

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION AUTHORIZING CHAIRMAN TO SIGN AMENDMENT NO. 1 TO THE
INTERLOCAL COOPERATION AGREEMENT FOR THE IMPROVEMENT OF
ROADS AND RAILROAD CROSSINGS WITHIN THE VICINITY OF THE
INTERSECTION OF 132ND AND WEST GILES ROAD

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the county necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, general supervision and control of the public roads of each county is vested in the County Board by virtue of Neb. Rev. Stat. §39-1402(Reissue 1998); and,

WHEREAS, on or about July 1, 2008, the County entered into an agreement pursuant to the Interlocal Cooperation Act Interlocal Cooperation Act, Neb. Rev. Stat. §13-801 827 (Reissue 1997) with the City of LaVista, Nebraska, for the first two of phases of improvements to the roads and railroad crossings within the vicinity of the intersection of 132nd Street and West Giles Road; and,

WHEREAS, an amendment to said agreement is necessary in order to facilitate the contribution of an adjacent landowner to the upgrade of the constant warning circuitry associated with the railroad crossing.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the Chairman of this Board, together with the County Clerk, be and hereby are authorized to execute on behalf of this Board Amendment No. 1 to the Interlocal Agreement with the City of LaVista, Nebraska, for the improvement to the roads and railroad crossings within the vicinity of the intersection of 132nd Street and West Giles Road, a copy of said Amendment being attached hereto.

DATED this 26th day of January, 2010.

Moved by Rich Jansen, seconded by Rusty Hike, that the above

Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

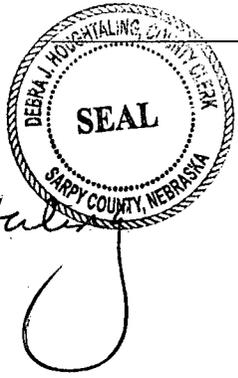
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
 County Clerk

none

none

ABSTAIN:

none



Approved as to form:

[Signature]
 Deputy County Attorney

INTERLOCAL AGREEMENT

AMENDMENT NO. 1

By signing below, the parties make and enter this Amendment No. 1 to the Interlocal Agreement by and between CITY OF LA VISTA, a Municipal Corporation of the State of Nebraska, hereinafter referred to as "La Vista"; and SARPY COUNTY of the State of Nebraska, hereinafter referred to as "Sarpy County" or "County" dated effective July 1, 2008 ("Interlocal Agreement").

WITNESSETH

WHEREAS, La Vista and Sarpy County entered the Interlocal Agreement to improve the intersection of West Giles Road and 132nd Street and adjacent legs of West Giles Road and 132nd Street and adjacent railroad crossings, which locations are in Sarpy County and the extraterritorial jurisdiction of La Vista; and

WHEREAS, there are three separate components to the improvements, with the first two to be undertaken pursuant to the Interlocal Agreement: Phase 1 shall consist of railroad crossing improvements; Phase 2 shall consist of interim reconstruction of the intersection of 132nd Street and West Giles Road; and Phase 3 shall consist of long term improvements to the intersection of 132nd Street and West Giles Road, all as shown on the exhibits of the Interlocal Agreement; and

WHEREAS, a significant part of Phase 1 improvements is the constant warning circuitry upgrade; and

WHEREAS, Phase 1 does not include any federal funding assistance, but is conditioned upon participation by adjacent landowners. Any contribution or cost sharing by local property owners and/or developers in Phase 1 improvements shall be the responsibility of La Vista to obtain; and

WHEREAS, La Vista has obtained a proposed agreement of landowner/developer SPW Partners, LLC to contribute to the cost of constant warning circuitry upgrade in form and content presented as Exhibit A to this Amendment No. 1 and incorporated herein by this reference and titled "Agreement 132nd and West Giles Phase I – Railroad Circuitry Upgrade Agreement" ("Landowner Agreement"); and

WHEREAS, an agreement between the County and Burlington Northern Santa Fe Railway is required for circuitry upgrade improvements.

NOW THEREFORE, in consideration of, and based on, the foregoing and the mutual promises and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Landowner Agreement and contributions to be provided thereunder by SPW Partners, LLC toward the costs of constant warning circuitry upgrade improvements are hereby approved. Any costs of the constant warning circuitry upgrade in excess of the amount to be paid by SPW Partners, LLC shall be paid by the County, with La Vista reimbursing the County for the City's share in accordance with the allocation of costs provided for in the Interlocal Agreement for other Phase 1 costs.
2. The County will enter an agreement with Burlington Northern Santa Fe Railway for the constant warning circuitry upgrade improvements, subject to prior review and approval of the City and SPW Partners, LLC ("Railroad Agreement").

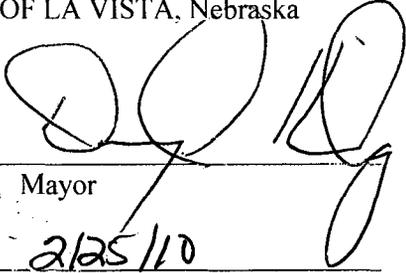
3. The County will not enter the Railroad Agreement until La Vista obtains a letter of credit from SPW Partners, LLC. Specifically, after SPW Partners, LLC and City approve, but before the County enters, the Railroad Agreement, La Vista will obtain and provide to the County a letter of credit from SPW Partners, LLC guaranteeing its payment obligations under the Landowner Agreement. The letter of credit shall be substantially in form and content attached hereto as Exhibit B and incorporated herein by this reference, subject to such revisions as the County Administrator and City Administrator determine necessary or appropriate ("Letter of Credit").

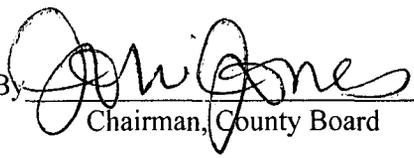
4. Oversight, inspections and approvals of or for constant warning circuitry upgrade work under the Railroad Agreement will be governed by the same provisions as provided in the Interlocal Agreement for other work with respect to which County is the lead agent.

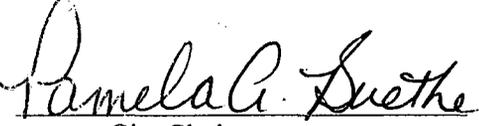
5. La Vista will be the lead agent for remaining Phase 1 improvements as provided in the Interlocal Agreement.

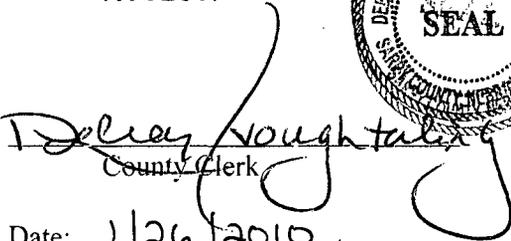
6. Except as modified by this Amendment No. 1, all terms and conditions of the Interlocal Agreement shall continue in effect as originally drafted.

IN WITNESS WHEREOF, we, the contracting parties, by our respective and duly authorized agents, hereto affix our signatures and seals in duplicate below.

CITY OF LA VISTA, Nebraska
By: 
Mayor
Date: 2/25/10

SARPY COUNTY, Nebraska
By: 
Chairman, County Board
Date: 1/26/2010

ATTEST:

City Clerk
Date: 2/25/10

ATTEST:

County Clerk
Date: 1/26/2010



Approved as to form: 
County Attorney
Date: 1-27-10

**AGREEMENT
132ND AND WEST GILES
PHASE I - RAILROAD CIRCUITRY UPGRADE**

THIS AGREEMENT is made and entered into effective as of the 1st day of September, 2009 by and between SPW PARTNERS, LLC, a Nebraska limited liability company ("SPW Partners") and the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska ("City" or "La Vista").

WITNESSETH:

WHEREAS, the City and Sarpy County ("County"), in the interests of public safety and welfare, entered an Interlocal Agreement for improvements to the intersection of West Giles Road and 132nd Street and adjacent legs of West Giles Road and 132nd Street and adjacent railroad crossings located in the County and extraterritorial jurisdiction of the City, effective as of July 1, 2008, a copy of which is attached hereto as Attachment 1 and incorporated herein by this reference ("Interlocal Agreement"); and

WHEREAS, there are three separate components to the improvements, with the first and second phases to be undertaken pursuant to the Interlocal Agreement. Phase 1 shall consist of railroad crossing improvements shown on Exhibit "A". Phase 2 shall consist of interim reconstruction of the intersection of 132nd Street and West Giles Road as shown on Exhibit "B". Phase 3 shall consist of long term improvements to the intersection of 132nd Street and West Giles Road as shown on Exhibit "C". All referenced Exhibits are part of and attached and incorporated into the Interlocal Agreement; and

WHEREAS, Phase 1 does not include any federal funding assistance, but is conditioned upon participation by adjacent landowners and/or developers; and

WHEREAS, the City is responsible for obtaining contribution by local property owners and/or developers in Phase 1 improvements; and

WHEREAS, Southport West is a subdivision within the corporate limits of the City and adjacent to the improvement area described in the Interlocal Agreement ("Southport West"); and

WHEREAS, SPW Partners is the current legal owner of record of Lots 1, 2 and 3, Southport West, as depicted on the plat of Southport West attached hereto as Attachment 2 and incorporated herein by this reference ("Lots"); and

WHEREAS, SPW Partners believes that marketability and potential development of said Lots in Southport West could be substantially enhanced by the contemplated Phase 1 improvements, and desires to see such improvements made; and

WHEREAS, as a result, SPW Partners desires to contribute to the cost of Phase 1 improvements.

NOW THEREFORE, in consideration of, and based on, the foregoing and mutual promises and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged and agreed, the parties agree as follows:

EXHIBIT A

1. The City and SPW Partners agree to cooperate in construction and acquisition of Phase 1 improvements.
2. La Vista shall arrange for design, construction and oversight of Phase 1 improvements in accordance with the Interlocal Agreement. La Vista shall provide the Project Manager and shall interpret and construe the plans, specifications, designs, and any addenda to those documents. All work undertaken for the Phase 1 improvements shall be subject to approval of the Project Manager. The Project Manager shall be the final arbiter and shall determine whether any and all performance of work, workmanship, quality of materials, and/or acceptability of work is in accordance with the Phase 1 contract documents.
3. Part of the Phase 1 improvements is the Constant Warning Circuitry Upgrade, W. Giles Crossing ("Circuitry Upgrade") more specifically described in Attachment 3 attached hereto and incorporated herein by this reference.
4. The estimated cost of the Circuitry Upgrade is \$114,395.00 (the "Estimated Cost"). SPW Partners hereby agrees to pay all costs to construct and provide the Circuitry Upgrade, up to, but not in excess of, 110% of the Estimated Cost.
5. Upon execution of this Agreement, City or County shall proceed to negotiate and enter one or more contracts for the Circuitry Upgrade, in form and content satisfactory to SPW Partners; the City and County, and subject to any required approval of, the City and County ("Circuitry Upgrade Agreement"). City shall promptly provide SPW Partners a copy of the Circuitry Upgrade Agreement for its review and approval.
6. SPW Partners shall provide the City with a letter of credit of such issuer and in such form and content as reasonably satisfactory to the City, to ensure and guaranty the timely payment of costs of the Circuitry Upgrade as provided for herein. Said letter of credit shall be provided to the City within 15 days after the Circuitry Upgrade Agreement has been executed by the contractor and approved by the City or County; provided, however, that City and/or County execution of and entering said Circuitry Upgrade Agreement shall be subject to prior receipt of said letter of credit.
7. The amount of the letter of credit shall be equal to 110% of the Estimated Cost.
8. SPW Partners shall timely pay in accordance with this Agreement all invoices submitted for work related to the Circuitry Upgrade; and if not timely paid, the City shall have the right to obtain payment from the issuer of the letter of credit.
9. Each invoice under this Agreement shall be due and payable within 30 days after the date the invoice is issued, unless an earlier date is required for any payment under any Circuitry Upgrade Agreement. Any amounts that are not paid when due shall accrue interest at the rate specified in the applicable invoice or agreement (or 1 ½ % per month if a rate is not specified) or the maximum rate allowed by applicable law, whichever is less. Failure to pay an amount when due shall constitute a default and breach of this Agreement.

10. SPW Partners enters this Agreement and agrees to make the payments and carry out such other obligations as provided herein to induce the City and/or County to negotiate and enter agreements for, and otherwise proceed with, the Phase 1 improvements as described in the Interlocal Agreement; and the City enters this Agreement in reliance on the obligations undertaken by SPW Partners hereunder.
11. Plans, specifications, and updated cost estimates for the Circuitry Upgrade shall be promptly provided to SPW Partners by the City.
12. The parties to this Agreement shall not in the performance of the terms of this contract discriminate or permit discrimination against any parties on account of race, national origin, sex, age, disability, or political or religious affiliations in violation of federal or state laws or local ordinances.
13. This Agreement shall be subject to approval of the governing body of the City.
14. Each party shall designate a person to be its primary point of contact for purposes of the party's administration of this Agreement, in addition to any other designation provided herein. The initial point of contact for each party shall be:

For SPW Partners:

Dean T. Hokanson, Jr.,
 Managing Member
 SPW Partners, LLC
 11213 Davenport Street, Suite 300
 Omaha, NE 68154

For the City:

Brenda Gunn
 City Administrator
 City of La Vista
 8116 Park View Blvd
 La Vista, NE 68128

15. Entire Agreement. This Agreement contains the entire agreement of the parties and shall be binding upon the successors and assigns of the respective parties. No amendments, deletions or additions shall be made to this Agreement except in writing signed by all parties.
16. Assignment. This Agreement or any right or obligation hereunder shall not be assigned or transferred in any manner whatsoever to any other party without the prior written consent of all parties to this Agreement.
17. Rights and Remedies. Remedies provided in this Agreement are not exclusive. Rather, each remedy set forth in this Agreement shall be cumulative with all other remedies set forth in this Agreement or otherwise available at law or in equity.
18. Severability. The invalidity or unenforceability of any covenant, restriction, condition, limitation or any other provision of Agreement, as the case may be and finally determined by a court of competent jurisdiction, shall not render the remainder of this Agreement nor any part hereof invalid or unenforceable.
19. Waivers. Any waiver must be in writing to be effective. The failure of a party to insist upon strict performance of any obligation under this Agreement shall not constitute or be deemed a waiver of any rights or remedies that a party might have and shall not be deemed a waiver of any subsequent breach or default.

20. Governing Law. Nebraska law shall govern this Agreement in all respects.
21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, we, the parties hereto, by our respective duly authorized agents hereby affix our signatures effective as of the day and year first above written.

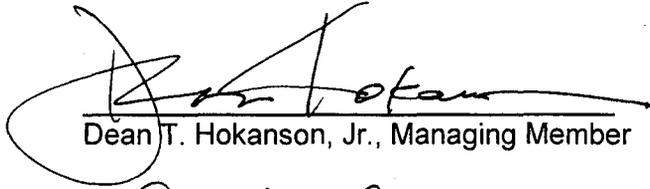
CITY OF LA VISTA, a Nebraska municipal corporation

SPW PARTNERS, LLC, a Nebraska limited liability company

BY:

BY:

Douglas Kindig, Mayor



Dean T. Hokanson, Jr., Managing Member

Date

9.5.09

Date

ATTEST:

Pamela A. Buethe, City Clerk

Date

INTERLOCAL AGREEMENT

This Interlocal Agreement is made and entered into effective as of the 1st day of July, 2008 by and between CITY OF LA VISTA, a Municipal Corporation of the State of Nebraska; hereinafter referred to as "La Vista"; and SARPY COUNTY of the State of Nebraska, hereinafter referred to as "Sarpy County" or "County".

WITNESSETH

WHEREAS, La Vista and Sarpy County are desirous of entering into mutually beneficial endeavors to improve the intersection of West Giles Road and 132nd Street and adjacent legs of West Giles Road and 132nd Street and adjacent railroad crossings, which locations are in Sarpy County and the extraterritorial jurisdiction of La Vista; and,

WHEREAS, there are three separate components to the improvements, with the first and second phases to be undertaken pursuant to this Interlocal Agreement. Phase 1 shall consist of railroad crossing improvements shown on Exhibit "A". Phase 2 shall consist of interim reconstruction of the intersection of 132nd Street and West Giles Road as shown on Exhibit "B". Phase 3 shall consist of long term improvements to the intersection of 132nd Street and West Giles Road as shown on Exhibit "C"; and,

WHEREAS, Phase 1 does not include any federal funding assistance, but is conditioned upon participation by adjacent landowners and/or developers; and,

WHEREAS, Phase 2 is to be funded at least 80 percent by the Federal Highway Administration and not in excess of 20 percent by the parties to this Interlocal Agreement; and,

WHEREAS, Phase 2 of this project shall be known by the Sarpy County Project number assigned to it; and,

WHEREAS, Phase 3 is to be funded at least 80 percent by the Federal Highway Administration and not in excess of 20 percent by the parties to this Interlocal Agreement; and,

WHEREAS, all entities desire to describe and define the project, phases, work and responsibilities of the project to enable them to jointly undertake the project in the manner described as follows.

NOW THEREFORE, in consideration of, and based on, the foregoing and the mutual promises and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. This Agreement is made pursuant to the Interlocal Cooperation Act §13-801, *et seq.* (Reissue 1997). This contract shall expire upon the performance of all the obligations of the parties as described herein. There shall be no separate legal or administrative entity created to administer this Agreement. Accordingly, no separate budget needs to be

established.

2. Sarpy County hereby delegates authority to La Vista to contract with an engineering consultant of its choice for the improvements in Phase 1. La Vista shall be responsible to arrange for design, construction and oversight of all Phase 1 improvements. Sarpy County shall have the right, but not the obligation, to inspect the work at any time at its sole cost. La Vista shall be responsible for making the initial payments for design and construction and Sarpy County shall reimburse La Vista for its share of such expenditures incurred before, on or after the effective date of this Agreement above, commencing no earlier than July 1, 2008, and at monthly intervals thereafter upon requests for reimbursements from La Vista. Sarpy County will reimburse La Vista for its share of such costs no later than 30 days after its invoice is received. The total estimated costs of Phase 1 and the participation by each party to this Agreement is set forth in Exhibit "A". A party shall not be obligated to pay in excess of the amount of actual costs allocated to it in accordance with the percentages set forth in Exhibit "A" unless authorized in advance by the party in writing. La Vista shall provide the Project Manager and shall interpret and construe the plans, specifications, designs, and any addenda to those documents. All of the work undertaken for the Phase 1 improvements shall be subject to the approval of the Project Manager. The Project Manager shall be the final arbiter and shall determine whether any and all performance of work, workmanship, quality of materials, and/or acceptability of work is in accordance with the Phase 1 contract documents.
3. Sarpy County shall serve as the lead agent for Phase 2 design, construction and payment. The County shall select a consultant for the preparation of plans and specifications for the Phase 2 improvements in accordance with the applicable Nebraska Department of Roads Guidelines for Consultant Selection on projects involving federal funding assistance. The County shall take bids and enter into contracts as necessary to complete the construction of the Phase 2 improvements; provided, however, that the County shall not solicit bids until the City and County receive written notice that federal funds have been approved for said improvements. The County shall inspect the work performed and make payments of the costs of the Phase 2 improvements on a regular basis as such costs are incurred. Sarpy County shall bill La Vista on a monthly basis for reimbursement of its share of such costs. La Vista will pay a bill no later than 30 days after an invoice is received. La Vista shall have the right, but not the obligation, to inspect the work at any time at its sole cost. The County shall be responsible for all real and personal property acquisitions required to construct the Phase 2 improvements. The Sarpy County Surveyor shall be the Project Manager and shall interpret and construe the plans, specifications, designs, and any addenda to those documents. All of the work undertaken for the Phase 2 improvements shall be subject to the approval of the Project Manager. The Project Manager shall be the final arbiter and shall determine whether any and all performance of work, workmanship, quality of materials, and/or acceptability of work is in accordance with the Phase 2 contract documents. Sarpy County may, with the approval of La Vista, engage the services of a consultant to perform the duties of Project Manager.
4. Federal assistance is presently available for the Phase 2 improvements and these

improvements shall be constructed by October 1, 2010. The total estimated costs of Phase 2 and the participation by each party to this Agreement are set forth in Exhibit "B". A party shall not be obligated to pay in excess of the amount of actual costs allocated to it in accordance with the percentages set forth in Exhibit "B" unless authorized in advance by the party in writing.

5. The estimated costs of Phase 3 and the participation by each party to this Agreement are set forth in Exhibit "C". Upon completion of Phase 2 improvements, the City and County will cooperate and work in good faith to secure federal funding and implement Phase 3 improvements in substantially the same manner as Phase 2 improvements. If federal funding becomes available for Phase 3 improvements, the parties agree to enter an addendum to this Agreement or another interlocal cooperation agreement setting forth their relative responsibilities with respect to said improvements.
6. Notwithstanding anything in this Agreement to the contrary, if the specified level of federal assistance for Phase 2 improvements has not become available within 5 years after the last date this Agreement is executed below, the parties shall meet and decide whether or not to proceed with said phase. To proceed under such circumstances shall require the written agreement of both parties.
7. Any contribution or cost sharing by local property owners and/or developers in Phase 1 improvements shall be the responsibility of La Vista to obtain. In the event the local property owners and/or developers do not agree to participate, then neither Sarpy County or La Vista shall be obligated to proceed with Phase 1 improvements under this Interlocal Agreement.
8. Sarpy County shall coordinate with, and obtain agreements and participation of, all public and private bodies, entities and persons as necessary or advisable for Phase 2. Sarpy County further shall notify and obtain consent of La Vista at least two weeks before any street or part of a street is at any time proposed to be in any manner closed, or traffic rerouted, diverted, restricted or otherwise affected.
9. It is the mutual desire and intention of the parties that the public improvements shall be completed as expeditiously as possible. Accordingly, the parties hereby agree to cooperate with each other and make reasonable, good faith efforts to perform their obligations hereunder in a timely manner so as to achieve completion of the work contemplated by this Agreement as expeditiously as possible. Not in limitation of the foregoing, the parties agree to cooperate and take such actions as necessary to expedite the application and request for federal funding for Phase 2 and obtain the same as quickly as possible after this Agreement is executed, it being understood that, with regard to applying for and obtaining federal funding, time is of the essence.
10. Plans, specifications, and updated cost estimates for Phase 1 or Phase 2 improvements shall be presented to each of the parties to this Agreement for their review and approval before construction bids are advertised; which approval and any other approval provided

for elsewhere in this Agreement shall not be unreasonably withheld. Construction documents shall be subject to review and approval of each party, as well. All construction and work shall be performed and carried out in strict accordance with the approved plans, specifications and other documents, as well as all applicable laws, rules and regulations, and all contractors hired to perform work shall be required to guarantee the work against all defects for a period of at least two years after final acceptance and at its sole cost and expense correct any defects arising within said warranty period. Each party shall have the right to separately or jointly assert and enforce any warranty or other right or requirement with respect to any of the work. Upon final completion, testing, certification and acceptance of the work, each party shall be provided a complete copy of all warranties, test results, certifications and any other documents related to the work as from time to time requested. All documents and records related to each phase of the work shall be maintained for at least five years after completion of the work related to that phase.

11. This Agreement shall remain in effect until all of the phases of the improvements have been completed, paid for and accepted, unless earlier terminated by the written agreement of both parties; provided, however that any provision hereof requiring any warranty, or requiring any document retention or maintenance with regard to the work or any other performance beyond the end of this Agreement, shall continue in effect and survive after this Agreement terminates. Amendments hereto shall be made in writing adopted and executed by both parties.
12. Attached as Exhibit "D" is a map of the Project area, showing the area of the Project currently within the corporate limits of the City. The area of the Project not currently within the corporate limits is designated on Exhibit "D" as "Area A." If a Phase 1 or 2 of the improvements provided by this Agreement is completed, and within 5 years thereafter the City exercises its powers of annexation so as to include within the corporate limits of the City, either directly or by operation of law, any portion of said Area A that includes improvements of said phase as depicted in the Exhibits attached hereto, City shall reimburse County for the County's share of project costs that the County paid under this Agreement with respect to said phase. Said reimbursement shall be the same proportion of the County's said paid cost under this Agreement for said phase as the proportion of Area A that is annexed within 5 years after said phase is completed. If, at any time after the execution of this Agreement and prior to the completion of a particular improvement pursuant to this Agreement as depicted in Exhibit A or B attached hereto, the City exercises its powers of annexation, so as to include within the corporate limits of the City, either directly or by operation of law, any portion of Area A that does or is scheduled to contain said improvement, the County shall have no obligation to participate in the cost of said improvement; provided, however:
 - a. At the election of City, County shall complete any such improvement for which County is designated in this Agreement as the lead agent;
 - b. County shall facilitate and cooperate in transitioning to the City all work,

documents and funding related to any such improvement for which County is designated in this Agreement as the lead agent and the City elects to assume the lead agent role and complete;

- c. County shall continue to act as fiscal agent for any federal funding that has been secured or awarded to it for such improvement if such fiscal agent responsibilities cannot be easily transferred to the City; and
- d. County shall continue to cooperate with the City to retain, secure or obtain any federal funding or complete any improvements specified in this Agreement.

If possible, any federal funding shall be secured and obtained in the names of the City and County as authorized alternative payees and fiscal agents, and all agreements entered by the County with respect to the improvements shall be assignable to the City.

- 13. The maintenance of the improvements constructed under this Agreement shall be the responsibility of the agency within whom's jurisdiction the improvements are located.
- 14. The parties to this Agreement shall not in the performance of the terms of this contract discriminate or permit discrimination against any parties on account of race, national origin, sex, age, disability, or political or religious affiliations in violation of federal or state laws or local ordinances.
- 15. Drug Free Policy. Each party provides assurance that it has established and maintains a drug free workplace policy.
- 16. This Agreement shall be subject to approval of the governing body of each party.
- 17. Each party shall designate a person to be its primary point of contact for purposes of the party's administration of this Agreement, in addition to any other designation provided herein. The initial point of contact for each party shall be:

For Sarpy County:

County Administrator
Sarpy County
1210 Golden Gate Drive
Papillion, NE 68046

For La Vista:

City Administrator
City of La Vista
8116 Park View Blvd.
La Vista, NE 68128

- 18. Entire Agreement. This Agreement contains the entire agreement of the parties and shall be binding upon the successors and assigns of the respective parties. No amendments, deletions, or additions shall be made to this Agreement except in writing signed by all parties.
- 19. Nebraska law shall govern this Agreement in all respects.

20. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, we, the contracting parties, by our respective and duly authorized agents, hereto affix our signatures and seals in duplicate below.

CITY OF LA VISTA, Nebraska

SARPY COUNTY, Nebraska

By [Signature]
Mayor

By [Signature]
Chairman, County Board

Date: 11/8/2009

Date: 12/16/2008

ATTEST:



[Signature]
City Clerk

Date: 11/8/2009



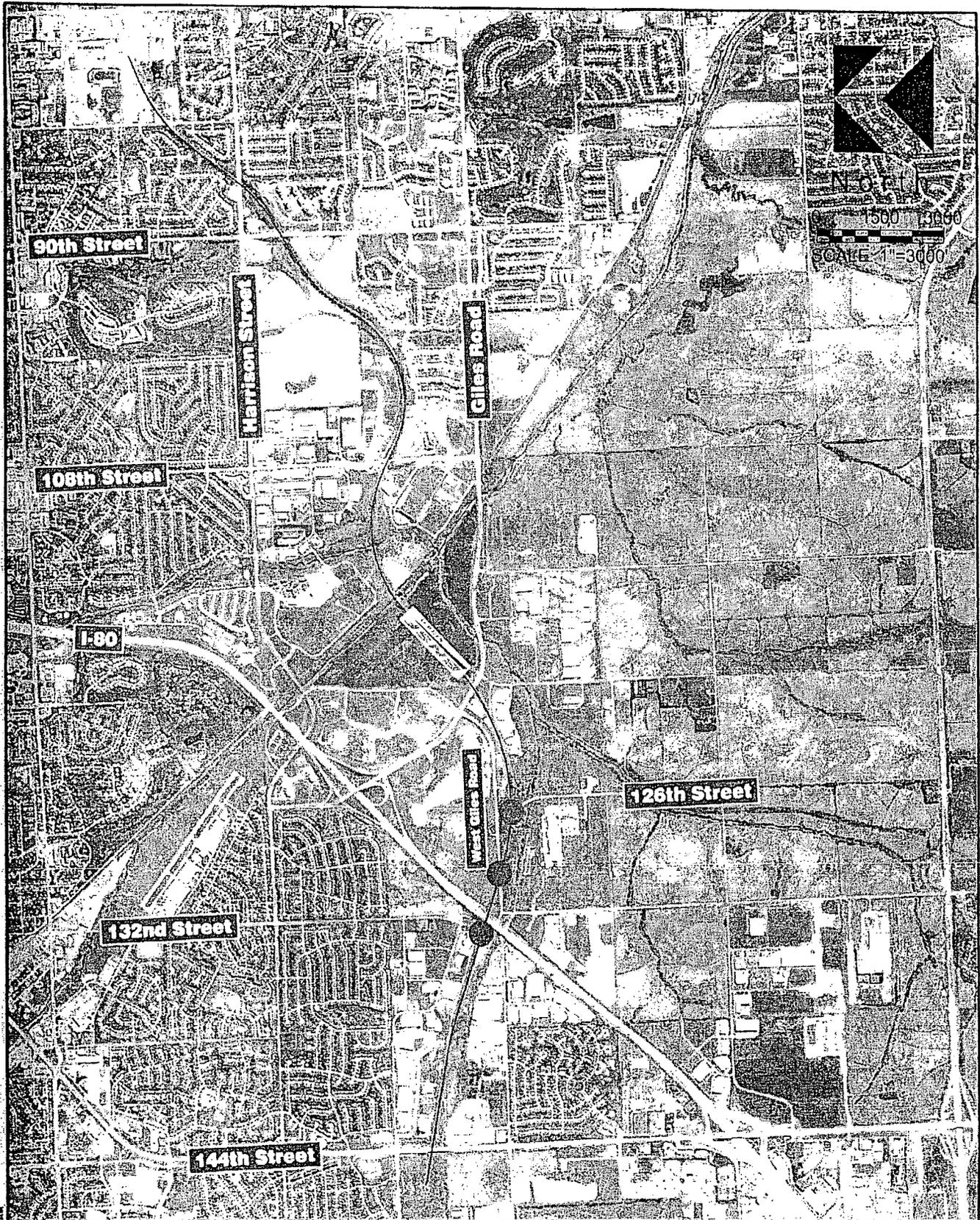
[Signature]
County Clerk

Date: 12/16/2008

Approved as to form: [Signature]
County Attorney

Date: 12/16/08

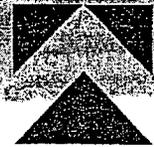
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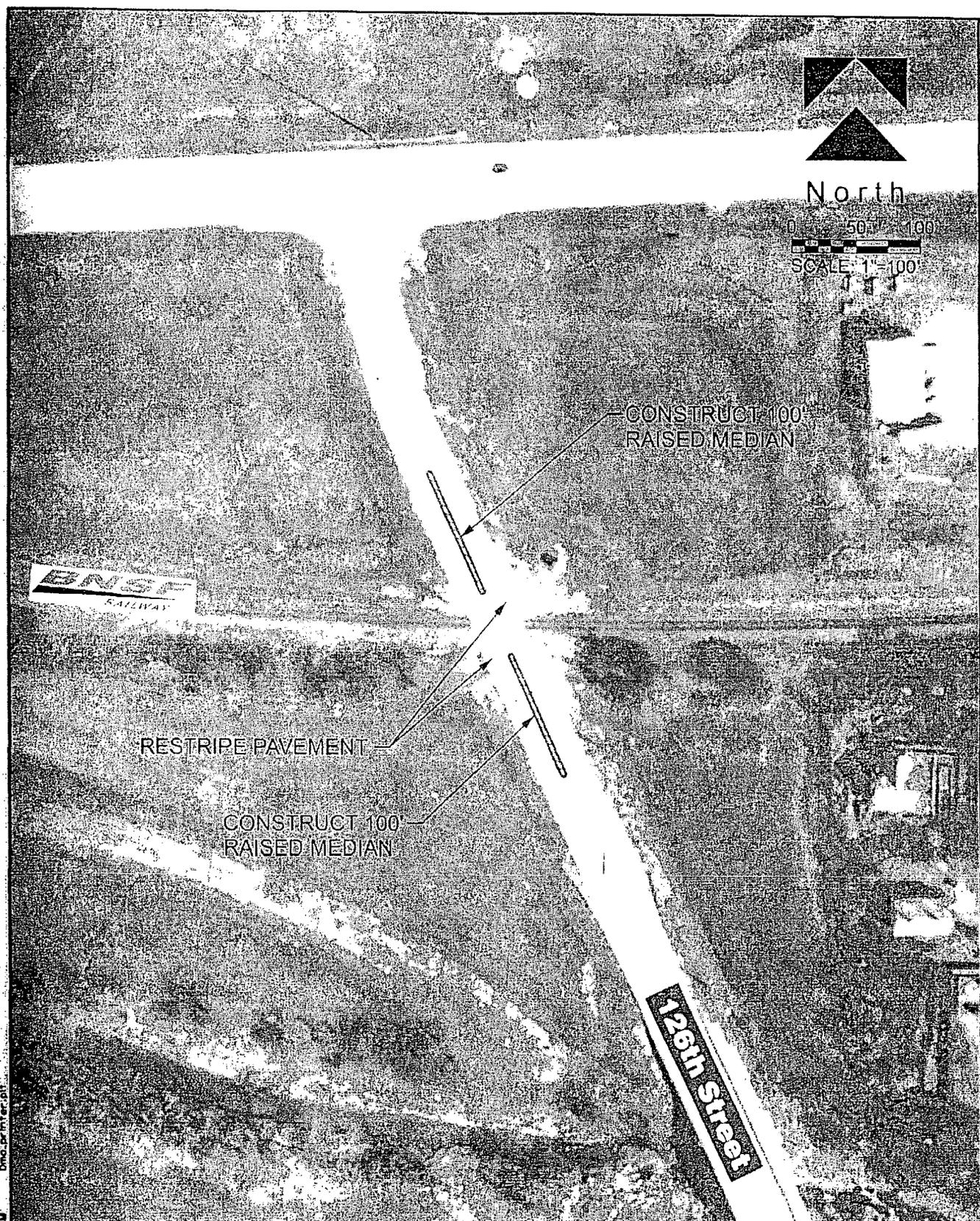
FELSBURG
HOLT &
ULLEVIG

BNSF Quiet Zone
LaVista, Nebraska

Figure 1
Study Location Map



North

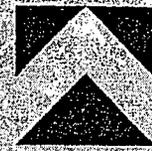


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BNSF Quiet Zone
LaVista, Nebraska

Figure 5
126th Street
Raised Median Option



North

0 50 100
SCALE: 1"=100'

BNSF
RAILWAY

EXTEND SHOULDERS UP
TO CROSSING SURFACE

CONSTRUCT 100'
RAISED MEDIAN

RESTRIPE PAVEMENT

West Giles Road

CONSTRUCT 100'
RAISED MEDIAN

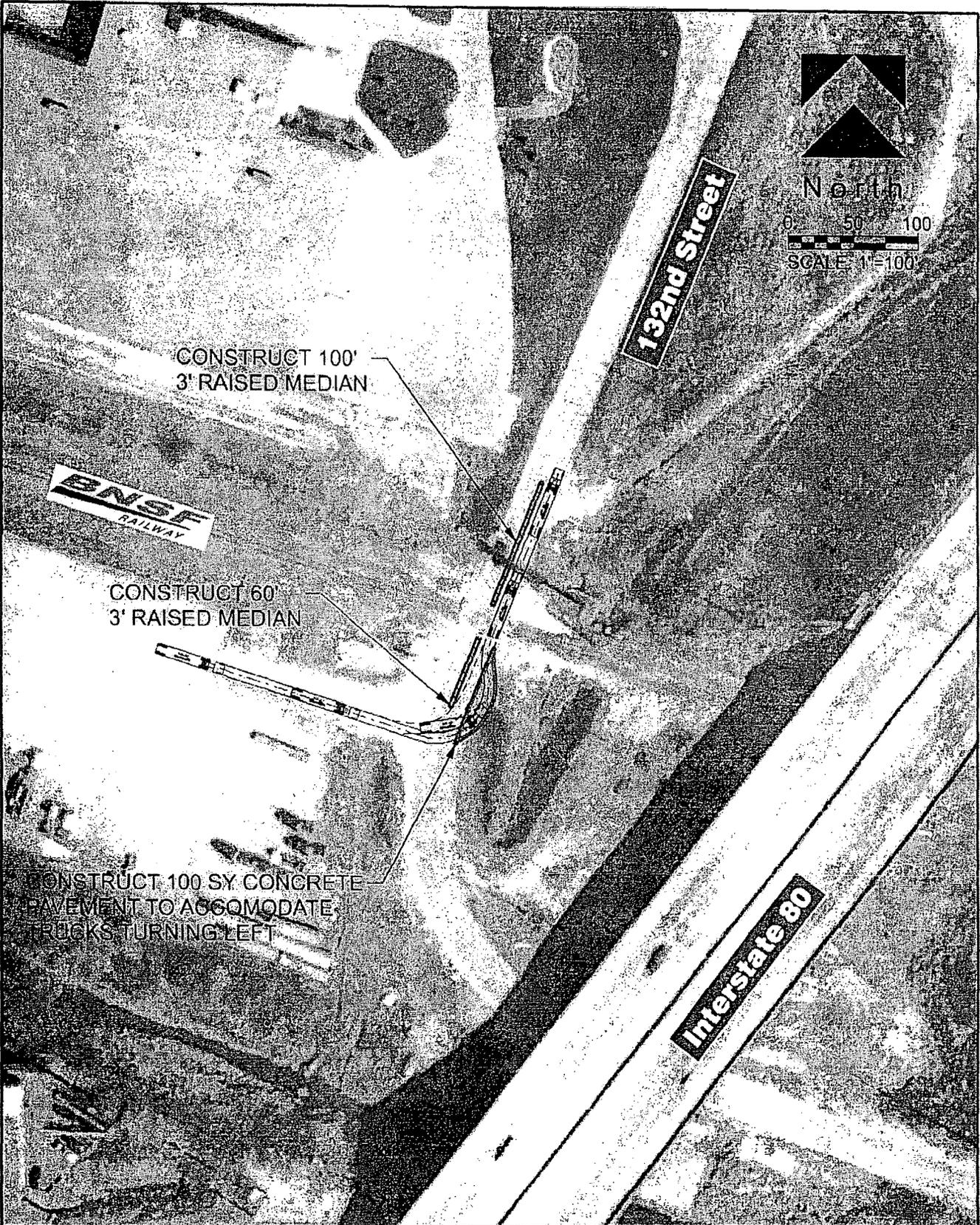
EXTEND SHOULDERS UP
TO CROSSING SURFACE

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BNSF Quiet Zone
LaVista, Nebraska

Figure 7
West Giles Road
Raised Median Option



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BNSF Quiet Zone
 LaVista, Nebraska

Figure 9
 132nd Street
 Raised Median Option

PHASE 1 – RAILROAD CROSSING IMPROVEMENTS

ESTIMATED COSTS:

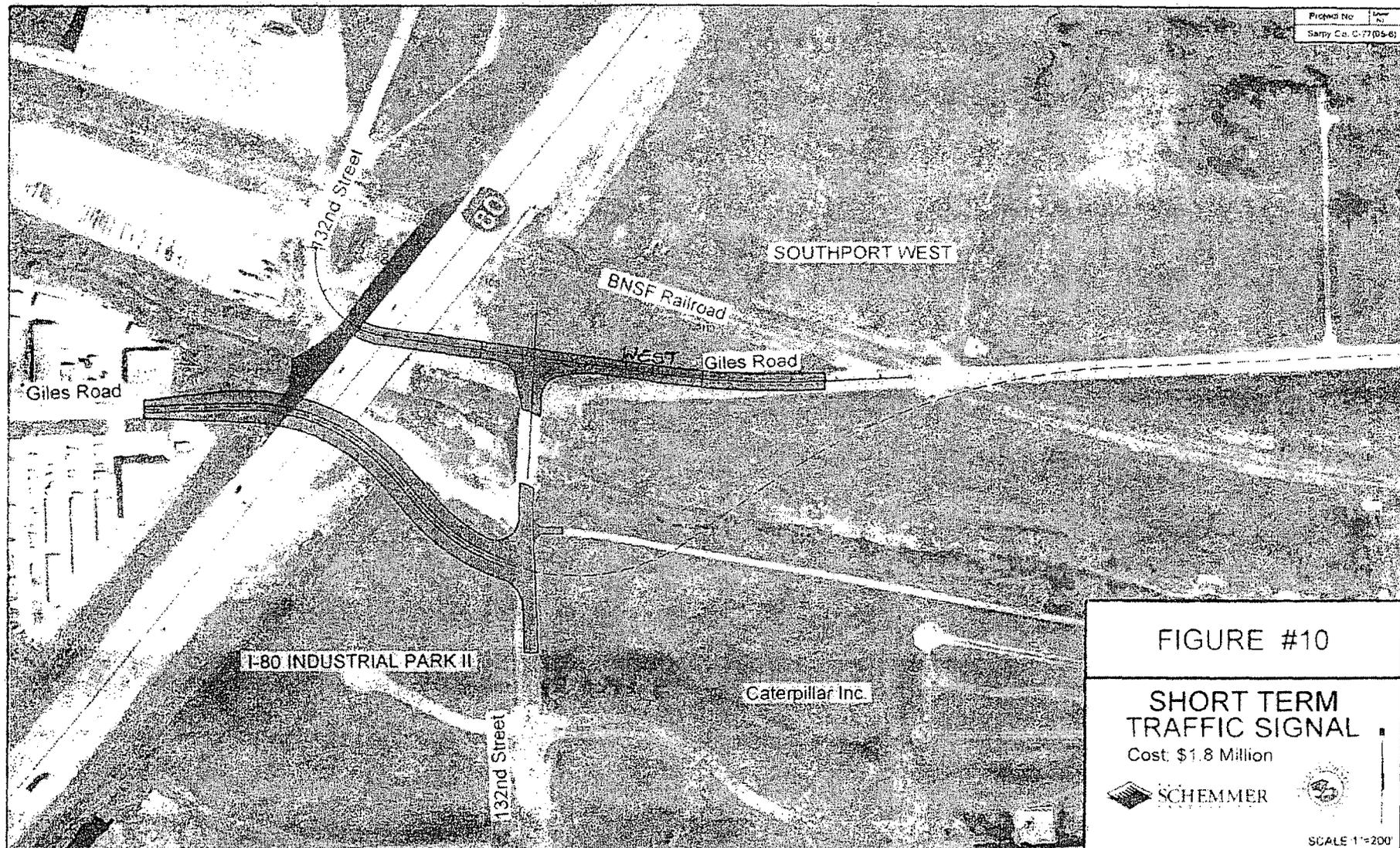
| | |
|--|-----------|
| 1. Quiet Zone Study | \$ 9,500 |
| 2. Constant Warning Circuitry Upgrade, W. Giles Crossing | \$114,395 |
| 3. Construct Raised Medians At 126 th St. Crossing | \$ 25,100 |
| 4. Construct Raised Medians At W. Giles Crossing | \$ 30,600 |
| 5. Construct Raised Medians At 132 nd St. Crossing | \$ 28,600 |
| 6. Survey, Design & Const. Phase Services | \$ 26,550 |
| 7. Legal Fees | \$ 3,500 |
| | <hr/> |
| Total Estimated Costs | \$238,245 |

ALLOCATION OF COSTS:

City of La Vista to recover from
Property Owners and/or Developers \$114,395
(Constant Warning Circuitry costs to BNSF, Item 2)

City of La Vista \$ 61,925
(50% of Items 1 and 3 through 7)

Sarpy County \$ 61,925
(50% of Items 1 and 3 through 7)



Giles Road @ 132nd St.
 Sarpy County Project Number: C-77 (05-8)
 TSA Project Number: 05040.001

72

Preliminary Project Cost Estimate

| <u>Interim T Intersection</u> | Quantity | Unit | Unit Cost | Total |
|-------------------------------|----------|--------|--------------|--------------------|
| Paving | 14,150 | Sq Yd | \$35 | \$495,250 |
| Bridge | 0 | Sq Ft | \$120 | \$0 |
| Earthwork | 25,000 | Cu Yd | \$6 | \$150,000 |
| Misc. for Conc. Paving | 1,900 | Lin Ft | \$28 | \$53,200 |
| Misc. for Grading | 1,900 | Lin Ft | \$35 | \$66,500 |
| Misc. for Drainage | 1,900 | Lin Ft | \$90 | \$171,000 |
| Remove Bridge | 0 | Each | \$60,000 | \$0 |
| Bridge Approach Slabs | 0 | LS | \$100,000 | \$0 |
| MSE Wall at I 80 | 5,390 | Sq Ft | \$35 | \$188,650 |
| Relocate Power Pole (Special) | 1 | Each | \$110,000 | \$110,000 |
| Traffic Signals | 2 | Each | \$100,000 | \$200,000 |
| Railroad Crossing | 0 | Each | \$375,000 | \$0 |
| | | | Construction | <u>\$1,434,600</u> |

| | | | | |
|-------------------|-----------|---|----------------------------|--------------------|
| Const. Eng. (6%) | \$86,076 | → | E+C | <u>\$301,266</u> |
| Contingency (15%) | \$215,190 | | | |
| | | | Construction + Const. Eng. | <u>\$1,735,866</u> |

| | | | | |
|-------------------|-----------|---|---------------------------|------------------|
| Engineering (12%) | \$172,152 | | | |
| Utilities (2.9%) | \$41,603 | → | Engineering + Util. + ROW | <u>\$293,755</u> |

| | | | | |
|-------------------------------------|----------|--|------------------|--------------------|
| R.O.W. = | \$80,000 | | | |
| Est. 0.8 Acres @ \$100,000 per acre | | | Estimated Cost = | <u>\$2,029,621</u> |

Portion To Remain for Ultimate Design (Credit) Single Point Alternative

See Page 4

Estimated Credit = \$1,391,066

Portion To Remain for Ultimate Design (Credit) 2 Intersection Alternative

See Page 4

Estimated Credit = \$1,304,018

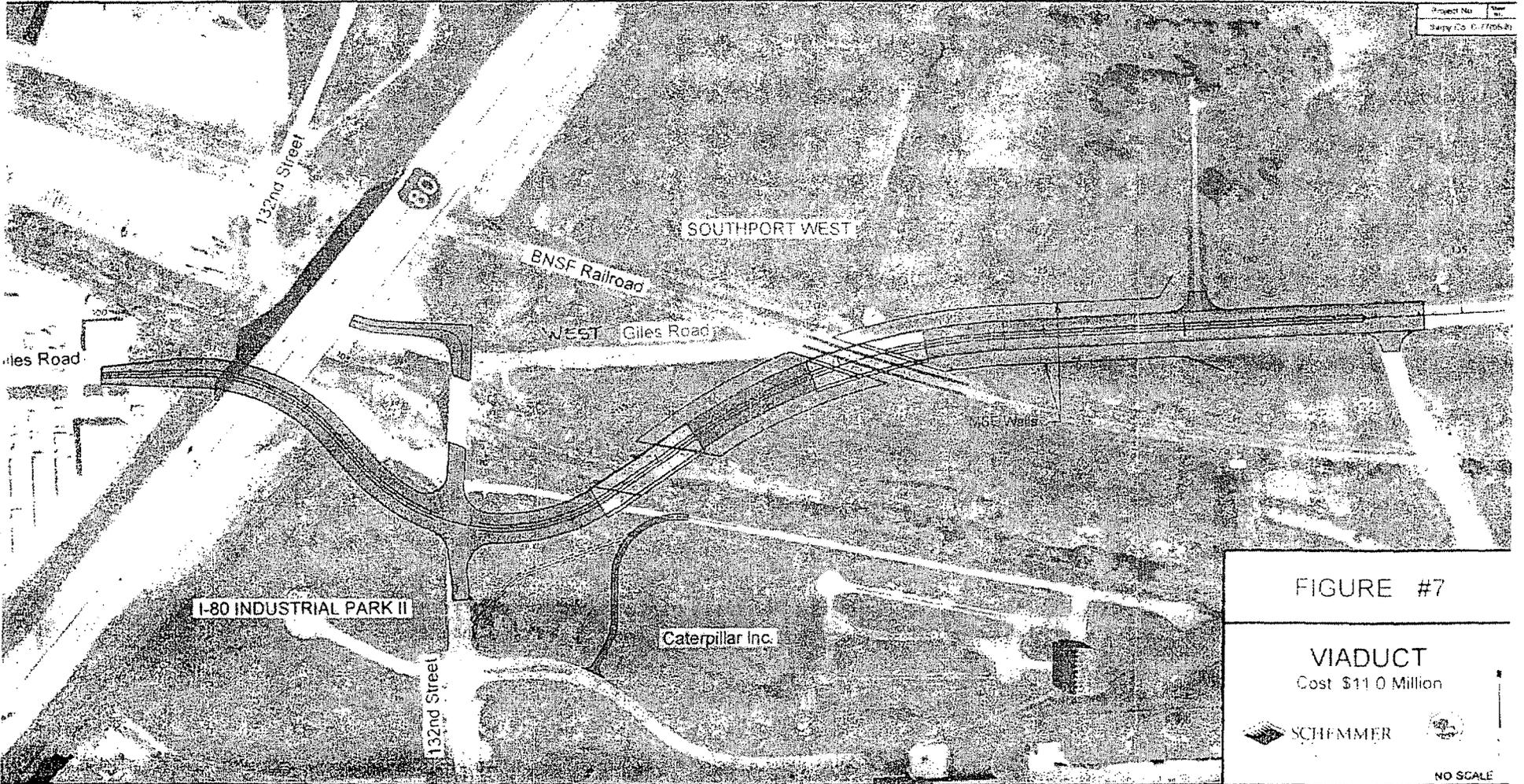
PHASE 2 – SHORT TERM IMPROVEMENTS – 132ND ST. & W. GILES ROAD

ESTIMATED COSTS:

As shown on Page 2 of Exhibit “B” the total estimated costs for the Short Term Improvements (aka “interim Improvements”) are \$2,029,621. Rounded off, use a cost of \$2,000,000.

ALLOCATION OF COSTS:

| | |
|--------------------------------|-------------------|
| Federal Highway Administration | \$1,600,000 (80%) |
| City of La Vista | \$ 200,000 (10%) |
| Sarpy County | \$ 200,000 (10%) |



Giles Road @ 132nd St.
 Sarpy County Project Number: C-77 (05-8)
 TSA Project Number: 05040.001

12/5/2006

| <u>Viaduct</u> | Quantity | Unit | Unit Cost | Total |
|------------------------------------|-----------|--------|--------------------|---------------------|
| Paving | 23,100 | Sq Yd | \$33 | \$762,300 |
| Bridge Over Papio 235' x 80' | 19,000 | Sq Ft | \$75 | \$1,425,000 |
| Bridge Over BNSF 125' x 80' | 10,000 | Sq Ft | \$100 | \$1,000,000 |
| Earthwork (w/ Walls 74' Lt/Rt) | 331,000 | Cu Yd | \$4 | \$1,324,000 |
| Misc. for Conc. Paving | 3,700 | Lin Ft | \$25 | \$92,500 |
| Misc. for Grading | 3,700 | Lin Ft | \$35 | \$129,500 |
| Misc. for Drainage | 3,700 | Lin Ft | \$85 | \$314,500 |
| Remove Bridge | 0 | Each | \$60,000 | \$0 |
| Bridge Approach Slabs | 2 | LS | \$100,000 | \$200,000 |
| MSE Wall at I-80 | 5,390 | Sq Ft | \$35 | \$188,650 |
| MSE Walls Rail Road | 64,000 | Sq Ft | \$35 | \$2,240,000 |
| Relocate Power Pole (Special) | 1 | Each | \$100,000 | \$100,000 |
| Traffic Signals | 1 | Each | \$90,000 | \$90,000 |
| Railroad Crossing | 0 | Each | \$375,000 | \$0 |
| | | | | <u>\$7,866,450</u> |
| Const. Eng. (8%) | \$629,316 | | E+C | <u>\$1,415,961</u> |
| Contingency (10%) | \$786,645 | | | |
| | | | Construction + E&C | <u>\$9,282,411</u> |
| Engineering (10%) | \$786,645 | | | |
| Utilities (2.9%) | \$228,127 | | E + Util. + ROW | <u>\$1,729,156</u> |
| R.O.W. = | \$714,384 | | | |
| Est. 8.2 Acres @ \$87,120 per acre | | | Estimated Cost = | <u>\$11,011,567</u> |

Notes:

Lighting, Signing, Guard Rail, Phasing etc. not included in estimate.
 Misc. for Conc. Paving includes items such as subgrade prep., water, shoulder constr. and mobilization
 Misc. for Grading includes items such as removals, general clear & grub., erosion control and mobilization
 Misc. for Drainage includes items such as storm sewer, culverts and mobilization
 RR X-ing Est. signalized w/gates 4-lane divided \$350,000 to \$450,000 per NDOR/Abe Anshasi 2/8/06

PHASE 3 - LONG TERM IMPROVEMENTS - 132ND ST. & W. GILES ROAD

ESTIMATED COSTS:

As shown on Page 2 of Exhibit "C" the total estimated costs for the Long Term Improvements (aka "Interim Improvements") are \$11,011,567. Assuming that the Short Term Improvements are constructed first, then there would be a credit against the Long Term Improvement Costs for the portion of the Short Term Improvements that can be left in place or salvaged. This estimated credit is \$1,049,679. The net cost of the Long Term Improvements is then \$9,961,888. Round off, use a cost of \$10,000,000.

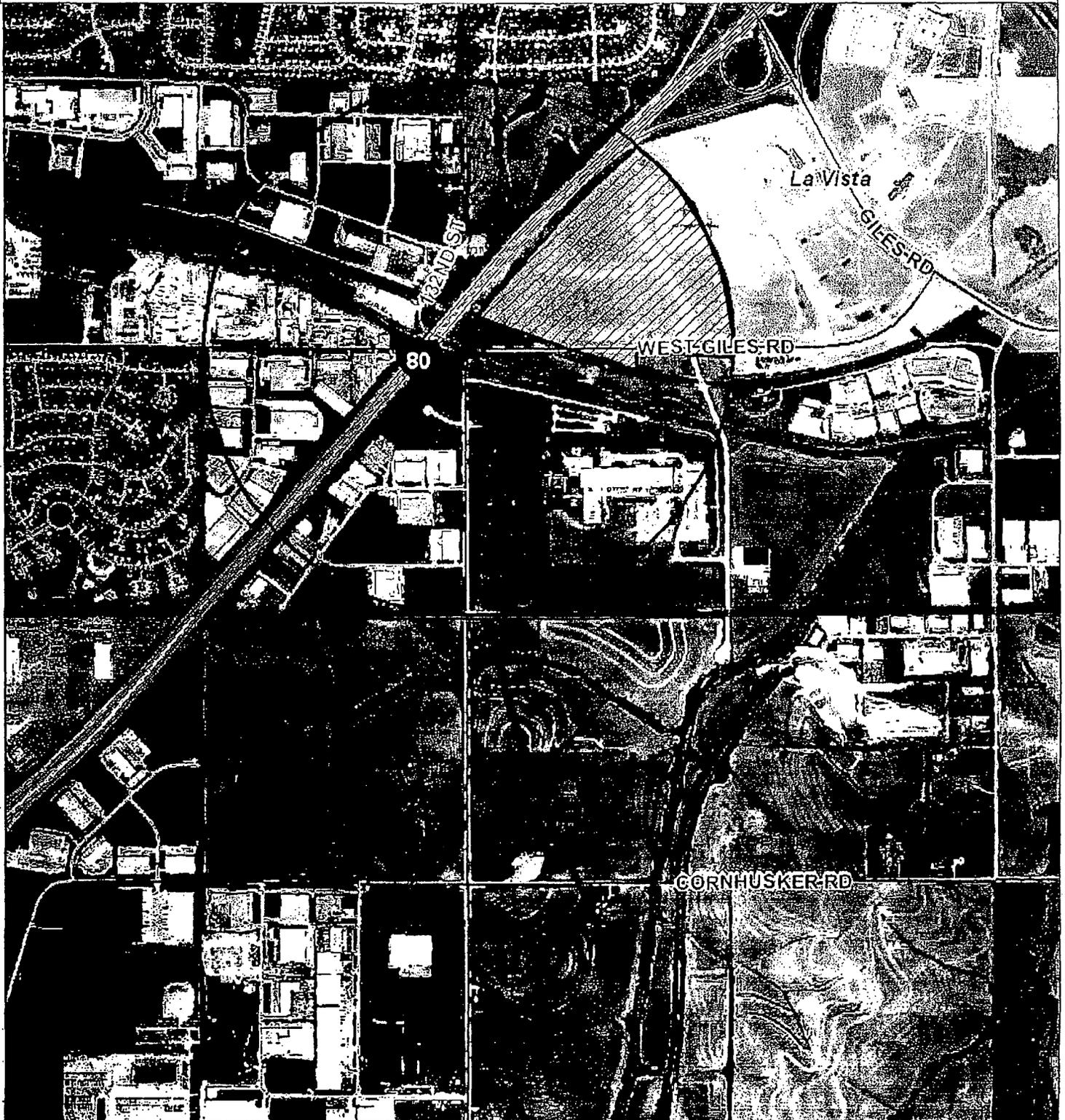
ALLOCATION OF COSTS:

| | |
|--------------------------------|-----------|
| Federal Highway Administration | (80%-90%) |
| City of La Vista | (5-10%) |
| Sarpy County | (5-10%) |

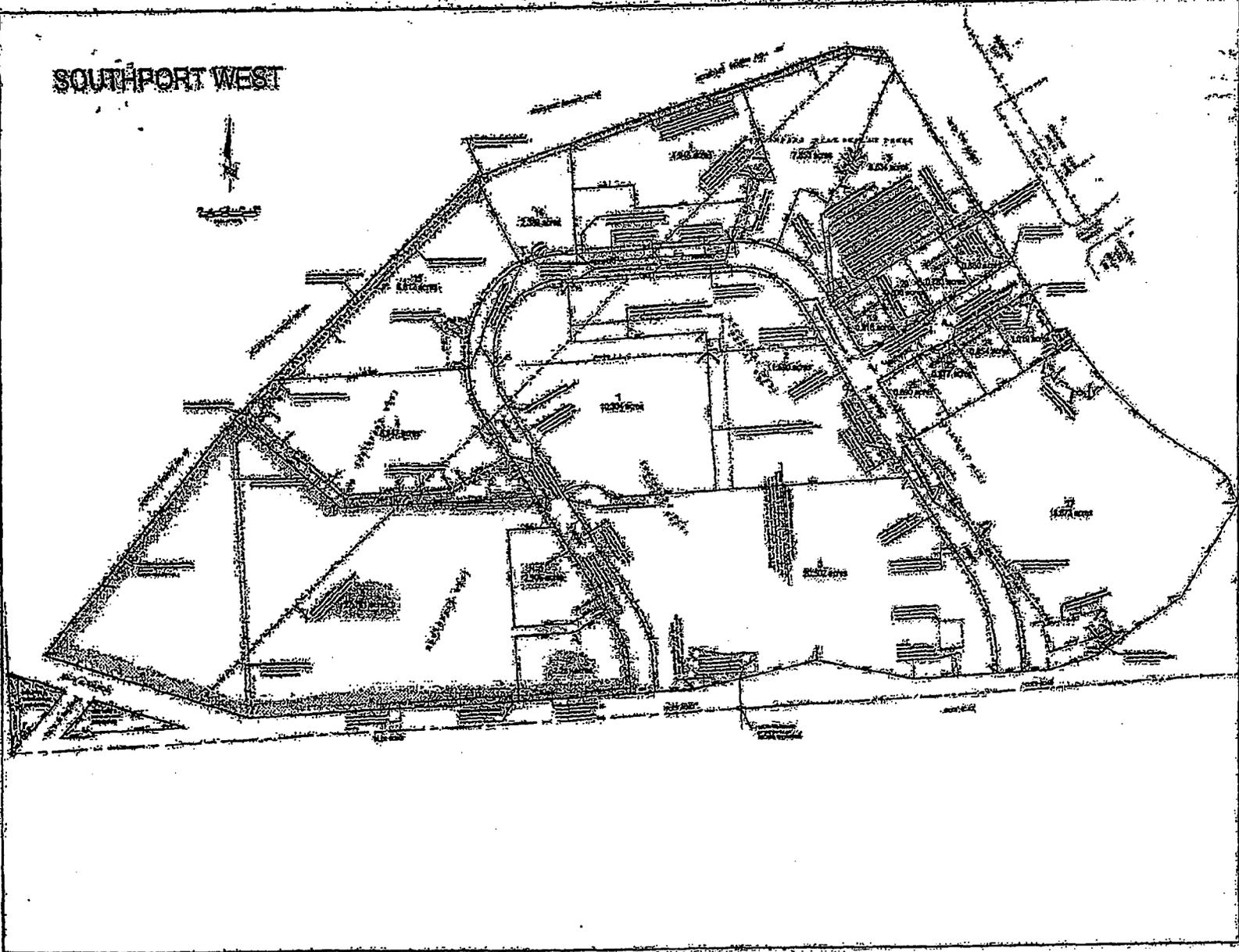
Note: Funding levels by FHWA may be lower than shown depending on NDOR policy requirement to close two at-grade railroad crossings in conjunction with funding an overpass project.

132nd & Giles

 "Area A" Current City Limits
 ETJ  Not "Area A"

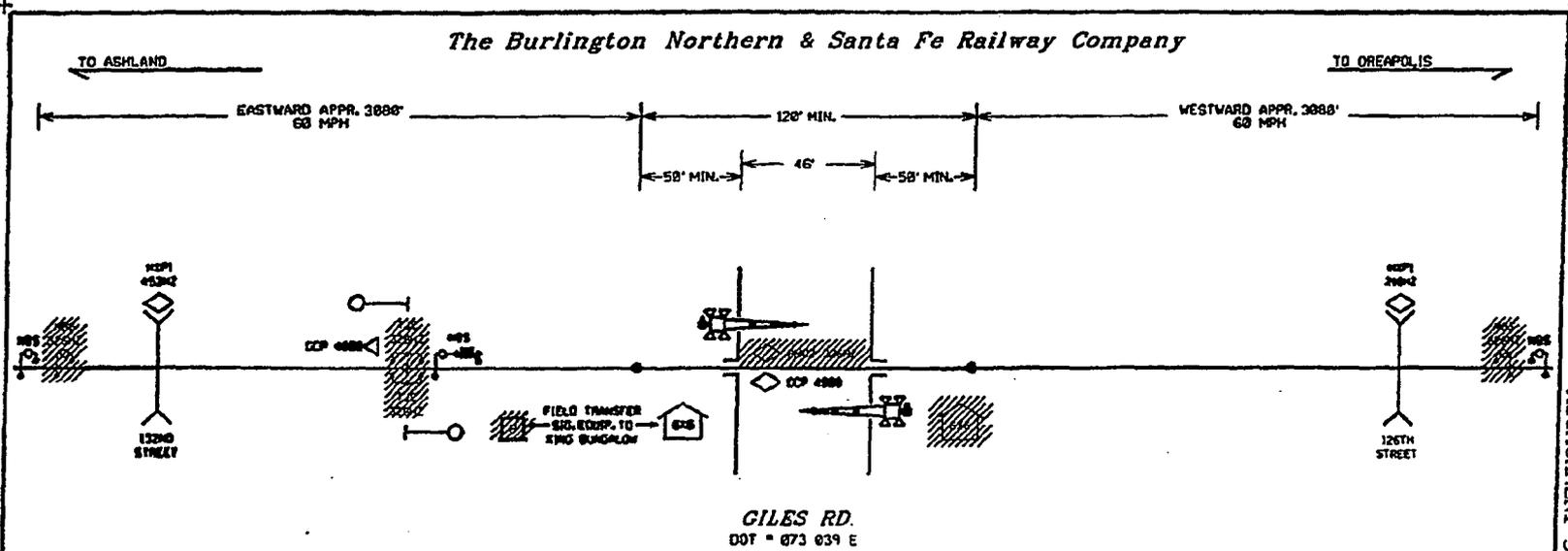


SOUTHPORT WEST



Scale bar and legend information, including a graphic scale and a legend box with symbols.

The Burlington Northern & Santa Fe Railway Company



GILES RD.
DOT = 073 039 E

INSTALL: CANTILEVERS, GATES & FLASHERS
CONTROL DEVICES: CONSTANT WARNING

SOLD -
- OUT
SALVAGE: NONE

| | |
|--|---------------------------------|
| | INSTRUMENT HOUSE |
| | BELL |
| | METER |
| | CROSSING CONTROL CONNECTIONS |
| | BIDIRECTIONAL CROSSING CONTROL |
| | UNIDIRECTIONAL CROSSING CONTROL |
| | COUPLER OR TERMINATION |
| | GUARD RAIL |

Warning device placement:
Clearance to C.L. Track = Min. 12'
Edge of Road to C.L. Foundation:
Min. 4'3" with curb.
Min. 8'3" without curb.
Max. 12'

House Clearance:
25' Min. to Near Rail
30' Min. to Edge of Road
ALL LIGHTS TO BE LED

BNSF RAILWAY CO.
(LOCATION) LA VISTA, NE
(STREET) GILES RD.
LS: 0137
M.P. 29.63
DOT = 073-039-E
DIVISION: NEBRASKA
SUBDIVISION: OMAHA
KANSAS CITY
NO SCALE
DATE: 20070827
FILE: 7506067_88.dgn
LWD

ATTACHMENT 3 - Page 1

Union Bank & Trust Company
2720 South 177th Street
Omaha, Nebraska 68130
(402) 323-1828

L/C Number: 2065

RE: IRREVOCABLE STANDBY COMMERCIAL LETTER OF CREDIT

Attention:

City of La Vista, Nebraska
Attention: Mayor and City Council
8116 Park View Boulevard
La Vista, NE 68128-2198

OR

Sarpy County, Nebraska
Attention: Board of Commissioners
1210 Golden Gate Drive
Papillion, NE 68046

Sirs/Madams:

Upon the request of SPW Partners, LLC, we, Union Bank & Trust Company (the issuing institution) have established this Irrevocable Standby Commercial Letter of Credit in your (Beneficiary) favor, up to an aggregate amount of **\$125,834.50**.

Payment to you will be made upon presentation of a sight draft drawn on us.

This Letter of Credit must be presented with your drawing. A draft must bear upon its face the statement "Drawn under Letter of Credit No. 2065."

This Credit is not transferable. Any successor or assignee of the Beneficiary will not constitute a transferee of Credit.

We will honor a draft drawn and presented under and in compliance with the terms of this Letter of Credit if presented to us at our address set forth above within 180 days after any failure by SPW Partners, LLC to make payments as required under the terms of the Agreement 132nd and West Giles Phase 1 – Railroad Circuitry Upgrade between the SPW Partners, LLC and the City of La Vista, Nebraska.

The Uniform Customs and Practice for Documentary Credits (hereinafter called the "UCP") as most recently published by the International Chamber of Commerce (ICC) shall in all respects be deemed a part hereof as fully as if incorporated herein and shall apply to the Credit. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska, United States of America, except to the extent such laws are inconsistent with the UCP.

ADDITIONAL PROVISIONS. This Letter of Credit will be automatically extended without amendments for one year from the date of present, and each future, expiration date thereof, unless Issuer delivers

written notice at least sixty (60) days prior to any such expiration date to Beneficiary of its intent not to renew this Letter of Credit. Any such notice shall be in writing and shall be delivered with an acknowledged receipt, either in hand or by certified mail.

Union Bank & Trust Company

By: _____

Date: _____

Its: _____

**AGREEMENT
132ND AND WEST GILES
PHASE I - RAILROAD CIRCUITRY UPGRADE**

THIS AGREEMENT is made and entered into effective as of the 1st day of September, 2009 by and between SPW PARTNERS, LLC, a Nebraska limited liability company ("SPW Partners") and the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska ("City" or "La Vista").

WITNESSETH:

WHEREAS, the City and Sarpy County ("County"), in the interests of public safety and welfare, entered an Interlocal Agreement for improvements to the intersection of West Giles Road and 132nd Street and adjacent legs of West Giles Road and 132nd Street and adjacent railroad crossings located in the County and extraterritorial jurisdiction of the City, effective as of July 1, 2008, a copy of which is attached hereto as Attachment 1 and incorporated herein by this reference ("Interlocal Agreement"); and

WHEREAS, there are three separate components to the improvements, with the first and second phases to be undertaken pursuant to the Interlocal Agreement. Phase 1 shall consist of railroad crossing improvements shown on Exhibit "A". Phase 2 shall consist of interim reconstruction of the intersection of 132nd Street and West Giles Road as shown on Exhibit "B". Phase 3 shall consist of long term improvements to the intersection of 132nd Street and West Giles Road as shown on Exhibit "C". All referenced Exhibits are part of and attached and incorporated into the Interlocal Agreement; and

WHEREAS, Phase 1 does not include any federal funding assistance, but is conditioned upon participation by adjacent landowners and/or developers; and

WHEREAS, the City is responsible for obtaining contribution by local property owners and/or developers in Phase 1 improvements; and

WHEREAS, Southport West is a subdivision within the corporate limits of the City and adjacent to the improvement area described in the Interlocal Agreement ("Southport West"); and

WHEREAS, SPW Partners is the current legal owner of record of Lots 1, 2 and 3, Southport West, as depicted on the plat of Southport West attached hereto as Attachment 2 and incorporated herein by this reference ("Lots"); and

WHEREAS, SPW Partners believes that marketability and potential development of said Lots in Southport West could be substantially enhanced by the contemplated Phase 1 improvements, and desires to see such improvements made; and

WHEREAS, as a result, SPW Partners desires to contribute to the cost of Phase 1 improvements.

NOW THEREFORE, in consideration of, and based on, the foregoing and mutual promises and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged and agreed, the parties agree as follows:

1. The City and SPW Partners agree to cooperate in construction and acquisition of Phase 1 improvements.
2. La Vista shall arrange for design, construction and oversight of Phase 1 improvements in accordance with the Interlocal Agreement. La Vista shall provide the Project Manager and shall interpret and construe the plans, specifications, designs, and any addenda to those documents. All work undertaken for the Phase 1 improvements shall be subject to approval of the Project Manager. The Project Manager shall be the final arbiter and shall determine whether any and all performance of work, workmanship, quality of materials, and/or acceptability of work is in accordance with the Phase 1 contract documents.
3. Part of the Phase 1 improvements is the Constant Warning Circuitry Upgrade, W. Giles Crossing ("Circuitry Upgrade") more specifically described in Attachment 3 attached hereto and incorporated herein by this reference.
4. The estimated cost of the Circuitry Upgrade is \$114,395.00 (the "Estimated Cost"). SPW Partners hereby agrees to pay all costs to construct and provide the Circuitry Upgrade, up to, but not in excess of, 110% of the Estimated Cost.
5. Upon execution of this Agreement, City or County shall proceed to negotiate and enter one or more contracts for the Circuitry Upgrade, in form and content satisfactory to SPW Partners, the City and County, and subject to any required approval of, the City and County ("Circuitry Upgrade Agreement"). City shall promptly provide SPW Partners a copy of the Circuitry Upgrade Agreement for its review and approval.
6. SPW Partners shall provide the City with a letter of credit of such issuer and in such form and content as reasonably satisfactory to the City, to ensure and guaranty the timely payment of costs of the Circuitry Upgrade as provided for herein. Said letter of credit shall be provided to the City within 15 days after the Circuitry Upgrade Agreement has been executed by the contractor and approved by the City or County; provided, however, that City and/or County execution of and entering said Circuitry Upgrade Agreement shall be subject to prior receipt of said letter of credit.
7. The amount of the letter of credit shall be equal to 110% of the Estimated Cost.
8. SPW Partners shall timely pay in accordance with this Agreement all invoices submitted for work related to the Circuitry Upgrade; and if not timely paid, the City shall have the right to obtain payment from the issuer of the letter of credit.
9. Each invoice under this Agreement shall be due and payable within 30 days after the date the invoice is issued, unless an earlier date is required for any payment under any Circuitry Upgrade Agreement. Any amounts that are not paid when due shall accrue interest at the rate specified in the applicable invoice or agreement (or 1 ½ % per month if a rate is not specified) or the maximum rate allowed by applicable law, whichever is less. Failure to pay an amount when due shall constitute a default and breach of this Agreement.

10. SPW Partners enters this Agreement and agrees to make the payments and carry out such other obligations as provided herein to induce the City and/or County to negotiate and enter agreements for, and otherwise proceed with, the Phase 1 improvements as described in the Interlocal Agreement; and the City enters this Agreement in reliance on the obligations undertaken by SPW Partners hereunder.
11. Plans, specifications, and updated cost estimates for the Circuitry Upgrade shall be promptly provided to SPW Partners by the City.
12. The parties to this Agreement shall not in the performance of the terms of this contract discriminate or permit discrimination against any parties on account of race, national origin, sex, age, disability, or political or religious affiliations in violation of federal or state laws or local ordinances.
13. This Agreement shall be subject to approval of the governing body of the City.
14. Each party shall designate a person to be its primary point of contact for purposes of the party's administration of this Agreement, in addition to any other designation provided herein. The initial point of contact for each party shall be:

| | |
|--|--|
| <p>For SPW Partners:</p> <p>Dean T. Hokanson, Jr., Managing Member SPW Partners, LLC 11213 Davenport Street, Suite 300 Omaha, NE 68154</p> | <p>For the City:</p> <p>Brenda Gunn City Administrator City of La Vista 8116 Park View Blvd La Vista, NE 68128</p> |
|--|--|
15. Entire Agreement. This Agreement contains the entire agreement of the parties and shall be binding upon the successors and assigns of the respective parties. No amendments, deletions or additions shall be made to this Agreement except in writing signed by all parties.
16. Assignment. This Agreement or any right or obligation hereunder shall not be assigned or transferred in any manner whatsoever to any other party without the prior written consent of all parties to this Agreement.
17. Rights and Remedies. Remedies provided in this Agreement are not exclusive. Rather, each remedy set forth in this Agreement shall be cumulative with all other remedies set forth in this Agreement or otherwise available at law or in equity.
18. Severability. The invalidity or unenforceability of any covenant, restriction, condition, limitation or any other provision of Agreement, as the case may be and finally determined by a court of competent jurisdiction, shall not render the remainder of this Agreement nor any part hereof invalid or unenforceable.
19. Waivers. Any waiver must be in writing to be effective. The failure of a party to insist upon strict performance of any obligation under this Agreement shall not constitute or be deemed a waiver of any rights or remedies that a party might have and shall not be deemed a waiver of any subsequent breach or default.

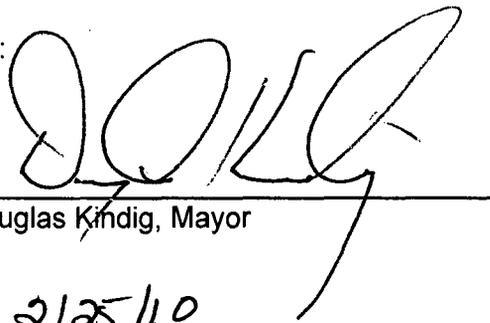
20. Governing Law. Nebraska law shall govern this Agreement in all respects.
21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, we, the parties hereto, by our respective duly authorized agents hereby affix our signatures effective as of the day and year first above written.

CITY OF LA VISTA, a Nebraska municipal corporation

SPW PARTNERS, LLC, a Nebraska limited liability company

BY:

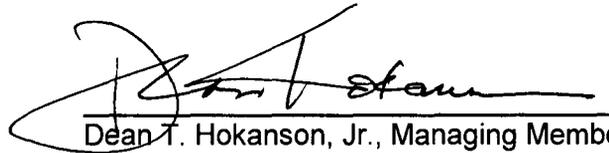


Douglas Kindig, Mayor

Date

2/25/10

BY:

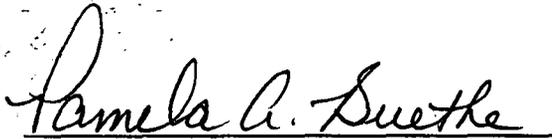


Dean T. Hokanson, Jr., Managing Member

Date

9.5.09

ATTEST:



Pamela A. Buethe, City Clerk

Date

2/25/10

INTERLOCAL AGREEMENT

This Interlocal Agreement is made and entered into effective as of the 1st day of July, 2008 by and between CITY OF LA VISTA, a Municipal Corporation of the State of Nebraska; hereinafter referred to as "La Vista"; and SARPY COUNTY of the State of Nebraska, hereinafter referred to as "Sarpy County" or "County".

WITNESSETH

WHEREAS, La Vista and Sarpy County are desirous of entering into mutually beneficial endeavors to improve the intersection of West Giles Road and 132nd Street and adjacent legs of West Giles Road and 132nd Street and adjacent railroad crossings, which locations are in Sarpy County and the extraterritorial jurisdiction of La Vista; and,

WHEREAS, there are three separate components to the improvements, with the first and second phases to be undertaken pursuant to this Interlocal Agreement. Phase 1 shall consist of railroad crossing improvements shown on Exhibit "A". Phase 2 shall consist of interim reconstruction of the intersection of 132nd Street and West Giles Road as shown on Exhibit "B". Phase 3 shall consist of long term improvements to the intersection of 132nd Street and West Giles Road as shown on Exhibit "C"; and,

WHEREAS, Phase 1 does not include any federal funding assistance, but is conditioned upon participation by adjacent landowners and/or developers; and,

WHEREAS, Phase 2 is to be funded at least 80 percent by the Federal Highway Administration and not in excess of 20 percent by the parties to this Interlocal Agreement; and,

WHEREAS, Phase 2 of this project shall be known by the Sarpy County Project number assigned to it; and,

WHEREAS, Phase 3 is to be funded at least 80 percent by the Federal Highway Administration and not in excess of 20 percent by the parties to this Interlocal Agreement; and,

WHEREAS, all entities desire to describe and define the project, phases, work and responsibilities of the project to enable them to jointly undertake the project in the manner described as follows.

NOW THEREFORE, in consideration of, and based on, the foregoing and the mutual promises and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. This Agreement is made pursuant to the Interlocal Cooperation Act §13-801, *et seq.* (Reissue 1997). This contract shall expire upon the performance of all the obligations of the parties as described herein. There shall be no separate legal or administrative entity created to administer this Agreement. Accordingly, no separate budget needs to be

established.

2. Sarpy County hereby delegates authority to La Vista to contract with an engineering consultant of its choice for the improvements in Phase 1. La Vista shall be responsible to arrange for design, construction and oversight of all Phase 1 improvements. Sarpy County shall have the right, but not the obligation, to inspect the work at any time at its sole cost. La Vista shall be responsible for making the initial payments for design and construction and Sarpy County shall reimburse La Vista for its share of such expenditures incurred before, on or after the effective date of this Agreement above, commencing no earlier than July 1, 2008, and at monthly intervals thereafter upon requests for reimbursements from La Vista. Sarpy County will reimburse La Vista for its share of such costs no later than 30 days after its invoice is received. The total estimated costs of Phase 1 and the participation by each party to this Agreement is set forth in Exhibit "A". A party shall not be obligated to pay in excess of the amount of actual costs allocated to it in accordance with the percentages set forth in Exhibit "A" unless authorized in advance by the party in writing. La Vista shall provide the Project Manager and shall interpret and construe the plans, specifications, designs, and any addenda to those documents. All of the work undertaken for the Phase 1 improvements shall be subject to the approval of the Project Manager. The Project Manager shall be the final arbiter and shall determine whether any and all performance of work, workmanship, quality of materials, and/or acceptability of work is in accordance with the Phase 1 contract documents.
3. Sarpy County shall serve as the lead agent for Phase 2 design, construction and payment. The County shall select a consultant for the preparation of plans and specifications for the Phase 2 improvements in accordance with the applicable Nebraska Department of Roads Guidelines for Consultant Selection on projects involving federal funding assistance. The County shall take bids and enter into contracts as necessary to complete the construction of the Phase 2 improvements; provided, however, that the County shall not solicit bids until the City and County receive written notice that federal funds have been approved for said improvements. The County shall inspect the work performed and make payments of the costs of the Phase 2 improvements on a regular basis as such costs are incurred. Sarpy County shall bill La Vista on a monthly basis for reimbursement of its share of such costs. La Vista will pay a bill no later than 30 days after an invoice is received. La Vista shall have the right, but not the obligation, to inspect the work at any time at its sole cost. The County shall be responsible for all real and personal property acquisitions required to construct the Phase 2 improvements. The Sarpy County Surveyor shall be the Project Manager and shall interpret and construe the plans, specifications, designs, and any addenda to those documents. All of the work undertaken for the Phase 2 improvements shall be subject to the approval of the Project Manager. The Project Manager shall be the final arbiter and shall determine whether any and all performance of work, workmanship, quality of materials, and/or acceptability of work is in accordance with the Phase 2 contract documents. Sarpy County may, with the approval of La Vista, engage the services of a consultant to perform the duties of Project Manager.
4. Federal assistance is presently available for the Phase 2 improvements and these

improvements shall be constructed by October 1, 2010. The total estimated costs of Phase 2 and the participation by each party to this Agreement are set forth in Exhibit "B". A party shall not be obligated to pay in excess of the amount of actual costs allocated to it in accordance with the percentages set forth in Exhibit "B" unless authorized in advance by the party in writing.

5. The estimated costs of Phase 3 and the participation by each party to this Agreement are set forth in Exhibit "C". Upon completion of Phase 2 improvements, the City and County will cooperate and work in good faith to secure federal funding and implement Phase 3 improvements in substantially the same manner as Phase 2 improvements. If federal funding becomes available for Phase 3 improvements, the parties agree to enter an addendum to this Agreement or another interlocal cooperation agreement setting forth their relative responsibilities with respect to said improvements.
6. Notwithstanding anything in this Agreement to the contrary, if the specified level of federal assistance for Phase 2 improvements has not become available within 5 years after the last date this Agreement is executed below, the parties shall meet and decide whether or not to proceed with said phase. To proceed under such circumstances shall require the written agreement of both parties.
7. Any contribution or cost sharing by local property owners and/or developers in Phase 1 improvements shall be the responsibility of La Vista to obtain. In the event the local property owners and/or developers do not agree to participate, then neither Sarpy County or La Vista shall be obligated to proceed with Phase 1 improvements under this Interlocal Agreement.
8. Sarpy County shall coordinate with, and obtain agreements and participation of, all public and private bodies, entities and persons as necessary or advisable for Phase 2. Sarpy County further shall notify and obtain consent of La Vista at least two weeks before any street or part of a street is at any time proposed to be in any manner closed, or traffic rerouted, diverted, restricted or otherwise affected.
9. It is the mutual desire and intention of the parties that the public improvements shall be completed as expeditiously as possible. Accordingly, the parties hereby agree to cooperate with each other and make reasonable, good faith efforts to perform their obligations hereunder in a timely manner so as to achieve completion of the work contemplated by this Agreement as expeditiously as possible. Not in limitation of the foregoing, the parties agree to cooperate and take such actions as necessary to expedite the application and request for federal funding for Phase 2 and obtain the same as quickly as possible after this Agreement is executed, it being understood that, with regard to applying for and obtaining federal funding, time is of the essence.
10. Plans, specifications, and updated cost estimates for Phase 1 or Phase 2 improvements shall be presented to each of the parties to this Agreement for their review and approval before construction bids are advertised; which approval and any other approval provided

for elsewhere in this Agreement shall not be unreasonably withheld. Construction documents shall be subject to review and approval of each party, as well. All construction and work shall be performed and carried out in strict accordance with the approved plans, specifications and other documents, as well as all applicable laws, rules and regulations, and all contractors hired to perform work shall be required to guarantee the work against all defects for a period of at least two years after final acceptance and at its sole cost and expense correct any defects arising within said warranty period. Each party shall have the right to separately or jointly assert and enforce any warranty or other right or requirement with respect to any of the work. Upon final completion, testing, certification and acceptance of the work, each party shall be provided a complete copy of all warranties, test results, certifications and any other documents related to the work as from time to time requested. All documents and records related to each phase of the work shall be maintained for at least five years after completion of the work related to that phase.

11. This Agreement shall remain in effect until all of the phases of the improvements have been completed, paid for and accepted, unless earlier terminated by the written agreement of both parties; provided, however that any provision hereof requiring any warranty, or requiring any document retention or maintenance with regard to the work or any other performance beyond the end of this Agreement, shall continue in effect and survive after this Agreement terminates. Amendments hereto shall be made in writing adopted and executed by both parties.

12. Attached as Exhibit "D" is a map of the Project area, showing the area of the Project currently within the corporate limits of the City. The area of the Project not currently within the corporate limits is designated on Exhibit "D" as "Area A." If a Phase 1 or 2 of the improvements provided by this Agreement is completed, and within 5 years thereafter the City exercises its powers of annexation so as to include within the corporate limits of the City, either directly or by operation of law, any portion of said Area A that includes improvements of said phase as depicted in the Exhibits attached hereto, City shall reimburse County for the County's share of project costs that the County paid under this Agreement with respect to said phase. Said reimbursement shall be the same proportion of the County's said paid cost under this Agreement for said phase as the proportion of Area A that is annexed within 5 years after said phase is completed. If, at any time after the execution of this Agreement and prior to the completion of a particular improvement pursuant to this Agreement as depicted in Exhibit A or B attached hereto, the City exercises its powers of annexation, so as to include within the corporate limits of the City, either directly or by operation of law, any portion of Area A that does or is scheduled to contain said improvement, the County shall have no obligation to participate in the cost of said improvement; provided, however:
 - a. At the election of City, County shall complete any such improvement for which County is designated in this Agreement as the lead agent;

 - b. County shall facilitate and cooperate in transitioning to the City all work,

documents and funding related to any such improvement for which County is designated in this Agreement as the lead agent and the City elects to assume the lead agent role and complete;

- c. County shall continue to act as fiscal agent for any federal funding that has been secured or awarded to it for such improvement if such fiscal agent responsibilities cannot be easily transferred to the City; and
- d. County shall continue to cooperate with the City to retain, secure or obtain any federal funding or complete any improvements specified in this Agreement.

If possible, any federal funding shall be secured and obtained in the names of the City and County as authorized alternative payees and fiscal agents, and all agreements entered by the County with respect to the improvements shall be assignable to the City.

- 13. The maintenance of the improvements constructed under this Agreement shall be the responsibility of the agency within whom's jurisdiction the improvements are located.
- 14. The parties to this Agreement shall not in the performance of the terms of this contract discriminate or permit discrimination against any parties on account of race, national origin, sex, age, disability, or political or religious affiliations in violation of federal or state laws or local ordinances.
- 15. Drug Free Policy. Each party provides assurance that it has established and maintains a drug free workplace policy.
- 16. This Agreement shall be subject to approval of the governing body of each party.
- 17. Each party shall designate a person to be its primary point of contact for purposes of the party's administration of this Agreement, in addition to any other designation provided herein. The initial point of contact for each party shall be:

For Sarpy County:

County Administrator
Sarpy County
1210 Golden Gate Drive
Papillion, NE 68046

For La Vista:

City Administrator
City of La Vista
8116 Park View Blvd.
La Vista, NE 68128

- 18. Entire Agreement. This Agreement contains the entire agreement of the parties and shall be binding upon the successors and assigns of the respective parties. No amendments, deletions, or additions shall be made to this Agreement except in writing signed by all parties.
- 19. Nebraska law shall govern this Agreement in all respects.

20. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, we, the contracting parties, by our respective and duly authorized agents, hereto affix our signatures and seals in duplicate below.

CITY OF LA VISTA, Nebraska

SARPY COUNTY, Nebraska

By [Signature]
Mayor
Date: 11/8/2009

By [Signature]
Chairman, County Board
Date: 12/16/2008

ATTEST:

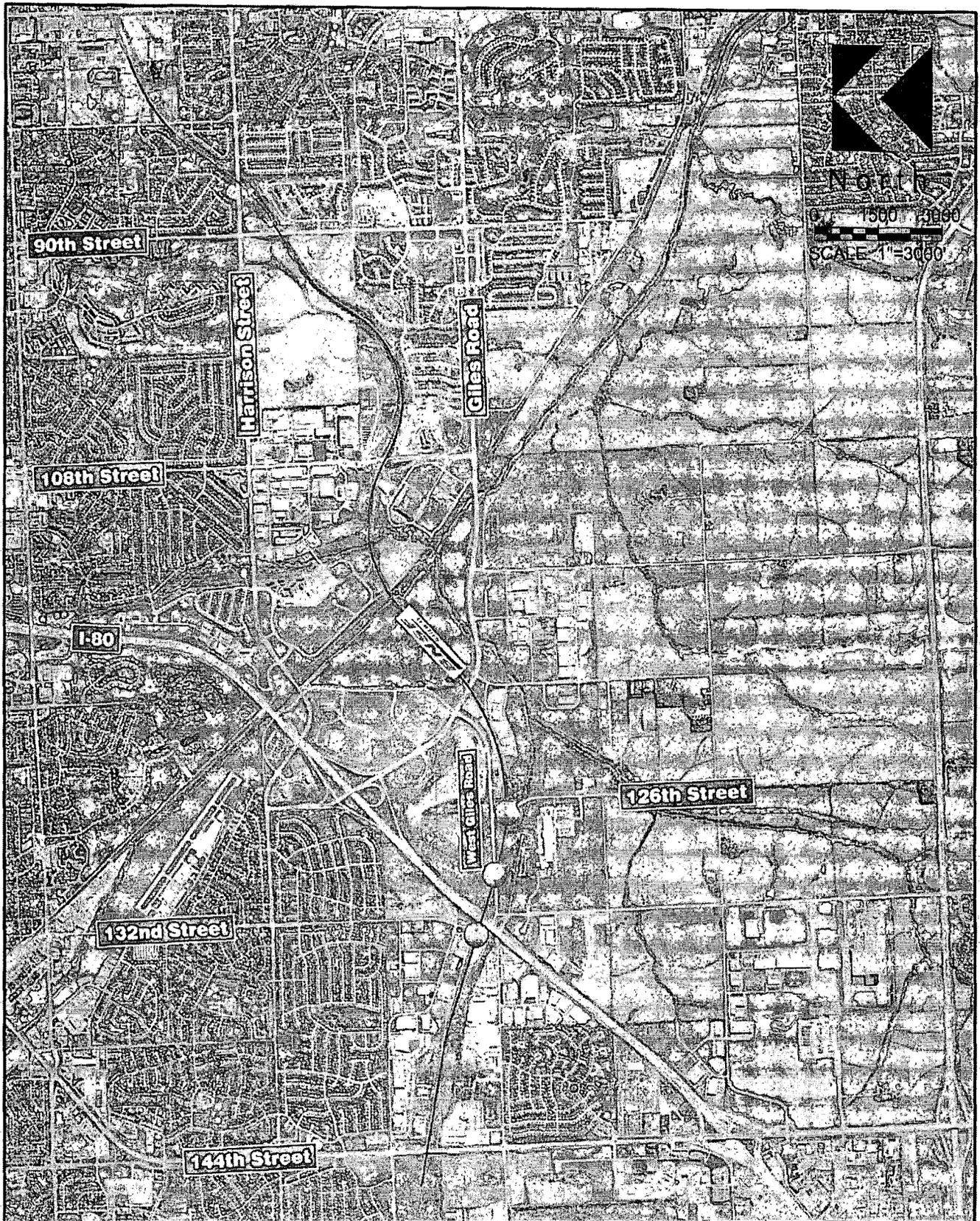


[Signature]
City Clerk
Date: 11/8/2009



[Signature]
County Clerk
Date: 12/16/2008

Approved as to form: [Signature]
County Attorney
Date: 12/16/08

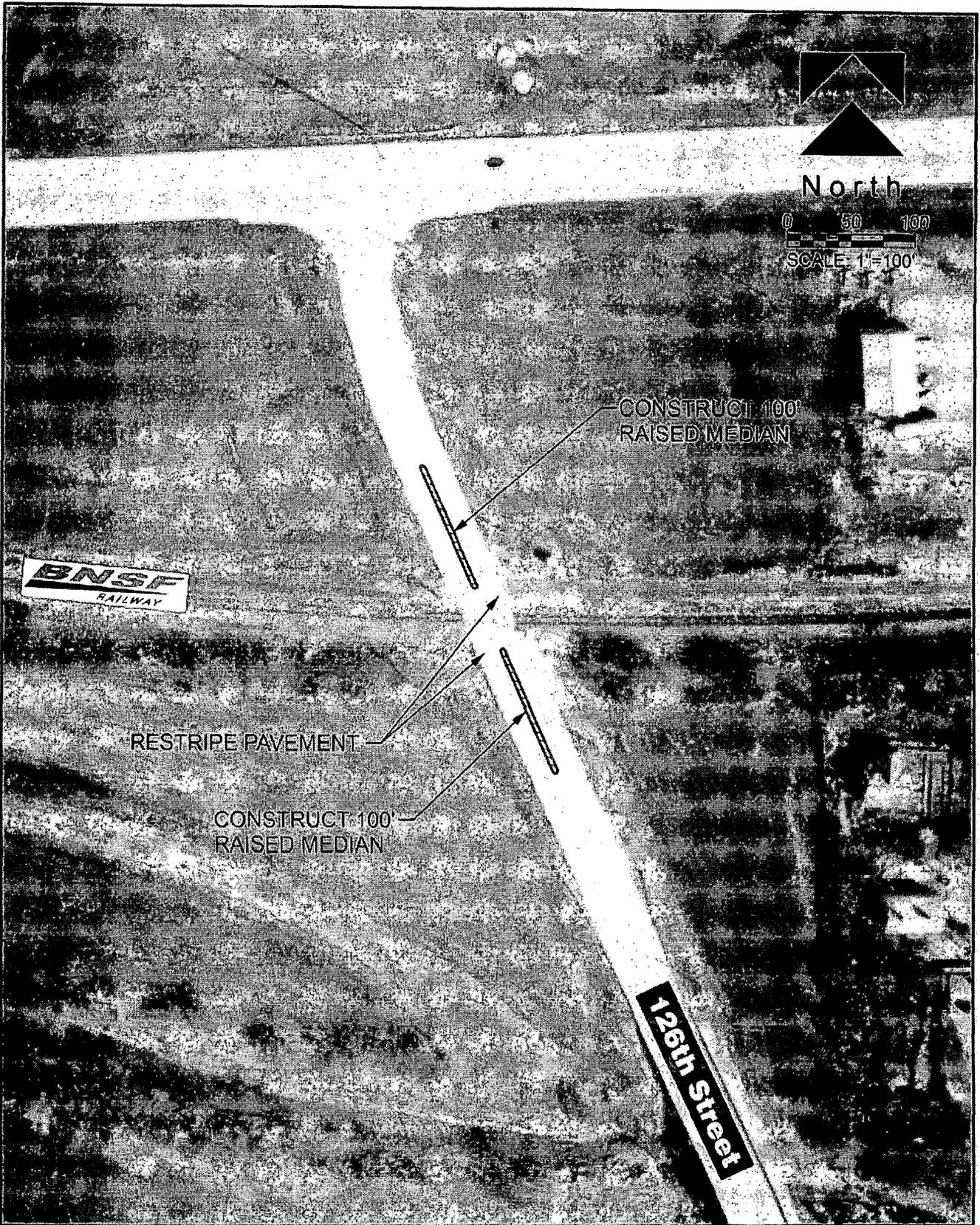


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BNSF Quiet Zone
 LaVista, Nebraska

Figure 1
Study Location Map

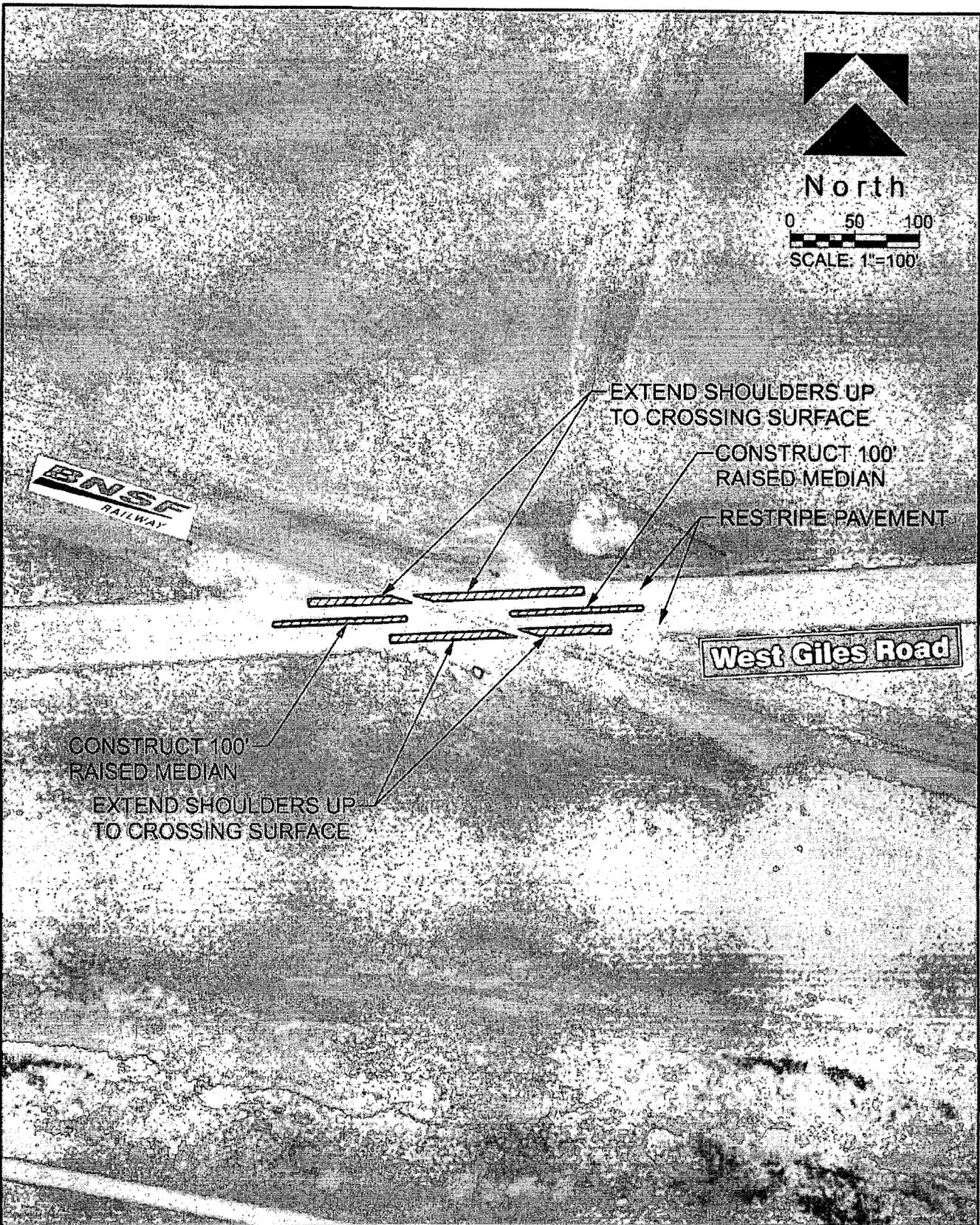


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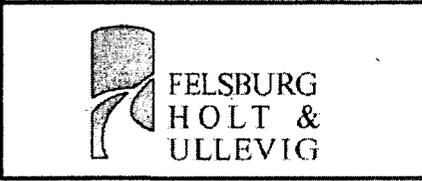


BNSF Quiet Zone
 LaVista, Nebraska

Figure 5
126th Street
Raised Median Option

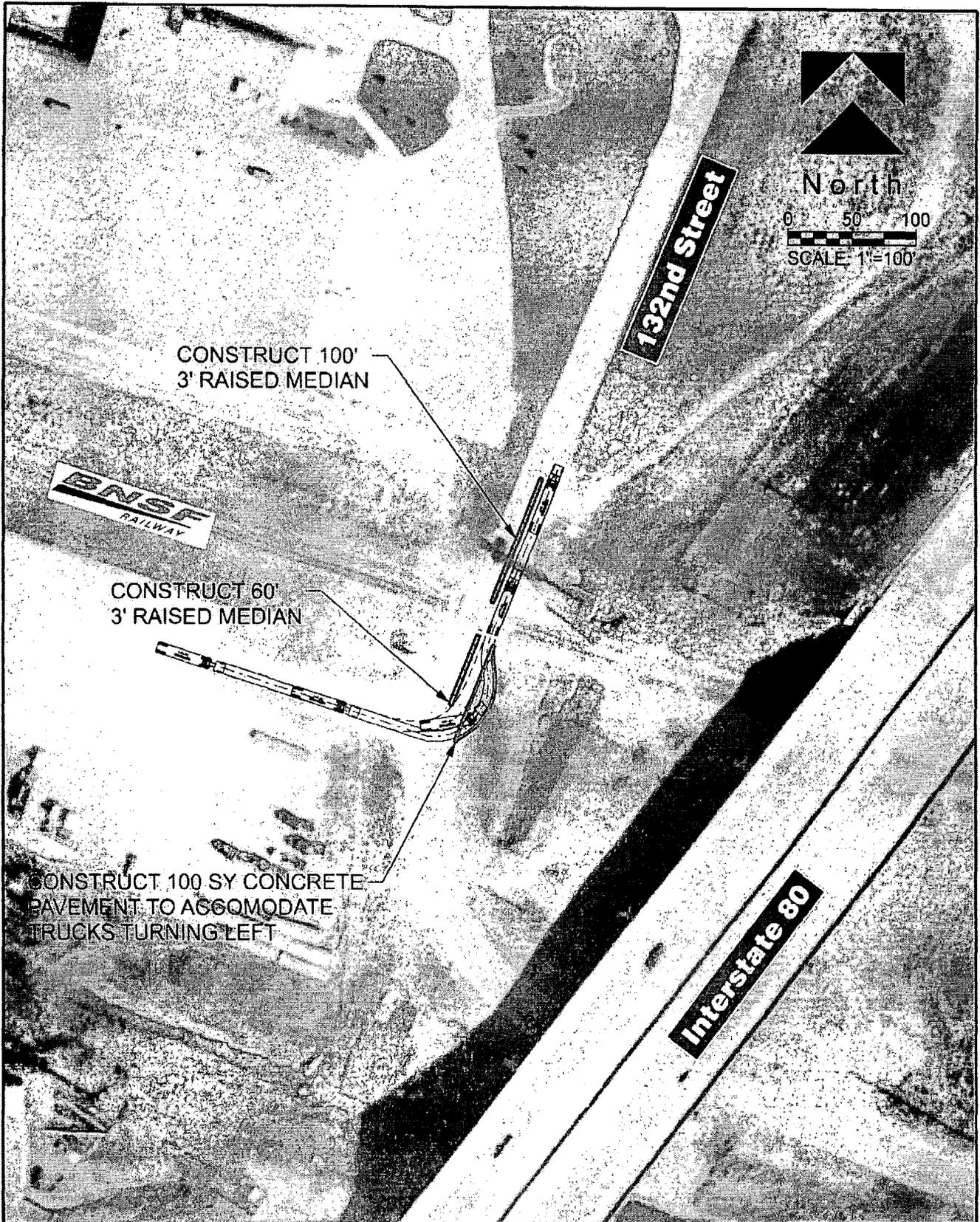


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BNSF Quiet Zone
 LaVista, Nebraska

Figure 7
West Giles Road
Raised Median Option



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BNSF Quiet Zone
 LaVista, Nebraska

Figure 9
132nd Street
Raised Median Option

PHASE 1 – RAILROAD CROSSING IMPROVEMENTS

ESTIMATED COSTS:

| | |
|--|-----------|
| 1. Quiet Zone Study | \$ 9,500 |
| 2. Constant Warning Circuitry Upgrade, W. Giles Crossing | \$114,395 |
| 3. Construct Raised Medians At 126 th St. Crossing | \$ 25,100 |
| 4. Construct Raised Medians At W. Giles Crossing | \$ 30,600 |
| 5. Construct Raised Medians At 132 nd St. Crossing | \$ 28,600 |
| 6. Survey, Design & Const. Phase Services | \$ 26,550 |
| 7. Legal Fees | \$ 3,500 |
| | <hr/> |
| Total Estimated Costs | \$238,245 |

ALLOCATION OF COSTS:

City of La Vista to recover from
Property Owners and/or Developers \$114,395
(Constant Warning Circuitry costs to BNSF, Item 2)

City of La Vista \$ 61,925
(50% of Items 1 and 3 through 7)

Sarpy County \$ 61,925
(50% of Items 1 and 3 through 7)



Giles Road @ 132nd St.
 Sarpy County Project Number: C-77 (05-8)
 TSA Project Number: 05040.001

72

Preliminary Project Cost Estimate

| <u>Interim T Intersection</u> | Quantity | Unit | Unit Cost | Total |
|-------------------------------|----------|--------|--------------|--------------------|
| Paving | 14,150 | Sq Yd | \$35 | \$495,250 |
| Bridge | 0 | Sq Ft | \$120 | \$0 |
| Earthwork | 25,000 | Cu Yd | \$6 | \$150,000 |
| Misc. for Conc. Paving | 1,900 | Lin Ft | \$28 | \$53,200 |
| Misc. for Grading | 1,900 | Lin Ft | \$35 | \$66,500 |
| Misc. for Drainage | 1,900 | Lin Ft | \$90 | \$171,000 |
| Remove Bridge | 0 | Each | \$60,000 | \$0 |
| Bridge Approach Slabs | 0 | LS | \$100,000 | \$0 |
| MSE Wall at I 80 | 5,390 | Sq Ft | \$35 | \$188,650 |
| Relocate Power Pole (Special) | 1 | Each | \$110,000 | \$110,000 |
| Traffic Signals | 2 | Each | \$100,000 | \$200,000 |
| Railroad Crossing | 0 | Each | \$375,000 | \$0 |
| | | | Construction | <u>\$1,434,600</u> |

| | | | | |
|-------------------|-----------|--------|----------------------------|--------------------|
| Const. Eng. (6%) | \$86,076 | —————> | E+C | <u>\$301,266</u> |
| Contingency (15%) | \$215,190 | | Construction + Const. Eng. | <u>\$1,735,866</u> |

| | | | | |
|-------------------|-----------|--------|---------------------------|------------------|
| Engineering (12%) | \$172,152 | | | |
| Utilities (2.9%) | \$41,603 | —————> | Engineering + Util. + ROW | <u>\$293,755</u> |

| | | | | |
|-------------------------------------|----------|--|------------------|--------------------|
| R.O.W. = | \$80,000 | | | |
| Est. 0.8 Acres @ \$100,000 per acre | | | Estimated Cost = | <u>\$2,029,621</u> |

Portion To Remain for Ultimate Design (Credit) Single Point Alternative
 See Page 4

Estimated Credit = \$1,391,066

Portion To Remain for Ultimate Design (Credit) 2 Intersection Alternative
 See Page 4

Estimated Credit = \$1,304,018

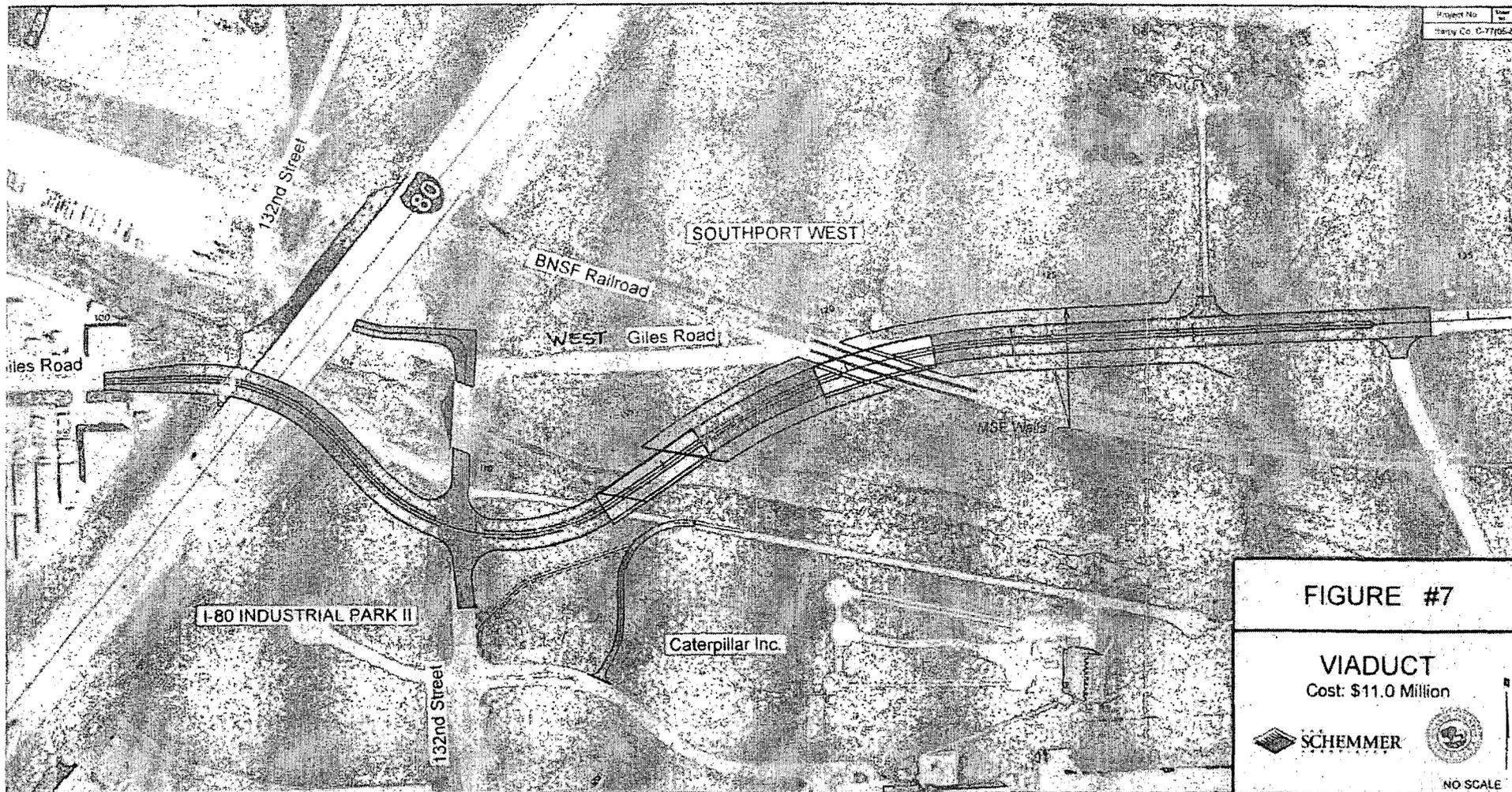
PHASE 2 – SHORT TERM IMPROVEMENTS – 132ND ST. & W. GILES ROAD

ESTIMATED COSTS:

As shown on Page 2 of Exhibit “B” the total estimated costs for the Short Term Improvements (aka “interim Improvements”) are \$2,029,621. Rounded off, use a cost of \$2,000,000.

ALLOCATION OF COSTS:

| | |
|--------------------------------|-------------------|
| Federal Highway Administration | \$1,600,000 (80%) |
| City of La Vista | \$ 200,000 (10%) |
| Sarpy County | \$ 200,000 (10%) |



Giles Road @ 132nd St.
 Sarpy County Project Number: C-77 (05-8)
 TSA Project Number: 05040.001

12/5/2006

| <u>Viaduct</u> | | Quantity | Unit | Unit Cost | Total |
|------------------------------------|------------|----------|--------|-------------------------|----------------------------|
| Paving | | 23,100 | Sq Yd | \$33 | \$762,300 |
| Bridge Over Papio | 235' x 80' | 19,000 | Sq Ft | \$75 | \$1,425,000 |
| Bridge Over BNSF | 125' x 80' | 10,000 | Sq Ft | \$100 | \$1,000,000 |
| Earthwork (w/ Walls 74' Lt/Rt) | | 331,000 | Cu Yd | \$4 | \$1,324,000 |
| Misc. for Conc. Paving | | 3,700 | Lin Ft | \$25 | \$92,500 |
| Misc. for Grading | | 3,700 | Lin Ft | \$35 | \$129,500 |
| Misc. for Drainage | | 3,700 | Lin Ft | \$85 | \$314,500 |
| Remove Bridge | | 0 | Each | \$60,000 | \$0 |
| Bridge Approach Slabs | | 2 | LS | \$100,000 | \$200,000 |
| MSE Wall at I-80 | | 5,390 | Sq Ft | \$35 | \$188,650 |
| MSE Walls Rail Road | | 64,000 | Sq Ft | \$35 | \$2,240,000 |
| Relocate Power Pole (Special) | | 1 | Each | \$100,000 | \$100,000 |
| Traffic Signals | | 1 | Each | \$90,000 | \$90,000 |
| Railroad Crossing | | 0 | Each | \$375,000 | \$0 |
| | | | | | <u>\$7,866,450</u> |
| Const. Eng. (8%) | \$629,316 | | | E+C | <u>\$1,415,961</u> |
| Contingency (10%) | \$786,645 | | | | |
| | | | | Construction + E&C | <u>\$9,282,411</u> |
| Engineering (10%) | \$786,645 | | | | |
| Utilities (2.9%) | \$228,127 | | | E + Util. + ROW | <u>\$1,729,156</u> |
| R.O.W. = | \$714,384 | | | | |
| Est. 8.2 Acres @ \$87,120 per acre | | | | Estimated Cost = | <u>\$11,011,567</u> |

Notes:

Lighting, Signing, Guard Rail, Phasing etc. not included in estimate.
 Misc. for Conc. Paving includes items such as subgrade prep., water, shoulder constr. and mobilization
 Misc. for Grading includes items such as removals, general clear & grub., erosion control and mobilization
 Misc. for Drainage includes items such as storm sewer, culverts and mobilization
 RR X-ing Est. signalized w/gates 4-lane divided \$350,000 to \$450,000 per NDOR/Abe Anshasi 2/8/06

PHASE 3 – LONG TERM IMPROVEMENTS – 132ND ST. & W. GILES ROAD

ESTIMATED COSTS:

As shown on Page 2 of Exhibit “C” the total estimated costs for the Long Term Improvements (aka “Interim Improvements”) are \$11,011,567. Assuming that the Short Term Improvements are constructed first, then there would be a credit against the Long Term Improvement Costs for the portion of the Short Term Improvements that can be left in place or salvaged. This estimated credit is \$1,049,679. The net cost of the Long Term Improvements is then \$9,961,888. Round off, use a cost of \$10,000,000.

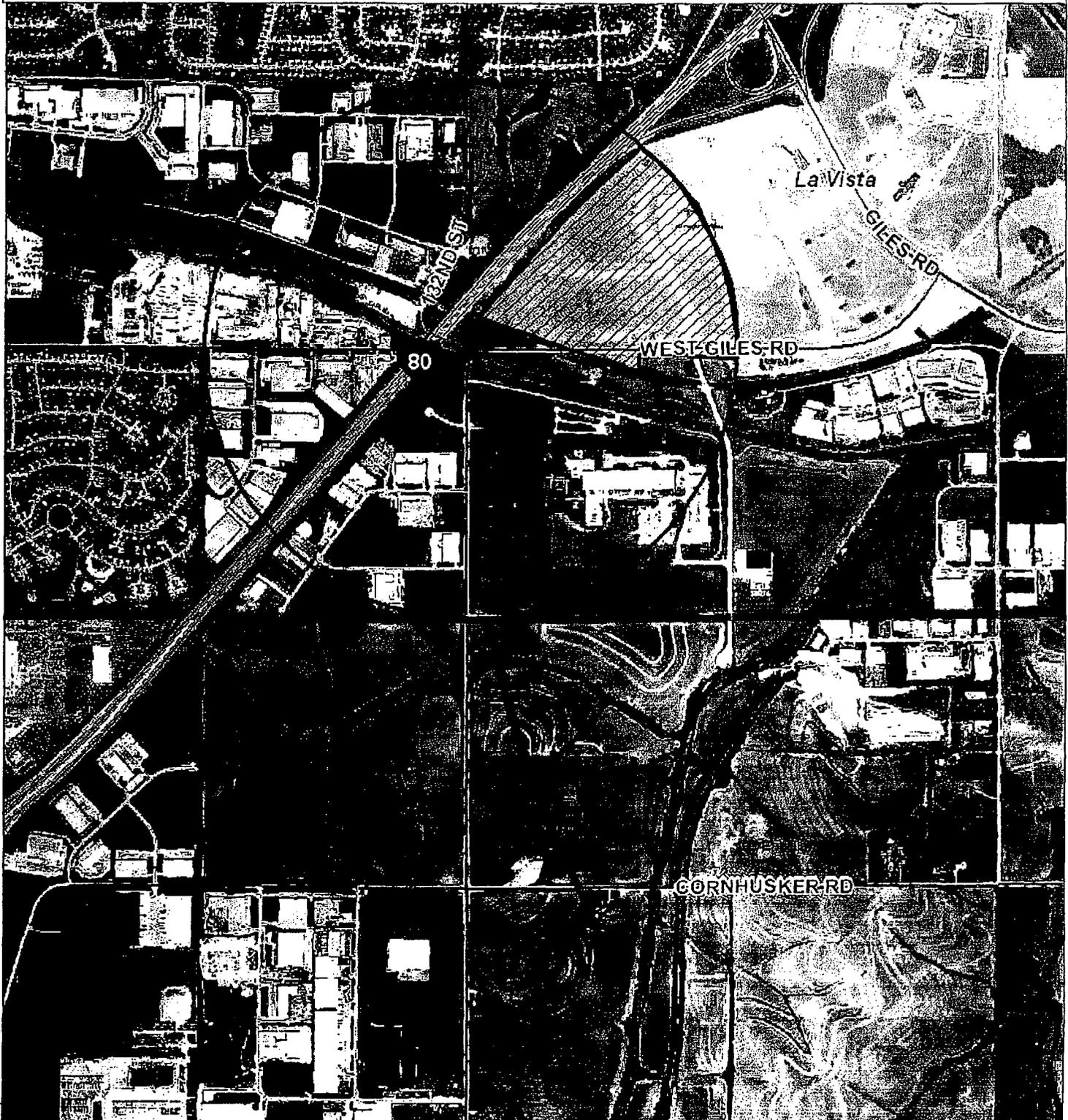
ALLOCATION OF COSTS:

| | |
|--------------------------------|-----------|
| Federal Highway Administration | (80%-90%) |
| City of La Vista | (5-10%) |
| Sarpy County | (5-10%) |

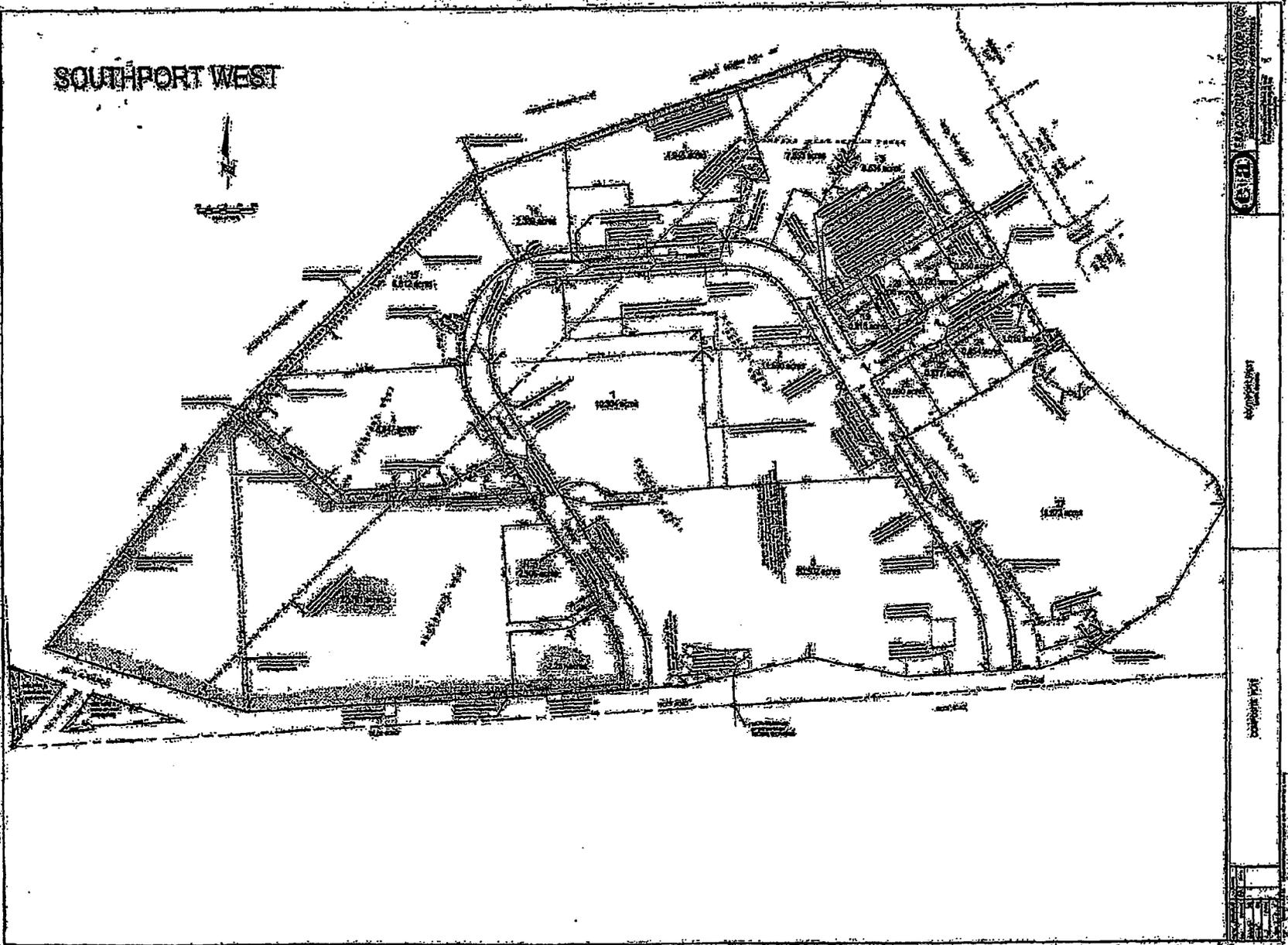
Note: Funding levels by FHWA may be lower than shown depending on NDOR policy requirement to close two at-grade railroad crossings in conjunction with funding an overpass project.

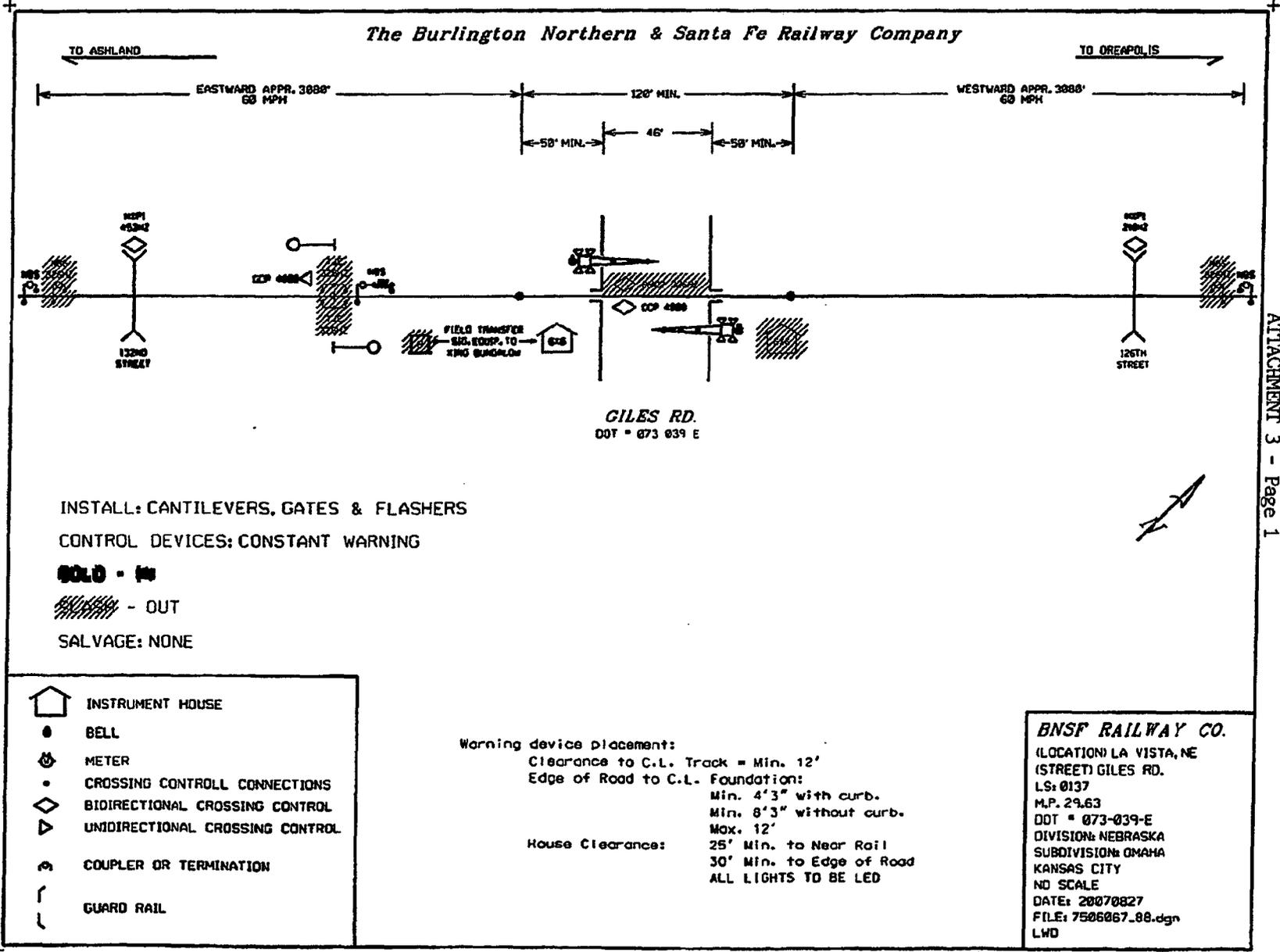
132nd & Giles

 "Area A" Current City Limits
 ETJ  Not "Area A"



SOUTHPORT WEST





The Burlington Northern & Santa Fe Railway Company

TO ASHLAND

TO OMAHA

EASTWARD APPR. 3088' 60 MPH

120' MIN.

WESTWARD APPR. 3088' 60 MPH

58' MIN.

46'

58' MIN.

132ND STREET

126TH STREET

GILES RD.
DDT = 073 039 E

INSTALL: CANTILEVERS, GATES & FLASHERS

CONTROL DEVICES: CONSTANT WARNING

SOLD - IN

- OUT

SALVAGE: NONE

- INSTRUMENT HOUSE
- BELL
- METER
- CROSSING CONTROL CONNECTIONS
- BIDIRECTIONAL CROSSING CONTROL
- UNIDIRECTIONAL CROSSING CONTROL
- COUPLER OR TERMINATION
- GUARD RAIL

Warning device placement:
 Clearance to C.L. Track = Min. 12'
 Edge of Road to C.L. Foundation:
 Min. 4'3" with curb.
 Min. 8'3" without curb.
 Max. 12'
 House Clearance:
 25' Min. to Near Rail
 30' Min. to Edge of Road
 ALL LIGHTS TO BE LED

BNSF RAILWAY CO.
 (LOCATION) LA VISTA, NE
 (STREET) GILES RD.
 LS: 0137
 M.P. 29.63
 DDT = 073-039-E
 DIVISION: NEBRASKA
 SUBDIVISION: OMAHA
 KANSAS CITY
 NO SCALE
 DATE: 20070827
 FILE: 7506067_08.dgn
 LWD

ATTACHMENT 3 - Page 1

THOMAS A. LYNAM

SARPY COUNTY SURVEYOR

• 15100 SOUTH 84th STREET • PAILLION, NEBRASKA 68046 • 402.339.4606 • FAX: 402.339.6555 •

Memo

To: Sarpy County Board of Commissioners

From: Tom Lynam, County Surveyor 

Subject: Amendment #1 to the Interlocal Cooperation Agreement for the Improvement of Roads and Railroad Crossing 132nd Giles and West Giles Road.

Date: 01/22/2010

I recommend approval of the Interlocal Agreement and Amendment #1 for the improvement of roads and railroad crossings within the vicinity of the Intersection of 132nd and West Giles Road.

This Agreement clarifies the payment by the Developer and changes the railroad notification to the County, as the actual location of the crossing is within County jurisdiction.

If you have any questions, please feel free to contact me at 339-4606 Ext. 108.