



City of Grand Island

Tuesday, August 28, 2012

Council Session

Item I4

**#2012-237 - Consideration of Approving MOU Regarding a Fence
along the UPRR Right of Way**

Staff Contact: Robert J. Sivick, City Attorney

Council Agenda Memo

From: Robert J. Sivick, City Attorney

Meeting: August 28, 2012

Subject: Approval of MOU with UPRR Regarding a Fence along Railroad Right of Way

Item #'s: I-4

Presenter(s): Robert J. Sivick, City Attorney

Background

Trespassing on the Union Pacific Railroad (UPRR) right of way running along its tracks in downtown Grand Island has been an ongoing problem. This trespassing results in potential and actual damage to property, injuries to persons, and sadly fatalities on occasion. The Grand Island Police Department (GIPD) has worked closely with UPRR officials to reduce the frequency of trespassing on UPRR property. In recognition of its efforts the UPRR recently presented the GIPD with its Safety Spike Award.

Despite the efforts of UPRR and City of Grand Island (City) officials, additional measures to reduce trespassing are needed. On July 30, 2012 UPRR officials met with the Mayor, Administrator, and representatives from the City Public Works, Police, and Legal Departments to discuss this issue. The agreements reached during that meeting are memorialized in the Memorandum of Understanding (MOU) before you tonight for consideration.

Discussion

Essentially UPRR has agreed to erect a fence constructed of aesthetically pleasing ornamental black steel along its tracks in downtown Grand Island similar to what exists along the UPRR tracks in Kearney. The fence will be approximately 1,400 feet long and stretch from the Burlington Northern tracks west to Pine Street. The UPRR will also construct a chain link fence along its right of way from Pine Street west to Eddy Street. The City agreed to maintain the fence.

Resolution 2012-237 authorizes the Mayor to sign the MOU on behalf of the City so construction of the fence may begin.

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

The City Administration recommends the Council approve Resolution 2012-237 authorizing the Mayor to sign the MOU with UPRR on behalf of the City.

Sample Motion

Move to approve Resolution 2012-237 to authorize the Mayor to sign the Memorandum of Understanding with the Union Pacific Railroad for the construction of a fence along the railroad's right of way in downtown Grand Island.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into on August 28, 2012, between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UPRR") and the CITY OF GRAND ISLAND, Hall County, Nebraska, a political subdivision duly organized and existing under the Constitution and Laws of the State of Nebraska (the "City").

WHEREAS, the City and UPRR desire to provide for the installation and maintenance of a fence on portions of the UPRR right of way generally from the BNSF overhead (where it passes over the UPRR tracks) to Eddy Street, which location is depicted on **Exhibit A**, attached hereto and incorporated herein by reference; and

WHEREAS, the City and UPRR desire to establish between them their respective rights and obligations with respect to installation and maintenance of the fence.

In consideration of the mutual promises and covenants set forth in this MOU and for other good valuable consideration, the parties hereby agree as follows:

Section 1. UPRR Responsibilities.

Within thirty (30) days after execution of this MOU, UPRR, at UPRR's sole cost and expense, shall install the fence. UPRR shall select the final location for the fence on the UPRR right of way, provided the fence shall be at least fifty (50) feet from the centerline of UPRR's nearest railroad tracks. The design of the fence on portions of the right of way from the BNSF overhead to Pine Street shall be Ameristart ornamental black steel fencing (approximately 1,400 feet), and the design of the fence on portions of the right of way from Pine Street to Eddy Street shall be chain link fencing matching the nearby parking lot and the fence at the end of Elm and Cleburn Streets (approximately 500 feet). Notwithstanding any other provision in this MOU to the contrary, however, in the event that UPRR determines it needs to install a gate in the fence, relocate the fence, or otherwise remove the fence completely for UPRR's operating or other purposes, then UPRR may do so upon thirty (30) days written notice to the City.

Section 2. City Responsibilities.

After UPRR's completion of the fence, the City, at its sole cost and expense, shall periodically inspect the fence and when necessary shall repair the fence to keep the fence in good and safe condition. Any repairs and maintenance on the fence and any labor performed or materials furnished in connection therewith shall be performed and furnished in compliance with all applicable laws, regulations, ordinances and requirements of all duly constituted municipal authorities or other governmental bodies having jurisdiction over the fencing. The City shall not modify the design of the fence without the consent of UPRR. Prior to any entry by the City or any employees, contractors or agents of the City onto UPRR's right of way for any purpose, the City and any of its contractors and agents shall each enter into UPRR's then-current form of Right of Entry Agreement.

Section 3. Term.

The term of this MOU shall commence as of the date first above written and shall continue in effect as long as the fence remains on the UPRR right of way.

Section 4. Entire Memorandum of Understanding.

This MOU and all exhibits attached hereto constitute the entire MOU between the parties, superseding any other written and oral MOUs between the parties. If any section of this MOU is held to be invalid by a court of competent jurisdiction, such section shall be reformed to the extent necessary to be held valid, and the parties agree that the remainder of this MOU shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this MOU the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____
Printed Name: _____

CITY OF GRAND ISLAND, NEBRASKA

By: _____
Title: Mayor _____
Printed Name: Jay Vavricek _____

Exhibit A
Part 1 of 2

BNSF overhead to Pine St., Grand Island, NE Ameristart ornamental black steel fence with total length of about 1400 ft.

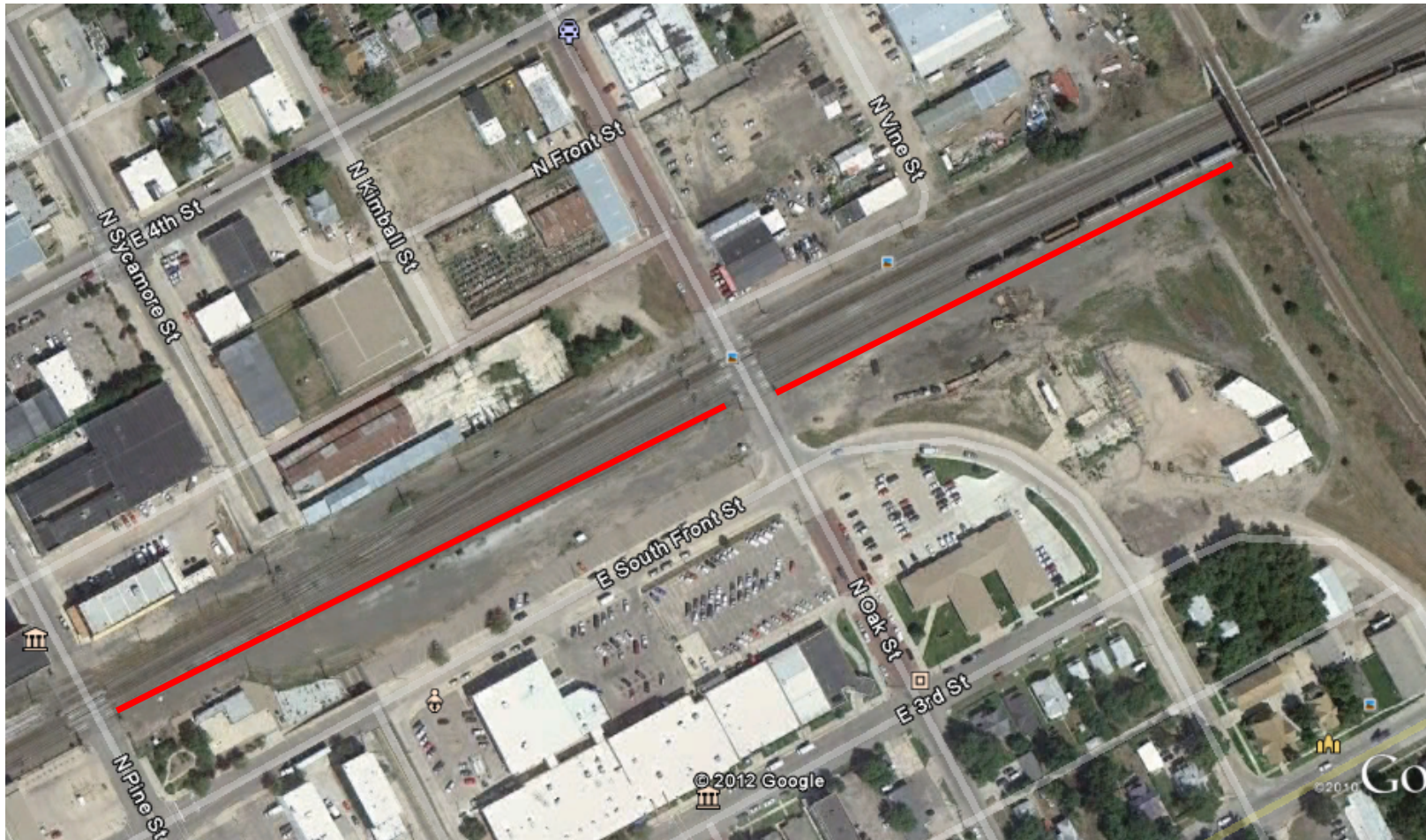
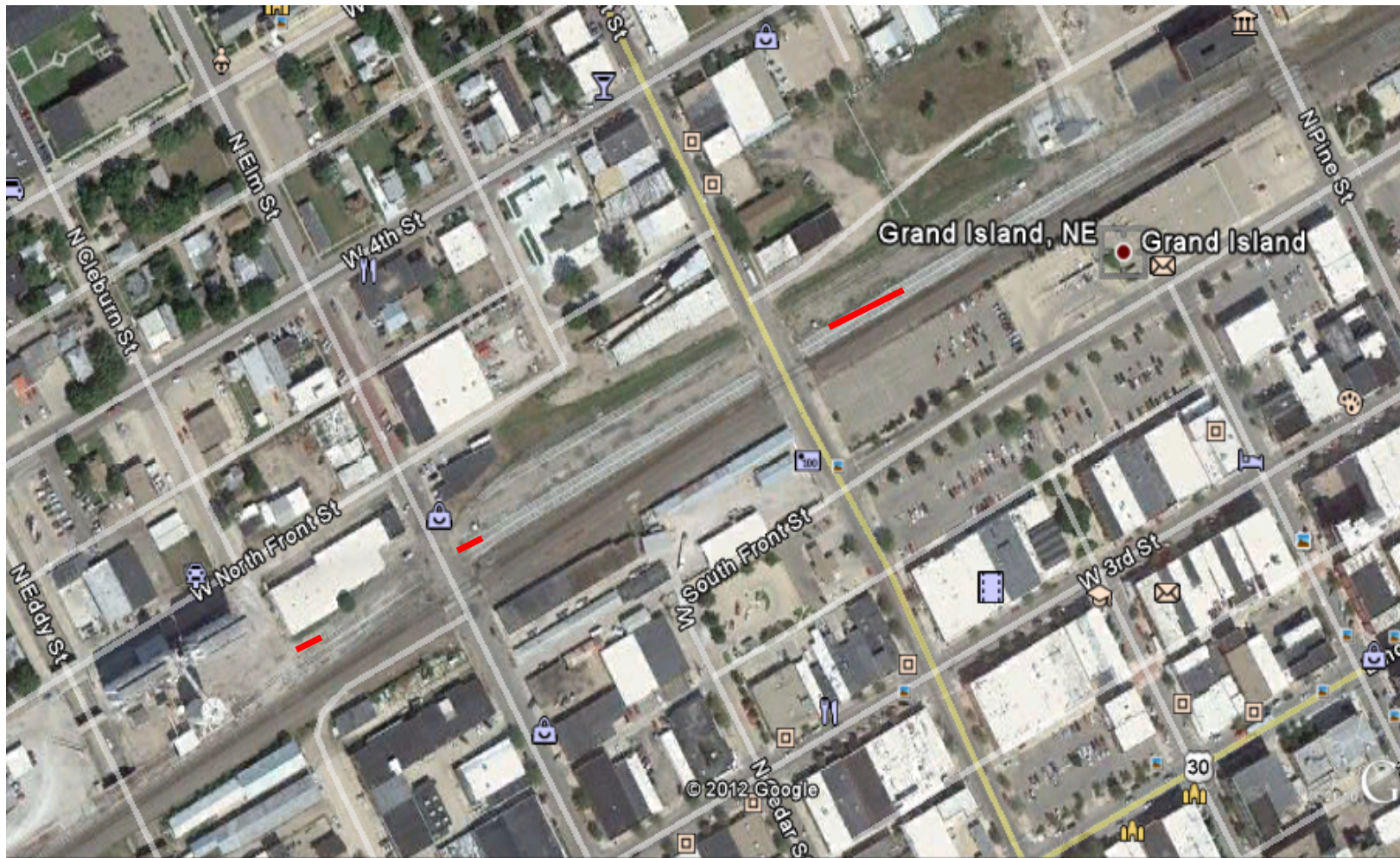


Exhibit A
Part 2 of 2

Pine St. to Eddy St., Grand Island, NE. Chain link fence to match parking lot and fence at dead end streets of Elm and Cleburn St. Total length about 500 ft.



RESOLUTION 2012-237

WHEREAS, trespassing on the Union Pacific Railroad (UPRR) right of way is a problem that endangers life and property; and

WHEREAS, City of Grand Island (City) officials, particularly members of the Grand Island Police Department, have worked closely with UPRR officials to reduce trespassing along the railroad right of way; and

WHEREAS, both City and UPRR officials agree a fence is needed along the railroad right of way in downtown Grand Island to further reduce incidents of trespassing; and

WHEREAS, a Memorandum of Understanding has been drafted memorializing the agreement between the City and UPRR;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Memorandum of Understanding between the City of Grand Island and the Union Pacific Railroad is hereby approved and the Mayor is authorized to execute said Memorandum on behalf of the City.

Adopted by the City Council of the City of Grand Island, Nebraska, August 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

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|---------------------|--|
| Approved as to Form | <input type="checkbox"/> _____ |
| August 24, 2012 | <input type="checkbox"/> City Attorney |