeting was adjourned at 8:00 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G3

Approving Appointment of Kris Jerke to the Business Improvement District #8 Board

The Mayor has submitted the appointment of Kris Jerke to the Business Improvement District #8 Board to replace Bruce Eberle. This appointment would become effective immediately upon approval by the City Council and would expire on September 30, 2013.

Approval is recommended.

Staff Contact: Mayor Vavricek



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G4

**Approving Liquor Manager Designation for Robert Real, 609 East
9th Street, Wood River, Nebraska for United Veterans Club, 1914
West Capital Avenue**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: December 6, 2011

Subject: Request from Robert Real, 609 East 9th Street, Wood River, Nebraska for Liquor Manager Designation for United Veterans Club, 1914 Capital Avenue

Item #'s: G-4

Presenter(s): RaNae Edwards, City Clerk

Background

Robert Real, 609 East 9th Street, Wood River has submitted an application with the City Clerk's Office for a Liquor Manager Designation in conjunction with the Class 'C-08618' Liquor License for United Veterans Club, 1914 Capital Avenue.

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

Discussion

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

Alternatives

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

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

Recommendation

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

Sample Motion

Move to approve the request from Robert Real, 609 East 9th Street, Wood River for Liquor Manager Designation in conjunction with the Class "C-08618" Liquor License for United Veterans Club, 1914 West Capital Avenue with the stipulation that Mr. Real complete a state approved alcohol server/seller training program.

11/29/11
450

Grand Island Police Department

14:55
1

LAW INCIDENT TABLE

Page:

City	: Grand Island
Occurred after	: 12:07:07 11/29/2011
Occurred before	: 12:07:07 11/29/2011
When reported	: 12:07:07 11/29/2011
Date disposition declared	: 11/29/2011
Incident number	: L11113951
Primary incident number	:
Incident nature Investigation	: Liquor Lic Inv Liquor License
Incident address	: 1914 Capital Ave W
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 : 3478
Long-term call ID :
Clearance Code : CL Case Closed
Judicial Status : NCI Non-criminal Incident

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INVOLVEMENTS:

Px	Record #	Date	Description	Relationship

NM	40430	11/29/11	Real, Robert D	Manager
NM	103032	11/29/11	United Veterans Club,	Business

LAW INCIDENT NARRATIVE:

I Received a Copy of a Liquor Manager Application from Robert Real for the
United Veterans' Club.

LAW INCIDENT RESPONDERS DETAIL:

Se Responding offier Unit number

1 Vitera D 318 Vitera D

LAW SUPPLEMENTAL NARRATIVE:

Seq	Name	Date

1 Vitera D 14:45:34 11/29/2011

11/29/11
450

Grand Island Police Department

14:55
2

LAW INCIDENT TABLE

Page:

318

Grand Island Police Department

Supplemental Report

Date, Time: Tue Nov 29 14:45:46 CST 2011

Reporting Officer: Vitera

Unit- CID

From looking at the application, it appears that Robert has lived in Nebraska

since 1968 where he worked at New Holland for 34 years. He currently resides in

Wood River and has lived there since 1977. Robert is not married, and he did

not disclose any convictions.

I checked Robert through Spillman and NCJIS. Robert has a Spillman record but

nothing that would indicate any potential convictions. Robert has no convictions listed in NCJIS.

The Grand Island Police Department has no objection to Robert Real becoming the

liquor manager at the United Veterans' Club.



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G5

#2011-350 - Approving Utility Easement - 1010 & 1040 Allen Drive - Batis Development Company

This item relates to the aforementioned Public Hearing item E-3.

Staff Contact: Tim Luchsinger

RESOLUTION 2011-350

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

WHEREAS, a public hearing was held on December 6, 2011, for the purpose of discussing the proposed acquisition of an easement located in the City of Grand Island, Hall County, Nebraska; and more particularly described as follows:

Commencing at the southwest corner of Lot Two (2), Meadowlark West Ninth Subdivision, in the City of Grand Island, Hall County, Nebraska; thence northerly along the westerly line of said Lot Two (2), on an assumed bearing of N1°30'45"W, a distance of nineteen and thirty nine hundredths (19.39) feet to the ACTUAL Point of Beginning; thence continuing N1°30'45"W, along the westerly line of said Lot Two (2), a distance of twenty (20.0) feet; thence N88°49'00"E, a distance of forty six and twenty two hundredths (46.22) feet; thence N58°40'11"E, a distance of twenty and fifty two hundredths (20.52) feet; thence N38°46'00"E, a distance of one hundred ninety three and fifty nine hundredths (193.59) feet; thence N88°31'59"E, a distance of seventeen and four hundredths (17.04) feet; thence N1°30'56"W and parallel with the westerly right-of-way line of Allen Drive, a distance of one hundred eighty two and thirty eight hundredths (182.38) feet; thence N69°09'43"W, a distance of two hundred twenty three and fifteen hundredths (223.15) feet to a point on the westerly line of Lot One (1), Meadowlark West Ninth Subdivision; thence N1°30'45"W, along the westerly line of said Lot One (1), a distance of twenty one and sixty three hundredths (21.63) feet; thence S69°09'43"E, a distance of two hundred forty four and seventy nine hundredths (244.79) feet to a point on the westerly right-of-way line of said Allen Drive; thence S1°30'56"E, along the westerly line of said Allen Drive, a distance of two hundred fifteen and seventy nine hundredths (215.79) feet; thence S88°31'59"W, a distance of twenty seven and seventy six hundredths (27.76) feet; thence S38°46'00"W, a distance of one hundred eighty seven and eighty two hundredths (187.82) feet; thence S58°40'11"W, a distance of twenty nine and forty one hundredths (29.41) feet; thence S88°49'00"W, a distance of fifty one and forty nine hundredths (51.49) feet to the said Point of Beginning.

The above-described easement and right-of-way containing a total of 0.33 acres, more or less, as shown on the plat dated 11/16/2011, marked Exhibit "A", attached hereto and incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF

Approved as to Form	by _____
December 1, 2011	City Attorney

THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island be, and hereby is, authorized to acquire a public utility easement from Batis Development Company, on the above-described tract of land.

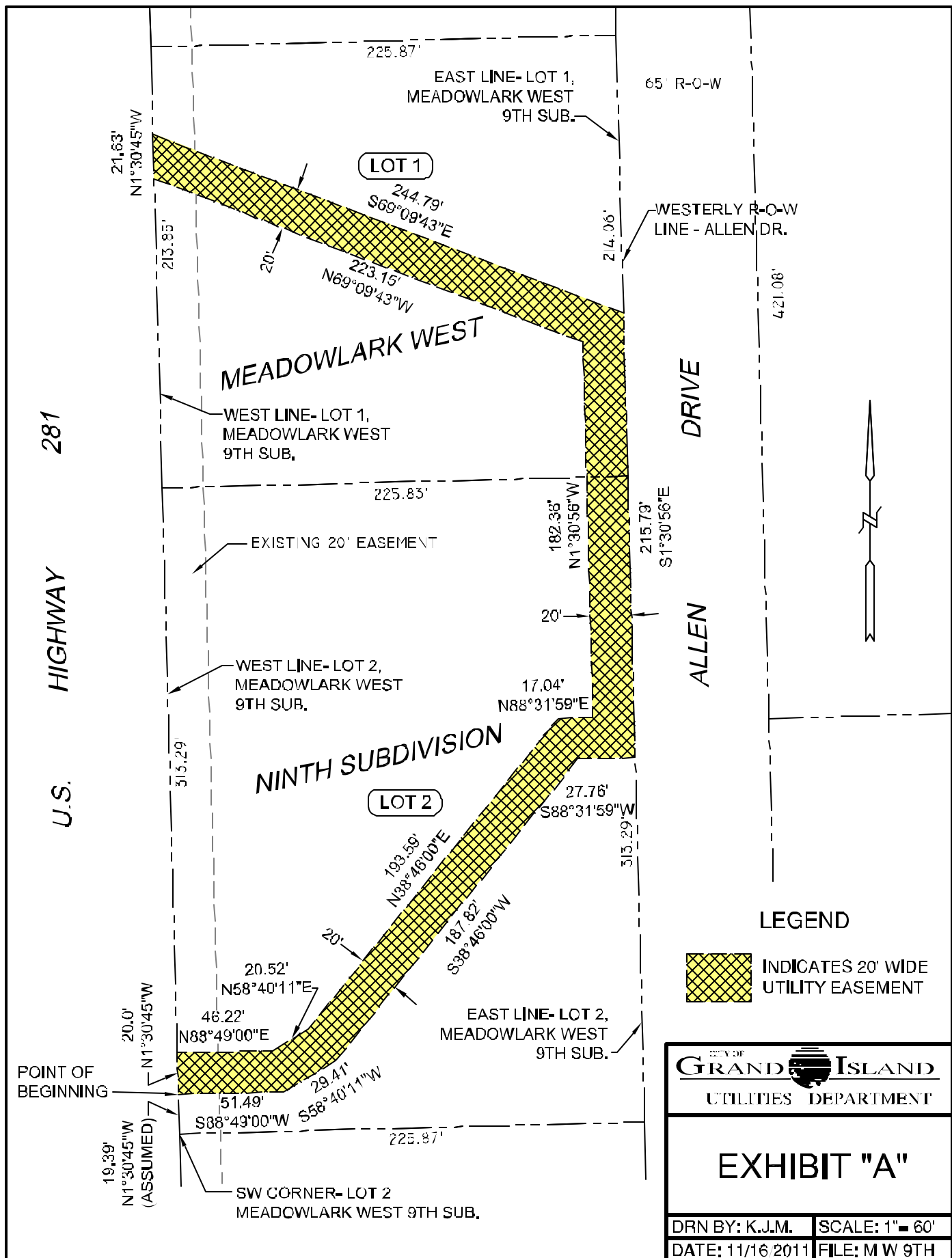
- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk





City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G6

#2011-351 - Approving Bid Award - Water Main Construction in the Parkview Area - Water Main Districts #457, #459, #460, and #461

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director

Meeting: December 6, 2011

Subject: Approving Bid Award – Water Main Construction in the Parkview Area – Water Main Districts 457, 459, 460 and 461

Item #'s: G-6

Presenter(s): Timothy Luchsinger, Utilities Director

Background

Residents living on Pioneer Blvd., Park Drive, Riverview Drive, Grand Avenue, August Street, and Hagge Avenue, currently utilize private wells for domestic water usage, however, some of the groundwater in this area has become contaminated by industrial volatile organic chemicals. The Nebraska Department of Environmental Quality (NDEQ) and the Environmental Protection Agency (EPA) have classified the area as a Superfund Site and are conducting cleanup operations.

Due to these issues, petitions were submitted by area property owners requesting City water service. In response to the request, Council created Water Main Districts 457, 459, 460 and 461 for the installation of water mains and service extensions for the properties within those districts' boundaries. These four districts passed the protest period, and specifications and plans for construction were developed and issued for bids. The costs associated with the construction will be assessed to the property owners over a five year period at 7% interest on the unpaid balance.

Attached is a sketch of the areas to be served.

Discussion

The Utilities Department consolidated the plans and specifications for the four districts to be bid as one project. In accordance with City Procurement Codes, the contract documents were advertised and publicly opened at 2:00 p.m. on Tuesday, November 22, 2011. Four bids were received and have been checked and evaluated. All bids are complete and the tabulation is below.

Bidder	Bid Security	Exceptions	Bid Price
Diamond Engineering Co. Grand Island, NE	Universal Surety Co.	None	\$ 902,439.05
General Excavating Lincoln, NE	Universal Surety Co.	None	\$1,268,443.39
Van Kirk Bros. Contracting Sutton, NE	Universal Surety Co.	None	\$ 924,599.20
K2 Construction Lincoln, NE	Western Surety Co.	None	\$ 897,249.13

Alternatives

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

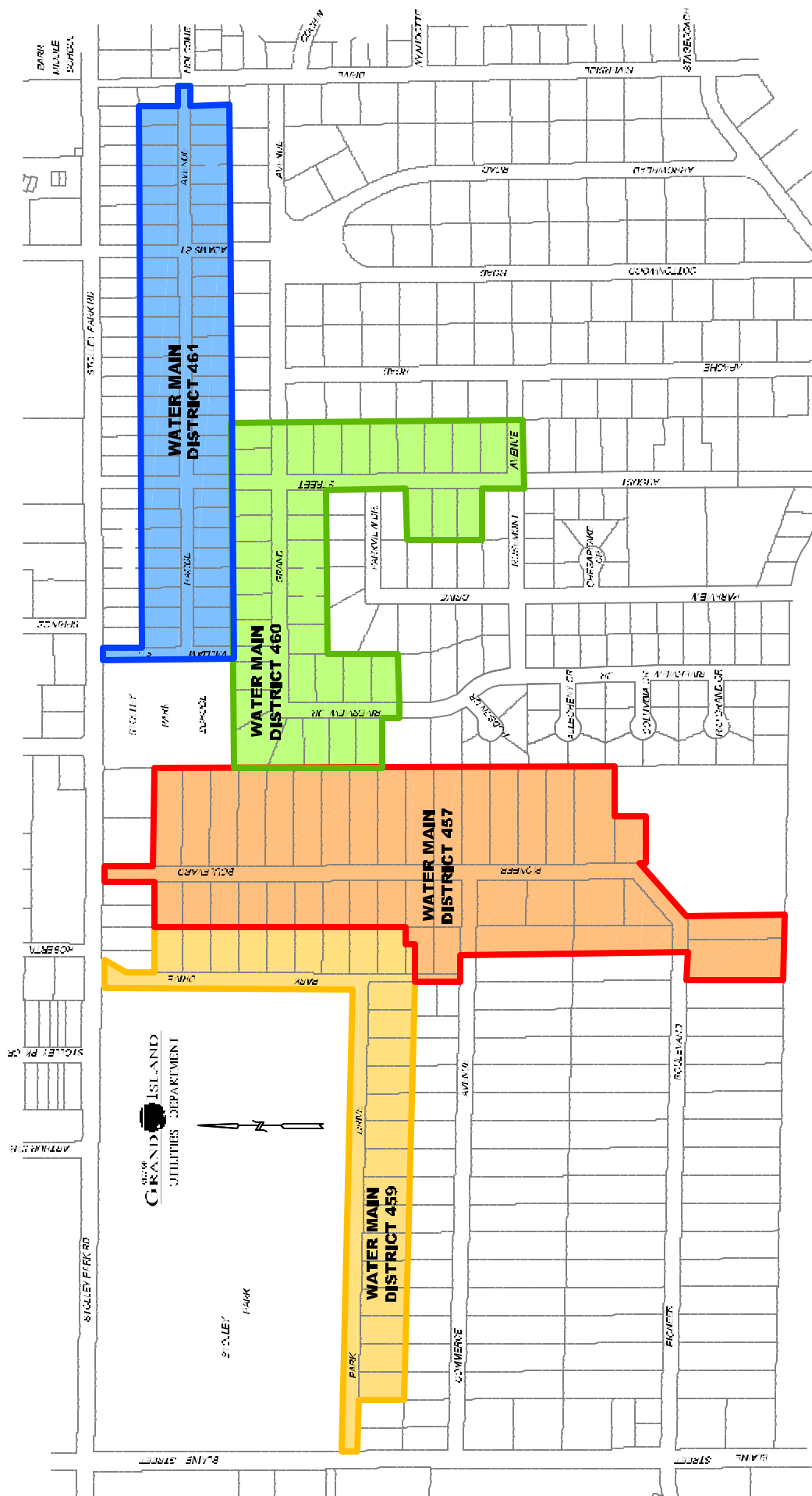
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the bid for the construction of Water Main Districts 457, 459, 460, and 461 to K2 Construction of Lincoln, Nebraska, in the amount of \$897,249.13. Their bid is below the project estimate of \$1,350,000.00, and meets all contract requirements.

Sample Motion

Move to approve the construction contract for Water Main Districts 457, 459, 460, and 461 to K2 Construction of Lincoln, Nebraska in the amount of \$897,249.13.



Water Main Districts 457, 459, 460, and 461

Pioneer Blvd., Park Drive, Riverview Drive, Grand Avenue, August Street, and Hagge Avenue

BIDS: 11/22/2011

TOTAL FOR ALL DISTRICTS

ITEM	DESCRIPTION	QUANTITY	EST.
1.01	8" d.i. pipe (r.i.) - trenchless installation	10,652.7	lf
1.02	8" d.i. pipe (s.i.) - trenched	162.7	lf
1.03	8" nitrile Gaskets (R.L.)	221.0	ea
1.04	8" nitrile Gaskets (M.J.)	38.0	ea
1.05	6" d.i. pipe (s.i.)	84.72	lf
1.06	6" nitrile Gaskets (M.J.)	40.0	ea
1.07	8"x8"x8" m.j. cross	1.0	ea
1.08	8"x8"x8" m.j. cross	1.0	ea
1.09	8"x8"x8" m.j. tapping sleeve	2.0	ea
1.10	8"x8"x8" m.j. tee	3.0	ea
1.11	8"x8"x6" m.j. tee	21.0	ea
1.12	8"x90° m.j. bend	6.0	ea
1.13	8"x45° m.j. bend	8.0	ea
1.14	8"x22.5° m.j. bend	2.0	ea
1.15	8"x6" m.j. reducer	2.0	ea
1.16	8" retainer gland	4.0	ea
1.17	8" sleeve coupling	5.0	ea
1.18	8" plug	0.0	ea
1.19	8" r.s. tapping valve	3.0	ea
1.20	8" r.s. gate valve	12.0	ea
1.21	6" sleeve coupling	1.0	ea
1.22	6" r.s. gate valve	1.0	ea
1.23	12"x12"x8" m.j. tapping sleeve	1.0	ea
1.24	12" sleeve coupling	0.0	ea
1.25	valve box	16.0	ea
1.26	fire hydrant assembly	23.0	ea
1.27	duc-lugs & redi-rod	3.0	ea
1.28	thrust block	43.0	ea
1.29	I-beam block	0.0	ea
1.30	linestopper installation	0.0	ea
1.31	1" copper water service (complete)	128.0	ea
1.32	8 mil polywrap	10,831.3	lf
1.33	remove asph./conc. roadway	776.3	sy
1.34	replace asph./conc. roadway	778.3	sy
1.35	remove asph./conc. driveway	140.7	sy
1.36	replace asph./conc. driveway	140.7	sy
1.37	remove concrete sidewalk	874.7	sf
1.38	replace concrete sidewalk	874.7	sf
1.39	remove & salvage existing 12"x12"x8" tee	1.0	ea
1.40	remove & salvage existing 8" valve & box	1.0	ea
1.41	remove & salvage existing 8"x6" reducer	1.0	ea
1.42	remove & salvage existing 6"x90" Ell	2.0	ea
1.43	remove & salvage existing fire hydrant	2.0	ea
1.44	saw cut	910.9	lf
1.45	residential seeding	21,824.0	sf
1.46	traffic control	4.0	complete

K2 Construction Lincoln, NE			
UNIT \$	TOTAL \$		
53.70	572,049.99		
53.35	8,680.05		
25.89	5,721.69		
21.53	818.14		
38.0	762.48		
16.28	651.20		
294.22	294.22		
296.00	296.00		
2,070.64	4,141.28		
261.96	785.88		
237.15	4,980.15		
198.75	1,192.50		
181.63	1,453.04		
179.86	359.72		
158.60	317.20		
101.71	406.84		
211.51	1,057.55		
95.00	0.00		
1,637.92	4,913.76		
1,202.74	14,432.88		
378.44	378.44		
898.19	898.19		
2,253.71	2,253.71		
465.00	0.00		
353.83	5,661.28		
1,687.79	38,819.17		
28.44	85.32		
100.03	4,301.29		
600.00	0.00		
1,540.00	0.00		
1,026.96	131,450.88		
1.02	11,047.93		
4.90	3,813.67		
52.85	41,133.16		
35.00	4,924.50		
42.85	6,029.00		
1.40	1,224.58		
4.35	3,804.95		
140.00	140.00		
105.00	105.00		
105.00	105.00		
105.00	105.00		
140.00	280.00		
4.90	4,463.41		
0.17	3,710.08		
2,300.00	9,200.00		
		\$897,249.13	

Diamond Engineering Co Grand Island, NE			
UNIT \$	TOTAL \$		
52.30	557,136.21		
42.70	6,947.29		
25.30	5,591.30		
27.10	1,029.80		
38.50	346.50		
17.40	696.00		
455.00	455.00		
460.00	460.00		
2,360.00	4,720.00		
435.00	1,305.00		
405.00	8,505.00		
350.00	2,100.00		
330.00	2,640.00		
330.00	660.00		
280.00	560.00		
85.00	340.00		
340.00	1,700.55		
170.00	0.00		
1,520.00	4,560.00		
1,370.00	16,440.00		
260.00	260.00		
1,035.00	1,035.00		
2,430.00	2,430.00		
650.00	0.00		
150.00	2,400.00		
1,645.00	37,835.00		
115.00	345.00		
170.00	7,310.00		
600.00	0.00		
600.00	0.00		
1,255.00	160,640.00		
0.89	9,639.86		
5.10	3,969.33		
38.50	29,964.55		
5.40	759.78		
34.00	4,783.80		
0.70	612.29		
4.30	3,761.21		
200.00	200.00		
235.00	235.00		
225.00	225.00		
225.00	225.00		
305.00	610.00		
3.30	3,005.97		
0.34	7,420.16		
2,145.00	8,580.00		
		\$902,439.05	

Van Kirk Bros Sutton, NE			
UNIT \$	TOTAL \$		
52.34	557,562.32		
39.50	6,426.65		
17.00	3,757.00		
16.00	608.00		
37.60	338.40		
11.00	440.00		
435.00	435.00		
420.00	420.00		
2,225.00	4,450.00		
370.00	1,110.00		
340.00	7,140.00		
275.00	1,650.00		
260.00	2,080.00		
255.00	510.00		
210.00	420.00		
85.00	340.00		
325.00	1,625.00		
125.00	0.00		
1,525.00	4,575.00		
1,270.00	15,240.00		
280.00	280.00		
845.00	845.00		
2,240.00	2,240.00		
450.00	0.00		
200.00	3,200.00		
1,800.00	41,400.00		
25.00	75.00		
125.00	5,375.00		
600.00	0.00		
150.00	0.00		
1,450.00	185,600.00		
0.75	8,123.48		
5.50	4,280.65		
40.00	31,132.00		
5.75	809.03		
40.00	5,628.00		
0.75	656.03		
4.50	3,936.15		
85.00	85.00		
120.00	120.00		
60.00	60.00		
50.00	50.00		
175.00	350.00		
3.25	2,960.43		
0.42	9,166.08		
2,275.00	9,100.00		
		\$924,599.22	

General Excavating Lincoln, NE			
UNIT \$	TOTAL \$		
78.60	837,302.22		
78.00	12,690.60		
18.50	4,088.50		
14.50	551.00		
396.00	396.00		
10.50	420.00		
401.00	401.00		
402.00	402.00		
780.00	1,560.00		
288.00	864.00		
263.00	5,523.00		
226.00	1,356.00		
209.00	1,672.00		
208.00	416.00		
187.00	374.00		
48.00	192.00		
304.00	1,520.00		
0.00	0.00		
1,244.00	3,732.00		
958.00	11,496.00		
262.00	262.00		
651.00	651.00		
883.00	883.00		
0.00	0.00		
182.00	2,912.00		
1,682.00	38,686.00		
93.00	279.00		
200.00	8,600.00		
0.00	0.00		
0.00	0.00		
1,843.00	235,904.00		
0.50	5,415.65		
9.90	7,705.17		
61.50	47,865.45		
9.90	1,392.93		
57.00	8,019.90		
1.00	874.70		
5.00	4,373.50		
591.00	591.00		
690.00	690.00		
296.00	296.00		
296.00	296.00		
400.00	800.00		
4.50	4,099.05		
0.28	6,110.72		
1,695.00	6,780.00		
		\$1,268,443.39	

Purchasing Division of Legal Department
INTEROFFICE MEMORANDUM



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

BID OPENING

BID OPENING DATE: November 22, 2011 at 2:00 p.m.

FOR: Water Main Districts 457, 459, 460 & 461

DEPARTMENT: Utilities

ESTIMATE: \$1,350,000.00

FUND/ACCOUNT: 525

PUBLICATION DATE: November 8, 2011

NO. POTENTIAL BIDDERS: 8

SUMMARY

Bidder:	<u>Diamond Engineering Co.</u> Grand Island, NE	<u>General Excavating</u> Lincoln, NE
Bid Security:	Universal Surety Co.	Universal Surety Co.
Exceptions:	None	None
Bid Price:	\$902,439.05	\$1,268,443.39

Bidder:	<u>Van Kirk Bros. Contracting</u> Sutton, NE	<u>K2 Construction</u> Lincoln, NE
Bid Security:	Universal Surety Co.	Western Surety Co.
Exceptions:	None	None
Bid Price:	\$924,599.20	\$897,249.13

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

Bob Smith, Assist. Utilities Director
Pat Gericke, Utilities Admin. Assist.
Tom Barnes, Utilities Eng. Mgr.

RESOLUTION 2011-351

WHEREAS, the City of Grand Island invited sealed bids for Water Main Construction in the Parkview area of the City of Grand Island according to plans and specifications on file with the Utilities Department; and

WHEREAS, on November 22, 2011, bids were received, opened and reviewed; and

WHEREAS, K2 Construction of Lincoln, 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 \$897,249.13; and

WHEREAS, the bid of K2 Construction is less than the estimate for the Water Main Construction for Districts 457, 459, 460, and 461.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of K2 Construction of Lincoln, Nebraska, in the amount of \$897,249.13 for Water Main Construction for Districts 457, 459, 460, and 461, is hereby approved as the lowest responsible bid.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G7

**#2011-352 - Approving Bid Award - Low NOx Conversion
Burners - Platte Generating Station**

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Timothy G. Luchsinger, Utilities Director
Jason Eley, Assistant City Attorney

Meeting Date: December 6, 2011

Subject: Low NO_x Conversion Burners

Item #'s: G-7

Presenter(s): Timothy Luchsinger, Utilities Director

Background

The Environmental Protection Agency (EPA) published a new regulation for power plant air emissions on July 7, 2011, the Cross State Air Pollution Rule (CSAPR), which will replace the current Clean Air Interstate Rule on January 1, 2012. The CSAPR has lowered the annual amount of nitrous oxides (NO_x) emissions that can be released as a result of the combustion process in the plant boiler, and this lower amount becomes the limiting constraint on the generating output of the Platte Generating Station, about 45% of its maximum capacity. This loss in generating capacity must be replaced by higher cost options of purchasing power from the regional market or using the gas-fueled facilities at Burdick Station. To meet the requirements of the new rule, the plant engineering staff researched methods to reduce the amount of NO_x released from the boiler, including plant equipment modifications and chemical additions. Installing new low NO_x burners with separate over-fire air ducts to lower the NO_x emission rate from the unit was evaluated to be the long-term solution to allow full operating capacity for the plant. Specifications for the Low NO_x Conversion Burners with separate over-fire air ducts were developed by plant staff and issued for bid in accordance with the City Purchasing Code. These specifications include furnishing and installing all of the combustion system components necessary to lower the NO_x emissions from the Platte boiler to a rate of 14 #/mmBtu, or about one-fourth of its current permitted rate. These specifications also include computer modeling for design of the new burners and final compliance testing and tuning. The system is planned to be installed during a plant maintenance outage in the last quarter of 2012.

Discussion

Bids were publicly opened on November 17, 2011, at 2:00 p.m. Specifications were sent to four potential bidders and responses were received as listed below. The engineer's estimate for this project was \$4,000,000.

Bidder	Base Bid Price
Babcock Power Services, Inc. Lees Summit, MO	\$ 2,958,859.00
Alstom Power, Inc. Windsor, CT	\$ 4,083,555.00
Fuel Tech Warrenville, IL	\$ 4,645,600.00
Clyde Bergemann Power Group Hanover, MD	\$ 5,941,899.00

The bids and exceptions were reviewed by plant engineering staff. Each bidder also supplied figures for recommended spare parts and an optional air flow and measurement system. Exceptions were noted for each bidder. In order to comply with specification requirements and ensure comparability with the other bidders, the Babcock Power Services bid was adjusted, using pricing included in their bid package, for the addition of a coal pipe analysis, coal mill classifier tuning, distributed control system integration, and spare parts, for an adjusted bid price of \$3,251,444.00. The bid from Babcock Power Services was found to be otherwise compliant with the specifications, less than the engineer's estimate, and exceptions regarding commercial conditions were reviewed by City legal staff and are 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 future date
4. Take no action on the issue

Recommendation

City Administration recommends that Council award the Contract for Low NO_x Conversion Burners to Babcock Power Services, Inc., of Lees Summit, Missouri, as the low responsive bidder, in the amount of \$3,251,444.00.

Sample Motion

Move to approve the contract for Low NO_x Conversion Burners to Babcock Power Service, Inc., of Lees Summit, Missouri in the amount of \$3,251,444.00.

Purchasing Division of Legal Department
INTEROFFICE MEMORANDUM



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

BID OPENING

BID OPENING DATE: November 17, 2011 at 2:00 p.m.

FOR: Low NOx Conversion Burner

DEPARTMENT: Utilities

ESTIMATE: \$4,000,000.00

FUND/ACCOUNT: 520

PUBLICATION DATE: November 1, 2011

NO. POTENTIAL BIDDERS: 4

SUMMARY

Bidder:	<u>Babcock Power Services, Inc.</u>	<u>Fuel Tech</u>
	Lees Summit, MO	Warrenville, IL
Bid Security:	Westchester Fire Ins. Co.	\$242,000.00
Exceptions:	Noted	Noted

Bid Price:		
Material:	\$1,063,047.00	\$1,583,400.00
Labor:	\$1,772,572.00	\$2,951,400.00
Sales Tax:	\$ 123,000.00	\$ 110,800.00
Total Base Bid:	\$2,958,859.00	\$4,645,600.00
Option:	\$ 81,424.00	\$ 596,200.00
Spare Parts:	\$ 58,369.00	\$ 48,000.00

Bidder:	<u>Alstom Power, Inc.</u>	<u>Clyde Bergemann Power Group</u>
	Windsor, CT	Hanover, MD
Bid Security:	The Insurance Co. of the State of PA	\$297,095.00
Exceptions:	Noted	Noted

Bid Price:		
Material:	\$1,851,800.00	\$2,557,575.00
Labor:	\$2,231,755.00	\$3,151,141.00

Sales Tax:		\$ 233,183.00
Total Base Bid:	\$4,083,555.00	\$5,941,899.00
Option:	\$772,120.00	\$ 984,360.00
Spare Parts:	TBD	\$ 75,076.00

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

Bob Smith, Assist. Utilities Director
Pat Gericke, Utilities Admin. Assist.
Lynn Mayhew, Utility Engineer

P1515

RESOLUTION 2011-352

WHEREAS, the City of Grand Island invited sealed bids for Low NOx Conversion Burners, according to plans and specifications on file with the Utilities Department; and

WHEREAS, on November 17, 2011, bids were received, opened and reviewed; and

WHEREAS, Babcock Power Services, Inc., of Lees Summit, Missouri, 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 \$3,251,444.00, including the base bid of \$2,958,859.00, Option #3 (Coal Pipe Analysis) for \$18,069, Option #4 (Classifier Tuning) for \$13,889, Option #6 (Integration into Customer DCS) for \$202,248, and recommended spare parts for \$58,369, including all applicable sales taxes; and

WHEREAS, the bid of Babcock Power Services, Inc., is less than the estimate for the Low NOx Conversion Burners.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Babcock Power Services, Inc., in the amount of \$3,251,444.00, for Low NOx Conversion Burners is hereby approved as the lowest responsible bid.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
December 1, 2011	☐ City Attorney



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G8

**#2011-353 - Approving Amended Subdivision Agreement for
Fairway Crossings at Indianhead Golf Course First Subdivision**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Chad Nabity, AICP

Meeting: December 6, 2011

Subject: Amendment to the Subdivision Agreement for Fairway Crossings at Indianhead Golf Club Subdivision

Item #'s: G-8

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

Background

The subdivision agreement approved for Fairway Crossings at Indianhead Golf Club Subdivision required that the Developer install a gravity sewer main for future use and connection to a sanitary sewer interceptor to be located in Husker Highway. After approval of the subdivision agreement the decision was made by both the Grand Island Public Works Department and the subdivider, to hold off on building this main until such time as the Husker Highway interceptor is constructed so that the gravity main could be built to an appropriate depth to match the pipe to be placed in Husker Highway.

The subdivision agreement also specified that the lots in this first phase of the Fairway Crossings Subdivision would be required to pay for their portion of the construction of the interceptor sewer main. This was to be accomplished with each property owner paying their share at the time when they connect to the sewer. Those costs are not known at this time and will not be known until after construction of the project. It is appropriate to amend the agreement to state that the assessments would be made and collected at a later date.

Discussion

The proposed changes to the language in the current subdivision agreement are as follows:

3. **Sanitary Sewer.** Public sanitary sewer is available to the subdivision and the Subdivider agrees to extend, connect and provide sanitary sewer service to all lots in the subdivision in accordance with plans and specifications approved by the Director of Public Works, and subject to the City's inspection. The Subdivider shall install a sanitary sewer lift station in an easement to be located on property located at the southwest corner of the intersection of Belfry Boulevard and Augusta Parkway. The Subdivider shall construct a sewage force main from said lift station to the existing public sanitary sewer main on Indianhead Road west of Schroeder Avenue. ~~The Subdivider shall construct a gravity sanitary sewer main in public street right of way or in a public utility easement for future use from the lift station to the location where a future sanitary sewer main will be located along Husker Highway.~~ The Subdivider shall dedicate an easement for construction of a gravity sanitary sewer main from the lift station to the sanitary sewer main planned in Husker Highway. Said gravity main will be constructed as a separate construction project concurrent with or prior to the construction of the Husker Highway interceptor. The property being developed is subject to a proportionate cost share for extending public interceptor sanitary sewer in the future along Husker Highway where it abuts the subdivision. The owner of each lot in the subdivision will be required to pay their proportionate share of the cost for the Husker Highway interceptor sanitary sewer main. Payment may be financed through the sewer assessment process as allowed by law. ~~at the time of the application for a sanitary sewer service permit.~~ The sanitary sewer lift station and sewage force main shall be built in accordance with plans and specifications approved by the Director of Public Works, and subject to the City's inspection. The City shall assume ownership and operation and

maintenance of said sewer lift station and force main upon acceptance by the Department of Public Works.

Without these proposed changes the City will be unable to accept the sewer mains as they have been constructed, even though they were constructed according to plans and specifications approved by the City. Also there is one house that has been constructed that is ready to hook up to sanitary sewer but it cannot be hooked up until such time as the City accepts the sewer line and until either the assessment for the Husker Highway interceptor is paid or the language is changed to allow that payment to be made at some point in the future when the assessment is known.

The attached resolution will authorize the Mayor to sign the amendment to the subdivision agreement and all necessary paperwork to accept the sewer system into the City wastewater system; as well as the insurance rider, which adds the City as an additional obligee for the Performance and Payment Bond issued to The Diamond Engineering Company. This insurance rider will extend the Performance and Payment Bond for a two year period, which will require The Diamond Engineering Company to maintain and remedy work, free from defects in materials and workmanship.

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 subdivision agreement as shown above and accept the insurance rider.

Sample Motion

Move to approve the amendment to the subdivision agreement and the insurance rider.

RESOLUTION 2011-353

WHEREAS, on February 10, 2009, by Resolution 2009-26, the City Council of the City of Grand Island approved the final plat and Subdivision Agreement for Fairway Crossings at Indianhead Golf Club First Subdivision; and

WHEREAS, the subdivision agreement required that a gravity main be constructed between the lift station and Husker Highway and that assessments for the Husker Highway Interceptor sewer main be paid prior to connecting any new structures to sewer; and

WHEREAS, it has been determined that construction of the gravity main and collection of the assessments should be done concurrent with and following the construction of the Husker Highway Interceptor; and

WHEREAS, an Amendment to the Springdale Subdivision Agreement has been prepared by the City Attorney's office.

WHEREAS, The Diamond Engineering Company was hired by Indianhead Golf Club for development of the Fairway Crossings at Indianhead Golf Club First Subdivision; and

WHEREAS, The Diamond Engineering Company was issued a Performance and Payment Bond for said work involved in development; and

WHEREAS, the Performance and Payment Bond will be in place for a two year period following completion of said work.

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 the amended subdivision agreement for Fairway Crossings at Indianhead Golf Club First Subdivision and the Dual Obligate Rider between the City, The Diamond Engineering Company and Indianhead Golf Club.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 6, 2011.

Jay Vavricek, Mayor

Attest:

Approved as to Form	☐ _____
December 1, 2011	☐ City Attorney

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G9

**#2011-354 - Approving Change Order No. 1 for Broadwell Avenue
Shoulder Improvement - Capital Avenue to Veteran's Athletic
Fields**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Scott Griepenstroh, PW Project Manager

Meeting: December 6, 2011

Subject: Approving Change Order No. 1 for Broadwell Avenue
Shoulder Improvement - Capital Avenue to Veteran's
Athletic Fields

Item #'s: G-9

Presenter(s): John Collins, Public Works Director

Background

J.I.L. Asphalt Paving Co., of Grand Island, Nebraska was awarded an \$119,193.70 contract by the City Council on October 11, 2011 for the Broadwell Avenue Shoulder Improvement project. The estimate for the project was \$180,000.

This project consisted of placing 6' wide asphalt shoulders on the east and west sides of Broadwell Avenue from the intersection of Capital Avenue north to the Veteran's Athletic Field Complex entrance.

Public Works is currently working with Burlington Northern Railroad (BNRR) officials to provide railroad crossing panels wide enough to accommodate surfaced shoulders through the Broadwell Avenue/BNRR crossing. The crossing panels and surfaced shoulders on BNRR right of way will not be constructed until this crossing is reconstructed under their Double Track project.

Discussion

There are five surfaced driveways located on the east side of Broadwell Avenue north of Roberts Drive. The lanes of Broadwell Avenue had been resurfaced since these driveways were constructed, resulting in the roadway surface being higher than each driveway's surface. The placement of the 6' wide shoulder at a relatively flat slope resulted in a greater elevation difference, or "drop-off," from the roadway to each driveway.

The "drop-off" from the new shoulder to each driveway was excessive and unsafe. The Contractor was directed to resurface each driveway to provide a level transition from the roadway to each driveway. The item 'Placement of Asphaltic Concrete for Intersections

and Driveways” is being added to compensate the Contractor for cleaning and preparing each driveway for placement and compaction of asphalt.

The agreed unit price for “Placement of Asphaltic Concrete for Intersections and Driveways” compares to 123% of the contract unit price for the same item on the Nebraska Department of Roads project NH-34-4(131), Grand Island South. The agreed unit price is reasonable considering the “hand work” required and the small quantities involved.

The contract quantities of “Asphaltic Concrete, Type B” and “Asphaltic Cement” are being increased to reflect this change.

The cost for this additional work is \$6,506.20. There are adequate funds in the line item budget (Account No. 10033506-85354) for this project.

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 Broadwell Avenue Shoulder Improvement project.

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: December 6, 2011

PROJECT: Broadwell Avenue Shoulder Improvement – Capital Avenue to Veteran's Athletic Fields Entrance

CONTRACTOR: J.I.L. Asphalt Paving Co.

CONTRACT DATE: October 11, 2011

	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
1. Placement of Asphaltic Concrete for Intersections and Driveways	310 SY	\$4.90/SY	\$1,519.00
2. Asphaltic Concrete, Type "B"	90 TON	\$30.95/TON	\$2,785.50
3. Asphaltic Cement	1074 gal	\$2.05/GAL	\$2,201.70
TOTAL OF CHANGE ORDER NO. 1			\$ 6,506.20

Placement of Asphaltic Concrete for Intersections and Driveways shall be in accordance with the 2007 Edition of the Nebraska Department of Roads Standard Specifications for Highway Construction, Section 503.04, Paragraph 5.b.(1).

Measurement and payment shall be in accordance with the 2007 Edition of the Nebraska Department of Roads Standard Specifications for Highway Construction, Section 503.05, Paragraph 2, and Section 503.06, Paragraph 1.

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

Contract Price Prior to This Change Order \$ 119,193.70

Net Increase/~~Decrease~~ Resulting from this Change Order..... \$ 6,506.20

Revised Contract Price Including this Change Order \$ 125,699.90

Approval Recommended:

By _____
John Collins, Public Works Director

Date _____

The Above Change Order Accepted:

J.I.L. Asphalt Paving Co.
Contractor

By _____

Date _____

Approved for the City of Grand Island:

By _____
Jay Vavricek, Mayor

Attest: _____
RaNae Edwards, City Clerk

Date _____

RESOLUTION 2011-354

WHEREAS, on October 11, 2011, by Resolution 2011-301, the City of Grand Island awarded J.I.L. Asphalt Paving Co., of Grand Island, Nebraska the bid in the amount of \$119,193.70 for the Broadwell Avenue Shoulder Improvement – Capital Avenue to Veteran's Athletic Fields Entrance; and

WHEREAS, it has been determined that modifications to the work to be performed by J.I.L. Asphalt Paving Co. 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 amount by \$6,506.20 for a revised contract price of \$125,699.90.

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 J.I.L. Asphalt Paving Co. of Grand Island, Nebraska to provide the modifications.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G10

#2011-355 - Approving Change Order No. 1 for the St. Joseph Trail Reconstruction - 2011

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services

Meeting: December 6, 2011

Subject: Approving Change Order No. 1 for the St. Joseph Trail Reconstruction - 2011

Item #'s: G-10

Presenter(s): John Collins, Public Works Director

Background

The Diamond Engineering Company of Grand Island, Nebraska was awarded a \$168,769.25 contract by the City Council on September 13, 2011 to improve the trail surface from asphalt to concrete.

Discussion

The City used Hall County's zipper machine to grind up the asphalt trail, allowing for the ground up asphalt to be used as suitable base. It wasn't known at the time that this asphalt base would require compaction before the concrete trail could be poured. The contractor provided a cost for the subgrade preparation at \$1.35 per square yard; with 5,364.50 square yards being worked, for a total contract increase of \$7,242.08. Change Order No. 1 will increase the contract amount to \$176,011.33.

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 St. Joseph Trail Reconstruction – 2011 project.

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: December 6, 2011

PROJECT: St. Joseph Trail Reconstruction - 2011

CONTRACTOR: The Diamond Engineering Company

CONTRACT DATE: September 13, 2011

Subgrade preparation of asphalt millings for concrete trail.

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

Contract Price Prior to This Change Order\$168,769.25

Net Increase/~~Decrease~~ Resulting from this Change Order.....\$ 7,242.08

Revised Contract Price Including this Change Order.....\$176,011.33

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 2011-355

WHEREAS, on September 13, 2011, by Resolution 2011-249, the City of Grand Island awarded The Diamond Engineering Company of Grand Island, Nebraska the bid in the amount of \$168,769.25 to improve the St. Joseph Trail from an asphalt surface to a concrete surface; 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 \$7,242.08, for a total contract price of \$176,011.33.

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, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G11

#2011-356 - Approving Certificate of Final Completion for the St. Joseph Trail Reconstruction - 2011

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services

Meeting: December 6, 2011

Subject: Approving Certificate of Final Completion for the St. Joseph Trail Reconstruction - 2011

Item #'s: G-11

Presenter(s): John Collins, Public Works Director

Background

The Diamond Engineering Company of Grand Island, Nebraska was awarded a \$168,769.25 bid by the City Council on September 13, 2011 to improve the St. Joseph Trail from an asphalt surface to a concrete surface. Work on the project commenced on October 17, 2011 and was completed on November 10, 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 \$171,459.63.

Change Order No. 1 is being presented to City Council tonight in the amount of \$7,242.08, which is for subgrade preparation after the asphalt trail was ground for the trail base.

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 the St. Joseph Trail Reconstruction - 2011.

Sample Motion

Move to approve the Certificate of Final Completion.

ENGINEER'S CERTIFICATE OF FINAL COMPLETION

St. Joseph Trail Reconstruction - 2011
CITY OF GRAND ISLAND, NEBRASKA
December 6, 2011

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

This is to certify that the St. Joseph Trail Reconstruction - 2011 has been fully completed by The Diamond Engineering Company of Grand Island, Nebraska under the contract dated September 13, 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.

St. Joseph Trail Reconstruction – 2011

Item No.	Description	Total Quantity	Unit	Unit Price	Total Cost
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Bid Section "A" - US Highway 34 to Sothman Park Access (Station 0+00 - 39+00)

1	6" PCC Trail	4,125.00	s.y.	\$30.75	\$126,843.75
2	Remove Sidewalk	428.00	s.f.	\$1.15	\$492.20
3	Construct Sidewalk	0.00	s.f.	\$4.20	\$0.00
4	Remove Existing Trail	0.00	s.y.	\$7.00	\$0.00
Total Bid Section A =					\$127,335.95

Bid Section "B" - Sothman Park Access to Stolley Park Road (Station 39+00 - 49+15)

1	6" PCC Trail	1,224.00	s.y.	\$30.10	\$36,842.40
2	Remove Existing Trail	5.60	s.y.	\$7.00	\$39.20
Total Bid Section B =					\$36,881.60

Change Order No. 1

1	Subgrade Preparation	5,364.50	s.y.	\$1.35	\$7,242.08
Total Bid Section CO #1 =					\$7,242.08

Grand Total =				\$171,459.63
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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 2011-356

WHEREAS, the City Engineer/Public Works Director for the City Of Grand Island has issued a Certificate of Completion for the St. Joseph Trail Reconstruction - 2011, 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 St. Joseph Trail Reconstruction is hereby confirmed.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G12

**#2011-357 - Approving Bid Award for Lift Station No. 7 Repairs;
Project No. 2011-S-1**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services

Meeting: December 6, 2011

Subject: Approving Bid Award in Lift Station No. 7 Repairs Project No. 2011-S-1 for the City of Grand Island

Item #'s: G-12

Presenter(s): John Collins, Public Works Director

Background

The proposed repair improvements project(s) in Lift Station No.7 vary in scale to upgrade the capacity and quality of sanitary sewer pumping, and to undertake sanitary sewer main gravity collection system upgrades. This is an area in southern Grand Island generally between Anna Street and Stolley Park Road/Harrison and Blaine Streets. Lift Station 7, which currently serves this area, installed in the early 1960's, includes 1,127 structures in single family homes, multi-family residences, and businesses.

The area served by Sanitary Sewer Lift Station No. 7 has experienced numerous sewer backups in the past during high ground water and wet weather events. These sewer backups have resulted in thousands of dollars in property damage and significant allocation of City resources and dollars in response to the problem. Repair of sanitary sewer lines which allow large quantities of ground water to enter the collection system and replacement of the force main exiting the lift station will significantly reduce the chance for costly sewer backups.

Repairs and mitigation planning for the service area have been identified in the May 2010 updated Wastewater Collection and Treatment Comprehensive Plan. A 2008 Community Development Block Grant (CDBG) in the amount of \$1,003,365 has been awarded to assist in funding this improvement project. The remaining grant amount will be used towards the lift station rehabilitation, which bids will be solicited for in the near future.

On October 26, 2011 an ad to bidders was published in the Grand Island Daily Independent.

A mandatory pre-bid meeting was held November 2, 2011 at the Wastewater Treatment Plant.

Discussion

On November 16, 2011 bids were received from three contractors: 1) Diamond Engineering Co., 2) Midlands Contraction, Inc., and 3) General Excavating. The bid proposal allowed the contractor to bid on either Option No.1, Option No. 2, or bid both options. Option No. 1

provided for lining the sewer line between Oklahoma and Phoenix, Arthur and Grant with a continuous lining material. Option No. 2 provided for complete replacement of the eight (8) inch sanitary sewer main line, replacement of manholes, replacement of service connections. The project will provide three (3) rehabilitation projects in the gravity sewer collection system and one (1) new forced pumping main construction.

- a) Construction of a Beltline Forcemain, eight (8) inch diameter; 3,517 feet thru Directional Boring process for the sanitary sewer pumping main. The location of the sanitary sewer forcemain construction is from Lift Station No. 7 to Manhole 83-A; seventy (70) feet west of the River Industrial Lead.
- b) Barbara and Gretchen consist of sanitary sewer open excavation to replace ten (10) inch gravity main, four (4) inch service lateral. The location of the sanitary sewer construction is North of Barbara Avenue from Gretchen Avenue East approximately one hundred thirty (130) feet.
- c) Stolley and Blaine consist of existing eight (8) inch gravity clay tile sanitary sewer main rehabilitation to stabilize structural defect in specific point location repairs. The location of the sanitary sewer construction is in Stolley Park Road from Blaine Street; West approximately three hundred (300) feet.
- d) Arthur to Grant consists of rehabilitation/replacement to six hundred twenty-three (623) feet of eight (8) inch gravity sanitary sewer main, service laterals, and manholes. The location of the sanitary sewer construction is from Arthur Avenue to Grant Street between Phoenix and Oklahoma.

Bid Table

	<u>Diamond Engineering</u>	<u>Midlands Contracting, Inc.</u>	<u>General Excavating</u>
Beltline Forcemain:	\$ 350,758.19	\$ 218,911.07	\$ 377,329.00
Stolley & Blaine:	\$ 14,400.00	\$ 44,080.00	\$ 14,250.00
Option #1 Arthur to Grant #1:	No Bid	\$ 72,158.00	No Bid
Option #2 Arthur to Grant #2:	\$ 114,760.00	\$ 758,984.10	\$ 224,476.00
Barbara & Gretchen:	\$ 9,441.10	\$ 15,829.00	\$ 47,250.00
Total Bid Tabulation W/ Option #1	No Bid	\$ 310,978.67	No Bid
Total Bid Tabulation W/ Option #2	\$ 489,359.29	\$ 997,804.17	\$ 663,305.65

City staff recommends the bid be awarded to Midlands Contracting, Inc. in the amount of \$310,978.67 for Option No. 1, as this is the lowest, responsible bid 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

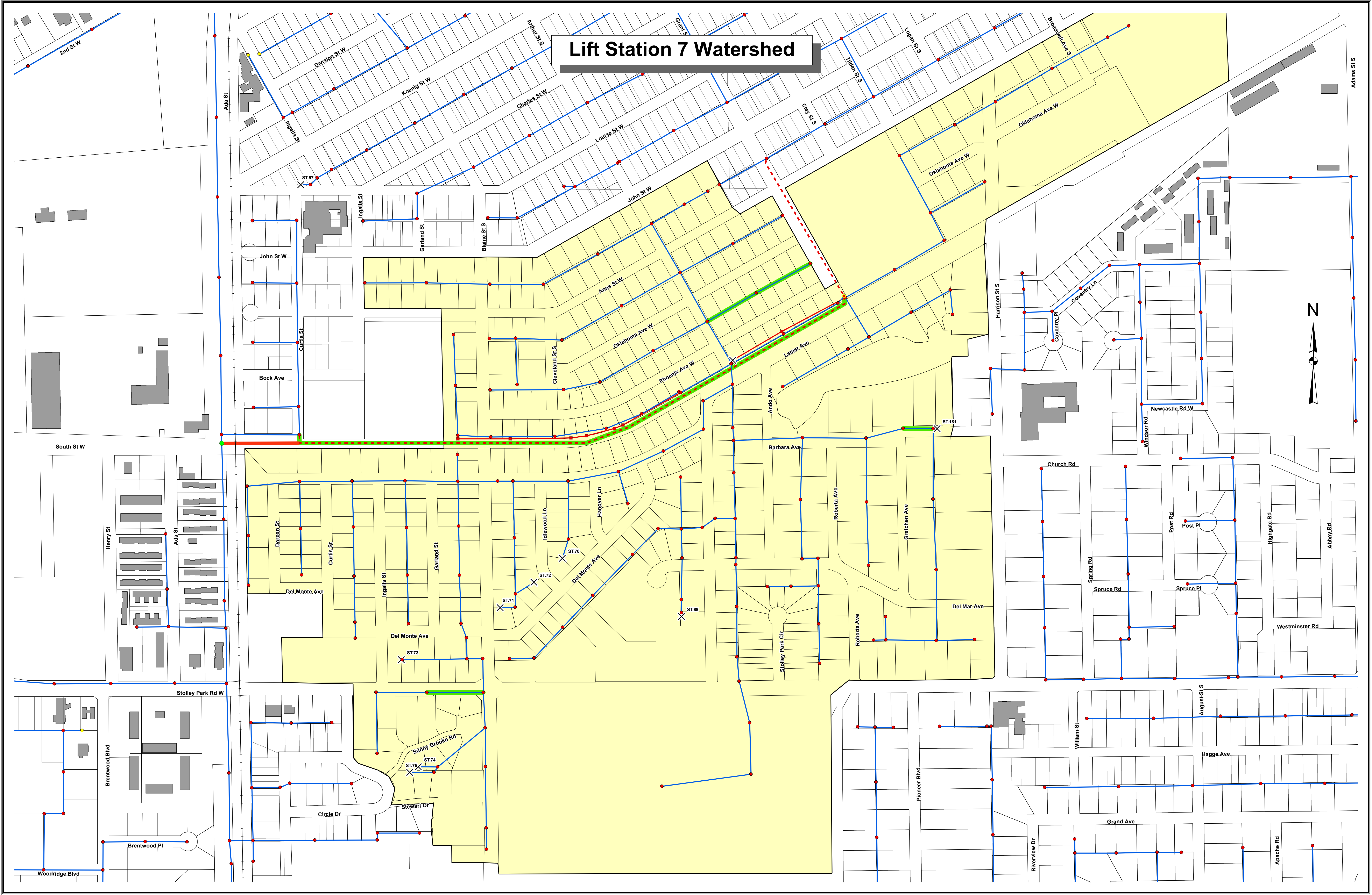
Recommendation

City Administration recommends that the Council approve the bid and award it to Midlands Contracting, Inc. of Kearney, Nebraska who had a bid of \$310,978.67 for Lift Station No. 7 Repairs, Project No. 2011-S-1.

Sample Motion

Move to approve bid award to Midlands Contracting, Inc. of Kearney, Nebraska for Lift Station No. 7 Repairs, Project No. 2011-S-1 for the City of Grand Island.

Lift Station 7 Watershed



Purchasing Division of Legal Department
INTEROFFICE MEMORANDUM



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

BID OPENING

BID OPENING DATE: November 16, 2011 at 2:00 p.m.

FOR: Lift Station No. 7 Repairs – Project 2011-S-1

DEPARTMENT: Public Works

ESTIMATE: \$600,000.00

FUND/ACCOUNT: 5303-0055-85213-53011

PUBLICATION DATE: October 26, 2011

NO. POTENTIAL BIDDERS: 10

SUMMARY

Bidder:	<u>Diamond Engineering Co.</u> Grand Island, NE	<u>Midlands Contracting, Inc.</u> Kearney, NE
Bid Security:	Universal Surety Co.	Travelers Casualty & Surety Co.
Exceptions:	Noted	None
Bid Price:		
Beltline Forcemain:	\$350,758.19	\$218,911.07
Stolley & Blaine:	\$ 14,400.00	\$ 4,080.00
Arthur to Grant #1:	No Bid	\$ 72,158.60
Arthur to Grant #2:	\$114,760.00	\$758,984.10
Barbara & Gretchen:	<u>\$ 9,441.10</u>	<u>\$ 15,829.00</u>
Total Bid Option #1:	No Bid	\$310,978.67
Total Bid Option #2:	\$489,359.29	\$997,804.17

Bidder: General Excavating
Bid Security: Lincoln, NE
Exceptions: Universal Surety Co.
Noted

Bid Price:
Beltline Forcemain: \$377,329.00
Stolley & Blaine: \$ 14,250.00
Arthur to Grant #1: No Bid
Arthur to Grant #2: \$224,476.65
Barbara & Gretchen: \$ 47,250.00
Total Bid Option #1: No Bid
Total Bid Option #2: \$663,305.65

cc: John Collins, Public Works Director
Jason Eley, Purchasing Agent
Mary Lou Brown, City Administrator

Catrina DeLosh, PW Admin. Assist.
Vicki Tylkowski, WWTP Clerk
Roger Scott, WWTP Eng. Tech.

P1519

RESOLUTION 2011-357

WHEREAS, Advertisement to Bidders for Lift Station No. 7 Repairs, Project No. 2011-S-1 at the Wastewater Treatment Plant was published in the Grand Island Daily Independent on October 26, 2011, and

WHEREAS, on November 16, 2011 bids were received, opened and reviewed; and

WHEREAS, Midlands Contracting, Inc. of Kearney, Nebraska submitted a bid in accordance with the terms of the advertisement of bids, plans and specifications and all other statutory requirements contained therein, with a base bid of \$310,978.67; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid award with the contracting firm, Midlands Contracting, Inc. of Kearney, Nebraska, in the amount of \$310,978.67 for Lift Station No. 7 Repairs, Project No. 2011-S-1 at the Wastewater Treatment Plant is hereby approved.

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
December 6, 2011	☐ City Attorney



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G13

#2011-358 - Approving Agreement with NDOR for US Highway 30 Improvements

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services

Meeting: December 6, 2011

Subject: Approving Agreement with NDOR for US Highway 30 Improvements

Item #'s: G-13

Presenter(s): John Collins, Public Works Director

Background

All agreements must be approved by the City Council. The Nebraska Department of Roads (NDOR) is preparing plans for improvements to US Highway 30.

Discussion

The improvements to US Highway 30 cover 1.62 miles, starting just west of the US Highway 30 and US Highway 281 junction and extending east to the junction of US Highway 30 and Broadwell Avenue.

Improvements to this stretch of roadway will consist of the following:

- Repairing concrete pavement, curbs and bridge joints;
- Diamond grinding the concrete roadway and resurfacing shoulders and the ramps at the US Highway 30 and US Highway 281 interchange; and
- New pavement markings

The City of Grand Island will pay 50% of the preliminary engineering, construction and construction engineering total costs for the portion of the project that is within the City's corporate limits. The City's share is currently estimated to be \$423,705.00, with a total project estimate of \$847,409.00.

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

Public Works Administration recommends that the Council approve a resolution authorizing the Mayor to sign the agreement.

Sample Motion

Move to approve authorization for the Mayor to sign the agreement.

AGREEMENT

PROJECT NO. STP-NH-30-4(157)
CONTROL NO. 42699
CITY OF GRAND ISLAND
STATE OF NEBRASKA, DEPARTMENT OF ROADS
IMPROVING HIGHWAY US-30 IN GRAND ISLAND

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

WITNESSETH:

WHEREAS, it is the desire of the parties that a portion of Highway US-30 be improved at the location as shown in Exhibit "A" which is attached and hereby made a part of this agreement, and

WHEREAS, said improvement is located within the designated urban area of Grand Island, Nebraska, and funds administered by the State, hereinafter known as "State Funds," have been made available for the construction of improvements such as this, and

WHEREAS, Federal Regulations provide that the City shall not profit or otherwise gain from local property assessments that exceed the City's share of project costs, and

WHEREAS, it is the further desire of the City that the proposed urban construction be included in a project under the designation of STP-NH-30-4(157), as evidenced by the Resolution of the City Council dated the ____ day of _____, 2011, identified as Exhibit "B", which is attached hereto, and hereby made a part of this agreement, and

WHEREAS, the description of the project is as follows:

This preventative maintenance project consists of repairing concrete pavement, curbs and bridge joints, diamond grinding the concrete roadway and resurfacing shoulders and the ramps at the US-30 and US-281/N-2 interchange. The project covers 1.62 miles of US-30 located in Hall County, starting 0.46 miles west of the junction of US-30 and US-281/N-2 at mile marker (MM) 312+47, and extending east to (MM) 314+00, 0.30 miles west of the junction of US-30 and Broadwell Avenue in Grand Island. New Pavement markings will be applied. This project will be constructed under traffic with lane closures controlled by approved temporary traffic control. The existing roadway on this segment of US-30 consists of dual 24 foot concrete roadways with a raised center median and either an outside curb or surfaced shoulders.

NOW THEREFORE, in consideration of these facts and the mutual promises of the parties hereto, it is hereby agreed that the construction or reconstruction of the aforesaid highway between construction limits described in Exhibit "A" shall be accomplished according to

and in the manner provided by plans and specifications to be prepared by the State, which are by this reference, made a part of this agreement

And the parties agree further as follows:

SECTION 1. The City agrees for the portion of the project within its corporate limits;

- (a) To pass and enforce an ordinance as required effecting the following restrictions within the project limits: No Parking
- (b) To prohibit business establishments being located in such a way that vehicles being served will be required to stand on said public highway right of way.
- (c) To require that all future entrances from private property to the public right of way within the limits of this project receive prior approval of the Director or his authorized representative.
- (d) To clear, at no cost to the State, the present right of way of this project of all advertising signs. The City also agrees, at no cost to the State, to clear any other privately owned facility or thing that may interfere with the construction, maintenance and operation of the improvement planned in this project, and to keep the old and new right of way free of future encroachments, except those authorized by permit from the City and approved by the State and Federal Highway Administration.
- (e) If the City performs any part of the work on this project itself the City agrees to abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb.Rev.Stat. §48-1101 through 48-1126, and all regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49 CFR, Parts 21 and 27 as set forth in Exhibit "C" attached hereto and hereby made a part of this agreement. The reference to "Contractor" in this exhibit shall mean the "City."

(f) DISADVANTAGED BUSINESS ENTERPRISES

(1) Policy

The City and State further agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the disadvantaged business requirements of 49 CFR Part 26 are hereby made a part of and incorporated by this reference into this agreement.

(2) Disadvantaged Business Enterprises Obligation

The City and State further agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, the City shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The City shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of FHWA assisted contracts.

The City acting as a subrecipient of Federal-aid funds on this project agrees to adopt the disadvantaged business enterprise program of the State for the Federal-aid contracts the City enters into on this project.

On any work performed by the City, failure of the City to carry out the requirements set forth above shall constitute breach of contract and, after the notification of the FHWA, may result in termination of the agreement or contract by the State or such remedy as the State deems appropriate.

- (g) Any changes in the roadway geometrics, either during project construction or after the project is completed, including but not limited to access control, driveways, median breaks, parking restrictions or any other traffic control items shall require prior approval of the State with Federal Highway Administration concurrence.
- (h) To provide, where the proposed construction involves a change in the grades established by City ordinance, that an amendment to said ordinance be passed, reestablishing said grades as shown in the plans without cost to the State.

SECTION 2. It is agreed and understood by the parties hereto that Federal-Aid Policy Guide, 23 CFR 645A, "Utility Relocations, Adjustments and Reimbursement", and Federal Aid Policy Guide, 23 CFR 645B, "Accommodation of Utilities" issued by the U.S. Department of Transportation, Federal Highway Administration, as supplemented, revised or updated heretofore, is hereby expressly made a part of and incorporated into this agreement by this

reference. By signing this agreement, the City agrees to adopt, on the improvement contemplated in this agreement the Nebraska Department of Roads' Policy for Accommodating Utilities on State Highway Right of Way issued by the State August, 1998, and its subsequent revisions or additions.

The City further agrees:

- (a) To comply with Neb.Rev.Stat. §39-1361, and the rules and regulations of the Department of Roads before making or allowing to be made, any utility excavation, pavement cuts or performing other activity upon said highway, and shall be responsible to see that all such work is performed according to the rules and regulations of, and by authority of a permit granted by the Department of Roads of the State of Nebraska.
- (b) To furnish or cause to be furnished all of the labor, tools, equipment and materials for the rehabilitation of its municipally owned utilities as made necessary by the construction of this project.
- (c) To prepare and submit to the State upon receipt of preliminary construction plans for this project a plan and estimate detailing anticipated location and nonbetterment costs for the rehabilitation of all municipally owned utilities as made necessary by this project. It is mutually understood that all nonbetterment municipal utility rehabilitation costs within the corporate limits of the City will become a project cost, but that outside said City limits only the nonbetterment portion of the rehabilitation costs of facilities currently occupying private right of way will be reimbursed. The cost of nonbetterment rehabilitation of municipally owned and operated utilities within the corporate limits is currently unknown. Should this project necessitate the nonbetterment rehabilitation of any municipally owned and operated utilities, the parties hereto agree to enter into an agreement to provide for the design and construction of the nonbetterment utilities and the reimbursement to the City for the State's share of the costs of the rehabilitation of municipally owned and operated utilities. Said agreement shall be entered into prior to utility work beginning.

SECTION 3. The City and State agree the City's project funding share will be as follows:

- a. The City's funding share will be 50% of the preliminary engineering, construction and construction engineering total costs for the portion of the project within the corporate limits. The City will not relinquish Federal STP Funds for the City's cost share, only local funds will be used for the above cost share. The total cost is currently estimated to be \$847,409, with the City's share currently estimated to be \$423,705. Both parties recognize this is a preliminary estimate and the final cost may well be higher or lower. Costs incurred by the State with respect to the entire project shall be considered as a part of the total cost of the project to be paid out of City and State/Federal funds. The State may, at its discretion, invoice the City for costs incurred by the State prior to letting and during the progression of the project. Upon award of a construction contract the State will invoice the City for their 50% share of the construction, construction engineering and 50% of the unbilled preliminary engineering. The City agrees to pay the State within 30 days after receipt of the invoice from the State. The final settlement between the State and the City will be made following final audits and when the final costs have been determined by the State.
- b. The City and State agree the final City Cost Share shall be determined in accordance to the terms and conditions set forth as follows:
 - (1) Preliminary Engineering: The State will determine the City's preliminary engineering cost share by dividing the project's total preliminary engineering cost by the project's total construction cost and then multiplying the resulting percentage times the City's construction cost share.
 - (2) Construction: The City's share of the construction costs shall be determined by the State from bid prices and plan quantities, and any construction credits or additional charges due. Construction credits or additional charges due will be made via change orders, changed quantities and plan revisions, hereinafter collectively referred to as "Changes". The State will have sole authority to allow any Change required for construction of this project. When a Change is ordered or approved by the State, the City's share of the cost shall be adjusted in an amount equal to the City's cost share percentage of the additional costs or savings that result from said Change. Prior to the issuing of a Change, the State will notify the City of any change in participation.

(3) Construction Engineering: The State will determine the City's construction engineering cost share by dividing the project's total construction engineering cost by the project's total construction cost and then multiplying the resulting percentage times the City's construction cost share.

SECTION 4. The Federal share of this project shall be reduced by any project specific local property assessments that exceed the appropriate local share on this project. This is subject to State review.

SECTION 5. All traffic control devices will conform to the latest approved edition of the Manual on Uniform Traffic Control Devices and the Nebraska Supplement thereto. If the City is to perform or contract for any work, they will develop a traffic control plan. The plan will be provided to the State's Project Manager for approval and acceptance. It will be the City's responsibility for the operation and maintenance of the approved traffic control plan. The City further agrees to comply with all traffic safety regulations, including those prescribed in the latest approved edition of the Manual of Uniform Traffic Control Devices and to use caution when working in the State right of way and provide appropriate traffic control to direct traffic.

SECTION 6. It is hereby agreed that plans and specifications for the above mentioned project will be on file in the office of the Department of Roads, Lincoln, Nebraska.

SECTION 7. The City and State will fully cooperate to cause the removal from public right of way, or correction or alteration in the public right of way, as necessary for the construction of the aforesaid project, of all pipe lines, poles or other underground or overhead services not owned by the City and are located within the corporate limits.

SECTION 8. The State hereby agrees:

- (a) To prepare and convey to the City, prior to construction, plans for the proposed subject project.
- (b) To advertise and conduct a letting and receive bids on the contemplated improvement. The City agrees that the State will award the contract to the lowest responsible bidder and that said contract shall be signed only by the State.
- (c) To supervise and cause completion of the construction of the improvement as shown in the plans.
- (d) To acquire all additional right of way and do all things, in pursuance of the aforesaid project, not specifically assumed by the City.

- (e) To reimburse the City for the nonbetterment rehabilitation of municipally owned utility facilities as provided in Section 2(c).
- (f) To detour traffic during the construction of the ramp, along Old Potash Highway and Webb Road, as shown on Exhibit "D", attached hereto and hereby made a part of this agreement

SECTION 9. The parties hereto agree that the State shall make sole determination as to the scheduling of the construction for this project.

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

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

ATTEST:

CITY OF GRAND ISLAND

City Clerk

Mayor

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

STATE OF NEBRASKA
DEPARTMENT OF ROADS
James J. Knott, P.E.

Roadway Design Engineer

RECOMMENDED:
Wesley Wahlgren, P.E.

District 4 Engineer

AGRC6-NZ

IN GRAND ISLAND 30-4(157) C.N. 42699 HALL COUNTY

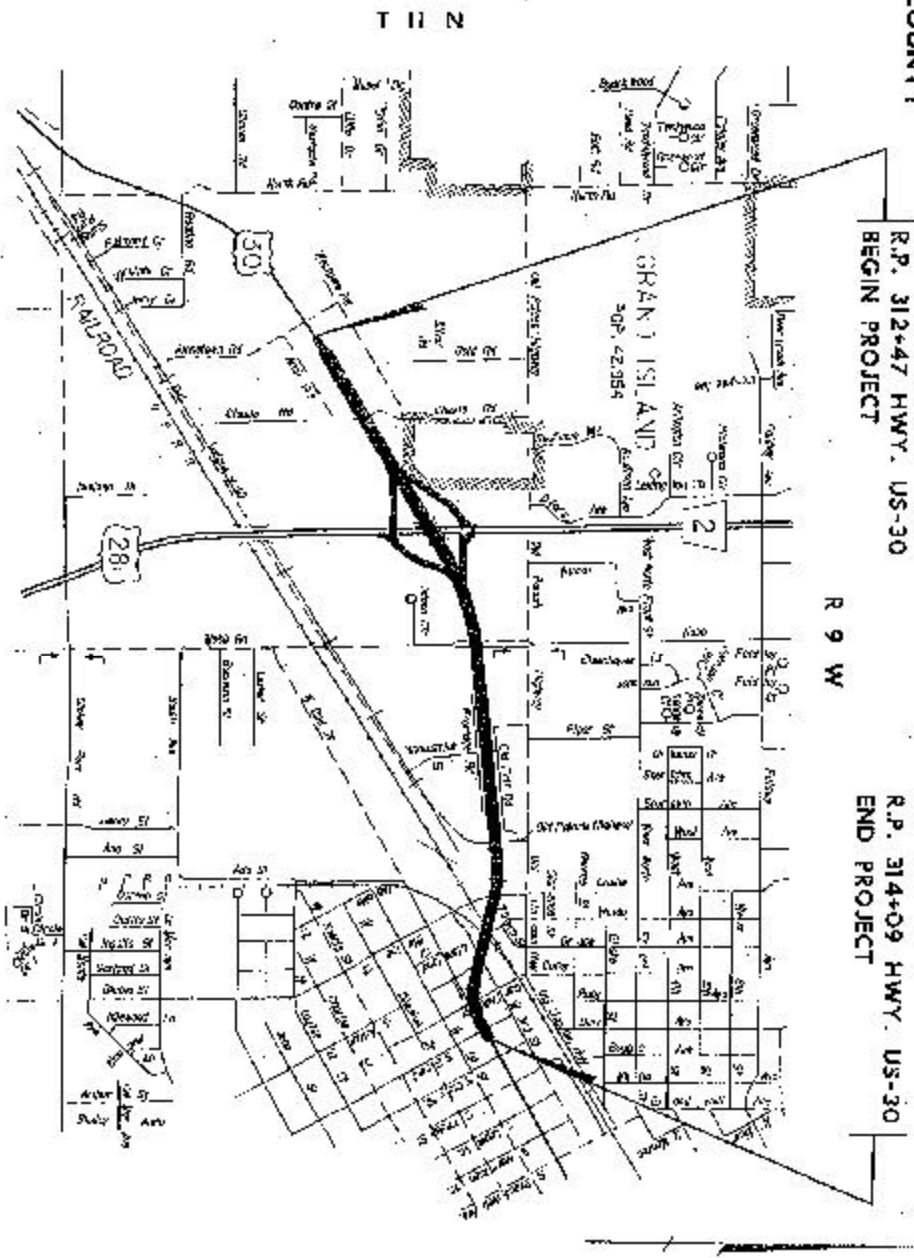


EXHIBIT "A"

NONDISCRIMINATION CLAUSES

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

- (1) Compliance with Regulations: The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the basis of disability, race, color, sex, religion or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A," "B," and "C" of Part 21 of the Regulations.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.
- (4) Information and Reports: The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Highway Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State Highway Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to,
 - (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract or procurement as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT "C"

IN GRAND ISLAND
30-4(157)
C.N. 42699
HALL COUNTY

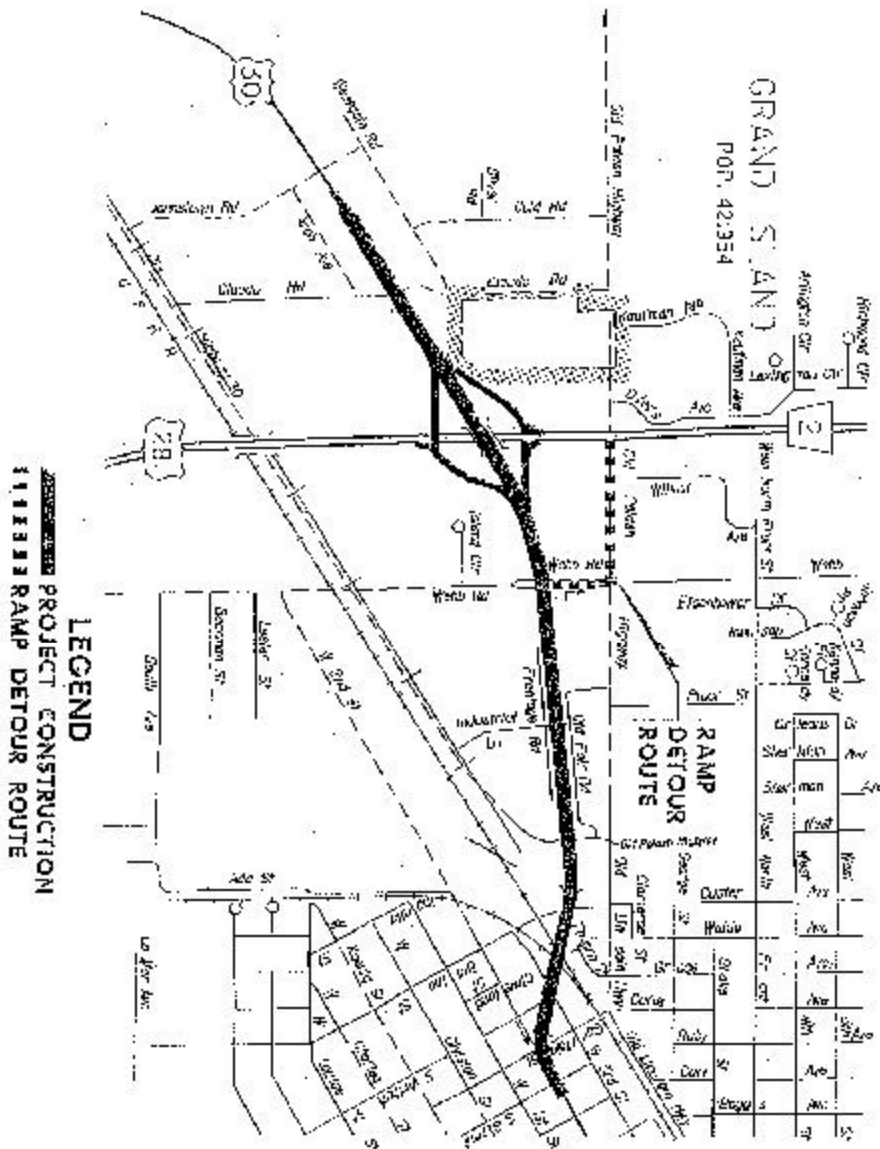


EXHIBIT "D"

RESOLUTION 2011-358

WHEREAS, the Nebraska Department of Roads is improving US Highway 30 from west of the US Highway 30 and US Highway 281 junction and extending east to the junction of US Highway 30 and Broadwell Avenue; and

WHEREAS, such improvements shall consist of repairing concrete pavement, curbs and bridge joints; diamond grinding the concrete roadway and resurfacing shoulders and the ramps at the US Highway 30 and US Highway 281 interchange; and new pavement markings; and

WHEREAS, the City's share is estimated to be \$423,705.00; and

WHEREAS, an agreement with the Nebraska Department of Roads is required to proceed with this project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the agreement with the Nebraska Department of Roads for the improvement to US Highway 30 is hereby approved.

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G14

#2011-359 - Approving Certificate of Final Completion 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: December 6, 2011

Subject: Approving Certificate of Final Completion for Sugar Beet Ditch Piping at Suck's Lake; Drainage Project No. 2011-D-3

Item #'s: G-14

Presenter(s): John Collins, Public Works Director

Background

The Diamond Engineering Company of Grand Island, Nebraska was awarded a \$69,664.40 bid by the City Council on September 27, 2011 to allow for the lining of what is referred to as the Sugar Beet Ditch and additional piping for better drainage, as well as ease in maintenance. This project also reduced the chance of a potentially hazardous situation, as there was a possibility of an individual falling into the open ditch. Work on the project commenced on October 12, 2011 and was completed on November 28, 2011.

On November 8, 2011 City Council approved Change Order No. 1, which allowed 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. Change Order No. 1 increased this project cost by \$12,550.00, for a total contract amount of \$82,214.40.

Discussion

The project was completed in accordance with the terms, conditions and stipulations of the bidding process. The project cost was overrun by \$6,121.04, with work being completed at a total cost of \$88,335.46. The project required more square feet of sidewalk removal and replacement in both Bid Sections "A" and "B" from the original plan quantities; this was discovered once work began. There was also additional fill that was needed to complete the filling in of the ditch, which was not known until the end phase of the project.

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

Sample Motion

Move to approve the Certificate of Final Completion.

ENGINEER'S CERTIFICATE OF FINAL COMPLETION

Sugar Beet Ditch Piping @ Suck's Lake; Project No. 2011-D-3
CITY OF GRAND ISLAND, NEBRASKA
December 6, 2011

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

This is to certify that the Sugar Beet Ditch Piping @ Suck's Lake; Project No. 2011-D-3 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.

Sugar Beet Ditch Piping @ Suck's Lake; Project No. 2011-D-3

Item No.	Description	Total Quantity	Unit	Unit Price	Total Cost
<u>Bid Section "A"</u>					
1	Construct 36" Polypropylene Storm Sewer Pipe	176.00	l.f.	\$59.40	\$10,454.40
2	Remove & Salvage 36" C.M.P.	20.00	l.f.	\$4.75	\$95.00
3	Remove & Replace Concrete Sidewalk	153.10	s.f.	\$4.85	\$742.54
4	Remove & Relocate 36" Flared End	1.00	ea.	\$146.60	\$146.60
5	Furnish & Place Fill	400.00	c.y.	\$11.60	\$4,640.00
6	Seeding	0.16	ac.	\$1,865.00	\$298.40
7	36" x 30" Tee with Standard 30" Grate	1.00	ea.	\$2,150.00	\$2,150.00
Total Bid Section A =					\$18,526.94

Bid Section "B"

1	Construct 36" Polypropylene Storm Sewer Pipe	128.00	l.f.	\$59.40	\$7,603.20
2	Remove & Salvage 36" C.M.P.	20.00	l.f.	\$4.75	\$95.00
3	Remove & Replace Concrete Sidewalk	186.30	s.f.	\$4.85	\$903.56
4	Remove & Replace 36" Flared End	0.00	ea.	\$146.60	\$0.00
5	Furnish & Place Fill	290.00	c.y.	\$11.60	\$3,364.00
6	Seeding	0.12	ac.	\$1,865.00	\$223.80
7	36" x 30" Tee with Standard 30" Grate	1.00	ea.	\$2,150.00	\$2,150.00
Total Bid Section B =					\$14,339.56

Bid Section "C"

1	Construct 36" HDPE N-12 Storm Sewer Pipe	376.00	l.f.	\$47.85	\$17,991.60
2	Construct 4'x8' Junction Box	1.00	ea.	\$3,065.00	\$3,065.00
3	Construct Junction Box with Beehive Inlet	0.00	ea.	\$1,870.00	\$0.00
4	Remove 36" Flared End Section	2.00	ea.	\$100.00	\$200.00
5	Furnish & Place Fill	1173.00	c.y.	\$11.60	\$13,606.80
6	Seeding	0.67	ac.	\$1,865.00	\$1,249.55
7	36" x 30" Tee with Standard 30" Grate	2.00	ea.	\$2,010.00	\$4,020.00
Total Bid Section C =					\$40,132.95

Change Order No. 1

CO1-1	Tree Removal	7.00	ea.	\$500.00	\$3,500.00
CO1-2	Headwall Removal	1.00	ea.	\$500.00	\$500.00
CO1-3	10" HDPE	58.20	l.f.	\$80.00	\$4,656.00
CO1-4	90° Installed Fitting (10")	3.00	ea.	\$175.00	\$525.00
CO1-5	10" Insert-a-tee	3.00	ea.	\$730.00	\$2,190.00
CO1-6	Installed 1" HDPE Riser & Drop in Grate	3.00	ea.	\$190.00	\$570.00
CO1-7	Concrete Pad (3' x 3')	3.00	ea.	\$425.00	\$1,275.00
CO1-8	24" Drop in Grate	4.00	ea.	\$530.00	\$2,120.00
Total Bid Section C =					\$15,336.00

Grand Total - Bid Sections A, B, C, Change Order No. 1 =	\$88,335.44
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I hereby recommend that the Engineer's Certificate of Final Completion for the Sugar Beet Ditch Piping @ Suck's Lake; Project No. 2011-D-3 be approved.

John Collins – City Engineer/Public Works Director

Jay Vavricek – Mayor

RESOLUTION 2011-359

WHEREAS, the City Engineer/Public Works Director for the City Of Grand Island has issued a Certificate of Completion for the Sugar Beet Ditch Piping at Suck's Lake; Drainage Project No. 2011-D-3, 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 Sugar Beet Ditch Piping at Suck's Lake; Drainage Project No. 2011-D-3, is hereby confirmed.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G15

#2011-360 - Approving State Bid Award for (1) 2012 3/4 Ton Ford F250 4x4 Pickup for the Solid Waste Division of the Public Works Department

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Jeff Wattier, Solid Waste Superintendent

Meeting: December 6, 2011

Subject: Approving State Bid Award for (1) 2012 3/4 Ton Ford F250 4x4 Pickup for the Solid Waste Division of the Public Works Department

Item #'s: G-15

Presenter(s): John Collins, Public Works Director

Background

The Solid Waste Division of the Public Works Department budgeted for a pickup to be used in daily operations at the Landfill. The approved FY 2012 Solid Waste Division budget includes \$30,000.00 for this purchase.

Discussion

The vehicle specifications awarded under State of Nebraska Contract #13092 OC meet all of the requirements for the Solid Waste Division vehicle. Anderson Ford Lincoln Mercury of Lincoln, Nebraska submitted a bid with no exceptions in the amount of \$23,346.00. There are sufficient funds for this purchase in Account No. 50530043-85625.

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 State Bid Award to Anderson Ford Lincoln Mercury in the amount of \$23,346.00 for the 2012 F250 4x4 pickup for the Solid Waste Division of the Public Works Department.

Sample Motion

Move to approve the State Bid Award to Anderson Ford Lincoln Mercury in the amount of \$23,346.00 for the 2012 F250 4x4 pickup for the Solid Waste Division of the Public Works Department.

RESOLUTION 2011-360

WHEREAS, the Solid Waste Division of the Public Works Department for the City of Grand Island, budgeted for a vehicle in the 2011/2012 fiscal year; and

WHEREAS, said vehicle, a 2012 Ford F250 4x4 Pickup, can be obtained from the State Contract holder; and

WHEREAS, purchasing the vehicle from the State Contract holder meets all statutory bidding requirements; and

WHEREAS, the funding for such vehicle is provided in the 2011/2012 budget.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the purchase of a 2012 Ford F250 4x4 Pickup in the amount of \$23,346.00 from the State Contract holder, Anderson Ford Lincoln Mercury of Lincoln, Nebraska, is hereby approved.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item G16

**#2011-361 - Approving Supplemental Agreement No. 4 with
Schemmer Associates for Engineering Consulting Services for the
Walk to Walnut Project**

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Scott Griepenstroh, Project Manager

Meeting: December 6, 2011

Subject: Approving Supplemental Agreement No. 4 with Schemmer Associates for Engineering Consulting Services for the Walk to Walnut Project

Item #'s: G-16

Presenter(s): Scott Griepenstroh, Project Manager

Background

The Walk to Walnut project will realign the main driveway to Walnut Middle School to match up with the intersection of 15th Street and Custer Avenue and install a traffic signal. The project is mostly funded with Safe Routes to School (SRTS) funds authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Act (SAFETEA-LU) that are administered by the Nebraska Department of Roads (NDOR). The project will make it safer for children crossing Custer Avenue and encourage more walking and biking to school. The federal aid funding cap for individual SRTS projects is \$250,000.

On May 27, 2008, the City Council approved a Professional Services Agreement with The Schemmer Associates, Inc. of Lincoln, Nebraska, with Rockwell and Associates, L.L.C. of Grand Island, Nebraska as a Sub-consultant. The original agreement was for a total of \$33,388.05.

On December 2, 2008, the City Council approved Amendment No. 1 for \$11,135.46, which provided for additional engineering services to address impacts to resources developed with Land and Water Conservation Fund (LWCF) funds, as per Section 6(f) of the Land and Water Conservation Fund Act of 1965. The detention cell land where the main driveway will be relocated was purchased and developed using LWCF funds, and the land that is being converted by the project has to be replaced.

On May 24, 2011, the City Council approved Amendment No. 2 in the amount of \$26,785.81 to provide for additional environmental review services, coordination and review of Plans, Specifications and Estimate package submittal, and conversion to NDOR construction specifications necessary to complete the project.

On July 12, 2011, the City Council approved Amendment No. 3, which was developed by NDOR to provide language to explicitly state that the engineering services provided for in Amendment No. 2 would be funded only by the Local Public Agency and non-participating for Federal Aid.

Discussion

Prior to moving forward with acquisition of right-of-way, certain preliminary engineering services must be completed as per NDOR's Right-of-Way Acquisition Guide for Local Public Agencies. The services include work associated with preparation of right-of-way (ROW) plans and performing a title research. The scope of this additional work could not be determined until recently.

Although the original agreement for preliminary engineering included ROW services in the scope, plan design changes were made in order to comply with Land and Water Conservation Fund land conversion requirements as per guidance from NDOR and the Federal Highway Administration in a June 29, 2011 meeting. The guidance resulted in a better option for addressing the land conversion and for achieving timely completion of the project.

Original Agreement	\$33,388.05
Amendment No. 1	\$11,135.46
Amendment No. 2	\$26,785.81
Amendment No. 3	\$0.00
Amendment No. 4	\$4,920.71
Total Revised Agreement	\$76,230.03

The original estimate for all costs for this project was \$271,944, with \$22,940 funded by in kind donations (landscaping and irrigation) and a cash match from Grand Island Public Schools. The maximum preliminary engineering expenses to be funded with SRTS funds, as per the Program Agreement, is \$21,756. All costs exceeding the \$21,756 limit are to be funded by the City of Grand Island. The engineering services provided for in this supplemental agreement are to be funded only by the Local Public Agency and non-participating for Federal Aid.

Submittal of 90% Plans, completion of environmental clearance, and acquisition of right of way are anticipated to be completed in the next three months. Construction of this project is anticipated to be completed in 2012.

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 Amendment No. 4 to the Agreement for Preliminary Engineering Consulting Services for the Safe Routes To Schools Walk to Walnut Project.

Sample Motion

Move to approve Amendment No. 4.

SUPPLEMENTAL AGREEMENT #4

CITY OF GRAND ISLAND
THE SCHEMMER ASSOCIATES, INC.
PROJECT NO. SRTS-40(57)
CONTROL NO. 42521
GRAND ISLAND WALNUT MIDDLE SCHOOL
PRELIMINARY ENGINEERING SERVICES

THIS SUPPLEMENTAL AGREEMENT, made and entered into by and between the City of Grand Island, Nebraska, hereinafter referred to as the Local Public Agency or "LPA," and The Schemmer Associates, Inc., hereinafter referred to as the "Consultant."

WHEREAS, the Consultant and the LPA entered into an Engineering Agreement executed by the Consultant on May 22, 2008 and executed by the LPA on June 2, 2008, hereinafter referred to as the "Original Agreement" providing for the preparation of plans and specifications, and a supplemental agreement executed by the Consultant on November 21, 2008 and executed by the LPA on December 2, 2008, hereinafter referred to as "Supplemental Agreement No. 1" providing for environmental services and a supplemental agreement executed by the Consultant on May 31, 2011 and by the LPA on May 24, 2011, hereinafter referred to as "Supplemental Agreement No. 2", providing for additional environmental review services, coordination and review of PSE submittal and conversion to NDOR construction specifications necessary to complete the work and a supplement agreement executed by the Consultant on July 20, 2011 and by the LPA on July 12, 2011, hereinafter referred to as "Supplemental Agreement No. 3" to establish the funding responsibility for services added in Supplemental Agreement No. 2 for Project No. SRTS-40(57), and

WHEREAS, it is necessary that work not contemplated in the Original Agreement, Supplemental No. 1, Supplemental No. 2 and Supplement No. 3 be added under this supplemental agreement, and

WHEREAS, the services performed as a part of this supplemental agreement will be funded solely with LPA funds and will be non-participating for Federal-aid, and

WHEREAS, it is the desire of the LPA that the project be constructed under the designation of Project No. SRTS-40(57), as evidenced by the Resolution of the LPA dated the _____ day of _____, 2011, attached and identified as EXHIBIT "A" and made a part of this agreement, and

NOW THEREFORE, in consideration of these facts, the Consultant and LPA agree as follows:

SECTION 1. The LPA will fund professional services totaling \$4,920.71 with LPA funds only.

The LPA will not seek reimbursement for this work from Federal funds made available for this project.

SECTION 2. The Consultant will perform the additional work stipulated in the Scope of Services which is attached as Exhibit "B" and hereby made a part of this supplemental agreement.

SECTION 3. The Consultant shall complete all the services according to the schedule in attached EXHIBIT "C" and shall complete all work required under this agreement in a satisfactory manner by January 31, 2012.

SECTION 4. Except as specifically amended by this supplemental agreement, all terms and conditions of the Original Agreement on Project No. SRTS-40(57), executed by the LPA on June 2, 2008 and executed by the Consultant on May 22, 2008 and Supplemental Agreement No. 1, executed by the Consultant on November 21, 2008 and executed by the LPA on December 2, 2008 and Supplemental Agreement No. 2 executed by the Consultant on May 31, 2011 and by the LPA on May 24, 2011 and Supplemental Agreement No. 3 executed by the Consultant on July 20, 2011 and by the LPA on July 12, 2011, shall remain in full force and effect.

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

After being duly sworn on oath, I do hereby acknowledge the foregoing certification and state that I am authorized to sign this agreement for the firm.

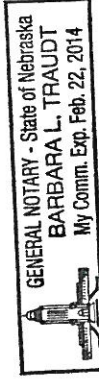
EXECUTED by the Consultant this 30 day of November, 2011.

THE SCHEMMER ASSOCIATES, INC.
Doug Halle


Project Manager

STATE OF NEBRASKA)
)
)ss.
 DOUGLAS COUNTY)

Subscribed and sworn to before me this 30th day of November, 2011.



BT

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

Barbara S. Zaudt
Notary Public

CITY OF GRAND ISLAND
Jay Vavricek

Mayor

Subscribed and sworn to before me this _____ day of _____, 2011.

Clerk

STATE OF NEBRASKA
DEPARTMENT OF ROADS
Form of Agreement Approved for
Federal Funding Eligibility:

Date

Walk to Walnut-Safe Routes to School Project
City of Grand Island
Project # SRTS-40(57), C.N. 42521

SCOPE OF SERVICES (TASK OUTLINE)

Project Administration

- Contract Administration/Scheduling & Coordination of Design Professionals
- Right-of-way review meeting with City staff and NDOR
 - Attended by 1 TSA representatives

City Responsibilities

- Provide land acquisition services

Right-of-Way Design, Coordination and Plan Preparation. A thorough examination of the City records shall be made for each tract by a Registered Abstractor, Title Company or other qualified person to establish ownership including any liens or mortgages for the City's use during the appraisal and acquisition of the right of way or easements needed to construct the project. The research should include all ownership transactions for the last five years. A document similar to (Attachment PA-2, Record of Title) which may be found in the NDOR, Right of way Acquisition Guide for Local Public Agencies shall be used to verify ownerships on all tracts.

a. Title Search (One anticipated). The Consultant shall research a five-year record of ownership and record on NDOR Certificate of Title report form, or other state-supplied or approved form. The following information should be noted:

- The current owner's current mailing address and telephone numbers.
- Current ownership.
- If an estate-name heirs, share of each and name spouses.
- Include active encumbrances (Mortgage, Deeds of Trust, etc.) and any reassignments of unreleased mortgages.
- List of five year chain of ownership documents.
- Include other liens, agreements, conditions, limitations, restrictions, or covenants affecting title.
- Include easements such as water, sewer, ingress/egress, irrigation, or anything that might influence the project or right-of-way design, except utilities (power, gas, telephone and telegraph).
- Include leases still in effect.
- Transcribe legal on approved form or use generic legal description.
- Provide copies of all supporting documentation (deeds, easements, etc.) Provide copies of all subdivision plats and surveys of irregular tracts and County Cadastral Maps and tax lots with metes and bounds field notes. Do not need State highway deeds.

Right of way plans will be submitted to NDOR for review and approval along with the preliminary right of way cost estimate. If property owners have indicated a willingness to donate, the donation request letters (Donation Request Letter, NDOR form PA-3) will be submitted to NDOR

by Consultant for review and approval before authorization to begin appraisals or authorization to complete the donations will be given.

Appraisals and negotiations for the needed right of way and easements will be performed under a separate agreement between the City and a NDOR certified Right of Way Consultant.

Existing land base files and title research developed by the Consultant will be used to determine the existing right-of-way and to design the easements and additional right-of-way. Encroachments on existing right-of-way will be noted on the plans.

Care is to be given by the Consultant when preparing right of way plans and the right of way cost estimate. Any revisions of these documents, subsequent to their submittal will require additional review by the NDOR's Right of Way Division, the appraiser and review appraiser, causing delays in project delivery.

b. Right-of-Way Design (Two Tracts Anticipated). The Consultant shall label all streets and highways on the plans.

The Consultant shall prepare a title sheet (R-1) with centerline, property lines, section lines, 1/4 section lines, lots, blocks, etc., displayed.

The Consultant shall place the limits of construction (L.O.C.'s) and new design (pavement, sidewalks, sewers, drives, culverts, dikes, retaining walls, alignment geometrics, etc.) on the plans.

The Consultant will determine the easements (temporary and permanent) and right-of-way needed for construction and maintenance of the project.

Temporary construction easements will be acquired to construct driveways, sidewalks or make improvements on personal property beyond the existing or proposed right of way.

The Consultant shall prepare legal descriptions for all R.O.W. takings, permanent easements and temporary easements.

The Consultant shall place all R.O.W. break points on the plans by station and offset distance from the project design centerline to be used. This must include but is not limited to all points of new R.O.W., existing R.O.W., points of intersection with all section lines, 1/4 section lines, and property lines and new P.E., T.E., and R.O.W. break points. Computed stations and offsets must be to nearest 0.01 foot. All text must be legible and not overlapping other text or topography.

All Permanent and Temporary Easement areas must be labeled separately and include their respective purposes on the plans, i.e., TE1, PE1. If more than one easement description occurs per tract, a consecutive number will be given, i.e., TE2, PE2. The areas are to be shown compiled on the R-2 sheet.

The Consultant shall prepare a summary of areas sheet; identified as the R-2 sheet. The R-2 sheet must display areas of all takings.

After the final right-of-way design is complete, the Consultant shall provide two copies of the R.O.W. Design plans.

For the purpose of reviewing the plans, it is helpful (but not required) to have the limits of construction offsets shown on the plans. These will be removed or the level shut off for the final PS&E plan submittal. Limits of construction will be shown for the new right of way and easements (temporary and permanent). The LPA's RC, the LPD PC, the NDOR Right of Way Design Section will arrange a right of way design review meeting. A representative of the Consultant shall attend this meeting.

The plans must include the following:

- a. One set of plans (as described in project plans format).
- b. The legal descriptions. The Consultant shall provide the descriptions to the State in ASCII format.
- c. The Title Research performed by the Consultant with Tract Numbers labeled as "Tract Number" or "Not Needed" along the bottom of the form provided by the State.
- d. Titles must be organized from the beginning of the project to the end of the project in numerical order.

After the review meeting, the Consultant shall:

- a. Make all the necessary Revisions, Corrections, etc.
- b. Submit plan and legal description(s) for early acquisition(s), if required, by the scheduled date.
- c. Provide an updated title sheet (R-1) with tract numbers added.

The Consultant shall compute and record the area computations for:

- a. New R.O.W.
- b. Temporary easements.
- c. Permanent easements.
- d. Other (wetlands, railroad easements, etc.)

Note: Compute urban areas in square feet to nearest 0.01. Each time a revision is made after submittal of the right of way plans, the date of the revision will be shown in the lower right corner of the revised sheet(s) by using the revision stamp included in the cell library. Each time a revision to the plans is made, the Consultant shall submit updated versions of all affected CADD files to the LPA on CD or via electronic mail.

Exhibit B

Client: **City of Grand Island**
Project: **Walk to Walnut-Safe Routes to School Project**
Project Number: **SRTS-40(57), C.N. 42521**
TSA Project No: **5583001**
Date: **11/29/2011**

[illegible]

Exhibit B

Professional Fee Summary Sheet

Project Name:	Walk to Walnut-Safe Routes to School Project
Project Number:	SRTS-40(57), C.N. 42521
Agreement Type:	Actual Cost

Labor

Name & Title	Hours	Actual Rate/Hr.	Cost	Total
Steve Kathol, Principal-in-Charge	0	\$54.47	\$0.00	
Doug Holle, Project Manager	10	\$45.16	\$451.60	
Doug Holle, Designer	17	\$45.16	\$767.72	
Mark Lutjeharms, Traffic Engineer	0	\$45.68	\$0.00	
Marie Stamm, Environmental Specialist	0	\$35.14	\$0.00	
Terry Nocita, Engineering Technician	12	\$20.36	\$244.32	
Megan Stamer, Administration Support	0	\$19.50	\$0.00	
	39 Subtotal		\$1,463.64	
Direct Labor Subtotal				\$1,463.64
Overhead @ 180%				\$2,634.55
				\$4,098.19
Sub-Total Labor & Overhead				\$522.52
Profit: 12.75% of Subtotal				
Total Labor, Overhead & Profit				\$4,620.71
Other Direct Costs				
Sub-Consultants				
Surveying (Rockwell and Associates)			\$0.00	
Title Search			\$300.00	
	Subtotal		\$300.00	\$300.00
Reimbursable Expenses				
Printing (11 x 17 sheets) @ \$ Each			\$0.00	
Printing (24 x 36 s) 0 @ 1.50 Each			\$0.00	
Postage 1 L.S. @ \$0			\$0.00	
Mileage 0 Mile @ \$0.52/Mile			\$0.00	
	Subtotal		\$0.00	\$0.00

TOTAL ESTIMATED PROFESSIONAL FEES

\$4,920.71

Exhibit C

Project Schedule
Grand Island Walnut Middle School Project
SRTS-40(57)
CN 42521

Complete Title information December 23, 2011

Submit Right-of-way plans January 31, 2012 (assuming NTP received by January 15, 2012)

RESOLUTION
SUPPLEMENTAL ENGINEERING SERVICES AGREEMENT NO. 4

CITY OF GRAND ISLAND
Resolution No. _____

Whereas: City of Grand Island and The Schemmer Associates, Inc. have previously executed an Engineering Services Agreement for a transportation project for which the Local Public Agency (LPA) would like to obtain Federal funds;

Whereas: City of Grand Island understands that it must continue to strictly follow all Federal, State and local laws, rules, regulations, policies and guidelines applicable to the funding of this Federal-aid project; and

Whereas: City of Grand Island and The Schemmer Associates, Inc. wish to enter into a Supplemental Engineering Services Agreement setting out modifications and/or additional duties and/or funding responsibilities for the Federal-aid project.

Be It Resolved: by the City Council of the City of Grand Island that:

Jay Vavricek, Mayor of the City of Grand Island is hereby authorized to sign the attached Supplemental Engineering Services Agreement, Supplement Number 4 between the City of Grand Island and The Schemmer Associates, Inc.

City of Grand Island is committed to providing local funds for the project as required by the Project Program Agreement and any Supplemental Project Agreements.

NDOR Project Number: SRTS-40(57)

NDOR Control Number: 42521

NDOR Project Description: Grand Island Walnut Middle School

Adopted this _____ day of _____, 2011 at _____ Nebraska.

The City Council of the City of Grand Island

Board/Council Member _____
Moved the adoption of said resolution
Member _____ Seconded the Motion
Roll Call: _____ Yes _____ No _____ Abstained _____ Absent
Resolution adopted, signed and billed as adopted

Attest:

Clerk

RESOLUTION 2011-361

WHEREAS, on May 27, 2008, by Resolution 2008-147, the City Council of the City of Grand Island approved an agreement with The Schemmer Associates, Inc. of Lincoln, Nebraska, with Rockwell & Associates of Grand Island, Nebraska as a sub-consultant, in the amount of \$33,388.05, to perform design services for the Safe Routes to Schools Walk to Walnut Project; and

WHEREAS, on December 2, 2008, by Resolution 2008-340, the City Council for the City of Grand Island approved Amendment No. 1, in the amount of \$11,135.46, to the original agreement for consulting services to address impacts to resources developed with Land and Water Conservation funds as per Section 6(f) of the Land and Water Conservation Fund Act of 1965; and

WHEREAS, on May 24, 2011, by Resolution 2011-128, the City Council for the City of Grand Island approved Amendment No. 2, in the amount of \$26,785.81, to the original agreement for consulting services to address increased requirements for documenting and resolving environmental impacts and to convert existing plans to comply with Nebraska Department of Roads Construction Specifications; and

WHEREAS, July 12, 2011, by Resolution 2011-167, the City Council for the City of Grand Island approved Amendment No. 3 to the original agreement to provide for the work stipulated in Amendment No. 2 to be funded solely with LPA funds and to be non-participating for Federal Aid.

WHEREAS, it is necessary to amend the agreement for recently determined consulting services for work required prior to moving forward with acquisition of right-of-way ; and

WHEREAS, costs of the additional services shall not exceed \$4,920.71; with a total consulting service cost of \$76,230.03.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the amendment to the agreement with The Schemmer Associates, Inc. of Lincoln, Nebraska, with Rockwell & Associates of Grand Island, Nebraska as a sub-consultant is hereby approved.

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item I1

#2011-362 - Consideration of Request from GIPH Restaurants, LLC dba Pizza Hut, 707 North Diers Avenue for a Class “A” Liquor License and Liquor Manager Designation for Scott Kemery, 4156 Vermont Avenue

This item relates to the aforementioned Public Hearing item E-1.

Staff Contact: RaNae Edwards

RESOLUTION 2011-362

WHEREAS, an application was filed by GIPH Restaurants, LLC doing business as Pizza Hut, 707 North Diers Avenue for a Class "A" Liquor License; and

WHEREAS, a public hearing notice was published in the *Grand Island Independent* as required by state law on November 26, 2011; such publication cost being \$20.31; and

WHEREAS, a public hearing was held on December 6, 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 Scott Kemery, 4156 Vermont Avenue 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, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

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



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item I2

#2011-363 - Consideration of Request from GIPH Restaurants, LLC dba Pizza Hut, 1608 South Locust Street for a Class “A” Liquor License and Liquor Manager Designation for Scott Kemery, 4156 Vermont Avenue

This item relates to the aforementioned Public Hearing item E-2.

Staff Contact: RaNae Edwards

RESOLUTION 2011-363

WHEREAS, an application was filed by GIPH Restaurants, LLC doing business as Pizza Hut, 1608 South Locust Street for a Class "A" Liquor License; and

WHEREAS, a public hearing notice was published in the *Grand Island Independent* as required by state law on November 26, 2011; such publication cost being \$20.31; and

WHEREAS, a public hearing was held on December 6, 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 Scott Kemery, 4156 Vermont Avenue 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, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
December 1, 2011	☐ City Attorney



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item I3

#2011-364 - Approving Utilities Relocation Agreement with the Burlington Northern Santa Fe Railroad for Double Track Project

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director
Robert Sivick, City Attorney

Meeting: December 6, 2011

Subject: BNSF Double Track Project Master Utility Relocation Agreement

Item #'s: I-3

Presenter(s): Timothy Luchsinger, Utilities Director

Background

In 1993, Burlington Northern Railroad completed an elevated rail overpass to eliminate traffic conflicts caused by an at-grade crossing with the Union Pacific Railroad. In April of this year, the City was advised by BNSF that they were proceeding with a project to widen this overpass to a double track to alleviate traffic congestion as a result of multiple tracks reducing to a single track through Grand Island. As a result of this, multiple electrical, water, and sewer utility crossings by the City across BNSF right-of-way will need to be modified to accommodate the track improvement project. These modifications include either relocating utilities or encasement of the utilities to current railroad crossing standards. BNSF would also like to acquire portions of Utilities Department properties adjoining BNSF property south of the JBS facility and at the Burdick Station. Crossing agreements currently in place with BNSF require that utilities conflicts in railroad right-of-way be corrected at the City's expense. Relocations outside of railroad right-of-way and acquisition of City property are subject to negotiations regarding compensation.

Discussion

In order to expedite some of the logistic and regulatory processes needed to meet their project schedule, BNSF has offered to undertake the design and relocation of all utility crossings at their expense, in exchange for transfer of the required Utilities Department property and other considerations. Their proposed Master Utility Relocation Agreement is attached. The other considerations include the following.

- The City will cooperate and refrain from causing any delays and will grant any required construction approvals.

- The City will complete work, designated to be by the City, in accordance with the project schedule.
- The City will resolve any construction issues within two business days.
- The City will provide review of all utility design by the BNSF within one week.
- The City will execute standard crossing agreements for all utilities in BNSF right-of-way within six months.
- The City will provide all property rights and temporary construction easements within one month.
- The BNSF will acquire all property rights for relocating utilities outside of BNSF right-of-way, except where the City must exercise the right of eminent domain.

Subject to approval of the utility agreement, the BNSF will provide aesthetic treatment to the retaining wall that will be used on much of the project, to improve its appearance and reduce the impact of graffiti.

City staff has reviewed the BNSF Master Utility Relocation Agreement and recommends that the Mayor be authorized for its execution on the City's behalf.

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 BNSF Master Utility Relocation Agreement and authorize its execution by the Mayor.

Sample Motion

Move to approve the BNSF Master Utility Relocation Agreement and authorize its execution by the Mayor.



Todd M. Kuhn, PE
Manager Engineering

BNSF Railway Company
3700 Globeville Road
Denver, CO 80216

303-480-6582 (Office)
303-319-0542 (Cell)
Todd.Kuhn@bnsf.com

November 21, 2011

Robert J. Sivick
Grand Island City Attorney
Grand Island City Hall
100 East First Street
P.O. Box 1968
Grand Island, NE 68802

Dear Mr. Sivick:

As you know, BNSF Railway will be constructing a second main track through Grand Island alongside our existing single main track. Concrete retaining walls will be used to construct the new BNSF grade along the west side of our current right-of-way between the Union Pacific tracks and Capital Avenue. These retaining walls are necessary to avoid significant impacts to adjacent property owners. At the City's request, BNSF has reviewed the addition of an aesthetic treatment to these proposed walls. Pending City Council approval of the Master Utility Relocation Agreement on December 6, 2011, BNSF will include the below-described aesthetic treatment on our proposed retaining walls.

The aesthetic treatment will consist of casting the face of the retaining walls with a formliner that creates the appearance of a natural stacked stone wall. The Georgia Ashlar formliner has a relatively random, natural appearance, and the shallow depth of the aesthetic "mortar" lines will reduce the potential for wall climbing. Example photos of the wall appearance are attached to this letter.

Additionally, these retaining wall surfaces that are within the reach of vandals will be treated with a graffiti protection barrier. This product will be applied to the exposed concrete surfaces and will prevent paint from being absorbed into the voids of the concrete. Prevention of paint absorption results in easier cleanup of the concrete surfaces with minimal permanent staining from graffiti.

If you have any questions, please contact me at (303) 480-6582 or todd.kuhn@bnsf.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd M. Kuhn", followed by a long horizontal flourish.

Todd M. Kuhn, PE
Manager Engineering

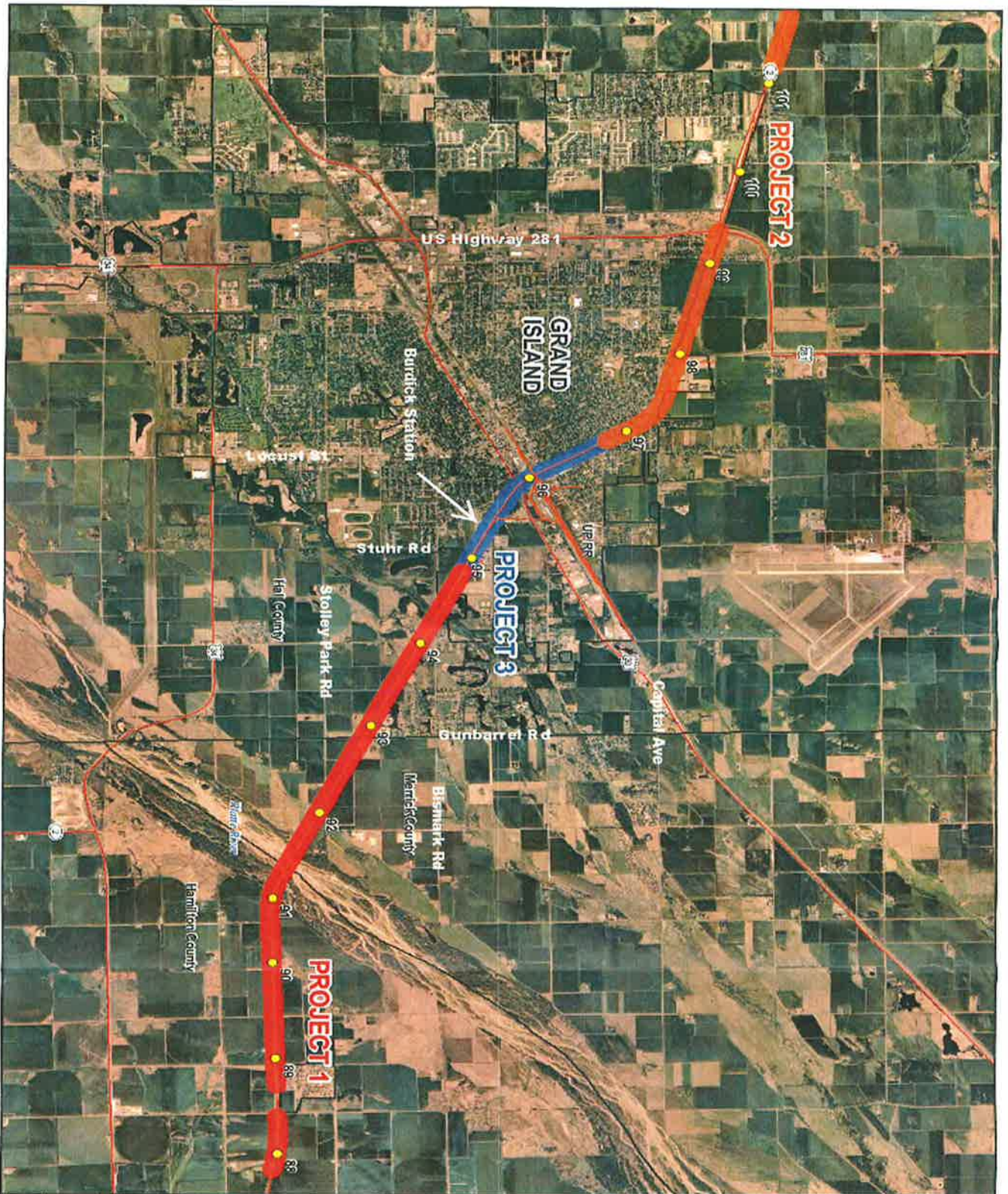
Attachments

Figure 1. Georgia Ashlar Formliner Appearance



Figure 2. Georgia Ashlar Cut Sheet Image





SHEET NO. OVERALL PROJECT EXHIBIT	SHEET TITLE:	SCALE: AS SHOWN 1" = 1 MILE	REVISIONS:	PHILLIPS TO McDONALD DOUBLE TRACK PROJECT (GRAND ISLAND) BNSF RAILWAY	CONSULTANTS:		







MASTER UTILITY RELOCATION AGREEMENT

THIS UTILITY RELOCATION AGREEMENT (this "Agreement") is entered into and effective as of this _____ day of _____, 20____ (the "Effective Date"), by and between the **CITY OF GRAND ISLAND, NEBRASKA** (the "City"), and **BNSF RAILWAY COMPANY**, a Delaware corporation ("BNSF").

RECITALS

- A.** BNSF plans to construct a second main track on the Ravenna Subdivision passing through Grand Island, Nebraska (the "Project").
- B.** BNSF has notified the City that certain of its utility facilities and appurtenances (the "Utilities") are in locational conflict with the Project and has requested that the City relocate the Utilities in order to accommodate the Project.
- C.** With respect to certain Utilities under permits obligating the City to undertake relocations and other Utilities without existing permits between the City and BNSF and/or its predecessors, BNSF desires to cause such relocations to occur at its cost.
- D.** Due to budgetary and other resource restraints, the City has been unable to relocate the Utilities; therefore, BNSF has requested that the City allow BNSF to undertake a relocation of the Utilities (the "Work") as necessary to accommodate the Project.
- E.** The parties desire to enter into this Agreement to outline their respective obligations regarding the cost and timely execution of the Work.

NOW, THEREFORE, for the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1) BNSF Obligations

- a) BNSF shall fund one hundred percent (100%) of the cost of the Work required by the Project and initiated after the Effective Date. The execution of this Agreement shall in no way impair preexisting agreements between the parties as to Work commenced prior to the Effective Date. The respective Work obligations of the parties are set forth on Exhibit A, which is attached hereto and incorporated by this reference. Funding obligations assumed by BNSF under this Section 1(a) shall also include funding for Work that the City is obligated to fund under the terms of existing utility permits between the parties as well as Utilities encroaching on BNSF property without permits. However, voluntary payment by BNSF for Work which it otherwise has no contractual payment obligation shall in

no way be construed as a waiver of any of its other rights with respect to the City under existing and future utility permits.

- b) Reimbursement to the City for Work completed by City forces shall be in accordance with the rate schedule set forth in Exhibit B, which is attached hereto and incorporated by this reference.
- c) For all Work funded by BNSF in accordance with subsection (a) above, BNSF shall be free to use a contractor of its choosing.

2) City Obligations

- a) The City agrees to cooperate in all respects with BNSF throughout the course of the Project and otherwise refrain from causing any delay in the execution of Work whatsoever. The City further agrees to grant BNSF any required construction approvals and acquire any third party approvals required for the Work under this Agreement.
- b) For Work which the City, using its own forces, agrees to complete in accordance with the schedule for Work set forth in Exhibit A, the City shall provide contact information for a primary and secondary representative for the purpose of coordinating such work with BNSF.
 - i. The City's representatives shall cooperate with BNSF and BNSF's contractor in the coordination of Work the City elects to perform with its own forces.
 - ii. In agreeing to the timing of the parties respective Work obligations to be contained in Exhibit A, the schedule for Work undertaken by the City shall in no way adversely affect the Work to be performed by BNSF's contractor.
 - iii. For any Work undertaken by the City on BNSF's right of way, the City shall pay for the cost of flagging services.
 - iv. In the event that the City fails to complete Work it elects to complete using its own forces in advance of the deadlines set forth in Exhibit A, BNSF shall have the right to complete such Work using its own contractor. Further, the City shall forfeit its right to reimbursement from BNSF under this Agreement to the extent of any Work not completed in accordance with the timelines set forth in Exhibit A.
- c) The City agrees to resolve any and all construction issues which may arise throughout the course of the Work within two business days of its initial receipt of notice of such issues from BNSF or BNSF's contractor. When giving the City notice of construction issues, BNSF shall also provide the City with its recommended resolution of such issue. In the event that the City fails to resolve any such construction issue within two business days, the City will be deemed to have concurred in the resolution of such issue recommended by BNSF.

- d) The City shall expeditiously review and approve all utility designs submitted by BNSF. The City further agrees to provide a one week turnaround time for review and approval of utility designs submitted to it by BNSF. In the event that the City has not completed its review and approval of any utility design within one week of its submission by BNSF, such design will be deemed approved by the City.
- e) No later than six (6) months following the execution of this Agreement, the City shall execute BNSF's standard Utility Crossing Agreement for (1) all Utilities to be relocated on BNSF property for which Utility Crossing Agreements exist and (2) all Utilities present and existing on BNSF property for which no Utility Crossing Agreements exist. Copies of BNSF's standard Utility Crossing Agreements, the forms of which depend on the particular type of Utility, are included as Exhibit E, which are attached hereto and incorporated by this reference.
- f) No later than one (1) month following the execution of this Agreement, the City shall provide, at no cost to BNSF, all necessary property rights for the completion of the Project, including but in no way limited to temporary construction easements. The locations of properties required by BNSF for the completion of the Project are set forth on Exhibit D, which is attached hereto and incorporated by reference.
- g) For Utilities to be relocated outside of BNSF's right of way, BNSF shall be primarily responsible for acquiring any and all property rights which the City needs but does not currently hold. Property rights to be acquired by BNSF under this subsection shall also include the right for BNSF and/or its agents to access properties for the purpose of completing Work hereunder. In the event that the acquisition of property rights under this subsection threatens to delay the Project for any reason, the City shall exercise its power of eminent domain in order to acquire necessary property rights.

3) Terms and Conditions of Existing Permits Govern

- a) To the extent not inconsistent with this Agreement, the terms and conditions of any and all existing utility permits between the parties shall continue in full force and effect. The execution of this Agreement by the parties will in no way, shape, or form alter or impair the current rights and obligations of the parties as set forth in those instruments, except for those changes made herein.
- b) For Utilities existing on BNSF property without Utility Crossing Agreements prior to the execution of this Agreement, BNSF hereby agrees that the Utility Crossing Agreements to be executed by the City shall in no way, shape, or form obligate the City to pay to BNSF any amount as a fee for the right to have such Utilities located on BNSF property.

4) Release and Indemnification

a) *Personal Injury and Property Damage Claims*

- i. The City agrees to release, indemnify, defend, and hold harmless BNSF, its officers, employees, agents, and contractors for all losses, damages, expenses, injuries, or death to the City, its employees, agents, and contractors, arising in any manner from the performance of this agreement, except to the extent of BNSF's gross negligence or intentional misconduct.
- ii. The City further agrees to release, indemnify, defend, and hold harmless BNSF, its officers, employees, agents, and contractors for all losses, damages, expenses, injuries, or death to any person, including BNSF, which arise in any manner from the construction, maintenance, relocation, use, state of repair, or presence of the Utilities.

b) *Utility Design and Utility Interruption Claims*

- i. The City agrees to release, indemnify, defend, and hold harmless BNSF, its officers, employees, agents, and contractors for any and all losses, damages, expenses, injuries, or death to any person arising from or relating to (i) the design of and/or function of Utilities undertaken by BNSF and/or its agents and (ii) service interruptions in any Utility, except to the extent caused by BNSF's gross negligence or misconduct.

5) Term and Termination; Survival

- a) This agreement shall remain in effect until the completion of the Project.
- b) The obligations set forth in Section 4 (release and indemnification) shall survive any termination of this agreement.

6) General

- a) *Counterparts*. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one agreement, but in making proof hereof it shall only be necessary to produce one such counterpart.
- b) *Assignments*.
 - i. The City may not assign its rights and obligations under this Agreement without the prior written consent of BNSF. All assignments made without the written consent of BNSF are VOID.
 - ii. BNSF may assign its rights or obligations under this agreement without the City's consent, but BNSF shall provide notice of such assignment to the City.
- c) *Modification*. This Agreement may be modified or amended only by a writing signed by each party hereto.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized representative.

THE CITY OF GRAND ISLAND, NEBRASKA

BNSF RAILWAY COMPANY

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Schedule of Exhibits

- Exhibit A – Project Timeline
- Exhibit B – City Reimbursement Schedule
- Exhibit C – (Reserved)
- Exhibit D – Additional Properties Required for Completion of the Project
- Exhibit E – Samples of BNSF's Standard Utility Crossing Agreements
 - Exhibit E-1 – Sample Supplemental Agreement
 - Exhibit E-2 – Sample Electrical License
 - Exhibit E-2 – Sample Pipeline License

Exhibit A

Project Timeline

**EXHIBIT A
PROJECT TIMELINE**

BNSF MILE POST	CITY UTILITY	WORK RESPONSIBILITY	SCHEDULED COMPLETION DATE
PROJECT 1			
**92.13	OH Power Line crossing AND perpendicular service on Kruse property	City	10/15/2011
**92.27	UDG 120/240 Power	City	10/15/2011
**92.58	UG power 120/240 volt xing tied to transformer	City	10/15/2011
92.77	Guy wire	City	1/6/2012
**94.02	OH Power, west R/W Shady Bend Rd; BNSF service drop; Pole relocation	City	10/30/2011
94.4	OH Power Line crossing	BNSF	3/1/2012
94.56	36" Sanitary Sewer Interceptor	BNSF	3/1/2012
94.62	OHD Power Line crossing	BNSF	3/1/2012
94.7	OHD Power Line crossing 115kV multi-wire 43' VCL	City	1/6/2012
94.71	0.75" Guy Wire Cable	BNSF	3/1/2012
94.89	OH Power Line crossing	BNSF	3/1/2012
94.97	OH Power Line crossing, pole & guy wire	BNSF	3/1/2012
94.94 - 95.12	Overhead Power Line parallel to and south of rail	BNSF	3/1/2012
94.40 - 95.44	Overhead Power Line parallel to and south of rail	BNSF	3/1/2012
94.42-95.39	Burdick Plant cooling water line from Bismark Rd. to Plant	BNSF	3/1/2012
PROJECT 2			
97.14	10" water main	BNSF	3/1/2012
97.3	Light Pole	City	1/6/2012
97.4	Power Pole	City	1/6/2012
97.82	13.8 kv 4 wire overhead power line	City	1/6/2012
97.96	6" Sanitary Sewer crossing at Broadwell Ave	BNSF	3/1/2012
97.96	6" Water Line crossing at Broadwell Ave	BNSF	3/1/2012
97.97	60" Storm Sewer crossing at Broadwell Ave	BNSF	3/1/2012
98.31	48" Storm sewer pipeline at Soldiers Home	BNSF	3/1/2012
99.06	20" Water Line crossing at Webb Road	BNSF	3/1/2012
97.14-96.9	10" Water main parallel to rail along Vine street 18-17th St.	BNSF	3/1/2012
PROJECT 3			
95.08	OH Power Line crossing 13.8 kv 40' VCL	BNSF	12/31/2012
95.16	20" water Line crossing at Stuhr Road	BNSF	12/31/2012
95.31	UDG Electric	BNSF	12/31/2012
95.33	24" Water Line crossing	BNSF	12/31/2012
95.37	30" Water Line crossing	BNSF	12/31/2012
95.39	36" Water Line crossing	BNSF	12/31/2012
95.39	24" Water Line crossing	BNSF	12/31/2012
95.4	30" CIP sanitary sewer	BNSF	12/31/2012
95.42	36" Water Line crossing	BNSF	12/31/2012
95.42	OH Power Line crossing	BNSF	12/31/2012
95.44	84" Storm Sewer crossing	BNSF	12/31/2012
95.46	34.5 kv overhead power	BNSF	12/31/2012
95.71	2 33kv overhead power crossings	BNSF	12/31/2012
95.9	10" Water Line crossing at 2nd Street	BNSF	12/31/2012
96.03	UGD Electric line crossing	BNSF	12/31/2012
96.05	30" Water Line crossing	BNSF	12/31/2012
96.05	6" Water Line crossing	BNSF	12/31/2012
96.15	8" CIP Sanitary Sewer	BNSF	12/31/2012
96.17	6" Water Line crossing at 4th Street	BNSF	12/31/2012
96.25	12" Sanitary Sewer Line crossing @ 5th Street	BNSF	12/31/2012
96.25	18" Water Line crossing @ 5th Street	BNSF	12/31/2012
96.26	UDG Electric	BNSF	12/31/2012
96.27	6" Water Line crossing at 5th Street	BNSF	12/31/2012
96.34	Power Cable	BNSF	12/31/2012
96.34	6" Water Line crossing at 8th Street	BNSF	12/31/2012
96.41	6" Water Line crossing at 7th Street	BNSF	12/31/2012
96.44	8" Sanitary Sewer Line	BNSF	12/31/2012
96.52	6" Water Line crossing at 9th Street	BNSF	12/31/2012
96.73	6" Water Line crossing	BNSF	12/31/2012
12th Street	6" Water Line crossing at 12th Street	BNSF	12/31/2012
7th & 8th Street	6" Water Line parallel between 7th St & 8th St.	BNSF	12/31/2012
96.60 - 97.07	10" Water Line parallel to and south of existing rail	BNSF	12/31/2012

** Utility work has been completed under prior utility relocation agreements

Exhibit B

City Reimbursement Schedule

EXHIBIT B
CITY REIMBURSEMENT SCHEDULE

BNSF MILE POST	CITY UTILITY (RELOCATION PERFORMED BY CITY)	TOTAL (Not to Exceed)	BNSF Cost	City Cost
**92.13	OH Power Line crossing AND perpendicular service on Kruse property	\$100,000.00	\$100,000.00	\$0.00
**92.27	UDG 120/240 Power	\$11,000.00	\$1,200.00	\$8,800.00
**92.58	UG power 120/240 volt xing tied to transformer	\$11,000.00	\$1,200.00	\$8,800.00
**94.02	OH Power, west R/W Shady Bend Rd; BNSF service drop; Pole relocation	\$20,000.00	\$13,334.00	\$6,666.00
	Totals from Prior Agreements	\$142,000.00	\$115,734.00	\$24,266.00
92.77	Guy wire	\$1,000.00	\$1,000.00	\$0.00
94.7	OHD Power Line crossing 115kV multi-wire 43' VCL	\$46,137.00	\$46,137.00	\$0.00
97.3	Light Pole	\$1,500.00	\$1,500.00	\$0.00
97.4	Power Pole	\$3,000.00	\$3,000.00	\$0.00
97.82	13.8 kv 4 wire overhead power line	\$6,000.00	\$6,000.00	\$0.00
	Totals Under This Master Agreement	\$57,637.00	\$57,637.00	\$0.00

Total BNSF Reimbursement to City for Work Performed Under This Master Agreement: \$57,637.00

** Utility work has been completed under prior utility relocation agreements

Exhibit C

(Reserved)

Exhibit D

Additional Properties Required for Completion of the Project

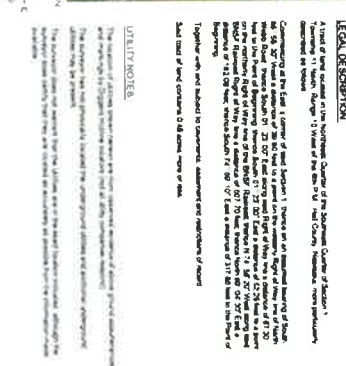
**City of Grand Island Master Agreement
Land Schedule**

<u>City Parcel</u>	<u>Acres</u>	<u>Est. Value/Acre</u>	<u>Est. FMV</u>
Parcel 04	0.48	\$5,000/Acre	\$ 2,400.00
Parcel 06	0.61	\$5,000/Acre	\$ 3,050.00
Parcel 07 (City Esmt See Industrial Add Plat)	0.22	\$5,000/Acre	\$ 1,100.00
Parcel 08	1.97	\$5,000/Acre	\$ 9,850.00
Parcel 35	1.40	\$5,000/Acre	\$ 7,000.00
Parcel 36	0.22	\$5,000/Acre	\$ 1,100.00
TOTAL	4.90	EST. TOTAL	\$ 24,500.00

COMPARABLE LAND SALES SUMMARY TABLE

<u>No.</u>	<u>Location</u>	<u>Sale Date</u>	<u>Price</u>	<u>Size in Acres</u>	<u>Price/ Acre</u>
1.	Near Old Potash Highway and 90th Road	12/28/2010	\$1,096,262	209.40	\$5,235
2.	NWC Schminner Drive and 90th Road	05/28/2010	\$796,000	156.70	\$5,080
3.	NEC Schimmer Road and 130th Street	05/05/2010	\$600,000	118.30	\$5,072
4.	NEC Airport Road and North Road	12/13/2010	\$826,038	196.76	\$4,198

CHD NO ISSUE



A total of 1000 samples of the *Artemia* Schrankii of the 1955-56 season were examined at the University of California, Berkeley, and were previously frozen at -10°C for 24 hours. The following table summarizes the results.

20 *area and boundaries of figure and line names granted to the Great West Life Company, received June 11, 1815 in Book 1, Page 136 assigned to the City of Oregon listed by assignment of August after received August 16, 1870 in Book 20 Page 715 records of Post County Indiana
(Alfreda The Public property - this problem)

1. Derivatives on the spot are determined in kind and deferred price through virtual observation.

[illegible]

- ☐ UNDERGROUND ELECTRICAL
- ☐ GAS LINE
- ☐ UNDERGROUND DATA
- ☐ OVERHEAD POWER
- ☐ WORM HOLE
- ☒ TELEPHONE PEDESTAL
- ☒ GAS METER



2	VAL 17
C10	SCALE 1700



LE GAZ DE SCRAP TIRON

[illegible]

UTILITY NOTES

The location of stations shown here are from a distance-sensitivity of station ground water-levels and are not necessarily the same as the location of the station. The location of stations shown here are from a distance-sensitivity of station ground water-levels and are not necessarily the same as the location of the station. The location of stations shown here are from a distance-sensitivity of station ground water-levels and are not necessarily the same as the location of the station.

ISOLATION OF THE POLYMER

- c. *Trans. and Comp. of C. Gaudet*, 1924, approved by the Reg. of Naturalization, recorded January 21, 1925 in Block 17, Page 175, returns of said County, Indiana. [Added to the subject property. Not published.]
- d. *Grants and Conveyances*, recorded and given in the Reg. and Declaration of Naturalization, recorded January 24, 1925 in Block 154, Page 446, returns of said County, Indiana. [Added to the subject property. Not published.]
- e. *Trans. and Comp. of Declaration No. 2555-247*, recorded November 6, 2000 on the 2000/2001/717, returns of said County, Indiana. [Added to the subject property. Not published.]

MISCELLANEOUS NOTES

3 No observable signs of aneurysms

SURVIVORS CERTIFICATION

© 2007 Wiley Periodicals, Inc. *Journal of Management Education* 31(10): 1169–1181, 2007
DOI: 10.1177/0095647207311169

Date: Aug 3 201

Don S. Johnson, Ed.

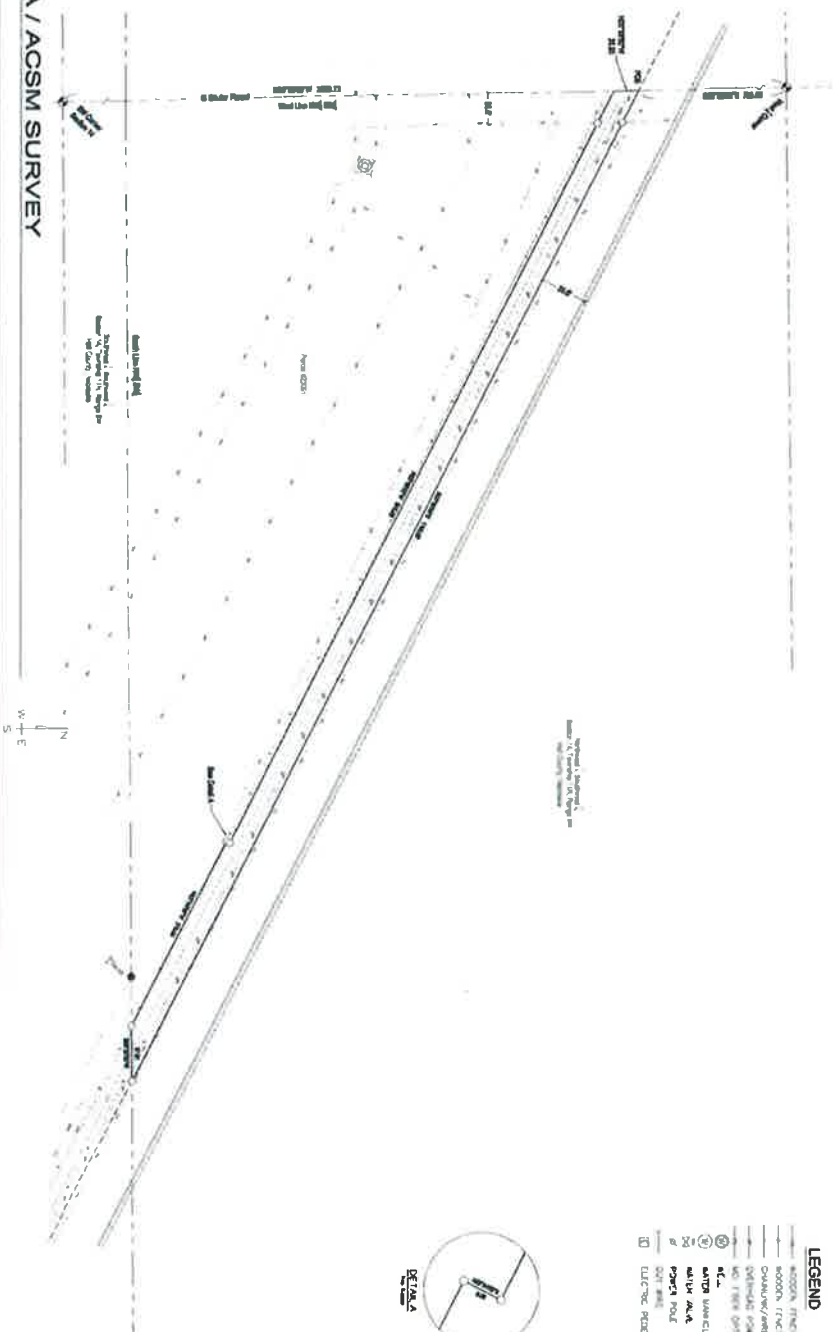
Intercept: 1.000000

LEGEND

- ☐ MODERN TRUCK
☐ CHAIRMAN/PAUL PENCE
☐ DISTRICT POLICE
☐ NO FREE ZONE
☒ **AL**
☐ WATER WHEEL
☐ MATHS ART
☐ POWER POLE
☐ OUT WEST
☒ **ELECTRIC PISTONAL**



ALTA / ACSM SURVEY





LEGAL DESCRIPTION

A trace of level located in the Backwaters Chapter of the Birmingham Chapter of Section 14 Township 11 North, Range 2 West of the 1st P. M. East Coast. *Hydrurus* were particularly abundant on salinity.

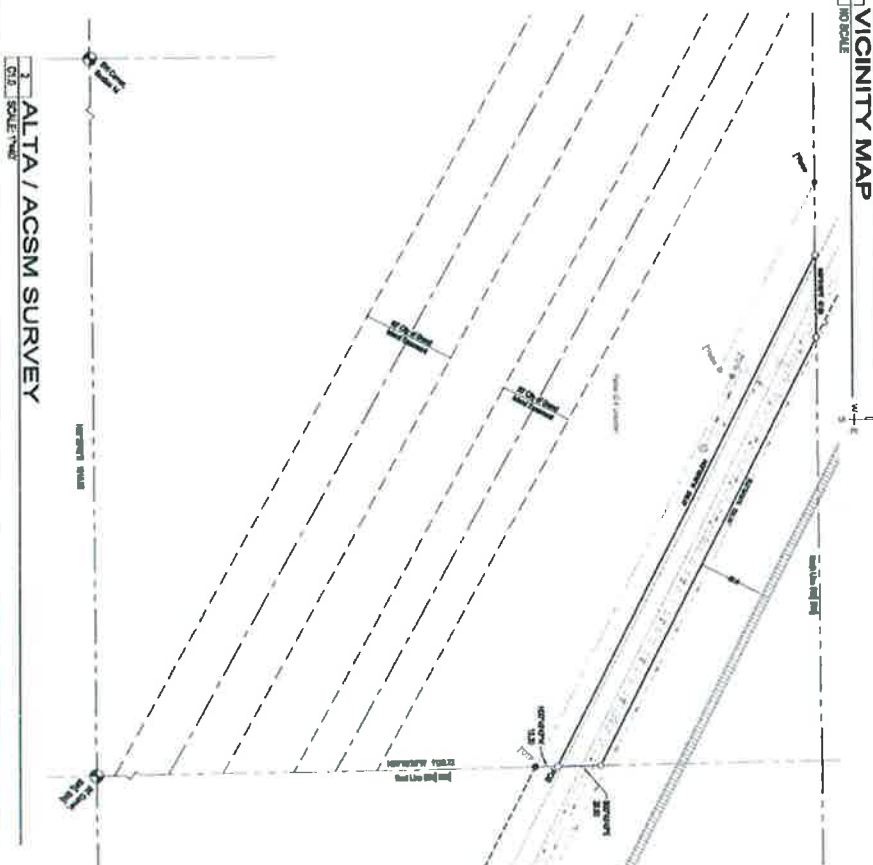
***Optimal care and balanced departmental assignments and workloads of nurses**

UTILITY NOTE

The collection of address information has not been obtained in a variety of above ground applications and managed by Dignitas Health's secure (not at all) computer system.)

The browser has no physically secured or atmospheric address and additional information address may be present.

The browser does not contain data that address are in the world location network, although the browser does carry that they are located at a company, as possible from the information under available.



LEGEND

- WOODEN FENCE
OVERHEAD POWER
NO FLOOR OPTIC
WELL
WATER MAIN-POLE
WATER VALVE
POWER POLE
CUR MARK
ELECTRIC PEDSTAL

MISCELLANEOUS NOTES

- 2 No identification signs of environmental impact

NOE DUAL-BEAM SPECTROMETER

[illegible]

Dated this ____ day of _____, 2011:

and 3. according to the following:
1. the number of the first and second
2. the number of the first and second
3. the number of the first and second

[illegible]

**ENGINEERING
& SURVEYING**

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Tel: 402.972.2000 • www.journalofnlp.com

**BNSF Right of Way
Acquisition
Hall County, Nebraska**



ALTA/ACSM
SURVEY
PARCEL UNKN

C1.0

VICINITY MAP
☐ 1
☐ G19 NO SCALE

1

LEAD DESCRIPTION

Key words: early and delayed life expectancy, environmental and occupational factors

SOCIAL-BEHAVIOR STUDIES

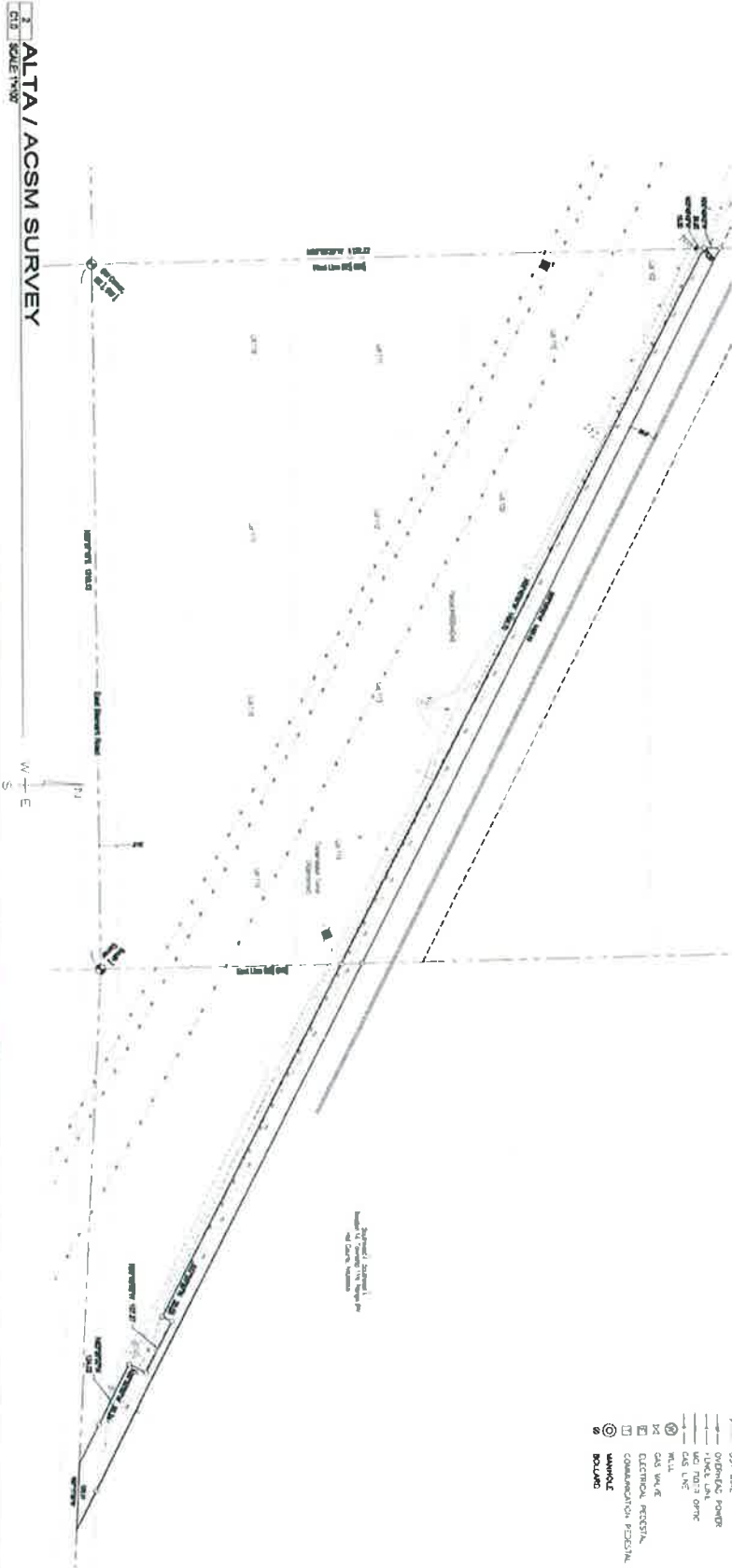
- [illegible]

SECTION 8 CENTER EQUATION

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LEGEND

- | | |
|----------------------|----------------------|
| POWER SOLE | POWER SOLE |
| CAR WARE | CAR WARE |
| OVERHEAT POWDER | OVERHEAT POWDER |
| FLAME LAMP | FLAME LAMP |
| WATER TIGHT OPTIC | WATER TIGHT OPTIC |
| CAS LINE | CAS LINE |
| WELL | WELL |
| CAS VALVE | CAS VALVE |
| ELECTRICAL PISTON | ELECTRICAL PISTON |
| COMMUNICATION PISTON | COMMUNICATION PISTON |
| WARRANTY | WARRANTY |
| BOLARD | BOLARD |



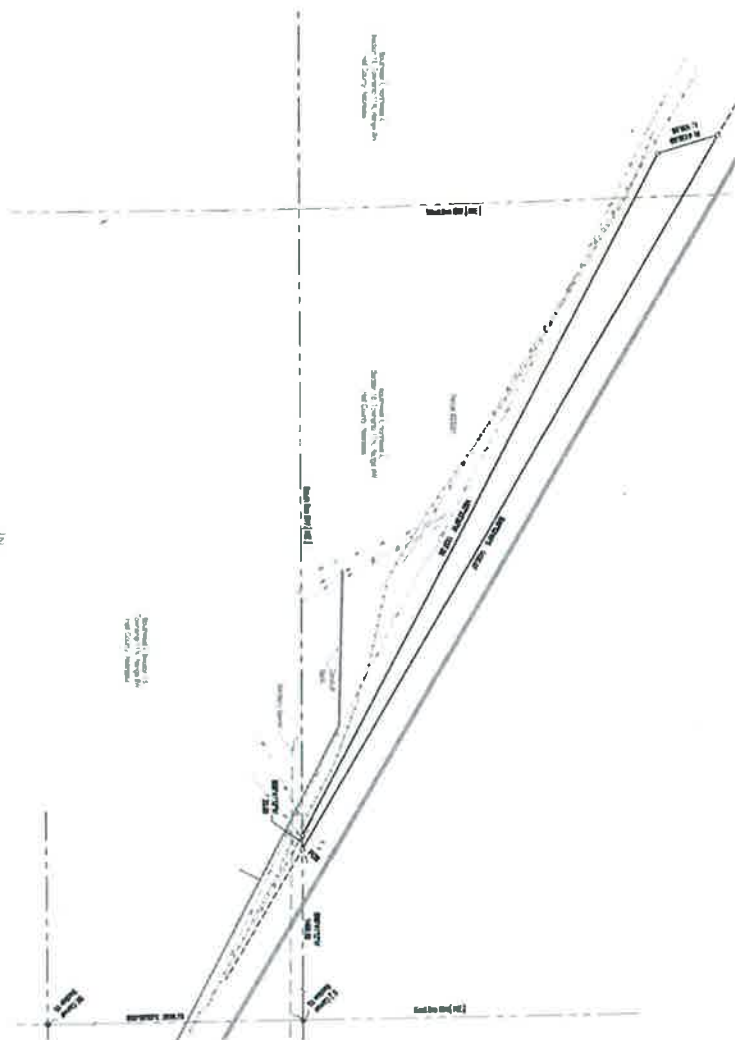
[illegible]

The analysis of *Salmonella* isolates from human origin contained evidence of *Salmonella* group A serotypes and serotypes for *Salmonella* isolates from food of other companies (regional).

[illegible][illegible]

1. Describing the first and second, as well as third party terrorist impact operations related
2. My educational degree of environmental

- ⑤ FIBER OPTIC WALT
- POWER POLE
- ◎ MANHOLE
- CUY WIRE
- GAS LINE
- DEFINED POWER
- WATER LINE
- INTERCOM & AL
- FIBER OPTIC LINE
- PHONE LINE



1	ALTA / ACSM SURVEY
C1.0	

SCALE: 1"=100'

C1.0

ALTA/ACSM
SURVEY
PARCEL 35



**BNSF Right of Way
Acquisition
Hall County, Nebraska**



RW ENGINEERING
& SURVEYING

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VICINITY MAP

[illegible]

LE GUL DE BOCRAPHION

A portion of Units A-1 and A-2 (hereinafter referred to as "Units A-1 and A-2") is located within the City of Grand Island, Nebraska. The portion of Units A-1 and A-2 located within the City of Grand Island, Nebraska, is hereby designated as follows:

UTILITY NOTES

Had input of local farmers 0.22 acres more or less

1000-0000/00/0000-0000\$05.00/0

UTILITY NOTES

Surveyor from 1977

The European Union officially banned the use of lead additives and leaded gasoline starting only in 1996.

WORLDWIDE SCIENCE

32. Terms and conditions of Ordinance No. 2024, approving the Dept of Industrial Relations, received January 27, 1983 in Book 11, Page 364, records of Hall County, Georgia.

MISCELLANEOUS NOTE

Journal of Management Inquiry 22(1) 3-17

⁴ Definitions for this grid are equivalent to that of the standard 10% standard deviation rules.

1. hereby assigns to British Railways Comm.

Memoranda "for circulation and to your Hon. Examiners and Judges, per : none surveyed on the ground the property highly doubtful whether that this part of survey is a true, correct and accurate drawing and representation of said property and the boundaries thereof that this did not show and the survey is taken in a total and complete accordance with the above description."

David Rosenbaum for ALTA/ACMA and "Big Surveys," in parts established and signed by ALTA and ACMA in 2010, and includes items 1, 4, 11b and 12 of ALTA's Survey and Audit for Accuracy Statement; 1a, established by ALTA and ACMA for the use of the Certification of Data Survey, as outlined above, and that is intended to clarify internal assessment of the recorded documents. Item 12, established by ALTA/ACMA, is the "Company Survey" effective date of February 27, 2011, and having a file number 00013704.

LEGEND

- ④ LOCK POLE
- ⑤ ELECTRIC BOX
- ⑥ FIBER OPTIC VALV.T
- ⑦ BOLLING
- ⑧ POWER POLE
- ⑨ VALVE
- ⑩ MANHOLE
- ⑪ CUT WIRE
- ⑫ WELL
- --- CS LINE
- --- OVERHEAD POWER
- --- WATER LINE
- --- UNDERGROUND ELEC
- --- FIBER OPTIC LINE
- --- PHONE LINE

Dated this _____ day of _____, 2014

Signed by me: _____
and countersigned by: _____
Clerk of Court

1	ALTA / ACSM SURVEY
2	SCALE: 1"=100'

[illegible]

C1.0

ALTA/ACSM
SURVEY
PARCEL 36

**BNSF Right of Way
Acquisition
Hall County, Nebraska**



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Exhibit E

Samples of BNSF's Standard Utility Crossing Agreements

Exhibit E-1

**Sample Supplemental Agreement
(amendment for any existing permit)**

SUPPLEMENTAL AGREEMENT

This **SUPPLEMENTAL AGREEMENT**, made this _____ day of _____, 2011, subject to the terms and conditions set forth in the original agreement, between **BNSF RAILWAY COMPANY**, a Delaware corporation, its successors and assigns, (hereinafter called "Licensor") and the **CITY OF GRAND ISLAND** (hereinafter called "Licensee").

RECITALS:

Licensor and Licensee are now parties to an agreement dated August 29, 1989, Licensor's Contract No. PX898039, together with any and all modifications, supplements and amendments thereto (hereinafter called "Original Contract"), relating to a 13.8 kV 30 power line.

AGREEMENT:

It is mutually agreed that the following modification(s) will be made to the Original Contract:

1. The Original Contract shall be modified as follows:

PREMISES. That property at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 94.02, shown by bold line upon the print no. 1-52739 dated September 7, 2011 marked "Exhibit A", attached hereto and made a part hereof ("Premises").

2.(a) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction, maintenance, and use of the Fiber Optic Line, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$800.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.

(b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-orientation program at the following Internet Website "<http://contractororientation.com>". This program must be completed no more than one year in advance of Licensee's entry on the Premises.

(c) Licensee shall notify Licensor's Engineer, Todd Kuhn at telephone 303-480-6582, at least five (5) business days prior to installation of the Electric Line and prior to entering the Premises for any subsequent maintenance thereon.

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$ 4,000,000 but in no event less than the amount otherwise carried by the Licensee. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
- ◆ Bodily Injury and Property Damage
 - ◆ Personal Injury and Advertising Injury
 - ◆ Fire legal liability
 - ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to *Licensors*.
- ◆ Additional insured endorsement in favor of and acceptable to *Licensors and Jones, Lang, LaSalle Global Services RR, Inc.*
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by *Licensors*.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to *Licensors* employees.

No other endorsements limiting coverage may be included on the policy.

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired
- ◆ Waiver of subrogation in favor of and acceptable to *Licensors*.
- ◆ Additional insured endorsement in favor or and acceptable to *Licensors*.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by *Licensors*.

- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:
- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee. This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
 - ◆ Waiver of subrogation in favor of and acceptable to *Licensors*.
- D. Railroad Protective Liability Insurance. This insurance shall name only the Licensors as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Electric Supply Line. **THE CONSTRUCTION OF THE ELECTRIC SUPPLY LINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Electric Supply Line is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
 - ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
 - ◆ No other endorsements restricting coverage may be added.
 - ◆ The original policy must be provided to the Licensors prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensors' Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$400.00.

- ☐ I elect to participate in Licensors' Blanket Policy;
- ☐ I elect not to participate in Licensors' Blanket Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Licensee agrees to waive its right of recovery against Licensors for all claims and suits against Licensors. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licensors for all claims and suits. The certificate of insurance must

reflect waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody or control.

Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing the Work, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall 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.

Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not

comply with this section shall not operate as a waiver of Licensee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

For purposes of this section, Licensor shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The insurance is procured from an underwriter of BNSF and the price is subject to change if the cost from the underwriter changes. Licensor will cover the RPLI cost for this relocation project under AFE# A110658.

3. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL AND SHALL CAUSE ITS CONTRACTOR TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**
- (i) THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
 - (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
 - (iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR

(v) 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,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

(b) FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 21(a), LICENSEE SHALL AND SHALL CAUSE ITS CONTRACTOR TO NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON THE STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE ELECTRIC SUPPLY LINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

(c) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR TO REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL

EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other 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, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

PERSONAL PROPERTY WAIVER

4. ALL PERSONAL PROPERTY OF LICENSEE, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

Except as herein modified, the Original Contract shall continue in full force and effect.

Staubach Global Services, Inc. is acting as representative for BNSF Railway Company.

IN WITNESS WHEREOF, this Supplemental Agreement has been duly executed in duplicate by the parties hereto as of the day and year first above written.

BNSF RAILWAY COMPANY

Jones Lang LaSalle Global Services RR, Inc., its Attorney
in Fact
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800

By: _____

Ed Darter
Vice President – National Accounts

CITY OF GRAND ISLAND

By: _____

Title: _____

Exhibit E-2

Sample Electrical License
(new permit for electrical or OH power)

**LICENSE FOR ELECTRIC SUPPLY LINE
ACROSS OR ALONG RAILWAY PROPERTY**

(Electric Light, Power Supply, Irrespective of Voltage, Overhead or Underground)

THIS LICENSE ("License"), made as of the ____ day of _____, 20__ ("Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and _____, a _____ corporation ("Licensee").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

[If changed to an Easement, globally change "License" to "Easement".]

GENERAL

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties including, without limitation, any leases, use rights, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to construct, maintain, and use in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process ("the Drawings and Specifications") an electric supply line containing a maximum of _____ conductors, together with its supporting or containing structures ("Electric Supply Line") across or along the premises of Licensor at or near the station of _____, County of _____, State of _____, Line Segment _____, Mile Post _____, shown by bold line upon the print No. _____, dated _____ marked "Exhibit A", attached hereto and made a part hereof ("Premises").
2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, Licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. Licensee shall use the Premises solely for construction, maintenance, and use of an Electric Supply Line in accordance with the Drawings and Specifications. Licensee shall not use the Premises for any other purpose. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.
4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Licensor shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.
5. Any contractors or subcontractors performing work on the Electric Supply Line or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

TERM

6. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

[If changed to a perpetual easement, replace with "Intentionally Deleted" and delete the heading "Term".]

COMPENSATION

7. (a) Licensee shall pay Licensor, prior to the Effective Date, the sum of _____ and No/100 Dollars (\$ _____) as compensation for the use of the Premises.
- (b) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction, maintenance, and use of the Electric Supply Line, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- (c) All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

COMPLIANCE WITH LAWS

8. (a) Licensee shall observe and comply with any and all laws, statutes, regulations,

ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance and use of the Electric Supply Line and the use of the Premises.

- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-orientation program at the following Internet Website "<http://contractororientation.com>". This program must be completed no more than one year in advance of Licensee's entry on the Premises.

DEFINITION OF COST AND EXPENSE

- 9. For the purpose of this License, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

RIGHT OF LICENSOR TO USE

- 10. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
 - (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
 - (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or
 - (c) to use the Premises in any manner as the Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 3 above.

LICENSEE'S OPERATIONS

- 11. (a) Licensee shall notify Licensor's Roadmaster, _____ at _____, telephone _____, at least five (5) business days prior to construction of the Electric Supply Line and prior to entering the Premises for any subsequent maintenance thereon.
- (b) In performing the work described in Section 3, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

12. (a) Licensee shall, at its sole cost and expense, construct and at all times maintain the Electric Supply Line in accordance with the National Electric Code.
- (b) If the operation or maintenance of said Electric Supply Line shall at any time cause interference, including but not limited to physical interference from electromagnetic induction, electrostatic induction, or from stray or other currents, with the facilities of the Licensor or of any lessee or Licensee of the Licensor, or in any manner interfere with the operation, maintenance, or use by the Licensor of its right-of-way, tracks, structures, pole lines, signal and communication lines, radio, or other equipment, devices, other property or appurtenances thereto, Licensee agrees immediately to make such changes in its Electric Supply Line and furnish such protective devices and/or replacement equipment to Licensor and its lessees or Licensees as shall be necessary, in the judgement of the Licensor's representative, to eliminate such interference. The cost of such protective devices and their installations shall be borne solely by Licensee. If any of the interference covered by this paragraph shall be, in the judgement of the Licensor, of such importance to the safety of the Licensor's operations as to require immediate corrective action, Licensee, upon notice from the Licensor, shall either, at the Licensor's election, cease using said Electric Supply Line for any purpose whatsoever and remove same, or reduce the voltage or load on said Electric Supply Line, or take such other interim protective measures as the Licensor may deem advisable, until the protective devices and/or replacement equipment required by this paragraph have been installed, put in operation, tested, and found to be satisfactory to correct the interference.
13. (a) Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- (b) Licensee shall, at its sole cost and expense, and subject to the supervision of Licensor's Roadmaster, locate, construct and maintain the Electric Supply Line in such a manner and of such material that it will not at any time be a source of danger to or interference with the existence or use of present or future tracks,

roadbed or property of Licensor, or the safe operation and activities of its railroad. Further, the Electric Supply Line shall be constructed, installed and maintained in conformity with the plans and specifications shown on the print attached hereto as Exhibit A and made a part hereof (which, if present, are to be deemed part of the Drawings and Specifications). Licensor may direct one of its field engineers to observe or inspect the construction and/or maintenance of the Electric Supply Line at any time for compliance with the Drawings and Specifications. If ordered at any time to halt construction or maintenance of the Electric Supply Line by Licensor's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Electric Supply Line, it being solely Licensee's responsibility to ensure that the Electric Supply Line is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by Licensor to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, upon receipt of an invoice for the same. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

14. Licensee shall, at its sole cost and expense, remove all combustible material from around wooden poles and will at all times keep the space around such poles free of such material, and if removal of such combustible material shall not be attended to within fifteen (15) days after having been requested by Licensor to do so, Licensor shall have the right itself to perform the work and Licensee hereby agrees to reimburse Licensor for the expense so incurred.
15. During the construction and any subsequent maintenance performed on Electric Supply Line, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. The construction of the Electric Supply Line shall be completed within one (1) year of the Effective Date. Upon completion of the construction of the Electric Supply Line and after performing any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore Licensor's premises to their former state as of the Effective Date of this License.
16. If at any time during the term of this License, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Electric Supply Line, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Electric Supply Line as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without

limitation, the relocation of the existing or the construction of new a Electric Supply Line.

17. (a) Prior to Licensee conducting any boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, the Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested construction of the Electric Supply Line, Licensor will provide Licensee any information that Licensor's Engineering Department has in its possession concerning the existence and approximate location of Licensor's underground utilities and pipelines at or near the vicinity of the proposed Electric Supply Line. Prior to conducting any such boring work, the Licensee will review all such material. Licensor does not warrant the accuracy of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.
 - (b) For all bores greater than 26-inch diameter' and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by the Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
18. Any open hole, boring or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
 - (a) filled in to surrounding ground level with compacted bentonite grout; or
 - (b) otherwise secured or retired in accordance with any applicable Legal Requirement. All excavated materials shall not remain on Licensor's property for more than ten (10) days and shall be properly disposed of by Licensee in accordance with applicable Legal Requirements.

19. Upon termination of this License, Licensee shall, at its sole cost and expense:
- (a) remove all of its equipment from the Premises;
 - (b) remove the Electric Supply Line at Licensor's sole discretion;
 - (c) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
 - (d) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
 - (e) leave the Premises in the condition which existed as of the Effective Date of this License.
20. Licensee's on-site supervision shall retain/maintain a fully-executed copy of this License at all times while on the Premises.

LIABILITY

*****Use bracketed language when dealing with a governmental entity**

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL [AND SHALL CAUSE ITS CONTRACTOR TO] RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**
- (i) THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
 - (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**

(iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR

(v) 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,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

(b) FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 21(a), LICENSEE SHALL [AND SHALL CAUSE ITS CONTRACTOR TO] NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON THE STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE ELECTRIC SUPPLY LINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

(c) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, [AND SHALL CAUSE ITS CONTRACTOR TO] REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS

THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee 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 Indemnatee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

PERSONAL PROPERTY WAIVER

- 22. ALL PERSONAL PROPERTY OF LICENSEE, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

INSURANCE

- 23. Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:**
- A. Commercial General Liability Insurance.** This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$ 4,000,000 but in no event less than the amount otherwise carried by the Licensee. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
- ◆ Bodily Injury and Property Damage
 - ◆ Personal Injury and Advertising Injury
 - ◆ Fire legal liability

- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to *Licensors*.
- ◆ Additional insured endorsement in favor of and acceptable to *Licensors and Jones, Lang, LaSalle Global Services RR, Inc.*
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by *Licensors*.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to *Licensors* employees.

No other endorsements limiting coverage may be included on the policy.

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired
- ◆ Waiver of subrogation in favor of and acceptable to *Licensors*.
- ◆ Additional insured endorsement in favor of and acceptable to *Licensors*.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by *Licensors*.

[[**OPTIONAL: ADD SECTION C. IF NO EMPLOYEES]]

- C. Licensee hereby agrees to waive any Workers' Compensation subrogation claims, liens, or demands, which could be asserted against *Licensors* by the Licensee, and further agrees to indemnify and save harmless *Licensors* and its employees, regardless of *Licensors*' negligence, for any and all Workers' Compensation subrogation claims, liens, or demands asserted by the Licensee's agents or employees, or the Licensee's insurance carrier.

[[**OPTIONAL: ADD SECTION C. IF EMPLOYEES]]

- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:
- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.

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

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to *Licensors*.

D. Railroad Protective Liability Insurance. This insurance shall name only the Licensors as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Electric Supply Line. **THE CONSTRUCTION OF THE ELECTRIC SUPPLY LINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Electric Supply Line is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the Licensors prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensors' Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$_____.

- ☐ I elect to participate in Licensors' Blanket Policy;
- ☐ I elect not to participate in Licensors' Blanket Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Licensee agrees to waive its right of recovery against Licensors for all claims and suits against Licensors. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licensors for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensors for loss of its owned or leased property or property under its care, custody or control.

Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing the Work, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall 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.

Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including,

without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

For purposes of this section, Licensor shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

ENVIRONMENTAL

24. (a) Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- (b) Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- (c) In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Electric supply Line which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- (d) Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

ALTERATIONS

25. Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensors prior written consent.

NO WARRANTIES

26. LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

QUIET ENJOYMENT

27. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

DEFAULT

28. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this License by operation of law, Licensors may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Any waiver by Licensors of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensors ability to enforce any Section of this License. The remedy set forth in this Section 28 shall be in addition to, and not in limitation of, any other remedies that Licensors may have at law or in equity.

LIENS AND CHARGES

29. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensors is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensors to take any such action shall not relieve Licensee of any obligation or liability under this Section 29 or any other Section of this License. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any

governmental or quasi-governmental body or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

TERMINATION

30. This License may be terminated by Licensor, at any time, by serving thirty (30) days' written notice of termination upon Licensee. This License may be terminated by Licensee upon execution of Licensor's Mutual Termination Letter Agreement then in effect. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.

[If changed to an easement, replace § 30 with the following language:

If at any time Licensee fails to properly perform its obligations under this Easement, Licensor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, (ii) terminate this Easement if Licensee fails to perform such obligation within 30 days after written notice thereof from Licensor to Licensee, or (iii) at Licensee's sole cost, arrange for the performance of such work as Licensor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Licensor, or anyone or anything present on the rail corridor or property with the authority of permission of Licensor. Licensee shall promptly reimburse Licensor for all costs of work performed on Licensee's behalf upon receipt of an invoice for such costs. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation set forth in this Easement.]

31. If Licensee fails to surrender to Licensor the Premises, upon any termination of this License, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

[If changed to an easement, replace § 31 with the following language:

- 31(a) Removal of Improvements and Restoration. Upon termination of this Easement, whether by abandonment of the Easement or by the exercise of Licensor's termination rights hereunder, Licensee shall, at its sole cost and expense, immediately perform the following:**

- (i) remove all of Licensee's Improvements and all appurtenances thereto from the Premises at Licensor's sole discretion;**
- (ii) repair and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;**
- (iii) remedy and unsafe conditions on the Premises created or aggravated by**

Licensee; and

(iv) leave the Premises in the condition which existed as of the Effective Date.

(b) Limited License for Entry. If this Easement is terminated, Licenser may direct Licensee to undertake one or more of the actions set forth above, at Licensee's sole cost, in which case Licensee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Licenser. The terms of this limited license include all of Licensee's obligations under this Easement. Termination will not release Licensee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee's Improvements, if any, are removed and the Premises is restored to its condition as of the Effective Date. If Licensee fails to surrender the Premises to Licenser upon any termination of the Easement, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises is surrendered.]

ASSIGNMENT

32. Neither Licensee, nor the heirs, legal representatives, successors, or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this License or any interest herein, without the prior written consent and approval of Licenser, which may be withheld in Licenser's sole discretion.

[If changed to an easement, replace with following language:

No assignment of Licensee's rights hereunder shall be effective unless the proposed assignee assumes in writing all of Licensee's obligations under this Easement. Subject to the foregoing, this Easement shall inure to the benefit of and be binding upon Licenser and Licensee's successors and assigns.]

NOTICES

33. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licenser: Jones Lang LaSalle Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB-3
Fort Worth, TX 76131
Attn: _____ - Land Revenue Management

[[with a copy to: FILL IN ADDITIONAL ADDRESS OF REGIONAL JONES
LANG LASALLE OFFICE IF DOCUMENT IS ORIGINATING
FROM THAT OFFICE**]]**

If to Licensee: _____

SURVIVAL

34. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Electric Supply Line and improvements are removed and the Premises are restored to its condition as of the Effective Date.

RECORDATION

35. It is understood and agreed that this License shall not be placed on public record.

[If changed to an easement, add the following sentence: A memorandum of this Easement may be recorded at either party's written request.]

APPLICABLE LAW

36. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the state of Texas without regard to conflicts of law provisions.

[If changed to an easement, then replace with following:

All questions concerning any interest in real property created or affected by this Easement shall be governed by the law of the state in which the Premises are located, all other questions concerning the interpretation or application of provisions of this Easement shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.]

SEVERABILITY

37. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

INTEGRATION

38. This License is the full and complete agreement between Licensors and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensors harmless in any prior written agreement between the parties.

MISCELLANEOUS

39. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
40. The waiver by Licensors of the breach of any provision herein by Licensee shall in no way impair the right of Licensors to enforce that provision for any subsequent breach thereof.

*******USE ONLY FOR NEW MEXICO*******

41. In conformance with and limited to the applicable effect of the Laws of 1971 (Ch. 107, Sec. 1, Laws of New Mexico § 56-7-1 N.M.S.A., 1978), insofar as the indemnity provisions set forth in any of the preceding sections or any rider, amendment or addendum hereto, to indemnify any Indemnatee, or the agents or employees of any Indemnatee, or any legal entity for whose negligence, acts or omissions any of them may be liable, from liability, claims, damages, losses or expenses, including attorney fees, arising out of, in whole or in part, the negligence of any Indemnatee, or of the agents or employees of any Indemnatee, or of any legal entity for whose negligence, acts or omissions any of them may be liable for, such indemnity provisions shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of:
- (a) The preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications by any Indemnatee, or the agents or employees of any Indemnatee; or
 - (b) The giving of or the failure to give directions or instructions by any Indemnatee, or the agents or employees of any Indemnatee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to rail corridor.

[Intentionally left blank]

Jones Lang LaSalle Global Services – RR, Inc. is acting as representative for BNSF Railway Company.

IN WITNESS WHEREOF, this License has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

BNSF RAILWAY COMPANY

Jones Lang LaSalle Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800

By: _____
_____, _____

**&LICENSEE&
&ADDRESS&**

By: _____

Title: _____

Exhibit E-3

Sample Pipeline License
(new permit for water, sewer, or storm water lines)

PIPELINE LICENSE

THIS LICENSE ("License"), made as of the ____ day of _____, 20__ ("Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and _____, a _____ corporation ("Licensee").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

[If changed to an Easement, globally change "License" to "Easement".]

GENERAL

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "Drawings and Specifications"), _____ (__) Pipeline(s), _____ inches in diameter inside a _____ [Size of Casing Pipe] inch _____ [Casing Material] casing ("PIPELINE"), across or along the rail corridor of Licensor at or near the station of _____, County of _____, State of _____, Line Segment _____, Mile Post _____ as shown on the attached Drawing No. _____, dated _____, attached hereto as Exhibit "A" and made a part hereof ("Premises").
2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, Licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. Licensee shall use the Premises solely for construction and maintenance of a PIPELINE in accordance with the Drawings and Specifications carrying _____. Licensee shall not use the PIPELINE to carry any other commodity or use the Premises for any other purpose.

Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the PIPELINE on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in such compliance. Should Licensee not comply fully with the above-stated obligations of this Section, notwithstanding anything contained in any other provision hereof, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee. Upon termination, Licensee shall remove the PIPELINE and restore Licensor's property as herein elsewhere provided.

4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or for any damage Licensee sustains in connection therewith.
5. Any contractors or subcontractors performing work on the PIPELINE or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

TERM

6. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

[If changed to a perpetual easement, replace with "Intentionally Deleted" and delete the heading "Term".]

COMPENSATION

7. (a) Licensee shall pay Licensor, prior to the Effective Date, the sum of _____ and No/100 Dollars (\$) _____ as compensation for the use of the Premises.
- (b) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the PIPELINE, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- (c) All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual

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rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

COMPLIANCE WITH LAWS

8. (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance, and use of the PIPELINE and the use of the Premises.
- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-orientation program at the following Internet Website "<http://contractororientation.com>". This program must be completed no more than one year in advance of Licensee's entry on the Premises.

DEFINITION OF COST AND EXPENSE

9. For the purpose of this License, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

RIGHT OF LICENSOR TO USE

10. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
 - (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
 - (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or
 - (c) to use the Premises in any manner as the Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 3 above.

LICENSEE'S OPERATIONS

11. (a) Licensee shall notify Licensor's Roadmaster, _____ at _____, telephone _____, at least five (5) business days prior to installation of the PIPELINE and prior to entering the Premises for any subsequent maintenance thereon.
- (b) In performing the work described in Section 3, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
12. (a) Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- (b) Licensee shall, at its sole cost and expense, construct and maintain the PIPELINE in such a manner and of such material that it will not at any time be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. Licensor may direct one of its field engineers to observe or inspect the construction and/or maintenance of the PIPELINE at any time for compliance with the Drawings and Specifications. If ordered at any time to halt construction or maintenance of the PIPELINE by Licensor's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the PIPELINE, it being solely Licensee's responsibility to ensure that the PIPELINE is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by Licensor to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse

Licensors for all costs and expenses of such work, upon receipt of an invoice for the same. Licensors failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

13. During the construction and any subsequent maintenance performed on the PIPELINE, Licensee shall perform such work in a manner to preclude damage to the property of Licensors, and preclude interference with the operation of its railroad. The construction of the PIPELINE shall be completed within one (1) year of the Effective Date. Upon completion of the construction of the PIPELINE and after performing any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore Licensors Premises to their former state as of the Effective Date of this License.
14. If at any time during the term of this License, Licensors shall desire the use of its rail corridor in such a manner as would, in Licensors reasonable opinion, be interfered with by the PIPELINE, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensors to such effect, make such changes in the PIPELINE as in the sole discretion of Licensors may be necessary to avoid interference with the proposed use of Licensors rail corridor, including, without limitation, the relocation of the existing or the construction of new a PIPELINE(s).
15. (a) Prior to Licensee conducting any boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, the Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensees written request, which shall be made thirty (30) business days in advance of Licensees requested construction of the PIPELINE, Licensors will provide Licensee any information that Licensors has in the possession of its Engineering Department concerning the existence and approximate location of Licensors underground utilities and pipelines at or near the vicinity of the proposed PIPELINE. Prior to conducting any such boring work, the Licensee will review all such material. Licensors does not warrant the accuracy or completeness of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.
- (b) For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by the Licensee and reviewed by Licensors prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensors reasonable opinion that granular material is present, Licensors may select a new location for Licensee's use, or may require Licensee to furnish for Licensors review and

approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

16. Any open hole, boring or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
 - (a) filled in to surrounding ground level with compacted bentonite grout; or
 - (b) otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.
17. Upon termination of this License, Licensee shall, at its sole cost and expense:
 - (a) remove the PIPELINE and all appurtenances thereto, or, at the sole discretion of the Licensor, fill and cap or otherwise appropriately decommission the PIPELINE with a method satisfactory to Licensor;
 - (b) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
 - (c) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
 - (d) leave the Premises in the condition which existed as of the Effective Date of this License.
18. Licensee's on-site supervisions shall retain/maintain a fully executed copy of this License at all times while on the Premises.

LIABILITY

*****Use bracketed language when dealing with a governmental entity**

19. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL [AND SHALL CAUSE ITS CONTRACTOR TO] RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES,**

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LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

(i) THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,

(ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,

(iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR

(v) 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,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

(b) FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 19(a), LICENSEE SHALL [AND SHALL CAUSE ITS CONTRACTOR TO] NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON THE STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PIPELINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND

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AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

- (c) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, [AND SHALL CAUSE ITS CONTRACTOR TO AGREE] REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.
- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee 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 Indemnatee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

PERSONAL PROPERTY WAIVER

- 20. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF,

**WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE
OF ANY INDEMNITEE.**

INSURANCE

21. Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the Licensee. . Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to *Licensors*.
- ◆ Additional insured endorsement in favor of and acceptable to *Licensors and Jones, Lang, LaSalle Global Services RR, Inc.*
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by *Licensors*.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to *Licensors* employees.

No other endorsements limiting coverage may be included on the policy.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired
- ◆ Waiver of subrogation in favor of and acceptable to *Licensors*.
- ◆ Additional insured endorsement in favor of and acceptable to *Licensors*.
- ◆ Separation of insureds.

- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by *Licensors*.

[OPTIONAL: ADD SECTION C. IF NO EMPLOYEES]**

- C. Contractor hereby agrees to waive any Workers' Compensation subrogation claims, liens, or demands, which could be asserted against Railroad by the Contractor, and further agrees to indemnify and save harmless Railroad and its employees, regardless of Railroad's negligence, for any and all Workers' Compensation subrogation claims, liens, or demands asserted by the Contractor's agents or employees, or the Contractor's insurance carrier.

[OPTIONAL: ADD SECTION C. IF EMPLOYEES]**

- C. **Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:**
- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Licensors
- D. **Railroad Protective Liability Insurance. This insurance shall name only the Licensors as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the PIPELINE. THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the PIPELINE is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
 - ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
 - ◆ No other endorsements restricting coverage may be added.
 - ◆ The original policy must be provided to the Licensors prior to performing any work or services under this Agreement.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$_____.

- ☐ I elect to participate in Licensor's Blanket Policy;
- ☐ I elect not to participate in Licensor's Blanket Policy.

HE B N L SE NE F LL S RE RE N HE F R N E

E. Contractor's Pollution Legal Liability (CPL) Insurance. This insurance shall be in an amount of at least FIVE MILLION DOLLARS (\$5,000,000) per occurrence and TEN MILLION DOLLARS (\$10,000,000) in the aggregate including but not limited to coverage for the following:

- ◆ bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death;
- ◆ property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- ◆ defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- ◆ Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in BODILY INJURY, PROPERTY DAMAGE, or Remediation Expense.
- ◆ If coverage is purchased on a "claims made" basis, lessee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation, or termination of this contract. Annually contractor agrees to provide evidence of such coverage as required hereunder.
- ◆ Delete any bodily injury exclusions resulting from lead or asbestos.
- ◆ Amend the Contractual Liability exclusions and employers' liability exclusion to provide coverage for liability assumed under contract.
- ◆ Amend the definition of Property Damage to provide coverage for natural resource damage.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licensor for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody, or control.

Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing the Work, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving Railroad arising out of this agreement, Licensee will make available any required policy covering such claim or lawsuit.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall

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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.

Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

For purposes of this section, Licensor shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

ENVIRONMENTAL

22. (a) Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- (b) Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- (c) In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the PIPELINE which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

- (d) Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

ALTERATIONS

23. Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

NO WARRANTIES

24. **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

QUIET ENJOYMENT

25. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

DEFAULT

26. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this License by operation of law, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 26 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

LIENS AND CHARGES

27. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensors is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensors to take any such action shall not relieve Licensee of any obligation or liability under this Section 27 or any other Section of this License. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Licensors or the Premises that are attributable to the Improvements.

TERMINATION

28. This License may be terminated by Licensors, at any time, by serving thirty (30) days' written notice of termination upon Licensee. This License may be terminated by Licensee upon execution of Licensors's Mutual Termination Letter Agreement then in effect. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.

[If changed to an easement, replace § 28 with the following language:

If at any time Licensee fails to properly perform its obligations under this Easement, Licensors, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, (ii) terminate this Easement if Licensee fails to perform such obligation within 30 days after written notice thereof from Licensors to Licensee, or (iii) at Licensee's sole cost, arrange for the performance of such work as Licensors deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Licensors, or anyone or anything present on the rail corridor or property with the authority of permission of Licensors. Licensee shall promptly reimburse Licensors for all costs of work performed on Licensee's behalf upon receipt of an invoice for such costs. Licensors's failure to perform any obligations of Licensee shall not alter the liability allocation set forth in this Easement.]

29. If Licensee fails to surrender to Licensors the Premises, upon any termination of this License, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

[If changed to an easement, replace § 29 with the following language:

- 29(a) Removal of Improvements and Restoration. Upon termination of this Easement, whether by abandonment of the Easement or by the exercise of Licensors's termination rights hereunder, Licensee shall, at its sole cost and expense, immediately perform the following:**

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- (i) remove all of Licensee's Improvements and all appurtenances thereto from the Premises at Licensors sole discretion;
 - (ii) repair and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
 - (iii) remedy and unsafe conditions on the Premises created or aggravated by Licensee; and
 - (iv) leave the Premises in the condition which existed as of the Effective Date.
- (b) **Limited License for Entry.** If this Easement is terminated, Licensors may direct Licensee to undertake one or more of the actions set forth above, at Licensee's sole cost, in which case Licensee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Licensors. The terms of this limited license include all of Licensee's obligations under this Easement. Termination will not release Licensee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee's Improvements, if any, are removed and the Premises is restored to its condition as of the Effective Date. If Licensee fails to surrender the Premises to Licensors upon any termination of the Easement, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises is surrendered.]

ASSIGNMENT

30. Neither Licensee, nor the heirs, legal representatives, successors, or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this License or any interest herein, without the prior written consent and approval of Licensors, which may be withheld in Licensors sole discretion.

[If changed to an easement, replace with following language:

No assignment of Licensee's rights hereunder shall be effective unless the proposed assignee assumes in writing all of Licensee's obligations under this Easement. Subject to the foregoing, this Easement shall inure to the benefit of and be binding upon Licensors and Licensee's successors and assigns.]

NOTICES

31. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address

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as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

[[**with a copy to: **FILL IN ADDITIONAL ADDRESS OF REGIONAL JONES LANG LASALLE OFFICE IF DOCUMENT IS ORIGINATING FROM THAT OFFICE**]]**

If to Licensee: _____

SURVIVAL

32. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the PIPELINE and improvements are removed and the Premises are restored to its condition as of the Effective Date.

RECORDATION

33. It is understood and agreed that this License shall not be placed on public record.

[If changed to an easement, add the following sentence: A memorandum of this Easement may be recorded at either party's written request.]

APPLICABLE LAW

34. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

[If changed to an easement, then replace with following language:

All questions concerning any interest in real property created or affected by this Easement shall be governed by the law of the state in which the Premises are located, all other questions concerning the interpretation or application of provisions of this Easement shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.]

SEVERABILITY

35. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

INTEGRATION

36. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

MISCELLANEOUS

37. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
38. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

*******USE ONLY FOR NEW MEXICO*******

39. In conformance with and limited to the applicable effect of the Laws of 1971 (Ch. 107, Sec. 1, Laws of New Mexico § 56-7-1 N.M.S.A., 1978), insofar as the indemnity provisions set forth in any of the preceding sections or any rider, amendment or addendum hereto, to indemnify any Indemnatee, or the agents or employees of any Indemnatee, or any legal entity for whose negligence, acts or omissions any of them may be liable, from liability, claims, damages, losses or expenses, including attorney fees, arising out of, in whole or in part, the negligence of any Indemnatee, or of the agents or employees of any Indemnatee, or of any legal entity for whose negligence, acts or omissions any of them may be liable for, such indemnity provisions shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of:

- (a) The preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications by any Indemnatee, or the agents or employees of any Indemnatee; or
- (b) The giving of or the failure to give directions or instructions by any Indemnatee, or the agents or employees of any Indemnatee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to rail corridor.

[Intentionally left blank]

Jones Lang LaSalle Global Services – RR, Inc. is acting as representative for BNSF Railway Company.

IN WITNESS WHEREOF, this License has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

BNSF RAILWAY COMPANY

Jones Lang LaSalle Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800

By: _____
_____, _____

**&LICENSEE&
&ADDRESS&**

By: _____
Title: _____

RESOLUTION 2011-364

WHEREAS, in April of this year, the City was advised by BNSF that they were proceeding with a project to widen the elevated rail overpass to a double track to alleviate train traffic congestion; and

WHEREAS, as a result of this project, multiple electrical, water and sewer utility crossings by the City across the BNSF right-of-way will need to be modified to accommodate the track improvement project; and

WHEREAS, these modifications include either relocating utilities or encasement of the utilities to current railroad crossing standards, and

WHEREAS, BNSF would also like to acquire portions of Utilities Department properties adjoining BNSF property south of the JBS facility and at the Burdick Station; and

WHEREAS, BNSF would like to expedite this process, and has offered to undertake the design and relocation of all utility crossings at their expense in exchange for transfer of the required Utilities Department property and other consideration.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the BNSF Master Utility Agreement is hereby approved, and that the Mayor 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, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item J1

Approving Payment of Claims for the Period of November 23, 2011 through December 6, 2011

The Claims for the period of November 23, 2011 through December 6, 2011 for a total amount of \$3,465,671.14. A MOTION is in order.

Staff Contact: Jaye Monter



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item X1

Strategy Session with Respect to Pending Litigation

The City Council may vote to go into Executive Session as required by State law to discuss possible litigation for the protection of the public interest.

Staff Contact: Mary Lou Brown