



City of Grand Island

Tuesday, October 11, 2016

Council Session

Item I-2

#2016-254 - Consideration of Approving Agreement between the City of Grand Island and Grow Grand Island, Inc. for Community Enhancement Programs

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Attorney

Meeting: October 11, 2016

Subject: Resolution and Proposed Agreement with Grow Grand Island, Inc.

Presenter(s): Jerry Janulewicz, City Attorney

Background

At the primary election held May, 2016, the electorate of City approved by majority vote of the votes cast the imposition of an occupation tax of one and one-half percent (1½%) on the sale of all food and beverages presently subject to sales tax at commercial establishments in the City. The ballot measure directed the occupation tax shall be used for the following community enhancements:

1. The annual financial commitment to the Nebraska State Fair as required by state law;
2. Promote entertainment, agricultural and livestock shows, trade shows and similar events that will attract visitors to Grand Island;
3. Ongoing enhancement and development of recreational and athletic facilities such as hike, bike and recreational trails, ball fields and other community activity needs; and
4. Invest in community development projects and activities that stimulate progress and growth for Grand Island;

The Grow Grand Island initiative was expected to be the recipient of funds to accomplish numbers 2 and 4 listed above.

Grow Grand Island, Inc., a Nebraska nonprofit corporation (“GGI”), was organized and established through the effort of community minded individuals and organizations for the purpose of promoting, encouraging, and developing projects and programs to promote entertainment, agricultural and livestock shows, trade shows and similar events that will attract visitors to Grand Island and to invest in community development projects and activities that stimulate progress and growth for Grand Island.

City Administration believes it is in the best interests of the City, its citizenry, and the Grand Island community and area that the City enters into an agreement with GGI for the establishment, development, operation, and maintenance of community enhancement programs within the City.

Discussion

The attached agreement outlines and authorizes Grow Grand Island, Inc. to receive funds and process grants on behalf of the City of Grand Island. Specifically, the proposed agreement provides for a two (2) year initial term with an automatic renewal or an additional two (2) year term unless notice of not renewal is provided; funding of \$500,000 per year from City's food and beverage tax revenue; funds must be used in accordance with state laws applicable to cities and the ballot measure approved by voters; accountability through quarterly reports and annual audits; security of funds through fidelity bonding, segregation of funds, and deposits of funds into FDIC insured accounts or accounts secured by collateral backed by the full faith and credit of the United States; and provisions for early termination for cause.

Alternatives

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

1. Move to approve the Agreement with Grow Grand Island
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 resolution which, if approved, provides authority for execution of the agreement on behalf of the City of Grand Island.

Sample Motion

Move to approve the resolution approving the agreement with Grow Grand Island, Inc.

**AGREEMENT BY AND BETWEEN THE CITY OF GRAND ISLAND
AND
GROW GRAND ISLAND, INC. FOR COMMUNITY ENHANCEMENT PROGRAMS.**

This Agreement dated this ___ day of _____, 2016, by and between the CITY OF GRAND ISLAND, a Nebraska municipal corporation (“City”) and GROW GRAND ISLAND, INC., a Nebraska nonprofit corporation (“GGI”),

WITNESSETH:

WHEREAS, at the primary election held May 2016, the electorate of the City approved by majority vote of the votes cast the imposition of an occupation tax on retailers of food and beverages at a rate of one and one-half percent on the sale of all food and beverages presently subject to sales tax at commercial establishments in the City; and

WHEREAS, the above-mentioned ballot measure directed the occupation tax shall be used for the following community enhancements:

1. The annual financial commitment to the Nebraska State Fair as required by state law;
2. Promote entertainment, agricultural and livestock shows, trade shows and similar events that will attract visitors to Grand Island;
3. Ongoing enhancement and development of recreational and athletic facilities such as hike, bike and recreational trails, ball fields and other community activity needs; and
4. Invest in community development projects and activities that stimulate progress and growth for Grand Island; and

WHEREAS, Nebraska Revised Statute Section 13-315 authorizes cities to expend up to four-tenths of one percent of the taxable valuation of the city for the purpose of encouraging immigration, new industries, and investment and to conduct and carry on a publicity campaign, including a publicity campaign conducted for the purpose of exploiting and advertising the various agricultural, horticultural, manufacturing, commercial, and other resources, including utility services, of the city. Such sum may be expended directly by the city or may be paid to the chamber of commerce or other commercial organization or a similar county organization or multicounty organization or local development corporation to be expended for the purposes enumerated in this section under the direction of the board of directors of the organization; and

WHEREAS, City desires to contract with a community based, private nonprofit corporation to assist and partner with the City for the development of programs, projects, and events specifically designed to promote entertainment, agricultural and livestock shows, trade shows and similar events that will attract visitors to Grand Island and community development projects and activities that stimulate progress and growth for Grand Island; and

WHEREAS, Grow Grand Island, Inc., a Nebraska nonprofit corporation (“GGI”), was organized and established through the effort of community minded individuals and organizations for the purpose of promoting, encouraging, and developing projects and programs to promote entertainment, agricultural and livestock shows, trade shows and similar events that will attract visitors to Grand Island and to invest in community development projects and activities that stimulate progress and growth for Grand Island; and

WHEREAS, GGI has and will obtain funds for its community enhancement programs through private and corporate contributions, grants, gifts, and other sources; and

WHEREAS, it is desirable for City and GGI to participate in a joint public-private effort for the purpose of promoting, encouraging, and developing community enhancement programs for Grand Island; and

WHEREAS, such joint public-private effort enhances efficiency, promotes cost savings and increases the effectiveness of community enhancement programs that would otherwise be realized through a separate private and a separate public program; and

WHEREAS, it is in the best interests of the City, its citizenry, and the Grand Island community and area that City contract with GGI, as set forth herein, for the establishment, development, operation, and maintenance of community enhancement programs within the City.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, City and GGI do hereby agree as follows:

Section 1. Recitals. The recitals contained above are incorporated herein by this reference.

Section 2. Purpose. Through a joint and collaborative effort between City and GGI, the purposes of this Agreement are: (a.) the promotion, encouragement, and development of projects and programs to promote entertainment, agricultural and livestock shows, trade shows and similar events that will attract visitors to Grand Island and (b.) investment in community development projects and activities that stimulate progress and growth for Grand Island, such project and programs, herein referred to as “community enhancement programs.”

Section 3. Term. The initial term of this project shall be for a period of twenty-four months commencing _____, the “initial term”. Subject to Sections 14 and 15, the term shall automatically renew for an additional term of 24 months (the “renewal term”).

Section 4. Projects. GGI shall promote, encourage, conduct, develop and fund community enhancement programs utilizing a combination of funds obtained through private and corporate contributions, grants, gifts, and other sources and through the funds hereby provided by City. Funds provided by City (the “City Funds”) shall be maintained in a segregated account and shall be expended solely as provided for herein.

Section 5. City Funds.

- a. City shall provide the following funds, derived from city’s occupation tax of food and beverage retailers in such amounts and such schedule as set forth herein:

November 1 of each year \$500,000.00 minimum.

Amount could increase with approval by the City Council.

Section 6. Limitation on Use. City Funds shall be utilized and expended by GGI solely for such project, programs and purposes that serve and carry out a public purpose as expressly authorized, necessarily or fairly implied in or incidental to those expressly authorized and those essential to the declared objects and purposes of a city of the first class as expressed by Nebraska statutes as from time to time amended. Such projects, programs and purposes shall encompass and be directed toward encouraging immigration, new industries, and investment and to conduct and carry on a publicity campaign, including a publicity campaign conducted for the purpose of exploiting and advertising the various agricultural, horticultural, manufacturing, commercial, and other resources, including utility services, of the city; to promote entertainment, agricultural and livestock shows, trade shows and similar events that will attract visitors to Grand Island; and investment in community development projects and activities that stimulate progress and growth for Grand Island. No more than 10% of the City Funds will be allowed to be used for employee and operation expenses.

Section 7. Approval by City Administrator. Prior to expending City Funds for a community enhancement project, a summary of the project including such detail and supporting documentation as required by City shall be submitted to City’s City Administrator or his or her designee for approval.

Section 8. Accounting. On an annual basis, GGI shall submit its financial audit to City. The audit shall be prepared by a Public Accountant or Public Accountancy firm licensed and authorized to engage in public accountancy within the State of Nebraska.

Section 9. Reports. On a quarterly basis GGI shall provide to City full and complete reports of its activities, programs and projects and an accounting of its receipt and expenditure of public and private funds. Said reports shall be in such form and include such detail as specified by City's Finance Director or his or her designee.

Section 10. Access to Records. During normal business hours, City shall be provided with access to review, inspect, and photocopy records of GGI pertaining to the funding and expenditure of public and private funds for community enhancement projects. Such records shall be maintained by GGI for not less than 60 months following termination of this agreement.

Section 11. Termination. Within 30 days of the expiration of the initial term or subsequent renewal term, or earlier termination as provided herein, all remaining and unobligated City Funds held by GGI shall be returned to and paid to City for deposit in City's food and beverage retailer occupation tax fund.

Section 12. Segregation of Funds. City Funds shall at all times be maintained by GGI on deposit in a national chartered bank in accounts fully insured by the FDIC or, if not fully insured, shall at all times be collaterally secured by a deposit of bonds that are either direct and general obligations of or are unconditionally guaranteed as to both principal and interest by the United States of America and having a market value at least equal to the amount by which the moneys on deposit. All interest received and all profits realized on account of any such investments or reinvestments shall be added to and become a part of city-provided funds and subject to the provisions of this agreement.

Section 13. Bond/Security. GGI shall, at its own expense, supply to city a fidelity bond issued by an insurance company licensed to do business in the State of Nebraska, insuring city against dishonesty or fraudulent acts of the employees of GGI in the amount of \$500,000.00 per employee.

Section 14. Termination for Default. In the event that City reasonably determines that GGI has failed to comply with the material terms of this Agreement in a timely manner ("Default"), City shall notify GGI in writing of the nature of the Default and of the corrective action to be taken. If corrective action is not commenced within 5 days after receipt of written notice and

completed within a reasonable time thereafter, then City may terminate this Agreement by written Notice of Termination to GGI, which termination shall take effect 30 days after delivery of the Notice of Termination. City further reserves the right to prohibit GGI from expending additional City-provided funds during the investigation of any alleged Default and pending corrective action by GGI or a decision by City to terminate the Agreement.

Section 15. Election to Terminate. Either party may elect to terminate this Agreement on the last day of the Initial Term by providing written notice of termination not less than 90 days prior to the end of the then current term. In the event that both parties fail to deliver written notice of an election to terminate, this Agreement will automatically renew for one additional Renewal Term as provided in Section 3. The automatic renewal of this Agreement shall terminate in the event of the termination of this Agreement prior to the expiration of the Initial Term pursuant to the terms of this Agreement.

Section 16. Discrimination. With respect to the activities conducted by it pursuant to this Agreement, GGI will not subject any person to discrimination on the basis of race, color, religion, sex, national origin or ancestry.

Section 17. Procurement. GGI shall adopt, subject to City's approval, a procurement policy that shall provide for open, competitive bidding for purchases of or contracts for materials, supplies, services or labor in the amount of \$20,000 or more and shall prohibit contracts between GGI and members of its board of directors and members of their families.

Section 18. Miscellaneous.

- a. Interpretation. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. Days, unless otherwise specified, shall be calendar days.
- b. Severability. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either City or GGI in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

- c. Binding on Successors. Subject to the provisions of SECTION 21, this Agreement binds and inures to the benefit of the parties and their respective successors and assigns.
- d. Headings. The headings of the sections and exhibits of this Agreement are inserted for convenience only; they do not constitute part of this Agreement and are not to be used in its construction.
- e. Authority of City Administrator. Where this Agreement requires or permits City to act and no officer of the City is specified, the City Administrator of the City or the designated representative of the City Administrator has the authority to act on City's behalf.

Section 19. Hold Harmless. GGI shall, and does hereby agree to, have the right and obligation to defend, save, indemnify and hold the City, its corporate authorities, elected and appointed officials, officers, boards, commissions, legal counsel, employees and agents harmless from any injury, claim, demand, suit, judgment, execution, liability, debt, damages or penalty (the "Claims") arising out of resulting from, or alleged to arise out of or result from, GGI's performance of this Agreement..

Section 20. Insurance. In the event GGI regularly employs one or more persons under a contract of hire in the usual course of its business, GGI shall maintain the following insurance and furnish proof to the City Administrator that the foregoing insurance policies have been obtained in the form of a certificate of insurance.

- a. General Liability. General comprehensive liability insurance insuring both GGI and the City, and its officers, boards, commissions, elected and appointed officials, agents and employees, in the minimum amounts of:
 - \$1,000,000 for bodily injury or death to each Person;
 - \$1,000,000 for property damage resulting from any one accident; and
- b. Automobile. Automobile liability insurance with a limit of \$1,000,000 for each person and \$1,000,000 for each accident for property damage with respect to owned and non-owned automobiles for the operation of which GGI is responsible.
- c. Worker's Compensation. Worker's compensation Insurance within the statutory limits.

Section 21. Assignments, Transfers and Similar Actions. Neither the Agreement nor any rights or obligations of GGI pursuant to this Agreement shall be assigned, transferred, pledged, leased, sublet, hypothecated or mortgaged in any manner, in whole or in part, to any person, either by act of GGI, by operation of law or otherwise, without the prior consent of the City. Any such action completed without such prior consent of the City shall be a violation of this Agreement and shall, at the option of the City, which option may be exercised in the City's sole judgment and discretion, allow the City to initiate termination of this Agreement. The grant or waiver of any one or more of said consents shall not render unnecessary any subsequent consent or consents, nor shall the grant of any said consent constitute a waiver of any other rights of the City.

Section 22. Entire Agreement. This Agreement contains all of the agreements, representations, and understandings of the parties hereto, and, subject to the last sentence of this paragraph, supersedes and replaces any previous understandings, commitments, or agreements, whether oral or written.

Section 23. Third Party Beneficiaries. The provisions of this Agreement are intended solely for the benefit of City and GGI, and create no rights or obligations enforceable by any third party, including any creditor of City or GGI, except as otherwise provided by applicable law.

Section 24. Effectiveness Subject To Appropriation. The parties agree and acknowledge that it is a prerequisite to the effectiveness of this Agreement that moneys be appropriated in an amount sufficient to fund the obligations of City under this Agreement. City and GGI further agree that, in the event that the City Council does not appropriate the funding for this Agreement, it shall become null and void.

CITY OF GRAND ISLAND

GROW GRAND ISLAND, INC.

BY _____

BY _____

Jeremy L. Jensen, Mayor

ATTEST:

RaNae Edwards, City Clerk

R E S O L U T I O N 2016-254

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WHEREAS, City desires to contract with a community based, private nonprofit corporation to assist and partner with the City for the development of programs, projects, and events specifically designed to promote entertainment, agricultural and livestock shows, trade shows and similar events that will attract visitors to Grand Island and community development projects and activities that stimulate progress and growth for Grand Island; and

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Approved as to Form	☐ _____
October 7, 2016	☐ City Attorney

WHEREAS, GGI has and will obtain funds for its community enhancement programs through private and corporate contributions, grants, gifts, and other sources; and

WHEREAS, it is desirable for City and GGI to participate in a joint public-private effort for the purpose of promoting, encouraging, and developing community enhancement programs for Grand Island; and

WHEREAS, such joint public-private effort enhances efficiency, promotes cost savings and increases the effectiveness of community enhancement programs that would otherwise be realized through a separate private and a separate public program; and

WHEREAS, it is in the best interests of the City, its citizenry, and the Grand Island community and area that City contract with GGI, as set forth herein, for the establishment, development, operation, and maintenance of community enhancement programs within the City.

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 Grow Grand Island, Inc. should be and 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.

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Adopted by the City Council of the City of Grand Island, Nebraska, October 11, 2016.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk