



# City of Grand Island

Tuesday, September 26, 2006

Council Session

## Item G19

**#2006-281 - Approving Purchase Agreement for (2) SelfCheck Workstations with SirsiDynix**

Staff Contact: Steve Fosselman

# Council Agenda Memo

**From:** Steve Fosselman, Library Director

**Meeting:** September 26, 2006

**Subject:** Approving Purchase Agreement for (2) SelfCheck Workstations with SirsiDynix

**Item #'s:** G-19

**Presenter(s):** Steve Fosselman, Library Director

## Background

Through previous City Council approval, the Grand Island Public Library has been contracting with SirsiDynix (formerly Dynix) since 1993 on a variety of automation system needs, including installation of hardware and software to operate the automated circulation of items. The purchase of 3M SelfCheck workstations (which allow patrons to do the routine checkout of materials without staff intervention) in 1993 was included in this arrangement. Since that initial contract, our library has periodically received City Council approval for various system enhancements and 3M SelfCheck upgrades.

## Discussion

To facilitate the advancement of technologies such as will be implemented in the library's expansion project, SirsiDynix is offering a trade-in incentive of our current workstations for a net cost of \$34,522.00 after trade in. This will allow our library to continue operating in the most cost-effective manner and to allow staff to provide other essential services to library patrons while increasing numbers of routine checkouts handled by the patrons themselves.

Purchasing through SirsiDynix is recommended because 3M selfcheck workstations are directly linked to SirsiDynix's database server, purchasing through SirsiDynix assures the library of consistent maintenance service regardless of the source of the problem, and discounts have been negotiated with SirsiDynix based on previous purchases.

This is a budgeted expense in the library's account 10044301-85620, which has a current balance of \$35,000 for automation enhancements.

## **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 this purchase agreement in the amount of \$34,522.00 with SirsDynix.

## **Sample Motion**

Motion to approve a purchase agreement in the amount of \$34,522.00 with SirsDynix.



## **THIRD PARTY PRODUCT PURCHASE AND LICENSE AGREEMENT**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2006 ("Effective Date") by and between SirsiDynix with offices at 101 Washington Street, S.E., Huntsville, Alabama 35801 and Edith Abbott Memorial Library ("Customer"), having its offices at 211 North Washington, Grand Island, Nebraska 68801. The term "SirsiDynix" shall also refer to the company, its agents, suppliers, and its subcontractors.

### **1. DEFINITION OF TERMS**

*Hardware:* The hardware items listed on Schedule 1 hereto.

*Third Party Software:* The software listed in Schedule 1 owned by an entity other than SirsiDynix which is re-licensed or sublicensed by SirsiDynix to the Customer.

### **2. CONTRACT DOCUMENTS.** The contract documents are this Agreement, including the following schedules attached hereto:

Schedule 1—Configuration

Schedule 2—End User License Agreement

Each of these documents is incorporated herein by this reference as if set forth in full, and shall constitute a part of this Agreement.

### **3. FURNISHING OF HARDWARE, SOFTWARE, AND SERVICES.** Subject to the terms and conditions set forth herein, SirsiDynix agrees to provide and Customer hereby agrees to purchase the licenses and services described in Schedule 1.

### **4. RISK OF LOSS.** SirsiDynix is responsible for all risks of loss or damage to Hardware furnished under this Agreement until delivery is made to Customer. Thereafter Customer will be responsible for risks of loss or damage, except for loss or damage caused by SirsiDynix in the process of installation. Title to the Hardware shall pass from SirsiDynix to Customer upon delivery to Customer.

### **5. WARRANTY**

A. **WARRANTIES.** SirsiDynix warrants that it is an authorized distributor of the Hardware and Third Party Software and that with the execution of this Agreement Customer will have the right to use the Third Party Software in accordance with the terms and conditions of the end user license attached hereto as Schedule 2.

B. **NO ADDITIONAL WARRANTIES. THE WARRANTIES SET FORTH IN SECTION 5A OF THIS AGREEMENT ARE IN LIEU OF, AND THIS AGREEMENT EXPRESSLY EXCLUDES TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND (iii) ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY SIRSIDYNIX, ITS AFFILIATES, CONTRACTORS OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY.**

### **6. PAYMENT**

A. **PAYMENT ARRANGEMENTS.** SirsiDynix shall submit all invoices to Customer at the address shown in the first paragraph of this Agreement. Invoices shall be considered past due 30 days after the date shown thereon. Past due balances are subject to the lesser of a 1½% per month interest charge (18% per annum) or the highest rate allowed by law.

B. **DISPUTED INVOICES.** Customer is not required to pay the disputed portion of any invoice, pending resolution of that dispute, if written notice of the dispute has been provided to SirsiDynix within 15 days of receipt of the invoice.

C. **TAXES.** Unless otherwise noted, the prices in this Agreement do not include taxes. Customer agrees to pay directly or reimburse SirsiDynix for any taxes arising out of this Agreement or

SirsiDynix's performance under this Agreement, excluding taxes on SirsiDynix's net income. If Customer is exempt from taxes, photocopies of applicable certificates demonstrating exemption shall be provided by Customer prior to the execution of this Agreement.

- D. **MILESTONES.** Payment is due upon invoice for successful completion of the following milestones:
- | <u>MILESTONE</u>  | <u>AMOUNT</u> |
|---|---------------|
| Delivery of Hardware and Third Party Software to Customer | 34,522        |

**TOTAL**

**\$34,522**

7. **LIMITATION OF LIABILITY.** SIRSIDYNIX'S TOTAL LIABILITY TO CUSTOMER UNDER THIS AGREEMENT, EXCLUDING LIABILITY FOR PERSONAL INJURY, DAMAGE TO REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY, AND LIABILITY PURSUANT TO CLAIMS OF INFRINGEMENT, WILL BE LIMITED TO THE PAYMENTS MADE BY CUSTOMER DURING THE PREVIOUS 12 MONTHS FOR THE PRODUCT OR SERVICE WHICH IS THE SUBJECT MATTER OF THE CLAIM. IN NO EVENT WILL SIRSIDYNIX BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT SIRSIDYNIX HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDY.
8. **TERMINATION.** Either party may terminate this Agreement immediately upon written notice if the other party commits a non-remediable material breach of this Agreement or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within 30 days of being notified in writing of such breach. Following termination of this Agreement (for whatever reason), each party will deliver to the other any property of the other in its possession or control in good condition, reasonable wear and tear excepted. Neither party will be liable for any damages arising out of the termination of this Agreement, provided that such termination will not affect any right to recover damages sustained by reason of material breach or any payments owing under the Agreement.
9. **RETURNS.** Customer may incur restocking fees and other like assessments if it changes the types and quantities of Hardware purchase or Third Party Software licensed under this Agreement after the items have been ordered.
10. **DISPUTE RESOLUTION.** The parties will use reasonable efforts to resolve any dispute arising out of the Agreement through a meeting of appropriate managers from each party. If the parties are unable to resolve the dispute, either party may escalate it to its executives. If an executive level meeting fails to resolve the dispute within 30 days after escalation, either party may seek any available legal relief. This provision will not affect either party's right to seek injunctive or other provisional relief at any time.
11. **GENERAL**
- A. **Force Majeure.** The parties will exercise every reasonable effort to meet their respective obligations hereunder but shall not be liable for delays resulting from force majeure or other causes beyond their reasonable control. This provision does not relieve Customer of its obligation to make payments then owing.
- B. **Assignment.** Customer may not assign or transfer the Agreement or its rights under it without SirsiDynix's prior written approval, which approval will not be unreasonably withheld. SirsiDynix may, without Customer's consent, assign this Agreement to an affiliate or subsidiary of SirsiDynix or its parent corporation, or assign its rights to receive payments hereunder.
- C. **Notices.** All written notices required by this Agreement will be effective upon receipt. Notices communicated by electronic mail or facsimile will be deemed to be written.

- D. **Relationship.** This Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.
- E. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- F. **Survival.** Rights and obligations under the Agreement which by their nature should survive will remain in effect after termination or expiration of the Agreement.
- G. **No Waiver.** Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.
- H. **Modification.** No modification to this Agreement will be binding unless in writing and signed by an authorized representative of each party.
- I. **Section Headings.** Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.
- J. **Entire Agreement.** This Agreement constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations, and warranties, and prevails over any conflicting or additional terms contained in any quote, purchase order, acknowledgement, or other communication between parties relating to its subject matter during its term.
- K. **Counterparts.** The parties agree that this Agreement may be executed in one or more counterparts, each of which shall be constitute an enforceable original of the Agreement, and that facsimile signatures shall be as effective and binding as original signatures.

IN WITNESS WHEREOF, the parties have caused this Agreement, which shall inure to the benefit of and be binding upon the successors of the respective parties, to be signed and entered as of the Effective Date.

SirsiDynix

Edith Abbott Memorial Library

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1**

**CONFIGURATION**

For the complete list of Software and Services to be delivered under this Agreement, please see Exhibit "A — Quote dated September 20, 2006 attached hereto and incorporated herein by reference.



Electronic Library Proposal  
for the  
Edith Abbott Memorial Library

September 20, 2006

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The following is SirsiDynix's financial proposal for a complete Unicorn electronic library system, including software licensing, education and documentation, policy configuration, data loading and indexing, server hardware and ongoing system maintenance and enhancements.

Software support includes toll-free telephone consultation service and 24-hour, 7-day emergency support from SirsiDynix's Client Care Center, and all future enhancements released by SirsiDynix for the Unicorn modules licensed.

Prices and products presented here are valid for 90 days from the date of this proposal unless otherwise specified in the Statement of Work.

SirsiDynix may add and/or substitute equivalent products for any third party items quoted in the event of product unavailability, software requirements and/or model number changes.



**INVESTMENT SUMMARY**

<i>Description</i>	<i>License &amp; 1st Year Software Support</i>	<i>Estimated 2nd Year Software Support</i>	<i>Estimated 2nd Year Subscription</i>
SOFTWARE SUBTOTAL	\$ 33,622	\$ 0	
SIRSIDYNIX PROFESSIONAL SERVICES SUBTOTAL	\$ 0	N/A	N/A
SIRSIDYNIX HARDWARE SUBTOTAL	\$ 900	3 Year Warranty	N/A
<b>TOTAL SYSTEM COST</b>	<b>\$ 34,522</b>	<b>\$ 0</b>	

**Statement of Work**

**SIRSIDYNIX SOFTWARE**

<i>Description</i>	<i>Unit of Measure</i>	<i>Quantity</i>	<i>License &amp; 1st Year Software Support</i>	<i>Estimated 2nd Year Software Support</i>	<i>Estimated 2nd Year Subscription</i>
3M Model 6410-V SelfCheck Workstation (No Cabinet)	ea	2	\$ 30,622		
3M Store and Forward Option for V-Series Selfcheck Workstations	ea	2	\$ 3,000		
<b>SIRSIDYNIX SOFTWARE SUBTOTAL</b>			<b>\$ 33,622</b>		

**SIRSIDYNIX HARDWARE**

<i>Description</i>	<i>Unit of Measure</i>	<i>Quantity</i>	<i>Extended Cost</i>
General Shipping & Handling Charges	ea	60	\$ 900
<b>SIRSIDYNIX HARDWARE SUBTOTAL</b>			<b>\$ 900</b>

## SCHEDULE 2

### END USER LICENSE AGREEMENT

#### **3M™ SELF-CHECK™ SYSTEM SOFTWARE LICENSE**

Use of the 3M SelfCheck System Software is governed by the terms of the license between 3M and Customer. The Software may be used by Customer and its employees and agents only for Customer's benefit and in accordance with the license between 3M and Customer, as set forth below.

1. **3M SelfCheck Software.** As used in this License, "Software" means the proprietary 3M™ SelfCheck™ System Software licensed to Customer and any updates (e.g., maintenance releases, modifications to existing functionality or new functionality) that may be provided to Customer by 3M during the term of this License. 3M is under no obligation to issue updates.

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**Version 2.0, January 2004**

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END OF TERMS AND CONDITIONS

3M Library Systems

3M Center, Building 225-4N-14

St. Paul, MN 55144-1000

1-800-328-0067 4 78-8126-8213-2 Rev. B

RESOLUTION 2006-281

WHEREAS, the Grand Island Public Library has contracted with SirsiDynix (formerly Dynix) since 1993 on a variety of automation system needs, including installation of hardware and software to operate the automated circulation of items; and

WHEREAS, to facilitate the advancement of technologies such as will be implemented in the library's expansion project, to allow our library to continue operating in the most cost-effective manner, and to allow staff to provide other essential services to library patrons while increasing numbers of routine checkouts handled by the patrons themselves, SirsiDynix is offering a trade-in incentive on such equipment; and

WHEREAS, the purchase of two 3M Self Check V series workstations for the amount of \$34,522.00 is recommended; and

WHEREAS, continued use of SirsiDynix is recommended to assure consistent maintenance with SirsiDynix equipment that is directly linked to the SirsiDynix database server.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the purchase of two 3M Self Check V series workstations at the Grand Island Public Library from SirsiDynix (formerly Dynix) for the amount of \$34,522.00 is hereby approved; and the Mayor is hereby authorized and directed to execute such Purchase Agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska on September 26, 2006.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form ? \_\_\_\_\_  
September 21, 2006 ? City Attorney