



City of Grand Island

Tuesday, August 09, 2005

Council Session

Item G10

#2005-221 - Approving Replacement of Fire Protection Systems at the Utilities Service Center

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Dale Shotkoski, Asst. City Attorney/Purchasing

Meeting: August 9, 2005

Subject: Replacement of Fire Protection Systems at the Utility Service Center

Item #'s: G-10

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

Background

The Utilities Department Service Center has a fire protection sprinkler system consisting of water pipes and sprinkler heads. That system covers the operation offices, purchasing, warehouse and truck garage areas.

Central Sprinkler Company, an affiliate of Tyco Fire Products of Lansdale, PA is the maker of the fire suppression system. The company has issued a Voluntary Sprinkler Replacement recall to replace parts of the sprinkler heads. They will provide parts and labor to replace the original O-Ring Sprinkler Heads with an improved design, at no cost to the Department. The Department has 51 of the sprinkler heads covered in the recall.

Discussion

Prior to the replacement, Central Sprinkler Company and Tyco Fire Products require a "Waiver, Release of Claims and Replacement Agreement" to be signed by the "Owner", in this case, the Mayor with approval by City Council.

The agreement limits the liability of Central Sprinkler Company and Tyco Fire Products for prior claims associated with the sprinkler heads. Fortunately, the Utilities Department has not had occasion for the system to operate, so there are no "prior claim" issues at this time.

The Legal Department has reviewed the agreement.

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 waiver agreement, and that the O-Ring Sprinkler Heads be replaced.

Sample Motion

Motion to approve the Waiver, Release of Claims and Replacement Agreement with Central Sprinkler Company.

WAIVER, RELEASE OF CLAIMS AND REPLACEMENT AGREEMENT

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“Central” means Central Sprinkler Company, its predecessors, successors, subsidiaries, parent company, affiliated companies (including, but not limited to, Gem Sprinkler Co. and Star Sprinkler, Inc.), and any and all of their past, present or future officers, directors, stockholders, partners and agents.

“You” means the undersigned individual or entity that owns O-Ring Sprinkler Heads covered by the Voluntary Replacement Program described in this Notice Packet or at www.SprinklerReplacement.com, or any person claiming through the undersigned individual as his, her or its heir, administrator, devisee, predecessor, successor, shareholder, partner, director, owner, affiliate, subrogee, assignee, insurer or representative of any kind.

In return for Your agreements below, Central agrees to do the following:

- (1) Central will provide a Central Replacement Sprinkler Head to replace each O-Ring Sprinkler Head owned by You that is covered by the Voluntary Replacement Program described in the Notice Packet or at www.SprinklerReplacement.com.
- (2) Central will provide a replacement extension, escutcheon and any fittings, fixtures or appurtenances necessary for the proper replacement of each O-Ring Sprinkler Head with a Replacement Sprinkler Head (“Replacement Parts”).
- (3) Central will remove the O-Ring Sprinkler Heads at Your building(s) and install the Replacement Sprinkler Heads and Parts or pay an installer designated by Central an agreed-upon price to perform the replacement work.

In return for Central’s agreements above, You agree to the following:

(1) You release and give up any claim against Central and those persons or entities in the chain of distribution of Central O-Ring Sprinkler Heads, including distributors, installers, design engineers, builders, developers, contractors or subcontractors (together with Central, “Released Parties”) that may arise from the selection, purchase, presence or use of the O-Ring Sprinkler Heads that are being replaced, except as provided below. You do not release, and continue to retain, any claim against persons in the chain of distribution that does not arise from that person’s selection, sale or distribution of the O-Ring Sprinkler Heads that are being replaced. You also do not release, and continue to retain, the right to bring any claim for actual property damage, costs associated with business interruption or lost business, bodily injury, or wrongful death that may arise from (a) the failure of an O-Ring Sprinkler Head or sprinkler system to perform in a fire as intended, designed or expected, (b) the premature activation of an O-Ring Sprinkler Head, or (c) damage to property other than the O-Ring Sprinkler Head or sprinkler system caused by leakage or corrosion of the O-Ring Sprinkler Head.

(2) You expressly waive the provisions of Section 1542 of the California Civil Code (and all other like provisions of law), which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;

Unknown claims for damages arising from fire damage, property damage, personal injury, or wrongful death associated with the failure or alleged failure of an O-ring sprinkler head or sprinkler system to perform in a fire as intended, designed, or expected; premature activation of such sprinkler; or damage to property other than the O-Ring Sprinkler Head or sprinkler system caused by leakage or corrosion of the O-Ring Sprinkler Head, are not released hereby.

(3) You will fully cooperate with Central (or the installer designated by Central to perform the replacement work) to schedule the replacement work for a mutually convenient time and, if necessary, to secure the cooperation and agreement of any occupants or tenants.

(4) It is Central’s intention that, as a matter of good faith and sound business practice, if a defect in the sprinkler system not related to the heads being replaced is identified by the installer, the installer will bring the defect to the attention of

the building owner or manager. Nevertheless, Central and/or the installer designated by Central are not legally responsible for identifying, disclosing, repairing, or remedying any pre-existing condition(s) of Your building or sprinkler system, and cannot be held liable for failing to do so. Pre-existing conditions include asbestos abatement, improper or incorrect sprinkler system design, unsuitable piping or materials (other than the O-Ring Sprinkler Heads), adequacy of available water supply, water quality or microbiologically induced corrosion.

(5) Central and/or the installer designated by Central are not liable for any incidental or consequential damages or for costs associated with business interruption or lost business to You, unless such damage was caused by intentional misconduct or a negligent act during the installation of the Replacement Sprinkler Heads and Parts. These incidental damages include water damage, leaks, cosmetic damage, or costs of cleaning the premises more than broom clean.

(6) Central and/or the installer designated by Central are not liable for any costs associated with access restrictions, fire watch or security costs, permit costs, or Your personnel costs, unless such cost was caused by intentional misconduct or a negligent act during the installation of the Replacement Sprinkler Heads and Parts. If your O-ring sprinkler heads are "On-Off" sprinklers, Central is not liable for the fact that no Replacement Sprinkler heads with an On-Off feature are available if you choose to participate in this program.

(7) In the event You bring suit against some party other than the Released Parties for claims covered by this release, You will reduce any judgment You obtain related to the claims released above so as to discharge any claims for contribution and/or indemnity against the Released Parties arising from or related to those claims, and if You obtain a judgment (or settlement) against a party and that party obtains a judgment against the Released Parties for contribution or indemnity, You will reduce or remit any judgment You obtain by the amount of the judgment against the Released Parties.

(8) Your participation in this program supersedes all prior offers from Central regarding replacement of O-Ring Sprinkler Heads.

(9) Central's offer of free Replacement Sprinkler Heads, free Replacement Parts and performance or provision of replacement labor does not mean that any valid claim exists against Central or any other person or entity regarding the O-Ring Sprinkler Heads, and by making this offer, Central does not admit liability of any kind.

(10) This Agreement can only be amended in writing signed by You and Central.

(11) You are fully possessed of all rights and authority to execute this document on behalf of the owner of the O-Ring Sprinklers being replaced.

By entering this Agreement, You and Central intend to eliminate the necessity and expense of defending against any claims by You, as an owner of O-Ring Sprinkler Heads, relating to the purchase and installation of O-Ring Sprinkler Heads against any other person.

Bob Brinkman

Robert Brinkman,
for Central Sprinkler Company

Owner of the O-ring Sprinkler Heads (Signature)

By: _____
(print name)

Title: _____
(if You are signing on behalf of an entity)

Date: _____

Send this signed Agreement with Your completed and signed Proof of Claim Form and required photographs to:

Central Sprinkler Company Replacement Program
PO Box 5005
Lansdale, PA 19446

RESOLUTION 2005-221

WHEREAS, the Utilities Department Service Center has a fire protection sprinkler system consisting of water pipes and sprinkler heads that covers the operation offices, purchasing, warehouse and truck garage areas; and

WHEREAS, Central Sprinkler Company, an affiliate of Tyco Fire Products of Lansdale, Pennsylvania is the maker of the fire suppression system; and

WHEREAS, the company has issued a Voluntary Sprinkler Replacement recall to replace parts of the sprinkler heads; and

WHEREAS, such recall will provide parts and labor to replace the original O-Ring Sprinkler Heads with an improved design, at no cost to the Department; and

WHEREAS, prior to the replacement, Central Sprinkler Company and Tyco Fire Products require a Waiver, Release of Claims and Replacement Agreement to limit the liability of Central Sprinkler Company and Tyco Fire Products for prior claims associated with the sprinkler heads; and

WHEREAS, the City Attorney's office has reviewed and approved the proposed agreement, and no prior claims exist pertaining to the sprinkler heads.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized and directed to execute the Waiver, Release of Claims and Replacement Agreement with Central Sprinkler Company to provide parts and labor to replace the original O-Ring Sprinkler Heads at the Utility Service Center involved in the recall.

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Adopted by the City Council of the City of Grand Island, Nebraska, August 9, 2005.

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
August 2, 2005	☐ City Attorney