

**ORDINANCE NO. 3275**

**AN ORDINANCE VACATING A PORTION OF A RIGHT-OF-WAY AND STREET WITHIN THE CITY LIMITS OF THE CITY OF ABILENE, KANSAS**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:**

WHEREAS, the Governing Body of the City of Abilene, Kansas, has the power to vacate streets and rights-of-way if it finds it is necessary or expedient, pursuant to K.S.A. 14-423; and

WHEREAS, the Governing Body finds that it is necessary or expedient to vacate a portion of Elm Street and adjoining right-of-way;

NOW THEREFORE, the Governing Body declares that a portion of Elm Street and adjoining right-of-way shall be vacated as set forth in Section 1, below:

**SECTION 1.** Pursuant to K.S.A. 14-423, the following right-of-way and street located in the City of Abilene, Kansas, which is described below, is hereby vacated:

**SEE ATTACHED EXHIBIT "A"**

That there be reserved to the city and the owners of lesser property rights for public utilities, rights-of-way, and easements for public facilities in said alley for present uses, if any.

This vacation of right-of-way and street is subject to a Land Use Agreement and Easement by and between the City of Abilene, Kansas, and Flint Hills Grain, LLC, attached hereto as EXHIBIT "B" and incorporated as a part of this Ordinance.

**SECTION 2.** This ordinance shall become effective and in full force 30 days after its publication in the official city newspaper unless an interested party shall file a written protest in the office of the Abilene City Clerk before the expiration of such 30 day period.

**SECTION 3.** That the City Clerk certify a copy of this order to the Dickinson County Register of Deeds and the Dickinson County Clerk for appropriate action pursuant to K.S.A 14-423.

**PASSED AND ADOPTED** this 22<sup>nd</sup> day of June, 2015.



*Penny Soukup, CMC*  
**PENNY SOUKUP  
CITY CLERK, CMC**

*Dennis P. Weishaar*  
**DENNIS P. WEISHAAR  
MAYOR**

**EXHIBIT A**

**Legal Description**

**S. Elm Street Vacation**

**June 22, 2015**

# DESCRIPTION EXHIBIT

S 89°50'05" W 27.00'

POINT OF BEGINNING  
NE COR, BLOCK 6,  
ORIGINAL TOWN OF ABILENE  
FND 1/2" BAR

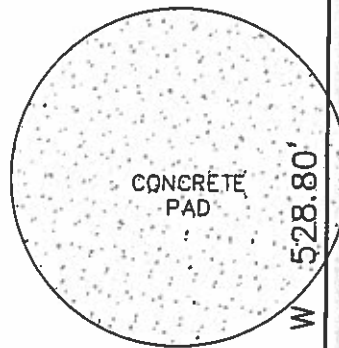
SOUTH  
RIGHT-OF-WAY LINE,  
FIRST STREET



SCALE: 1" = 60'

DESCRIBED  
AREA

BLOCK 6



CONCRETE  
PAD

528.80'

528.86'

ELM STREET R/W  
(80' PUBLIC R/W)

S 00°01'05" W

N 00°01'05" E

40' PLATTED  
R/W

WEST RIGHT-OF-WAY LINE,  
ELM STREET

N 89°57'19" E 27.00'

NE COR,  
LOT 16, BLOCK 7  
ORIGINAL TOWN OF ABILENE

2319 NORTH JACKSON | P.O. BOX 1304  
JUNCTION CITY, KANSAS 66441  
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**KAW VALLEY ENGINEERING**

1 OF 2

JUNE 4, 2015

7187EXBH\_RW\_ESMT

# DESCRIPTION EXHIBIT

## PROPERTY DESCRIPTION:

THAT PORTION OF ELM STREET RIGHT-OF-WAY AS PLATTED IN THE PLAT OF THE TOWN OF ABILENE, COUNTY OF DICKINSON, STATE OF KANSAS, BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF BLOCK 6 OF SAID PLAT OF THE TOWN OF ABILENE; THENCE WITH AN ASSUMED BEARING ON THE WEST RIGHT-OF-WAY LINE OF SAID ELM STREET, S 00°01'05" W 528.80 FEET TO THE NORTHEAST CORNER OF LOT 16 BLOCK 7 OF SAID PLAT OF THE TOWN OF ABILENE; THENCE N 89°57'19" E 27.00 FEET; THENCE PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE, N 00°01'05" E 528.86 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF FIRST STREET; THENCE ON SAID SOUTH RIGHT-OF-WAY LINE, S 89°50'05" W 27.00 FEET TO THE POINT OF BEGINNING. CONTAINS 14,278.29 SF, 0.33 ACRES MORE OR LESS.

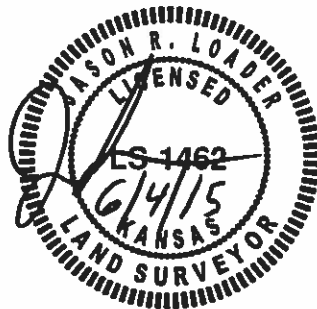
END OF DESCRIPTION

## BASIS OF BEARINGS:

BEARINGS ARE BASED ON WEST LINE OF SECTION 21-13-2. SOUTH 00°01'52" WEST.

## SURVEYOR'S NOTES:

1. BEARINGS, DISTANCES, MONUMENTS, AND UTILITIES SHOWN ARE PER ALTA/ACSM LAND TITLE SURVEY PERFORMED BY POWELL AND ASSOCIATES, LLC, WITH JOB NO. P10-394, DATED MARCH 1, 2011.



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**EXHIBIT B**

**Land Use Agreement and Easement**

**S. Elm Street**

**June 22, 2015**

## **LAND USE AGREEMENT AND EASEMENT**

**THIS LAND USE AGREEMENT AND EASEMENT** is made by and between the City of Abilene, Kansas ("City") and Flint Hills Grain, LLC ("FHG").

**WHEREAS**, in 2015 FHG constructed certain improvements consisting of a grain bin and related grain handling and storage facilities pursuant to a valid building permit issued by the City; and

**WHEREAS**, FHG and the City agree that a portion of the grain bin encroaches 6.7 feet on the City's right-of-way on the west side of South Elm Street located in the City; and

**WHEREAS**, FHG and the City have determined that it is necessary and expedient to the City that such encroachment and front yard set-back encroachment of an additional twenty feet (20') be resolved by vacation of a portion of the adjoining right-of-way of South Elm Street, subject to the parties entering into this Agreement and Easement setting forth the respective rights and obligations of the parties relative to that vacated land.

**NOW, THEREFORE**, the parties hereto agree as follows:

1. The City has or will vacate certain land consisting of a portion of South Elm Street located in the City, and described as follows:

**THAT PORTION OF ELM STREET RIGHT-OF-WAY AS PLATTED IN THE PLAT OF THE TOWN OF ABILENE, COUNTY OF DICKINSON, STATE OF KANSAS, BEING DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE NORTHEAST CORNER OF BLOCK 6 OF SAID PLAT OF THE TOWN OF ABILENE; THENCE WITH AN ASSUMED BEARING ON THE WEST RIGHT-OF-WAY LINE OF SAID ELM STREET, S 00°01'05" W 528.80 FEET TO THE NORTHEAST CORNER OF LOT 16 BLOCK 7 OF SAID PLAT OF THE TOWN OF ABILENE; THENCE N 89°57'19" E 27.00 FEET; THENCE PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE, N 00°01'05" E 528.86 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF FIRST STREET; THENCE ON SAID SOUTH RIGHT-OF-WAY LINE, S 89°50'05" W 27.00 FEET TO THE POINT OF BEGINNING. CONTAINS 14,278.29 SF, 0.33 ACRES MORE OR LESS.**

as more particularly described in the plat of survey attached, hereinafter referred to as the "Land".

2. FHG grants to the City a perpetual easement over the east twenty feet (20') of the Land for right-of-way (the "Easement Area"), including the right of the City, its officers, employees, contractors and consultants to use, inspect, repair and maintain any part of the Easement Area; for fire, police, ambulance and other emergency services, as well as the public to traverse the portion of the Easement Area used for public street as the same presently exists or may exist in the future by motorized vehicle or otherwise; and for public utilities, including but not limited to those owned and operated by the City, to use, locate, inspect, repair, remove and replace utility lines, pipes, cable and poles and related equipment for public utility purposes.

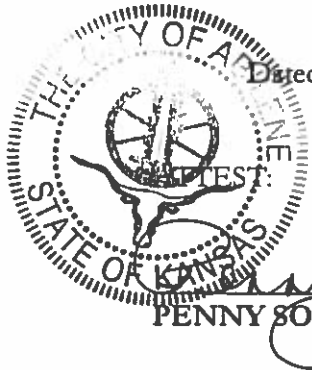
3. In the event that FHG or the City desire to repair, maintain, improve or replace any part of the street, curb and/or gutter located on the Easement Area, the parties shall confer regarding such work and the terms and conditions to apply to any such work, including the share of the cost of the same to be paid by each party. FHG shall not perform any repair, maintenance, improvement or replacement of any part of the street, curb and/or gutter on the Easement Area without prior approval by the City. FHG will not install any underground facilities on the Easement Area without prior approval by the City. FHG shall not construct any improvements on the Easement Area without a valid building permit issued by the City, when applicable, and will not otherwise build or place any improvements on the Easement Area, nor otherwise use the Easement Area, in any manner that would materially interfere with the use of the Easement Area for the purposes for which this easement is granted.
4. It is the intent of the parties that concurrent with the approval and execution of this Agreement, the City shall adopt an ordinance pursuant to K.S.A. § 14-423 vacating the Land. This Agreement shall become effective thirty (30) days after publication of that ordinance unless a protest is made pursuant to K.S.A. § 14-423 prior to the expiration of that time; and in that event this Agreement shall become effective following hearing duly held, adoption of a resolution confirming the vacation ordinance and filing of the same with the Dickinson County, Kansas Clerk and Register of Deeds, all in accordance with applicable law.
5. The City agrees to indemnify and hold FHG harmless from and against any and all liability for personal injury or property damage when such injury or damage shall occur from activities on the Easement Area resulting from use by the City, its employees, contractors, consultants, agents, business invitees and licensees, and which is not the result of, or arise out of, or be attributable to use by FHG to the extent that such injury or damage was caused by FHG, its officers, employees, contractors, consultants, business invitees and licensees.
6. FHG agrees to indemnify and hold the City harmless from and against any and all liability for personal injury or property damage when such injury or damage shall occur from activities on the Land resulting from use thereof by FHG, its officers, employees, contractors, consultants, business invitees and licensees, and which is not the result of, or arise out of, or be attributable to use by the City to the extent that such injury or damage was caused by the City, its officers, employees, contractors, consultants, business invitees and licensees.
7. This Agreement shall be binding on the parties, their successors and assigns. It is permanent and perpetual, and may be modified or terminated only on the written agreement executed by the parties and making reference to this Agreement. Either party may cause this Agreement to be recorded in the office of the Register of Deeds of Dickinson County, Kansas so that the easement granted herein shall run with the Land.

**IN WITNESS WHEREOF**, the parties have executed this agreement on the date below.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

"CITY"

CITY OF ABILENE, KANSAS



Dated: June 22, 2015

By: Dennis Waishaar  
DENNIS WAISHAAR, Mayor

Penny Soukup  
PENNY SOUKUP, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS )  
COUNTY OF Dickinson ) SS:

BE IT REMEMBERED, that on this 22<sup>nd</sup> day of June, 2015, before me, the undersigned, a notary public in and for the county and state aforesaid, came **Dennis Waishaar, Mayor, and Penny Soukup, City Clerk**, of the **City of Abilene, Kansas**, who are personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Shayla L. Mohr  
NOTARY PUBLIC





“FHG”

FLINT HILLS GRAIN, LLC

Dated: June 24, 2015

By: [Signature]  
Printed Name: KEVIN L. WEDEKING  
Title: VP, Treasurer

ACKNOWLEDGMENT

STATE OF ~~KANSAS~~ Nebraska )  
 ) SS:  
COUNTY OF Douglas )

BE IT REMEMBERED, that on this 24<sup>th</sup> day of June, 2015, before me, the undersigned, a notary public in and for the county and state aforesaid, came Kevin L. Wedeking, Vice President, Treasurer of Flint Hills Grain, LLC, who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.



NOTARY PUBLIC

[Signature]  
Douglas County NE  
6/24/15