



Council Communication

Office of the City Manager

Date

October 23, 2006

Agenda Item No. 18C
Roll Call No. 06-
Communication No. 06-673
Submitted by: Jeb E. Brewer, P.E.,
City Engineer

AGENDA HEADING:

Approving settlement agreement for the acquisition of property from the Union Pacific Railroad Company for the American Discovery Trail – Riverpoint Segment Project.

SYNOPSIS:

Recommend approval of settlement agreement with the Union Pacific Railroad Company, J. R. Young, President, 1400 Douglas Street, Omaha, NE 68179 for the acquisition of property in the amount of \$468,000 for the American Discovery Trail – Riverpoint Segment Project (Riverpoint Trail). This action is required to authorize the mutual release and dismissal of a condemnation appeal with the Union Pacific Railroad Company (UPRR) for this project.

FISCAL IMPACT:

Amount: \$468,000

Funding Source: 2006-07 CIP, Park Improvements, Recreation Trails, Page 21, PKS045.

ADDITIONAL INFORMATION:

Since 2004, the City has been negotiating with UPRR for the acquisition of their property for several City projects, including the following:

- Riverpoint Trail
- Southwest Connector
- Flood Control Improvements

Voluntary negotiations with UPRR were unsuccessful for the Riverpoint Trail project and condemnation was used to acquire the necessary property interests to construct the project. The condemnation award was appealed by UPRR and a district court hearing is scheduled for December 2006. As part of the condemnation appeal process, the Legal and Engineering Departments have negotiated a settlement with UPRR in the amount of \$468,000 for the mutual release and dismissal of the condemnation appeal. This agreement is part of a global settlement involving the acquisition of additional UPRR property required for the other above referenced projects.

This settlement would pay UPRR an increase of \$110,000 over the City's 2004 approved fair market value of \$358,000 for the property required for the Riverpoint Trail Project. As part of this settlement, UPRR has agreed to convey the necessary property interests required for the Southwest Connector

Project at the City's 2005 fair market value of \$1,020,000, which was approved by the City Council on August 22, 2005 by Roll Call Number 05-2044. UPRR has also agreed to convey the necessary property interests required for the Flood Control Improvements Projects at the City's 2006 fair market value of \$21,800. The overall increase of \$110,000 in compensation to settle the condemnation appeal for the Riverpoint Trail Project represents a 7.86 percent increase above the total of all fair market values for the properties being acquired from UPRR. This negotiated increase is considered well within an acceptable range of the total fair market values of all the property interests being acquired from UPRR, considering the time that has lapsed from the date of the original appraisals.

In addition, the closing on UPRR's property required for the Southwest Connector Project is pending the City's acceptance of the environmental condition of the property subject to the City completing comprehensive environmental testing on the property. If the results of the environmental testing are not acceptable to the City, then the City has the right to cancel the agreement, at its sole discretion.

POTENTIAL OUTCOMES AND RISKS IF THE CITY DOES NOT APPROVE SETTLEMENT:

1. UPRR obtained a third party appraisal in October 2005 showing a value of \$665,000 for the Riverpoint Trail property. The City would be risking an additional \$307,000 above the City's approved fair market value of \$358,000, if the court rules in favor of UPRR.
2. The City would have to use condemnation for the acquisition of UPRR's property for the Flood Control Improvements Project, which would delay construction set for Fall 2006 until Spring 2007, resulting in additional flood risk and manual levee closures.
3. The UPRR property required for the Southwest Connector Project may be sold by UPRR to adjoining property owners for development, which if developed, could result in substantially higher acquisition and relocation costs for the project in the future.
4. UPRR's property required for the Southwest Connector Project is also required for a planned recreation trail project connecting the Riverpoint Trail to the Great Western Trail via UPRR's property. A delay in acquiring the property will delay any potential to develop this trail connection.

PREVIOUS COUNCIL ACTION(S):

Date: August 9, 2004

Roll Call Number: 04-1684

Action: Authorizing payment of condemnation award for the acquisition of property north of Thomas Beck Road between vacated SW 12th Street and SW 7th Street for the American Discovery Trail-Riverpoint Segment Project, \$272,400 plus Sheriff's fees and jury expenses. Moved by Hensley to adopt. Motion Carried 7-0.

Date: September 27, 2004

Roll Call Number: 04-1993

Action: Authorization to Proceed with Federal Levee Improvements Consisting of Four (4) Closures in the Levee System. Moved by Hensley to adopt. Motion Carried 7-0.

Date: August 22, 2005

Roll Call Number: 05-2044

Action: Establishing fair market value and authorizing acquisition of abandoned railroad corridor from south side of Gray's Lake and extending westerly to SW 30th Street for Southwest Connector Project, \$1,020,000. Moved by Hensley to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE