



City of Grand Island

Tuesday, October 9, 2012

Council Session

Item I1

#2012-300 - Approval of Revised MOU with UPRR Regarding a Fence along Railroad Right of Way

Staff Contact: Robert J. Sivick, City Attorney

Council Agenda Memo

From: Robert J. Sivick, City Attorney

Meeting: October 9, 2012

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

Item #'s: I-1

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 were memorialized in a Memorandum of Understanding (MOU) presented to the Grand Island City Council at its August 28, 2012 meeting.

Since that time, City staff has maintained communications with UPRR officials and a new MOU has been drafted with terms more favorable to the City.

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 installation of the fence will extend from the Burlington Northern tracks West to Broadwell Avenue and installation will begin later this year. The main change in the previous MOU is fencing along the entire length of the project will be ornamental black steel and no portion will be chain link. As stated in the previous MOU, the City will agree to maintain the fence.

Resolution 2012-300 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 2012-300 authorizing the Mayor to sign the MOU with UPRR on behalf of the City.

Sample Motion

Move to approve Resolution 2012-300 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 from the Burlington Northern tracks West to Broadwell Avenue.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into on _____, 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, Eddy Street to Lincoln Avenue and Lincoln Avenue to Broadwell Avenue, which locations are 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 _____ (___) 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 thirty (30) feet from the centerline of UPRR's nearest railroad tracks. The design of the fence shall be as follows:

- (a) on portions of the right of way from the BNSF overhead to Pine Street -- Ameristar ornamental black steel fencing (approximately 1,400 feet);
- (b) on portions of the right of way from Pine Street to Eddy Street -- Ameristar ornamental black steel fencing (approximately 500 feet);
- (c) on portions of the right of way from Eddy Street to Lincoln Avenue -- Ameristar ornamental black steel fencing (approximately 1,928 feet); and
- (d) on portions of the right of way from Lincoln Avenue to Broadwell Avenue -- Ameristar ornamental black steel fencing (approximately 1,872 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: _____
Printed Name: _____

RESOLUTION 2012-300

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, October 9, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
October 5, 2012	☐ City Attorney