



City of Grand Island

Tuesday, May 12, 2020

Council Session

Item G-10

#2020-118 - Approving Public Transit Vehicle User Agreement

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

Council Agenda Memo

From: Charley Falmlen, Transit Program Manager
Meeting: May 12, 2020
Subject: Approving Public Transit Vehicle User Agreement
Presenter(s): John Collins PE, Public Works Director

Background

On May 28, 2019, via Resolution No. 2019-178, City Council approved a Section 5339 Capital Grant Application and the subsequent agreement, which allowed for the purchase of two (2) Small Bus-Ford chassis to be used within the public transit service. The grant application provided for 80% or \$96,000.00 of such purchases to be paid by Federal funds and 20% or \$24,000.00 to be paid by the City.

On June 25, 2019, via Resolution No. 2019-197, City Council approved an agreement with Senior Citizens Industries, Inc. of Grand Island, Nebraska to provide public transit services in the urbanized area of Grand Island and the remainder of Hall County. Such agreement was for a period beginning July 1, 2019, with an option to extend through June 30, 2024; the referenced resolution is attached for detail.

Discussion

With the acquisition of the two (2) Ford E450 buses it is necessary for the City of Grand Island to enter into a lease agreement for such vehicles with Senior Citizens Industries, Inc. The agreement is at a cost of \$1.00 per year; with all maintenance, repairs, registration, license, taxes, inspection, fees, and expenses being the responsibility of Senior Citizens Industries, Inc.

The negotiated agreement is attached for review and approval.

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 Transit Vehicle User agreement with Senior Citizens Industries, Inc. of Grand Island, Nebraska.

Sample Motion

Move to approve the resolution.

TRANSIT VEHICLE USER AGREEMENT

This User Agreement is entered into this _____ day of _____, by and between, the City of Grand Island, hereinafter referred to as, CITY, and Senior Citizens Industries, Inc, hereinafter referred to as the TRANSIT PROVIDER.

In consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1. **USER AGREEMENT.** The CITY hereby provides to the TRANSIT PROVIDER the transit vehicles as listed on Attachment 1. Attachment 1 will be modified as new vehicles are purchased and taken out of service.

2. **TERM.** The term of this User Agreement shall commence on the above stated date and run in concurrence with the Transit Provider Agreement dated the 25th of June, 2019, subject however, to any prior termination as hereinafter provided.

3. **LEASE.** The TRANSIT PROVIDER agrees to pay One Dollar and Zero Cents (\$1.00) per year for the use of the transit vehicles, the said lease amount being due upon effective date of this User Agreement, and annually on said calendar day thereafter.

4. **MAINTENANCE AND REPAIRS.** The TRANSIT PROVIDER shall pay for and furnish all maintenance and repairs to keep transit vehicles in good working order and condition. All maintenance shall be in accordance with the City of Grand Island's Transit Division Vehicle & Equipment Maintenance Plan (Attachment 2.) At the expiration or termination of this Lease, the property will be returned to the CITY in good condition, allowing for normal wear and tear excepted.

5. **REGISTRATION, LICENSE, TAXES, INSPECTION, FEES, EXPENSES.** The TRANSIT PROVIDER shall pay all expenses incurred in the use and operation of the transit vehicles, including but not limited to, registration fees, insurance, cleaning, maintenance, fines, inspections, assessments, sales or use taxes, if any, and all other taxes which may be imposed by law from time to time arising from TRANSIT PROVIDER'S use and operation of the transit vehicles. The CITY will reimburse the TRANSIT PROVIDER in accordance with the Transit Provider Agreement, dated June 25, 2019.

6. **USE AND OPERATION.** The TRANSIT PROVIDER acknowledges receipt of the transit vehicles, and that the same is in condition satisfactory to TRANSIT PROVIDER'S purposes. The transit vehicles shall not be altered, marked or additional equipment installed without the prior documented consent of the CITY in which case the TRANSIT PROVIDER will bear the expense thereof as well as the restoration expenses. The TRANSIT PROVIDER shall keep the transit vehicles free of all taxes, liens, and encumbrances. The TRANSIT PROVIDER shall not use or permit the use of transit vehicles in violation of any City, County, State or Federal laws, ordinances, rules or regulations, or contrary to the provisions of the insurance policy coverage. The TRANSIT PROVIDER, by acceptance of this User Agreement, agrees to abide by the terms hereof and to indemnify the CITY for any losses occurring as a result of such use in violation of said terms, laws, rules and ordinances.

7. **INDEMNIFICATION AND INSURANCE.** The TRANSIT PROVIDER agrees and will protect, indemnify and hold harmless the CITY and its assignees and agents from and against any and all losses, damages, injuries, claims, demands and expenses occasioned by, or arising out of, the condition, maintenance, use or operation of the transit vehicles including any accident or other occurrence causing or inflicting injury and/or damage to any person or property, happening or done, in, upon, or due directly or indirectly to this Lease, or the condition, maintenance, use or operation of the transit vehicles by the TRANSIT PROVIDER or any person claiming through or under the TRANSIT PROVIDER.

TRANSIT PROVIDER shall, obtain and maintain for the applicable agreement term, comprehensive liability insurance covering personal injury of at least \$1,500,000 per person and property damage of at least \$1,500,000 per occurrence, and such insurance shall otherwise be in a form and with companies reasonably satisfactory to City. Transit Provider shall designate City as additional insured on liability insurance. The policy shall provide that the insurer shall not cancel or change the insurance without giving the thirty (30) days prior written notice. A copy of the policy or a certificate of insurance shall be delivered to the CITY.

The TRANSIT PROVIDER agrees that it shall at all times and at its own expense pay for any deductibles. Insurance Deductibles will not be reimbursed by the City of Grand Island.

The TRANSIT PROVIDER shall provide and pay for any other insurance or bond that may be required by any governmental authority as a condition to, or in connection with, the TRANSIT PROVIDER'S use of the transit vehicles.

In the event the transit vehicles are involved in an crime, accident, or damaged, the TRANSIT PROVIDER shall promptly notify CITY, in writing, within twenty-four (24) hours and will also comply with all terms and condition entered in the insurance policies. The TRANSIT PROVIDER agrees to cooperate with the CITY, and the insurance companies in defending against any claims or actions resulting from the TRANSIT PROVIDER'S operation or use of the transit vehicles.

The transit vehicles shall not be used by any person or entity, in any manner or for any purpose that would cause any insurance herein specified to be suspended, canceled, or rendered inapplicable.

8. DAMAGE TO TRANSIT VEHICLES. Should the transit vehicles or any part thereof be so damaged as to preclude usage for the purpose intended and should the TRANSIT PROVIDER be indemnified therefor pursuant to any insurance coverage required pursuant to paragraph 7 hereof in an amount not less than the full amount of the insurance coverage provided by a City approved insurance agency, this User Agreement shall terminate. However, should the TRANSIT PROVIDER be indemnified in an amount less than the full amount of the insurance coverage provided by the CITY, the TRANSIT PROVIDER will repair or replace the transit vehicle/s or the damaged part thereof and the proceeds of the insurance recovery shall be applied to such repair or replacement. Should the transit vehicles or any part thereof be damaged by any cause for which the TRANSIT PROVIDER makes no insurance recovery and should the transit vehicles or the damaged part thereof be capable of repairs, this User Agreement shall terminate and the TRANSIT PROVIDER shall immediately pay the CITY the reasonable value of the repairs to the property damaged, regardless of rentals paid or accrued.

9. TITLE. The TRANSIT PROVIDER acknowledges that this is an agreement to use the transit vehicles only and that the TRANSIT PROVIDER does not in any way acquire leasing or decision rights to the transit vehicles, under this agreement. Without the prior written consent of the CITY, the TRANSIT PROVIDER agrees not to do any act to encumber, convert, pledge, sell, assign, re-hire, lease, lend, conceal, abandon, give up possession of, or modify the transit vehicles.

10. WARRANTIES AND WAIVER. The TRANSIT PROVIDER uses the transit vehicles herein described in "as is" condition and agrees that the CITY had not made, and does not hereby make any representation, warranty or covenant expressed or implied with respect to the condition, quality, durability, capability, or suitability of the transit vehicles or against any patent or latent defects therein. The TRANSIT PROVIDER agrees that the CITY shall not be liable to the TRANSIT PROVIDER for any liability, claim, loss, damage or expense of any kind or nature caused directly or indirectly by the transit vehicles or the inadequacy thereof for any purpose, or for any deficiency or defect therein, or for the use or maintenance thereof, or for any repairs, servicing, adjustments, or expenses thereto or for any loss of business or for any damage whatsoever and howsoever caused.

11. ASSIGNMENT. Without the prior written consent of the CITY or any assignee of the CITY, the TRANSIT PROVIDER agrees not to sublet, mortgage, pledge, sell, assign or otherwise transfer or dispose of this User Agreement. The TRANSIT PROVIDER acknowledges and understands that the CITY may assign this User Agreement and that such assignee shall be entitled to all of the benefits of this User Agreement in the place of the TRANSIT PROVIDER. In connection therewith, the TRANSIT PROVIDER agrees this User Agreement and transit vehicles used there under will be subjected to any rights and interest in and to said transit vehicles under any contract the CITY has with another regarding title or interests in title; to accept the directions, demands or consents of such assignee in place of those of the CITY; to surrender transit vehicles only to such assignee; to abide by all sections hereunder as directed by such assignee.

12. DEFAULT. In any of the following default events:

- 1) Failure to pay any lease or sum herein provided when the same are due and payable and such default continues for a period of thirty (30) days after receipt of notice thereof of TRANSIT PROVIDER;
- 2) Failure to comply with any terms or conditions hereof;
- 3) A proceeding in insolvency or receivership by or against the TRANSIT PROVIDER or its property, or in the event lessee suspends business, makes an assignment for the benefit of creditors, or if an attachment be levied or tax lien filed against the transit vehicles, or
- 4) The CITY may, at its option and without prejudice to any other rights it may:
 - a) Take possession of and/or use transit vehicles and for the purpose thereof may enter the premises on which transit vehicles are located. Damages occasioned by such taking being expressly waived by the TRANSIT PROVIDER;
 - b) May (but need not) use transit vehicles or any portion thereof for such period, and to such persons or entities as the CITY shall elect and shall not affect in payment of the lease and other obligations due from TRANSIT PROVIDER hereunder by acceleration or otherwise;
 - c) May (but need not) relocate transit vehicle storage or any part thereof without demand or notice of intention;
 - d) May deduct all costs and expenses in connection with such retaking, including insurance, repairs, storage, renting or sale of transit vehicles from the proceeds derived from such leasing or sale;
 - e) Terminate TRANSIT PROVIDER'S rights hereunder as to transit vehicles;

No right or remedy conferred upon or reserved to the CITY by this User Agreement shall be exclusive of any other right or remedy herein or by law provided; all rights and remedies conferred upon the CITY by this User Agreement or by law shall be cumulative and in addition to every other right and remedy to.

13. CONSTRUCTION. This User Agreement shall be construed and determined in accordance with the laws of the State of Nebraska. Any provision herein prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of the User Agreement. Words and phrases herein, including any acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neutral gender according to the context.

14. TIME IS OF THE ESSENCE. Time is of the essence of this Lease. However, the CITY's failure at any time to require strict performance by the TRANSIT PROVIDER of any provisions herein shall not waive or diminish CITY's right to thereafter demand strict compliance therewith or with other provisions of this User Agreement and written waiver by the CITY of any default hereunder shall not constitute a waiver of any other default.

15. ENTIRE AGREEMENT. This User Agreement contains the whole agreement of the parties. None of the covenants, provisions, terms or conditions of this User Agreement shall be in any manner modified, waived, abandoned or amended except by a written instrument duly signed by the parties or their assignee and delivered to the CITY and the TRANSIT PROVIDER or their assignee.

16. BINDING. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties hereto except as may be modified in paragraph 11 or 17 hereof.

17. NOTICE. Notices as provided for in this User Agreement shall be given to the respective parties or their assignees at their respective addresses designated herein unless there is notification of the parties to the other, in writing, of a different address. Such notice shall be deemed to be given and received when deposited in the United States mail, postage prepaid, addressed as herein designated.

City of Grand Island
Transit Program Manager
1016 Diers Avenue, Suite 119
Grand Island, Nebraska 68803
308-646-6571

Senior Citizens Industries, Inc.
Executive Director
304 3rd Street
Grand Island, Nebraska 68801
308-385-5308

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the most recent signatory.

City of Grand Island, Nebraska

Date _____ By _____
Roger G. Steele, Mayor, City of Grand Island

Attest:

RaNae Edwards, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Stacy R. Nonhof, Assistant City Attorney

Transit Provider: **Senior Citizens Industries, Inc**

Date _____ By _____
Theresa Engelhardt, Executive Director

Date _____ By _____
Karl Hughes, Board President

RESOLUTION 2020-118

WHEREAS, On May 28, 2019, via Resolution No. 2019-178, City Council approved a Section 5339 Capital Grant Application and the subsequent agreement, which allowed for the purchase of two (2) Small Bus-Ford chassis to be used within the public transit service; and

WHEREAS, the grant application provided for 80% or \$96,000.00 of such purchases to be paid by Federal funds and 20% or \$24,000.00 to be paid by the City; and

WHEREAS, on January 17, 2019 three (3) vendors submitted proposals for such services; and

WHEREAS, On June 25, 2019, via Resolution No. 2019-197, City Council approved an agreement with Senior Citizens Industries, Inc. of Grand Island, Nebraska to provide public transit services in the urbanized area of Grand Island and the remainder of Hall County; and

WHEREAS, such agreement was for a period beginning July 1, 2019, with an option to extend through June 30, 2024; the referenced resolution is attached for detail; and

WHEREAS, with the acquisition of the two (2) Ford E450 buses it is necessary for the City of Grand Island to enter into a lease agreement for such vehicles with Senior Citizens Industries, Inc.; and

WHEREAS, the agreement is at a cost of \$1.00 per year; with all maintenance, repairs, registration, license, taxes, inspection, fees, and expenses being the responsibility of Senior Citizens Industries, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Transit Vehicle User Agreement by and between the City and Senior Citizens Industries, Inc. for the provision of public transit services should be, and hereby is, approved.

Adopted by the City Council of the City of Grand Island, Nebraska, May 12, 2020.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
May 8, 2020	☐ City Attorney