
City of Grand Island



Tuesday, March 11, 2008

Council Session Packet

City Council:

Tom Brown
Larry Carney
John Gericke
Peg Gilbert
Joyce Haase
Robert Meyer
Mitchell Nickerson
Bob Niemann
Kirk Ramsey
Jose Zapata

Mayor:

Margaret Hornady

City Administrator:

Jeff Pederson

City Clerk:

RaNae Edwards

7:00:00 PM
Council Chambers - City Hall
100 East First Street

Call to Order

This is an open meeting of the Grand Island City Council. The City of Grand Island abides by the Open Meetings Act in conducting business. A copy of the Open Meetings Act is displayed in the back of this room as required by state law.

The City Council may vote to go into Closed Session on any agenda item as allowed by state law.

Invocation - Associate Pastor Alan Davis, Independent Bethel Baptist Church 1223 East 6th Street

Pledge of Allegiance

Roll Call

A - SUBMITTAL OF REQUESTS FOR FUTURE ITEMS

Individuals who have appropriate items for City Council consideration should complete the Request for Future Agenda Items form located at the Information Booth. If the issue can be handled administratively without Council action, notification will be provided. If the item is scheduled for a meeting or study session, notification of the date will be given.

B - RESERVE TIME TO SPEAK ON AGENDA ITEMS

This is an opportunity for individuals wishing to provide input on any of tonight's agenda items to reserve time to speak. Please come forward, state your name and address, and the Agenda topic on which you will be speaking.

MAYOR COMMUNICATION

This is an opportunity for the Mayor to comment on current events, activities, and issues of interest to the community.



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item E1

Public Hearing on Re-Adopting the City of Grand Island Official Zoning Map

Staff Contact: Chad Nabity

Council Agenda Memo

From: Regional Planning Commission

Meeting: March 11, 2008

Subject: Re-Adoption City of Grand Island Zoning Map

Item #'s: E-1

Presenter(s): Chad Nabity AICP, Regional Planning Director

Background

Concerning the re-adoption of the City of Grand Island Zoning Map, as produced using the Hall County Geographic Information System as the official zoning map for the City of Grand Island.

Discussion

At the regular meeting of the Regional Planning Commission, held February 6, 2008, the above item was considered following a public hearing. This map will be used as the official map to show zoning, the Grand Island City Limit Lines and 2 mile extraterritorial jurisdiction incorporating all annexation and zoning actions since this map became official on March 13, 2007.

Included below you will find the Planning Directors report to the Planning Commission on this item with a summary of the changes.

PROPOSAL:

On March 13, 2007 the Grand Island City Council approved using a map produced from the Hall County GIS as the official zoning map for the City of Grand Island based on the 2004 Comprehensive Plan for the City of Grand Island with all changes to the map as approved through March 13, 2007. As a matter of course, the City of Grand Island occasionally re-adopts the zoning map incorporating all changes since the last re-adoption of the entire map along with other changes as recommended by staff and the Hall County Regional Planning Commission. This will allow a newly revised and adopted copy of the map to be printed for official use by Council, staff and the general public. This hearing is being held for that purpose. This map will also serve to give

notice to all parties that the Grand Island City limits, and 2 mile extraterritorial jurisdiction, is as shown on the map.

BACKGROUND:

The following chart shows the changes that have been approved by the Regional Planning Commission and the Grand Island City Council since March 13, 2007, including proposed changes through February 28, 2008.

| Id | FILEDATE | ORDINANCE | CHANGE | LEGAL | CASE |
|-----------|-----------------|------------------|-----------------|-------------------------------------|-------------|
| 1 | 3/27/2007 | 9110 | R2 to R3 | Woodland Park | C-13-2007GI |
| 2 | 5/8/2007 | 9085 | M2 to R4 | Frank P. Barks E 7th Street | C-16-2007GI |
| 3 | 5/8/2007 | 9116 | LLR to B2 | Chief Industries on Stolley Park Rd | C-15-2007GI |
| 4 | 5/22/2007 | 9119 | Amended CD Zone | Conestoga Mall (El Toro) | C-18-2006GI |
| 5 | 7/24/2007 | 9128 | Amended RD Zone | Ponderosa Lake Estates | C-21-2007GI |
| 6 | 7/25/2006 | 9129 | RO to B2 | College Park | C-23-2007GI |
| 7 | 11/27/2007 | 9150 | Amended RD Zone | Nottingham Estates | C-04-2008GI |

The changes shown on this chart are represented on the new version of the Grand Island Zoning map. A map delineating the location of these changes is attached.

There were no additions to the City of Grand Island that changed the city limits lines and/or the extraterritorial jurisdiction since the annexation of industrial property and power plant annexation in southeast Grand Island. Those changes were approved on March 13, 2007. All changes to the zoning map for those changes were incorporated on March 13, of 2007.

ADDITIONAL CHANGES

Staff is recommending that two Commercial Development Zones (Ewoldt Subdivision and Kings Crossing Subdivision) be reverted to their prior zoning classifications due to inactivity at the sites. Commercial Development zones are approved with an initial period of 18 months. If no activity has occurred during that time frame, the Commercial Development zone expires and Planning Commission and Council have to take action to revert the zoning.

ANALYSIS

Staff is not recommending any changes to the Grand Island Zoning Map other than the reversion of the two CD zones. All of the other changes mentioned herein have been previously approved by the Grand Island City Council after proper notice and hearing. This map serves to notify any, and all, interested parties of the current boundaries of the City of Grand Island, the extents of the extraterritorial jurisdiction for the City of Grand Island and the zoning of property within the jurisdiction of the City of Grand Island.

The Kings Crossing Development located south of U.S. Highway 34 and west of South Locust Street (Knot's Auction House) was rezoned from B2 General Business to CD Commercial Development Zone in accordance with the Gateway Corridor Regulations by Ordinance 9019 on November 22, 2005. No activity has occurred on the site and the subdivision plat was not filed. It is recommended by staff, and required by city code, that this tract of ground in the NE ¼ of the NE ¼ of Section 33, Township 11 north, Range 9 west of the 6th P.M. be rezoned from CD Commercial Development Zone to B2 General Business Zone.

The Ewoldt Subdivision, located at the southwest corner of the intersection of U.S. Highway 34 and U.S. Highway 281, was rezoned from TA Transitional Agriculture to CD Commercial Development Zone at the request of Husker Retail Development Group by Ordinance 9035 on March 28, 2006. No activity has occurred on the site. It is recommended by staff, and required by city code, that this tract of ground, all of the Ewoldt Subdivision, be rezoned from CD Commercial Development Zone to TA Transitional Agriculture Zone.

RECOMMENDATION:

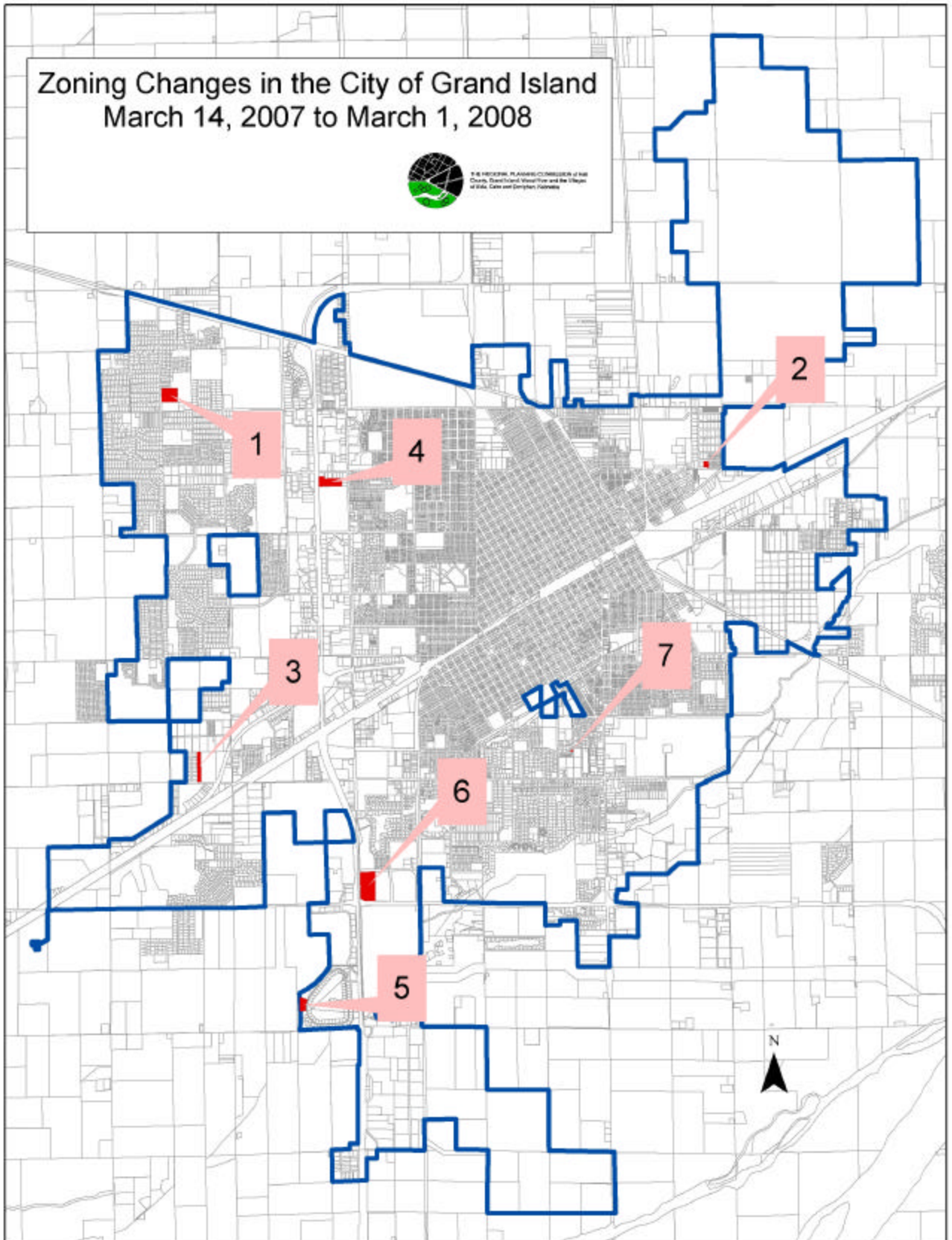
That the Regional Planning Commission recommend that the City Council of Grand Island revert the CD Zones for the Kings Crossing Development and the Ewoldt Subdivision and adopt this map as presented as the official Zoning Map for the City of Grand Island.

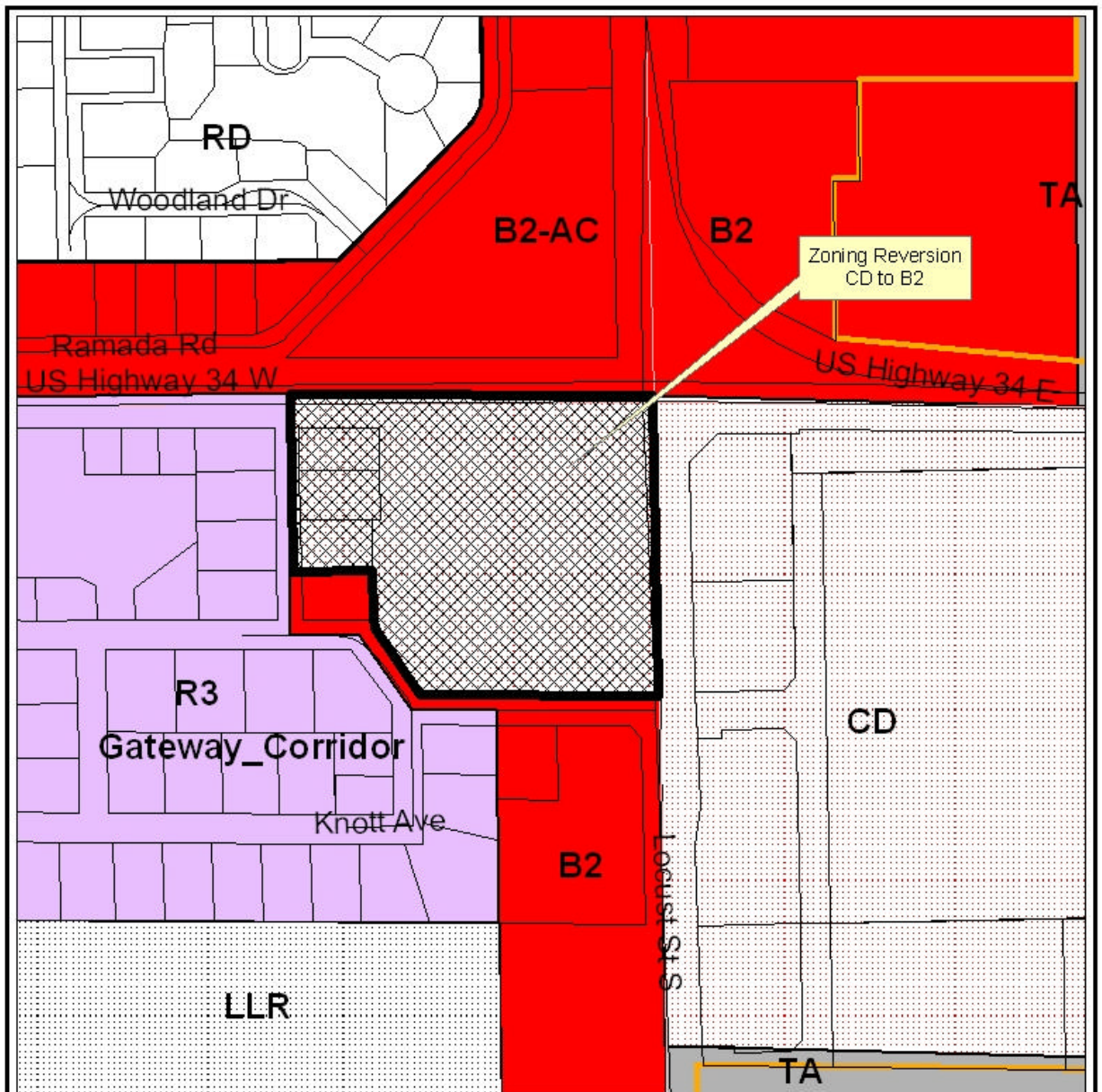
_____ Chad Nabity AICP, Planning Director

Zoning Changes in the City of Grand Island March 14, 2007 to March 1, 2008





REGIONAL PLANNING COMMISSION of SAN
DIEGO COUNTY, DIVERSIFIED VISION and the Vision
of Life, Love and Community Forestry





Zoning Reversion

-  From CD : Commercial Development Zone
-  To B2 : General Business Zone



Scale : NONE

C-11-2008GI



PLANNING & DEVELOPMENT
CITY OF ALBUQUERQUE, NEW MEXICO

No members of the public spoke in favor or opposed to the zoning map.

Alternatives

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

1. Approve the Grand Island Zoning Map as presented
2. Modify the Grand Island Zoning Map to meet the wishes of the Council
3. Table the issue

Recommendation

A motion was made by Ruge, 2nd by Amick, to approve the Grand Island Zoning Map as presented.

A roll call vote was taken and the motion passed with 10 members present (Miller, Amick, O'Neill, Ruge, Hayes, Reynolds, Haskins, Bredthauer, Heineman, Snodgrass) voting in favor.

Sample Motion

Approve the adoption of the Grand Island Zoning Map.



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item G1

**Receipt of Official Document - Tort Claim Filed by Dianne G.
Kelley**

Staff Contact: Dale Shotkoski

Council Agenda Memo

From: Dale Shotkoski, City Attorney

Meeting: March 11, 2008

Subject: Receipt of Official Document – Tort Claim filed by
Dianne G. Kelley

Item #'s: G-1

Presenter(s): Dale Shotkoski, City Attorney

Background

The City of Grand Island has received a Notice of Tort Claim on behalf of Dianne G. Kelley, alleging certain claims in connection with an accident which occurred on May 4, 2007 inside the Fonner Park Exposition and Events Center, Inc. d/b/a Heartland Events Center, 700 East Stolley Park Road.

Without getting into issues concerning the City's and other parties' liability, and whether the claim of Dianne G. Kelley, is fair and reasonable, we are simply providing a copy of this claim to you in compliance with the Nebraska Political Subdivision Tort Claims Act.

For a person to assert a tort claim against the City of Grand Island, a written notice of the claim must be filed with the City clerk, Secretary or other official responsible for keeping official records. The claim must be filed within one year of the accrual of the claim, and the Council has six months to act on the claim. No suit can be filed until after the Council acts on the claim, or the six months has run.

Historically, the City of Grand Island has simply let the six months run. Not all claims result in a suit being filed, so it makes good sense to not act affirmatively in many instances. In any event, if you wish to look further into this claim, please contact the City Administrator's office or the City Attorney, and we will provide you with the information which we have in connection with the claim. Our recommendation is to continue to take no affirmative action on tort claims. It must be emphasized that by providing copies of alleged claims to you, we are not making an admission or representation that a claim has been properly filed in any respect. We also recommend that no comments concerning a particular claim be made during Council meetings, unless you decide to bring the matter on for formal consideration. Even then, we ask that comments be carefully considered so that the legal rights of all parties are preserved.

Discussion

This is not an item for council action other than to simply acknowledge that the claim has been received.

Recommendation

City Administration recommends that the Council take no action other than acknowledge receipt of the claim.

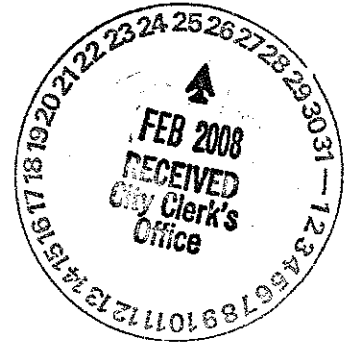
Sample Motion

Motion to approve acknowledgement of the Tort Claim filed by Dianne G. Kelley.

POLITICAL SUBDIVISION TORT CLAIM

TO: City of Grand Island
RaNae Edwards, City Clerk
100 East First Street
P.O. Box 1968
Grand Island, NE 68802-1968

Administrative Services
Division of Risk Management
Executive Building
521 S. 14th St., Ste. 230
Lincoln, NE 68508



RE: **CLAIM OF:** Dianne G. Kelley, Residing at 2106 Circle Drive, Grand Island, NE 68801.
AGAINST: City of Grand Island; and Administrative Services, Division of Risk Management.

PLEASE TAKE NOTICE that DIANNE G. KELLEY, residing at 2106 Circle Drive, Grand Island, NE 68801, hereby makes her claim against City of Grand Island; and Administrative Services, Division of Risk Management, hereinafter referred to as "Defendant."

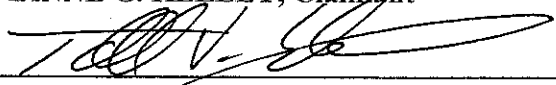
The following information is being provided pursuant to Neb. Rev. Stat. §13-901 et. seq. as well as 81-8,209 et. seq.

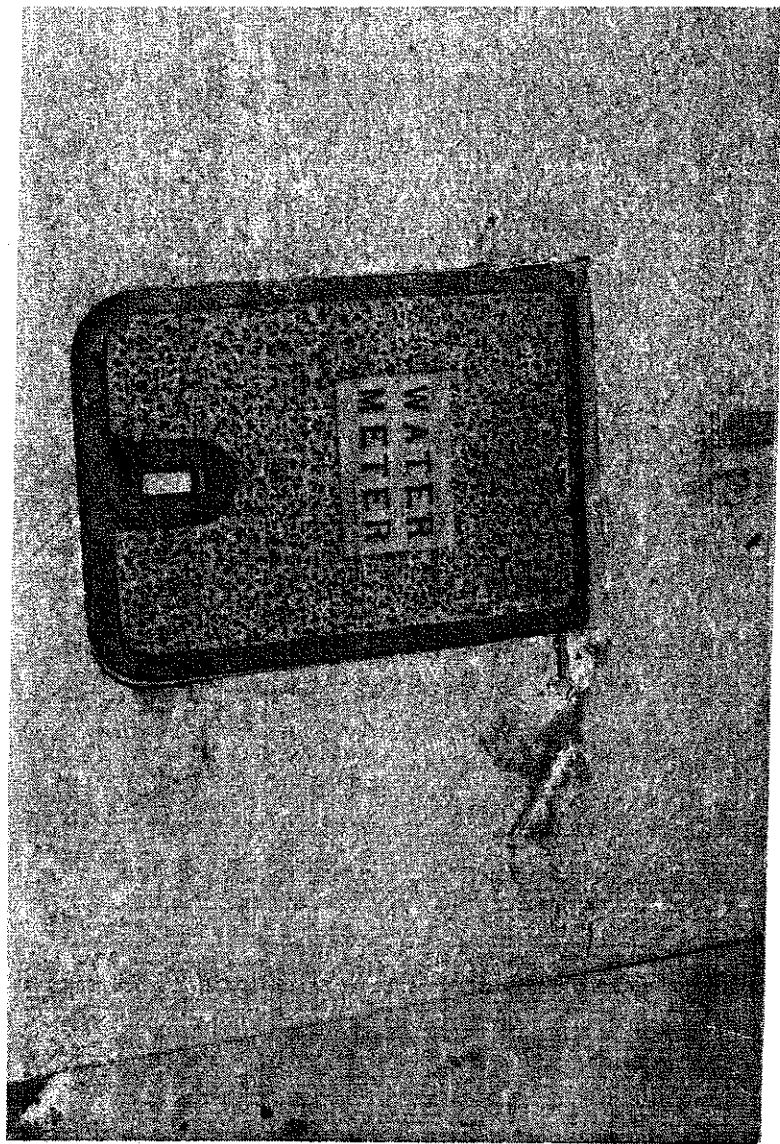
The basis for this claim is that on or about May 4, 2007, Dianne G. Kelley was lawfully located inside the Fonner Park Exposition and Events Center, Inc., d/b/a Heartland Events Center, 700 E. Stolley Park Road, Grand Island, NE 68802-0490, when then and there a "Water Meter" cover located on and throughout the floor of said Events Center inappropriately and without warning or notification, either expressed or implied, became open and raised thereby creating a dangerous, condition which then and there caused the injured party, Dianne G. Kelley, to fall thereby causing significant injury to her body as a whole, including, but not limited to, her face, nose, eyes, forehead, mouth, teeth, and other parts of her body requiring emergency medical, medical dental, optical, radiological, neurological and medication services. Copies of medical statements and bills received to date as well as copies of pictures of said "Water Meter" cover are attached hereto and incorporated herein by this reference.

Dianne G. Kelley requests reimbursement for medical bills in the amount of \$4,018.68 and for damages in the sum which would fairly compensate her for her pain and suffering, future medical bills, and future pain and suffering.

Dianne G. Kelley hereby presents her claim to the governing body to render disposition within six months of the date of filing.

DATED: February 22, 2008.

DIANNE G. KELLEY, Claimant
BY: 
Todd V. Elsbernd, #18785
BRADLEY, ELSBERND, EMERTON,
ANDERSEN & KNEALE, P.C.
202 West Third Street
P.O. Box 639
Grand Island, NE 68802
Telephone: (308) 382-2128





City of Grand Island

Tuesday, March 11, 2008

Council Session

Item G2

Approving Minutes of February 26, 2008 City Council Regular Meeting

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL REGULAR MEETING

February 26, 2008

Pursuant to due call and notice thereof, a Regular Meeting of the City Council of the City of Grand Island, Nebraska was conducted in the Council Chambers of City Hall, 100 East First Street, on February 26, 2008. Notice of the meeting was given in *The Grand Island Independent* on February 20, 2008.

Mayor Margaret Hornady called the meeting to order at 7:00 p.m. The following City Council members were present: Councilmember's Brown, Haase, Zapata, Nickerson, Gericke, Carney, Gilbert, Ramsey, Niemann, and Meyer. The following City Officials were present: City Administrator Jeff Pederson, City Clerk RaNae Edwards, Finance Director David Springer, City Attorney Dale Shotkoski, and Public Works Director Steve Riehle.

INVOCATION was given by Pastor Paul Hofrichter, Evangelical Free Church, 2609 South Blaine Street followed by the PLEDGE OF ALLEGIANCE.

MAYOR COMMUNICATION: Mayor Hornady complimented Public Information Officer Wendy Meyer-Jerke on the presentation given at the Nebraska League of Municipalities Conference today in Lincoln regarding the Community Youth Council.

PUBLIC HEARINGS:

Public Hearing on Request from AYR, Inc. dba El Toro Mexican Restaurant, 3425 West State Street for an Addition to their Class "I-61118" Liquor License. RaNae Edwards, City Clerk reported that an application had been received from AYR, Inc. dba El Toro Mexican Restaurant, 3425 West State Street for an addition to their Class "I-61118" Liquor License. Ms. Edwards presented the following exhibits for the record: application submitted to the Liquor Control Commission and received by the City on February 11, 2008; notice to the general public of date, time, and place of hearing published on February 16, 2008; notice to the applicant of date, time, and place of hearing mailed on February 12, 2008; along with Chapter 4 of the City Code. Staff recommended approval contingent upon final inspections. No public testimony was heard.

Public Hearing on Acquisition of Sanitary Sewer Easement Located in the SE 1/4 of the NE 1/4 of Section 23-11-10 between Springdale Second Subdivision and North Road (Karen J. Bredthauer). Steve Riehle, Public Works Director reported that a sanitary sewer easement was needed in unplatted land in the SE 1/4 of the NE 1/4 of Section 23-11-10 between Springdale Second Subdivision and North Road for the construction, operation, maintenance, extension, repair, replacement, and removal of sanitary sewer within the easement. Staff recommended approval. No public testimony was heard.

CONSENT AGENDA: Consent agenda item G-4 was pulled from the agenda. Consent item G-10 was pulled for further discussion. Motion by Zapata, second by Brown to approve the Consent Agenda excluding items G-4 and G-10. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of February 12, 2008 City Council Regular Meeting.

Approving Minutes of February 19, 2008 City Council Study Session.

#2008-56 – Approving Application and Memorandum of Understanding for Safe Haven: Office on Violence Against Women Grant.

#2008-57 – Approving Bid Award for Spent Activated Carbon and Fly Ash Waste Conveying, Storage and Conditioning System for Platte Generating Station with Clyde Bergemann Delta Ducon of Malvern, Pennsylvania. This item was pulled from the agenda at the request of the Utilities Department.

#2008-58 – Approving Bid Award for Twelve (12) 115 kV Transformer Bushings with PCore Electric of LeRoy, New York in an Amount of \$48,984.60.

#2008-59 – Approving Bid Award for Transmission Line Work – Contract #08-PCC-01 with Schmader Electric Construction Co. of West Point, Nebraska in an Amount of \$179,642.25.

#2008-60 – Approving Tim Luchsinger, Assistant Utilities Director as Alternate Management Committee Representative to the Municipal Energy Agency of Nebraska.

#2008-61 – Approving Bid Award for Swimming Pool Chemicals at Island Oasis with Aqua-Chem, Inc. of Bellevue, Nebraska in an Amount of \$14.50 per bag for Sodium Bicarbonate; \$24.00 per drum for Hydrochloric Acid; \$52.25 per bag for Cyanuric Acid; \$135.00 per drum for Calcium Hypochlorite; \$1.16 per gallon for Sodium Hypochlorite; and \$1.25 per gallon for Hydrochloric Acid.

#2008-62 – Approving Contract for Soft Drink Services for Aquatic Facilities with Pepsi Bottling Group of Grand Island, Nebraska.

#2008-64 – Approving Change Order No. 1 for Re-Alignment of Riverway Trail with The Diamond Engineering Company of Grand Island, Nebraska for an increase of \$1,710.00 and a Revised Contract Amount of \$341,133.85.

#2008-65 – Approving Modification to Golf Pro Contract with Don E. Kruse of Grand Island, Nebraska for the Operation and Management Services for Jackrabbit Run Golf Course.

#2008-66 – Approving Bid Award for Purchase of Furnishings for Building 6 Expansion for Waste Water Treatment Plant with Eakes Office Plus of Grand Island, Nebraska in an Amount of \$21, 684.00.

#2008-67 – Approving Acquisition of Sanitary Sewer Utilities Easement in Springdale Second Subdivision (Karen J. Bredthauer).

#2008-68 – Approving Designating No Parking Zones for Westbound US Highway 30 (2nd Street) Detour.

#2008-69 – Approving Amendment to Resolution #2008-47 Regarding Structural Firefighters Protective Clothing with Municipal Emergency Services, Inc. of Fremont, Nebraska for a Decreased Amount of \$956.00 and a Revised Purchase Price of \$81,756.00.

#2008-70 – Approving Demonstration Grant Contract with Nebraska Children and Families Foundation.

#2008-71 – Approving Continuation Grant Contract with Nebraska Children and Families Foundation.

#2008-72 – Approving Designating 415 East 9th Street as Surplus Property and Directing Method of Disposal.

#2008-73 – Approving Mid-Continent Area Power Pool (MAPP) CEII Non-Disclosure Agreement – Utilities Department.

#2008-63 – Approving Policies and Procedures for Use of Parks & Recreation Facilities. Steve Paustian, Parks & Recreation Director reported a usage policy had been drafted that would allow the Park and Recreation Department control over the use of recreational facilities.

Mark Galvin, 584 East 20th Street and Jan Sorenson, 312 West 17th Street spoke in support. Discussion was held by the council on use of the fields, scheduling, and concession revenue.

Motion by Gilbert, second by Carney to approve Resolution #2008-63. Upon roll call vote, all voted aye. Motion adopted.

REQUESTS AND REFERRALS:

Consideration of Request from Ray and Dianne Stahla to Amend the Park Plan for Stahla Mobile Park Located in the 2200 Block of South Engleman Road. Craig Lewis, Building Department Director reported that a request had been made by Ray and Dianne Stahla to amend their Park Plan for Stahla Mobile Park to modify two existing manufactured home sites on Lots 50 and 61. Lot 50 would be modified to allow for one additional recreation vehicle and Lot 61 would create one new recreational vehicle space. City Administration recommended approval with the condition that the required parking pad be completed by April 15, 2008.

Motion by Gilbert, second by Ramsey to approve the request from Ray and Dianne Stahla to amend the Park Plan for Stahla Mobile Park with the condition that the required parking pad be completed by April 15, 2008. Upon roll call vote, all voted aye. Motion adopted.

RESOLUTIONS:

#2008-74 – Consideration of Request from AYR, Inc. dba El Toro Mexican Restaurant, 3425 West State Street for an Addition to their Class “I-61118” Liquor License. This item related to the aforementioned Public Hearing.

Motion by Haase, second by Brown to approve Resolution #2008-74 contingent upon final inspections. Upon roll call, all voted aye. Motion adopted.

#2008-75 – Consideration of Economic Development Incentive Agreement with Hastings Foods, LLC. Marlan Ferguson, Economic Development Corporation (EDC) President reported that Hastings Foods, LLC had submitted an application for EDC incentives that would create 35 new full time employee (FTE) positions at \$2,000 per job for a maximum assistance of \$70,000.

Hastings Foods intends to expand its current facility in Hastings, Nebraska to the Grand Island area. It is a meat processing plant that custom produces products primarily for export to Japan. They have entered into a (10) year lease for a building being built at 3321 Island Circle in Grand Island. Gary Deal, owner spoke in support.

Motion by Haase, second by Gilbert to approve Resolution #2008-75. Upon roll call vote, all voted aye. Motion adopted.

#2008-76 – Consideration of Economic Development Incentive Agreement with Nova-Tech, Inc. Marlan Ferguson, Economic Development Corporation (EDC) President reported that Nova-Tech, Inc. had submitted an application for EDC incentives that would create 30 new full time employee (FTE) positions at \$2,000 per job for a maximum assistance of \$60,000 and \$100,000 to offset infrastructure costs related to a new manufacturing corporate headquarters.

Nova-Tech, Inc. intends to expand their FDA Registered Device manufacturing facility which began as an animal blood collection and sterile serum facility. In 2000 they added the FDA Drug registration and are now focused on the aseptic fill of large volume and small volume sterile injectables, specifically fluids, minerals and vitamin products custom manufactured for Animal Health Distributors.

Gloria Thesanvitz, owner spoke in support. Kevin Prior representing Olsson Associates presented a PowerPoint explaining the background of Nova-Tech.

Motion by Haase, second by Gericke to approve Resolution #2008-76. Upon roll call vote, all voted aye. Motion adopted.

#2008-77 – Consideration of Resolution of Intent to Finance Mercury Emissions Control Project at Platte Generating Station. This item was pulled from the agenda at the request of the Utilities Department.

#2008-78 – Consideration of Resolution of Intent to Issue Tax-Exempt Industrial Development Revenue Bonds for Microgy Grand Island, LLC. David Springer, Finance Director reported that the growth in production and processing over the last four years at the Swift & Company plant has put a strain on the City's Waste Water Treatment Plant (WWTP). The proposed Microgy facility, together with an additional holding pond, currently under construction at Swift, were intended to help reduce the flow and the solids content to the WWTP and provide an environmental friendly generation of biogas to be used in their facility.

The Microgy facility meets the criteria for the issuance of Industrial Development Revenue Bonds. These would be limited obligations of the City payable solely from payments made by the Company under a lease agreement with the City and would not constitute a liability to the City, nor would they be payable from any tax source.

Motion by Carney, second by Gericke to approve Resolution #2008-78. Upon roll call vote, all voted aye. Motion adopted.

#2008-79 – Consideration of Model Ordinance for Smoking Ban. Dale Shotkoski, City Attorney reported that Council approved Resolution 2008-55 at their February 12, 2008 meeting to put on the ballot at the May Primary the issue of a Smoking Ban. This item was a model ordinance based upon the language used in the Lincoln Smoking Ban Ordinance.

The following people spoke regarding the smoking ban:

- Curtis Cellar, 4258 Nevada Avenue requested council wait until 2009
- Richard Fruehling, 3604 South Blaine spoke in support
- Ron King, 2615 West Charles requested council wait until 2009
- Richele Cellar, 4258 Nevada Avenue spoke of concerns about Fonner Park being exempt
- Todd Carpenter, 2703 West 2nd Street requested council wait until 2009
- Teresa Anderson, Central District Health Department updated council on the background of the smoking ban

Motion by Haase, second by Gilbert to approve Resolution #2008-79. Upon roll call vote, Councilmember's Brown, Haase, Zapata, Nickerson, Gericke, Carney, Gilbert, Ramsey, and Niemann voted aye. Councilmember Meyer voted no. Motion adopted.

PAYMENT OF CLAIMS:

Motion by Brown, second by Haase to approve the Claims for the period of February 13, 2008 through February 26, 2008, for a total amount of \$2,725,858.51. Motion adopted unanimously.

EXECUTIVE SESSION: Motion by Meyer, second by Gericke to adjourn to Executive Session for the purpose of an update on FOP Union Contract Negotiations and IAFF pending litigation at 8:35 p.m. Upon roll call vote, all voted aye. Motion adopted.

RETURN TO REGULAR SESSION: Motion by Meyer, second by Brown to return to regular session at 10:10 p.m. Upon roll call vote, all voted aye. Motion adopted.

ADJOURNMENT: The meeting was adjourned at 10:10 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item G3

Approving Minutes of March 3, 2008 City Council Special Meeting

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL SPECIAL MEETING

March 3, 2008

Pursuant to due call and notice thereof, a Special Meeting of the City Council of the City of Grand Island, Nebraska was conducted in the Council Chambers of City Hall, 100 East First Street, on Monday, March 3, 2008. Notice of the meeting was given in *The Grand Island Independent* on February 28, 2008.

Mayor Margaret Hornady called the meeting to order at 8:00 a.m. The following Councilmember's were present: Brown, Haase, Zapata, Nickerson, Gericke, Carney, Gilbert, Ramsey, Niemann and Meyer. The following City Officials were present: City Administrator Jeff Pederson, City Clerk RaNae Edwards, Finance Director David Springer, and City Attorney Dale Shotkoski.

PLEDGE OF ALLEGIANCE was said.

ORDINANCE:

Councilmember Gilbert moved "that the statutory rules requiring ordinances to be read by title on three different days are suspended and that ordinance numbered:

#9158 – Consideration of a Smoking Ban Ordinance

be considered for passage on the same day upon reading by number only and that the City Clerk be permitted to call out the number of this ordinance on first reading and then upon final passage and call for a roll call vote on each reading and then upon final passage." Councilmember Haase second the motion. Upon roll call vote, Councilmember's Brown, Haase, Zapata, Nickerson, Gericke, Carney, Gilbert, Ramsey, and Niemann voted aye. Councilmember Meyer voted no. Motion adopted.

Motion by Haase, second by Brown to approve Ordinance #9158.

Scott Dugan, 4059 Indianhead Drive spoke in support of the smoking ban, but was concerned about the timing and government control of passing this Ordinance now instead of waiting until next year when the state statute would take effect.

Motion by Carney, second by Nickerson to amend the main motion that the definition of a "Public Place" shown in paragraph 39.3, in Section 1 of Ordinance #9158 be amended by deleting the words, "... and shall also include a ten (10) foot arc by every entrance and exit from a public place".

Discussion was held concerning the 10' arc. Ryan King representing the Health Department commented on the 10' arc and enforcement. The Health Department and Police Department would work together on enforcement. Mr. King commented there would need to be education on the part of the Health Department.

Police Chief Steve Lamken commented this would be an enforcement issue for the Police Department because of the additional demand. Enforcement of the 10' arc was discussed; Chief Lamken stated they would use a common sense approach to enforce the 10' arc. Prosecution would be done by the City Attorney until June 1, 2009.

Discussion was held concerning enforcement, penalties, and the 10 foot arc.

Upon roll call vote on the amendment, Councilmember's Myer, Carney, Gericke, Nickerson, and Zapata voted aye. Councilmember's Niemann, Ramsey, Gilbert, Haase, and Brown voted no. Mayor Hornady voted aye to break the tie. Motion adopted.

Motion by Carney, second by Niemann to amend the motion that Section 3 of Ordinance #9158 be amended to show an effective date of August 1, 2008.

Discussion was held concerning owners ability to comply with the smoking ban by June 1, 2008.

Upon roll call vote, Councilmember's Niemann, Carney, Gericke, and Zapata voted aye. Councilmember's Meyer, Ramsey, Gilbert, Nickerson, Haase, and Brown voted no. Motion failed.

City Clerk: Ordinance #9158 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, Councilmember's Brown, Haase, Zapata, Gericke, Carney, Gilbert, Ramsey, and Niemann voted aye. Councilmember's Nickerson and Meyer voted no. Motion adopted.

City Clerk: Ordinance #9158 on final passage. All those in favor of the passage of this ordinance on final passage, answer roll call vote. Upon roll call vote, Councilmember's Brown, Haase, Zapata, Gericke, Carney, Gilbert, Ramsey, and Niemann voted aye. Councilmember's Nickerson and Meyer voted no. Motion adopted.

Mayor Hornady: By reason of the roll call votes on first reading and then upon final passage, Ordinance #9158 is declared to be lawfully adopted upon publication as required by law.

RESOLUTION:

#2008-80 – Consideration of Rescinding Resolution #2008-55 Relative to the Ballot Issue for a Smoking Ban.

Motion by Haase, second by Brown to approve Resolution #2008-80. Upon roll call vote, all voted aye. Motion adopted.

ADJOURNMENT: The meeting was adjourned at 9:05 a.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item G4

**#2008-81 - Approving Final Plat and Subdivision Agreement for
Copper Estates Second Subdivision**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Regional Planning Commission

Meeting: March 11, 2008

Subject: Copper Creek Estates Second Subdivision – Final Plat

Item #'s: G-4

Presenter(s): Chad Nabity AICP, Regional Planning Director

Background

This final plat proposes to add 2 feet to the back of 7 lots Copper Creek Subdivision in the City of Grand Island, Hall County, Nebraska. This land consists of approximately 1.167 acres. This will not negatively impact future development within the subdivision. This property is located south of Indian Grass Drive and west of Cherokee Avenue.

Discussion

The final plat for Copper Creek Estates Second Subdivision was considered under the Consent Agenda by the Regional Planning Commission at the March 5, 2008 meeting. A motion was made by Ruge, and seconded by Reynolds, to approve the plat as presented. A roll call vote was taken and the motion carried with members present voting in favor (Miller, Amick, O'Neill, Ruge, Reynolds, Monter, Haskins, Bredthauer, Snodgrass).

Alternatives

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

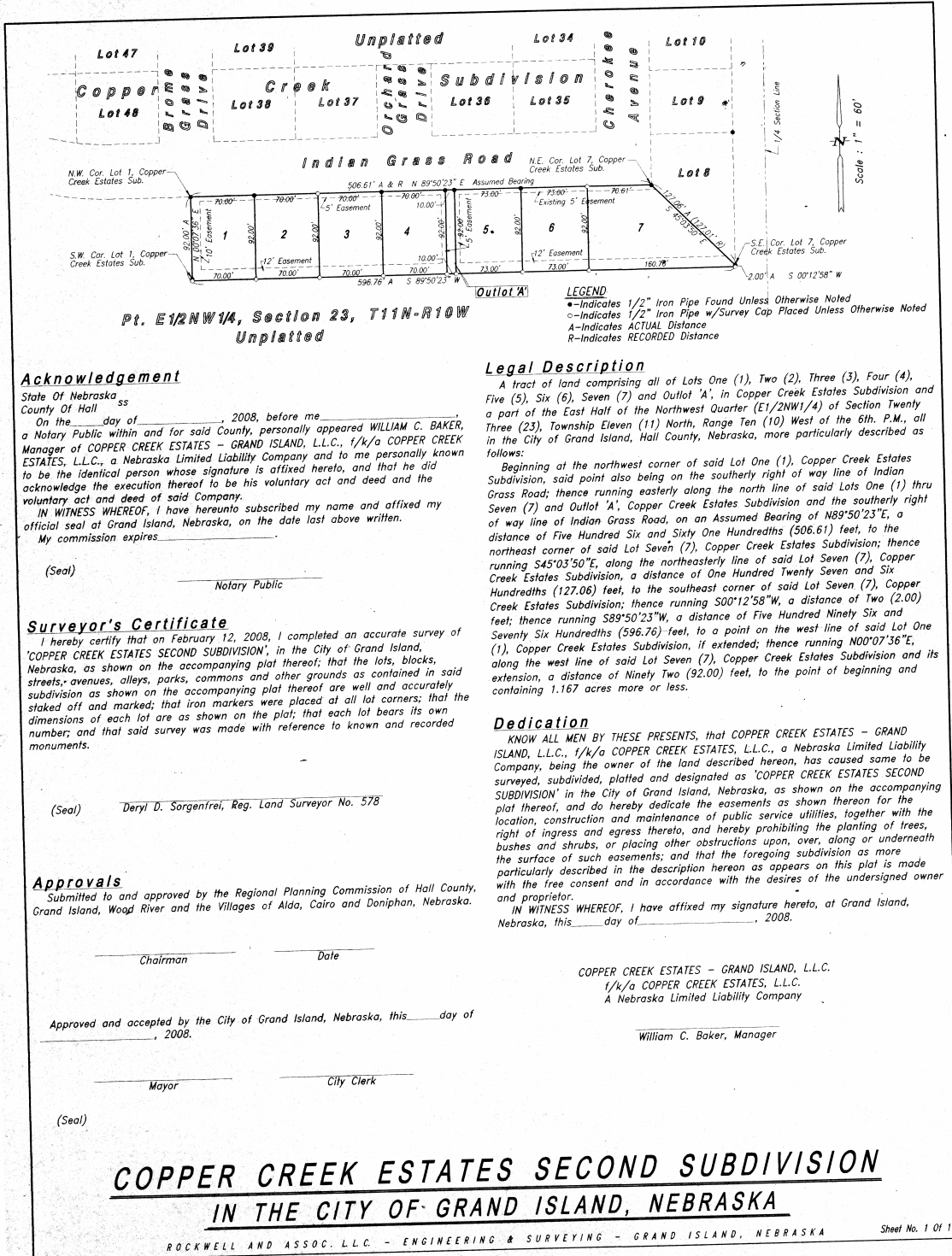
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the final plat as presented

Sample Motion

Move to approve as recommended.



Copper Creek Second Subdivision Final Plat Summary

Developer/Owner

Copper Creek Estates – Grand Island LLC
William C. Baker Manager.
1233 N Webb Road
Grand Island, NE 68803

7 Lots and 1 outlot south of Indian Grass Road and west Cherokee Avenue.

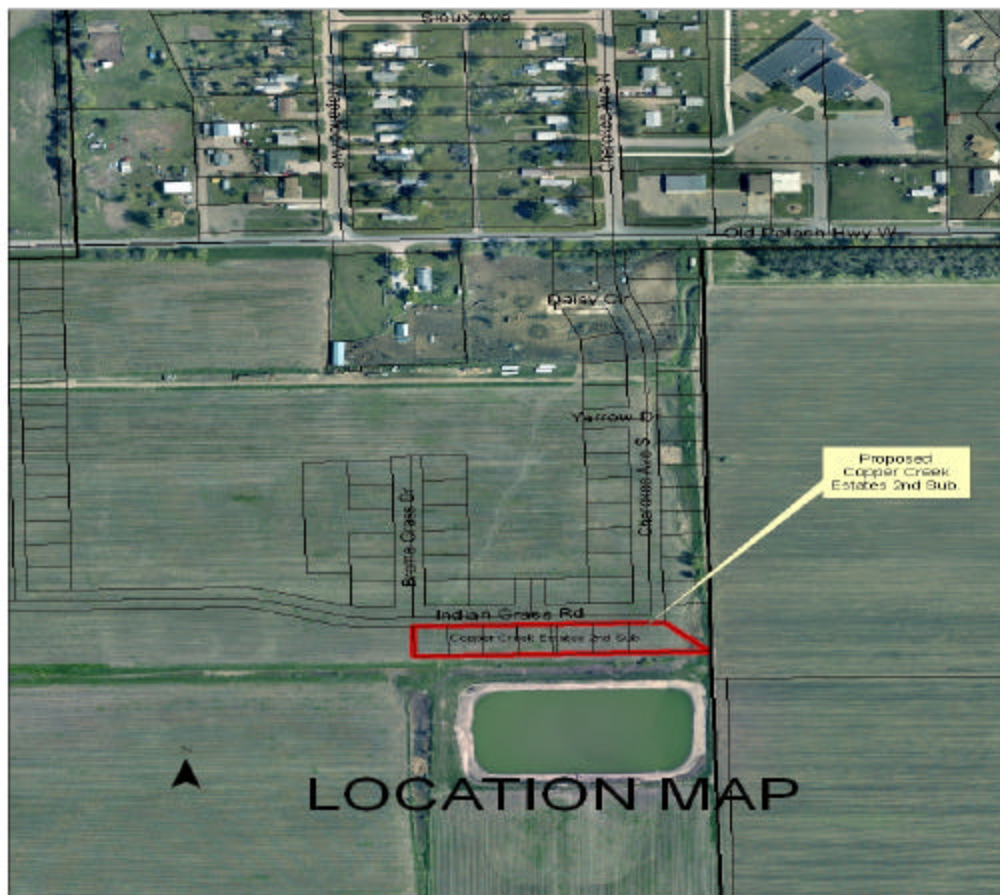
Size: 1.167 Acres

Zoning R2-Low Density Residential.

Road Access: Public City Streets, no new streets

Water Public: City Water is available to all lots.

Sewer Public: City Sewer is available to all lots.



RESOLUTION 2008-81

WHEREAS, Copper Creek Estates – Grand Island, L.L.C. f/k/a Copper Creek Estates, L.L.C., a Nebraska Limited Liability Company, as owner, has caused to be laid out into lots, a tract of land comprising all of Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7) and Outlot “A”, in Copper Creek Estates Subdivision and a part of the East Half of the Northwest Quarter (E½ NW¼) of Section Twenty Three (23), Township Eleven (11) North, Range Ten (10) West of the 6th P.M., in the City of Grand Island, Hall County, Nebraska, under the name of COPPER CREEK ESTATES SECOND SUBDIVISION, and has caused a plat thereof to be acknowledged by it; and

WHEREAS, a copy of the plat of such subdivision has been presented to the Boards of Education of the various school districts in Grand Island, Hall County, Nebraska, as required by Section 19-923, R.R.S. 1943; and

WHEREAS, a form of subdivision agreement has been agreed to between the owner of the property and the City of Grand Island.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the form of subdivision agreement hereinbefore described is hereby approved, and the Mayor is hereby authorized to execute such agreement on behalf of the City of Grand Island.

BE IT FURTHER RESOLVED that the final plat of COPPER CREEK ESTATES SECOND SUBDIVISION, as made out, acknowledged, and certified, is hereby approved by the City Council of the City of Grand Island, Nebraska, and the Mayor is hereby authorized to execute the approval and acceptance of such plat by the City of Grand Island, Nebraska.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

RaNae Edwards, City Clerk

| | |
|---------------------|-----------------|
| Approved as to Form | ☐ _____ |
| March 6, 2008 | ☐ City Attorney |



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item G5

**#2008-82 - Approving Final Plat and Subdivision Agreement for
Spencer Acres Subdivision**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Regional Planning Commission

Meeting: March 11, 2008

Subject: Spencer Acres Subdivision – Final Plat

Item #'s: G-5

Presenter(s): Chad Nabity AICP, Regional Planning Director

Background

This final plat proposes to create 2 lots between Ravenwood Subdivision and Hidden Lakes Subdivision. One lot is slightly more than 3 acres in size and the other is approximately 7 acres. City Sewer and Water are not available to these lots. They exceed the minimum size for well and septic systems. Both lots front onto existing public right-of-way. The property is zoned LLR Large Lot Residential and would permit 20,000 square foot lots. This land consists of approximately 10.135 acres. This property is located on the west Gunbarrel Road with Pheasant Drive on the north and the south.

Discussion

The final plat for Spencer Acres Subdivision was considered under the Consent Agenda by the Regional Planning Commission at the March 5, 2008 meeting. A motion was made by Haskins, and seconded by Bredthauer, to approve the plat as presented. A roll call vote was taken and the motion carried with members present voting in favor (Miller, Amick, O'Neill, Ruge, Reynolds, Monter, Haskins, Bredthauer, Snodgrass).

Alternatives

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

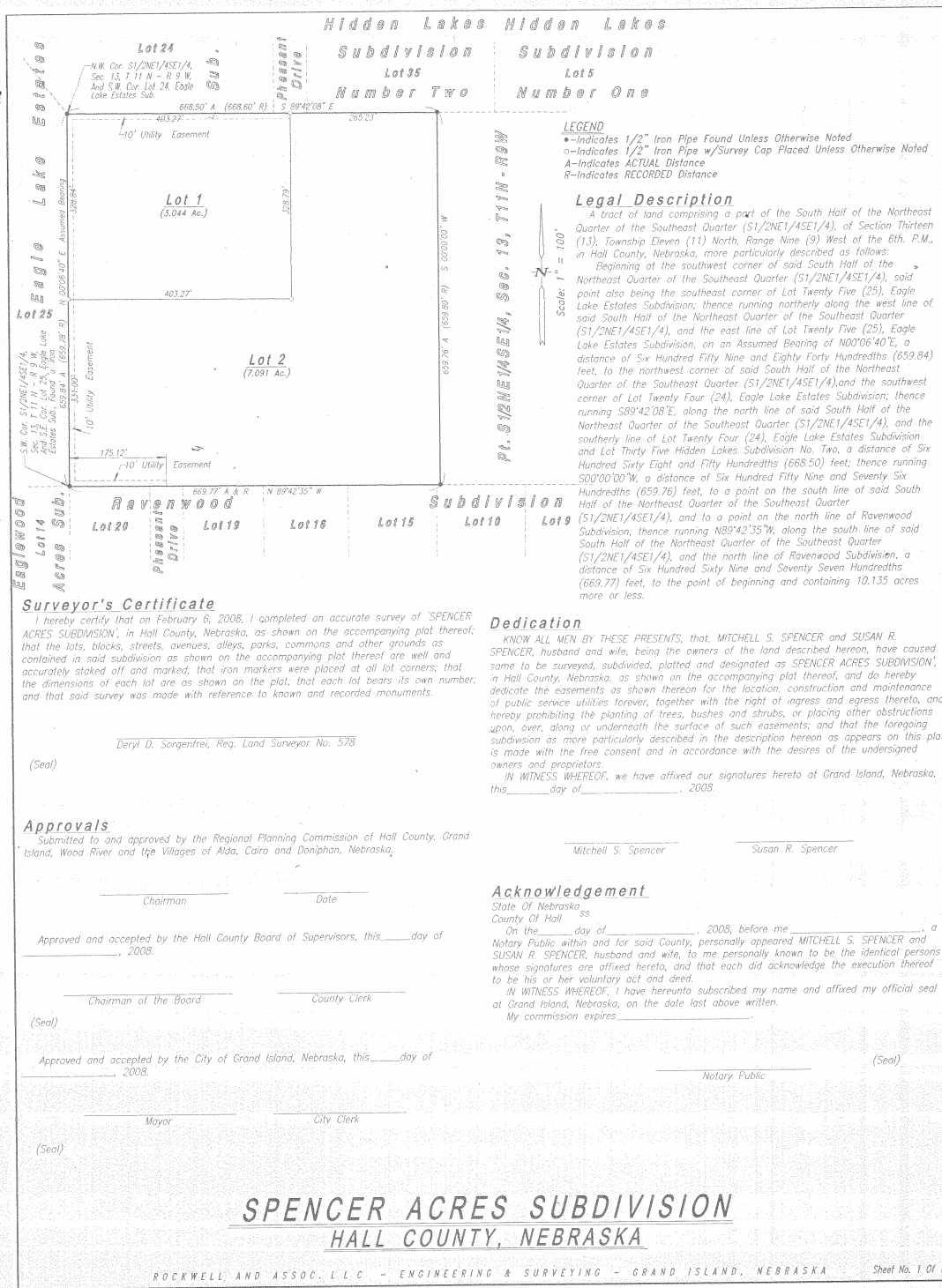
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the final plat as presented.

Sample Motion

Move to approve as recommended.



Spencer Acres Subdivision Final Plat Summary

Developer/Owner

Mitchell S. and Susan R. Spencer
436 Pheasant Drive
Grand Island, NE 68801

2 Lots west of Gunbarrel Road between Pheasant Drive on the north and south.

Size: 10.135 Acres

Zoning LLR-Low Density Residential.

Road Access: Public City Streets, no new streets

Water Public: City Water **is not** available to all lots.

Sewer Public: City Sewer **is not** available to all lots.



RESOLUTION 2008-82

WHEREAS, Mitchell S. Spencer and Susan R. Spencer, husband and wife, as owners, have caused to be laid out into lots, a tract of land comprising a part of the South Half of the Northeast Quarter of the Southeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Thirteen (13), Township Eleven (11) North, Range Nine (9), West of the 6th P.M., in the City of Grand Island, Hall County, Nebraska, under the name of SPENCER ACRES SUBDIVISION, and has caused a plat thereof to be acknowledged by it; and

WHEREAS, a copy of the plat of such subdivision has been presented to the Boards of Education of the various school districts in Grand Island, Hall County, Nebraska, as required by Section 19-923, R.R.S. 1943; and

WHEREAS, a form of subdivision agreement has been agreed to between the owners of the property and the City of Grand Island.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the form of subdivision agreement hereinbefore described is hereby approved, and the Mayor is hereby authorized to execute such agreement on behalf of the City of Grand Island.

BE IT FURTHER RESOLVED that the final plat of SPENCER ACRES SUBDIVISION, as made out, acknowledged, and certified, is hereby approved by the City Council of the City of Grand Island, Nebraska, and the Mayor is hereby authorized to execute the approval and acceptance of such plat by the City of Grand Island, Nebraska.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

RaNae Edwards, City Clerk

| | | |
|---------------------|--------------------------|---------------|
| Approved as to Form | <input type="checkbox"/> | _____ |
| March 6, 2008 | <input type="checkbox"/> | City Attorney |



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item G6

**#2008-83 - Approving Interlocal Agreement with the Community
Redevelopment Authority for Quiet Zone Improvements**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Chad Nabity, AICP

Meeting: March 11, 2008

Subject: Interlocal Agreement with CRA relative Quiet Zone Improvements

Item #'s: G-6

Presenter(s): Chad Nabity, AICP

Background

In January of 2008 the Grand Island City Council approved amendments to the redevelopment plans for CRA Areas #1, #4 and #6 relative to quiet zone improvements. The amendments would permit the CRA to enter into an agreement with the City to participate in the funding of the quiet zone project in those areas. The attached agreement formalizes that commitment and allows the CRA to make payment to the City for a share of the improvements.

Discussion

The noise from trains on the Union Pacific Rail Line through the center of town has been identified as a condition of blight in CRA areas #1, #4 and #6. The Grand Island City Council and the CRA have researched alternatives to reduce train noise along this corridor. Quiet zones created through a combination of raised medians and wayside horns appears to be the most economical method of reducing train noise. The CRA has agreed to participate with the City in paying for the necessary improvements. The CRA approved an interlocal agreement with the City at their February 2008 meeting. If the City Council agrees, the CRA will set funds aside to pay for a portion of the improvements during the 2008 and 2009 fiscal years.

The attached agreement was drafted by the City Attorney and reviewed by the attorney for the CRA.

Alternatives

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

1. Move to approve the interlocal agreement
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 interlocal agreement with the CRA as presented.

Sample Motion

Move to approve the interlocal agreement with the CRA as presented.

INTERLOCAL AGREEMENT

This Interlocal Agreement, which shall become effective upon the date set forth herein, is made by and between the CITY OF GRAND ISLAND, NEBRASKA, a Municipal Corporation, hereinafter referred to as the "City" and THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF GRAND ISLAND NEBRASKA, hereinafter referred to as "CRA", for the implementation of Quiet Zone Improvements, including, but not limited to, the installation of directional/wayside railroad horns in the City.

WHEREAS, it is the in the best interests of the City and the CRA to participate in the Quite Zone Improvements in downtown Grand Island; and

WHEREAS, the City and the CRA wish to enter into such an agreement pursuant to the terms of the Interlocal Cooperation Act, Neb. Rev. Stat., §13-801 through §13-827 as authorized under the laws of the State of Nebraska; and

WHEREAS, the CRA has reviewed this agreement and has passed a Resolution approving the same and authorizing the Chairman thereof to execute this agreement; and

WHEREAS, the City has reviewed this agreement and passed a Resolution approving the same and authorizing the Mayor of the City to execute this agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, each of the parties hereby intend to be bound by this document and agree as follows:

I.

GENERAL TERMS

A. Term of Agreement. The term of this agreement shall be perpetual, unless terminated as provided in this document hereafter.

B. Purpose of this Agreement. The purpose of this agreement is to focus and deal with the noise issues associated with the Union Pacific Railroad as it crosses Grand Island through the Community Redevelopment Authority Areas 1, 4 and 6 from Broadwell Avenue on the west to Oak Street on the east, containing six at-grade crossings between the Union Pacific Railroad and Grand Island city streets that are in CRA areas. The six crossings are completely contained within CRA Areas 1, 4 and 6 and all within the City of Grand Island. The areas have been declared blighted and substandard by the Grand Island City Council.

All of the property involved in the redevelopment for these six crossing would be located either within railroad right-of-way or city street right-of-way and used for transportation purposes.

No acquisition of private property will be required to implement this plan. Closure of accesses to private property may be necessary to eliminate the necessity to sound horns at the crossings in some places, these areas being most likely on the south side of the crossings at Elm, Walnut and Oak.

CRA Areas 1, 4 and 6 are immediately adjacent to the tracks. The current noise based on the number of trains has been found to be an environmental disincentive to investments in the area.

The 2004 Comprehensive Plan for the City of Grand Island contains Transportation Objective 8.03.01 which called for the installation of directional railroad horns that direct sound down the street.

The anticipated cost to purchase and install wayside horns is \$33,000.00 for each horn and an additional \$16,500.00 for installation and utilities. Installing a horn on each side of the tracks at a crossing is estimated to cost approximately \$99,000.00. It is anticipated that with the typical installation of the wayside horns, the noise should be reduced to the appropriate decibel level 100 feet from the tracks.

It is further agreed that no horn areas may be possible at some intersections if driveways and other access points of 100 feet away from the crossings and raised medians are installed to discourage people from driving around the crossing arms when they are down. Both parties agree that the cost of creating no horn areas would be less than the cost of purchasing and installing wayside horns, but it has further been found that it would not be possible to use no horn areas at every intersection.

Based upon the current figures and estimates, total cost to purchase and install wayside horns or to create quiet zones where possible, at all six crossings, is \$480,000.00.

II.

WAYSIDE HORN COMMITTEE

A. Establishment of Committee. The CRA shall elect two representatives to serve on the Wayside Horn Committee and the City shall also select two people to serve on the Wayside Horn Committee. The Committee shall be responsible for advising the CRA and the City Council of the undertaking of the purpose of the agreement stated above.

B. Committee Responsibilities. The Committee shall be advisory in nature and shall have the responsibility to make recommendations to the governing bodies of the City and the CRA regarding the implementation of the Wayside Horn Program.

C. Legal Entity. There shall be no separate legal entity formed to conduct this cooperative undertaking.

III.

IMPLEMENTATION

A. Implementation. The purchase and contracting necessary for implementation of this program shall be conducted by the City of Grand Island pursuant to the City Code and laws of the State of Nebraska.

B. Financing. The CRA agrees to set aside up to \$140,000.00 from the 2008 fiscal year and up to \$100,000.00 for the 2009 fiscal year toward the Quiet Zone Project. The City agrees to set aside funds necessary to complete the implementation of the program. Table 1 outlined below contains the estimated costs and improvements for quiet zones that identified Union Pacific Railroad crossings.

Table 1
Estimated Cost Improvements for Quiet Zones at Identified UPRR Crossings

| Crossing Number | Street | | Solution | Cost With Installation | Cost Per Crossing |
|-----------------|-----------|--------------------------|------------------------------|----------------------------|-------------------|
| 1 | Broadwell | North Side South Side | Wayside Horn Wayside Horn | \$49,500.00 \$49,500.00 | \$99,000.00 |
| 2 | Lincoln | North Side South Side | Wayside Horn Wayside Horn | \$49,500.00 \$49,500.00 | \$99,000.00 |
| 3 | Elm | North Side South Side | Wayside Horn Median | \$49,500.00 \$11,000.00 | \$60,500.00 |
| 4 | Walnut | North Side South Side | Wayside Horn Median | \$49,500.00 \$11,000.00 | \$60,500.00 |
| 5 | Pine | North Side South Side | Wayside Horn Wayside Horn | \$49,500.00 \$49,500.00 | \$99,000.00 |
| 6 | Oak | North Side South Side | Wayside Horn Median | \$49,500.00 \$11,000.00 | \$60,500.00 |
| Total | | | | | \$478,500.00 |

III.

A. Termination. This Agreement may be terminated at any time by either of the parties and for any reason on ninety (90) days written notice by either party to the other. The City of Grand Island shall remain the owner of all equipment and property improvements and operational equipment obtained and installed pursuant to this program.

PASSED and APPROVED this _____ day of _____, 2008.


Attest:

CITY OF GRAND ISLAND, NEBRASKA,
A Municipal Corporation,

RaNae Edwards, City Clerk

By: _____
Margaret Hornady, Mayor

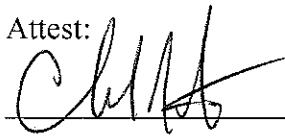
Reviewed and Approved by the City Attorney:



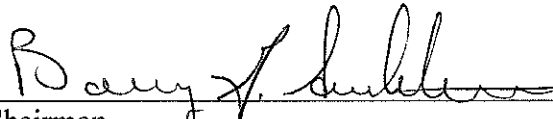
PASSED and APPROVED this 13 day of February, 2008.

THE COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF GRAND
ISLAND NEBRASKA

Attest:



By: _____
Chairman



Reviewed and Approved by the CRA Attorney:



RESOLUTION 2008-83

WHEREAS, on January 8, 2008, by Resolution 2008-2, the Grand Island City Council approved amendments to the redevelopment plans for Community Redevelopment Authority (CRA) Areas #1, #4 and #6 relative to quiet zone improvements; and

WHEREAS, the amendments will permit the CRA to enter into an agreement with the City to participate in the funding of the quiet zone project in these areas; and

WHEREAS, the CRA approved an interlocal agreement with the City of Grand Island at their February 13, 2008 meeting, and will set aside funds to pay for a portion of the improvements during the 2008 and 2009 fiscal years; and

WHEREAS, the proposed interlocal 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 Interlocal Cooperative Agreement by and between the Community Redevelopment Authority (CRA) and the City of Grand Island, is hereby approved according to the terms set out in the agreement.

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

RaNae Edwards, City Clerk

| | |
|---------------------|-----------------|
| Approved as to Form | ☐ _____ |
| March 6, 2008 | ☐ City Attorney |



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item G7

#2008-84 - Approving Bid Award for Water Main Project 2008-W-4 (Crane Valley 4th Subdivision)

Staff Contact: Gary R. Mader; Wesley Nespor

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Wesley Nespor, Asst. City Attorney/Purchasing

Meeting: March 11, 2008

Subject: Bid Award – Water Main Project 2008-W-4
Crane Valley 4th Subdivision

Item #'s: G-7

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

Background

The Crane Valley Subdivision is part of the retail – restaurant area located west of Hwy. 281, between Faidley Avenue and 13th Street. It is one of the fastest developing areas within the City. There are fifteen commercial buildings, many with multiple businesses located within the area. Most of these businesses are supplied from a single radial water main in Diers Avenue.

The referenced project will install a new water main tie between the main in Diers Avenue and the water main which supplies the K-Mart Shopping Center. The new main will run within existing easements beneath the concrete parking and retail unloading areas. This will be done by using the horizontal directional drilling (HDD) method of installation. This process allows the infrastructure to be installed with minimal disruption in the area. The project will thereby provide the needed back-up and reliability for water supply, while minimizing inconvenience to the public during construction.

Discussion

The bid package was submitted to six potential contractors. Bids were publicly opened at 11:00 a.m. on February 21, 2008, in accordance with City Procurement Codes. Two bids were received and have been reviewed, evaluated, and are tabulated below.

| Bidder | Exceptions | Amount | Completion |
|---|------------|-------------|------------|
| Diamond Engineering Co. Grand Island, NE | None | \$55,499.71 | 150 days |
| General Excavating Lincoln, NE | None | \$69,483.40 | 6/27/2008 |

The low bid from Diamond Engineering Company is below the total project estimate of \$69,000; is complete, without exceptions, and meets all City contract requirements.

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 award the contract for Water Main Project 2008-W-4 to the low responsive bidder, Diamond Engineering Company, of Grand Island, in the amount of \$55,499.71.

Sample Motion

Move to approve the contract for Water Main Project 2008-W-4 to Diamond Engineering of Grand Island, Nebraska.

Purchasing Division of Legal Department
INTEROFFICE MEMORANDUM



Dale M. Shotkoski, Assistant City Attorney

*Working Together for a
Better Tomorrow, Today*

BID OPENING

BID OPENING DATE: February 21, 2008 at 11:00 a.m.

FOR: Water Main Project 2008-W-4

DEPARTMENT: Utilities

ESTIMATE: \$69,000.00

FUND/ACCOUNT: 525

PUBLICATION DATE: February 8, 2008

NO. POTENTIAL BIDDERS: 6

SUMMARY

| | | |
|----------------------|--|---|
| Bidder: | <u>Diamond Engineering Co.</u> Grand Island NE | <u>General Excavating</u> Lincoln, NE |
| Bid Security: | Universal Surety Co. | Universal Surety Co. |
| Exceptions: | None | None |
| Bid Price: | \$55,499.71 | \$69,483.40 |

cc: Gary Mader, Utilities Director
Tom Barnes, Utilities Eng. Mgr.
Dale Shotkoski, City Attorney
Sherry Peters, Legal Secretary

Bob Smith, Assist. Utilities Director
Pat Gericke, Utilities Admin. Assist.
Wes Nespor, Assist. City Attorney
Jeff Pederson, City Administrator

P1230

RESOLUTION 2008-84

WHEREAS, the City of Grand Island invited sealed bids for Water Main Project 2008-W-4 (Crane Valley 4th Subdivision), according to plans and specifications on file with the Utilities Department; and

WHEREAS, on February 21, 2008, bids were received, opened and reviewed; and

WHEREAS, the Diamond Engineering Co. of Grand Island, Nebraska, submitted a bid in accordance with the terms of the advertisement of bids and plans and specifications and all other statutory requirements contained therein, such bid being in the amount of \$55,499.71; and

WHEREAS, the bid of the Diamond Engineering Co. is less than the estimate for Water Main Project 2008-W-4 (Crane Valley 4th Subdivision).

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of the Diamond Engineering Co. of Grand Island, Nebraska in the amount of \$55,499.71 for Water Main Project 2008-W-4 (Crane Valley 4th Subdivision) is hereby approved as the lowest responsible bid.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

RaNae Edwards, City Clerk

| | |
|---------------------|-----------------|
| Approved as to Form | ☐ _____ |
| March 6, 2008 | ☐ City Attorney |



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item G8

**#2008-85 - Approving Certificate of Final Completion and Setting
BOE Meeting Date for Water Main District 455 - Park-View Area**

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Gary R. Mader, Utilities Director

Meeting: March 11, 2008

Subject: Water Main District 455, Park-View Subdivision Area
Certificate of Final Completion; Board of Equalization

Item #'s: G-8

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

Background

The Park-View area initially developed over 75 years ago and at the time of development was not within the City Limits. Private domestic household wells were used for water supply at the time and have served that entire area until recently. In 2001, groundwater contamination was discovered in the area aquifer as a part of the Water Department's routine water testing for the Grand Island Municipal system. That discovery led to extensive additional testing by Grand Island, the Nebraska Department of Environmental Quality and the Environmental Protection Agency; and ultimately, designation of the Parkview Superfund Site by EPA. As a result of the contamination, many of the private wells in the area are no longer suitable for use for drinking water supply without purification equipment use, and others are in jeopardy as the contamination spreads in the aquifer. In response to the contamination problems, the city created Water Main District 454 to facilitate extension of the municipal water system throughout the subdivision. That initial district was protested out by the area residents.

After the failure of District 454, a number of area residents again petitioned the City to create a Water Main District. This request was for a smaller area, serving a portion of the subdivision where the interest in having a municipal water system extension was more prevalent. That district, District 455, was created as laid out by the petitioners and successfully passed the protest period. Installation of the City water mains to serve District 455 was completed during the 2007 construction season. That extension is now fully operational and has been incorporated into the municipal system. A map of District 455 is attached for reference.

Discussion

The construction of the district was done using the "Assessment District" administrative process. This is the standard method used by the City to recoup costs when water mains are installed in developed areas, at the request of the property owners. The total project cost was \$268,664.74. Of that total, the assessment amount chargeable to the district is \$260,064.64. The City's expense is the remaining \$8,600.10 for engineering cost over the standard 10%. This cost is associated with additional construction oversight required to complete the work as specified.

There are 40 single family homes and one vacant lot within the district's boundaries. The proposed assessments are based on equal benefit and value of service to each property. Each residential property would be assessed an equal portion of the total assessment amount or \$6,343.04 assessed to each of the 41 newly served properties.

The Water Department will finance the assessment costs for five years. The assessment payment schedule may be set up with five annual installments at 7% simple interest on the outstanding balance. The interest rate is set by state statute. The first payment is due 50 days after the Council sets the assessments at the Board of Equalization (BOE) Hearing. Attached for reference are copies of the district's costs, ownership records, and calculated assessments.

Alternatives

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

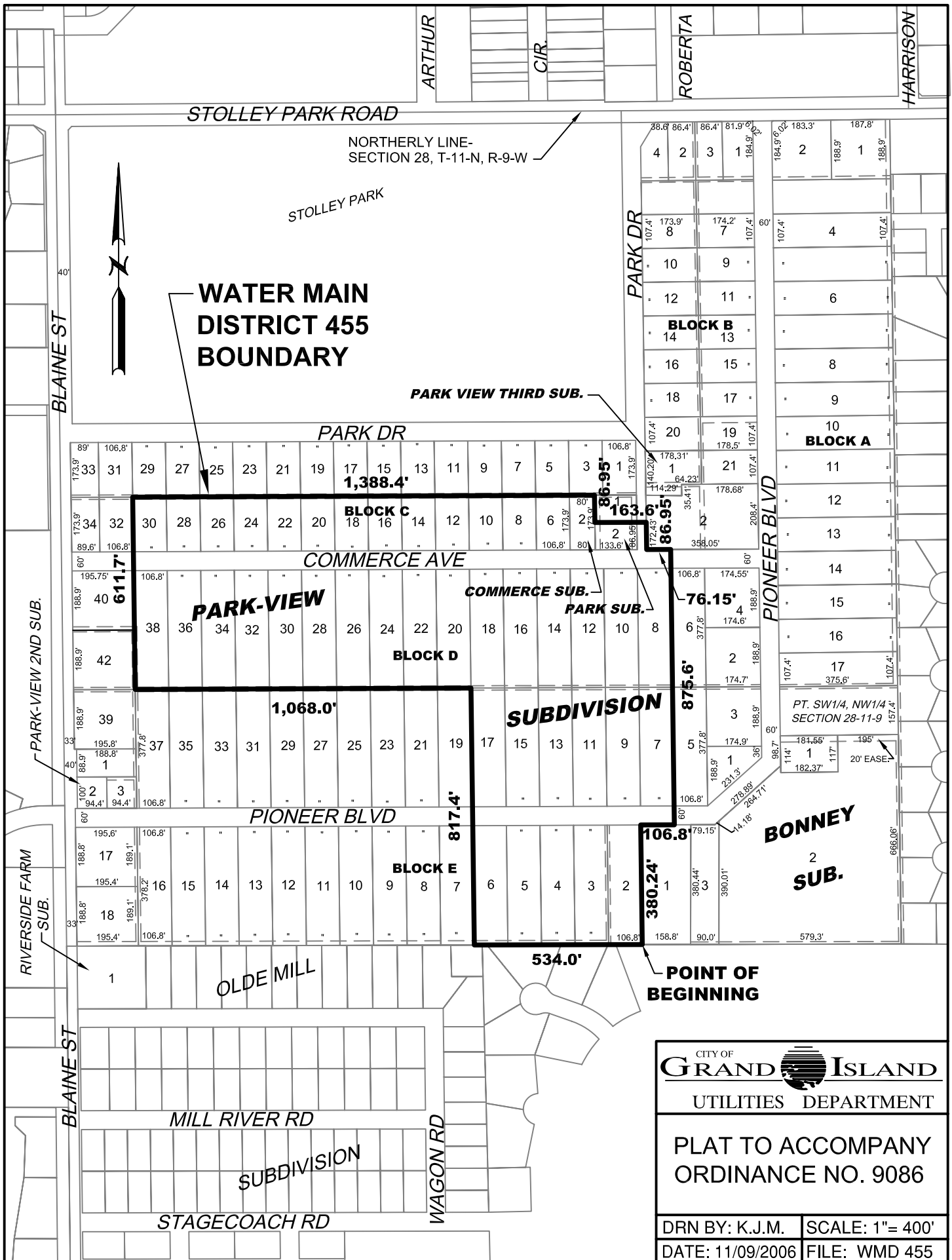
1. Move to approve assessments as proposed
2. Refer the issue to a Committee for further study
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council accept the Certificate of Final Completion, and set the date for the Board of Equalization to determine benefits for the properties within the boundaries of Water Main District 455.

Sample Motion

Move to approve the Certificate of Final Completion and set the date for the Board of Equalization for April 22, 2008 to determine benefits for the properties within the boundaries of Water Main District 455.



CITY OF
GRAND ISLAND
UTILITIES DEPARTMENT

PLAT TO ACCOMPANY
ORDINANCE NO. 9086

| | |
|------------------|------------------|
| DRN BY: K.J.M. | SCALE: 1" = 400' |
| DATE: 11/09/2006 | FILE: WMD 455 |

CITY OF GRAND ISLAND, NEBRASKA - UTILITIES DEPARTMENT
Water Main District 455 - Park-View Sub. Area

| ITEM | UNIT DESCRIPTION | BID UNIT \$ | QUANTITIES PLACED | TOTAL AMT COMPLETED \$ | DISTRICT ASSESSABLE AMOUNT \$ | CITY AMOUNT \$ |
|----------------|--|-------------|----------------------|---------------------------|-------------------------------------|-------------------|
| C. 1.01 | 8" D.I. Pipe, (S.J.) Trenched Installation | 44.05 | 1,830.00 LF | 80,611.50 | 80,611.50 | 0.00 |
| C. 1.02 | 8" D.I. Pipe, (S.J.) Trenchless Installation | 87.40 | 734.00 LF | 64,151.60 | 64,151.60 | 0.00 |
| C. 1.03 | 6" D.I. Pipe, (S.J.) Trenched Installation | 41.40 | 15.00 LF | 621.00 | 621.00 | 0.00 |
| C. 1.04 | 8" Nitrile Gaskets (S.J.) | 15.20 | 47.00 LF | 714.40 | 714.40 | 0.00 |
| C. 1.05 | 8" Nitrile Gaskets (M.J.) | 14.75 | 12.00 LF | 177.00 | 177.00 | 0.00 |
| C. 1.06 | 6" Nitrile Gaskets (M.J.) | 10.55 | 12.00 EA | 126.60 | 126.60 | 0.00 |
| C. 1.07 | 12"X 8" Reducer (M.J.) | 186.00 | 1.00 EA | 186.00 | 186.00 | 0.00 |
| C. 1.08 | 10"X10"X 8" Tapping Sleeve | 1,415.00 | 1.00 EA | 1,415.00 | 1,415.00 | 0.00 |
| C. 1.09 | 8"X 8"X 6" Tee (M.J.) | 210.00 | 5.00 EA | 1,050.00 | 1,050.00 | 0.00 |
| C. 1.10 | 8"X 6" Reducer (M.J.) | 122.00 | 1.00 EA | 122.00 | 122.00 | 0.00 |
| C. 1.11 | 8"X 45° Ell (M.J.) | 258.00 | 2.00 EA | 516.00 | 516.00 | 0.00 |
| C. 1.12 | 8"X 22-1/2° Ell (M.J.) | 149.00 | 2.00 EA | 298.00 | 298.00 | 0.00 |
| C. 1.13 | 8" Cap (M.J.) W/ 2" Tap | 83.05 | 1.00 EA | 83.05 | 83.05 | 0.00 |
| C. 1.14 | 8" Retainer Gland | 56.45 | 0.00 EA | 0.00 | 0.00 | 0.00 |
| C. 1.15 | 6"X 90° Ell (M.J.) | 120.00 | 1.00 EA | 120.00 | 120.00 | 0.00 |
| C. 1.16 | 6"X 45° Ell (M.J.) | 195.00 | 0.00 EA | 0.00 | 0.00 | 0.00 |
| C. 1.17 | 8" RS Gate Tapping Valve | 1,104.00 | 1.00 EA | 1,104.00 | 1,104.00 | 0.00 |
| C. 1.18 | 8" RS Gate Valve | 891.00 | 3.00 EA | 2,673.00 | 2,673.00 | 0.00 |
| C. 1.19 | Valve Box | 186.00 | 4.00 EA | 744.00 | 744.00 | 0.00 |
| C. 1.20 | Fire Hydrant Assembly Complete | 1,557.00 | 5.00 EA | 7,785.00 | 7,785.00 | 0.00 |
| C. 1.21 | Fire Hydrant (Only) | 1,846.00 | 1.00 EA | 1,846.00 | 1,846.00 | 0.00 |
| C. 1.22 | 8 Mil Polyethylene Pipe Wrap | 0.55 | 2,710.00 EA | 1,490.50 | 1,490.50 | 0.00 |
| C. 1.23 | Thrust Block | 33.75 | 12.00 EA | 405.00 | 405.00 | 0.00 |
| C. 1.24 | Bell Block | 588.00 | 1.00 EA | 588.00 | 588.00 | 0.00 |
| C. 1.25 | 1" Water Service, Complete | 974.00 | 41.00 EA | 39,934.00 | 39,934.00 | 0.00 |
| C. 1.26 | Remove And Salvage Cap & Retainer Gland | 195.00 | 1.00 EA | 195.00 | 195.00 | 0.00 |
| C. 1.27 | Remove Asph. / Conc. Roadway | 7.95 | 81.06 EA | 644.43 | 644.43 | 0.00 |
| C. 1.28 | Replace Asph. / Conc. Roadway | 37.80 | 81.06 EA | 3,064.07 | 3,064.07 | 0.00 |
| C. 1.29 | Remove Concrete Sidewalk | 0.65 | 1,982.70 EA | 1,288.76 | 1,288.76 | 0.00 |
| C. 1.30 | Replace Concrete Sidewalk | 3.70 | 1,982.70 EA | 7,335.99 | 7,335.99 | 0.00 |
| C. 1.31 | Remove and Replace Gravel Driveway | 11.40 | 4.20 EA | 47.88 | 47.88 | 0.00 |
| C. 1.32 | Dewatering | 1.00 | 0.00 EA | 0.00 | 0.00 | 0.00 |
| C. 1.35 | Original Contract | | | \$219,337.78 | \$219,337.78 | \$0.00 |
| Change Order 1 | Directional Bore Long Service | 9.00 | 955.00 LF | 8,595.00 | 8,595.00 | 0.00 |
| Change Order 2 | Time Extension | | | 0.00 | 0.00 | 0.00 |
| Change Order 3 | WWO 22632 - Deduct for Driveway Work | | | -1,906.83 | -1,906.83 | 0.00 |
| | Final Contract Total | | | \$226,025.95 | \$226,025.95 | \$0.00 |
| | Water Department Supplied Materials | | | 6,892.24 | 6,892.24 | 0.00 |
| | Water Department Labor & Overhead | | | 536.58 | 536.58 | 0.00 |
| | Vender Services and Supplies | | | 2,967.76 | 2,967.76 | 0.00 |
| | Engineering - Labor & Overhead | | | 32,242.21 | 23,642.11 | 8,600.10 |
| | Total | | | \$42,638.79 | \$34,038.69 | \$8,600.10 |
| | Water Main District 455 Total Cost | | | \$268,664.74 | \$260,064.64 | \$8,600.10 |
| | 41 Service Connections - Equal Assessment | | | | \$6,343.04 ea | |

WATER MAIN DISTRICT 455
Ordinance # 9086

Ownerships: 2/13/2008
District Created: 11/28/2006

| LOT | BLOCK | SUBDIVISION | ADDRESS | | | FRONT FOOTAGE | SQUARE FOOTAGE | ASSESSMENT |
|-----|-------|----------------------------------|----------|--------------|--|---------------|----------------|------------|
| 30 | C | PARK-VIEW SUB | 2522 | COMMERCE AVE | Current HEUPEL / EUGENE L & JACQUALYNE H & W Address: 2522 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801-0000 | 106.80 | 18,572.52 | \$6,343.04 |
| 38 | D | PARK-VIEW SUB | 2521 | COMMERCE AVE | Current NELSON / MICHAEL S & JODY L H & W Address: 2521 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801-0000 | 106.80 | 40,349.04 | \$6,343.04 |
| 28 | C | PARK-VIEW SUB | 2520 | COMMERCE AVE | Current TJADEN / JERROLD L & LINDA S H & W Address: 2520 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801-0000 | 106.80 | 18,572.52 | \$6,343.04 |
| 36 | D | PARK-VIEW SUB | 2519 | COMMERCE AVE | Current LAWREY / WILLIAM E & SANDRA L H & W | 106.80 | 40,349.04 | \$6,343.04 |
| 26 | C | PARK-VIEW SUB | 2518 | COMMERCE AVE | Address: 2519 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801-7324 | 106.80 | 18,572.52 | \$6,343.04 |
| 34 | D | PARK-VIEW SUB | 2517 | COMMERCE AVE | Current PAPE / ROGER C A SINGLE PERSON Address: 1095 CALLE DEL ORO City, State: BASQUE FARMS NM Zipcode: 87068- | 106.80 | 40,349.04 | \$6,343.04 |
| 22 | C | PARK-VIEW SUB | 2516 | COMMERCE AVE | Current DOWD / PATRICK F & SUZANNE M H & W | 106.80 | 18,572.52 | \$6,343.04 |
| 24 | C | PARK-VIEW SUB | | | Address: 2516 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801-0000 | 106.80 | 18,572.52 | |
| 32 | D | PARK-VIEW SUB | 2515 | COMMERCE AVE | Current BEASON / ROCKE D & MARLENE M H & W Address: 2515 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801-0000 | 106.80 | 40,349.04 | \$6,343.04 |
| 30 | D | PARK-VIEW SUB | 2513 | COMMERCE AVE | Current MLECZKO / KRIS L A SINGLE PERSON Address: 2513 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801-0000 | 106.80 | 40,349.04 | \$6,343.04 |
| 20 | C | PARK-VIEW SUB | 2512 | COMMERCE AVE | Current GUERRERO / ROBERT P & JOANIE C H & W Address: 2512 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68803-0000 | 106.80 | 18,572.52 | \$6,343.04 |
| 28 | D | PARK-VIEW SUB | 2511 | COMMERCE AVE | Current WOBIG / AARON L A SINGLE PERSON Address: 2511 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801- | 106.80 | 40,349.04 | \$6,343.04 |
| 18 | C | PARK-VIEW SUB EXCEPT EAST 12' | 2510 | COMMERCE AVE | Current BROWN / THOMAS J & LORINDA LOU (KRANCE) H & W Address: 2510 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801-0000 | 94.80 | 16,485.72 | \$6,343.04 |
| 26 | D | PARK-VIEW SUB | 2509 | COMMERCE AVE | Current TOLLE / WILLIAM & SHERRI H & W Address: 2509 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801-0000 | 106.80 | 18,572.52 | \$6,343.04 |
| 16 | C | PARK-VIEW SUB | 2508 | COMMERCE AVE | Current RUHE / WALDO E & DOROTHY E H & W | 106.80 | 20,659.32 | \$6,343.04 |
| 18 | C | PARK-VIEW SUB | EAST 12' | | Address: 2508 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801-0000 | 12.00 | | |
| 14 | C | PARK-VIEW SUB | 2506 | COMMERCE AVE | Current HOFFMAN / CHARLES H & CHRISTINE M H & W Address: 2115 PARK DR City, State: GRAND ISLAND NE Zipcode: 68801-0000 | 106.80 | 18,572.52 | \$6,343.04 |
| 24 | D | PARK-VIEW SUB | 2507 | COMMERCE AVE | Current FAIRCHILD / GERALDINE LEE W & H Address: 2507 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801- | 106.80 | 40,349.04 | \$6,343.04 |
| 22 | D | PARK-VIEW SUB | 2505 | COMMERCE AVE | Current VON HOUSEN / JAMES E & GAYLENE A H & W Address: 2505 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801-0000 | 106.80 | 40,349.04 | \$6,343.04 |
| 12 | C | PARK-VIEW SUB | 2504 | COMMERCE AVE | Current CASTLEBERRY / CAROL M A SINGLE PERSON Address: 2504 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801- | 106.80 | 18,572.52 | \$6,343.04 |
| 20 | D | PARK-VIEW SUB | 2503 | COMMERCE AVE | Current HENKE / FRANK W & MARLENE E H & W Address: 2503 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801- | 106.80 | 40,349.04 | \$6,343.04 |
| 18 | D | PARK-VIEW SUB | 2429 | COMMERCE AVE | Current HENKE / BRIAN A & TRUDI R H & W Address: 2429 COMMERCE AVE City, State: GRAND ISLAND NE Zipcode: 68801- | 106.80 | 40,349.04 | \$6,343.04 |

| LOT | BLOCK | SUBDIVISION | ADDRESS | FRONT FOOTAGE | SQUARE FOOTAGE | ASSESSMENT |
|------------|-------|------------------|---|---------------|---|-----------------------------|
| 8 | C | PARK-VIEW SUB | 2428 COMMERCE AVE | Current | WILLIS / RICHARD E & EURDIS L H & W | 106.80 18,572.52 \$6,343.04 |
| 10 | C | PARK-VIEW SUB | 2428 COMMERCE AVE GRAND ISLAND NE City, State: 68801-0000 Zipcode: | Current | 2428 COMMERCE AVE GRAND ISLAND NE City, State: 68801-0000 Zipcode: | 106.80 18,572.52 \$6,343.04 |
| 16 | D | PARK-VIEW SUB | 2427 COMMERCE AVE | Current | FITZGERALD / DENNY A A SINGLE PERSON | 106.80 40,349.04 \$6,343.04 |
| 6 | C | PARK-VIEW SUB | 2426 COMMERCE AVE | Current | RUGE / MELVIN H & ELEANOR A H & W | 106.80 18,572.52 \$6,343.04 |
| 14 | D | PARK-VIEW SUB | 2425 COMMERCE AVE | Current | PIRNIE / PATRICIA A & KEITH H H & W | 106.80 40,349.04 \$6,343.04 |
| 2 | | COMMERCE SUB | 2424 COMMERCE AVE | Current | SCHWEITZER / RON & ELAINE H & W | 80.00 13,912.00 \$6,343.04 |
| 12 | D | PARK-VIEW SUB | 2423 COMMERCE AVE | Current | GUZINSKI / EDWARD D JR & PHYLLIS A H & W | 106.80 40,349.04 \$6,343.04 |
| 10 | D | PARK-VIEW SUB | 2421 COMMERCE AVE | Current | DEY ERMAND / DALE J H & W | 106.80 40,349.04 \$6,343.04 |
| 2 | | PARK SUBDIVISION | 2420 COMMERCE AVE | Current | SCHRITT / WILLIAM FRED & ELLEN L H & W | 220.55 11,616.52 \$6,343.04 |
| 8 | D | PARK-VIEW SUB | 2419 COMMERCE AVE | Current | BISHOP / ANDREW A & KRISTEN L H & W | 106.80 40,349.04 \$6,343.04 |
| 17 | D | PARK-VIEW SUB | 2430 PIONEER BLVD | Current | KOZISEK / ERNEST L A SINGLE PERSON | 106.80 40,349.04 \$6,343.04 |
| 6 | E | PARK-VIEW SUB | 2429 PIONEER BLVD | Current | CHRISTENSEN / CLIFFORD W & KATHERINE H & W | 106.80 40,546.63 \$6,343.04 |
| 15 | D | PARK-VIEW SUB | 2428 PIONEER BLVD | Current | POTTEBAUM / JOSHUA H & JESSICA A H & W | 106.80 40,349.04 \$6,343.04 |
| 5 | E | PARK-VIEW SUB | 2427 PIONEER BLVD | Current | KOHLHOF / MICHELLE M A SINGLE PERSON | 106.80 40,560.71 \$6,343.04 |
| 13 | D | PARK-VIEW SUB | 2426 PIONEER BLVD | Current | LOCKARD / RICKEY L & MICHELLE L H & W | 106.80 40,349.04 \$6,343.04 |
| 4 | E | PARK-VIEW SUB | 2425 PIONEER BLVD | Current | SCHUETT / GARY L & DE VONNE R H & W | 106.80 40,574.80 \$6,343.04 |
| 11 | D | PARK-VIEW SUB | 2424 PIONEER BLVD | Current | CATES / MAX & SANDRA H & W | 96.80 36,571.04 \$6,343.04 |
| WEST 96.8' | | | 2424 PIONEER BLVD GRAND ISLAND NE City, State: 68801-0000 Zipcode: | Current | 2424 PIONEER BLVD GRAND ISLAND NE City, State: 68801-0000 Zipcode: | 96.80 36,571.04 \$6,343.04 |
| 3 | E | PARK-VIEW SUB | 2423 PIONEER BLVD | Current | NORMAN / WARREN & DEBORAH H & W | 106.80 40,588.88 \$6,343.04 |
| 9 | D | PARK-VIEW SUB | 2422 PIONEER BLVD | Current | BOLIN / ANDREW W & FLORA E TRUSTEES | 106.80 44,127.04 \$6,343.04 |
| 11 | D | PARK-VIEW SUB | EAST 10' | Current | 2422 PIONEER BLVD GRAND ISLAND NE City, State: 68801-0000 Zipcode: | 10.00 44,127.04 \$6,343.04 |
| 2 | E | PARK-VIEW SUB | 2421 PIONEER BLVD | Current | KRINGS / STEVEN D & ASHLEY M H & W | 106.80 40,602.96 \$6,343.04 |
| 7 | D | PARK-VIEW SUB | 2420 PIONEER BLVD | Current | FREDRICK / DUANE A & DINAH H & W | 106.80 40,349.04 \$6,343.04 |
| | | | 2420 PIONEER BLVD GRAND ISLAND NE City, State: 68801-0000 Zipcode: | Current | 2420 PIONEER BLVD GRAND ISLAND NE City, State: 68801-0000 Zipcode: | 106.80 40,349.04 \$6,343.04 |
| | | | | TOTAL | 4,572.55 1,335,747.62 \$260,064.64 | |

ENGINEER'S CERTIFICATE OF FINAL COMPLETION

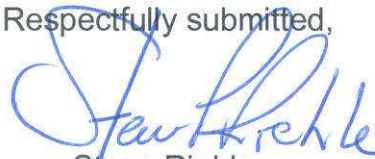
WATER MAIN DISTRICT NO. 455

March 11, 2008

Water Main District No. 455 is located along Commerce Avenue, from Blaine Street east to Park Drive, approximately 1,900 feet; and within Pioneer Blvd, from the end of the existing public water main, east approximately 750 ft.. The work on this main, as certified to be fully completed by Gary R. Mader, Utilities Director, is hereby accepted for the City of Grand Island, Nebraska, by me as Public Works Director in accordance with the provision on Section 16-650, R.R.S., 1943.

It is recommended that the City Council sit as Board of Equalization on April 22, 2008, to determine benefits and levy special assessments.

Respectfully submitted,



Steve Riehle,
Public Works Director

WATER MAIN DISTRICT NO. 455

March 11, 2008

TO THE MEMBERS OF COUNCIL
CITY OF GRAND ISLAND
GRAND ISLAND, NEBRASKA

I hereby recommend that the Engineer's Certificate of Final Completion for Water Main District 455 be approved.

I further recommend that the City Council sit as Board of Equalization on April 22, 2008, to determine benefits and levy special assessments.

Respectfully submitted,

Margaret Hornady,
Mayor

INTEROFFICE
MEMORANDUM



*Working Together for a
Better Tomorrow. Today.*

DATE: March 4, 2008

TO: Mayor and Council Members

FROM: Gary R. Mader, Utilities Director

SUBJECT: Water Main District 455 – Park-View Subdivision area

This memo is to certify that Water Main District 455, along Commerce Avenue, from Blaine Street east to Park Drive, approximately 1,900 feet; and within Pioneer Blvd, from the end of the existing public water main, east approximately 750 ft., has been fully completed. All work was done in accordance with the terms and conditions of the contract, and complies with the plans and specifications. The water main district has been placed in service.

It is recommended that a Board of Equalization be set for April 22, 2008, to determine the benefits and connection fees for the properties within the boundaries of Water Main District 455.



Gary R. Mader, Utilities Director

GRM/pag

pc: David Springer, Finance Director
Bob Smith, Asst. Utilities Director
Steve Riehle, Public Works Director
Tom Barnes, Civil Engineering Manager, Utilities
Dave Goosic, Water Superintendent
Yolanda Rayburn, Sr. Accounting Clerk

R E S O L U T I O N 2008-85

WHEREAS, the City Engineer/Public Works Director for the City of Grand Island has issued a Certificate of Final Completion for Water Main District No. 455 located along Commerce Avenue, from Blaine Street east to Park Drive, approximately 1,900 feet; and within Pioneer Blvd., from the end of the existing public water main, east approximately 750 feet, certifying that The Starostka Group Unlimited, Inc., of Grand Island, Nebraska, under contract awarded February 15, 2007, has completed such project according to the terms, conditions, and stipulations for such improvements; and

WHEREAS, the Public Works Director recommends the acceptance of the district; and

WHEREAS, the Mayor concurs with the Public Works Director's recommendations.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that:

1. The City Engineer/Public Works Director's Certificate of Final Completion for Water Main District No. 455 is hereby confirmed.
2. The City Council will sit as a Board of Equalization on April 22, 2008 to determine benefits and set assessments for Water Main District No. 455.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

RaNae Edwards, City Clerk

| |
|--|
| Approved as to Form <input type="checkbox"/> _____ March 6, 2008 <input type="checkbox"/> City Attorney |
|--|



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item G9

**#2008-86 - Approving Award of Proposal for Engineering Services
Related to Environmental Monitoring Services at the Landfill**

Staff Contact: Steven P. Riehle, City Engineer/Public Works Direc

Council Agenda Memo

From: Steven P. Riehle, Public Works Director

Meeting: March 11, 2008

Subject: Approving Award of Proposal for Engineering Services
Related to Environmental Monitoring Services at the
Landfill

Item #'s: G-9

Presenter(s): Steven P. Riehle, Public Works Director

Background

The Solid Waste Division of the Public Works Department is responsible for the operation of the city's 330 acre solid waste landfill. The landfill is in Hall County and located seven (7) miles north of Shelton, Nebraska at 19550 West Husker Highway, just east of the Hall/Buffalo County Line (Wiseman Road).

As per NDEQ Title 132-Integrated Solid Waste Management Regulations and the Grand Island Regional Landfill operating permit #NE0210658, ground water monitoring and reporting must be performed on a semi-annual basis to ensure that landfill operations are not impacting ground water quality.

On February 8, 2008 a Request For Proposals (RFP) for engineering services related to environmental monitoring services at the landfill was advertised in the Grand Island Independent and sent to six (6) potential firms.

Discussion

Four (4) proposals were received on February 27, 2008. The proposals were reviewed by Solid Waste Superintendent, Jeff Wattier; Public Works Director, Steve Riehle; and Assistant City Attorney, Wes Nespor. Midwest Laboratories Inc. of Omaha, Nebraska submitted the proposal that was chosen using the evaluation criteria listed in the RFP.

Cost (as it relates to scope) for completing the subject work (20%)

Responsiveness and completeness of the proposal with respect to the RFP (20%)

Experience, qualifications and references of firm (20%)

Proposed team members and qualifications (20%)
Experience with the City of Grand Island (10%)
Proposed agreement (10%)

Midwest Laboratories Inc. will provide engineering services to collect groundwater samples, packing/shipping & handling water samples, laboratory analysis of water samples, statistical analysis of analytical results, documentation, quality control/quality assurance & reporting.

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 proposal by Midwest Laboratories Inc. of Omaha, Nebraska.

Sample Motion

Move to approve the proposal by Midwest Laboratories Inc. of Omaha, Nebraska.



Dale M. Shotkoski, Assistant City Attorney

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL
FOR
ENVIRONMENTAL MONITORING SERVICES AT SOLID WASTE LANDFILL**

RFP DUE DATE: February 27, 2008 at 4:15 p.m.

DEPARTMENT: Public Works

PUBLICATION DATE: February 9, 2008

NO. POTENTIAL BIDDERS: 6

SUMMARY OF PROPOSALS RECEIVED

Olsson Associates
Holdrege, NE

Geotechnical Services, Inc.
Grand Island NE

AquaTerra Environmental Solutions, Inc.
Omaha, NE

Midwest Laboratories
Omaha, NE

cc: Steve Riehle, Public Works Director
Jeff Wattier, Solid Waste Superintendent
Jeff Pederson, City Administrator
Dale Shotkoski, City Attorney
Sherry Peters, Legal Secretary

Bud Buettner, Assist. PW Director
Catrina Delosh, PW Admin. Assist.
David Springer, Finance Director
Wes Nespor, Assist. City Attorney

P1231

RESOLUTION 2008-86

WHEREAS, the City of Grand Island invited proposals for engineering services for Environmental Monitoring Services at the city landfill, according to Request for Proposals on file with the Public Works Department; and

WHEREAS, on February 27, 2008, proposals were received, reviewed and evaluated in accordance with established criteria; and

WHEREAS, Midwest Laboratories, Inc. of Omaha, Nebraska, submitted a proposal in accordance with the terms of the Request for Proposals and all statutory requirements contained therein and the City Procurement Code.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal of Midwest Laboratories, Inc. of Omaha, Nebraska, for engineering services for Environmental Monitoring Services at the city landfill is hereby approved.

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska on March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

RaNae Edwards, City Clerk

| | |
|---------------------|-----------------|
| Approved as to Form | ☐ |
| March 6, 2008 | ☐ City Attorney |



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item G10

**#2008-87 - Approving Bid Award for Law Enforcement Center
Lawn & Landscaping Services**

Staff Contact: Steve Lamken

Council Agenda Memo

From: Steven Lamken, Police Chief
Meeting: March 11, 2008
Subject: Lawn and Landscaping Services for the LEC
Item #'s: G-10
Presenter(s): Steven Lamken, Police Chief

Background

The Police Department let a request for bids for lawn and landscaping services for the new Law Enforcement Center grounds and the Stuhr Impound Lot grounds. Four bids were received on February 28, 2008. Johnson Lawn and Landscaping Inc. submitted the low bid of \$8,684.00 for the services. The bid is under the estimate of costs for the services. Johnson Lawn and Landscaping Inc. appear capable of providing the required services.

Discussion

The Police Department is required to provide lawn and landscaping services to the new Law Enforcement Center at 111 Public Safety Drive and the Police Department Impound Lot at 510 S. Stuhr Road. The Department prepared specifications and advertized for bids in February. Four bids were received on February 28th. The bids received ranged from \$24,999.00 to \$8,684.00. The lowest bid was from Johnson Lawn and Landscaping Inc. of Kearney for a total cost of \$8,684.00 for the growing season. This bid was the only one received that was within the estimated cost of the services.

The Police Department conducted four reference checks on Johnson's services. Two references were in Kearney and two were in Grand Island. All four references indicated that Johnson's gave good service and that their lawns and landscaping were well maintained.

Alternatives

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

1. Move to Approve
2. Take no action on the issue
3. Postpone the issue to a future date

Recommendation

City Administration recommends that the Council approve the bid of Johnson Lawn and Landscaping Inc. for lawn and landscaping services to the Police Department properties for \$8,684.00.

Sample Motion

Move to approve the bid of Johnson Lawn and Landscaping, Inc. of Kearney, Nebraska for lawn and landscaping services to the Police Department properties in the amount of \$8,684.00.

Purchasing Division of Legal Department
INTEROFFICE MEMORANDUM



Dale M. Shotkoski, Assistant City Attorney

*Working Together for a
Better Tomorrow, Today*

BID OPENING
AMENDED

BID OPENING DATE: February 28, 2008 at 11:00 a.m.

FOR: Law Enforcement Center Lawn & Landscaping Services

DEPARTMENT: Police

ESTIMATE: \$15,000.00

FUND/ACCOUNT: 10022302-85229

PUBLICATION DATE: February 10, 2008

NO. POTENTIAL BIDDERS: 8

SUMMARY

| | | |
|-------------------|--|---|
| Bidder: | <u>Rick's Lawn Care, Co.</u> Grand Island NE | <u>McDowell Grounds Maintenance</u> Grand Island NE |
| Bid Price: | \$24,999.00 | \$19,938.80 |
| Bidder: | <u>St. Paul Lawn Care</u> Grand Island NE | <u>Johnson Lawn & Landscape, Inc.</u> Kearney, NE |
| Bid Price: | \$17,190.00 | \$8,684.00 |

cc: Steve Lamken, Police Chief
Dale Shotkoski, City Attorney
Sherry Peters, Legal Secretary

Robert Falldorf, Police Captain
Wes Nespor, Assist. City Attorney
Jeff Pederson, City Administrator

P1229

RESOLUTION 2008-87

WHEREAS, the City of Grand Island invited sealed bids for lawn and landscaping services for the Law Enforcement Center, according to plans and specifications on file with the Police Department; and

WHEREAS, on February 28, 2008, bids were received, opened and reviewed; and

WHEREAS, Johnson Lawn & Landscape, Inc. of Kearney, Nebraska, submitted a bid in accordance with the terms of the advertisement of bids and plans and specifications and all other statutory requirements contained therein, such bid being in the amount of \$8,684.00; and

WHEREAS, the bid of Johnson Lawn & Landscape, Inc. is less than the estimate for the lawn and landscaping services for the Law Enforcement Center.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Johnson Lawn & Landscape, Inc. of Kearney, Nebraska, in the amount of \$8,684.00 for lawn and landscaping services for the Law Enforcement Center is hereby approved as the lowest responsible bid.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

RaNae Edwards, City Clerk

| | |
|---------------------|-----------------|
| Approved as to Form | ☐ _____ |
| March 6, 2008 | ☐ City Attorney |



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item G11

**#2008-88 - Approving Contract for Cable Television Services at the
Law Enforcement Center**

Staff Contact: Steve Lamken

Council Agenda Memo

From: Steven Lamken, Police Chief
Meeting: March 11, 2008
Subject: Cable Television Contract for Law Enforcement Center
Item #'s: G-11
Presenter(s): Steven Lamken, Police Chief

Background

The Police Department is requesting to contract with Charter Business cable television services for installation of service into the building to the cable distribution point and also for monthly cable outlet fees. Charter Business has proposed a three year contract of a one time \$1,000.00 installation charge and a fee of \$10.00 per month per cable service in the building. The costs of the regular monthly service will be shared with the County.

Discussion

The new Law Enforcement Center was prewired for cable television outlets; however, the installation of service into the building is to be provided under a separate contract with a local vendor. Charter Communications has prepared a three year contract that will provide for the installation of cable into the building and a three year service contract for outlets in the building. The contract includes a one time installation cost of \$1,000.00 and a monthly fee of \$10.00 per month per service in the building with one service provided free.

The City Legal Department has reviewed the contract with Charter. The costs of the monthly services will be shared with the County with the County paying 30% of the costs.

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 contract with Charter Communications for installation and monthly cable television services to the Law Enforcement Center.

Sample Motion

Move to approve the contract with Charter Communications for installation and monthly cable television services to the Law Enforcement Center.



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BUSINESS VIDEO SERVICE AGREEMENT

This Service Agreement ("Agreement") is executed and effective upon the latest date of the signatures set forth in the signature block below ("Effective Date") by and between Charter Communications VI, LLC, ("Charter Business" or "Charter") with local offices at 809 Central Avenue, Kearney, NE 68848 and Grand Island Hall County Law Enforcement, ("Customer") with offices located at 111 Public Safety Drive, Grand Island, NE 68801.

Both parties desire to enter into this Agreement in order to set forth the general terms under which Charter is to provide Customer with Charter's services ("Service" or "Services") to Customer site(s), the scope and description to be specified per site below and/or in a Service order(s) executed by both parties (each instance of site identification and order a "Service Order" or collectively the "Service Orders"), which shall be incorporated in this Agreement upon execution. **This Agreement and each Service Order will be effective only after both parties have signed each document.**

SERVICE ORDER

Under the Business Video Service Agreement

CUSTOMER INFORMATION:

Account Name: Grand Island Hall County Law Enforcement

Invoicing Address: _____, Grand Island, _____

Invoicing Special Instructions: _____

Customer Federal Tax ID#: _____

1. SITE-SPECIFIC INFORMATION:

Order Type: New Service

Service Location (Address): 111 Public Safety Drive, Grand Island, NE 68801

Service Location Name (for purposes of identification): _____

Service Location Special Instructions: _____

☒ Non-Hospitality or Non-Video

Customer Contact Information. To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

| | Billing Contact | Site Contact | Technical Contact |
|---------------|-----------------|----------------------|--------------------------|
| Name | | 308-385-5400 | Jim Bartlett |
| Phone | | Steve Lamken | 308-379-5253 |
| Fax | | _____ | |
| Cell | | 308-380-8506 | |
| Pager | | | |
| Email Address | | slamken@gipolice.org | jbartlett@chartercom.com |

| MONTHLY SERVICE FEES: | | |
|------------------------|---|----------|
| Video Services: | | |
| Video Service: | Private Office: Basic and Expanded -- 12 units @ \$10.00 + 1 Comp | \$120.00 |

** If Customer has selected the Charter Business Special Offers, the Section 2(k) of the Standard Terms of Service (for Charter Business Bundle) shall apply.*

| ONE-TIME CHARGES: | |
|-------------------------------------|-----------|
| One-Time Standard Installation Fee: | \$1000.00 |
| ONE-TIME CHARGES \$1,000.00 | |

2. TOTAL FEES.

Total Monthly Service Fees of \$120.00 are due upon receipt of the monthly invoice.

Total One-Time Charges of \$1,000.00 are due included in the first monthly invoice.

- SERVICE PERIOD.** The initial Service Period of this Service Order shall begin on the date installation is completed and shall continue for a period of 36 months. Upon expiration of the initial term, this Service Order shall automatically renew for successive one-month terms unless either party terminates this Service Order by giving thirty (30) days prior written notice to the other party before the expiration of the current term. Video Services are subject to rate increases during the term of the contract as described in Video, Music and Content Services.
- NO UNTRUE STATEMENTS.** Customer further represents and warrants to Charter that neither this Service Order, nor any other information, including without limitation, any schedules or drawings furnished to Charter contains any untrue or incorrect statement of material fact or omits or fails to state a material fact.
- CONFIDENTIALITY.** Customer hereby agrees to keep confidential and not to disclose directly or indirectly to any third party, the terms of this Service Order or any other related Service Orders, except as may be required by law, including but not limited to, Nebraska laws relating to access to public records. If any unauthorized disclosure is made by Customer and/or its agent or representative, Charter shall be entitled to, among other damages arising from such unauthorized disclosure, injunctive relief and a penalty payment in the amount of the total One-Time Charges associated with this Service Order, and Charter shall have the option of terminating this Service Order, other related Service Orders and/or the Service Agreement.
- FACSIMILE.** A facsimile of a duly executed Agreement and Service Order signed by both authorized parties shall be considered evidence of a valid order and Charter may rely on such facsimile copy of the Agreement and Service Order as if it were the original.

NOW THEREFORE, Charter and Customer agree to the terms and conditions included within this Service Agreement, including the Standard Terms of Service which follow, and hereby execute this Service Agreement by their duly authorized representatives.

Charter Communications VI, LLC

Grand Island Hall County Law Enforcement

By:

By: Charter Communications, Inc., Its Manager

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Charter Business Account Executive:

Name: Jeanne Noyes

Telephone: (308) 698-1742

Sales Code: _____

Fax: (308) 236-1509

STANDARD TERMS OF SERVICE

1. **SERVICE.** Charter agrees to provide the Services during the Service period to the Customer at the site(s) identified in the Service Order(s). "Service Period," is the time period starting on the date the Services are fully functional in all material respects and available for use as described in a Service Order or as reflected in the first invoice (the "Turn-up Date"), and continuing for the number of months specified in the Service Order(s).
2. **STANDARD PAYMENT TERMS.** Customer agrees to pay the monthly Service fees and one-time charges as set forth in the Service Order(s) incorporated under this Service Agreement by execution thereof by the parties. "Monthly Service Fees" is the amount specified as the monthly fee to be paid by the Customer for the Services. "One-Time Charges" include, but are not limited to, construction, Service installation charge(s), repair, replacement, or any non-recurring charges. "Service Installation Charge" is the amount specified as the fee for installation of equipment and network facilities. "Equipment" means components including, but not limited to, any gateway or edge electronic device, antenna, node, concentrator, bridge, receiver, transmitter, transceiver, router, switch, hub or communications lines/cables that makes up the network of Charter-provided Equipment, facilities and materials (the "Network") necessary to provide the Services.
 - (a) Monthly Service Fees. Customer agrees to pay Monthly Service Fees in advance of the provision of the Services. Monthly Service Fees are due upon receipt of the invoice.
 - (b) One-Time Charges. Customer agrees to pay the One-Time Charges as described on the applicable Service Order(s).
 - (c) Taxes, Fees, and Government Charges. Customer agrees to pay any sales, use, property, excise or other taxes, franchise fees, and governmental charges (excluding income taxes), arising under this Agreement, including, without limitation, applicable state property taxes. A copy of the Customer's tax exemption document, if applicable, must be provided to Charter to certify tax-exempt status. Tax-exempt status shall not relieve Customer of its obligation to pay any applicable franchise fees.
 - (d) Charges for Change Requests. Any charges associated with Service and Equipment installations, additions, modifications, substitutions, upgrades, reconfigurations, rebuilds or relocations at a site and requested by Customer subsequent to executing a Service Order for that site, are the sole financial responsibility of Customer. Charter shall notify Customer, orally or in writing, of any additional One-Time Charges and/or adjustments to Monthly Service Fees associated with or applicable to such Customer change requests prior to making any such additions or modifications. Customer's failure to object to such additional charges within three (3) days of receiving such notice shall be deemed an acceptance by Customer of such charges. Customer shall be assessed such additional One-Time Charges and/or adjusted Monthly Service Fees, either (i) in advance of implementation of the change request or (ii) beginning on the Customer's next and/or subsequent invoice(s).
 - (e) Site Visits and Repairs. If Customer's misuse, abuse or modification of the Services, Equipment or Network facilities supplied by Charter necessitates a visit to the Customer site for inspection, correction or repair, Charter shall charge Customer a site visit fee as well as charges for any Equipment or Network repair or replacement necessary to restore Service.
 - (f) Invoicing Errors. Customer must provide notice to Charter of any invoice errors or disputed charges within thirty (30) days of the invoice date on which the errors and/or disputed charges appear in order for Customer to receive any credit that may be due.
 - (g) Late Fees. If Customer fails to pay an invoice within sixty (60) days of issuance, Charter will issue a notice of late payment. Customer will be charged a late fee of not more than five percent (5%) per month on any outstanding past-due balance.
 - (h) Non-Payment. If Services are disconnected because Customer does not pay the invoice, Charter may, in its sole discretion, require that Customer pay all past due charges, a reconnect fee, and a minimum of one month's Monthly Service Fees in advance before Charter will reconnect Services.
 - (i) Returned Checks, Bankcard or Credit Card Charge-Backs and Collection Fees. Charter may charge a reasonable service fee for all returned checks and bankcard, credit card or other charge card charge-backs.
 - (j) Collection Fees. Customer shall be responsible for all expenses, including reasonable attorney's fees and collection costs, incurred by Charter in collecting any unpaid amounts due under this Agreement if so ordered by a court of law.
 - (k) Bundled Pricing. In the event Customer has selected a Charter Business Bundle (as must be specifically indicated by component Service in this Service Order), the following conditions shall apply:

In consideration for Customer's purchase of the Charter Business Bundle and only with respect to that period time during which Customer continues to purchase such Charter Business Bundle (for purposes of clarification, continues purchase of each bundled Service component of such Charter Business Bundle), Charter agrees to apply a discount to the Services ordered under this Service Order. Such discount has been applied to the Services included in Charter's bundled pricing offer and is reflected in the Monthly Services Fees for such Services contained in this Service Order.

For purposes of clarification, in the event Charter's provision to Customer of one or more of the bundled Service components of the Charter Business Bundle, is discontinued or otherwise terminated for any reason, the pricing for the remaining Service components listed above shall revert to Charter's a la carte pricing for such Services in effect at the time of the discontinuation or termination. Termination liabilities applicable to the Services under the Service Agreement shall otherwise remain unchanged.

3. SERVICE LOCATION ACCESS and INSTALLATION.

- (a) Access. Customer shall provide Charter with reasonable access to each Service Location listed on a Service Order as necessary for Charter to review, install, inspect, maintain or repair any Equipment or Materials necessary to provide the Services. If Customer owns and/or controls the Service Location(s), Customer grants to Charter permission to enter the site(s) for the exercise of such right. If a site is not owned and/or controlled by Customer then Customer will obtain, with Charter's assistance, appropriate right of access. If Customer is not able to gain right of access for a site from owner and/or controlling party, Charter's obligations under this Agreement and the appropriate Service Order for such site are terminated, null and void.
- (b) Installation Review; Subsequent Interference. Charter may perform an installation review of each Service Location prior to installation of the Services at that Service Location. Customer may be required to provide Charter with accurate site and/or physical network diagrams or maps of a Service Location prior to the installation review. Charter may directly or through its agents inspect the Customer Premises before beginning installation, and shall satisfy itself that safe installation and proper operation of its Equipment and the Services are possible in the location(s) provided by Customer. If Charter, in its sole discretion, determines that safe installation and/or activation of one or more of the Services will have negative consequences to Charter's personnel or Network and/or cause technical difficulties to Charter or its customers, Charter may terminate the Service Order effective upon prior written notice to Customer or may require the Customer to correct the situation before proceeding with installation or activation of the Services.

In the event during the initial or any renewal Service Period, (i) proper operation of Charter's Equipment and/or unhindered provision of the Services is no longer possible as a result of interference or obstruction caused by the acts or omissions of Customer, a third party or any Force Majeure Event, or (ii) such interference/obstruction or the cause thereof will have negative consequences to Charter's personnel or Network and/or cause technical difficulties to Charter or its customers, as Charter may determine in its sole discretion, Charter may terminate the affected Service Order(s) without liability upon written notice to Customer.

- (c) Site Preparation. Customer shall be responsible, at its own expense, for all site preparation activities necessary for delivery and installation of the Equipment and the installation and ongoing provision of Services, including, but not limited to, the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment and/or Services. To ensure proper installation of the Equipment and the Services, Customer may be required to provide electrical or other utility service, and/or accurate physical network diagrams and/or maps prior to installation.
- (d) Installation. Charter will schedule one or more installation visits with Customer. Customer's authorized representative must be present during installation. During installation, Charter shall test to confirm that the Services can be accessed from the Service Location. In the event that during the course of installation Charter determines additional work is necessary to enable Charter to deliver the Services to the Service Location, Charter will notify Customer of any new or additional One-Time Charges that may be necessary. In the event the Customer does not agree to pay such One-Time Charges by executing a revised Service Order reflecting such new charges (and superseding the underlying applicable Service Order) within five (5) business days of receiving the revised Service Order, Customer and/or Charter shall have the right to terminate the applicable Service Order. Customer shall be responsible for access paths, moving or relocating furniture, furnishings, or equipment, or other preparation activities necessary for Charter to install the Services. Customer shall connect any Equipment provided by Charter to Customer's computer or network to enable access to the Services. With respect to any excavation, Charter shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from such excavation.
- (e) Ongoing Visits. Charter will need access to the Customer Premises from time to time for inspecting, constructing, installing, operating and maintaining Charter's Network facilities, Equipment or materials and/or any related facilities. Except in emergency situations, Charter will obtain approval from the Customer (not to be unreasonably withheld or delayed) before entering the Customer Premises. At Charter's request, Customer, or a representative designated by Customer, will accompany Charter's employees or agents into any unoccupied unit for the purpose of installing, repairing, maintaining, upgrading, and/or removing the Equipment.

4. EQUIPMENT AND MATERIALS.

- (a) Responsibilities and Safeguards. Except as otherwise provided in this Service Agreement or any Service Order(s), neither party shall be responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party, provided, however, that subject to the Indemnification limitations set forth in section 11 hereunder, each party shall be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage-causing party's negligence or willful misconduct.

Without limiting the foregoing, Customer will not be liable for loss of or damage to cable, electronics, structures or Equipment owned by Charter and located on Customer Premises which occurred as a result of the occurrence of any Force Majeure Event, natural disaster or other casualty loss over which Customer has no control.

Customer shall:

- i Safeguard Charter-provided Equipment against others;
- ii Not add other equipment nor move, modify, disturb, alter, remove, nor otherwise tamper with any portion of the Equipment;
- iii Not hire nor permit anyone other than personnel authorized by Charter acting in their official capacity to perform any work on the Equipment; and

- iv Not move nor relocate Equipment to another location or use it at an address other than the Service location without the prior written consent of Charter.

Any unauthorized connection or other tampering with the Services, Equipment, any system or its components shall be cause for immediate disconnection of Services, termination of this Agreement and/or legal action, and Charter shall be entitled to recover damages, including, but not limited to, the value of any Services and/or Equipment obtained in violation of this Agreement in addition to reasonable collection costs including, but not limited to, reasonable attorneys' fees. Should any antenna, or signal amplification system for use in connection with communication equipment hereafter be installed on the Premises which interferes with the Services provided by Charter hereunder, Customer acknowledges and agrees that Charter shall not be obligated to distribute a quality signal to the Premises better than the highest quality which can be furnished as a result of such interference, until such time as the interference is eliminated or corrected by Customer or a third party.

- (b) Ownership. Customer understands and agrees that notwithstanding any other provision contained herein to the contrary, all Equipment and materials installed or provided by Charter are and shall always remain the property of Charter, shall not become a fixture to the Premises, and must be returned to Charter at any time Services are disconnected in the condition in which they were received subject to ordinary wear and tear. Customer will not sell, lease, assign nor encumber any Equipment.
- (c) Equipment Return, Retrieval, Repair and Replacement. Immediately upon termination of Services ("Termination" shall mean the termination of the Service Agreement and/or Service Order(s)), at the discretion of Charter, Customer shall return, or allow Charter to retrieve, the Equipment supplied by Charter to Customer, in good condition. Failure of Customer to return, or allow Charter to retrieve, Equipment within ten (10) days after Services are terminated will result in a charge to Customer's account equal to the full retail cost of replacement of the unreturned Equipment. In addition, Customer agrees to pay for the repair or replacement of any damaged Equipment (whether or not caused by Customer's negligent act, except such repairs or replacements as may be necessary due to normal and ordinary wear and tear or material/workmanship defects), together with any costs incurred by Charter in obtaining or attempting to regain possession of such Equipment, including, but not limited to, reasonable attorneys' fees.

5. **VIDEO, MUSIC AND CONTENT SERVICE.** This Video, Music and Content Service section shall only apply if Video, Music and Content Services are included in this Service Agreement or any related Service Order. Continued reception of the Video Services is subject to these Terms and Conditions. Charter may, in its sole discretion, preempt, rearrange, delete, add, discontinue, modify or otherwise change any or all of the advertised programming, packaging, and distribution of its Video Services or of any of Charter's Video Services packages.

- (a) Payment Terms. Increases in any and all programming, license, copyright, retransmission and/or other costs, charges, fees or amounts including, without limitation, taxes and any and all other governmental fees, charges and/or other amounts, shall not be deemed to be included in the Monthly Service Fees or limited by any provision in this Agreement, and may be passed on to Customer at any time when such costs are incurred by, assessed or required of Charter.

The initial Monthly Service Fees shall remain in effect for the first 12-months of this Agreement. Thereafter, Charter may increase the Monthly Service Fees from time to time upon thirty (30) days' prior written notice to Customer. Customer hereby agrees to any such increases that do not exceed six percent (6%) of the Customer's total Monthly Service Fees incurred in the month immediately preceding the month in which the increase is to be effective. Increases shall not occur more frequently than once per 12-month period. In the event such increased Monthly Service Fee would exceed the amount permitted under applicable law, the Monthly Service Fees shall be increased only to the maximum allowable under applicable law. Notwithstanding the foregoing, increases in any and all programming, license, copyright, retransmission and/or other costs, charges, fees or amounts including, without limitation, taxes and any and all other governmental fees, charges and/or other amounts, shall not be limited by any provision in this Agreement, and may be passed onto Customer at any time when such costs are passed on to Charter.

- (b) Music Rights Fees. In all cases, Customer is responsible for and must secure any music rights and/or pay applicable fees required by the American Society of Composers, Authors & Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI") and SESAC, Inc. ("SESAC") or their respective successors, and any other entity, person or governmental authority from which a license is necessary or appropriate in connection with Customer's transmission, retransmission, communication, distribution, performance or other use of the Services.
- (c) Premium and Pay-Per-View. Customer may not exhibit any premium Services such as HBO or Showtime in any public or common viewing area. Customer may not order or request Pay-Per-View (PPV) programming for receipt, exhibition or taping in a commercial establishment. Customer may not exhibit nor assist in the exhibition of PPV programming in a commercial establishment unless explicitly authorized to do so by agreement with an authorized program provider and subject to Charter's prior written consent. If Customer fails to abide by these restrictions, in addition to all other liability and not by way of limitation, Customer accepts liability for any and all claims made against Customer or Charter of any unauthorized commercial exhibition and Customer agrees to indemnify and hold Charter harmless from any loss, cost, liability, or expense, including reasonable attorney's fees, arising from a breach of this provision.
- (d) Provision of Service. Charter may, in its sole discretion, from time to time, rearrange, delete, add or otherwise change packaging and programming of Services contained in Charter's basic cable, Digital Music or other Services provided pursuant

to this Agreement. Customer acknowledges that Charter has the right at any time to preempt without notice specific advertised programming and to substitute programming that Charter deems to be comparable.

- (e) Restrictions. Customer shall not and shall not authorize or permit any other person to (i) copy, record, dub, duplicate, alter, make or manufacture any recordings or other reproductions of the Services (or any part thereof); (ii) transmit the Services (or any part thereof) by any television or radio broadcast or by any other means or use the Services (or any part thereof) outside the Service Location. Customer acknowledges that such duplication, reproduction or transmission may subject Customer to criminal penalties and/or civil liability and damages under applicable copyright and/or trademark laws. Customer shall not, and shall not authorize or permit any other person to (i) charge a cover charge or admission fee to any Service Location(s) at the time the Services (or any part thereof) are being performed or are to be performed; (ii) permit dancing, skating or other similar forms of entertainment or physical activity in conjunction with the performance of the Services (or any part thereof) unless Customer can demonstrate to the reasonable satisfaction of Charter that Customer or a third-party has obtained a then-current music license permitting such activity; or (iii) insert any commercial announcements into the Services or interrupt any performance of the Services for the making of any commercial announcements. If Customer fails to abide by these restrictions, Customer accepts liability for any and all claims made against Customer or Charter due to any unauthorized commercial exhibition and Customer agrees to indemnify and hold Charter harmless from any damages, loss, cost, liability, or expense, including reasonable attorneys' fees, arising from a breach of these restrictions.

6. INTERNET ACCESS SERVICE. Continued use of the Internet Service is subject to these Terms and Conditions.

- (a) Equipment and Software Requirements. Customer shall maintain certain minimum Equipment and software to receive the Service. Please refer to www.charter-business.com (or the applicable successor URL) for the current specifications.
- (b) Internet Service Speeds. Charter shall use commercially reasonable efforts to achieve the Internet speed selected by the Customer on the Service Order. However, Customer understands and agrees that such speeds may vary.
- (c) Access and Use. Customer agrees to ensure that any person who has access to the Internet Services through Customer's computer(s), Service Location, facilities or account shall comply with the terms of this Agreement. Customer shall be responsible for all charges incurred and all conduct, whether authorized or unauthorized, caused by use of Customer's computers, service locations, facilities or account using the Internet Services.
- (d) Customer Security Responsibilities. Customer shall be responsible for the implementation of reasonable security procedures and standards. Charter may temporarily discontinue or disconnect the Internet Services upon learning of a breach of security and will attempt to contact Customer in advance, if possible. The temporary discontinuation or disconnection of the Internet Services shall not constitute a breach of this Agreement.
- (e) Electronic Addresses. All e-mail addresses, e-mail account names, and IP addresses ("Electronic Addresses") provided by Charter are and shall remain the property of Charter. Customer may not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses.
- (f) No Liability for Changes of Address. Due to growth, acquisitions and changes in technology, Charter reserves the right to change addressing schemes, including e-mail and IP addresses.
- (g) No Liability for Risks of Internet Use. The Internet is a shared network and Charter does not warrant that Service will be error free. The Service, Charter's network and the Internet are not secure, and others may access or monitor the Customer's traffic. Charter does not warrant that data or files sent or received by the Customer over the Network will not be subject to unauthorized access by others, that other users will not gain access to the Customer's data, nor that the data or files will be free from computer viruses or other harmful components. Charter has no responsibility and assumes no liability for such acts or occurrences.
- (h) No Liability for Purchases. Through use of the Service, the Customer may access certain information, products and services of others, for which there is a charge. The Customer shall be solely liable and responsible for all fees or charges for these online services, products or information. Charter shall have no responsibility to resolve disputes with other vendors.
- (i) Blocking and Filtering. While the computer industry may provide blocking and filtering software that empowers Customer to monitor and restrict access to Customer's computer and its data, Charter is not the publisher of this software. Charter strongly recommends that the Customer employ a "firewall" or other security software. The Customer assumes all responsibility for providing and configuring any "firewall" or security measures for use with the Service. Except to the extent set forth in the Supplemental Charter Business Security Service Section, Charter shall not be responsible in any manner for the effectiveness of these blocking and filtering technologies. Charter does not warrant that other users will be unable to gain access to Customer's computer(s) and/or data even if the Customer utilizes blocking and filtering technologies.
- (j) Acceptable Use Policy. Customer agrees to comply with the terms of Charter's Acceptable Use Policy ("AUP"), found at www.charter-business.com (or the applicable successor URL) and that policy is incorporated by reference into this Agreement. Customer represents and warrants that Customer has read the AUP and agrees to be bound by its terms as they may from time to time be amended, revised, replaced, supplemented or otherwise changed. Customer expressly understands and agrees that the AUP may be updated or modified from time to time by Charter, with or without notice to Customer. Charter may discontinue or disconnect Services immediately for any violation of the Charter AUP with or without notice to Customer.
- (k) Supplemental Charter Business Security Service. This Charter Business Security Service subsection shall only apply if Charter's managed security service ("Charter Business Security") is included in this Service Agreement or any related Service

Order. Charter Business Security is made up of software and hardware components. Charter shall ensure that Charter Business Security is operational and updated from time to time based on manufacturer-sent updates. Except to the limited extent described in the foregoing sentence, Charter makes no warranties of any kind (express or implied) regarding Charter Business Security and hereby disclaims any and all warranties pertaining thereto (including but not limited to implied warranties of title, non-infringement, merchantability, or fitness for a particular purpose). Customer understands and acknowledges that Charter is not the manufacturer of any software or hardware components of Charter Business Security nor is Charter the supplier of any components of such software or hardware. IN ADDITION TO BUT WITHOUT ABROGATING THE TERMS SET FORTH IN SECTION 11, CHARTER SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF CHARTER BUSINESS SECURITY (INCLUDING BUT NOT LIMITED TO THAT ATTRIBUTABLE TO BLOCKED CONTENT OR EMAIL). REGARDLESS OF CAUSE OR FAULT, CHARTER'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO CUSTOMER'S PURCHASE OR USE OF CHARTER BUSINESS SECURITY, SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER TO CHARTER FOR CHARTER BUSINESS SECURITY.

- (l) Supplemental CB Back-Up Service. This CB Back-Up service subsection shall apply only if Charter's data storage service ("CB Back-Up") is requested by the Customer. In addition to One Time Charges and Monthly Service Fees, monthly storage overage fees shall apply each month Customer exceeds the respective subscribed storage level. Additional One Time Charges and Monthly Service Fees also apply to Customer-requested media and/or professional services.

CB Back-Up is made up of software components. Customer understands and acknowledges that Charter is not the manufacturer or supplier of any CB Back-Up software components. Customer shall be responsible for updating CB Back-Up from time to time based on updates provided by the software manufacturer, and any failure of Customer to perform such updates shall relieve Charter from any responsibility to ensure that CB Back-Up remains operational. Except to the limited extent described in the foregoing sentences, Charter makes no warranties of any kind (express or implied) regarding CB Back-Up and disclaims any and all warranties pertaining to CB Back-Up (including but not limited to implied warranties of title, non-infringement, merchantability, or fitness for a particular purpose). IN ADDITION TO, BUT WITHOUT ABROGATING OR LIMITING THE TERMS SET FORTH IN THE LIMITATION OF LIABILITY SECTION OF THIS AGREEMENT, CHARTER SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF CB BACK-UP REGARDLESS OF CAUSE OR FAULT. CHARTER'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO CUSTOMER'S PURCHASE OR USE OF CB BACK-UP SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER TO CHARTER FOR CB BACK-UP SERVICE.

In the event the functionality of the CB Back-Up service cannot be maintained by Charter or the manufacturer, Charter shall have the right to discontinue providing the service immediately and Charter shall credit Customer's account for any pre-paid Monthly Service Fees attributable to the service, except where such lack of functionality is caused by the Customer or any end user gaining access to the service through the Customer's facilities, equipment, or point of access. Customer shall not be relieved of its responsibility to continue to pay for CB Back-Up in the event CB Back-Up does not function properly as a result of Customer's failure to install and configure the software, activate the service or install manufacturer-provided updates. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES (1) THAT IT IS CUSTOMER'S SOLE RESPONSIBILITY TO CREATE AND RETAIN THE CB BACK-UP PASSWORD THAT IS NECESSARY FOR ACCESS TO ANY DATA STORED VIA THE CB BACK-UP SERVICE AND (2) THAT CHARTER HAS NO ACCESS TO AND DOES NOT KNOW NOR KEEP ANY RECORD OF THE PASSWORD CREATED BY CUSTOMER. FAILURE BY CUSTOMER TO RETAIN CUSTOMER'S CB BACK-UP PASSWORD SHALL RESULT IN COMPLETE LOSS OF ACCESSABILITY TO DATA STORED VIA THE CB BACK-UP SERVICE.

- (m) Supplemental CB Hosting Service. This Hosting Service subsection shall only apply if one of Charter's Hosting Services ("Hosting") is included in this Service Agreement or any related Service Order. Charter will provide to Customer Hosting Service in accordance with the Specifications associated with the plan Customer has selected on the Service Order.
- i. Third Party Software via Hosting Service. The Hosting Service will permit access to a variety of resources available from selected third parties, including developer tools, communication forums and product information (collectively, "Hosting Software"). The Hosting Software, including any updates, enhancements, new features, and/or the addition of any new Web properties, may subject to end user license agreements between such third parties and Customer. Version changes of any such software compatibility and/or suitability with any other Customer provided software shall be Customer's responsibility.
 - ii. WITHOUT LIMITING THE FOREGOING, COPYING OR REPRODUCTION OF THE HOSTING SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED, UNLESS SUCH REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PERMITTED IN WRITING BY CHARTER.
 - iii. WITHOUT LIMITING OR ABROGATING THE TERMS SET FORTH IN SECTION 7, CHARTER HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE HOSTING SOFTWARE, INCLUDING ALL WARRANTIES AND CONDITIONS OF MERCHANTABILITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.
 - iv. Domain Names. Customer shall be solely responsible for registering for or renewing a desired domain name, Charter disclaims such responsibility, and Customer acknowledges that Charter does not guarantee that Customer will be able to register or renew a desired domain name, even if an inquiry indicates that domain name is available at the time of such inquiry.

- v. **Specification Limitations.** Individual websites may not at any time exceed the Hosting Specifications identified on the applicable Service Order. If a Customer's Hosting account is found exceed the Specifications set forth in the applicable Service Order, or is adversely impacting Charter's network or server(s), Charter may (i) contact the Customer to resolve the issues; or if Customer has exceeded the then-applicable Specifications in any given month, (ii) upgrade the Customer's account on the next available billing cycle to the next service level tier or (iii) suspend or terminate the Hosting Service.

Notwithstanding anything to the contrary, in the event Customer's use of the Hosting Service is causing an adverse impact on Charter's network or servers, Charter may (i) suspend or terminate the Hosting Service or (ii) terminate the Agreement in its entirety.

- vi. **Limitation of Charter-Provided Services.** Customer understands and agrees that certain services are not provided by Charter as part of the Hosting Service (e.g., Charter does not provide nor offer web page creation, development, design or content services).
- vii. **No Additional Warranties.** Charter makes no warranties of any kind (express or implied) regarding Hosting and hereby disclaims any and all warranties pertaining thereto (including but not limited to implied warranties of title, non-infringement, merchantability, or fitness for a particular purpose). IN ADDITION TO, BUT WITHOUT ABROGATING AND LIMITING THE TERMS SET FORTH IN THE LIMITATION OF LIABILITY SECTION OF THIS AGREEMENT, CHARTER SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF CHARTER HOSTING REGARDLESS OF CAUSE OR FAULT. CHARTER'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO CUSTOMER'S PURCHASE OR USE OF THE HOSTING SERVICE SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER TO CHARTER FOR HOSTING SERVICE.
- viii. **Hosting Fees.** The applicable Service Order sets forth the Monthly Service Fees for the Hosting Service. Customer is responsible for payment whether or not the hosting platform is used. Customer shall not be relieved of its responsibility to continue to pay for Hosting in the event Hosting does not function properly as a result of (i) Customer's failure to install or properly use any software; or (ii) Customer's failure to utilize in any way or less than the maximum Specifications the Hosting Service.
- ix. **Content Liability and Use Restrictions.** Customer acknowledges Charter exercises no control whatsoever over the content of the information passing through Customer's site(s) and that it is Customer's sole responsibility to ensure that Customer and Customer's users use of the Hosting Service complies at all times with all applicable laws and regulations and Charter's AUP.

Upon activation of Customer's account, Charter shall have the right to disclose any, or all available information collected from Customer to law enforcement authorities upon written request by such authorities. Information that may be disclosed includes, but is not limited to IP addresses, account history, and files stored on Charter servers.

In addition to the foregoing, Customer expressly understands and agrees that the following activities are prohibited. In the event that Customer engages in such activities, Charter shall have the right to suspend or terminate the Hosting Services and/or this Agreement:

- a. The hosting of unlicensed software that is available to the public;
- b. Use of software or files that contain computer viruses or files that may harm user's computers;
- c. Any attempt or actual unauthorized access by Customer or through Customer's equipment to any Charter website or the website of any Charter customer;
- d. The collection or any attempt to collect personally identifiable information of any person or entity without their express written consent. Customer shall maintain records of any such written consent throughout the Term (and any Renewal Term) of this agreement and for three years thereafter;
- e. Any action which is harmful or potentially harmful to the Charter server structure;
- f. Running a banner exchange, free adult tgp (thumbnail gallery post) and/or free adult image galleries on your website;
- g. Inclusion of sites with material, links, or resources for hacking, phreaking, viruses, or any type of site that promotes or participates in willful harm to Internet sites or providers.
- x. **Impositions on Customer's End Users.** Customer is responsible for charging and collecting from Customer's end-user customers any and all applicable taxes. If Customer fails to impose and/or collect any tax from its end users or customers as required herein, then, as between Charter and Customer, Customer shall remain liable for such uncollected tax and any interest and penalty assessed thereon with respect to the uncollected tax by the applicable taxing authority. With respect to any tax that Customer has agreed to pay or impose on and/or collect from Customer's end users or customers, Customer agrees to indemnify and hold harmless Charter for any costs incurred as a result of actions taken by the applicable taxing authority to collect such tax from Charter due to Customer's failure to pay or collect and remit such tax to such authority.

- 7. **NO THIRD-PARTY HARDWARE OR SOFTWARE SUPPORT.** Customer is responsible for the installation, repair and use of Customer-supplied third-party hardware and/or software. For purposes of this Agreement the Hosting Software shall be considered third party software. Charter does not support third-party hardware or software supplied by Customer. Any questions concerning third-party hardware or software should be directed to the provider of that product. Charter assumes no liability or responsibility for the installation, maintenance, compatibility or performance of third party software, any Customer-supplied

hardware or software with the Services. If such third-party equipment or software impairs the Services, Customer shall remain liable for payments as agreed (if any) without recourse for credit or prorated refund for the period of impairment. Charter has no responsibility to resolve the difficulties caused by such third-party equipment or software. If, at Customer's request, Charter should attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at Charter's discretion and at then-current commercial rates and terms.

8. **CUSTOMER USE.** Customer agrees not to re-sell or re-distribute access to the Service(s) or system capacity, or any part thereof, in any manner without the express prior written consent of Charter. Customer agrees not to use or permit third parties to use the Service(s), including but not limited to the Equipment and software provided by Charter, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer agrees not to interfere with other customers' use of the Equipment or Services or disrupt the Charter Network, backbone, nodes or other Services. Violation of any part of this section is grounds for immediate Termination of this Service Agreement and/or all Service Orders in addition to any other rights or remedies Charter may have hereunder.
9. **PERFORMANCE.** Charter will use commercially reasonable efforts in keeping with normal industry standards to ensure that the Service is available to Customer twenty-four (24) hours per day, seven (7) days per week. It is possible, however, that there will be interruptions of Service. Specifically, Customer understands and agrees that the Service may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Charter's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by the Customer, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by Charter to perform its obligations under this Service Agreement, and Customer will not hold Charter at fault for loss of Customer revenue or lost employee productivity due to Service outages.
10. **DEFAULT; SUSPENSION OF SERVICE; TERMINATION.** No express or implied waiver by Charter of any event of default shall in any way be a waiver of any further subsequent event of default. Nothing herein, including, but not limited to Termination, shall relieve Customer of its obligation to pay Charter all amounts due.
 - (a) Default by Customer. Customer shall be in default under this Service Agreement in the event that the Customer does one (1) or more of the following (each individually to be considered a separate event of default) and the Customer fails to correct each such noncompliance within twenty (20) days of receipt of written notice in cases involving non-payment or within thirty (30) days of receipt of written notice in cases involving any other noncompliance:
 - i Customer is more than thirty (30) days past due with respect to any payment required hereunder;
 - ii Customer otherwise has failed to comply with the terms of this Service Agreement or any other Service Order(s) incorporated herein by execution thereof by the parties; or
 - iii Customer files or initiates proceedings or has proceedings filed or initiated against it, seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within sixty (60) days.
 - (b) Charter's Right to Terminate and Termination Charge. In the event Customer is in default, Charter shall have the right, at its option, and in addition to any other remedies it may have, to:
 - i Immediately suspend Services to the Customer until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay Charter any amounts due under this Agreement (e.g., the Monthly Service Fees), as if such suspension of Services had not taken place;
 - ii Terminate the Services; or
 - iii After the occurrence of two (2) such events of Customer default in any twelve (12) month period of time, terminate this Service Agreement and/or any or all of the applicable Service Order(s).

If Termination is due to noncompliance by the Customer, Customer must pay Charter a Termination charge (a "Termination Charge"), which the parties recognize as liquidated damages. This Termination Charge shall be equal to fifty percent (50%) of the unpaid balance of the Monthly Service Fees that would have been due throughout the remainder of the applicable Service Period plus one hundred percent (100%) of (1) the outstanding balance of any and all One-Time Charges plus (2) any and all previously waived One-Time Charges
 - (c) Default by Charter. Charter shall be in default under this Service Agreement in the event that Charter does one (1) or more of the following (each instance individually to be considered a separate event of default), and Charter fails to remedy each such noncompliance or occurrence within thirty (30) days of receipt of written notice from Customer describing in reasonable detail the nature, scope and extent of the default or noncompliance:
 - i Charter fails to comply with the terms of this Service Agreement and/or any or all of the applicable Service Order(s);
 - ii Charter files or initiates proceedings or has proceedings filed or initiated against it, seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within sixty (60) days.
 - (d) Customer's Right to Terminate and Termination Charge.

- i Customer shall have the right, at its option and in addition to any other remedies it may have, to terminate any applicable Service Order(s), if the underlying event of default and/or noncompliance by Charter is limited to Services provided under the applicable Service Order(s) or this Service Agreement, if such noncompliance is not so limited, provided that Charter's diligent efforts to correct such breach are not commenced and pursued within thirty (30) days after Charter's receipt of a written notice from the Customer describing in reasonable detail the nature, scope and extent of the event of default/noncompliance.
- ii If Termination is due to noncompliance by Charter, Charter shall reimburse Customer for any pre-paid, unused Monthly Service Fees attributable to such terminated Service Order(s). In addition, if Termination is due to noncompliance by Charter within one (1) year of the applicable Turn-Up Date, Charter shall pay a Termination Charge, which the parties recognize as liquidated damages, equal to a portion of any One-Time Charge that has already been paid by the Customer to Charter relative to Service at the sites covered by the terminated Service Order. This Termination Charge Charter must pay Customer shall be equal to the product of a) the number of months (or portion thereof) remaining in the initial twelve (12) months of the initial Service Period at the time of Termination and b) a ratio in which the numerator is the total of One-Time Charges paid to date and the denominator is twelve (12).
- iii Notwithstanding any provision herein to the contrary, Customer, at its option, may terminate this Agreement without early termination charges by providing written notice to Charter not more than sixty (60) days following receipt from Charter of notice of any increase in the Monthly Service fees.

Fees attributable to Video Services exceeding six percent (6%) of the Monthly Service Fees attributable to the Video Service in the immediately preceding month. Customer's failure to provide Charter notice of Termination within such thirty (30) days period shall constitute an acceptance of such increase in the Monthly Service Fees exceeding six percent (6%).

LIMITATION OF LIABILITY. PLEASE READ THIS SECTION CAREFULLY, IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.

- (a) Limited Warranty. At all times during the Service Period, Charter warrants that it will use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to the Customer.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER.

EXCEPT AS OTHERWISE STATED IN THIS SERVICE AGREEMENT, CHARTER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED HEREUNDER AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

WITHOUT LIMITING ANY EXPRESS PROVISIONS PROVIDED FOR ELSEWHERE IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES HEREUNDER (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES), UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

THE FOREGOING LIMITATIONS APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

Any warranty claim by Customer must be made within thirty (30) days after the applicable Services have been performed. Charter's sole obligation and Customer's sole remedy, with respect to any breach of the limited warranty set forth herein, shall be a prorated refund of the fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty provision.

- (b) Content. Customer acknowledges that any content that Customer may access or transmit through any Service is provided by independent content providers, over which Charter does not exercise and disclaims any control. Charter neither previews content nor exercises editorial control; does not endorse any opinions or information accessed through any Service; and assumes no responsibility for content. Charter specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Service. Such content or programs may include, without limitation, programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and their authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and Charter assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.
- (c) Damage, Loss or Destruction of Software Files and/or Data. Customer agrees that Customer uses the Services and Equipment supplied by Charter at its sole risk. Charter does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind.

Charter assumes no responsibility whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data or peripherals which may result from Customer's use of any Service. Charter does not warrant that data or files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time.

- (d) **Unauthorized Access.** If Customer chooses to run or offer access to applications from its equipment that permits others to gain access through the Network, Customer must take appropriate security measures. Failing to do so may cause immediate Termination of Customer's Service by Charter without liability for Charter. Charter is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall hold Charter harmless from and indemnify Charter against any claims, losses, or damages arising from such use. Charter is not responsible and assumes no liability for losses, claims, damages, expenses, liability, or costs resulting from others accessing the Customer's computers, its internal network and/or the Network through Customer's equipment, and Customer shall hold Charter harmless from and indemnify Charter against any such claims, losses, or damages to the full extent arising from such access.
- (e) **Force Majeure Event.** Customer agrees that Charter shall not be liable for any inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances beyond Charter's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Services.

11. **INDEMNIFICATION.** In addition to its specific indemnification responsibilities set forth elsewhere in this Service Agreement and as permissible under applicable law, Customer agrees, at its own expense, to indemnify, defend and hold harmless Charter and its directors, employees, representatives, officers and agents, (the "Indemnified Parties") against any and all claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by Charter Indemnified Parties, including but not limited to, reasonable attorneys' fees and court costs incurred by Charter Indemnified Parties under this Service Agreement, to the full extent that such arise from Customer's misrepresentation with regard to or noncompliance with the terms of this Service Agreement and any or all Service Orders, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. Charter Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer agrees to cooperate with Charter Indemnified Parties in such case. Charter agrees, at its own expense, to indemnify, defend and hold harmless Customer and its affiliates, directors, employees, representatives, officers and agents, (the "Customer Indemnified Parties") against any and all claims, liabilities, lawsuits, direct damages, losses, judgments, costs, fees and expenses incurred by Customer Indemnified Parties (including but not limited to, reasonable attorneys' fees and court costs), to the full extent that such arise directly from (1) Charter's failure to comply with applicable law, (2) physical damage to personal or real property caused by the negligent or willful misconduct of Charter, its employees or contractors, at the Site(s) during the installation or maintenance of the Equipment, and/or (3) third party claims that any of the Charter-owned or controlled equipment, facilities, and/or system used to deliver the Services infringes upon the intellectual property rights of such third party. Customer Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Charter's cost and Charter agrees to cooperate with the Customer Indemnified Parties in such case.

- 12. **TITLE.** Title to the Equipment shall remain with Charter during the applicable Service Period. Customer shall keep that portion of the Equipment located on Customer Premises free and clear of all liens, encumbrances and security interests. Upon Termination of Service or expiration of a Service Order's Service Period for a specific site, Charter shall have the right to remove all Equipment components and/or leave any of such components in place, assigning title and interest in such components to the Customer, it being understood that no further notice or action is required to accomplish the assignment contemplated hereunder. Charter shall have the right to remove the Equipment and all components within sixty (60) days after such Termination.
- 13. **COMPLIANCE WITH LAWS.** Customer shall not use or permit third parties to use the Services in any manner that violates applicable law or causes Charter to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties hereunder.
- 14. **PRIVACY.** Charter treats private communications on or through its Network or using any Service as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. Charter also maintains a Privacy Policy with respect to the Services in order to protect the privacy of its customers. The Privacy Policy can be found on Charter's website at www.Charter-Business.com. Customer represents and warrants that Customer has read the Privacy Policy and agrees to be bound by its terms. Customer expressly understands and agrees that the Privacy Policy may be updated or modified from time to time by Charter, with or without notice to Customer.
- 15. **GENERAL CUSTOMER REPRESENTATIONS AND OBLIGATIONS.** Customer represents to Charter that Customer has the authority to execute, deliver and carry out the terms of this Service Agreement and associated Service Orders. Customer also represents that any person who accesses any Services through Customer's equipment or through the Network facilities in Customer's Premises will be an authorized user, will use the Service, Network and/or Network facilities in an appropriate and legal manner, and will be subject to the terms of this Service Agreement. Customer shall be responsible for ensuring that all such users understand the Service Agreement and comply with its terms.

The Customer shall be responsible for all access to and use of the Service by means of the Customer's equipment, whether or not the Customer has knowledge of or authorizes such access or use. The Customer shall be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Service, until the Customer informs Charter of any breach of security.

Charter expressly prohibits using the Service for the posting or transferring of sexually explicit images, material inappropriate for minors, or other offensive materials. By signing, Customer expressly acknowledges that Customer will not post or transfer or permit others to post or transfer such materials using the Service..

16. **NOTICES.** Any notices to be given under this Service Agreement shall be validly given or served only if in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses:

If to Charter:

Charter Communications
ATTN: Charter Business

with copies to:

Charter Communications
ATTN: Legal Department
Dept: Corporate Operations
12405 Powerscourt Drive
St. Louis, MO. 63131

and

Charter Communications
ATTN: CB Corporate – Contracts Management
12405 Powerscourt Drive
St. Louis, MO. 63131

If to Customer:

Grand Island Hall County Law Enforcement
ATTN:
111 Public Safety Drive, Grand Island, NE 68801

Each party may change its respective address(es) for legal notice by providing notice to the other party.

17. **MISCELLANEOUS.**

- (a) Entire Agreement. This Service Agreement and any related, executed Service Order(s) constitute the entire Agreement with respect to the Services, Network and Equipment. This Service Agreement supersedes all prior understandings, promises and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to the subject matter of this Service Agreement.
- (b) No Amendments, Supplements or Changes. This Service Agreement and the associated executed Service Order(s) may not be amended, supplemented or changed without both parties' prior written consent.
- (c) No Assignment or Transfer. The parties may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) this Service Agreement and the associated Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from the other party, which consent shall not be unreasonably withheld, provided, however, that Charter may assign this Service Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with Charter, or to its successor-in-interest in the event Charter sells the underlying communications system, without Customer's consent.
- (d) Severability. If any term, covenant, condition or portion of this Service Agreement, any related, executed Service Order(s) shall, to any extent, be invalid or unenforceable, the remainder of this Service Agreement, any related, executed Service Order(s), shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law.
- (e) Section Headings. The section headings are furnished for the convenience of the parties and are not to be considered in the construction or interpretation of this Service Agreement.
- (f) Governing Law. This Service Agreement and all matters arising out of or related to this Agreement shall be governed by the laws of the State of Nebraska, without regard to conflicts of law provisions. IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, CUSTOMER AND CHARTER EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.
- (g) Jointly Drafted. Both parties hereby acknowledge that they participated equally in the negotiation and drafting of this Service Agreement and any related, executed Service Order(s) and that, accordingly, no court construing this Service Agreement and any related, executed Service Order(s) shall construe it more stringently against one party than against the other.
- (h) No Third Party Beneficiaries. The parties agree that the terms of this Service Agreement and the parties' respective performance of obligations as described are not intended to benefit any person or entity not a party to this Service Agreement, that the consideration provided by each party under this Service Agreement only runs to the respective parties hereto, and that

no person or entity not a party to this Service Agreement shall have any rights under this Service Agreement nor the right to require the performance of obligations by either of the parties under this Service Agreement.

- (i) Waiver. Except as otherwise provided herein, the failure of Charter to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

RESOLUTION 2008-88

WHEREAS, the Law Enforcement Center is pre-wired for cable television; and

WHEREAS, installation of cable television service shall be provided by Grand Island's local vendor, Charter Communications; and

WHEREAS, a three year contract with Charter Communications has been prepared to provide service to the Law Enforcement Center for three years, which will include a one time installation cost of \$1,000 and a monthly fee of \$10 per month per service in the Law Enforcement Center, with one service provided at no cost.; and

WHEREAS, the proposed contract between Charter Communications and the City of Grand Island has been reviewed and approved by the City Attorney's Office.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the contract between Carter Communications and the City of Grand Island to provide cable television services is hereby approved and the mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

RaNae Edwards, City Clerk

| | |
|---------------------|-----------------|
| Approved as to Form | ☐ _____ |
| March 6, 2008 | ☐ City Attorney |



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item G12

#2008-89 - Approving Grant Award from Region III Behavioral Health Services

Staff Contact: Wendy Meyer-Jerke

Council Agenda Memo

From: Wendy Meyer-Jerke, Public Information Officer

Council Meeting: March 11, 2008

Subject: Accept grant award from Region III Behavioral Health Services

Item #'s: G-12

Presenter(s): Wendy Meyer-Jerke, Public Information Officer

Background

The City of Grand, Community Youth Council, has been awarded \$600 from Region III Behavioral Health Services to help fund the 2008 "Family Day in the Park". It will be the third year that the Community Youth Council has sponsored this free family event. The group plans on building on its past success as the event last year received a Community Services Award as part of the Nebraska Community Improvement Program awarded by Governor Dave Heineman.

The event will once again promote family interaction through activities, entertainment and education on healthy lifestyle choices for youth. The emphasis of the use of these grant dollars will be to educate youth on strategies to reduce methamphetamine and marijuana use, as well as ways to incorporate all cultures throughout the activities of the day. In addition, activities will also be provided that educate youth on tobacco use, underage drinking, and childhood obesity.

The grant was submitted on February 7, 2008 to Region III and will help to offset costs for the event.

Discussion

Some of the organizations that the City of Grand Island and the Community Youth Council may partner with to sponsor the event include: Central Nebraska Council on Alcoholism and Addictions, Central District Health Department, Parks and Recreation Department, Youth Leadership Tomorrow, Tobacco Free Hall County, Substance Abuse

Prevention Coalition, and the Public Library. The following activities will take place the day of the event:

- 1) The morning will consist of some type of family activity to promote exercise and healthy lifestyle choices for the entire family. Possibilities include a disc golf tournament for all ages, family bike ride, family walk/run, horseshoes, etc.
- 2) An education pavilion will be available during the day with participation from drug prevention/awareness community groups. Community groups with an emphasis on drug use prevention and youth services will be invited to attend.
- 3) Afternoon family activities will include an inflated castle for bouncing, refreshments (snow cones, granola bars, fruit snacks, etc.), GIFD smoke house, ambulance and fire truck, a sports clinic, face painting and tattoos, and family games. The committee has once again invited the Nebraska Army National Guard to bring their rock climbing wall to the 2008 event. Adrian Valez, the Guard representative, has expressed interest in participating again.
- 4) Options for the evening include showing an age appropriate, value positive evening movie for families and youth of all ages. Prior to the main feature, a short alcohol abuse video will be aired. Other possibilities include a magician, comedian, or band/musician appropriate for all ages.

Alternatives

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

1. Accept the grant award from Region III and authorize expenditure of funds by resolution
2. Refer the issue to a Committee.
3. Postpone the issue to a later date.
4. Take no action.

Recommendation

City Administration recommends that the grant award from Region III be accepted and expenditure of funds authorized by resolution.

Sample Motion

Move to accept the grant award from Region III and authorize expenditure of funds by resolution.

RESOLUTION 2008-89

WHEREAS, On February 7, 2008, the City of Grand Island, on behalf of the Community Youth Council, submitted a grant application to Region III Behavioral Health Services to assist in funding the 2008 Family Day in the Park; and

WHEREAS, Region III Behavioral Health Services has recommended that the City of Grand Island be provided grant funds awarded to the Community Youth Council, City of Grand Island, in the amount of \$600.00; and

WHEREAS, the Mayor of the City of Grand Island is required to sign the grant in acceptance of the same.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the grant funds awarded to the City of Grand Island, Community Youth Council in the amount of \$600.00 to assist in funding the 2008 Family Day in the Park is hereby approved.

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

RaNae Edwards, City Clerk

| | | |
|---------------------|--------------------------|---------------|
| Approved as to Form | <input type="checkbox"/> | _____ |
| March 6, 2008 | <input type="checkbox"/> | City Attorney |



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item G13

**#2008-90 - Approving Paul Essman of Capital City Concepts to
Conduct Joint IBEW and Future Wage and Benefits Surveys**

Staff Contact: Brenda Sutherland

Council Agenda Memo

From: Brenda Sutherland, Human Resources Director

Meeting: March 11, 2008

Subject: Approving Paul Essman of Capital City Concepts to Conduct a Joint IBEW and Future Wage and Benefits Surveys

Item #'s: G-13

Presenter(s): Brenda Sutherland, Human Resources Director

Background

The City of Grand Island's current labor agreement with the IBEW (International Brotherhood of Electrical Workers), Local 1597, will expire at midnight on September 30, 2008. The current contract has been in place since October 1, 2003. IBEW represents employees in the utilities department, finance department and I. T. (information technology) department as well as the latest group with the wastewater treatment plant. The employees at the wastewater treatment plant just agreed to a four year contract so the employee groups that are being represented in the upcoming negotiations would be the other aforementioned groups. It has been common practice for the City and usually the union to conduct salary and benefit surveys to determine midpoint on the issues that are negotiated in the labor agreement.

Discussion

The City of Grand Island has employed the services of Paul Essman of Capital City Concepts to provide wage and salary surveys for the City of Grand Island for the past several years. Paul has served as an expert witness on behalf of the City at the CIR on a few separate occasions as well as the survey work that has been performed. The City and members of the IBEW have met and discussed the possibility of going in together on a joint survey to use for upcoming labor negotiations. The membership voted and agreed that they would like to have Paul Essman conduct the survey. Their comfort level stems from their knowledge and past experience with Mr. Essman in doing surveys for other communities utility services. The City obviously has had and still does a working relationship with Mr. Essman and his knowledge of our structure and positions enables him to hit the ground running.

The reason for coming to Council to approve Mr. Essman for the purpose of conducting the joint survey is that the City's share of the survey will go over the \$7,500 limit as outlined in the City procurement code thus requiring three quotes from other vendors. The City's share of the survey is estimated at \$15,000 with expenses taken into account. Mr. Essman has a niche in the marketplace and there are not three other vendors that the City is aware of to get quotes from that can deliver a "CIR ready" survey. There are few if any that have not been retained by other groups that are available to conduct wage and salary surveys that are certified ready to be introduced at the CIR. The term CIR ready refers to the fact that the surveyor has visited the communities where matches are made to determine the job and community match.

The number of positions and size of the survey has driven the cost of this survey up compared to some others that are done. As a practical matter, Mr. Essman is the only viable source for services in Nebraska. The ability to employ his services as needed for negotiations as well as non-union surveys is important. The ability to go into negotiations working together from the start lends itself to more harmonious and efficient negotiations.

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 Paul Essman of Capital City Concepts to conduct salary and wage surveys for the City of Grand Island.

Sample Motion

Move to approve Paul Essman of Capital City Concepts to conduct salary and wage surveys for the City of Grand Island.

R E S O L U T I O N 2008-90

WHEREAS, the City of Grand Island's labor agreement with the International Brotherhood of Electrical Workers, Local 1597 (IBEW) will expire at midnight on September 30, 2008; and

WHEREAS, it is common practice for the City and the union to conduct salary and benefit surveys to determine midpoint on negotiated issues; and

WHEREAS, it is a requirement of the City Procurement Code to obtain quotes for any amount over \$7,500; and

WHEREAS, Paul Essman of Capital City Concepts is the most viable source for these services in the State of Nebraska; and

WHEREAS, the City's share of the cost of the services of Mr. Essman is estimated to be \$15,000 and requires approval of the City Council; and

WHEREAS, the services of Mr. Essman will be needed for future union and non-union surveys.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal of Paul Essman of Capital City Concepts to conduct salary and benefits surveys for labor agreement negotiations for the City of Grand Island and the IBEW in the amount of approximately \$15,000 is hereby approved and the mayor is hereby authorized and directed to execute such contract on behalf of the City of Grand Island.

BE IT FURTHER RESOLVED that the City may use the services of Paul Essman of Capital City Concepts for future union and non-union surveys.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

| | |
|--|--|
| Approved as to Form <input type="checkbox"/> _____ | |
| March 6, 2008 | <input type="checkbox"/> City Attorney |

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item H1

Consideration of Request from Stratford Plaza, LLC dba Howard Johnson Riverside Inn, 3333 Ramada Road for a Deletion of Approximately 180' x 130' to their Class "C-65949" Liquor License

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: March 11, 2008

Subject: Request from Stratford Plaza, LLC dba Howard Johnson Riverside Inn, 3333 Ramada Road for a Deletion to Class “C-65949” Liquor License

Item #'s: H-1

Presenter(s): RaNae Edwards, City Clerk

Background

Stratford Plaza, LLC dba Howard Johnson Riverside Inn, 3333 Ramada Road has submitted an application for a deletion of an area approximately 180' x 150' to their Class “C-65949” Liquor License. (See attached drawing.)

Discussion

Howard Johnson Riverside Inn currently holds a liquor license which covers the entire hotel located at 3333 Ramada Road. They are requesting a deletion of an area approximately 180' x 150' which includes the restaurant, kitchen, conference center, lobby, and atrium from their current license. This area will be covered under a separate license which will come before the City Council for approval on March 25, 2008.

City Council action is required and forwarded to the Nebraska Liquor Control Commission for issuance of all licenses. This application has been reviewed by the City Clerk.

Alternatives

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

1. Approve the application.
2. Forward to the Nebraska Liquor Control Commission with no recommendation.

3. Forward to the Nebraska Liquor Control Commission with recommendations.
4. Deny the application.

Recommendation

Based on the Nebraska Liquor Control Commission's criteria for the approval of Liquor Licenses, City Administration recommends that the Council approve the application.

Sample Motion

Move to approve the request from Howard Johnson Riverside Inn for a deletion of an area of approximately 180' x 150' from their Liquor License 'C-65949' located at 3333 Ramada Road.

RECEIVED

FEB 20 2008

**APPLICATION FOR ADDITION,
DELETION, CHANGE OF LOCATION,
RECONSTRUCTION**

NEBRASKA LIQUOR CONTROL COMMISSION
301 CENTENNIAL MALL SOUTH
PO BOX 95046
LINCOLN, NE 68509-5046
PHONE: (402) 471-2571
FAX: (402) 471-2814

NEBRASKA LIQUOR
CONTROL COMMISSION

Website:

FEE \$45.00

LICENSEE'S NAME Stratford Plaza LLC

TRADE NAME Howard Johnson Riverside Inn

PREMISE ADDRESS 3333 Remuda Rd

CITY/COUNTY Grand Island, NE / Hall County

LICENSE NUMBER 65949 PHONE NUMBER 308-379-1745

PLEASE CHECK ONE OF THE FOLLOWING

☐ ADDITION ☐ RECONSTRUCTION ☒ DELETION (partial)

☐ CHANGE OF LOCATION (this application will not be accepted if the license is moving into another jurisdiction)

Address From: _____

Address To: _____

- 1) Include a sketch of the proposed area to be licensed (8 1/2 x 11 paper - no blueprints) indicate the dimensions of the area to be licensed and the direction "north" on the sketch
- 2) Submit a copy of your lease or deed demonstrating ownership
- 3) If you do not know what jurisdiction you are located in, call the city or county clerk
- 4) In order to clarify your changes, an attached explanation is always welcome

AFFIDAVIT

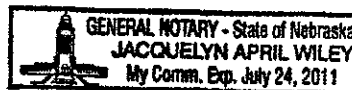
The above reference request, as filed, will comply with the rules and regulations of the Nebraska Liquor Control Act.

Verna Rae Campbell
Signature of licensee

Subscribed in my presence and first duly sworn to before me on this 11 day of

February, 2008.

Jacquelyn April Wiley
Notary Public signature and seal

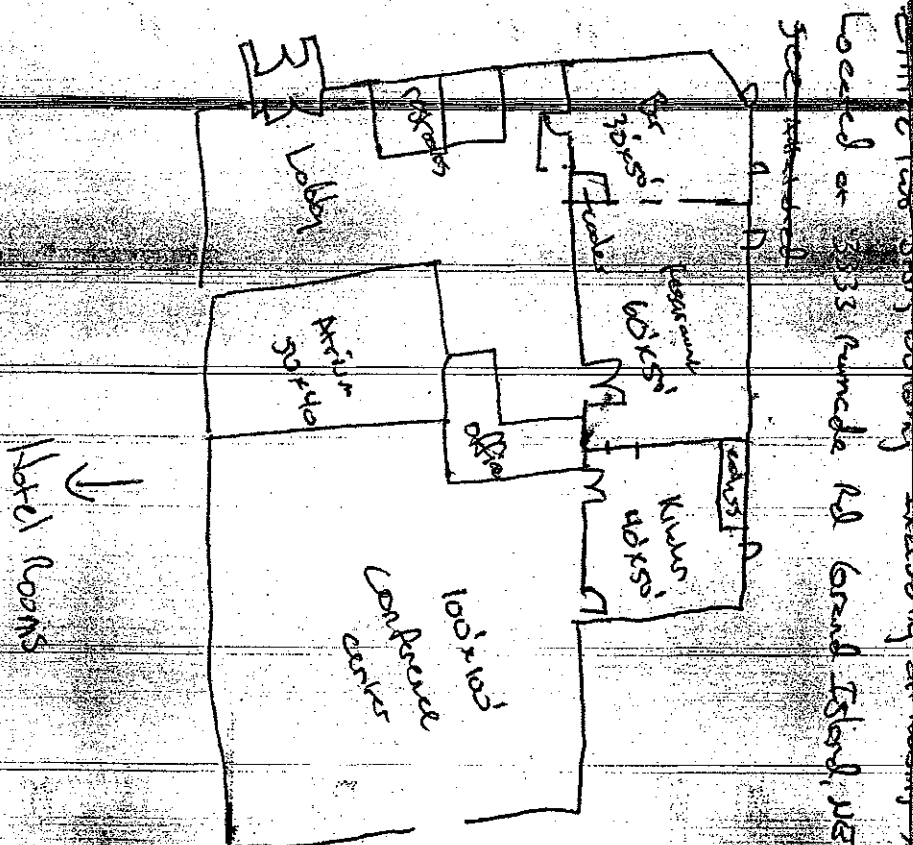


Bus 10043
45-mm



FEB 26 2008

NEBRASKA LIQUOR
CONTROL COMMISSION



Approximate
Bar 1500 \$
Restaurant 3000
Kitchen 2000
cont. dr. 10,000
Attrition - 2000

NOTE - larger/lower seems
to rooms will be sold
as off sale items
and purchased for a price



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item I1

**#2008-91 - Approving Boundaries for Creation of Business
Improvement District #6**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Chad Nabity, AICP

Meeting: March 11, 2008

Subject: Approving Boundaries for the Creation of Business Improvement District #6

Item #'s: I-1

Presenter(s): Chad Nabity, AICP

Background

State statutes allow for the creation of business improvement districts and the expenditure of funds for improvement of public places or facilities within the district, including the acquisition, construction, maintenance, and operation of such improvements, creation and implementation of a plan for improving the general architectural design of public areas within the district, the development of any public activities and promotion of public events, including the management and promotion and advocacy of retail trade activities or other promotional activities, and employing or contracting for personnel for any improvement program under the act.

Discussion

In February of 2008 owners of some of the properties along Second Street between Eddy and Grant sent a letter to the Mayor and Council requesting the creation of a business improvement district. The owners are hoping to create a landscaping district similar to the ones created on South Locust Street. A copy of the letter is attached.

The first step in the creation of the district is for Council to define the boundaries of the area that could be included in a district. City staff is suggesting a larger area than the one requested by the property owners as it is easier to approve a smaller area when the final district boundaries are determined than it is to add an additional block or two. City staff is suggesting an area bounded by South Front Street on the north, First Street on the south, Eddy Street on the east and Garfield Street on the west. See the attached map. This would include all of the property requested and allow the district to include other properties that could benefit from the creation of the district.

This is the first step in the process and will define an area from which the Mayor can select property owners, residents or users of space to serve on an initial board to define a plan or plans for the area. Prior to creation of the district all property owners will have the ability to protest the creation of the district in its final form.

Alternatives

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

1. Move to resolution defining the boundaries
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 Resolution defining the initial boundaries of BID 6.

Sample Motion

Move to approve the Resolution defining the initial boundaries of BID #6.

January 26, 2008

Grand Island City Council
100 E 1st Street
Grand Island, NE



Dear Sir or Madam:

RE: BID for 2nd Street (Eddy to Grant)

This letter is to request council's consideration of creating a BID for aforementioned area. A good portion of this street will be expanded to five lanes in 2008. Additionally, it is believed to carry a blighted/substandard designation.

A unified look will benefit the businesses as well as give a more favorable impression to all, driving through the city on US Highway 30. The potential to mirror the work done on South Locust should be the goal of the new district.

Many of the landowners/occupants were called during the week of January 21, 2008
All voiced support for said designation.

Affixed hereto are signatures of a number of businesses/individuals contacted.

Thank you for your consideration.

Robert L Dodendorf
Five Points Bank

Mike Wanek
Property Owner

Dallas Kime
Tier One Bank

Phil Maltzahn
Almquist Maltzahn etal

Cheryl Niedfeldt
Real Estate Group

Randy Evans
Randy's Used Cars

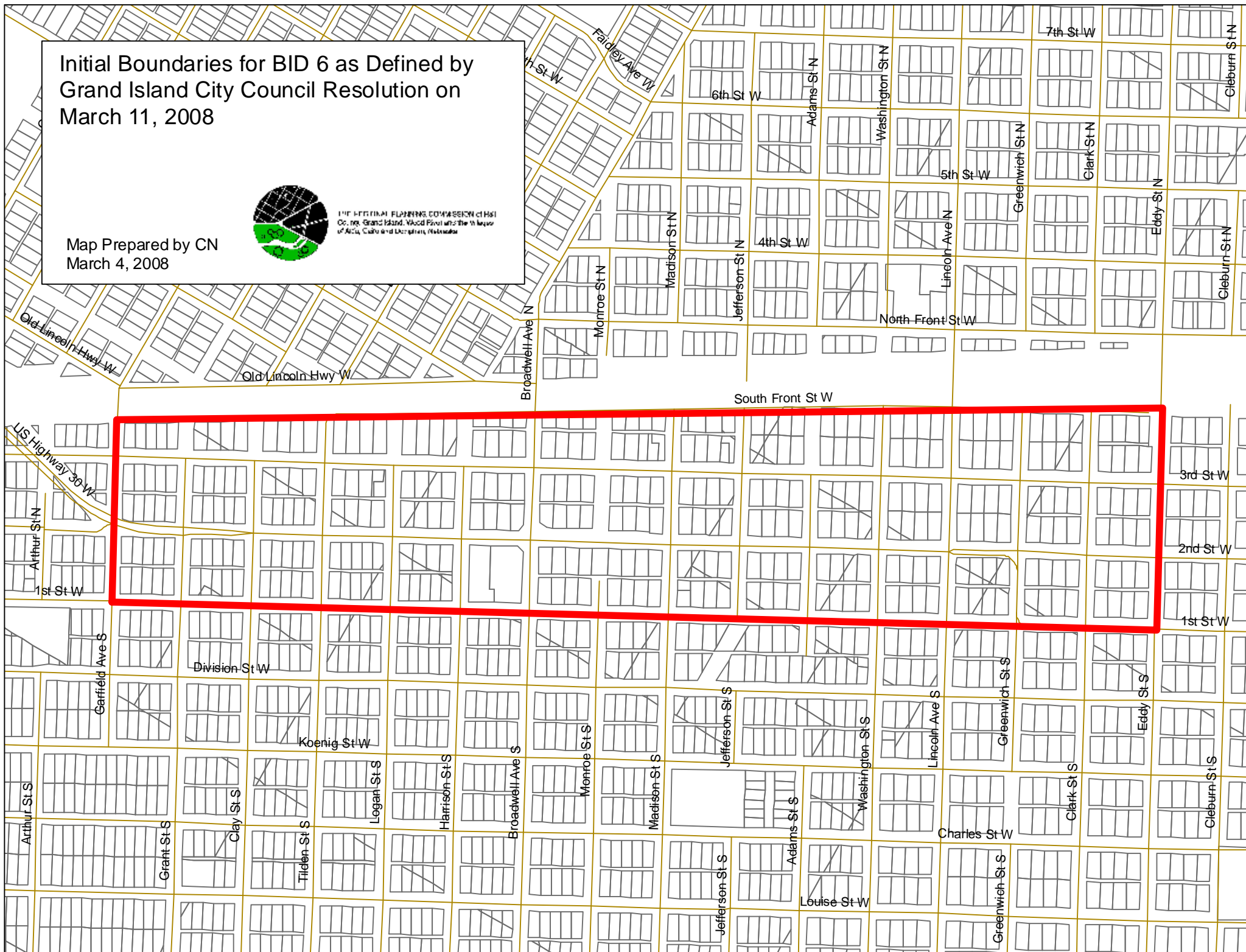
cc: Mayor
Council
Admin.
Legal
Planning
1-30-08

Initial Boundaries for BID 6 as Defined by
Grand Island City Council Resolution on
March 11, 2008



THE GRAND ISLAND PLANNING COMMISSION of Hsd
Co., Inc. Grand Island, Nebr. 68801
P.O. Box 1000 Grand Island, Nebraska 68801

Map Prepared by CN
March 4, 2008



RESOLUTION 2008-91

WHEREAS, Second Street property owners have recommended that the City of Grand Island create a business improvement district with boundaries set out below; and

WHEREAS, Section 19-4021, R.R.S. 1943, indicates that the boundaries of a business area for a potential business improvement district shall be declared by the city council prior to or at the same time as the appointment of the business improvement board; and

WHEREAS, the outer boundaries of the potential Business Improvement District No. 6 are described on the attached map, marked as Exhibit "A"; and

WHEREAS, it is suggested that a business improvement board be appointed to make recommendations to the city council for the potential establishment of a district and plans for improvements, if any, for such district.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the property set out within the boundaries described on attached Exhibit "A" be declared as future Business Improvement District No. 6.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska on March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

RaNae Edwards, City Clerk

| | |
|--------------------------------------|------------------------|
| Approved as to Form March 6, 2008 | _____ City Attorney |
|--------------------------------------|------------------------|



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item I2

**#2008-92 - Approving Designation of 1st Street as Stop Sign
Protected from Cleveland Street to Washington Street**

Staff Contact: Steven P. Riehle, City Engineer/Public Works Direc

Council Agenda Memo

From: Steven P. Riehle, Public Works Director

Meeting: March 11, 2008

Subject: Approving Designation of 1st Street as Stop Sign
Protected from Cleveland Street to Washington Street

Item #'s: I-2

Presenter(s): Steven P. Riehle, Public Works Director

Background

The Nebraska Department of Roads (NDOR) is managing the project to widen US Highway 30 (2nd Street) from Grant Street to Greenwich Street. The installation of traffic control signs for the project has begun with work on the highway set to begin on Monday, March 17th. The project will detour westbound US Highway 30 traffic to 3^d Street. Eastbound US Highway 30 traffic will remain on 2^d Street throughout the duration of the project.

The first phase of the project will shift eastbound US Highway 30 traffic to the north side of 2nd Street. The NDOR is working with property owners along the south side of 2nd Street for access during this first phase. Many will use 1st Street for access to businesses and residences along the south side of 2nd Street during that first phase.

Discussion

The NDOR anticipates an increase in traffic volumes on 1st Street and is requesting that 1st Street be designated as a "Stop Sign Protected" street. The designation would cover 1st Street from east of Blaine Street to west of Lincoln Avenue.

The following side streets will stop at 1st Street during the first phase of the project:

Cleveland Street
Arthur Street
Garfield Avenue
Grant Street
Clay Street
Tilden Street

Logan Street
Harrison Street
Monroe Street
Madison Street
Jefferson Street
Adams Street
Washington Street

First Street will still be required to stop at the following streets:

Blaine Street
Broadwell Avenue
Lincoln Avenue
Greenwich Street

The designation will start on March 17th and remain until the first phase is completed in late summer 2008.

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

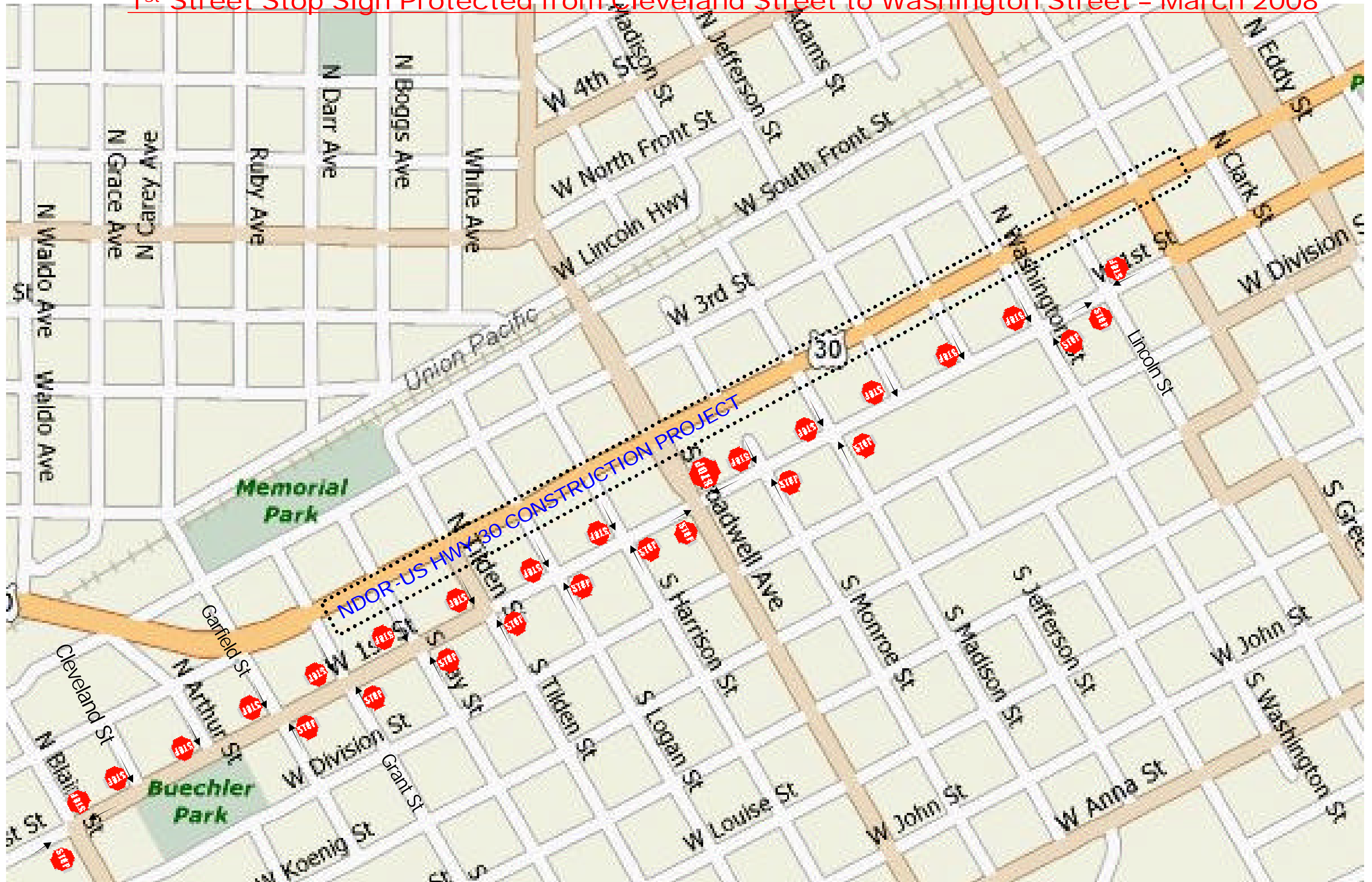
Recommendation

City Administration recommends that the Council approve Stop sign protected intersections on 1st Street from Cleveland Street to Washington Street.

Sample Motion

Move to approve stop sign protected intersections on 1st Street from Cleveland Street to Washington Street.

1st Street Stop Sign Protected from Cleveland Street to Washington Street – March 2008



RESOLUTION 2008-92

WHEREAS, the City Council, by authority of Section 22-27 of the Grand Island City Code, may by resolution regulate motor vehicle traffic upon the streets of the City of Grand Island; and

WHEREAS, that during the widening project of US Highway 30 (Second Street) in the City of Grand Island, the Nebraska Department of Roads is requesting that First Street be designated as a "Stop Sign Protected" street from Cleveland Street to Washington Street; and

WHEREAS, said streets will be designated as "Stop Sign Protected" beginning March 17, 2008, until the first phase of the widening project is completed in late summer of 2008; and

WHEREAS, it is in the city's best interests to effectuate such changes.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the request of the Nebraska Department of Roads to designate Cleveland Street to Washington Street as a "Stop Sign Protected" street from March 17, 2008, through late summer of 2008, is hereby approved.

BE IT FURTHER RESOLVED that the Streets Division of the Public Works Department is hereby directed to install such signs to regulate traffic as outlined above.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

RaNae Edwards, City Clerk

| | |
|---------------------|-----------------|
| Approved as to Form | ☐ _____ |
| March 6, 2008 | ☐ City Attorney |



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item I3

**#2008-93 - Approving Settlement of Sapp Bros. Petroleum, Inc.
Condemnation Appeal**

Staff Contact: Wes Nespor

Council Agenda Memo

From: Wesley D. Nespor, Legal Department

Meeting: March 11, 2008

Subject: Settlement of Sapp Bros. Petroleum, Inc. Condemnation Appeal

Item #'s: I-3

Presenter(s): Wesley D. Nespor, Attorney

Background

The City previously authorized an improvement project to widen a portion of Capital Avenue. It was necessary to acquire permanent and temporary rights-of-way and easements to complete this project as designed. Negotiations to purchase the needed property from Poland Oil, Inc. (now known as Sapp Bros. Petroleum, Inc.) stalled and eminent domain proceedings were commenced. The Board of Appraisers awarded the sum of \$40,785.00 which was deposited by the City last year in an account controlled by the Hall County Court. Sapp Bros. Petroleum, Inc. appealed the award to the District Court seeking more money.

Discussion

After due consideration of all the factors, costs, and the potential outcome of a new trial in District Court, a settlement was negotiated by the legal department with Sapp Bros. Petroleum subject to approval by the Nebraska Department of Roads and the City Council. Pre-approval has been received from the NDOR and approval is now sought from the Council.

Alternatives

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

1. Move to approve
2. Move to deny

Recommendation

City Administration recommends that the Council approve a resolution authorizing settlement with Sapp Bros. Petroleum, Inc. as follows:

That the Forty Thousand Seven Hundred Eighty Five Dollars (\$40,785.00) deposited with the Hall County Court in Case No. CI07-4107, together with any interest accrued thereon, may be released to Sapp Bros. Petroleum, Inc.

The City of Grand Island, Nebraska, shall pay to Sapp Bros. Petroleum, Inc., the additional sum of Forty Four Thousand Seven Hundred Fifty Eight Dollars (\$44,758.00) in full and complete settlement of all claims and damages arising out of the public taking of the subject property.

Each party shall be responsible for its own costs and attorneys fees and no additional interest will be due on the settlement except the interest that has accrued on the amount deposited in County Court.

Nothing in this Stipulation is intended to affect the City of Grand Island's ability to specially assess the adjoining real estate for street improvements.

Sample Motion

Move to approve a resolution authorizing settlement with Sapp Bros. Petroleum, Inc. under the terms negotiated by the legal department.

RESOLUTION 2008-93

WHEREAS, the City of Grand Island, Nebraska condemned certain real estate belonging to Sapp Bros. Petroleum, Inc. as successor in interest to Poland Oil, Inc.; and

WHEREAS, Sapp Bros. Petroleum, Inc. appealed the award of appraisers to the Hall County District Court; and

WHEREAS, a settlement has been negotiated that is fair and reasonable;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the settlement is approved and the Mayor is authorized to sign the settlement agreement which provides, in pertinent part:

That the Forty Thousand Seven Hundred Eighty Five Dollars (\$40,785.00) deposited with the Hall County Court in Case No. CI07-4107, together with any interest accrued thereon, may be released to Sapp Bros. Petroleum, Inc.

The City of Grand Island, Nebraska, shall pay to Sapp Bros. Petroleum, Inc., the additional sum of Forty Four Thousand Seven Hundred Fifty Eight Dollars (\$44,758.00) in full and complete settlement of all claims and damages arising out of the public taking of the subject property.

Each party shall be responsible for its own costs and attorneys fees and no additional interest will be due on the settlement except the interest that has accrued on the amount deposited in County Court.

Nothing in this Stipulation is intended to affect the City of Grand Island's ability to specially assess the adjoining real estate for street improvements.

Adopted by the City Council of the City of Grand Island, Nebraska, March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

RaNae Edwards, City Clerk

| | | |
|---------------------|--------------------------|---------------|
| Approved as to Form | <input type="checkbox"/> | _____ |
| March 6, 2008 | <input type="checkbox"/> | City Attorney |



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item J1

Approving Payment of Claims for the Period of February 27, 2008 through March 11, 2008

The Claims for the period of February 27, 2008 through March 11, 2008 for a total amount of \$2,406,390.80. A MOTION is in order.

Staff Contact: David Springer