

City of Hastings

VI-04

To: Mayor Hicks and City Councilmembers
From: Tom Montgomery
Date: May 29, 2013
Re: Approve Agreement – Smead 10th Street RR Crossing

Council Action Requested:

Council is requested to approve the enclosed agreement that would allow the City to remove Smead's railroad spur line crossing of 10th St. as part of this year's 10th St. reconstruction, while preserving Smead's right to re-install the crossing in the future if they were to resume railroad deliveries.

Background Information:

Smead Manufacturing currently does not utilize railroad deliveries as part of their Hastings operations. Their 10th St. railroad spur line crossing needs replacement. The crossing reconstruction is estimated to cost \$80,000 if completed as part of the 10th St. reconstruction project.

The enclosed agreement would allow the City to remove the crossing as part of the 10th St. reconstruction project while preserving Smead Manufacturing's rights to re-install the crossing in the future if needed. The City gains by eliminating a railroad crossing for now, and Smead Manufacturing does not incur an expense for replacing a crossing that is not currently being used, while preserving their ability to re-install the crossing in the future if needed.

Financial Impact:

As part of the 10th Street reconstruction project, the City will incur a \$2,900 cost to remove the existing crossing.

Attachments:

- Railroad Spur Line Agreement

RAILROAD SPUR LINE AGREEMENT

This Agreement is made this _____ day of June, 2013, by and between The Smead Manufacturing Company, a Minnesota Corporation, having an address of 600 10th Street East, Hastings, Minnesota, 55033-2221 and the City of Hastings, a Minnesota Municipal Corporation, having an address of 101 East 4th Street, Hastings, Minnesota 55033-1944.

RECITALS

WHEREAS, The Smead Manufacturing Company (“Smead Manufacturing”) operates a manufacturing business from improved real property located generally at 600 10th Street East in the City of Hastings, Dakota County, Minnesota, described in part on the attached Exhibit A, and including the parcels identified as Dakota County Parcel Identification Nos.: 19-31900-03-101, 19-31900-02-150 and 19-31900-05-160 (the “Smead Property”).

WHEREAS, the Smead Property lies to the north and to the south of 10th Street East (“10th Street”), a public right-of-way regulated and maintained by the City of Hastings (the “City”).

WHEREAS, there currently exists a railroad spur line servicing the Smead Property originating and connecting to the existing and active Chicago, Milwaukee, St. Paul and Pacific Railroad Line and right-of-way lying westerly of that portion of the Smead Property situated north of 10th Street, and from there crossing 10th Street and continuing southerly onto that portion of the Smead Property situated south of 10th Street and there terminating (the “Smead Spur Line”) all as depicted on the attached Exhibit B.

WHEREAS, Smead Manufacturing has discontinued use of the Smead Spur Line but desires to retain the right to reinstate such use in the future.

WHEREAS, As part of its 2013 Public Road Improvement Projects, the City will undertake reconstruction and resurfacing of that portion of 10th Street lying between the northern and

southern parcels of the Smead Property and including the area where the Smead Spur Line crosses 10th Street.

WHEREAS, To avoid increased costs of improving the currently unused Smead Spur Line where it crosses 10th Street, Smead Manufacturing and the City desire to remove the existing Smead Spur Line crossing of 10th Street, provided that Smead Manufacturing would retain the right, subject to certain conditions, to reinstall a new railroad spur in the same location across 10th Street if Smead Manufacturing, its successor or assigns would desire to resume rail deliveries at sometime in the future.

WHEREAS, Smead Manufacturing and the entity having control over the railway line and right-of-way to which the Smead Spur Line connects, Soo Line Railroad Company, a Minnesota Corporation and a wholly owned subsidiary of Canadian Pacific Railway (“CP Rail”), may enter into a separate agreement establishing the terms by which a new spur line crossing may be reinstalled in the future if Smead Manufacturing desires to resume rail deliveries.

WHEREAS, Smead Manufacturing and the City desire to enter into an agreement establishing the terms and conditions by which the Smead Spur Line crossing of 10th Street shall be removed with Smead Manufacturing retaining the right to reinstall the spur line crossing in the future.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Recitals Incorporated.** The foregoing recitals are incorporated herein to the same extent as if they were repeated here.
2. **Condition Precedent.** All obligations of Smead Manufacturing and the City to perform hereunder are conditioned upon the City obtaining all necessary approvals and funding to undertake the 2013 City of Hastings Public Road Improvement Project which includes the reconstruction and resurfacing of 10th Street.
3. **Removal of Spur Line Crossing.** As part of the reconstruction of 10th Street, the City shall, at the City’s expense, undertake to remove that portion of the Smead Rail Spur where it crosses the 10th Street right-of-way. The City shall causes its contractors and agents to work cooperatively with CP Rail and Smead Manufacturing to ensure the removal and termination of the spur line and track are completed in a manner consistent with all federal, state and local guidelines and regulations for such work. All costs associated with removing the spur line crossing and installing necessary components for the railway line and track termination shall be paid by the City.
4. **Grant of License.** Smead Manufacturing hereby grants to the City, its contractors, employees and agents, a temporary license to enter onto those portions of the Smead Property and the Smead Spur Line as reasonably necessary for the City to remove the Smead Spur Line crossing of 10th Street and to install all necessary components to terminate the spur line rail and track. The license granted to the City hereunder shall terminate on November 1, 2013. Any portions of the Smead Property disturbed to complete the work contemplated by this Agreement

shall be restored by the City, at its cost, utilizing best practices applicable to similar public road improvement projects undertaken by the City.

5. **Future Installation of Spur Line.** If Smead Manufacturing, its successors or assigns as to the Smead Property desire to reinstall a railroad spur line crossing of 10th Street, that party shall first notify the City, in writing, of its intent no less than 60 days prior to the date it intends to commence construction. The City shall require application for and issuance of a right-of-way permit for work within the 10th Street right-of-way and payment of any associated permit fees. Smead Manufacturing or its successors or assigns, as the case may be, shall be required to pay all costs associated with the installation and construction of the new railroad spur line crossing which shall include, but not be limited to, all costs of labor and materials, required safety and traffic control devices, temporary traffic control during construction, railroad related charges and fees payable to CP Rail or any other railroad entity, and the costs of all work necessary to restore the 10th Street right-of-way to the condition that exists prior to commencement of that work. All work on the new railroad spur line and the 10th Street right-of-way shall be undertaken by qualified contractors in a good and workmanlike manner and subject to the design, engineering, and construction approval by the Hastings City Engineer.

6. **Maintenance.** Upon installation of a new railroad spur line crossing of 10th Street, Smead Manufacturing shall be responsible for all costs associated with maintenance, repair and replacement of the spur line track and components, the pavement surface within the crossing area, any required traffic control devices, and any required spur line switch devices. The City shall be responsible for all other maintenance of the 10th Street right-of-way.

7. **Indemnification.** City shall indemnify and hold harmless Smead Manufacturing, its successors, assigns, agents and contractors (collectively the “Smead Indemnified Parties”) from any damages, claims, or causes of action that may arise from or in connection with (i) City’s performance of all work on the Smead Property associated with removal of the Smead Spur Line crossing of 10th Street, (ii) any act, omission or negligence of the City, its officers, agents, employees or contractors, (iii) any breach or default by the City in the full and prompt performance of its obligations under this Agreement, and (iv) all costs, expenses and liabilities incurred in connection with each such claim, action or proceeding brought pursuant to this section, including without limitation, all attorney fees and expense (collectively the “Smead Indemnified Claims”). Smead Manufacturing shall indemnify and hold harmless the City, its public officials, employees, agents and contractors (collectively the “City Indemnified Parties”) from any damages, claims, or causes of action that may arise from or in connection with (i) Smead Manufacturing’s performance of all work undertaken by Smead Manufacturing, its employees, contractors or agents while on property owned by the City or public right-of-ways for the purpose of reinstalling a new railroad spur line crossing of 10th Street, (ii) any act, omission or negligence of Smead Manufacturing, its officers, agents, employees or contractors, (iii) any breach or default by Smead Manufacturing in the full and prompt performance of its obligations under this Agreement, and (iv) all costs, expenses and liabilities incurred in connection with each such claim, action or proceeding brought pursuant to this section, including without limitation, all attorney fees and expenses (collectively the “City Indemnified Claims”). In case any action or proceeding is brought against the Smead Indemnified Parties by reason of any Smead Indemnified Claims, the City, upon notice from Smead Manufacturing, shall defend

Dated: June _____, 2013

CITY OF HASTINGS,
a Minnesota Municipal Corporation

By: Paul Hicks
Its Mayor

By: Julie A. Flaten
Its Assistant City Administrator/City Clerk

ACKNOWLEDGMENT

STATE OF MINNESOTA)
)ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of June, 2013, by Paul J. Hicks and Julie A. Flaten, the Mayor and Assistant City Administrator/City Clerk of the City of Hastings, a Minnesota Municipal Corporation.

Notary Public

THIS INSTRUMENT DRAFTED BY:
FLUEGEL LAW FIRM P.A.
999 Westview Drive, Suite #1
Hastings, MN 55033
651-438-9777
(DAN/ksk)

**EXHIBIT A
LEGAL DESCRIPTION**

The following described land situated in the County of Dakota, State of Minnesota:

Lots Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), and Fifteen (15), in Block B; and

Lots Six (6), Seven (7), Eight (8), Nine (9), and Ten (10), in Block C, except the south 55 feet of Lot 10 lying west of the Chicago, Milwaukee, St. Paul and Pacific Railroad right-of-way; and

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), and Sixteen (16), in Block E, except that portion lying within the Chicago, Milwaukee, St. Paul and Pacific Railroad right-of-way;

All in Hancock and Russell's Subdivision, according to the plat thereof on file and of record in the Office of the Register of Deeds in and for said County;

And including those portions of Lea Street and Bass Street lying adjacent thereto and accruing thereto by reason of vacation.

EXHIBIT B
DIAGRAM OF RAIL SPUR CROSSING



Crossing Location

Crossing Detail

