



# **City of Grand Island**

**Tuesday, June 10, 2008**

**Council Session**

## **Item F2**

**#9172 - Consideration of Issuance of Industrial Development  
Revenue Bonds for Microgy Grand Island, LLC**

**Staff Contact: Dale Shotkoski**

# **Council Agenda Memo**

**From:** Dale Shotkoski, City Attorney  
Dave Springer, Finance Director

**Meeting:** June 10, 2008

**Subject:** Approval of Ordinance to Issue Tax-Exempt Industrial Development Revenue Bonds for Microgy Grand Island, LLC

**Item #'s:** F-2

**Presenter(s):** Dale Shotkoski, City Attorney  
Dave Springer, Finance Director

## **Background**

On February 26, 2008, council approved the intent for the City of Grand Island to issue its industrial development revenue bonds, as authorized by Nebraska statutes, for the purpose of defraying the cost of acquisition, construction and equipping of certain solid waste disposal and biogas manufacturing facilities to be operated by Microgy at the Swift & Company beef processing facility in Grand Island. At the May 27, 2008 council meeting, a public hearing was conducted on this matter.

## **Discussion**

The proposed Microgy facility, together with an additional holding pond, currently under construction at Swift, are intended to help reduce the flow and the solids content to our 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 these 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 will not constitute a liability to the City, nor would they be payable from any tax source. This evening, council is asked to consider the passage of the ordinance to issue these tax exempt bonds. The bond paper work is on file in the City Clerk's office.

## **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 ordinance.

## **Sample Motion**

Move to approve the ordinance to issue Tax-Exempt Industrial Development Revenue Bonds to finance the Microgy Grand Island, LLC facility.

Whereupon, the Mayor declared said Ordinance duly passed as follows:

THE CITY OF GRAND ISLAND, STATE OF NEBRASKA  
ORDINANCE NO. 9172

AN ORDINANCE AUTHORIZING THE SALE AND THE ISSUANCE OF UP TO SEVEN MILLION DOLLARS (\$7,000,000) OF THE CITY OF GRAND ISLAND, NEBRASKA (THE "CITY") ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SOLID WASTE DISPOSAL FACILITIES REVENUE BONDS (MICROGY GRAND ISLAND, LLC PROJECT) SERIES 2008, FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION, IMPROVING AND EQUIPPING OF CERTAIN INDUSTRIAL SOLID WASTE DISPOSAL FACILITIES LOCATED WITHIN THE CORPORATE BOUNDARIES OF THE CITY (WHICH FACILITIES ARE HEREINAFTER REFERRED TO AS THE "PROJECT"), WHICH BONDS AND THE INTEREST THEREON SHALL BE PAYABLE SOLELY FROM THE AMOUNTS TO BE PAID TO THE CITY UNDER A LEASE AGREEMENT BETWEEN THE CITY AND MICROGY GRAND ISLAND, LLC AND WHICH AMOUNTS ARE PLEDGED TO THE PAYMENT OF SAID BONDS; APPROVING AND AUTHORIZING EXECUTION OF A TRUST INDENTURE WITH RESPECT TO THE BONDS; APPROVING AND AUTHORIZING EXECUTION OF A LEASE AGREEMENT WITH MICROGY GRAND ISLAND, LLC WITH RESPECT TO THE PROJECT CONTAINING CERTAIN OPTIONS AND COVENANTS TO PURCHASE SAID PROJECT; APPROVING AND AUTHORIZING A TAX REGULATORY AGREEMENT WITH RESPECT TO THE BONDS; APPROVING THE USE OF A LIMITED OFFERING MEMORANDUM TO BE USED IN CONNECTION WITH THE SALE OF SAID BONDS; MAKING FINDINGS AND DETERMINATIONS WITH REFERENCE TO THE PROJECT AND THE BONDS; APPROVING AND AUTHORIZING EXECUTION OF A BOND PURCHASE AGREEMENT WITH RESPECT TO SAID BONDS AND THE SALE OF SAID BONDS; DETERMINING THAT SAID BONDS SHALL NOT CONSTITUTE A PECUNIARY LIABILITY OF THE CITY NOR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS; PROVIDING THAT THE INVALIDITY OF ANY PART OF THIS ORDINANCE SHALL NOT AFFECT THE REMAINDER; INCORPORATING WITHIN THIS ORDINANCE THE PROVISIONS OF SECTION 2 OF ARTICLE XIII OF THE NEBRASKA CONSTITUTION AND SECTION 13-1101 ET SEQ., AS AMENDED, OF THE NEBRASKA STATUTES, AS AMENDED; AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; EXPRESSING PUBLIC APPROVAL WITHIN THE MEANING OF SECTION 147(f) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR THE DATE OF EFFECT OF THIS ORDINANCE.

WHEREAS, The City of Grand Island, Nebraska (the "City") now proposes at the request of Microgy Grand Island, LLC, a Nebraska limited liability company (the "Company"), to sell its Solid Waste Disposal Facilities Revenue Bonds (Microgy Grand Island, LLC Project) Series 2008 in the aggregate principal amount of up to \$7,000,000 (the "Bonds"), to finance all or a portion of the cost of financing the acquisition, construction, improving and equipping of an industrial development solid waste disposal project located within the City at the JBS Swift & Co. beef processing plant, 555 South Stuhr Road, Grand Island, Nebraska, all in accordance with the provisions of the Section 2 of Article XIII of the Nebraska Constitution and the Nebraska

Industrial Development Act, Sections 13-1101 et seq., Reissue Revised Statutes of Nebraska, 1997, as amended (the "Act"); and

WHEREAS, the Mayor and the City Council find and determine that in furtherance of the issuance of the Bonds and the financing of the Project, it is necessary and advisable and in the best interest of the City to accept the interests in real estate and personal property conveyed by the Company to the City pursuant to a sublease or warranty deed and a bill of sale, respectively; and

WHEREAS, the Mayor and the City Council of the City find and determine that in furtherance of the purposes and pursuant to the provisions of Section 2 of Article XIII of the Nebraska Constitution and the Act, it is necessary and advisable and in the best interest of the City to proceed with the issuance of the Bonds and the provision of the proceeds thereof to the Company in order to finance the costs of the Project; and

WHEREAS, pursuant to a Notice of Public Hearing, duly published in *The Grand Island Independent* on May 13, 2008, the City Council conducted on May 27, 2008 a public hearing (the "Hearing"), pursuant to and in compliance with the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), at which all interested parties were given an opportunity to express their views orally or in writing for or against the proposed Bonds and related Project, and the City Council deems it necessary and advisable to give public approval to the proposed issuance by the City of not to exceed \$7,000,000 aggregate principal amount of the Bonds, for the aforesaid purposes; and

WHEREAS, there have been presented to this meeting the following documents, which the City proposes to enter into or which are integral to the contemplated transaction:

1. The form of Lease Agreement dated as of June 1, 2008 (the "Agreement") between the City, as lessor, and the Company, as lessee;
2. The form of Trust Indenture dated as of June 1, 2008 (the "Indenture") between the City and Wells Fargo Bank, National Association, as trustee thereunder (the "Trustee"), setting forth the terms of the Bonds (including, without limitation, the maturity date of not later than June 1, 2038, the rate or rates of interest not to exceed 8.25% per annum and redemption provisions) and the conditions and security for the Bonds;
3. The form of Sublease Agreement dated as of June 1, 2008 (the "Sublease") between the Company, as sublessor, and the City, as sublessee;
4. The form of Guaranty Agreement dated as of June 1, 2008 (the "Guaranty") to be executed and delivered by Microgy Grand Island, LLC, as guarantor (the "Guarantor"), to the Trustee;
5. The form of Tax Regulatory Agreement dated as of June 1, 2008 (the "Tax Regulatory Agreement") between the City and the Company;
6. The form of Bond Purchase Agreement (the "Purchase Agreement") among the City, the Company and Ziegler Capital Markets (the "Underwriter") to be used in connection with the sale of the Bonds;

7. The form of the Bonds as set forth in the Indenture; and

8. The form of the Preliminary Limited Offering Memorandum (the "Preliminary Limited Offering Memorandum") to be used in connection with the sale of the Bonds; and

WHEREAS, it appears that each of the instruments above referred to, which are now before the Mayor and each of the Members of the City Council, is in appropriate form and is an appropriate instrument for the purposes intended;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, AS FOLLOWS:

**Section 1.** That the City finance the Project, but only from the proceeds of the sale of the Bonds, by issuing the Bonds and providing the proceeds from the sale of the Bonds to the Company.

**Section 2.** That, in order to finance the Project, the issuance of the Bonds in the principal amount of up to \$7,000,000 in substantially the form and content set forth in the Indenture now before this meeting, subject to appropriate insertion and revision in order to comply with provisions of the Indenture, is in all respects authorized, approved and confirmed, subject to the satisfaction of the preconditions to such issuance set forth in the Indenture, and the form and content of the Bonds set forth in the Indenture now before this meeting are in all respects authorized, approved and confirmed, and the Mayor or the Mayor pro tem and the City Clerk or Deputy City Clerk are authorized, empowered and directed to execute, and attest to the execution, either by manual or facsimile signatures, seal with the official seal of the City and deliver for and on behalf of the City the Bonds to the Trustee for authentication, and the Trustee is hereby authorized and directed to authenticate the Bonds, and the provisions of the Indenture with respect to the Bonds (including, without limitation, the aggregate principal amount not to exceed \$7,000,000, the maturity date of not later than June 1, 2038, the rate or rates of interest not to exceed 8.25% per annum and redemption provisions) are authorized, approved and confirmed and are incorporated herein by reference.

**Section 3.** That the City provide the proceeds of the Bonds to the Company to finance the Project pursuant to the Agreement, and the form and content of the Agreement are in all respects authorized, approved and confirmed, and the Mayor or the Mayor pro tem and the City Clerk or Deputy City Clerk are authorized, empowered and directed to execute, attest to the execution of, seal with the official seal of the City and deliver the Agreement prior to or simultaneously with the issuance of the Bonds for and on behalf of the City, including necessary counterparts in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions or deletions therein from and the form and content of the Agreement now before this meeting, and that, from and after the execution, attestation, sealing and delivery of the Agreement, the Mayor or the Mayor pro tem and the City Clerk or Deputy City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Agreement as executed.

**Section 4.** That Wells Fargo Bank, National Association is hereby appointed Trustee under the Indenture, and that the form and content of the Indenture, and the assignment of the City's interest in the Agreement, are in all respects authorized, approved and confirmed, and the Mayor or the Mayor pro tem and the City Clerk or Deputy City Clerk are authorized, empowered and directed to execute, attest to the execution of, seal with the official seal of the City and deliver the Indenture for and on behalf of the City to the Trustee for the security of the Bonds and the interest thereon, including necessary counterparts in substantially the form and content now before this meeting, but with such changes, modifications, additions and deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions or deletions therein from and the form and content of the Indenture now before this meeting, and that, from and after the execution, attestation, sealing and delivery of the Indenture, the Mayor or the Mayor pro tem and the City Clerk or Deputy City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Indenture as executed.

**Section 5.** That the form and content of the Tax Regulatory Agreement are in all respects authorized, approved and confirmed, and the Mayor or the Mayor pro tem and the City Clerk or Deputy City Clerk are authorized, empowered and directed to execute, attest to the execution of, seal with the official seal of the City and deliver the Tax Regulatory Agreement prior to or simultaneously with the issuance of the Bonds for and on behalf of the City, including necessary counterparts in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions there as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions or deletions therein from and the form and content of the Tax Regulatory Agreement now before this meeting, and that, from and after the execution, attestation, sealing and delivery of the Tax Regulatory Agreement, the Mayor or the Mayor pro tem and the City Clerk or Deputy City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Tax Regulatory Agreement as executed.

**Section 6.** That the form and content of the Sublease are in all respects authorized, approved and confirmed, and the Mayor or the Mayor pro tem and the City Clerk or Deputy City Clerk are authorized, empowered and directed to execute, attest to the execution of, seal with the official seal of the City and deliver the Sublease prior to or simultaneously with the issuance of the Bonds for and on behalf of the City, including necessary counterparts in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions there as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions or deletions therein from and the form and content of the Sublease now before this meeting, and that, from and after the execution, attestation, sealing and delivery of the Sublease, the Mayor or the Mayor pro tem and the City Clerk or Deputy City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Sublease as executed.

**Section 7.** That the Guaranty is hereby approved in substantially the form and content now before this meeting, but with such changes, modifications, additions and deletions therein as shall seem necessary, desirable or appropriate to the Mayor or the Mayor pro tem and the City Clerk or Deputy City Clerk, and which Guaranty the Trustee is authorized to accept.

**Section 8.** That the sale of the Bonds to the Underwriter at a purchase price of not less than 98 percent of the aggregate principal amount of the Bonds on the date of delivery is hereby authorized and approved, and the Mayor or the Mayor pro tem and the City Clerk or Deputy City Clerk be and they hereby are authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to effectuate and confirm the sale of the Bonds.

**Section 9.** That the form and content of the Purchase Agreement are in all respects authorized, approved and confirmed, and the Mayor or the Mayor pro tem be and he hereby is authorized, empowered and directed to accept the Purchase Agreement for and on behalf of the City, in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions therein as shall to him seem necessary, desirable or appropriate, his acceptance thereof to constitute conclusive evidence of his approval of any and all changes, modifications, additions or deletions therein from the form and content of the Purchase Agreement now before this meeting, and, that from and after the execution and delivery of the Purchase Agreement, the Mayor or the Mayor pro tem and the City Clerk or Deputy City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Purchase Agreement, as executed.

**Section 10.** That the distribution and use of the Preliminary Limited Offering Memorandum in substantially the form and context now before this meeting, but with such changes, modifications, deletions or additions therein as shall to the Mayor, City Attorney or Finance Director of the City seem necessary, desirable or appropriate, by the Underwriter in connection with the sale of the Bonds be and hereby are approved, the Preliminary Limited Offering Memorandum is deemed final for the purposes of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended, all actions of the City and its officers and agents taken in connection with the Preliminary Limited Offering Memorandum are hereby authorized, approved, ratified and confirmed, and the distribution and use of the final Limited Offering Memorandum by the Underwriter in substantially the form of the Preliminary Limited Offering Memorandum but with such modifications, additions or deletions therein as shall be necessary or desirable to reflect the final terms of the Bonds and the updating of the remaining content of the Preliminary Limited Offering Memorandum, are hereby authorized, approved, ratified and confirmed.

**Section 11.** That the Mayor or the Mayor pro tem and the City Clerk or Deputy City Clerk of the City are authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents, opinions or other papers and perform all other acts (including, without limitation, a blanket issuer letter of representations to The Depository Trust Company, New York, New York, and the filing of any financing statements or any other documents and the recordation of any instruments to create and maintain a security interest on the properties and revenues pledged under the Indenture) customary to the closing of bond issues as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Ordinance.



**Section 12.** That it is hereby determined and found that:

(a) The Company is obligated under the Agreement to make basic lease rental payments sufficient in amount to timely pay all principal and interest requirements on the Bonds;

(b) The Indenture establishes a Debt Service Reserve Fund with respect to the retirement of the Bonds;

(c) The terms of the Agreement provide that the Company shall maintain the Project in good repair, carry all proper insurance with respect thereto and pay the taxes on the Project; and

(d) As the basic lease rental payments to be made by the Company will be sufficient in amount to pay all principal and interest requirements on the Bonds and the Company covenants in the Agreement to maintain the Project in good repair, to keep it properly insured, and to pay all taxes with respect thereto, it is not deemed advisable to establish any reserve funds, other than the Debt Service Reserve Fund as aforesaid, in connection with maintenance and insuring of the Project or the payment of taxes with respect thereto.

**Section 13.** That the Bonds are limited obligations of the City, payable solely out of the lease rental payments required to be paid by the Company pursuant to and in accordance with the Agreement and as provided in the Indenture, and are secured as provided in the Indenture. The Bonds and the interest thereon shall never constitute an indebtedness of the City, within the meaning of any State constitutional provision or statutory limitation, and shall not give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

**Section 14.** That this Ordinance does hereby incorporate by reference, as though fully set out herein, the provisions of Section 2 of Article XIII of the Nebraska Constitution and the Act.

**Section 15.** That the City Council has considered all oral or written statements which were made or filed for or against the proposed Bonds and the Project, and hereby determines that the proposed issuance by the City of the Bonds, for the purpose as set forth in the Notice of Public Hearing and described in the preamble hereof, be and the same are hereby approved for the purpose of complying and in accordance with the public approval requirements of Section 147(f) of the Code.

**Section 16.** That the provisions of this Ordinance are hereby declared to be separable, and, if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

**Section 17.** That the City Clerk is hereby directed to publish this Ordinance upon its passage and approval in the legal newspaper for the City in the manner required by law.

**Section 18.** That this Ordinance shall become effective 15 days following its publication as aforesaid.

Dated this 10<sup>th</sup> day of June, 2008.

THE CITY OF GRAND ISLAND,  
NEBRASKA

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
City Clerk