

**RESOLUTION NO. 092616-1**

**A RESOLUTION APPROVING A LICENSE AGREEMENT WITH FLINT HILLS GRAIN, LLC  
GRANTING USE OF THE S. ELM STREET PUBLIC RIGHT-OF-WAY**

**WHEREAS**, the City of Abilene desires to enter into a License Agreement (“Agreement”) for the use of public right-of-way with Flint Hills Grain, LLC (“Applicant”).

**NOW, THEREFORE BE IT RESOLVED**, by the City Commission of the City of Abilene, as follows:

**SECTION ONE. License Agreement.** That the Agreement with Applicant is hereby adopted as attached hereto as **Exhibit A**.

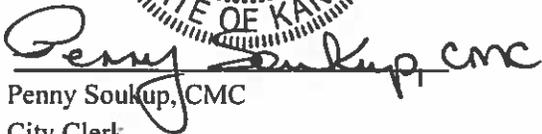
**SECTION TWO. Implementation.** The Mayor is hereby authorized to execute the aforementioned Agreement, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

**SECTION THREE. Effective Date.** That the effects of this Resolution shall be in full force after its approval by the City Commission.

**PASSED AND APPROVED** by the Governing Body of the City of Abilene, Kansas this 26<sup>th</sup> day of September, 2016.



ATTEST

  
Penny Soukup, CMC  
City Clerk

**CITY OF ABILENE, KANSAS**

By:   
Dee Marshall, Mayor

**EXHIBIT A**

**License Agreement**

**Flint Hills Grain, LLC**

## LICENSE AGREEMENT

This License Agreement is entered into this 26<sup>th</sup> day of September, 2016, by and between the City of Abilene, Kansas ("City") and Flint Hills Grain, LLC, a Delaware limited liability company ("Licensee").

### Recitals

- A. Licensee owns certain real estate ("the Property") commonly known as 109 S. Elm St., Abilene, Kansas, and legally described on Exhibit A attached hereto.
- B. The City is the holder of a public right-of-way for S. Elm Street ("Right-of-Way") adjacent to and abutting the East side of the Property.
- C. Licensee wishes, in connection with its use of the Property for grain storage, to extend its existing fall protection system attached to the structures on the Property ("the Improvements"), which Improvements will extend approximately twenty-five feet over the Right-of-Way.
- D. The City's Public Works Department has concluded that under the circumstances, allowing Licensee to maintain the Improvements in the proposed location will not interfere with the current public use of the Right-of-Way.

### THE PARTIES THEREFORE AGREE:

1. Grant of License. The City grants a license to Licensee for the construction and maintenance of the Improvements as described and depicted on the attached and incorporated Exhibit B (the "License").
2. Term of License. The License shall commence upon execution of this License Agreement and shall continue until the earlier of:
  - A. Notification of City by the Licensee of desire by Licensee to terminate the use of the Right-of-Way License. Such termination shall occur no less than one hundred eighty (180) days following such notice.
  - B. Notification of Licensee by the City that the public interest is best served by the use of the Right-of-Way in a manner in conflict with the License, and that the License shall terminate no less than one hundred eighty (180) days following such notice.
3. Responsibilities Upon Notification of Termination. If notice of termination of the License is given pursuant to paragraph 2.B, Licensee must remove that portion of the Improvements that extend over the Right-of-Way no later than the designated license termination date. If Licensee fails to remove that portion of the Improvements that extend over the Right-of-Way prior to the License termination date, the City may cause the necessary work to be performed and charge the

cost of the work against Licensee and/or assess the costs as a special assessment against the Property.

4. **No Representations.** Licensee agrees that the City has made no representations to it with respect to the Right-of-Way or its condition, and that it is not relying on any representations of the City or its agents with respect to the Right-of-Way or its condition. This License grants the licensee a license to use the Right-of-Way in its present condition, "as is," without any warranties, representations, or assurances from the City as to condition, quality, or title.

5. **Indemnification and Hold Harmless.** The Licensee shall defend, indemnify, and hold harmless the City, its agents, representatives, officers, officials, and employees from and against any and all claims, damages, losses, judgments and expenses (including but not limited to attorney fees and court costs) that may arise from or in any way relate to this Agreement or the Licensee's use of the Right-of-Way.

6. **Notices.** Any notice to either party shall be sufficient if mailed by United States mail, postage prepaid, at the following addresses:

City of Abilene, Kansas  
c/o City Clerk  
P.O. Box 519  
Abilene, KS 67410-0519

Flint Hills Grain, LLC  
c/o Scott Sorrows  
1331 Capitol Ave.  
Omaha, NE 68102

7. **Other Approvals.** Any permission granted pursuant to this License Agreement to install the Improvements shall be subject to and conditional upon approval by the railroad, where applicable.

8. **Binding Effect.** The City and Licensee agree that this Agreement shall be recorded with the Office of the Dickinson County Register of Deeds and shall be indexed to the Property. This License shall "run with the land" in relation to the Property and shall be binding upon and inure to the benefit of the Licensee, its authorized or permitted successors and assigns, and any subsequent owners of all or any portion of the Property.

{Signature page follows}

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives.

CITY OF ABILENE, KANSAS ("CITY")

FLINT HILLS GRAIN, LLC ("LICENSEE")

By: Dee Marshall  
Dee Marshall, Mayor

By: TJ  
Name: TASSO SIDERIS  
Title: PRESIDENT, FHG

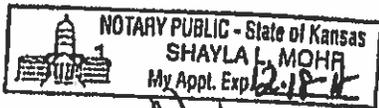
ATTEST:

By: Penny Soukup CMC  
Penny Soukup, CMC, City Clerk

STATE OF KANSAS, COUNTY OF DICKINSON, ss:

This instrument was acknowledged before me on the 26<sup>th</sup> day of September, 2016, by Dee Marshall as Mayor of the City of Abilene, Kansas, and Penny Soukup as City Clerk for the City of Abilene, Kansas.

My appointment expires: 12-18-2018

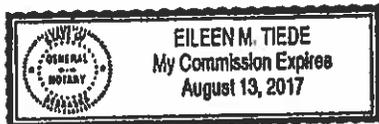


Shayla L. Mohr  
Notary Public

STATE OF Nebraska, COUNTY OF Douglas, ss:

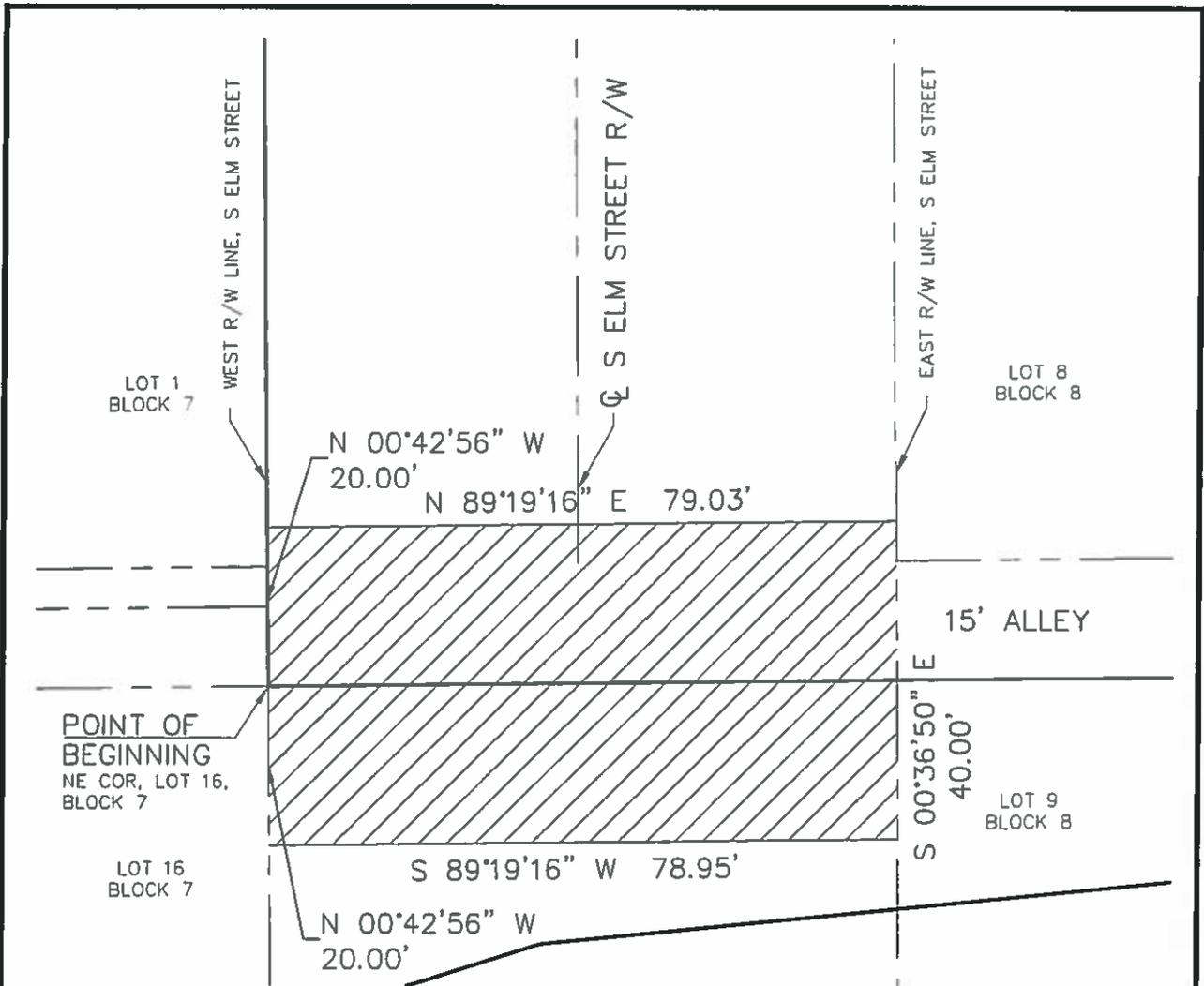
This instrument was acknowledged before me on the 6<sup>th</sup> day of ~~September~~ October, 2016 by Tasso Sideris as President FHG of Flint Hills Grain, LLC, a Delaware limited liability company.

My appointment expires:



Eileen M. Tiede  
Notary Public

**EXHIBIT A**  
**Legal Description of Property**



**DESCRIPTION:**

THAT PORTION OF PLATTED ELM STREET RIGHT-OF-WAY, BEING DESCRIBED AS FOLLOWS:  
 BEGINNING AT THE NORTHEAST CORNER OF LOT 16, BLOCK 7, ORIGINAL TOWN OF ABILENE; THENCE WITH AN ASSUMED BEARING OF N 00°42'56" W 20.00 FEET ON THE WEST RIGHT-OF-WAY LINE OF ELM STREET; THENCE N 89°19'16" E 79.03 FEET TO THE EAST RIGHT-OF-WAY LINE OF ELM STREET; THENCE ON SAID EAST RIGHT-OF-WAY LINE, S 00°36'50" E 40.00 FEET; THENCE S 89°19'16" W 78.95 FEET TO SAID WEST RIGHT-OF-WAY LINE OF ELM STREET; THENCE ON SAID WEST RIGHT-OF-WAY LINE, N 00°42'56" W 20.00 FEET TO THE POINT OF BEGINNING. CONTAINS 3,160 SQUARE FEET, 0.07 ACRE, MORE OR LESS.

END OF DESCRIPTION

**BASIS OF BEARINGS:**

THE BASIS OF BEARINGS FOR THIS EXHIBIT IS AN ASSUMED BEARING OF N 00°40'44" W ON THE WEST RIGHT-OF-WAY LINE OF S ELM STREET.



2319 NORTH JACKSON | P.O. BOX 1304  
 JUNCTION CITY, KANSAS 66441  
 PH. (785) 762-5040 | FAX (785) 762-7744  
 jckveng.com | www.kveng.com

**KAW VALLEY ENGINEERING**

SEPTEMBER 8, 2016  
 7187EXBJ\_RW\_ESMT

**Exhibit B**  
**Depiction and Description of Improvements**



SCR: 18761

System Description

6 91, 6 123 & 20 TOS options

AREA: EAST & WEST BARR  
ADDITIONS

- (S) USEAS
- NO NEW USER SETS
  - 7 C. W. 200
  - 30 MIN T. 200
  - GOOD ACCESS
  - COL 6" DOWN
  - 500 HOURS
  - LOCAL JOHN
  - MON UNION OF
  - LOSTRAK ONLY
  - 6000 MILE

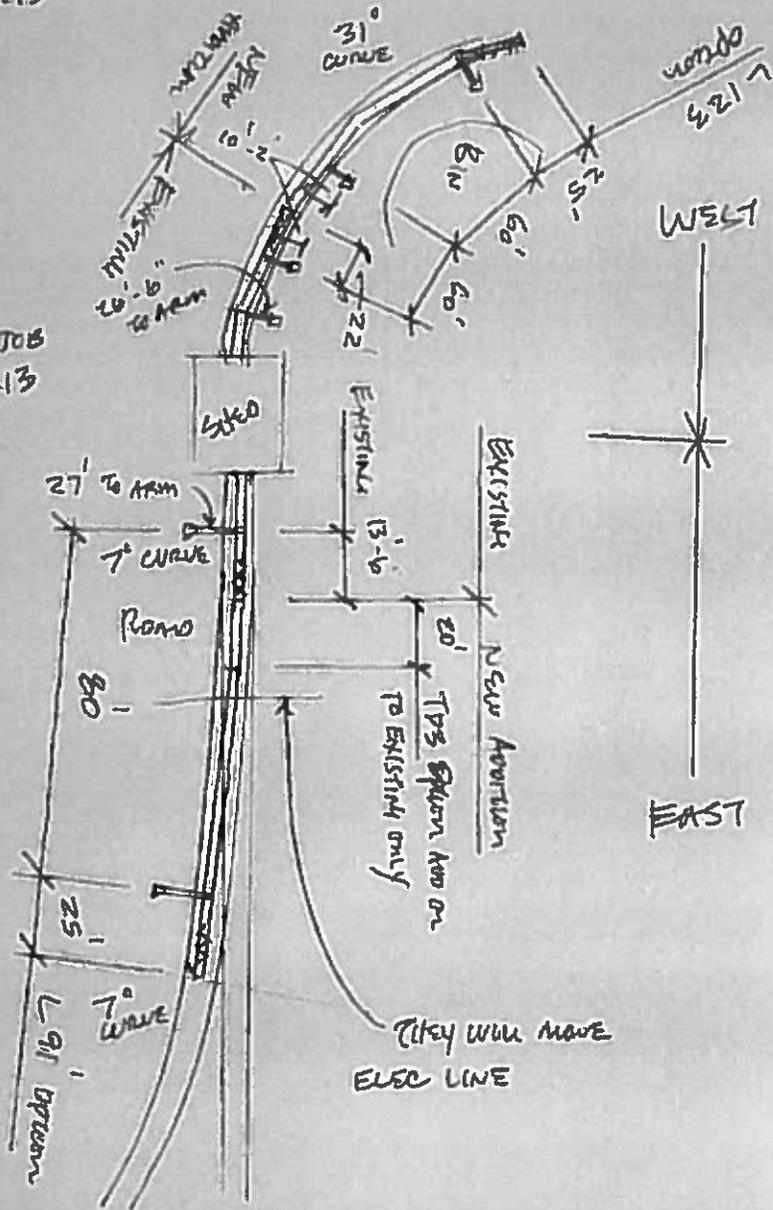
- Specialized
- Equipment required
- Access restricted
- Power line issues

- Extra safety measures required
- Customer work/traffic on site
- Significant elevation changes either direction
- Curved tracks? Mark start of curve.



Customer: 6000  
 Address: 6000 S.E. 123  
 Date: 6-29-16  
 Drawn By: GWA, S. J. L. C.

OLD JOB 28213



20' will be added to our existing rail fall protection system indicated by the red line below.





