

COUNCIL AGENDA ADDENDUM, CITY OF COUNCIL BLUFFS, IOWA
REGULAR MEETING AUGUST 23, 2010 7:00 PM
COUNCIL CHAMBERS, 2ND FLOOR, CITY HALL
209 PEARL STREET

4. RESOLUTION

- I. Resolution 10-258, authorizing the Mayor to execute a development agreement between the City of Council Bluffs and the Iowa Interstate Railroad, Ltd.

PREPARED BY: City Legal Department, 209 Pearl Street, Council Bluffs, IA 51503
RETURN TO: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503

RESOLUTION NO. 10-258

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF COUNCIL BLUFFS AND THE IOWA INTERSTATE RAILROAD, LTD.

WHEREAS, a Development Agreement for Phase 2 of the Intermodal Ramp Project has been drafted between the City and Iowa Interstate Railroad, Ltd. (IAIS); and

WHEREAS, it is in the best interest of the parties to enter said agreement.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA

The Mayor is hereby authorized to execute the development agreement entitled Phase 2- Intermodal Ramp Project which is attached to this resolution as Exhibit "A".

ADOPTED
AND
APPROVED August 23, 2010

Thomas P. Hanafan, Mayor

ATTEST: _____
Marcia L. Worden, City Clerk

**DEVELOPMENT AGREEMENT
PHASE 2 - INTERMODAL RAMP PROJECT
IOWA INTERSTATE RAILROAD, LTD.**

THIS AGREEMENT made and entered into by and between THE CITY OF COUNCIL BLUFFS, IOWA hereinafter referred to as the "CITY" and THE IOWA INTERSTATE RAILROAD, LTD., hereinafter referred to as "IAIS";

WITNESSETH

WHEREAS, IAIS maintains and operates a railroad yard ("the Yard") in the City of Council Bluffs, Iowa in the general location of 16th Ave. and 29th Ave. as the respective North/South boundaries of the Yard and South Ave. and Hwy. 192 as the respective East/West boundaries of the Yard;

WHEREAS, in 2009, IAIS began developing plans and designs for improvements to the current and actively used intermodal ramp in the Yard to pave the ramp area and pave the entrance from South Ave. and driveway to the intermodal ramp as specified in IDOT Project No. ESL-005R -7S-78, Sheet 8 of 54 attached hereto as Exhibit A labeled Phase 1 and Phase 2, for the remainder of this document referred to as the "Intermodal Ramp Project", the purpose of the project is to improve safety, current operations and to reduce the creation of dust and mud;

WHEREAS, in or around November of 2009, IAIS submitted engineering designs for the Intermodal Ramp Project to the CITY for permitting approval;

WHEREAS, between November of 2009 and April of 2010, IAIS communicated and worked through the permit process and developed a plan modification to create a separate (*separate from and not connected to the prior storm water drainage system*) drainage outflow design; the plan modification collects the storm water from the intermodal ramp and directs the storm water through new culverts West across the Yard to a new water detention area on the Westside of the Yard with a outflow into the drainage ditch known as Lateral-5;

WHEREAS, this drainage modification has been developed by IAIS and this modification has been approved by both parties of this agreement;

WHEREAS, in an effort to allow IAIS to begin construction as soon as possible on the Intermodal Ramp Project to capture as much of the construction season as possible, IAIS developed a project phasing which allows construction to begin and to create additional designs to address storm water management, dust and mud concerns of the CITY;

WHEREAS, the Phase 1 and Phase 2 grading permit was approved as by the CITY;

WHEREAS, the parking/paving permit approved by the CITY in Phase 1, was limited to approximately 1800' on the north end, extending from Station 25 to Station 43;

WHEREAS, the remaining 1500' extending from Station 10 to Station 25 shall become a portion of Phase 2, along with the entry pavement and surfacing improvements for the Intermodal Ramp Project; and

WHEREAS, the Phase 1 work from Station 25 to Station 43 has been approved and work is ongoing.

NOW, THEREFORE, in consideration of this agreement as herein contained, the parties agree as follows:

- 1) IAIS will construct a minimal 100-year standard upland run on conveyance through its intermodal ramp property to the 36-inch and 72-inch culverts that run under the main railroad line of IAIS (as the culverts are generally depicted on Exhibit B) ~~as detailed in the engineering solutions provided under this agreement as described in below paragraph 3);~~
- 2) IAIS will construct a paved driveway loop through the parking lot area South of Phase 2 improvements by the end of the year of 2012 and IAIS will pave the remainder of the parking lot area in 3-phases by the end of the year of 2014 as illustrated in Exhibit C; IAIS will present to the CITY an estimate of the total cost with dates for completion noted;
- 3) ~~IAIS will provide the engineering storm water management solutions for drainage in Phase 2 and engineering solutions for that include conveyance of the 100-year standard upland run on by October 31, 2010. These improvements will be constructed as part of Phase 2 construction. IAIS will provide storm water management solutions for drainage of the parking lot areas south of Phase 2 improvements that include conveyance of the 100 year standard upland run on. These improvements will be constructed no later than the timeline cited in paragraph 2 for the construction of the parking lot areas south of Phase 2 conveyance as described in paragraph 1 of this agreement;~~
- 4) In consideration for the construction of the 100-year standard upland run on conveyance as described in paragraphs ~~1 and 3~~ of this agreement and the full paving of the parking lot area South of the Phase 2 of the Intermodal Ramp Project by the end of the year of 2014, the CITY will ~~issue/provide/approve~~ all CITY permits for the full completion of all phases of the IDOT Project No. ESL(1) -72-78 Phase 1 and Phase 2 of the IAIS Intermodal Ramp Project after the CITY approval submittal of engineering solutions addressing the storm water management concerns and accepting Exhibit C for the future paving as described in this agreement.
- 5) IAIS will pay all costs and fees, including attorney fees and other litigation costs, that are incurred by the CITY in the event of IAIS not performing any of the requirements of this agreement and requiring the CITY to file a legal action and obtain a judicial finding or verdict that IAIS breached the terms of this agreement and seeking performance under this agreement.

WHEREAS, this agreement can be executed in duplicate counterparts, each of which shall be considered as an original, by their duly authorized officials as of the dates below indicated.

THE CITY OF COUNCIL BLUFFS, IOWA

PASSED AND APPROVED this _____ day of _____, 2010.

By: _____
Tom Hanafan, Mayor

ATTEST:

By: _____
City Clerk

THE IOWA INTERSTATE RAILROAD, LTD.

SIGNED AND DATED this _____ day of _____, 2010

By: _____
Dennis Miller, President and CEO