



# City of Grand Island

Tuesday, September 25, 2012

Council Session

## Item G11

**#2012-264 - Approving Use of Land Owned by the City of Grand Island for the Concrete Driveway and Traffic Signals to be Constructed on the Walk to Walnut Project**

Staff Contact: Terry Brown, Interim Public Works Director

# **Council Agenda Memo**

**From:** Scott Griepenstroh, Project Manager

**Meeting:** September 25, 2012

**Subject:** Approving Use of Land Owned by the City of Grand Island for the Concrete Driveway and Traffic Signals to be Constructed on the Walk to Walnut Project

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

**Presenter(s):** Terry Brown, Interim Public Works Director

## **Background**

The Walk to Walnut project will realign the main driveway to Walnut Middle School with the intersection of 15th Street and Custer Avenue and install traffic signals. This project is mostly funded with Safe Routes to School (SRTS) funds authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A legacy for Users Act (SAFETEA-LU) that are administered by the Nebraska Department of Roads (NDOR).

The original funding cap for this project was set at \$249,004.00. The funding cap was recently removed and Federal Aid will be used to pay for 100% of the costs for construction, construction engineering and utility relocation. The current estimate for all project costs is \$374,630.00.

The new driveway will be constructed through the Custer and Fifteenth Mini-park. A permanent easement will be granted to Grand Island Public Schools for the driveway. Traffic signal poles and public sidewalk will be constructed on the edge east of the Mini-park at the intersection of the new driveway and Custer Avenue.

## **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 for the concrete driveway or the traffic signals (transportation purposes) cannot be readily used for this project without execution of a “Declaration as to 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. Acquisition of Right-of-Way is anticipated to be completed in the next three months. Construction of this project is anticipated to occur in 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**

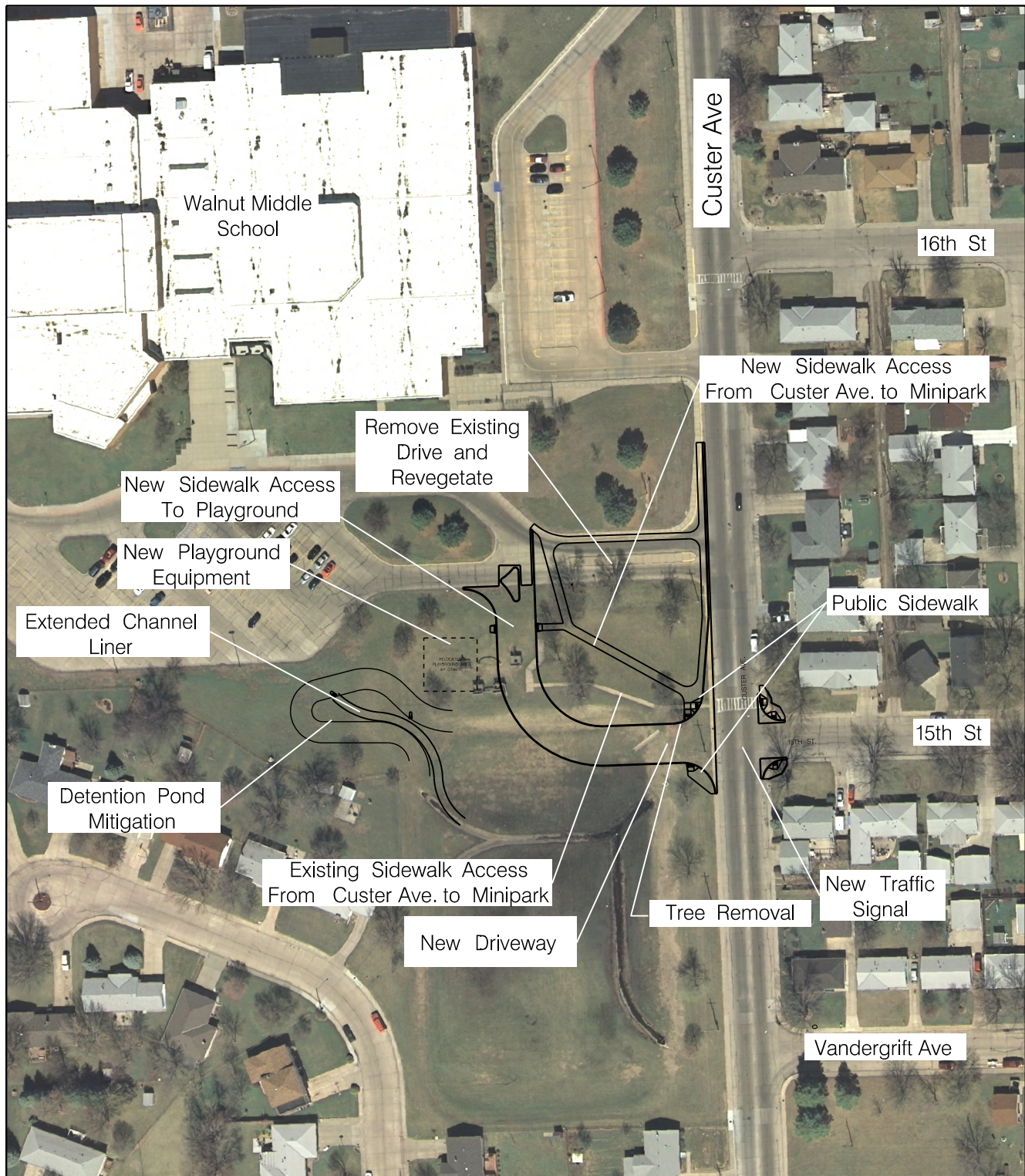
City Administration recommends that the Council approve the use of a portion of land owned by the City of Grand Island for the construction, operation and maintenance of a concrete driveway and traffic signals.

### **Sample Motion**

Move to approve the agreement.



## Walk to Walnut: Safe Routes to School Proposed Design Features



Walnut Middle School SRTS  
SRTS-40(57), CN 42521  
Hall County – Grand Island, NE

Proposed Design

**Exhibit A**



PROJ: SPROJECTS  
PEN: SPENTBLAS  
USER: MEGAN STARNER  
DATE: 9/7/2012  
DGN: ROW Sheet 1.DGN

OWNERSHIP				EASEMENTS	
TRACT NO.	OWNER	DESCRIPTION	TAKING SQ. FT.	PERM. EASE. SQ. FT.	TEMP. EASE. SQ. FT.
T-1	CITY OF GRAND ISLAND	IMPERIAL VILLAGE SUB TO THE CITY OF GRAND ISLAND LT 20 BLK 2		13,017	
T-2	SCHOOL DISTRICT NUMBER 2 OF HALL COUNTY, NE	MISCELLANEOUS TRACTS 8-11-9 TO THE CITY OF GRAND ISLAND PT E 1/2 SW 1/4 27.65AC	21,891		7,978

**SCHEMMER**  
ARCHITECTS | ENGINEERS | PLANNERS

PROJECT NO.	SHEET NO.
SRTS-40(57)	11
Date: 9/7/2012	Drawn: MDS
	Checked: DGH
	Approved: DGH

0 20 40

LEGEND

- EXISTING LOT LINE
- PERMANENT EASEMENT
- TEMPORARY EASEMENT
- NEW RIGHT-OF-WAY
- CONTRACTOR ACCESS AREA
- DECLARATION OF USE

WALNUT MIDDLE SCHOOL

RELOCATED  
PLAYGROUND AREA  
BY OTHERS

BLOCK 2

LOT 20

DECLARATION OF USE  
PER RESOLUTION  
NO.

DECLARATION OF USE-MATCHING  
PERMANENT EASEMENT AREA  
PER RESOLUTION  
NO.

CONTRACTOR TO STAY WITHIN CITY PROPERTY

DRIVEWAY GRADING  
LIMITS OF CONSTRUCTION

IMPERIAL VILLAGE SUBDIVISION

SEC.8, T.11 N., R.9 W.

DECLARATION OF USE  
PER RESOLUTION  
NO.

CONTRACTOR TO STAY WITHIN CITY PROPERTY

CUSTER AVE.

15TH ST.

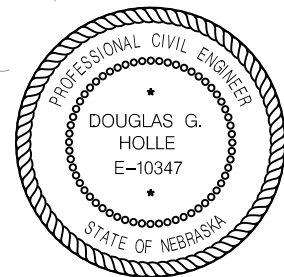


Exhibit A

RIGHT OF WAY

## 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 2012-264

WHEREAS; the City of Grand Island, Nebraska is the owner of portions of Lot 20, Block 2, Section 8, T11N, R9W, Grand Island, Hall County, Nebraska, more particularly described as follows:

Commencing at the northeast corner of Lot 20, Block 2, Imperial Village Subdivision and extending South along the east line of said Lot 20 and west right-of-way line of Custer Avenue, a distance of 56.58 feet to the point of beginning, thence deflecting 21°33'43" right, a distance of 38.09 feet; thence deflecting 21°33'43" left, a distance of 16.00 feet; thence deflecting 90°00'00" left, a distance of 14.00 feet to the east line of said Lot 20 and west right-of-way line of Custer Avenue; thence deflecting 90°00'00" left, a distance of 51.43 feet to the Point of Beginning, containing 472.00 square feet, more or less, and

Commencing at the northeast corner of Lot 20, Block 2, Imperial Village Subdivision and extending South along the east line of said Lot 20 and west right-of-way line of Custer Avenue, a distance of 154.11 feet to the point of beginning, thence deflecting 90°00'00" right, a distance of 14.00 feet; thence deflecting 90°00'00" left, a distance of 35.00 feet; thence deflecting 90°00'00" left, a distance of 14.00 feet to the east line of said Lot 20 and west right-of-way line of Custer Avenue; thence deflecting 90°00'00" left, a distance of 35.00 feet to the Point of Beginning, containing 490.00 square feet, more or less, and

Commencing at the northeast corner of Lot 20, Block 2, Imperial Village Subdivision; thence running westerly along the north line of said Lot 20, a distance of One Hundred Forty and Eighty Three Hundredths (140.83) feet to the Point of Beginning, thence continuing westerly along said north lot line of Lot 20, a distance of Forty Six (46.00) feet; thence deflecting 90°17'31" left, and running a distance of Ninety Two and Forty Hundredths (92.40) feet; thence deflecting 45°00'00" left, and running a distance of Eighty Eight and Sixty One Hundredths (88.61) feet; thence deflecting 45°00'00" left, and running a distance of One Hundred Twenty Four and Seventeen Hundredths (124.17) feet to a point on the east line of Lot 20; thence running northerly along said east lot line of Lot 20, a distance of Forty Six (46.00) feet; thence deflecting 90°00'00" left, and running a distance of Eighty Eight and Forty Hundredths (88.40) feet; thence deflecting 45°00'00" right, and running a distance of Seventy Four and Fifteen Hundredths (74.15) feet; thence deflecting 45°00'00" right, and running a distance of Fifty Six and Forty Hundredths (56.40) feet to the Point of Beginning, containing 13,017 square feet more or less, and

WHEREAS; said portions of Lot 20, Block 2, Section 8, T11N, R9W, Grand Island, Hall County, Nebraska, are now being occupied by the City of Grand Island for stormwater detention and recreational purposes as a mini-park, and

WHEREAS; the City of Grand Island wishes to construct, operate and maintain a concrete driveway, public sidewalk and traffic signals across a portion of said property, and

WHEREAS; the concrete driveway, public sidewalk and traffic signals are to be constructed as part of Nebraska Department of Roads project STRS-40(57), Control Number 42521, and identified as Walk to Walnut, and

WHEREAS; To comply with Federal Highway Administration 23 CFR 1.23(a) –

Approved as to Form	<input type="checkbox"/>
September 21, 2012	<input type="checkbox"/> City Attorney

“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 concrete driveway, public sidewalk and traffic signals for a period of no less than twenty five years from the completion of their 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 concrete driveway, public sidewalk and traffic signals as shown on Exhibit “A” and as aligned in project plans and specifications for Nebraska Department of Roads project STRS-40(57), Control Number 42521, and identified as Walk to Walnut 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, September 25, 2012.

---

Jay Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk