



# City of Grand Island

Tuesday, July 24, 2012

Council Session

## Item G11

**#2012-185 - Approving Use of Land Owned by the City of Grand Island for the Trail to be Constructed on the State Street and Capital Avenue Connector Trail Project**

Staff Contact: John Collins, Public Works Director

# **Council Agenda Memo**

**From:** Scott Griepenstroh, Project Manager

**Meeting:** July 24, 2012

**Subject:** Approving Use of Land Owned by the City of Grand Island for the Trail to be Constructed on the State Street and Capital Avenue Connector Trail Project

**Item #'s:** G-11

**Presenter(s):** John Collins, Public Works Director

## **Background**

The Federal-aid Transportation Enhancement (TE) Program provides funding to construct and restore transportation infrastructure that are not eligible to be funded through other programs. TE activities offer funding opportunities to help expand transportation choices and enhance the transportation experience. Project types eligible for this funding are hike/bike trails, historic preservation, and scenic or historic byways.

This State Street to Capital Avenue Connector Trail Project will construct a 0.5 mile, 10' wide concrete recreational trail for bicycle and pedestrian use in northwest Grand Island. This project will begin on the State Street Trail 0.25 mile west of US Highway 281, extend north within City right-of-way along the west side of the Moores Creek Drainway, and end at the west end of the concrete trail that was recently completed along Capital Avenue under project STPAA-5436 for the Eagle Scout Trail.

The State Street and Capital Connector Trail will be constructed on existing City property that was acquired in 1984 for the Moore's Creek Drainway. Additional 12' wide easements will be acquired on the west side of the City property for construction of a small ditch and area inlets.

## **Discussion**

As per guidance from the Nebraska Department of Roads, a critical component of any federal aid public transportation project are the land rights needed to facilitate the construction, operation and maintenance of the project in accordance with Federal Highway Administration 23 Code of Federal Regulations 1.23(a), which states "Interest

to be acquired. The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation, and maintenance of a project.” These rights ensure that the facility that is developed with Federal Transportation funds has a legal right to exist and cannot be displaced by a competing land use, and a return on the investment will be realized.

Property that is currently owned by the City of Grand Island that was initially purchased for a purpose other than a hike/bike trail cannot be readily used for this project, without execution of the Declaration of Use document. The purpose or use consistent with the requirements of the project need to be established and of record by execution of a “Declaration as to Use” resolution. The duration the declaration is to be in effect is a minimum of 25 years from completion of construction.

Once approved, a copy of the “Declaration as to Use” resolution must be placed on file at the Register of Deeds office.

Approval of Environmental Documents was received in January. Approval of 90% Plans and acquisition of permanent easements are anticipated to be completed in the next three months. Construction of this project is anticipated to begin in spring of 2013.

### **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 use of a portion of land owned by the City of Grand Island for the construction, operation and maintenance of a Hike/Bike Trail.

### **Sample Motion**

Move to approve the agreement.

On 1/4 Sec. 4/3/85  
L.D.C.

CORPORATION WARRANTY DEED

OMAHA NATIONAL/GRAND ISLAND (formerly COMMERCIAL NATIONAL BANK AND TRUST COMPANY OF GRAND ISLAND), a corporation organized and existing under the laws of Nebraska, herein called the Grantor, in consideration of Ten Thousand Seven Hundred Eighty Dollars (\$10,780.00),

received from Grantee, conveys to the

CITY OF GRAND ISLAND, NEBRASKA,

a municipal corporation, herein called the Grantee, the following described real estate (as defined in Neb. Rev. Stat. 76-201), in part of the Northwest Quarter (NW 1/4) of Section Twelve (12), Township Eleven (11) North, Range Ten (10) West of the 6th P.M.:

The southerly 2,607 feet of the eastern 90 feet of the Northwest Quarter (NW 1/4) of Section 12-11-10, containing 5.39 acres, more or less, as shown on the plat marked Exhibit "A" attached hereto and incorporated herein by reference.

Grantor covenants with Grantee that Grantor:

- (1) is lawfully seized of such real estate and that it is free from encumbrances;
- (2) has legal power and lawful authority to convey the same;
- (3) warrants and will defend title to the real estate against the lawful claims of all persons claiming the same or any part thereof through, by, or under Grantor.

Executed September 10, 1984.

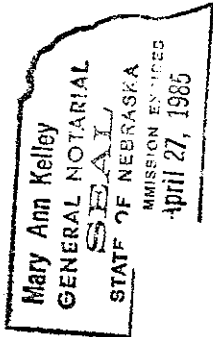
OMAHA NATIONAL/GRAND ISLAND  
(formerly COMMERCIAL NATIONAL  
BANK AND TRUST COMPANY OF  
GRAND ISLAND, A Corporation,  
Grantor

By

  
President

STATE OF NEBRASKA )  
COUNTY OF HALL ) ss )

The foregoing instrument was acknowledged before me on  
September 10, 1984, by Larry Comise Jr.,  
President of OMAHA NATIONAL/GRAND ISLAND (formerly COMMERCIAL  
NATIONAL BANK AND TRUST COMPANY OF GRAND ISLAND, A  
Corporation, on behalf of the corporation.



Mary Ann Kelley  
Notary Public

SPECIAL WARRANTY DEED

AAGE E. NELDEBERG and A. JEANNE NELDEBERG, husband and wife, herein called the Grantors, in consideration of Ten Thousand Seven Hundred Eighty Dollars (\$10,780.00),

received from the Grantee, conveys to the

CITY OF GRAND ISLAND, NEBRASKA,

a municipal corporation in Hall County, Nebraska, herein called the Grantee, the following described real estate (as defined in Neb. Rev. Stat. 76-201) in part of the Northwest Quarter (NW 1/4) of Section Twelve (12), Township Eleven (11) North, Range Ten (10) West of the 6th P.M.:

The southerly 2,607 feet of the eastern 90 feet of the Northwest Quarter (NW 1/4) of Section 12-11-10, containing 5.39 acres, more or less, as shown on the plat marked Exhibit "A" attached hereto and incorporated herein by reference.

Grantors covenant jointly and severally with Grantee that Grantors:

- (1) are lawfully seized of such real estate and that it is free from encumbrances;
- (2) have legal power and lawful authority to convey the same;
- (3) warrant and will defend title to the real estate against the lawful claims of all persons claiming the same or any part thereof through, by, or under Grantors.

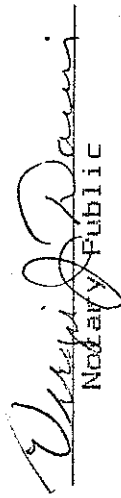
Executed September 2, 1984.

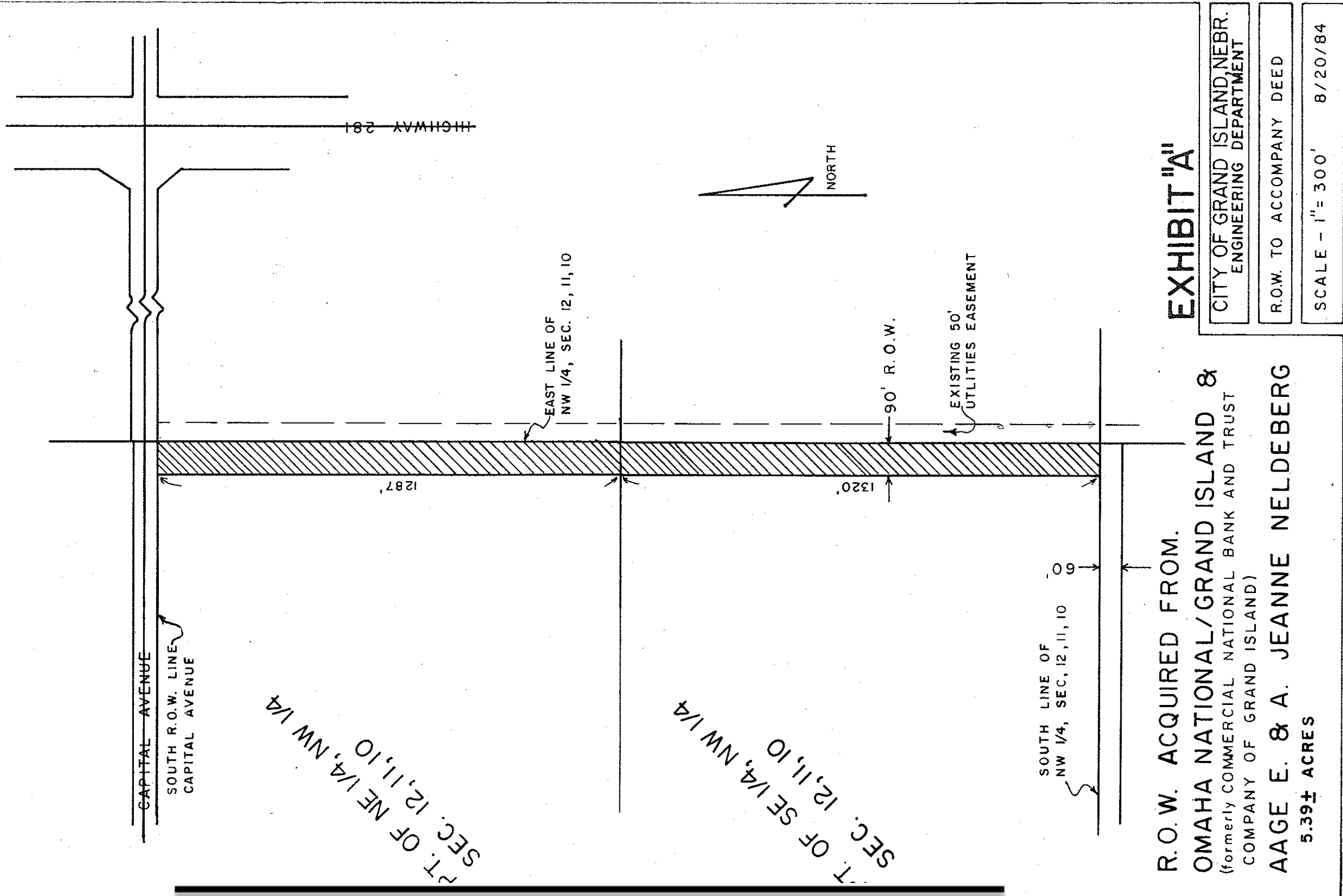
Aage E. Neldeberg  
Aage E. Neldeberg

Jeanne Neldeberg  
A. Jeanne Neldeberg  
Grantors

STATE OF IOWA       )  
                          )  
COUNTY OF MONONA )

The foregoing instrument was acknowledged before me on  
9-12, 1984, by Aage E. Neldeberg and A.  
Jeanne Neldeberg, husband and wife.

  
Notary Public





## Declarations as to Use

A critical component of any federal aid public transportation project are the land rights needed to facilitate the construction operation and maintenance of the project in accordance with Federal Highway Administration 23 CFR 1.23(a) – “Interest to be acquired – The State\* shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation, and maintenance of a project”. These rights ensure that the transportation facility, and the various components and features that they are comprised of, have a legal right to exist on the land and so that they cannot be displaced by a competing land use before a return on the investment has been realized. The transportation facility itself primarily consists of public roads, sidewalks, and multi use trails. Permanent supporting features of the transportation facility typically include items such as culverts, storm sewers, embankments, ditches, curb ramps, bridges, street lighting, traffic signals, sight distance, or any other items that if altered or removed could jeopardize the continued operation and maintenance of the facility as intended. Permanent land rights encompassing all of these features must be secured by, or made available to the sponsoring agency to ensure the transportation facility can meet its objectives and be eligible for federal aid.

\*Note - The term “State” in this regulation is generally accepted to mean the public agency who has the jurisdictional authority for the construction, operation, and maintenance of the facility either by being the project sponsor, by operation of law, or through agreements or other documents legally establishing this role.

Because the transportation facility is a public use feature it must reside on public right of way or land that is dedicated for this use. Land that was previously purchased, platted, or otherwise dedicated for public right of way is available for the projects use. Similarly, permanent easement rights that are owned or are otherwise made available to the sponsoring agency may be used for the purpose for which they were acquired for. Rights for any additional areas that are required for the project will need to be acquired from the owning party through the standard design-appraisal-acquisition process or other acceptable means.

At times the transportation facility, or a supporting feature of it, will require the use of property that is currently owned by the local public agency project sponsor. This land is available for project use if a purpose consistent with the project needs was either identified as part of the purchase, or was later identified through a declaration or dedication. Land that was simply purchased in the sponsoring agencies name, or for a purpose that is not consistent with the transportation projects needs, cannot readily be used for the project as is. Examples of this situation typically occur when the local public agency simply purchased the property in their name for some possible future use, because it became available on the market, or it was acquired for a non transportation use such as a park, school, library, city office, pool, retirement home, sports complex, maintenance yard, cemetery, etc. Because the project sponsor already has the ownership in these lands only the purpose or use consistent with the requirements of the project needs to be established and of record. This can be done by either platting

or otherwise establishing the area as public ROW through the local process, or through the execution of a "Declaration as to Use" resolution by the sponsoring agency. The Declaration as to Use resolution option basically establishes an easement only for the projects specific needs on the sponsoring agency's land.

This "Declaration as to Use" is processed by the sponsoring agency in accordance with their resolution execution procedures. Once approved a copy must be placed on file at the register of deeds office. This must be accomplished in order for a right of way certificate can be issued for the project. The resolution language must indicate the legal description that geographically identifies the location of the land, the owner of the land, what is its currently used for (if applicable), who currently administers the land (if applicable), the portion that will be declared for transportation use, the project number(s) the transportation facility is being built under (State's and LPA's if used), a reference to Federal Highway Administration 23 CFR 1.23(a), and length of duration declaration is in affect (perpetuity or minimum of 25 years from completion of its construction). The portion that is to be declared for transportation use is usually identified on a survey plat attached as an exhibit, or geographically described in the Declaration as to Use document itself. If the declaration is for a specific project feature that can be readily identified in the field such as a sidewalk or bicycle pedestrian trail an attached exhibit showing the location of the feature can be used instead of the survey plat or geographic description. In this case the reference to the project number(s) and Federal Highway Administration 23 CFR 1.23(a) establishes that any areas necessary for the construction, operation, and maintenance of the transportation facility, to including its supporting components and features, are included in the declaration. Example "Declaration as to Use" language is available from the Nebraska Department of Roads. These examples may be modified to reflect any language or formatting specific to the LPA. Draft Declaration language should be reviewed and approved by Nebraska Department of Roads officials prior to the LPA passing the resolution to be sure it meets the project needs.



RESOLUTION 2012-185

WHEREAS; the City of Grand Island, Nebraska is the owner of THE SOUTHERLY TWO THOUSAND, SIX HUNDRED AND SEVEN (2,607) FEET OF THE EASTERN NINETY (90) FEET OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION TWELVE (12), TOWNSHIP ELEVEN (11) NORTH, RANGE TEN (10) WEST OF THE 6<sup>TH</sup> P.M., CONTAINING 5.39 ACRES, MORE OR LESS, Hall County, Nebraska, and

WHEREAS; said SOUTHERLY TWO THOUSAND, SIX HUNDRED AND SEVEN (2,607) FEET OF THE EASTERN NINETY (90) FEET OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION TWELVE (12), TOWNSHIP ELEVEN (11) NORTH, RANGE TEN (10) WEST OF THE 6<sup>TH</sup> P.M., CONTAINING 5.39 ACRES, MORE OR LESS, Hall County, Nebraska, is now being occupied by the City of Grand Island for the construction, operation and maintenance of the Moore's Creek Drainway outfall ditch, and

WHEREAS; the City of Grand Island wishes to construct, operate and maintain a Hike/Bike Trail across a portion of said property, and

WHEREAS; the Hike/Bike Trail is to be constructed as part of Nebraska Department of Roads project ENH-40(59), Control Number 42650, and identified as State Street - Capital Avenue Connector Trail, and

WHEREAS; To comply with Federal Highway Administration 23 CFR 1.23(a) – "Interest to be acquired – The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation, and maintenance of a project," it is necessary for the City of Grand Island to declare that a portion of said property shall be used for the construction, operation, and maintenance of a Hike/Bike Trail for a period of no less than twenty five years from the completion of its construction, and

NOW, THEREFORE, BE IT RESOLVED; THAT THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, hereby approves the use of a portion of said land owned by the City of Grand Island for the construction, operation and maintenance of a Hike/Bike Trail as shown on Exhibit "A" and as aligned in project plans and specifications for Nebraska Department of Roads project ENH-40(59), Control Number 42650, and identified as State Street - Capital Avenue Connector Trail for a period of no less than twenty five years from the completion of its construction.

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Adopted by the City Council of the City of Grand Island, Nebraska, July 24, 2012.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	▣ _____
July 23, 2012	▣ City Attorney