



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G11

**#2009-111 - Approving Renewal of Leases at Cornhusker Army
Ammunition Plant for Storage Buildings**

Staff Contact: Steve Paustian

Council Agenda Memo

From: Steve Paustian, Parks and Recreation Director

Meeting: May 12, 2009

Subject: Approving Renewal of Leases at Cornhusker Army Ammunition Plant for Storage Buildings

Item #'s: G-11

Presenter(s): Steve Paustian, Parks and Recreation Director

Background

On May 22, 2001, City Council approved the leasing of several buildings at the former Cornhusker Army Ammunition Plant pursuant to the provisions of Resolution 2001-132. The leases that were approved provide for an automatic one year renewal requested by the lessees. The resolution that is presented for Council consideration would authorize the city to renew the lease on Building's No. A-11 and A-12 located on city property at the former Cornhusker Army Ammunition Plant.

Discussion

The city purchased property at the former Cornhusker Army Ammunition Plant that had several buildings located on it. The city has been leasing these buildings to the State of Nebraska, Department of Administrative Services, State Building Division; Dominion Construction Company; and Jerry Harders to obtain revenue and utilize these assets. There have not been any problems with damage to the property or with non payment of rent and City Parks & Recreation officials are recommending that the Council extend the lease for an additional year. The State of Nebraska has a two year lease which runs through April 30, 2011. The two leases requiring action are for Dominion Construction and Jerry Harders.

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 resolution authorizing the extension of the leases for an additional year.

Sample Motion

Move to approve the resolution authorizing the city to extend the leases for an additional year to Dominion Construction Company in the amount of \$2,750.00 and Jerry Harders in the amount of \$825.00.

BUILDING LEASE

THIS LEASE is made and entered into on this ____ day of May, 2009, by and between the CITY OF GRAND ISLAND, NEBRASKA, A Municipal Corporation, herein referred to as "City" and DOMINION CONSTRUCTION COMPANY, A Corporation, herein referred to as "Lessee".

1. STATEMENT PURPOSE. This Building Lease is made for the purpose of leasing to the Lessee the property identified as Building No. A-11, on the former Cornhusker Army Ammunition Plant (CHAAP), containing 8,000 square feet, more or less, together with 3 concrete parking pads to the front, side and rear of the building, herein after referred to as "premises", for inert storage purposes only.

2. TERM OF LEASE. The term of this Building Lease is for a period of one year beginning on May 1, 2009, and ending on April 30, 2020, subject to the revocation and renewal provisions set forth hereafter.

3. CONSIDERATION. The Lessor shall pay the City rental in advance of the initial term, and any renewal terms, in the amount of Two Thousand Seven Hundred Fifty and No/100 Dollars (\$2,750.00), payable to the order of The City of Grand Island, Finance Department, P.O. Box 1968, Grand Island, Nebraska, 68802. In the event the Lessee fails or refuses for any reason to pay the foregoing rentals in advance, this Building Lease shall be considered void.

4. CONDITION OF PREMISES. Lessee acknowledges that it has inspected the premises described in paragraph 1 above, knows its condition, and understands the same is leased without any representations or warranties whatsoever and without obligation on the part of the City to make any alterations, repairs or additions thereto. The Lessee shall surrender the premises to the City at the end of the term, or any renewal term, in the same condition as the premises were at the commencement of the initial lease term, normal wear and deterioration excepted. Any portion of the premises damaged by the Lessee must be either replaced or restored to the condition existing at the commencement of the initial lease term or the Lessee shall pay to the City an amount equal to the cost of repair or replacement of the damaged property, whichever is less.

5. UTILITIES AND INSURANCE. During the initial term, or any renewal term, of this Building Lease, the Lessee shall pay all utility costs for services on the premises and shall maintain liability insurance in the amount of not less than a combined single limit of \$100,000.00 coverage for the leased premises. The Lessee shall provide the City with a copy of a Certificate of Insurance evidencing the required coverage, which certificate shall state that the City will be given 30 days written notice of any cancellation or change in such insurance.

6. RIGHT TO ENTER PREMISES. The City reserves the right to enter the premises at any time for any purpose necessary or convenient in connection with government and Lessor purposes, including but not limited to making inspections, removing debris, making repairs or

performing maintenance. The Lessee shall have no claim for damages on account of such entry against the City or its officials, officers, employees, agents or representatives.

7. INDEMNIFICATION OF CITY. The City shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted or for damages to the property of the Lessee, its officers, employees, agents, or others who may be on the premises at their invitation. The Lessee shall hold the City harmless from any and all claims, causes of action, or damages of any nature due to the negligence of the Lessee, its officers, employees, agents, contractors, invitees or licensees.

8. PROHIBITED USES. The Lessee shall not construct or place any structure, improvement, advertising sign, or make any modification to the premises or allow or permit such construction, placement, or modification without prior written approval of the City. The Lessee shall not conduct or allow to be conducted any illegal or prohibited activity on the premises and specifically shall not conduct or allow to be conducted any activities which violate any of the environmental laws, regulations, rules, or other regulatory measures of the United States Environmental Protection Agency (USEPA) or Nebraska Department of Environmental Quality (NDEQ). The Lessee shall be responsible for and hold the City harmless from all claims, costs, penalties, or any other consequences associated with violations of environmental laws.

Routine servicing of vehicles and equipment on the premises is prohibited, including fueling, adding or changing lubricants. Only emergency servicing which is necessary to start a vehicle or equipment shall be permitted. Necessary measures shall be taken to clean up any petroleum products or fluids which leak from vehicles or equipment.

9. TAXES. Any and all taxes imposed by the State of Nebraska or its political subdivisions upon the premises shall, except real estate taxes, shall be paid promptly by the Lessee. In the event the premises owned by the City are made taxable by state or local governments, the lease shall be renegotiated to adjust the consideration in an amount sufficient to reimburse the City for said tax liability.

10. LESSEE'S MAINTENANCE RESPONSIBILITIES. The Lessee shall maintain Building No. A-11 to prevent deterioration of the structure. All openings shall be closed in order to keep out birds and other animals. The Lessee shall maintain and prevent the loss of gravel from the parking areas off the concrete parking pads and maintain proper drainage to prevent erosion. Lessee shall maintain all grassed areas located on the premises and shall control noxious weeds by mowing, spraying, hand grubbing or by a combination of these methods.

11. RENEWAL FOR ADDITIONAL TERMS. This Building Lease may be renewed by the Lessee for up to 5 additional one year terms subject to approval of the City. The renewal terms shall run from May 1 through April 30 of each successive year. Lessee shall request each additional renewal term by sending written notice to the City of its interest in extending this Building Lease for an additional one year term not more than 60 days and not less than 30 days prior to the end of the current term, which date shall be determined by the postmark appearing on the envelope bearing the renewal request or the date of hand delivery of the renewal request to

the City Clerk. The only term of this Building Lease which may be modified in connection with extending the lease for a renewal term is the annual rental.

12. SURRENDER OF PREMISES. The Lessee shall vacate and remove all its personal property, fixtures and improvements prior to the end of the initial term or any renewal term. The Lessee shall pay the City on demand any sum which may be expended by the City after expiration, revocation or termination of this Building Lease in restoring the premises to a condition in accordance with paragraph 4 above.

13. CHOICE OF LAWS. This Building Lease shall be construed in accordance with the laws of the United States of America, the State of Nebraska and the ordinances of the City of Grand Island.

14. ENTIRE AGREEMENT. This Building Lease constitutes the entire agreement between the City and the Lessee, notwithstanding any other verbal or written agreements or understandings to the contrary. This Building Lease may be amended only in writing, duly approved and executed by the City and Lessee.

15. REVOCATION RIGHTS OF PARTIES. This Building Lease may be revoked by either the City or Lessee for any material violation of the lease, which termination shall be effective 30 calendar days from the date a Notice of Termination is mailed or delivered in hand to the other party at the address noted in paragraph 16.

16. NOTICES. All notices envisioned under the terms and conditions of this Building Lease shall be sent to other party by first class United States Mail, postage prepaid and addressed as follows or delivered in hand to:

City of Grand Island
Attn: Mayor
P.O. Box 1968
Grand Island, NE 68802-1968

Dominion Construction Company
Attn: R. Michael Olmstead, President
P.O. Box 48
Scottsbluff, NE 69363

17. BINDING EFFECT. All covenants, terms and conditions herein contained shall extend to and be obligatory on the successors, assigns and legal representatives of the City and Lessee.

18. SUCCESSORS AND ASSIGNS. This Building Lease shall not be assigned, transferred or otherwise conveyed or alienated by the City or the Lessee and any such act, whether accomplished or attempted shall be deemed a material violation of and cause immediate termination of this lease.

DATED: _____, 2009.

BUILDING LEASE

THIS LEASE is made and entered into on this ____ day of _____, 2009, by and between the CITY OF GRAND ISLAND, NEBRASKA, A Municipal Corporation, herein referred to as "City" and JERRY HARDERS, herein referred to as "Lessee".

1. **STATEMENT PURPOSE.** This Building Lease is made for the purpose of leasing to the Lessee the property identified as Fire/Guard Building No. A12, on the former Cornhusker Army Ammunition Plant (CHAAP), together with 3 concrete parking pads to the front, side and rear of the building, herein after referred to as "premises", for inert storage purposes only.

2. **TERM OF LEASE.** The term of this Building Lease is for a period of one year beginning on May 1, 2009, and ending on April 30, 2010, subject to the revocation and renewal provisions set forth hereafter.

3. **CONSIDERATION.** The Lessor shall pay the City rental in advance of the initial term, and any renewal terms, in the amount of Eight Hundred Twenty-Five Dollars (\$825.00), payable to the order of The City of Grand Island, Finance Department, P.O. Box 1968, Grand Island, Nebraska, 68802. In the event the Lessee fails or refuses for any reason to pay the foregoing rentals in advance, this Building Lease shall be considered void.

4. **CONDITION OF PREMISES.** Lessee acknowledges that it has inspected the premises described in paragraph 1 above, knows its condition, and understands the same is leased without any representations or warranties whatsoever and without obligation on the part of the City to make any alterations, repairs or additions thereto. The Lessee shall surrender the premises to the City at the end of the term, or any renewal term, in the same condition as the premises were at the commencement of the initial lease term, normal wear and deterioration excepted. Any portion of the premises damaged by the Lessee must be either replaced or restored to the condition existing at the commencement of the initial lease term or the Lessee shall pay to the City an amount equal to the cost of repair or replacement of the damaged property, whichever is less.

5. **UTILITIES AND INSURANCE.** During the initial term, or any renewal term, of this Building Lease, the Lessee shall pay all utility costs for services on the premises and shall maintain liability insurance in the amount of not less than a combined single limit of \$100,000.00 coverage for the leased premises. The Lessee shall provide the City with a copy of a Certificate of Insurance evidencing the required coverage, which certificate shall state that the City will be given 30 days written notice of any cancellation or change in such insurance.

6. **RIGHT TO ENTER PREMISES.** The City reserves the right to enter the premises at any time for any purpose necessary or convenient in connection with government and Lessor purposes, including but not limited to making inspections, removing debris, making

repairs or performing maintenance. The Lessee shall have no claim for damages on account of such entry against the City or its officials, officers, employees, agents or representatives.

7. **INDEMNIFICATION OF CITY.** The City shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted or for damages to the property of the Lessee, its officers, employees, agents, or others who may be on the premises at their invitation. The Lessee shall hold the City harmless from any and all claims, causes of action, or damages of any nature due to the negligence of the Lessee, its officers, employees, agents, contractors, invitees or licensees.

8. **PROHIBITED USES.** The Lessee shall not construct or place any structure, improvement, advertising sign, or make any modification to the premises or allow or permit such construction, placement, or modification without prior written approval of the City. The Lessee shall not conduct or allow to be conducted any illegal or prohibited activity on the premises and specifically shall not conduct or allow to be conducted any activities which violate any of the environmental laws, regulations, rules, or other regulatory measures of the United States Environmental Protection Agency (USEPA) or Nebraska Department of Environmental Quality (NDEQ). The Lessee shall be responsible for and hold the City harmless from all claims, costs, penalties, or any other consequences associated with violations of environmental laws.

Routine servicing of vehicles and equipment on the premises is prohibited, including fueling, adding or changing lubricants. Only emergency servicing which is necessary to start a vehicle or equipment shall be permitted. Necessary measures shall be taken to clean up any petroleum products or fluids which leak from vehicles or equipment.

9. **TAXES.** Any and all taxes imposed by the State of Nebraska or its political subdivisions upon the premises shall, except real estate taxes, shall be paid promptly by the Lessee. In the event the premises owned by the City are made taxable by state or local governments, the lease shall be renegotiated to adjust the consideration in an amount sufficient to reimburse the City for said tax liability.

10. **LESSEE'S MAINTENANCE RESPONSIBILITIES.** The Lessee shall maintain Building No. A-12 to prevent deterioration of the structure. All openings shall be closed in order to keep out birds and other animals. The Lessee shall maintain and prevent the loss of gravel from the parking areas off the concrete parking pads and maintain proper drainage to prevent erosion. Lessee shall maintain all grassed areas located on the premises and shall control noxious weeds by mowing, spraying, hand grubbing or by a combination of these methods.

11. **RENEWAL FOR ADDITIONAL TERMS.** This Building Lease may be renewed by the Lessee for up to 5 additional one year terms subject to approval of the City. The renewal terms shall run from May 1 through April 30 of each successive year. Lessee shall request each additional renewal term by sending written notice to the City of its interest in extending this Building Lease for an additional one year term not more than 60 days and not less than 30 days prior to the end of the current term, which date shall be determined by the postmark appearing on the envelope bearing the renewal request or the date of hand delivery of the renewal request to

the City Clerk. The only term of this Building Lease which may be modified in connection with extending the lease for a renewal term is the annual rental.

12. SURRENDER OF PREMISES. The Lessee shall vacate and remove all its personal property, fixtures and improvements prior to the end of the initial term or any renewal term. The Lessee shall pay the City on demand any sum which may be expended by the City after expiration, revocation or termination of this Building Lease in restoring the premises to a condition in accordance with paragraph 4 above.

13. CHOICE OF LAWS. This Building Lease shall be construed in accordance with the laws of the United States of America, the State of Nebraska and the ordinances of the City of Grand Island.

14. ENTIRE AGREEMENT. This Building Lease constitutes the entire agreement between the City and the Lessee, notwithstanding any other verbal or written agreements or understandings to the contrary. This Building Lease may be amended only in writing, duly approved and executed by the City and Lessee.

15. REVOCATION RIGHTS OF PARTIES. This Building Lease may be revoked by either the City or Lessee for any material violation of the lease, which termination shall be effective 30 calendar days from the date a Notice of Termination is mailed or delivered in hand to the other party at the address noted in paragraph 16.

16. NOTICES. All notices envisioned under the terms and conditions of this Building Lease shall be sent to other party by first class United States Mail, postage prepaid and addressed as follows or delivered in hand to:

City of Grand Island
Attn: Mayor
P.O. Box 1968
Grand Island, NE 68802-1968

Jerry Harders
10582 West 13th Street
Wood River, NE 68883

17. BINDING EFFECT. All covenants, terms and conditions herein contained shall extend to and be obligatory on the successors, assigns and legal representatives of the City and Lessee.

18. SUCCESSORS AND ASSIGNS. This Building Lease shall not be assigned, transferred or otherwise conveyed or alienated by the City or the Lessee and any such act, whether accomplished or attempted shall be deemed a material violation of and cause immediate termination of this lease.

DATED: _____, 2009.

RESOLUTION 2009-111

WHEREAS, the City of Grand Island is the owner of an approximately 420 acre tract of land at the former Cornhusker Army Ammunition Plant, which has several buildings which were leased by the US Army Corp of Engineers during their ownership of the property; and

WHEREAS, on May 22, 2001, by Resolution 2001-132, the City approved Building Leases with the tenants of the buildings pending development of the property; and,

WHEREAS, the leases terminated on April 30, 2009; and

WHEREAS, two of the Lessee's of the storage buildings have requested that their lease be renewed.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Building Leases at the former Cornhusker Army Ammunition Plant are hereby authorized to be renewed for an additional year to the following Lessees in accordance with the Building Leases:

<u>Lessee</u>	<u>Description</u>	<u>Rental</u>
Dominion Construction Company	Storage building	\$2,750/yr.
Jerry Harders	Fire/guard building	\$825/yr.

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Adopted by the City Council of the City of Grand Island, Nebraska, May 12, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
May 7, 2009	☐ City Attorney