
City of Grand Island



Tuesday, July 24, 2012
Council Session Packet

City Council:

Larry Carney
Linna Dee Donaldson
Scott Dugan
John Gericke
Peg Gilbert
Chuck Haase
Vaughn Minton
Mitchell Nickerson
Bob Niemann
Kirk Ramsey

Mayor:

Jay Vavricek

City Clerk:

RaNae Edwards

7:00 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 - 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.



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item C1

Proclamation Nebraska State Fair 1868 Foundation "Blue Ribbon Roll Out Week" July 30 – August 4, 2012

The Nebraska State Fair started in 1868 and has been held at the State Fair Park in Lincoln until 2009 (108 years). Beginning in 2010, the Nebraska State Fair has been held at Fonner Park in Grand Island. The Nebraska State Fair 1868 Foundation, a non-profit organization whose purpose is to raise private funds for the Nebraska State Fair, will be celebrating the eighth annual "Blue Ribbon Roll Out" on Saturday, August 4, 2012 to raise funds for improvements to the grounds and facilities. The Mayor has proclaimed the week of July 30, 2012 as "Blue Ribbon Roll Out Week". See attached PROCLAMATION.

Staff Contact: Mayor Jay Vavricek

THE OFFICE OF THE MAYOR
City of Grand Island
State of Nebraska

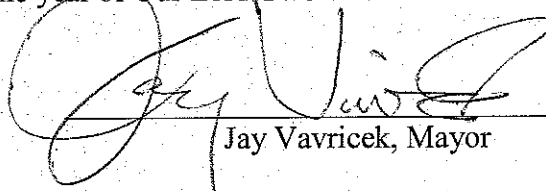
PROCLAMATION

- WHEREAS, in 1868, the Nebraska State Fair became an annual statewide celebration of agriculture, education and a showcase of the talents found in Nebraskans both young and old; and
- WHEREAS, in 2010, the Nebraska State Fair took up permanent residence at Fonner Park in Grand Island, Nebraska; and
- WHEREAS, Nebraskans will celebrate the 143rd annual Nebraska State Fair at its home in Grand Island beginning on August 24, 2012 and continuing through September 3, 2012; and
- WHEREAS, the home of the Nebraska State Fair will continue to be the place where all Nebraskans can come together to honor and celebrate their heritage and their ties to agriculture, 4-H and FFA; and
- WHEREAS, the Nebraska State Fair 1868 Foundation is a charitable 501(c)(3) organization whose purpose is to raise private funds for the Nebraska State Fair; and
- WHEREAS, the Nebraska State Fair 1868 Foundation will be celebrating the eighth annual Blue Ribbon Roll Out on Saturday, August 4, 2012 to highlight the 2012 Nebraska State Fair and raise funds for improvements to the grounds and facilities.
- NOW, THEREFORE, I, Jay Vavricek, Mayor of the City of Grand Island, Nebraska, do hereby proclaim the week of July 30, 2012 as

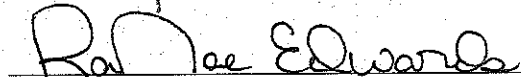
“Blue Ribbon Roll Out Week”

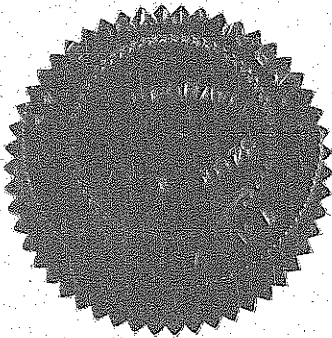
in the City of Grand Island, and encourage all citizens to join in the celebration and encourage everyone to attend the Blue Ribbon Roll Out as you do not need to be a 1868 Foundation member to attend. Get set to enjoy a taste of what the fair is all about while helping to strengthen efforts for the State Fair in its new home.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the City of Grand Island to be affixed this twenty-fourth day of the month of July in the year of Our Lord Two Thousand and Twelve.


Jay Vavricek, Mayor

Attest:


RaNae Edwards, City Clerk





City of Grand Island

Tuesday, July 24, 2012

Council Session

Item E1

**Public Hearing on Amendment to Redevelopment Plan Area #6
Located at 709 & 715 West 18th Street**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Chad Nabity, AICP

Meeting: July 24, 2012

Subject: Amendment to Redevelopment Plan for CRA Area #6

Item #'s: E-1 & I-4

Presenter(s): Chad Nabity, AICP CRA Director

Background

In 2007, the Grand Island City Council declared property referred to as CRA Area #6 as blighted and substandard and approved a generalized redevelopment plan for the property. The generalized redevelopment plan authorized the use of Tax Increment Financing (TIF) for the acquisition of property, redevelopment of property, site preparation including demolition, landscaping and parking. TIF can also be used for improvements to and expansion of existing infrastructure including but not limited to: streets, water, sewer, drainage.

Baker Development Inc., as the developer has submitted a proposed amendment to the redevelopment plan that would provide for site acquisition, clearance and extension of utilities and subsequent construction of a duplex at 709 and 715 W 18th Street in Grand Island, Nebraska.

The CRA reviewed the proposed development plan on June 13, 2012 and forwarded it to the Hall County Regional Planning Commission for recommendation at their meeting on July 11th, 2012. The CRA also sent notification to the City Clerk of their intent to enter into a redevelopment contract for this project pending Council approval of the plan amendment.

The Hall County Regional Planning Commission held a public hearing on the plan amendment at a meeting on July 11th. The Planning Commission approved Resolution 2012-06 in support of the proposed amendment, declaring the proposed amendment to be consistent with the Comprehensive Development Plan for the City of Grand Island.

Discussion

Tonight, Council will hold a public hearing to take testimony on the proposed plan amendment (including the cost benefit analysis that was performed regarding this proposed project) and to enter into the record a copy of the plan amendment, the draft TIF contract under consideration by the CRA.

Council is being asked to approve a resolution approving the cost benefit analysis as presented in the redevelopment plan along with the amended redevelopment plan for CRA Area #6 and authorizes the CRA to execute a contract for TIF based on the plan amendment. The redevelopment plan amendment permits site acquisition, clearance and extension of utilities and subsequent construction of a duplex at 709 and 715 W 18th Street in Grand Island, Nebraska. The cost benefit analysis included in the plan finds that this project meets the statutory requirements for as eligible TIF project and that it will not negatively impact existing services within the community or shift additional costs onto the current residents of Grand Island and the impacted school districts. The total tax increment financing allowed for this project may not exceed \$42,000 during this 15 year period.

Alternatives

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

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

Recommendation

The CRA and Hall County Regional Planning Commission recommend that the Council approve the Resolution necessary for the adoption and implementation of this plan.

Sample Motion

Move to approve the resolution as submitted.



BACKGROUND INFORMATION RELATIVE TO TAX INCREMENT FINANCING REQUEST

Project Redeveloper Information

I. Business Name: BAKER Development LLC.
Address: P.O. Box 2161 Grand Island NE 68802
Telephone No.: 308-383-1609 Fax No.: 308-382-3372
Contact: GREG BAKER

II. Brief Description of Applicant's Business: Residential + Commercial Contractors and Rental Company

III. Present Ownership Proposed Project Site: 709-715 W. 18th St.

IV. Proposed Project: Building square footage, size of property, description of
buildings – materials, etc. Please attach site plan, if available.

Residential duplex with Attached garages
units are 884 Sq/Ft Each yards landscaped and
sprinklers installed

V. If Property is to be Subdivided, Show Division Planned:

VI. Estimated Project Costs:

Acquisition Costs:

- ✓ A. Land \$ 28,500
B. Building \$ N/A

Construction Costs:

- A. Renovation or Building Costs: \$ 128,000
✓ B. On-Site Improvements: Extend water from N. side of 18th Street to site - tree removal \$ 9,769

Soft Costs:

- ✓ A. Architectural & Engineering Fees: \$ 500
B. Financing Fees: \$ 1,500
✓ C. Legal/Developer/Audit Fees: \$ 1,250⁰⁰
D. Contingency Reserves: \$ 2,000
✓ E. Other (Please Specify) TIF (City Fees) Financing Fees \$ 1,500⁰⁰

TOTAL \$ 173,019

VII. Total Estimated Market Value at Completion: \$ 158,882

VIII. Source of Financing:

- ✓ A. Developer Equity: \$ 30,000
B. Commercial Bank Loan: \$ 110,000
C. Tax Credits:
1. N.I.F.A. \$ _____
2. Historic Tax Credits \$ _____
D. Industrial Revenue Bonds: \$ _____
E. Tax Increment Assistance: \$ 42,000

IX. Name, Address, Phone & Fax Numbers of Architect, Engineer and General Contractor:

✓ Baker Development - General Contractor

X. Estimated Real Estate Taxes on Project Site Upon Completion of Project:

(Please Show Calculations)

2.180514

158,882 x Levy - Base 2009 x Levy = \$3009

See attached spreadsheet

3009 x 15 yrs = \$45135

XI. Project Construction Schedule:

A. Construction Start Date: Aug. 2012B. Construction Completion Date: MAR 2013

C. If Phased Project:

_____ Year _____ % Complete

_____ Year _____ % Complete

XII. Please Attach Construction Pro Forma

XIII. Please Attach Annual Income & Expense Pro Forma

(With Appropriate Schedules)

TAX INCREMENT FINANCING REQUEST INFORMATION

I. Describe Amount and Purpose for Which Tax Increment Financing is Requested:

Amount of Incremental Prospective Annual Real Estate

Taxes over 2012 Real Estate Taxes on the Subject Property

for 15 yrs will be used to develop the Property.

II. Statement Identifying Financial Gap and Necessity for use of Tax Increment Financing for Proposed

Project: 709-715 W 18TH ST

TIF is an important Component in order for this project
to bridge the deficit between the actual Cost of the project
And the income producing Capability of the real estate.
We feel that this project will Add Value to a defined
blighted Area in the Community as well as provide much
needed quality affordable rental housing

III. Municipal and Corporate References (if applicable). Please identify all other Municipalities, and other Corporations the Applicant has been involved with, or has completed developments in, within the last five (5) years, providing contact person, telephone and fax numbers for each:

IV. Please Attach Applicant's Corporate/Business Annual Financial Statements for the Last Three Years.

Post Office Box 1968
Grand Island, Nebraska 68802-1968
Phone: 308 385-5240
Fax: 308 385-5423
Email: cnabity@grand-island.com

REALESTATE PURCHASE AGREEMENT

THIS AGREEMENT is entered into this 14th day of May, 2012, between James and Mary Jane Partington hereinafter referred to as "Seller", whether one or more, Baker Development hereinafter referred to as "Buyer".

WITNESSETH:

1. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase and accept from the seller the following described real property located in Hall County, Nebraska, on the terms and conditions and covenants herein contained, to wit:

**Schimmer's Addition, Lots 2 and 3, Block 22
City of Grand Island, Hall County, Nebraska**

And carrying a physical address of 709 and 715 West 18th Street, Grand Island, NE

together with all appurtenances related thereto and improvements thereon and subject to all easements, covenants and restrictions of record.

The purchase of the aforesaid property shall specifically include the following items of personal property:

None

2. The purchase price of the real and personal property being sold by the Seller and purchased by the Buyer hereunder is the sum of Twenty eight thousand five hundred Dollars (\$28,500.00), at closing to Seller. This contract is contingent upon Tax Increment Financing being granted to the buyer.

3. Buyer shall be entitled to possession of all the property being sold hereunder within 30 days of the approval of the Tax Increment Financing. Except that if necessary for the Seller to cure defects in title to the real property as provided in the paragraph following, the date of closing shall be 10 days after said defects are cured. Closing shall occur at the offices of Grand Island Abstract, Escrow & Title Company Grand Island, Nebraska, which shall act as closing agent.

4. Within 20 days of the date of the Agreement, Seller shall furnish to Buyer evidence of its title to the above-described real estate which shall take the form of a commitment to insure the Buyer under an owner's title insurance policy. Buyer shall, within 10 days after receipt of such commitment, notify Seller of any defects in title which are unacceptable to the Buyer. Seller shall have 10 days thereafter to determine whether it will agree to cure such defects and if Seller determines not to cure such defects, this Agreement shall terminate and neither party shall have any further liability or obligation hereunder. If the Seller elects to cure said defects, it may do so within a reasonable time thereafter and closing shall be extended as in the above and foregoing paragraph. The cost of said title insurance shall be borne equally between the Buyer and the Seller.

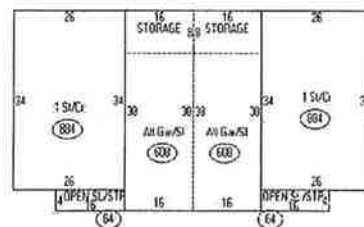
5. General real estate taxes shall be prorated to the date of closing, all special assessments levied and assessed prior to the date of closing shall be paid by Seller.

137,973

20,909

158,882

No Photo On File.



		Sale Information		
Book/Page	Sale Date	Code	Grantor	Amount

Notes Field Notes

Field Notes

ReviewSheet 2012

O'Hara Plumbing Co., Inc.

P.O. Box 1038
Grand Island, NE 68802-1038
(308) 382-0765
Fax (308) 382-5166
Email oharaplumbing@hamilton.net

PROPOSAL SUBMITTED TO Baker Development		PHONE	DATE May 14, 2012
STREET		JOB NAME 709-715 W. 18th	
CITY, STATE and ZIP CODE		JOB LOCATION Water Service	
ARCHITECT	DATE OF PLANS		JOB PHONE

We hereby submit specifications and estimates for:

Remove 37 x 14 1/2 concrete
Side dump
Excavator
Skidsteer with breaker
Mobilization

1-6x 1 1/2" tapping sleeve
1-1 1/2" corp
1-1 1/2" curb stop
1-Curb box
1-1" corp for test
1-1" corp plug
54'-1 1/2" type "K" copper pipe
Flowable fill
Excavate
Less concrete replacement
Total \$6,567.00

Concrete Replacement 2000⁰⁰

Barricades by owner
Street permit by owner

We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

Payment to be made as follows: _____ dollars (\$ _____).

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

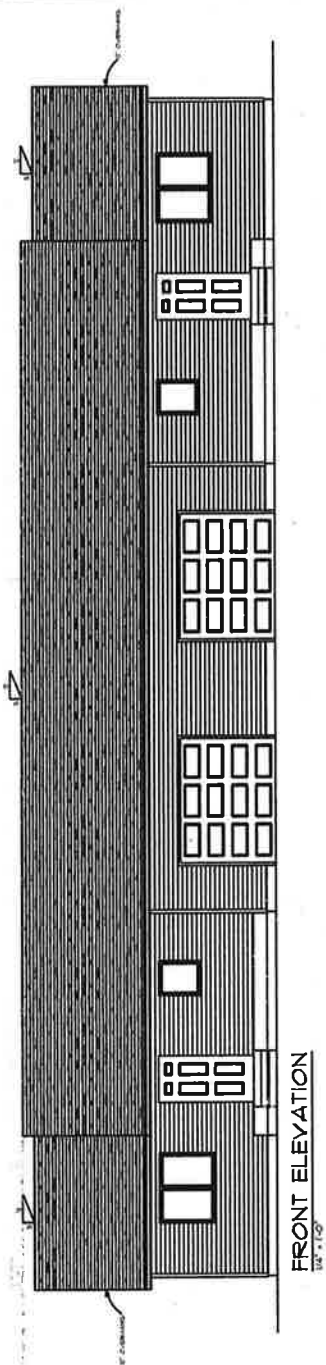
Authorized
Signature

Pat O'Hara

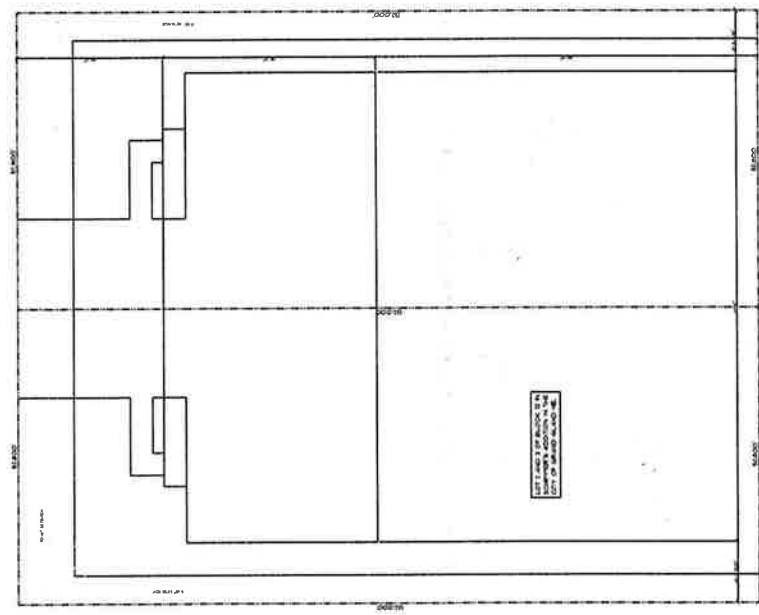
Note: This proposal may be withdrawn by us if not accepted within _____ days.

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance: _____ Signature _____

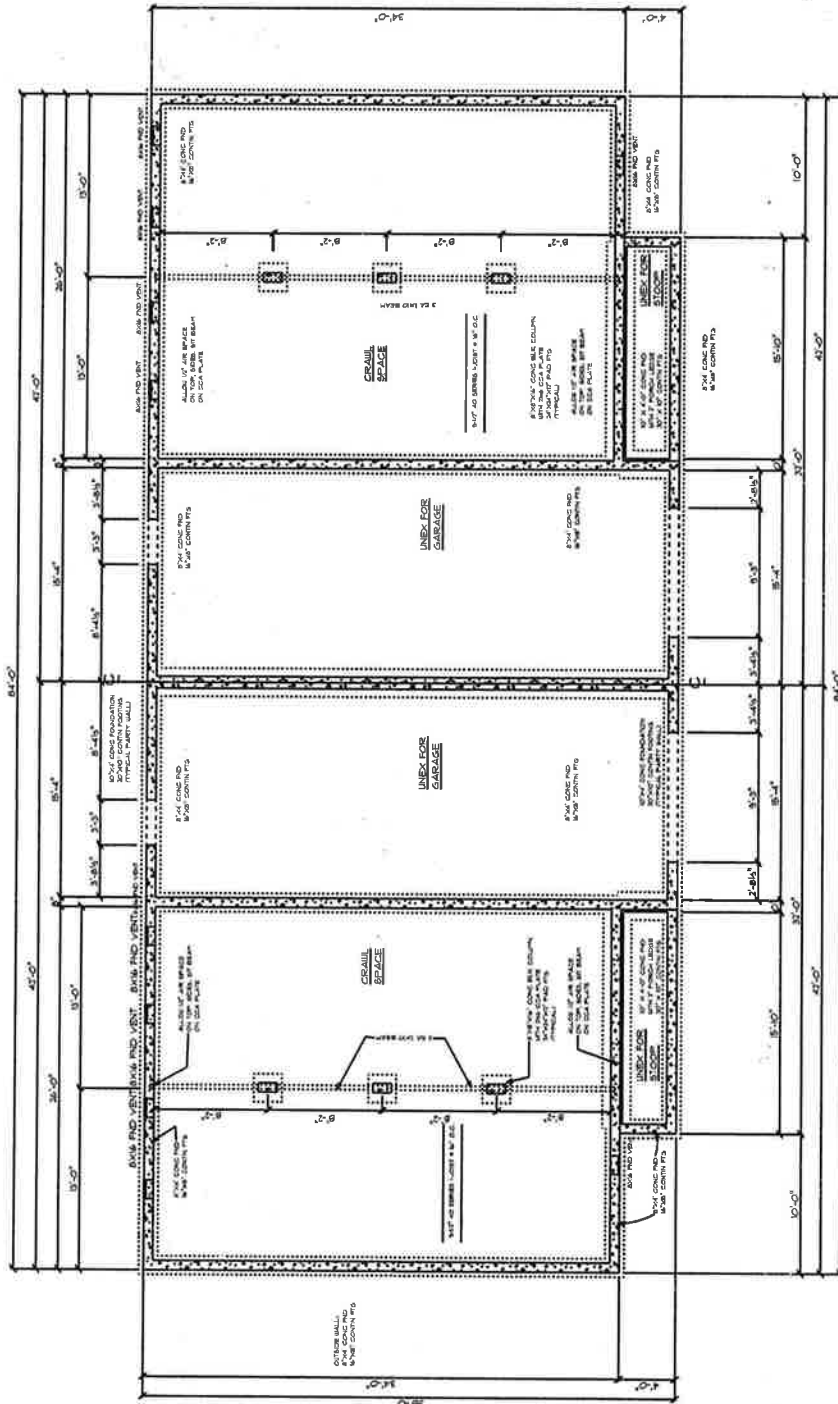


10TH ST. W.



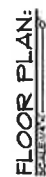
PLOT PLAN
1" = 10'-0"

05/14/12	REVISED	4	B613
BUILT BY	BUILT FOR	BUILT ON	BUILT AT
BUILT BY	BUILT FOR	BUILT ON	BUILT AT
BUILT BY	BUILT FOR	BUILT ON	BUILT AT



FOUNDATION PLAN:
SCALE 1/4" = 1'-0"

051419	051419
REVISION	REVISION
BAKER DEVELOP	BAKER DEVELOP
1308-2023	1308-2023
GRAND ISLAND NE	GRAND ISLAND NE
4	4
B613	B613



BUILDERS 1-800-362-3646 LUMBER • BUILDING CENTER	DUPLEX DESIGNED FOR BAKER DEVELOP. 203 LBS W 18TH ST ZON 1-10		DESIGNED BY KEVIN	05/14/02
	THE BEST PRICE GUARANTEE 10% OFF THE LOWEST PRICE GUARANTEED		4	06/13



HOME FEDERAL BANK

May 16, 2012

RE: Greg Baker
4710 Tara CT.
Grand Island, NE 68801

To Baker Development:

This letter is to advise the reader that Home Federal Bank has approved financing for Greg Baker to construct a duplex located at 709 & 715 W. 18th in Grand Island. This loan is contingent upon tax increment financing approval.

Please do not hesitate to call me at 308/398-4930 should you have any questions.

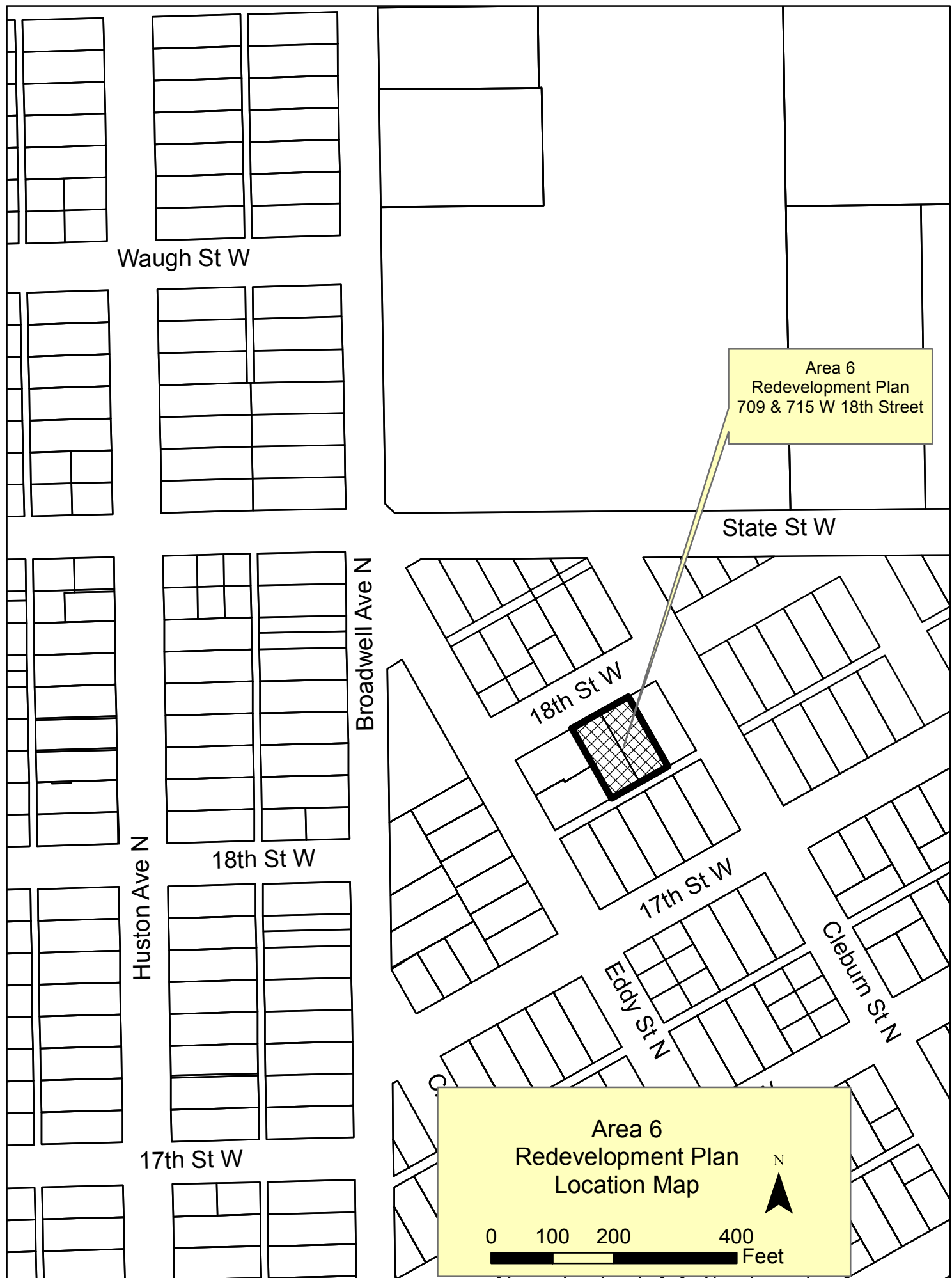
Respectfully,

Steve Kunzman
Senior Vice President



P.O. Box 1009 — GRAND ISLAND, NE 68802-1009
308-382-4000 — www.homefedgi.com

MEMBER
FDIC



COMMUNITY REDEVELOPMENT AUTHORITY
OF THE CITY OF GRAND ISLAND, NEBRASKA

RESOLUTION NO. 136

RESOLUTION OF THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY
OF GRAND ISLAND, NEBRASKA, SUBMITTING A PROPOSED
REDEVELOPMENT PLAN TO THE HALL COUNTY REGIONAL PLANNING
COMMISSION FOR ITS RECOMMENDATION

WHEREAS, this Community Redevelopment Authority of the City of Grand Island, Nebraska ("Authority"), pursuant to the Nebraska Community Development Law (the "Act"), prepared a proposed redevelopment plan (the "Plan") a copy of which is attached hereto as Exhibit 1, for redevelopment of an area within the city limits of the City of Grand Island, Hall County, Nebraska; and

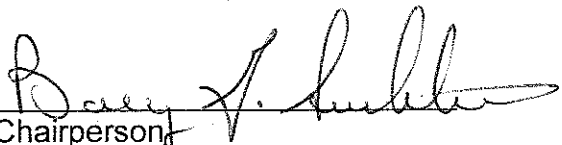
WHEREAS, the Authority is required by Section 18-2112 of the Act to submit said to the planning board having jurisdiction of the area proposed for redevelopment for review and recommendation as to its conformity with the general plan for the development of the City of Grand Island, Hall County, Nebraska;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

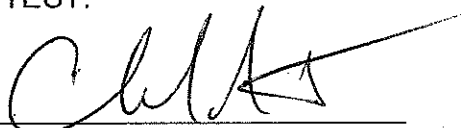
The Authority submits to the Hall County Regional Planning Commission the proposed Plan attached to this Resolution, for review and recommendation as to its conformity with the general plan for the development of the City of Grand Island, Hall County, Nebraska.

Passed and approved this 13th day of June, 2012.

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
GRAND ISLAND, NEBRASKA.

By 
Chairperson

ATTEST:


Secretary

**COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY
OF GRAND ISLAND, NEBRASKA**

RESOLUTION NO. 137

RESOLUTION OF THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF GRAND ISLAND, NEBRASKA, PROVIDING NOTICE OF INTENT TO ENTER INTO A REDEVELOPMENT AFTER THE PASSAGE OF 30 DAYS AND OTHER MATTERS

WHEREAS, this Community Redevelopment Authority of the City of Grand Island, Nebraska ("Authority"), has received an Application for Tax Increment Financing under the Nebraska Community Development Law (the "Act") on a project within redevelopment area #6, from Baker Development Inc., (The "Developer") for redevelopment of an area within the city limits of the City of Grand Island as set forth in Exhibit 1 attached hereto area; and

WHEREAS, this Community Redevelopment Authority of the City of Grand Island, Nebraska ("Authority"), is proposing to use Tax Increment Financing on a project within redevelopment area #6;

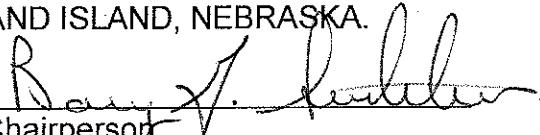
NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. In compliance with section 18-2114 of the Act, the Authority hereby gives the governing body of the City notice that it intends to enter into the Redevelopment Contract, attached as Exhibit 1, with such changes as are deemed appropriate by the Authority, after approval of the redevelopment plan amendment related to the redevelopment project described in the Redevelopment Contract, and after the passage of 30 days from the date hereof.

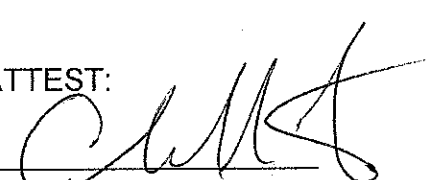
Section 2. The Secretary of the Authority is directed to file a copy of this resolution with the City Clerk of the City of Grand Island, forthwith.

Passed and approved this 13th day of June, 2012.

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
GRAND ISLAND, NEBRASKA.

By 
Chairperson

ATTEST:


Secretary

HALL COUNTY REGIONAL PLANNING COMMISSION

A RESOLUTION RECOMMENDING APPROVAL OF A REDEVELOPMENT
PLAN OF THE CITY OF GRAND ISLAND, NEBRASKA; AND APPROVAL OF
RELATED ACTIONS

WHEREAS, the Chairman and Board of the Community Redevelopment Authority of the City of Grand Island, Nebraska (the "Authority"), referred that certain Redevelopment Plan to the Hall County Regional Planning Commission, (the "Commission") a copy of which is attached hereto as Exhibit "A" for review and recommendation as to its conformity with the general plan for the development of the City of Grand Island, Hall County, Nebraska, pursuant to Section 18-2112 of the Community Development Law, Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended (the "Act"); and

WHEREAS, the Commission has reviewed said Redevelopment Plan as to its conformity with the general plan for the development of the City of Grand Island, Hall County;

NOW, THEREFORE, BE IT RESOLVED BY THE HALL COUNTY REGIONAL PLANNING COMMISSION AS FOLLOWS:

Section 1. The Commission hereby recommends approval of the Redevelopment Plan.

Section 2. All prior resolutions of the Commission in conflict with the terms and provisions of this resolution are hereby expressly repealed to the extent of such conflicts.

Section 3. This resolution shall be in full force and effect from and after its passage as provided by law.

DATED: July 11 2012.

HALL COUNTY REGIONAL PLANNING
COMMISSION

ATTEST:

By: Pat C. Orr
Chair

By: Leslie E. Ruge
Secretary

EXHIBIT A

FORM OF REDEVELOPMENT PLAN

**Redevelopment Plan Amendment
Grand Island CRA Area #6
May 2012**

The Community Redevelopment Authority (CRA) of the City of Grand Island intends to amend the Redevelopment Plan for Area #6 with in the city, pursuant to the Nebraska Community Development Law (the “Act”) and provide for the financing of a specific infrastructure related project in Area #6.

**Executive Summary:
Project Description**

THE ACQUISITION OF PROPERTY LOCATED AT 709 AND 715 W 18TH STREET AND THE SUBSEQUENT SITE WORK, UTILITY and ENGINEERING, LANDSCAPING AND PARKING IMPROVEMENTS NECESSARY FOR CONSTRUCTING A DUPLEX AT THIS LOCATION.

The use of Tax Increment Financing to aid in the acquisition of property along with costs associated with redevelopment of this site with a new duplex. The use of Tax Increment Financing makes it affordable to provide additional housing in Grand Island at this location at a contract rent that is consistent with the neighborhood. This project would not be possible in an affordable manner without the use of TIF.

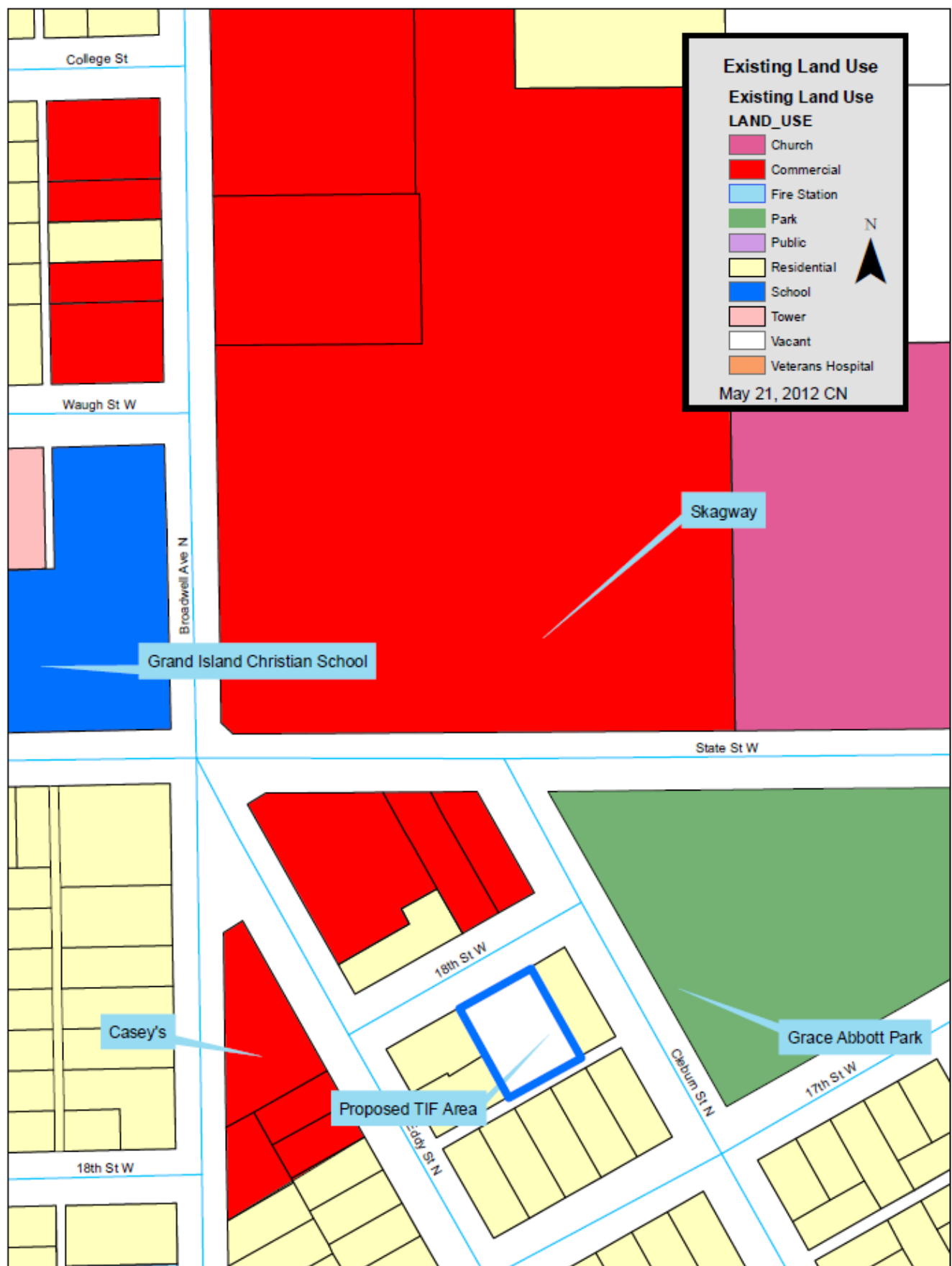
The site is under contract for purchase by developer contingent on the approval of TIF. All acquisition costs, site work, and utilities will be paid for by the developer. The developer is responsible for and has provided evidence that they can secure adequate debt financing to cover the costs associated with the acquisition, site work and remodeling. The Grand Island Community Redevelopment Authority (CRA) intends to pledge the ad valorem taxes generated over the 15 year period beginning January 1, 2014 towards the allowable costs and associated financing for the acquisition and site work.

TAX INCREMENT FINANCING TO PAY FOR THE ACQUISITION OF THE PROPERTY AND RELATED SITE WORK WILL COME FROM THE FOLLOWING REAL PROPERTY:

Property Description (the “Redevelopment Project Area”)

This property is located at the between Cleburn Street and Eddy Street on the south side of 18th Street in northeast Grand Island. The attached map identifies the subject property and the surrounding land uses:

- **Legal Descriptions** Lot 2 and Lot 3 of Block 22 of Schimmer’s Addition to the City of Grand Island.



The tax increment will be captured for the tax years the payments for which become delinquent in years 2014 through 2028 inclusive.

The real property ad valorem taxes on the current valuation will continue to be paid to the normal taxing entities. The increase will come from development of a duplex housing unit at this location.

Statutory Pledge of Taxes.

Pursuant to Section 18-2147 of the Act, any ad valorem tax levied upon real property in the Redevelopment Project Area shall be divided, for the period not to exceed 15 years after the effective date of the provision, which effective date shall be January 1, 2014.

a. That portion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the redevelopment project valuation shall be paid into the funds, of each such public body in the same proportion as all other taxes collected by or for the bodies; and

b. That portion of the ad valorem tax on real property in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the Authority to pay the principal of; the interest on, and any premiums due in connection with the bonds, loans, notes, or advances on money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Authority for financing or refinancing, in whole or in part, a redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness including interest and premium due have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in such redevelopment project shall be paid into the funds of the respective public bodies.

Pursuant to Section 18-2150 of the Act, the ad valorem tax so divided is hereby pledged to the repayment of loans or advances of money, or the incurring of any indebtedness, whether funded, refunded, assumed, or otherwise, by the CRA to finance or refinance, in whole or in part, the redevelopment project, including the payment of the principal of, premium, if any, and interest on such bonds, loans, notes, advances, or indebtedness.

Redevelopment Plan Amendment Complies with the Act:

The Community Development Law requires that a Redevelopment Plan and Project consider and comply with a number of requirements. This Plan Amendment meets the statutory qualifications as set forth below.

1. The Redevelopment Project Area has been declared blighted and substandard by action of the Grand Island City Council on October 9, 2007.[§18-2109] Such declaration was made after a public hearing with full compliance with the public notice requirements of §18-2115 of the Act.

2. Conformation to the General Plan for the Municipality as a whole. [§18-2103 (13) (a) and §18-2110]

Grand Island adopted a Comprehensive Plan on July 13, 2004. This redevelopment plan amendment and project are consistent with the Comprehensive Plan, in that no changes in the Comprehensive Plan elements are intended. This plan merely provides funding for the developer to acquire the necessary property and provide the necessary site work for the construction of a permitted use on this property.

3. The Redevelopment Plan must be sufficiently complete to address the following items: [§18-2103(13) (b)]

a. Land Acquisition:

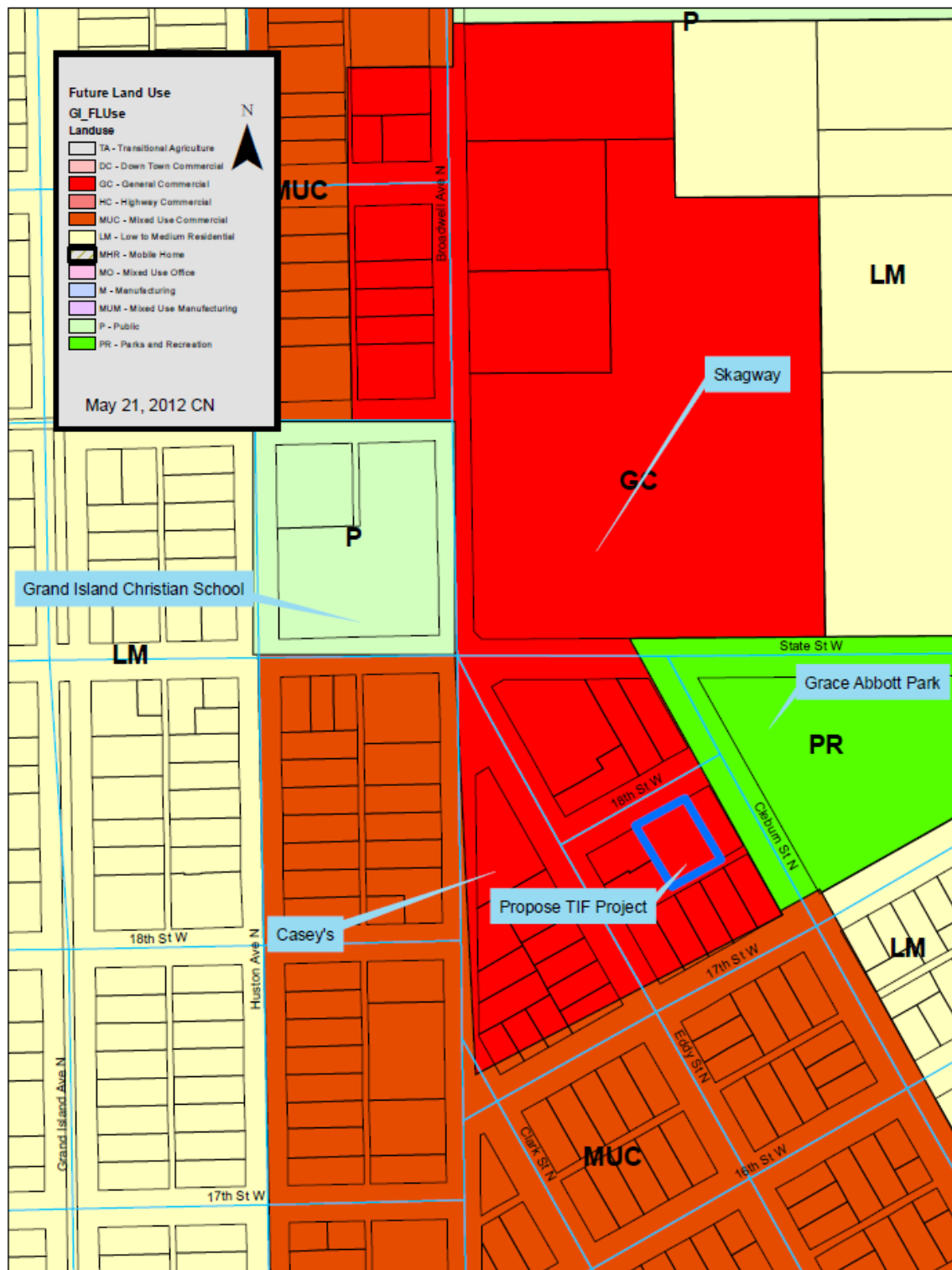
The Redevelopment Plan for Area #6 provides for real property acquisition and this plan amendment does not prohibit such acquisition. There is no proposed acquisition by the authority. The developer is proposing to acquire the property through private contract.

b. Demolition and Removal of Structures:

The project to be implemented with this plan does call for the demolition and removal of an existing substandard housing unit at this location. The structure to be demolished is a vacant substandard residential structure owned by the applicant.

c. Future Land Use Plan

See the attached map from the 2004 Grand Island Comprehensive Plan. The site is planned for commercial development. [§18-2103(b) and §18-2111] The attached map also is an accurate site plan of the area after redevelopment. [§18-2111(5)]



City of Grand Island Future Land Use Map

d. Changes to zoning, street layouts and grades or building codes or ordinances or other Planning changes.

The area is zoned B2-Genereal Business zone. No zoning changes are anticipated with this project. No changes are anticipated in street layouts or grades. No changes are anticipated in building codes or ordinances. Nor are any other planning changes contemplated. [§18-2103(b) and §18-2111]

e. Site Coverage and Intensity of Use

The developer is proposing purchase the property. The B2 zoning district allow 1 dwelling unit per 1000 square feet of property the combined size of the two lots is slightly more than 13139 square feet; enough to legally accommodate a duplex housing unit. The property is zoned B2 and could accommodate a building of up to 100% of the property area. The proposed units including the attached garages will cover about 2,984 square feet, well within the allowable coverage. [§18-2103(b) and §18-2111]

f. Additional Public Facilities or Utilities

Sewer and water are available to support this development. New water and sewer services may be required for this building. Water is located on the north side of 18th Street and no services are present on the south side of the street for these lots.

No other utilities would be impacted by the development.

The developer will be responsible for replacing any sidewalks damaged during construction of the project.

No other utilities would be impacted by the development. [§18-2103(b) and §18-2111]

4. The Act requires a Redevelopment Plan provide for relocation of individuals and families displaced as a result of plan implementation. This property, under contract by the developer is currently vacant and undeveloped, no relocation is needed. [§18-2103.02]

5. No member of the Authority, nor any employee thereof holds any interest in any property in this Redevelopment Project Area. [§18-2106]

Baker Development Inc. does have a banking relationship with Home Federal Bank in Grand Island, Nebraska. Barry Sandstrom, Chair of the CRA is also President of Home Federal Bank. He will abstain from the votes on actions taken on this project.

6. Section 18-2114 of the Act requires that the Authority consider:

a. Method and cost of acquisition and preparation for redevelopment and estimated proceeds from disposal to redevelopers.

The developer has a contract to purchase the property. The cost of property acquisition is included as a TIF eligible expense. Costs for acquisition, site preparation, utilities extensions, landscaping and concrete are \$38,250. These expenses are included as TIF eligible expenses. Fees and reimbursement to the City and the CRA of \$2750 are included as a TIF eligible expense. .

No property will be transferred to redevelopers by the Authority. The developer will provide and secure all necessary financing.

b. Statement of proposed method of financing the redevelopment project.

The developer will provide all necessary financing for the project. The Authority will assist the project by granting the sum of \$42,000 from the proceeds of the TIF Indebtedness issued by the Authority. This indebtedness will be repaid from the Tax Increment Revenues generated from the project. TIF revenues shall be made available to repay the original debt and associated interest after January 1, 2014 through December 2029.

c. Statement of feasible method of relocating displaced families.

No families will be displaced as a result of this plan.

7. Section 18-2113 of the Act requires:

Prior to recommending a redevelopment plan to the governing body for approval, an authority shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the city and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of insanitary or unsafe dwelling accommodations or conditions of blight.

The Authority has considered these elements in proposing this Plan Amendment. This amendment, in and of itself will promote consistency with the Comprehensive Plan, in

that it will allow for the utilization of and redevelopment of existing lots. This will not significantly impact traffic on at the Five Points intersection. New residential rental properties in this area raise property values and provide a stimulus to keep surrounding properties properly maintained. This will have the intended result of preventing recurring elements of unsafe buildings and blighting conditions.

8. Time Frame for Development

Development of this project (including demolition, site preparation and new construction) is anticipated to be completed between September 2012 and March of 2012. Excess valuation should be available for this project for 15 years beginning with the 2014 tax year.

9. Justification of Project

This is a residential neighborhood characterized by single family dwellings on smaller lots. The City of Grand Island is in need of additional housing units and this development will result in 2 brand new housing units. This is infill development in an area with all city services available. This project does not propose to tear down any buildings.

10. Cost Benefit Analysis Section 18-2113 of the Act, further requires the Authority conduct a cost benefit analysis of the plan amendment in the event that Tax Increment Financing will be used. This analysis must address specific statutory issues.

(a) Tax shifts resulting from the approval of the use of Tax Increment Financing;

The redevelopment project area currently has an estimated valuation of \$20,909. The proposed demolition and subsequent construction of a duplex at this location will result in an additional \$138,000 of taxable valuation based on an analysis by the Hall County Assessor's office. No tax shifts are anticipated from the project. The project creates additional valuation that will support taxing entities long after the project is paid off.

(b) Public infrastructure and community public service needs impacts and local tax impacts arising from the approval of the redevelopment project;

No additional public service needs have been identified. Existing water and waste water facilities will not be impacted by this development. The electric utility has sufficient capacity to support the development. It is not anticipated that this will impact schools. Fire and police protection are available and should not be impacted by this development.

(c) Impacts on employers and employees of firms locating or expanding within the boundaries of the area of the redevelopment project;

The proposed facility will provide jobs for persons employed with Baker Construction. It will have no impact on other firms locating or expanding in the area.

(d) Impacts on other employers and employees within the city or village and the immediate area that are located outside of the boundaries of the area of the redevelopment project; and

This project will not have a negative impact on other employers and will result in additional housing choices for employees within the city.

(e) Any other impacts determined by the authority to be relevant to the consideration of costs and benefits arising from the redevelopment project.

This project will increase the available quality housing in Grand Island by a net of 2 units. These types of smaller projects spread throughout the city will have a less drastic impact on neighborhoods and schools than a centralized larger housing project.

Time Frame for Development

Development of this project is anticipated to be completed during between September 2012 and March of 2013. The base tax year should be calculated on the value of the property as of January 1, 2013. Excess valuation should be available for this project for 15 years beginning in 2014. Excess valuation will be used to pay the TIF Indebtedness issued by the CRA per the contract between the CRA and the developer for a period not to exceed 15 years or an amount not to exceed \$42,000. This is about \$3,000 less than the projected amount of increment based upon the anticipated value of the project and current tax rate. Based on the estimates of the expenses of the cost of acquisition, site preparation, expenses and fees reimbursed to the City and CRA, the developer will spend at least \$42,000 on TIF eligible activities.

See Attached Building Plans

REDEVELOPMENT CONTRACT

This Redevelopment Contract is made and entered into as of the ____th day of _____, 2012, by and between the Community Redevelopment Authority of the City of Grand Island, Nebraska (“Authority”), and Baker Development, Inc., a Nebraska corporation (“Redeveloper”).

WITNESSETH:

WHEREAS, the City of Grand Island, Nebraska (the “City”), in furtherance of the purposes and pursuant to the provisions of Section 12 of Article VIII of the Nebraska Constitution and Sections 18-2101 to 18-2154, Reissue Revised Statutes of Nebraska, 2007, as amended (collectively the “Act”), has designated an area in the City as blighted and substandard; and

WHEREAS, City and Redeveloper desire to enter into this Redevelopment Contract for redevelopment of a parcel in the blighted and substandard area;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, Authority and Redeveloper do hereby covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01 Terms Defined in this Redevelopment Contract.

Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Redevelopment Contract, such definitions to be equally applicable to both the singular and plural forms and masculine, feminine and neuter gender of any of the terms defined:

“Act” means Section 12 of Article VIII of the Nebraska Constitution, Sections 18-2101 through 18-2154, Reissue Revised Statutes of Nebraska, 2007, as amended, and acts amendatory thereof and supplemental thereto

“Authority” means the Community Redevelopment Authority of the City of Grand Island, Nebraska.

“City” means the City of Grand Island, Nebraska.

“Governing Body” means the Mayor and City Council of the City.

“Holder” means the holders of TIF indebtedness issued by the Authority from time to time outstanding.

“Liquidated Damages Amount” means the amounts to be repaid to Authority by Redeveloper pursuant to Section 6.02 of this Redevelopment Contract.

“Project” means the improvements to the Redevelopment Area, as further described in Exhibit B attached hereto and incorporated herein by reference and, as used herein, shall include the Redevelopment Area real estate.

“Project Cost Certification” means a statement prepared and signed by the Redeveloper verifying the Redeveloper has been legally obligated for the payment of Project Costs identified on Exhibit D

“Project Costs” means only costs or expenses incurred by Redeveloper for the purposes set forth in §18-2103 (a) through (f), inclusive, of the Act as identified on Exhibit D.

“Redeveloper” means Baker Development, Inc., a Nebraska corporation.

“Redevelopment Area” means that certain real property situated in the City of Grand Island, Hall County, Nebraska, which has been declared blighted and substandard by the City pursuant to the Act, and which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

“Redevelopment Contract” means this redevelopment contract between the Authority and Redeveloper with respect to the Project.

“Redevelopment Plan” means the Amended Redevelopment Plan for the Redevelopment Area related to the Project, prepared by the Authority and approved by the City pursuant to the Act.

“Resolution” means the Resolution of the Authority, as supplemented from time to time, approving this Redevelopment Contract and the issuance of the TIF Indebtedness.

“TIF Indebtedness” means any bonds, notes, loans, and advances of money or other indebtedness, including interest and premiums, if any, thereon, incurred by the Authority pursuant to Article III hereof and secured in whole or in part by TIF Revenues.

“TIF Revenues” means incremental ad valorem taxes generated by the Project which are allocated to and paid to the Authority pursuant to the Act.

Section 1.02 Construction and Interpretation.

The provisions of this Redevelopment Contract shall be construed and interpreted in accordance with the following provisions:

(a) Wherever in this Redevelopment Contract it is provided that any person may do or perform any act or thing the word “may” shall be deemed permissive and not mandatory and it shall be construed that such person shall have the right, but shall not be obligated, to do and perform any such act or thing.

(b) The phrase “at any time” shall be construed as meaning “at any time or from time to time.”

(c) The word “including” shall be construed as meaning “including, but not limited to.”

(d) The words “will” and “shall” shall each be construed as mandatory.

(e) The words “herein,” “hereof,” “hereunder,” “hereinafter” and words of similar import shall refer to the Redevelopment Contract as a whole rather than to any particular paragraph, section or subsection, unless the context specifically refers thereto.

(f) Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as the context may require.

(g) The captions to the sections of this Redevelopment Contract are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary by implication or otherwise any of the provisions hereof.

ARTICLE II

REPRESENTATIONS

Section 2.01 Representations by Authority.

The Authority makes the following representations and findings:

(a) the Authority is a duly organized and validly existing Community Redevelopment Authority under the Act.

(b) The Redevelopment Plan has been duly approved and adopted by the City pursuant to Section 18-2109 through 18-2117 of the Act.

(c) The Authority deems it to be in the public interest and in furtherance of the purposes of the Act to accept the proposal submitted by Redeveloper as specified herein.

(d) The Redevelopment Project will achieve the public purposes of the Act by, among other things, increasing employment, improving public infrastructure, increasing the tax base, and lessening conditions of blight and substandard in the Redevelopment Area.

(e) (1) The Redevelopment Plan is feasible and in conformity with the general plan for the development of the City as a whole and the plan is in conformity with the legislative declarations and determinations set forth in the Act, and

(2) Based on Representations made by the Redeveloper:

(i) the Project would not be economically feasible without the use of tax-increment financing,

(ii) the Project would not occur in the Redevelopment Area without the use of tax-increment financing, and

(iii) the costs and benefits of the Project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the Authority and have been found to be in the long-term best interest of the community impacted by the Project.

(f) The Authority has determined that the proposed land uses and building requirements in the Redevelopment Area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development: including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of insanitary or unsafe dwelling accommodations, or conditions of blight.

Section 2.02 Representations of Redeveloper.

The Redeveloper makes the following representations:

(a) The Redeveloper is a Nebraska corporation, having the power to enter into this Redevelopment Contract and perform all obligations contained herein and by proper action has been duly authorized to execute and deliver this Redevelopment Contract.

(b) The execution and delivery of the Redevelopment Contract and the consummation of the transactions therein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which Redeveloper is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Redeveloper contrary to the terms of any instrument or agreement.

(c) There is no litigation pending or to the best of its knowledge threatened against Redeveloper affecting its ability to carry out the acquisition, construction, equipping and furnishing of the Project or the carrying into effect of this Redevelopment Contract or, except as disclosed in writing to the Authority, as in any other matter materially affecting the ability of Redeveloper to perform its obligations hereunder.

(d) Any financial statements of the Redeveloper or its Members delivered to the Authority prior to the date hereof are true and correct in all respects and fairly present the financial condition of the Redeveloper and the Project as of the dates thereof; no materially adverse change has occurred in the financial condition reflected therein since the respective dates thereof; and no additional borrowings have been made by the Redeveloper since the date thereof except in the ordinary course of business, other than the borrowing contemplated hereby or borrowings disclosed to or approved by the Authority.

(e) The Project would not be economically feasible without the use of tax increment financing.

(f) The Project would not occur in the Redevelopment Area without the use of tax-increment financing.

(g) The Redeveloper is an accredited investor as that term is defined for purposes Regulation D, issued pursuant to the Securities Act of 1933, as amended.

ARTICLE III

OBLIGATIONS OF THE AUTHORITY

Section 3.01 Division of Taxes.

In accordance with Section 18-2147 of the Act, the Authority hereby provides that any ad valorem tax on the following real property in the Project: to wit: the property shown on attached Exhibit A, for the benefit of any public body be divided for a period of fifteen years after the effective date of this provision as set forth in this section. The effective date of this provision shall be January 1, 2013.

(a) That proportion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the Redevelopment Project Valuation (as defined in the Act) shall be paid into the funds of each such public body in the same proportion as all other taxes collected by or for the bodies; and

(b) That proportion of the ad valorem tax on real property in the Redevelopment Area in excess of such amount (the "Incremental Ad Valorem Tax"), if any, shall be allocated to, is pledged to, and, when collected, paid into a special fund of the Authority to pay the principal of, the interest on, and any premiums due in connection with the bonds, loans, notes or advances of money to, or indebtedness incurred by

whether funded, refunded, assumed, or otherwise, such Authority for financing or refinancing, in whole or in part, such Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premium due have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in such Project shall be paid into the funds of the respective public bodies.

Section 3.02 Issuance of TIF Indebtedness

Authority shall incur TIF Indebtedness in the form and principal amount and bearing interest and being subject to such terms and conditions as are specified on the attached exhibit C. No TIF Indebtedness will be issued until Redeveloper has (a) acquired fee title to the Redevelopment Area; (b) obtained financing commitments as described in Section 5.01; and (c) entered into a contract for construction of the Project. The Authority shall have no obligation to find a lender or investor to acquire the TIF Indebtedness, but rather shall issue the TIF Indebtedness to the Redeveloper upon payment of the principal amount thereof. The purchase price of the TIF Indebtedness may be offset against the Grant described in Section 3.04 hereof, in the sole discretion of the Authority.

The TIF Indebtedness issued pursuant to the provisions of this contract constitutes a limited obligation of the Authority payable exclusively from that portion of the ad valorem real estate taxes mentioned in subdivision (1)(b) of Section 18-2147, R.R.S. Neb. 2007, as levied, collected and apportioned from year to year with respect to certain real estate located within the "Redevelopment Area" The TIF Indebtedness shall not constitute a general obligation of the Authority and the Authority shall be liable for the payment thereof only out of said portion of taxes as described in this paragraph. The TIF Indebtedness shall not constitute an obligation of the State of Nebraska or of the City or the Authority (except for such receipts as have been pledged pursuant to Section 3.03) and neither the State or Nebraska, the Authority nor the City shall be liable for the payment thereof from any fund or source including but not limited to tax monies belonging to either thereof (except for such receipts as have been pledged pursuant to Section 3.03). Neither the members of the Authority's governing body nor any person executing the TIF Indebtedness shall be liable personally on the TIF Indebtedness by reason of the issuance thereof. The Authority's obligation to the holder of the TIF Indebtedness shall terminate, in all events no later than 15 years from the effective date set forth in Section 3.01 hereof.

Section 3.03 Pledge of TIF Revenues.

The Authority hereby pledges 100% of the annual TIF Revenues as security for the TIF Indebtedness.

Section 3.04 Grant of Proceeds of TIF Indebtedness.

From the proceeds of the TIF indebtedness incurred as described on Exhibit C, the Authority shall grant the following sums to the following entities, to wit: 100% to the Redeveloper for Project Costs.

Notwithstanding the foregoing, the amount of the grant shall not exceed the amount of Project Costs certified pursuant to Section 4.02. The grants shall be paid to the Redeveloper upon certification that the Redeveloper has incurred or is obligated to incur such Project Costs which include supporting documentation requested by Authority and shall, if requested by Redeveloper, be made in one or more advances.

Section 3.05 Creation of Fund.

The Authority will create a special fund to collect and hold the TIF Revenues. Such special fund shall be used for no purpose other than to pay TIF Indebtedness issued pursuant to Sections 3.02 above.

ARTICLE IV

OBLIGATIONS OF REDEVELOPER

Section 4.01 Construction of Project; Insurance.

(a) Redeveloper will complete the Project and install all infrastructure, improvements, buildings, fixtures, equipment and furnishings necessary to operate the Project. Redeveloper shall be solely responsible for obtaining all permits and approvals necessary to acquire, construct and equip the Project. Until construction of the Project has been completed, Redeveloper shall make reports in such detail and at such times as may be reasonably requested by the Authority as to the actual progress of Redeveloper with respect to construction of the Project. Promptly after completion by the Redeveloper of the Project, the Redeveloper shall furnish to the Authority a Certificate of Completion. The certification by the Redeveloper shall be a conclusive determination of satisfaction of the agreements and covenants in this Redevelopment Contract with respect to the obligations of Redeveloper and its successors and assigns to construct the Project. As used herein, the term "completion" shall mean substantial completion of the Project.

(b) Any general contractor chosen by the Redeveloper or the Redeveloper itself shall be required to obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations and a penal bond as required by the Act. The City, the Authority and the Redeveloper shall be named as additional insured. Any contractor chosen by the Redeveloper or the Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the Project to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and shall include "All Risk" insurance for physical loss or damage. The contractor or the Redeveloper, as the case may be, shall furnish the Authority with a Certificate of Insurance evidencing policies as required above. Such certificates shall state that the insurance companies shall give the Authority prior written notice in the event of cancellation of or material change in any of the policies.

(c) Redeveloper shall pay, on execution hereof the sum of \$1,000.00 to the City of Grand Island for administrative expenses related to payment of the tax increment revenue.

Section 4.02 Cost Certification.

Redeveloper shall submit to Authority a certification of Project Costs, on or before the issuance of the TIF Indebtedness which shall contain detail and documentation showing the payment or obligation for payment of Project Costs specified on the attached Exhibit D in an amount at least equal to the grant to Redeveloper pursuant to Section 3.05.

Section 4.03 Legal Costs.

Redeveloper shall pay the Authority the sum of \$1,250 for the costs incurred by the Authority associated with the issuance of the TIF Indebtedness. Redeveloper understands that the law firm assisting with the issuance of the TIF Indebtedness represents the Authority and not the Redeveloper.

Section 4.04 No Discrimination.

Redeveloper agrees and covenants for itself, its successors and assigns that as long as any TIF Indebtedness is outstanding, it will not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status or receipt of public assistance in connection with the Project. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Project, Redeveloper will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, ancestry, disability, marital status or receipt of public assistance. Redeveloper will comply with all applicable federal, state and local laws related to the Project.

Section 4.05 Pay Real Estate Taxes.

Redeveloper intends to create a taxable real property valuation [over and above the valuation thereof as the same existed on January 1, 2012] of the Redevelopment Project Area of One Hundred Fifty Eight Thousand Dollars (\$158,000) no later than no later than January 1, 2013. During the period that any TIF Indebtedness is outstanding, neither the Redeveloper, nor its assigns, will (1) file a protest seeking to obtain a real estate property valuation on the Redevelopment Area of less than the sum of: (a) One Hundred Fifty Eight Thousand Dollars (\$158,000) and (b) the valuation of the Redevelopment Project Area as the same existed on January 1, 2012; (2) convey the Redevelopment Area or structures thereon to any entity which would be exempt from the payment of real estate taxes or cause the nonpayment of such real estate taxes; nor (3) allow real estate taxes and assessments levied on the Redevelopment Area and Project to become delinquent during the term that any TIF Indebtedness is outstanding. Redeveloper shall pay the real property ad valorem taxes for the project for the year 2027 prior to January 1, 2028.

Section 4.07 Assignment or Conveyance.

Any assignment or conveyance of the any portion of the Redevelopment, the Project or any interest therein prior to the termination of the 15 year period commencing on the effective date specified in Section 3.01 hereof Area by the Redeveloper shall be subject to the terms and

conditions of this Redevelopment Contract.

Section 4.08 Purchase of TIF Indebtedness.

The Redeveloper shall purchase the TIF Indebtedness at 100% of the principal amount thereof upon issuance of such debt. The Authority may provide that such purchase be offset against the grant provided in Section 3.04 hereof.

Section 4.09 Penal Bond.

The Developer shall execute a penal bond for the Project with good and sufficient surety to be approved by the Authority meeting the requirements of Section 18-2151, Reissue Revised Statutes of Nebraska, as amended, on or prior to its execution of this Contract.

Section 4.10 Immigration Status.

The Redeveloper agrees that any contractor for the Project shall be required to agree to use a federal immigration verification system (as defined in §4-114, R.S. Supp. 2009) to determine the work eligibility status of new employees physically performing services on the Project and to comply with all applicable requirements of §4-114, R.S. Supp. 2009.

ARTICLE V

FINANCING REDEVELOPMENT PROJECT; ENCUMBRANCES

Section 5.01 Financing.

Redeveloper shall pay all Project Costs and any and all other costs related to the Redevelopment Area and the Project which are in excess of the amounts paid from the proceeds of the TIF Indebtedness granted to Redeveloper. Prior to issuance of the TIF Indebtedness, Redeveloper shall provide Authority with evidence satisfactory to the Authority that private funds have been committed to the Redevelopment Project in amounts sufficient to complete the Redevelopment Project. Redeveloper shall timely pay all costs, expenses, fees, charges and other amounts associated with the Project which shall include such other fees and expenses imposed by the Authority.

ARTICLE VI

DEFAULT, REMEDIES; INDEMNIFICATION

Section 6.01 General Remedies of Authority and Redeveloper.

Subject to the further provisions of this Article VI, in the event of any failure to perform or breach of this Redevelopment Contract or any of its terms or conditions, by any party hereto or any successor to such party, such party, or successor, shall, upon written notice from the other,

proceed immediately to commence such actions as may be reasonably designed to cure or remedy such failure to perform or breach which cure or remedy shall be accomplished within a reasonable time by the diligent pursuit of corrective action. In case such action is not taken, or diligently pursued, or the failure to perform or breach shall not be cured or remedied within a reasonable time, this Redevelopment Contract shall be in default and the aggrieved party may institute such proceedings as may be necessary or desirable to enforce its rights under this Redevelopment Contract, including, but not limited to, proceedings to compel specific performance by the party failing to perform on in breach of its obligations.

Section 6.02 Additional Remedies of Authority

In the event that:

(a) the Redeveloper, on successor in interest, shall fail to complete the construction of the Project on or before January 1, 2013, or shall abandon construction work for any period of 90 days,

(b) the Redeveloper, on successor in interest, shall fail to pay real estate taxes or assessments on the Redevelopment Area on any part thereof or payments in lieu of taxes pursuant to Section 4.07 when due; or

(c) There is, in violation of Section 4.08 of this Redevelopment Contract, and such failure or action by the Redeveloper has not been cured within 30 days following written notice from Authority, then the Redeveloper shall be in default of this Redevelopment Contract.

In the event of such failure to perform, breach or default occurs and is not cured in the period herein provided, the parties agree that the damages caused to the Authority would be difficult to determine with certainty and that a reasonable estimation of the amount of damages that could be incurred is the amount of the grant to Redeveloper pursuant to Section 3.04 of this Redevelopment Contract, less any reductions in the principal amount of the TIF Indebtedness, plus interest on such amounts as provided herein (the "Liquidated Damages Amount"). The Liquidated Damages Amount shall be paid by Redeveloper to Authority within 30 days of demand from Authority.

Interest shall accrue on the Liquidated Damages Amount at the rate of one percent (1%) over the prime rate as published and modified in the Wall Street Journal from time to time and interest shall commence from the date that the Authority gives notice to the Redeveloper demanding payment.

Payment of the Liquidated Damages Amount shall not relieve Redeveloper of its obligation to pay real estate taxes or assessments with respect to the Project.

Section 6.03 Remedies in the Event of Other Redeveloper Defaults.

In the event the Redeveloper fails to perform any other provisions of this Redevelopment Contract (other than those specific provisions contained in Section 6.02), the Redeveloper shall be in default. In such an instance, the Authority may seek to enforce the terms of this Redevelopment Contract or exercise any other remedies that may be provided in this Redevelopment Contract or by applicable law; provided, however, that the default covered by this Section shall not give rise to a right or rescission on termination of this Redevelopment Contract, and shall not be covered by the Liquidated Damages Amount.

Section 6.04 Forced Delay Beyond Party's Control.

For the purposes of any of the provisions of this Redevelopment Contract, neither the Authority nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of or default in its obligations with respect to the conveyance or preparation of the Redevelopment Area for redevelopment, or the beginning and completion of construction of the Project, or progress in respect thereto, in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays in subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of the Authority or of the Redeveloper with respect to construction of the Project, as the case may be, shall be extended for the period of the forced delay: Provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such forced delay, have first notified the other party thereto in writing, and of the cause or causes thereof and requested an extension for the period of the forced delay.

Section 6.05 Limitations of Liability; Indemnification.

Notwithstanding anything in this Article VI or this Redevelopment Contract to the contrary, neither the City, the Authority, nor their officers, directors, employees, agents or their governing bodies shall have any pecuniary obligation or monetary liability under this Redevelopment Contract. The sole obligation of the Authority under this Redevelopment Contract shall be the issuance of the TIF Indebtedness and granting of a portion of the proceeds thereof to Redeveloper, as specifically set forth in Sections 3.02 and 3.04. The obligation of the City and Authority on any TIF Indebtedness shall be limited solely to the payment of the TIF Revenues on the TIF Indebtedness. Specifically, but without limitation, neither the City or Authority shall be liable for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder. The Redeveloper releases the City and Authority from, agrees that neither the City or Authority shall be liable for, and agrees to indemnify and hold the City and Authority harmless from any liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever

pertaining to the Project.

The Redeveloper will indemnify and hold each of the City and Authority and their directors, officers, agents, employees and member of their governing bodies free and harmless from any loss, claim, damage, demand, tax, penalty, liability, disbursement, expense, including litigation expenses, attorneys' fees and expenses, or court costs arising out of any damage or injury, actual or claimed, of whatsoever kind or character, to property (including loss of use thereof) or persons, occurring or allegedly occurring in, on or about the Project during the term of this Redevelopment Contract or arising out of any action or inaction of Redeveloper, whether on not related to the Project, or resulting from or in any way connected with specified events, including the management of the Project, or in any way related to the enforcement of this Redevelopment Contract or any other cause pertaining to the Project.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Notice Recording.

This Redevelopment Contract or a notice memorandum of this Redevelopment Contract shall be recorded with the County Register of Deeds in which the Redevelopment Area is located.

Section 7.02 Governing Law.

This Redevelopment Contract shall be governed by the laws of the State of Nebraska, including but not limited to the Act.

Section 7.03 Binding Effect; Amendment.

This Redevelopment Contract shall be binding on the parties hereto and their respective successors and assigns. This Redevelopment Contract shall run with the Redevelopment Area. The Redevelopment Contract shall not be amended except by a writing signed by the party to be bound.

Section 7.04 Third Party Enforcement,

The provisions of this Redevelopment Contract which obligate the Redeveloper shall inure to the benefit of the holder of the TIF Indebtedness, the Hall County Assessor, the City and the Authority, any of whom may, but are not obligated to enforce the terms of this Redevelopment Contract in a court of law.

IN WITNESS WHEREOF, City and Redeveloper have signed this Redevelopment Contract as of the date and year first above written.

ATTEST:

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
GRAND ISLAND, NEBRASKA

Secretary

By:_____

Chairman

Baker Development, Inc.

By: _____
President

STATE OF NEBRASKA)
) ss.
COUNTY OF HALL)

The foregoing instrument was acknowledged before me this _____ day of _____,
_____, by _____ and _____, Chair and Secretary, respectively, of the
Community Redevelopment Authority of the City of Grand Island, Nebraska, on behalf of the
Authority.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
_____, by _____, President of Baker Development, Inc., on behalf of the
corporation.

Notary Public

EXHIBIT A

Lots 2 and 3, Block 22, Schimmer's Addition to the City of Grand Island, Hall County, Nebraska.

A-I

EXHIBIT B

DESCRIPTION OF PROJECT

The acquisition of property located at 709 and 715 w 18th street and the subsequent site preparation work, utility and engineering, landscaping and parking improvements necessary for constructing a duplex at the site.

B- 1

EXHIBIT C
TIF INDEBTEDNESS

1. Principal Amount: \$42,000.00 [annual payment amounts assumed are \$3,000.00]
2. Payments: Semi-annually or more frequent, with payments limited to annual incremental taxes revenues from the project.
3. Interest Rate: Zero percent (0.00%)
4. Maturity Date: On or before December 31, 2027.

C-1

EXHIBIT D

PROJECT COSTS

All Project Costs payable from the proceeds of TIF indebtedness pursuant to the Act including:

1. Redevelopment Area acquisition cost
2. Site demolition work and site preparation
3. Utility extensions, installation of gas, water, sewer and electrical lines and equipment
4. Underground and surface concrete, including parking.
5. Sidewalk rehabilitation

D-1



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item E2

Public Hearing on Budget Amendment for Neighborhood Stabilization Program Grant

Staff Contact: Marco Floreani

Council Agenda Memo

From: Marco Floreani

Council Meeting: July 24, 2012

Subject: Approving Neighborhood Stabilization Program
(09-3N-11) Budget Amendment Request

Item #: E-2 & G-14

Presenter(s): Marco Floreani, Community Development Administrator

Background

In 2009, the City of Grand Island was awarded a \$993,712 Neighborhood Stabilization Program Grant from the Nebraska Department of Economic Development for property acquisition, demolition, redevelopment of new housing, housing administration, and general administration. In September 2010, the Department of Economic Development awarded an additional \$190,000 to the City for additional demolition and redevelopment. The project has enabled the City to demolish 11 blighted structures and fund construction of (8) new houses on a portion of the lots. The houses are available to first-time homebuyers, who can apply for Direct Subsidy for down payment through this grant. All funds from the sale of each property will return to the City as program income and reinvested into similar projects.

Discussion

There are grant funds remaining for use in the New Construction activity of the budget. By requesting a budget amendment, these New Construction funds may be reallocated to Clearance/Demolition activity. This will give the City of Grand Island the opportunity to demolish an additional vacant and blighted property and fully utilize the funds we have been awarded for the Neighborhood Stabilization Program (NSP) grant 09-3N-11. The current remaining funds in the New Construction activity are \$16,728. The proposed budget amendment will allocate the \$16,728 to be used for Clearance/Demolition. The Grand Island City Council is required to take action on the budget amendment request for submission to the Nebraska Department of Economic Development.

The budget amendment is being requested due to:

1. New Construction funds remaining, which have not been utilized during the construction of 8 homes built for low-moderate income individuals and families.

2. The ability to re-allocate these remaining funds to the Clearance/Demolition activity and demolish additional owner-occupied, vacant, blighted properties in Grand Island.

Community Development believes that the demolition of additional properties will be completed within the Neighborhood Stabilization Programs contract, which ends on August 23, 2012, if not before.

Alternatives

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

1. Approve the Neighborhood Stabilization Program (NSP) grant 09-3N-11 budget amendment request
2. Refer the issue to a Committee.
3. Postpone the issue to a later date.

Recommendation

City Administration recommends that Council approves the Neighborhood Stabilization Program (NSP) grant 09-3N-11 budget amendment request.

Sample Motion

Move to approve the Neighborhood Stabilization Program (NSP) grant 09-3N-11 budget amendment request.



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item F1

#9391 - Consideration of Amendments to Chapters 13 and 32 of the Grand Island City Code Relative to Downtown BID Encroachments

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Scott Griepentstroh, Project Manager

Meeting: July 24, 2012

Subject: Consideration of Amendments to Chapters 13 and 32 of the Grand Island City Code

Item #'s: F-1

Presenter(s): John Collins, Public Works Director

Background

All agreements with the Nebraska Department of Roads (NDOR) for Federal-aid Transportation projects include the following requirements for encroachments in the public Right-of-Way.

The Local Public Agency (LPA), at no cost to the project, shall clear the entire existing Right-of-Way of this project of any private or non-LPA uses or occupancy of the area above, below, or on the existing Right-of-Way. Also, the LPA agrees to keep the old and new Right-of-Way free of future encroachments, except those specifically authorized by permit.

The LPA must have all encroachments cleared from the Right-of-Way before requesting a Right-of-Way Certificate and must attest to said clearance.

NDOR provided the following specific guidance for addressing encroachments on public Right of Way on Federal-aid Transportation projects.

- A. Encroachments that are potential safety hazards (obstacle, sight distance interference) located within the clear zone MUST be removed immediately.
- B. Encroachments that are potential safety hazards located outside the clear zone may be decided case-by-case; work with NDOR's District office for assistance.
- C. Encroachments that are not potential safety hazards located within project lateral obstacle clearances must be moved, or considered to be abandoned, with the understanding that any damage caused by construction is not reimbursable, i.e. will not be paid for with Federal, State or Local funds (and if it remains after construction must be permitted by the local agency).
- D. Encroachments not included in any of the above categories – must be permitted (LPA governing body letter).

The Third and Wheeler Historical Lighting receives Federal aid through the Transportation Enhancement Program. The Grand Island Downtown has several encroachments that must be addressed before the Nebraska Department of Roads will approve final design plans and specifications.

Discussion

The Downtown Business Improvement District provided for and maintains concrete planters, bike racks, trash receptacles, sidewalk grates for trees and benches. These items typically are placed on the public sidewalk and are therefore encroachments in the public right-of-way.

This ordinance will allow these items to remain in the public right-of-way at the discretion of the City of Grand Island and the Public Works Director.

There are several buildings in the Downtown Business Improvement District that were constructed with vaults, or cavities, that extend under the public sidewalk. The purpose of these vaults includes providing for entrances to basements or additional storage space. Locations of underground vaults were identified in 1972 by Public Works staff as part of Downtown Sidewalk District improvements.

This ordinance allows these underground vaults to remain in the public right-of-way. In the event the vaults become structurally unsound, the property owner is responsible for structural upgrades or removal.

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 changes to Chapters 13 and 32 of the City Code.

Sample Motion

Move to approve the ordinance amending Sections 13-92 and 32-69 and of the Grand Island City Code.

ORDINANCE NO. 9391

An ordinance to amend Chapters 13 and 32 of the Grand Island City Code; and to provide 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. Article XII. Business Improvement District No. 8, Section 13-92 of the Grand Island City Code is hereby amended by adding paragraphs (D) and (D)(i):

§13-92. Purpose

(D) Improvements Encroaching Public Right-of-Way: Physical improvements as described in this section that occupy public right-of-way are maintained solely at the sufferance of the City. The City reserves the right and power to require the removal of any such improvement at its sole discretion.

(i) The Public Works Director shall have the authority to order items removed from the public right of way that compromise the use, construction or maintenance of the public sidewalk, alley or street.

SECTION 2. Article VII. Occupancy of Public Right of Way, Section 32-69 of the Grand Island City Code is hereby amended by adding paragraph (6):

§32-69. General

(6) Underground vault space under public sidewalk on buildings constructed prior to 1972 in the Downtown Improvement Parking District, as defined in Section 13-1 of the Grand Island City Code, are maintained solely at the sufferance of the City. The City reserves the authority to require structural upgrades or removal if in the interest of public safety.

SECTION 3. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

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

ORDINANCE NO. 9391 (Cont.)

Enacted: July 24, 2012

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G1

**Approving Minutes of July 9, 2012 Annual Joint Central District
Health Department Meeting**

Staff Contact: RaNae Edwards

OFFICIAL PROCEEDINGS

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF JOINT HEALTH SPECIAL MEETING

July 9, 2012

Pursuant to due call and notice thereof, a Special Joint Meeting of the City Council of the City of Grand Island, Nebraska, the Hall County Board of Supervisors, the Hamilton County Board of Commissioners, the Merrick County Board of Commissioners, and the Central District Health Department was conducted at the Grand Island Public Library, 211 North Washington Street, Grand Island, Nebraska on July 9, 2012. Notice of the meeting was given in the *Grand Island Independent* on July 3, 2012.

Central District Health Department Board President Mike Bowman called the meeting to order at 6:00 p.m. The following Health Board members were present: Dan Purdy (Hall Co.), Mike Bowman (Merrick Co.), Steve Kunzman, Mary Ann Apfel, Chuck Haase (Grand Island City Council), Dr. Richard Fruehling, Roger Wiegert (Merrick Co.), and Tim Bergen (Hamilton Co.). The following Hall County Supervisors were present: Daniel Purdy, Pamela Lancaster, Steve Schuppan, Gary Quandt, Bob McFarland and Hall County Clerk Marla Conley. The following Hamilton County Board of Commissioner was present: Tim Bergen. The following Merrick County Supervisor's were present: Mike Bowman and Roger Wiegert. The following City Officials were present: Mayor Jay Vavricek, Councilmember's Chuck Haase, Bob Niemann, Kirk Ramsey, Linna Dee Donaldson, John Gericke, Peg Gilbert, and City Clerk RaNae Edwards. Health Department employees: Executive Director Teresa Anderson, Assistant Director Ryan King, Jeremy Eschliman, and Jeremy Collinson.

Mike Bowman welcomed the group. Theresa Anderson gave a PowerPoint presentation on the historical perspective of the Health Department.

Jeremy Collinson commented on the Environmental Health which included: water, food inspections, preparedness and response and Vector control which dealt with mosquitos. Mr. Collinson commented on swimmers itch at Morman Island and working with inspections at the Nebraska State Fair. Questions were answered concerning the vendors at the State Fair and throughout the City. Periodic inspections were given throughout the fair and local vendors were inspected every six months.

Jeremy Eschliman commented on WIC, immunization and epidemiology and surveillance. Ryan King commented on the Community Health Assessment. Life style issues were mentioned. Grant funds were used for Healthy Works, which was working with businesses to encourage healthy lifestyles. Explained was what the Health Department was doing to create a healthier lifestyle.

Ms. Anderson explained the CHAMP program.

The following Leading Causes of Death were presented:

1. Cancer

2. Heart Disease
3. Chronic lower respiratory disease
4. Alzheimer Disease
5. Unintentional injuries

In the Central District area, seven out of ten deaths were from chronic disease. Nearly one out of every two adults had at least one chronic illness, many of which were preventable. Today, almost one in every three children in the district was overweight or obese which predisposes them to chronic disease.

Presented were the CDHD Strategic Direction:

- Tobacco free living
- Preventing drug abuse and excessive alcohol use
- Healthy eating
- Active living
- Injury and violence free living
- Reproductive and sexual health
- Mental and emotional well-being

A presentation was given on sugar-sweetened beverages (SSB). The Health Department will be working with worksites, schools, child care centers, government, and healthcare organizations to reduce the availability of sugar drinks and encourage healthier options. Discussion was held regarding taxes on SSB's.

Comments were made concerning the success of the smoking ban and the welcoming center here in Grand Island. Mentioned was the partnership between the City and County regarding replacing the parking lot at the Health Department.

ADJOURNMENT: The meeting was adjourned at 6:50 p.m.

Respectfully submitted,

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G2

Approving Minutes of July 10, 2012 City Council Regular Meeting

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL REGULAR MEETING
July 10, 2012

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 July 10, 2012. Notice of the meeting was given in *The Grand Island Independent* on July 4, 2012.

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, and John Gericke. Councilmember Vaughn Minton was absent. The following City Officials were present: City Clerk RaNae Edwards, City Attorney Robert Sivick, Public Works Director John Collins and Finance Director Jaye Monter.

INVOCATION was given by Pastor Bob Rhodes, Trinity United Methodist Church, 511 North Elm Street followed by the PLEDGE OF ALLEGIANCE.

Mayor Vavricek recused himself due to a conflict of interest on Items E-1 and G-2. Council President Gilbert conducted the meeting.

Council President Gilbert introduced Community Youth Council member Ashley Bykerk.

PUBLIC HEARINGS:

Public Hearing on Acquisition of Utility Easement Located at 2533 Old Potash Hwy. (Charter Communications). Utilities Director Tim Luchsinger reported that acquisition of an easement located at 2533 Old Potash Hwy. was needed in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers for the purpose of locating underground conduit, cable, and a three phase pad-mounted transformer to serve the new load for Charter Communications. Staff recommended approval. No public testimony was heard.

Public Hearing on Acquisition of Utility Easement Located at 2103 Pioneer Blvd. (James F. Crisel). Utilities Director Tim Luchsinger reported that acquisition of an easement located at 2103 Pioneer Blvd. was needed in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers for the purpose of locating underground cable, conduit and a pad-mounted transformer closer to the increased load. Staff recommended approval. No public testimony was heard.

ORDINANCES:

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

#9390 – Consideration of Amending Chapter 2 of the Grand Island City Code to Require City Council Approval of Future Hires of Certain Department Directors

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 these ordinances on second reading and then upon final passage and call for a roll call vote on each reading and then upon final passage.” Councilmember Nickerson seconded the motion. Upon roll call vote, all voted aye. Motion adopted.

#9390 – Consideration of Amending Chapter 2 of the Grand Island City Code to Require City Council Approval of Future Hires of Certain Department Directors

City Attorney Robert Sivick reported that at the June 26, 2012 Council meeting Ordinance #9389 was approved requiring Council approval of future Police and Fire Chiefs hired by the Mayor. A motion to amend Ordinance was offered which would have required additional Department Directors be hired with Council approval. The motion was withdrawn due to concerns regarding the Nebraska Open Meetings Act requiring sufficient notice to the public. This ordinance did not include the Regional Planning Director, Emergency Management Director, and the Library Director because they were subject to the authority of public bodies other than the Council.

Lewis Kent, 624 Meves Avenue requested Council to approve all Department Director’s positions.

Discussion was held regarding the three positions not included in Ordinance #9390. Mr. Sivick explained the Regional Planning Director and Emergency Management Director’s position were tied with Hall County through an Interlocal and the Library Director was appointed by the Library Board as required by state statutes. They City pays for all three positions. Concerns were made regarding delays in hiring.

Motion by Carney, second by Haase to approve Ordinance #9390.

City Clerk: Ordinance #9390 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, Councilmember’s Haase, Carney, Niemann, Ramsey, Gilbert, Nickerson, Dugan, and Gericke voted aye. Councilmember Donaldson voted no. Motion adopted.

City Clerk: Ordinance #9390 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 Haase, Carney, Niemann, Ramsey, Gilbert, Nickerson, Dugan, and Gericke voted aye. Councilmember Donaldson voted no. Motion adopted.

Mayor Vavricek: By reason of the roll call votes on first reading and then upon final passage, Ordinance #9390 is declared to be lawfully adopted upon publication as required by law.

CONSENT AGENDA: Agenda items G-2 and G-8 were pulled for further discussion. Motion by Ramsey, second by Carney to approve the Consent Agenda excluding items G-2 and G-8. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of June 26, 2012 City Council Regular Meeting.

#2012-173 – Approving Acquisition of Utility easement located at 2103 Pioneer Blvd. (James F. Crisel).

#2012-174 – Approving Bid Award for Chimney Repairs at Platte Generation Station with NAES Power Contractors of Cranberry Township, PA in an Amount of \$59,994.00.

#2012-175 – Approving Bid Award for Fire Protection Upgrade at Platte Generating Station with Nebraska Fire Sprinkler of Alda, NE in an Amount of \$68,900.00.

#2012-176 – Approving Change Order #1 for Uranium Removal Water Treatment Plant Equipment Installation & Pump Modifications with Judds Brothers of Lincoln, NE for an Increase of \$1,567.86 and a Revised Contract Amount of \$310,817.86.

#2012-177 – Approving Change Order #1 for Uranium Removal System Equipment at the Uranium Removal Water Treatment Plant with Water Remediation Technologies of Wheat Ridge, CO for a Decrease of \$1,315.86 and a Revised Contract Amount of \$1,956,784.14.

#2012-179 – Approving Crossing Surface Installation Agreement with Burlington Northern Santa Fe (BNSF) Railway Company for Improvements at the Broadwell Avenue/BNSF Railroad Crossing in an Amount Estimated at \$31,572.00.

#2012-180 – Approving Increase to the City's Share of the US Highway 30 Improvements with NDOR Project No. STP-NH 30-4(157) for a Total Amount of \$571,423.60.

#2012-172 – Approving Acquisition of Utility Easement Located at 2533 Old Potash Hwy. (Charter Communications). This item related to the aforementioned Public Hearing.

Motion by Carney, second by Dugan to approve Resolution #2012-172. Upon roll call vote, all voted aye. Motion adopted.

#2012-178 – Approving Request for Relaxation of Design Standards for Minimum Shoulder Width on Streets without Curb and Gutter for the Grand Island Resurfacing – Various Locations Project. Public Works Director John Collins reported that relaxation of Design Standards for Minimum Shoulder width on Streets without curb and gutter were needed on sections of Independence Road, South Blaine Street and North Road which did not currently have sufficient right of way to construct wider shoulders due to ditch and utility conflicts.

Councilmember Gericke raised concerns of allowing narrow streets within the city.

Motion by Carney, second by Gericke to approve Resolution #2012-178. Upon roll call vote, Councilmember's Carney, Niemann, Ramsey, Gilbert, Nickerson, Donaldson, Dugan, and Gericke voted aye. Councilmember Haase voted no. Motion adopted.

Mayor Vavricek returned to conduct the meeting.

PAYMENT OF CLAIMS:

Motion by Dugan, second by Nickerson to approve the Claims for the period of June 27, 2012 through July 10, 2012, for a total amount of \$4,345,834.28. Unanimously approved.

Motion by Gilbert, second by Dugan to remove item X-2 – Strategy Session with Respect to Pending Litigation from the agenda. Upon roll call vote, all voted aye. Motion adopted.

ADJOURN TO EXECUTIVE SESSION: Motion by Gilbert, second by Ramsey to adjourn to Executive Session at 7:30 p.m. for the purpose of a strategy session with respect to collective bargaining (IBEW Local 1597 – Wastewater, Service/Clerical, Finance, Utilities). Upon roll call vote, all voted aye. Motion adopted.

RETURN TO REGULAR SESSION: Motion by Gilbert, second by Ramsey to return to Regular Session at 8:07 p.m. Upon roll call vote, all voted aye. Motion adopted.

ADJOURNMENT: The meeting was adjourned at 8:07 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G3

Approving Minutes of July 10, 2012 City Council Study Session

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL STUDY SESSION

July 10, 2012

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 July 10, 2012. Notice of the meeting was given in the *Grand Island Independent* on July 4, 2012.

Mayor Jay Vavricek called the meeting to order at 8:07 p.m. The following Councilmembers were present: Chuck Haase, Larry Carney, Bob Niemann, Kirk Ramsey, Peg Gilbert, Mitch Nickerson, Linna Dee Donaldson, Scott Dugan, and John Gericke. Councilmember Vaughn Minton was absent. The following City Officials were present: City Clerk RaNae Edwards, City Attorney Bob Sivick, Public Works Director John Collins and Finance Director Jaye Monter.

SPECIAL ITEMS:

Presentation on Fire Chief Recruitment Process. Human Resources Director Brenda Sutherland reported that the City had an opening for a Fire Chief that was currently being advertised with a closing date for applications on July 16, 2012. An overview of the process for recruitment was presented. The goal was to hire the best possible candidate with community and council participation, professional expertise, validated process to lead to a successful recommendation.

The following Fire Chief Recruitment Process was presented:

- Applications are being accepted until July 16, 2012 at 3:00 p.m.
- Applicants must submit required supporting documents with an on-line application by deadline
- CPS (company that the City has used for Fire testing for many years) is supplying the assessment center test. Civil Service rules require a competitive testing process

Using an assessment center testing process would increase the applicant pool and be a validated, objective process. While applications were being accepted, a job analysis along with the knowledge, skills and abilities necessary would be evaluated by Subject Matter Experts (SMEs) i.e. professional fire department management employees. Assessment center exercises and scoring would be developed during the application period. Candidates meeting the eligibility requirements/minimum qualifications would be contacted by Cooperative Personnel Services (CPS) and phone interviews would be conducted by CPS with candidates who met qualifications. The Civil Service Commission would receive recommendations on candidate eligibility. The assessment center would consist of approximately three exercises and two to three assessors per exercise to be held August 21 – August 23, 2012 at the One-Stop building.

The following hiring process was presented:

- Candidates' scores will be based on their responses to assessment center exercises
- Candidates will be ranked based on their score
- Civil Service Commission will certify scores and form a certified eligibility list
- Civil Service Rules permit consideration for the top three ranking candidates (finalists)

- Thorough background checks will be conducted on the top candidates
- An employment interview will be conducted by an interview committee with the top candidates
- Community opportunity to hear from top candidates will be held
- Recommendation by Mayor and City Council approval

Discussion was held regarding an interview committee. Ms. Sutherland stated if people in the community were interested to be on the interview committee or be a part of the assessment center they could contact Ms. Sutherland or the Mayor. Comments were made by the Mayor that employees on the Fire Department would be a part of this process.

2013 Proposed Budget Presentation – General Fund and Capital Improvement Projects Fund. Finance Director Jaye Monter reported that tonight's presentation would allow council to start with an understanding of the estimate of the 2012-2013 General Fund revenues and know the revenue needed for departments to incur increasing payroll costs and continue to provide quality services to the citizens of Grand Island.

The goal was for financial sustainability of City policies and services to best serve the people of Grand Island. The purpose of the budget was to meet service expectations based on prioritization, identify the financial needs for the next 12 months, and lay the groundwork for long-term financial sustainability.

Presented were revenue projections for the 2012-2013 Budget. An increase in sales tax, property tax, municipal equalization, and food & beverage tax were forecasted to increase for a total increase of 2.9% or \$38,401,000. Explained was the All Other category which included motor vehicle tax, grants, and fees received by the city, etc.

Explained was the program expenditure for 2012-2013. Revenue needed for General Fund Department Expenditures was \$31,890,000 with a General Fund Revenue shortage of \$353,000. Discussion was held regarding the increase in operating costs over the last two to three years. Of the \$31,890,000 projected expenditures, \$24,000,000 was for payroll costs.

The following 2012-2013 Payroll Budget Calculations were presented:

- 1.75% salary increase FOP union – Fraternal Order of Police
- 1.50% salary increase AFSCME union – American Federation of State, City and Municipal Employees
- 2.00% salary increase all other unions
- 2.00% salary increase non-union
- 15.00% increase health insurance premium

General Fund Capital Department requests for 2012-2013 were presented for a total of \$1,835,285. Carry over funds were discussed. Discussion was held regarding the addition to Station No. 3 – Dormitory, exercise request for an amount of \$200,000. Interim Fire Chief Russ Blackburn explained the need for this request.

Capital Improvement Projects - 400 Fund were reviewed for a total request of \$4,744,067.

Discussion was held with regards to those items that were budgeted for in 2011-2012 but were not done and were moved over to the 2012-2013 budget request at an increased amount. Building Department Director Craig Lewis explained the City Hall HVAC item in the budget.

Mayor questioned the Council, if they were in agreement of no tax increase in the General Fund or in the Capital Improvement Projects. Comments were made regarding the Program Prioritization process with regards to eliminating programs. Reviewed were the upcoming Council meetings. City Attorney Bob Sivick explained the cell phone occupation tax.

Several Councilmember's commented on no increase in property tax.

ADJOURNMENT: The meeting was adjourned at 10:15 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G4

Approving Minutes of July 17, 2012 City Council Study Session

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL STUDY SESSION

July 17, 2012

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 July 17, 2012. Notice of the meeting was given in the *Grand Island Independent* on July 11, 2012.

Mayor Jay Vavricek called the meeting to order at 7:00 p.m. The following Councilmembers were present: Chuck Haase, Larry Carney, Bob Niemann, Kirk Ramsey, Peg Gilbert, Mitch Nickerson, Linna Dee Donaldson, Scott Dugan, Vaughn Minton, and John Gericke. The following City Officials were present: City Clerk RaNae Edwards, City Attorney Bob Sivick, Public Works Director John Collins and Finance Director Jaye Monter.

INVOCATION was given by Community Youth Council member Ashley Bykerk followed by the PLEDGE OF ALLEGIANCE.

SPECIAL ITEMS:

Emergency Medical Service (EMS) Demonstration. Interim Fire Chief Russ Blackburn stated this presentation was a simulation of a chest pain victim and what the response by EMS and the Grand Island Fire Department would be in an actual emergency. The goal for transfer was 10 minutes or less. Reasons for an engine truck and an ambulance at each call were needed for manpower. Mentioned was that it was important to call 911 if you were having chest pains. Station #1 engine company was introduced along with Jason Carter who portrayed the chest pain victim. Emergency Management Director Jon Rosenlund explained the process of incoming calls to the 911 Center.

Presentation of Grand Island Police Department Implementation Plan for the ICMA Public Safety Study. Police Chief Steve Lamken reported this was an overview of the ICMA Study. The “End Game” was to reduce Crime and the Fear of Crime in Grand Island.

The following Benchmarks were presented:

- Performance Objectives
 - Crime Reduction – 3773/100,000 population
 - Crime Clearance – Violent 50%, Property 21.3%
 - Fear of Crime – City Survey
 - Crime Defense – Crime Prevention Programs
 - Traffic Safety – to be determined
 - Emergency Services – 5 min. Response Time to Priority 1 Calls. Less than 60% Saturation Index.
- Saturation Index – Above 60% - Upper Threshold
- Police Officers
 - Ten Additional Officers

- Replacement and Reassignment of Two Officers
- CSOs – 5 FTE Positions
- Support Staff – 3 FTE Positions

Chief Lamken stated ICMA recommended a Strategic Policing Plan. His definition of Strategic Policing was a well planned and coordinated initiative, using multiple resources in cooperation with community resources, with the goal of creating a sustainable impact on crime. Explained was a plan for Strategic Policing for the Grand Island Police Department. Implementation would take place over four years.

The following Implementation Costs Summary was presented:

<u>Program</u>	<u>2012/13</u>	<u>2013/14</u>	<u>2014/15</u>	<u>2015/16</u>
Police Officers	\$561,690	\$820,220	\$861,862	\$921,047
CSOs	\$137,723	\$213,619	\$286,556	\$313,649
Support Staff	\$ 70,583	\$108,741	\$111,581	\$153,320
Totals	\$769,996	\$1,142,580	\$1,259,999	\$1,388,012

Discussion was held regarding if there were enough candidates to fill these positions. Chief Lamken stated they would take the time to find the right people for these positions. Comments were made by Council regarding the importance of the School Resource Officers. Chief Lamken stated during the school year the officers would still be in the schools and then be put on patrol duty during the summer. Calls for service had been addressed and changed over the past few years. Chief answered questions regarding the mobile units in the cars and stated the reception of calls was very good through Verizon.

Mentioned was the importance of Community Service Officers (CSOs) and what a great job they were doing. Comments were made concerning the Police Officer's taking their cars home to have a presence in the neighborhoods and the elimination of the Police Motorcycles. Explained was the Fear of Crime City Survey. Chief stated if the Council wanted the impact of the Strategic Policing, the Police Department needed the resources.

Comments were made regarding Program Prioritization and that 24 months ago the Police Department lost 11 employees. Chief answered questions concerning the overtime budget and that it had been reduced over the past few years. Explained was on average there were between five to nine officers and two sergeants on the street on any shift at any one time to cover a city of 50,000 people.

Mayor Vavricek commented on the ICMA Study and spoke in full support of the study. Chief stated this study was solid and the Police Department was up to the challenge. CSOs were mentioned as important to Strategic Policing.

Presentation of 2013 Capital Improvement Fund Budget. Public Works Director John Collins reviewed the Capital Projects for 2012-2013. Explained were construction estimates, rule of thumb, preliminary estimate and final estimate. Total Capital Improvement requests for the Public Works Department for 2012-2013 was \$4,744,067. Anticipated 2013-2014 Capital

Improvement Budget was \$9,388,700. Mr. Collins reviewed and explained each of the proposed projects in the General Fund for 2012-2013.

Discussion was held regarding the Cannon Ditch Lining project and other ditches in the City. Mr. Collins stated he had been working on standards for ditches.

City Attorney Robert Sivick explained the request of \$65,000 for Digital Antenna/Transmission Line Install. Finance Director Jaye Monter explained this presentation was to give the Council more information and time to think about the funding. Mentioned was there should be carryover of approximately \$400,000 to \$500,000 in the General Fund.

Presentation of City Administrator Hiring Process. Human Resources Director Brenda Sutherland reported that the City of Grand Island currently had an opening for City Administrator which was a statutory position appointed by the Mayor and approved by the City Council. The goal was to appoint the best candidate for the City Administrator position for the City of Grand Island.

The following two processes were presented:

- Internal Recruitment – Coordinated by the City Human Resources Department
 - No additional cost other than recruitment advertising
 - Recruitment brochure and job posting
 - Advertising
 - League of Municipalities – various states
 - On-line advertising sources
 - Social Media websites
 - GovernmentJobs.com
 - Trade Organizations
- External Recruitment – Performed by an outside recruitment agency

The following Internal Recruitment Process was presented:

- Applications accepted until 3:00 p.m. on September 7, 2012
- Review of the applications for minimum qualifications estimated completion by September 17, 2012
- Review of applications by committee consisting of Mayor, Council President Gilbert and H.R. Director
- Telephone interviews by a five member committee which includes an additional two at-large members selected from the community
- Background checks will be conducted on the candidates
- Biographical information about the finalists will be shared with the public
- Finalists will be invited to an in-person interview in October with the Mayor, City Council and Community members
- Contract negotiations with recommended candidate
- Recommendation by Mayor and approval by City Council

The following External Recruitment Process was presented:

- Request for Proposal (RFP) – 30 days
- Selection of external recruitment agency – late August. Cost is typically 25% - 33% of the first year's salary (City Administrator salary range is \$1114,033 - \$160,457)
- Contract with recruitment firm brought before City Council for approval – September 11th
- Timeline determined in conjunction with external recruitment agency
- Job Analysis
- Creation of recruitment brochure
- Application period is typically 30-45 days
- Advertising by external firm
- Review of applications by external firm
- Phone interviews with the most qualified candidates by recruitment agency
- Top candidates forwarded to the City for review
- Phone interviews with review committee which includes the Mayor, County President Gilbert, Human Resources Director and 2 at-large members
- Background checks will be conducted on the candidates
- Biographical information about each finalist will be made available to the public
- Finalists will be invited to an in-person interview with the Mayor, City Council and Community members
- Contract negotiations with recommended candidate
- Recommendation by Mayor and approval by City Council

Discussion was held concerning the contract negotiation and who would be involved. Mentioned were the City Attorney, Mayor and HR Director if the Internal Recruitment Process was used. Using an External Recruitment Process could be negotiated by the external firm.

Comments were made concerning the cost and time of an external firm. Internal recruitment could have a City Administrator in place by November. It was suggested that the two community members for the committee be Councilmember's.

ADJOURNMENT: The meeting was adjourned at 9:45 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G5

Approving Re-Appointments of Donald Skeen, Mike Spilinek, and Steve Grubbs to the Building Code Advisory Board

The Mayor has submitted the re-appointments of Donald Skeen, Mike Spilinek, and Steve Grubbs to the Building Code Advisory Board. These appointments would become effective August 1, 2012 upon approval by the City Council and would expire on August 1, 2014

Staff Contact: Mayor Jay Vavricek



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G6

Approving Re-Appointments of Al Avery, Deb Trosper, Glen Murray, John Schultz, Karen Bredthauer, and Mike Nolan to the Zoning Board of Adjustment

The Mayor has submitted the re-appointments of Mike Nolan, Al Avery, Glen Murray, John Schultz, Karen Bredthauer, and Deb Trosper to the Zoning Board of Adjustment. These appointments would become effective September 1, 2012 upon approval by the City Council and would expire on August 31, 2015.

Staff Contact: Mayor Jay Vavricek



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G7

#2012-181 - Approving Final Plat and Subdivision Agreement for Sheaffer Second Subdivision

Staff Contact: Chad Nabity

Council Agenda Memo

From: Regional Planning Commission

Meeting: July 24, 2012

Subject: Sheaffer Second Subdivision – Final Plat

Item #'s: G-7

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

Background

This property is located west of Claude Rd and south of Arch Ave., in the City of Grand Island, in Hall County, Nebraska. Consisting of (2 Lot) and 5.5.6046 acres.

Discussion

The revised final plat for Sheaffer Second Subdivision was considered by the Regional Planning Commission at the July 11, 2012 meeting. A motion was made by Bredthauer and seconded by Hayes to approve the plat as presented. A roll call vote was taken and the motion passed with 8 members present (McCarty, Snodgrass, O'Neill, Ruge, Hayes, Reynolds, Haskins, Bredthauer) voting in favor no member present abstaining.

Alternatives

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

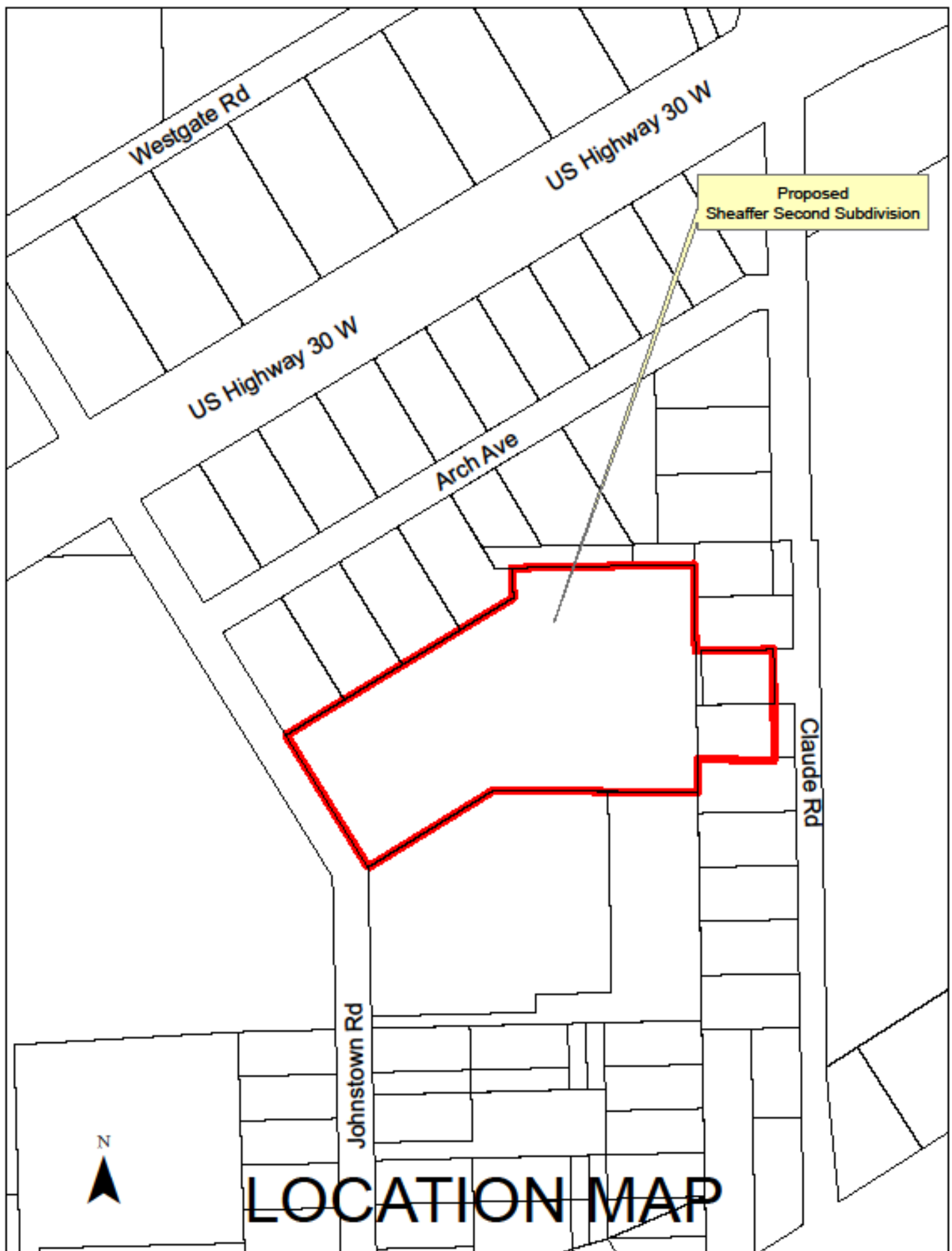
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the final plat as presented.

Sample Motion

Move to approve as recommended.



Kevin J Houtwed & Karen Houtwed

Developer/Owner

1104 S Claude Road

Grand Island NE 68803

PRO-TATCH INC, INC a Nebraska Corporation

Kevin J. Houtwed, President

1104 S Claude Road

Grand Island NE 68803

PREFERED PUMP & EQUIPMENT, L.P.

Randy Lyne, President of PPE Genpar Inc.,

General Partner of Prefered Pump & Equipment, L.P.

2201 Scott Avenue

Ft. Worth TX 76103

City of Grand Island

100 E 1st St

Grand Island NE 68801

To create 2 Lots west of Claude Road and south of Arch Ave., in the City of Grand Island, in Hall County, Nebraska.

Size: 5.6046

Zoning: M2 – Heavy Manufacturing Zone

Road Access: City Roads

Water Public: City water is available

Sewer Public: City sewer is available



RESOLUTION 2012-181

WHEREAS, Kevin J. Houted and Karen Houted, husband and wife, and PRO-TATCH, INC., a Nebraska Corporation, and THE CITY OF GRAND ISLAND, NEBRASKA, and PREFERED PUMP & EQUIPMENT, L.P., being the owners of the land described hereon, have caused same to be surveyed, subdivided, platted and designated as SHEAFFER SECOND SUBDIVISION, to be laid out into 2 lots, a tract of land comprising a part of the Northeast Quarter of the Southwest Quarter (NW1/4 SW1/4) of Section Twenty Four (24), Township Eleven North, Range Ten (10) West of the 6th P.M., in the City of Grand Island, Hall County Nebraska, and has caused a plat thereof to be acknowledged by it; and

WHEREAS, a copy of the plat of such subdivision has been presented to the Boards of Education of the various school districts in Grand Island, Hall County, Nebraska, as required by Section 19-923, R.R.S. 1943; and

WHEREAS, a form of subdivision agreement has been agreed to between the owner of the property and the City of Grand Island.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the form of subdivision agreement hereinbefore described is hereby approved, and the Mayor is hereby authorized to execute such agreement on behalf of the City of Grand Island.

BE IT FURTHER RESOLVED that the final plat of SHEAFFER SECOND SUBDIVISION, as made out, acknowledged, and certified, is hereby approved by the City Council of the City of Grand Island, Nebraska, and the Mayor is hereby authorized to execute the approval and acceptance of such plat by the City of Grand Island, Nebraska.

- - -

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



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G8

**#2012-182 - Approving Bid Award - Cooling Tower Reconditioning
at Platte Generating Station**

Staff Contact: Tim Luchsinger, Jason Eley

Council Agenda Memo

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

Meeting Date: July 24, 2012

Subject: Cooling Tower Reconditioning 2012

Item #'s: G-8

Presenter(s): Timothy G. Luchsinger, Utilities Director

Background

The cooling tower at the Platte Generating Station was constructed as part of the original plant in 1982. It is a wooden structure with fiberglass and PVC components. It is regularly inspected to maintain its structural integrity. Recent inspections by consultants and plant staff indicate that reconditioning is required to replace damaged louvers, air seals, and hot water deck seals.

The existing louvers have been damaged by falling ice over the years. The new louvers will be heavier and supported by fiberglass rods which will extend their useful life. Wind wall air seals are in need of repair, as many are cracked or have fallen off. Several perimeter air seals are in need of replacement. The leaks on the hot water deck will be re-caulked and sealed to reinforce the existing fiberglass seal.

Discussion

The specifications for Cooling Tower Reconditioning – 2012, were advertised and issued for bid in accordance with the City Purchasing Code. Bids were publicly opened on July 10, 2012. Specifications were sent to eight potential bidders and responses were received as listed below. The engineer's estimate for this project was \$150,000.

Bidder	Bid Price
Cooling Tower Depot, Inc.	\$132,235.00
International Cooling Tower	\$153,000.00
Evaptech, Inc.	\$155,168.83
Midwest Towers, Inc.	\$174,310.00

The bids were reviewed by plant engineering staff. The Cooling Tower Depot, Inc., bid had noted exceptions excluding any electrical work, which are acceptable. The bid is otherwise compliant with specifications, and less than the engineer's estimate.

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 award the Contract for Cooling Tower Reconditioning – 2012, to Cooling Tower Depot, Inc., of Golden, Colorado, in the amount of \$132,235.00.

Sample Motion

Move to approve the bid of \$132,235.00 from The Cooling Tower Depot, Inc., for Cooling Tower Reconditioning – 2012, at Platte Generating Station.



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

BID OPENING

BID OPENING DATE: July 10, 2012 at 2:00 p.m.
FOR: Cooling Tower Reconditioning 2012
DEPARTMENT: Utilities
ESTIMATE: \$150,000.00
FUND/ACCOUNT: 520
PUBLICATION DATE: June 23, 2012
NO. POTENTIAL BIDDERS: 5

SUMMARY

Bidder:	<u>International Cooling Tower</u> Edmonton, Canada	<u>Cooling Tower Depot, Inc.</u> Golden, CO
Bid Security:	Hartford Fire Ins. Co.	Argonaut Ins. Co.
Exceptions:	Noted	Noted

Bid Price:		
Material:	\$91,000	\$59,467
Labor:	\$58,000	\$68,735
Sales Tax:	<u>\$ 5,000</u>	<u>\$ 4,033</u>
Total Bid:	\$153,000	\$132,235

Bidder:	<u>Evaptech, Inc.</u> Lenexa, KS	<u>Midwest Towers, Inc.</u> Chickasha, OK
Bid Security:	Western Surety Co.	Liberty Mutual Ins. Co.
Exceptions:	None	None

Bid Price:		
Material:	\$69,020.00	\$77,147.00
Labor:	\$82,730.00	\$85,758.00
Sales Tax:	<u>\$ 3,418.83</u>	<u>\$11,405.00</u>
Total Bid:	\$155,168.83	\$174,310.00

cc: Tim Luchsinger, Utilities Director

Bob Smith, Assist. Utilities Director

Jason Eley, Purchasing Agent
Ryan Schmitz, Utility Production Eng.

Pat Gericke, Utilities Admin. Assist.
Karen Nagel, Utilities Secretary

P1568

RESOLUTION 2012-182

WHEREAS, the City of Grand Island invited sealed bids for Cooling Tower Reconditioning at Platte Generating Station according to plans and specifications on file with the Utilities Department; and

WHEREAS, on July 10, 2012, bids were received, opened and reviewed; and

WHEREAS, Cooling Tower Depot, Inc., of Golden, Colorado, submitted a bid in accordance with the terms of the advertisement of bids and plans and specifications and all other statutory requirements contained therein, such bid being in the amount of \$132,235.00; and

WHEREAS, the bid of Cooling Tower Depot, Inc., is less than the estimate for the Cooling Tower Reconditioning at Platte Generating Station.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Cooling Tower Depot, Inc., in the amount of \$132,235.00, for Cooling Tower Reconditioning is hereby approved as the lowest responsible bid.

- - -

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



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G9

#2012-183 - Approving Bid Award - Coal Conveyor #1 Transfer Point Upgrade at Platte Generating Station

Staff Contact: Tim Luchsinger, Jason Eley

Council Agenda Memo

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

Meeting Date: July 24, 2012

Subject: Coal Conveyor #1 Transfer Point Upgrade

Item #'s: G-9

Presenter(s): Timothy G. Luchsinger, Utilities Director

Background

Platte Generating Station utilizes a conveyor system to transport coal from the point where train cars unload to the coal storage pile and additional conveyors to the coal storage bunkers. The conveyor system consists of five separate conveyors. The five transfer points where coal is transferred from one conveyor to another are in need of upgrades to alleviate airborne dust, minimize maintenance, and provide a higher level of safety for plant personnel. Specifications were developed by the plant staff to include upgrading the first two transfer points. The specification was written to require, firm, lump sum pricing on the first transfer point with an alternate pricing for the second transfer point.

Discussion

The specifications for the Coal Conveyor #1 Transfer Point Upgrade were advertised and issued for bid in accordance with the City Purchasing Code. Bids were publicly opened on July 17, 2012. Specifications were sent to four potential bidders and responses were received as listed below. The engineer's estimate for this project was \$150,000.00.

Bidder	Bid Price	Alternate Bid	Total Bid
Martin Engineering Neponset, IL	\$ 76,377.67\$69,823.92	\$146,201.59	
Benetech Aurora, IL	\$334,045.00	\$193,680.00	\$527,725.00

The bids were reviewed by plant engineering staff. The bid from Martin Engineering is compliant with specifications and the base bid and optional bid are less than the engineer's estimate.

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 award the Contract for Coal Conveyor #1 Transfer Point Upgrade at Platte Generating Station to Martin Engineering of Neponset, Illinois, as the low responsive bidder, in the amount of \$146,201.59.

Sample Motion

Move to approve the bid of \$146,201.59 from Martin Engineering for the Coal Conveyor #1 Transfer Point Upgrade at Platte Generating Station.



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

BID OPENING

BID OPENING DATE: July 17, 2012 at 2:00 p.m.
FOR: Coal Conveyor #1 Transfer Point Upgrade - PGS
DEPARTMENT: Utilities
ESTIMATE: \$150,000.00
FUND/ACCOUNT: 520
PUBLICATION DATE: June 30, 2012
NO. POTENTIAL BIDDERS: 4

SUMMARY

Bidder:	<u>Martin Engineering</u> Neponset, IL	<u>Benetech</u> Aurora, IL
Bid Security:	Cashier's Check	Westchester Fire Ins. Co.
Exceptions:	Noted	Noted
Bid Price:		
Material:	\$36,366.00	\$189,145.00
Labor:	\$35,015.00	\$144,900.00
Sales Tax:	<u>\$ 4,996.67</u>	<u>\$ 0.00</u>
Total Bid:	\$76,377.67	\$334,045.00
Alternate Bid	\$69,823.92	\$193,680.00

cc: Tim Luchsinger, Utilities Director
Jason Eley, Purchasing Agent
Ryan Schmitz, Water Supt.

Bob Smith, Assist. Utilities Director
Pat Gericke, Utilities Admin. Assist.

P1569

RESOLUTION 2012-183

WHEREAS, the City of Grand Island invited sealed bids for Coal Conveyor #1 Transfer Point Upgrade at Platte Generating Station, according to plans and specifications on file with the Utilities Department; and

WHEREAS, on July 17, 2012, bids were received, opened and reviewed; and

WHEREAS, Martin Engineering, of Neponset, Illinois, 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 \$146,201.59; and

WHEREAS, the bid of Martin Engineering is less than the estimate for the Coal Conveyor #1 Transfer Point Upgrade at Platte Generating Station.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Martin Engineering, in the amount of \$146,201.59, for Coal Conveyor #1 Transfer Point Upgrade is hereby approved as the lowest responsible bid.

- - -

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



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G10

#2012-184 - Approving Supplemental Agreements with Burlington Northern Santa Fe Railroad - Double Track Project

Staff Contact: Tim Luchsinger, Utilities Director

Council Agenda Memo

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

Meeting: July 24, 2012

Subject: Burlington North Santa Fe Supplemental Agreements – Double Track Project

Item #'s: G-10

Presenter(s): Timothy Luchsinger, Utilities Director

Background

Burlington Northern Santa Fe (BNSF) is in the process of constructing a second track through Grand Island. To facilitate that construction and as a result of the Agreement entered into between the City and BNSF on December 6, 2011, a number of supplemental agreements will need to be approved.

The next agreements to come before City Council for approval are as follows:

1. Mile Post (MP) 94.41 – Electric Supply Line - Approximately 300 feet west of Bismark Road.
2. Mile Post (MP) 96.34 – Electric Supply Line - Between 6th & 7th Streets
3. Mile Post (MP) 96.19 – Electric Supply Line - Parallel to tracks between 4th & 5th Streets
4. Mile Post (MP) 96.03 – Electric Supply Line - Just south of the crossing with Union Pacific Railroad
5. Mile Post (MP) 96.26 – Electric Supply Line - On the north side of 5th Street

Discussion

Power line modifications for crossing #1 will be made and paid for by BNSF. The remaining crossing are existing crossings with no required modifications, but the crossing agreements are being updated to the current crossing agreement form. The supplemental agreements also include insurance requirements and working conditions for parties performing activities on railroad property.

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 supplemental agreements with BNSF for the electrical crossing at Mile Post 94.41, Mile Post 96.34, Mile Post 96.19, Mile Post 96.03 and Mile Post 96.26.

Sample Motion

Move to approve the supplemental agreements with BNSF for the Double Track Project.

**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 **CITY OF GRAND ISLAND** ("Licensee").

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

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 two (2) conduits, together with its supporting or containing structures ("Electric Supply Line") across or along the premises of Licensor at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 94.41, shown by bold line upon the print No. 1-55039, dated May 31, 2012 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.

COMPENSATION

7. (a) Intentionally omitted as this is due to a track expansion project.
- (b) Licensee agrees to reimburse Licensors (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensors 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 Licensors' 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.
- (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 Licensors 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 Licensors' 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 (402) 362-5501 or cell (402) 429-4055, at least ten (10) 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

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL 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 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, 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:

- ◆ It is agreed that any workers' compensation exclusion does not apply to Licensor's payments related to the Federal Employers Liability Act or a Licensor Age Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under

any Workers Compensation, disability benefits, or unemployment compensation law or similar law.

- ◆ 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.
- ◆ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

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
- 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.
- D. Railroad Protective Liability Insurance. This insurance shall name only the Licensor 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 Licensor prior to performing any work or services under this Agreement

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's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Licensor. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and, if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Licensor and Jones Lang LaSalle Brokerage, Inc. as an additional insured with respect to work performed under this agreement. Severability of interest and naming Licensor and Jones Lang LaSalle Brokerage, Inc. as additional insureds shall be indicated on the certificate of insurance.

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.

Licensee warrants 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 Licensor's 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, 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 28 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

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. Licensor 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 Licensor 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.
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.

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 Licensor, which may be withheld in Licensor's sole discretion.

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 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. – AOB-3
Fort Worth, TX 76131
Attn: Carrie Thompson - Land Revenue Management

If to Licensee: City of Grand Island
P.O. Box 1968
Grand Island, NE 68802

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.

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.

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 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. 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

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 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.

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:



Manager - Land Revenue Management

CITY OF GRAND ISLAND

P.O. Box 1968
Grand Island, NE 68802

By: _____

Title: _____

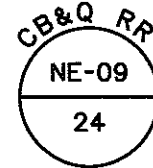


EXHIBIT "A"

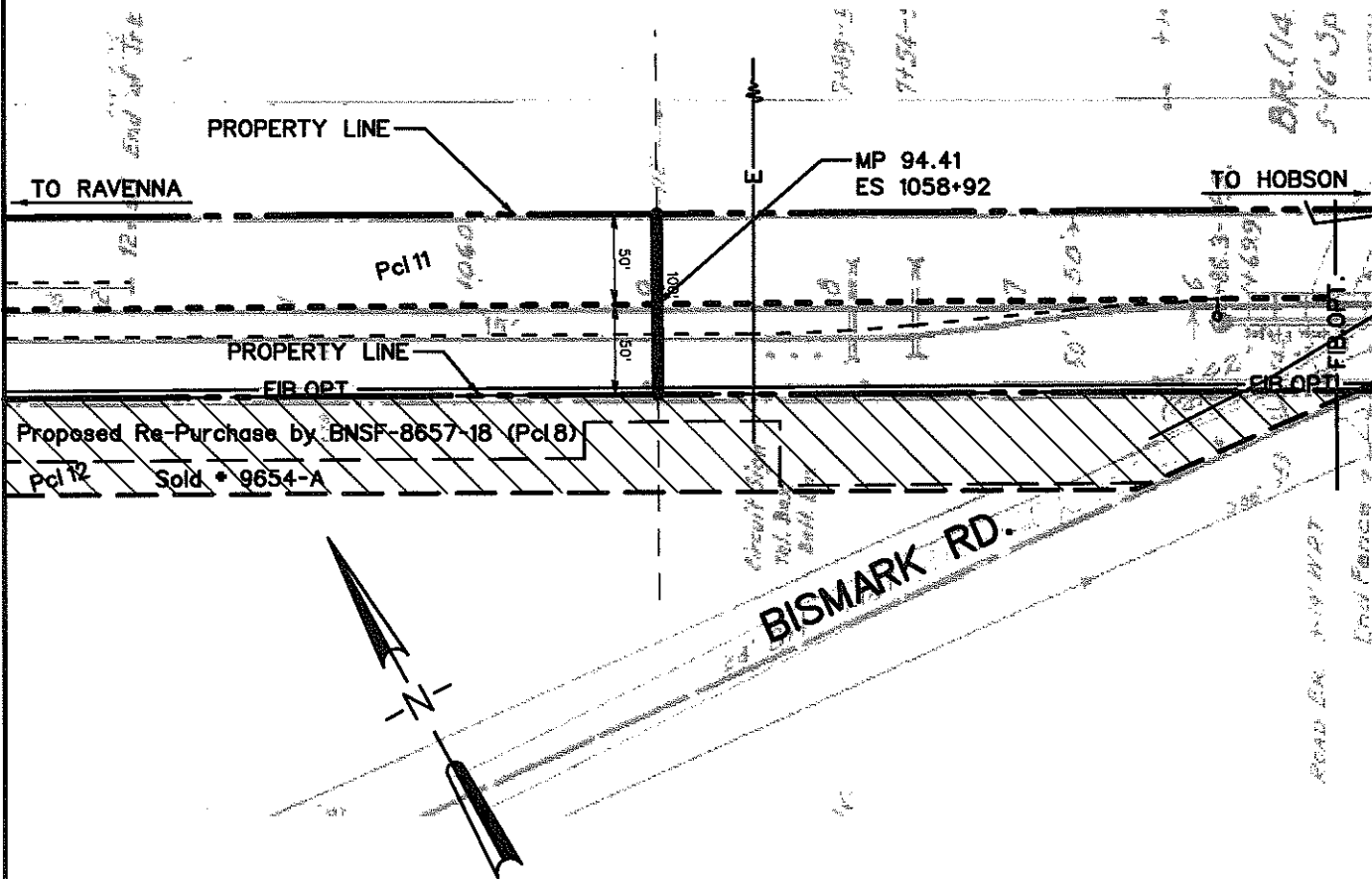
ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
 AND
CITY OF GRAND ISLAND, NE

SCALE: 1 IN. = 100 FT.
 NEBRASKA DIV.
 RAVENNA SUBDIV. L.S. 0004
 DATE 05/31/2012

SECTION: 14
 TOWNSHIP: 11N
 RANGE: 09W
 MERIDIAN: 6PM



MAP REF. S63982



NOTE:
 2-6" STEEL CONDUITS
 1 OCCUPIED
 1 VACANT

DESCRIPTION OF WIRES UNDER TRACK
 WIRES LOCATED AS SHOWN BOLD

TYPE	ELECTRIC	SIZE OF CONDUIT	6"x100'
NUMBER OF CONDUITS	2	CONDUIT MATERIAL	STEEL
VOLTAGE	13.8KV	WALL THICKNESS	0.188"
		LENGTH ON R/W	100'
		BASE OF RAIL TO TOP OF CONDUIT	6'

NOTE: CASING TO BE JACKED OR DRY BORED ONLY
 AT GRAND ISLAND
 COUNTY OF HALL

STATE OF NE

JWD

DRAWING NO. 1-55039

**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 **CITY OF GRAND ISLAND**, a Nebraska corporation ("Licensee").

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

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 two (2) conductors, together with its supporting or containing structures ("Electric Supply Line") across or along the premises of Licensor at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 96.34, shown by bold line upon the print No. 1-55154, dated June 13, 2012 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.

COMPENSATION

7. (a) Intentionally omitted as this is due to a track expansion project.
- (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 \$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.
- (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-training program at the following Internet Website "<http://contractororientation.com>". This training 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 (402) 362-5501 or cell (402) 429-4055, at least ten (10) 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

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL 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 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, 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 BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

- (d) Upon written notice from Licensors, 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

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. 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:

- ◆ It is agreed that any workers' compensation exclusion does not apply to Licensors' payments related to the Federal Employers Liability Act or a Licensors Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed

under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.

- ◆ 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.
- ◆ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

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

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.

D. Railroad Protective Liability Insurance. This insurance shall name only the Licensor 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 Licensor prior to performing any work or services under this Agreement

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's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Licensor. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Licensor and Jones Lang LaSalle Brokerage, Inc. as an additional insured with respect to work performed under this agreement. Severability of interest and naming Licensor and Jones Lang LaSalle Brokerage, Inc. as additional insureds shall be indicated on the certificate of insurance.

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 and referencing the contract audit/folder number if available. 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.

Licensee WARRANTS 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 Licensor's 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, 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 28 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

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. Licensor 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 Licensor 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.
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.

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 Licensor, which may be withheld in Licensor's sole discretion.

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 Licensor: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155
Attn: Licenses/Permits

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

If to Licensee: City of Grand Island
P.O. Box 1968
Grand Island, NE 68802

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.

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.

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 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. 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

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 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.

Jones Lang LaSalle Brokerage, 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 Brokerage, Inc.
It's Attorney In Fact
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155

By: _____

Ed Darter, Vice President – National Accounts

CITY OF GRAND ISLAND

P.O. Box 1968
Grand Island, NE 68802

By: _____

Title: _____

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND

CITY OF GRAND ISLAND, NE

SCALE: 1 IN. = 100 FT.

NEBRASKA DIV.

RAVENNA SUBDIV. L.S. 0004

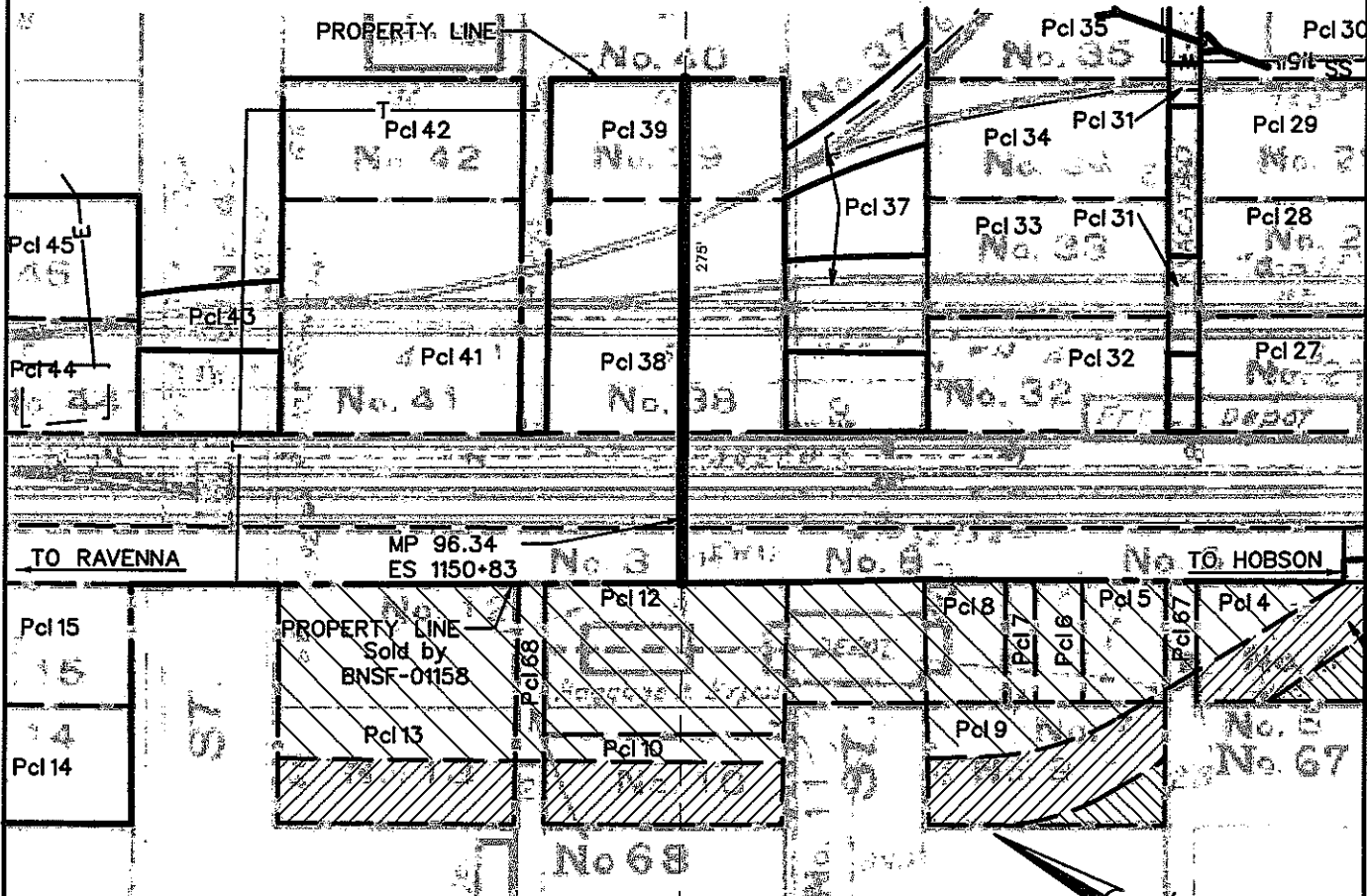
DATE 06/13/2012

SECTION: 10

TOWNSHIP: 11N

RANGE: 09W

MERIDIAN: 6PM



NOTE:
2-5" PVC CONDUITS
1 OCCUPIED
1 VACANT

DESCRIPTION OF WIRES UNDER TRACK
WIRES LOCATED AS SHOWN BOLD

TYPE	ELECTRIC
NUMBER OF CONDUITS	2
VOLTAGE	13.8KV

SIZE OF CONDUIT	5"x275'
CONDUIT MATERIAL	PVC
WALL THICKNESS	0.506"
LENGTH ON R/W	275'
BASE OF RAIL TO TOP OF CONDUIT	33'

NOTE: CASING TO BE JACKED OR DRY BORED ONLY
AT GRAND ISLAND
COUNTY OF HALL

STATE OF NE

JWD

DRAWING NO. 1-55154

**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 **CITY OF GRAND ISLAND**, a Nebraska corporation ("Licensee").

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

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 four (4) conductors^{cat}, together with its supporting or containing structures ("Electric Supply Line") across or along the premises of Licensor at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 96.13^{cat}, shown by bold line upon the print No. 1-55156, dated June 13, 2012 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.

COMPENSATION

7. (a) Intentionally omitted as this is due to a track expansion project.
- (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 \$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.
- (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-training program at the following Internet Website "<http://contractororientation.com>". This training 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 (402) 362-5501 or cell (402) 429-4055, at least ten (10) 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

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL 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 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, 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 BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY 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. 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:

- ◆ It is agreed that any workers' compensation exclusion does not apply to Licensor's payments related to the Federal Employers Liability Act or a Licensor Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed

under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.

- ◆ 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.
- ◆ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

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

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.

D. Railroad Protective Liability Insurance. This insurance shall name only the Licensor 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 Licensor prior to performing any work or services under this Agreement

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's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Licensor. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Licensor and Jones Lang LaSalle Brokerage, Inc. as an additional insured with respect to work performed under this agreement. Severability of interest and naming Licensor and Jones Lang LaSalle Brokerage, Inc. as additional insureds shall be indicated on the certificate of insurance.

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 and referencing the contract audit/folder number if available. 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.

Licensee WARRANTS 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 Licensor's 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, 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 28 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

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. Licensor 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 Licensor 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.
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.

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 Licensor, which may be withheld in Licensor's sole discretion.

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 Licensor: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155
Attn: Licenses/Permits

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

If to Licensee: City of Grand Island
P.O. Box 1968
Grand Island, NE 68802

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.

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.

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 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. 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

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 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.

Jones Lang LaSalle Brokerage, 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 Brokerage, Inc.
It's Attorney In Fact
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155

By: _____

Ed Darter, Vice President – National Accounts

CITY OF GRAND ISLAND

P.O. Box 1968
Grand Island, NE 68802

By: _____

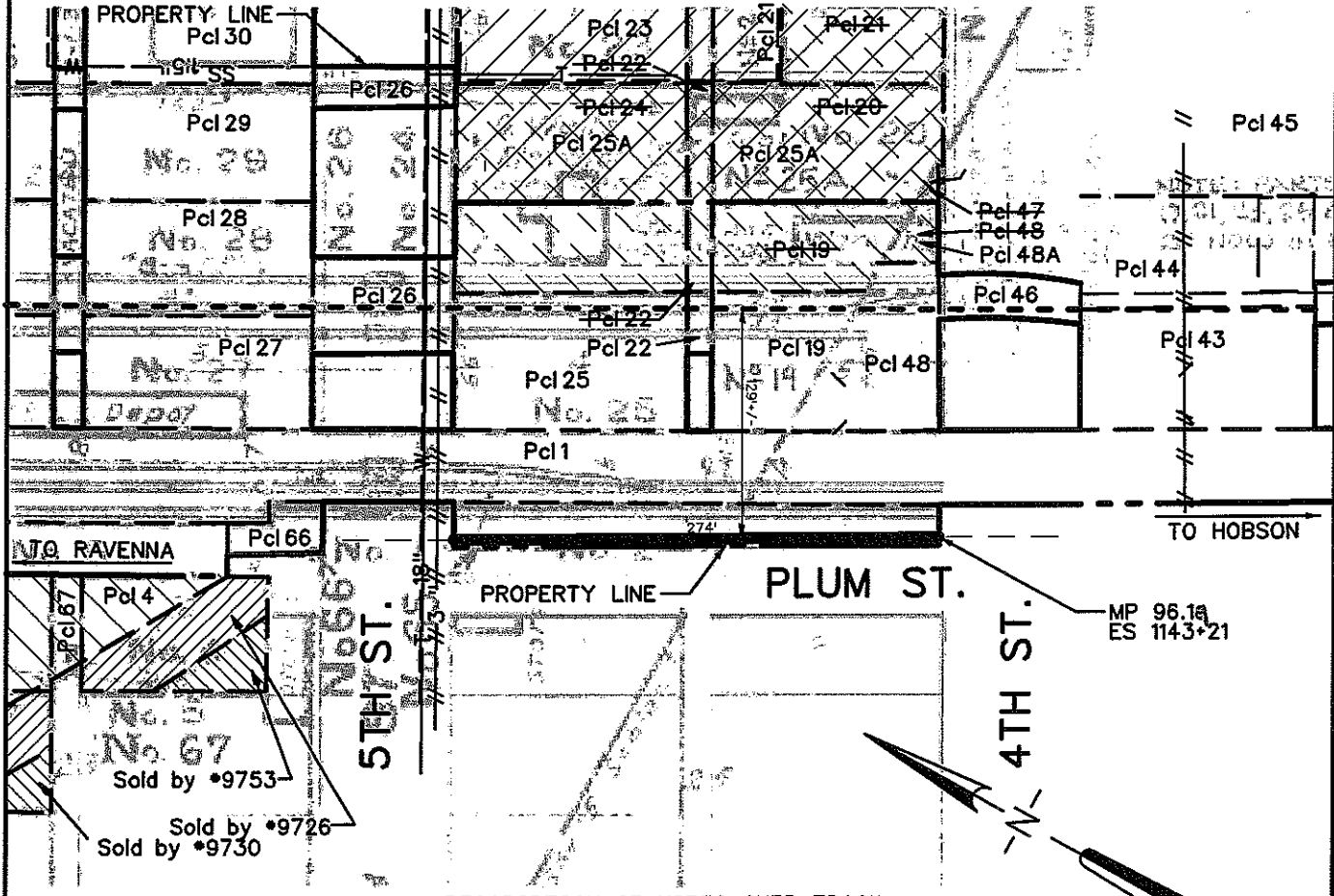
Title: _____

MAP REF. S71484/S71483

EXHIBIT "A"
ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND
CITY OF GRAND ISLAND, NE

SCALE: 1 IN. = 100 FT.
NEBRASKA DIV.
RAVENNA SUBDIV. L.S. 0004
DATE 06/13/2012

SECTION: 15
TOWNSHIP: 11N
RANGE: 09W
MERIDIAN: 6PM



DESCRIPTION OF WIRES OVER TRACK
WIRES LOCATED AS SHOWN BOLD

TYPE	NUMBER	VOLTAGE	DISTANCE ABOVE TOP OF RAIL	CLEARS RAILWAY COMPANY'S WIRES
ELECTRIC	4	13.8KV	-	-

AT GRAND ISLAND
COUNTY OF HALL

STATE OF NE

JWD

DRAWING NO. 1-55156

**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 **CITY OF GRAND ISLAND**, a Nebraska corporation ("Licensee").

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

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 two (2) conductors^{CM}, together with its supporting or containing structures ("Electric Supply Line") across or along the premises of Licensor at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 96.03, shown by bold line upon the print No. 1-55153, dated June 13, 2012 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.

COMPENSATION

7. (a) Intentionally omitted as this is due to a track expansion project.
- (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 \$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.
- (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-training program at the following Internet Website "<http://contractororientation.com>". This training 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 (402) 362-5501 or cell (402) 429-4055, at least ten (10) 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

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL 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 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, 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 BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY 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

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. 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:

- ◆ It is agreed that any workers' compensation exclusion does not apply to Licensor's payments related to the Federal Employers Liability Act or a Licensor Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed

under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.

- ◆ 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.
- ◆ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

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

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.

D. Railroad Protective Liability Insurance. This insurance shall name only the Licensor 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 Licensor prior to performing any work or services under this Agreement

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's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Licensor. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Licensor and Jones Lang LaSalle Brokerage, Inc. as an additional insured with respect to work performed under this agreement. Severability of interest and naming Licensor and Jones Lang LaSalle Brokerage, Inc. as additional insureds shall be indicated on the certificate of insurance.

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 and referencing the contract audit/folder number if available. 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.

Licensee WARRANTS 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 Licensor's 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, 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 28 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

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. Licensor 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 Licensor 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.
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.

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 Licensor, which may be withheld in Licensor's sole discretion.

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 Licensor: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155
Attn: Licenses/Permits

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

If to Licensee: City of Grand Island
P.O. Box 1968
Grand Island, NE 68802

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.

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.

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 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. 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

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 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.

Jones Lang LaSalle Brokerage, 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 Brokerage, Inc.
It's Attorney In Fact
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155

By: _____

Ed Darter, Vice President – National Accounts

CITY OF GRAND ISLAND

P.O. Box 1968
Grand Island, NE 68802

By: _____

Title: _____

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
 AND

CITY OF GRAND ISLAND, NE

SCALE: 1 IN. = 100 FT.

NEBRASKA DIV.

RAVENNA SUBDIV. L.S. 0004

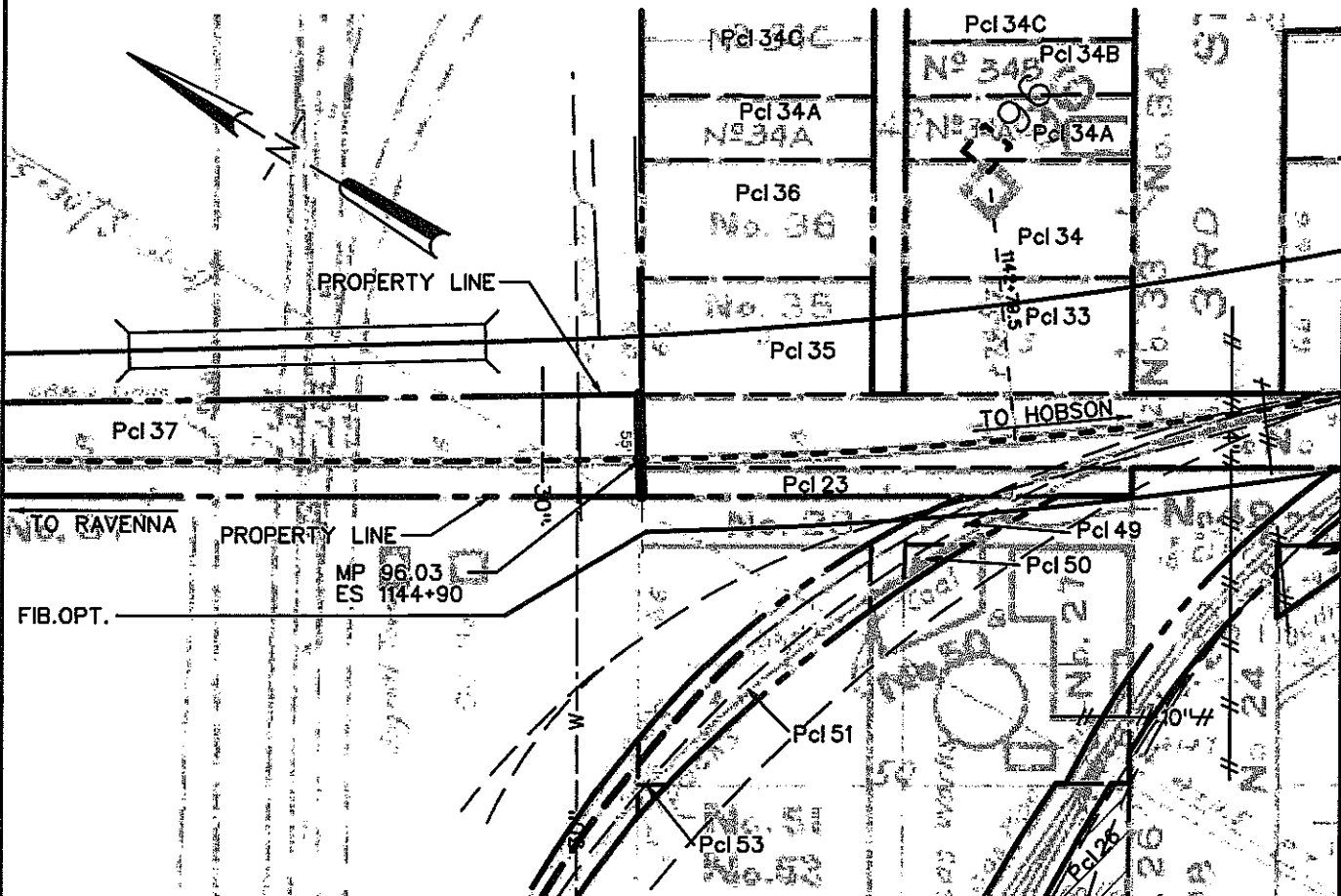
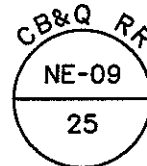
DATE 06/13/2012

SECTION: 15

TOWNSHIP: 11N

RANGE: 09W

MERIDIAN: 6PM

**NOTE:**

2-5" PVC CONDUITS
 1 OCCUPIED
 1 VACANT

TYPE	ELECTRIC
NUMBER OF CONDUITS	2
VOLTAGE	13.8KV

DESCRIPTION OF WIRES UNDER TRACK
 WIRES LOCATED AS SHOWN BOLD

SIZE OF CONDUIT	5"x55'
CONDUIT MATERIAL	PVC
WALL THICKNESS	0.506"
LENGTH ON R/W	55'
BASE OF RAIL TO TOP OF CONDUIT	47'

NOTE: CASING TO BE JACKED OR DRY BORED ONLY
AT GRAND ISLAND
COUNTY OF HALL

STATE OF NE

JWD

DRAWING NO. 1-55153

**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 **CITY OF GRAND ISLAND**, a Nebraska corporation ("Licensee").

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

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 two (2) conduits^{that}, together with its supporting or containing structures ("Electric Supply Line") across or along the premises of Licensor at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 96.26, shown by bold line upon the print No. 1-55155, dated June 13, 2012 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.

COMPENSATION

7. (a) Intentionally omitted as this is due to a track expansion project.
- (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 \$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.
- (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-training program at the following Internet Website "<http://contractororientation.com>". This training 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 (402) 362-5501 or cell (402) 429-4055, at least ten (10) 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

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL 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 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, 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 BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY 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

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. 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:

- ◆ It is agreed that any workers' compensation exclusion does not apply to Licensor's payments related to the Federal Employers Liability Act or a Licensor Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed

under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.

- ◆ 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.
- ◆ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

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

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.

D. Railroad Protective Liability Insurance. This insurance shall name only the Licensor 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 Licensor prior to performing any work or services under this Agreement

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's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Licensor. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Licensor and Jones Lang LaSalle Brokerage, Inc. as an additional insured with respect to work performed under this agreement. Severability of interest and naming Licensor and Jones Lang LaSalle Brokerage, Inc. as additional insureds shall be indicated on the certificate of insurance.

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 and referencing the contract audit/folder number if available. 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.

Licensee WARRANTS 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 Licensor's 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, 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 28 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

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. Licensor 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 Licensor 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.
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.

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 Licensor, which may be withheld in Licensor's sole discretion.

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 Licensor: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155
Attn: Licenses/Permits

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

If to Licensee: City of Grand Island
P.O. Box 1968
Grand Island, NE 68802

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.

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.

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 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. 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

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 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.

Jones Lang LaSalle Brokerage, 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 Brokerage, Inc.
It's Attorney In Fact
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155

By: _____
Ed Darter, Vice President – National Accounts**CITY OF GRAND ISLAND**

P.O. Box 1968
Grand Island, NE 68802

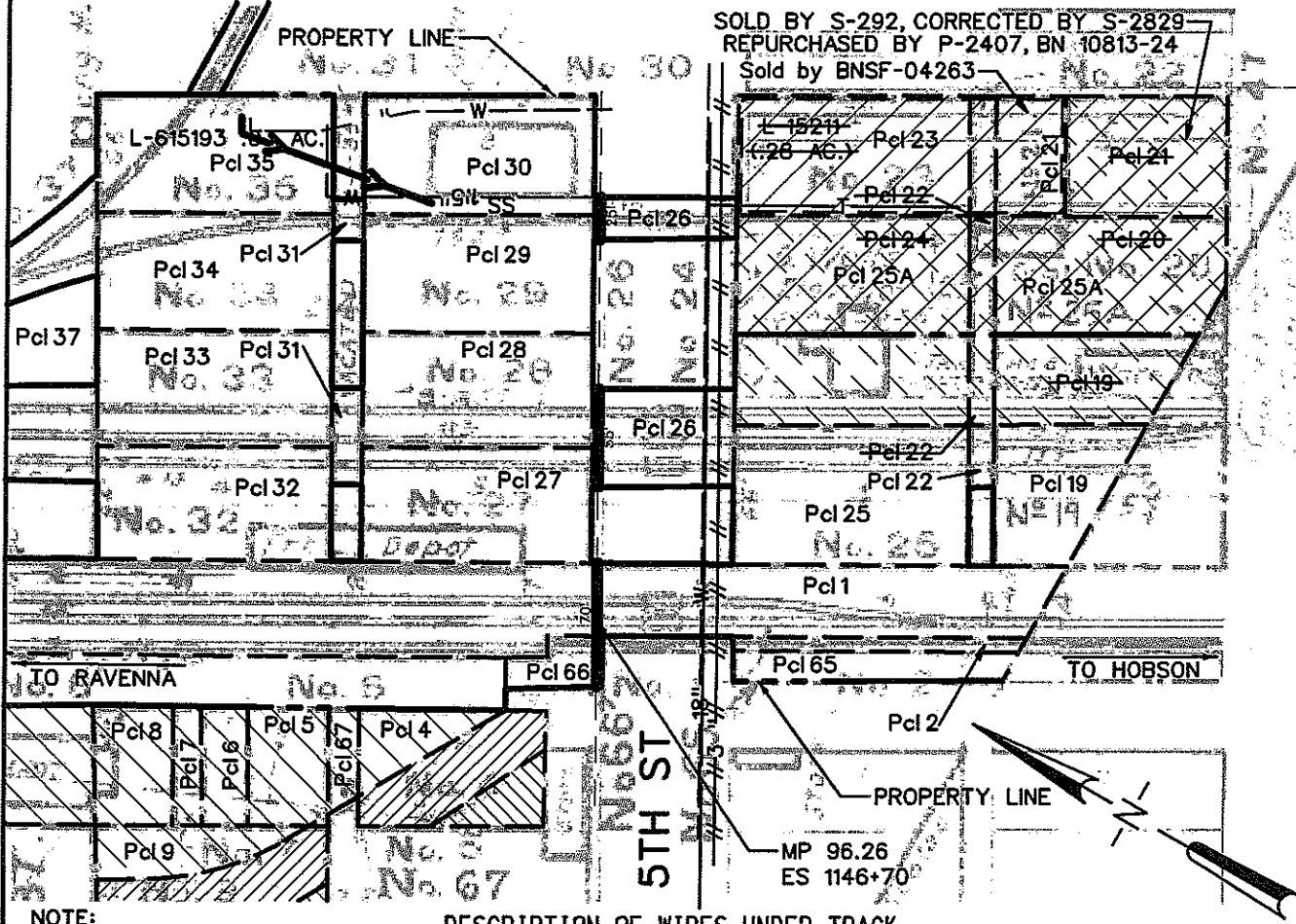
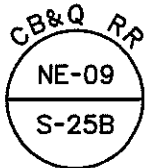
By: _____

Title: _____

EXHIBIT "A"
ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND
CITY OF GRAND ISLAND, NE

SCALE: 1 IN. = 100 FT.
NEBRASKA DIV.
RAVENNA SUBDIV. L.S. 0004
DATE 06/13/2012

SECTION: 10
TOWNSHIP: 11N
RANGE: 09W
MERIDIAN: 6PM



SOLD BY S-292, CORRECTED BY S-2829
REPURCHASED BY P-2407, BN 10813-24
Sold by BNSF-04263

NOTE:
2-5" PVC CONDUITS
1 OCCUPIED
1 VACANT

DESCRIPTION OF WIRES UNDER TRACK
WIRES LOCATED AS SHOWN BOLD

TYPE	ELECTRIC
NUMBER OF CONDUITS	2
VOLTAGE	13.8KV

SIZE OF CONDUIT	5"x150'
CONDUIT MATERIAL	PVC
WALL THICKNESS	0.506"
LENGTH ON R/W	150'
BASE OF RAIL TO TOP OF CONDUIT	35.4'

NOTE: CASING TO BE JACKED OR DRY BORED ONLY
AT GRAND ISLAND
COUNTY OF HALL

STATE OF NE JWD

DRAWING NO. 1-55155

RESOLUTION 2012-184

WHEREAS, in April of 2011, the City was advised by Burlington Northern Santa Fe (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 at Mile Post 94.41, Mile Post 96.34, Mile Post 96.19, Mile Post 96.03 and Mile Post 96.26; and

WHEREAS, the BNSF entered into an Agreement to pay for the modifications;
and

WHEREAS, the contract requires the City's passage of supplemental agreements for each crossing; and

WHEREAS, modifications include either relocating utilities or encasement of the utilities to current railroad crossing standards.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Supplemental Agreements presented at this meeting are hereby approved, and that the Mayor is authorized to sign the agreements on behalf of the City of Grand Island.

- - -

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



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.

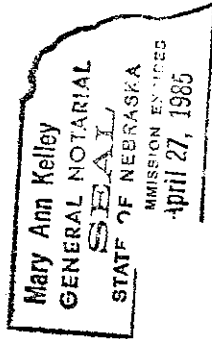
OMAHA NATIONAL/GRAND ISLAND
(formerly COMMERCIAL NATIONAL
BANK AND TRUST COMPANY OF
GRAND ISLAND, A Corporation,
Grantor

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.

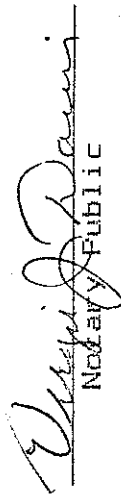
Executed September 2, 1984.

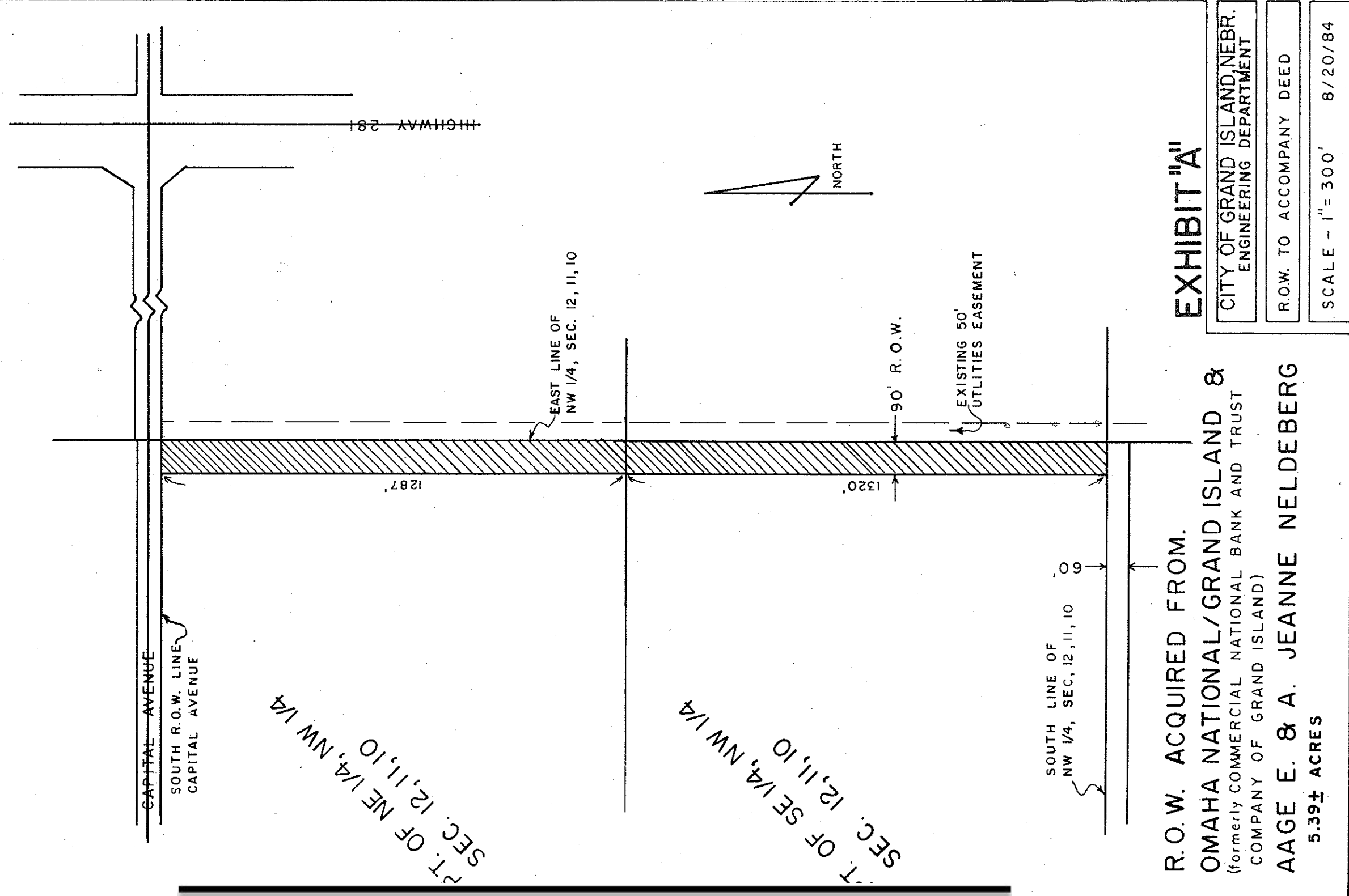
Aage E. Neldeberg
Aage E. Neldeberg

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.

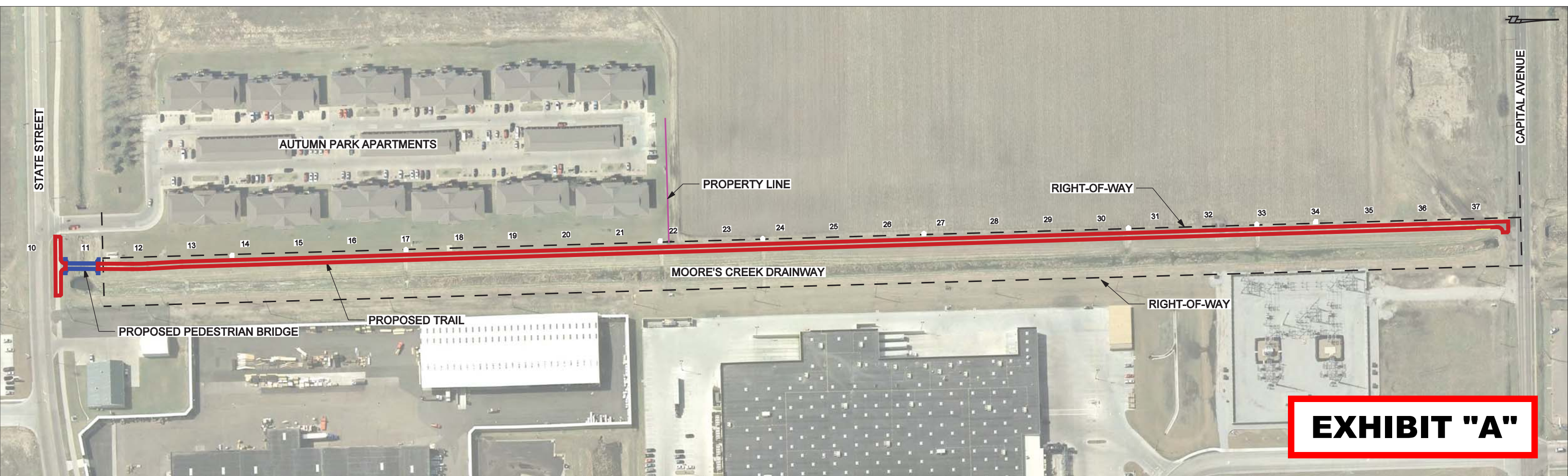
*Note - The term “State” in this regulation is generally accepted to mean the public agency who has the jurisdictional authority for the construction, operation, and maintenance of the facility either by being the project sponsor, by operation of law, or through agreements or other documents legally 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 6TH 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 6TH 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.

- - -

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



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G12

#2012-186 - Approving Bid Award for HVAC Renovation at City Hall

Staff Contact: Craig Lewis

Council Agenda Memo

From: Craig A. Lewis, Building Department Director

Meeting: July 24, 2012

Subject: Request for Proposals for the Renovations of the Heating and Air Conditioning Systems at City Hall.

Item #'s: G-13

Presenter(s): Craig Lewis

Background

On June 8, 2012 the City of Grand Island issued a request for proposal for renovations to the heating and air conditioning system at City Hall. The heating and air conditioning system is in need of renovations to the control system, replacement of the controls on variable air volume boxes, modifications to heat devices on the first floor, installation of variable speed controls for selected fan motors, and temperature control sequencing and automation compatible with existing systems.

Six proposal were received on June 28, 2012 ranging in cost from \$120,132.59 to \$174,950.00

Discussion

The proposals received were:

Johnson Controls
Omaha, NE. -- \$124,915.00

Control Services, Inc.
Omaha, NE. -- \$162,133.00

Honeywell Bld. Sol.
Omaha, NE. -- \$120,132.59

Engineered Controls
Lincoln, NE. -- \$174,950.00

Integrated Controls
Lincoln, BE. -- \$129,100.00

Aidin Electric, LLC.
Grand Island, NE. -- \$163,125.00

Honeywell Building Solutions of Omaha submitted the lowest responsive proposal and additionally identified alternatives to installing reheat devices on the first floor and provided for the based quote of \$105,620.52 with an option of \$14,512.07 for the reheats,

bringing the total to \$120,132.59. The alternative proposal has merit and I would suggest we approve the base proposal of \$105,620.52.

Alternatives

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

1. Approve the proposal from Honeywell Building Solutions.
2. Disapprove or /Deny all of the submitted proposals.
3. Modify the proposals to meet the wishes of the Council
4. Table the issue

Recommendation

City Staff recommends that the Council approve the request for proposal submitted by Honeywell Building Solutions for \$105,620.52.

Sample Motion

Move to approve the proposal submitted by Honeywell Building Solutions for the amount of \$105,620.52 and authorize the Mayor to sign the proposal.



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL
FOR
HVAC RENOVATION CITY HALL**

RFP DUE DATE: June 28, 2012 at 4:00 p.m.

DEPARTMENT: Building

PUBLICATION DATE: June 8, 2012

NO. POTENTIAL BIDDERS: 3

SUMMARY OF PROPOSALS RECEIVED

Johnson Controls
Omaha, NE

Control Services, Inc.
Omaha, NE

Honeywell
Omaha, NE

Engineered Controls
Lincoln, NE

Integrated Controls
Lincoln, NE

Aidin Electric, LLC
Grand Island, NE

cc: Craig Lewis, Building Department Director
Jason Eley, Purchasing Agent

Brian Henke, Bldg. Maintenance
Jaye Monter, Finance Director

P1565

Honeywell Proposal

Honeywell Building Solutions

Building Systems Agreement

(Rev.07/06)

Proposal Number: 932-12062802

Agreement Number: <AgreementNumber>

Proposal Name: Modifications to City Hall HVAC Systems

Date: June 27, 2012

Provider:

Honeywell Building Solutions

6602 S 118th Street

Omaha, Nebraska 68137

Customer:

City of Grand Island

100 East First Street

Grand Island, Nebraska 68801

Scope of Work

Honeywell shall provide the following equipment and services ("the Work") in accordance with the attached work scope documents and terms and conditions, which form a part of this Agreement.

Provide and install a new temperature control system for the Grand Island City Hall building. This includes the replacement of all existing controllers for 127 VAV boxes, 3 air handling units, the hot water heating system, chilled water system, and emergency generator/CU-1 exhaust. All sensors associated with these systems will also be replaced under this scope.

Provide and install new Honeywell variable frequency drives for RF-1, SF-2, RF-2, SF-3, and RF-3. The existing VFD for SF-1 is compatible with the system and fully functional. These VFD's will fully communicate with the temperature control system. Factory startup of drives is included.

Remove static control vanes on the existing air handling units to reduce air flow restrictions.

Provide graphics for all each system connected to the system. All points shall be capable of trending, alarm notification as required for proper monitoring and control.

Provide user training for the control system

Provide a fully commissioned system for validation of all inputs and outputs to the system.

All work to be performed in accordance with code and OSHA compliance.

Period of Performance

The Work shall commence on **Summer/Fall 2012** ("Effective Date") and shall be completed by **Fall 2012** ("Completion Date")

Inclusions

- Use Tax
- 1 year warranty on parts and labor furnished by Honeywell
- Proposal is valid for 90 days

Modifications to City Hall HVAC Systems

Honeywell Proposal

932-12062802

Honeywell Building Solutions

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- Checkout, testing and commissioning
- BMS graphics
- Variable Frequency Drives

Exclusions

- Use of owner's network

Clarifications, Assumptions and Exceptions

- Static IP, Subnet Mask & Gateway Provided by Customers IT Department.
- **Scope of work limited to work described above. Option price adds the installation of seven reheats to VAV boxes on the north side of the first floor. These reheats include installation in the ductwork, connection to VAV box controls, and electrical service to the reheats to provide a complete installed solution.**

Price

Base Price (Temperature Controls and VFD Drives): One Hundred Five Thousand Six Hundred Twenty and 52/100 (\$105,620.52) U.S. Dollars

Option Price (Seven Reheats on First Floor): Fourteen Thousand Five Hundred Twelve and 07/100 (\$14,512.07) US Dollars

☐ Sales Tax will be invoiced separately ☒ Use Tax is included in the Price ☐ This sale is tax exempt

Payment: Upon Customer acceptance of this proposal or contract execution, whichever occurs first, the Customer shall pay Honeywell ~~\$21,124.10 or twenty percent 20%~~ of the Price. Such payment shall be used for engineering, drafting, and other mobilization costs reasonably incurred prior to on-site installation.

This proposal is valid for 90 days.

Proposal Submitted By: 

(Signature)

Name: **Paul Stigge**

Title: **Account Representative**

Date: **June 28, 2012**

Honeywell Building Solutions

Acceptance

This proposal and the pages attached shall become an Agreement in accordance with Article 13 of the General Terms and Conditions below and only upon signature below by an authorized representative of Honeywell and Customer, subject to credit approval by Honeywell.

Accepted by:

HONEYWELL BUILDING SOLUTIONS CUSTOMER: City of Grand Island

Signature: _____

Name: _____

Title: _____

Date: _____

Signature: _____

Name: _____

Title: _____

Date: _____

Modifications to City Hall HVAC Systems

Honeywell Proposal

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Honeywell Building Solutions

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Honeywell Terms and Conditions

Rev. 08/09

1. WORKING HOURS

Unless otherwise stated, all labor and services under this Agreement will be performed during the hours of 8:00 a.m. - 4:30 p.m. local time Monday through Friday, excluding federal holidays. If for any reason Customer requests Honeywell to furnish any such labor or services outside of the hours of 8:00 a.m. - 4:30 p.m. local time Monday through Friday (or on federal holidays), any overtime or other additional expense occasioned thereby, such as repairs or material costs not included in this Agreement, shall be billed to and paid by Customer.

2. TAXES

2.1 Customer agrees to pay the amount of any new or increased taxes or governmental charges upon labor or the production, shipment, sale, installation, or use of equipment or software which become effective after the date of this Agreement. If Customer claims any such taxes do not apply to transactions covered by this Agreement, Customer shall provide Honeywell with a tax exemption certificate acceptable to the applicable taxing authorities.

2.2 Tax-Related Cooperation Customer agrees to execute any documents and to provide additional reasonable cooperation to Honeywell related to Honeywell tax filings under Internal Revenue Code Section 179D. Honeywell will be designated the sole Section 179D beneficiary.

3. PROPRIETARY INFORMATION

3.1 All proprietary information (as defined herein) obtained by Customer from Honeywell in connection with this Agreement shall remain the property of Honeywell, and Customer shall not divulge such information to any third party without prior written consent of Honeywell. As used herein, the term "proprietary information" shall mean written information (or oral information reduced to writing), or information in machine-readable form, including but not limited to software supplied to Customer hereunder which Honeywell deems proprietary or confidential and characterizes as proprietary at the time of disclosure to Customer by marking or labeling the same "Proprietary," "Confidential," or "Sensitive". The Customer shall incur no obligations hereunder with respect to proprietary information which: (a) was in the Customer's possession or was known to the Customer prior to its receipt from Honeywell; (b) is independently developed by the Customer without the utilization of such confidential information of Honeywell; (c) is or becomes public knowledge through no fault of the Customer; (d) is or becomes available to the Customer from a source other than Honeywell; (e) is or becomes available on an unrestricted basis to a third party from Honeywell or from someone acting under its control; (f) is received by Customer after notification to Honeywell that the Customer will not accept any further information.

3.2 Customer agrees that Honeywell may use nonproprietary information pertaining to the Agreement, and the work performed under the Agreement, for press releases, case studies, data analysis, promotional purposes, and other similar documents or statements to be publicly released, as long as Honeywell submits any such document or statement to Customer for its approval, which shall not be unreasonably withheld.

4. INSURANCE OBLIGATIONS

4.1 Honeywell shall, at its own expense, carry and maintain in force at all times from the effective date of the Contract through final completion of the work the following insurance. It is agreed, however, that Honeywell has the right to insure or self-insure any of the insurance coverages listed below:

- (a) Commercial General Liability Insurance to include contractual liability, products/completed operations liability with a combined single limit of USD \$2,000,000 per occurrence. Such policy will be written on an occurrence form basis;
- (b) If automobiles are used in the execution of the Contract, Automobile Liability Insurance with a minimum combined single limit of USD \$2,000,000 per occurrence. Coverage will include all owned, leased, non-owned and hired vehicles.
- (c) Where applicable, "All Risk" Property Insurance, including Builder's Risk insurance, for physical damage to property which is assumed in the Contract.
- (d) Workers' Compensation Insurance Coverage A - Statutory limits and Coverage B-Employer's Liability Insurance with limits of USD \$1,000,000 for bodily injury each accident or disease.

Honeywell will not issue coverage on a per project basis.

4.2 Prior to the commencement of the Contract, Honeywell will furnish evidence of said insurance coverage in the form of a Memorandum of Insurance which is accessible at: <http://www51.honeywell.com/moi/liability-n2/ds-united.html>. All insurance required in this Article will be written by companies with a rating of no less than "A-, XII" by A.M. Best or equivalent rating agency. Honeywell will endeavor to provide a thirty (30) day notice of cancellation or non-renewal to the Customer. In the event that a self-insured program is implemented, Honeywell will provide adequate proof of financial responsibility.

5. HAZARDOUS SUBSTANCES, MOLD AND UNSAFE WORKING CONDITIONS

5.1 Customer has not observed or received notice from any source (formal or informal) of (a) Hazardous Substances or Mold, either airborne or on or within the walls, floors, ceilings, heating, ventilation and air conditioning systems, plumbing systems, structure, and other components of the Site, or within furniture, fixtures, equipment, containers or pipelines in a Site; or (b) conditions that, to Customer's knowledge, might cause or promote accumulation, concentration, growth or dispersion of Hazardous Substances or Mold on or within such locations.

5.2 Honeywell is not responsible for determining whether the Covered Equipment or the temperature, humidity and ventilation settings used by Customer, are appropriate for Customer and the Site except as specifically provided in an attached Work Scope Document.

5.3 If any such materials, situations or conditions, whether disclosed or not, are in fact discovered by Honeywell or others and provide an unsafe condition for the performance of the work or Services, the discovery of the condition shall constitute a cause beyond Honeywell's reasonable control and Honeywell shall have the right to cease the work or Services until the area has been made safe by Customer or Customer's representative, at Customer's expense. Honeywell shall have the right to terminate this Agreement if Customer has not fully remediated the unsafe condition within sixty (60) days of discovery.

5.4 Customer represents that Customer has not retained Honeywell to discover, inspect, investigate, identify, prevent or remediate Hazardous Substances or Mold or conditions caused by Hazardous Substances or Mold.

5.5 TO THE FULLEST EXTENT ALLOWED BY LAW, CUSTOMER SHALL INDEMNIFY AND HOLD HONEYWELL HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND COSTS OF WHATEVER NATURE, INCLUDING BUT NOT LIMITED TO, CONSULTANTS' AND ATTORNEYS' FEES, DAMAGES FOR BODILY INJURY AND PROPERTY DAMAGE, FINES, PENALTIES, CLEANUP COSTS AND COSTS ASSOCIATED WITH DELAY OR WORK STOPPAGE, THAT IN ANY WAY RESULTS FROM OR ARISES UNDER THE BREACH OF THE REPRESENTATIONS AND WARRANTIES IN THIS SECTION, THE EXISTENCE OF MOLD OR A HAZARDOUS SUBSTANCE AT A SITE, OR THE OCCURRENCE OR EXISTENCE OF THE SITUATIONS OR CONDITIONS DESCRIBED IN THIS SECTION, WHETHER OR NOT CUSTOMER PROVIDES HONEYWELL ADVANCE NOTICE OF THE EXISTENCE OR OCCURRENCE AND REGARDLESS OF WHEN THE HAZARDOUS SUBSTANCE OR OCCURRENCE IS DISCOVERED OR OCCURS. THIS INDEMNIFICATION SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR WHATEVER REASON.

Modifications to City Hall HVAC Systems

Honeywell Proposal

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Honeywell Building Solutions

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6. WARRANTY AND LIMITATION OF LIABILITY

6.1 Honeywell will replace or repair any product Honeywell provides under this Agreement that fails within the warranty period (one) 1 year because of defective workmanship or materials, except to the extent the failure results from Customer negligence, or from fire, lightning, water damage, or any other cause beyond the control of Honeywell. This warranty applies to all products Honeywell provides under this Agreement, whether or not manufactured by Honeywell. The warranty is effective as of the date of Customer acceptance of the product or the date Customer begins beneficial use of the product, whichever occurs first.

6.2 THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE, AND HONEYWELL EXPRESSLY DISCLAIMS AND CUSTOMER EXPRESSLY WAIVES ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF WORKMANSHIP, CONSTRUCTION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES, EQUIPMENT, AND MATERIALS PROVIDED HEREUNDER. Honeywell SHALL NOT BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF INCOME, EMOTIONAL DISTRESS, DEATH, LOSS OF USE, LOSS OF VALUE, ADVERSE HEALTH EFFECT OR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, ARISING FROM, OR RELATING TO, THIS LIMITED WARRANTY OR ITS BREACH.

6.3 Honeywell makes no representation or warranty, express, implied or otherwise, regarding Hazardous Substances or Mold. Honeywell shall have no duty, obligation or liability, all of which Customer expressly waives, for any damage or claim, whether known or unknown, including but not limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effect or any special, consequential, punitive, exemplary or other damages, regardless of whether such damages may be caused by or otherwise associated with defects in the Services, in whole or in part due to or arising from any investigation, testing, analysis, monitoring, cleaning, removal, disposal, abatement, remediation, decontamination, repair, replacement, relocation, loss of use of building, or equipment and systems, or personal injury, death or disease in any way associated with Hazardous Substances or Mold.

7. INDEMNITY

Honeywell agrees to indemnify and hold Customer and its agents and employees harmless from all claims for bodily injury and property damages to the extent such claims result from or arise under Honeywell's negligent actions or willful misconduct in its performance of the Work required under this Agreement, provided that such indemnity obligation is valid only to the extent (i) Customer gives Honeywell immediate notice in writing of any such claims and permits Honeywell, through counsel of its choice and Honeywell's sole cost and expense, to answer the claims and defend any related suit and (ii) Customer gives Honeywell all needed information, assistance and authority, at Honeywell's expense, to enable Honeywell to defend such suit. Honeywell shall not be responsible for any settlement without its written consent. Honeywell shall not be liable for loss or damage caused by the negligence of Customer or any other party or such party's employees or agents. This obligation shall survive termination of this Agreement. Notwithstanding the foregoing, Customer agrees that Honeywell will not be responsible for any damages caused by Mold or any other fungus or biological material or agent, including but not limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effect or any special, consequential, punitive, exemplary or other damages, regardless of whether such damages may be caused by or otherwise associated with defects in the Services.

8. LIMITATION OF LIABILITY

8.1 IN NO EVENT SHALL HONEYWELL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING OUT OF OR AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, MOLD, MOISTURE, INDOOR AIR QUALITY, OR OTHERWISE, ARISING FROM, RELATING TO, OR CONNECTED WITH THE SERVICES, EQUIPMENT, MATERIALS, OR ANY GOODS PROVIDED HEREUNDER.

8.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IF A PORTION OF THE SERVICES INVOLVES THE INSTALLATION AND/OR MAINTENANCE OF SYSTEMS ASSOCIATED WITH SECURITY AND/OR THE DETECTION OF AND/OR REDUCTION OF RISK OF LOSS ASSOCIATED WITH FIRE, HONEYWELL'S TOTAL LIABILITY ARISING OUT OF OR AS A RESULT OF ITS PERFORMANCE UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THIS AGREEMENT.

9. EXCUSABLE DELAYS

Honeywell shall not be liable for damages caused by delay or interruption in Services due to fire, flood, corrosive substances in the air, strike, lockout, dispute with workmen, inability to obtain material or services, commotion, war, acts of God, the presence of Hazardous Substances or Mold, or any other cause beyond Honeywell's reasonable control. Should any part of the system or any Equipment be damaged by fire, water, lightning, acts of God, the presence of Hazardous Substances or Mold, third parties, or any other cause beyond the control of Honeywell, any repairs or replacement shall be paid for by Customer. In the event of any such delay, date of shipment or performance shall be extended by a period equal to the time lost by reason of such delay, and Honeywell shall be entitled to recover from Customer its reasonable costs, overhead, and profit arising from such delay.

10. PATENT INDEMNITY

10.1 Honeywell shall, at its expense, defend or, at its option, settle any suit that may be instituted against Customer for alleged infringement of any United States patents related to the hardware or software manufactured and provided by Honeywell under this Agreement ("the equipment"), provided that a) such alleged infringement consists only in the use of such equipment by itself and not as part of, or in combination with, any other devices, parts or software not provided by Honeywell hereunder, b) Customer gives Honeywell immediate notice in writing of any such suit and permits Honeywell, through counsel of its choice, to answer the charge of infringement and defend such suit, and c) Customer gives Honeywell all needed information, assistance and authority, at Honeywell's expense, to enable Honeywell to defend such suit.

10.2 If such a suit has occurred, or in Honeywell's opinion is likely to occur, Honeywell may, at its election and expense: a) obtain for Customer the right to continue using such equipment; b) replace, correct or modify it so that it is not infringing; or if neither a) or b) is feasible, then c) remove such equipment and grant Customer a credit therefore, as depreciated.

10.3 In the case of a final award of damages in any such suit, Honeywell will pay such award. Honeywell shall not, however, be responsible for any settlement made without its written consent.

10.4 THIS ARTICLE STATES HONEYWELL'S TOTAL LIABILITY AND CUSTOMER'S SOLE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT BY THE HARDWARE MANUFACTURED AND PROVIDED BY Honeywell HEREUNDER.

11. SOFTWARE LICENSE

All software provided in connection with this Agreement shall be licensed and not sold. The end user of the software will be required to sign a license agreement with provisions limiting use of the software to the equipment provided under these specifications, limiting copying, preserving confidentiality, and prohibiting transfer to a third party. Licenses of this type are standard for computer-based equipment of the type covered by this Agreement. Customer shall be expected to grant Honeywell access to the end user for purposes of obtaining the necessary software license.

12. DISPUTE RESOLUTION

With the exception of any controversy or claim arising out of or related to the installation, monitoring, and/or maintenance of fire and/or security systems, the Parties agree that any controversy or claim between Honeywell and Customer arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in a neutral venue, conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Any award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Any controversy or claim arising out of or related to the installation, monitoring, and/or maintenance of systems associated with security and/or the detection of, and/or reduction of risk of loss associated with fire shall be resolved in a court of competent jurisdiction.

13. ACCEPTANCE OF THE CONTRACT

This proposal and the pages attached shall become an Agreement upon signature above by Honeywell and Customer. The terms and conditions are expressly limited to the provisions hereof, including Honeywell's General Terms and Conditions attached hereto, notwithstanding receipt of, or acknowledgment by, Honeywell of any purchase order,

Modifications to City Hall HVAC Systems

Honeywell Proposal

000-10000000

Honeywell Building Solutions

05

specification, or other document issued by Customer. Any additional or different terms set forth or referenced in Customer's purchase order are hereby objected to by Honeywell and shall be deemed a material alteration of these terms and shall not be a part of any resulting order.

14. MISCELLANEOUS

14.1 This Agreement represents the entire Agreement between Customer and Honeywell for the Work described herein and supersedes all prior negotiations, representations or Agreements between the Parties related to the work described herein.

14.2 None of the provisions of this Agreement shall be modified, altered, changed or voided by any subsequent Purchase Order or other document unilaterally issued by Customer that relates to the subject matter of this Agreement. This Agreement may be amended only by written instrument signed by both Parties.

14.3 This Agreement shall be governed by the law of the State where the work is to be performed.

14.4 Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Honeywell and Customer, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

14.5 Customer may not assign its rights or delegate its obligations under this Agreement, in whole or in part, without the prior written consent of Honeywell. Honeywell may assign its right to receive payment to a third party.

15. TERMS OF PAYMENT

Subject to Honeywell's approval of Customer's credit, payment terms are as follows:

Progress Payments - Honeywell will invoice at least monthly for all materials delivered to the job site or to an off-site storage facility and for all installation, labor, and services performed, both on and off the job site. Customer agrees to pay the full amounts invoiced, less retainage, upon receipt of the invoice at the address specified by the Customer. Invoices not paid within thirty (30) days of the invoice date are past due and accrue interest from the invoice date to the date of payment at the rate of one percent (1%) per month, compounded monthly, or the highest legal rate then allowed.

Retainage - Customer shall not withhold, as retainage, a greater percentage than is withheld from Customer under a prime contract, if applicable. Customer shall pay all retainage to Honeywell within 30 days after Honeywell's work is substantially complete.

Suspension of work - If Honeywell, having performed work per Agreement requirements, does not receive payment within thirty (30) days after submission of a Honeywell invoice, Honeywell may suspend work until Customer provides remedy.

16. WORK BY OTHERS

16.1 Unless otherwise indicated, the following items are to be furnished and installed by others: electric wiring and accessories, all in-line devices (including but not limited to flow tubes, hand valves, orifice plates, orifice flanges, etc.), pipe and pipe penetrations including flanges for mounting pressure and level transmitters, temperature sensors, vacuum breakers, gauge glasses, water columns, equipment foundations, riggings, steam tracings, and all other items and work of like nature. Automatic valve bodies and dampers furnished by Honeywell are to be installed by others.

16.2 Services Honeywell will provide under this Agreement specifically exclude professional services which constitute the practice of architecture or engineering unless specifically set forth in the Scope of Work. Customer or Owner will specify all performance and design criteria that Honeywell will follow in performing Work under this Agreement. If professional design services or certifications by a design professional related to systems, materials, or equipment is required, such services and certifications are the responsibility of others. To the fullest extent permitted by law, Customer shall indemnify and hold harmless Honeywell and its agents and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, that in any way result from or arise under breach of the representations in this Section 16. This indemnification shall survive termination of this Agreement for whatever reason. Nothing in this Section 16 shall be construed to require that Customer indemnify and hold harmless Honeywell from claims and costs resulting from Honeywell's negligent actions or willful misconduct.

17. DELIVERY

Delivery of equipment not agreed on the face hereof to be installed by or with the assistance of Honeywell shall be F.O.B. at Honeywell's factory, warehouse, or office selected by Honeywell. Delivery of equipment agreed on the face hereof to be installed by or with the assistance of Honeywell shall be C.I.F. at site of installation.

18. DAMAGE OR LOSS

Honeywell shall not be liable for damage to or loss of equipment and software after delivery to destination determined by this Agreement or any applicable prime contract. If thereafter, and prior to payment in full to Honeywell by Customer, any such equipment or software is damaged or destroyed by any cause whatsoever, other than by the fault of Honeywell, the Customer agrees promptly to pay or reimburse Honeywell for such loss.

19. TERMINATION

19.1 By Customer. Customer may terminate this Agreement for cause if Honeywell defaults in the performance of any material term of this Agreement, or fails or neglects to carry forward the Work in accordance with this Agreement, after giving Honeywell written notice of its intent to terminate. If Honeywell has not, within seven (7) business days after receipt of such notice, acted to remedy and make good such deficiencies, Customer may terminate this Agreement and take possession of the site together with all materials thereon, and move to complete the Work itself expediently. Upon request of Honeywell, Customer will furnish to Honeywell a detailed accounting of the costs incurred by Customer in finishing the Work. If the unpaid balance of the contract price exceeds the expense of finishing the Work, the excess shall be paid to Honeywell, but if the expense exceeds the unpaid balance, Honeywell shall pay the difference to Customer.

19.2 By Honeywell. Honeywell may terminate this Agreement for cause (including, but not limited to, Customer's failure to make payments as agreed herein) after giving Customer written notice of its intent to terminate. If, within seven (7) days following receipt of such notice, Customer fails to make the payments then due, or otherwise fails to cure or perform its obligations, Honeywell may, by written notice to Customer, terminate this Agreement and recover from Customer payment for Work executed and for losses sustained for materials, tools, construction equipment and machinery, including but not limited to, reasonable overhead, profit and applicable damages.

20. CHANGES IN THE WORK

20.1 A Change Order is a written order signed by Customer and Honeywell authorizing a change in the Work or adjustment in the price or a change to the schedule.

20.2 Customer may request Honeywell to submit proposals for changes in the Work, subject to acceptance by Honeywell. If Customer chooses to proceed, such changes in the Work will be authorized by a Change Order. Unless otherwise specifically agreed to in writing by both parties, if Honeywell submits a proposal pursuant to such request but Customer chooses not to proceed, Customer shall issue a Change Order to reimburse Honeywell for any and all costs incurred in preparing the proposal.

20.3 Honeywell may make a written request to Customer to modify this Agreement based on the receipt of, or the discovery of, information that that Honeywell believes will cause a change to the scope, price, schedule, level of performance, or other facet of the Agreement. Honeywell will submit its request to Customer within a reasonable time after receipt of, or the discovery of, information that Honeywell believes will cause a change to the scope, price, schedule, level of performance, or other facet of the Agreement. This request shall be submitted by Honeywell before proceeding to execute the Work, except in an emergency endangering life or property, in which case Honeywell shall have the authority to act, in its discretion, to prevent threatened damage, injury or loss. Honeywell's request will include information necessary to substantiate the effect of the change and any impacts to the Work, including any change in schedule or contract price. If Honeywell's request is acceptable to Customer, Customer will issue a Change Order consistent therewith. If Customer and Honeywell cannot agree on the amount of the adjustment in the Price, or the Schedule, it shall be determined pursuant to the Dispute Resolution article of this Agreement. Any change in the Price or the Schedule resulting from such claim shall be authorized by Change Order.

21. ACCEPTANCE OF THE WORK

Modifications to City Hall HVAC Systems

Honeywell Proposal

000 10062800

Honeywell Building Solutions

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Upon receipt of notice by Honeywell that the Work is ready for final inspection and acceptance, Customer will make such final inspection and issue acceptance within three (3) business days. Acceptance will be in a form provided by Honeywell, stating that to the best of Customer's knowledge, information and belief, and on the basis of Customer's on-site visits and inspections, the Work has been fully completed in accordance with the terms and conditions of this Agreement. If Customer finds the Work unacceptable due to non-compliance with a material element of this Agreement, which non-compliance is due solely to the fault of Honeywell, Customer will notify Honeywell in writing within the three (3) business days setting forth the specific reasons for non-acceptance. Customer agrees that failure to inspect and/or failure to issue proper notice of non-acceptance within three (3) business days shall constitute final acceptance of the Work under this Agreement. Customer further agrees that partial or beneficial use of the Work by Customer or Owner prior to final inspection and acceptance will constitute acceptance of the Work under this Agreement. To the fullest extent permitted by law, Customer shall indemnify and hold harmless Honeywell and its agents and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, that in any way result from or arise under breach of the representations in this Section 21. This indemnification shall survive termination of this Agreement for whatever reason. Nothing in this Section 21 shall be construed to require that Customer indemnify and hold harmless Honeywell from claims and costs resulting from Honeywell's negligent actions or willful misconduct.

22. DEFINITIONS

22.1 "Hazardous substance" includes all of the following, and any by-product of or from any of the following, whether naturally occurring or manufactured, in quantities, conditions or concentrations that have, are alleged to have, or are believed to have an adverse effect on human health, habitability of a Site, or the environment: (a) any dangerous, hazardous or toxic pollutant, contaminant, chemical, material or substance defined as hazardous or toxic or as a pollutant or contaminant under state or federal law, and (b) any petroleum product, nuclear fuel or material, carcinogen, asbestos, urea formaldehyde, foamed-in-place insulation, polychlorinated biphenyl (PCBs), and (c) any other chemical or biological material or organism, that has, is alleged to have, or is believed to have an adverse effect on human health, habitability of a Site, or the environment.

22.2 "Mold" means any type or form of fungus or biological material or agent, including mold, mildew, moisture, yeast and mushrooms, and any mycotoxins, spores, scents, or by-products produced or released by any of the foregoing. This includes any related or any such conditions caused by third parties.

22.3 "Covered Equipment" means the equipment covered by the Services to be performed by Honeywell under this Agreement, and is limited to the equipment included in the respective work scope attachments.

RESOLUTION 2012-186

WHEREAS, The City Of Grand Island published a request for proposal for the renovation of the heating and air conditioning system in City Hall , and

WHEREAS, Six proposals were received and evaluated, and

WHEREAS, The City has determined the most beneficial proposal for the renovations and replacement of components was submitted by Honeywell Building Solutions of Omaha, Nebraska ,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor be authorized to sign the proposal with Honeywell Building Solutions in the amount of \$105,620.52 for the renovations of the heating and air conditioning system in City Hall at 100 E. 1st Street Grand Island, Nebraska.

- - -

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



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G13

#2012-187 - Approving Physio-Control Monitors Maintenance Contract

Staff Contact: Russ Blackburn

Council Agenda Memo

From: EMS Division Chief Russ Blackburn

Meeting: July 24, 2012

Subject: Physio-Control Monitors Maintenance Contract

Item #'s: G-13

Presenter(s): EMS Division Chief Russ Blackburn

Background

For the past 5 years the City has entered into an agreement with Physio Control for an agreement for service of the Grand Island Fire Department heart monitors. The contract covers monitors not still under warranty, and eliminates annual increases for this service by committing to a five year agreement. That contract expired June 1, 2012. The hold up on the contract was the GIFD was changing out 7 LifePak 12s for 7 LifePak 1000s. The new LP1000s have been received and are in service now so the contract could be finished. The LP1000s are easier to maintain and therefore the maintenance contract has decreased from \$44,869.53 for the previous five years to \$30,222.00 for the next five years.

Discussion

The Life-Pak 12 Cardiac monitor allows the Fire Department's paramedics and EMTs to defibrillate a patient's heart, that has stopped beating, as an Automatic External Defibrillator. The Life-Pak 12 allows our paramedics to see the cardiac rhythm in 3 lead or 12 lead format, get pulse oxygenation readings, monitor end tidal CO2 levels, take automated blood pressures, mark time during treatment, record events during cardiopulmonary resuscitation efforts, and manually defibrillate patients. These monitors are carried on all of our ambulances.

The LifePak 1000s are on the engines and ladder. The 1000s can defibrillate in either an automatic mode for EMTs or be put in manual mode by the paramedics. They can also display a lead two tracing of a patients EKG. They do not have the other capabilities but are enough to treat the patient until the ambulance arrives.

Having the monitors inspected annually and repaired when needed reduces the City of Grand Island's liability for the performance of these monitors. Repairs are done at no

additional cost, saving the City money over the duration of the contract. When a monitor need repairs Physio sends a replacement monitor to use while the repairs are completed, not reducing our available assets.

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 contract as submitted.

Sample Motion

Move to approve the contract with Physio Control.

TECHNICAL SERVICE SUPPORT AGREEMENT



Contract Number:

End User # 00558203
GRAND ISLAND FD
1720 N BROADWELL
GRAND ISLAND, NE 68803

Bill To # 00558202
GRAND ISLAND FD
100 E FIRST ST
GRAND ISLAND, NE 68802

This Technical Service Support Agreement begins on 6/1/2012 and expires on 5/31/2015.

The designated Covered Equipment and/or Software is listed on Schedule A. This Technical Service Agreement is subject to the Terms and Conditions on the reverse side of this document and any Schedule B, if attached. If any Data Management Support and Upgrade Service is included on Schedule A then this Technical Service Support Agreement is also subject to Physio-Control's Data Management Support and Upgrade Service Terms and Conditions, rev 7/99-1.

Price of coverage specified on Schedule A is \$30,222.00 per term, payable in Annual installments.

Special Terms

10% DISCOUNT ON ACCESSORIES
10% DISCOUNT ON ALL ELECTRODES

Accepted: Physio-Control, Inc.

By:

Title:

Date:

Customer:

By:

Print:

Title:

Date:

Purchase Order Number:

Territory Rep: WEMM59
Denny Blosser
Phone:
FAX: 800-772-3340

Customer Contact:
Russ Blackburn
Phone: 308-385-5444 ext 227
FAX: 308-385-5423

Reference Number: M59-2179
Printed: 7/12/2012

Renewal
Page 1 of 6

PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT TERMS AND CONDITIONS

Customer's signature or purchase order referencing this Technical Service Support Agreement are required prior to Physio-Control's acceptance of this Agreement. This Agreement covers only the equipment listed on Schedule A ("Covered Equipment"). These terms constitute the complete agreement between the parties and they shall govern over any other documents. These terms may not be revised in any manner without the prior written consent of Physio-Control.

SERVICES. The services provided under this Agreement are set forth on Schedule A. Physio-Control strives to return service calls within two (2) hours, and strives to resolve service issues within twenty-four (24) hours. Following service, Physio-Control will provide Customer with a written report of actions taken or recommended and identification of any materials replaced or recommended for replacement. The following services are available:

"Repair Only Service" means repairs, Battery Replacement Service, parts and labor necessary to restore Covered Equipment to original specifications, subject to Exclusions.

"Inspection Only Service" means inspections of Covered Equipment to verify proper device calibration, mechanical operations and output measurements, electrical safety check in accordance with National Fire Protection Association (NFPA) guidelines and labor, subject to Exclusions.

"Repair and Inspect Service" means repairs, Battery Replacement Service, parts and labor necessary to restore Covered Equipment to original specifications, and inspections to verify proper device calibration, mechanical operations and output measurements, electrical safety check in accordance with NFPA guidelines and Updates (as set forth below), subject to Exclusions.

"Battery Replacement Service" means replacement of batteries on a one-for-one, like-for-like basis, up to the number of batteries and/or devices listed in Schedule A. Only batteries manufactured or distributed by Physio-Control are eligible for replacement. Battery replacement is available upon Customer notification to Physio-Control of the occurrence of:

- (i) Battery failure as determined by Customer's performance testing and evaluation in accordance with the applicable Operating Instructions; or
- (ii) The end of the useful life of the battery as set forth in the applicable Operating Instructions

At the discretion of Physio-Control, battery replacement shall be effected by shipment to Customer and replacement by Customer, or by on-site delivery and replacement by a Physio-Control Service Technician. Upon Customer's receipt of a replacement battery, the battery being replaced shall become the property of Physio-Control, and Customer must return the battery being replaced to Physio-Control for proper disposal. In the event that Physio-Control does not receive the battery, Customer will be charged at the then-current rate for the replacement battery.

"On-Site Service" means that a Physio-Control factory-trained technician will provide service at Customer's location. Services will be performed between 8:00am and 5:00pm local time, Monday through Friday, excluding holidays. Customer is to ensure Covered Equipment is available for service at scheduled times. Some service may not be completed On-Site. Physio-Control will cover travel and/or round-trip freight for Covered Equipment that must be sent to our designated service facility for repair.

"24-hour On-Site Service" means that a Physio-Control factory-trained technician will provide service at Customer's location at any time, except on the holidays listed above. Customer is to ensure Covered Equipment is available for service at scheduled times. Some service may not be completed On-Site. Physio-Control will cover travel and/or round-trip freight for Covered Equipment that must be sent to our designated service facility for repair.

"Ship-In Service" means that service will be performed at Physio-Control's designated service facility. Physio-Control will cover round-trip freight for Covered Equipment that is sent to our designated service facility for repair.

If Covered Equipment is not available as scheduled or Customer requests services or goods not covered by this Agreement or outside of designated service frequency or hours, Physio-Control will charge Customer at Physio-Control's standard labor rates less 10% (including overtime, if appropriate) and applicable travel costs. Parts required for such repairs will be made available at 15% off the then-current list price.

EXCLUSIONS. Unless otherwise specified, this Agreement does not include:

- supply or repair of accessories or disposables
- repair of damage caused by misuse, abuse, abnormal operating conditions, use of batteries or other products not distributed by Physio-Control, operator errors, or acts of God
- case changes
- repair or replacement of items not originally distributed or installed by Physio-Control
- Upgrades and installation of Upgrades
- battery maintenance, performance testing, evaluation, removal and recycling

Reference Number: M59-2179

Printed: 7/12/2012

Renewal

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LOANERS. If Covered Equipment must be removed from service to complete repairs, Physio-Control will provide Customer with a loaner device, if one is available, until the Covered Equipment is returned. Customer assumes complete responsibility for the loaner and shall return the loaner at Customer's expense to Physio-Control in the same condition as received, upon the earlier of the return of the removed Covered Equipment or Physio-Control's request.

UPDATES. "Update" means a change to a device to enhance its current features, stability, or software. If Repair and Inspect Service is designated for Covered Equipment on Schedule A, Physio-Control will install Updates at no additional cost, provided such Updates are installed at the time of regularly scheduled service. If parts must be replaced to accommodate installation of new software, such parts may be purchased at a rate of 30% less than the then-current list price. Updates installed on Covered Equipment designated as Repair Only Service, Inspect Only Service, or at a time other than regularly scheduled Repair and Inspect Service will be billed on a separate invoice at the then-current list price less 20%.

UPGRADES. "Upgrade" means a major, standalone version of software or the addition of features or capabilities to a device. Upgrades must be purchased separately, and are not provided under this Agreement. Upgrades are available at a rate of 17% less than the then-current list price.

PRICING. Pricing is set forth on the front page of this Agreement. Prices do not include taxes. Sales, service or use taxes will be invoiced in addition to the price of the goods and services covered by this Agreement unless Physio-Control receives a copy of a valid exemption certificate. If the number or configuration of Covered Equipment changes during the Term, pricing shall be pro-rated accordingly. For Inspection Only Service and Repair and Inspect Service, no pricing deduction will be made for removal of Covered Equipment if an inspection has already been performed during the Term. Discounts will not be combined with other special terms, discounts, and/or promotions.

PAYMENT. Payment is due within thirty (30) days of invoice date.

WARRANTY. Physio-Control warrants services performed under this Agreement and replacement parts provided in performing such services against defects in material and workmanship for ninety (90) days from the date a service was performed or a part was provided. Customer's sole remedy shall be reservicing the affected unit and/or replacement of any part determined to be defective, without additional charge, provided Customer notifies Physio-Control of any allegedly defective condition within ten (10) calendar days of its discovery by Customer. Physio-Control makes no other warranties, express or implied, including, without limitation, **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL PHYSIO-CONTROL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR OTHER DAMAGES.**

TERM. The initial Term is set forth on the front page of this Agreement. This Agreement shall automatically renew unless terminated by either party with written notice thirty (30) days prior to the expiration of the then-current term. Prices are subject to change upon renewal.

TERMINATION. Either party may terminate this Agreement for material breach by the other party by providing thirty (30) days' written notice to the other party, and provided such breach is not cured within the notice period. In addition, either party may terminate this Agreement at any time upon sixty (60) days' prior written notice to the other party. In the event of such early termination, Customer shall be responsible for the portion of the designated price which corresponds to the portion of the Term prior to the effective date of termination and the cost of any services rendered during the Term.

DELAYS. Physio-Control will not be liable for any loss or damage of any kind due to its failure to perform or delays in its performance resulting from any cause beyond its reasonable control, including, but not limited to, acts of God, labor disputes, labor shortages, the requirements of any governmental authority, war, civil unrest, delays in manufacture, obtaining any required license or permit, and Physio-Control's inability to obtain goods from its usual sources. Any such delay shall not be considered a breach of Physio-Control's obligations and the performance dates shall be extended for the length of such delay.

DEVICE INSPECTION BEFORE ACCEPTANCE. All devices that are not under Physio-Control Limited Warranty or a current Technical Service Support Agreement must be inspected and repaired (if necessary) to meet original specifications at then-current list prices prior to being covered under a Technical Service Support Agreement.

MISCELLANEOUS. (a) Customer agrees to not employ or offer employment to anyone performing services on Physio-Control's behalf during the Term of this Agreement or for one (1) year following its expiration without Physio-Control's prior written consent; (b) this Agreement, and any related obligation of other party, may not be assigned in whole or in part without the prior written consent of the other party; (c) this Agreement shall be governed by the laws of the State in which the service is provided; (d) all costs and expenses incurred by the prevailing party related to the enforcement of its rights under this Agreement, including reasonable attorney's fees, shall be reimbursed by the other party.

Reference Number: M59-2179

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Printed: 7/12/2012

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PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE A

Contract Number:

Servicing Rep: Denny Blosser, WEMM59

District: MIDWEST

Phone:

FAX: 800-772-3340

Equipment Location: GRAND ISLAND FD, 00558203
 1720 N BROADWELL
 GRAND ISLAND, NE 68803

Scope Of Service Ship In Repair - 1 On Site Inspection per year:M-F/8-5

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LIFEPAK® 12	VLP12-02-005985	33029192	1	6/1/2012	5/31/2015	3
LIFEPAK® 12	VLP12-02-002936	31911860	2	6/1/2012	5/31/2015	3
LIFEPAK® 12	VLP12-02-002936	31911610	3	6/1/2012	5/31/2015	3
LIFEPAK® 12	VLP12-02-002940	30132573	4	6/1/2012	5/31/2015	3
LIFEPAK® 12	VLP12-02-007228	38029138	5	6/1/2012	5/31/2015	3
LIFEPAK® 12	VLP12-02-005985	34115232	6	6/1/2012	5/31/2015	3
LIFEPAK® 12	VLP12-02-005985	33029622	7	6/1/2012	5/31/2015	3

Equipment Location: FOREMOST EQUIPMENT, 16448001
 320 N WASHINGTON ST
 ROCHESTER, NY 14625

Scope Of Service On Site Inspection Only - 1 Inspection per Year:M-F/8-5

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LIFEPAK®1000	320371500229	40486845	8	6/1/2012	5/31/2015	3
LIFEPAK®1000	320371500229	40486843	9	6/1/2012	5/31/2015	3
LIFEPAK®1000	320371500229	40486844	10	6/1/2012	5/31/2015	3
LIFEPAK®1000	320371500229	40486847	11	6/1/2012	5/31/2015	3
LIFEPAK®1000	320371500229	40486846	12	6/1/2012	5/31/2015	3
LIFEPAK®1000	320371500229	40486842	13	6/1/2012	5/31/2015	3
LIFEPAK®1000	320371500229	40486841	14	6/1/2012	5/31/2015	3

** Denotes an inventory line that has changed since the last contract revision or addendum.

Reference Number: M59-2179

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PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE B

LIFEPAK® 12 Defibrillator/Monitor Repair Service includes:

- Standard detachable hard paddle repairs.
- Replacement or repair of Physio-Control battery charging systems, on a one-for-one basis with the total number of LP12 defibrillator/monitors listed in Schedule A and as determined necessary by Physio-Control.
- Power Adapter repair/replacement.
- Replacement of failed internal coin cell batteries.
- Preventative replacement of internal coin cell batteries up to the number of coin cell batteries listed in the Additional Items section of Schedule A according to Physio-Control service specifications.
- Battery Coverage
- Replacement of four (4) Physio-Control FASTPAK®, FASTPAK 2, LIFEPAK SLA, LIFEPAK NiCd Battery every two years, or upon battery failure:

OR

- Replacement of three (3) LIFEPAK Li-ion Batteries every two years, or upon battery failure.

Reference Number: M59-2179
Printed: 7/12/2012

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PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE B

LIFEPAK® 1000 AED Inspection-Only with Battery Replacement Service includes:

- Periodic inspections as set forth on Schedule A.
- Updates installed at no additional cost provided such Updates are installed at the time of regularly scheduled service. If parts must be replaced to accommodate installation of new software, such parts may be purchased at a rate of 50% less than the then-current list price. Updates installed at a time other than regularly scheduled service will be billed on a separate invoice at the then-current list price less 20%.
- Battery Coverage
 - o Replacement of up to one (1) LIFEPAK 1000 Rechargeable Battery Pak every two (2) years, or upon failure;

OR

- o Replacement of up to one (1) LIFEPAK 1000 Li-ion Battery Pak every five (5) years for each LIFEPAK 1000 AED listed on Schedule A, or upon failure.

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Printed: 7/12/2012

Renewal
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RESOLUTION 2012-187

WHEREAS, the City of Grand Island Fire Department utilizes seven LifePak-12 cardiac monitors and seven LifePak-1000 cardiac monitors to care for our patients with cardiac symptoms; and

WHEREAS, the cardiac monitors have to be inspected yearly for proper performance as protection from liability; and

WHEREAS, the LP-12s are no longer under warranty; and

WHEREAS, the five year maintenance contract with Physio-Control specifies yearly inspections and no additional cost maintenance for the term of the contract.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, to enter into the 5 year maintenance agreement with Physio-Control.

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

- - -

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



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G14

#2012-188 - Approving Budget Amendment for Neighborhood Stabilization Program Grant

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

Staff Contact: Marco Floreani

RESOLUTION 2012-188

WHEREAS, in 2009, the City of Grand Island was awarded a \$993,712 Neighborhood Stabilization Program Grant from the Nebraska Department of Economic Development for property acquisition, demolition, redevelopment of new housing, housing administration, and general administration; and

WHEREAS, in September 2010, the Department of Economic Development awarded an extra \$190,000 to the City for additional demolition and redevelopment; and

WHEREAS, the project has enabled the City to demolish 11 blighted structures and will fund construction of 8 new houses on a portion of the lots; and

WHEREAS, the actual New Construction costs for the redevelopment of demolished properties are less than originally budgeted for and the Clearance/Demolition costs have exceeded the original budgeted amount; and

WHEREAS, reallocating funds from New Construction to Clearance/Demolition will allow the city to demolish an additional blighted, vacant, owner property; and

WHEREAS, required documents for the budget amendment request have been prepared and must be submitted to the Nebraska Department of Economic Development for authorization.

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

The City of Grand Island, Nebraska is hereby authorized to request a budget amendment for Neighborhood Stabilization Program Grant (09-3N-11).

- - -

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



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item G15

**#2012-189 - Approving Authorization to Apply for Additional
Disaster Prevention Funds**

Staff Contact: Marco Floreani

Council Agenda Memo

From: Marco Floreani, Community Development

Meeting: July 24, 2012

Subject: Approving Authorization to Apply for Additional Disaster Recovery Grant Funds

Item #'s: G-15

Presenter(s): Marco Floreani, Community Development

Background

In September 2009, the City of Grand Island was awarded a Disaster Recovery Grant (#08-DPI-005) for \$803,500, plus \$40,175 in General Administration, for installation of a sanitary sewer interceptor and sewer main collection system upgrade to address an urgent community development need that occurred as a result of high ground water levels and flooding between May 22 and June 24, 2008. The project encompasses two southern areas of Grand Island to improve protection of homes from future sanitary sewer backups. Total project cost, including Administration, is projected at \$1,003,675. The City has budgeted \$160,000 for the balance of project costs above the grant award.

Disaster Recovery Program funds are to be used only for activities related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by the Federal Emergency Management agency (FEMA) declaration of major disaster 1770-DR. Only damages occurring during the incident period from May 22, 2008 to June 24, 2008 are considered.

Discussion

The Nebraska Department of Economic Development has notified City Staff of additional funds for Disaster Recovery Funding. The total amount of additional funding has yet to be determined, but Department of Economic Development Staff has instructed interested communities to submit a letter of interest for the returned funds.

The City of Grand Island, Nebraska, is an eligible unit of the Disaster Recovery Funding authorized to file an application under the Community Development Block Grant Program. This

additional funding will provide administrative costs and help fund the develop of a additional gravity collection sewer infrastructure preventive maintenance construction projects in the Disaster Recovery Area.

Alternatives

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

1. Move to approve a resolution granting authorization apply for additional Disaster Recovery Grant Funds.
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 Approving authorization to apply for additional Disaster Recovery Grant Funds.

Sample Motion

Move to approve authorization to proceed with the formulation of any and all contracts, documents or other memoranda between the City of Grand Island and the Nebraska Department of Economic Development so as to affect acceptance of the grant application #08-DPI-005, Disaster Recovery Grant.



July 10, 2012

*Working Together for a
Better Tomorrow. Today.*

Merci Suarez
Nebraska Department of Economic Development
Community & Rural Development
PO Box 94666
Lincoln, NE 68509

RE: Community Development Block Grant – Disaster Program Recovery Grant #08-DPI-005
Project No.: Lift Station No.7 Repairs – 2011-S-1, Lift Station No.7 Improvements – 2011-S-1A
City of Grand Island, Nebraska, Hall County
Venue: Procurement and guideline review in acquiring professional consulting engineering services.

Miss Suarez

City staff is coordinating a public hearing on July 24, 2012 in regards to applying for additional Disaster Relief Funding as discussed in the June 27, 2012 conference call.

City staff has reviewed Chapter 7 of the Administration Manual for procurement in professional consulting services and would entertain Black & Veatch's, and local sub-consultant Olsson Associates as eligible consultants. You're accepting review comments would be appreciated.

Please find timeline and public document archives in relating to the procurement in professional consulting engineering services for Lift Station No. 7 projects.

On May 23, 2011 a public advertisement was published in the Grand Island Daily Independent for Request for Qualifications for professional engineering firms' submission. The project, planned thru comprehensive, and cost of service planning to provide rehabilitation within the Wastewater collection and treatment facilities systems, based on a Wastewater rate study. <https://www.grand-island.com/modules/ShowDocument.aspx?documentid=3356>

On June 7, 2011 three (3) professional engineering firms submitted performance and qualification submittals; Black & Veatch, Kansas City Missouri; CH2M Hill, Denver Colorado; and HDR Engineering, Omaha Nebraska. <https://www.grand-island.com/modules/ShowDocument.aspx?documentid=3410>

On June 30, 2011 the selection committee received formal presentation by all responding engineering firms.

On October 4, 2011 the Manager of Engineering Services presented in City Council Study Session forum; Discussion of Agreement for Professional Engineering Services Entitled "Wastewater Treatment Plant and Collection System Rehabilitation". <https://agendamanagement.blob.core.windows.net/agenda-1000-public/meeting/969/20111004--2.pdf>

On October 11, 2011 the Public Work Director presented in City Council regular meeting; Agreement for Professional Engineering Services entitled "Wastewater Treatment Plant and Collection Systems Rehabilitation". <https://agendamanagement.blob.core.windows.net/agenda-1000-public/meeting/773/20111011-I1.pdf>

On April 24, 2012 the Public Work Director presented in City Council regular meeting; Amendment No. 1 to the Agreement for Professional Engineering Services entitled "Wastewater Treatment Plant and Collection Systems Rehabilitation". <https://agendamanagement.blob.core.windows.net/agenda-1000-public/meeting/786/20120424-G12.pdf>

We appreciate your assistance in this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry A. Brown". The signature is fluid and cursive, with the first name "Terry" and last name "Brown" clearly distinguishable.

Terry Brown P.E.

Manager of Engineering Services

July 10, 2012

Merci Suarez
Nebraska Department of Economic Development
Community & Rural Development
PO Box 94666
Lincoln, NE 68509

RE: Community Development Block Grant – Disaster Program Recovery Grant #08-DPI-005
Project No.: Lift Station No.7 Repairs – 2011-S-1, Lift Station No.7 Improvements – 2011-S-1A
City of Grand Island, Nebraska, Hall County
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We appreciate your assistance in this project.

Sincerely,

Terry Brown P.E.

Manager of Engineering Services

RESOLUTION 2012-189

WHEREAS, The Nebraska Department of Economic Development has notified City Staff in additional funds be returned by other communities in Disaster Relief Funding, and

WHEREAS, The City of Grand Island, Nebraska, is an eligible unit of the Disaster Relief Funding authorized to file an application under the Community Development Block Grant Program; and

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 to proceed with the formulation of any and all contracts, documents or other memoranda between the City of Grand Island and the Nebraska Department of Economic Development for acceptance of the grant application.

- - -

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 24, 2012	☐ City Attorney



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item I1

#2012-190 - Approving FY 2012-2013 Annual Budget for Business Improvement District #6, 2nd Street from Garfield Avenue to Eddy Street and Setting Date for Board of Equalization

Staff Contact: Jaye Monter

Council Agenda Memo

From: Jaye Monter, Finance Director

Meeting: July 24, 2012

Subject: Approving FY 2012-2013 Annual Budget for Business Improvement District #6, Second Street, and setting Date For Board of Equalization

Item #'s: I-1

Presenter(s): Jaye Monter, Finance Director

Background

On September 9, 2008, the City Council adopted Ordinance #9186 creating Business Improvement District (BID) #6, Second Street. The creating ordinance established the purpose of the District, described the boundaries, and established that real property in the area that would be subject to a special assessment to support the purposes of the District. The creating Ordinance requires that a proposed budget for the District be approved by the BID Board and forwarded to the City Council for consideration. On June 30, 2012 the BID #6 Board met and approved the 2012-2013 Budget which provides for special assessments in the amount of \$4.50 per front footage for a total of \$32,148 for the 7,144 front footage.

Discussion

The majority of the proposed appropriation budget of \$96,500 is to be used for the maintenance of frontage areas along the Second Street portion of their district. The appropriations for the 2012-2013 also include a City fee of \$1,500 for accounting services. A copy of the proposed 2012-2013 budget is attached for review.

Alternatives

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

1. Approve the 2012-2013 Budget for BID #6 and set the date for the Board of Equalization.

2. Modify the budget and/or reschedule the Board of Equalization.

Recommendation

City Administration recommends that the Council approve the 2012-2013 Budget for BID #6 and set the date of September 11, 2012 for the Board of Equalization. Notice of the Hearing and proposed assessments will be published according to State Statutes.

Sample Motion

Move to approve the 2010-2011 Budget for BID #6 and set the date of September 11, 2012 for the Board of Equalization.

Created for 5 years through 09/30/2013
5 Year total costs of \$275,000

**BUISNESS IMPROVEMENT DISTRICT #6 - SECOND STREET
FY 2012-2013 BUDGET**

	2009 Actual	2010 Actual	2011 Actuals	2012 Budget	2012 Projected	2013 Budget
Front Footage	7,144	7,144	7,144	7,144	7,144	7,144
Levy (Per Foot)	\$6.00	\$6.00	\$4.50	\$2.00	\$2.00	\$4.50

REVENUE 94011416

Account						
74140 Special Asessments	42,447	38,001	31,570	14,288	13,742	32,148
74787 Interest Revenue	84	124	123		26	
74795 Other Revenue	-	-	2,376	1,000	-	1,000
TOTAL REVENUE	42,531	38,125	34,069	15,288	13,768	33,148

APPROPRIATIONS

Account						
85213 Contract Services	5,145	6,892	11,356	17,000	15,000	69,900
85241 Computer Services		-		-	-	-
85245 Printing & Binding Services	98	81	74	300	100	250
85249 Snow & Ice Removal	-		-	-	-	-
85290 Other Professional Services	-	1,500	1,500	1,500	2,000	1,500
85305 Utility Services	-	-	258	2,200	-	1,000
85390 Other Property Services	-	-	-	-	-	-
85413 Postage	248	229	214	250	250	250
85416 Advertising	-	-	-	1,500	-	-
85419 Legal Notices	833	589	518	500	600	600
85422 Dues & Subscriptions		-	-	-	-	-
85428 Travel & Training		-	-	-	-	-
85490 Other Expenditures	-	-	-	-	-	-
85505 Office Supplies	5	-	9	250	-	-
85560 Trees & Shrubs	2,472	-	1,304	2,000	-	-
85590 Other General Supplies	-	-	-	500	-	-
85608 Land Improvements	-	3,758	4,282	-	6,000	23,000
TOTAL OPERATING EXPENSE	8,802	13,049	19,514	26,000	23,950	96,500

ANNUAL EXCESS/(LOSS) 33,730 25,076 14,555 (10,712) (10,182) (63,352)

Beginning Cash Balance	-	33,730	58,898	73,544	73,544	63,362
Revenues	42,531	38,125	34,069	15,288	13,768	33,148
Expenditures	8,802	13,049	19,514	26,000	23,950	96,500
Ending Cash Balance	33,730	58,898	73,544	62,832	63,362	10

July 5, 2012

Mayor Jay Vavricek and City Council
City of Grand Island
PO Box 1968
Grand Island, NE 68802

Dear Mayor and City Council:

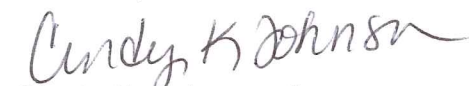
The Business Improvement District #6 adopted its proposed budget for 2012-2013 on June 20, 2012. They are proposing a front footage assessment of \$4.50. This is the last year in the original five-year life of the BID; it is anticipated that property owners will be interested in considering the creation of a new Business Improvement District in 2013. With the completion of the Second Street widening project and the associated landscaping, the Board has been focusing its efforts on the maintenance of the landscape. Significant resources are being allocated for addressing specific areas of need throughout the District, including plantings, pavers, and drainage concerns. The budget for FY2012-2013 is attached.

It is my understanding the BID will need to present its budget to the Council at the July 24 meeting.

If you have any questions, please do not hesitate to contact me.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Cindy K Johnson".

Cindy K. Johnson for
BID #6

RESOLUTION 2012-190

WHEREAS, the City Council has considered the proposed budget of the Business Improvement District No. 6 for the fiscal year 2012-2013; and

WHEREAS, the City has received the assessed values of the individual properties within Business Improvement District No. 6 as shown in the office of the Hall County Assessor in effect on the first day of January, 2012; and

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

1. The budget for Business Improvement District No. 6 is hereby considered.
2. A proposed assessment schedule shall be prepared.
3. A hearing before the City Council sitting as a Board of Equalization on the proposed assessments shall be held on September 11, 2012 at 7:00 p.m. in the City Council chambers of City Hall 100 East First Street, Grand Island NE.
4. Notice of hearing shall be published once each week for three consecutive weeks in accordance with the Business Improvement District Act.
5. Notice of hearing shall be mailed to all property owners of Business Improvement District No. 6 by U.S. Mail, postage prepaid

- - -

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



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item I2

#2012-191 - Approving FY 2012-2013 Annual Budget for Business Improvement District #7, South Locust Street from Stolley Park Road to Highway 34 and Setting Date for Board of Equalization

Staff Contact: Jaye Monter

Council Agenda Memo

From: Jaye Monter, Finance Director

Meeting: July 24, 2012

Subject: Approving FY 2012-2013 Annual Budget for Business Improvement District #7, South Locust Street from Stolley Park Road to Highway 34, and setting Date for Board of Equalization

Item #'s: I-2

Presenter(s): Jaye Monter, Finance Director

Background

On September 9, 2008, the City Council adopted Ordinance #9187 creating Business Improvement District (BID) #7, South Locust Street from Stolley Park Road to Highway 34. The creating ordinance establishes the purpose of the District, describes the boundaries, and establishes that real property in the area would be subject to a special assessment to support the purposes of the District. The creating Ordinance requires that a proposed budget for the District be approved by the BID Board and forwarded to the City Council for consideration. On June 14, 2012 the BID #7 Board met and approved the 2012-2013 Budget which provides for special assessments in the amount of \$4.88 per front footage for a total of \$47,892 for the 9,814 front footage.

Discussion

The majority of the proposed appropriations budget of \$56,645 is to be used for the maintenance of frontage areas along the South Locust Street portion of their district. The appropriations for 2012-2013 also include a City fee of \$875 for accounting services. A copy of the proposed 2012-2013 budget is attached for review.

Alternatives

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

1. Approve the 2012-2013 Budget for BID #7 and set the date for the Board of Equalization.

2. Modify the budget and/or reschedule the Board of Equalization.
- 3.

Recommendation

City Administration recommends that the Council approve the 2012-2013 Budget for BID #7 and set the date of September 13, 2012 for the Board of Equalization. Notice of the Hearing and proposed assessments will be published according to State Statutes.

Sample Motion

Approve the 2012-2013 Budget for BID #7 and set the date of September 11, 2012 for the Board of Equalization.

July 5, 2012

Jaye Monter, Finance Director and
Mayor and City Council
City of Grand Island
PO Box 1968
Grand Island, NE 68802

Dear Jaye, Mayor and City Council:

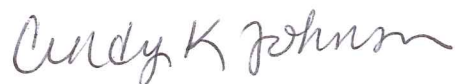
The Business Improvement District #7 adopted its proposed budget for 2012-2013 on June 14, 2012. This is the final year in the five-year life of this Business Improvement District. It is anticipated the property owners will want to continue with the BID and will work in conjunction with the Business Improvement Board for the north section of South Locust Street (formerly BID #4) toward creation of a single District for South Locust Street.

The Business Improvement District #7 Board is proposing a front footage assessment of \$4.88 for a total budget of \$47,892. The Board continues to focus its efforts on the maintenance of the lawn scape and the gazebo park area. The budget for FY 2012-2013 is attached.

It is my understanding the BID will need to present its budget to the Council at the second meeting in July – July 24, 2012. If you have any questions, please do not hesitate to contact me.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Cindy K Johnson".

Cindy K. Johnson for
BID #7

Created for 5 years through 09/30/2013
5 Year total costs of \$250,000

BUSINESS IMPROVEMENT BOARD #7
STOLLEY PARK RD TO HWY 34
FY 2012-2013

	2009 Actual	2010 Actuals	2011 Actuals	2012 Budget	2012 Projected	2013 Budget
Front Footage	9,814	9,814	9,386	9,814	9,814	9,814
	\$4.75	\$4.75	\$5.33	\$6.00	\$6.00	\$4.88
Budgeted Revenue	46,615	46,615	50,027	58,882		47,861
REVENUE 94011412						
Account						
74140 Special Asessments	42,862	44,672	44,368	58,883	57,840	47,892
74787 Interest Revenue	61	37	39		10	
74795 Other Revenue	1,662	0	0	0	0	0
TOTAL REVENUE	44,585	44,709	44,407	58,883	57,850	47,892
APPROPRIATIONS						
Account						
85213 Contract Services	25,956	29,320	28,743	31,200	29,000	32,000
85245 Printing & Binding Services	105	73	83	-	-	-
85249 Snow & Ice Removal	1,138	2,863	1,800	2,000	950	2,000
85290 Other Professional & Tech.			-	-	-	-
85305 Utility Services	3,945	6,544	6,767	6,945	7,000	7,000
85319 Repair & Maint - Land Improv	9,441	1,587	7,689	7,500	19,000	9,300
85325 Repair & Maint - M & E		-		-	-	-
85390 Other Property Services	-	-		-	-	-
85413 Postage	156	136	169	250	250	250
85416 Advertising	-	-	-	-	-	-
85419 Legal Notices	598	413	429	750	900	500
85490 Other Expenditures	15,823	75	-	3,000	-	-
85505 Office Supplies	-	-	-	100	-	-
85560 Trees & Shrubs	2,100	460	-	4,000	1,000	-
85590 Other General Supplies	-		-	-	-	-
85608 Land Improvements	-		-	900	900	-
TOTAL OPERATING EXPENSE	59,262	41,470	45,680	56,645	59,000	51,050
ANNUAL EXCESS/(LOSS)	(14,677)	3,238	(1,273)	2,238	(1,150)	(3,158)
Beginning Cash Balance	17,301	2,532	5,679	4,406	4,406	3,255
Revenues	44,585	44,709	44,407	58,883	57,850	47,892
Expenditures	59,262	41,470	45,680	56,645	59,000	51,050
Ending Cash Balance	2,532	5,679	4,406	6,643	3,255	97

RESOLUTION 2012-191

WHEREAS, the City Council has considered the proposed budget of the Business Improvement District No. 7 for the fiscal year 2012-2013; and

WHEREAS, the City has received the assessed values of the individual properties within Business Improvement District No. 7 as shown in the office of the Hall County Assessor in effect on the first day of January, 2012; and

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

1. The budget for Business Improvement District No. 7 is hereby considered.
2. A proposed assessment schedule shall be prepared.
3. A hearing before the City Council sitting as a Board of Equalization on the proposed assessments shall be held on September 11, 2012 at 7:00 p.m. in the City Council chambers of City Hall 100 East First Street, Grand Island NE.
4. Notice of hearing shall be published once each week for three consecutive weeks in accordance with the Business Improvement District Act.
5. Notice of hearing shall be mailed to all property owners of Business Improvement District No. 7 by U.S. Mail, postage prepaid

- - -

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



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item I3

#2012-192 - Approving FY 2008-2009 Annual Budget for Business Improvement District #8, Downtown and Setting Date for Board of Equalization

Staff Contact: Jaye Monter

Council Agenda Memo

From: Jaye Monter, Finance Director

Meeting: July 24, 2012

Subject: Approving FY 2012-2013 Annual Budget for Business Improvement District #8, Downtown, and setting Date for Board of Equalization

Item #'s: I-3

Presenter(s): Jaye Monter, Finance Director

Background

On August 26, 2009, the City Council adopted Ordinance #9180 creating Business Improvement District (BID) #8, Downtown. The creating ordinance established the purpose of the District, described the boundaries, and established that real property in the area would be subject to a special assessment to support the purposes of the District. The creating Ordinance requires that a proposed budget for the District be approved by the BID Board and forwarded to the City Council for consideration. On July 19, 2012 the BID #8 Board met and approved the 2012-2013 budget which provides for special assessments in the amount of \$90,000.

Discussion

In this district, assessments are paid by property owners based on the valuation of land and real property in the district as of January 1 of the current year. No personal property is figured into the assessment. Owners are billed for the assessment on October 1 of each fiscal year. The total taxable value for the district as of January 1, 2012 was \$31,473,795 which for budgeted assessments of \$90,000 gives a levy of .285952 per \$100 of real property. Downtown Beautification, Retention and Recruitment, and Maintenance are the areas of proposed work to be performed by the BID. The appropriations for 2012-2013 also include a City fee of \$4,000 for accounting services. A copy of the proposed 2012-2013 budget is attached for review.

Alternatives

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

1. Approve the 2012-2013 Budget for BID #8 and set the date for the Board of Equalization.
2. Modify the budget and/or reschedule the Board of Equalization.

Recommendation

City Administration recommends that the Council approve the 2012-2013 Budget for BID #8 and set the date of September 11, 2012 for the Board of Equalization. Notice of the Hearing and proposed assessments will be published according to State Statutes.

Sample Motion

Approve the 2011-2012 Budget for BID #8 and set the date of September 11, 2012 for the Board of Equalization.

BUISNESS IMPROVEMENT DISTRICT #8
FY 2012-2013

			2009	2010	2011	2012			2013
			Budget	Budget	Budget	Budget			Budget
			29,326,665	29,573,895	29,573,895	29,573,895			31,473,795
			0.295598	0.313452	0.322856	0.285920			0.285952
			2009	2010	2011	2012	2012		2013
			Actual	Actual	Actual	Budget	Projected		Budget
REVENUE	94011414	Valuation	30,099,334	31,679,040	31,790,717	31,369,569	31,369,569		31,473,795
Account		Levy	0.29705	0.283101	0.283102	0.286902	0.285920		0.285952
74140	Special Asessments		84,112	89,143	86,901	90,000	89,000		90,000
74736	Donations & Contribution		1,050	750	1,300	-	13,500		25,000
74795	Other Revenue		2,576	-	-	-	52,597		75,000
74787	Interest		36	156	178		40		
TOTAL REVENUE			87,773	90,049	88,379	90,000	155,137		190,000
APPROPRIATIONS									
Account									
85213	Contract Services		38,883	29,390	28,878	45,000	73,000		66,000
85245	Printing & Binding Services		1,815	1,470	787	4,000	1,800		2,500
85249	Snow & Ice Removal		450	929	231	500	231		600
85290	Other Professional Services		7,164	637	2,535	4,500	13,000		23,500
85305	Utility Services		805	1,275	1,854	1,900	2,000		2,200
85325	Repairs & Maint.		-	2,836	6,332	-	3,500		1,000
85413	Postage		1,272	625	522	1,400	650		1,200
85416	Advertising		8,753	3,822	5,509	16,000	3,200		5,000
85419	Legal Notices		1,587	1,953	197	2,000	2,000		2,250
85422	Dues & Subscriptions		-	3,000	3,450		3,500		3,500
85428	Travel & Training		412	182	-	500	250		500
85490	Other Expenditures		5,074	2,122	348	32,724	12,600		78,400
85505	Office Supplies		106	300	312	600	300		1,000
85560	Trees & Shrubs		11,023	-	1,727	1,000	6,000		7,000
85590	Other General Supplies		96	2,915	447	750	750		750
85608	Land Improvements		-	-	2,314	25,000	26,000		100,000
TOTAL OPERATING EXPENSE			77,440	51,456	55,441	135,874	148,781		295,400
ANNUAL EXCESS/(LOSS)			10,333	38,592	32,938	(45,874)	6,356		(105,400)
Beginning Cash Balance			17,646	27,979	66,571	99,509	99,509		105,865
Revenues			87,773	90,049	88,379	90,000	155,137		190,000
Expenditures			77,440	51,456	55,441	135,874	148,781		295,400
Ending Cash Balance			27,979	66,571	99,509	53,635	105,865		465

RESOLUTION 2012-192

WHEREAS, the City Council has considered the proposed budget of the Business Improvement District No. 8 for the fiscal year 2012-2013; and

WHEREAS, the City has received the assessed values of the individual properties within Business Improvement District No. 8 as shown in the office of the Hall County Assessor in effect on the first day of January, 2012; and

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

1. The budget for Business Improvement District No. 8 is hereby considered.
2. A proposed assessment schedule shall be prepared.
3. A hearing before the City Council sitting as a Board of Equalization on the proposed assessments shall be held on September 11, 2012 at 7:00 p.m. in the City Council chambers of City Hall 100 East First Street, Grand Island NE.
4. Notice of hearing shall be published once each week for three consecutive weeks in accordance with the Business Improvement District Act.
5. Notice of hearing shall be mailed to all property owners of Business Improvement District No. 8 by U.S. Mail, postage prepaid

- - -

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



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item I4

**#2012-193 - Approving Amendment to Redevelopment Plan Area
#6 Located at 709 & 715 West 18th Street**

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

Staff Contact: Chad Nabity

RESOLUTION 2012-193

WHEREAS, the City of Grand Island, Nebraska, a municipal corporation and city of the first class, has determined it be desirable to undertake and carry out urban redevelopment projects in areas of the City which are determined to be substandard and blighted and in need of redevelopment; and

WHEREAS, the Nebraska Community Development Law, Chapter 18, Article 21, Nebraska Reissue Revised Statutes of 2007, as amended (the "Act"), prescribes the requirements and procedures for the planning and implementation of redevelopment projects; and

WHEREAS, the City has previously declared Redevelopment Area No. 6 of the City to be substandard and blighted and in need of redevelopment pursuant to the Act; and

WHEREAS, the Community Redevelopment Authority of the City of Grand Island, Nebraska (the "Authority"), has prepared a Redevelopment Plan pursuant to Section 18-2111 of the Act, and recommended the Redevelopment Plan to the Planning Commission of the City; and

WHEREAS, the Planning Commission of the City reviewed the Redevelopment Plan pursuant to the Act and submitted its recommendations, to the City, pursuant to Section 18-2114 of the Act; and

WHEREAS, following consideration of the recommendations of the Authority to the Planning Commission, the recommendations of the Planning Commission to the City, and following the public hearing with respect to the Redevelopment Plan, the City approved the Plan; and

WHEREAS, there has been presented to the City by the Authority for approval a specific Redevelopment Project within the Redevelopment Plan and as authorized in the Redevelopment Plan, such project to be as follows: property acquisition, site preparation, utilities extensions, landscaping, concrete and fee associated with the redevelopment project. All redevelopment activities will occur in Grand Island, Hall County, Nebraska; and

WHEREAS, the City published notices of a public hearing and mailed notices as required pursuant to Section 18-2115 of the Act and has, on the date of the Resolution held a public hearing on the proposal to amend the Redevelopment Plan to include the Redevelopment Project described above.

NOW, THEREFORE, be it resolved by the City Council of the City of Grand Island, Nebraska:

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

1. The Redevelopment Plan of the City approved for Redevelopment Area No. 6 in the city of Grand Island, Hall County, Nebraska, including the Redevelopment Project described above, is hereby determined to be feasible and in conformity with the general plan for the development of the City of Grand Island as a whole and the Redevelopment Plan, including the Redevelopment Project identified above, is in conformity with the legislative declarations and determinations set forth in the Act; and it is hereby found and determined that (a) the redevelopment project in the plan would not be economically feasible without the use of tax-increment financing, (b) the redevelopment project would not occur in the community redevelopment area without the use of tax-increment financing, and (c) the costs and benefits of the redevelopment project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the City and have been found to be in the long-term best interest of the community impacted by the redevelopment project. The City acknowledges receipt of notice of intent to enter into the Redevelopment Contract in accordance with Section 18-2119 of the Act and of the recommendations of the Authority and the Planning Commission with respect to the Redevelopment Contract.
2. Approval of the Redevelopment Plan is hereby ratified and reaffirmed, as amended by this Resolution, and the Authority is hereby directed to implement the Redevelopment Plan in accordance with the Act.
3. Pursuant to Section 18-2147 of the Act, ad valorem taxes levied upon real property in the Redevelopment Project included or authorized in the Plan which is described above shall be divided, for a period not to exceed 15 years after the effective date of this provision, which effective date shall be January 1, 2014 as follows:
 - a. That proportion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the Redevelopment Project Valuation (as defined in the Act) shall be paid into the funds of each such public body in the same proportion as all other taxes collected by or for the bodies; and
 - b. That proportion of the ad valorem tax on real property in the Redevelopment Project in excess of such amount, if any, shall be allocated to, is pledged to, and, when collected, paid into a special fund of the Authority to pay the principal of, the interest on, and any premiums due in connection with the bonds, loans, notes or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Authority for financing or refinancing, in whole or in part, such Redevelopment Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premium due have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in such Redevelopment Project shall be paid into the funds of the respective public bodies.
 - c. The Mayor and City Clerk are authorized and directed to execute and file with the Treasurer and Assessor of Hall County, Nebraska, an Allocation Agreement and Notice of Pledge of Taxes with respect to each Redevelopment Project.

4. The City hereby finds and determines that the proposed land uses and building requirements in the Redevelopment Area are designed with the general purposes of accomplishing, in accordance with the general plan for development of the City, a coordinated, adjusted and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity; and the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of a healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreation and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, or conditions of blight.

- - -

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

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item I5

#2012-194 - Approving Memorandum of Understanding with Chief Industries and the Grand Island Community Redevelopment Authority

Staff Contact: Chad Nabity

Council Agenda Memo

From: Chad Nabity, AICP

Meeting: July 24, 2012

Subject: Memorandum of Understanding with Chief Industries and the Grand Island Community Redevelopment Authority

Item #'s: I-5

Presenter(s): Chad Nabity, Director Grand Island CRA

Background

Chief Industries has purchased the former Aurora Coop property at Fonner Park Road and Lincoln Avenue. They are currently in the process of demolishing the old structures and preparing the site for future construction. The Grand Island CRA has approved a grant of \$100,000 to aid Chief in this process that will cost more than \$200,000. This grant is consistent with the generalized redevelopment plan for the area approved by the Grand Island City Council and the CRA.

When the CRA approved the grant they asked Chief to consider a Memorandum of Understanding (MOU) that would allow the CRA to recapture the grant at some point in the future if TIF is requested on the property. Attorney's representing both the CRA and Chief has drafted the attached MOU. In order to make it clear that all parties are on board with the possible inclusion of these demolition activities in any future TIF application both attorneys agreed that the MOU should also be signed by the Mayor representing the City after approval by Council.

Representatives from Chief signed the agreement on July 5, 2012. The CRA approved and signed the agreement on July 11, 2012.

Discussion

The action item does not authorize the use of Tax Increment Financing for this project or impact the decision of the CRA to grant funds toward the demolition of structures on the former Aurora Coop property. It does however allow the CRA to recapture the grant at

some point in the future if Chief makes an application for TIF. It also authorizes Chief to complete the demolition and site clearance activities and allows them to proceed with the installation of a public water main across the property to facilitate potential future development.

This MOU does not bind either the City Council or the CRA into approving an application for TIF at some future time. It does not bind City or CRA into allowing these redevelopment expenses as TIF Eligible expenses within any future redevelopment plan or TIF application. It does however make it clear that these expenses can be included within any future application.

Alternatives

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

1. Move to approve the MOU as presented.
2. Move to not approve the MOU as presented
3. Refer the issue to a Committee
4. Postpone the issue to future date
5. Take no action on the issue

Recommendation

City Administration recommends that the Council Move to approve the MOU as presented and authorize the Mayor to sign the agreement on behalf of the City.

Sample Motion

Move to approve the MOU as presented and authorize the Mayor to sign the agreement on behalf of the City.

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (the “**MOU**”) is made and entered into this 11th day of July, 2012, between the City of Grand Island, NE (the “**City**”), the Community Redevelopment Authority of the City of Grand Island, NE (the “**Authority**”) and Chief Industries, Inc., a Delaware corporation (the “**Company**”).

WHEREAS, the Community Development Law, Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended (the “**Act**”), prescribes the requirements and procedures for the Planning and implementation of Redevelopment Projects; and

WHEREAS, the Company has acquired certain real Property in the City legally described on Exhibit A (the “**Property**”) which lies within an area declared blighted and substandard by the City; and

WHEREAS, the Property lies within an area subject to a Redevelopment Plan adopted by the Authority and approved by the City; and

WHEREAS, the Company desires to demolish and remove the blighted and substandard improvements on the Property, (the “**Preliminary Activities**”); and

WHEREAS, the Company intends to formulate and present a Redevelopment Plan for the Property to the Authority, which plan shall include demolition of blighted and substandard improvements, installation of municipal utilities including, but not limited to, a municipal water main line, and the eventual redevelopment of certain private improvements to be identified by the Company; and

WHEREAS, the Authority finds it in the public interest to consider a request for a grant to be funded in part by Tax Increment Financing (TIF) to promote the development of the Project and assist with the funding of the Preliminary Activities.

NOW THEREFORE, the parties set forth their understanding in regard to certain actions and expenditures that the Company will make for funding Preliminary Activities prior to Redevelopment Plan submission and approval but which Preliminary Activities shall remain eligible for inclusion in a subsequent Redevelopment Project and Plan:

1. *Definitions.* Capitalized items used in this MOU shall have the meanings assigned herein.
2. *Company's Obligations.* Upon execution of this MOU, the Company may proceed with the following actions:
 - a. *Preliminary Activities.* Upon presentation to the Authority of a Demolition Plan identifying the existing improvements on the Property to be demolished the Company may proceed with the demolition in accordance with the Demolition Plan.

- b. *Redevelopment Plan and Project.* The Company shall cooperate with the Authority to prepare a Redevelopment Plan identifying a Redevelopment Project for the Property. Such Redevelopment Plan shall include, at a minimum:
 - i) the demolition of the existing blighted and substandard structures;
 - ii) the installation of municipal utilities including, specifically, a city water main extension to provide service to the Property; and
 - iii) the eventual development of the Property with private improvements.
- c. *Funding.* Upon completion of the demolition pursuant to the Demolition Plan, the Company shall provide the Authority an itemized list of expenditures incurred in the demolition.
- d. *Indemnification.* The Company agrees to indemnify, and hold the Authority and the City, their employees, agents, independent contractors and consultants harmless from and against any and all suits, claims, cost of defense, damages, injuries, liabilities, costs and/or expenses resulting from, arising out of, or in any way connected with this MOU.

3. *Authority's Obligations.*

- a. *Funding.* In order to finance in part the Preliminary Activities the Authority shall grant to the Company up to the sum of \$100,000.00 ("**Grant**"), provided such amount shall not exceed the sum determined to be qualifying expenditures eligible for reimbursement pursuant to §18-2103 (12) of the Act. Such grant shall be financed by the issuance of TIF indebtedness to be repaid from a division of taxes pursuant to §18-2147 (1)(b) of the Act as provided herein. The Redevelopment Plan for the Property shall provide for the reimbursement of the Authority in an amount not to exceed the Grant solely from excess TIF Note proceeds or excess incremental tax revenue generated by the Project. The Redevelopment Plan and the Redevelopment Contract shall first provide for the payment of the Company's eligible project costs once the Authority and/or the City approve the use of TIF for the Project, pursuant to subsection (b) below.
- b. *Tax Increment Financing.* The City and Authority shall consider, after appropriate proceedings as required by law approving and implementing a Redevelopment Plan for the Property authorizing tax increment financing for the Project to pay costs eligible for reimbursement as Redevelopment Project costs as defined by §18-2103(12) of the Act. The grant for Preliminary Activity qualifying expenditures as set forth in paragraph 3a hereof, shall be payable only from Authority funds and those funds generated by the TIF revenues on the Property divided pursuant to §18-2147(1) (b) of the Act. After approval of a Redevelopment Plan dividing taxes on the Property pursuant to §18-2147(1)(b) of the Act, the Authority may consider the issuance of additional TIF indebtedness, to be purchased by the Company, the proceeds of which shall be granted to the Company to fund remaining qualifying Preliminary Activity expenditures, and other Redevelopment Project costs as defined by §18-2103(12) of the Act. The Authority and City, in entering in this MOU, do not pre approve use of TIF for the Project. The Authority and/or the City, without any liability to the Company, may ultimately decline to utilize TIF for the Project, and if either or both do so, the Company shall have no claim against the Authority or the City. The

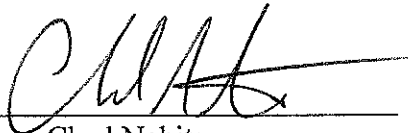
- Company knowingly accepts its own risk in site acquisition, demolition and site preparation prior to the Authority's implementation and City's approval of the TIF process.
- c. *Good Faith Meeting Schedule.* The City and Authority agree to takes all reasonable steps to establish public meeting schedules, according to law, to establish and maintain the proposed schedule for Redevelopment Plan adoption and Redevelopment Contract approval and other steps required by the Project.
-
4. *Economic Feasibility.* The Company hereby declares to the City and the Authority that the Redevelopment Project for the Property, and specifically the Preliminary Activities are not economically feasible and the Project will not occur on the Property as designed without the use of tax increment financing as required by §18-2116(1) of the Act.. The Company's investment of costs of Preliminary Activities to begin the Project development will not alter the Company's determination, based upon its analysis of cash flow requirements, not to implement the Project in the proposed location unless tax increment financing is ultimately provided by the City and the Authority. Section 18-2116(1) of the Act requires the City to make findings as follows if a TIF application requests the use of funds as described in Section 3 above: (i) the Project would not be economically feasible without the use of tax increment financing, and (ii) the Project would not occur in the City without the use of tax increment financing. Due to the proposed schedule of the Project the Company desires to begin the Project immediately and to undertake the Preliminary Activities prior the formal submittal of a Redevelopment Plan/ Project to the Authority and the city for approval. The purpose of this MOU is to make clear the parties intentions to consider the costs of Preliminary Activities as eligible for TIF funding, if and only if, the City and Authority approve TIF funding for the Project even if the Project is commenced prior to the approval of a Redevelopment Plan or Redevelopment Project by the Authority or the City. The parties agree that if the Project is commenced prior to the approval of a Redevelopment Plan providing for TIF funding, the allowable costs for the Preliminary Activities will remain eligible for TIF funding under a Redevelopment Contract.
5. *Preliminary Activity Costs.* The Company estimates that the costs to conduct the Preliminary Activities shall be in excess of Two Hundred Thousand and No/100 Dollars (\$200,000.00). The Redevelopment Project ultimately proposed by the Company for the Redevelopment Project Site shall be eligible for payment or reimbursement as part of the Project Eligible Costs. Any sums expended by the Company in excess of the Preliminary Activity Grant are subject to reimbursement to the Company in accordance with the priority and order set forth herein and subject to the terms of the Redevelopment Contract. Further, the Preliminary Activity Grant made by the Authority is subject to reimbursement from excess incremental tax revenues generated by the Redevelopment Project to be undertaken by the Company.
6. *Counterparts.* This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this MOU and all other agreements, certificates, instruments and other documents contemplated by this MOU and exchange the

counterparts of such documents by means of facsimile transmission. The parties agree that the receipt of such executed counterparts shall be binding on such parties and shall be construed as originals.

7. *Governing Law.* The MOU shall be governed by the laws the State of Nebraska.

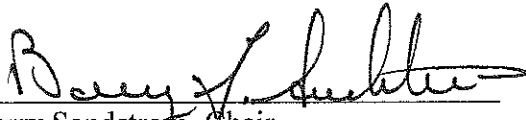
July 11th, 2012

Attest


Secretary Chad Nabity

"The Authority"

Community Redevelopment Authority
of the City of Grand Island, Nebraska

By: 
Barry Sandstrom, Chair

July ____, 2012

Attest

City Clerk RaNae Edwards

"The City"

City of Grand Island, Nebraska

By: _____
Jay Vavricek, Mayor

July 11th, 2012

"The Company"

Chief Industries, Inc., a Delaware corporation


By: 
DJ Eihusen, President

Exhibit A

LEGAL DESCRIPTION OF PROJECT

Lots One (1) and Two (2), Chief Fab Second Subdivision, City of Grand Island,
Hall County, Nebraska

4813-3490-9967,v . 2

RESOLUTION 2012-194

WHEREAS, the City of Grand Island, Nebraska, a municipal corporation and city of the first class, has determined it be desirable to undertake and carry out urban redevelopment projects in areas of the City which are determined to be substandard and blighted and in need of redevelopment; and

WHEREAS, the Nebraska Community Development Law, Chapter 18, Article 21, Nebraska Reissue Revised Statutes of 2007, as amended (the "Act"), prescribes the requirements and procedures for the planning and implementation of redevelopment projects; and

WHEREAS, the City has previously declared Redevelopment Area No. 8 of the City to be substandard and blighted and in need of redevelopment pursuant to the Act; and

WHEREAS, Chief Industries Inc., a Delaware Corporation (the "Developer"), has purchased the former Aurora Coop Property located entirely within Redevelopment Area No. 8,

WHEREAS, various activities are necessary to facilitate the redevelopment of the property owned by the Developer including: demolition of the existing structures, clearing and grading the property, and installation of a city water main across the property.

WHEREAS, the Community Redevelopment Authority of the City of Grand Island, Nebraska (the "Authority"), the Developer and wish to enter into a memorandum of understanding with the City of Grand Island regarding the various activities necessary to facilitate the redevelopment of the property; and

WHEREAS, the Authority and the Developer have previously approved and signed the memorandum of understanding, and

WHEREAS, the Authority has granted funds in the amount of \$100,000 toward clearance of the site to the Developer, and

WHEREAS, this memorandum of understanding is in the best interests of the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of a healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreation and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, or conditions of blight.

NOW, THEREFORE, be it resolved by the City Council of the City of Grand Island, Nebraska that The Mayor and City Clerk are authorized and directed to execute the attached memorandum of understanding.

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

- - -

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

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

- 2 -



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item I6

#2012-195 – Approving Request of Hall County Historical Society, Inc. for Release of Funds from the Stolley Fund held by the Nebraska Historical Society Foundation

Staff Contact: Craig Lewis

Council Agenda Memo

From: Craig Lewis, Building Department Director

Meeting: July 24, 2012

Subject: Request of Hall County Historical Society, INC. for Release of Funds from the Stolley Fund held by the Nebraska Historical Society Foundation

Item #'s: I-6

Presenter(s): Craig Lewis, Building Department Director

Background

The Hall County Historical Society, the Nebraska State Historical Society Foundation, and Grace Carmody on June 26, 2007 entered into an agreement for the creation of a Stolley House Committee and a Stolley Fund to hold dollars received from the Richard Palmer estate. That agreement identifies how the dollars are to be invested, distributed, and a list of fund uses was attached to enumerate the proposed expenditures and reimbursements. Typically an identified use or expenditure is acquired, paid for by the Hall County Historical Society from an initial \$50,000 distribution and then submitted for reimbursement to me, I then review the bills and forward them onto the Foundation for their approval and distribution of the available dollars.

Discussion

This request is to utilize \$15,000 from the Stolley Fund to help pay for expenses incurred in the construction of a memorial located in Stolley Park. As this request is for a use not specifically listed on the attachment of the agreement approval of the City of Grand Island is needed before the request is forwarded onto the Foundation.

Funds available this year are approximately \$30,000. Prior request for reimbursements submitted this year were \$13,850.24 and with this request of \$15,000 the fund will be substantially depleted for this year.

Alternatives

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

1. Approve the request for use of the funds for the memorial.
2. Disapprove or /Deny the Request.
3. Modify the Approval to meet the wishes of the Council.
4. Table the issue.

Recommendation

City Staff recommends approval of the funds to pay for the construction of the memorial as no other immediate use of the funds is identified.

Sample Motion

Move to approve the request for reimbursement of \$15,000 from the Nebraska State Historical Foundation Stolley Fund.



HALL COUNTY HISTORICAL SOCIETY, INC.

P.O. BOX 1683
GRAND ISLAND, NEBRASKA 68802 - 1683
FOUNDED 1922 <http://www.hallchs.com>

July 17, 2012

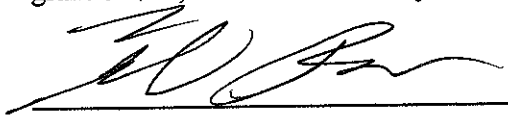
The Hall County Historical Society is in the process of constructing a memorial in Stolley Park on the Stolley Campus. This memorial is to commemorate the pioneers and those that followed to create the city of Grand Island. The following paragraph will be placed on a plaque at the memorial:

This memorial is in honor of the early pioneers who fought for and settled this land. The foresight of individuals such as William Stolley and Fred Hedde and many more left a legacy for our future.

Many businesses and individuals have donated funds for the construction of the memorial (see attached list). Due to unforeseen changes in construction, additional funds are needed to complete this project (see attached list).

According to the Stolley House Agreement dated June 26, 2007, by and between Grace Carmody, the Nebraska Historical Society Foundation (Foundation), and the Hall County Historical Society (HCHS) we would like to request a grant of \$15,000 for this memorial. Item #17 of the Stolley House Fund Uses, states: "And any other uses relating to the Stolley Property as may be agreed to by the HCHS, the City of Grand Island, and the Foundation."

The Hall County Historical Society Board of Directors met July 17th, 2012 and passed a motion to request a grant of \$15,000 from the Stolley House-Hall County Historical Society Fund (Richard Palmer Fund).

 7-18-2012

Hall County Historical Society
Fred Roeser President

Date

City of Grand Island Representative

Date

Nebraska State Historical Society Foundation Representative

Date

The Hall County Historical Society promotes the research education and preservation of Hall County's heritage and history.

STOLLEY HOUSE AGREEMENT

This Stolley House Agreement (Agreement) is entered into this 26th day of June, 2007, by and between Grace Carmody, the Nebraska State Historical Society Foundation (Foundation), and the Hall County Historical Society (HCHS).

WHEREAS Richard Stolley Palmer (Palmer) died on November 9, 2003, with his entire estate being left via the First Amendment To The Trust Indenture Creating The Richard S. Palmer Trust (the Trust); and

WHEREAS the residue of the Trust was left to the HCHS; and

WHEREAS Carmody and the Foundation allege that the residual beneficiary designation of the HCHS was a mistake and should have been the Foundation; and

WHEREAS Carmody and the Foundation have filed suit against the HCHS in the Hall County District Court, which suit bears Case No. CI 05-97 in said court (the Suit);

WHEREAS the HCHS has received a preliminary distribution of \$50,000 from the Trust, but the balance of the residue is being held by the trustee of the Trust, pending resolution of the Suit; and

WHEREAS the parties to said suit have agreed on a settlement, the terms of which are set forth herein.

IT IS THEREFORE AGREED BY THE PARTIES:

1. The Suit will be dismissed "with prejudice" by Carmody and the Foundation.
2. The trustee of the Trust is hereby instructed by the parties to this Agreement to distribute the balance of the residue of the Trust to the Foundation, which agrees to hold said funds pursuant to the terms of this Agreement.
3. The parties agree to the creation of the Stolley House Committee (Committee), which will be created by the HCHS and Craig Lewis, Building Department Director of the City of Grand Island, or such other representative that may be appointed by the City of Grand Island.
4. The Foundation agrees to hold the funds received from the Trust in a fund named the Stolley House-Hall County Historical Society Fund (the Stolley Fund).

5. The Foundation presently charges an administrative fee of 0.5% (and has recently decided to increase this fee to 0.75%) of the principal balance of its funds each year; however, as part of the consideration for this Agreement, the Foundation agrees to charge a fee for the Stolley Fund of 0.25% of the principal each year for the first five years, with the charge thereafter being the lesser of (1) the Foundation's customary charge for fund management or (2) 0.5%.

6. The parties agree that distributions from the Stolley Fund will be made on a "total return" basis, with the maximum payout being calculated in the same way that the Foundation uses for its other funds; (presently, that payout is 3.75% of the average balance of the particular fund for the lesser of (1) the previous twelve quarters, or (2) all quarters of the fund's existence).

7. The Foundation agrees to invest the Stolley Fund in the same way as all of its other "total return" funds; presently, the normal "mix" for such funds is 65% equities and 35% fixed funds.

8. The Committee may make quarterly requests for funds from the Stolley Fund for any purpose set forth in the attached Stolley House Fund Uses list; the Foundation agrees to honor all such requests for funds from the Committee on a timely basis. If an emergency need for funds arises between quarterly payout dates, the Foundation agrees to review and honor requests for fund from the Committee.

9. The parties agree that the HCHS may keep the initial distribution of \$50,000 that has already been received from the Trust, but the HCHS agrees to use such funds only for purposes set forth on the attached Stolley House Fund Uses list and to account at least quarterly to the City of Grand Island as expenditures from this \$50,000 fund.

10. If the Stolley House and its environs, including the Haans house, the school house, the summer kitchen building, and the garden, are destroyed and the Stolley House area is abandoned by the City of Grand Island, then in that event the remaining Stolley Fund will be distributed to the HCHS, with the restriction that it may only be used for historical projects in Hall County.

11. If the HCHS should request representation on the Foundation's Board of Directors, then the HCHS will forward three names to the Foundation from which the Foundation will select the person who will become a member of the Foundation's Board with full voting rights and privileges.

GRACE CARMODY

Grace Carmody
Grace Carmody

NEBRASKA STATE HISTORICAL
SOCIETY FOUNDATION

BY: Steven E. Guenzel
Steven E. Guenzel, President

HALL COUNTY HISTORICAL
SOCIETY

BY: Fred Roeser
Fred Roeser, President

Stolley House Fund Uses

1. Utility bills, including but not limited to electricity, gas, telephone.
2. Remodel, restore, repair, and maintain the entire Stolley "campus" area, and the facilitation of such work. The "campus" area shall be limited to the Stolley house, summer kitchen, school house, Haans House, and the grounds surrounding such buildings.
3. Insurance and loss deductibles.
4. Purchase of period appropriate window coverings, floor coverings, and light fixtures.
5. Purchase of period appropriate personal property, such as chairs, tables, and other furnishings.
6. Install and/or replace walkways to the house from the parking lots.
7. Shutters for the house.
8. Yard landscaping, with period shrubs and flowers, of the Stolley Campus area, including but not limited to restoration and maintenance of the Stolley House flower garden.
9. Security service, fire alarms, etc.
10. Expenses for staffing an office in the house, including the hiring of a permanent, but part-time, assistant to (1) look after the house; (2) provide tours and/or educational programs, and/or assist in event planning for the Stolley property; (3) prepare proposals for maintenance.
11. Signage, directional and other.
12. Termite inspections and treatments (if needed).
13. Annual furnace and air-conditioning checks.
14. Housekeeping.

15. Expenses and attorney's fees for Mr. Janulewicz for defending and settling the suit, and any expenses and fees that may be incurred by the HCHS to enforce this Agreement.
16. In general, to pay for specific projects including the purchase of artifacts, support of educational programs, care of historic sites and landmarks in and around Stolley Park, and preparation of exhibits.
17. And any other uses relating to the Stolley Property as may be agreed to by the HCHS, the City of Grand Island, and the Foundation.

RESOLUTION 2012-195

WHEREAS, the Hall County Historical Society has constructed a memorial in Stolley Park; and

WHEREAS, The Nebraska State Historical Society Foundation has an established Stolley Fund provided by the Richard Palmer Estate; and

WHEREAS, The City of Grand Island is listed as a party to the agreement entered into on June 26, 2007, and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor be authorized to sign a request for reimbursement from the Foundation Stolley Fund in the amount of \$15,000 to contribute toward the construction of such Hall County Historical Society Memorial located in Stolley Park.

- - -

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



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item I7

**#2012-196 - Approving Bid Award for 2012 Lincoln Park
Swimming Pool**

Staff Contact: Todd McCoy

Council Agenda Memo

From: Todd McCoy, Interim Parks and Recreation Director

Meeting: July 24, 2012

Subject: Consideration of Bids for Construction of New Lincoln Park Swimming Pool

Item #'s: I-7

Presenter(s): Todd McCoy

Background

After several years of discussions and emergency repairs, Council determined it was time to replace Lincoln Park Swimming Pool. Funding was made available to complete this project using bonding authority provided through the CRA. The bonding capability for the CRA was adopted by Council in September of 2011. In December of 2011 JEO Consulting Group of Wahoo, Nebraska was contracted to design and provide construction services for this project. On January 24, 2012 Council passed Resolution 2012-25 setting a project budget of \$1,550,000.00 for construction of the pool.

Discussion

Through the City's formal bidding process four bids were received as follows:

Hausmann Construction of Lincoln, Nebraska	\$1,679,000
Lacy Construction of Grand Island, Nebraska	\$1,690,000
Neuman Pools of Beaver Dam, Wisconsin	\$1,695,700
USA Pools of Roswell, Georgia	Bid rejected- nonconforming bid bond

JEO, the City's contracted consultant for the Lincoln Pool project, recommends Hausmann Construction of Lincoln because of their swimming pool building experience, excellent references, and low bid. Award of contract to Hausmann Construction would be consistent with City purchasing policies.

The bid of Lacy Construction of Grand Island was only \$11,000 higher than the low bid. The City Legal Department reviewed the matter and determined the City could not award the contract to Lacy Construction as to do so would be a violation of the City's procurement laws contained in Chapter 27 of the Grand Island City Code. In addition, the

Legal Department has concluded to award the contract to Lacy Construction would expose the City to potential civil liability.

Before construction can begin the Council must amend Resolution 2012-25 to increase the project budget to reflect the bids received and then award the contract.

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

Chapter 27 of the Grand Island City Code, requires the City Administration recommend the City Council amend Resolution 2012-25 to increase the project budget for the construction of Lincoln Park Pool and approve the award of a contract to Hausmann Construction in the amount of \$1,679,000.

Sample Motion

Move to amend Resolution 2012-25 to increase the project budget of the Lincoln Park Pool to \$1,679,000 and award the contract to construct the pool to Hausmann Construction.



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

BID OPENING

BID OPENING DATE: July 13, 2012 at 2:00 p.m.
FOR: 2012 Lincoln Park Swimming Pool (Re-Bid)
DEPARTMENT: Parks & Recreation
ESTIMATE: \$1,500,000.00
FUND/ACCOUNT: 40044450-90037
PUBLICATION DATE: July 5, 2012
NO. POTENTIAL BIDDERS: 29

SUMMARY

Bidder:	<u>USA Pools</u>	<u>Neuman Pools, Inc.</u>
	Roswell, GA	Beaver Dam, WI
Bid Security:	Darren Hutcheson	Liberty Mutual
Base Bid:	\$1,640,000.00	\$1,695,700.00
Deduct:		
Alternate 3:	\$ 800.00	\$ 11,100.00
Alternate 5:	\$ 3,500.00	\$ 20,000.00
Add:		
Alternate 1:	\$ 2,000.00	\$ 3,600.00
Alternate 2:	\$ 800.00	\$ 1,200.00

(USA Pools bid has been rejected due to an insufficient bid bond.)

Bidder: **Lacy Construction Company**
Grand Island, NE
Bid Security: **Merchants Bonding Co.**

Hausmann Construction
Lincoln, NE
North American Specialty Ins.

Base Bid: **\$1,690,000.00**

\$1,679,000.00

Deduct:

Alternate 3: **\$ 15,250.00**

\$ 14,300.00

Alternate 5: **\$ 14,500.00**

\$ 8,000.00

Add:

Alternate 1: **\$ 3,400.00**

\$ 1,800.00

Alternate 2: **\$ 900.00**

\$ 740.00

cc: Todd McCoy, Parks Supt.
Jason Eley, Purchasing Agent
George Parizek, Assist. Project Mgr.

Patti Buettner, Parks Secretary
Dave Henke, Project Manager

P1573

R E S O L U T I O N 2012-25

WHEREAS, the City of Grand Island is in the process of replacing Lincoln Park swimming pool; and

WHEREAS, it has been determined that new construction shall be the process used: and

WHEREAS, the City of Grand Island has set a project budget of ~~\$1,550,000.00~~
1,679,000.00.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that City staff will work with JEO Consulting of Wahoo, Nebraska to develop the design and construction plans for a new Lincoln Park swimming pool. - - -

Amended and adopted as amended 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

RESOLUTION 2012 -196

WHEREAS, the City of Grand Island invited sealed bids for the Construction of Lincoln Park Swimming Pool, according to plans and specifications on file with the Parks and Recreation Department; and

WHEREAS, on July 13, 2012, bids were received, opened and reviewed; and

WHEREAS, Hausmann Construction of Lincoln, Nebraska, submitted a bid in accordance with the terms of the advertisement of bids, plans and specifications and all other statutory requirements contained therein, such bid being in the amount of \$1,679,000.00.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Hausmann Construction from Lincoln, Nebraska in the amount of \$1,679,000.00 for Construction of Lincoln Park Swimming Pool is hereby approved as the lowest responsible bid.

- - -

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



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item I8

#2012-197 - Approving Contract for Health Plan

Staff Contact: Brenda Sutherland



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL
FOR
HEALTH PLAN**

RFP DUE DATE: April 26, 2012 at 4:00 p.m.

DEPARTMENT: Human Resources

PUBLICATION DATE: March 22, 2012

NO. POTENTIAL BIDDERS: 13

SUMMARY OF PROPOSALS RECEIVED

BenefitMall Self Funded Division
Phoenix, AZ

Aetna
Woodland Hills, CA

Blue Cross Blue Shield
Omaha, NE

United Healthcare Company
Wausau, WI

Maxor Plus
Amarillo, TX

Coventry Health Care
Omaha, NE

HCC Life Insurance Company
Minnetonka, MN

US Script
Fresno, CA

Harrington Health
Wichita, KS

FMH CoreSource
Overland Park, KS

Regional Care, Inc.
Scottsbluff, NE

cc: Brenda Sutherland, Human Resources Director
Mary Lou Brown, City Administrator
Jason Eley, Purchasing Agent

Tami Herald, HR Risk Mgt/Benefits Cor.
Jaye Monter, Interim Finance Director

P1550

Council Agenda Memo

From: Brenda Sutherland, Human Resources Director

Meeting: July 24, 2012

Subject: Health Insurance and COBRA Contract

Item #'s: I-8

Presenter(s): Brenda Sutherland, Human Resources Director

Background

The City of Grand Island has had a contract with Regional Care, Inc. (RCI) to provide administrative services for the City's health plan and COBRA administration. The City has a partially self-funded plan, meaning that claims are actually paid for by the premium dollars generated through the plan to a specified limit. The City has paid a third party, in this case RCI, to administer and pay claims and provide stop loss coverage.

The City's current "specific deductible" or stop loss is \$150,000 per participant. This means that the first \$150,000 of claims for a plan participant is paid for by the premium dollars generated and then the reinsurance carrier picks up the claims that go over that amount.

Discussion

As a part of routine practice, the City advertises through the RFP process to shop its various benefit packages on a three year cycle. As it has been three years since the health insurance was shopped, it seemed prudent to take a look at the market to see if we are indeed getting the best buy for the dollar. The City has a health insurance committee that has been in place for several years that is comprised of union, non-union, management, and non-management personnel. The City is currently contracted with Strong Financial Resources, Inc. for consulting services and as part of those services, to assist with the breakdown of the proposals, compilation of the information and contract negotiations.

The committee held interviews with finalists based on the proposals that were submitted. Negotiations ensued and the committee has a recommendation before the Council for the administration of the health plan and COBRA administration. The committee is proposing Blue Cross and Blue Shield of Nebraska (BCBSNE) as the new plan administrator. After careful review and consideration, the insurance committee has

determined that the proposal from Blue Cross and Blue Shield provided the best package for the price. The City will have access to deeper network discounts. The contract will commence on October 1, 2012. Strong Financial Resources has been chosen to be retained as the broker to assist the City and its employees with their daily needs and to provide professional assistance in an ever changing market. Per the City procurement rules, quotes were obtained and Strong Financial Resources had the most competitive pricing. The reinsurance will be provided by Blue Cross and Blue Shield. They will also act as fiduciary under this contract. Due to the size and strength of Blue Cross and Blue Shield of Nebraska, ancillary products such as our current transplant policy and our Dialysis PPO contract will no longer be needed. The City currently is contracted with American Healthways Services, Inc. to provide wellness physicals. That contract will be brought in under the Blue Cross umbrella and is referred to in the Blue Partners Program Agreement.

The plan structure will remain much the same as it is today. There are always changes in plan design when a new company is chosen, however, the changes experienced by the employees will be minor.

The contract with Blue Cross and Blue Shield of Nebraska (BCBSNE) specifies administrative fees of \$27 per employee per month for the first year and will increase to \$28.25 in year two and \$29.50 in year three. Stop loss coverage will cost \$61.25 per employee per month during the first year of the contract and is subject to change based on claims and the aggregate stop loss coverage will cost \$4.85 per employee per month with future increases to be based on claims paid as well. The contract with Strong Financial will cost \$1,500 per month in year one and will increase to \$1,575 in the second year and \$1,654 in the third year. COBRA administration will be handled by Discovery Benefits, Inc. (DBI) The cost for COBRA administration will be .70 per employee per month for the three year term of the contract. The fees associated with the wellness physicals will be lower under the Blue Cross contract and will be \$79.38 per participant for the duration of the three year contract.

While fixed costs are slightly higher than the current year, the offset in deeper network discounts outweigh the increase by a sizable margin. There will be an overall increase in the premium as has been identified in the proposed budget. Premiums have not increased since 2010. They are proposed to increase by 15%.

Contracts are on file in the City Clerk's office.

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 contracts with Blue Cross and Blue Shield of Nebraska, Strong Financial Resources, Discovery Benefits, Inc. and Bluepartners Program to administer the health insurance benefits, COBRA administration and wellness program for the City of Grand Island employees.

Sample Motion

Move to approve the contracts with Blue Cross and Blue Shield of Nebraska, Strong Financial Resources Discovery Benefits, Inc. and Bluepartners Program to administer the health insurance benefits for the employees of the City of Grand Island.

RESOLUTION 2012-197

Whereas, the City subscribes to health insurance for its employees and other eligible participants, as authorized by the City of Grand Island Personnel Rules and Regulations and federal regulations; and

WHEREAS, a Health Insurance Committee consisting of union, non-union, management and non-management employees, along with the Human Resources Director, the Finance Director, and the Attorney/Purchasing Agent met and reviewed plan changes; and

WHEREAS, Blue Cross and Blue Shield of Nebraska has been selected by the health insurance committee to serve as the Third Party Administrator for the City's health insurance plan; and

WHEREAS, the reinsurance coverage and administration of the plan is provided under a contract with Blue Cross and Blue Shield of Nebraska. COBRA administration will be provided by Discovery Benefits, Inc. The broker is Strong Financial Resources, and the current agreement with Healthways will be covered under the Bluepartners Program agreement and;

WHEREAS, contracts are necessary for the provision of such services and associated stop loss coverage; and

WHEREAS, a Business Associate Agreement, an Administrative Service Agreement and a Bluepartners Program Agreement will be entered into with Blue Cross and Blue Shield of Nebraska; and a Business Associate Agreement and an Administrative Service Agreement will be entered into with Discovery Benefits, Inc., and a Health Insurance Broker Contract will be entered into with Strong Financial Resources, for the aforementioned contracts for insurance services;

NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the contracts with Blue Cross and Blue Shield of Nebraska, Discovery Benefits, Inc., Strong Financial Resources and Bluepartners Program for the administration of health insurance, COBRA administration, broker services and wellness program as set out by the contracts is hereby approved.

- - -

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

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item I9

**#2012-198 - Approving Appointment of Terry Brown as Interim
Public Works Director/City Engineer**

Staff Contact: Mayor Jay Vavricek

Council Agenda Memo

From: Mayor Jay Vavricek

Meeting: July 24, 2012

Subject: Mayoral Recommendation for Interim City Engineer/Public Works Director

Item #'s: I-9

Presenter(s): Mayor Jay Vavricek

Background

State Statute and Grand Island City Code specifies the need to designate a City Engineer within the Public Works Department of the City of Grand Island. The current City Engineer is John Collins. As Public Works Director, John's resignation relative to both positions will become effective July 29, 2012. Therefore, it is necessary to make a recommendation in order to maintain the on going work of the Public Works Department. A capable replacement with an accredited engineering degree to serve in the capacity as Interim City Engineer/Public Works Director is necessary and has been identified to be Terry Brown.

Discussion

Terry Brown received a Bachelor of Science Degree in Civil Engineering from the University of Nebraska Lincoln. He has over 20 years of experience as a consultant, is a registered Professional Engineer in our state and has significant background as a Senior Design Engineer with Ross Engineering in Lincoln, a Senior Project Manager for Snyder and Associates in Ankeny, Iowa and as a Senior Project Manager for Olsson Associates for seven years. Terry has been an employee of the City of Grand Island Public Works Department as Manager of Engineering Services since July 2010 and serves as the head of the Engineering Division.

Therefore, I am confident he has the accreditation and previous engineering experience, and as a valued employee within the Public Works Department, I am confident this recommendation is in the best interests of the effectiveness of the department, meets the qualifications necessary under State law and Grand Island City Code and as Interim City Engineer best serves the people of Grand Island. Mr. Brown's appointment will be effective July 24, 2012 with Council approval. Mr. Brown will be placed in step 11 of the

current Public Works Director pay scale per the City Personnel Rules which represents a salary of \$96,774.60 per year.

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 appointment of Terry Brown as Interim City Engineer/Public Works Director.

Sample Motion

Move to approve Terry Brown as Interim City Engineer/Public Works Director.

RESOLUTION 2012-198

WHEREAS, under Neb. Rev. Stat., §16-308 and Grand Island City Code §2-30 the office of City Engineer/Public Works Director for the City of Grand Island, Nebraska, is an appointed position; and

WHEREAS, the Mayor, with the approval of the City Council, may appoint the position of City Engineer/Public Works Director; and

WHEREAS, the position will become vacant and an interim appointment may be made; and

WHEREAS, Terry Brown, the Manager of Engineering Services is a licensed professional engineer and meets the statutory requirement for a City Engineer; and

WHEREAS, the Mayor has recommended the appointment of Terry Brown as the Interim City Engineer/Public Works Director effective as of July 24, 2012 until such time as a replacement is appointed.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that Terry Brown is hereby duly appointed the Interim City Engineer/Public Works Director for the City of Grand Island, Nebraska,.

- - -

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



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item J1

Approving Payment of Claims for the Period of July 11, 2012 through July 24, 2012

The Claims for the period of July 11, 2012 through July 24, 2012 for a total amount of \$4,022,075.71. A MOTION is in order.

Staff Contact: Jaye Monter