



City of Grand Island

Tuesday, September 14, 2004

Council Session

Item G22

#2004-231 - Approving Assignment of Lease from Toba, Inc. to the City of Grand Island, Utilities Department, for Union Pacific Railroad Right-of-Way

Staff Contact: Gary R. Mader; Doug Walker

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Doug Walker, City Attorney

Meeting: September 14, 2004

Subject: Thompson Building; assumption of Union Pacific Lease

Item #'s: G-22

Presenter(s): Gary R. Mader, Utilities Director

Background

The Electric Department, Line Division and Underground offices, shops and storage facilities are located in the 1100 block of West North Front Street. The current buildings were first built over 35 years ago. As the City has grown, so have the Utility's electric distribution divisions. Rather than abandon the current site and build new to meet this growth, the Utilities Department has acquired suitable adjacent properties as they have become available and integrated those facilities into the previously constructed facilities. The old YMCA property, which was located on the same block, was acquired in the 70's. A private residence in that same block was acquired in the 80's, and a commercial business in the block just east was acquired in the 90's. These acquisitions have been fully integrated into the Line Division's operations, and have provided well for the needed growth.

The property located at 1209 – 1219 West North Front, generally referred to as the Thompson Building, was approved for purchase to continue the expansion of the Line Division facilities in the area at the Council meeting of March 23, 2004.

Discussion

The Purchase Agreement approved in March contained several contingencies required by the City to protect its interests in the proposed purchase. One of those contingencies was the assumption of a 20 year lease with Union Pacific Railroad for property upon which a portion of the building is located. The business use of property leased from Union Pacific is a common situation in the central part of the City. Parts of the Public Works Department Shops are on property leased from the Railroad.

Union Pacific has agreed to assign the property lease to the City. A copy of the Agreement is attached. The proposed Lease Assignment has been reviewed by the Legal Department.

Alternatives

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

1. Approve the Lease Assignment.
2. Deny the Lease Assignment.
3. Modify the Assignment to meet the wishes of the Council.
4. Table the issue.

Recommendation

City Administration recommends that the Council approve the Assignment of the Lease from Union Pacific and that the Mayor be authorized to execute the Assignment.

Sample Motion

I move to approve the Assignment of the Property Lease from Union Pacific Railroad for the property at 1209 – 1219 West North Front Street and to authorize the Mayor to execute the Assignment.

Folder: 213-91
Audit: 181895

ASSIGNMENT

THIS AGREEMENT is entered into on the _____ day of _____, 2004, between UNION PACIFIC RAILROAD COMPANY ("Lessor") and TOBA, INC., a Nebraska corporation, whose address is P.O. Box 1466, Grand Island, NE 68802-1466, ("Assignor").

RECITALS:

By instrument dated March 06, 2003, Lessor and Assignor, or their predecessors in interest, entered into an agreement ("Basic Agreement"), identified as Audit No. 181895, at Grand Island, Nebraska.

AGREEMENT:

Effective September 15, 2004, Assignor assigns all of Assignor's right, title and interest in and to the Basic Agreement, including any supplement or amendment (if any), to CITY OF GRAND ISLAND, a municipal corporation of the State of Nebraska, whose address is City Hall, 100 East First Street P.O. Box 1968 Grand Island, Nebraska 68802-1968 ("Assignee").

Assignee accepts the above Assignment and agrees to be bound by all of the terms and conditions contained in the Basic Agreement and any supplement or amendment (if any). Assignee represents and warrants to Railroad that Assignee has purchased and is the owner of all improvements located on, in or under the premises leased under the Basic Agreement.

Lessor gives its consent to this Assignment. This consent does not authorize any further assignment of the Basic Agreement, whether voluntary or otherwise, without the prior written consent of Lessor. In the event of default by Assignee, Assignor shall be bound by and shall perform all of the obligations of the Basic Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

TOBA, INC.

By: Anthony J. Wald
Title: CEO
(Assignor)

UNION PACIFIC RAILROAD COMPANY

By: _____
Senior Manager - Real Estate

GRAND ISLAND, CITY OF

By: _____
Title: _____
(Assignee)

RESOLUTION 2004-231

WHEREAS, on March 23, 2004, by Resolution 2004-58, the City Council of the City of Grand Island approved the acquisition of a tract of land at 1219 W. North Front Street, generally referred to as the Thompson Building, to be used by the Utility Department; and

WHEREAS, the Commercial Agreement contained several contingencies required by the City to protect its interests in the proposed purchase; and

WHEREAS, one of the contingencies required by the City was the assumption of a 20-year lease with the Union Pacific Railroad for property upon which a portion of the building is located; and

WHEREAS, a Basic Agreement was entered into on March 6, 2003 (identified as Audic No. 181895, at Grand Island, Nebraska, by and between Anthony J. Wald of Toba, Inc. and the Union Pacific Railroad; and

WHEREAS, an Assignment of such Basic Agreement has been reviewed and approved by the City Attorney.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Assignment of the Basic Agreement by and between Toba, Inc., the Union Pacific Railroad Company, and the City of Grand Island to assign a 20-year lease to the City of Grand Island for property upon which a portion of the building at 1219 W. North Front Street is located, is hereby approved.

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

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Adopted by the City Council of the City of Grand Island, Nebraska, September 14, 2004.

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
September 9, 2004	☐ City Attorney