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# City of Grand Island



**Tuesday, July 12, 2016**  
**Council Session Packet**

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**City Council:**

**Linna Dee Donaldson**  
**Michelle Fitzke**  
**Chuck Haase**  
**Julie Hehnke**  
**Jeremy Jones**  
**Vaughn Minton**  
**Mitchell Nickerson**  
**Mike Paulick**  
**Roger Steele**  
**Mark Stelk**

**Mayor:**

**Jeremy L. Jensen**

**City Administrator:**

**Marlan Ferguson**

**City Clerk:**

**RaNae Edwards**

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**7:00 PM**  
**Council Chambers - City Hall**  
**100 East 1st Street**

### **Call to Order**

This is an open meeting of the Grand Island City Council. The City of Grand Island abides by the Open Meetings Act in conducting business. A copy of the Open Meetings Act is displayed in the back of this room as required by state law.

The City Council may vote to go into Closed Session on any agenda item as allowed by state law.

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**Invocation - Pastor Bill Harrold, First Christian Church, 2400 West 14th Street**

**Pledge of Allegiance**

**Roll Call**

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### **A - SUBMITTAL OF REQUESTS FOR FUTURE ITEMS**

Individuals who have appropriate items for City Council consideration should complete the Request for Future Agenda Items form located at the Information Booth. If the issue can be handled administratively without Council action, notification will be provided. If the item is scheduled for a meeting or study session, notification of the date will be given.

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### **B - RESERVE TIME TO SPEAK ON AGENDA ITEMS**

This is an opportunity for individuals wishing to provide input on any of tonight's agenda items to reserve time to speak. Please come forward, state your name and address, and the Agenda topic on which you will be speaking.



# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item C-1

### Presentation by the Nebraska State Fair

*Executive Director Joseph McDermott will give an update of the Nebraska State Fair.*

Staff Contact: Mayor Jeremy Jensen



# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item C-2

### Proclamation “Park and Recreation Month” July, 2016

*Parks and recreation programs build a healthy community as well as increase the community's economic prosperity. They are fundamental to the environmental well-being of our community. Mayor Jensen has proclaimed the month of July 2016 as "Park and Recreation Month". See attached PROCLAMATION.*

Staff Contact: Mayor Jeremy Jensen



THE OFFICE OF THE MAYOR  
City of Grand Island  
State of Nebraska

PROCLAMATION

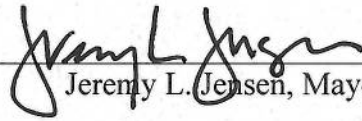
- WHEREAS, parks and recreation programs are an integral part of communities throughout this country, including Grand Island, NE; and
- WHEREAS, our parks and recreation are vitally important to establishing and maintaining the quality of life in our communities, ensuring the health of all citizens, and contributing to the economic and environmental well-being of a community and region; and
- WHEREAS, parks and recreation programs build healthy, active communities that aid in the prevention of chronic disease, provide therapeutic recreation services for those who are mentally or physically disabled, and also improve the mental and emotional health of all citizens; and
- WHEREAS, parks and recreation programs increase a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and crime reduction; and
- WHEREAS, parks and recreation areas are fundamental to the environmental well-being of our community; and
- WHEREAS, the U.S. House of Representatives has designated July as Parks and Recreation Month; and
- WHEREAS, the City of Grand Island recognizes the benefits derived from parks and recreation resources.

NOW, THEREFORE, I, Jeremy L. Jensen, Mayor of the City of Grand Island, Nebraska, do hereby proclaim July 2016 as

***"Park and Recreation Month"***

in the City of Grand Island, and encourage all citizens to use and enjoy Grand Island's parks and trails.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the City of Grand Island to be affixed this twelfth day of July in the year of our Lord Two Thousand and Sixteen.

  
\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

  
\_\_\_\_\_  
RaNae Edwards, City Clerk





# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item F-1

**#9591 - Consideration of Vacation of Drainage Easement in Vanosdall Second Subdivision (Wayne Vanosdall Sanitation Service, Inc.)**

Staff Contact: John Collins, P.E. - Public Works Director

# **Council Agenda Memo**

**From:** Terry Brown PE, Assistant Public Works Director

**Meeting:** July 12, 2016

**Subject:** Consideration of Vacation of Drainage Easement in Vanosdall Second Subdivision (Wayne Vanosdall Sanitation Service, Inc.)

**Presenter(s):** John Collins PE, Public Works Director

## **Background**

A drainage easement agreement executed by the property owner of 3100A South Locust Street and the City of Grand Island was filed with Hall County Register of Deeds on January 5, 1999, as Document No. 99-100091. This drainage easement is no longer needed with the redevelopment of such property.

## **Discussion**

The property owner, Wayne Vanosdall Sanitation Service, Inc. is requesting to vacate such dedicated drainage easement within Vanosdall Second Subdivision. There are no utilities currently within this easement that will be affected by the vacation. The attached sketch details the referenced easement to be vacated.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council pass an ordinance vacating the drainage easement located in Vansodall Second Subdivision.

## **Sample Motion**

Move to pass an ordinance vacating the easement.

ORDINANCE NO. 9591

An ordinance to vacate an existing utility easement and to provide for filing this ordinance in the office of the Register of Deeds of Hall County, Nebraska; to repeal any ordinance or parts of ordinances in conflict herewith, and to provide for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. That existing drainage easement located in Vanosdall Second Subdivision, in the City of Grand Island, Hall County, Nebraska and more particularly described as follows:

COMMENCING AT THE NORTHWEST CORNER OF LOT THREE (3), VANOSDALL SECOND SUBDIVISION, SAID POITN ALSO BEING THE POINT OF BEGINNING; THENCE ON AN ASSUMED BEARING OF N89°17'54"E, ALONG THE NORTH LINE OF SAID LOT THREE (3), A DISTANCE OF 513.16 FEET; THENCE N61°29'44"E, ALONG THE NORTHERLY LINE OF SAID LOT THREE (3), ADISTANCE OF 239.86 FEET; THENCE S17°27'00"E, ALONG THE EASTERLY LINE OF SAID LOT THREE (3), A DISTANCE OF 131.47 FEET; THENCE N89°38'58"W A DISTANCE OF 763.34 FEET TO THE POINT OF BEGINNING. SAID EASEEMNT VACATE CONTAINS A CALCUALTED AREA OF 19,071.25 SQUARE FEET OR 0.438 ACRES MORE OR LESS

is hereby vacated. Such easement to be vacated is shown and more particularly described on Easement Vacation Exhibit 1 attached hereto.

SECTION 2. The title to the property vacated by Section 1 of this ordinance shall revert to the owner or owners of the real estate upon which the easement is located.

Approved as to Form	▣ _____
July 8, 2016	▣ City Attorney

ORDINANCE NO. 9591 (Cont.)

SECTION 3. This ordinance is directed to be filed, with the drawing, in the office of the Register of Deeds of Hall County, Nebraska.

SECTION 4. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

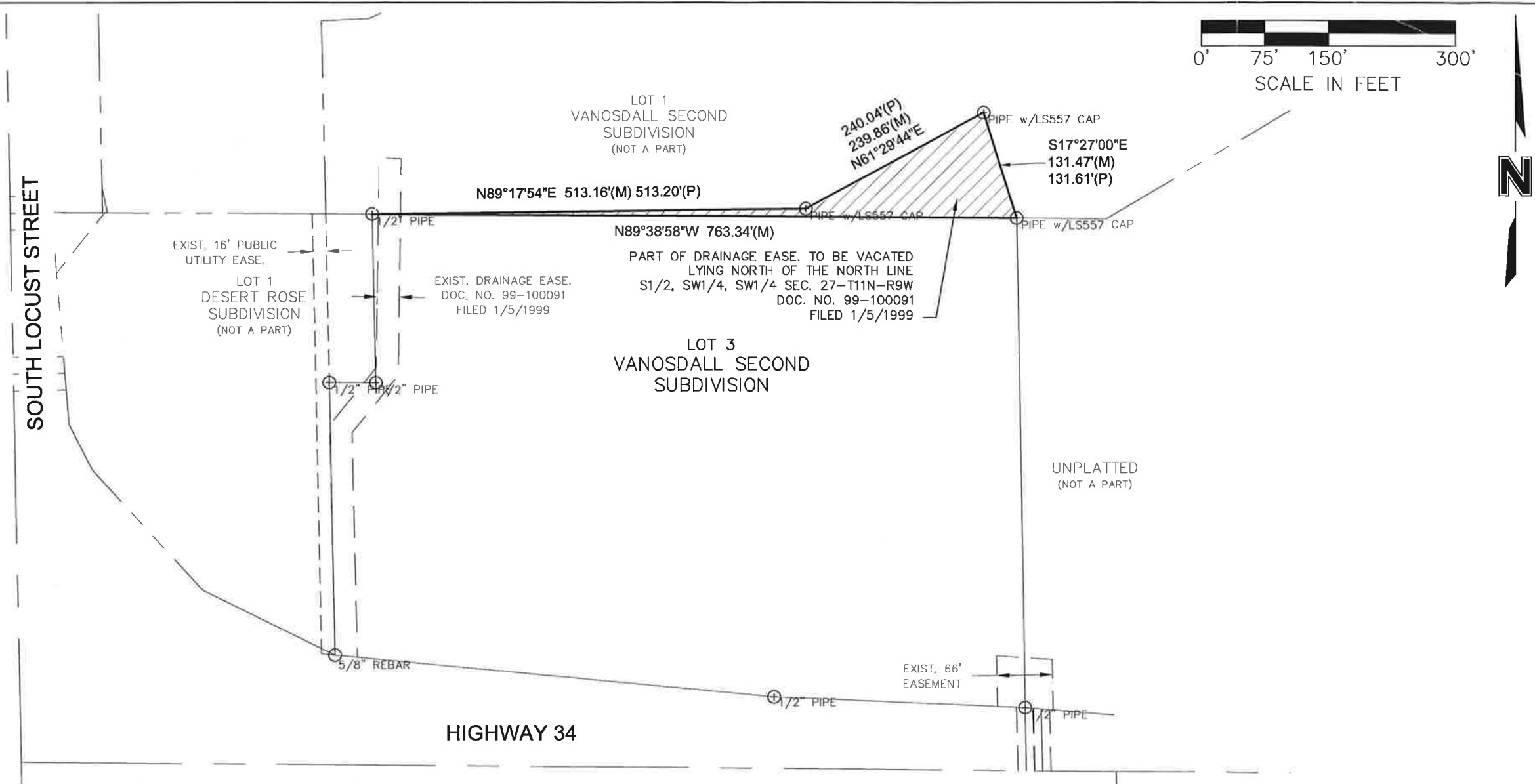
Enacted: July 12, 2016

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
Nicki Stoltenberg, Assistant to the City Administrator

DWG: F:\2016\0001-0500\016-0218\40-Design\Survey\SRV\Sheets\V\_ESM\_6021B.dwg  
DATE: Apr 20, 2016 4:01pm  
XREFS: V\_XTP0\_2016-0218  
TOPO-WLMRTSOUTH  
USER: jramirez  
BASE-WLMRTSOUTH  
BASE-UTILITIES



**VACATION OF EASEMENT DESCRIPTION**

A TRACT OF LAND LOCATED IN PART OF THE LOT 3, VANOSDALL SECOND SUBDIVISION, IN THE CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 3, VANOSDALL SECOND SUBDIVISION, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE ON AN ASSUMED BEARING OF N89°17'54"E, ALONG THE NORTH LINE OF SAID LOT 3, A DISTANCE OF 513.16 FEET; THENCE N61°29'44"E, ALONG THE NORTHERLY LINE OF SAID LOT 3, A DISTANCE OF 239.86 FEET; THENCE S17°27'00"E, ALONG THE EASTERLY LINE OF SAID LOT 3, A DISTANCE OF 131.47 FEET; THENCE N89°38'58"W A DISTANCE OF 763.34 FEET TO THE POINT OF BEGINNING. SAID EASEMENT VACATE CONTAINS A CALCULATED AREA OF 19,071.25 SQUARE FEET OR 0.438 ACRES MORE OR LESS.

PROJECT NO: 2016-0218	VACATION OF EASEMENT	 201 East 2nd Street P.O. Box 1072 Grand Island, NE 68802-1072 TEL 308.384.8750 FAX 308.384.8752	EXHIBIT  1
DRAWN BY: JMR			
DATE: 04.20.2016			



# **City of Grand Island**

**Tuesday, July 12, 2016**

**Council Session**

## **Item G-1**

**Approving Minutes of June 28, 2016 City Council Regular Meeting**

**Staff Contact: RaNae Edwards**



CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL REGULAR MEETING

June 28, 2016

Pursuant to due call and notice thereof, a Regular Meeting of the City Council of the City of Grand Island, Nebraska was conducted in the Council Chambers of City Hall, 100 East First Street, on June 28, 2016. Notice of the meeting was given in *The Grand Island Independent* on June 22, 2016.

Mayor Jeremy L. Jensen called the meeting to order at 7:00 p.m. The following City Council members were present: Mitch Nickerson, Mark Stelk, Jeremy Jones, Chuck Haase, Julie Hehnke, Linna Dee Donaldson, Vaughn Minton, Roger Steele, and Mike Paulick. Councilmember Michelle Fitzke was absent. The following City Officials were present: City Administrator Marlan Ferguson, City Clerk RaNae Edwards, Finance Director Renae Griffiths, City Attorney Jerry Janulewicz, and Public Works Director John Collins.

Mayor Jensen introduced Community Youth Council member Jackson Richling.

INVOCATION was given by Bishop Jared Noorlander, Church of Jesus Christ of Latter-day Saints, 212 West 22<sup>nd</sup> Street followed by the PLEDGE OF ALLEGIANCE.

PUBLIC HEARINGS:

Public Hearing on Request from B & R Stores, Inc. dba Super Saver 28, 710 West State Street for a Class "C" Liquor License. City Clerk RaNae Edwards reported that an application for a Class "C" Liquor License had been received from B & R Stores, Inc. dba Super Saver 28, 710 West State Street. Ms. Edwards presented the following exhibits for the record: application submitted to the Liquor Control Commission and received by the City on June 3, 2016; notice to the general public of date, time, and place of hearing published on June 18, 2016; notice to the applicant of date, time, and place of hearing mailed on June 3, 2016; along with Chapter 4 of the City Code. Staff recommended approval contingent upon final inspections and completion of a state approved alcohol server/seller training program. No public testimony was heard.

Public Hearing on Acquisition of Utility Easement - 315 N Washington Street (J & B Rentals, LLC). Public Works Director John Collins reported that acquisition of a utility easement located at 315 N. Washington Street was needed in order to access an existing sanitary sewer main between South Front Street and 3<sup>rd</sup> Street and Washington Street to Lincoln Avenue. Staff recommended approval. No public testimony was heard.

Public Hearing on Acquisition of Utility Easement - 905 S. Locust Street (Gosda Car Wash). Utilities Director Tim Luchsinger reported that acquisition of a utility easement located at 905 South Locust Street was needed in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers. This easement would be used to provide access for the placement, operation, and maintenance of the high voltage underground power

line, pad-mounted transformer and appurtenances for the Gosda Car Wash remodel and upgraded facilities. Staff recommended approval. No public testimony was heard.

Public Hearing on Redevelopment Plan for CRA Area 19 located at the Northeast Corner of US Highway 34 and South Locust Street (Talon Apartments, Inc.). Regional Planning Director Chad Nabity reported that Talon Apartments had made an offer and intended to purchase property and had submitted an application for Tax Increment Financing to aid in the construction of 288 Apartments north of U.S. Highway 34 and east of South Locust Street. Staff recommended approval. Ron Depue, 308 No. Locust Street, attorney for applicant and Bruce Schreiner, 3535 Grassridge Drive, CPA for applicant spoke in support. No further public testimony was heard.

Public Hearing on Request to Rezone Property located North of US Hwy 34 and East of South Locust Street from B2-AC – General Business with an Arterial Commercial Overlay to RD – Residential Development (Talon Apartments, Inc.). Regional Planning Director Chad Nabity reported that an application had been made by Talon Apartments to rezone property located north of U.S. Highway 34 and east of South Locust Street from B2-AC – General Business with an Arterial Commercial Overlay to RD – Residential Development. Staff recommended approval. Ron Depue, 308 No. Locust Street, attorney for applicant and Bruce Schreiner, 3535 Grassridge Drive, CPA for applicant spoke in support. No further public testimony was heard.

Public Hearing on Community Development Block Grant Consolidated Plan and Annual Action Plan Funding Allocations. Community Development Specialist Charley Falmlen reported that in September 2015 Grand Island began the process of becoming an Entitlement Community. Part of the planning process for the Community Development Block Grant (CDBG) model was the creation of a Consolidated Plan which included the Annual Action Plan. The Consolidated Plan identifies community development needs, goals, and priorities for Grand Island and contains a housing and homeless needs assessment, housing marketing analysis, and a strategic plan. The Action Plan addresses the intended use of an estimated \$348,927 in entitlement grant funds under the CDBG program. No Council action was needed. No public testimony was heard.

#### ORDINANCES:

Councilmember Donaldson moved “that the statutory rules requiring ordinances to be read by title on three different days are suspended and that ordinance numbered:

#9590 - Consideration of Request to Rezone Property located North of US Hwy 34 and East of South Locust Street from B2-AC – General Business with an Arterial Commercial Overlay to RD – Residential Development (Talon Apartments, Inc.)

be considered for passage on the same day upon reading by number only and that the City Clerk be permitted to call out the number of this ordinance on second reading and then upon final passage and call for a roll call vote on each reading and then upon final passage.” Councilmember Nickerson seconded the motion. Upon roll call vote, all voted aye. Motion adopted.

Discussion was held regarding the rezoning. Mr. Nabity stated if this was approved the applicant had 18 months to move forward on this project otherwise it would revert back to the original zoning. He explained how zoning took place and the impact to the southeast part of Grand Island. Mr. Nabity answered questions regarding the concept of walkability and access to parks. Discussion was held regarding safety concerns for children. Mr. Depue commented on the importance of providing more housing in Grand Island.

Motion by Donaldson, second by Minton to approve Ordinance #9590.

City Clerk: Ordinance #9590 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, Councilmembers Steele, Minton, Donaldson, Hehnke, Haase, Jones, Stelk, and Nickerson voted aye. Councilmember Paulick voted no. Motion adopted.

City Clerk: Ordinance #9590 on second and final reading. All those in favor of the passage of this ordinance on second and final reading, answer roll call vote. Upon roll call vote, Councilmembers Steele, Minton, Donaldson, Hehnke, Haase, Jones, Stelk, and Nickerson voted aye. Councilmember Paulick voted no. Motion adopted.

Mayor Jensen: By reason of the roll call votes on first reading and then upon second and final readings, Ordinance #9590 is declared to be lawfully adopted upon publication as required by law.

CONSENT AGENDA: Consent Agenda items G-5 and G-17 (Resolution #2016-160) were pulled for further discussion. Motion by Stelk, second by Hehnke to approve the Consent Agenda excluding items G-5 and G-17. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of June 14, 2016 City Council Regular Meeting.

Approving Minutes of June 21, 2016 City Council Study Session.

Approving Re-Appointment of Wanda Stelk to the Animal Advisory Board.

Approving Re-Appointment of Rob Czaplewski and Appointments of Tanya Hansen and Sapna Purawat to the Library Board.

Approving Appointments of Karl Kostbahn, Ron Depue, Brad Bauer, Kirk Ramsey, and Lisa Willman to the Occupation Tax Oversight Committee (Food & Beverage). Councilmember Steele questioned the legality of this committee. City Attorney Jerry Janulewicz stated it was legal and the committee would have to follow the open meeting laws.

Motion by Stelk, second by Hehnke to approve. Upon roll call vote, all voted aye. Motion adopted.

Approving Liquor Manager Designation for Jennifer Bonnell, 910 N. Hastings Avenue, Hastings, NE for Buffalo Wild Wings, 809 Allen Drive.

#2016-150 - Approving Request from Request from B & R Stores, Inc. dba Super Saver 28, 710 West State Street for a Class "C" Liquor License and Liquor Manager Designation for James Goodman, 2716 Apache Road.

#2016-151 - Approving Preliminary and Final Plat and Subdivision Agreement for Talon Apartments 1st Subdivision. It was noted that Talon Apartments, Inc., owners, had submitted the Preliminary and Final Plat and Subdivision Agreement located north of US Highway 34 and east of South Locust Street for the purpose of creating 11 lots consisting of 10.656 acres.

#2016-152 - Approving Acquisition of Utility Easement - 905 S. Locust Street (Gosda Car Wash).

#2016-153 - Approving 2016 Coal Purchase Carryover with Cloud Peak Energy.

#2016-154 - Approving Coal Transportation Contract with the Union Pacific Railroad.

#2016-155 - Approving Acquisition of Utility Easement - 315 N Washington Street (J & B Rentals, LLC).

#2016-156 - Approving Unified Planning Work Program (UPWP) for the Grand Island Area Metropolitan Planning Organization (GIAMPO) for the 2017 Fiscal Year Transportation Planning Program in an Amount of \$28,417.00.

#2016-157 - Approving Authorization for Emergency Sanitary Sewer Repairs between Sunset Avenue and Dodge Street; Oak Street to Vine Street with Myer Construction, Inc. of Broken Bow, NE in an Amount of \$37,875.00.

#2016-158 - Approving Change Order No. 2 for Hall County SID No. 2 Sanitary Sewer Improvements – 2014 with Myers Construction, Inc. of Broken Bow, NE for an Increase of \$16,880.00 and a Revised Contract Amount of \$2,244,704.75.

#2016-159 - Approving Bid Award for Building Demolition - North of Highway 2 (Between Railroad Mile Marker 98 & 99) Within the Burlington Northern Santa Fe Railroad Right-of-Way with Hooker Brothers Construction Company of Grand Island, NE in an Amount of \$32,979.60.

#2016-160 - Approving Resolution to Place Firefighter Ronald Tubbs on the Disabled Firefighter Pension List.

Motion by Haase, second by Nickerson to go into Executive Session at 8:12 p.m. Upon roll call vote, Councilmembers Steele, Minton, Hehnke, Haase, Jones, Stelk, and Nickerson voted aye. Councilmembers Paulick and Donaldson voted no. Motion adopted.

Motion by Paulick, second by Haase to returned to Regular Session at 8:44 p.m. Upon roll call vote, all voted aye. Motion adopted.

Motion by Haase, second by Nickerson to approve Resolution #2016-160. Upon roll call vote, all voted aye. Motion adopted.

#### REQUESTS AND REFERRALS:

Consideration of Community Development Block Grant Consolidated Plan and Annual Action Plan Funding Allocations. This item relates to the aforementioned Public Hearing. No Council action is required. Community Development Specialist Charley Falmlen answered questions and explained the continuum of the Care Grant.

#### RESOLUTIONS:

#2016-161 - Consideration of Redevelopment Plan for CRA Area 19 located at the Northeast Corner of US Highway 34 and South Locust Street (Talon Apartments, Inc.). This item relates to the aforementioned Public Hearing. Bruce Schreiner commented on the financing of this project. Mr. Nabity commented on the time frame of the phases for this project with regards to bonds.

Motion by Hehnke, second by Nickerson to approve Resolution #2016-161. Upon roll call vote, Councilmembers Steele, Minton, Donaldson, Hehnke, Haase, Jones, Stelk, and Nickerson voted aye. Councilmember Paulick voted no. Motion adopted.

#### PAYMENT OF CLAIMS:

Motion by Donaldson, second by Hehnke to approve the Claims for the period of June 15, 2016 through June 28, 2016 for a total amount of \$4,728,142.82. Unanimously approved.

#### SPECIAL ITEMS:

Update on Wrongful Death Claim of Dumale Bariyiga: City Attorney Jerry Janulewicz reported that on September 11, 2015, the City of Grand Island received a Tort Claim from Dumale Bariyiga due to the death of her daughter Nubari Koffree on July 18, 2015 at Island Oasis Water Park. Through mediation a settlement agreement had been reached in the amount of \$240,000.00 to be paid by the City's insurance carrier. A settlement release and consideration for the release was completed on June 16, 2016. As required by State Statutes this item was brought forward for public information. Mayor Jensen stated the settlement was in no way an admission of guilt on the part of the City of Grand Island.

ADJOURNMENT: The meeting was adjourned at 9:06 p.m.

RaNae Edwards  
City Clerk



# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item G-2

### **Approving Appointment of Dena Sullivan to the South Locust BID 2013 Board**

*Mayor Jensen has submitted the appointment of Dena Sullivan to the South Locust Street BID 2013 board. Ms. Sullivan will replace Bill Lawrey who is retiring from the board. The appointment would become effective immediately upon approval by the City Council and would expire on September 30, 2016.*

Staff Contact: Mayor Jeremy Jensen



# City of Grand Island

Tuesday, July 12, 2016

## Council Session

### Item G-3

#### **Approving Appointments of Darwin Wicht, Steve Meyer, Leon Van Winkle, Gregg Bostelman, Bob Loewenstein, Brian Fiala, and Barry Burrows to the Tree Board**

*Mayor Jensen has submitted the appointments of Darwin Wicht, Steve Meyer, Leon Van Winkle, Gregg Bostelman, Bob Loewenstein, Brian Fiala, and Barry Burrows to the Tree Board. These appointments would all become effective August 1, 2016 upon approval by the City Council. Darwin Wicht, Steve Meyer, and Leon Van Winkle's term would expire on July 31, 2019; Gregg Bostelman and Bob Loewenstein's term would expire on July 31, 2018; and Brian Fiala and Barry Burrows term would expire on July 31, 2017.*

Staff Contact: Mayor Jeremy Jensen



# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item G-4

**#2016-162 - Approving Vehicle Storage Building Construction -  
Utilities Department**

Staff Contact: Tim Luchsinger, Stacy Nonhof



# **Council Agenda Memo**

**From:** Tim Luchsinger, Utilities Director  
Stacy Nonhof, Assistant City Attorney

**Meeting:** July 12, 2016

**Subject:** Vehicle Storage Building Construction – Utilities Department

**Presenter(s):** Tim Luchsinger, Utilities Director

## **Background**

On April 28, 2015, City Council approved a contract with JEO Architects for an initial amount of \$45,000 to evaluate space requirements and develop a conceptual design and building estimate for the remodel of the Electric Service Center Building at 1116 W. N. Front Street and a new vehicle storage building to be constructed immediately north of the existing garage. The building will provide protected storage space for Electric Department service trucks which are larger than the existing garage area was designed for when the building was constructed in 1964.

It was determined by City staff to use a phased approach for this project beginning with the storage building. On December 8, 2015, City Council approved the first amendment to the contract in the amount of \$99,000 for the development of the detailed construction drawings and specifications for the new vehicle storage building. All documents were completed and issued for bids.

## **Discussion**

The following bids were received by the City on June 23, 2016 for the labor and materials to construct the new vehicle storage building. The engineer's estimate for this work is \$1,500,000.

Bidder	Bid Price	Exceptions
Rathman & Manning Corp., Chapman, NE	\$902,615.00	None
Chief Industries, Inc., Grand Island, NE	\$920,407.00	None
Lacy Construction, Grand Island, NE	\$995,000.00	None
Abat Lerew Construction, LLC, Sutton, NE	\$1,012,408.77	None

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B-D Construction, Inc., Columbus, NE	\$1,144,000.00	None
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### **Alternatives**

It appears that the Council that the following alternatives concerning the issue at hand.  
The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to a future date
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council award the bid for the Vehicle Storage Building construction to the low bidder, Rathman & Manning Corporation of Chapman, Nebraska, in the amount of \$902,615.00.

### **Sample Motion**

Move to approve the bid for the Vehicle Storage Building construction to Rathman & Manning Corporation of Chapman, Nebraska, in the amount of \$902,615.00.



Stacy Nonhof, Purchasing Agent

*Working Together for a  
Better Tomorrow, Today*

**BID OPENING**

**BID OPENING DATE:** June 23, 2016 at 2:00 p.m.  
**FOR:** Vehicle Storage Building  
**DEPARTMENT:** Utilities  
**ESTIMATE:** \$1,500,000.00  
**FUND/ACCOUNT:** 520  
**PUBLICATION DATE:** May 26, 2016  
**NO. POTENTIAL BIDDERS:** 16

**SUMMARY**

<b>Bidder:</b>	<b><u>Rathman &amp; Manning Corp.</u></b> Chapman, NE	<b><u>B-D Construction, Inc.</u></b> Columbus, NE
<b>Bid Security:</b>	Inland Insurance Co.	North American Specialty Ins. Co.
<b>Exceptions:</b>	None	None
<b>Bid Price:</b>	\$902,615.00	1,144,000.00

<b>Bidder:</b>	<b><u>Lacy Construction Company</u></b> Grand Island, NE	<b><u>Chief Industries, Inc.</u></b> Grand Island, NE
<b>Bid Security:</b>	Merchants Bonding Co.	Fidelity & Deposit Co.
<b>Exceptions:</b>	None	None
<b>Bid Price:</b>	\$995,000.00	\$920,407.00

<b>Bidder:</b>	<b><u>Abat Lerew Construction, LLC</u></b> Sutton, NE
<b>Bid Security:</b>	Allied World Specialty Ins. Co.
<b>Exceptions:</b>	None
<b>Bid Price:</b>	\$1,012,408.77

cc: Tim Luchsinger, Utilities Director  
Marlan Ferguson, City Administrator  
Stacy Nonhof, Purchasing Agent

Pat Gericke, Utilities Admin. Assist.  
Renae Griffiths, Finance Director  
Travis Burdett, Assistant Utilities Director

**P1887**

RESOLUTION 2016-162

WHEREAS, the City of Grand Island invited sealed bids for a Vehicle Storage Building according to plans and specifications on file with the Utilities Department; and

WHEREAS, on June 23, 2016, bids were received, opened and reviewed; and

WHEREAS, Rathman & Manning Corporation of Chapman, Nebraska, submitted a bid in accordance with the terms of the advertisement of bids and plans and specifications and all other statutory requirements contained therein, such bid being in the amount of \$902,615.00; and

WHEREAS, the bid of Rathman & Manning Corporation is less than the estimate for the Utilities Vehicle Storage Building.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Rathman & Manning Corporation in the amount of \$902,615.00, for the Utilities Vehicle Storage Building, is approved as the lowest responsible bid, and the Mayor is hereby authorized to sign the contract on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2016 .

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
Nicki Stoltenberg, Assistant to the City Administrator

Approved as to Form	☐ _____
July 8, 2016	☐ City Attorney



# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item G-5

**#2016-163 - Approving Amendment to the Interlocal Agreement  
with Hall County for Public Transportation Services**

Staff Contact: Jerry Janulewicz

# **Council Agenda Memo**

**From:** Jerry Janulewicz, City Attorney

**Meeting:** July 12, 2016

**Subject:** Approving Amendment to the Interlocal Agreement for Public Transit Services

**Presenter(s):** Jerry Janulewicz, City Attorney

## **Background**

Through an Interlocal Agreement between the County of Hall and the City, the City is providing public transit services within the Hall County and the City of Grand Island through a contract for services with Senior Citizens Industries, Inc. Funding for transit services within the City will be provided utilizing Federal Section 5307 Urban Transit Funds and the City's local matching obligation for Section 5307 Funds and utilizing Federal Section 5311 Rural Transit Funds ("5311 Funds") and the County's local matching obligation for Section 5311 Funds ("County Match"). Through an amendment to the Agreement, the City and County desire to formalize the provision 5311 Funds and County Match for operation of the Service.

## **Discussion**

The City's Public Transit budget for the initial twelve month term of the Agreement is estimated to be \$630,000 of which approximately 5% will be funded utilizing 5311 Funds and the County Match, which is estimated to be an amount equal to approximately 25% of the 5311 Funds received. It is anticipated that 5311 Funds will be received quarterly by County or by the City's Transit Service Provider.

The proposed amendment to the Agreement would provide that, on a quarterly basis, the County will remit and pay to the City an amount equal to the County's required Federal Section 5311 match obligation together with an amount equal to the Federal 5311 Funds received by County in the calendar quarter. Additionally, in July 2017 and each year thereafter and upon termination of the Agreement the parties shall audit the amount of Federal Section 5311 Funds received by County and the City's Transit Service Provider and County's Section 5311 and 5311 match payments to the City, will be trued-up for any over-payments made or underpayments to be corrected. The amendment was approved by the Hall County Board of Supervisors.

## **Alternatives**

The Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the resolution thereby approving the terms of the amendment.
2. Disapprove or /Deny the resolution.
3. Modify the resolution to meet the needs of the City Council.
4. Table the issue.

## **Recommendation**

City Administration recommends that the Council approve the resolution.

## **Sample Motion**

Move to approve the resolution approving the Amendment to the Interlocal Agreement for Public Transit Services.



**AMENDMENT TO THE INTERLOCAL AGREEMENT  
BY AND BETWEEN THE COUNTY OF HALL, NEBRASKA AND THE CITY OF GRAND ISLAND,  
NEBRASKA  
FOR PUBLIC TRANSPORTATION SERVICES**

Whereas, the County of Hall (“County”) and the City of Grand Island (“City”) entered into an Interlocal Agreement for Public Transit Services (the “Agreement”); and

Whereas, Public Transit Services ( “Service”) provided through the Agreement will be funded utilizing Federal Section 5307 Urban Transit Funds and City’s local matching obligation for Section 5307 Funds and utilizing Federal Section 5311 Rural Transit Funds (“5311 Funds”) and County’s local matching obligation for Section 5311 Funds (“County Match”); and

Whereas, through this amendment of the Agreement City and County desire to formalize the provision 5311 Funds and County Match for operation of the Service; and

Whereas, City’s Public Transit budget for the initial twelve month term of the Agreement is estimated to be \$630,000 of which approximately 5% will be funded utilizing 5311 Funds and the County Match, which is estimated to be an amount equal to approximately 25% of the 5311 Funds received; and

Whereas, it is anticipated that 5311 Funds will be received quarterly by County or by City’s Transit Service Provider.

Now, therefor, City and County do hereby amend the Agreement by adding the following:

24. Federal and County Match Funds; True-Up. On a quarterly basis as provided below, County shall remit and pay to City an amount equal to County’s required Federal Section 5311 match obligation together with an amount equal to the Federal 5311 Funds received by County in the calendar quarter.

<b>Q#</b>	<b>Months</b>	<b>Payment Due Date</b>
Q1	July through September	October 31
Q2	October through December	January 31
Q3	January through March	April 30
Q4	April through June	July 31

In July 2017 and each year thereafter and upon termination of the Agreement the parties shall audit the amount of Federal Section 5311 Funds received by County and City’s Transit Service Provider and County’s Section 5311 and 5311 match payments to City, and shall promptly true-up for any over-payments made or underpayments to be corrected.

Dated: \_\_\_\_\_, 2016.

**City of Grand Island, Nebraska**

By: \_\_\_\_\_  
Mayor Jeremy L. Jensen

[attest]

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to form:

\_\_\_\_\_  
Jack Zitterkopf  
Hall County Attorney

Approved as to form:

\_\_\_\_\_  
Jerom E. Janulewicz  
Grand Island City Attorney

**County of Hall, Nebraska**

By: \_\_\_\_\_  
Scott Arnold, Chairman  
Hall County Board of Supervisors

[attest]

\_\_\_\_\_  
Marla Conley, County Clerk

RESOLUTION 2016-163

WHEREAS, the County of Hall (“County”) and the City of Grand Island (“City”) entered into an Interlocal Agreement for Public Transit Services (the “Agreement”); and

WHEREAS, Public Transit Services ( “Service”) provided through the Agreement will be funded utilizing Federal Section 5307 Urban Transit Funds and City’s local matching obligation for Section 5307 Funds and utilizing Federal Section 5311 Rural Transit Funds (“5311 Funds”) and County’s local matching obligation for Section 5311 Funds (“County Match”); and

WHEREAS, through an amendment to the Agreement, City and County desire to formalize the provision 5311 Funds and County Match for operation of the Service; and

WHEREAS, City’s Public Transit budget for the initial twelve month term of the Agreement is estimated to be \$630,000 of which approximately 5% will be funded utilizing 5311 Funds and the County Match, which is estimated to be an amount equal to approximately 25% of the 5311 Funds received; and

WHEREAS, it is anticipated that 5311 Funds will be received quarterly by County or by City’s Transit Service Provider.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND that the amendment to the Interlocal Agreement for Public Transportation Services be, and the same is hereby, approved.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2016.

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Jeremy L. Jensen, Mayor

Attest:

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Nicki Stoltenberg, Assistant to the City Administrator



# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item G-6

**#2016-164 - Approving Agreement for Engineering Consulting Services Related to Lift Station No. 20 Upgrade and Force Main Rehabilitation & Abandonment of Lift Station No. 14**

Staff Contact: John Collins, P.E. - Public Works Director

# **Council Agenda Memo**

**From:** Terry Brown PE, Assistant Public Works Director

**Meeting:** July 12, 2016

**Subject:** Approving Agreement for Engineering Consulting Services Related to Lift Station No. 20 Upgrade and Force Main Rehabilitation & Abandonment of Lift Station No. 14

**Presenter(s):** John Collins PE, Public Works Director

## **Background**

April 28, 2016 the Engineering Division of the Public Works Department advertised for qualifications of professional engineering consulting services in order to upgrade Lift Station No. 20 and rehabilitate the force main, as well as abandon Lift Station No. 14. The solicitation was sent to fourteen (14) consulting firms.

## **Discussion**

Olsson Associates of Grand Island, Nebraska was the sole responder to the Request for Qualifications (RFQ). Based on the pre-approved evaluation criteria set forth in the RFQ Olsson Associates is found to be qualified to perform the requested services.

The anticipated start date of such work is July 13, 2016, with an anticipated construction completion date of September 15, 2017.

The scope of this agreement will entail project management, topographic survey, easement and right-of-way acquisition and geotechnical investigation for Lift Station No. 20 upgrade and force main rehabilitation. Design, project permitting, bid phase services, construction administration services, construction observation services, and project closeout will be handled under this agreement for Lift Station No. 20 upgrade and force main rehabilitation, as well as the abandonment of Lift Station No. 14.

Such agreement will be based on time and expense not to exceed \$299,864.00.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council approve the agreement with Olsson Associates of Grand Island, Nebraska and pass a Resolution authorizing the Mayor to sign the agreement, for a total amount of \$299,864.00.

### **Sample Motion**

Move to approve the resolution.

## LETTER AGREEMENT FOR PROFESSIONAL SERVICES

June 28, 2016

City of Grand Island  
Attn: Tara Bevard  
100 East First Street  
Grand Island, NE 68802

Re: **LETTER AGREEMENT FOR PROFESSIONAL SERVICES**  
Grand Island Lift Station No 20 and Force Main Improvements (the "Project")  
Grand Island, NE

Dear Ms. Bevard:

It is our understanding that the City of Grand Island, NE ("Client") requests Olsson Associates, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement") for the Project.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions and any exhibits attached hereto, which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide the following services ("Scope of Services") to Client for the Project: as more specifically described in "Scope of Services" attached hereto. Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

## **SCHEDULE FOR OLSSON'S SERVICES**

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date:	July 6, 2016
Anticipated Construction Completion Date:	September 15, 2017

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

## **COMPENSATION**

Client shall pay to Olsson for the performance of the Scope of Services, the actual time of personnel performing such services on an hourly cost basis times a factor of 3.085 for services rendered by our principals and employees engaged directly on the Project, and all actual reimbursable expenses in accordance with Reimbursable Expense Schedule attached to this Agreement. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

Olsson's Scope of Services will be provided on a time and expense basis not to exceed \$299,864.00.

## **TERMS AND CONDITIONS OF SERVICE**

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be Tara Bevard.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain one original for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.



**OLSSON ASSOCIATES, INC.**

By \_\_\_\_\_  
Matt Rief

By \_\_\_\_\_  
Joe Baxter

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

**CITY OF GRAND ISLAND**

By \_\_\_\_\_  
Signature

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

Attachments

General Provisions

Scope of Services

Reimbursable Expense Schedule

Resident Project Representative Duties

## GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated June 28, 2016 between City of Grand Island, Nebraska ("Client") and Olsson Associates, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

### **SECTION 1—OLSSON'S SCOPE OF SERVICES**

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

### **SECTION 2—ADDITIONAL SERVICES**

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate

schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

### **SECTION 3—CLIENT'S RESPONSIBILITIES**

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until

the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

3.11 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

#### **SECTION 4—MEANING OF TERMS**

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the

contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Construction Cost Estimate": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such

observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

## **SECTION 5—TERMINATION**

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably

incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

## **SECTION 6—DISPUTE RESOLUTION**

### **6.1. Mediation**

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

### **6.2 Arbitration or Litigation**

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

### **6.3 Certification of Merit**

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice.

## **SECTION 7—MISCELLANEOUS**

### **7.1 Reuse of Documents**

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse

by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

### **7.2 Electronic Files**

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

### **7.3 Construction Cost Estimate**

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Construction Cost Estimate provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s)

or construction costs may reasonably vary from Olsson's Construction Cost Estimate. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Construction Cost Estimate was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Construction Cost Estimate was not performed in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Construction Cost Estimate, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Construction Cost Estimate.

#### **7.4 Prevailing Wages**

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

#### **7.5 Samples**

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

#### **7.6 Standard of Care**

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

#### **7.7 Force Majeure**

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall

take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

#### **7.8 Confidentiality**

In performing this Agreement, the parties may disclose to each other written or oral non-public, confidential or proprietary information, including but not limited to, information of a business, planning, marketing or technical nature and models, tools, hardware and software, and any documents, reports, memoranda, notes, files or analyses that contain, summarize or are based upon any proprietary or confidential information (hereafter referred to as the "Information").

7.8.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.8.2 The existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.8.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.8.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.8.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.8.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.8.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.8.3.5 is received from a third party not subject to any confidentiality obligations.

7.8.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.8.5 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.8.6 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.8.7 The obligations of confidentiality set forth herein shall survive termination of this Agreement, but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

## **7.9 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination**

7.9.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.9.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.9.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.9.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all

claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.9.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.9.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.9.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

## **7.10 Controlling Law and Venue**

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

## **7.11 Subconsultants**

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

## **7.12 Assignment**

7.12.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.12.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.



7.12.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.12.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

### **7.13 Indemnity**

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

### **7.14 Limitation on Damages**

7.14.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.14.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s) or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.14.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted

by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

### **7.15 Entire Agreement**

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.

## SCOPE OF SERVICES

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated June 28, 2016 between City of Grand Island, NE ("Client") and Olsson Associates ("Olsson") providing for professional services. Olsson's Scope of Services for the Agreement is indicated below.

### PROJECT DESCRIPTION AND LOCATION

Project will be located at: Grand Island, NE

Project Description: Grand Island Lift Station No 20 and Force Main Improvements

### SCOPE OF SERVICES

Olsson shall provide the following services (Scope of Services) to Client for the Project:

#### PHASE 100: PROJECT MANAGEMENT

Olsson shall coordinate meetings and establish schedules with the Client to ensure timely Project advancement. Tasks performed under this phase of the work shall include the following:

**Task 101: Project Initiation Meeting** - Meet with the Client, conduct a site visit, and discuss project specifics and prerequisites. Specific project personnel will be identified and channels of communication will be established. Contractual matters will be addressed as required.

**Task 102: Project Design Coordination** – Day to day coordination and correspondence with parties of interest to insure timely project advancement and progress updates.

**Task 103: Meetings with Owner** – Olsson will meet with the Client to discuss the development of the plans and specifications. A total of two meetings are anticipated. The anticipated meetings are a 30% review meeting (design memorandum) and a 90% review meeting.

#### PHASE 500: TOPOGRAPHIC SURVEY

Olsson shall complete items associated with the topographic survey for the project. Task to be completed include:

**Task 501: Locate Existing Utilities** - Olsson shall contact the Diggers Hotline of Nebraska to request the location and size of any existing underground conduits or cables along the proposed projects alignment. Olsson shall have the horizontal location of the known existing utilities located in the field and incorporate this information into the project drawings as required.

**Task 502: Establish Control and Survey** – Olsson shall establish control points with known vertical and horizontal coordinates. Olsson shall perform topographic survey along the proposed improvements within the project area. Olsson shall also locate section corners and property pins to layout R.O.W. lines and to write legal descriptions and generate tract drawings for the needed permanent easements, temporary easements, and/or right-of-ways.

- Task 503: Reduce Survey & Cleanup Drawing** – From the information collected in the survey the Olsson shall produce a topographic drawing of the project area in AutoCad format.

#### **PHASE 510: EASEMENT / RIGHT-OF-WAY ACQUISITION**

Olsson shall complete items associated with the permanent and temporary easement acquisition for the installation of the new force main and the temporary easement and right-of-way for the new lift station. It is anticipated that there are four tracts with a total of two individual landowners from which easements will be required. Tasks to be completed include:

- Task 511: Easement / Right-of-Way Descriptions & Tract Drawings** – Olsson shall prepare legal descriptions and tract drawings for the permanent easements, temporary easements, and/or right-of-way required from each of the impacted tracts.
- Task 512: Title Search & Appraisals** – Olsson shall perform a title search and have an appraisal completed for each of the impacted tracts for use in the acquisition of the temporary easement, permanent easement, and/or right-of-way.
- Task 513: Easement Acquisitions** – Olsson shall assist the City in the negotiations for the acquisition of the temporary and/or permanent easements. Olsson will prepare the easement documents, present, explain offers, answer related questions, and secure signatures from interested parties. Olsson will attempt to meet with each property owner at least three times if necessary.

Olsson will perform the services in accordance with the City of Grand Island's procedures. The goal will be to acquire the necessary right of way through amicable negotiations. If condemnation is required, Olsson will deliver the parcel files to the City of Grand Island and be available for consultation or condemnation testimony.

Olsson will submit signed purchase agreements, deeds and temporary easements, along with a payment transmittal letter to the City. The City will approve all signed purchase agreements and easement documents and will make payments to each property owner and tenant, if necessary. The City will record the deeds at the County Courthouse, and provide copies of the recorded documents and payment vouchers or checks to Olsson in order to complete the acquisition file.

#### **PHASE 520: GEOTECHNICAL INVESTIGATION**

Olsson shall perform engineering services including exploratory work, laboratory and field testing, and professional guidance in tests to be made at test locations based on preliminary drawings and designs and including professional interpretations of exploratory and test data. The services will include:

- Task 521: Geotechnical Borings** – Olsson shall perform geotechnical exploratory work, such as soil borings, penetration tests, soundings, subsurface explorations, laboratory tests of soils including corrosivity testing, rock formations, and other geophysical phenomena which may be required to provide information for design, and field and laboratory tests and

analyses which are required to provide design information for the new lift station and new force main.

**Task 522: Geotechnical Report** – Olsson shall prepare a geotechnical report interpreting the data on the exploratory work. Included will be recommendations for testing and setting out the site conditions that can be anticipated from this initial exploratory work.

#### **PHASE 530 – LIFT STATION NO. 20 AND FORCE MAIN DESIGN AND LIFT STATION NO. 14 ABANDONMENT**

Olsson shall prepare a set of plans and specifications that can be used as bid and construction documents that will allow the project to be competitively bid and constructed. The tasks performed shall include:

**Task 531: Design Lift Station No. 20** – Olsson shall design the lift station improvements. These improvements will finalize the siting and sizing of the lift station, structural, mechanical, electrical design (including generator) for the lift station and building. Instrumentation & control design for the lift station which will be the first step in the City's migration away from the use of CrystalBall for lift station alarming. The improvements will also include site improvements for the lift station including access road to the lift station, possible future chemical addition, site grading, and seeding. A building to house the electrical and control equipment is included in the project design.

The impact that the potential development south of Husker Highway has on the street layout around Lift Station No. 20 will be evaluated during the lift station design so that the proposed lift station will not have a negative impact on the proposed development layout.

**Task 532: Design Lift Station No. 20 Force Main Improvements** – Olsson shall evaluate the existing force main and determine if trenchless rehabilitation of the existing force main is feasible. Olsson will evaluate the anticipated flows from the new lift station and the impact the flows have on the capacity of the existing force main. A new force main in either in conjunction with the existing force main or as a standalone force main will be evaluated. These improvements will include finalizing the alignment and size of the force main, valve locations, air release structure locations, manhole locations, and connection to the existing sanitary sewer system.

**Task 533: Design Lift Station No. 14 Abandonment** – Olsson shall design the needed site improvements for the abandonment of Lift Station No. 14. These improvements will finalize the siting and sizing of the gravity sewer lines and connection to the existing sanitary sewer system. The improvements will also include the abandonment of the existing lift station structure and the restoration of the site.

It is our understanding that Black & Veatch will perform the following modeling items for the City:

- Re-evaluate the upstream current future flows for Lift Station No. 20 based on the proposed development south of Husker Highway, the completion of the Hwy.

281 gravity sewer, and the completion of the SID #2 sanitary sewer project. The current and projected flows will be used to size the lift station pumps.

- Evaluate the capacity of the west interceptor to determine the available flow range for Lift Station No. 20 so that capacity issues in the west interceptor are not caused by the lift station flows.
- Re-evaluate the abandonment of Lift Station No. 14 and the potential downstream impacts of the lift station abandonment.

Olsson will coordinate with Black & Veatch and the modeling and the results of the modeling.

At the completion of Tasks 531, 532, and 533 a Design Memorandum will be prepared and reviewed with the City. Once approved by the City, the design memorandum will serve as the basis for the final design of the lift station, force main, and lift station abandonment.

**Task 534: Prepare Plans & Specifications** – Olsson shall prepare plan sheets, technical specifications, and front end documents for the proposed project based on the project components outlined in the approved design memorandum. The complete plans and specifications will be submitted to the Nebraska Department of Environmental Quality for review.

**Task 535: QA/QC Review** – A review of the Plans and Specifications will be conducted internally for Quality Assurance at the 30% design, 60% design, and 90% design levels.

**Task 536: Prepare Cost Opinion** - A final opinion of probable construction cost shall be prepared, based upon the information in the plans and specifications and presented to the Client.

#### **PHASE 540 – PROJECT PERMITTING**

Olsson shall work with the City on obtaining the necessary permits that will be required to construct the project. The tasks performed shall include:

**Task 541: NDOR Permits** – Olsson shall prepare the necessary NDOR permits required for the project. The anticipated permits are permits to occupy and a permit to cross NDOR right-of-way.

**Task 542: SWPPP** – Olsson shall prepare Erosion Control Documents containing the following:

- Plan Sheet(s) showing the location of BMP's.
- Details & Standard Plans of BMP's to be used.
- 3-ring binder complete with permit and supporting documents
- Fill out Notice of Intent (NOI).
  - Submittal of the NOI is the responsibility of Client.
- At the preconstruction meeting, yet to be scheduled, the needed maintenance & updating of the plan through completion and seeding will be discussed.

Client will provide to Olsson the following:

- Name, address, phone number and e-mail of the onsite foreman who will be responsible for the SWPPP and inspections during construction.

#### **Exclusions**

- Bi-weekly Stormwater Construction Site Inspection Report completion
  - The proper filling out of these reports will be covered at the preconstruction meeting.
- Completion and submittal of the Notice of Termination (NOT)
  - The proper filling out of this form will be covered at the preconstruction meeting.

No wetland delineation or U.S. Corps of Engineers Nationwide 404 permit application is anticipated being needed for the proposed improvements and no fees have been included in the agreement for this work.

#### **PHASE 600 – BID PHASE SERVICES**

Olsson shall assist the Client in bidding the project. The tasks shall include:

- Task 601: Prepare and Distribute Bid Documents** – Olsson shall arrange for preparation and distribution of bid documents to prospective bidders. Olsson shall maintain a list of current holders of bid documents.
- Task 602: Answer Bidder Inquiries** – Olsson shall answer bidder's inquiries & questions regarding the construction documents.
- Task 603: Prepare Addenda** – Olsson shall prepare and distribute addenda to the bidders that may be needed during the bid phase.
- Task 604: Attend Pre-Bid Conference** - Olsson shall attend a pre-bid conference prior to bid opening.
- Task 605: Attend Bid Opening** – Olsson shall attend bid opening to assist Client in opening bids.
- Task 606: Evaluate Bids & Recommend Award** – Olsson shall assist the City in evaluating the bids and qualifications of the bidders, and provide a Recommendation of Award to Client. Client to prepare bid tabulation.

#### **PHASE 620 – CONSTRUCTION ADMINISTRATION SERVICES**

Olsson shall assist the Owner in the Administration of the project during the construction phase of the project. Olsson shall perform the tasks listed below:

- Task 621: Organize Pre-construction Meeting** - Olsson shall organize and attend the pre-construction meeting, assist in preparing the meeting agenda, and shall prepare and distribute to all attendees (narrative style) minutes of the pre-construction meeting.
- Task 622: Review Submittal Data** - Olsson shall review the Contractor's submittal data on materials for general conformance with the intent of the design.

- Task 623: Construction Progress Meetings** - Olsson shall attend construction progress meetings, assist in preparing the meeting agenda, and shall prepare and distribute to all attendees (narrative style) minutes of the progress meetings for the project. A total of five construction progress meetings are anticipated.
- Task 624: Review Progress Payments and Change Orders** - Olsson shall review the Contractor's monthly progress payment applications for general conformance with the progress of the work and mathematical accuracy. Olsson shall review and prepare construction change order requests and present to the Client. A total of six progress payments and two change orders are anticipated.
- Task 625: Review Final Application for Payment** - Olsson shall review the Contractor's final application for payment and the accompanying documentation for compliance with the contract requirements.
- Task 626: Construction Project Management** – Day to day coordination and correspondence with parties of interest to insure timely project advancement and progress updates.
- Task 627: SCADA Integration** – Olsson SCADA integration for a 2 pump system with option for third future pump. SCADA integration to include PLC programming, HMI configuration, Alarming, Trending, and Reporting to match existing WWTP Rockwell RSView HMI system. System will not include other lift stations but will be designed to accommodate future additions.

#### **PHASE 640. CONSTRUCTION OBSERVATION SERVICES**

Olsson shall perform full time construction observation services on behalf of the Client during the construction of the project.

- Task 641: Construction Observation** - Duties and responsibilities of the Olsson's Resident Project Representative shall be as described in "Exhibit B - Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative." A representative will be on site when work of substance is being completed. A total of twenty-two weeks of full time observation at 45 hours per week is anticipated (estimated total of 990 hours).
- Task 642: Construction Materials Testing** – Olsson shall perform the materials testing for the project. The testing that is anticipated is soil compaction testing and concrete testing. Any testing on the dewatering water shall be the responsibility of the Contractor.
- Task 643: Construction Staking** – Olsson shall be responsible for the construction staking required to complete the work for the sanitary sewer lines. The level of construction staking that is to be provided will be detailed in the project specifications.

#### **PHASE 700. PROJECT CLOSE-OUT**

Olsson shall complete the following services to close out the project. These services shall include the following:





## REIMBURSABLE EXPENSE SCHEDULE

The expenses incurred by Olsson or Olsson's independent professional associates or consultants directly or indirectly in connection with the Project shall be included in periodic billing as follows:

<b><u>Classification</u></b>	<b><u>Cost</u></b>
Automobiles (Personal Vehicle)	\$0.540/mile*
Suburbans and Pick-Ups	\$0.75/mile*
Automobiles (OA Vehicle)	\$85.00/day
Other Travel or Lodging Cost	Actual Cost
Meals	Actual Cost
Printing and Duplication including Mylars and Linens	
In-House	Actual Cost
Outside	Actual Cost+10%
Postage & Shipping Charges for Project Related Materials including Express Mail and Special Delivery	Actual Cost
Film and Photo Developing	Actual Cost+10%
Telephone and Fax Transmissions	Actual Cost+10%
Miscellaneous Materials & Supplies Applicable to this Project	Actual Cost+10%
Copies of Deeds, Easements or other Project Related Documents	Actual Cost+10%
Fees for Applications or Permits	Actual Cost+10%
Sub-Consultants	Actual Cost+10%

\*Rates consistent with the IRS Mileage Rate Reimbursement Guidelines (Subject to Change).

## **DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE**

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing performance of the work of CONTRACTOR.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of CONTRACTOR; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with Contract Documents and in particular the specific limitations set forth in the Agreement as applicable.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

### **A. General**

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealing in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealing with subcontractor shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

### **B. Duties and Responsibilities of RPR**

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.
2. Conferences and Meetings: Attend meeting with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
  - a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist the ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
4. Shop Drawings and Samples:
  - a. Record date of receipt of Shop Drawings and samples.
  - b. Receive samples which are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.
  - c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.
5. Review of Work, Rejection of Defective Work, Inspections and Tests:
  - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.

- b. Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
  - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
  - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
- 6. Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
- 7. Modifications: Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings and Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
- 8. Records:
  - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
  - b. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
- 9. Reports:
  - a. Furnish ENGINEER periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
  - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
  - c. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to ENGINEER Change Orders, Work Directive Changes, and Field Orders.
  - d. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.
- 10. Payment Requests: Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.
- 11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

12. Completion:
  - a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
  - b. Conduct final inspection in the company of ENGINEER, OWNER, and CONTRACTOR and prepare a final list of items to be completed or corrected.
  - c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

**C. Limitations of Authority**

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

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Date: 6/14/2016					
Job: Lift Station No. 20, Force Main, and Lift Station No. 14 Abandonment					
Phase/ Task	Description of Work	TOTAL MAN- DAYS	TOTAL LABOR FEE	TOTAL EXPENSE FEE	TOTAL FEE
<b>Phase 100 - Project Management</b>					
101	Project Initiation Meeting	1.50	\$1,448	\$45	\$1,493
102	Project Design Coordination	8.75	\$9,020	\$25	\$9,045
103	Meetings with Owner (2 planned)	3.50	\$3,264	\$125	\$3,389
	<b>Sub-Total</b>	<b>13.75</b>	<b>\$13,732</b>	<b>\$195</b>	<b>\$13,927</b>
<b>Phase 500 - Topographic Survey</b>					
501	Locate Existing Utilities	3.63	\$2,024	\$180	\$2,204
502	Establish Control and Survey	8.50	\$4,536	\$180	\$4,716
503	Reduce Survey & Cleanup Drawing	3.88	\$2,032		\$2,032
	<b>Sub-Total</b>	<b>16.01</b>	<b>\$8,592</b>	<b>\$360</b>	<b>\$8,952</b>
<b>Phase 510 - Easement Acquisition</b>					
511	Easement and ROW Descriptions & Tract Drawings	4.94	\$2,838	\$35	\$2,873
512	Title Search & Appraisals	0.19	\$238	\$4,000	\$4,238
513	Easement Acquisitions	0.63	\$716	\$6,500	\$7,216
	<b>Sub-Total</b>	<b>5.76</b>	<b>\$3,792</b>	<b>\$10,535</b>	<b>\$14,327</b>
<b>Phase 520 - Geotechnical Investigation</b>					
521	Geotechnical Borings	0.38	\$358	\$5,200	\$5,558
522	Geotechnical Report	0.50	\$536	\$8,700	\$9,236
	<b>Sub-Total</b>	<b>0.88</b>	<b>\$894</b>	<b>\$13,900</b>	<b>\$14,794</b>
<b>Phase 530 - Lift Station No. 20 and Force Main Design and Construction</b>					
531	Design Lift Station No. 20				
0	Lift Station Design	15.00	\$12,680	\$45	\$12,725
0	Structural Design	6.88	\$6,330	\$45	\$6,375
0	Mechanical & Electrical Design	13.13	\$10,780	\$45	\$10,825
0	A&T Design	7.50	\$7,700	\$45	\$7,745
532	Design Lift Station No. 20 Force Main Improvements	15.00	\$12,860	\$25	\$12,885
533	Design Lift Station No. 14 Abandonment	5.75	\$4,668	\$25	\$4,693
534	Prepare Plans & Specifications	46.25	\$33,480	\$65	\$33,545
535	QA/QC Review	8.00	\$7,952	\$55	\$8,007
536	Prepare Cost Opinion	3.25	\$2,564	\$15	\$2,579
	<b>Sub-Total</b>	<b>120.76</b>	<b>\$99,014</b>	<b>\$365</b>	<b>\$99,379</b>
<b>Phase 540 - Project Permitting</b>					
541	NDOR Permits	0.88	\$730	\$20	\$750
542	SWPPP	3.63	\$2,926	\$50	\$2,976
	<b>Sub-Total</b>	<b>4.51</b>	<b>\$3,656</b>	<b>\$70</b>	<b>\$3,726</b>
<b>Phase 600 - Bid Phase Services</b>					
601	Prepare and Distribute Bid Documents	1.88	\$1,262	\$360	\$1,622
602	Answer Bidder Questions	3.94	\$3,796	\$15	\$3,811
603	Prepare Addenda	1.25	\$1,092	\$15	\$1,107
604	Attend Pre-Bid Conference	1.00	\$994		\$994
605	Attend Bid Opening	0.38	\$362		\$362
606	Evaluate Bids / Recommend Award	1.25	\$1,092	\$5	\$1,097
	<b>Sub-Total</b>	<b>9.70</b>	<b>\$8,598</b>	<b>\$395</b>	<b>\$8,993</b>
<b>Phase 620 - Construction Administration Services</b>					
621	Attend Pre-Construction Meeting	1.75	\$1,384	\$30	\$1,414
622	Review Submittal Data	8.00	\$7,304	\$40	\$7,344
623	Attend Construction Progress Meetings	3.75	\$3,792	\$20	\$3,812
	Review Progress Payments and Change Orders				
	Review Final Application for Payment				
626	Construction Project Management	15.50	\$13,220	\$40	\$13,260
627	SCADA Integration	18.00	\$18,140	\$600	\$18,740
	<b>Sub-Total</b>	<b>52.25</b>	<b>\$48,306</b>	<b>\$760</b>	<b>\$49,066</b>
<b>Phase 640 - Construction Observation Services</b>					
641	Construction Observation	123.75	\$64,350	\$2,830	\$67,180
642	Construction Materials Testing	6.25	\$3,000	\$400	\$3,400
643	Construction Staking	13.50	\$7,428	\$360	\$7,788
	<b>Sub-Total</b>	<b>143.50</b>	<b>\$74,778</b>	<b>\$3,590</b>	<b>\$78,368</b>
<b>Phase 660 - Contract Close Out</b>					
661	Attend Final Inspection	1.13	\$1,086	\$25	\$1,111
662	Review Contractor's Records	0.75	\$638		\$638
663	Prepare Record Drawing Package	9.00	\$6,408	\$175	\$6,583
	<b>Sub-Total</b>	<b>10.88</b>	<b>\$8,132</b>	<b>\$200</b>	<b>\$8,332</b>
	<b>GRAND TOTAL</b>	<b>378.00</b>	<b>\$269,494</b>	<b>\$30,370</b>	<b>\$299,864</b>

6/14/2016

Lift Station No. 20, Force Main, and Lift Station No. 14 Abandonment- Fees (2)

RESOLUTION 2016-164

WHEREAS, the City of Grand Island requested qualifications of professional engineering consulting services in order to upgrade Lift Station No. 20 and rehabilitate the force main, as well as abandon Lift Station No. 14; and

WHEREAS, Olsson Associates of Grand Island, Nebraska was the sole responder to the solicitation and based on the pre-approved evaluation criteria set forth in the Request for Qualifications (RFQ) is found to be qualified to perform such services; and

WHEREAS, the scope of the agreement entails project management, topographic survey, easement and right-of-way acquisition and geotechnical investigation for Lift Station No. 20 upgrade and force main rehabilitation; and

WHEREAS, design, project permitting, bid phase services, construction administration services, construction observation services, and project closeout will be handled under this agreement for Lift Station No. 20 upgrade and force main rehabilitation, as well as the abandonment of Lift Station No. 14; and

WHEREAS, the cost of such work is based on time and expense not to exceed \$299,864.00.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the agreement between the City of Grand Island and Olsson Associates of Grand Island, Nebraska for professional engineering consulting services in order to upgrade Lift Station No. 20 and rehabilitate the force main, as well as abandon Lift Station No. 14 is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2016.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
Nicki Stoltenberg, Assistant to the City Administrator

Approved as to Form	☐ _____
July 8, 2016	☐ City Attorney



# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item G-7

**#2016-165 - Approving Designation of Sole Source for CUES TV Equipment for the Collection Crew of the Wastewater Division of the Public Works Department**

Staff Contact: John Collins, P.E. - Public Works Director

# **Council Agenda Memo**

**From:** Marvin Strong PE, Wastewater Treatment Plant Engineer

**Meeting:** July 12, 2016

**Subject:** Approving Designation of Sole Source for CUES TV Equipment for the Collection Crew of the Wastewater Division of the Public Works Department

**Presenter(s):** John Collins PE, Public Works Director

## **Background**

The Collection Crew of the Wastewater Division televises sanitary sewer lines to identify structural defects and obstructions, ensure compliance with City Standards and Specifications, and aid in the maintenance and repair of sanitary sewer mains.

Currently the Division owns one (1) transporter for the televising equipment, which was recently sent in for repairs, thus halting such work.

## **Discussion**

It is recommended that an additional transporter for the sanitary sewer televising equipment be purchased to reduce the amount of down time for this activity. This will allow the City to maintain the integrity of the sanitary sewer collection system. The purchase price of an additional transporter from Municipal Pipe Toll Company, LLC of Hudson, Iowa is \$33,003.22.

The televising equipment presently owned by the City is CUES brand and is a very specialized piece of equipment that would potentially have compatibility problems if we were to try and use non-standard parts to transport the camera. The sole source letter from CUES is attached for reference. Municipal Pipe Tool Company, LLC is the vendor for our area.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date



4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council approve the purchase of an additional sanitary sewer television transporter from CUES through Municipal Pipe Tool Company, LLC of Hudson, Iowa in the total amount of \$33,003.22.

### **Sample Motion**

Move to approve the resolution.

"The Standard of the Industry"



3600 Rio Vista Avenue  
Orlando, FL 32805

Wednesday, August 27, 2014

To whom it may concern

This letter is to advise that CUES-Orlando, and Municipal Pipe Tool are the only authorized source of genuine CUES Replacement Parts and Service in the states of Iowa and Nebraska. We strongly recommend the use of genuine CUES Parts and Service due to potential compatibility problems. We have recorded instances where non-standard parts resulted in major damage to the electronic and other systems.

We appreciate your interest in CUES Equipment and look forward to being of service to you.  
CUES Sole Source Statement

CUES is the sole manufacture and supplier of OEM (**Original Equipment Manufacture**) products/parts for your existing CUES TV equipment. Due to compatibility and warranty issues CUES recommends the purchase of "Original" components and parts for your existing CUES TV unit.

CUES will not be responsible for damage resulting from the use of other manufactures components or parts that are not 100% compatible with your existing CUES TV equipment.

**The main benefits of CUES OEM purchases are:**

1. Continuation of Warranty
2. Maintain Standardization of Equipment
3. CUES has the only fully stocked parts and service facility located within the State of Florida eliminating the need for the City to stock an expensive parts inventory or being subjected to long periods of interrupted service due to lack of spare parts.
4. 100% compatibility without modifications.

Best regards,

Karen Andre

RESOLUTION 2016-165

WHEREAS, the Collection Crew of the Wastewater Division televises sanitary sewer lines to ensure compliance with City Standards and Specifications, as well as to aid in the maintenance and repair of sanitary sewer mains; and

WHEREAS, the Division currently has one (1) transporter for the televising equipment; and

WHEREAS, it is recommended that an additional transporter be purchased, at a cost of \$33,003.22, to reduce the amount of down time for this activity; and

WHEREAS, the televising equipment currently owned by the City is CUES brand and is a very specialized piece of equipment, which doesn't sanction the use of non-standard parts to transport the camera.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the purchase of one (1) additional sanitary sewer televising equipment transporter in the amount of \$33,003.22 from Municipal Pipe Tool Company, LLC of Hudson, Iowa is hereby approved.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2016.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
Nicki Stoltenberg, Assistant to the City Administrator

Approved as to Form	☐ _____
July 8, 2016	☐ City Attorney



# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item G-8

**#2016-166 - Approving Bid Award of Concrete Dewatering Pad;  
Project No. 2016-WWTP-1 at the Wastewater Treatment Plant**

Staff Contact: John Collins, P.E. - Public Works Director

# **Council Agenda Memo**

**From:** Marvin Strong PE, Wastewater Treatment Plant Engineer

**Meeting:** July 12, 2016

**Subject:** Approving Bid Award of Concrete Dewatering Pad;  
Project No. 2016-WWTP-1 at the Wastewater Treatment Plant

**Presenter(s):** John Collins PE, Public Works Director

## **Background**

On June 13, 2016 the Engineering Division of the Public Works Department advertised for bids for a Concrete Dewatering Pad; Project No. 2016-WWTP-1.

The Concrete Dewatering Pad will be constructed at the Wastewater Treatment Plant adjacent to the existing septic dumping station. The facility will receive categories of septage waste which include car wash screenings, solid waste from cleaning sanitary sewer and storm sewers. Additionally, a dedicated area will provide containers for grease trap waste. This will allow septage waste that is questionable to be held prior to entering the treatment process at the wastewater treatment plant. The facility will be recognized by the Nebraska Department of Environmental Quality as a waste receiving site.

## **Discussion**

Three (3) bids were received and opened on June 28, 2016. The Engineering Division of the Public Works Department and the Purchasing Division of the City Attorney's Office have reviewed the bids that were received. A summary of the bids is shown below.

<b><i>Bidder</i></b>	<b><i>Exceptions</i></b>	<b><i>Bid Price</i></b>	<b><i>Add Alternate</i></b>
Starostka Group Unlimited, Inc. of Grand Island, NE	None	\$114,989.60	\$9,143.34
The Diamond Engineering Co. of Grand Island, NE	None	\$115,937.21	\$17,660.16
Myers Construction of Broken Bow, NE	None	\$158,356.70	\$11,390.00

Funds are available in Account No. 53030054-85213-53035.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council approve the bid award to Starostka Group Unlimited, Inc. of Grand Island, Nebraska in the amount of \$124,132.94.

## **Sample Motion**

Move to approve the bid award.



Stacy Nonhof, Purchasing Agent

*Working Together for a  
Better Tomorrow, Today*

**BID OPENING**

**BID OPENING DATE:** June 28, 2016 at 2:00 p.m.  
**FOR:** Concrete Dewatering Pad, Project 2016-WWTP-1  
**DEPARTMENT:** Public Works  
**ESTIMATE:** \$155,000.00  
**FUND/ACCOUNT:** 53030054-85213-53035  
**PUBLICATION DATE:** June 8, 2016  
**NO. POTENTIAL BIDDERS:** 14

**SUMMARY**

<b>Bidder:</b>	<b><u>Myers Construction, Inc.</u></b> Broken Bow, NE	<b><u>The Diamond Engineering Co.</u></b> Grand Island, NE
<b>Bid Security:</b>	Merchants Bonding Co.	Universal Surety Co.
<b>Exceptions:</b>	None	None
<b>Bid Price:</b>	<b>\$158,356.70</b>	<b>\$115,937.21</b>
<b>Alternatives:</b>		
<b>ADD.1.01:</b>	<b>\$2,800.00</b>	<b>\$5,772.90</b>
<b>ADD.1.02:</b>	<b>\$3,540.00</b>	<b>\$4,952.41</b>
<b>ADD.1.03:</b>	<b>\$4,240.00</b>	<b>\$6,418.30</b>
<b>ADD.1.04:</b>	<b>\$ 160.00</b>	<b>\$ 191.50</b>
<b>ADD.1.05:</b>	<b>\$ 650.00</b>	<b>\$ 325.00</b>

**Bidder:** Starostka Group Unlimited, Inc.  
**Bid Security:** Grand Island, NE  
**Exceptions:** Western Surety Co.  
**Bid Price:** None  
**Alternatives:**  
**ADD.1.01:** \$114,989.60  
**ADD.1.02:** \$1,037.75  
**ADD.1.03:** \$3,047.94  
**ADD.1.04:** \$4,547.40  
**ADD.1.05:** \$ 152.75  
**ADD.1.06:** \$ 357.50

cc: John Collins, Public Works Director  
Marlan Ferguson, City Administrator  
Stacy Nonhof, Purchasing Agent  
Terry Brown, PW Engineer

Catrina DeLosh, PW Admin. Assist.  
Renae Griffiths, Finance Director  
Tara Bevard, WW Project Manager

**P1886**



RESOLUTION 2016-166

WHEREAS, the City of Grand Island invited sealed bids for a Concrete Dewatering Pad; Project No. 2016-WWTP-1 at the Wastewater Treatment Plant, according to plans and specifications on file with the Public Works Department; and

WHEREAS, on June 28, 2016 bids were received, opened, and reviewed; and

WHEREAS, Starostka Group Unlimited, Inc. of Grand Island, Nebraska submitted a bid in accordance with the terms of the advertisement of bids and plans and specifications and all other statutory requirements contained therein, such bid being in the amount of \$124,132.94.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Starostka Group Unlimited, Inc. of Grand Island, Nebraska in the amount of \$124,132.94 for a Concrete Dewatering Pad; Project No. 2016-WWTP-1 is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute a contract with such contractor for such project on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2016.

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Jeremy L. Jensen, Mayor

Attest:

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Nicki Stoltenberg, Assistant to the City Administrator

Approved as to Form	▣ _____
July 8, 2016	▣ City Attorney



# **City of Grand Island**

**Tuesday, July 12, 2016**

**Council Session**

## **Item G-9**

### **#2016-167 - Approving Addition to 2016 One- Year Street Improvement Plan**

**Staff Contact: John Collins, P.E. - Public Works Director**

# **Council Agenda Memo**

**From:** Shannon Callahan, Street Superintendent

**Meeting:** July 12, 2016

**Subject:** Approving Addition to 2016 One- Year Street Improvement Plan

**Presenter(s):** John Collins, Public Works Director

## **Background**

The Pavement Lifting and Stabilization with Polyurethane Foam Project on South Locust Street from Lake Street to the Diversion Bridge was approved on June 14, 2016. This project consists of lifting and stabilizing the concrete pavement by means of polyurethane foam for an awarded dollar amount of \$250,000 to Trasher, Inc. of LaVista, Nebraska. This type of treatment is considered maintenance by the Nebraska Board of Classifications and Standards (NBCS) but due to the high dollar amount of the project, Public Works is recommending the project be added to the current One-Year Plan.

To meet the NBCS requirements, a revision/addition to the One-Year Plan must be submitted for construction projects taking place within that calendar year that were not previously listed on the One-Year Plan.

This addition is done by means of a Form 10 (attached) and Council Resolution submittal to the NBCS.

## **Discussion**

The Grand Island City Council adopted the current One-and Six-Year Street Improvement Plan on February 23, 2016 with Resolution 2016-37.

Revisions or Additions to the One-Year Plan must be approved by Council Resolution prior to submitting to the NBCS.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve

2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

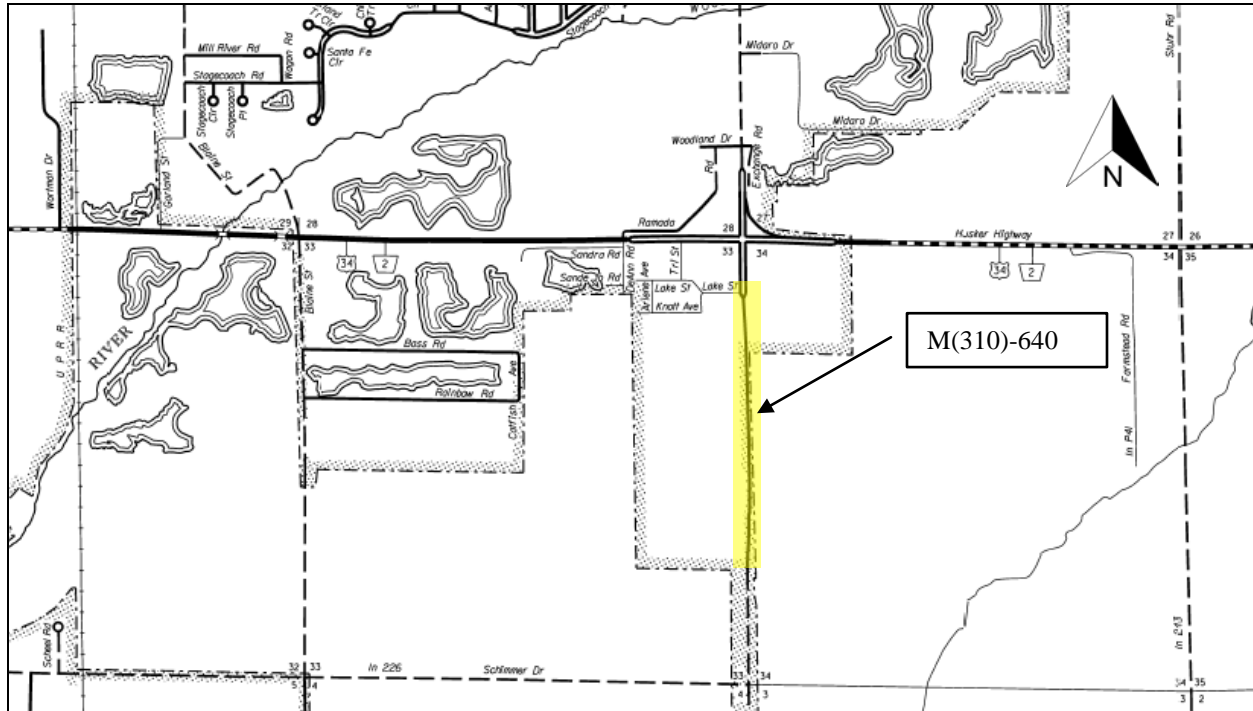
Public Works Administration recommends that the Council approve the addition of the Pavement Lifting and Stabilization with Polyurethane Foam Project on South Locust Street from Lake Street to the Diversion Bridge to the 2016 One-Year Street Improvement Plan.

### **Sample Motion**

Move to approve the addition of the Pavement Lifting and Stabilization with Polyurethane Foam Project on South Locust Street from Lake Street to the Diversion Bridge to the 2016 One-Year Street Improvement Plan.

# PROJECT LOCATION MAP

Pavement Lifting & Stabilization with Polyurethane Foam  
South Locust St. from Lake St to Diversion Bridge



**Form 10****Notification of Revision of One-Year Plan**

County:	City: GRAND ISLAND	Village:
---------	-----------------------	----------

Reason for Revision Addition of maintenance project - Pavement Lifting and Stabilization with Polyurethane Foam. Major deterioration occurred over the winter compared to previous years. This project was put together as a "shelf ready" and due to the lack of bidders on another project it was able to be financed			
Location Description: See attached South Locust St from Lake St. to Diversion Channel Bridge.			
Project Description: Lift and stabilize concrete slabs using polyurethane foam.			
Existing Surface Type and Structures: (Such as dirt, gravel, asphalt, concrete, culvert, or bridge) Concrete			
Average Daily Traffic:		Classification Type: (As shown on Functional Classification Map)	
2013	8,031	2033	15,000 Major Arterial

PROPOSED IMPROVEMENT							
Design Standard Number: Municipal			Surfacing			Thickness: 2" or 3"	Width: varies
	Grading		Concrete		Right of Way		Lighting
	Aggregate		Curb & Gutter		Utility Adjustments		Shoulder Widen
	Armor Coat		Drainage Structures		Fencing	X	Lifting and Stabilization
	Asphalt		Erosion Control		Sidewalk		
Bridge to Remain in Place:			Roadway Width:		Length:	Type:	
New Bridge:			Roadway Width:		Length:	Type:	
Box Culvert			Span:	Rise:	Length:	Type:	
Culvert			Diameter:		Length:	Type:	
Bridges and Culverts Sized			YES	X	N/A		Hydraulic Analysis Pending
Other Construction Features:							
ESTIMATED COST (in Thousands) *OPTIONAL		*County:	*City:	*State:	*Federal:	*Other:	*Total:
			250				250
Project Length: (Nearest Tenth, State Unit of Measure) 0.41 MILES				Project No.: M(310)-640			
Signature:				Title: Street Superintendent			Date:

NBCS Form 10, Jul 96

RESOLUTION 2016-167

WHEREAS, the City Council approved the 2016 One- and Six-Year Street Improvement Plan on February 23, 2016; and

WHEREAS, construction of The Pavement Lifting and Stabilization with Polyurethane Foam Project on South Locust Street from Lake Street to the Diversion Bridge has been approved for the 2016 Calendar Year; and

WHEREAS, the Nebraska Board of Classifications and Standards requires a Notification of Revision of One-Year Plan (Form 10) to be submitted for construction of projects not currently listed on the One-Year Plan; and

WHEREAS, this Council has determined that the Notification of Revision of One-Year Plan as set out in Exhibit "A" should be adopted.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the revision to the 2016 One-Year Street Improvement Program, identified as Exhibit "A", is hereby approved and adopted by this Council.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2016.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
Nicki Stoltenberg, Assistant to the City Administrator

Approved as to Form	▣ _____
July 8, 2016	▣ City Attorney



# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item G-10

**#2016-168 - Approving Agreement with Victory Place, LLC  
Regarding Use of CDBG Program Income Reuse Funds**

Staff Contact: Charley Falmlen



# **Council Agenda Memo**

**From:** Charley Falmlen, Community Development

**Meeting:** July 12, 2016

**Subject:** Agreement with Victory Place, LLC Regarding Use of CDBG Program Income Reuse Funds

**Presenter(s):** Charley Falmlen, Community Development

## **Background**

The Community Development Division maintains a Community Development Block Grant (CDBG) Program Income Reuse Fund, which is funded by income from former CDBG programs and is maintained with the intent of funding future qualifying projects.

The Program Income Reuse Plan was approved by City Council on May 28, 2013. This plan outlines the acceptable uses of CDBG Program Income Reuse funds, including housing projects and various housing programs which may support low-moderate income persons.

## **Discussion**

Pioneer Group, LLC, representing Victory Place, LLC has presented the City of Grand Island with a budget shortfall, which developed after unplanned changes had to be made to the sewer extension on the corner of Wheeler and Capital.

Victory Place, LLC when operational, will be a housing development which specifically serves homeless and near homeless veterans within the community of Grand Island. This objective, qualifies this project for CDBG Program Income Reuse funds. The Victory Place project has not received any CDBG funds to date, but has received other veteran based funding packages including V.A.S.H vouchers. For this reason, the Victory Place project is currently under contract, and reporting subsequently, as a Davis-Bacon Labor Standard project. The Davis-Bacon compliance will continue through the change order proposed in this sewer extension, as Davis-Bacon Labor compliance would also be required for CDBG funding.

The City of Grand Island does not have the capacity to place a lien on the federally owned land, and for this reason the funds are being dispersed as a forgivable grant, which will be forgiven upon project completion.

The construction contract, which exists between Victory Place, LLC and 4Sight Construction, will continue and the 15' pipe extension will be addressed via a change order.

The agreement between the City of Grand Island and Victory Place, LLC ensures the dispersal of CDBG upon completion of the contract between Victory Place, LLC and 4Sight Construction. The City of Grand Island will not directly oversee 4Sight Construction's work. However they City will be included in all of 4Sights Davis-Bacon Labor Standard document submissions.

### **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the agreement
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council approve the agreement with Victory Place, LLC.

### **Sample Motion**

Move to approve the agreement, and authorize the Mayor to sign all related documents.

## AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **CITY OF GRAND ISLAND, NEBRASKA**, a Municipal Corporation, hereinafter referred to as "City" and **Victory Place, LLC**, hereinafter referred to as "Grantee".

WHEREAS, the City has received Program Income Reuse Funds, allocated for projects which further housing options for low to moderate income persons; and

WHEREAS, Grantee has proven the scope of the project which will ultimately benefit low to moderate income veterans; and

WHEREAS, the Contract between Victory Place, LLC and 4Sight Group, LLC dba 4Sight Construction dated November 10, 2015 and subsequent Change Order #002 fully describes the project and is incorporated herein by reference as a part of this Agreement; and

WHEREAS, the Grantee is a qualifying business under the City's Program Income Reuse Guidelines; and

WHEREAS, the allocation the Program Income Reuse funds requires that the Grantee fully execute all requirements of the previously mentioned contract and change order; and

WHEREAS, the project will be of substantial benefit to the homeless and near homeless veteran populations in Grand Island and its surrounding area; and

WHEREAS, the disbursement of Program Income Reuse funds set forth below constitutes a fulfillment of the major objective of the City.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the City along with the Grantee agree as follows:

1. **DISBURSEMENTS.** The City shall disburse funds of a Grant to the Grantee as follows:

(A) Grantee shall obtain all permits to complete the project.

(B) The Grantee will create all bid and construction documents, inclusive of Davis-Bacon language. Copies of all bid documents, contract documents and pertinent construction documents must be submitted to the City prior to contract completion.

(C) The entirety of the project shall remain subject to Davis-Bacon. The Grantee is responsible for ensuring all required Davis-Bacon paperwork is submitted to the City.

(D) Payment will only be made to the Grantee upon submittal of a request for payment along with an Affidavit of the General Contractor certifying the work completed as of the date of the submittal.

(E) All changes to the project must be approved by the City and Grantee prior to implementation of any changes to the project.

(F) Any unapproved changes shall void the Grant.

(G) TOTAL DISBURSEMENTS: Pursuant to this Agreement, the City shall not disburse more than \$84,121.45 (EIGHTY FOUR THOUSAND ONE HUNDRED AND TWENTY ONE DOLLARS AND FORTY FIVE CENTS) to the Grantee.

2. PROGRAM INCOME GRANT FORGIVENESS. The City shall forgive the entire amount of the AMOUNT disbursed on behalf of Grantee, not to exceed \$84,121.45, upon completion of all required benchmarks of the contract and change order.

3. BREACH OF AGREEMENT. In the event Grantee fails to comply with any of the terms as set forth in this Agreement, the City may declare Grantee in breach and shall follow the procedure set for below:

(A) Any such declaration shall be given in writing, clearly stating the nature of the breach, signed by such person duly authorized to make such declaration, and delivered to Grantee by Certified U.S. Mail, return receipt requested to the Grantee at Grantee's last known address.

(B) Grantee shall respond, in writing, to such declaration within fifteen (15) days of receipt of declaration.

(C) Grantee shall be given thirty (30) days from date of receipt of said declaration to cure the breach.

(D) Upon agreement of the City, the Grantee may be granted additional time to cure said breach.

(E) Should the breach not be cured, any monies disbursed by the City and not forgiven pursuant to the terms of Paragraph 2 of this Agreement shall become immediately due and owing by Grantee to the City.

(F) Upon breach of this Agreement and a failure to cure said breach, any monies disbursed and unforgiven shall accrue interest at the rate of eight percent (8%) per annum.

4. COMMUNICATION. Grantee agrees to fully respond within fifteen (15) calendar days to any request for information from the City related to the Grantee's compliance with the terms of this Agreement. Grantee further agrees to inform the City of any changes in address, telephone number, or email address within three (3) business days of such change. All responses and notifications shall be in writing and provided to the City and BID at the following addresses:

City of Grand Island  
Attn: Community Development Division  
100 East First St.  
P.O. Box 1968  
Grand Island, NE 68802-1968

5. LEGAL EFFECT. Notwithstanding any other provision of this Agreement, Grantee specifically agrees to the following:

(A) Should Grantee be purchased, absorbed or merged with any other person or entity the terms of this Agreement shall continue to be in full force and effect on any such purchaser or successor entity.

(B) Should Grantee cease operations in the City Of Grand Island at any time while this Agreement is in effect, any monies disbursed by the City and not forgiven pursuant to the terms of this Agreement shall become immediately due and owing to the City, and any monies owed shall accrue interest at the rate of eight percent (8%) per annum until paid in full.

(C) Should any provision of this Agreement be declared void or illegal by a Court of law, all other unaffected provisions shall remain in full force and effect.

6. ENTIRE AGREEMENT. This Agreement, and all attachments hereto, constitutes the entire agreement between the City and Grantee notwithstanding any other oral agreements or understandings to the contrary and may be amended only in writing, approved and executed as required by law.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, this Agreement is executed by the respective parties.

CITY OF GRAND ISLAND, NEBRASKA,  
A Municipal Corporation,

By: \_\_\_\_\_  
Jeremy L. Jensen, Mayor


Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
RaNae Edwards, City Clerk

By: \_\_\_\_\_  
Stacy R. Nonhof, Assistant City Attorney

Date: \_\_\_\_\_

Victory Place, LLC  
By: Pioneer Investment Victory Place, LLC,  
Its Managing Member

By:  \_\_\_\_\_  
Ross R. Freeman, Designated Member

Date: 7/6/16

# DRAFT AIA® Document G701™ - 2001

## Change Order

**PROJECT (Name and address):**

Victory Place, LLC  
VA Grounds  
Broadwell and Capital Avenue  
Grand Island (Hall) Nebraska 68801

**CHANGE ORDER NUMBER:** 002**DATE:** 6/28/2016**TO CONTRACTOR (Name and address):**

4Sight Group, LLC dba 4Sight  
Construction  
7920 Ward Parkway  
Kansas City, MO 64114

**ARCHITECT'S PROJECT NUMBER:****CONTRACT DATE:** November 10, 2015**CONTRACT FOR:** General ConstructionOWNER: ☐ARCHITECT: ☐CONTRACTOR: ☐FIELD: ☐OTHER: ☐**THE CONTRACT IS CHANGED AS FOLLOWS:**

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

We hereby submit specifications and estimates for: The 15' extension and riser installation of the city sewer on the corner of  
wheeler and capital.

Also includes 280' of 6" forced main C-900 sewer replacement

The original Contract Sum was

The net change by previously authorized Change Orders

The Contract Sum prior to this Change Order was

The Contract Sum will be increased by this Change Order in the amount of

The new Contract Sum including this Change Order will be

The Contract Time will be increased by Zero (0) days.

The date of Substantial Completion as of the date of this Change Order therefore is

\$ 3,387,954.00  
\$ 9,125.70  
\$ 3,397,079.70  
\$ 108,440.00  
\$ 3,505,519.70

**NOTE:** This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum-Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

Rosemann &amp; Associates

4Sight Group, LLC dba 4Sight  
ConstructionVictory Place, LLC By: Pioneer  
Investment Victory Place, LLC Managing  
Member**ARCHITECT (Firm name)**

1526 Grand Boulevard, Kansas City, MO  
64108

**ADDRESS****CONTRACTOR (Firm name)**

7920 Ward Parkway, Kansas City, MO  
64114

**ADDRESS****OWNER (Firm name)**

404 SW. 9th Street, Topeka, KS 66612

**ADDRESS****BY (Signature)**

(Typed name)

**BY (Signature)**

Ian Leftwich

(Typed name)

**BY (Signature)**

Ross R. Freeman

(Typed name)

**DATE****DATE****DATE**

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User Notes:

(1380803660)

RESOLUTION 2016-168

WHEREAS, on the Community Development Division receives income from previous Community Development Block Grant (CDBG) projects; and

WHEREAS, the Community Development Division maintains a Program Income Reuse Plan, as approved by City Council on May 28, 2013; and

WHEREAS, the housing project at Victory Village will address the needs of homeless or near homeless veterans within Grand Island; and

WHEREAS, the project presented by Pioneer Group, LLC representing Victory Place, LLC addresses and meets the criteria set out in the Program Income Reuse Plan by addressing the needs of homeless and near homeless veterans; and

WHEREAS, the Community Development Division allocates \$84,121.45 of CDBG Program Income Reuse funds to the Victory Place project; and

WHEREAS, an agreement is required for all CDBG funding projects.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA that the City of Grand Island, Nebraska is hereby approves and adopts Agreement with Victory Place, LLC ; and the Mayor is hereby authorized to sign such agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2016.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
Nicki Stoltenberg, Assistant to the City Administrator

Approved as to Form	☐ _____
July 8, 2016	☐ City Attorney





# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item G-11

### **#2016-169 - Approving Certifications Required for Community Development Block Grant Plan Submission**

Staff Contact: Charley Falmlen

# **Council Agenda Memo**

**From:** Charley Falmlen, Community Development

**Meeting:** July 12, 2016

**Subject:** Certifications Required for Community Development  
Block Grant Plan Submission

**Presenter(s):** Charley Falmlen, Community Development

## **Background**

The United States Department of Housing and Urban Development requires that all communities which receive Community Development Block Grant (CDBG) funds must adopt multiple certifications to be eligible for receiving funding. These certifications include agreeing to comply with various federal requirements including Fair Housing practices, Anti-Lobbying practices and Lead – Based Paint rules. In addition to general statement of agreement, various plans and/or statements must be created to comply. The Citizen Participation Plan, adopted by City Council on April 28, 2016 is one example of a required certification, along with the Anti-Displacement and Relocation Plan, Section 3 Plan, and Excessive Force Statement, which are available for review as part of this agenda item.

## **Discussion**

At this time it is requested that Council approve the proposed CDBG Certifications along with adopting the Anti-Displacement and Relocation Plan, Section 3 Plan and Excessive Force Statement.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the Certifications and Plans
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council approve the Certifications and Plans.

## **Sample Motion**

Move to approve the Certifications and Plans, and authorize the Mayor to sign all related documents.

## CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

**Affirmatively Further Fair Housing --** The jurisdiction will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

**Anti-displacement and Relocation Plan --** It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential antidisplacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

**Anti-Lobbying --** To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**Authority of Jurisdiction --** The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

**Consistency with plan --** The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

**Section 3 --** It will comply with section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

---

Signature/Authorized Official

Date

## Specific CDBG Certifications

The Entitlement Community certifies that:

**Citizen Participation --** It is in full compliance and following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105.

**Community Development Plan --** Its consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that provide decent housing, expand economic opportunities primarily for persons of low and moderate income. (See CFR 24 570.2 and CFR 24 part 570)

**Following a Plan --** It is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

**Use of Funds --** It has complied with the following criteria:

1. Maximum Feasible Priority. With respect to activities expected to be assisted with CDBG funds, it certifies that it has developed its Action Plan so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. The Action Plan may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available);
2. Overall Benefit. The aggregate use of CDBG funds including section 108 guaranteed loans during program year(s) \_\_\_\_\_, \_\_\_\_\_ (a period specified by the grantee consisting of one, two, or three specific consecutive program years), shall principally benefit persons of low and moderate income in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period;
3. Special Assessments. It will not attempt to recover any capital costs of public improvements assisted with CDBG funds including Section 108 loan guaranteed funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements.

However, if CDBG funds are used to pay the proportion of a fee or assessment that relates to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds.

The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108, unless CDBG funds are used to pay the proportion of fee or assessment attributable to the capital costs of public improvements financed from other revenue sources. In this case, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. Also, in the case of properties owned and occupied by moderate-income (not low-income) families, an assessment or charge may be made against the property for public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

**Excessive Force --** It has adopted and is enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its

jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction;

**Compliance With Anti-discrimination laws --** The grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 USC 2000d), the Fair Housing Act (42 USC 3601-3619), and implementing regulations.

**Lead-Based Paint --** Its activities concerning lead-based paint will comply with the requirements of 24 CFR Part 35, subparts A, B, J, K and R;

**Compliance with Laws --** It will comply with applicable laws.

\_\_\_\_\_  
Signature/Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**OPTIONAL CERTIFICATION  
CDBG**

Submit the following certification only when one or more of the activities in the action plan are designed to meet other community development needs having a particular urgency as specified in 24 CFR 570.208(c):

The grantee hereby certifies that the Annual Plan includes one or more specifically identified CDBG-assisted activities which are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs.

\_\_\_\_\_  
Signature/Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

## Specific HOME Certifications

The HOME participating jurisdiction certifies that:

**Tenant Based Rental Assistance --** If the participating jurisdiction intends to provide tenant-based rental assistance:

The use of HOME funds for tenant-based rental assistance is an essential element of the participating jurisdiction's consolidated plan for expanding the supply, affordability, and availability of decent, safe, sanitary, and affordable housing.

**Eligible Activities and Costs --** it is using and will use HOME funds for eligible activities and costs, as described in 24 CFR § 92.205 through 92.209 and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214.

**Appropriate Financial Assistance --** before committing any funds to a project, it will evaluate the project in accordance with the guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other Federal assistance than is necessary to provide affordable housing;

\_\_\_\_\_  
Signature/Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title



## ESG Certifications

The Emergency Solutions Grants Program Recipient certifies that:

**Major rehabilitation/conversion** – If an emergency shelter’s rehabilitation costs exceed 75 percent of the value of the building before rehabilitation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed rehabilitation. If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed conversion. In all other cases where ESG funds are used for renovation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 3 years after the date the building is first occupied by a homeless individual or family after the completed renovation.

**Essential Services and Operating Costs** – In the case of assistance involving shelter operations or essential services related to street outreach or emergency shelter, the jurisdiction will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long the jurisdiction serves the same type of persons (e.g., families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or persons in the same geographic area.

**Renovation** – Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary.

**Supportive Services** – The jurisdiction will assist homeless individuals in obtaining permanent housing, appropriate supportive services ( including medical and mental health treatment, victim services, counseling, supervision, and other services essential for achieving independent living), and other Federal State, local, and private assistance available for such individuals.

**Matching Funds** – The jurisdiction will obtain matching amounts required under 24 CFR 576.201.

**Confidentiality** – The jurisdiction has established and is implementing procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter.

**Homeless Persons Involvement** – To the maximum extent practicable, the jurisdiction will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, in providing services assisted under the ESG program, and in providing services for occupants of facilities assisted under the program.

**Consolidated Plan** – All activities the jurisdiction undertakes with assistance under ESG are consistent with the jurisdiction’s consolidated plan.

**Discharge Policy** – The jurisdiction will establish and implement, to the maximum extent practicable and where appropriate policies and protocols for the discharge of persons from

publicly funded institutions or systems of care (such as health care facilities, mental health facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent this discharge from immediately resulting in homelessness for these persons.

---

Signature/Authorized Official

---

Date

---

Title

## HOPWA Certifications

The HOPWA grantee certifies that:

**Activities --** Activities funded under the program will meet urgent needs that are not being met by available public and private sources.

**Building --** Any building or structure assisted under that program shall be operated for the purpose specified in the plan:

1. For at least 10 years in the case of assistance involving new construction, substantial rehabilitation, or acquisition of a facility,
2. For at least 3 years in the case of assistance involving non-substantial rehabilitation or repair of a building or structure.

\_\_\_\_\_  
Signature/Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

## **APPENDIX TO CERTIFICATIONS**

### **INSTRUCTIONS CONCERNING LOBBYING:**

#### **A. Lobbying Certification**

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

# RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN

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*City of Grand Island*

*Community Development Division*

*Version 2016.1*

*This Residential Anti-displacement and Relocation Assistance Plan (RARAP) is prepared by the City of Grand Island in accordance with the Housing and Community Development Act of 1974, as amended; and HUD regulations at 24 CFR 42.325 and is applicable to our CDBG1, UDAG and/or HOME-assisted projects.*

## Minimize Displacement

Consistent with the goals and objectives of activities assisted under the Act, the City of Grand Island will take the following steps to minimize the direct and indirect displacement of persons from their homes for projects which receive CDBG funding:

- ❑ Coordinate code enforcement with rehabilitation and housing assistance programs through the Problem Resolution Team.
- ❑ Evaluate zoning standards in reinvestment areas to prevent undue financial burden on established owners and tenants.
- ❑ Arrange for facilities to house persons who must be relocated temporarily during CDBG funded rehabilitation.
- ❑ Maintain Problem Resolution Team procedures which ensure adequate effort is made to avoid displacement when possible.
- ❑ Maintain CDBG procedures which follow federal relocation guidelines including property determination, owner notification and property acquisition.
- ❑ Establish counseling options to provide homeowners and tenants with information on assistance available to help them remain in their neighborhood in the face of revitalization pressures.
- ❑ Where feasible, give priority to rehabilitation of housing, as opposed to demolition, to avoid displacement.
- ❑ If feasible, demolish or convert only dwelling units that are not occupied or vacant and occupiable dwelling units (especially those units which are “lower-income dwelling units” (as defined in 24 CFR 42.305).
- ❑ Target only those properties deemed essential to the need or success of the CDBG project.

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*1 CDBG programs include: Entitlement Community Development Block Grant (CDBG) Program, State CDBG Program, CDBG Small Cities Program, Section 108 Loan Guarantee Program, CDBG Special Purpose Grants Program, and the Neighborhood Stabilization Program (NSP).*

## Relocation Assistance to Displaced Persons

The City of Grand Island will provide relocation assistance for lower-income tenants who, in connection with an activity assisted under the CDBG Program, move permanently or move personal property from real property as a direct result of the demolition of any dwelling unit or the conversion of a lower-income dwelling unit in accordance with the requirements of 24 CFR 42.350. A displaced person who is not a lower-income tenant, will be provided relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR Part 24.

## One-for-One Replacement of Lower-Income Dwelling Units

The City of Grand Island will replace all occupied and vacant occupiable lower-income dwelling units demolished when the project is assisted with funds provided under the CDBG Program in accordance with 24 CFR 42.375.

Before entering into a contract committing the City of Grand Island to provide CDBG funds for a project that will directly result in demolition or conversion of lower-income dwelling units, the City of Grand Island will make public by public notice in a newspaper of general circulation to include the following:

1. A description of the proposed assisted project;
2. The address, number of bedrooms, and location on a map of lower-income dwelling units that will be demolished or converted to a use other than as lower-income dwelling units as a result of an assisted project;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. To the extent known, the address, number of lower-income dwelling units by size (number of bedrooms) and location on a map of the replacement lower-income housing that has been or will be provided. *NOTE: See also 24 CFR 42.375(d).*
5. The source of funding and a time schedule for the provision of the replacement dwelling units;
6. The basis for concluding that each replacement dwelling unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and
7. Information demonstrating that any proposed replacement of lower-income dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units), or any proposed replacement of efficiency or single-room

occupancy (SRO) units with units of a different size, is appropriate and consistent with the housing needs and priorities identified in the HUD-approved Consolidated Plan and 24 CFR 42.375(b).

To the extent that the specific location of the replacement dwelling units and other data in items 4 through 7 are not available at the time of the general submission, the City of Grand Island will identify the general location of such dwelling units on a map and complete the disclosure and submission requirements as soon as the specific data is available.

## **Replacement not Required Based on Unit Availability**

Under 24 CFR 42.375(d), the City of Grand Island may submit a request to the U.S. Department of Housing and Urban Development for a determination that the one-for-one replacement requirement does not apply based on objective data that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a non-discriminatory basis within the area.

## **Contacts**

The Community Development Division is responsible for tracking the replacement of lower income dwelling units and ensuring that they are provided within the required period, when CDBG funding is involved.

The Community Development Division is responsible for providing CDBG relocation payments and other CDBG relocation assistance to any lower-income person displaced by the demolition of any dwelling unit or the conversion of lower-income dwelling units to another



# Section 3 Plan

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*City of Grand Island*

*Community Development Division*

*Version 2016.1*

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## Definitions

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*Business Concern* – a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

*Contractor* - any entity which contracts to perform work generated the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

*Employment Opportunities Generated by Section 3 Covered Assistance* – all employment opportunities generated by the expenditure of Section 3 covered public assistance (i.e., operating assistance, development assistance and modernization assistance, (as described in Section 135.3 (a) (1)). With respect to Section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection with Section 3 covered projects (as described in Section 135.3 (a) (2)), including management and administrative jobs. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

*Housing Development* -low-income housing owned, developed, or operated by public housing agencies in accordance with HUD's public housing program regulations codified in 24 CFR Chapter IX.

*HUD Youthbuild Programs* – programs that receive assistance under subtitle D of Title *N* of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

*JTPA*- The Job Training Partnership Act (29 U.S.C. 1579 (a)).

*Low-income person*-families (including single persons) whose incomes do not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary

because of prevailing levels of construction costs or unusually high or low-income families.

*Metropolitan Area* –a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

*New Hires* –full-time employees for permanent, temporary or seasonal employment opportunities.

*Recipient* –any entity which receives Section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State unit of local government, PHA, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors.

*Section 3* –Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

*Section 3 Business Concern* –a business concern,

- 1) That is 51 percent or more owned by Section 3 resident: or
- 2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
- 3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontractors to be awarded to business concerns that meet the qualifications set forth in paragraphs 1 or 2 above.

*Section 3 Covered Contracts* –a contract which includes CDBG funded activities and the full contract amount is over \$100,000.

*Section 3 Covered Project* - the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with CDBG funds.

*Section 3 Resident* –a public housing resident or an individual who resides in the boundaries of Grand Island in which the Section 3 covered assistance is expended and who is considered to be

a low-to very low-income person.

*Subcontractor* –any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

*Very low-income person*-families (including single persons) whose income do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes.

## General Policy Statement

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It is the policy of the Community Development Division of the City of Grand Island to require its contractors to provide equal employment opportunity to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability, veteran's or marital status, or economic status and to take affirmative action to ensure that both job applicants and existing employees are given fair and equal treatment.

The Community Development Division implements this policy through the awarding of contracts to contractors, vendors, and suppliers, to create employment and business opportunities for low- and very low-income persons.

The policy shall result in a reasonable level of success in the recruitment, employment, and utilization of Grand Island's Section 3 businesses for contracts partially or wholly funded with Section 3 covered funding from the United States Department of Housing and Urban Development (HUD). The Community Development Division shall examine and consider a contractor's or vendor's potential for success by providing employment and business opportunities to Section 3 residents prior to acting on any proposed contract award.

## Section 3 Purpose

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Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) (Section 3) requires the Community Development Division to ensure that employment and other economic and business opportunities generated by the Department of Housing and Urban Development (HUD) Section 3 financial assistance, to the greatest extent feasible, are directed to public housing residents and other low-income persons, particularly recipients of government housing assistance, and business concerns that provide economic opportunities to low- and very-low income persons.

## Section 3 Contracting Policy & Procedure

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The Community Development Division will adopt a Section 3 Contracting Policy and Procedure to be included in all procurements generated for use with covered HUD funding. The policy and procedure contains goal requirements for awarding contracts to Section 3 Business Concerns.

All contractors/businesses meeting Section 3 requirements must complete certifications, as appropriate, as acknowledgement of the Section 3 contracting and employment provisions required Community Development Division before receiving a Notice to Proceed for their contracted project. Such certifications shall be adequately supported with appropriate documentation as referenced in the Section 3 Business Application.

## Section 3 Plan

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The Community Development Division will maintain a Section 3 Plan to identify the goals, objectives, and actions that will be implemented to ensure compliance with the requirements of Section 3. In addition, contractors will be required to submit a Section 3 Plan on each project.

## Section 3 Employment & Training Goals

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The Community Development Division has established employment and training goals that contractors and subcontractors should meet in order to comply with Section 3 requirements.

It is the responsibility of contractors, vendors and suppliers to implement progressive efforts to attain Section 3 compliance. All contractors submitting bids or proposals to the Community Development Division are aware of their requirement to comply with Section 3, as the information will be included in the bid materials.

The Section 3 Contract Clause specifies the requirements for contractors hired for Section 3 covered projects. The Section 3 Clause must be included in all Section 3 covered projects. The Section 3 Contract Clause is included in Exhibit 1.

## Assisting Contractors to Achieve Section 3 Goal Hiring and Contracting Goals

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The Community Development Division will assist contractors in achieving Section 3 hiring and contracting goals by:

1. Requiring the contractor to submit a Section 3 Plan, to the Community Development Division.
2. Community Development Division will provide contractor with a list of Section 3 business concerns interested and qualified for construction projects.
5. Community Development Division will review the new hire clause with contractors and subcontractors to ensure that the requirement is understood. It is not intended for contractors and subcontractors to terminate existing employees, but when hiring additional employees needed to complete proposed work to be performed with HUD (federal) funds.

## Section 3 Business Certification Procedure

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Any business seeking Section 3 preference in the awarding of contracts with the Community Development Division shall complete the Section 3 Business Certification form (see Exhibit 3), which can be obtained from the Community Development Division. The business seeking Section 3 preference must be able to provide adequate documentation as evidence of eligibility for preference under the Section 3 Program, including documentation of Section 3 Resident Employment

Certifications for Section 3 preference for business concerns must be submitted to the Community Development Division 3 days prior to the submission of bids for approval. If the Community Development Division previously approved the business concern to be Section 3 certified, then the certification can be submitted along with the bid. Section 3 business concerns certifying as "Subcontracting Commitment" must be certified on a per-project basis.



## Efforts to Award Contract Opportunities to Section 3 Business Concerns

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The Community Development Division may use the following methods to notify and contract with Section 3 business concerns when contracting opportunities exist.

- Advertise contracting opportunities via newspaper, mailings, posting notices that provide general information about the work to be contracted and where to obtain additional information.
- Provide written or electronic notice of contracting opportunities. The notice will be provided in sufficient time to enable business concerns the opportunity to respond to the bid invitation
- Conduct workshops on contracting procedures to include bidding and insurance requirements, Section 3 Resident requirements, and other pertinent requirements, in a timely manner in an effort to allow Section 3 businesses the opportunity to take advantage of any upcoming contracting opportunities.
- Establish relationships with Small Business Administration (SBA,) Minority and Women's Businesses Enterprises, Community Development Corporations and other sources necessary to assist with educating and mentoring residents with a desire to start their own business.

## Section 3 Resident Requirements

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The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent possible, provide job training, employment, and contract opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods. Designation as a Section 3 resident does not guarantee employment in HUD-funded projects.

A "Section 3 Resident" is: 1) a public housing resident; or 2) a low- or very low-income person residing in the metropolitan area or Non-metropolitan County in which the HUD-funded project is undertaken.

A section 3 resident seeking the consideration as such in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a Section 3 resident, as defined in Section 135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

## Contractor's Requirements Regarding Section 3

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Under the City of Grand Island Section 3 Program, contractors and subcontractors are required to:

- Maintain a current Section 3 Plan on file.
- Notify the Community Development Division of their interests regarding new employees prior to hiring.
- Document the performance actions required as part of the Section 3 Plan (positive and negative.)
- Immediately notify Community Development Division if an employee quits, walks off, or is terminated for any reason. The contractor must provide written documentation of all such incidents to support such decisions to Community Development Division to determine if an investigation is warranted.

## Internal Section 3 Complaint Procedure

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In an effort to resolve complaints generated due to non-compliance through an internal process, Community Development encourages submittal of such complaints to its Section 3 Coordinator as follows:

Complaints of non-compliance should be filed in writing and must contain the name of the complaint and brief description of alleged violation of 24 CFR 135.

Complaints must be filed within thirty (30) calendar days after the complainant becomes aware of the alleged violation.

An investigation will be conducted if complaint is found to be valid. The Community Development Division will conduct an informal, but thorough investigation affording all interested parties, if any, an opportunity to submit testimony and/or evidence pertinent to the complaint.

The Community Development Division will provide written documentation detailing the findings of the investigation. The Community Development Division will review the findings for accuracy and completeness before it is released to complainants. The findings will be made available no later than thirty (30) days after the filing of complaint.

If complainants wish to have their concerns considered outside of the Community Development Division, a complaint may be filed with:

Assistant Secretary for Fair Housing and Equal Opportunity  
United States Department of Housing and Urban Development  
451 Seventh Street, SW  
Washington, DC 20410

## Exhibit 1 - Section 3 Contract Clause & Acknowledgement

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All Section 3 covered contracts shall include the following clause, referred to as the Section 3 Clause.



### Section 3 Contract Clause

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor and all subcontractors will create and maintain a written Section 3 Plan before contract commencement.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. No segregated facilities will be maintained.

## SPECIAL EQUAL OPPORTUNITY PROVISIONS

### A. Activities and Contracts Not Subject to Executive Order 11246, As Amended

(Applicable to Federally assisted construction contracts and related subcontracts \$10,000 and under)

During the performance of this contract.

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, or national origin. Such action shall include, but not be limited to: employment upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.
- (2) The contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by contracting officer setting forth the provisions of the nondiscrimination clause. The contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) Contractors shall incorporate foregoing requirements in all subcontracts.

### B. Executive Order 11246 (contract/subcontracts above \$10,000)

1. SEC. 202. Except in contracts exempted in accordance with Section 204 of this order, all Government contracting agencies shall include in every government contract hereafter entered into the following:

During the performance of this contract:

- (1) The contractor will not discriminate against any employee an applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to: employment upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
- (2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the [Contract Compliance Officer], advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and the rules, regulations, and relevant orders of the U.S. Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the [Department] and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor *will* take such action with respect to any subcontract or purchase order as may be directed by the [Department and the] Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction [by the Department], the contractor may request the United States to enter into such litigation to protect the interests of the United States [italics added]."

## **ACCESS TO AND MAINTENANCE OF RECORDS**

The Consultant/Contractor agrees to maintain such records and follow such procedures as may be required under HUD Community Planning and Development (CPD) subpart J, 570.502 (paragraph a. 16.) and 24CFR85.42 (paragraphs (b) and (c)) and any such procedures that the department may prescribe. In general such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to this contract and work undertaken under this contract shall be retained by the Consultant/Contractor or grantee for a period of three years after the final audit of the grantee's CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the grantee shall request a longer period for record retention.

The grantee, the department and duly authorized officials of the state and federal government shall have full access and the right to examine any pertinent documents, papers, records and books of the Consultant/Contractor involving transactions to this local program and contract.

### **Conflict of Interest**

From 24CFR85.36, no officer, employee or agent of the Grantee who will participate in the selection, the award, or the administration of this grant, may obtain a personal or financial interest or benefit from the activity or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. It is further required that this stipulation be included in all subcontracts to this Contract. Upon written request, exceptions may be granted upon a case by case basis when it is determined that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. These exceptions are granted by the Department of Housing and Urban Development.



### **Section 3 Acknowledgement**

By signing below, you are acknowledging that you have read the City of Grand Island Section 3 Contract Clause and understand the requirements of Section 3 as it applies to your agency and that your agency will comply with all Section 3 requirements and submit necessary documentation to the City of Grand Island.

Any failure to comply with Section 3 regulations may result in revocation of funds from the City of Grand Island and may jeopardize future funding opportunities from the City of Grand Island.

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Signature of Authorized

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Official Name of Authorized

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Official Title

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Date



## Exhibit 2 – Sample Section 3 Plan for Contractors

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All Section 3 covered contractors and subcontractors must maintain a written Section 3 Plan. The entity may create one, or use the Sample Plan provided. A Plan which is created by the contractor, apart from the sample plan, will require approval from the City of Grand Island before construction commences.

## **CONTRACTOR**

### **Section 3 Plan**

\_\_\_\_\_ agrees to implement the following specific affirmative action steps directed at increasing the utilization of lowest income residents and businesses within the City of Grand Island. \_\_\_\_\_

To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.

To attempt to recruit from within the city the necessary number of lower income residents through local advertising media; signs placed at the proposed site for the project; and community organizations and public or private institutions operating within or serving the Grand Island area.

To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.

To insert this Section 3 plan in all bid documents, and to require all bidders and subcontracts to submit a Section 3 plan that includes utilization goals and the specific steps planned to accomplish these goals.

To insure that subcontracts (typically let on a negotiated rather than bid basis in areas other than Section 3 covered project areas), also are let on a negotiated basis, where feasible, when let in a Section 3 covered project area.

To formally contact unions, subcontractors and trade associations to secure their cooperation for this program, if applicable.

To insure that all appropriated project area business concerns are notified of pending subcontractual opportunities.

To maintain records, including copies of correspondence, memoranda, etc., that document all above affirmative action steps have been taken.

To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of the Section 3 plan.

## Exhibit 3 –Section 3 Business Application

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If a business wishes to seek bid preference for HUD-funding projects, the application must be completed and submitted to the City of Grand Island's Community Development Division at least 3 days before the formal bid is placed.

**CERTIFICATION FOR BUSINESS  
SEEKING DESIGNATION AS A SECTION 3 BUSINESS CONCERN**

Name of  
Business \_\_\_\_\_

Address of  
Business \_\_\_\_\_

County in which Business is  
located \_\_\_\_\_

Attached is the following documentation as evidence of status:

**For Business claiming status as a Section 3 resident-owned enterprise:**

- List of all owners and Copy of Certification for Residents Seeking Designation as a Section 3 Resident for all Section 3 owners

**For business claiming Section 3 status by subcontracting 25 percent of the dollar awarded to qualified Section 3 business:**

- List of subcontracted Section 3 business(es) with indication of whether the subcontractor business is a Section 3 business concern (attach Certification of Business Seeking Designation as Section 3 for each Section 3 subcontractor to this form)

**For business claiming Section 3 status, claiming at least 30 percent of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:**

- Affidavit to this form that 25% or more of the dollar award of HUD funds will be awarded to subcontracts that qualify as Section 3 business concerns (above criteria) and the business will collect Certification for Business Seeking Designation as Section 3 for Contracting forms from these contractors

\_\_\_\_\_  
Authorizing Name and Signature

(Corporate Seal)

Attested  
by: \_\_\_\_\_

The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent possible, provide job training, employment, and contract opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods. Designation as a Section 3 Business Concern does not guarantee selection for contract opportunities.

**Section 3 business concerns are** businesses that can provide evidence that they meet one of the following:

- 1) 51 percent or more owned by Section 3 residents; or

- 2) At least 30 percent of its full time employees include persons that are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
- 3) Provides evidence, as required, of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications in the above two paragraphs.

More information can be found at <http://www.hud.gov/offices/fheo/section3/section3.cfm>

## Exhibit 4 –Section 3 Resident Application

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If a resident wishes to be listed as a Section 3 resident, the following application must be submitted to the Community Development Division.

**CERTIFICATION FOR RESIDENT  
SEEKING DESIGNATION AS A SECTION 3 RESIDENT**

<b>Certification for Resident Seeking Section 3 designation in Training and Employment</b>	
I, _____	, am a legal resident of the _____
_____ and meet the income eligibility guidelines for a low- or very-low-income person as published on the reverse.	
My permanent address is:	_____ _____
County in which I reside:	_____
I have attached the following documentation as evidence of my status:	
<input type="radio"/> Copy of public housing lease	<input type="radio"/> Copy of receipt of public assistance
<input type="radio"/> Copy of Evidence of participation	<input type="radio"/> Copy of Tax Return indicating income
Annual Income \$ _____	
_____ Signature	
_____ Print Name	_____ Date

### SECTION 3 INCOME LIMITS

All residents of public housing developments of the Hall County Housing Authority qualify as Section 3 residents. Additionally, individuals residing in the County of

Hall and/or City of Grand Island

Who meet the HUD income limits applicable to the year of project contract creation, can also qualify for Section 3 status.

A picture identification card, including current address, is required.

# Excessive Force Policy Statement

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*City of Grand Island*

*Community Development Division*

*Version 2016.1*



# Statement

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The City of Grand Island hereby adopts an Excessive Force Policy that is in accordance with the applicable Federal Regulations, i.e., Section 519 of Public Law 101-144, (1990 HUD Appropriations Act) requiring units of government receiving CDBG funds to adopt and enforce *Excessive Force Provision*. The City, as the recipient of federal Community Development Block Grant Funds, acknowledges its responsibility to and will adhere to the aforesaid federal Excessive Force Regulations.

Grand Island Police Department's General Order Number O2703 on the topic Less-Lethal Force, addresses the definitions and procedures regarding the use of Less-Lethal Force and applicable reporting requirements. General Order Number O2703 became effective in August 2009.

The City adopts General Order Number O2703 as its Excessive Force Policy and will enforce its requirements by prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any and all individuals engaged in non-violent civil rights demonstrations, and is adopting and will enforce a policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstration within Grand Island.

## GRAND ISLAND POLICE DEPARTMENT GENERAL ORDER

Topic: Less-Lethal Force

Number: O2703

Issued by: Chief Lamken

Effective date: August 2009

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### I. Policy

Officers are faced with encounters that require the use of force to affect an arrest or subdue a person that do not reach the threshold of requiring deadly force. The level of less-lethal force needed can range from verbal commands and handcuffing to a much higher level. Officers are required to use a level of force necessary to overcome resistance. Only force which is reasonable and necessary to accomplish a police function shall be applied and should cease immediately upon the accomplishment of the police function.

### II. Procedure

A. Less-lethal force is that force which is intended to control a situation or overcome physical resistance an officer may encounter when attempting to carry out a police function. The use of less-lethal force is preferable to lethal force and should be used in accordance with the resistance/control continuum adopted by the Department.

1. Officers are authorized to use Department issued or approved less-lethal tactics and weapons which include defensive tactics, the baton, Taser, OC spray and impact munitions.
2. Officers shall be instructed in each approved method of defensive tactics and use of less-lethal weapons prior to authorization to use or carry such, and will be periodically required to demonstrate a proficiency in the use of the method. Officers shall use and provide care after the use of less-lethal weapons in accordance with Department approved training.

- B. Less-lethal force is used to overcome resistance and gain compliance. Officers shall use only the force judged necessary in conjunction with their training and policy to overcome resistance and gain compliance.
- C. A Department use of force report shall be completed for every instance in which physical force, including the use of less-lethal weapons, is used to overcome or restrain an individual. The arrest of a person involving handcuffing without resistance does not require a use of force report.

**Application for Federal Assistance SF-424**

**\* 1. Type of Submission:**

- ☐ Preapplication  
☒ Application  
☐ Changed/Corrected Application

**\* 2. Type of Application:**

- ☒ New  
☐ Continuation  
☐ Revision

**\* If Revision, select appropriate letter(s):**

**\* Other (Specify):**

**\* 3. Date Received:**

**4. Applicant Identifier:**

**5a. Federal Entity Identifier:**

**5b. Federal Award Identifier:**

**State Use Only:**

**6. Date Received by State:**

**7. State Application Identifier:**

**8. APPLICANT INFORMATION:**

**\* a. Legal Name:**

City of Grand Island

**\* b. Employer/Taxpayer Identification Number (EIN/TIN):**

47-6006205

**\* c. Organizational DUNS:**

0409196070000

**d. Address:**

**\* Street1:**

100 East 1st Street

**Street2:**

**\* City:**

Grand Island

**County/Parish:**

**\* State:**

NE: Nebraska

**Province:**

**\* Country:**

USA: UNITED STATES

**\* Zip / Postal Code:**

68801-1968

**e. Organizational Unit:**

**Department Name:**

Regional Planning

**Division Name:**

Community Development Division

**f. Name and contact information of person to be contacted on matters involving this application:**

**Prefix:**

**\* First Name:**

Charley

**Middle Name:**

**\* Last Name:**

Falmlen

**Suffix:**

**Title:**

Community Development Administrator

**Organizational Affiliation:**

**\* Telephone Number:**

308-389-0288

**Fax Number:**

**\* Email:**

charleyf@grand-island.com

## Application for Federal Assistance SF-424

### \* 9. Type of Applicant 1: Select Applicant Type:

C: City or Township Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

\* Other (specify):

### \* 10. Name of Federal Agency:

Department of Housing and Urban Development

### 11. Catalog of Federal Domestic Assistance Number:

14.218

CFDA Title:

Community Development Block Grant (CDBG) Program

### \* 12. Funding Opportunity Number:

N/A

\* Title:

N/A

### 13. Competition Identification Number:

N/A

Title:

N/A

### 14. Areas Affected by Project (Cities, Counties, States, etc.):

Add Attachment

Delete Attachment

View Attachment

### \* 15. Descriptive Title of Applicant's Project:

Community Development Block Grant Program

Attach supporting documents as specified in agency instructions.

Add Attachments

Delete Attachments

View Attachments

Application for Federal Assistance SF-424	
<b>16. Congressional Districts Of:</b>	
* a. Applicant: <input style="width: 80px;" type="text" value="3rd"/>	* b. Program/Project: <input style="width: 80px;" type="text" value="3rd"/>
Attach an additional list of Program/Project Congressional Districts if needed. <div style="display: flex; align-items: center; gap: 10px;"> <input style="width: 300px;" type="text"/> <div> <input type="button" value="Add Attachment"/> <input type="button" value="Delete Attachment"/> <input type="button" value="View Attachment"/> </div> </div>	
<b>17. Proposed Project:</b>	
* a. Start Date: <input style="width: 80px;" type="text" value="10/01/2016"/>	* b. End Date: <input style="width: 80px;" type="text" value="09/30/2019"/>
<b>18. Estimated Funding (\$):</b>	
* a. Federal	<input style="width: 150px;" type="text" value="348,927.00"/>
* b. Applicant	<input style="width: 150px;" type="text" value="0.00"/>
* c. State	<input style="width: 150px;" type="text" value="0.00"/>
* d. Local	<input style="width: 150px;" type="text" value="0.00"/>
* e. Other	<input style="width: 150px;" type="text" value="0.00"/>
* f. Program Income	<input style="width: 150px;" type="text" value="0.00"/>
* g. TOTAL	<input style="width: 150px;" type="text" value="348,927.00"/>
<b>* 19. Is Application Subject to Review By State Under Executive Order 12372 Process?</b>	
<input type="checkbox"/> a. This application was made available to the State under the Executive Order 12372 Process for review on <input style="width: 100px;" type="text"/> .	
<input type="checkbox"/> b. Program is subject to E.O. 12372 but has not been selected by the State for review.	
<input checked="" type="checkbox"/> c. Program is not covered by E.O. 12372.	
<b>* 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)</b>	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If "Yes", provide explanation and attach <div style="display: flex; align-items: center; gap: 10px;"> <input style="width: 300px;" type="text"/> <div> <input type="button" value="Add Attachment"/> <input type="button" value="Delete Attachment"/> <input type="button" value="View Attachment"/> </div> </div>	
<b>21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)</b>	
<input checked="" type="checkbox"/> ** I AGREE	
** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.	
<b>Authorized Representative:</b>	
Prefix: <input style="width: 100px;" type="text"/>	* First Name: <input style="width: 200px;" type="text" value="Jeremy"/>
Middle Name: <input style="width: 300px;" type="text" value="L."/>	
* Last Name: <input style="width: 300px;" type="text" value="Jensen"/>	
Suffix: <input style="width: 100px;" type="text"/>	
* Title: <input style="width: 250px;" type="text" value="Mayor"/>	
* Telephone Number: <input style="width: 150px;" type="text" value="308-389-0140"/>	Fax Number: <input style="width: 200px;" type="text"/>
* Email: <input style="width: 300px;" type="text" value="mayor@grand-island.com"/>	
* Signature of Authorized Representative:	* Date Signed:
<div style="background-color: yellow; width: 350px; height: 40px; border: 1px solid black;"></div>	<div style="background-color: yellow; width: 100px; height: 20px; border: 1px solid black;"></div>



RESOLUTION 2016-169

WHEREAS, on August 25, 2015, the City of Grand Island became an Entitlement Community; and

WHEREAS, the United States Department of Housing and Urban Development requires multiple certifications in order to comply with the Community Development Block Grant Program requirements; and

WHEREAS, documentation of the required certifications is to be submitted along with the 2016-2019 Consolidated Plan and 2017 Annual Action Plan; and

WHEREAS, the Community Development Department created the required documentation to serve under the Entitlement Program.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA that the City of Grand Island, Nebraska is hereby approves and adopts Community Development Block Grant Certifications; and the Mayor is hereby authorized to sign such certifications on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2016.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
Nicki Stoltenberg, Assistant to the City Administrator

Approved as to Form	▣ _____
July 8, 2016	▣ City Attorney





# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item G-12

**#2016-170 - Approving Final Plat and Subdivision Agreement for Schimmer's Third Subdivision**

Staff Contact: Chad Nabity

# **Council Agenda Memo**

**From:** Regional Planning Commission

**Meeting:** July 12, 2016

**Subject:** Schimmer's Third Subdivision –Final Plat

**Presenter(s):** Chad Nabity, Regional Planning Director

## **Background**

This property is located east of Eddy Street and north of 13<sup>th</sup> Street, in the City of Grand Island, in Hall County, consisting of 2 lots and .160 acres.

## **Discussion**

The final plat for Schimmer's Third Subdivision was considered by the Regional Planning Commission at the July 6, 2016 meeting.

Nabity informed the planning commission that Council will have to specifically waive the minimum lot size requirements with the approval of this subdivision. This is an old lot and 2 houses were built on it at a time when that was permissible. The owners are trying to sell the houses separately and that can only be done by waiving the lot size requirements. The owners have shown proof that each of the proposed lots has separate sewer, water and electrical services.

A motion was made by Hoggatt and seconded by Rainforth to **approve** and recommend that City Council **approve** the final plat of Schimmer's Third Subdivision.

A roll call vote was taken and the motion passed with 8 members present (Huisman, Sears, O'Neill, Maurer, Apfel, Rainforth, Hoggatt and Kjar) voting in favor and no members present abstaining.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date

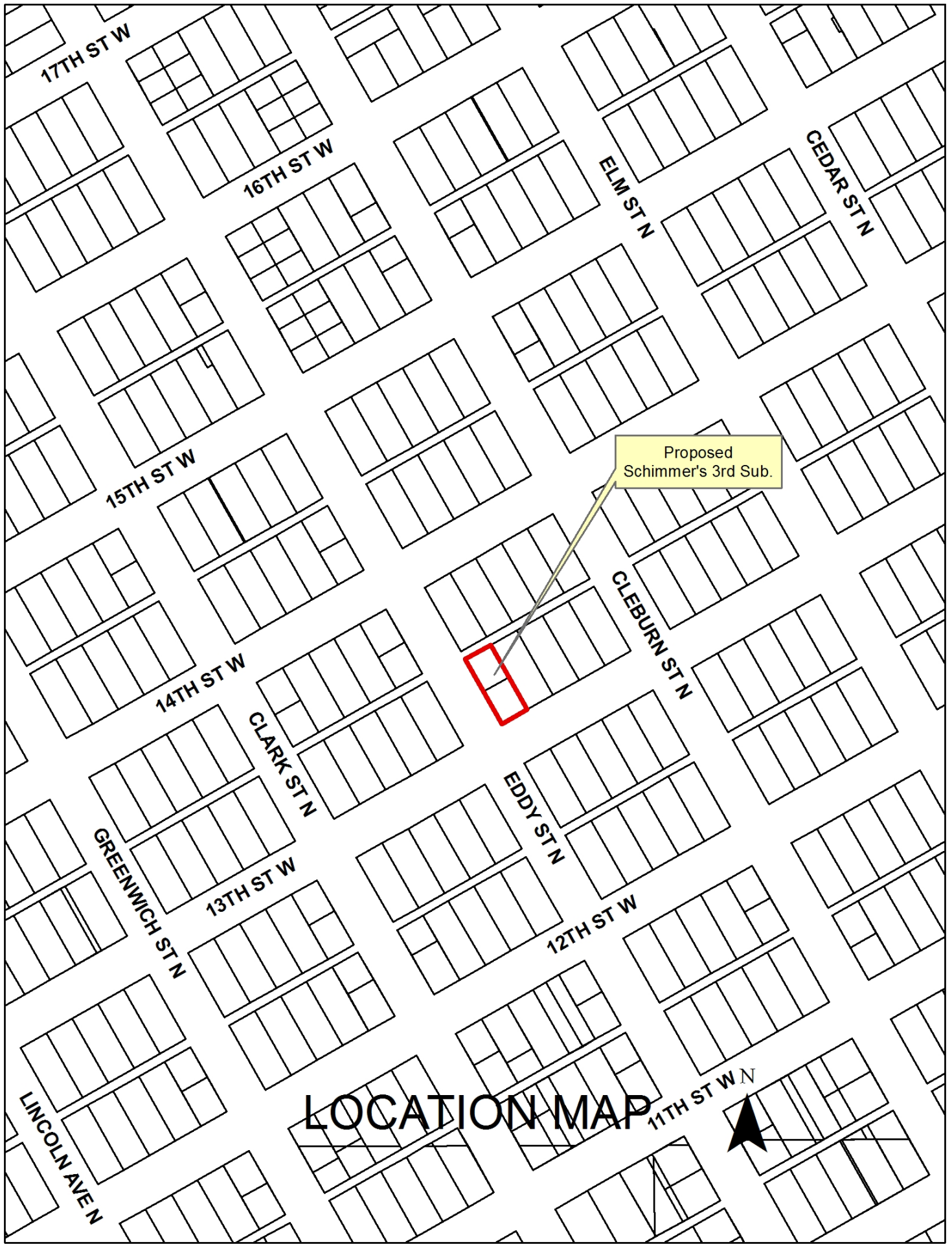
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council approve the final plat as presented.

### **Sample Motion**

Move to approve as recommended.



**Developers/Owners**

Jeff Suck  
114 Riverview Drive  
Phillips NE 68865

To create 2 lots on a tract of land north of 13<sup>th</sup> Street and east of Eddy Street, in the City of Grand Island, in Hall County.

**Size:** .160 acres.

**Zoning:** B2 – General Business Zone.

**Road Access:** Public streets are available.

**Water Public:** Water is available.

**Sewer Public:** Sewer is available.





June 21, 2016

Dear Members of the Board:

**RE: Final Plat – Schimmer’s Third Subdivision**

For reasons of Section 19-923 Revised Statutes of Nebraska, as amended, there is herewith submitted a final plat of Schimmer’s Third Subdivision, located in Grand Island, in Hall County, Nebraska.

This final plat proposes to create 2 lots, on a replat of all of Lot 6 Block 6, Schimmer’s Addition, in the City of Grand Island, Hall County, Nebraska said tract containing .160 acres.

You are hereby notified that the Regional Planning Commission will consider this final plat at the next meeting that will be held at 6:00 p.m. on July 6, 2016 in the Council Chambers located in Grand Island's City Hall.

Sincerely,

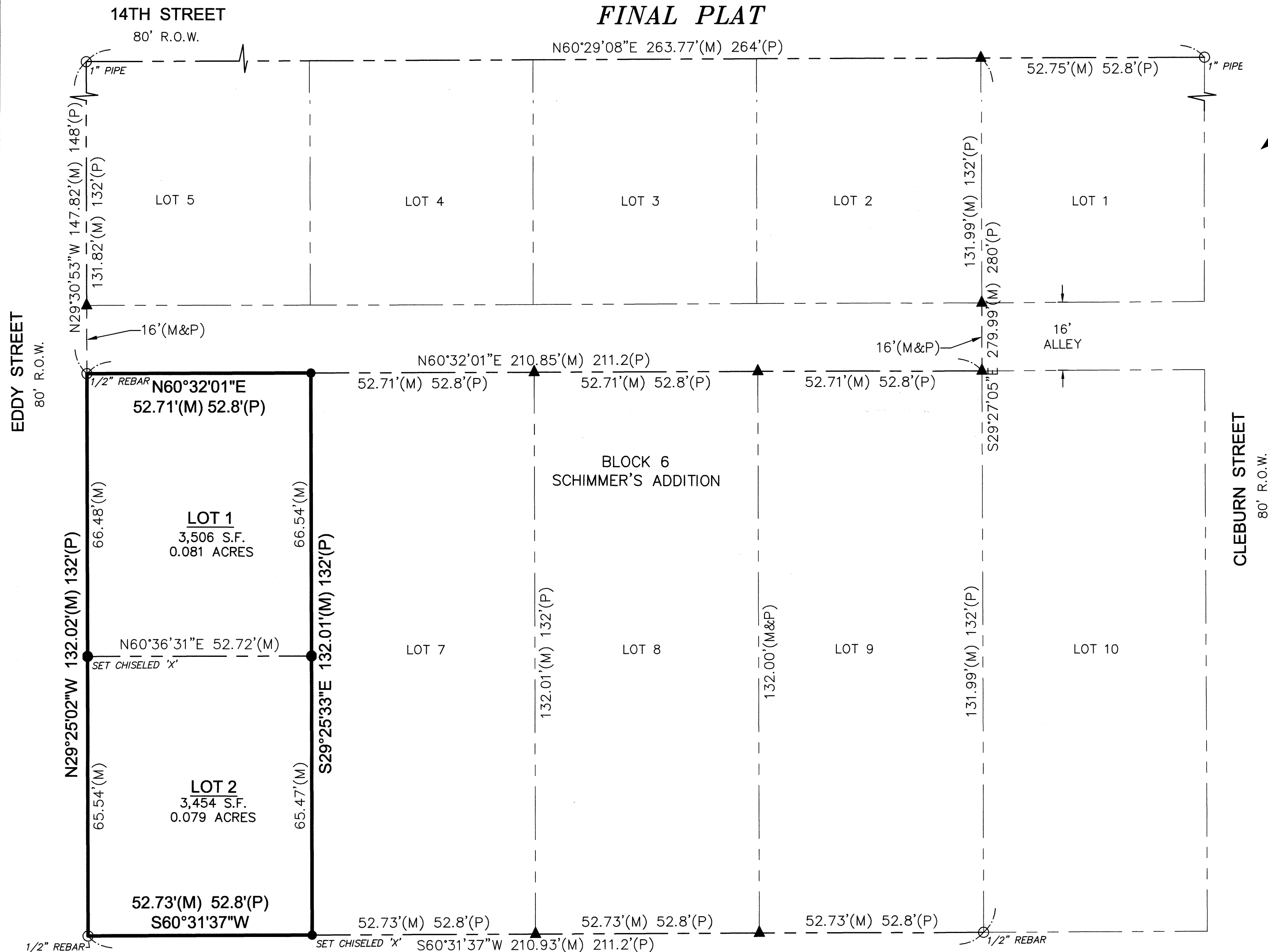
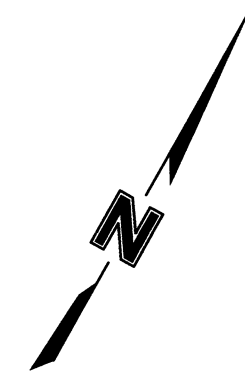
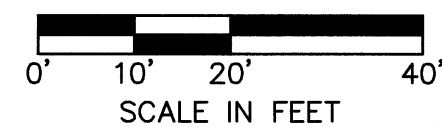
Chad Nabity, AICP  
Planning Director

Cc: City Clerk  
City Attorney  
City Public Works  
City Utilities  
City Building Director  
Manager of Postal Operations  
Olsson Associates

This letter was sent to the following School Districts 1R, 2, 3, 19, 82, 83, 100, 126.



SCHIMMER'S THIRD SUBDIVISION  
CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA  
FINAL PLAT



LEGAL DESCRIPTION

A REPLAT OF ALL OF LOT 6, BLOCK 6, SCHIMMER'S ADDITION, IN THE CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA.

SAID TRACT CONTAINS A CALCULATED AREA OF 6,960 SQUARE FEET OR 0.160 ACRES MORE OR LESS.

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT ON \_\_\_\_\_, 2016, I COMPLETED AN ACCURATE SURVEY, UNDER MY PERSONAL SUPERVISION, OF A TRACT OF LAND LOCATED IN ALL OF LOT 6, BLOCK 6, SCHIMMER'S ADDITION, IN THE CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA, AS SHOWN ON THE ACCOMPANYING PLAT THEREOF; THAT IRON MARKERS, EXCEPT WHERE INDICATED, WERE FOUND AT ALL CORNERS; THAT THE DIMENSIONS ARE AS SHOWN ON THE PLAT; AND THAT SAID SURVEY WAS MADE WITH REFERENCE TO KNOWN AND RECORDED MONUMENTS.

JAI JASON ANDRIST, REGISTERED LAND SURVEYOR NUMBER, LS-630

DEDICATION OF PLAT

KNOW ALL MEN BY THESE PRESENTS, THAT JK INVESTMENTS, LLC AND ETHAN M. MAY, A SINGLE PERSON, BEING THE OWNERS OF THE LAND DESCRIBED HEREON, HAVE CAUSED SAME TO BE SURVEYED, SUBDIVIDED, PLATTED AND DESIGNATED AS "**SCHIMMER'S THIRD SUBDIVISION**" OF ALL OF LOT 6, BLOCK 6, SCHIMMER'S ADDITION, IN THE CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA, AS SHOWN ON THE ACCOMPANYING PLAT THEREOF; AND THAT THE FOREGOING ADDITION AS MORE PARTICULARLY DESCRIBED IN THE DESCRIPTION HEREON AS APPEARS ON THIS PLAT IS MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS AND PROPRIETORS.

IN WITNESS WHEREOF, I HAVE AFFIXED MY SIGNATURE HERETO, AT \_\_\_\_\_, NEBRASKA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016.

JEFF SUCK - MEMBER, JK INVESTMENTS, LLC

ETHAN M. MAY

ACKNOWLEDGMENT

STATE OF NEBRASKA  
COUNTY OF HALL

ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016, BEFORE ME \_\_\_\_\_, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY, PERSONALLY APPEARED JEFF SUCK, MEMBER, JK INVESTMENTS, LLC, TO ME PERSONALLY KNOWN TO BE THE IDENTICAL PERSON WHOSE SIGNATURE IS AFFIXED HERETO AND ACKNOWLEDGED THE EXECUTION THEREOF TO BE HIS VOLUNTARY ACT AND DEED. IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND AFFIXED MY OFFICIAL SEAL AT \_\_\_\_\_, NEBRASKA, ON THE DATE LAST ABOVE WRITTEN.

MY COMMISSION EXPIRES \_\_\_\_\_ NOTARY PUBLIC

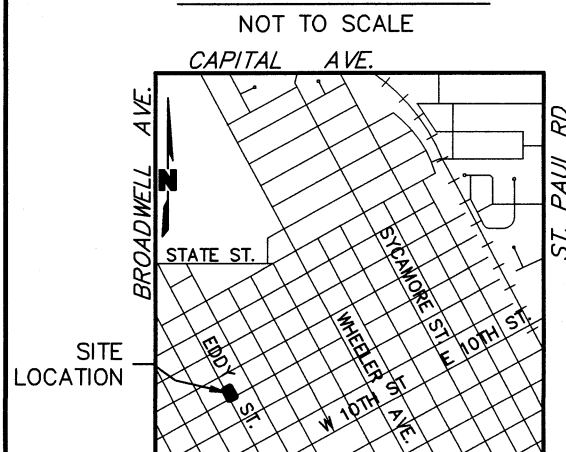
ACKNOWLEDGMENT

STATE OF NEBRASKA  
COUNTY OF HALL

ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016, BEFORE ME \_\_\_\_\_, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY, PERSONALLY APPEARED ETHAN M. MAY, A SINGLE PERSON, TO ME PERSONALLY KNOWN TO BE THE IDENTICAL PERSON WHOSE SIGNATURE IS AFFIXED HERETO AND ACKNOWLEDGED THE EXECUTION THEREOF TO BE HIS VOLUNTARY ACT AND DEED. IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND AFFIXED MY OFFICIAL SEAL AT \_\_\_\_\_, NEBRASKA, ON THE DATE LAST ABOVE WRITTEN.

MY COMMISSION EXPIRES \_\_\_\_\_ NOTARY PUBLIC

LOCATION MAP



LEGEND

- SET CORNER (5/8"x24" REBAR W/CAP)
- FOUND CORNER (AS NOTED)
- ▲ CALCULATED CORNER
- PROPERTY LINE
- - - PROPOSED SUBDIVISION LINE
- M MEASURED DISTANCE
- P PLATTED DISTANCE SCHIMMER'S ADD.

APPROVAL

SUBMITTED TO AND APPROVED BY THE REGIONAL PLANNING COMMISSION OF HALL COUNTY, CITIES OF GRAND ISLAND, WOOD RIVER, AND THE VILLAGES OF ALDA, CAIRO, AND DONIPHAN, NEBRASKA.

CHAIRPERSON \_\_\_\_\_ DATE \_\_\_\_\_

APPROVED AND ACCEPTED BY THE CITY OF GRAND ISLAND, NEBRASKA

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016.

MAYOR \_\_\_\_\_

CITY CLERK \_\_\_\_\_

OWNERS: JK INVESTMENTS, LLC AND ETHAN M. MAY  
SUBDIVIDER: JK INVESTMENTS, LLC AND ETHAN M. MAY  
SURVEYOR: OLSSON ASSOCIATES  
ENGINEER: OLSSON ASSOCIATES  
NUMBER OF LOTS: 2



201 East 2nd Street  
P.O. Box 1072  
Grand Island, NE 68802-1072  
TEL 308.384.8750  
FAX 308.384.8752

PROJECT NO. 2016-1716  
JEFF SUCK  
REPLAT SURVEY  
FB GI 2016-1



RESOLUTION 2016-170

WHEREAS, JK Investments, LLC, and Ethan M. May a single person, being the said owner of the land described hereon, has caused same to be surveyed, subdivided, platted and designated as "SCHIMMER'S THIRD SUBDIVISION", a replat of all of Lot 6, Block 6, Schimmer's Addition, in the City of Grand Island, Hall County, Nebraska, and has caused a plat thereof to be acknowledged by them; and

WHEREAS, a copy of the plat of such subdivision has been presented to the Boards of Education of the various school districts in Grand Island, Hall County, Nebraska, as required by Section 19-923, R.R.S. 1943; and

WHEREAS, two houses were constructed on this single lot in accordance with the laws in place at time of construction, and

WHEREAS, the subdivision plat, as presented will require a waiver to the lot area requirements for Lots 1 and 2, and

WHEREAS, the subdivider has given sufficient evidence to show prove that water, waste water and electrical services are provided separately to each house, and

WHEREAS, a form of subdivision agreement has been agreed to between the owner of the property and the City of Grand Island.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the form of subdivision agreement hereinbefore described is hereby approved, and the Mayor is hereby authorized to execute such agreement on behalf of the City of Grand Island.

BE IT FURTHER RESOLVED that the final plat of SCHIMMER'S THIRD SUBDIVISION, as made out, acknowledged, and certified, is hereby approved by the City Council of the City of Grand Island, Nebraska, and the Mayor is hereby authorized to execute the approval and acceptance of such plat by the City of Grand Island, Nebraska.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2016.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
Nicki Stoltenberg, Assistant to the City Administrator

Approved as to Form	▣ _____
July 8, 2016	▣ City Attorney



# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item G-13

### **#2016-171 - Approving Bid Award for Installation of New Portable Turf at the Community Fieldhouse**

Staff Contact: Todd McCoy, Parks & Recreation Director

# **Council Agenda Memo**

**From:** Todd McCoy, Parks and Recreation Director

**Meeting:** July 12, 2016

**Subject:** Bid Award for Installation of New Portable Turf at the Community Fieldhouse

**Presenter(s):** Todd McCoy, Parks and Recreation Director

## **Background**

The Grand Island Community Fieldhouse features 28,500 square feet of synthetic turf for indoor soccer, football, baseball, softball, and more. The Fieldhouse is used for sports leagues, practice, tournaments, clinics, and training. The turf is required to be portable so it can be taken up and down for the Nebraska State Fair.

## **Discussion**

The existing turf was installed originally with the building in 2010. The turf has become worn with high amounts of use. Staff is recommending replacement.

On June 17, 2016 the bid was advertised for the Installation of New Portable Turf. Three firms responded to the bid.

**Mid-America Sports Construction, Lee's Summit, MO**

\$5.87 square foot turf/\$0.10 square foot anti-microbial treatment

**All Sports Enterprises, Inc., Exton, PA**

\$6.72 square foot turf/\$0.24 square foot anti-microbial treatment

**Reams Sprinkler Supply Co., Grand Island, NE**

\$11.16 square foot turf/ anti-microbial treatment N/A

Staff recommends the low bid from Mid-America Sports Construction. The total price for the installation of new turf including the anti-microbial treatment is \$170,145.00. The purchase will be funded through the Food and Beverage Tax Fund.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council approve the Installation of New Portable Turf from Mid-America Sports Construction of Lee's Summit, Missouri. The total purchase price is \$170,145.00.

## **Sample Motion**

Move to approve the Installation of New Portable Turf for the amount of \$170,145.00.

Purchasing Division of Legal Department  
**INTEROFFICE MEMORANDUM**



Stacy Nonhof, Purchasing Agent

*Working Together for a  
Better Tomorrow, Today*

**BID OPENING**

**BID OPENING DATE:** June 29, 2016 at 2:00 p.m.  
**FOR:** Installation of New Portable Turf at Community Fieldhouse  
**DEPARTMENT:** Parks & Recreation  
**ESTIMATE:** \$250,000.00  
**FUND/ACCOUNT:** Food and Beverage Tax Fund  
**PUBLICATION DATE:** June 17, 2016  
**NO. POTENTIAL BIDDERS:** 4

**SUMMARY**

<b>Bidder:</b>	<u>Reams Sprinkler Supply Co.</u> Grand Island, NE	<u>All Sports Enterprises, Inc.</u> Exton, PA
<b>Bid Security:</b>	Merchants National Bonding	The Ohio Casualty Ins. Co.
<b>Exceptions:</b>	Noted	None
<b>Bid Price:</b>		
<b>Installation:</b>	\$69,192.00	\$191,496.00
<b>Astroshield:</b>	<u>No Bid</u>	<u>\$ 6,750.00</u>
<b>Total:</b>	\$69,192.00	\$198,246.00

<b>Bidder:</b>	<u>Mid-America Sports Construction</u> Lee's Summit, MO
<b>Bid Security:</b>	The Guarantee Co. of North America
<b>Exceptions:</b>	Noted
<b>Bid Price:</b>	
<b>Installation:</b>	\$167,295.00
<b>Astroshield:</b>	<u>\$ 2,850.00</u>
<b>Total:</b>	\$170,145.00

cc: Todd McCoy, Parks & Recreation Director  
Marlan Ferguson, City Administrator  
Stacy Nonhof, Purchasing Agent

Patti Buettner, Parks & Rec. Admin. Assist.  
Renae Griffiths, Finance Director  
Jeremy Bachmann, Recreation Supt.

**P1895**

RESOLUTION 2016-171

WHEREAS, the City of Grand Island invited sealed bids for the Installation of New Portable Turf for the Grand Island Community Fieldhouse, according to plans and specifications on file with the Parks and Recreation Department; and

WHEREAS, on June 29, 2016, three (3) bids were received, opened and reviewed; and

WHEREAS, Mid-America Sports Construction from Lee's Summit, Missouri submitted a bid in accordance with the terms of the advertisement of bids, plans and specifications and all other statutory requirements contained therein, such bid being in the amount of \$170,145.00.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Mid-America Sports Construction from Lee's Summit, Missouri in the amount of \$170,145.00 for the Installation of New Portable Turf for the Grand Island Community Fieldhouse is hereby approved as the lowest responsible bid.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2016.

---

Jeremy L. Jensen, Mayor

Attest:

---

Nicki Stoltenberg, Assistant to the City Administrator

Approved as to Form	▣ _____
July 8, 2016	▣ City Attorney



# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item G-14

**#2016-172 - Approving License Agreement between Fonner Park Exposition and Events Center and Verizon Wireless (Heartland Events Center)**

Staff Contact: Jerry Janulewicz

# **Council Agenda Memo**

**From:** Jerry Janulewicz, City Attorney

**Meeting:** July 12, 2016

**Subject:** Approving License Agreement between Fonner Park Exposition and Events Center, Inc. and Verizon Wireless, LLC

**Presenter(s):** Jerry Janulewicz, City Attorney

## **Background**

Through a master license agreement between the Hall County Livestock Improvement Association (“Fonner Park”) and Verizon Wireless (“Verizon”) is installing antenna nodes within various buildings located at the Fonner Park/State Fair site in an effort to improve cellular communications and data access at that location, especially during time when heavy wireless demands are experienced. As part of this project, Verizon seeks to install antenna nodes within the Heartland Events Center building. Because of the City’s legal interests in the facility, Verizon is asking that the City enter into the execution of a licensing agreement for the sole purpose of acknowledging to the terms, conditions, provisions and rights granted under the agreement. This agreement, if approved by the parties, would grant to Verizon the authority to install antenna nodes in the Heartland Event Center building.

## **Discussion**

The Heartland Events Center building and the real estate upon which it is located is owned by Fonner Park and leased to the City under the terms of a Lease Purchase Agreement whereby the City will receive title to the property following payment of the bonds issued to finance construction of the building. The bonds are expected to be paid and redeemed in full on or before December 31, 2024. During the time the building bonds are outstanding, Fonner contracted to manage the facility. Under the terms of the management contract, Fonner is entitled to receive all revenues from the general operations of the event center.

The proposed Fonner Park/Verizon License Agreement presented to the City would terminate on December 31, 2024 if not sooner. Verizon will pay an annual rental fee of \$1,800 per node in addition to \$1,500 per year for electric power provided by Fonner. Because of the City’s legal interests in the facility, Verizon is asking that the City enter



into the execution of the licensing agreement for the sole purpose of acknowledging to the terms, conditions, provisions and rights granted under the agreement

### **Alternatives**

The Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the resolution whereby the City enter into the execution of the licensing agreement for the sole purpose of acknowledging to the terms, conditions, provisions and rights granted under the agreement.
2. Disapprove or /Deny the resolution.
3. Modify the resolution to meet the needs of the City Council.
4. Table the issue.

### **Recommendation**

City Administration recommends that the Council approve the resolution.

### **Sample Motion**

Move to approve the resolution authorizing execution of the licensing agreement between the Hall County Livestock Improvement Association and Verizon Wireless.

## LICENSE AGREEMENT

This License Agreement (the "**Agreement**") made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between **Fonner Park Exposition and Events Center, Inc.**, with its principal offices located at \_\_\_\_\_, Grand Island, Nebraska 68801, hereinafter designated **LICENSOR** and **Verizon Wireless (VAW) LLC d/b/a Verizon Wireless** with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated **LICENSEE**. LICENSOR and LICENSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "**Party**."

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **PREMISES.** LICENSOR hereby licenses to LICENSEE certain space in the building located at \_\_\_\_\_ (the "**Building**"), the underlying real property of which is legally described on **Exhibit A**, attached hereto and made a part hereof (the Building and the underlying real property are hereinafter sometimes collectively referred to as the "**Property**"), for the installation, operation and maintenance of communications equipment. The space licensed to LICENSEE shall include space inside the Building sufficient for the installation, operation and maintenance of antennas (the "**Antenna Space**"); together with such additional space within the Building for the installation, operation and maintenance of wires, cables, conduits and pipes (the "**Cabling Space**") running between and among the Antenna Space and to all necessary electrical and telephone utility sources located within the Building or on the Property; together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day, over the Property and in and through the Building to and from the Premises (as hereinafter defined) for the purpose of installation, operation and maintenance of LICENSEE's communications facility (the "**Rights of Way**"). The Antenna Space, Cabling Space, and Rights of Way are hereinafter collectively referred to as the "**Premises**" and are as shown on **Exhibit B** attached hereto and made a part hereof. In the event there are not sufficient electric and telephone, cable or fiber utility sources located within the Building or on the Property, LICENSOR agrees to grant LICENSEE or the local utility provider the right to install such utilities on, over and/or under the Property and through the Building necessary for LICENSEE to operate its communications facility, provided the location of such utilities shall be as reasonably designated by LICENSOR. The Parties acknowledge and agree that LICENSEE's interests in the Premises granted hereunder may only be terminated pursuant to the express terms of this Agreement.

2. **CONDITION OF PROPERTY.** LICENSOR shall deliver the Premises to LICENSEE in a condition ready for LICENSEE's construction of its improvements and clean and free of debris. LICENSOR represents and warrants to LICENSEE that as of the Effective Date and continuing throughout the Term (as hereinafter defined): (a) the Building (including without limitation the roof, foundations, exterior walls, interior load bearing walls, and utility systems) is (i) in good condition, structurally sound, and free of any leakage; and (ii) the Property and Building are in compliance with all Laws (as defined in Paragraph 23 below), including any applicable building codes, regulations, or ordinances which may exist with regard to the Building, or any part thereof; and (b) the Property is free of all lead-based paint, asbestos or other hazardous substances, as such term may be defined under any applicable federal, state or local law. If a breach of the representations and warranties contained in this Paragraph 2 is

discovered at any time during the Term, LICENSOR shall, promptly after receipt of written notice from LICENSEE setting forth a description of such non-compliance, rectify same at LICENSOR's expense.

3. TERM; RENTAL.

This Agreement shall be effective as of the date of execution by both Parties (the "**Effective Date**"). The term shall commence on the first day of the month following the day that LICENSEE commences installation of the equipment on the Premises (the "**Commencement Date**") and shall terminate on December 31, 2024 (the "**Term**"). The rental payments shall commence on the Commencement Date and shall be due at a total annual rental of One Thousand Eight Hundred Dollars (\$1,800.00) for Node SC5, and One Thousand Eight Hundred Dollars (\$1,800.00) for Node SC6, to be paid in advance annually on the Commencement Date and on each anniversary of it in advance, to LICENSOR or to such other person, firm or place as LICENSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 17 below. LICENSOR and LICENSEE agree that they shall acknowledge in writing the Commencement Date and the initial rental payment may not actually be sent by LICENSEE until sixty (60) days after LICENSEE's receipt of the written acknowledgement from LICENSOR.

Upon agreement of the Parties, LICENSEE may pay rent by electronic funds transfer and in such event, LICENSOR agrees to provide to LICENSEE bank routing information for such purpose upon request of LICENSEE.

LICENSOR hereby agrees to provide to LICENSEE certain documentation (the "**Rental Documentation**") including without limitation: (i) documentation evidencing LICENSOR's good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits hereunder; (ii) a completed Internal Revenue Service Form W-9, or equivalent for any party to whom rental payments are to be made pursuant to this Agreement; and (iii) other documentation requested by LICENSEE and within fifteen (15) days of obtaining an interest in the Property or this Agreement, any assignee(s), transferee(s) or other successor(s) in interest of LICENSOR shall provide to LICENSEE such Rental Documentation. All documentation shall be acceptable to LICENSEE in LICENSEE's reasonable discretion. Delivery of Rental Documentation to LICENSEE shall be a prerequisite for the payment of any rent by LICENSEE and notwithstanding anything to the contrary herein, LICENSEE shall have no obligation to make any rental payments until Rental Documentation has been supplied to LICENSEE as provided herein.

Within thirty (30) days of a written request from LICENSEE, LICENSOR or any assignee(s) or transferee(s) of LICENSOR agrees to provide updated Rental Documentation. Delivery of Rental Documentation to LICENSEE shall be a prerequisite for the payment of any rent by LICENSEE to such party and notwithstanding anything to the contrary herein, LICENSEE shall have no obligation to make any rental payments until Rental Documentation has been supplied to LICENSEE as provided herein.

4. ELECTRICAL. LICENSOR shall, at all times during the Term, provide electrical service and telephone service access within the Premises. Commencing on the Commencement Date in consideration for electrical service, LICENSEE shall pay \$1,500.00 per year to LICENSOR for Node SC5, and \$1,500.00 per year to LICENSOR for Node SC6. LICENSOR agrees and acknowledges that LICENSEE may not send the initial annual electrical payment until sixty (60) days after LICENSEE's receipt of the written acknowledgement referenced in paragraph 3 herein.

LICENSEE shall be permitted at any time during the Term, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by LICENSOR. LICENSEE shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

5. Reserved for Future Use

6. USE; GOVERNMENTAL APPROVALS. LICENSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. LICENSEE shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. It is understood and agreed that LICENSEE's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "**Governmental Approvals**") that may be required by any Federal, State or Local authorities as well as a satisfactory building structural analysis which will permit LICENSEE use of the Premises as set forth above. LICENSOR shall cooperate with LICENSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by LICENSEE. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LICENSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LICENSEE determines that such Governmental Approvals may not be obtained in a timely manner, (iv) LICENSEE determines that the Premises is no longer technically compatible for its use; or (v) LICENSEE, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary, LICENSEE shall have the right to terminate this Agreement. Notice of LICENSEE's exercise of its right to terminate shall be given to LICENSOR in accordance with the notice provisions set forth in Paragraph 17 and shall be effective upon the mailing of such notice by LICENSEE, or upon such later date as designated by LICENSEE. All rentals paid to said termination date shall be retained by LICENSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder. Otherwise, the LICENSEE shall have no further obligations for the payment of rent to LICENSOR.

Any rights hereunder shall in all events be subject to the requirements of that Lease Purchase Agreement dated October 9, 2001 (the "**Original Agreement**"), by and between the City of Grand Island, Nebraska (the "**City**") and Fonner Park Exposition and Events Center, Inc., as amended and supplemented by that Addendum to the Lease Purchase Agreement dated August 26, 2003 (the "**First Addendum**") by and between said parties, as further amended and supplemented by that Second Addendum to Lease Purchase Agreement dated as of December 1, 2004 (the "**Second Addendum**") and, including but not limited to, requirements for cancellation under Rev. Proc. 82-26 and, specifically, the requirement that the City have the right to obtain unencumbered fee title to the Project (including additions thereto) and exclusive possession of the Project.

7. INDEMNIFICATION. Subject to Paragraph 8, below, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its

employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

8. INSURANCE.

a. The Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

b. LICENSOR and LICENSEE each agree that at its own cost and expense, each will maintain commercial general liability insurance with limits not less than \$2,000,000 per occurrence for bodily injury (including death) and for damage or destruction to property. LICENSOR and LICENSEE each agree that it will include the other Party as an additional insured, as their interests may appear under this Agreement.

9. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs 7 and 21, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

10. ANNUAL TERMINATION. Notwithstanding anything to the contrary contained herein, provided LICENSEE is not in default hereunder beyond applicable notice and cure periods, LICENSEE shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to LICENSOR.

11. INTERFERENCE. LICENSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LICENSOR or other licensees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LICENSEE's equipment causes such interference, and after LICENSOR has notified LICENSEE of such interference by a written communication and a call to LICENSEE's Network Operations Center [at (800) 264-6620/(800) 621-2622], LICENSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LICENSEE's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LICENSOR be entitled to terminate this Agreement or relocate the equipment as long as LICENSEE is making a good faith effort to remedy the interference issue. LICENSOR agrees that LICENSOR and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LICENSEE. The Parties acknowledge that there will not be an adequate remedy at law for

noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

12. REMOVAL AT END OF TERM. LICENSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LICENSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LICENSEE shall remain the personal property of LICENSEE and LICENSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If such time for removal causes LICENSEE to remain on the Premises after termination of this Agreement, LICENSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

13. RIGHT OF FIRST REFUSAL (COMMUNICATIONS EASEMENT). If LICENSOR elects, during the Term to grant to a third party by easement or other legal instrument an interest in and to that portion of the Building and or Property occupied by LICENSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this Agreement to such third party, LICENSEE shall have the right of first refusal to meet any bona fide offer of transfer on the same terms and conditions of such offer. If LICENSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LICENSOR, LICENSOR may grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer.

14. RIGHTS UPON SALE. Should LICENSOR, at any time during the Term decide (i) to sell or transfer all or any part of the Property or the Building thereon to a purchaser other than LICENSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Building and or Property occupied by LICENSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LICENSEE's rights hereunder under the terms of this Agreement. In the event that LICENSOR completes any such sale, transfer, or grant described in this paragraph without executing an assignment of this Agreement whereby the third party agrees in writing to assume all obligations of LICENSOR under this Agreement, then LICENSOR shall not be released from its obligations to LICENSEE under this Agreement, and LICENSEE shall have the right to look to LICENSOR and the third party for the full performance of this Agreement.

15. QUIET ENJOYMENT AND REPRESENTATIONS. LICENSOR covenants that LICENSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises. LICENSOR represents and warrants to LICENSEE as of the execution date of this Agreement, and covenants during the Term that LICENSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LICENSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting LICENSOR's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LICENSEE as set forth above.

16. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the LICENSEE without any approval or consent of the LICENSOR to the LICENSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LICENSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LICENSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LICENSEE or transfer upon partnership or corporate dissolution of LICENSEE shall constitute an assignment hereunder.

17. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LICENSOR: Fonner Park Exposition and Events Center, Inc.  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
Grand Island, Nebraska 68801

LICENSEE: Verizon Wireless (VAW) LLC  
d/b/a Verizon Wireless  
Attention: Network Real Estate  
180 Washington Valley Road  
Bedminster, New Jersey 07921

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

18. RECORDING. LICENSOR agrees to execute a Memorandum of this Agreement which LICENSEE may record with the appropriate recording officer. The date set forth in the Memorandum of License is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

19. DEFAULT. In the event there is a breach by a Party with respect to any of the provisions of this Agreement or its obligations under it, the non-breaching Party shall give the breaching Party written notice of such breach. After receipt of such written notice, the breaching Party shall have thirty (30) days in which to cure any breach, provided the breaching Party shall have such extended period as may be required beyond the thirty (30) days if the breaching Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. The non-breaching Party may not maintain any action or effect any remedies for default against the breaching Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this

Agreement if LICENSOR fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by LICENSOR if the failure to perform such an obligation interferes with LICENSEE's ability to conduct its business in the Building; provided, however, that if the nature of LICENSOR's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

20. REMEDIES. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. If LICENSEE undertakes any such performance on LICENSOR's behalf and LICENSOR does not pay LICENSEE the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due, LICENSEE may offset the full undisputed amount due against all fees due and owing to LICENSOR under this Agreement until the full undisputed amount is fully reimbursed to LICENSEE.

21. ENVIRONMENTAL.

a. LICENSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Building or Property, unless such conditions or concerns are caused by the specific activities of LICENSEE in the Premises.

b. LICENSOR shall hold LICENSEE harmless and indemnify LICENSEE from and assume all duties, responsibility and liability at LICENSOR's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused by LICENSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Building or Property or activities conducted thereon, unless such environmental conditions are caused by LICENSEE.

c. LICENSEE shall hold LICENSOR harmless and indemnify LICENSOR from and assume all duties, responsibility and liability at LICENSEE's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation,



investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, to the extent that such non-compliance results from conditions caused by LICENSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Property or activities conducted thereon, to the extent that such environmental conditions are caused by LICENSEE.

22. CASUALTY. In the event of damage by fire or other casualty to the Building or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LICENSEE's operations at the Premises for more than forty-five (45) days, then LICENSEE may, at any time following such fire or other casualty, provided LICENSOR has not completed the restoration required to permit LICENSEE to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days prior written notice to LICENSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LICENSEE's use of the Premises is impaired.

23. APPLICABLE LAWS. During the Term, LICENSOR shall maintain the Property, the Building, Building systems, common areas of the Building, and all structural elements of the Premises in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LICENSEE shall, in respect to the condition of the Premises and at LICENSEE's sole cost and expense, comply with (a) all Laws relating solely to LICENSEE's specific and unique nature of use of the Premises; and (b) all building codes requiring modifications to the Premises due to the improvements being made by LICENSEE in the Premises. It shall be LICENSOR's obligation to comply with all Laws relating to the Building in general, without regard to specific use (including, without limitation, modifications required to enable LICENSEE to obtain all necessary building permits).

24. MISCELLANEOUS. This Agreement contains all agreements, promises and understandings between the LICENSOR and the LICENSEE regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the LICENSOR or the LICENSEE in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. This Agreement and the performance thereof shall be governed interpreted, construed and regulated by the laws of the state in which the Premises is located without reference to its choice of law

rules. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of that Party has the full right, power and authority to enter into and execute this Agreement on that Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

25. RELOCATION. If LICENSOR determines that the Building, and/or other improvements and/or facilities on which LICENSEE's Premises are located, must be taken out of service temporarily for maintenance, repair or replacement; or if the Building and/or other improvement and/or facility on which LICENSEE's Premises are located is to be permanently removed or relocated, LICENSOR may require LICENSEE to relocate its equipment to an alternate location upon the following terms and conditions:

(a) LICENSOR shall give LICENSEE at least sixty (60) days written notice prior to requiring LICENSEE to relocate from the Premises;

(b) LICENSOR shall make a good faith effort to identify all viable locations in the vicinity of the Premises to be relocated, and the Parties shall mutually agree on an alternate location for LICENSEE's Premises (the "**Alternate Premises**");

(c) LICENSEE will pay all costs incurred for relocating LICENSEE's equipment to the Alternate Premises;

(d) LICENSOR shall provide documentation or other information, if it has any, to assist LICENSEE in obtaining all of the certificates, permits and other approvals that may be required by any Federal, State or other authorities which will permit LICENSEE's use of the Alternate Premises;

(e) LICENSEE shall be allowed, if necessary in LICENSEE's reasonable discretion, to place a temporary installation in a location approved by LICENSOR during a temporary relocation and, upon completion of any maintenance, repair or similar work by LICENSOR, LICENSEE will be permitted to return to its original Premises from the temporary location; and

(f) If the relocation to the Alternate Premises will be a permanent relocation, the Parties shall amend this Agreement to accurately reflect the location of the Alternate Premises.

[Remainder of Page Intentionally Left Blank]

SITE NAME: NE07 Fonner Park SC5 / 402027  
SITE NAME: NE07 Fonner Park SC6 - 402028

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**LICENSOR:**

**Fonner Park Exposition and Events Center, Inc.**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LICENSEE:**

**Verizon Wireless (VAW) LLC d/b/a Verizon Wireless**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

The City enters into the execution of this Agreement for the sole purpose of acknowledging to the terms, conditions, provisions and rights granted under this Agreement.

**City of Grand Island, Nebraska**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SITE NAME: NE07 Fonner Park SC5 / 402027  
SITE NAME: NE07 Fonner Park SC6 - 402028

**EXHIBIT A**

**PROPERTY**

**Situated in the County of Hall, State of Nebraska:**

**Lot One (1), Heartland Event Center First Subdivision to the City of Grand Island, Hall County, Nebraska.**

**Tax ID No: 400424215**

SITE NAME: NE07 Fonner Park SC5 / 402027  
SITE NAME: NE07 Fonner Park SC6 - 402028

**EXHIBIT B**

**SITE PLAN OF ANTENNA SPACE AND CABLING SPACE**

**See Attached**

## RESOLUTION 2016-172

WHEREAS, through a master license agreement between the Hall County Livestock Improvement Association (“Fonner Park”) and Verizon Wireless LLC (“Verizon”), Verizon is installing antenna nodes within various buildings located at the Fonner Park/State Fair site in an effort to improve cellular communications and data access at that location; and

WHEREAS, the Heartland Events Center building and the real estate upon which it is located (the “facility”) is owned by Fonner Park and leased to the City of Grand Island (“City”) under the terms of a Lease Purchase Agreement whereby the City will receive title to the facility following payment of the bonds issued to finance construction of the building; and

WHEREAS, the building bonds are expected to be paid and redeemed in full on or before December 31, 2024; and

WHEREAS, for such time as the building bonds are outstanding, Fonner is contracted to manage the facility under the terms of a management contract with the City; and

WHEREAS, pursuant to the terms of the management contract, Fonner is entitled to receive all revenues from the general operations of the facility; and

WHEREAS, the proposed license agreement between Fonner Park and Verizon would terminate on December 31, 2024 if not sooner; and

WHEREAS, Verizon will pay an annual rental fee to Fonner Park and pay compensation for electric power provided by Fonner Park; and

WHEREAS, due to the City’s legal interests in the Heartland Event Center building, Verizon is requesting that the City enter into the execution of the licensing agreement between Fonner Park and Verizon for the sole purpose of acknowledging to the terms, conditions, provisions and rights granted under the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND that execution of the licensing agreement between Fonner Park Exposition and Events Center, Inc. and Verizon Wireless, LLC for placement of wireless antenna nodes within the Heartland Events Center building should be, and hereby is, approved for the sole purpose of acknowledging to the terms, conditions, provisions and rights granted under the agreement as presented to the City.

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Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2016.

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Jeremy L. Jensen, Mayor

Attest:

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Nicki Stoltenberg, Assistant to the City Administrator



# City of Grand Island

Tuesday, July 12, 2016

Council Session

## Item J-1

### **Approving Payment of Claims for the Period of June 29, 2016 through July 12, 2016**

*The Claims for the period of June 29, 2016 through July 12, 2016 for a total amount of \$4,043,220.68.  
A MOTION is in order.*

Staff Contact: Renae Griffiths