



City of Grand Island

Tuesday, February 10, 2009

Council Session

Item G13

#2009-35 - Approving Interlocal Agreement between the City of Grand Island, the Village of Alda, and the U.S. Dept. of Agriculture, Rural Development to provide Water to the Village of Alda, Nebraska

Staff Contact: Gary R. Mader;Dale Shotkoski

Council Agenda Memo

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

Meeting: February 10, 2009

Subject: Alda Water Main Connection Agreement

Item #'s: G-13

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

Background

In 2006 the Village of Alda contacted the Utilities Department regarding the possibility of the City of Grand Island providing water supply to the Village. At that time, the Village was beginning the processes of evaluating options to replace their current wells being used for water supply. The Village is under an Administrative Order from the Nebraska Department of Health and Human Services because the current wells do not meet the recently implemented regulations regarding uranium, a naturally occurring contaminate common in central Nebraska. One of the options being investigated was the construction of a water line from the southwest portion of Grand Island's present water distribution system to the Village. Information received from the Village's engineers, JEO Consulting Group, states that the water usage averages approximately 142,322 gallons per day (gpd). For reference, Grand Island water usage averages approximately 11,500,000 gpd.

The Village of Alda is located about 2.25 miles southwest from the closet point to the Grand Island water distribution system. This distance is also up-gradient. JEO conducted an engineering evaluation of a potential connecting pipeline and concluded that the project was feasible. Generally, the connecting line from Grand Island would supply water to a metering and pumping station located on the eastern edge of the Village. At that point, the pumping station would boost pressure to supply Alda's needs and fill their water tower. With the feasibility of the project confirmed, the Village proceeded with the pursuit of options for funding, through a grant from the U.S. Department of Agriculture, Rural Development Fund. Since a large portion on the proposed water line would be in an area immediately adjacent to the Grand Island City Limits, City staff thought it important that the construction of that line be in compliance with current Grand Island standards and be constructed so as not to be a hindrance to future City expansion of water infrastructure required as the City grows, and not present problems of service area

jurisdiction between the two communities. City Staff also advised that the Alda representatives should consider these discussions, just that, discussions. Any decisions as to whether or not the City of Grand Island participates in this proposed project rests with the City Council.

Initially, the staff discussions developed a program whereby the new line would be constructed to serve the Alda requirements, utilizing the grant funding, and then be turned over to the Grand Island Water Department for future maintenance, operation and use. That achieved the purpose of the program, to provide alternate water supply to Alda, alleviated the need for Alda to maintain the line, and provided for use of the line by the City for future development as Grand Island grows. But that program ran into a snag when the federal authorities determined that the federally funded line must continue to be owned by the Village of Alda since they were the party receiving the funding. Later it was determined that Grand Island could charge a “Connection Fee”, which could be paid from the grant funding.

At that time, the staff and consultants from the two communities set about re-developing the program to try to achieve the original purpose of providing for water supply to Alda while maintaining the ability of Grand Island to grow along the route without interference. That led to a shift of the construction responsibility from the Village to the Grand Island Water Department, with the connection fee based on the cost of construction. With this shift in responsibility, Grand Island assumes significantly more risk, in that the City is now responsible for route selection, design, specification, bidding, contract administration, construction residency, testing and final certifications. That change would also require an expansion of the scope of the agreement between the parties to fully define the obligations of the two communities. The Grand Island Legal Department has been working with the attorney representing the Village, Arend Baack of Leininger, Smith, Johnson, Baack, Placzek and Allen Law Firm. A copy of the most recent draft of the agreement is attached.

Discussion

In reviewing the possible methods and routes, Utility Engineering evaluated several different combinations of routing, line sizing and western terminus points to accomplish the connection of the Grand Island water distribution system to the Village of Alda. Seven potential routes were considered. Each achieves the basic purpose of the connection, but there are variations in the routes and sizes of the water line and in the eastern terminus, i.e. where the Water Department’s responsibility for line construction would end at the east edge of Alda, either at a point within the Village limits or at a point outside the Village limits nearer Grand Island. Additionally, the most direct route, which would parallel U.S. Highway 30, would involve the acquisition of Right-of-Way (ROW) access from Union Pacific Railroad or the acquisition of ROW or easements from private property owners along the route adjacent to the railroad land. Some of the alternate routes developed would allow water piping to be installed in existing public ROW. In all cases, the Village of Alda will have additional construction within their water service area to incorporate the new connecting line into their water system.

A major consideration in route evaluation was benefit to the future expansion of the City of Grand Island. A map of a route agreeable at the staff level is attached. It provides extension of the Grand Island water distribution system trunk line in Husker Highway to the east boundary of the Ordinance Plant, then south along 60th Road to U.S. Highway 30, in accordance with the City's standards. The total connection fee is \$1,060,000 to be paid by the Village of Alda from the federal grant funds.

Alternatives

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

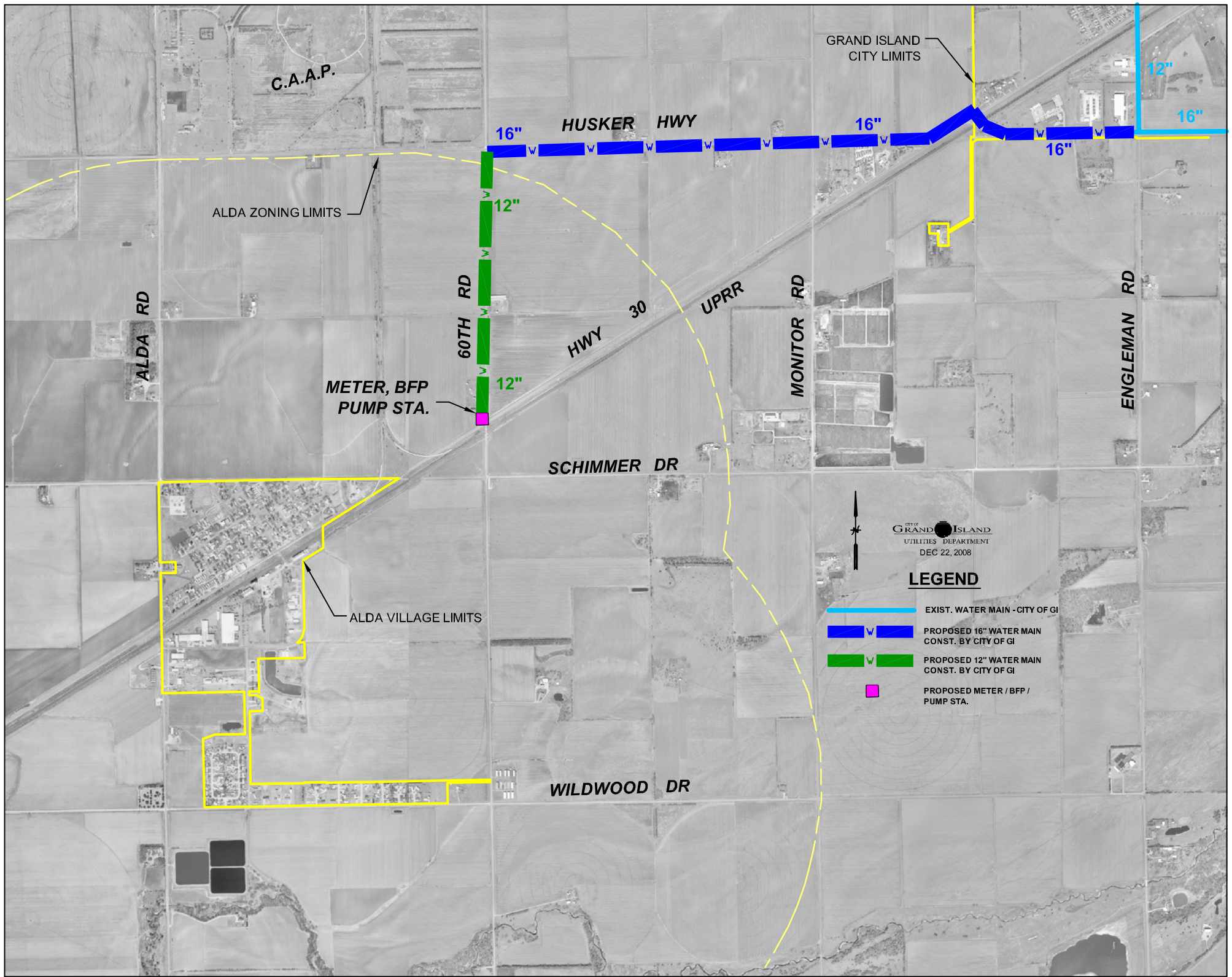
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Interlocal Agreement between the City of Grand Island, the Village of Alda, and the U.S. Department of Agriculture, Rural Development, for water supply for the Village of Alda.

Sample Motion

Move to approve the Interlocal Agreement between the City of Grand Island, the Village of Alda, and the U.S. Department of Agriculture, Rural Development, for water supply for the Village of Alda.



C.A.A.P.

GRAND ISLAND
CITY LIMITS

ALDA ZONING LIMITS

ALDA RD

60TH RD

HWY 30

UPRR

MONITOR RD

ENGLEMAN RD

METER, BFP
PUMP STA.

SCHIMMER DR

ALDA VILLAGE LIMITS

WILDWOOD DR



CITY OF
GRAND ISLAND
UTILITIES DEPARTMENT
DEC 22, 2008

LEGEND

- EXIST. WATER MAIN - CITY OF GI
- PROPOSED 16" WATER MAIN
CONST. BY CITY OF GI
- PROPOSED 12" WATER MAIN
CONST. BY CITY OF GI
- PROPOSED METER / BFP /
PUMP STA.

INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF GRAND ISLAND, NEBRASKA,
THE VILLAGE OF ALDA, NEBRASKA, AND
THE UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL
DEVELOPMENT, FOR WATER SUPPLY FOR THE VILLAGE OF ALDA

THIS AGREEMENT is made and entered into by the CITY OF GRAND ISLAND, NEBRASKA, a Municipal Corporation, a Nebraska Political Subdivision; the VILLAGE OF ALDA, a Nebraska Political Subdivision; and THE UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, an Agency of the Federal Government.

WITNESSETH:

WHEREAS, the Village of Alda, sometimes hereinafter referred to as "Customer", wishes to receive municipal water supply from the City of Grand Island, sometimes hereinafter referred to as the "Purveyor", for the Customer's water system supply requirements and Purveyor is willing to provide the water in accordance with the provisions of this agreement; and

WHEREAS, Purveyor currently has sufficient capacity and ability to provide water that meets existing quality standards as imposed by the Nebraska Department of Health and Human Services and has resources through its broad customer base to pursue water treatment alternatives if necessary to insure such water quality; and

WHEREAS, the United States Department of Agriculture, Rural Development, sometimes hereinafter referred to as "USDA", has worked with the Village of Alda to furnish financing for the project; and

WHEREAS, in accordance with §13-807 the Interlocal Cooperation Act, any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which at least one of the public agencies entering into the contract is authorized to perform.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed as follows:

1. Authority. This agreement is made pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat., §13-801, R.R.S. 1943), without a separate entity being created.

2. Term of Agreement. This agreement shall become effective and binding on the date the last signature is applied by the parties, at such time as it is approved by the Customer's Village Board and the Purveyor's City Council and the agreement is signed by the duly authorized individuals on behalf of each such municipal corporation with the attestation by the respective clerk for each.

This Agreement shall extend for an initial term of twenty-five (25) years from the date of initial delivery of water as indicated by the first bill to Customer from Purveyor and shall automatically renew for an additional term of fifteen (15) years, following the expiration of the initial term of this Agreement. Neither Purveyor nor Customer shall have any right to unilaterally terminate

this Agreement prior to the expiration of the initial term and first renewal term herein provided following notification that Purveyor has initiated design of the water main. After the initial renewal period, the parties may further renew or extend the Agreement for such periods of time as they may mutually agree and shall also have the right to terminate this Agreement in accordance with the provisions contained in Section 5 of this Agreement.

3. Water Supply. From and after the effective date of this Agreement, Customer contracts to purchase and Purveyor contracts to supply water as described in this Agreement and such water supplied may be utilized by the Customer to meet the requirements of its residential, commercial, industrial and all other types of users located within the Village of Alda corporate limits or in immediately adjacent zoning area with whom the Customer has contracted to supply water.

4. Fee for Water Supplied. On a monthly basis, commencing at such time as Customer shall first use water delivered from Purveyor, Customer shall pay Purveyor for all water use in accordance with the Grand Island Water Department standard rate schedule in effect at the time of water delivery for Purveyor's commercial wholesale accounts located within the Purveyor's corporate limits, as shall be adjusted from time to time. A copy of such rate schedule currently in effect is attached hereto as Exhibit "A" and is incorporated herein by this reference.

5. Right of Termination. At any time prior to notification by Purveyor to Customer that it has initiated design of the water main, either party to this Agreement may elect to terminate this Agreement by giving written notice to the other and, in such event, this Agreement shall be of no further force or effect.

Following expiration of both the initial term and the automatically renewing additional term of this Agreement, this Agreement may be terminated at any time by either of the parties for any reason based upon one year written notice to the other party. The City of Grand Island shall remain the owner of all property and improvements that it has constructed pursuant to this Agreement and the Village of Alda shall remain the owner of all property and improvements that it shall have constructed pursuant to this Agreement.

Prior to the expiration of the initial term and the automatically renewing additional term of this Agreement, Purveyor may unilaterally terminate its obligation to provide water only in accordance with provisions set forth in Section 9 of this Agreement.

6. Construction of Connecting Water Line. After this agreement shall be duly approved to become effective, the Purveyor's Utilities Department shall formulate acceptable plans and specifications for the construction of a water main to extend the Purveyor's existing water distribution system to a Boundary Valve at the Customer's water distribution system; in accordance with the following parameters:

- a. The route for such water main shall proceed West of the Purveyor's existing distribution system located near Engleman Road in the Hall County Road Right-of-Way alongside Husker Highway to 60th Road and will then proceed South to a Boundary Valve located adjacent to a pump and metering station to be constructed by the Customer North of the Union Pacific Railroad tracks in the vicinity of US Highway 30 and 60th Road. Such water main shall be of 16" diameter alongside Husker Highway and shall be of 12" diameter alongside 60th Road as generally depicted on Exhibit "B" attached hereto.
- b. Purveyor, will be responsible for all water main design, right-of-way acquisition, permissions, contract drafting, contract award and administration, construction engineering residency, testing and other

construction requirements for the water main. The final design and construction of the Customer's pump and metering station to be served by the Purveyor's water system shall be subject to approval by the Grand Island Utilities Director, for the City of Grand Island.

- c. Customer, shall be responsible for all design, right-of-way acquisition, permissions, contract drafting, contract award and administration, construction engineering residency, testing and other construction requirements for the pump and metering station and all water main, and appurtenances down stream of the Boundary Valve.

7. Reservation of Rights. The City Of Grand Island reserves the right to terminate any involvement in the project should the project be deemed one subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act, the Endangered Species Act, or any other Federal or Environmental impact or notification acts. No requirements for funding that are or may be required of the Customer by any regulatory agency shall pass on to or through to the Purveyor. If any regulatory requirements of the Customer are to pass through to the Purveyor, the Purveyor may terminate the agreement at its discretion. The United States Department of Agriculture, Rural Development, will not require the City of Grand Island to comply with any federal acts or regulations as part of the financing this agency is providing to the Village of Alda for the development of this water project.

8. Connection Fee Payment. Customer shall pay to Purveyor a Connection Fee of \$1,060,000.00 for access to the Purveyor's water distribution system, which fee shall include all costs incurred by Purveyor for design and construction of the required Connecting Water Line. Payment shall be made in accordance with the below milestone schedule:

\$50,000.00	– when Purveyor notifies Customer that it has initiated design of the water main.
\$350,000.00	– at the time of award of the water main construction contract by the Grand Island City Council.
\$350,000.00	– when 50% of the water main has been placed.
\$250,000.00	– when 100% of the water main has been placed.
\$60,000.00	– when Purveyor certifies that water main disinfection and testing is complete, and water main is available for Customer's use.

Purveyor shall render billing and send the same to the Customer upon achievement of each milestone with certification of completion of that milestone, and Customer shall provide payment to Purveyor within forty-five (45) days of receipt of the Purveyor's billing. In the event that Customer shall fail to timely pay any scheduled installment in respect to the Connection Fee, Purveyor may elect to cease further construction of the Water Main until such time as all payments then due shall be fully paid and satisfactory assurances given regarding the ability of Customer to pay remaining installments in respect to the Connection Fee. Notwithstanding cessation of construction in respect to the Water Main, if Purveyor shall have incurred expenses in excess of sums paid by Customer and otherwise reasonably recoverable by Purveyor, then Customer shall remain liable to Purveyor for any such deficiency.

After payment of either of the foregoing installments in respect to the Connection Fee, if Purveyor shall fail to progress with construction of the water main for a period in excess of forty-five (45) days following Purveyor's receipt of such installment, Customer may withhold payment of any further installments and proceed to make alternative arrangements to proceed with construction of such water main at its cost for which it shall be entitled to credit from Purveyor toward satisfaction of such Connection Fee and may recover from Purveyor any cost to construct such Water Main that Customer incurs in excess of the Connection Fee herein set forth.

9. Default in Payment. In the event that Customer default in the payment of any sum due to Purveyor pursuant to the terms of this Agreement, Purveyor shall give Customer and USDA, written notice by certified mail, to the address hereafter specified in Section 24, of its intent to cease supplying water to Customer pursuant to the terms unless, within thirty (30) days following date of mailing such notice, the default in payment shall be cured. In the event such default shall not have been cured, Purveyor may, thereafter, cease supplying water without further notice to any party.

10. Ownership of Line and Facilities. The Purveyor's ownership of the newly constructed water main shall terminate at the Boundary Valve immediately adjacent to, and upstream of, Customer's pumping and metering station. The Boundary Valve shall be owned by Purveyor. The Customer's ownership shall include Customer's pumping and metering station, water main, and all facilities downstream of the Boundary Valve.

11. Ongoing Water Line Maintenance Responsibilities. Purveyor shall own and be responsible for all costs associated with the operation and maintenance of the Connecting Water Line and related appurtenances from the point of its connection to the Purveyor's water distribution system to, and including, the Boundary Valve. Customer shall be responsible for all costs associated with the operation and maintenance of its pumping and metering station which shall include all necessary power supplies, booster pumps, meters, backflow protection devices and all other facilities as are constructed down stream of the Boundary Valve.

12. Supply of Water. After completion of construction and testing, Purveyor shall provide water at a reasonable pressure calculated at a minimum of 30 p.s.i. at a supply rate of a maximum of 500 gallons per minute from the proposed water main, at the Boundary Valve. If a greater pressure than that normally available at the point of delivery is required by the Customer, the cost of providing such greater pressure shall be borne by the Customer. Emergency failures of pressure or supply due to water main breaks, power failure, flood, fire, use of water to fight fire, earthquake or other catastrophe shall excuse the Purveyor from this provision for such reasonable period of time as may be necessary to restore service.

13. Failure to Deliver. The Purveyor will operate and maintain its system in an efficient manner. Temporary or partial failure to deliver water shall be remedied as soon as practical. In the event of an extended shortage of water, or the supply of water available to the Purveyor is otherwise diminished over an extended period of time, the supply of water to Customer and Customer's consumers shall be reduced or diminished in the same manner or proportion as the supply to Purveyor's consumers is reduced or diminished.

14. Usage. The water meter maintained by the Customer at its pump and metering station will be read monthly by the Purveyor and billings will be rendered by Purveyor at the rate hereinabove agreed. For verification of usage, Customer will provide Purveyor with reasonable access to the meter facilities to permit equipment inspection and for confirmation of water quantities utilized by Customer. Meters shall be located in accordance with Purveyor's standards for location.

15. Treatment Requirements. In the event that the Nebraska Department of Health and Human Services shall require that water furnished by Purveyor be re-chlorinated for use in Customer's distribution system to comply with applicable regulations, or require any other additional treatment due to Customer's use, Customer shall be responsible for all costs relating to the installation, operation and maintenance of treatment systems required for Customer's use in its water distribution system.

16. Water Quality. The water supplied to the Purveyor's distribution system by the City of Grand Island currently meets all state and federal regulations pertaining to water quality.

The Customer acknowledges that regulation and/or environmental conditions may change in the future. The Customer agrees to accept this risk as all other customers of the Purveyor's water system.

17. Metering Equipment. The Customer will calibrate the metering equipment in the meter station at the request of the Purveyor or may do so from time to time at its election. Calibration of such equipment at the request of the Purveyor, however, will not occur more frequently than once every twelve (12) months. A meter registering not more than two (2%) above or below the test result shall be deemed to be accurate. In the event that readings of the meter station are disclosed by a test to be inaccurate, readings for one (1) month prior to such test shall be deemed to have been inaccurate and shall be corrected in accordance with the percentage of inaccuracy found by such test. If the meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered for the corresponding period immediately prior to such failure, unless Purveyor and Customer shall agree upon a different amount. An appropriate official of the Customer shall have access at all reasonable times to the meter for the purpose of verifying its readings.

18. Customer Maintenance, Testing, And Documentation Requirements. Customer shall at all times be and remain responsible for all costs relating to the maintenance, repair and replacement of all metering devices required to document its usage of water from Purveyor and shall also be responsible to maintain and test all required backflow protection devices in accordance with all applicable regulations of the Nebraska Department of Health and Human Services and the City of Grand Island, to assure their proper operation and certification.

19. Non-Waiver. Either party's failure to enforce at any time any of the provisions of this Agreement shall not be construed to be a waiver of such provisions or of either party's right at any time to enforce each and every provisions.

20. Modification of Agreement. The terms of this Agreement may be modified or altered by mutual written agreement of Customer and Purveyor.

21. Assignment. This Agreement is not assignable by either party without the prior written consent of the other.

The restrictions upon assignment contained herein shall not apply to nor be enforceable against a secured lien holder, its successors and/or assigns in the event that such secured lien holder either through voluntary foreclosure or involuntary foreclosure or similar methods or procedures obtains title to the Customer's municipal water system.

22. Miscellaneous. The development of the new water supply system by the Customer is being financed by a loan and grant from the United States of America, acting through Rural Development of the United States Department of Agriculture, and the provisions hereof pertaining to the undertakings of the Customer are conditioned upon the approval, in writing, of the State Director of Rural Development. This Interlocal Agreement will be pledged to Rural Development as part of the security for this financial assistance.

23. Successor to the Customer. In the event of any occurrence rendering the Customer incapable of performing under this Interlocal Agreement, any successor of the Customer, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the Customer hereunder, subject to performance of those obligations of the Customer herein contained.

24. Notices. Any notices required or desired to be given hereunder shall be in writing, delivered by registered or certified mail, and addressed to the part to whom such notice

is to be given at the following addresses, unless notice of a new address has been given in compliance herewith:

Purveyor:
City of Grand Island
Attn: Utilities Director
100 East First Street
P.O. Box 1968
Grand Island, NE 68802-1968

Customer:
Village of Alda
Attn: City Clerk
6410 West U.S. Highway 30
P.O. Box 100
Alda, NE 68810-0100

USDA:
United States Department of Agriculture
Rural Development
Rm. 152 Federal Building
100 Centennial Mall North
Lincoln, NE 68508

Such notices shall be effective upon mailing.

25. Construction of Agreement. This Agreement shall be construed in accordance with the law of the State of Nebraska and in the event any provision contained herein shall be determined by a court of competent jurisdiction to be void or unenforceable, this agreement shall be construed as though such void or unenforceable provision were not a part hereof.

26. Entire Agreement. This Agreement supersedes any and all prior agreements between Purveyor and Customer with regard to the matters herein contained, and constitutes the entire agreement between the parties hereto with regard to such matters. Neither this Agreement nor any of the provisions, terms or conditions hereof may be waived, altered, abridged, modified or amended, except in writing, and signed by the party against whom the enforcement thereof is sought.

27. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns.

This Interlocal Agreement is approved on behalf of
the USDA, Rural Development on this ____ day of
_____, 2009,

By: _____
Title _____

Executed the ____ day of _____, 2009

Executed the ____ day of _____, 2009

CITY OF GRAND ISLAND, NEBRASKA,
A Municipal Corporation, Purveyor

VILLAGE OF ALDA, NEBRASKA,
A Nebraska Municipal Corporation, Customer

By: _____
Margaret Hornady, Mayor

By: _____
Chairman

Attest:

RaNae Edwards, City Clerk

Approved as to form:

Dale M. Shotkoski, City Attorney

4-9/218489v8

Attest:

Village Clerk

Approved as to form:

Arend R. Baack, Village Attorney

WATER RATE SCHEDULE

EFFECTIVE October 1, 2008

Ordinance No. 9181

SCHEDULE OF RATES

This rate to be charged for water furnished shall be as follows.

MONTHLY BILLINGS

Cubic feet per month	Rate per 100 cubic feet
First 500	\$ 1.496
Next 500	0.700
Next 500	0.692
Next 2,500	0.767
Next 6,000	0.713
Next 90,000	0.654
Next 100,000	0.574
Over 200,000	0.535
Monthly Minimum (500 Cu. Ft.)	7.480*

* Plus a customer charge of \$0.35 per month for unfunded federal mandates for the Clean Water Act and the City's backflow program, in addition to the regular rates charged for water furnished to the customer.

RESOLUTION 2009-35

WHEREAS, the Village of Alda contacted Grand Island Utilities Department regarding the possibility of the City of Grand Island providing water supply to the Village; and

WHEREAS, the Village of Alda is under an Administrative Order from the Nebraska Department of Health and Human Services because the current wells do not meet the recently implemented regulations regarding uranium; and

WHEREAS, the Village of Alda was able to obtain a grant from the U.S. Department of Agriculture, Rural Development Fund to assist with construction costs; and

WHEREAS, the water line will be constructed to be in compliance with current Grand Island standards and be constructed so as not to be a hindrance to future City expansion of water infrastructure required as the City grows, and not present problems of service area jurisdiction between the two communities; and

WHEREAS, the City of Grand Island has been working with the attorney representing the Village, Arend Baack, and an Interlocal Agreement between the City of Grand Island, Nebraska, the Village of Alda, Nebraska and the United States Department of Agriculture, Rural Development has been reached.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Interlocal Agreement by and between the City of Grand Island, the Village of Alda, and the United States Department of Agriculture, Rural Development, for Water Supply for the Village of Alda is hereby approved.

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Adopted by the City Council of the City of Grand Island, Nebraska, February 10, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
February 5, 2009	☐ City Attorney