



City of Grand Island

Tuesday, March 28, 2023

Council Session

Item G-10

#2023-78 - Approving Data Sharing Agreement with NorthWestern Energy

Staff Contact: Tim Luchsinger, Stacy Nonhof

Council Agenda Memo

From: Timothy G. Luchsinger, Utilities Director
Stacy Nonhof, Assistant City Attorney

Meeting Date: March 28, 2023

Subject: Approving Data Sharing Agreement with NorthWestern Energy

Presenter(s): Timothy G. Luchsinger, Utilities Director

Background

Grand Island Utilities utilize its Geographical Information System (GIS) to display and organize geospatial data for project planning and maintenance activities. This platform has been made available to all pertinent City staff but is independent from the information which is available to the public.

Discussion

In a joint effort with NorthWestern Energy, an agreement was worked out that will allow Grand Island Utilities to access NorthWestern Energy's GIS data to further expand the planning value of the internal platform. The enclosed Data Sharing Agreement is needed to establish the terms and conditions regarding this data.

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 the Data Sharing Agreement with NorthWestern Energy be approved and signed to allow the City to access NorthWestern Energy's GIS data.

Sample Motion

Move to approve the Data Sharing Agreement with NorthWestern Energy.

DATA SHARING AGREEMENT

This Data Sharing Agreement (“*Agreement*”) is entered into as of the 28th day of March, 2023, by and between the City of Grand Island, Nebraska, a municipality (“*City*”), and NorthWestern Corporation d/b/a NorthWestern Energy (“*NorthWestern*”), a Delaware corporation.

WHEREAS, NorthWestern is the owner of geographic information system (“*GIS*”) information about its natural gas facilities located in Grand Island; and

WHEREAS, City has requested access to NorthWestern’s GIS information; and

WHEREAS, NorthWestern has agreed to share its GIS information with City pursuant to the terms and conditions herein;

NOW, THEREFORE, the Parties agree as follows:

1. Purpose

The purpose of this Agreement is to outline the general terms and conditions for the sharing of NorthWestern’s GIS information with City.

2. Term

The term of this Agreement shall begin on the 28th day of March, 2023, and shall expire on the 24th day of March 2029, unless earlier terminated, as provided for herein.

The City may extend the term of this Agreement by an additional five years upon the same terms and conditions as set forth herein, upon giving NorthWestern sixty days’ notice of its intent to exercise such an extension.

3. Termination

Either party may terminate this Agreement for any reason, without penalty, upon 30 days’ prior written notice to the other party or upon mutual agreement. Notwithstanding any termination hereof, the obligations herein shall remain in full force and effect with respect to the information disclosed hereunder for the entire term of this Agreement.

4. Sharing Agreement and Intended Use

NorthWestern agrees to provide City with a shape file of NorthWestern’s natural gas distribution system in Grand Island and other agreed-upon data as requested. City agrees to return or destroy all information received from NorthWestern upon termination of this Agreement.

5. Constraints on the Use of Shared Information

City acknowledges that its employees and personnel will have access to confidential and proprietary information of NorthWestern during the term of this Agreement and agrees not to disclose any information obtained to any person or entity except as authorized herein.

All shared information is to be considered confidential and proprietary and is subject to the restrictions herein. City agrees that no shared information will be sold, given or loaned to

any person or entity not a party to this Agreement without the express written consent of NorthWestern.

All shared information is provided solely for the benefit of City and exclusively for planning purposes. The parties expressly acknowledge and understand that the shared information represents estimated location of natural gas facilities and is not meant to relieve the City or any person with access to the information of its obligation pursuant to Neb. Rev. Stat. § 76.2321 to notify the one-call notification center of a proposed excavation to determine the location of underground facilities. Any reliance upon the shared information will be at the sole and exclusive risk of City.

6. Security

City shall employ industry best practices to establish and use administrative, technical, and physical safeguards to protect NorthWestern’s data from unauthorized physical and electronic access, use or disclosure.

7. Access

Access to shared information provided hereunder shall be limited to those employees and staff members with a defined business need for review of the shared information.

8. Notification of Security Breaches

In the event of any breach or compromise of the security or confidentiality of data where information was or is reasonably believed to have been accessed by an unauthorized person or entity, City shall provide immediate notice to NorthWestern and shall take all reasonable action to mitigate the security breach.

9. Indemnification

City will indemnify, hold harmless and defend NorthWestern from all third-party claims, liabilities, fines, interest, costs, expenses and damages (including reasonable attorney fees) incurred by NorthWestern arising out of any act or omission of City during the term of the Agreement. If the claims, liabilities, fines, interest, costs, expenses and damages are caused by the joint or concurrent negligence of the parties, the parties shall bear the loss in proportion to their respective degrees of negligence.

10. No Warranties

NorthWestern makes no representations or warranties, either expressed or implied, with respect to the accuracy, completeness or appropriateness of the data, materials or documents submitted to City for use hereunder.

11. Limitation of Liability

NorthWestern will not be responsible for any action, cost, loss or liability whatsoever arising from City’s reliance on or use of any data, materials or documents submitted by NorthWestern to City for use hereunder. With the exception of intentional disclosures in violation of this Agreement or City’s third-party indemnification obligation, neither

NorthWestern nor City shall be liable to each other for any special, consequential, incidental, indirect, punitive or exemplary damages.

12. Miscellaneous

- a. **Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Nebraska, without regard to conflict of law principles. The venue for any dispute arising hereunder shall be in state or federal courts located within the State of Nebraska.
- b. **Assignment.** The parties hereto may not assign their respective rights, duties and obligations without the prior written consent of the other party. Notwithstanding the foregoing, NorthWestern may transfer or assign this Agreement to an affiliate formed in connection with a corporate reorganization or merger authorized by the Nebraska Public Service Commission and the Federal Energy Regulatory Commission, provided the affiliate assumes all assigned rights, duties and obligations of NorthWestern pursuant to the Agreement.
- c. **Severability, Entire Agreement and Amendments.** The invalidity in whole or of any part of this Agreement shall not affect the validity of the remainder of the Agreement. This written Agreement represents the complete agreement of the parties and shall not be modified except by an instrument in writing signed by City and NorthWestern.
- d. **Notices.** All notices under this Agreement must be in writing and will be deemed properly given if (i) delivered in person, (ii) sent electronically with confirmation, (iii) deposited in the United States mail with first class postage prepaid certified mail, return receipt requested, or (iv) delivered by private, prepaid courier and addressed to the appropriate party representative at the address set forth below:

City of Grand Island

City Hall
100 East First Street
Grand Island, NE 68801
Attn: Ryan Schmitz
Phone: (305) 385-5463
Email: rschmitz@giud.com

NorthWestern Energy

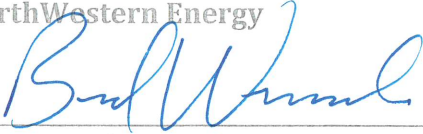
612 S Webb Road
Grand Island, NE 68803
Attn: Dennis Placke, Manager – District
Operations
Phone: (308) 385-4519
Email: dennis.placke@northwestern.com

- e. **Counterparts.** This Agreement may be signed in any number of counterparts and by signatures transmitted electronically, each of which shall be deemed an original and which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first set forth above.

City of Grand Island

NorthWestern Energy



Name: _____
Title: _____
Dated: _____

Name: Brad Wenande
Title: Director SD/NE Operations
Dated: March 17, 2023

RESOLUTION 2023-78

WHEREAS, NorthWestern Energy is an area natural gas operator who owns and maintains Geographical Information System (GIS) information; and

WHEREAS, the City of Grand Island has the need to access this data for project planning purposes; and

WHEREAS, an agreement is needed to establish terms and conditions governing how the City of Grand Island can utilize NorthWestern Energy's GIS data.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Data Services Agreement be approved and signed to facilitate the sharing of GIS information between the aforementioned parties.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized to execute the contract with NorthWestern Energy, and to take all other actions necessary to effect the purpose of this resolution.

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Adopted by the City Council of the City of Grand Island, Nebraska, March 28, 2023.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 24, 2023	☐ City Attorney