



City of Grand Forks Staff Report



Committee of the Whole – November 28, 2016
City Council – December 5, 2016

Agenda Item: Second Amendment to existing Encroachment Agreement with Magellan Pipeline Company for Project #7143 – Reconstruction of South Columbia Road from 40th Ave S to 47th Ave S

Submitted by: Engineering Department, Mark S. Walker, PE (Assistant City Engineer)
Mike Yavarow, PE (Principal Engineer)

Staff Recommended Action: **Approve Second Amendment to Encroachment Agreement with Magellan Pipeline Company**

Committee Recommended Action:

Refer to City Council with the recommendation to approve.

Council Action:

BACKGROUND:

Magellan Pipeline Company owns and operates a 6 inch refined fuel pipeline that passes from the south end of the City to the north end of the City. The pipeline is located in a private easement owned by Magellan which was obtained from the land owner when the pipeline was originally installed. A portion of this pipeline parallels Columbia Road from northward of 40th Avenue to southward of 47th Avenue S and crosses under Columbia Road near 40th Avenue. Since a portion of the proposed project to reconstruct Columbia Road from 40th to 47th Avenue encroaches into Magellan's easement, the City is obligated to obtain Magellan's approval to construct the portion of the project within their easement. The purpose of this Second Amendment is to obtain that approval.

In 1999, the City entered into an Encroachment Agreement with Williams Pipe Line Company who is now Magellan Pipeline Company. This Agreement detailed that Magellan was to relocate/lower their pipeline as necessary to allow the City to construct the Southend Drainway and to facilitate the future reconstruction of Columbia Road from 40th to 47th Avenue South. The City was responsible for reimbursement of Magellan's cost to relocate/lower their pipeline.

The Agreement was amended (First Amendment) in 2014 for the reconstruction of Columbia Road from 36th to 40th Ave South. The original 1999 Agreement was based on the width of Columbia Road to be 64 feet wide however during the design of Columbia Road, a median was added which increased the width of Columbia Road to 84 feet wide. This change necessitated the need for the First Amendment.

Similarly, the project to reconstruct Columbia Road from 40th to 47th Avenue S in 2017 is proposing a wider roadway section than was considered in the 1999 Agreement. The purpose of this Second Amendment is to permit that change as well as incorporating Magellan's updated General Encroachment Requirements and Insurance Coverage Requirements which the contractor will be required to comply with.

This project has been considered at a number of previous Council/Committee/Public meetings, some of which are as follows:

- This project has been programmed for several years and has been included on the NDDOT's listing for projects eligible for Federal Highway Urban Funding
- August 4, 2014 – Council approved an Agreement with CPS for Preliminary Engineering Services in the amount of \$227,009.55
- August 25, 2015 – A project update was provided to the Service/Safety Committee
- August 27, 2015 – A public input meeting for this project was held at Choice Health and Fitness Center where the public was invited to provide input into the project design
- November 24, 2015 – A project update was provided to the Service/Safety Committee
- December 21, 2015 – Council approved an amendment to the Agreement with CPS for Design Engineering Services in the amount of \$385,544.00
- December 21, 2015 – Council approved a Documented CATEX Document, concurred with the project concepts as proposed, and selected Alternative B – Construct Four-Lane Roadway
- September 6, 2016 – Council approved the project plans and specifications.
- September 19, 2016 – Council approved the Cost Participation, Construction and Maintenance Agreement

ANALYSIS AND FINDINGS OF FACT:

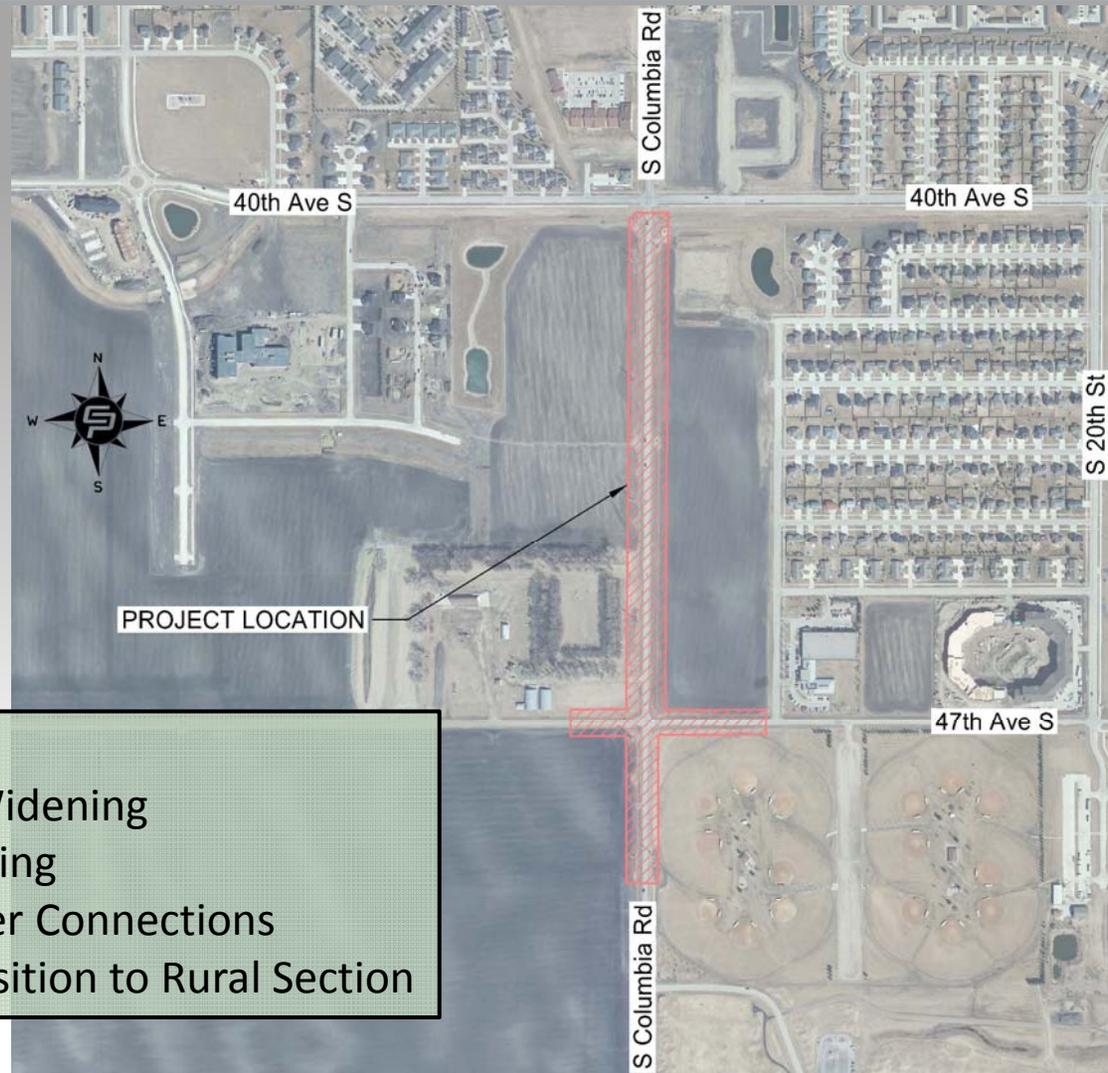
- The project is scheduled to be bid on December 9, 2016 at the NDDOT bid letting.
- It is expected that this project will again be placed on upcoming Committee of the Whole agenda on December 12, 2016 for award of bids and to approve a Construction Engineering Agreement.
- Construction is scheduled to take place during the 2017 construction season.
- Due to the minimal width of the existing roadway, it will not be possible to maintain traffic through the project during construction; therefore, the roadway will need to be closed during construction and traffic will need to be detoured.
- The intersection of 47th Avenue South and Columbia Road is specified to be constructed and opened to traffic in a 30 day construction window.
- The entire roadway is specified to be complete and open to traffic by the end of September, 2017.

SUPPORT MATERIALS:

- Project Location Map (1 page)
- Pertinent pages of Second Amendment to Encroachment Agreement (3 pages)



Project Location & Project Scope



Project Scope

- Roadway Widening
- Street Lighting
- Storm Sewer Connections
- Urban Transition to Rural Section

(Drafted by & when filed return to: Magellan Pipeline Company, L.P., P. O. Box 22186, MD OTC-8 (S. Guthrie), Tulsa, Oklahoma 74121-2186, 918/574-7350.)

SECOND AMENDMENT TO ENCROACHMENT AGREEMENT

This *Second Amendment To Encroachment Agreement* ("**Second Amendment**") is made and entered into by and between Magellan Pipeline Company, L.P., a Delaware limited partnership, whose address is P.O. Box 22186, Tulsa, Oklahoma, 74121-2186, (hereinafter called "**Magellan**"), and City of Grand Forks, North Dakota, whose mailing address is PO Box 5200, Grand Forks, North Dakota 58206-5200, its successors, assigns, and grantees (hereinafter called "**City**").

WITNESSETH:

WHEREAS, **City** represents and warrants that **City** owns or has the right to construct on all the certain land (hereinafter "**City's Land**"), described on attached **Exhibit "A"** and made a part hereof; and,

WHEREAS, **Magellan** is the owner of certain pipelines, pipeline facilities and appurtenances (hereinafter referred to as the "**Magellan Facilities**") located on **City's Land**; and,

WHEREAS, Williams Pipe Line Company, **Magellan's** predecessor in title, and **City** entered into an Encroachment Agreement effective as of October 19, 1999 and recorded on October 3, 2014 with a document number of 746972 (the "**Encroachment Agreement**"), as amended by an Amendment to Encroachment Agreement effective as of February 6, 2015, and recorded on February 10, 2015 with a document number of 750404 (the "**First Amendment**"), provided for certain specified encroachments within now **Magellan's Easement Tract**, as defined therein; and,

WHEREAS, **Magellan** has revised and updated its General Encroachment Requirements as set forth in attached **Exhibit "B"**; and;

WHEREAS, **Magellan** has revised and updated its Insurance Coverage Requirements as set forth in attached **Exhibit "C"**; and;

WHEREAS, **City** has revised and updated the project plans for the reconstruction of South Columbia Road from 40th Avenue South to 47th Avenue South (NHU-6-986(116)120, PCN 20734) and known as City Project No. 7143, and as described in attached **Exhibit "D"**;

NOW, THEREFORE, in consideration of the covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **Magellan and City**, subject to all of the terms and provisions of the **Encroachment Agreement**, except as amended by this **Second Amendment**, hereby consent to the revised and updated Magellan General Encroachment Requirements, Insurance Coverage Requirements, and the City Project Plans dated July 14, 2016. Except as amended by this **Second Amendment**, the **Encroachment Agreement**, as previously amended, is hereby ratified and remains in full force and effect. In the event of any conflict between or among this **Second Amendment** and either or both of the **Encroachment Agreement** or the **First Amendment**, this **Second Amendment** will control.

The terms and conditions of this **Second Amendment** will constitute covenants running with the land and be binding upon and inure to the benefit of the parties hereto, their successors, assigns and grantees. This **Second Amendment** may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. This **Second Amendment** shall become effective upon its complete execution by the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands on the dates expressed below.

MAGELLAN PIPELINE COMPANY, L.P.

By Its General Partner, Magellan Pipeline GP, LLC

By Its Undersigned Authorized Signatory:

By: _____

Name: _____

Title: Authorized Signatory _____

Date: _____, 2016

CITY OF GRAND FORKS NORTH DAKOTA

By: _____

Name: _____

Title: _____

Date: _____, 2016

STATE OF OKLAHOMA)
) SS
COUNTY OF TULSA)

Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this ____ day of _____, 2016 personally appeared _____, to me personally known to be the Authorized Signatory for **MAGELLAN PIPELINE GP, LLC**, a Delaware limited liability company, who being duly sworn did acknowledge to me that he/she executed the foregoing instrument on behalf of said limited liability company as the free and voluntary act and deed, for the uses, purposes and consideration therein set forth.

Witness my hand and official seal.

Notary Public

My commission expires:

STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

Before me, the undersigned, a Notary Public in and for the County aforesaid, on this ____ day of _____, 2016, personally appeared _____ to me known personally to be the _____, who being duly sworn did acknowledge to me that he/she executed the foregoing instrument on behalf of said **CITY OF GRAND FORKS** as the free and voluntary act and deed of said municipal corporation, for the uses, purposes and consideration therein set forth.

Witness my hand and official seal.

Notary Public

My Commission Expires:
