



City of Grand Island

Tuesday, May 22, 2012

Council Session

Item F6

#9387 - Conveyance of Real Estate and Granting of Easement for the BNSF Second Track Project

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Robert J. Sivick, City Attorney

Meeting: May 22, 2012

Subject: Conveyance of Real Estate and Granting of Easement for the BNSF Second Track Project

Item #'s: F-6

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, 2011 the City of Grand Island (City) was advised by BNSF Railway (BNSF) it was 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. To accomplish this, BNSF needs to acquire portions of Utilities Department properties adjoining BNSF property south of the JBS facility and at the Burdick Station.

On November 29, 2011 this project was the subject of a City Council Study Session. On December 6, 2011 the Grand Island City Council (Council) unanimously voted to approve the proposed Master Utility Relocation Agreement (Agreement) between the City and BNSF. On January 10, 2012 the Council voted to convey six parcels to BNSF. In March, 2012 it was discovered that the legal description for one of the parcels was incorrect. That legal description has since been corrected.

Discussion

Pursuant to paragraph 2f and Exhibit D of the Agreement, the City is obligated to convey six parcels of real estate it owns to BNSF. Because Neb. Rev. Stat. §16-202 grants the public the right to remonstrance within thirty days of the passage and publication of any sale of publicly owned real estate, BNSF will not take title to the real estate unless the Council approves and until the expiration of the remonstrance period. To allow BNSF to

begin work on the property in the meantime, the Agreement obligates the City to grant a temporary construction easement for the parcel.

Alternatives

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

1. Move to approve.
2. Take no action on the issue.

Recommendation

City Administration recommends that the Council approve Ordinance No. 9387 and authorize the Mayor to execute the Warranty Deed and Temporary Construction Easement.

Sample Motion

Move to approve Ordinance No. 9387 and authorize the Mayor to execute the Warranty Deed and Temporary Construction Easement.

WARRANTY DEED

The City of Grand Island, a(n) Nebraska Municipal Corporation ("**GRANTOR**"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash and other good and valuable consideration to it paid by BNSF RAILWAY COMPANY, a Delaware corporation ("**GRANTEE**"), whose mailing address is 2500 Lou Menk Drive, Fort Worth, Texas 76131, the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto the Grantee that certain tract of land ("**Land**") described on **Exhibit "A"** hereto, together with all improvements thereon and all rights and appurtenances appertaining thereto, and all of Seller's rights and interest, if any, in and to all easements and alleys, highways, or streets in, on, across or adjoining the Land (herein collectively called the "**Property**").

This Deed is executed by GRANTOR and accepted by GRANTEE subject to validly existing and enforceable rights, interests, and estates, if any do in fact exist, but only to the extent that the same do in fact exist, of third parties in connection with those items set out and listed on **Exhibit "B"** hereto (herein called the "**Permitted Encumbrances**"). GRANTOR covenants with GRANTEE that GRANTOR has legal power and lawful authority to convey the Land.

TO HAVE AND TO HOLD the Property together with all and singular the rights and appurtenances thereto in anywise belonging unto GRANTEE, its legal representatives, successors, and assigns forever; and GRANTOR does hereby bind itself, its legal representatives, successors, and assigns to WARRANT AND FOREVER DEFEND all and singular the Property, subject to the Permitted Encumbrances, unto GRANTEE, its legal representatives, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS THE EXECUTION HEREOF as of the ____ day of _____, 20__.

GRANTOR:

The City of Grand Island

By: _____
Name: Jay Vavricek
Title: Mayor

STATE OF NEBRASKA)
)ss.
COUNTY OF HALL)

*This instrument was acknowledged before me on the _____ day of _____, 20__, by
Jay Vavricek, Mayor of The City of Grand Island a(n) Nebraska Municipal Corporation, on behalf of said
Municipal Corporation..*

WITNESS my hand and notarial seal on this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

Deed Exhibits:

Exhibit A: Legal Description

Exhibit B: Permitted Encumbrances

LEGAL DESCRIPTION – EXHIBIT A (Parcel 35)

A tract of land located in the North Half (N1/2) of Section Fifteen (15), Township Eleven (11) North, Range Nine (9) West of the 6th P.M., City of Grand Island, Hall County, Nebraska, more particularly described as follows:

Commencing at the East Quarter corner of said Section Fifteen (15); thence on an assumed bearing of South 89° 41' 12" West along the South line of the North Half (N 1/2) of said Section Fifteen (15), a distance of one thousand four hundred ninety nine and eighty six hundredths (1,499.86) feet to a point on the southerly Right-of-Way line of the BNSF Railroad also being the Point of Beginning; thence South 89° 41' 12" West along said South line, a distance of twenty three and fifty five hundredths (23.55) feet; thence North 62° 33' 35" West, a distance of one thousand three hundred thirty seven and fifty nine hundredths (1,337.59) feet; thence on a curve to the right having a radius of four thousand one hundred thirty nine and eighty nine hundredths (4,139.89) feet, an arc length of one hundred eight and ninety eight hundredths (108.98) feet being subtended by a chord of North 16° 44' 30" West, a length of one hundred eight and ninety seven hundredths (108.97) feet to a point on the southerly Right-of-Way line of the BNSF Railroad; thence South 59° 52' 40" East along said Right-of-Way line, a distance of one thousand four hundred thirty five and eighty seven hundredths (1,435.87) feet to the said Point of Beginning.

Together with and subject to covenants, easement and restrictions of record.

Said tract of land contains 1.40 acres more or less.

EXCEPTIONS

Reservations of rights as contained in Deed and Release recorded September 8, 1922 in Book 61, Page 69; records of Hall County, Nebraska.

Platte Valley Public Power and Irrigation District Resolution No. 19-68 transferring Right of Way Easements for Transmission Line to the City of Grand Island, a municipal corporation, recorded April 5, 1968 in Book 17, Page 333; records of Hall County, Nebraska.

Easement granted to MCI Telecommunications Corporation, recorded April 19, 1993 as Instrument No. 1993103010; records of Hall County, Nebraska.

TEMPORARY CONSTRUCTION EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that the **CITY OF GRAND ISLAND, NEBRASKA**, referred to hereinafter as "**Grantor**", for Ten and No/100 Dollars (\$10.00) to it paid by **BNSF RAILWAY COMPANY**, a Delaware corporation, whose address for purposes of this instrument is 2650 Lou Menk Drive, Fort Worth, Texas 76131-2830, the "**Grantee**", and for the promises of the Grantee hereinafter specified, does hereby grant, bargain, sell, and convey unto the Grantee and its employees, officers, affiliates, contractors, agents and/or assigns (the "**BNSF Parties**"), subject to the terms and conditions hereinafter set forth, an exclusive **TEMPORARY CONSTRUCTION EASEMENT** (the "**Temporary Construction Easement**") for the construction and installation of that certain "double track" expansion of railroad tracks and related equipment and facilities (collectively, the "**Double Track Facilities**") in, on, over, under, and through those certain premises (the "**Easement Area**"), situated in Hall County, Nebraska, to-wit:

See **Exhibit "A"**, attached hereto and made a part hereof, for the description of the Easement Area.

The foregoing Temporary Construction Easement is made subject to and upon the following express conditions:

1. The Grantor on behalf of itself, its successors, and assigns hereby agrees that, as of the Commencement Date (defined below), Grantee and the BNSF Parties shall enjoy the Temporary Construction Easement in, on, over, under, and through the Easement Area and may use the Easement Area in any way they see fit in order to construct the Double Track Facilities and all related equipment, facilities, structures, and/or infrastructure deemed necessary or beneficial by Grantee and/or the BNSF Parties.
2. The Temporary Construction Easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of Grantor, Grantee, and the BNSF Parties.
3. The Temporary Construction Easement shall be exclusive in favor of Grantee and the BNSF Parties. Grantor shall not occupy, undertake any work on, or interfere with Grantee's and/or the BNSF Parties' use of the Easement Area. Further, Grantor shall use its best reasonable efforts to ensure that third parties do not interfere with use of the Easement Area by Grantee and/or the BNSF Parties.
4. In connection with the Temporary Construction Easement, Grantee and/or the BNSF Parties shall have the right, but not the obligation, to remove all trees, brush, and other vegetation from the above-described Easement Area and to reconfigure the Easement Area in any way they deem necessary or beneficial.

The Temporary Construction Easement shall commence in favor of Grantee and the BNSF Parties on **May 22, 2012** (the "**Commencement Date**"), and shall continue in full effect until its termination upon the earlier of (i) July 1, 2014, (ii) completion of the Double Track Facilities by Grantee and/or the BNSF Parties (with completion of the Double Track Facilities to be signified by Grantee's delivery of written notification of completion to Grantor), or (iii) Grantee's acquisition of fee simple title to the Easement Area from Grantor.

TEMPORARY CONSTRUCTION EASEMENT
CITY OF GRAND ISLAND, NEBRASKA TO BNSF

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee and the BNSF Parties for their use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

EXECUTED to be effective as of the 22nd day of May, 2012.

GRANTOR:

CITY OF GRAND ISLAND, NEBRASKA

By: _____
Name: Jay Vavricek
Title: Mayor

THE STATE OF NEBRASKA §
 §
COUNTY OF HALL §

This instrument was acknowledged before me on the _____ day of _____, 2012, as the voluntary act of the person known by me to be Jay Vavricek, the Mayor of the City of Grand Island, Nebraska, on behalf of and with the full authority of the City of Grand Island, Nebraska.

Notary Public, State of Nebraska

Notary's Typed or Printed Name

My Commission Expires: _____

TEMPORARY CONSTRUCTION EASEMENT
CITY OF GRAND ISLAND, NEBRASKA TO BNSF

EXHIBIT "A"
TO THE TEMPORARY CONSTRUCTION EASEMENT INSTRUMENT FROM
THE CITY OF GRAND ISLAND, NEBRASKA, TO BNSF AND THE BNSF PARTIES

Legal Description of the Easement Area

(Parcel 35)

A tract of land located in the North Half (N1/2) of Section Fifteen (15), Township Eleven (11) North, Range Nine (9) West of the 6th P.M., City of Grand Island, Hall County, Nebraska, more particularly described as follows:

Commencing at the East Quarter corner of said Section Fifteen (15); thence on an assumed bearing of South 89° 41' 12" West along the South line of the North Half (N 1/2) of said Section Fifteen (15), a distance of one thousand four hundred ninety nine and eighty six hundredths (1,499.86) feet to a point on the southerly Right-of-Way line of the BNSF Railroad also being the Point of Beginning; thence South 89° 41' 12" West along said South line, a distance of twenty three and fifty five hundredths (23.55) feet; thence North 62° 33' 35" West, a distance of one thousand three hundred thirty seven and fifty nine hundredths (1,337.59) feet; thence on a curve to the right having a radius of four thousand one hundred thirty nine and eighty nine hundredths (4,139.89) feet, an arc length of one hundred eight and ninety eight hundredths (108.98) feet being subtended by a chord of North 16° 44' 30" West, a length of one hundred eight and ninety seven hundredths (108.97) feet to a point on the southerly Right-of-Way line of the BNSF Railroad; thence South 59° 52' 40" East along said Right-of-Way line, a distance of one thousand four hundred thirty five and eighty seven hundredths (1,435.87) feet to the said Point of Beginning.

Together with and subject to covenants, easement and restrictions of record.

Said tract of land contains 1.40 acres more or less.

ORDINANCE NO. 9387

An ordinance directing and authorizing the sale of a parcel of real estate to the BNSF Railway Company, providing for a temporary construction easement for that parcel, providing for the giving of notice of such conveyance and the terms thereof; providing for the right to file a remonstrance against such conveyance; and providing for the publication and effective date of this ordinance.

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

SECTION 1. The City of Grand Island will convey to the BNSF Railway Company and provide a temporary construction easement for a tract of real estate legally described as follows:

A tract of land located in the North Half (N1/2) of Section Fifteen (15), Township Eleven (11) North, Range Nine (9) West of the 6th P.M., City of Grand Island, Hall County, Nebraska, more particularly described as follows:

Commencing at the East Quarter corner of said Section Fifteen (15); thence on an assumed bearing of South 89° 41' 12" West along the South line of the North Half (N 1/2) of said Section Fifteen (15), a distance of one thousand four hundred ninety nine and eighty six hundredths (1,499.86) feet to a point on the southerly Right-of-Way line of the BNSF Railroad also being the Point of Beginning; thence South 89° 41' 12" West along said South line, a distance of twenty three and fifty five hundredths (23.55) feet; thence North 62° 33' 35" West, a distance of one thousand three hundred thirty seven and fifty nine hundredths (1,337.59) feet; thence on a curve to the right having a radius of four thousand one hundred thirty nine and eighty nine hundredths (4,139.89) feet, an arc length of one hundred eight and ninety eight hundredths (108.98) feet being subtended by a chord of North 16° 44' 30" West, a length of one hundred eight and ninety seven hundredths (108.97) feet to a point on the southerly Right-of-Way line of the BNSF Railroad; thence South 59° 52' 40" East along said Right-of-Way line, a distance of one thousand four hundred thirty five and eighty seven hundredths (1,435.87) feet to the said Point of Beginning.

Together with and subject to covenants, easement and restrictions of record.

Said tract of land contains 1.40 acres more or less.

Approved as to Form	by _____
May 21, 2012	City Attorney

ORDINANCE NO. 9387 (Cont.)

SECTION 2. In consideration of Twenty Dollars (\$20.00) and other consideration as set forth in the Master Utility Relocation Agreement approved pursuant to Resolution 2011-364, the City of Grand Island shall convey the real estate as listed above by Warranty Deed and shall grant a temporary construction easement to BNSF Railway Company pursuant to the terms and conditions of the Warranty Deed and Temporary Construction Easement agreement between the parties.

SECTION 3. As provided by law, notice of such conveyance and the terms thereof shall be published for three (3) consecutive weeks in the *Grand Island Independent*, a newspaper published for general circulation in the City of Grand Island. Immediately after the passage and publication of this ordinance, the City Clerk is hereby directed and instructed to prepare and publish said notice.

SECTION 4. Authority is hereby granted to the electors of the City of Grand Island to file a remonstrance against the conveyance of such within described real estate; and if a remonstrance against such conveyance signed by registered voters of the City of Grand Island equal or greater in number to thirty percent (30%) of the registered voters of the City of Grand Island voting at the last regular municipal election held in such City be filed with the City Council within thirty (30) days of passage and publication of such ordinance, said property shall not then, nor within one (1) year thereafter, be conveyed.

SECTION 5. The conveyance of said real estate is hereby authorized, directed, and confirmed; and if no remonstrance is filed against such conveyance, the Mayor shall make, execute, and deliver to the BNSF Railway Company, a Warranty Deed for the parcel as described above, and the execution of that Deed is hereby authorized without further action on behalf of the City Council.

ORDINANCE NO. 9387 (Cont.)

SECTION 6. The Mayor shall make, execute, and deliver to the BNSF Railway Company a Temporary Construction Easement for the parcel as described above.

SECTION 7. The City Clerk is directed to file this ordinance in the Office of the Register of Deeds of Hall County, Nebraska.

SECTION 8. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen (15) days in one (1) issue of the *Grand Island Independent* as provided by law.

Enacted: May 22, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk