

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
FEBRUARY 16, 2010 AGENDA**

Subject:	Type:	Submitted By:
132 ND STREET AND WEST GILES ROAD IMPROVEMENTS	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOE SOUCIE PUBLIC WORKS DIRECTOR

SYNOPSIS

Resolutions have been prepared to approve the following:

- Amendment No. 1 of the Interlocal Cooperation Agreement with Sarpy County for improvements to the intersection of 132nd Street and West Giles Road and adjacent legs of 132nd Street and West Giles Road and adjacent railroad crossings.
- Phase I – Railroad Circuitry Upgrades.

FISCAL IMPACT

The project has three Phases. These projects have been included in the Capital Improvement Program and Phases 1 & 2 are funded in the current FY10 municipal budget. Estimated project costs for each phase are located in Exhibit A-B&C of the Interlocal Agreement.

RECOMMENDATION

Approval

BACKGROUND

There are three separate components to the improvements to be undertaken pursuant to the Agreement. Phase 1 consists of railroad crossing (Quiet Zone) improvements; Phase 2 consists of interim reconstruction of the intersection of 132nd Street and West Giles Road; and Phase 3 consists of long term improvements to the intersection of 132nd and West Giles Road.

The modifications contained in Amendment No. 1 include: 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 Costs; and, the County, not the City will enter into an agreement with Burlington Northern Santa Fe Railway for the constant warning circuitry upgrade improvements.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN AMENDMENT TO THE INTERLOCAL COOPERATION AGREEMENT WITH SARPY COUNTY FOR IMPROVEMENTS TO THE INTERSECTION OF 132ND STREET AND WEST GILES ROAD AND ADJACENT LEGS OF 132ND STREET AND WEST GILES ROAD AND ADJACENT RAILROAD CROSSINGS

WHEREAS, the city of La Vista and Sarpy County entered into an Interlocal Agreement to improve the intersection of 132nd Street and West Giles Road 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, the modifications contained in Amendment No. 1 include the estimated cost of the Circuitry Upgrade; and

WHEREAS, 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 costs; and

WHEREAS, Sarpy County, not La Vista, will enter into an agreement with Burlington Northern Santa Fe Railway for the constant warning circuitry upgrade improvements;

NOW THEREFORE, BE IT RESOLVED, that the First Amendment to the Interlocal Cooperation Agreement with Sarpy County and the city of La Vista, is hereby approved, and the Mayor and City Clerk be and hereby are, authorized to execute same on behalf of the City with such revisions or amendments thereto that the City Administrator and City Attorney may determine necessary to carry out the intent of the City Council.

PASSED AND APPROVED THIS 16TH DAY OF FEBRUARY 2010.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Bueth, CMC
City Clerk

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

SARPY COUNTY, Nebraska

By _____
Mayor

By *Jan Jones*
Chairman, County Board

Date: _____


Date: 1/26/2010

ATTEST:

ATTEST:

City Clerk

Debra J. Young
County Clerk



The seal is circular with a double-lined border. The outer ring contains the text "SARPY COUNTY, NEBRASKA" at the bottom and "DEBRA J. YOUNG, COUNTY CLERK" at the top. In the center of the seal, the word "SEAL" is printed in bold, capital letters.

Date: _____

Date: 1/26/2010

Approved as to form: *M. A. H.*
County Attorney

Date: 1-27-10

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING THE EXECUTION OF AN AGREEMENT BETWEEN SPW PARTNERS, LLC AND THE CITY OF LA VISTA FOR PHASE I – RAILROAD CIRCUITRY UPGRADE OF THE 132ND AND WEST GILES ROAD IMPROVEMENTS

WHEREAS, the city of La Vista and Sarpy County entered into an Interlocal Agreement to improve the intersection of 132nd Street and West Giles Road 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 to be undertaken pursuant to the Agreement; and

WHEREAS, Phase I 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 I improvements; and

WHEREAS, SPW Partners desires to contribute to the cost of Phase I improvements; and

WHEREAS, the FY 2009/10 Capital Improvement Program includes funding Phases 1 and 2 of this project;

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council that the agreement between SPW Partners, LLC and the City of La Vista, is hereby approved, and the Mayor and City Clerk be and hereby are, authorized to execute same on behalf of the City with such revisions or amendments thereto that the City Administrator and City Attorney may determine necessary to carry out the intent of the City Council.

PASSED AND APPROVED THIS 16TH DAY OF FEBRUARY 2010

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

**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:

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.

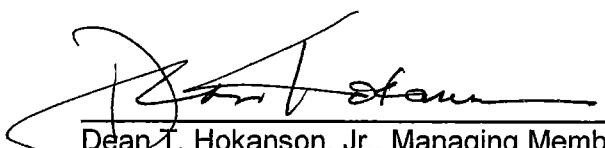
CITY OF LA VISTA, a Nebraska municipal corporation

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



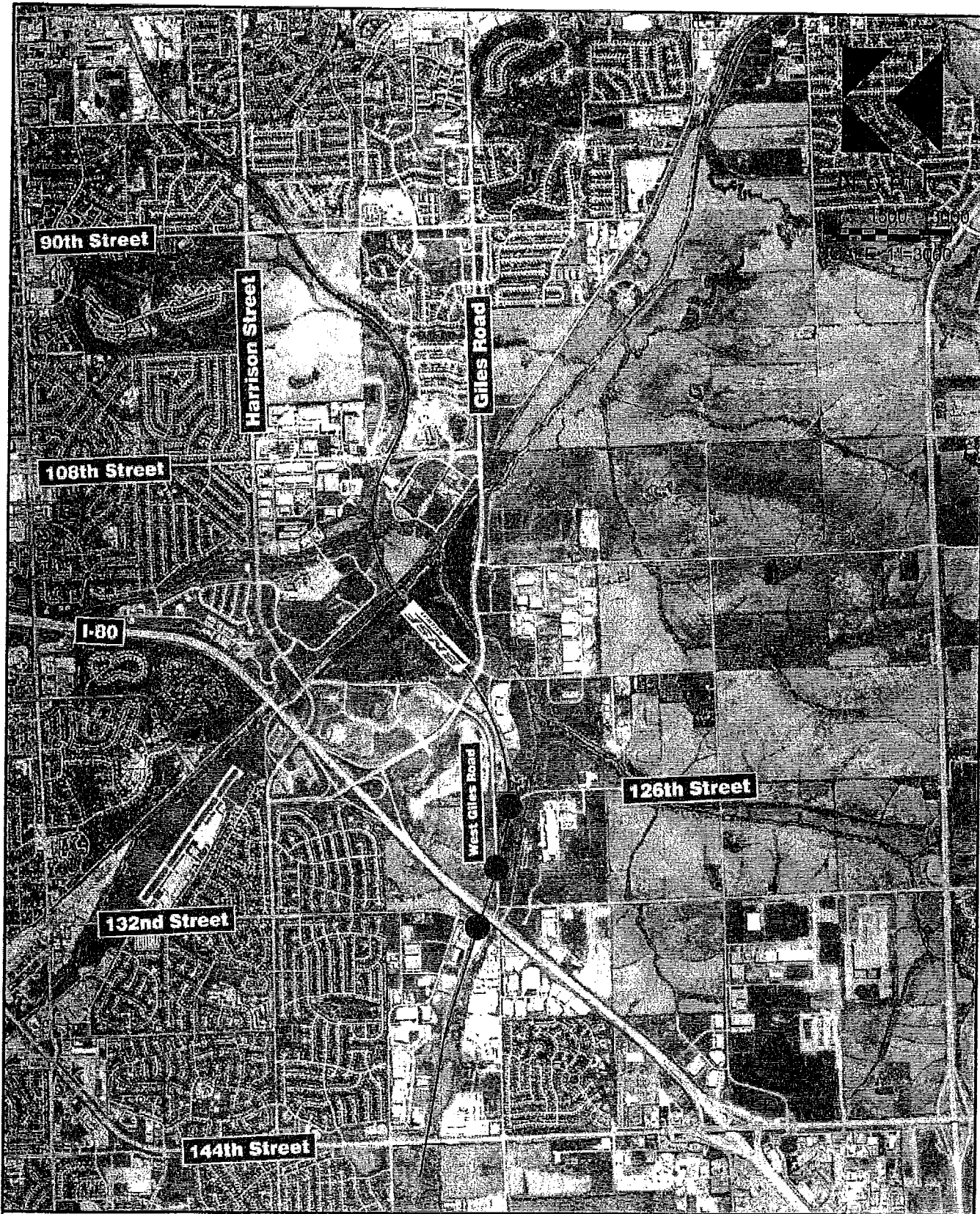
[Signature]
County Clerk

Date: 12/16/2008

Approved as to form: [Signature]
County Attorney

Date: 12/16/08

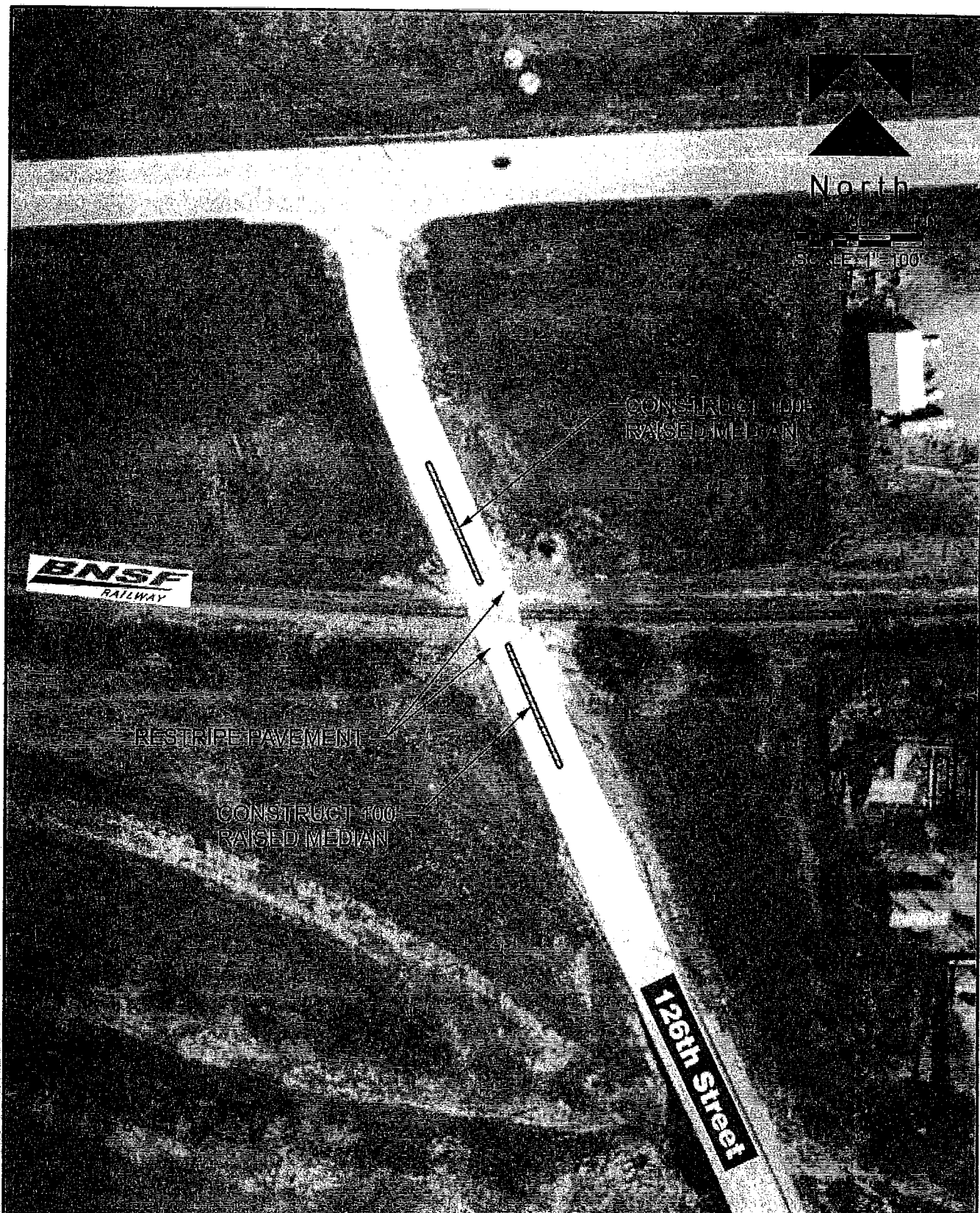
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FELSBURG
HOLT &
ULLEVIG

BNSF Quiet Zone
LaVista, Nebraska

Figure 1
Study Location Map

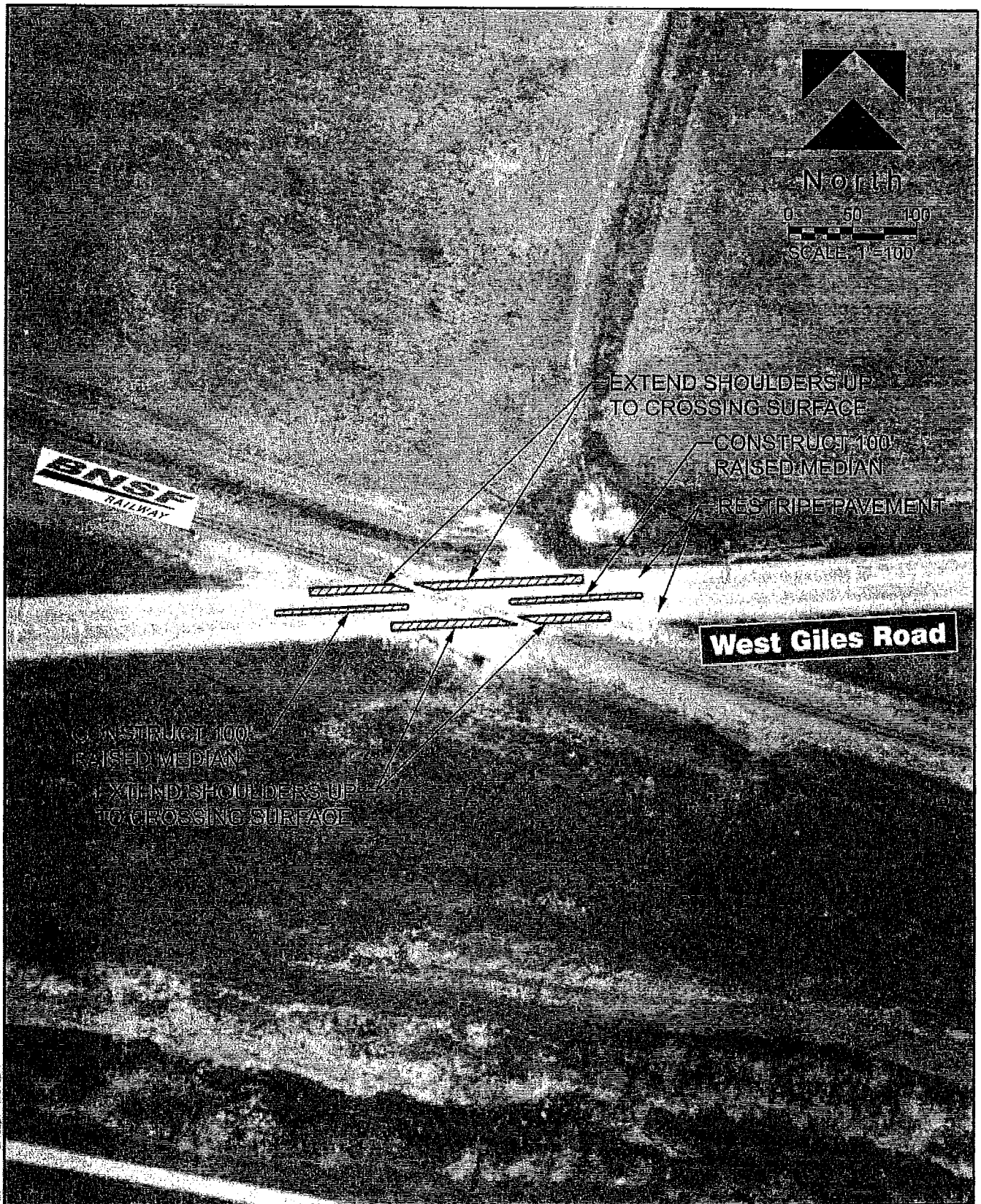


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10/4/2007 8:40:55 AM Dwg.plt Inter.plt



BNSF Quiet Zone
LaVista, Nebraska

Figure 5
126th Street
Raised Median Option

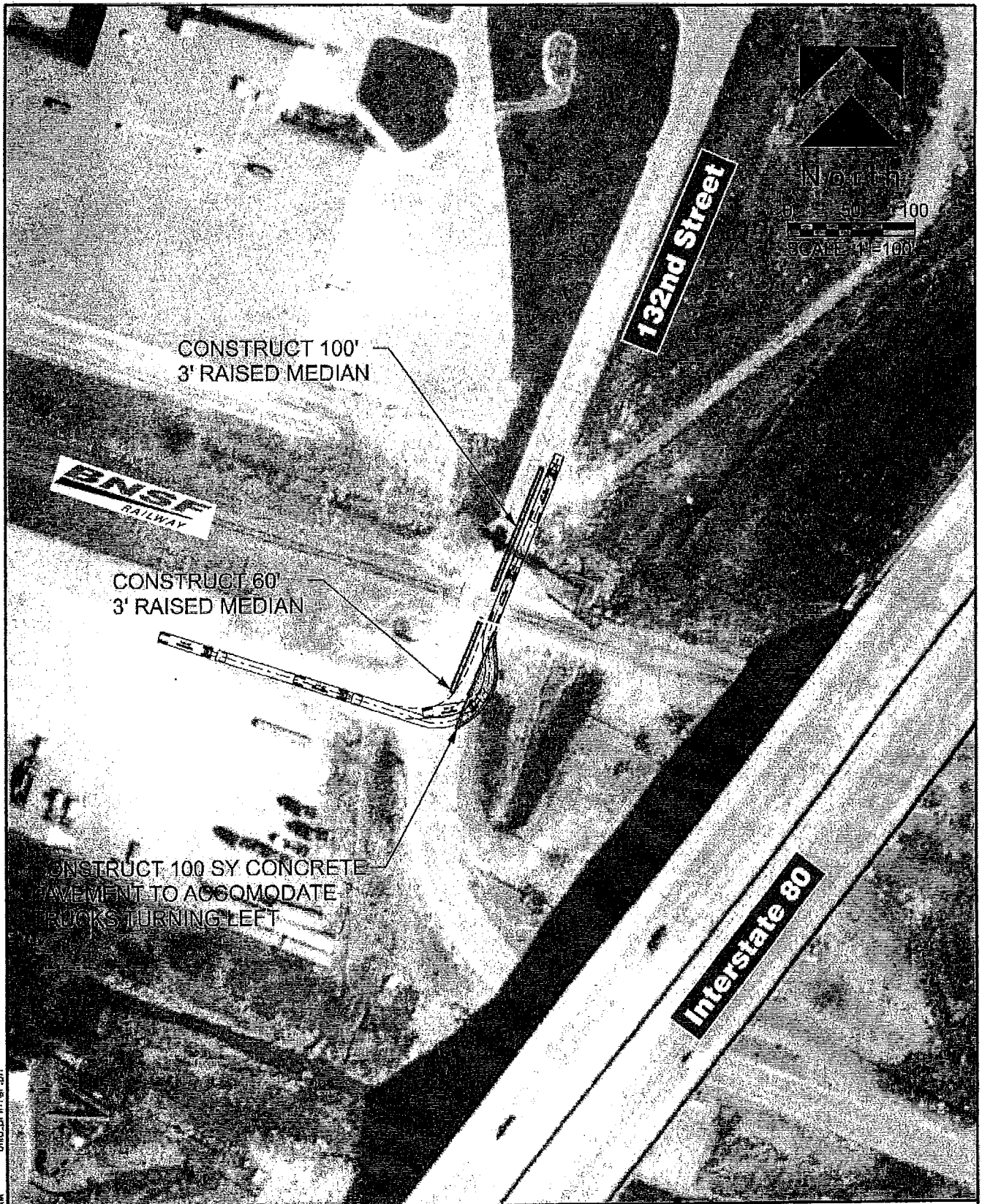


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BNSF Quiet Zone
LaVista, Nebraska

Figure 7
West Giles Road
Raised Median Option



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FELSBURG
HOLT &
ULLEVIG

BNSF Quiet Zone
LaVista, Nebraska

Figure 9
132nd Street
Raised Median Option

PHASE 1 – RAILROAD CROSSING IMPROVEMENTS

ESTIMATED COSTS:

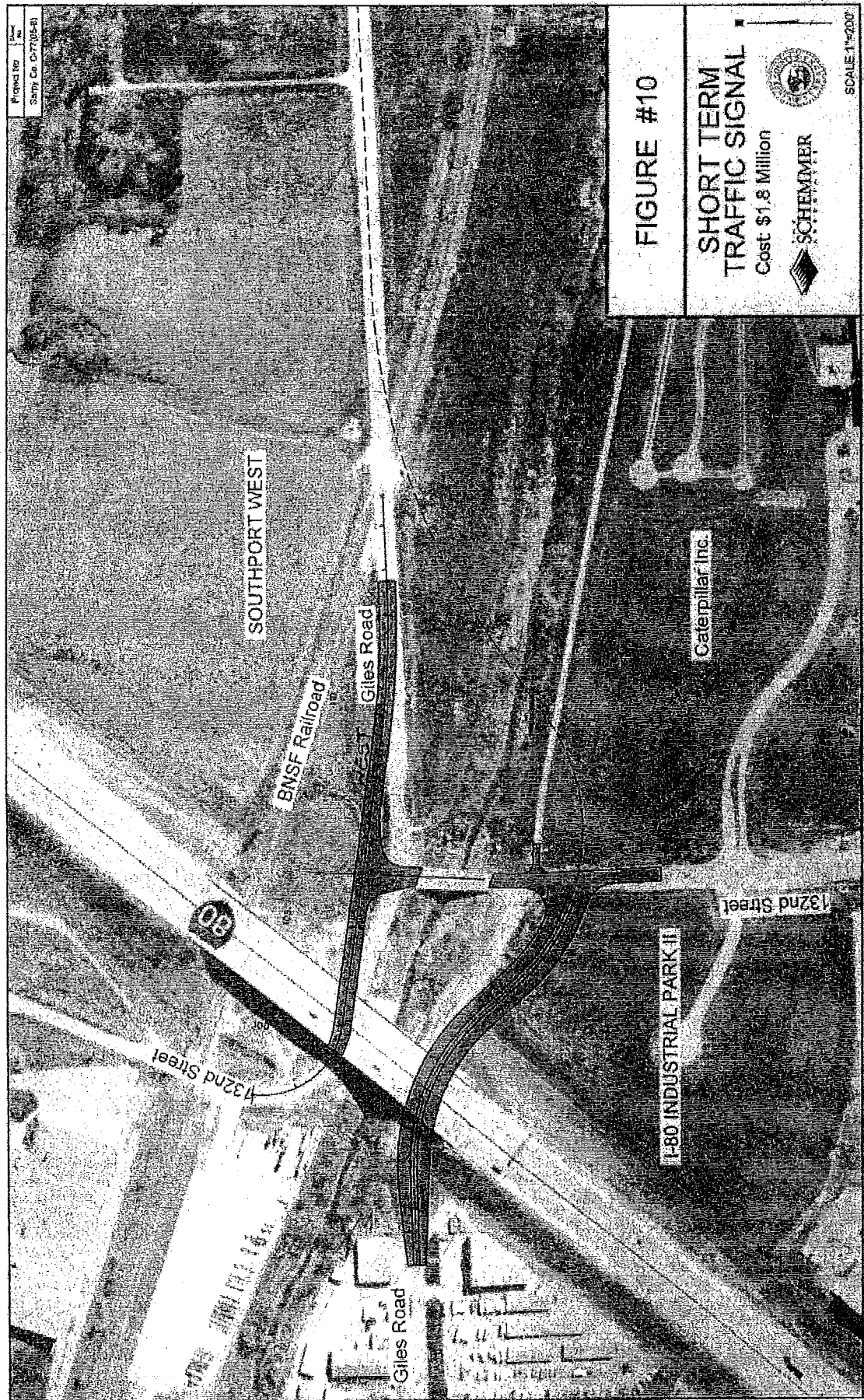
1. Quiet Zone Study	\$ 9,500
2. Constant Warning Circuitry Upgrade, W. Giles Crossing	\$114,395
3. Construct Raised Medians At 126 th St. Crossing	\$ 25,100
4. Construct Raised Medians At W. Giles Crossing	\$ 30,600
5. Construct Raised Medians At 132 nd St. Crossing	\$ 28,600
6. Survey, Design & Const. 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

12

Preliminary Project Cost Estimate

Interim T Intersection

	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

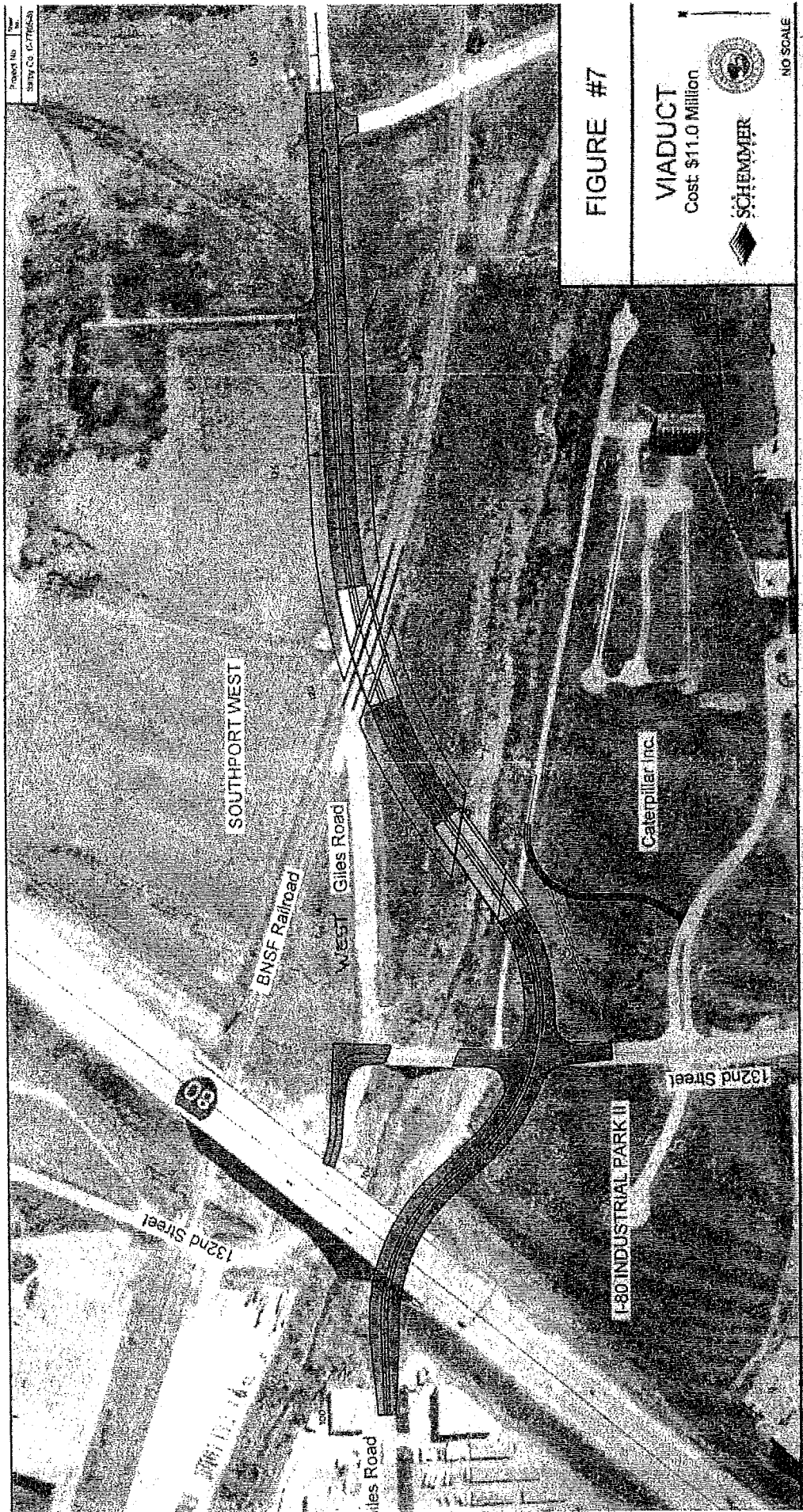
PHASE 2 – SHORT TERM IMPROVEMENTS – 132ND ST. & W. GILES ROAD

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:

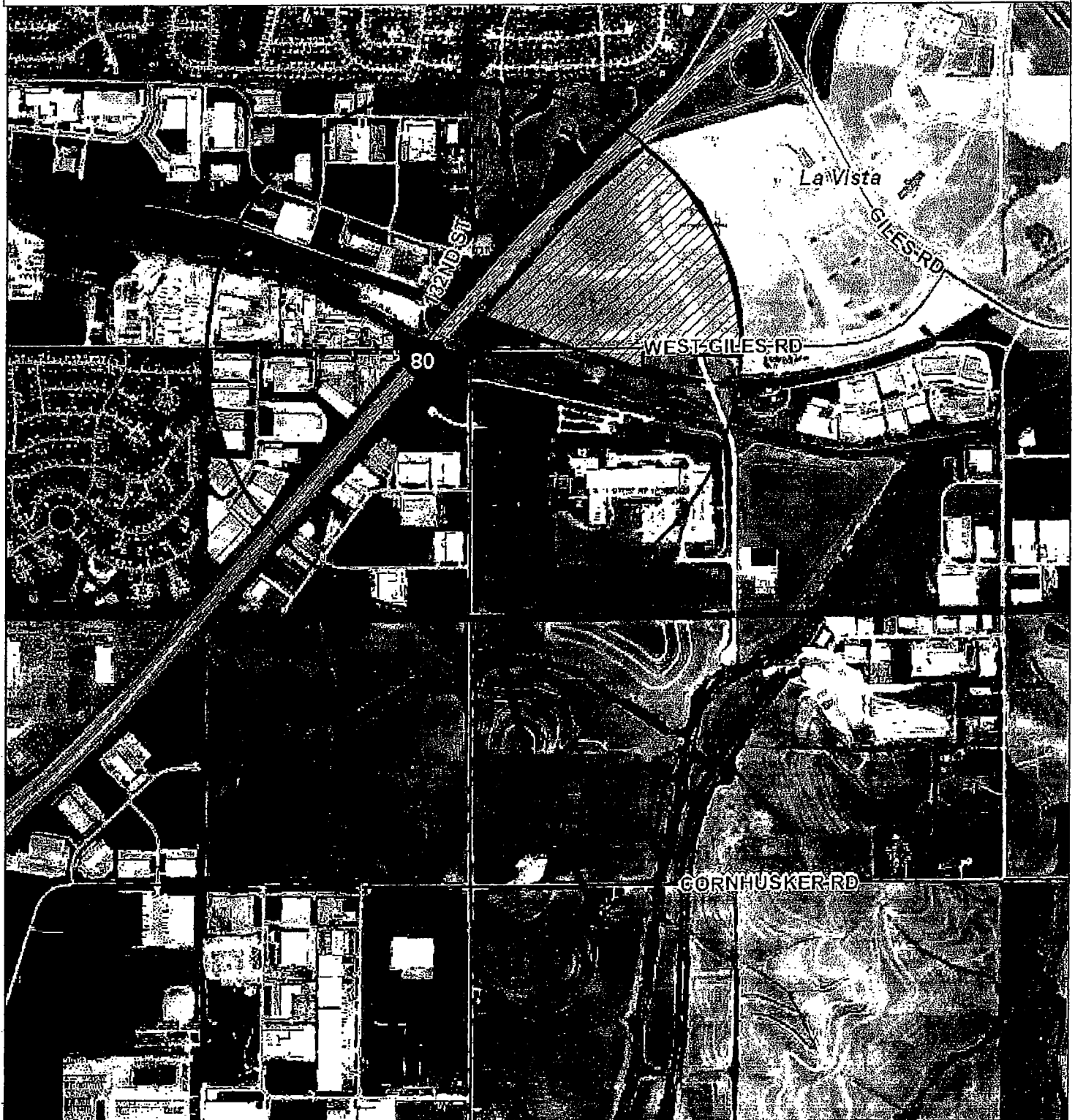
As shown on Page 2 of Exhibit "C" the total estimated costs for the Long Term Improvements (aka "Interim Improvements") are \$11,011,567. Assuming that the Short Term Improvements are constructed first, then there would be a credit against the Long Term Improvement Costs for the portion of the Short 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:

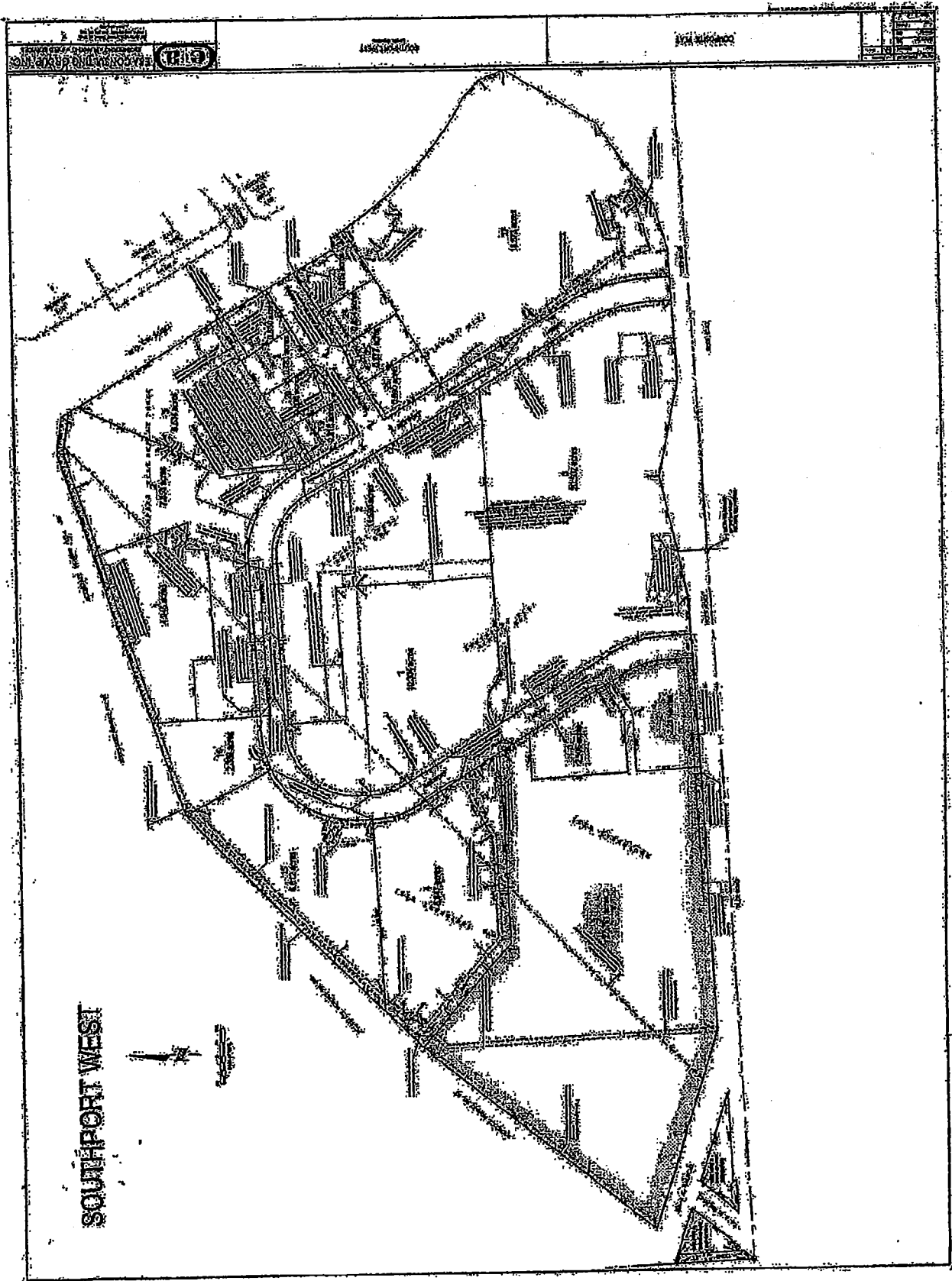
Federal Highway Administration	(80%-90%)
City of La Vista	(5-10%)
Sarpy County	(5-10%)

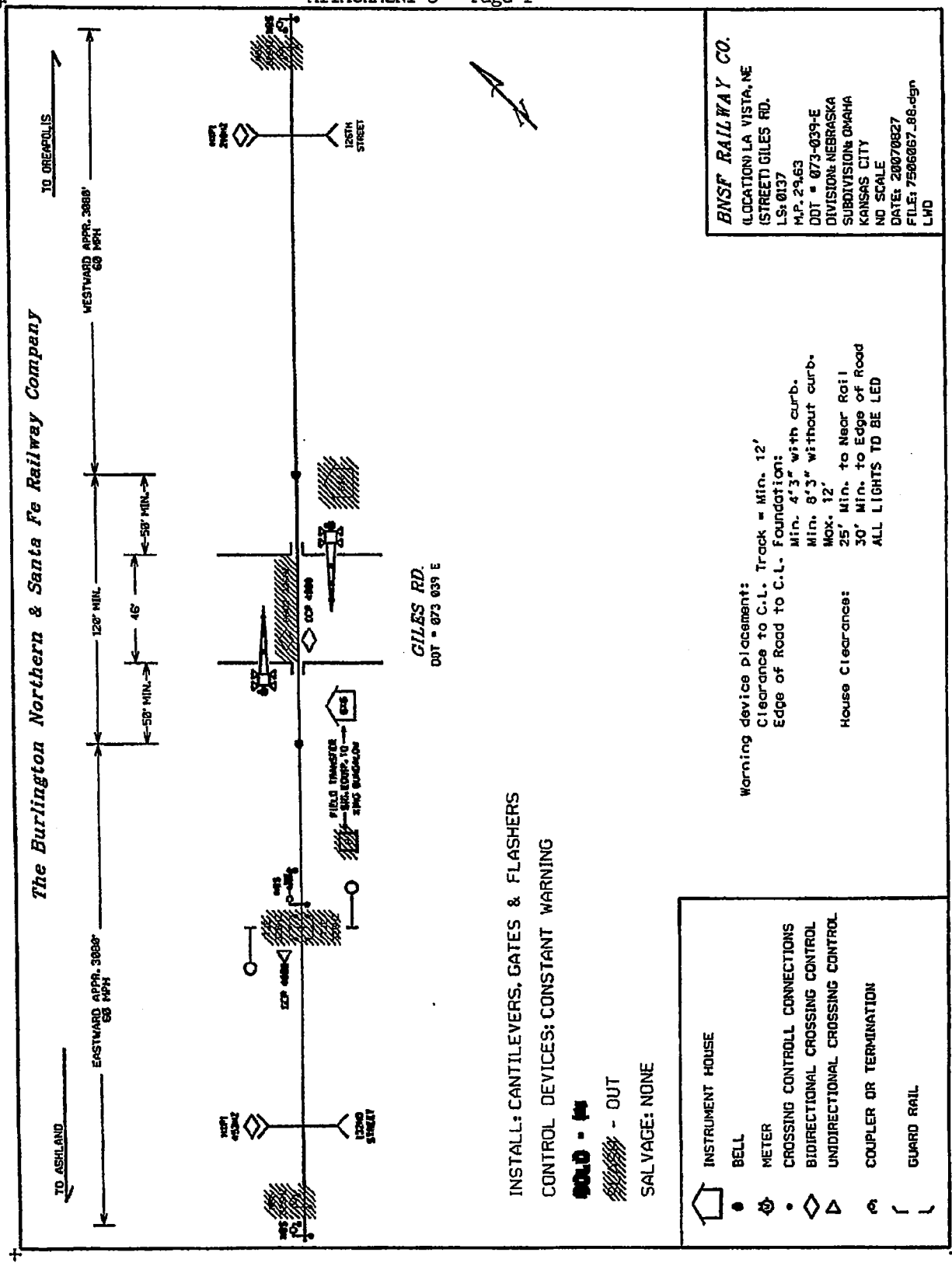
Note: Funding levels by FHWA may be lower than shown depending on NDOR policy requirement to close two at-grade railroad crossings in conjunction with funding an overpass project.

132nd & Giles



ATTACHMENT 2





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

OLD - IN
- OUT
SALVAGE: NONE

GILES RD.
DOT = 073 039 E

INSTRUMENT HOUSE

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

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

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

ATTACHMENT 3 - Page 2

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

THE B. N. S. F. RAILWAY COMPANY
FPM ESTIMATE FOR
NEBRASKA

LOCATION:- CHALCO DETAILS OF ESTIMATE PLAN ITEM: PS1073039E2 VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

INSTALL CONSTANT WARNING AT GILES RD IN LA VISTA, NE. NEBRASKA DIV., OMAHA SUBDIV., L/S
0137, M.P. 29.63, DOT # 073039E.
MONTHLY POWER UTILITY COST CENTER : 61856

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSE ONLY.
THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS, DETAILED AND ACCURATE
MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED.
CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.
THIS ESTIMATE IS GOOD FOR 90 DAYS, THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST
FOR LABOR, MATERIAL, AND OVERHEAD.

***** SIGNAL WORK ONLY *****

THE CITY OF LA VISTA, NEBRASKA IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY.

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

SIGNAL FIELD LABOR - CAP	448.00	MH	9,776	
SIGNAL SHOP LABOR - CAP	64.00	MH	1,447	
PAYROLL ASSOCIATED COSTS			8,218	
EQUIPMENT EXPENSES			2,966	
DA LABOR OVERHEADS			11,258	
INSURANCE EXPENSES			1,766	
TOTAL LABOR COST			35,431	35,431

MATERIAL				

BATTERY	1.00	EA N	4,120	
BUNGALOW 6X6	1.00	EA N	8,512	
BUNGALOW MATERIAL	1.00	LS N	4,399	
CABLE	1.00	EA N	3,096	
CHARGERS	1.00	LS N	810	
CONDUIT, PVC 4", SCH 80	60.00	FT N	234	
CONSTANT WARNING	1.00	EA N	23,429	
DURMY LOAD	2.00	EA N	842	
FIELD MATERIAL	1.00	LS N	4,073	
LAMP RESISTOR	1.00	EA N	761	
LIGHT OUT DETECTOR	1.00	EA N	682	
RECORDER	1.00	EA N	2,220	
RTU-6, CELLULAR MONITOR	1.00	EA N	2,060	
SHUNT, NBS	3.00	EA N	2,544	
USE TAX			3,943	
OFFLINE TRANSPORTATION			722	
TOTAL MATERIAL COST			62,547	62,547

OTHER				

CONTRACT ENGR.	1.00	EA N	5,000	
FILL DIRT	10.00	CY N	250	
SURFACE ROCK	10.00	CY N	250	
TOTAL OTHER ITEMS COST			5,500	5,500
PROJECT SUBTOTAL				103,478
CONTINGENCIES				10,347
BILL PREPARATION FEE				570
GROSS PROJECT COST				114,395
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				114,395

BNSF is not responsible for the accuracy of this estimate.