
City of Grand Island



Tuesday, May 12, 2009

Council Session Packet

City Council:

**Larry Carney
Scott Dugan
John Gericke
Peg Gilbert
Chuck 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

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, May 12, 2009

Council Session

Item C1

Proclamation "Tourism Recognition Month" May, 2009

Whereas, travel and tourism is extremely important to the community of Grand Island in terms of revenues generated, and because the travel and tourism industry contributes to the employment, economic prosperity, international trade, and relations and peace, understanding, and goodwill, Mayor Hornady, in conjunction with the Hall County Convention and Visitors Bureau, has proclaimed the month of May, 2009 as "Tourism Recognition Month". See attached PROCLAMATION.

Staff Contact: Mayor Hornady

THE OFFICE OF THE MAYOR
City of Grand Island
State of Nebraska

PROCLAMATION

WHEREAS, the travel and tourism industry in Grand Island is vital to our economic stability and growth and it contributes substantially to Grand Island's employment, economic prosperity, international trade and relations, peace, understanding and goodwill; and

WHEREAS, travel and tourism ranks as one of Grand Island's largest industries in terms of revenue generated contributing over \$139 million in our economy in 2007 with over 1 million people visiting our attractions and staying in our hotels; and

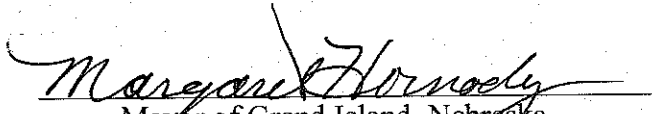
WHEREAS, recognizing travel and tourism can be expected to play an even greater role in the lives of those who live in the Greater Grand Island area.

NOW, THEREFORE, I, Margaret Hornady, Mayor of the City Grand Island, Nebraska, in recognition of the unique significance of the travel and tourism industry in the lives of the citizens of Grand Island, do hereby proclaim, May 2009 as


"Tourism Recognition Month"

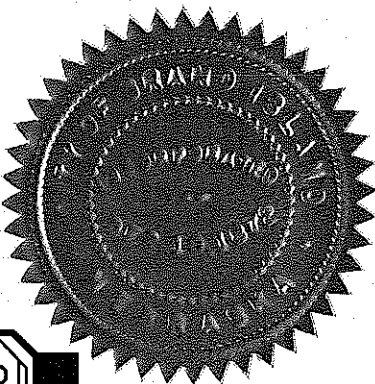
in the City of Grand Island, and urge all citizens to observe tourism with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the City of Grand Island to be affixed this twelfth day of May in the year of our Lord Two Thousand and Nine.


Mayor of Grand Island, Nebraska

Attest:


RaNae Edwards, City Clerk





City of Grand Island

Tuesday, May 12, 2009

Council Session

Item C2

Presentation by Tam Allen, Chairman Nebraska State Fair Board Concerning Request for Ground Lease and Use of City Land for State Fair Vehicle Parking

The current site plan for the Nebraska State Fair in Grand Island includes a 30,000 sq. ft. building that is proposed to be constructed on City land near Fire Station One. The plan also utilizes City land adjacent to Island Oasis for Fair parking.

Nebraska State Fair Board Chairman Tam Allen will visit with the Council about the interest that the Fair has in utilizing these areas for the respective State Fair uses. The placement of the building would require a ground lease from the City.

Staff Contact: Jeff Pederson



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item E1

**Public Hearing Concerning Acquisition of Utility Easement - 3134
West Highway 34 - Central Community College**

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Robert H. Smith, Asst. Utilities Director

Meeting: May 12, 2009

Subject: Acquisition of Utility Easement – 3134 West Highway 34 – Central Community College

Item #'s: E- 1 & G-5

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

Background

Nebraska State Law requires that acquisition of property must be approved by City Council. The Utilities Department needs to acquire an easement relative to the property of Central Community College located along the west side of Wortman Drive at 3134 West Highway 34, in the City of Grand Island, Hall County, in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers.

Discussion

This easement will be used to place conduit, primary electrical cable and a pad-mounted transformer to provide electrical service to the new addition of Central Community College.

Alternatives

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

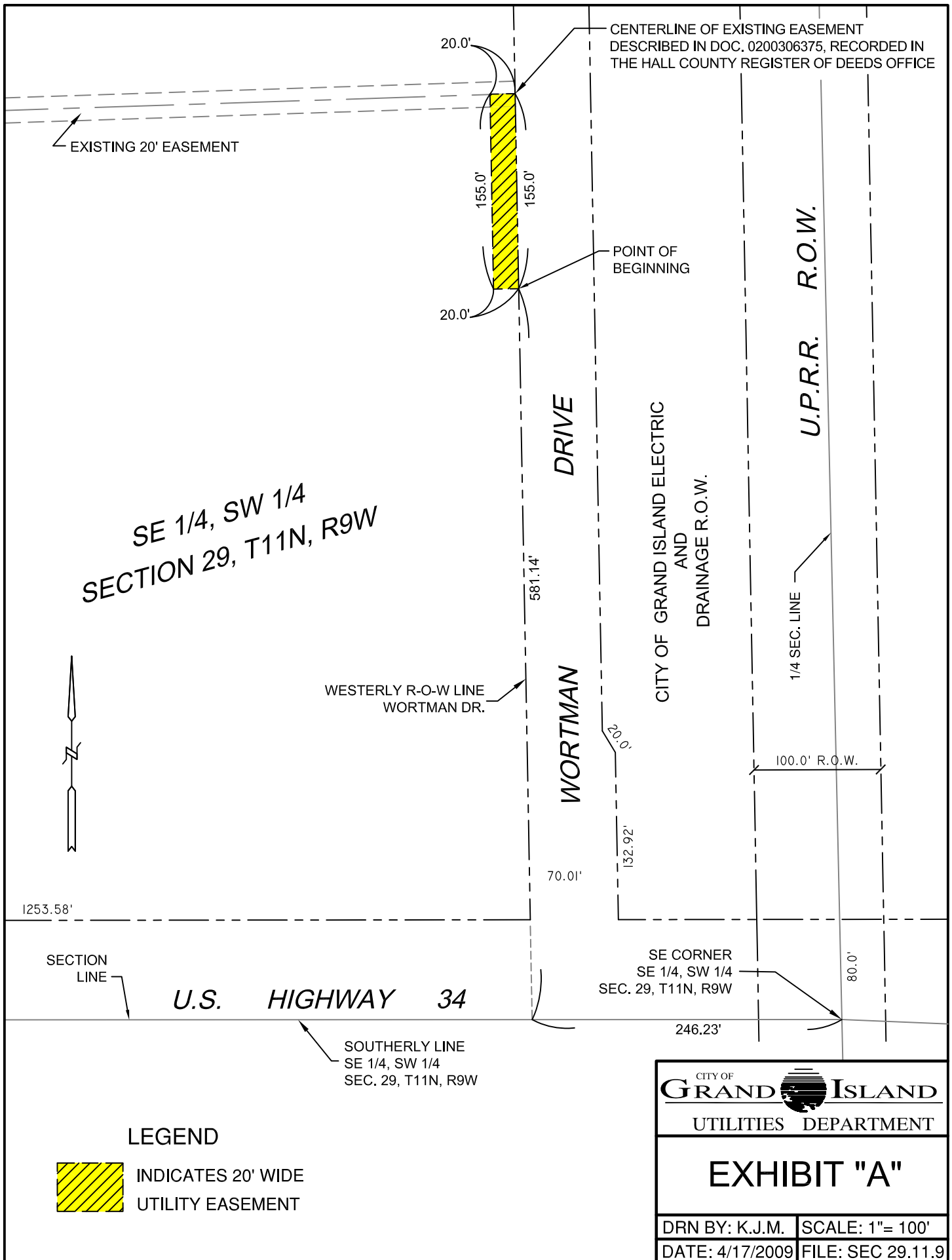
1. Make a motion to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the resolution for the acquisition of the easement for one dollar (\$1.00).

Sample Motion

Motion to approve acquisition of the Utility Easement.





City of Grand Island

Tuesday, May 12, 2009

Council Session

Item E2

**Public Hearing Concerning Acquisition of Utility Easement - 4705
Gold Core Drive - Zitski, LLC**

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Robert H. Smith, Asst. Utilities Director

Meeting: May 12, 2009

Subject: Acquisition of Utility Easement – 4705 Gold Core Drive
– Zitski, LLC

Item #'s: E-2 & G-6

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

Background

Nebraska State Law requires that acquisition of property must be approved by City Council. The Utilities Department needs to acquire an easement relative to the property of Zitski, LLC located on the west side of 4705 Gold Core Drive, in the City of Grand Island, Hall County, in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers.

Discussion

This easement will be used to provide a location for underground conduit, cable, and a pad-mounted transformer to provide electrical service to the new Nova Tech manufacturing facility. Tract two (2) will also provide the needed easement for the primary electrical feed along Gold Core Road.

Alternatives

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

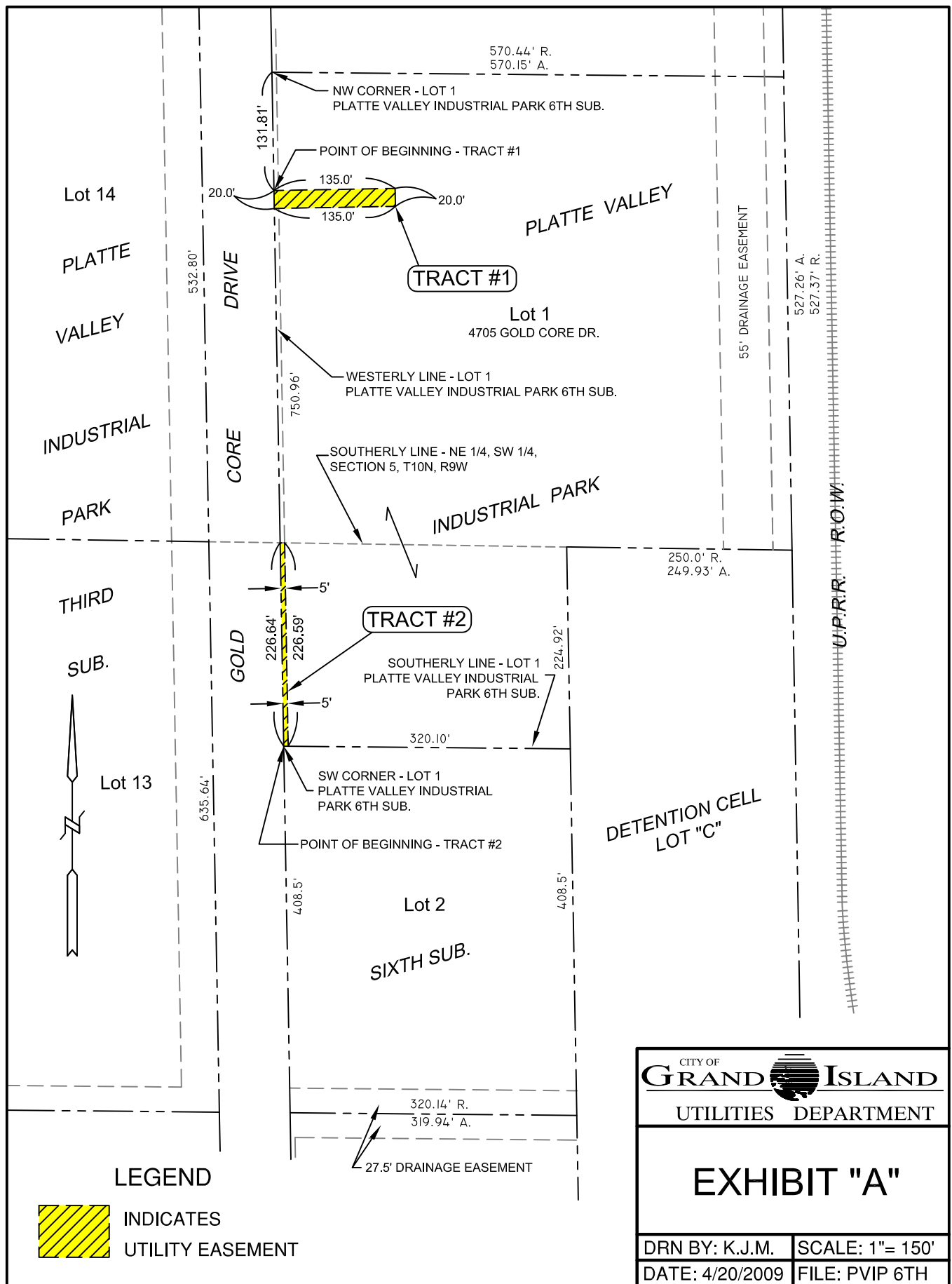
1. Make a motion to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the resolution for the acquisition of the easement for one dollar (\$1.00).

Sample Motion

Motion to approve acquisition of the Utility Easement.



<p>CITY OF GRAND ISLAND</p> <p>UTILITIES DEPARTMENT</p>	
<p>EXHIBIT "A"</p>	
<p>DRN BY: K.J.M.</p>	<p>SCALE: 1"= 150'</p>
<p>DATE: 4/20/2009</p>	<p>FILE: PVIP 6TH</p>



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item E3

**Public Hearing Concerning Acquisition of Utility Easement - 2216
East Highway 30 - Bosselman Carriers, Inc.**

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Robert H. Smith, Asst. Utilities Director

Meeting: May 12, 2009

Subject: Acquisition of Utility Easement – 2216 East Hwy. 30 – Bosselman Carriers, Inc.

Item #'s: E- 3 & G-7

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

Background

Nebraska State Law requires that acquisition of property must be approved by City Council. The Utilities Department needs to acquire an easement relative to the property of Bosselman Carriers, Inc., located at 2216 East Highway 30, in the City of Grand Island, Hall County, in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers.

Discussion

This easement will be used to extend an overhead power line and add transformers to improve the electrical service to the adjacent buildings.

Alternatives

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

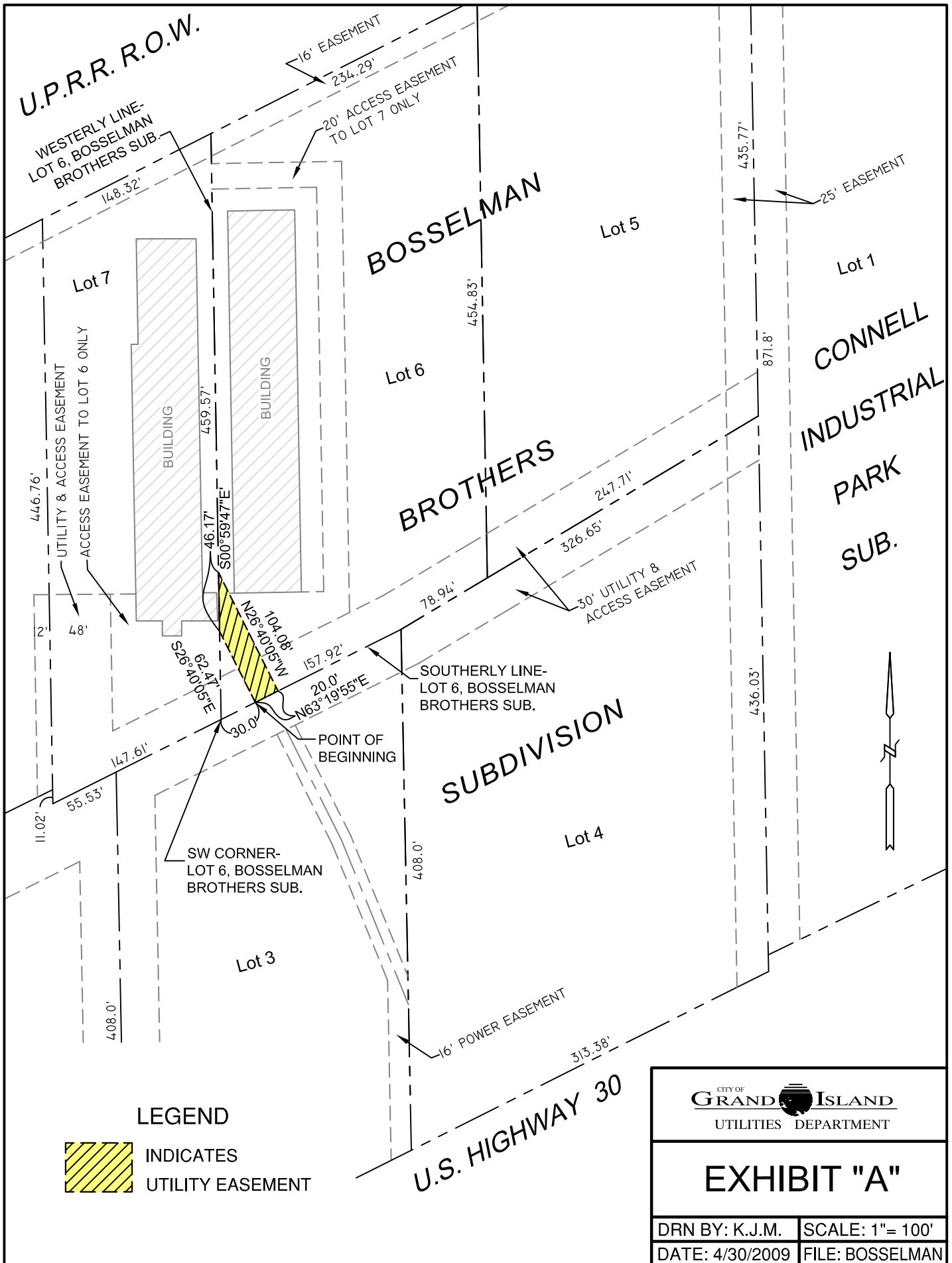
1. Make a motion to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the resolution for the acquisition of the easement for one dollar (\$1.00).

Sample Motion

Move to approve acquisition of the Utility Easement.





City of Grand Island

Tuesday, May 12, 2009

Council Session

Item E4

**Public Hearing on Disestablishment of Business Improvement
District No. 8**

Staff Contact:

Council Agenda Memo

From: Jeff Pederson, City Administrator

Meeting: May 12, 2009

Subject: Disestablishment of Business Improvement District No. 8

Item #'s: E-4 & F-3

Presenter(s): Jeff Pederson, City Administrator

Background

On April 14, 2009, the City Council passed Resolution No. 2009-90 which set May 12, 2009 as the date for a Public Hearing on the issue of disestablishment of Business Improvement District No. 8. Some written evidence (documents) has been received, and will be brought forward at the Hearing.

Discussion

The City Council is now at the stage in the process where evidence is received at a public hearing regarding whether or not to disestablish Business Improvement District No. 8. State law requires that the Council hear all protests and receive evidence for or against disestablishment. Prior to closing the hearing, Council must rule upon all written protests. This merely means that Council should determine if the protests are validly signed by someone who owns property within the boundaries of the District. If the owners of more than 50% of the assessable units communicate in writing that they do not want the district to be disestablished, you will not even consider the ordinance to disestablish and the district will continue.

Under every other scenario, the outcome is at the discretion of the governing body. You may disestablish the district or not depending on what you feel is in the best interests of those involved based on the evidence presented during the hearing. Although the hearing was set by a resolution of intent to disestablish the district, neither state law nor city code explicitly states that there is any presumption that you will act one way or another. If there are not enough protests to automatically stop the process, you may decide to introduce the ordinance to disestablish so that you may have a discussion about whether or not to disestablish. A vote for the ordinance would end the district. A vote against the ordinance would allow the district to continue. You also have the option of not

introducing the ordinance at all and taking no further action. In that case, the district would continue.

Alternatives

If there are not enough protests to automatically stop the process, the Council has the following alternatives concerning the issue at hand. The Council may:

1. Continue the public hearing if more time is needed to adduce evidence or verify protests.
2. Take no action on the issue.
3. Waive the rule requiring three readings, introduce the ordinance, and vote for or against passage.
4. Introduce the ordinance on first reading.

Recommendation

This issue involves the owners of property within a Business Improvement District and not the day-to-day operations of the City. Since the action of the Council should be based on evidence presented at a hearing, City Administration has no recommendation.

Sample Motion

Motion to be taken depends on the course of action the council chooses.



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item F1

**#9214 - Consideration of Annexation of Property Located South of
Case New Holland and West of Highway 281 (Second Reading)**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Regional Planning Commission

Meeting: May 12, 2009

Subject: Annexation Ordinance (Second Reading)

Item #'s: F-1

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

Background

Annexation of land, located in the SE ¼ of the NE ¼ of 25-11-10 (south of Case New Holland and west of U.S. Highway 281) into the Grand Island City Limits see the attached map. Case New Holland, owner of this property, petitioned Council to consider annexation of this property. City Council has already approved a request to rezone the property from TA Transitional Agriculture to M1 Light Manufacturing.

Discussion

On March 4, 2009 the Hall County Regional Planning Commission held a public hearing before considering this matter.

No members of the public testified at the hearing held by the Regional Planning Commission.

This property is adjacent to and contiguous with the Grand Island City Limits. It is entirely surrounded by the City Limits.

Water is available to the property. Sewer is available to the property. This property is within the Grand Island Utilities Electrical Service District. This property is within the Grand Island School District. Annexing this property **will not** impact the two mile extraterritorial jurisdiction of Grand Island.

On April 28, 2009 Council held a public hearing concerning this annexation. No members of the public spoke at the hearing. Council passed the ordinance to annex on the first reading.

Alternatives

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

1. Approve the annexation as presented
2. Modify the annexation to meet the wishes of the Council
3. Postpone the issue

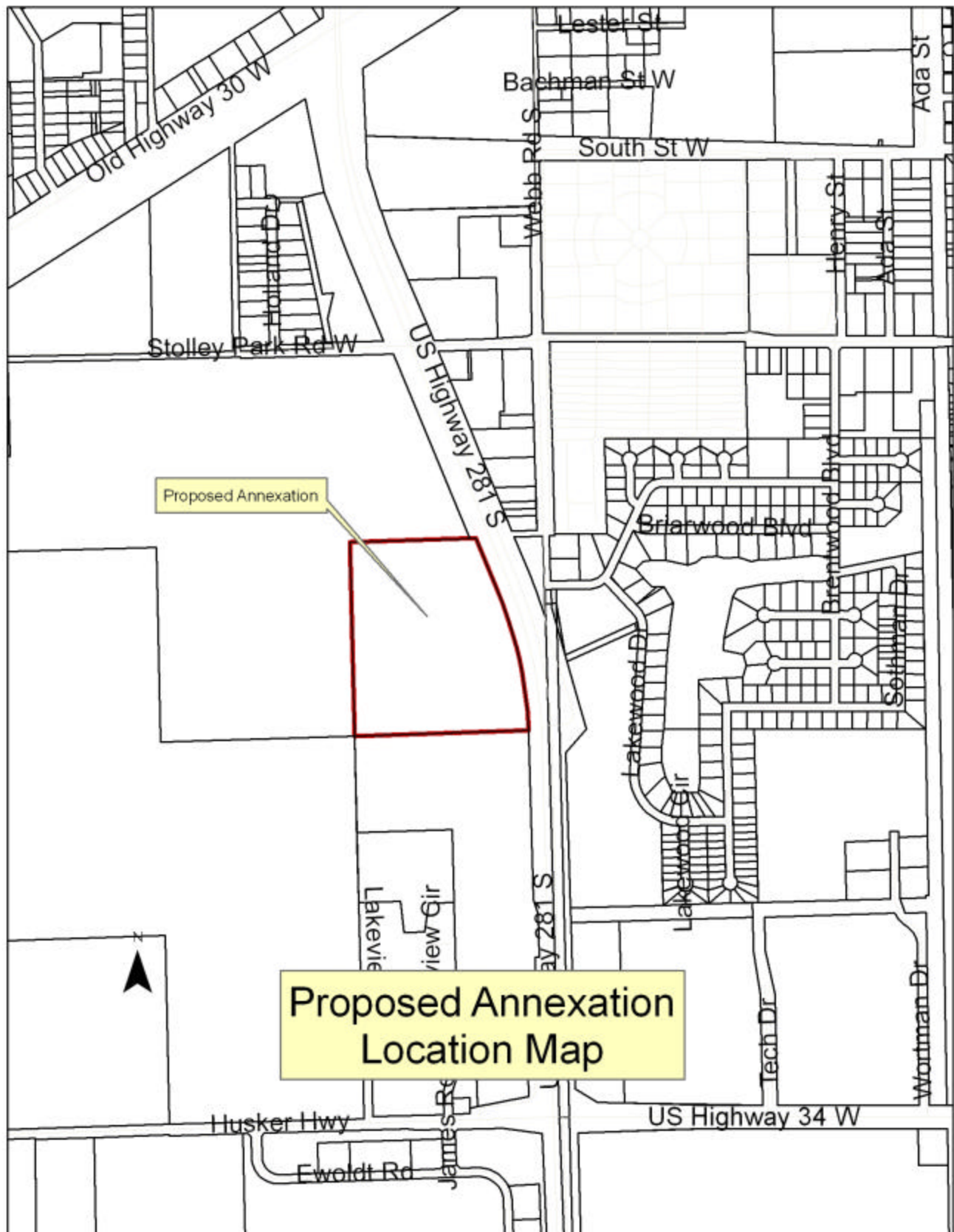
Recommendation

A motion was made by Haskins, and seconded by Aguilar to recommend approval of the Annexation as it meets the City Comprehensive Plan.

A roll call vote was taken and the motion passed with 7 member's present voting favor (Aguilar, Amick, Ruge, Hayes, Haskins, Bredthauer, Snodgrass).

Sample Motion

Move to approve the annexation as requested.



* This Space Reserved For Register of Deeds *

ORDINANCE NO. 9214

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, a tract of land West of U.S. Highway 281 in the Southeast Quarter of the Northeast Quarter (SE1/4NE1/4) of Section Twenty-five (25) in Township Eleven (11) North, Range Ten (10) West of the 6th P.M. in Hall County, Nebraska as more particularly described hereinafter and as shown on Exhibit "A" attached hereto; to provide service benefits thereto; to repeal any ordinance or resolutions or parts of thereof in conflict herewith; to provide for publication in pamphlet form; and to provide the effective date of this ordinance.

WHEREAS, after public hearing on March 4, 2009, the Regional Planning Commission recommended the approval of annexing into the City of Grand Island, the following tract of land in Hall County, Nebraska:

A tract of land located in part of the Southeast Quarter of the Northeast Quarter (SE1/4NE1/4) of Section Twenty-five (25), Township Eleven (11), North, Range Ten (10) West of the 6th p.m., in Hall County, Nebraska, except a certain tract more particularly described in quit claim deed recorded to the State of Nebraska in book 141, page 258, and except a certain tract more particularly described in appraiser's report recorded in book 9, page 67, and more particularly described as follows:

Approved as to Form	<input type="checkbox"/> _____
May 7, 2009	<input type="checkbox"/> City Attorney

ORDINANCE NO. 9214 (Cont.)

Commencing at the east quarter corner of Section 25-T11N-R10W; thence on an assumed bearing of S88°08'57"W upon and along the south line of the SE1/4NE1/4 a distance of 132.51 feet to the northeast corner of Lot 2, Pedcor Second Subdivision, an addition to the City of Grand Island, Nebraska, said point also being the westerly right-of-way (ROW) line of US Highway #281 and the point of beginning; thence S88°09'55"W upon and along the south line of said SE1/4NE1/4, said line also being the north line of said Lot 2 a distance of 1189.55 feet to the southwest corner of said SE1/4NE1/4, said point also being the northwest corner of said Lot 2; thence N01°24'18"W upon and along the west line of said SE1/4, NE1/4 a distance of 1322.52 feet to the northwest corner of said SE1/4NE1/4; thence N88°18'32"E upon and along the north line of said SE1/4NE1/4 a distance of 860.86 feet to said westerly row line of US Highway #281; thence S21°57'28"E along and upon said west row line a distance of 398.06 feet to a point of curvature; thence upon and along said westerly row line around a curve in a clockwise direction having a delta angle 20°00'15", an arc length 968.79 feet, a radius 2774.79, a chord bearing S12°42'30"E with a chord distance of 963.87 feet to the point of beginning. Said tract contains a calculated area of 1,412,514.37 square feet or 32.427 acres more or less

WHEREAS, after public hearing on April 28, 2009, the City Council of the City of Grand Island found and determined that such annexation be approved; and

WHEREAS, on April 28, 2009, the City Council of the City of Grand Island approved such annexation on first reading.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. It is hereby found and determined that:

(A) The above-described tracts of land are urban or suburban in character, and that the subject properties are contiguous or adjacent to the corporate limits of said City.

(B) The subject lands will receive the material benefits and advantages currently provided to land within the City's corporate limits including, but not limited to police, fire, emergency services, street maintenance, and utilities services upon annexation to the City of Grand Island, Nebraska, and that City electric, water and sanitary sewer service is available, or will be made available, as provided by law.

ORDINANCE NO. 9214 (Cont.)

(C) The various zoning classifications of the land shown on the Official Zoning Map of the City of Grand Island, Nebraska, are hereby confirmed and that the extraterritorial zoning jurisdiction is extended as allowed by law.

(D) There is unity of interest in the use of the said tract of land, lots, tracts, highways and streets (lands) with the use of land in the City, and the community convenience and welfare and in the interests of the said City will be enhanced through incorporating the subject land within the corporate limits of the City of Grand Island.

(E) The plan for extending City services adopted by the City Council by the passage and approval of Resolution No. 2009-58 is hereby approved and ratified as amended.

SECTION 2. The boundaries of the City of Grand Island, Nebraska, be and are hereby extended to include within the corporate limits of the said City the contiguous and adjacent tract of land located within the boundaries described above.

SECTION 3. The subject tract of land is hereby annexed to the City of Grand Island, Hall County, Nebraska, and said land and the persons thereon shall thereafter be subject to all rules, regulations, ordinances, taxes and all other burdens and benefits of other persons and territory included within the City of Grand Island, Nebraska.

SECTION 4. The owners of the land so brought within the corporate limits of the City of Grand Island, Nebraska, are hereby compelled to continue with the streets, alleys, easements, and public rights-of-way that are presently platted and laid out in and through said real estate in conformity with and continuous with the streets, alleys, easements and public rights-of-way of the City.

SECTION 5. That a certified copy of this Ordinance shall be recorded in the office of the Register of Deeds of Hall County, Nebraska and indexed against the tracts of land.

ORDINANCE NO. 9214 (Cont.)

SECTION 6. Upon taking effect of this Ordinance, the services of said City shall be furnished to the lands and persons thereon as provided by law, in accordance with the Plan for Extension of City Services adopted herein.

SECTION 7. That all ordinances and resolutions or parts thereof in conflict herewith are hereby repealed.

SECTION 8. This ordinance shall be in full force and effect from and after its passage, approval and publication, in pamphlet form, as provided by law.

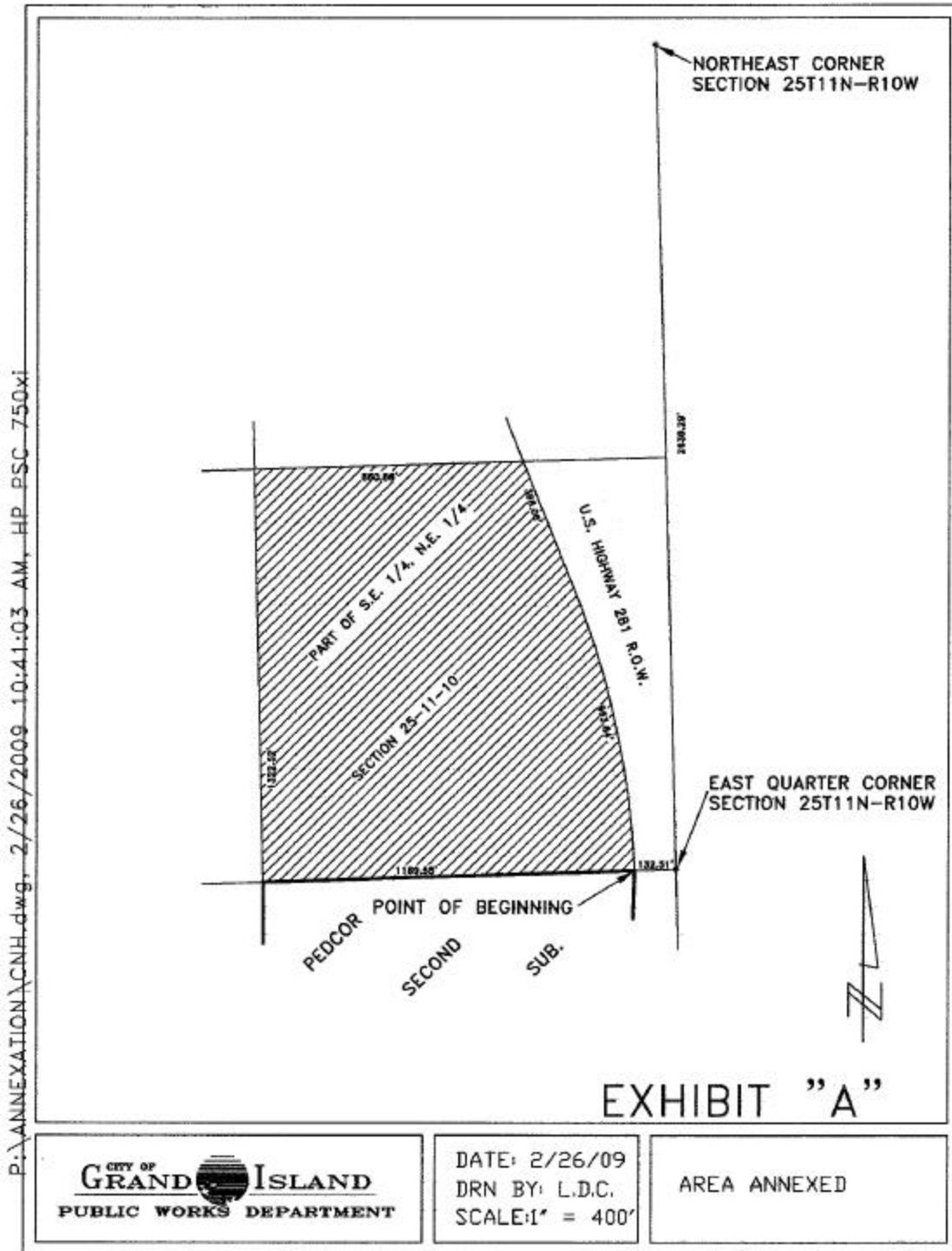
Enacted: May 12, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

ORDINANCE NO. 9214 (Cont.)





City of Grand Island

Tuesday, May 12, 2009

Council Session

Item F2

#9215 - Consideration of Lease-Purchase Agreement, Ground Lease and Escrow Agreement for Building and Related Improvements to Serve as a Recreational Facility for State Fair Activities (Second Reading)

Staff Contact: Jeff Pederson

Council Agenda Memo

From: Jeff Pederson, City Administrator

Meeting: May 12, 2009

Subject: Lease-Purchase Agreement, Ground Lease and Escrow Agreement for Building and Related Improvements to Serve as a Recreational Facility for State Fair Activities

Item #'s: F-2

Presenter(s): Jeff Pederson, City Administrator

Background

The City Council has heretofore taken action intended to facilitate the contribution of the sum of \$5 million towards the relocation of the Nebraska State Fair to Grand Island. That action includes the passage on September 9, 2008 of Ordinance No. 9189 implementing an occupation tax upon the sale of prepared food and non-alcoholic beverages. With the collection of the occupation tax to occur over a period of time, it becomes necessary to institute some form of borrowing in order to meet the requirements of LB 1116 that the \$5 million be available for State Fair construction at the Fonner Park site.

Discussion

Council's first of reading of this ordinance was held April 28, 2009. Council's first reading of the ordinance produced discussion and recommendations on the draft of the ground lease with Fonner Park. Subsequent negotiation meetings have achieved a revision to the draft ground lease which I believe is favorable to both parties.

Notable adjustments within the attached draft Ground Lease Agreement for the second ordinance reading are:

- Section 3 **Use**
- Section 5 **Rent**
- Section 8 **Assignment and Subletting**

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

Approve the Agreements.

Sample Motion

Move to approve Ordinance No. 9215 authorizing the Lease-Purchase Agreement, Ground Lease and Escrow Agreement and authorize execution.

LEASE-PURCHASE AGREEMENT

Between

WELLS FARGO BROKERAGE SERVICES, LLC

As Lessor

and the

The City of Grand Island, Nebraska

As Lessee

Dated as of the first day of July, 2009

LESSOR'S ORIGINAL

THIS LEASE-PURCHASE AGREEMENT dated as of the first day of July, 2009 (the Lease), by and between WELLS FARGO BROKERAGE SERVICES, LLC, as lessor (Lessor), whose address is 608 Second Avenue South – 10th Floor; MAC: N9303-105, Minneapolis, MN 55479, Attention Public Finance, and the City of Grand Island, Nebraska, as lessee (Lessee) whose address is P.O. Box 1968, 100 East First Street, Grand Island, Nebraska 68802-1968.

WITNESSETH:

WHEREAS, Lessee is authorized under the terms of Section 13-304, R.R.S. Neb. 2007 to acquire, hold, improve and operate a recreational facility and to acquire such property by entering into lease-purchase agreement under Section 19-2421, R.R.S. Neb. 2007; and

WHEREAS, Lessee, Lessor and Hall County Livestock Improvement Association (the “Association”) have entered into a Ground Lease dated as of July 1, 2009 (the Ground Lease), whereby the Association has leased to Lessor and Lessee certain land described therein and as set forth on Exhibit A hereto (the Land); and

WHEREAS, Lessor has agreed to acquire and construct on the Land certain improvements constituting a building and related improvements on the Land (the “Improvements”) to Lessee, pursuant to this Lease in accordance with Lessee’s requirements and specifications; and

WHEREAS, Lessee has determined that it is necessary and desirable for it to obtain lease-purchase financing under this Lease for the construction and acquisition of such Improvements upon the Land;

NOW THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

Closing Date: The date upon which the amount specified in Section 2.3 is deposited with the Escrow Agent.

Escrow Agent: Wells Fargo Bank, National Association, acting as escrow agent, pursuant to the terms and conditions of the Escrow Agreement, or any successor appointed and so acting under the terms of the Escrow Agreement.

Escrow Agreement: The Escrow Agreement dated as of the date hereof, by and between the Escrow Agent, Lessee, and Lessor and any replacement thereof or supplement thereto.

Fiscal Year: The twelve month fiscal period of Lessee which commences on October 1 in every year and ends on the following September 30.

Ground Lease: The Ground Lease dated as of the date hereof, by and between the Association, Lessor and Lessee, whereby the Association has leased the Land to Lessee and Lessor.

Independent Counsel: An attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of Lessor or Lessee.

Improvements: The improvements described on Exhibit A hereto, and all repairs, replacements, substitutions and modifications thereto.

Interest: The portion of any Rental Payment designated as and comprising interest as shown in the attached Exhibit B.

Land: The land described on Exhibit A hereto.

Net Proceeds: Any insurance proceeds or condemnation award, paid with respect to the Project, remaining after payment therefrom of all expenses incurred in the collection thereof.

Payment Date: The date upon which any Rental Payment is due and payable as provided in Exhibit B.

Permitted Encumbrances: As of any particular time: (i) liens for taxes and assessments not then delinquent, or which Lessee may, pursuant to provisions of Section 7.3 hereof, permit to remain unpaid, (ii) this Lease and the Ground Lease and amendments to either thereof, (iii) Lessor's interest in the Project, and (iv) any construction, mechanic's, laborer's,

materialmen's, supplier's or vendor's lien or right not filed or perfected in the manner prescribed by law which Lessee may, pursuant to Article VIII hereof, permit to remain unpaid.

Principal: The portion of any Rental Payment designated as principal in the attached Exhibit B.

Project: The interest of Lessor in the Land under the Ground Lease and the Improvements.

Purchase Option Price: With respect to the Project, as of the Payment Dates specified in the attached Exhibit B, the amount so designated and set forth opposite such date.

Rental Payment: The payment due from Lessee to Lessor on each Payment Date during the Term of this Lease, as shown on Exhibit B.

State: The State of Nebraska.

State and Federal Law or Laws: The Constitution and any law of the State and any rule or regulation of any agency or political subdivision of the State; and any law of the United States, and any rule or regulation of any federal agency.

Term of this Lease or Lease Term: The period during which this Lease is in effect as specified in Section 4.1.

Certain other terms used in this Lease are defined in parentheses elsewhere in this Lease.

Section 1.2. Exhibits.

The following Exhibits are attached to and by reference made a part of this Lease:

Exhibit A: A description of the Land and Improvements subject to this Lease.

Exhibit B: A schedule indicating the date and amount of each Rental Payment coming due during the Lease Term, the amount of each Rental Payment comprising Principal and Interest, and the price at which Lessee may exercise its option to purchase Lessor's interest in the Project in accordance with Article X.

Exhibit C: A certificate of officers of Lessee as to certain matters relating to the Lease, the Ground Lease and the Escrow Agreement.

Exhibit D: A form of opinion of counsel to Lessee.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of Lessee. Lessee represents, covenants and warrants as follows:

(a) Lessee is a duly formed and validly existing political subdivision of the State, governed by the Constitution and laws of the State.

(b) Lessee is authorized under the Constitution and laws of the State (specifically Section 19-2421, R.R.S. Neb. 1997, referred to herein as the Act) to enter into this Lease and the Escrow Agreement and the transactions contemplated thereby, and to perform all of its obligations thereunder.

(c) The officers of Lessee executing this Lease, the Ground Lease and the Escrow Agreement have been duly authorized to execute and deliver such documents under the terms and provisions of an ordinance of Lessee's governing body, or by other appropriate official action.

(d) In authorizing and executing this Lease, Lessee has complied with all public bidding and other State and Federal Laws applicable to this Lease and the acquisition of the Improvements by Lessee.

(e) Lessee will not pledge, mortgage or assign this Lease, or its duties and obligations hereunder to any other person, firm or corporation except as provided under the terms of this Lease.

(f) Lessee will use the Project during the Lease Term only to perform essential governmental functions or governmental and proprietary functions.

(g) Lessee will take no action that would cause the Interest portion of the Rental Payments to become includable in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code") and Treasury Regulations promulgated thereunder (the "Regulations"), and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the Interest portion of the Rental Payments does not become includable in gross income of the recipient for federal income tax purposes under the Code and Regulations.

(h) Lessee has funds available and properly appropriated or subject to appropriation to pay Rental Payments until the end of the current Fiscal Year and under the terms of the Act the Lessee is (i) authorized to acquire title to the Improvements, (ii) the term of this Lease is not restricted to a single year and (iii) this Lease may provide for the purchase of the Improvements in installment payments.

(i) Lessee will execute and deliver on the Closing Date a certificate substantially in the form of Exhibit C hereto, and Lessee will cause its legal counsel to provide a legal opinion to Lessor substantially in the form of Exhibit D hereto, dated as of the Closing Date.

Section 2.2. Representations, Covenants and Warranties of Lessor. Lessor represents, covenants and warrants as follows:

(a) Lessor is a limited liability company duly organized, existing and in good standing; has power to enter into this Lease, the Ground Lease and the Escrow Agreement; is possessed of full power to own and hold real and personal property, and to lease the same; and has duly authorized the execution and delivery of this Lease, the Ground Lease and the Escrow Agreement.

(b) Neither the execution and delivery of this Lease, the Ground Lease and the Escrow Agreement, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessor is now a party or by which Lessor is bound, constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor, or upon the Project except Permitted Encumbrances.

Section 2.3. Deposit of Funds. Upon execution and delivery of this Lease and the Ground Lease, Lessor shall deposit the sum of \$5,000,000 into escrow pursuant to the terms and conditions of the Escrow Agreement which amount shall be disbursed by the Escrow Agent in payment of the costs of the Improvements in accordance with this Lease and the Escrow Agreement.

ARTICLE III

LEASE OF PROJECT

Section 3.1. Lease. (a) Lessor hereby leases the Improvements (as and when constructed and acquired under the terms of this Lease and as paid for from amounts deposited by Lessor under the Escrow Agreement) to Lessee, and Lessee hereby leases the Improvements from Lessor, upon the terms and conditions set forth in this Lease. Lessee hereby confirms the rights of Lessor to construct, acquire, own and operate the Improvements as set forth in the Ground Lease. Such rights are hereby acknowledged to include full access and use by Lessor for the location, construction, acquisition, installation, operation and maintenance of the Improvements. The Improvements as financed pursuant hereto are hereby acknowledged to be the separate property of the Lessor, subject to the rights provided for Lessee under the terms of this Lease.

(b) Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, upon and subject to the terms and conditions hereinafter set forth, the Improvements, as and to the extent constructed and acquired under the terms of this Lease. Lessor shall lease the Improvements to Lessee (as and to the extent constructed or acquired) for a term beginning on date hereof and ending on _____, 20____. Until payment in full of all Rental Payments due hereunder the Improvements shall remain the property of the Lessor and shall not become a part of the real estate described on Exhibit A hereto attached. Upon the final payment of all rental obligations under this Lease the Improvements shall be conveyed to Lessee by the Lessor by quitclaim deed and bill of sale to be executed and delivered by Lessor upon the written request of Lessee.

(c) Lessor and Lessee agree that, as and to the extent that this Lease may be regarded as relating to goods, goods which may become fixtures, fixtures, furniture or equipment, this Lease shall constitute a "finance lease" within the meaning of such term as used in Article 2A of the Nebraska Uniform Commercial Code. In such connection Lessee acknowledges (a) that neither Lessor nor the Escrow Agent has selected, manufactured or supplied any goods constituting the Improvements, (b) that Lessor is acquiring the Improvements in connection with this Lease and (c) that Lessee has received a copy of the contract with the contractor constructing the Improvements prior to the execution of this Lease. Lessee further acknowledges that Lessee has been informed in writing before the execution of this Lease that Lessee is entitled under said Article 2A to the promises and warranties provided by such contractor and any other person supplying the Improvements or items incorporated therein and that Lessee may communicate with any such person and obtain a complete and accurate statement of any such promises and warranties, including any disclaimers and limitations of them or of remedies.

Section 3.2. Possession and Enjoyment. Lessor hereby covenants to provide Lessee during the Term of this Lease with the quiet use and enjoyment of the Project, and Lessee shall during the Term of this Lease peaceably and quietly have and hold and enjoy the Project, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Lease. Lessor will, at the request of Lessee and at Lessee's cost, join in any legal action in which Lessee asserts its right to such possession and enjoyment to the extent Lessor lawfully may do so.

Section 3.3. Lessor Access to Project. Lessee agrees that Lessor shall have the right at all reasonable times to examine and inspect the Project. Lessee further agrees that Lessor shall have such rights of access to the Project as may be reasonably necessary to cause the proper maintenance of the Project in the event of failure by Lessee to perform its obligations hereunder.

ARTICLE IV

TERM OF LEASE

Section 4.1. Lease Term. This Lease shall be in effect for a Term commencing upon its date of execution and ending as provided in Section 4.5.

Section 4.2. Agreement Concerning Rental Payments. Lessee covenants that the Rental Payments do not exceed any limitation imposed by law. Until all Rental Payments have been made in full, Lessee covenants and agrees to make and continue to make for so long as permitted by law an annual levy on the taxable property within its geographical area pursuant to Section 16-702, R.R.S. Neb. 2007, which will be sufficient, along with any other funds available for the purpose, specifically including amounts collected from sales taxes imposed under the Local Option Revenue Act (Sections 77-27,142 to 77-27,148, R.R.S. Neb. 2003, as amended) and any occupation taxes designated for such purpose, to enable Lessee to make all of the Rental Payments and to perform all other obligations of Lessee under this Lease and to take all action required to provide funds to make the Rental Payments and perform such obligations as herein required. Lessee covenants and agrees that throughout the term of this Lease it will observe all budget, tax and spending limitations now or hereafter imposed by law in such a manner that a sufficient portion of its tax levy or other monies shall be lawfully available to make all the Rental Payments and perform all other obligations of Lessee hereunder. Lessee agrees that commencing with its budget for the next-ensuing fiscal year it will include amounts sufficient to make the Rental Payments as the same fall due in its annual budget and appropriations. Lessee covenants and agrees that it shall neither take any action nor omit to take such action which such action or omission would have the affect of causing the interest portion of the Rental Payments due under the terms of this Lease and identified as such herein to be no longer excludable from gross income under the Internal Revenue Code of 1986, as amended, (the Code).

Section 4.3. Intent to Continue Lease Term; Appropriations. As authorized under the terms of Section 19-2421, R.R.S. Neb. 2007, Lessee hereby obligates itself to continue this Lease for its entire Term and to pay all Rental Payments specified in Exhibit B, as the installment payments related to the purchase of the Improvements. The officer of Lessee responsible for budget preparation will include in the budget request for each Fiscal Year the Rental Payments to become due in such Fiscal Year, and will use all reasonable and lawful means available to secure the appropriation of money for such Fiscal Year sufficient to pay the Rental Payments coming due therein.

Section 4.4. Termination of Lease Term. The Term of this Lease will terminate upon the occurrence of the first of the following events:

(a) the exercise by Lessee of its option to purchase Lessor's interest in the Project pursuant to Article X;

(c) a default by Lessee and Lessor's election to terminate this Lease pursuant to Article XII; or

(d) the payment by Lessee of all Rental Payments and other amounts authorized or required to be paid by Lessee hereunder.

ARTICLE V

RENTAL PAYMENTS

Section 5.1. Rental Payments. Lessee agrees to pay Rental Payments during the Term of this Lease, in the amounts and on the dates specified in Exhibit B. All Rental Payments shall be paid to Lessor at its offices at the address specified in the first paragraph of this Lease, or to such other person or entity to which Lessor has assigned such Rental Payments as specified in Article XI, at such place as such assignee may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments exclusively from moneys legally available therefor, in lawful money of the United States of America, to Lessor or, in the event of assignment of the right to receive Rental Payments by Lessor, to its assignee. Interest shall accrue from the time of the deposit into escrow of funds by the Lessor.

Section 5.2. Current Expense. The obligations of Lessee under this Lease, including its obligation to pay the Rental Payments due with respect to the Project, in any Fiscal Year for which this Lease is in effect and shall constitute a current expense of Lessee for such Fiscal Year.

Section 5.3. Interest Component. A portion of each Rental Payment is paid as and represents the payment of Interest. Exhibit B sets forth the Interest component of each Rental Payment.

Section 5.4. Rental Payments to be Unconditional. In accordance with the terms of the Act, the obligation of the Lessee to make Rental Payments shall be binding upon the Lessee from year to year. The obligation of Lessee to make Rental Payments or any other payments required hereunder shall be absolute and unconditional in all events. Notwithstanding any dispute between Lessee and Lessor or any other person, Lessee shall make all Rental Payments and other payments required hereunder when due and shall not withhold any Rental Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such Rental Payments or other payments required under this Lease. Lessee's obligation to make Rental Payments or other payments during the Lease Term shall not be abated through accident or unforeseen circumstances (including, without limitation, the occurrence of any environmental liability). However, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder; and if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damages therefor.

ARTICLE VI

INSURANCE AND NEGLIGENCE

Section 6.1. Liability Insurance. Upon receipt of possession of the Project, Lessee shall take such measures as may be necessary to insure that any liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition or the operation of the Project or any part thereof, is covered by a blanket or other general liability insurance policy maintained by Lessee. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid.

Section 6.2. Property Insurance. Lessee shall have and assume the risk of loss with respect to the Project. Lessee shall procure and maintain continuously in effect during the Term of this Lease, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part of the Project damaged or destroyed and to pay the applicable Purchase Option Price of the Project. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary deductible amounts and need not cover land and building foundations. The Net Proceeds of insurance required by this Section shall be applied to the prompt repair, restoration or replacement of the Project, or to the purchase of the Project, as provided in Section 6.6. Any Net Proceeds not needed for those purposes shall be paid to Lessee.

Section 6.3. Worker's Compensation Insurance. If required by State law, Lessee shall carry worker's compensation insurance covering all employees on, in, near or about the Project, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Term of this Lease.

Section 6.4. Requirements For All Insurance. All insurance policies (or riders) required by this Article shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten (10) days before the cancellation or revision becomes effective. All insurance policies or riders required by Sections 6.1 and 6.2 shall name Lessee and Lessor as insured parties, and any insurance policy or rider required by Section 6.3 shall name Lessee as insured party. Lessee shall deposit with Lessor policies (and riders) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), Lessee shall furnish to Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is no longer obtainable in which event Lessee shall notify Lessor of this fact.

Section 6.5. Lessee's Negligence. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Project and for injury to or death

of any person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or the property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees, to the extent permitted by law) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law.

Section 6.6. Damage to or Destruction of Project. If all or any part of the Project is lost, stolen, destroyed or damaged beyond repair, Lessee shall as soon as practicable after such event replace the same at Lessee's sole cost and expense with property of equal or greater value to the Project immediately prior to the time of the loss occurrence, such replacement to be subject to Lessor's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement. The Net Proceeds of all insurance payable with respect to the Project shall be available to Lessee and shall be used to discharge Lessee's obligation under this Section. Until all obligations of the Lessee to make Rental Payments under this Lease have been satisfied in full, the Lessee shall make restoration and repair of the Project in such manner as will prevent any termination of the Ground Lease.

ARTICLE VII

OTHER OBLIGATIONS OF LESSEE

Section 7.1. Use; Permits. Lessee shall exercise due care in the use, operation and maintenance of the Project, and shall not use, operate or maintain the Project improperly, carelessly, in violation of any State and Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. Lessee shall obtain all permits and licenses necessary for the installation, operation, possession and use of the Project. Lessee shall comply with all State and Federal Laws applicable to the installation, use, possession and operation of the Project, and if compliance with any such State and Federal Law requires changes or additions to be made to the Project, such changes or additions shall be made by Lessee at its expense.

Section 7.2. Maintenance of Project by Lessee. Lessee shall, at its own expense, maintain, preserve and keep the Project in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Project in such condition. Lessor shall have no responsibility for any of these repairs or replacements.

Section 7.3. Taxes, Other Governmental Charges and Utility Charges. Except as expressly limited by this Section, Lessee shall pay all taxes and other charges of any kind which are at any time lawfully assessed or levied against or with respect to the Project, the Rental Payments or any part thereof, or which become due during the Term of this Lease, whether assessed against Lessee or Lessor. Lessee shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.

Lessee may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay such taxes, assessments, utility or other charges or provide Lessor with full security against any loss which may result from nonpayment, in form satisfactory to Lessor.

Section 7.4. Advances. If Lessee shall fail to perform any of its obligations under this Article, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 12% per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

ARTICLE VIII

TITLE

Section 8.1. Title. During the Term of this Lease, legal title to the Improvements and any and all repairs, replacements, substitutions and modifications thereto shall be in Lessor. Legal title to the Land shall remain in the Association, subject to the Lessor's and the Lessee's interests under the Ground Lease. Upon the payment by Lessee of all Rental Payments as indicated in Exhibit B, or the exercise by Lessee of its option to purchase the Project pursuant to Article X, full and unencumbered legal title to the Project shall pass to Lessee, and Lessor shall have no further interest therein; and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the passage of legal title to the Project to Lessee and the termination of Lessor's interest therein. Nothing herein shall require Lessor to remove any lien, charge or encumbrance upon legal title to the Project not arising through Lessor.

Section 8.2. Liens. During the Term of this Lease, Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Project, other than the respective rights of Lessor and Lessee as herein provided and Permitted Encumbrances. Except as expressly provided in Section 7.3 and this Article, Lessee shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by Lessor in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 8.3. Installation of Lessee's Equipment. Lessee may at any time and from time to time, in its sole discretion and at its own expense, install items of equipment in or upon the Project, which items shall be identified by tags or other symbols affixed thereto as property of Lessee. All such items so identified shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be modified or removed by Lessee at any time provided that Lessee shall repair and restore any and all damage to the Project resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent Lessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease with option to purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Project.

Section 8.4. Modification of Project. Lessee shall, at its own expense, have the right to make repairs to the Project, and to make repairs, replacements, substitutions and modifications to all or any of the parts thereof. All such work and any part or component used or installed to make a repair or as a replacement, substitution or modification, shall thereafter comprise part of the Project and be subject to the provisions of this Lease. Such work shall not in any way damage the Project or cause it to be used for purposes other than those authorized under the provisions of State and Federal Law or those contemplated by this Lease; and the Project, upon completion of any such work, shall be of a value which is not less than the value of the Project immediately prior to the commencement of such work. Any property for which a

replacement or substitution is made pursuant to this Section may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any construction, mechanic's or other lien to be established or remain against the Project for labor or materials furnished in connection with any repair, addition, modification or improvement made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such item the interest of Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessor will cooperate fully with Lessee in any such contest, upon the request and at the expense of Lessee.

Section 8.5. Management Contract. Lessee shall have the right to contract for management services with respect to the Project in its discretion so long as the effect and operation under such contract does not affect the tax-exempt status of the interest component of the Rental Payments.

ARTICLE IX

WARRANTIES

Section 9.1. Selection, Design and Construction of Improvements. The Improvements have been or will be selected, designed and constructed by or on behalf of Lessee, and Lessor shall have no responsibility in connection with the selection, design or construction of the Improvements or their suitability for the use intended by Lessee. In connection with any contracting for the construction or acquisition of the Improvements, Lessor hereby appoints Lessee as its agent to make any such contract, with the express understanding that all items of property so obtained shall be and become the property of the Lessor in accordance with the terms of this Lease.

Section 9.2. Maintenance of Project. Lessor shall have no obligation to test, inspect, service or maintain the Project under any circumstances, but such actions shall be the obligation of Lessee.

Section 9.3. Contractor's Warranties. Lessor hereby assigns to Lessee for and during the Term of this Lease, all of its interest in all contractor's warranties and guarantees, if any, express or implied, issued on or applicable to the Improvements or any portion thereof, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense.

Section 9.4. Patent Infringement. Lessor hereby assigns to Lessee for and during the Term of this Lease all of its interest in patent indemnity protection provided by any contractor with respect to the Improvements. Such assignment of patent indemnity protection by Lessor to Lessee shall constitute the entire liability of Lessor for any patent infringement by Improvements furnished pursuant to this Lease.

Section 9.5. Disclaimer of Warranties. THE IMPROVEMENTS ARE AND ARE TO BE DELIVERED AS IS, AND LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE IMPROVEMENTS, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE IMPROVEMENTS.

ARTICLE X

OPTION TO PURCHASE

Section 10.1. When Available. Lessee shall have the option to purchase Lessor's interest in the Project on the Payment Dates for the Purchase Option Prices as set forth in Exhibit B, but only if Lessee is not in default under this Lease, and only in the manner provided in this Article.

Section 10.2. Exercise of Option. Lessee shall give notice to Lessor of its intention to exercise its option not less than sixty (60) days prior to the Payment Date on which the option is to be exercised and shall deposit with Lessor on the date of exercise an amount equal to all Rental Payments and any other amounts then due or past due (including the Rental Payment due on such Payment Date) and the Purchase Option Price. The closing shall be on the applicable Payment Date at such office as shall be designated by Lessor.

Section 10.3. Release of Lessor's Interest. Upon exercise of the Purchase Option by Lessee, Lessor shall convey or release to Lessee, all of its right, title and/or interest in and to the Project by delivering to Lessee such documents as Lessee deems necessary for this purpose.

ARTICLE XI

ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 11.1. Assignment by Lessor. Lessor shall not assign its obligations under this Lease, and no purported assignment thereof shall be effective. All of Lessor's rights, title and/or interest in and to this Lease, the Rental Payments and other amounts due hereunder and the Project may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, but only upon the written consent of Lessee. Lessee shall pay all Rental Payments due hereunder to or at the direction of Lessor or the assignee named in the most recent assignment, if any. During the Lease Term Lessee shall keep a complete and accurate record of all such assignments, if any. Transfer of the Lessor's rights under this Lease shall be made only upon presentation of the Lessor's original of this Lease to the Lessee's Treasurer for notation of assignment and transfer on such original.

Section 11.2. Assignment and Subleasing by Lessee. Neither this Lease nor Lessee's interest in the Project may be assigned by Lessee without the written consent of Lessor. However, the Project may be subleased by Lessee, in whole or in part, without the consent of Lessor, subject, however, to each of the following conditions:

(i) This Lease and the obligation of Lessee to make Rental Payments hereunder, shall remain obligations of Lessee.

(ii) The sublessee shall assume the obligations of Lessee hereunder to the extent of the interest subleased.

(iii) Lessee shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease.

(iv) No sublease by Lessee shall cause the Project to be used for a purpose other than a governmental function authorized under the provisions of the Constitution and laws of the State.

(v) No sublease shall cause the Interest component of the Rental Payments due with respect to the Project to become includable in gross income of the recipient for federal income tax purposes.

Section 11.3. Restriction on Mortgage or Sale of Project by Lessee. Except as provided in Section 11.2, Lessee will not mortgage, sell, assign, transfer or convey the Project or any portion thereof during the Term of this Lease, without the written consent of Lessor. Lessee may make such contracts for the use of the Project with the Nebraska State Fair Board as Lessee shall deem appropriate so long as such contract shall not cause the Interest component of the Rental Payments due with respect to the Project to become includable in gross income of the recipient for federal income tax purposes.

ARTICLE XII

EVENTS OF DEFAULT AND REMEDIES

Section 12.1. Events of Default Defined. The following shall be “events of default” under this Lease and the terms “events of default” and “default” shall mean, whenever they are used in this Lease, any one or more of the following events:

(i) Failure by Lessee to pay any Rental Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of ten (10) business days after telephonic or telegraphic notice given by Lessor that the payment referred to in such notice has not been received, such telephonic or telegraphic notice to be subsequently confirmed in writing, or after written notice.

(ii) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Clause (i) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

(iii) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental or proprietary function or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

The provisions of this Section 12.1 and Section 12.2 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to carry out its obligations under this Lease, other than its obligation to pay Rental Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph, Lessee shall not be deemed in default during the continuance of such inability. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause

or event not reasonably within the control of Lessee and not resulting from its negligence. Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing Lessee from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of Lessee and Lessee shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of Lessee unfavorable to Lessee.

Section 12.2. Remedies on Default. Whenever any event of default referred to in Section 12.1 hereof shall have happened and be continuing with respect to the Project, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(i) Lessor, with or without terminating this Lease, may declare all Rental Payments due or to become due during the Fiscal Year in effect when the default occurs to be immediately due and payable by Lessee, whereupon such Rental Payments shall be immediately due and payable.

(ii) Lessor, with or without terminating this Lease, may repossess the Project by giving Lessee written notice to surrender the Project to Lessor for the remaining term of the Ground Lease, whereupon Lessee shall do so in the manner provided in Section 12.3. If the Project or any portion of it has been destroyed or damaged beyond repair, Lessee shall pay the applicable Purchase Option Price of the Project, as set forth in Exhibit B (less credit for Net Proceeds), to Lessor. Notwithstanding the fact that Lessor has taken possession of the Project, Lessee shall continue to be responsible for the Rental Payments due during the Fiscal Year then in effect. If this Lease has not been terminated, Lessor shall return possession of the Project to Lessee at Lessee's expense when the event of default is cured.

(iii) If Lessor terminates this Lease and takes possession of the Project, Lessor shall thereafter use its best efforts to sell or lease its interest in the Project or any portion thereof in a commercially reasonable manner in accordance with applicable State laws. Lessor shall apply the proceeds of such sale or lease to pay the following items in the following order: (a) all costs incurred in securing possession of the Project; (b) all expenses incurred in completing the sale or lease; (c) the applicable Purchase Option Price of the Project; and (d) the balance of any Rental Payments owed by Lessee during the Fiscal Year then in effect. Any sale proceeds remaining after the requirements of Clauses (a), (b), (c) and (d) have been shall be the property of Lessee.

(iv) If the proceeds of sale or lease of the Project are not sufficient to pay the balance of any Rental Payments owed by Lessee during the Fiscal Year then in effect, Lessor may take any other remedy available at law or in equity to require Lessee to perform any of its obligations hereunder and to enforce the Ground Lease and Lessee's compliance with the terms of the Ground Lease.

Section 12.3. Surrender of Project. Upon the expiration or termination of this Lease prior to the payment of all Rental Payments in accordance with Exhibit B, Lessee shall surrender the Project to Lessor in the condition, repair, appearance and working order required in Section 7.2. If Lessee refuses to surrender the Project in the manner designated, Lessor may repossess the Project and charge to Lessee the costs of such repossession or pursue any remedy described in Section 12.2.

Section 12.4. No Remedy Exclusive. No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

ARTICLE XIII

ADMINISTRATIVE PROVISIONS

Section 13.1. Notices. All notices, certificates, legal opinions or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified on the first page hereof; provided that Lessor and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates, legal opinions or other communications will be sent.

Section 13.2. Financial Information. During the Term of this Lease, Lessee annually will provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of Lessee to continue this Lease as may be requested by Lessor or its assignee.

Section 13.3. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.4. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.5. Amendments, Changes and Modifications. This Lease may be amended or any of its terms modified only by written document duly authorized, executed and delivered by Lessor and Lessee.

Section 13.6. Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provision, Article, Section or Clause of this Lease.

Section 13.7. Further Assurances and Corrective Instruments. Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Lease.

Section 13.8. Execution in Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.9. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its corporate name by its duly authorized officer; and Lessee has caused this Lease to be executed in its name by its duly authorized officers, as of the date first above written.

WELLS FARGO BROKERAGE SERVICES, LLC,
as Lessor

By _____
Its _____

CITY OF GRAND ISLAND, NEBRASKA
as Lessee

By _____
Its Mayor

ATTEST:

By _____
Its City Clerk

SIGNATURE PAGE TO LEASE-PURCHASE AGREEMENT
DATED AS OF _____, 20__

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009 by _____, agent on behalf of Wells Fargo Brokerage Services, LLC, a limited liability company.

Notary Public
My Commission Expires: _____

(SEAL)

STATE OF NEBRASKA)
) ss.
COUNTY OF HALL)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by _____, Mayor of the City of Grand Island, Nebraska, on behalf of said city.

Notary Public
My Commission Expires: _____

(SEAL)

EXHIBIT A

LAND

IMPROVEMENTS

EXHIBIT B

SCHEDULE OF RENTAL PAYMENTS

Payment <u>Date</u>	Rental <u>Payment</u>	<u>Interest</u>	<u>Principal</u>	Purchase <u>Option Price</u>
------------------------	--------------------------	-----------------	------------------	---------------------------------

EXHIBIT C

OFFICERS' CERTIFICATE

We, the undersigned, hereby certify that we are the duly qualified and acting Mayor and City Clerk of the City of Grand Island (the "Lessee"), and with respect to the Lease-Purchase Agreement dated as of July 1, 2009 (the "Lease"), by and between the Lessee and Wells Fargo Brokerage Services, LLC (the "Lessor"), that:

1. In our capacities as such officers we have executed the Lease, a Ground Lease dated as of July 1, 2009 (the "Ground Lease"), by and between the Lessee and Hall County Livestock Improvement Association and an Escrow Agreement dated as of July 1, 2009 (the "Escrow Agreement"), by and among the Lessor, the Lessee and Wells Fargo Bank, National Association, acting as Escrow Agent.

2. The Rental Payments provided for in Exhibit B to the Lease shall commence and be due and payable on _____, 2009, and thereafter during the Term of the Lease (as that term is defined in the Lease) as shown in Exhibit B to the Lease. Lessee has appropriated and/or taken all other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Lease in Lessee's current fiscal year, and such moneys will be applied in payment of such Rental Payments.

3. There is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body, that challenges the organization or existence of the Lessee; the authority of its officers; the proper authorization, approval and execution of the Ground Lease, the Lease, the Escrow Agreement and other documents contemplated thereby; the appropriation of money to pay the Rental Payments due under the Lease; or the ability of the Lessee otherwise to perform its obligations under the Ground Lease, the Lease, the Escrow Agreement and the other documents and the transactions contemplated thereby.

4. Lessee has obtained from a reputable insurance company qualified to do business in the State of Nebraska insurance with respect to all risks required to be covered thereby pursuant to Article VI of the Lease.

Dated: _____, 2009.

CITY OF GRAND ISLAND, NEBRASKA

By _____
Its Mayor

Attest:

By _____
Its City Clerk

EXHIBIT D

OPINION

(may be provided by separate counsel for the City as to different matters set forth)

Mayor and Council
City of Grand Island
100 East First Street
Grand Island, NE 68802-1968

Wells Fargo Brokerage Services, LLC
Public Finance Department
608 Second Avenue South – 10th Floor
MAC: N9303-105
Minneapolis, MN 55479

Re: Lease-Purchase Agreement dated as of July 1, 2009, by and between Wells Fargo Brokerage Services, LLC (“Lessor”) and the City of Grand Island, Nebraska, (“Lessee”)

Ladies and Gentlemen:

I have acted as counsel to Lessee with respect to the Lease-Purchase Agreement described above (the “Lease”) and various related matters, and in this capacity have reviewed a duplicate original or certified copy of the Lease, the Ground Lease dated as of July 1, 2009 (the “Ground Lease”) by and between Lessor and Lessee and the Escrow Agreement dated as of July 1, 2009 (the “Escrow Agreement”) among the Lessor, the Lessee and Wells Fargo Bank, National Association, acting as escrow agent, and the Exhibits attached to each of said documents. Based upon the examination of these and such other documents as I deem relevant, it is my opinion that:

1. Lessee is a political subdivision of the state of the State of Nebraska (the “State”), duly organized, existing and operating under the Constitution and laws of the State.
2. Lessee is authorized and has power under applicable law to enter into the Lease, the Ground Lease and the Escrow Agreement and to carry out its obligations thereunder and the transactions contemplated thereby.

3. The Lease, the Ground Lease and the Escrow Agreement have been duly authorized, approved, executed and delivered by and on behalf of Lessee, and are valid and binding contracts of Lessee enforceable in accordance with their terms, except to the extent limited by State and Federal laws affecting remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.

4. The authorization, approval and execution of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public bidding and all other laws, rules and regulations of the State.

5. The execution of the Lease and the appropriation of moneys to pay the Rental Payments coming due thereunder do not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.

6. There is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body, that challenges the organization or existence of Lessee; the authority of Lessee or its officers or its employees to enter into the Lease, the Ground Lease and the Escrow Agreement; the proper authorization, approval and/or execution of the Lease, the Ground Lease and the Escrow Agreement, Exhibits thereto and other documents contemplated thereby; the appropriation of moneys to make Rental Payments under the Lease for the current fiscal year of Lessee; or the ability of Lessee otherwise to perform its obligations under the Lease, the Ground Lease and the Escrow Agreement and the transactions contemplated thereby.

(Subject to qualifications determined appropriate by each opining counsel and acceptable to Lessor)

Dated _____, 20__.

Very truly yours,

Initial Presentation Draft

ESCROW AGREEMENT

Among

WELLS FARGO BROKERAGE SERVICES, LLC,

as Lessor,

THE CITY OF GRAND ISLAND, NEBRASKA,

as Lessee,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Escrow Agent

Dated as of July 1, 2009

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Escrow Agreement") is made and entered into as of July 1, 2009, by and among Wells Fargo Brokerage Services, LLC, a limited liability company organized under the laws of the State of Delaware (the "Lessor"), Wells Fargo Bank, National Association, a national banking association organized under the laws of the United States and having trust powers (the "Escrow Agent") and the City of Grand Island, Nebraska, a city of the first class of the State of Nebraska (the "Lessee").

In the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

ARTICLE 1

RECITALS

Section 1.01. The Lessor and the Lessee are concurrently with the delivery of this Escrow Agreement entering into a Lease-Purchase Agreement (the "Lease") dated as of July 1, 2009 pursuant to Ordinance No. _____ passed and approved by the Mayor and Council of the Lessee on May __, 2009 (the "Ordinance") in order to provide financing for the construction and acquisition of a recreational facility to be owned and operated by the Lessee (the "Project"). The parties hereto desire to provide for the holding and application of a deposit required to be made for payment of costs of the Project by the Lessor in accordance with the terms of the Lease for the payment of costs of the Project.

Section 1.02. The terms capitalized in this Escrow Agreement but not defined herein shall have the meanings given to them in the Lease.

Section 1.03. Under the Lease, the Lessor has agreed to deposit with Escrow Agent the sum of \$5,000,000, to be credited to the Escrow Fund established in Article 2 hereof and to be applied to pay costs of the Project. The Lessor hereby authorizes and instructs the Escrow Agent to receive such sum on its behalf in accordance with the terms of the Lease.

Section 1.04. Under the terms of the Lease Agreement, the Lessor and Lessee have agreed to contract for the construction and acquisition of the Project. Costs of the Project shall be paid from the amount deposited with Escrow Agent as described in Sections 1.03, under the terms of this Escrow Agreement.

Section 1.05. The Lessor and the Lessee hereby employ the Escrow Agent to receive, hold, invest and disburse the moneys paid to the Escrow Agent as described in Section 1.03, all as hereinafter provided; however, the Escrow Agent shall not be obligated to assume or perform any obligation of the Lessor or the Lessee under the Lease except as set forth in this Escrow Agreement.

Section 1.06. Each of the parties has authority to enter into this Escrow Agreement, and has taken all actions necessary to authorize the execution of this Escrow Agreement by the officers whose signatures are affixed hereto.

ARTICLE 2

ESCROW FUND

Section 2.01. Escrow Agent shall establish a special escrow fund designated as the “City of Grand Island Construction and Acquisition Fund” (the “Escrow Fund”), shall keep such Escrow Fund separate and apart from all other funds and moneys held by it and shall administer such Escrow Fund as provided in this Escrow Agreement.

Section 2.02. All moneys paid to Escrow Agent by Lessor pursuant to Section 1.03 of this Escrow Agreement shall be credited to the Escrow Fund. Escrow Agent shall use the moneys in the Escrow Fund to pay the costs of the Project upon receipt with respect thereto of a Payment Request in the form attached hereto as Exhibit A, executed by Lessee, fully completed and with all supporting documents described therein attached thereto. Upon receipt of a Payment Request, an amount equal to the cost for the Project as shown therein shall be paid directly to the person or entity entitled to payment as specified therein. Lessee shall submit Payment Requests, other than for permitted reimbursement, only for portions of the cost of the Project as billed by the contractor or supplier and currently owing.

Section 2.03. Lessee shall furnish to Escrow Agent and Lessor as soon as available a copy of each contract or purchase order for construction or acquisition of the Project. Amounts for payment of costs of the Project shall be disbursed no later than August 31, 2010. Amounts, if any, remaining undisbursed as of such date shall be applied on behalf of the Lessee to make prepayment of the Rental Payments due under the Lease on the next permitted date for prepayment under the terms of the Lease.

Section 2.04. Upon receipt of written notice from the Lessor that a default or event of default has occurred under the Lease or that Lessee has determined not to complete the construction and acquisition of the Project, Escrow Agent shall liquidate all investments held in the Escrow Fund and transfer the proceeds thereof and all other moneys held in the Escrow Fund to Lessor to be applied to the prepayment, in whole or in part of the Rental Payments due under the Lease.

Section 2.05. Escrow Agent shall only be responsible for the safekeeping and investment of the moneys held in the Escrow Fund, and the disbursement thereof in accordance with this Article, and shall not be responsible for the authenticity or accuracy of such certifications or documents, the application of amounts paid pursuant to such certifications by the persons or entities to which they are paid, or the sufficiency of the moneys credited to the Escrow Fund to make the payments herein required.

ARTICLE 3

MONEYS IN ESCROW FUND; INVESTMENT

Section 3.01. The moneys and investments held by Escrow Agent under this Escrow Agreement are irrevocably held in trust for the benefit of the Lessor and the Lessee and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Escrow Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of the Lessor or the Lessee. The Lessor and the Lessee intend that the Escrow Fund constitute an escrow account in which the Lessee has no legal or equitable right, title or interest until satisfaction in full of all conditions contained herein and in the Lease for the disbursement of funds by Escrow Agent. However, if the parties' intention that Lessee shall have no legal or equitable right, title or interest until all conditions for disbursement are satisfied in

full is not respected in any legal proceeding, the parties hereto intend that Lessor shall have a security interest in the Escrow Fund, and such security interest is hereby granted to Lessor by the Lessee (to the fullest extent that it may lawfully do so), to secure payment of all sums due to Lessor under the terms of the Lease. Escrow Agent shall hold the Escrow Fund and the securities and monies therein for the purpose of perfecting Lessor's security interest therein and shall dispose of the Escrow Fund only in accordance with the terms and conditions of this Escrow Agreement. Escrow Agent hereby accepts appointment as agent and agrees to establish and maintain the Escrow Fund and the monies and securities therein as a financial intermediary or securities intermediary, as the case may be, for Lessor, as entitlement holder. Escrow Agent confirms that (i) the Escrow Fund is a "securities account" as such term is defined in §8-501 of the Nebraska UCC; (ii) Escrow Agent shall, subject to the terms of this Escrow Agreement, treat Lessor as entitled to exercise the rights that comprise any financial asset credited to the Escrow Fund; (iii) all property delivered to Escrow Agent for deposit into the Escrow Fund will be promptly credited to the Escrow Fund; and (iv) all securities and other property underlying any financial assets credited to the Escrow Fund shall be registered in the name of Escrow Agent, indorsed to Escrow Agent or in blank or credited to another securities account maintained in the name of Escrow Agent, and in no case will any financial asset credited to the Escrow Fund be registered in the name of Lessee, payable to the order of Lessee or specially indorsed to Lessee. Escrow Agent agrees that each item of property (whether investment property, financial asset, security, instrument or cash) credited to the Escrow Fund shall be treated as a "financial asset" within the meaning of §8-102(a)(9) of the Nebraska UCC. If at any time Escrow Agent shall receive an "entitlement order" (within the meaning of §8-102(a)(8) of the Nebraska UCC) issued by Lessor and relating to the Escrow Fund, Escrow Agent shall comply with such entitlement order without further consent by Lessee or any other person.

Section 3.02. Moneys held by Escrow Agent hereunder shall be invested and reinvested by Escrow Agent upon order of Lessee only in Qualified Investments, as defined in Section 3.05. Such investments shall be registered in the name of Escrow Agent and held by Escrow Agent for the benefit of the Lessor and for disbursement to pay costs of issuance and costs of the Project. With the approval of Lessee, Escrow Agent may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Article. Such investments and reinvestments shall be made giving full consideration for the time at which funds are required to be available.

Section 3.03. Escrow Agent shall, without further direction from Lessee, sell such investments as and when required to make any payment from the Escrow Fund. Any income received on such investments shall be credited to the Escrow Fund.

Section 3.04. Escrow Agent shall furnish to the Lessor and the Lessee reports accounting for all investments and interest and income therefrom. Such accounting shall be furnished no less frequently than every three months and upon request of the Lessor or the Lessee. Neither the Lessor nor the Escrow shall be responsible or liable for any loss suffered in connection with any investment of moneys made by Escrow Agent in accordance with this Article (other than the Escrow Agent in its capacity as obligor under any Qualified Investment). In the event funds in the Escrow Fund are insufficient to pay the costs of the Project, the Lessee shall provide for such costs from its other funds outside of and apart from the provisions for payment set forth in this Escrow Agreement.

Section 3.05. As used in this Escrow Agreement, the term "Qualified Investments" means (a) securities which are general obligations of or are guaranteed as to the payment of principal and interest by the United States of America; (b) obligations, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following: Federal Home Loan Bank System, Government National Mortgage Association, Farmers Home Administration, Federal Home Loan Mortgage Corporation or Federal

Housing Administration; (c) commercial paper issued by corporations organized under the laws of a state of the United States which is rated in the highest rating category by Standard & Poor's Ratings Services, a division of the McGraw Hill Companies, Inc., or Moody's Investors Service, Inc.; or (d) certificates of deposit issued by or other forms of deposit in any national or state bank to the extent that such deposits are fully insured by the Federal Deposit Insurance Corporation or any successor agency which is backed by the full faith and credit of the United States. By execution of this Escrow Agreement, the Lessee also consents to the investment and reinvestment by Escrow Agent of any moneys held as part of the Escrow Fund in shares of a money market fund (including a money market fund for which Escrow Agent and its affiliates provide advisory, custodial, administrative or similar services and receives fees), provided: (x) the money market fund is registered under the Investment Company Act of 1940; (y) the money market fund has been rated by a nationally recognized statistical rating organization in one of that organization's three highest mutual fund rating categories; and (z) the money market fund's investments are limited to those Qualified Investments listed in (a), (b) or (c) above. In the absence of duly authorized and complete directions regarding investment of moneys held in the Escrow Fund, the Escrow Agent shall automatically invest and reinvest the same in units of money market mutual funds, provided that such money market mutual funds constitute a Qualified Investment.

ARTICLE 4

ESCROW AGENT'S AUTHORITY; INDEMNIFICATION

Section 4.01. The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder shall be limited to those specifically provided herein.

Section 4.02. Unless the Escrow Agent is guilty of negligence or misconduct with regard to its duties hereunder, the Lessee, to the fullest extent that it may lawfully do so, hereby agrees to indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as the Escrow Agent under this Escrow Agreement; and in connection therewith, to indemnify the Escrow Agent against any and all expenses, including reasonable attorneys' fees (to the extent permitted by law) and the cost of defending any action, suit or proceeding or resisting any claim. The Escrow Agent shall be vested with a lien on all property deposited hereunder for indemnification, for reasonable attorneys' fees (to the extent permitted by law), court costs, for any suit, interpleader or otherwise, or any other expenses, fees or charges of any character or nature, which may be incurred by the Escrow Agent by reason of disputes arising among the Lessor and the Lessee as to the correct interpretation of the Lease or this Escrow Agreement and instructions given to the Escrow Agent hereunder, or otherwise, with the right of the Escrow Agent, regardless of the instructions aforesaid, to hold the said property until and unless said additional expenses, fees and charges shall be fully paid.

Section 4.03. If the Lessor and the Lessee shall be in disagreement about the interpretation of the Lease or this Escrow Agreement, or about the rights and obligations, or the propriety of any action contemplated by Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Escrow Agent shall be indemnified by the Lessee

for all costs, including reasonable attorneys' fees (to the extent permitted by law), in connection with such civil action, and shall be fully protected in suspending all or part of its activities under this Escrow Agreement until a final judgment in such action is received.

Section 4.04. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection in acting in accordance with the opinion of such counsel. The Escrow Agent shall not otherwise be liable for any mistakes of facts or errors of judgment, or for any acts or omissions of any kind unless caused by its negligence or misconduct.

ARTICLE 5

ESCROW AGENT'S COMPENSATION

The Escrow Agent's compensation for the services to be rendered hereunder is set forth in Exhibit B hereto. Escrow Agent acknowledges that the Lessor and the Lessee have relied on its undertakings as set forth in this Escrow Agreement. The Lessee hereby agrees to pay and/or reimburse the Escrow Agent upon request for all expenses, disbursements and advances, investment fees or other charges, including reasonable attorneys' fees, incurred or made by it in connection with carrying out its duties hereunder and such fees and charges may be deducted from investment earnings on the Escrow Fund.

ARTICLE 6

CHANGE OF ESCROW AGENT

Section 6.01. A national banking association located in the United States or a state bank or trust company organized under the laws of a state of the United States, qualified as a depository of public funds, may be substituted to act as the Escrow Agent under this Escrow Agreement upon agreement of the Lessor and Lessee. Such substitution shall not be deemed to affect the rights or obligations of the parties. Upon any such substitution, the Escrow Agent agrees to assign to such substitute Escrow Agent its rights under this Escrow Agreement.

Section 6.02. The Escrow Agent or any successor may at any time resign by giving mailed notice to the Lessor and the Lessee of its intention to resign and of the proposed date of resignation, which shall be a date not less than thirty (30) days after such notice is deposited in the United States mail with postage fully prepaid, unless an earlier resignation date and the appointment of a successor Escrow Agent shall have been or are approved by Lessor and Lessee.

Section 6.03. The Escrow Agent may appoint an agent to exercise any of the powers, rights or remedies granted to the Escrow Agent under this Escrow Agreement, and to hold title to property or to take any other action which may be desirable or necessary.

ARTICLE 7

ADMINISTRATIVE PROVISIONS

Section 7.01. The Escrow Agent shall keep complete and accurate records of all moneys received and disbursed under this Escrow Agreement, which shall be available for inspection by the Lessor and Lessee, or the agent of either thereof, at any time during regular business hours.

Section 7.02. All notices, certificates, requests, demands and other communications provided for hereunder shall be in writing and shall be (a) personally delivered, (b) sent by first class United States mail, (c) sent by overnight courier of national reputation, or (d) transmitted by telecopy, in each case addressed to the party to whom notice is being given at its address as set forth below and, if telecopied, transmitted to that party at its telecopier number set forth below or, as to each party, at such other address or telecopier number as may hereafter be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall be deemed to have been given on (a) the date received if personally delivered, (b) when deposited in the mail if delivered by mail, (c) the date sent if sent by overnight courier, or (d) the date of transmission if delivered by telecopy.

Section 7.03. This Escrow Agreement shall be construed and governed in accordance with the laws of the State of Nebraska.

Section 7.04. Any provisions of this Escrow Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Escrow Agreement or the Loan Agreement.

Section 7.05. This Escrow Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

Section 7.06. This Escrow Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Escrow Agreement.

Section 7.07. This Escrow Agreement shall terminate upon disbursement by the Escrow Agent of all moneys held by it hereunder.

Section 7.08. This Escrow Agreement together with the Lease and that related Ground Lease dated as of July 1, 2009 to which both Lessor and Lessee are parties, constitutes the entire agreement of the parties relating to the subject matter hereof.

Section 7.09. To the extent permitted by law, the terms of this Escrow Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties hereto, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

The Lessor and the Lessee may agree to amend the date specified in Section 2.03 for payment of costs of the Project to a date no more than three years after the date of delivery of the Lease. Such amendment shall be effected by written agreement signed by Lessor and the Lessee.

[REMAINDER OF PAGE INTENTIONALLY BLANK; EXECUTION PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the day and year first written above.

WELLS FARGO BROKERAGE SERVICES, LLC,
Lessor

By: _____
Title: _____
Address: MAC: 9303-105
608 Second Avenue South
9th Floor
Minneapolis, Minnesota 55479
Telephone (612) 667-7421
Telecopier (612) 667-9906

WELLS FARGO BANK, NATIONAL
ASSOCIATION, Escrow Agent

By: _____
Title: _____
Address: Corporate Trust Department
1248 "O" Street
4th Floor
Lincoln, Nebraska 68501
Telephone (402) 434-4431
Telecopier (402) 434-4612

THE CITY OF GRAND ISLAND, NEBRASKA

By: _____
Title: Mayor
PO Box 1968
100 East First Street
Grand Island, NE 68802-1968
Telephone (308) 385-5444, Ext. 169
Telecopier (308) 385-5486

Exhibit A to Escrow Agreement

(FORM OF PAYMENT REQUEST)

Payment Request No. _____

The City of Grand Island, Nebraska, as lessee (the "Lessee") under that Lease-Purchase Agreement dated as of July 1, 2009 (the "Lease") between Lessee and Wells Fargo Brokerage Services, LLC, (the "Lessor"), hereby requests Wells Fargo Bank, National Association, as escrow agent (the "Escrow Agent") under the Escrow Agreement dated as of July 1, 2009 (the "Escrow Agreement") among the Escrow Agent, the Lessor and the Lessee, to make payment from the Escrow Fund (as defined in the Escrow Agreement) to the following party or parties, at the addresses set forth below:

<i>Payee</i>	<i>Address</i>	<i>Amount To Be Paid</i>	<i>Cost of Issuance or Project Description</i>
---------------------	-----------------------	-------------------------------------	---

In connection therewith, the undersigned officer of the Lessee hereby certifies as follows:

1. All of the provisions of the Lease and the Escrow Agreement are incorporated herein by reference and capitalized terms used herein and not defined shall have the meanings assigned to them in the Loan Agreement and the Escrow Agreement.

2. The payments to be made to the payees set forth above are for costs of construction and/or acquisition of the Project (as defined in the Escrow Agreement) described above, or reimbursement to Lessee therefor, and the payments have not been the basis for a prior request which has been paid. Any amounts to be reimbursed to the Lessee are for advances made by the Lessee from its own funds not earlier than May 1, 2009.

3. All of Lessee's representations, covenants and warranties contained in the Lease and the Certificate with Respect to Tax Matters (the "Tax Certificate") were true and accurate in all material respects as of the date made, and remain true and accurate in all material respects as of the date of this Payment Request, and the Lessee has fully and satisfactorily performed all of its covenants, representations and obligations to date required under the Lease, the Escrow Agreement and the Tax Certificate. No Default Event has occurred under the Lease.

4. The Lessee understands that the Lessor is relying on the certifications herein with regard to and in connection with approving the disbursement requested hereby.

5. ***Please indicate if this Payment Request relates to the final disbursement from the Escrow Fund: __Yes __No.***

If this Payment Request relates to the final disbursement from the Escrow Fund, the Lessee and the Lessor hereby instruct Escrow Agent to disburse to Lessor the remaining moneys held in the Escrow Fund to be applied to make a partial prepayment on the Rental Payments as set forth in the Lease.

6. ***Please indicate if this Payment Request reimburses Lessee for any payment or payments previously made by Lessee: __Yes __No.***

If this Payment Request requests such a reimbursement, the payment or payments for any obligations originally paid by Lessee, for federal income tax purposes, was after May 1, 2009.

7. ***Lessee attaches hereto the following items:***

(a) ***invoices and/or bills of sale and/or contractor's payment certifications*** relating to the Project and, if such invoices have been paid by Lessee, evidence of payment thereof;

(b) an ***insurance certificate*** showing coverages as required by the Lease if such insurance certificate has not been previously provided by Lessee to the Lessor.

LESSEE:

THE CITY OF GRAND ISLAND,
NEBRASKA

By: _____
Title: _____
Date: _____

Attachments: 1. Invoices/Certificates for Payment
2. Insurance Certificate (if not previously provided)

Exhibit B to Escrow Agreement

SCHEDULE OF ESCROW AGENT'S FEES

STOPPED HERE

Exhibit C to Escrow Agreement

FORM OF AMENDMENT

THIS AMENDMENT TO ESCROW AGREEMENT is dated as of _____, 20__ (this "Amendment") by and between Wells Fargo Brokerage Services, LLC (the "Lessor"), the City of Grand Island, Nebraska, (the "Lessee") and Wells Fargo Bank, National Association, (the "Escrow Agent").

RECITALS

A. The Lessor, the Lessee and the Escrow Agent have entered into an Escrow Agreement dated as of July 1, 2009 (the "Escrow Agreement").

B. Pursuant to Section 7.09 of the Escrow Agreement, the Lessor and the Lessee may, without the consent of the Escrow Agent, amend the date specified in Section 2.03 of the Escrow Agreement to a date no more than three years after the date of delivery of the Lease.

C. The Lessor and the Lessee desire to amend the date specified in Section 2.03 of the Escrow Agreement.

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

1. The Lessor and the Lessee amend Section 2.03 of the Escrow Agreement by replacing the date "August 31, 2010" as it appears in the second sentence thereof with the date "_____, 20__."

2. This Amendment shall become effective only upon execution hereof by duly authorized officers or representatives of the Lessor and the Lessee.

3. All other terms and conditions of the Escrow Agreement not specifically amended by this Amendment shall remain in full force and effect and are hereby ratified and confirmed by the Lessor and the Lessee.

4. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in their respective corporate names by their duly authorized officers, all as of the date first written above.

WELLS FARGO BROKERAGE SERVICES, LLC, Lessor THE CITY OF GRAND ISLAND, NEBRASKA CENTER, INC., Lessee

By: _____
Title: _____

By: _____
Title: _____

DOCS/910956.1

GROUND LEASE

THIS GROUND LEASE ("Lease") is made and entered into July 1, 2009, by and between HALL COUNTY LIVESTOCK IMPROVEMENT ASSOCIATION, a Nebraska nonprofit corporation ("Fonner Park"); WELLS FARGO BROKERAGE SERVICES, L.L.C. (Wells Fargo); and CITY OF GRAND ISLAND, NEBRASKA, a city of the first class of the State of Nebraska ("City");

WHEREAS, the City and Fonner Park have determined that Wells Fargo and the City should have title to a multi-purpose recreational exposition building and associated infrastructure improvements (the "Building"); and

WHEREAS, the City and Wells Fargo Brokerage Services, LLC ("Wells Fargo") have entered into a Lease Purchase Agreement dated July 1, 2009 ("Lease Purchase Agreement") regarding the Building.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties do hereby agree and contract as follows:

1. **Certain Definitions.** For purposes of this Lease, the following terms are defined:

(a) "Leased Premises" shall mean that certain real property located in Hall County, Nebraska, which has been identified by Fonner Park based upon the plans and specifications approved and provided by the Nebraska State Fair Board. The Leased Premises are deemed by the parties hereto to be suitable to construct the Building and are located outside the restricted security envelope required of Fonner by the State Racing Commission, so as to be usable throughout each year. The exact location and legal description of the Leased Premises as determined by survey, are shown on Exhibit "A" attached hereto and made a part hereof. As part of this Lease, Wells Fargo and the City are hereby granted during the term of the Lease proper ingress and egress on, over and across the land of Fonner Park for access and suitable parking, as is necessary for proper utilization of the Building. Such land of Fonner Park is defined in Exhibit "B" hereto attached and incorporated herein.

(b) "Building" shall mean the building, structures, fixtures and improvements constructed or installed upon the Leased Premises and related infrastructure improvements serving the Building.

Certain other defined terms shall have the respective meanings assigned to them elsewhere in this Lease.

2. **Demise and Term.** Fonner Park hereby leases and rents to Wells Fargo and the City, and Wells Fargo and the City hereby lease and rent from Fonner Park, the Leased Premises for the period commencing with the date of delivery hereof and ending on December 31, 2050 (the "Term"). Thereafter, the Term shall automatically continue for five (5) year successive terms unless terminated by either party upon ninety (90) days written notice prior to the end of the expiring term. The leasehold interest of Wells Fargo hereunder shall be assigned and transferred in full to City

upon the City's fulfillment of all of its obligations under the Lease Purchase Agreement with Wells Fargo.

3. **Use.** The Leased Premises shall be used for the construction and operation of the Building to be used by the City for public purposes, including, without limitation, for use as a recreational facility, for any city organizational function and also for State Fair purposes, if and when appropriate, and for any other suitable use as determined by the City. Upon mutual agreement of the parties, the City may also use the Building for any sanctioned Nebraska School Athletic Activities Association or collegiate athletic event, or for any trade show, banquet, professional entertainment or convention. Such agreement from Fonner Park shall not be unreasonably withheld.

4. **Building.** The Building on the Leased Premises shall be designed in accordance with plans and specifications provided by the Nebraska State Fair Board, with due consideration to be provided to the City to allow for the Building to be used for any of the City's purposes. This Lease shall apply solely to the Building and the Leased Premises (as defined in Exhibit A hereto) and to access and parking on, over and across the land described on Exhibit B hereto. All necessary utilities that will be needed for the Building are to be furnished out of the funds to be collected and utilized for the relocation of the Nebraska State Fair, which project is being administered by the Nebraska State Fair Board and Fonner Park. The costs and expenses of any of these utility lines shall be paid for with the relocation funds and not from the separate funds of Fonner Park. The City shall have the right at its cost, as and to the extent that it determines appropriate, to install utilities for the Building, on, over and across the real estate defined in Exhibit "B" hereto attached.

5. **Rent.** City shall pay to Fonner Park as gross rent ("Rent") for the Term hereof the sum of One Thousand and No/100 Dollars (\$1,000.00) per year, first payable upon the certificate of occupancy being provided for the facility to the City and then payable on the same day of each year thereafter for the balance of the lease term and any extension thereof.

6. **Maintenance and Repair.** The maintenance, repairs and replacements of the Building and interior and the Leased Premises shall be the responsibility of the City. The maintenance, repairs and replacement of surrounding property as described on Exhibit "C" hereto attached and incorporated herein shall also be the responsibility of the City, including, but not limited to, maintenance of suitable parking, all sidewalks, landscape, and exterior lighting not attached to the Building, for access, parking and green space areas.

7. **Insurance and Casualty.** During the Terms of this Lease, the City shall, at its own expense, insure the Leased Premises and the Building against loss or damage by fire and extended perils coverage in an amount not less than the full replacement value thereof, with such insurance to be under policies issued by responsible insurers authorized to do business in the State of Nebraska. The insurance policy shall name Wells Fargo, the City and Fonner Park as insured as their respective interests may appear, but so long as the City is not in default of this Lease, any loss shall be adjusted by and paid to Wells Fargo and the City. Upon occurrence of any damage covered by the foregoing property insurance, the City shall repair, replace or reconstruct the Building. The parties agree that if the available proceeds of the property insurance are insufficient to fully restore the Building to the condition existing prior to the loss, the City shall provide funds for restoration beyond the funds available from such insurance if it so chooses. If the City chooses not to restore,

the Lease can be terminated if at such time the City has legal title to the Building. The other provisions of this Lease shall apply as to any such disposition and surrender.

8. **Assignment and Subletting.** Except as may be provided in the Lease Purchase Agreement, City may not assign this Lease or sublet, in whole or in part, the Leased Premises, by operation of law or otherwise without the consent of Fonner Park. The City shall have the right to contract for the use of the Building as it determines appropriate, consistent with the other terms of this Lease. The City has the right to charge admission fees, user fees, and to enter into usage agreements for its purposes for the Building.

9. **No Subordination.** Upon the prior written consent of Fonner Park, the City shall have the right to grant a mortgage or deed of trust upon the leasehold interest evidenced hereby subject to and upon the condition that the mortgagee or beneficiary shall execute an acknowledgment in form acceptable to Fonner Park acknowledging and agreeing that: (a) any such mortgage or deed of trust shall be junior and inferior in all respects to the interest of Fonner Park in the Leased Premises, (b) upon any foreclosure, such mortgagee or beneficiary shall be subject to the terms and conditions of this Lease, and (c) the expiration or termination of this Lease shall terminate any mortgage or deed of trust and such mortgagee or beneficiary shall cause the mortgage or deed of trust to be released and reconveyed upon any such termination. Fonner Park agrees that it will provide written notice of any default by City to the holder of any mortgage or deed of trust of which it has knowledge.

10. **Limitation on Termination as Against Wells Fargo/Disposition of Property.** This Lease shall not terminate until the City has acquired full legal title to the Building from Wells Fargo. Upon termination of this Lease, or any extension thereof, the Leased Premises shall remain the property of Fonner Park. The Building and any other structures or improvements or appurtenances of the City that have been constructed or installed shall remain the property of the City. Fonner Park, upon termination of this Lease, may purchase the City's interest in the Building, other structures or appurtenances for the Fair Market Value of the same. "Fair Market Value" shall mean the value of such interests, as determined by agreement of the parties or by a board of three (3) independent licensed appraisers chosen jointly by the parties. The City's interest may be purchased as determined by state or federal law or by agreement of the parties. If Fonner Park elects not to purchase the Building, structures and appurtenances on the Leased Premises, the City agrees to remove all buildings, structures and appurtenances on the Leased Premises at the City's cost, subject to any remonstrance requirements under applicable law.

11. **Default.** In the event City shall fail to observe and perform the terms and provisions of this Lease, and such failure continues for a period of thirty (30) days after written notice from Fonner Park to City and Wells Fargo (provided, in the event the nature of such failure reasonably requires more than thirty (30) days to cure, such thirty (30) day period shall be extended for as long as it is reasonably necessary provided City commences to cure such failure within such thirty (30) day period and thereafter diligently pursues the same to completion), then Fonner Park may terminate this Lease, City shall forfeit all rights, titles and interests in and to the Leased Premises and City shall remove the Building within ninety (90) days of such termination and shall immediately vacate the Leased Premises except for purposes of removing the Building. Wells Fargo as owner of the Building, shall have the right to cure any default of the City so long as Wells Fargo has legal title to the Building.

12. **Surrender.** City shall, upon termination of this Lease, whether by lapse of time or otherwise, peaceably and promptly surrender the Leased Premises, shall forfeit all rights, titles and interests in and to the Leased Premises and City shall remove the Building within ninety (90) days of such termination and shall immediately vacate the Leased Premises except for purposes of removing the Building. If City remains in possession after the termination of this Lease, without a written lease duly executed by the parties, City shall be deemed a tenant at will.

13. **Notices.** All notices, demands, requests, approvals, consents, offers, statements, and other instruments of communication required or permitted to be given pursuant to the provisions of this Lease, shall be in writing and shall be deemed to have been given when delivered in person, by Federal Express or other 24-hour delivery service, or three (3) business days after being deposited in the United States mail by certified mail, return receipt requested, postage prepaid, addressed to the other party at its address hereinbelow set forth:

City of Grand Island
Attn: Mayor
P.O. Box 1968
100 East First Street
Grand Island, NE 68802-1968
mayor@grand-island.com

Hall County Livestock Improvement Association
Attn: Registered Agent
P.O. Box 490
700 East Stolley Park Road
Grand Island, NE 68802-0490
fonnerpark@aol.com

For the purposes of this paragraph, any party may substitute its address by giving fifteen (15) days notice to the other party in the manner provided above.

14. **Recordation.** Fonner Park, the City and Wells Fargo each agree to execute and record a short form notice of this Lease.

15. **Entire Agreement.** This Lease constitutes the entire agreement between Fonner Park, Wells Fargo and the City regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Except for those set forth in this Lease, no representations, warranties or agreements have been made by Fonner Park, Wells Fargo or the City, to the other with respect to this Lease, or the obligations of Fonner Park, Wells Fargo or the City in connection therewith. The normal rule of construction that any ambiguities be resolved against the drafting party shall not apply to the interpretation of this Lease or any exhibits or amendments hereto.

16. **Binding Effect.** This Lease shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

The parties hereto hereby acknowledge that the proposed transfer of the State Fair from Lancaster County to Hall County has been authorized by LB 1116 as enacted by the Second Session (2008) of the One Hundredth Legislature of the State of Nebraska ("LB 1116") and that there is currently pending in the District Court of Lancaster County, Nebraska, the case of _____ (_____) (the "Pending Litigation"); that the City and Fonner Park are parties to the Pending Litigation; that no temporary restraining order, preliminary injunction, permanent injunction or other order restricting action by the City or Fonner Park has been entered

or is expected to be entered prior to the time (the "Anticipated Commitment Time") when execution and delivery of this Lease are expected to be required in order for construction to be timely completed; that the City's authority to enter into this Lease for the benefit of the citizens of Grand Island, independent of the provisions of LB 1116, is not questioned or challenged in the Pending Litigation; that the Pending Litigation will not likely be finally resolved before the Anticipated Commitment Time; and the parties hereto have determined to proceed with entering into this Lease without respect of the validity of LB 1116 and in order to serve the general governmental purpose of obtaining a recreational facility for the benefit of the City and its citizens. Each of the parties hereto irrevocably waives any right to claim invalidity or seek other equitable or legal relief based upon the doctrine of commercial frustration.

17. **Authority.** Fonner Park, Wells Fargo and the City each acknowledge and represent that it has the right, power and authority to enter into this Lease and bind itself hereto through the party set forth as signatory for the party below.

18. **Indemnification.** Nothing in this Lease shall be construed as an indemnification by Fonner Park or the City of the other for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of and during the performance of this lease. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors or assigns or by third persons, arising out of and during the performance of this Lease shall be determined according to applicable law including but not limited to the Political Subdivision and State Tort Claims Act.

19. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Nebraska.

20. **Effective Date.** This Lease has been dated for convenience of reference as shown on the initial page hereof.

ATTEST:

CITY OF GRAND ISLAND, NEBRASKA

RaNae Edwards, City Clerk

By: _____
Margaret Hornady, Mayor

APPROVED AS TO FORM:

Dale M. Shotkoski, City Attorney

ATTEST:

WELLS FARGO BROKERAGE SERVICES, L.L.C.

By: _____

ATTEST:

HALL COUNTY LIVESTOCK
IMPROVEMENT ASSOCIATION

Charles Bosselman, Secretary

By: _____
Larry Toner, President

STATE OF NEBRASKA)
)SS:
COUNTY OF HALL)

The foregoing instrument was acknowledged before me by Margaret Hornady, Mayor of the City of Grand Island, Nebraska, a city of the first class of the State of Nebraska, on behalf of such city.

Witness my hand and notarial seal this _____ day of _____, 2009.

Notary Public

STATE OF NEBRASKA)
)SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me by _____,
_____ of Wells Fargo Brokerage Services, L.L.C., on behalf of such limited liability
company.

Witness my hand and notarial seal this _____ day of _____, 2009.

Notary Public

STATE OF NEBRASKA)
)SS:
COUNTY OF HALL)

The foregoing instrument was acknowledged before me by Larry Toner, President of Hall County Livestock Improvement Association, a Nebraska nonprofit corporation, on behalf of such corporation.

Witness my hand and notarial seal this _____ day of _____, 2009.

Notary Public

ORDINANCE NO. 9215

AN ORDINANCE PROVIDING FOR THE PURCHASE AND LEASING OF A BUILDING AND RELATED IMPROVEMENTS TO SERVE AS A RECREATIONAL FACILITY FOR THE CITY OF GRAND ISLAND; AUTHORIZING EXECUTION AND DELIVERY OF A LEASE-PURCHASE AGREEMENT WITH WELLS FARGO BROKERAGE SERVICES, LLC RELATING TO THE CONSTRUCTION AND ACQUISITION OF SAID FACILITY; AUTHORIZING EXECUTION AND DELIVERY OF A RELATED GROUND LEASE AND ESCROW AGREEMENT; APPROVING THE FORMS OF DOCUMENTS WITH RESPECT TO SAID LEASE-PURCHASE AGREEMENT, GROUND LEASE AND ESCROW AGREEMENT; PROVIDING FOR THE APPROVAL OF AN APPRAISAL AND PROVIDING FOR THE PUBLISHING OF THIS ORDINANCE

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA (the "City") as follows:

Section 1. The Mayor and Council hereby find and determine: that the City is in need of a recreational facility (the "Project") to provide for indoor sporting programs and other indoor recreational activities and to serve as a facility for accommodating activities of the Nebraska State Fair Board (the "Board") upon transfer of State Fair activities to Hall County; that Wells Fargo Brokerage Services, LLC, ("Wells Fargo") has indicated its willingness to act as lessor for the purposes of acquiring, constructing and leasing such Project to the City for such purposes and has offered to enter into a Lease-Purchase Agreement (the "Lease") with the City whereby the City may acquire the Project to be built in accordance with specifications approved by the Mayor and Council and provided by the Board, all pursuant to the provisions of Section 19-2421, R.R.S. Neb. 2007; that Hall County Livestock Improvement Association ("Fonner Park") has agreed to provide a site for the Project under the terms of a Ground Lease (the "Ground Lease") between Fonner Park as ground lessor and the City and Wells Fargo as lessees; that for purposes of governing the disbursement of funds provided by Wells Fargo in accordance with the Lease, the City, Wells Fargo and Wells Fargo Bank, National Association, (the "Escrow Agent") shall enter into an Escrow Agreement (the "Escrow Agreement"); that the documents necessary for such purposes have been prepared and said documents should be approved and their execution authorized.

Section 2. The City of Grand Island shall enter into the Lease (to be dated as determined by the executing officers as of the time of its execution and delivery) with Wells Fargo and whereby Wells Fargo, with the City acting as its agent and contracting for construction and acquisition under a contract or contracts determined upon and awarded by the Board, will construct and acquire the Project in accordance with specifications approved or to be approved by the Mayor and Council of the City (with the schedule of rental payments ("Rental Payments") relating to the leasing and acquisition of the Project to be set forth in an exhibit to the Lease and that the Lease in the form presented at this meeting is hereby approved.

Approved as to Form ² May 8, 2009	City Attorney
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ORDINANCE NO. 9215 (Cont.)

Section 3. The City of Grand Island shall enter into the Ground Lease (to be dated as determined by the executing officers as of the time of its execution and delivery) with Wells Fargo and Fonner and whereby Wells Fargo and the City shall lease from Fonner the site for the Project and that the Ground Lease in the form presented at this meeting is hereby approved.

Section 4. The City of Grand Island shall enter into the Escrow Agreement (to be dated as determined by the executing officers as of the time of its execution and delivery) with Wells Fargo and the Escrow Agent and whereby amounts deposited by Wells Fargo for payment of construction and acquisition costs of the Project will be held and applied to payment of costs of the Project and that the Escrow Agreement in the form presented at this meeting is hereby approved.

Section 5. The City of Grand Island by separate resolution shall approve and enter into contracts for the construction and acquisition of the Project in accordance with terms and directions specified by the Board and in so acting shall be the agent of Wells Fargo such that title to the Project from and after the time of its acquisition shall be and constitute the separate property of Wells Fargo with the City having beneficial ownership under the terms of the Lease and the Ground Lease.

Section 6. The Mayor and City Clerk of the City be and they are hereby authorized and directed to execute and deliver on behalf of the City the Lease, the Ground Lease and the Escrow Agreement, including any necessary counterparts, in substantially the form and content as presented to the meeting at which final passage of this Ordinance has occurred, but with such changes or modifications therein as to them seem necessary, desirable or appropriate on behalf of the City; and said Mayor, the City Clerk, the City Finance Director and the City Administrator are further authorized and directed to execute and deliver any other documents or certificates and to do all other things necessary or appropriate in connection with the Lease, the Ground Lease and the Escrow Agreement.

Section 6. In connection with the execution and delivery of the Lease, the Ground Lease and the Escrow Agreement, the following determinations and approvals are hereby made by the Mayor and Council:

(a) The City hereby declares, as provided in the Lease, that it will take title to the Project when all of the Rental Payments specified in the Lease have been paid in full or otherwise satisfied.

(b) The designation in the Escrow Agreement of the City Administrator and/or the City Finance Director to act on behalf of the City in approving disbursements of funds deposited by Wells Fargo under the terms of the Lease and the Escrow Agreement is hereby approved.

(c) Prior to the execution and delivery of the Lease, the Ground Lease and the Escrow Agreement, there shall be placed on file with the City

ORDINANCE NO. 9215 (Cont.)

Clerk an appraisal report for the Project prepared by a certified appraiser in accordance with Section 13-403, R.R.S. Neb. 2007.

(d) The Mayor and Council hereby acknowledge that the proposed transfer of the State Fair from Lancaster County to Hall County has been authorized by LB 1116 as enacted by the Second Session (2008) of the One Hundredth Legislature of the State of Nebraska ("LB 1116") and that there is currently pending in the District Court of Lancaster County, Nebraska, the case of _____ (_____) (the "Pending Litigation"); that the City is a party to the Pending Litigation but no temporary restraining order, preliminary injunction, permanent injunction or other order restricting action by the City has been entered or is expected to be entered prior to the time (the "Anticipated Commitment Time") when execution and delivery of the Lease, the Ground Lease and the Escrow Agreement are expected to be required in order for construction to be timely completed; that the City's authority to enter into the Lease, the Ground Lease and the Escrow Agreement for the Project as a recreational facility for the benefit of the citizens of Grand Island, independent of the provisions of LB 1116, is not questioned or challenged in the Pending Litigation; that the Pending Litigation will not likely be finally resolved before the Anticipated Commitment Time; and that the Mayor and Council hereby declare the City's intention to proceed with entering into the Lease, the Ground Lease and the Escrow Agreement without respect of the validity of LB 1116 and in order to serve the general governmental purpose of obtaining a recreational facility for the benefit of the City and its citizens.

(e) The principal amount for financing to be arranged under the terms of the Lease, the Ground Lease and the Escrow Agreement shall not exceed \$5,000,000; the term of the Lease and the financing provided thereby shall not extend beyond ten years from the date of execution and delivery of the Lease and the interest rate relating to the interest component of the Rental Payments shall not exceed six percent per annum.

Section 6. The Mayor and Council hereby state that it is the intention of the City that interest on the interest component of the Rental Payments under the Lease shall be excludable from gross income under the federal income tax by virtue of Section 103 of the Internal Revenue Code of 1986, as amended, (the "Code") and the Mayor and Council hereby authorize the Mayor, the City Clerk and the City Treasurer (Finance Director) (or any one of more of them) to take all actions necessary or appropriate to carry out said intention and for obtaining such interest exclusion. The City hereby covenants with Wells Fargo and any permitted assigns of Wells Fargo that it will make no use of the proceeds of said issue, including monies held in any sinking fund for the Rental Payments to be set forth in the Lease-Purchase Agreement which would cause the City's obligation under the Lease to constitute an "arbitrage bond" within the meaning of Section 103 and 148 and other related sections of the Code and further covenants to comply with said Sections 103 and 148 and related sections and all applicable regulations thereunder throughout the term of the

ORDINANCE NO. 9215 (Cont.)

Lease, including all requirements with respect to reporting and payment of rebates, if applicable. The Lease is hereby designated by the City as one of its “qualified tax-exempt obligations” under Section 265(b)(3)(B)(i)(III) of the Code and the City in connection with entering into the Lease hereby covenants and warrants that it does not anticipate issuance directly by it or on its behalf of tax-exempt bonds or other tax-exempt interest bearing obligations in an amount exceeding \$30,000,000 in calendar 2009 (taking into consideration the exception for current refunding issues).

Section 7. This Ordinance shall be in force and take effect from and after its publication as provided by law.

Passed and approved this 12th day of May, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item F3

#9216 - Consideration of Disestablishment of Business Improvement District No. 8

This items relates to the aforementioned Public Hearing Item E-4.

Staff Contact: Jeff Pederson

ORDINANCE NO. 9216

An ordinance disestablishing Business Improvement District No. 8; repealing Chapter 13 Sections 13-91 through 13-96; and providing for publication and the effective date of this ordinance.

WHEREAS, the City Council adopted Resolution 2009-90 on April 14, 2009, indicating an intent to disestablish Business Improvement District No. 8; and

WHEREAS, pursuant to said resolution, a notice of hearing was published and mailed as required by law, and public hearing duly held at 7:00 p.m. on May 12, 2009, in the Council Chambers at City Hall, 100 East First Street, Grand Island, Nebraska, concerning the disestablishment of such district; and

WHEREAS, the owners of more than 50% of the assessable units within the District did not file written protests against disestablishment; and

WHEREAS, the City Council now finds and determines that Business Improvement District No. 8 should be disestablished based upon the evidence adduced at the public hearing showing that disestablishment is in the collective best interests of the property owners in the District.

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

SECTION 1. Article XII and Chapter 13 Sections 91 through 96 of the Grand Island City Code are hereby repealed

SECTION 2. Business Improvement District No. 8 is disestablished and the proceeds of any special assessments and assets acquired with such proceeds shall be subject to disposition as the City Council may hereafter determine.

ORDINANCE NO. 9216 (Cont.)

SECTION 3. If any section, subsection, sentence, phrase, or clause, of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 4. This ordinance shall be in force and take effect from and after its passage, approval and publication, within fifteen days in one issue of the *Grand Island Independent* as provided by law.

Enacted: May 12, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item F4

#9217 - Consideration of Firefighters and Police Pension Assets

Staff Contact: Jeff Pederson

Council Agenda Memo

From: Jeff Pederson, City Administrator

Meeting: May 12, 2009

Subject: Firefighters and Police Pension Assets

Item #'s: F-4

Presenter(s): Jeff Pederson, City Administrator

Background

For some time it has been known by the City and the Retirement Committee that there exists surplus money in the unallocated account for Public Service Pension assets. This determination is supported by an actuarial analysis that was conducted and was dated January 1, 2008 for Pre-1984 employees. Today, there exists approximately \$5.5m in the Fire unallocated account. There also exists a surplus of approximately \$180,000 in the unallocated account for Police.

I met with representatives of the Retirement Committee last fall to discuss concerns that the Committee had with the fact that the City was including in the 2008/2009 Budget a transfer from the unallocated account to the General Fund. We jointly agreed to formulate a set of questions relative to Federal Pension law to be answered by an Attorney who specialized in that field. A set of questions was posed to Attorney Michael Mueller of the Firm Cline, Williams, Wright, Johnson & Ordfather, L.L.P., and his response was received on March 23 of this year.

Discussion

The opinions rendered by Mr. Mueller on the several questions include a determination that the City can in fact use surplus assets in the unallocated employer account to meet City retirement match obligations for current and retired employees. Mueller recommended that, to do so, the City must amend its retirement plans to allow surplus assets to be used to fund current retirement matching contributions.

The City Attorney has prepared the attached Ordinance that amends the Plans for both Police and Firefighters to allow assets to be used for that purpose, provided that actuarial analysis show that surplus assets exist in the unallocated accounts. With passage of the

Ordinance, it would be the intention of the Finance Office to begin to expense required City retirement contributions immediately, and for the remainder of the Fiscal Year. This practice would be continued in subsequent budget years contingent upon a determination from the actuarial analysis that surplus funds exist.

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 Council suspend the rules requiring three separate readings and approve Ordinance No. 9217.

Sample Motion

Move to approve Ordinance No. 9217.

LAW OFFICES OF
CLINE, WILLIAMS, WRIGHT, JOHNSON & OLDFATHER, L.L.P.

L. BRUCE WRIGHT
JAMES M. BAUSCH
ROBERT J. ROUTH
DAVID R. BUNTAIN
STEPHEN H. NELSEN
MICHAEL C. MUELLER
DANIEL R. STOGSDILL
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STEVEN M. DELANEY
JOHN C. HEWITT
JOHN L. HORAN
ROCHELLE A. MULLEN
MICHAEL C. PALLESEN
RICHARD P. JEFFRIES

233 SOUTH 13TH STREET
1900 U.S. BANK BUILDING
LINCOLN, NEBRASKA 68508-2095
(402) 474-6900
FAX (402) 474-5393
www.clinewilliams.com

TRACY A. OLDEMAYER
PAMELA EPP OLSEN
TRENT R. SIDDERS
JENNIE A. KUEHNER
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RICHARD R. WOOD

KEVIN COLLERAN, 1941-2006

March 23, 2009

Dale M. Shotkoski
City Attorney
City of Grand Island
Box 1968
Grand Island, NE 68802

Attorney-Client Privileged and Confidential

Re: Firefighter Pension Fund

Dear Dale:

This letter responds to your letter of September 23, 2008. You asked that we provide the City of Grand Island opinions concerning specified issues that you raised in the enclosure to your letter titled, "Request for Legal Opinion." We have reviewed the Adoption Agreement, City of Grand Island, Nebraska, Firefighters' Retirement System Plan and Trust adopted on October 28, 2008 (the "Adoption Agreement"), the Basic Municipal Employees Plan and Trust Agreement for the City of Grand Island, Nebraska, Firefighters' Retirement System Plan and Trust dated April 1, 2005 (the "Basic Plan Document") and the City of Grand Island Retirement System for Firefighters' January 1, 2008 Actuarial Valuation Report accompanying the Actuarial Certification dated May 21, 2008, prepared by Milliman, Inc. (the "Milliman Report"). Additionally, we reviewed Neb. Rev. Stat. Sections 16-1020 to 16-1042 (2007), the statutes dealing with the Firefighters' Retirement for a city of the first class. Based on our review of the foregoing and the provisions of the Internal Revenue Code of 1986 as amended dealing with governmental plans qualified under Section 401(a) et seq., we are rendering the opinions set forth in this letter. The numbered questions below correspond to those in your Request for Legal Opinion.

1. a). The following questions assume that any withdrawal or transfer from the unallocated employer account is from money that is in excess of benefits and expenses payable from that account. What requirements must be met before the unallocated employer account can be said to contain money in excess of benefits and expenses payable from that account (i.e., fully funded)?

The concept of a "fully funded" unallocated account does not exist under the Nebraska statutes. In general retirement plan parlance, a fully funded plan is one where the value of the assets in the plan equals or exceeds the present value of the liabilities owed by the plan. Reviewing the Milliman Report, the Report Summary provides in part:

ONE PACIFIC PLACE
1125 SOUTH 103RD, SUITE 320
OMAHA, NE 68124-1090
(402) 397-1700

1207 M STREET
P.O. BOX 510
AURORA, NE 68818
(402) 694-6314

RAILWAY OFFICE PLAZA
115 RAILWAY STREET, SUITE A-115
SCOTT'S BLUFF, NE 69361
(308) 635-1020

OPERA GALLERIA
123 N. COLLEGE AVENUE, SUITE 330
FORT COLLINS, CO 80524
(970) 221-2637

"Based on the actuarial valuation, it is anticipated that the unallocated account is sufficient to provide the minimum defined benefits for the remaining pre-84 hires. **Therefore, it is anticipated that no additional contribution will be required to be contributed to the unallocated account.**" (Emphasis in original)

However, the following appears under "*Post-84 Hires*":

Firefighters hired after January 1, 1984 are eligible for special duty-related death and disability benefits. However, the expected number of occurrences is considerably less than 1.0. Therefore, any prefunding of the benefit will generate way too little funds (if an actual death or disability occurs), or will create unneeded funds (if none occur).

Therefore, we have not included a specific liability for the post-84 benefit. Some cities are considering the purchase of insurance to provide a benefit if an a [sic] duty-related death or disability occurs.

The Milliman Report shows the actuarial present value of future minimum benefits for active participants to be \$525. (I recommend that the City verify this. This seems unrealistically low to me.) The Report shows that the value of the unallocated asset account is approximately \$293,000. Based on this, the unallocated asset account value substantially exceeds the present value of the future benefits. However, the quoted part of the Report dealing with the "*Post-84 Hires*" says that if an actual death or disability occurs, "any prefunding of the benefit will generate way too little funds." Thus, Milliman has not unequivocally stated that the unallocated account has sufficient funds to provide for all of the benefits. I recommend that the City not conclude that the Plan is "overfunded" without Milliman's concurrence. I expect that the City must purchase life insurance and perhaps disability insurance for Milliman to so indicate.

1. b). What can be done with excess funds if they exist?

Neither Nebraska statutes nor the Plan documents describe what can be done with "excess funds" in the unallocated account. Neb. Rev. Stat. Section 16-1025(2) requires the City to contribute amounts necessary to fund the retirement or other retirement benefits not provided by the employee. Employee contributions and employer contributions are described in Subsection (1). Neb. Rev. Stat. Section 16-1033 provides that forfeitures of the nonvested portion of the employer contribution account are to be deposited in the unallocated employer account. It further provides:

"If the actuarial analysis required by Section 16-1037 shows that the assets of the unallocated employer account are sufficient to provide for the projected plan liabilities, such forfeitures shall instead be used to meet the expenses incurred by the city in connection with administering the retirement system, and the remainder shall then be used to reduce the city contribution which would otherwise be required to fund pension benefits."

Thus, forfeitures can offset the City's 13% contribution required by Neb. Rev. Stat. Section 16-1025(1) if the actuarial analysis shows that the unallocated employer account will provide for the Plan liabilities and if the expenses incurred by the City in administering the Plan are satisfied.

In my opinion, the City can amend the Plan to allow excess assets in the unallocated employer account to be used to offset the employer contribution required by Neb. Rev. Stat. Section 16-1025(1). If the City had not contributed excess funds to the unallocated account, it would have those funds in its treasury to make the 13% employer contribution. The Legislature called the unallocated account the "unallocated employer account." If the City cannot so use those funds, I see no other use for them. The statutes specify the level of employee and employer contribution for the Firefighters' benefits. Neither the statutes nor the Plan documents contemplate providing benefits to the Firefighters greater than those specified in Neb. Rev. Stat. Section 16-1025. In providing that forfeitures can offset the City's liability for expenses and its contributions, the Legislature is providing that the Plan should use assets not allocated to the Firefighters' accounts to reduce the City's costs.

The Plan is intended to meet the requirements of Section 401(a) of the Internal Revenue Code. The portion of the Plan providing the minimum benefits to the pre-1984 firefighters is a defined benefit plan. Internal Revenue Code Section 401(a)(2) requires that all assets of such a plan be used exclusively for the benefit of the employees or their beneficiaries. Once contributions are made to the Plan, the Plan sponsor may not reclaim the money unless there is a mistake of fact. Basic Plan Document Section 3.2 incorporates these requirements. Barring such a mistake, Plan assets cannot revert to the Plan sponsor until all benefit liabilities are paid. Additionally, if the Plan engages in a "prohibited transaction" described in Code Section 503(b), the trust holding the Plan assets loses its tax exemption. A prohibited transaction occurs if the trust engages in a transaction that results in a substantial diversion of its income or corpus to the creator of the trust (i.e., the City). Therefore, the City cannot remove assets from the Plan without a Plan termination after satisfaction of all liabilities.

I was able to obtain IRS approval of a "spinoff/termination" of a plan for another governmental client. Under that procedure, the Plan sponsor creates a new plan providing identical benefits to the current plan. The current plan transfers its liabilities and assets sufficient to satisfy those liabilities to the new plan. Assets in excess of those required to fund the liabilities in the new plan remain in the old plan. The Plan sponsor then terminates the old plan and receives back the excess assets from that plan.

I believe that a spinoff/termination would be difficult under this plan. First, the statutes do not authorize the assets to be returned to the City. Secondly, Neb. Rev. Stat. Section 16-1027(2) and the last paragraph of Basic Plan Document Section 7.3.1(b) provide that if the Participant wants a lump sum payment option, the Participant can request that the actuarial equivalent lump sum be the average of the cost of two annuity contracts purchased on the open market, if the difference between the cost of the two contracts does not exceed 5%. The Participant and the City each choose an annuity contract for determining the actuarial equivalent lump sum. If the difference between the costs of the two annuity contracts exceeds 5%, the Retirement Committee reviews the costs of the two contracts and makes a recommendation to the City Council on the amount of the lump-sum payment to be made to the Participant. The City Council then determines the amount of the single lump sum payment after a hearing.

In a spinoff/termination, the IRS requires that the participant's accrued benefit as of the date of the spinoff be funded through the purchase of an annuity contract. I doubt that the City could establish a procedure that would satisfy both the IRS requirement to purchase an annuity contract providing the Firefighter's accrued benefit and the statutory and Plan method of determining the Firefighter's lump sum benefit. Therefore, in my opinion, the City's preferred action is amending the Plan to allow the City to offset the excess assets in the unallocated employer account against the City's required employer contribution.

2. May the City withdraw money from the unallocated employer account and use it for purposes unrelated to the firefighters retirement system without violating state law, the Plan, and federal law?

As noted above, the City cannot simply withdraw the money from the unallocated employer account. Unless the City terminates the Plan, the funds must remain in Plan. The only exception is if the City made a contribution under a mistake of fact. In that case, the City can withdraw the funds contributed due to the mistake within one year of the date of the contribution.

3. May the City transfer money from the unallocated employer account for the purpose of paying its monthly contribution to each firefighter's employer account without violating state law, the Plan, and federal law?

As noted above, the City must amend the Plan to provide that the surplus funds will be used to defray the City's contribution under Neb. Rev. Stat. Section 16-1025(1). In my opinion, such an amendment would not violate federal law. Clearly with the amendment, it would not violate the terms of the Plan.

As noted above, the Nebraska State Statutes do not specifically authorize the unallocated account funds to be used to defray the City's contribution. However, I believe that one could reasonably infer from Neb. Rev. Stat. Section 16-1033 that the City could do so if the Plan so provided. As noted above, the last paragraph of that Section provides that forfeitures are to be allocated to the unallocated employer account. However, if the actuarial analysis shows that the assets of the unallocated account are sufficient to provide for projected plan liabilities, the forfeitures can be used first to reduce expenses incurred by the City. The remainder "shall then be used to reduce the City contribution which would otherwise be required to fund pension benefits." If forfeitures that would otherwise be deposited in the unallocated employer account can instead be used to reduce the City's contributions, the Legislature has clearly indicated an intent that those amounts are to be used by the City for its benefit in the Plan. The Firefighters' benefits are specifically described in the Statutes. They do not provide a mechanism for providing a benefit beyond the statutory benefits. Thus, the Plan must either apply the unallocated funds to the City's contribution liability or leave the funds in the trust totally unused. The later alternative is absurd.

The Legislature contemplated that the City might have to include provisions in its Plan or take action that the Legislature did not specifically describe in the statutes. Neb. Rev. Stat. Section 16-1034 provides in part:

The city and retirement committee shall have all powers which are necessary for or appropriate to establishing, maintaining, managing, and administering the retirement system. Whenever sections 16-1020 to 16-1042 fail to address the allocation of duties or powers in the administration of the retirement system, such powers or duties shall be vested in the city unless such powers or duties have been delegated by ordinance to the retirement committee.

Neb. Rev. Stat. Sections 16-1020 to 16-1042 do not address what should happen if the unallocated employer account contains a surplus that can never be used. Thus, unless the City has delegated by ordinance to the retirement committee the power to address this, the City can address it by ordinance amending the Plan. Section 12.3(i) of the Basic Plan Document provides:

Police and Fire Plans: Notwithstanding any provision of this Section 12.3 to the contrary, a Retirement Committee shall be established to supervise the general operation of the Plan. The number and members of the Retirement Committee shall be in accordance with the relevant statutes of Nebraska, as amended from time to time. **The City shall continue to be responsible for the general administration of the Plan unless specific functions or all functions with regard to the administration of the Plan are delegated, by ordinance, to the Retirement Committee. Whenever duties or powers are vested in the City or the Retirement Committee under the Plan or applicable state law, or whenever the Plan or such law fails to specifically allocate the duties or powers of administration of the Plan, such powers or duties shall be vested in the City unless such powers or duties have been delegated by ordinance to the Retirement Committee.**

Therefore, unless the City has by ordinance delegated the power to dictate how the unallocated employer account will be used to the Retirement Committee, the City can amend the Plan to direct how the surplus assets in the unallocated employer account will be used.

4. May the City withdraw money from the unallocated employer account to reimburse the City for past contributions that it made to each firefighter's employer account without violating state law, the Plan, and federal law?

As noted above, the City cannot withdraw funds from the unallocated employer account. Doing so risks the qualified status of the Plan under federal law.

5. With regard to all money transferred by the City into the firefighters retirement system since 1984; must such money be credited to either the employer account or to the unallocated employer account?

Neither the statutes nor the Plan deals with assets outside the employer and employee contribution accounts and the unallocated employer account. The Milliman Report does not reflect assets other than the unallocated employer contribution account and the employer and employee contribution accounts of the pre-84 Firefighters. I do not see a basis under the statutes or the Plan documents for the Plan trustee to hold assets other than those in the employer and employee contribution accounts described in Section 16-1025 or in the unallocated employer contribution account. Section 3 of the Basic Plan Document describes the contributions that the employees and the City make. Section 3.1(a) describes the mandatory employee contributions and the City's "pickup" of that contribution. Section 3.2 describes the employer contributions. Section 3.2(a)(i) provides that the City shall contribute to the trustee the amount stated in the adoption agreement. The City also must make the employer contribution for employees employed by the City on January 1, 1984, in the amount equal to the employee's contributions prior to 1984. Finally, Section 3.2(a)(iii) provides:

"The City shall make additional contributions to the Plan in amounts and at such times as are necessary to provide the benefits stated in this Agreement. For Fire Plans, such additional Employer contributions shall be paid to an Unallocated Employer Account and shall not exceed the applicable limitations of Code section 415."

Adoption Agreement item C describes the mandatory employee contributions. Adoption Agreement item E describes the allocation of City Contributions and Forfeitures. Neither the Adoption Agreement nor the Basic

Dale M. Shotkoski
March 23, 2009
Page 6

Plan Document describes accounts or contributions other than the Employee and Employer contributions described in Neb. Rev. Stat. § 16-1025 and those that are allocated to the unallocated Employer Account.

6. If your response to question #5 is that money transferred by the City into the firefighters retirement system since 1984 may be credited to an account separate from the employer account or the unallocated employer account; describe the purpose of such an account.

Not applicable.

7. Does authority exist with the Retirement Committee to prohibit or approve the City's use of the unallocated employer account or any account that you may have described in response to question 6.

Neb. Rev. Stat. § 16-1034 provides that the Retirement Committee is established to supervise the general operation of the retirement system. However, the governing body of the City is responsible for the general administration of the retirement system unless specific functions or all functions concerning the administration of the retirement system are delegated by ordinance to the Retirement Committee. As noted above, whenever Sections 16-1020 to 16-1042 fail to address the allocation of duties or powers in the administration of the retirement system, those powers or duties "shall be vested in the City unless such powers or duties have been delegated by ordinance to the retirement committee."

Reviewing the Plan document, Section 1.1.16, the definition of "Funding Agent" indicates that the City must approve the funding agent if the Retirement Committee selects it. Section 1.1.33 defines the Retirement Committee as "The Retirement Committee created under Section 12.3 for general supervision of the Plan and to perform the duties stated in this Agreement and those other duties as are properly delegated in this Agreement, by law or otherwise by the City to the Retirement Committee." As noted above, Section 12.3(i) provides that the Retirement Committee is established to supervise the general operation of the Plan. However, the City continues to be responsible for the general administration of the Plan unless specific functions or all functions concerning the administration of the Plan are delegated by ordinance, to the Retirement Committee. The last sentence of subsection 12.3(i) provides:

"Whenever duties or powers are vested in the City or the Retirement Committee under the Plan or applicable state law, or whenever the Plan or such law fails to specifically allocate the duties or powers of administration of the Plan, such powers or duties shall be vested in the City unless such powers or duties have been delegated by ordinance to the Retirement Committee."

Section 12.3(d) of the Basic Plan Document provides:

"Until authorization and creation of a Retirement Committee and thereafter, to the extent that rule making and other powers as aforesaid shall not be granted to such Committee, or in the event the Employer, after creating a Retirement Committee, shall discontinue the same or reduce its power and authority (the right so to do being hereby reserved to the Employer), such power shall be vested or become revested, as the case may be, in the Employer."

Dale M. Shotkoski

March 23, 2009

Page 7

I find nothing in the statutes or the Plan that would grant the authority to the Retirement Committee to prohibit or approve the City's use of the Unallocated Employer Account. The Retirement Committee may have certain powers that have been delegated to it by the City ordinance. However, I would be surprised if any such ordinance would restrict the City's authority with respect to the Unallocated Employer Account or any other assets of the Plan. Moreover, even if the City had delegated such authority, Section 12.3(d) would give the City the right to discontinue or reduce that power.

I trust that this letter responds to your questions. However, if you need additional clarification, please contact me.

The foregoing opinions are based upon Nebraska and United States law and the terms of the Plan in effect on the date of this letter. We do not undertake to advise you of any changes in applicable law. This letter is for the benefit of the City of Grand Island, Nebraska. No other party is authorized to rely upon the opinions set forth in this letter without first obtaining our written permission to do so. Our opinions are limited to those expressly set forth in this letter. No other opinion or conclusion should be inferred.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael C. Mueller", written in a cursive style.

MICHAEL C. MUELLER

For the Firm

ORDINANCE NO. 9217

An ordinance to amend the Basic Municipal Employees Plan and Trust Agreement for the City of Grand Island, Nebraska, Firefighters' Retirement System Plan and Trust and the Basic Municipal Plan and Trust Agreement for the -City of Grand Island, Nebraska, Police Officers' Retirement System Plan and Trust to revise and amend said plans to provide for the City to continue to be responsible for the general administration of the plans and to specifically allow that if the actuarial analysis of the plans shows that the assets in the unallocated account are sufficient to provide for subjected plan liabilities, that the assets can be used to reduce expenses incurred by the City and shall then be used to assist in meeting the City's contribution which is required to fund pension benefits.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. Pursuant to NEB. REV. STAT. §16-1034, the City has such powers and duties vested in it for the administration of the police and firefighter retirement systems.

SECTION 2. Retirement plans are in place for the police and firefighter retirement systems and said plans in the basic plan documents allows for the general administration of the plan to continue to be with the City. The plan documents shall be amended to specifically provide the City the authority to maintain and utilize the unallocated employer accounts pursuant to NEB. REV. STAT. §16-1033 so that if the actuarial analysis of the plans show that the assets in the unallocated accounts are sufficient to provide for projected plan liabilities, the assets can be used to assist in meeting expenses incurred by the City and also may be used to assist in meeting the City's contribution which is required to fund pension benefits.

ORDINANCE NO. 9217 (Cont.)

SECTION 3. If any section, subsection, or any other portion of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct, and independent, and such holdings shall not affect the validity of the remaining portions thereof.

SECTION 4. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: May 12, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item F5

**#9218 - Consideration of Issuance Refunding Various Purpose
Bonds - Series 2009**

Staff Contact: David Springer

Council Agenda Memo

From: Dave Springer, Finance Director

Meeting: May 12, 2009

Subject: Consideration of Refinancing Various Purpose Bonds

Item #'s: F-5 & I-1

Presenter(s): Dave Springer, Finance Director

Background

On January 15, 2002, \$4,370,000 in Various Purpose bonds was issued by the City to partially finance various street and alley improvements, particularly, Improvement District No. 1221.

Discussion

\$2,925,000 is still outstanding through December 15, 2017 at an average interest rate of 4.7791% and was callable by the City after January 15, 2007. Series 2009 Refunding Bonds can be issued to mature on the same December 15, 2017 date, with an average interest rate of 2.9666%. The debt service savings from the refinancing totals approximately \$235,891 over the remaining life of the bonds. Those savings are net of issuance expenses associated with the refunding bonds; so, reflect true cash flow savings to the City.

Alternatives

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

1. Approve the issuance of 2009 Refunding Bonds and retiring \$2,925,000 in 2002 Various Purpose Bonds.
2. Disapprove or /Deny the refinancing
3. Modify the Resolution to meet the wishes of the Council
4. Table the issue

Recommendation

City Administration recommends that the Council approve the issuance of Series 2009 Refunding Bonds, as detailed above, and to pay and redeem the Series 2002 Various Purpose Bonds.

Sample Motion

Move to approve the issuance of 2009 Refunding Bonds with the referenced ordinance.

Move to approve the resolution to pay and redeem the Series 2002 Various Purpose Bonds.

ORDINANCE NO. 9218

AN ORDINANCE AUTHORIZING THE ISSUANCE OF REFUNDING BONDS OF THE CITY OF GRAND ISLAND, NEBRASKA, IN THE PRINCIPAL AMOUNT OF TWO MILLION _____ THOUSAND DOLLARS (\$_____) FOR THE PURPOSE OF PAYING AND REDEEMING THE CITY'S VARIOUS PURPOSE BONDS, SERIES 2002, DATE OF ORIGINAL ISSUE – JANUARY 15, 2002, PRESENTLY OUTSTANDING IN THE PRINCIPAL AMOUNT OF \$2,925,000; DIRECTING THE APPLICATION OF THE PROCEEDS OF SAID BONDS; PRESCRIBING THE FORM OF SAID BONDS; PROVIDING FOR THE LEVY AND COLLECTION OF TAXES TO PAY THE SAME; PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE DELIVERY OF THE BONDS TO THE PURCHASER; AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

Section 1. The Mayor and City Council hereby find and determine that there have been heretofore issued and are now outstanding and unpaid valid and interest bearing bonds of the City of Grand Island, Nebraska, as follows:

Various Purpose Bonds, Series 2002, date of original issue - January 15, 2002, in the principal amount of Two Million Nine Hundred Twenty-five Thousand Dollars (\$2,925,000), numbered as shown on the books of the Paying Agent and Registrar becoming due and bearing interest as follows:

<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
\$270,000	December 15, 2009	4.20%	385622 MP 7
285,000	December 15, 2010	4.30	385622 MQ 5
295,000	December 15, 2011	4.40	385622 MR 3
310,000	December 15, 2012	4.50	385622 MS 1
320,000	December 15, 2013	4.65	385622 MT 9
330,000	December 15, 2014	4.75	385622 MU 6
355,000	December 15, 2015	4.85	385622 MV 4
370,000	December 15, 2016	4.95	385622 MW 2
390,000	December 15, 2017	5.00	385622 MX 0

Said bonds are hereinafter referred to as the "Refunded Bonds."

Said bonds are subject to redemption at any time on or after January 15, 2007, at the principal amount thereof plus accrued interest, and said interest is payable semiannually.

Said Refunded Bonds were issued for the purpose of paying the costs of improving streets and alleys, intersections and areas formed by the crossing of streets, avenues or alleys and streets adjacent to real estate owned by the City in Street Improvement District No. 1221.

Approved as to Form	<input type="checkbox"/> _____
May 8, 2009	<input type="checkbox"/> City Attorney

ORDINANCE NO. 9218 (Cont.)

Since the issuance of the Refunded Bonds, the rates of interest available in the markets have declined so that the City of Grand Island can effect a savings in interest costs by providing for payment in full of the Refunded Bonds as called for redemption on June 16, 2009 (the "Redemption Date") through the issuance of its refunding bonds. The Refunded Bonds have been called for redemption on the Redemption Date. For the purpose of making said redemption, it is for the best interest of the City to issue refunding bonds of the City in the principal amount of \$_____, pursuant to Section 10-142, Reissue Revised Statutes of Nebraska, 2007, and all laws amendatory thereof or supplementary thereto, and all conditions, acts and things required by law to exist or to be done precedent to the issuance of such refunding bonds do exist and have been done as required by law.

Section 2. For the purpose described in Section 1 hereof, there shall be and there are hereby ordered issued general obligation Refunding Bonds, Series 2009, of the City of Grand Island, Nebraska, in the principal amount of _____ Thousand Dollars (\$_____) (the "Series 2009 Bonds") with said bonds bearing interest at the rates per annum (said interest to be computed on the basis of a 360-day year consisting of twelve 30-day months) and maturing on December 15 of each year in the principal amounts as follows:

<u>Principal Amount</u>	<u>Date of Maturity</u>	<u>Rate of Interest</u>
\$ 275,000	December 15, 2009	
315,000	December 15, 2010	
320,000	December 15, 2011	
325,000	December 15, 2012	
330,000	December 15, 2013	
330,000	December 15, 2014	
350,000	December 15, 2015	
355,000	December 15, 2016	
370,000	December 15, 2017	

The Series 2009 Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The date of original issue for the Series 2009 Bonds shall be the date of delivery thereof. Interest on the Series 2009 Bonds, at the respective rates for each maturity, shall be payable semiannually on June 15 and December 15 of each year, commencing December 15, 2009 (each

ORDINANCE NO. 9218 (Cont.)

of said dates an "Interest Payment Date") and the Series 2009 Bonds shall bear such interest from the date of original issue or the most recent Interest Payment Date, whichever is later. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the close of business on the last business day of the month immediately preceding the month in which the Interest Payment Date occurs (the "Record Date"), subject to the provisions of Section 4 hereof. The Series 2009 Bonds shall be numbered from 1 upwards in the order of their issuance. No Series 2009 Bond shall be issued originally or upon transfer or partial redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the Series 2009 Bonds issued shall be designated by the City's Treasurer as directed by the initial purchaser thereof. Payments of interest due on the Series 2009 Bonds prior to maturity or date of redemption shall be made by the Paying Agent and Registrar, as designated pursuant to Section 3 hereof, by mailing a check or draft in the amount due for such interest on each Interest Payment Date to the registered owner of each Series 2009 Bond, as of the Record Date for such Interest Payment Date, to such owner's registered address as shown on the books of registration as required to be maintained in Section 3 hereof. Payments of principal and accrued interest thereon due at maturity or at any date fixed for redemption prior to maturity shall be made by said Paying Agent and Registrar to the registered owners upon presentation and surrender of the Series 2009 Bonds to said Paying Agent and Registrar. The City and said Paying Agent and Registrar may treat the registered owner of any Series 2009 Bond as the absolute owner of such Series 2009 Bond for the purpose of making payments thereon and for all other purposes and neither the City nor the Paying Agent and Registrar shall be affected by any notice or knowledge to the contrary, whether such Series 2009 Bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest or principal made to the registered owner of any Series 2009 Bond in accordance with the terms of this Ordinance shall be valid and effectual and shall be a discharge of the City and said Paying Agent and Registrar, in respect of the liability upon the Series 2009 Bonds or claims for interest to the extent of the sum or sums so paid.

ORDINANCE NO. 9218 (Cont.)

Section 3. Cornerstone Bank, York, Nebraska, is hereby designated as Paying Agent and Registrar for the Series 2009 Bonds. Said Paying Agent and Registrar shall serve in such capacities under the terms of an agreement entitled "Paying Agent and Registrar's Agreement" between the City and said Paying Agent and Registrar, the form of which is hereby approved. The Mayor and City Clerk are hereby authorized to execute said agreement in substantially the form presented but with such changes as they shall deem appropriate or necessary. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the Series 2009 Bonds at its principal corporate trust office. The names and registered addresses of the registered owner or owners of the Series 2009 Bonds shall at all times be recorded in such books. Any Series 2009 Bond may be transferred pursuant to its provisions at the principal corporate trust office of said Paying Agent and Registrar by surrender of such Series 2009 Bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to said Paying Agent and Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Paying Agent and Registrar on behalf of the City will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of such transferee owner or owners, a new Series 2009 Bond or Series 2009 Bonds of the same interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the Series 2009 Bonds by this Ordinance, one such bond may be transferred for several such bonds of the same interest rate and maturity, and for a like aggregate principal amount, and several such bonds may be transferred for one or several such bonds, respectively, of the same interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a Series 2009 Bond, the surrendered Series 2009 Bond or Bonds shall be canceled and destroyed. All Series 2009 Bonds issued upon transfer of the Series 2009 Bonds so surrendered shall be valid obligations of the City evidencing the same obligations as the Series 2009 Bonds surrendered and shall be entitled to all the benefits and protection of this Ordinance to the same extent as the Series 2009 Bonds upon transfer of which they were delivered. The City and said Paying Agent and Registrar shall not be required to

ORDINANCE NO. 9218 (Cont.)

transfer any Series 2009 Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any Series 2009 Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

Section 4. In the event that payments of interest due on the Series 2009 Bonds on an Interest Payment Date are not timely made, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the Series 2009 Bonds as of a special date of record for payment of such defaulted interest as shall be designated by the Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

Section 5. If the date for payment of the principal of or interest on the Series 2009 Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the city where the principal corporate trust office of the Paying Agent and Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

Section 6. Series 2009 Bonds maturing December 15, 2014, and thereafter shall be subject to redemption, in whole or in part, prior to maturity at any time on or after the fifth anniversary of the date of original issue thereof at par plus accrued interest on the principal amount redeemed to the date fixed for redemption. The City may select the Series 2009 Bonds to be redeemed in its sole discretion but the Series 2009 Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Series 2009 Bonds redeemed in part only shall be surrendered to said Paying Agent and Registrar in exchange for new Series 2009 Bonds evidencing the unredeemed principal thereof. Notice of redemption of any Series 2009 Bond called for redemption shall be given at the direction of the City by said Paying Agent and Registrar by mail not less than 30 days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such Series 2009 Bond at said owner's registered address. Such notice

ORDINANCE NO. 9218 (Cont.)

shall designate the Series 2009 Bond or Series 2009 Bonds to be redeemed by maturity or otherwise, the date of original issue and the date fixed for redemption and shall state that such Series 2009 Bond or Series 2009 Bonds are to be presented for prepayment at the principal corporate trust office of said Paying Agent and Registrar. In case of any Series 2009 Bond partially redeemed, such notice shall specify the portion of the principal amount of such Series 2009 Bond to be redeemed. No defect in the mailing of notice for any Series 2009 Bond shall affect the sufficiency of the proceedings of the City designating the Series 2009 Bonds called for redemption or the effectiveness of such call for Series 2009 Bonds for which notice by mail has been properly given and the City shall have the right to further direct notice of redemption for any such Series 2009 Bond for which defective notice has been given.

Section 7. The Series 2009 Bonds shall be in substantially the following form:

ORDINANCE NO. 9218 (Cont.)

UNITED STATES OF AMERICA
STATE OF NEBRASKA
COUNTY OF HALL

REFUNDING BOND OF
THE CITY OF GRAND ISLAND, NEBRASKA
SERIES 2009

No. _____ \$ _____

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP No.</u>
	December 15, ____	_____, 2009	

Registered Owner:

Principal Amount: _____ Dollars (\$ _____)

KNOW ALL PERSONS BY THESE PRESENTS: That the City of Grand Island, in the County of Hall, in the State of Nebraska, hereby acknowledges itself to owe and for value received promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above in lawful money of the United States of America on the date of maturity specified above with interest thereon to maturity (or earlier redemption) from the date of original issue or most recent Interest Payment Date, whichever is later, at the rate per annum specified above, payable semiannually on June 15 and December 15 of each year, commencing December 15, 2009 (each of said dates an "Interest Payment Date"). Said interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The principal hereof and unpaid accrued interest thereon due at maturity or upon redemption prior to maturity are payable upon presentation and surrender of this bond at the principal corporate trust office of Cornerstone Bank, the Paying Agent and Registrar, in York, Nebraska. Interest on this bond due prior to maturity or earlier redemption will be paid on each Interest Payment Date by a check or draft mailed by the Paying Agent and Registrar to the registered owner of this bond, as shown on the books of record maintained by the Paying Agent and Registrar, at the close of business on the last business day of the month immediately preceding the month in which the Interest Payment Date occurs, to such owner's registered address as shown on such books and records. Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the record date such interest was payable, and shall be payable to the person who is the registered owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Paying Agent and Registrar whenever monies for such purpose become available. For the prompt payment of this bond, principal and interest, as the same become due, the full faith, credit and resources of said City are hereby irrevocably pledged.

This bond is one of an issue of fully registered bonds of the total principal amount of _____
_____ Thousand Dollars (\$ _____), of even date and like tenor except as to date of maturity, rate of interest and denomination which were issued by the City for the purpose of paying and redeeming the City's Various Purpose Bonds, Series 2002, Date of Original Issue - January 15, 2002, in the outstanding principal amount of \$2,925,000, all in strict compliance with Section 10-142, R.R.S. Neb. 2007, as amended. The issuance of said bonds has been authorized by proceedings duly had and an ordinance legally passed, approved and published by the Mayor and Council of said City.

ORDINANCE NO. 9218 (Cont.)

Bonds of this issue maturing December 15, 2014 and thereafter are subject to redemption at the option of the City, in whole or in part, at any time on or after the fifth anniversary of the date of original issue thereof, at par plus interest accrued on the principal amount redeemed to the date fixed for redemption. Notice of redemption shall be given by mail to the registered owner of any bond to be redeemed at said registered owner's address in the manner specified in the ordinance authorizing said issue of bonds. Individual bonds may be redeemed in part but only in \$5,000 amounts or integral multiples thereof.

This bond is transferable by the registered owner or such owner's attorney duly authorized in writing at the principal corporate trust office of the Paying Agent and Registrar upon surrender and cancellation of this bond, and thereupon a new bond or bonds of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the ordinance authorizing said issue of bonds, subject to the limitations therein prescribed. The City, the Paying Agent and Registrar and any other person may treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment due hereunder and for all purposes and shall not be affected by any notice to the contrary, whether this bond be overdue or not.

If the date for payment of the principal of or interest on this bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the city where the principal corporate trust office of the Paying Agent and Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

IT IS HEREBY CERTIFIED AND WARRANTED that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this bond and in the issuance of the bonds refunded hereby did exist, did happen and were done and performed in regular and due form and time as required by law and that the indebtedness of said City, including this bond and the bonds refunded hereby, does not exceed any limitation imposed by law. The City agrees that it will cause to be levied and collected annually a tax by valuation on all the taxable property in the City, in addition to all other taxes, sufficient in rate and amount to fully pay the principal and interest of this bond and the other bonds of this issue as the same become due.

AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE ORDINANCE, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE PAYING AGENT AND REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE ORDINANCE.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE PAYING AGENT AND REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE PAYING AGENT AND REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY

ORDINANCE NO. 9218 (Cont.)

BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREOF IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSONS IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.

This bond shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar.

IN WITNESS WHEREOF, the Mayor and Council of the City of Grand Island, Nebraska, have caused this bond to be executed on behalf of the City with the facsimile signatures of the Mayor and the City Clerk and by causing the official seal of the City to be imprinted hereon or affixed hereto, all as of the date of original issue specified above.

CITY OF GRAND ISLAND, NEBRASKA

Mayor

ATTEST:

City Clerk

(SEAL)

ORDINANCE NO. 9218 (Cont.)

ORDINANCE NO. 9218 (Cont.)

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds authorized by the Ordinance of the Mayor and City Council of the City of Grand Island, in the State of Nebraska, described in the foregoing bond.

Cornerstone Bank
York, Nebraska
Paying Agent and Registrar

By: _____
Authorized Signature

(Form of Assignment)

For value received hereby sells, assigns and transfers unto _____
_____ (Social Security or Taxpayer I.D. No. _____
_____) the within bond and hereby irrevocably constitutes and appoints
_____, attorney, to transfer the same on
the books of registration in the principal corporate trust office of the within mentioned Paying Agent and
Registrar with full power of substitution in the premises.

Dated: _____

Registered Owner(s)

Signature Guaranteed

By _____

Authorized Officer(s)

Note: The signature(s) on this assignment **MUST CORRESPOND** with the name(s) as written on the face of the within bond in every particular, without alteration, enlargement or any change whatsoever, and must be guaranteed by a commercial bank or a trust company or by a firm having membership on the New York, Midwest or other stock exchange.

Section 8. Each of the Series 2009 Bonds shall be executed on behalf of the City with the facsimile signatures of the Mayor and the City Clerk and shall have imprinted thereon the City's seal. The

ORDINANCE NO. 9218 (Cont.)

Series 2009 Bonds shall be issued initially as "book-entry-only" bonds under the services of The Depository Trust Company (the "Depository"), with one typewritten bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a Letter of Representations (the "Letter of Representations") in the form required by the Depository (which may be in the form of a blanket letter, including any such letter previously executed and delivered), for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the Series 2009 Bonds. With respect to the issuance of the Series 2009 Bonds as "book-entry-only" bonds, the following provisions shall apply:

(a) The City and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds Series 2009 Bonds as securities depository (each, a "Bond Participant") or to any person who is an actual purchaser of a Series 2009 Bond from a Bond Participant while the Series 2009 Bonds are in book-entry form (each, a "Beneficial Owner") with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the Series 2009 Bonds,

(ii) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Series 2009 Bonds, including any notice of redemption, or

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Series 2009 Bonds. The Paying Agent and Registrar shall make payments with respect to the Series 2009 Bonds only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such Series 2009 Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Bond, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange Series 2009 Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the Series 2009 Bonds or (ii) to make available Series 2009 Bonds registered in whatever name or names as the Beneficial Owners transferring or exchanging such Series 2009 Bonds shall designate.

ORDINANCE NO. 9218 (Cont.)

(c) If the City determines that it is desirable that certificates representing the Series 2009 Bonds be delivered to the ultimate beneficial owners of the Series 2009 Bonds and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates representing the Series 2009 Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the Series 2009 Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any Series 2009 Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such Series 2009 Bond and all notices with respect to such Series 2009 Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the Series 2009 Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the Series 2009 Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee; or

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section and the terms of the Paying Agent and Registrar's Agreement.

(f) In the event of any partial redemption of a Series 2009 Bond unless and until such partially redeemed bond has been replaced in accordance with the provisions of this Ordinance, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such bond as is then outstanding and all of the Series 2009 Bonds issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository is terminated or resigns and is not replaced, the City shall immediately provide a supply of printed bond certificates for issuance upon the transfers from the Depository and subsequent transfers or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of such certificates and to direct their execution by manual or facsimile signatures of its then duly qualified and acting Mayor and City Clerk and by imprinting thereon or affixing thereto the City's seal. In case any officer whose signature or facsimile thereof shall appear on any Series 2009 Bond shall cease to be such officer before the delivery of such bond (including such certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption), such signature or such

ORDINANCE NO. 9218 (Cont.)

facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such bond. The Series 2009 Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The Series 2009 Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the Series 2009 Bonds, they shall be delivered to the City Treasurer, who is authorized to deliver them to Ameritas Investment Corp., as initial purchaser thereof, upon receipt of _____% of the principal amount of the Series 2009 Bonds plus accrued interest thereon, if any, to date of payment for the Series 2009 Bonds. Such purchaser and its agents, representatives and counsel (including the City's bond counsel) are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and sale of the Series 2009 Bonds, including without limitation, authorizing the release of the Series 2009 Bonds by the Depository at closing. The officers of the City (or any one of them) are hereby authorized to execute and deliver the Bond Purchase Agreement for and on behalf of the City. Said initial purchaser shall have the right to direct the registration of the Series 2009 Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. The City Clerk shall make and certify a transcript of the proceedings of the Mayor and Council with respect to the Series 2009 Bonds which shall be delivered to said purchaser.

Section 9. Accrued interest, if any, received from the sale of the Series 2009 Bonds shall be applied to pay interest falling due on December 15, 2009. Expenses of issuance of the Series 2009 Bonds may be paid from the proceeds of the Series 2009 Bonds. The remaining proceeds of the Series 2009 Bonds, together with other available City funds as required for such purpose, shall be applied to the payment of the principal of and interest on the Refunded Bonds as called for redemption on the Redemption Date. The Mayor and Council hereby covenant and agree to take all steps necessary and appropriate to provide for the payment, calling and redemption of the Refunded Bonds on the Redemption Date and hereby authorize the officers of the City or any one or more of them to take all actions deemed

ORDINANCE NO. 9218 (Cont.)

necessary in connection with the issuance of the Series 2009 Bonds and the payment and redemption of the Refunded Bonds.

Section 10. The holders of the Series 2009 Bonds shall be subrogated to all rights of the holders of the Refunded Bonds including the right to have special assessments set aside as a sinking fund for the payment of principal thereof and interest thereon, from and after their payment and redemption on the Redemption Date. The City agrees that it shall cause to be levied and collected annually a special levy of taxes on all the taxable property in this City, in addition to all other taxes, sufficient in rate and amount to fully pay the principal of and interest on the Series 2009 Bonds when and as such principal and interest become due.

Section 11. The City hereby covenants to the purchasers and holders of the Series 2009 Bonds hereby authorized that it will make no use of the proceeds of said bond issue, including monies held in any sinking fund for the Series 2009 Bonds, which would cause the Series 2009 Bonds to be arbitrage bonds within the meaning of Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and further covenants to comply with said Sections 103(b) and 148 and all applicable regulations thereunder throughout the term of said bond issue. The City hereby covenants and agrees to take all actions necessary under the Code to maintain the tax exempt status (as to taxpayers generally) of interest payable on the Series 2009 Bonds. The City hereby designates the Series 2009 Bonds as its "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B)(i)(III) of the Code and covenants and warrants that it does not reasonably expect to issue or have issued on its behalf tax-exempt bonds or other tax-exempt interest bearing obligations aggregating in principal amount more than \$30,000,000 during calendar year 2009 (taking into consideration the exception for current refunding issues), provided that the amount of the Series 2009 Bonds hereby designated shall be reduced as and to the extent that all or a portion of the Series 2009 Bonds may be determined to be "deemed designated" in accordance with the provisions of Section 265(b)(3)(D) of the Code. The officers of the City (or any one of them) are hereby authorized to make allocations of the Series 2009 Bonds (as to principal maturities) and of the proceeds of

ORDINANCE NO. 9218 (Cont.)

the Series 2009 Bonds and debt service funds of the City as may be deemed appropriate under the federal tax laws and regulations, specifically including any allocations relating to the determination of a portion of the Series 2009 Bonds as “deemed designated”. Any such allocations made and determinations set forth in a certificate by an officer of the City shall be and constitute authorized determinations made on behalf of the City with the same force and effect as if set forth in this Ordinance.

Section 12. The City's obligations under this Ordinance with respect to any or all of the Series 2009 Bonds herein authorized shall be fully discharged and satisfied as to any or all of such Series 2009 Bonds and any such Series 2009 Bond shall no longer be deemed to be outstanding hereunder if such Series 2009 Bond has been purchased by the City and canceled or when the payment of the principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof or (b) shall have been provided for by depositing with the Paying Agent and Registrar, or with a national or state bank having trust powers, or trust company, in trust, solely for such payment (i) sufficient money to make such payment and/or (ii) direct general obligations (including obligations issued or held in book entry form on the books of the Department of Treasury of the United States of America) of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America (herein referred to as "U.S. Government Obligations") in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal, at such time or times, as will ensure the availability of sufficient money to make such payment; provided, however, that with respect to any Series 2009 Bond to be paid prior to maturity, the City shall have duly called such bond for redemption and given notice of such redemption as provided by law or made irrevocable provision for the giving of such notice. Any money so deposited with a bank or trust company or the Paying Agent and Registrar may be invested or reinvested in U.S. Government Obligations at the direction of the City, and all interest and income from U.S. Government Obligations in the hands of such bank or trust company or Paying Agent and Registrar in excess of the amount required to pay principal of and interest on the Series 2009 Bonds for which such

ORDINANCE NO. 9218 (Cont.)

monies or U.S. Government Obligations were deposited shall be paid over to the City as and when collected.

Section 13. In accordance with the requirements of Rule 15c2-12 (as now existing or subsequently amended, the “Rule”) promulgated by the Securities and Exchange Commission, the City hereby agrees that it will provide the following continuing disclosure information:

(a) to each nationally recognized municipal securities information repository (a “NRMSIR”) and to the initial purchaser of the Series 2009 Bonds, the City shall provide annual financial and operating information generally consistent with the information set forth under the heading “SUMMARY FINANCIAL STATEMENT AND OPERATING STATISTICS” in the Official Statement for said bonds and the City’s audited financial statements; such information is expected to be available not later than seven months after the end of each fiscal year for the City. Audited financial information shall be provided for governmental and fiduciary fund types based on the modified accrual basis of accounting and as to proprietary fund types on an accrual basis in accordance with generally accepted accounting principles, subject to modification by the City in the future as it may determine appropriate;

(b) in a timely manner to each NRMSIR or to the Municipal Securities Rulemaking Board (“MSRB”) (as and to the extent required by the Rule), notice of the occurrence of any of the following events with respect to the Series 2009 Bonds, if in the judgment of the City, such event is material:

- (1) principal and interest payment delinquencies,
- (2) non-payment related defaults,
- (3) unscheduled draws on debt service reserves reflecting financial difficulties (there are no debt service reserves established for the Series 2009 Bonds under the terms of this Ordinance),
- (4) unscheduled draws on credit enhancements reflecting financial difficulties (there is no credit enhancement on the Series 2009 Bonds),
- (5) substitution of credit or liquidity providers, or their failure to perform (not applicable to the Series 2009 Bonds),
- (6) adverse tax opinions or events affecting the tax-exempt status of the Series 2009 Bonds,
- (7) modifications to rights of the Series 2009 Bondholders,
- (8) Series 2009 Bond calls,
- (9) defeasances,

ORDINANCE NO. 9218 (Cont.)

- (10) release, substitution, or sale of property securing repayment of the Series 2009 Bonds, and
- (11) rating changes (the Series 2009 Bonds are not rated and no rating for the Series 2009 Bonds is expected to be requested).

The City has not undertaken to provide notice of the occurrence of any other material event, except the events listed above.

(c) in a timely manner to each NRMSIR or to the MSRB (as and to the extent required by the Rule) notice of any failure on the part of the City to provide required annual financial information not later than seven months from the close of the City's fiscal year.

Any filing with respect to this Ordinance may be made solely by transmitting such filing to the Texas Municipal Advisory Council (the "MAC") as provided at <http://www.disclosureusa.org> unless the United States Securities and Exchange Commission has withdrawn the interpretive advice in its letter to the MAC dated September 7, 2004.

The City reserves the right to modify from time to time the specific types of information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of the City, consistent with the Rule. The City hereby agrees that such covenants are for the benefit of the registered owners of the Series 2009 Bonds (including Beneficial Owners) and that such covenants may be enforced by any registered owner or Beneficial Owner, provided that any such right to enforcement shall be limited to specific enforcement of such undertaking and any failure shall not constitute an event of default under this Ordinance. The continuing disclosure obligations of the City under this Ordinance, as described above, shall cease when none of the Series 2009 Bonds remain outstanding.

Section 14. The Preliminary Official Statement for the Series 2009 Bonds is hereby approved and the Mayor and City Clerk are hereby authorized to approve on behalf of the City a final Official Statement with any changes deemed appropriate by them.

Section 15. This Ordinance shall be in force and take effect from and after its passage and publication in pamphlet form as provided by law.

ORDINANCE NO. 9218 (Cont.)

PASSED AND APPROVED this 12th day of May, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G1

Approving Minutes of April 28, 2009 City Council Regular Meeting

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL REGULAR MEETING

April 28, 2009

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 April 28, 2009. Notice of the meeting was given in *The Grand Island Independent* on April 22, 2009.

Mayor Hornady called the meeting to order at 7:00 p.m. The following City Council members were present: Councilmember's Meyer, Niemann, Haase, Carney, Dugan, Ramsey, Nickerson, Zapata, and Gericke. Councilmember Gilbert was absent. 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 Mayor Hornady followed by the PLEDGE OF ALLEGIANCE.

MAYOR COMMUNICATION: Mayor Hornady introduced Community Youth Council members Austin Witmer and Tyler Koepp. Also mentioned was the National Join Hands Day event scheduled for Friday, May 1, 2009 at the Grand Generation Center.

PUBLIC HEARINGS:

Public Hearing on Acquisition of Utility Easement Located on Wildwood Drive and 1/2 Mile West of U.S. Highway 281 (Larry and Karen Knuth). Gary Mader, Utilities Director reported that a utility easement was needed on Wildwood Drive and 1/2 mile west of U.S. Highway 281 in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers. The easement would be used to place underground cable and conduit next to a driveway into the property. Staff recommended approval. No public testimony was heard.

Public Hearing on for a Neighborhood Stabilization Community Development Block Grant. Joni Kuzma, Community Development Administrator reported that the office of Housing and Urban Development had allocated \$19.6 million of stimulus money. Grand Island was applying for \$993,712 for demolishing six blighted structures. Staff recommended approval. No public testimony was heard.

Public Hearing Concerning Annexation of Property located south of Case New Holland and West of Highway 281. Chad Nabity, Regional Planning Director reported that Case New Holland had petitioned the Council to annex the property located south of Case New Holland and west of Highway 281. Water and sewer were available to this property. Staff recommended approval. No public testimony was heard.

Public Hearing Concerning Acquisition of Utility Easements for North Route Transmission Line Work. Gary Mader, Utilities Director reported that a presentation was made to Council on April 21, 2009 summarizing the findings of the route study. Requested was authorization for the Utilities Department and Advantage Engineering to take the necessary steps to complete the North Route Transmission Line project. Staff recommended approval. No public testimony was heard.

ORDINANCES:

#9214 – Consideration of Annexation of Property Located South of Case New Holland and West of Highway 281 (First Reading)

This item related to the aforementioned Public Hearing.

Motion by Meyer, second by Niemann to approve Ordinance #9214 on first reading. Upon roll call vote, all voted aye. Motion adopted.

#9215 – Consideration of Lease-Purchase Agreement, Ground Lease and Escrow Agreement for Building and Related Improvements to Serve as a Recreational Facility for State Fair Activities (First Reading)

Jeff Pederson, City Administrator reported that with the relocation of the Nebraska State Fair and Council approval of a \$5 million contribution it was necessary to own an asset of commensurate value. The Lease-Purchase Agreement would be to acquire, construct and lease a 70,000 sq. ft. building. The Escrow Agreement with Wells Fargo would be created for construction costs. The Ground Lease between Fonner Park and the City would grant the City use of a site for placement of the building.

Discussion was held concerning the restrictions of the building, building design, and costs associated with it. Mentioned was the frustration of the process, cost to tax payers, annual cost of the lottery match, rent for the ground lease, and increasing costs of the project to the City.

Dale Shotkoski, City Attorney stated the reasons for having the Lease-Purchase Agreement, Escrow Agreement and Ground Lease all included in this Ordinance was that they were all needed in order to move forward with the project. This being the first of three readings there was time to change the agreements before the final reading on May 26, 2009.

Jay Vavricek, 2729 Brentwood Blvd. spoke in support of the State Fair move but had concerns about accountability, control, and clarity of the agreements.

Motion by Ramsey, second by Zapata to approve Ordinance #9215 on first reading. Upon roll call vote, all voted aye.

CONSENT AGENDA: Motion by Zapata, second by Meyer to approve the Consent Agenda. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of April 14, 2009 City Council Regular Meeting.

Approving Minutes of April 21, 2009 City Council Study Session.

#2009-94 – Approving Payment for Services to Platte Valley Communications of Grand Island, Nebraska for Equipment Transfer to New Police Vehicles in an Amount of \$10,770.02.

#2009-95 – Approving Neighborhood Stabilization Community Development Block Grant Application.

#2009-96 – Approving Utility Easement Located on Wildwood Drive and 1/2 Mile West of U.S. highway 281 (Larry and Karen Knuth).

#2009-97 – Approving Bid Award for Cooling Tower Rebuild – Fall of 2009 – Platte Generating Station with International cooling Tower, Inc. of Edmonton, Canada in an Amount of \$1,140,000.00.

#2009-98 – Approval to Proceed with Transmission Line Easement Acquisitions – North Route Transmission Line Work.

#2009-99 – Approving Agreement with NDOR for Improvements to the US Highway 281 Viaduct over Burlington Northern Santa Fe Railroad and Nebraska Highway 2 at no cost to the City.

#2009-100 – Approving Amendment No. 2 to the Agreement for Waste Water Comprehensive Plan Update with CH2M Hill, Inc. of Englewood, Colorado in an Amount not to exceed \$35,038.00 and a Revised Contract Amount of \$381,238.00.

#2009-101 – Approving Amendment to Emergency Management/Communications Center Interlocal Cooperation Agreement with Hall County.

RESOLUTIONS:

#2009-102 – Consideration of Setting Public Hearing Date for Acquisition of Lease-Purchase and Ground Lease Site and Building for Recreational Facility for State Fair Activities. City Administrator Jeff Pederson reported that a Public Hearing was required for both the Ground Lease with Fonner Park and for the Lease-Purchase Agreement with Wells Fargo for the recreational facility for State Fair activities.

Motion by Meyer, second by Haase to approve Resolution #2009-102. Upon roll call vote, all voted aye. Motion adopted.

PAYMENT OF CLAIMS:

Motion by Dugan, second by Ramsey to approve the Claims for the period of April 15, 2009 through April 28, 2009, for a total amount of \$2,555,411.59. Unanimously approved.

ADJOURNMENT: The meeting was adjourned at 8:15 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G2

Approving Minutes of May 5, 2009 City Council Study Session

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL STUDY SESSION

May 5, 2009

Pursuant to due call and notice thereof, a Study Session of the City Council of the City of Grand Island, Nebraska was conducted in the Community Meeting Room of City Hall, 100 East First Street, on May 5, 2009. Notice of the meeting was given in the *Grand Island Independent* on April 29, 2009.

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

INVOCATION was given by Mayor Margaret Hornady followed by the PLEDGE OF ALLEGIANCE.

MAYOR COMMUNICATION: Mayor Hornady mentioned meetings last week with Fonner Park the State Fair Board and architects to discuss the State Fair.

Presentation on Waste Water Capital Improvement Plan and Cost-of-Service Based Rate Study. Steve Riehle, Public Works Director reported that Black & Veatch had been hired for engineering consulting services related to a digester complex. Capital improvement projects budgeted through 2013 was collection system, lift stations, and waste water treatment plant. Mr. Riehle introduced Bill Stoner with Black & Veatch to update the council concerning the digester project, options, costs, and rate study.

The following major projects in the Capital Improvement Plan were presented for 2009 – 2010:

- Digester Complex
- Additional Final Clarifier
- Aeration Basin Improvements

Mr. Riehle gave a PowerPoint presentation concerning background of the Digestion Project. The following advantages for anaerobic digestion were presented:

- Reliable and consistent process – widely used with successful track record
- Lowest O&M costs
- Major reduction in solids
- Pathogen reduction (Class B) allow immediate land application
- Improved de-watering ability of solids
- Enclosed to control odors
- Potential beneficial use of digester gas

JBS Concerns presented were:

- Ammonia – Insufficient aeration capacity to treat ammonia in the summer
- Sulfides – Odors and solids production associated with treatment process

Derek Cambridge with Black & Veatch presented the following Digestion Project update:

- Six options and costs developed
- Focused on capacity of the existing liquid treatment process based on Capacity Analysis
- Reviewed with City staff in November Workshop
- Digester project on-hold following November Workshop until rate study approved

Black and Veatch recommended Option 2A at a cost of \$19.6 million which provided redundancy with capacity for 100% expansion of the liquid process. This option would allow a digester building area of 12,000 sq ft. Option 2A was the most cost effective.

Anna White with Black & Veatch presented the following information on the Rate Study:

- Maintain Revenue Adequacy
- Use Fair and Equitable Cost Allocations
- Use Practical Rate and Billing Formats
- Minimize Customer Impacts
- Maximize Customer Understanding and Acceptance

The focus of the Cost of Service was to match the costs of providing service to individual customer classes and to design rates to equitably recover costs. It was recommended that the City reevaluate rates at least every 3 years. Projected revenue for 2010 was \$8,730,500 with requirements of \$9,341,600.

The following Rate Design Methodology - Process was used:

- Review Suitability of Existing Rate Structure
- Examine Alternative Structures
- Design Cost of Service Rates
- Examine impact of Rates on Individual Customers and Classes

The following was presented for Typical Residential Bills:

<u>Residential</u>	<u>Existing Rates</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Small	\$15.09	\$15.49	\$16.64	\$17.64	\$18.89
Medium	17.83	18.39	20.00	21.40	23.15
Large	28.79	29.99	33.44	36.44	40.19

The following recommendations were made:

- Approve moving forward with Option 2A for the Digesters
- Approve moving forward with finalizing the Rate Study recommending the proposed rates presented

Discussion was held concerning the timeframe of the project with the digester to be completed by 2013. Finance Director David Springer stated cash reserves were currently \$10.8 million. Thirty year bonds were mentioned for this project.

JBS volume charges were discussed relating to the more you use the less you pay. Ms. White explained the structure of rates for JBS and surcharge rates. The difference between flat rates and cost of service rates were explained. John Henderson, Wastewater Treatment Plant Superintendent answered questions concerning the sulfide trend of JBS.

Lewis Kent, 624 E. Meves Avenue and Paul Wieck, 319 Cardnial spoke concerning the cost of this project.

ADJOURNMENT: The meeting was adjourned at 8:45 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G3

#2009-103 - Approving Final Plat and Subdivision Agreement for DSK Subdivision

This item relates to the aforementioned Public Hearing Item E-1.

Staff Contact: Chad Nabity

Council Agenda Memo

From: Regional Planning Commission

Meeting: May 12, 2009

Subject: DSK Subdivision – Final Plat

Item #'s: G-3

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

Background

This final plat proposes to create 6 lots located east of Swan Lane and north of Bismark Road, in the 2-mile extraterritorial jurisdiction of the City of Grand Island. This property is zoned LLR Large Lot Residential Zone. Sewer and water are available to the site. This is approximately 10 acres.

Discussion

The final plat for DSK Subdivision was considered by the Regional Planning Commission at the May 6, 2009 meeting. A motion was made by Ruge and seconded by Hayes to approve the plat as presented on the Agenda. A roll call vote was taken and the motion carried with 7 members present voting in favor (Aguilar, Reynolds, Heineman, O'Neill, Ruge, Hayes, Bredthauer).

Alternatives

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

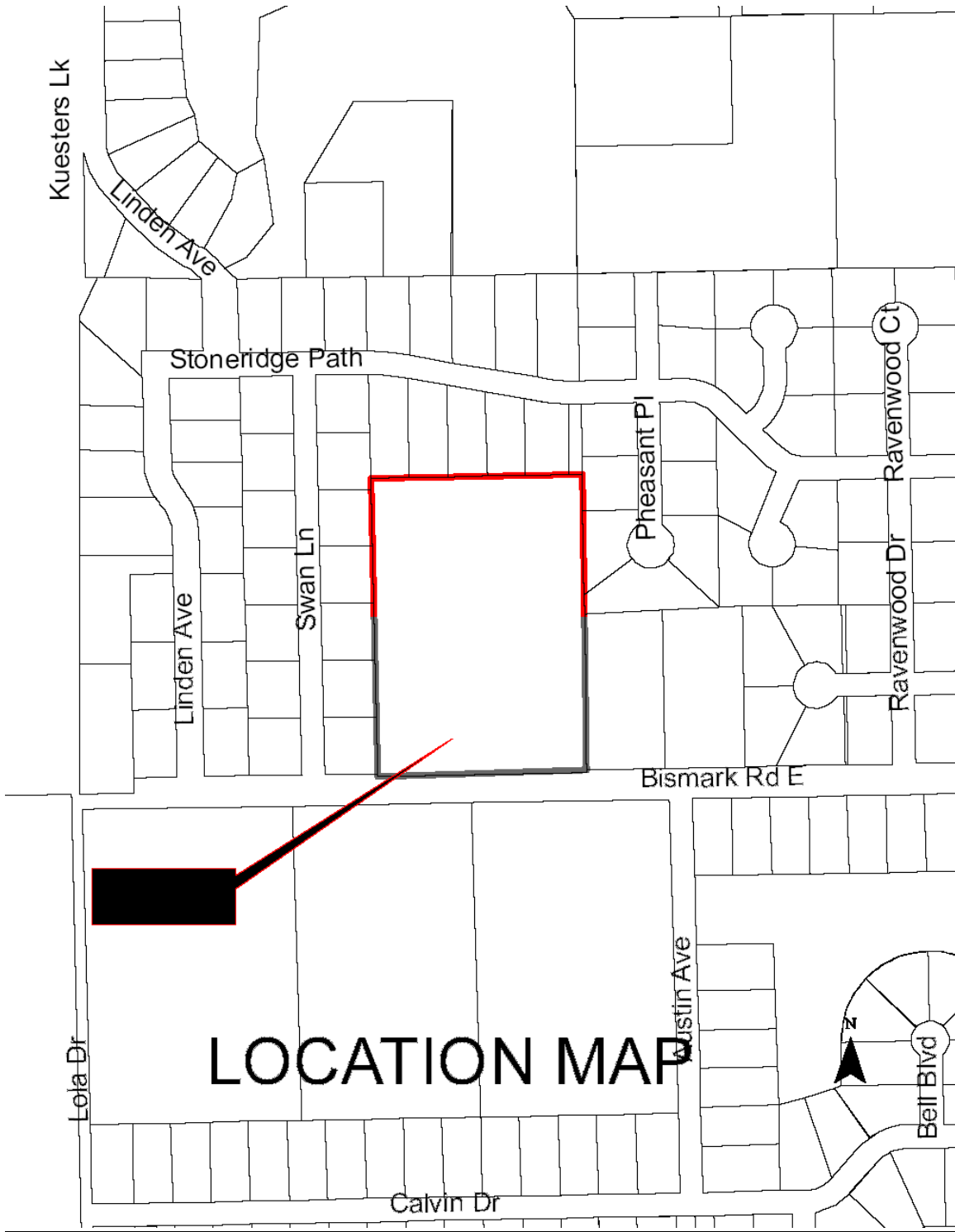
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

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

Sample Motion

Move to approve as recommended.



DSK Subdivision Final Plat Summary

Developer/Owner

Danny Kunze
1423 Piper Street
Grand Island NE 68803

To create 6 lots north of Bismark Road and east of Swan Lane, in the 2-mile extraterritorial of the City of Grand Island, in Hall County, Nebraska.

Size: 10 acres

Zoning: LLR – Large Lot Residential Zone

Road Access: Public City Roads

Water Public: Public water is available

Sewer Public: Public sewer is available



RESOLUTION 2009-103

WHEREAS, Danny Kunze and Susan M. Kunze, husband and wife, being the owners of the land described hereon have caused to be laid out into 6 lots, a tract of land comprising a part of the Southwest Quarter of the Southwest Quarter (SW1/4SE1/4) of Section Thirteen (13), Township Eleven (11) North, Range Nine (9) West of the 6th P.M., in the 2-mile extraterritorial of the City of Grand Island, in Hall County, Nebraska, under the name of DSK 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 DSK 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, May 12, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	<input type="checkbox"/> _____
May 7, 2009	<input type="checkbox"/> City Attorney



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G4

**#2009-104 - Approving Final Plat and Subdivision Agreement for
Miracle Valley Second Subdivision**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Regional Planning Commission

Meeting: May 12, 2009

Subject: Miracle Valley Second Subdivision – Final Plat

Item #'s: G-4

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

Background

This final plat proposes to create 2 lots located east of Engleman Road., and north of Michigan Ave. This property is zoned LLR Large Lot Residential Zone. Sewer and water are available to the site. This is approximately 4.375 acres.

Discussion

The final plat for Miracle Valley Second Subdivision was considered by the Regional Planning Commission at the May 6, 2009 meeting. A motion was made by Ruge and seconded by Hayes to approve the plat as presented on the Consent Agenda. A roll call vote was taken and the motion carried with 7 members present voting in favor (Aguilar, O'Neill, Heineman, Ruge, Hayes, Reynolds, Bredthauer).

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.



Miracle Valley Subdivision Final Plat Summary

Developer/Owner

Joseph M. Brown
2807 N Engleman Rd.
Grand Island NE 68803

To create 2 lots north of Michigan Ave., and east of Engleman Rd., in Grand Island, in Hall County, Nebraska.

Size: 4.375 acres

Zoning: LLR – Large Lot Residential Zone

Road Access: Public City Roads

Water Public: Public water is available

Sewer Public: Public sewer is available



RESOLUTION 2009-104

WHEREAS, Joseph M. Brown and Lori J. Brown, husband and wife, being the owners of the land described heron have caused to be laid out into 2 lots, a tract of land comprising all of Lot One (1), Miracle Valley Subdivision in the City of Grand Island, in Hall County, Nebraska, under the name of MIRACLE VALLEY 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 MIRACLE VALLEY 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, May 12, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

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



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G5

#2009-105 - Approving Acquisition of Utility Easement - 3134 West Highway 34 - Central Community College

This item relates to the aforementioned Public Hearing Item E-1.

Staff Contact: Gary R. Mader

RESOLUTION 2009-105

WHEREAS, a public utility easement is required by the City of Grand Island, from Central Community College Area, to survey, construct, inspect, maintain, repair, replace, relocate, extend, remove, and operate thereon, public utilities and appurtenances, including lines and transformers; and;

WHEREAS, a public hearing was held on May 12, 2009, for the purpose of discussing the proposed acquisition of an easement located in Hall County, Nebraska; and more particularly described as follows:

Commencing at the southeast corner of the Southeast Quarter of the Southwest Quarter (SE1/4, SW1/4) Section Twenty Nine (29), Township Eleven (11) North, Range Nine (9) West; thence westerly along the southerly line of said Southeast Quarter of the Southwest Quarter (SE1/4, SW1/4) Section Twenty Nine (29), Township Eleven (11) North, Range Nine (9) West, a distance of two hundred forty six and twenty three hundredths (246.23) feet; thence northerly along the westerly right-of-way line of Wortman Drive and its extension, a distance of five hundred eighty one and fourteen hundredths (581.14) feet to the ACTUAL Point of Beginning; thence continuing along the westerly line of said Wortman Drive, a distance of one hundred fifty five (155.0) feet to a point being on the centerline of an existing easement described in Document 0200306375, recorded in the Hall County Register of Deeds office; thence westerly and perpendicular to the westerly line of said Wortman Drive, a distance of twenty (20.0) feet; thence southerly, parallel with the westerly line of said Wortman Drive, a distance of one hundred fifty five (155.0) feet; thence easterly, perpendicular to the westerly line of said Wortman Drive, a distance of twenty (20.0) feet to a point on the westerly line of said Wortman Drive being the said Point of Beginning.

The above-described easement and right-of-way containing 0.071 acres, more or less, as shown on the plat dated 4/17/2009, marked Exhibit "A", attached hereto and incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island be, and hereby is, authorized to acquire a public utility easement from Central Community College Area, on the above-described tract of land.

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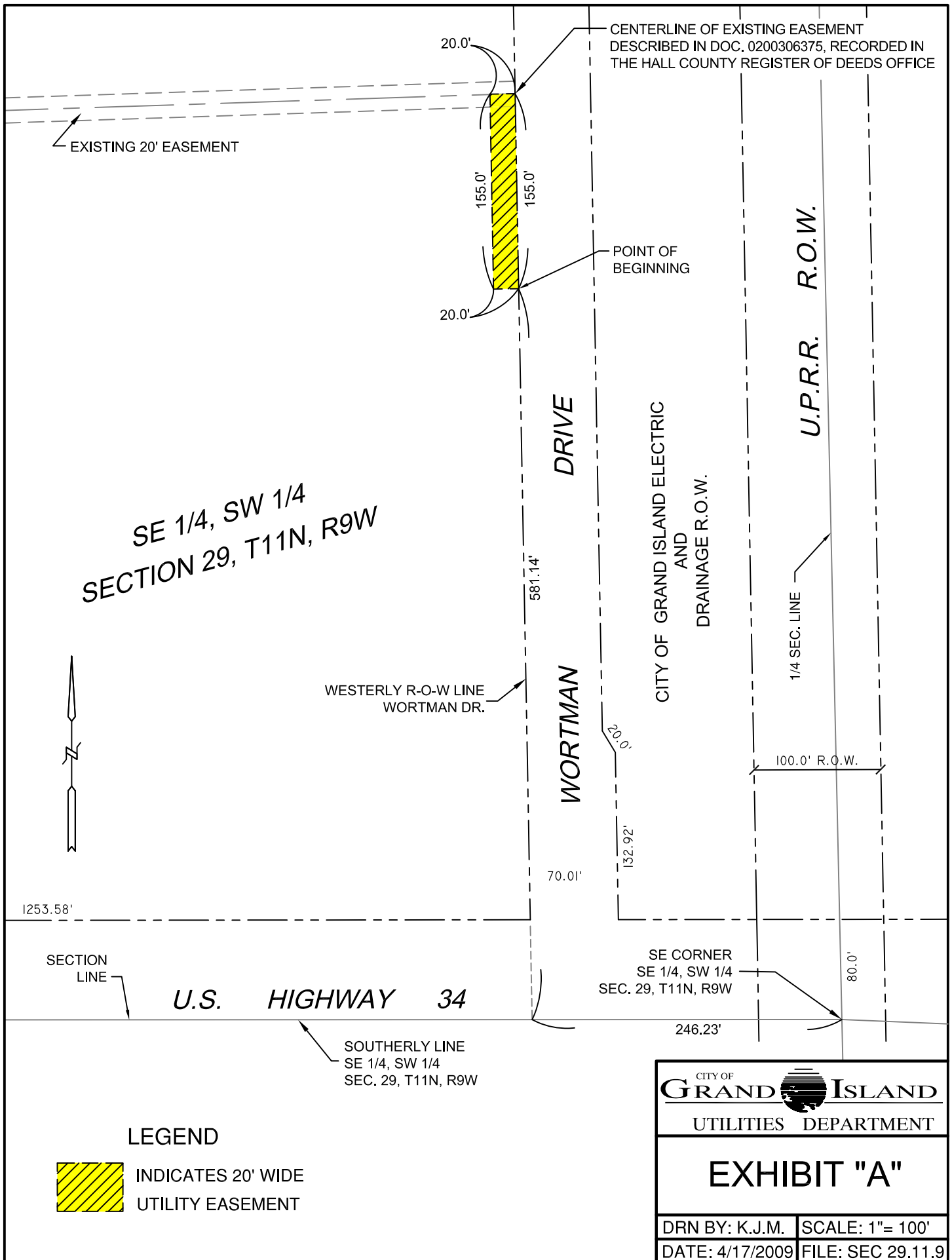
Adopted by the City Council of the City of Grand Island, Nebraska, May 12, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

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





City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G6

**#2009-106 - Approving Acquisition of Utility Easement - 4705 Gold
Core Drive - Zitski, LLC**

This item relates to the aforementioned Public Hearing Item E-2.

Staff Contact: Gary R. Mader

RESOLUTION 2009-106

WHEREAS, a public utility easement is required by the City of Grand Island, from Zitski, LLC, to survey, construct, inspect, maintain, repair, replace, relocate, extend, remove, and operate thereon, public utilities and appurtenances, including lines and transformers; and;

WHEREAS, a public hearing was held on May 12, 2009, for the purpose of discussing the proposed acquisition of an easement located in Hall County, Nebraska; and more particularly described as follows:

TRACT NO. 1

Commencing at the northwest corner of Lot One (1), Platte Valley Industrial Park Sixth Subdivision, in the City of Grand Island, Hall County, Nebraska; thence southerly along the westerly line of said Lot One (1), a distance of one hundred thirty one and eighty one hundredths (131.81) feet to the ACTUAL Point of Beginning; thence continuing southerly along the westerly line of said Lot One (1), a distance of twenty (20) feet; thence easterly, perpendicular to the westerly line of said Lot One (1), a distance of one hundred thirty five (135.0) feet; thence northerly, parallel with the westerly line of said Lot One (1), a distance of twenty (20.0) feet; thence westerly, perpendicular with the westerly line of said Lot One (1), a distance of one hundred thirty five (135.0) feet to a point on the westerly line of said Lot One (1), being the said Point of Beginning.

TRACT NO. 2

Beginning at the southwest corner of Lot One (1), Platte Valley Industrial Park Sixth Subdivision, in the City of Grand Island, Hall County, Nebraska; thence northerly along the westerly line of said Lot One (1), a distance of two hundred twenty six and sixty four hundredths (226.64) feet; thence easterly along the southerly line of the Northeast Quarter of the Southwest Quarter (NE1/4, SW1/4) Section Five (5), Township Ten (10) North, Range Nine (9) West, to a point being five (5.0) feet distant from the westerly line of said Lot One (1); thence southerly, parallel with the westerly line of said Lot One (1), a distance of two hundred twenty six and fifty nine hundredths (226.59) feet to a point on the southerly line of said Lot One (1); thence westerly along the southerly line of said Lot One (1) to the southwest corner of said Lot One (1), being the said Point of Beginning.

The above-described easements and right-of-way containing a combined total of 0.088 acres, more or less, as shown on the plat dated 4/20/2009, marked Exhibit "A", attached hereto and incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF

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

THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island be, and hereby is, authorized to acquire a public utility easement from Zitski, LLC, on the above-described tract of land.

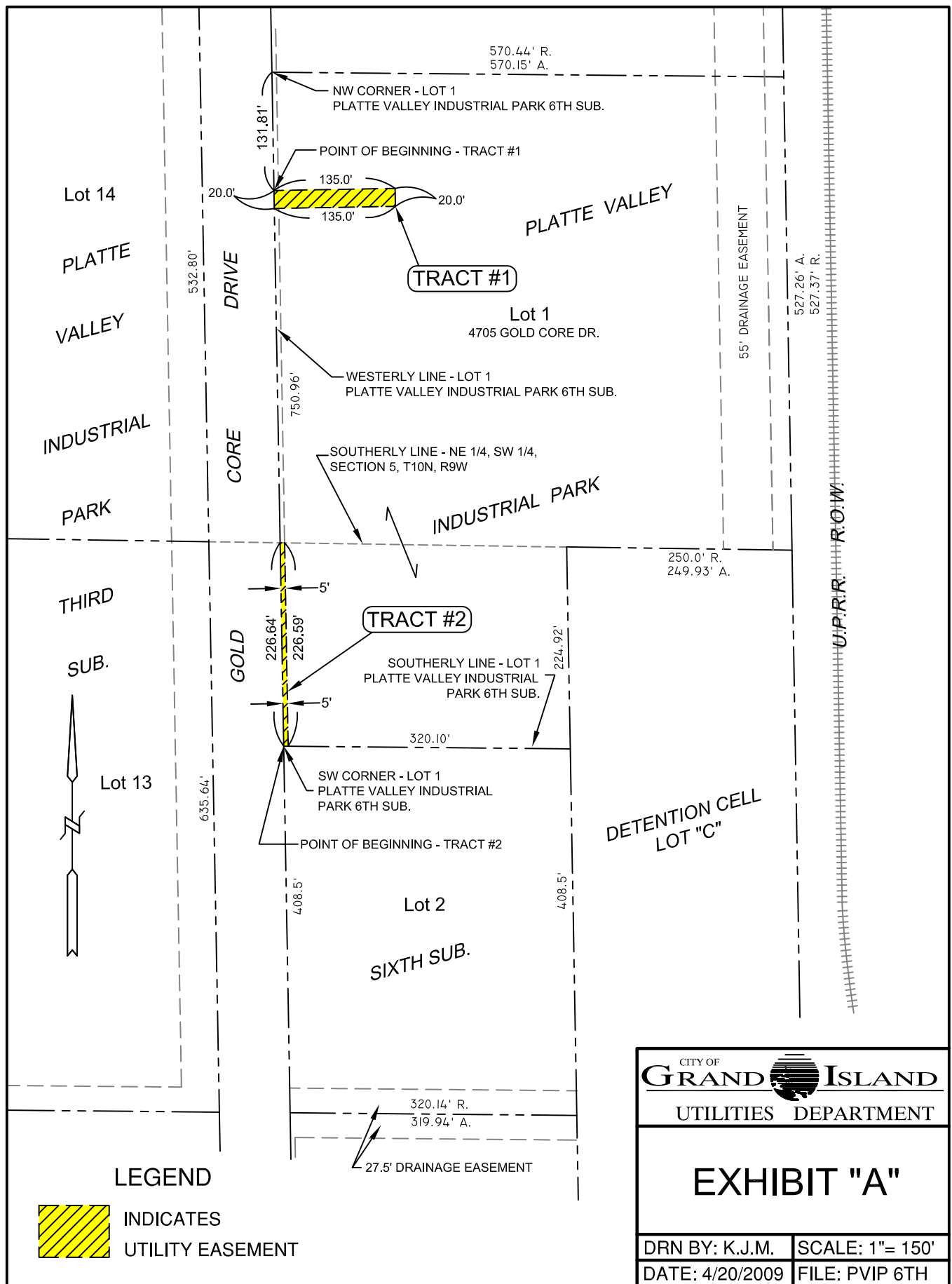
- - -

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

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk



 CITY OF GRAND ISLAND UTILITIES DEPARTMENT	
<h1>EXHIBIT "A"</h1>	
DRN BY: K.J.M.	SCALE: 1"= 150'
DATE: 4/20/2009	FILE: PVIP 6TH



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G7

#2009-107 - Approving Acquisition of Utility Easement - 2216 East Highway 30 - Bosselman Carriers, Inc.

This item relates to the aforementioned Public Hearing Item E-3.

Staff Contact: Gary R. Mader

RESOLUTION 2009-107

WHEREAS, a public utility easement is required by the City of Grand Island, from Bosselman Carriers, Inc., to survey, construct, inspect, maintain, repair, replace, relocate, extend, remove, and operate thereon, public utilities and appurtenances, including lines and transformers; and;

WHEREAS, a public hearing was held on May 12, 2009, for the purpose of discussing the proposed acquisition of an easement located in Hall County, Nebraska; and more particularly described as follows:

Commencing at the southwest corner of Lot Six (6) Bosselman Brothers Subdivision in the City of Grand Island, Hall County; thence northeasterly along the southerly line of said Lot Six (6) on an assumed bearing of N63°19'55"E, a distance of thirty (30.0) feet to the ACTUAL Point of Beginning; thence continuing along the southerly line of said Lot Six (6), a distance of twenty (20.0) feet; thence N26°40'05"W, a distance of one hundred four and eight hundredths (104.08) feet to a point on the westerly line of said Lot Six (6); thence S00°59'47"E along the westerly line of said Lot Six (6), a distance of forty six and seventeen hundredths (46.17) feet; thence S26°40'05"E, a distance of sixty two and forty seven hundredths (62.47) feet to the said Point of Beginning.

The above-described easement and right-of-way containing a combined total of 0.038 acres, more or less, as shown on the plat dated 4/30/2009, marked Exhibit "A", attached hereto and incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island be, and hereby is, authorized to acquire a public utility easement from Bosselman Carriers, Inc., on the above-described tract of land.

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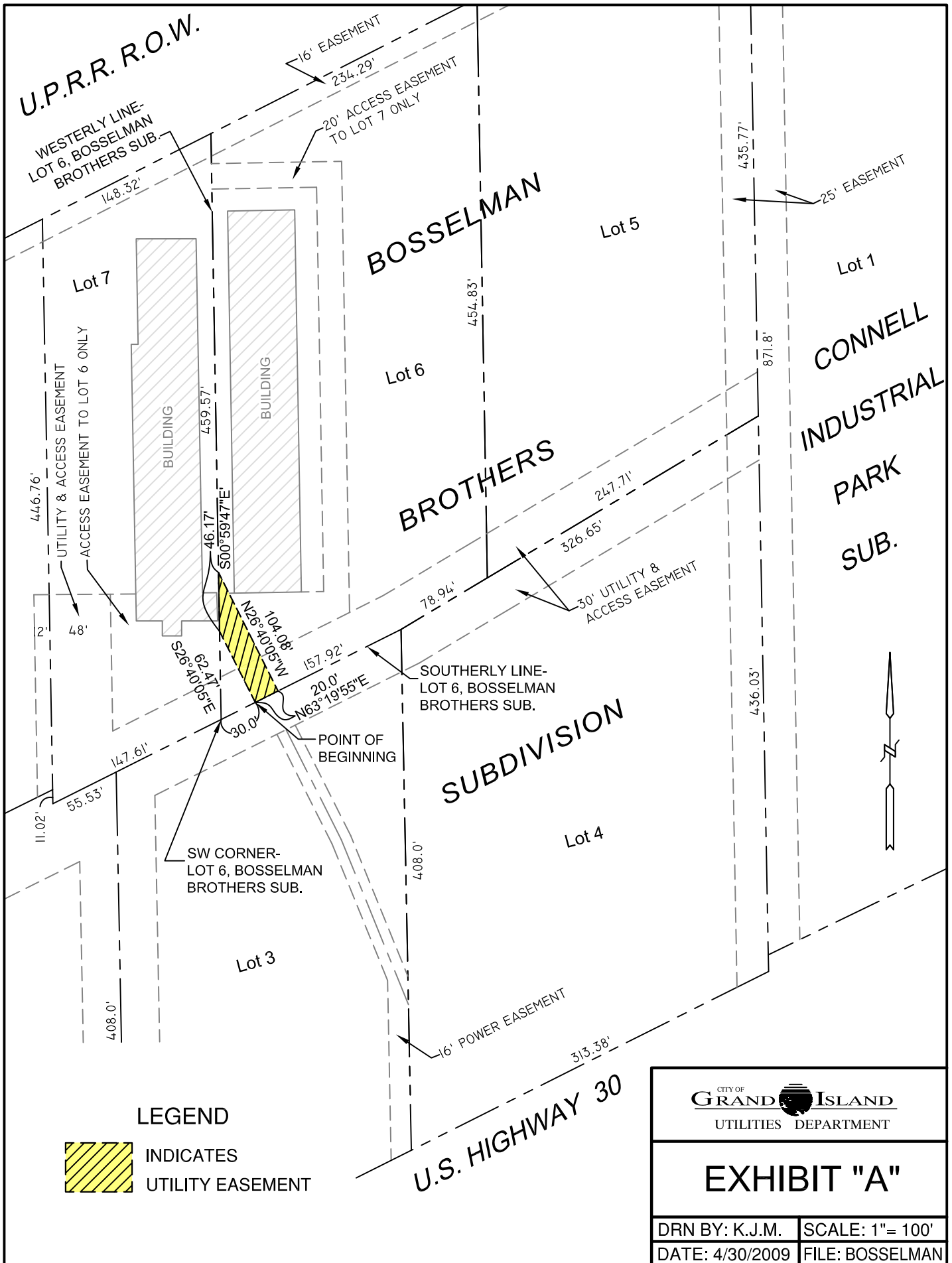
Adopted by the City Council of the City of Grand Island, Nebraska, May 12, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

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





City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G8

**#2009-108 - Approving Access Permission to the Platte River
Program for River Channel Monitoring**

Staff Contact: Gary R. Mader; Wes Nespor

Council Agenda Memo

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

Meeting: May 12, 2009

Subject: Platte River Recovery Program

Item #'s: G-8

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

Background

The Platte River Recovery Program (Program) is a cooperative effort of the three states in the Platte River basin and the federal government to restore the Platte River to a more natural condition for the benefit of the endangered species that utilize the riverine habitat in central Nebraska. As a part of that program, the river channel morphology in central Nebraska will be evaluated periodically to judge the success of modifications to the river system. The Program has requested permission for its contractor to access the river channels adjacent to the Grand Island Wellfield. The requested access locations are shown on the attached map and are referred to as "Anchor Points". A copy of the request and the proposed access agreement are attached.

Discussion

Historically, the City has cooperated with governmental agencies in analyses of environmental issues. The Program wishes to access the Wellfield once each year through 2019 to make precise measurements of the river channels adjacent to the Wellfield as described more fully in the attached Work Plan. The relatively limited access requirements of this request are a minimal burden to the Utilities Department, and the Department will retain control of the access by requiring that those accessing the City property be required to check-out a gate key for entrance and return it immediately upon completion of their annual measurements. The Program Executive Director has requested that the City execute the Anchor Point Access Permission form, copy attached.

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 Anchor Point Access Permission form.

Sample Motion

Move to approve the Anchor Point Access Permission form, and authorize the Mayor to execute the form on behalf of the City.



Office of the Executive Director
3710 Central Avenue
Suite E
Kearney, NE 68847
Phone: (308) 237-5728
Fax: (308) 237-4651



April 13, 2009

City of Grand Island, NE Utilities Department
Attention: Mr. Gary Mader
P.O. Box 1968
Grand Island, NE 68802-1968

Dear Mr. Mader:

As part of the Platte River Recovery Implementation Program (PRRIP or Program), monitoring of in-channel vegetation and bed form changes in the Platte River throughout the first increment of the Program (2007-2019) is required. The Program has contracted out this effort to a team of scientists and engineers lead by the research firm of Ayres & Associates. The Ayres & Associates team will collect this data at the same points in the river each year. These sites are located in the Platte River from Lexington to Chapman and are about a mile from each other. Some sites will need to be monitored annually while others will need to be monitored less frequently during the study. It is anticipated that the data at each site will be collected by a team of professionals in one day or less, and that only under unforeseen circumstances would 2 or more days per site be needed each year. The work will not change from year to year, but the research firm that is selected to collect the data may change.

As a further note of explanation, to avoid possible future confusion, I want to explain that the services of the Executive Director and other Program staff are provided through contract with the firm of Headwaters Corporation. The names Headwaters Corporation and Executive Director's Office are often used interchangeably in conversations and informal communications. If you are contacted by a Headwaters employee/Program Staff member, we officially represent the Program and direct the efforts of other contractors such as Ayres & Associates.

The Executive Director's Office of the Program requires employees and/ or contractors to obtain written permission from landowners before entering onto private property to conduct surveys or scientific sampling; so we are hereby requesting your approval to enter your land for this purpose. Please review the enclosed Ayres & Associates Work Plan if you wish to gain more information in regards to the methods for collecting the data.

If you approve this request, please sign both copies of this letter, keep one for your files and return one signed letter in the enclosed envelope. Thank you for your cooperation.

Sincerely,

Jerry F. Kenny, Ph.D.
Executive Director, PRRIP

Anchor Point Number(s): 6, 7

Approval: _____ Date: _____
Landowner Signature

Please circle your preference for the method in accessing your property:

By Land

By Water

Either

If you have any questions please contact:

Tim Tunnell

Phone (402)219-3883

e-mail: tunnellt@headwaterscorp.com

Bruce Sackett

Phone (402)450-3527

e-mail: sackettb@headwaterscorp.com

- All work shall be done in accordance with the Ayers Associates Work Plant attached herewith, which shall be incorporated as part of this agreement.
- All new ground control monumentation and flagging shall be located such that it will not pose a hazard or impediment to mowing.
- Land access to the anchor points requires use of a locked gate. Access in accordance with this agreement shall be obtained by contacting the Grand Island Utilities Department during normal working hours at least one day ahead of scheduled work.
- Access contact is Larry Keown, Power Plant Superintendent, Phone (308)385-5491, e-mail address is lkeown@giud.com
- With scheduling, the gate key will be made available for access. The gate key will be returned to Mr. Keown immediately upon completion of work during each visit to the sites.
- No equipment, vehicles, fuels or other materials shall be stored on the owner's property.

AYRES ASSOCIATES WORK PLAN
Channel Geomorphology and In-Channel Vegetation Monitoring, Central Platte River

Longitudinal Profile Survey

The following activities will be conducted along public and Program lands and only on private property where access has been granted:

- Access to sites by both four-wheel drive vehicles and by foot will be required in order to locate existing or establish and monument new ground control for the survey and to occupy those monuments when the survey is actively being performed.
- Where the establishment of new ground control is necessary, monumentation will consist of 24-inch long, 5/8-inch diameter rebar driven into and flush with the ground and capped with an aluminum cap. The monument will be located such that the monument will not pose a hazard or impediment to vehicles or animals. The monument will be documented with GPS and the area will be flagged for identification and later use.
- Ground control that is already present will be located and georeferenced with GPS. Existing monuments may be obscured or overgrown with vegetation, so some cutting away or modification of non-woody vegetation over or near the monuments may be required. If woody vegetation precludes the occupation of the monument, it may be necessary to relocate or reestablish the monument.
- When conducting the survey work, the ground control will be occupied by a survey grade GPS receiver and antennae mounted on a tripod. A survey technician may remain with the receiver while the station is being used.
- The survey work on the river will be conducted during a moderately high flow event in the spring in order to use a shallow draft, flat bottom jet boat. The boat will be launched at predetermined and pre-approved launch points.
- The boat will be performing the survey work by zigzagging across the river as it progresses in a downstream direction. It may be necessary for the boat to pass through a given property more than once in a day or even more than once in a week in order to accurately document the topography of the river or to return to its launch point.
- This work will be completed in the Spring of 2009.

Channel Geomorphology and In-Channel Vegetation Surveys

This task includes conducting topographic and vegetation surveys of the river between the historic high banks at predetermined sites along the river as well as collecting bed and bank material samples at those sites. Each site will contain three monumented transects. At least four to six project personnel will be performing the following activities at each site at any give time during the months of July and August.

Ground Control:

- Access to sites by both four-wheel drive vehicles and by foot will be required in order to locate existing or establish and monument new ground control for the survey and to occupy those monuments when the survey is actively being performed.

- Where the establishment of new ground control is necessary, monumentation will consist of 24-inch long, 5/8-inch diameter rebar driven into and flush with the ground and capped with an aluminum cap. The monument will be located such that the monument will not pose a hazard or impediment to vehicles or animals. The monument will be documented with GPS and area will be flagged for later use and identification.
- Ground control that is already present will be located and georeferenced with GPS. Existing monuments may be obscured or overgrown with vegetation, so some cutting away or modification of non-woody vegetation over or near the monuments may be required. If woody vegetation precludes the occupation of the monument, it may be necessary to relocate or reestablish the monument.
- When conducting the survey work, the ground control will be occupied by a survey grade GPS receiver and antennae mounted on a tripod. A survey technician may remain with the receiver while the station is being used.

Geomorphology and Vegetation Survey

- Access to survey sites by both four-wheel drive vehicles and by foot will be required in order to conduct the survey work.
- The survey personnel will locate three predefined permanently monumented geomorphology transects and five unmonumented vegetation transects at each site. Both ends of the permanent geomorphology transects and any hinge points along each transect will be monumented with 24-inch long, 5/8-inch diameter rebar driven into and flush with the ground and capped with an aluminum cap. The monuments will be located on both bank or in the overbank areas such that they will not pose a hazard or impediment to vehicles or animals. The monuments will be documented with GPS and the area will be flagged for later identification and use. The vegetation transects will not be monumented, but the transects will be documented with GPS.
- It is assumed that the survey work will take approximately the entire day at each site. Survey personnel will be conducting extensive survey and sampling work in the channel, so any non-woody vegetation in those areas may become trampled or, where it is extremely dense, may be cut back to allow for access. Areas marginal to the channel and in the floodplain will also be traversed, but to a lesser degree, so damage to any non-woody vegetation will likely be minimal.
- The geomorphology survey work will include surveying channel sections, taking bed and bank material samples, and documenting existing channel conditions with field notes and ground photos.
- Sediment samples will be collected from the bed of the channel at all transects and from both banks at one of the transects at each site. The samples will be collected with either a core sampler or a shovel. Some excavation of the banks (by shovel) may be required, but the extent of excavation will be minimal. All sample sites will be refilled after samples have been collected in order to minimize the hazards to humans and animals.
- The vegetation survey work will include documenting vegetation types, heights, and topographic position within the channel.
- Where channels are separated by islands, it may be necessary to traverse the islands as part of the survey work.
- Suspended sediment samples will be collected from five bridges twelve times in 2009, but bed material samples will only be collected once from the channel at those bridges.

Other General Conditions

Project personnel will also adhere to the following:

- Every effort will be made to minimize disturbances to private property and land adjacent to the river and to cattle or other animals that may be present.
- All landowner preconditions, limitations, restrictions, and requirements will be strictly adhered to by project personnel. If any landowner requests that project personnel leave their property during the course of the field work, project personnel will do so immediately and the Executive Director's Office will be immediately informed of the landowner's request.
- Where access has been granted, every effort will be made to notify the landowner the day before work is to be conducted on their property.
- We will take a "leave it as we found it" approach to access on private property. If we find a gate open, we will leave it open. If we find a gate closed, we will close it behind us as we enter and exit the property. If we damage or break something on a gate or fence, we will immediately notify the landowner and fix or repair it promptly.
- All project vehicles will be appropriately marked with corporate logos and/or will maintain a window placard that identifies the vehicle as being associated with Program activities. The placard will include a contact name and phone number in case the landowner or their representatives need to contact the ED's office.
- Upon request, all project personnel will provide landowners with a business card that identifies that person or their immediate supervisor.

Primary Project Personnel

The following project personnel will be conducting all or portions of the field work:

Ayres Associates Inc

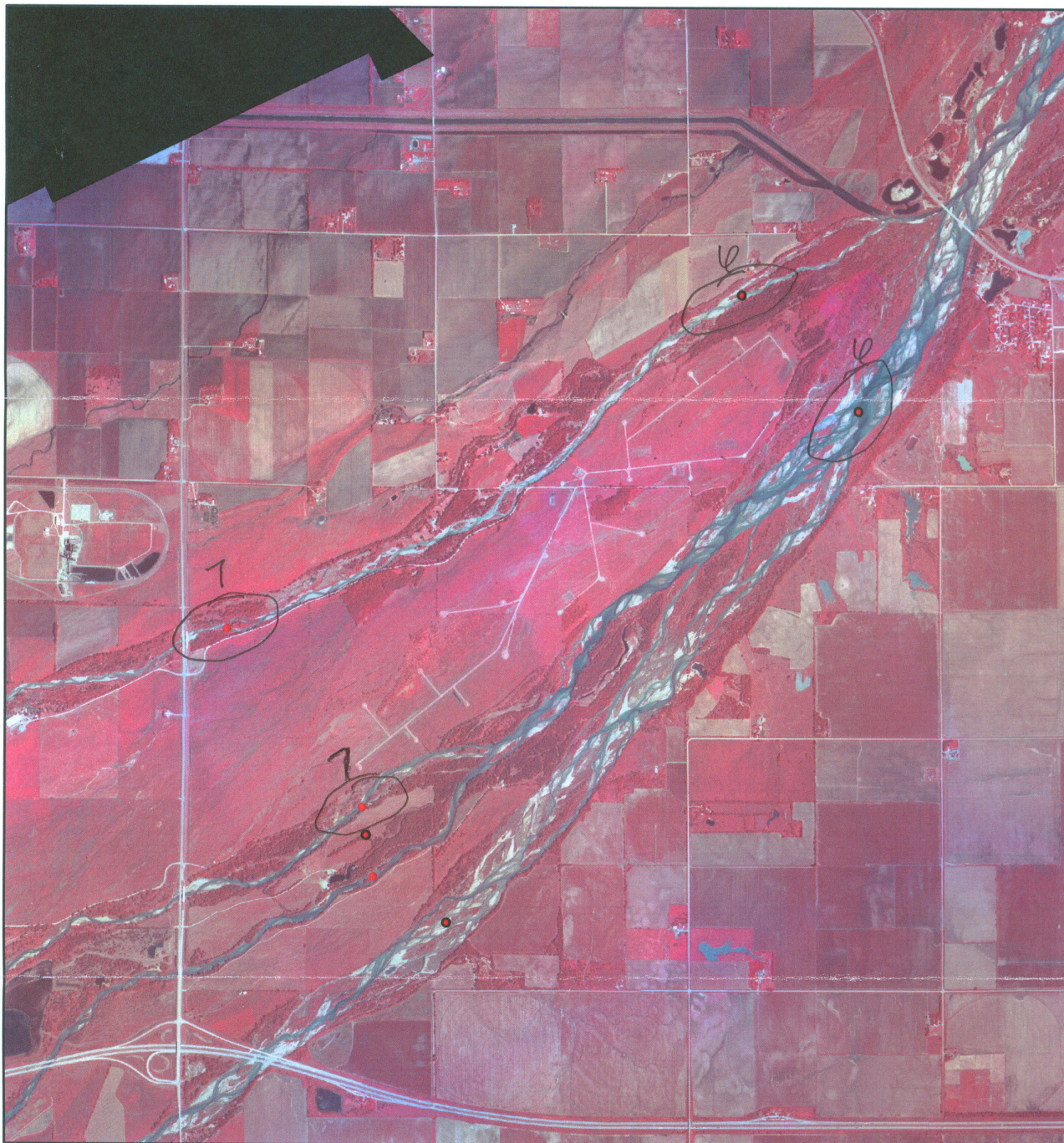
Dr. Jim Schall – Principal in Charge
Mr. Bill Spitz – Overall Project Manager
Mr. Anthony Alvarado
Mr. Dusty Robinson
Mr. Joe Robinson

3665 JFK Parkway, Bldg. 2, Suite 200
Ft. Collins, CO 80525
Ph: (970) 223-5556
Fax: (970) 223-5578
www.AyresAssociates.com

Olsson Associates

Dr. Joan Darling – Olsson Project Manager
Mr. Nate Van Meter

1111 Lincoln Mall, Suite 111
Lincoln, NE 68508
Ph: (402) 474-6311
Fax: (402) 474-5160
www.OAConsulting.com



Legend

- Draft_Geomorph_Anchor_Points
- PlatteR_Split_Flow_Pts



0.3 Miles

City of Grand Island Wellfield

Anchorpoint Locations
Date: 4/20/09
By: TRT

Anchorpoints 6 & 7

RESOLUTION 2009-108

WHEREAS, the Platte River Recovery Program (Program) is a cooperative effort of the three states in the Platte River basin and the federal government to restore the Platte River to a more natural condition for the benefit of the endangered species that utilize the riverine habitat in central Nebraska ; and

WHEREAS, the Program has requested permission for its contractor to access the river channels adjacent to the Grand Island Wellfield through 2019 to make precise measurement of the river channels adjacent to the Wellfield; and

WHEREAS, the limited access requirements of this request are a minimal burden to the Utilities Department, and the Department will retain control of the access by requiring that those accessing the City property be required to check-out a gate key for entrance and return it immediately upon completion of their annual measurements; and

WHEREAS, the Program Executive Director has requested that the City execute the Anchor Point Access Permission form.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized to, on behalf of the City, execute the Anchor Point Access Permission form for the Platte River Recovery Program.

- - -

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



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G9

**#2009-109 - Approving Wind Generation Agreement between
Douglas Brunk and Grand Island Utilities**

Staff Contact: Gary R. Mader;Dale Shotkoski

Council Agenda Memo

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

Meeting: May 12, 2009

Subject: Customer Owned Generation Agreement

Item #'s: G-9

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

Background

The National Energy Act of November, 1978 and the Public Utility Regulatory Policies Act (PURPA) had the effect of placing certain regulatory requirements on electric utilities. The goals of PURPA are to encourage:

1. The conservation of energy supplied by electric utilities
2. The optimization of the efficient use of facilities and resources by electric utilities
3. Equitable rates to electric consumers

PURPA addresses the subject of customer-owned generation. In order to carry out the provisions of the Act, the Federal Energy Regulatory Commission (FERC) issued certain rules and regulations (18 C.F.R. Part 292) regarding electric utility obligations and qualifying status for customer-owned generation.

The purpose of PURPA and the FERC rules is to encourage the use of cogeneration and small production facilities where such devices might utilize alternate and/or renewable fuels and thus might make a significant contribution to the nation's effort to conserve conventional fossil fueled energy resources.

Customer owned generation devices (designated Qualifying Facilities by FERC) are divided into two subsets, cogenerators and small power producers. Cogeneration facilities simultaneously produce two forms of useful energy such as electric power and steam. Cogeneration facilities can use significantly less fuel to produce electricity and steam in a combined process (or other forms of energy) than would be needed to produce the two separately. Qualifying Facilities power generators are those that rely on non-conventional fuels such as biomass, solid or gaseous waste, or renewable resources, including wind

and solar, to produce electric power. Use of alternative sources can reduce the need to consume conventional fossil fuels to produce electricity.

Under the FERC regulations, the Utilities Department is generally obligated to interconnect and operate in parallel with Qualifying Facilities, and to purchase excess electricity from those generators who qualify under FERC's standards.

The regulations allow the host utility to establish interconnection standards to ensure electrical system safety and reliability. The Act and regulations also make it clear that a utility's other customers are not to be detrimentally affected as a result of the interconnection.

The purchase rate for excess power provided from Qualifying Facilities is based (as stated by FERC) upon the costs that can be avoided by the host utility by such purchases. Avoided costs can be classified into two basic components, energy related and capacity related.

Energy related avoided costs are those associated with the cost of not burning conventional fuel to produce electricity or reducing energy purchases. With wind generation the costs that can be avoided are those associated with energy, i.e., not burning coal, natural gas or oil; or not purchasing power from other utilities.

Capacity avoided costs are those associated with the capital cost of adding new generation. If, at some point in the future, Grand Island were able to avoid acquisition of generation resources by relying on Qualifying Facilities to meet peak electric demands, there would be additional value over and above the avoided energy costs.

Discussion

GIUD now has a customer who wishes to connect to the electrical distribution system with a wind generator. A contract was developed to allow the interconnection, protect GIUD facilities and to create a mechanism to pay the customer should the Qualifying Facility produce excess energy to sell back.

The proposed agreement was modeled after a similar agreement form used by the Lincoln Electric System, with review of currently known and pending regulation at the state and federal level.

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 Customer Owned Generation Agreement with Douglas Brunk to connect a wind powered electric generator to Grand Island's electrical system.

Sample Motion

Move to approve the Customer Owned Generation Agreement with Douglas Brunk to connect a wind generator to Grand Island's electrical system.

COGENERATION AND SMALL POWER PRODUCTION
(25 kW and less)
PARALLEL OPERATION, POWER SALES AND INTERCONNECTION AGREEMENT
between
THE CITY OF GRAND ISLAND UTILITIES DEPARTMENT
and
Douglas Brunk

The Power Sales and Interconnection Agreement, hereinafter called the "Agreement," is made and entered into as of the 12th day of May, 2009 by and between Douglas Brunk, hereinafter referred to as the "Owner" of the alternate energy generation equipment of "Qualifying Facility" and the City of Grand Island Utilities Department, a municipal corporation of the State of Nebraska, hereinafter referred to a "GIUD".

WITNESSED: The Owner desires to install alternate energy generation equipment or a Qualifying Facility and has requested that it be interconnected to GIUD such that it operates in parallel with GIUD and GIUD may receive energy from such Qualifying Facility. GIUD agrees to allow such interconnection subject to the following terms and conditions, which are accepted and agreed to by the Owner:

ARTICLE I

TERM OF AGREEMENT

This Agreement shall be binding upon execution and shall remain in effect for a term of twelve (12) months from the forenamed execution date. The Agreement may be terminated by either Party by giving 30 days written notice. Upon completion of the term, the Agreement will remain effective on a month to month basis unless terminated by either Party.

ARTICLE II

SALE OF ENERGY

The Owner of the Qualifying Facility elects to sell and deliver energy to GIUD under one of the following two options:

(Check the appropriate option)

_____ OPTION A

Deliver the entire electrical output of the Qualifying Facility.

_____ OPTION B

Deliver the instantaneous surplus or excess electrical output beyond any load requirements associated with the Qualifying Facility.

ARTICLE III

RATES FOR PURCHASES FROM QUALIFYING FACILITY

GIUD shall pay the Qualifying Facility for energy delivered to the utility according to the current period GIUD price schedule for such purchases. This price schedule shall be reviewed and subject to change by GIUD at its discretion.

ARTICLE V

TERMS AND CONDITIONS

This Agreement includes the following appendix which is attached and incorporated by reference herein:

Appendix A - General Terms and Conditions of Interconnection and Power Purchases and Sales

In addition, the terms and conditions of the GIUD Service Regulations, as modified from time to time, shall also apply except as expressly modified in this Agreement.

In Witness Whereof, the Parties have executed this Agreement by their duly authorized representatives as of the date hereinabove set forth:

Qualifying Facility

City of Grand Island, Utilities Dept.

Title

Mayor

Attest

Attest

City Clerk

APPENDIX A

GENERAL TERMS AND CONDITIONS OF INTERCONNECTION AND POWER PURCHASES AND SALES

A-1 Electrical Service Conditions

A-1.1 General

- a) Owner: _____
- b) Location: _____

A-1.2 Primer Mover and Generator

- a) Manufacturer: _____
- b) Manufacturer's Reference
Number, Type or Style: _____
- c) Serial Number: _____
- d) Nameplate Data: _____
- e) Fuel Source: _____

A-1.3 Character of Service

- a) Voltage: _____
- b) Phase: _____
- c) Frequency: _____
- d) Service Amp: _____
- e) Other Characteristics: _____

A-1.4 Points of Delivery and Receipt

The point of delivery and/or receipt between GIUD and the Qualifying Facility will be the GIUD metering equipment or that point where the GIUD service wires are joined to the Qualifying Facility's service terminals unless otherwise mutually agreed to by the Parties.

A-2 Rights and Obligations

A-2.1 Ownership and Responsibility

The Owner of the Qualifying Facility shall design, construct, install, own, operate and maintain the Facility and all equipment on the Owner's side of the point of delivery/receipt that is required to generate and deliver energy to GUID except for any special facilities as may be designated. The Facility's protection, control, safety and all associated equipment must meet standards of good engineering and electrical safety

practices as determined solely by GIUD and be capable of parallel operation with GIUD service wires. The protection, control, safety and other associated equipment shall at all reasonable times be accessible to authorized GIUD personnel.

A-2.2 Design

The Owner of the Qualifying Facility shall supply GIUD with three copies of technical specifications and drawings upon request related to the production and interconnection facilities and related equipment. GIUD's review of the Facility's specifications shall not be construed as confirming nor endorsing the design nor as any warranty of safety, durability or reliability of such Facility or equipment. GIUD shall not, by reason of such review or failure to review, be responsible for strength, details of design, adequacy or capacity of the Qualifying Facility or other equipment, nor shall GIUD's acceptance be deemed to be an endorsement of any facility or equipment.

A-2.3 Interconnection Facilities

The Owner of Qualifying Facility shall construct, own and maintain interconnection facilities as required by GIUD to deliver energy from the Qualifying Facility to the point of delivery/receipt. The interconnection facilities shall be of such size to accommodate the delivery of such energy.

A-2.4 Protective Equipment

The Owner of the Qualifying Facility shall be responsible for providing and maintaining all equipment deemed necessary for the protection of its own facilities, property and operations. Such equipment shall be provided for on the Owner's side of the point of delivery/receipt. By virtue of the interconnection with the Qualifying Facility, GIUD assumes no liability for the protection of any property or person associated with the Qualifying Facility's operations.

A-2.5 Changes in Conditions

The Owner of the Qualifying Facility agrees to make and bear all costs, except as otherwise provided, of changes in equipment necessitated by changes in service requirements as may be reasonably required by GIUD.

A-2.6 Governmental Regulations, Codes and Ordinance

The Owner of the Qualifying Facility has the responsibility to comply with all applicable federal, state and local regulations, building codes and ordinances including electrical codes. The Owner shall not begin initial operation of the Qualifying Facility until it has passed applicable code inspection requirements and has received written approval from GIUD. The GIUD review of design specifications and drawing or on-site inspections shall not be construed as approvals as to compliance with any such regulations, codes and/or ordinances.

A-2.7 Land Rights

The Owner of the Qualifying Facility grants to GIUD all necessary right-of-ways and easements on the property of the Owner to install, operate, maintain, replace and remove GIUD metering and interconnection equipment. If any part of GIUD 's facilities are to be located on property owned by other than a Party to this Agreement, the Owner of the Qualifying Facility shall procure all necessary right-of-ways and easements for the construction, operation, maintenance and replacement of GIUD's facilities upon such property in a form satisfactory to GIUD. The standard GIUD easement agreement will be utilized.

Authorized GIUD personnel have the right to enter at any reasonable time to inspect equipment located on the property or within an enclosure and make safety inspections. This right does not relieve the Owner of the Qualifying Facility of the obligation to maintain such facilities.

A-3 Operations and Safety

A3.1 Procedures

The Owner of the Qualifying Facility shall cooperate with GIUD in developing mutually acceptable operating procedures for the delivery of the electrical output from the Qualifying Facility and associated interconnection. The Owner will be responsible for operating the Qualifying Facility and associated equipment in a manner that will not cause undesirable and harmful effects, unusual fluctuations or disturbances to occur on the electrical system of GIUD or GIUD's customers. Any future changes to the interconnection relay settings must receive the approval of GIUD System Protection personnel before implementation.

A-3.2 Disconnect Equipment

The Owner shall provide equipment for manually disconnecting and isolating the Qualifying Facility from the GIUD electrical system. An outside-mounted visible disconnect shall be installed on the Owner's side of the point of delivery/receipt near the meter or mutually agreed upon location. Such equipment must be capable of preventing the Qualifying Facility from energizing the GIUD service wires and must include a device which, at GIUD's discretion, GIUD employees can operate and lock in place.

The Owner shall also provide equipment to automatically disconnect and isolate the Qualifying Facility from GIUD during a service interruption. The automatic disconnect shall receive its voltage and frequency referenced from the GIUD service wires. The automatic disconnect shall not close without proper voltage and frequency from the GIUD service wires. Such equipment must be capable of preventing the Qualifying Facility from energizing GIUD service wires during a service interruption. Please refer to the latest IEEE standard 1547 section on "Islanding."

A3.3 Fault Protection

Adequate protection facilities shall be provided by the Owner to protect the GIUD service wires from fault currents originating from the Qualifying Facility. The Owner

shall also be responsible to provide adequate protection for the Qualifying Facility from fault currents originating from GIUD.

A-3.4 Over/Under Voltage

It shall be the responsibility of the Owner to provide adequate protection or safeguards to prevent damage to GIUD caused by over/under voltages originating in the Qualifying Facility and to protect the Qualifying Facility from inadvertent over/under voltage conditions originating from the GIUD electrical system. Please refer to the latest IEEE standard 1547 for voltage ranges and clearing times when setting the interconnection relay.

A-3.5 Synchronization

The Owner shall provide adequate facilities for the proper synchronization of the Qualifying Facility with GIUD service wires such that such synchronization is accomplished without causing undesirable currents, surges or voltage dips on the GIUD electrical system. GIUD employs automatic reclosing on its distribution system circuit breakers. A fault and the subsequent breaker trip and reclose can cause an out-of-phase condition to exist between GIUD and the customer generation facility. Following a period of interruption, the proper resynchronization of the Qualifying Facility shall be the responsibility of the Owner.

A-3.6 Grounding

The Owner shall ground the Qualifying Facility and associated equipment in such a manner that coordination is maintained with the relay protection system in use by GIUD and the Qualifying Facility is protected from being subject to deleterious voltage and excessive current conditions.

A-3.7 Harmonics

Adequate design precaution must be taken by the Owner to prevent excessive and deleterious harmonic voltages and/or currents caused by the Qualifying Facility from occurring on the electrical system of GIUD or to GIUD's customers. The Qualifying Facility must be designed to operate with normal harmonic voltage and currents that originate from the GIUD electrical system. Please refer to the latest IEEE standard 1547.

A-3.8 Power Factor

The operation of the Qualifying Facility shall not produce nor consume excessive reactive power. Should the power factor fall outside acceptable limits either lagging or leading, as determined by GIUD, the Owner shall undertake the necessary modifications to meet the required power factor level.

A-3.9 Voltage Regulation

The Owner shall provide the necessary voltage regulation equipment to prevent the Qualifying Facility from causing excessive voltage variations on the GIUD

electrical system. The voltage variation caused by the Qualifying Facility must be within the ranges capable of being handled by the voltage regulation facilities used by GIUD.

A-3.10 Voltage Flicker

Voltage surges or flickers caused by the operation, synchronization or isolation of the Qualifying Facility shall be within the standards of frequency of occurrence and magnitude established by GIUD to prevent undue voltage flicker on the GIUD electrical system. The Owner shall provide suitable equipment to reasonably limit voltage fluctuations caused by the Qualifying Facility.

A-3.11 Voltage Balance

The voltage produced by the Qualifying Facility must be balanced if it is a three-phase installation. The Owner shall be responsible for protecting the Qualifying Facility from an inadvertent phase unbalance in GIUD service voltage.

A-3.12 Over/Under Frequency

The Owner shall provide the necessary facilities for safeguards and protection of equipment caused by the occurrence of an over or under frequency event. Please refer to the latest IEEE standard 1547 for frequency ranges and clearing times when setting the interconnection relay.

A-3.13 Emergency Dispatchability

An emergency condition exists when the reliability of the electric system is in jeopardy and customer service is threatened. During emergency conditions, the Owners of Qualifying Facilities may be asked to place control of their facilities under the direction of GIUD until the electric system has returned to normal operation. GIUD will determine when generation should be adjusted, brought on-line or shut down. If the Owner chooses to cooperate during these emergency conditions, they should be able to alter their generation schedules as directed by GIUD system dispatchers.

A-4 Continuity of Service

GIUD shall not be obligated to accept and GIUD may require the Qualifying Facility to curtail, interrupt or reduce deliveries of energy in order to construct, install, maintain, repair, replace, remove, investigate or inspect any of its equipment or any part of its electrical system or if it determines that curtailment, interruption or reduction is necessary because of emergencies, forced outages, operating conditions on its electrical system or as otherwise required by prudent electrical utility practices. Such discontinuance of service or purchases shall be without notice or liability.

The Owner of the Qualifying Facility shall promptly notify GIUD of any extended Qualifying Facility outage along with the estimated duration of such outage or reduction. Any violation of the terms and conditions of the Agreement or GIUD Service Regulations shall result in the immediate termination of the Agreement without notice or liability.

A-5 Metering

A-5.1 Ownership and Maintenance

GIUD, at its expense, shall install, own, maintain and test all billing meters and associated equipment that is necessary in GIUD's sole judgment to determine amounts and/or times of delivery of energy by the Qualifying Facility to GIUD and from GIUD to the Qualifying Facility and any associated load. The Qualifying Facility shall furnish the meter socket(s) and other related equipment plus sufficient space required by GIUD in order to accommodate such equipment.

The Owner of the Qualifying Facility agrees to allow GIUD, at GIUD's expense, to install additional metering to obtain other load and operating data provided such metering does not adversely affect the operations of the Qualifying Facility.

A-5.2 Sealed Meters and Testing

All meters used to determine the billings shall be sealed and the seals shall be broken by GIUD employees only upon those occasions when the meters are to be inspected, tested or adjusted.

If requested to do so by the Qualifying Facility, GIUD shall inspect or test the meter(s) with the expense of such an inspection or test being paid by the Qualifying Facility unless upon being tested or inspected the meter is found to register inaccurately by more than two percent of full scale. If a meter is found to be inaccurate beyond two percent or is otherwise defective, it shall be repaired or replaced, at GIUD's expense, in order to provide accurate metering.

A-5.3 Adjustments

If any test of metering equipment discloses any inaccuracy of more than two percent, the accounts between the Parties shall be adjusted in accordance with this section. Such correction and adjustment shall be made from the date the meter became inaccurate, if known. If such data cannot be determined, then the adjustment shall be made for the previous month or from the date of the latest test (if within the previous month) and for the elapsed period in the month during which the test was made. Should any metering equipment at any time fail to register or should the registration thereof be so erratic as to be meaningless, the amounts of energy transacted shall be determined by the Parties from the best available data.

A-5.4 VAR Metering

At GIUD's option, VAR metering may be installed by GIUD at the Qualifying Facility's expense to measure reactive power.

A-6 Billing and Payment

Once a billing month, GIUD shall read the billing meter(s) installed to measure energy and capacity (real and reactive, if applicable) delivered to GIUD from the Qualifying Facility. GIUD shall then prepare a statement computing the amounts owed by GIUD for such energy. The billing and payment shall be in accordance with state law and adopted GIUD regulations regarding such items.

A-7 Uncontrollable Forces

A Party shall not be considered to be in default in respect to any obligation hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces. The term uncontrollable forces shall be deemed for the purposes hereof to mean storm, flood, lightening, earthquake, fire, explosion, civil disturbance, labor disturbance, sabotage, war, national emergency, restraint by court or public authority or other causes beyond the control of the Party affected which such Party could not reasonably have been expected to avoid by exercise of due diligence and foresight. Either Party unable to fulfill any obligation by reason of uncontrollable forces will exercise due diligence to remove such disability with reasonable dispatch.

A-8 Indemnity and Liability

Each Party shall indemnify the other Party, its officers, agents, and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property, proximately caused by the indemnifying Party's construction, ownership, operation, or maintenance of, or by failure of, any of such Party's works on facilities used in connection with this Agreement. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all costs that may be incurred by the other Party in enforcing this indemnity.

Nothing in this Agreement shall be construed to create any duty to any standard of care with reference to or any liability to any person not a Party to this Agreement.

A-9. Waiver

Any waiver at any time by either Party of its rights with respect to default under this Agreement shall not be deemed a waiver with respect to any subsequent default by the other Party under this Agreement.

A-10. Successors, Legal Representative or Assigns

This Agreement shall be binding upon and inure to the benefit of the successors, legal representatives, or assigns of the respective Parties. Neither Party shall assign this Agreement without the express written consent of the other Party, nor shall a Party be relieved of its obligations hereunder or impose additional obligations or burdens on the other Party by any assignment given.

A-11. Governmental Jurisdiction and Authorization

This Agreement is subject to the jurisdiction of those governmental agencies having control over the Parties of the Agreement. This Agreement shall not become effective until all required governmental authorization and permits are first obtained and copies are submitted to GIUD.

This Agreement shall at all times be subject to such changes by such governmental agencies, and the Parties shall be subject to such conditions and obligations, as such governmental agencies may from time to time direct in the exercise of their jurisdiction. Both parties agree to exert their best efforts to comply with all applicable rules and regulations of all governmental agencies having control over either Party or this Agreement. The Parties shall take all reasonable action necessary to secure all required governmental approvals of this Agreement in its entirety and without change.

COGENERATION AND SMALL POWER PRODUCTION PURCHASED ENERGY RATE

AVAILABLE: To cogeneration and small power production facilities with production capacity of 25 KW and less that qualify under the guidelines for implementing PURPA Sections 201 and 210. This rate shall be used in conjunction with the applicable retail rate.

CHARACTER OF SERVICE: Unless otherwise provided by contract, the character of purchased power will be single or three phase alternating electric current at 60 hertz. Voltage shall be determined by the voltage of GIUD's distribution system in the vicinity unless otherwise agreed.

PURCHASE OF OUTPUT FROM QUALIFYING FACILITIES: Owners of Qualifying Facilities will be allowed to use the electrical output of their Qualifying Facilities to instantaneously supply all or a portion of their own load and deliver the instantaneous surplus to GIUD. At the end of the billing period, the energy delivered to GIUD or supplied to the customer will be determined. The net positive energy supplied to the customer will be at the applicable retail rate.

The net positive energy delivery to GIUD will be purchased by GIUD each billing period at this Cogeneration and Small Power Production Energy Rate. Other applicable fees and charges, including the customer charge and demand charge of the retail rate will be billed to the Customer.

PURCHASE PRICE: Energy from qualifying small power production and cogeneration facilities will be paid for on the following basis:

- A. For Qualifying Facilities of 25 kW and less payment on a monthly basis of an amount of \$0.015 per kilowatt hour plus the calculated power cost adder normally applied to purchase kilowatt hours for all net positive energy delivered to the City of Grand Island Utilities Department.

COGENERATION AND SMALL POWER PRODUCTION PURCHASED ENERGY RATE

TERMS AND CONDITIONS:

1. A signed written agreement between the Qualifying Facility and GIUD will be required.
2. Unless modified by contract, the GIUD Service Regulations shall apply to this schedule.
3. For facilities with more than 25 kilowatts of capacity, the purchase rate and other terms and conditions will be determined on a case by case basis.
4. Customer Qualified Facility installation must comply with all applicable City, County, and State Laws and Regulations.

Effective _____

Approved _____ Issued by _____

RESOLUTION 2009-109

WHEREAS, the City of Grand Island Utilities Department (GIUD) and Douglas Brunk (the Parties) desire to enter into a Cogeneration and Small Power Production (25 kW and less) for Parallel Operation, Power Sales and Interconnection Agreement, in order to encourage the conservation of energy supplied by GUID, optimize the efficient use of facilities and resources, and to provide equitable rates to electric consumers; and

WHEREAS, Grand Island Utilities Department encourages the use of cogeneration and small production facilities where such devices might utilize alternate and/or renewable fuels and thus might make a significant contribution to the nation's effort to conserve conventional fossil fueled energy resources; and

WHEREAS, GIUD now has a customer who wishes to connect to the electrical distribution system with a wind generator; and

WHEREAS, the Parties desire to enter into an Agreement to allow interconnection, and to protect GIUD facilities and to create a mechanism to pay the customer should the Qualifying Facility produce excess energy to sell back.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized to, on behalf of the City, execute the Cogeneration and Small Power Production (25 kW and less) Parallel Operation, Power Sales and Interconnection Agreement between the City of Grand Island Utilities Department and Douglas Brunk in accordance with the terms and conditions generally described above.

- - -

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



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G10

#2009-110 - Approving License Agreement with Unite Private Networks for Power Pole Attachments

Staff Contact: Gary R. Mader; Wes Nespor

Council Agenda Memo

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

Meeting: May 12, 2009

Subject: License Agreement with Unite Private Networks for
Power Pole Attachments

Item #'s: G-10

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

Background

Unite Private Networks (UPN) is a new telecommunications company that wishes to attach fiber optic cables to City owned utility poles.

The Company has a contract with the Grand Island School District to provide telecommunications interconnection service to School District facilities across the City; including Grand Island Senior High, Walnut Middle School, the Administration Building, Barr Middle School, and Central Community College.

Discussion

A License Agreement is the form used in the past to allow cables owned by others to be placed on City utility poles. Charter and Qwest are currently attached to utility poles in the City.

The National Electric Safety Code (Code) prescribes the methods and clearances required for installation of multiple wire strand utility company facilities and equipment on power poles. The proposed agreement includes requirements to meet the Code specifications for clearances between utility facilities, which will require some work by the Utilities Department and the other utilities currently using the poles.

Of the 206 poles to which UPN wishes to attach, 40 will require work to be done by the Utilities Department and Charter Communications. The proposed contract requires UPN to pay for any "make ready" work that is required to provide the needed space on the pole to allow them to attach in accordance with the Code. The proposed contract is essentially

the same as the current Contracts with Charter Communications and Qwest. UPN will also pay the same \$4.00 per pole annual fee that is received from Qwest and Charter.

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 License Agreement and direct the Mayor to sign on behalf of the City.

Sample Motion

Move to approve the License Agreement between the City of Grand Island and Unite Private Networks, and authorize the Mayor to sign the agreement.



License Agreement Between

The City Of Grand Island

&

Unite Private
Networks, LLC

LICENSE AGREEMENT

THIS AGREEMENT, made as of May 12, 2009, between the City of Grand Island, hereinafter called Licensor, and Unite Private Networks, LLC, hereinafter called Licensee.

WITNESSETH

WHEREAS, Licensee provides communication and education services in the territory in which Licensor provides electric power.

WHEREAS, Licensor owns all poles to be used jointly by the parties.

WHEREAS, the parties wish to provide for Licensee's use of Licensor's utility poles.

NOW, THEREFORE, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS

As used in this Agreement:

(A) Licensors "poles" means poles owned by Licensor and poles owned by third parties, to which Licensor is authorized to permit Licensee to attach its facilities.

(B) "Attachments" means messengers, guy strands, aerial wires, cables, amplifiers, associated power supply equipment and other transmission apparatus necessary for the proper operation of Licensee's cable television system.

ARTICLE II
SCOPE OF AGREEMENT

(A) Subject to the provisions of the Agreement, including the proper execution of APPENDIX 1 and 2, Licensor hereby issues to Licensee, for any lawful communication/educational purpose, revocable nonexclusive authorization for the attachment of Licensee's cables, equipment and facilities to Licensor's poles within the territory in which both parties now or hereafter operate.

(B) No use, however extended, of Licensor's poles or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in said poles, but Licensee's rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel Licensor to construct, retain, extend, place or maintain any facilities not needed for its own service requirements, nor to reconstruct, replace or substitute any facilities damaged, destroyed or discontinued.

(C) Licensee acknowledges that Licensor has heretofore entered into, and may in the future enter into, agreements and arrangements with third parties allowing the attachment of their facilities to the poles covered by this Agreement. Licensor agrees that no such agreement or arrangement will, in any way, diminish the scope of the license granted hereby or Licensee's rights hereunder.

(D) Licensee's attachment to poles belonging to a third party shall be subject to any restrictions in the Agreement between that third party and licensor authorizing the attachment.

ARTICLE III

FEES AND CHARGES

(A) Licensee shall pay to Licensor the fees and charges specified in and in accordance with the terms and conditions of APPENDIX 1.

(B) Nonpayment of any amount due under this Agreement shall constitute a default of this Agreement.

(C) At the expiration of One(1) year from the date of this Agreement and at the end of every one (1) year period thereafter, Licensor may adjust the fees and charges specified in APPENDIX 1 after notice made in writing to Licensee not later than sixty (60) days before the end of the one (1) year period or the end of any subsequent one (1) year period thereafter. Any such adjustment shall reflect only changes in Licensor's costs, determined in a manner consistent with the determination of the fees and charges specified in APPENDIX 1.

ARTICLE IV

SPECIFICATIONS

(A) Licensee's fiber, cable, equipment and facilities shall be placed and maintained in accordance with the requirements and specifications of APPENDIX 2. Licensors shall have the right, upon reasonable notice to Licensee, to make reasonable changes and amendments to APPENDIX 2. Unless different standards are specified herein, the provisions of the National Electrical Code and the National Electrical Safety Code, and any amendments thereto or replacements thereof, shall be applicable.

ARTICLE V

LEGAL AUTHORITY

(A) The parties shall at all times observe and comply with, and the provisions of this Agreement are subject to all laws, ordinances and regulations which in any manner affect the rights and obligations of the parties under this Agreement, so long as such laws, ordinances or regulations remain in effect.

ARTICLE VI

ISSUANCE OF LICENSES

(A) Upon execution of this Agreement, the parties will prepare a list indicating to which of the Licensors' poles Licensee's facilities are then attached; Licensee shall be deemed to have a license hereunder for attachment to all such poles. Before attaching to additional poles of Licensors, Licensee must make application for and receive license therefore in the form of Exhibit A, hereto.

(B) Licensors shall have the right at any time to issue reasonable rules and regulations concerning submission of applications and attachments to poles of Licensor, which rules and regulations shall be binding upon submission of a copy thereof to Licensee.

ARTICLE VII

POLE REPLACEMENTS, RESTRICTIONS AND REARRANGEMENTS

(A) In the event Licensor determines that the space on any pole to which Licensee wishes to make attachment is required for its exclusive use or that the pole may not reasonably be rearranged or replaced, Licensor may refuse attachment to that pole.

(B) In the event Licensor determines that any pole to which Licensee wishes to make attachments is inadequate or otherwise needs rearrangement of the existing facilities thereon to support or accommodate the additional facilities of Licensee in accordance with the specifications set forth in APPENDIX 2, Licensor will indicate on the application (Exhibit A) the changes necessary to provide adequate pole space and the estimated cost thereof to Licensee and return the application to Licensee. If Licensee wishes that such changes be made and returns the application marked to so indicate, Licensor will make such changes, including the replacement of inadequate poles, and Licensee shall pay Licensor in accordance with the terms of APPENDIX 1. Licensee shall also reimburse the owner or owners of other facilities attached to said poles for any expense incurred by it or them in transferring or rearranging said facilities to accommodate Licensee's attachments.

(C) Should Licensor need for its own service requirements the space occupied

by Licensee's attachments on any of Licensor's poles, Licensee will be notified that it shall either surrender its license for that pole and, at its own expense, vacate the space by removing its attachments, or it shall authorize Licensor to replace the pole at the expense of Licensee, in the same manner as stated in the preceding Paragraph (B) covering the replacement or rearrangement of poles when required to accommodate Licensee's attachments; or, if Licensor advises Licensee that Licensee's desired attachments can be accommodated on present poles of Licensor by rearranging Licensor's facilities thereon, Licensee shall authorize Licensor to make such arrangements at the expense of Licensee. Licensee shall also reimburse the owner or owners of other facilities attached to said poles for any expense incurred by it or them in transferring or rearranging said facilities to accommodate Licensee's attachments. Any strengthening of poles will be provided at the expense of Licensee in accordance with the specifications in APPENDIX 2.

(D) When Licensor receives multiple applications for attachment to any pole that must be replaced or rearranged to provide sufficient space, Licensor will, to the extent that it is practical to do so, prorate the common expenses of engineering, rearrangement and replacement, if any, among all the applicants. Licensee shall be bound by Licensor's determination as to any such proration of costs to Licensee.

(E) Whenever it is necessary for Licensor to make pole replacements or rearrangements in order to accommodate Licensee's cable, equipment and facilities, Licensor will endeavor to have such work performed as soon as is practicable upon consideration of Licensor's service requirements, but only after issuance of the license to, and acceptance of responsibility for costs by, Licensee.

(F) Licensee shall provide all anchors and guying necessary for its facilities. If the presence of Licensee's facilities on Licensor's poles make it necessary for Licensor to modify its existing guying or add new guying to its poles, then the cost of such modifications or additions shall be reimbursed by Licensee.

(G) When Licensor's facilities occupy space on a pole owned by a third party, Licensee shall reimburse Licensor for any expense incurred in transferring or rearranging its facilities thereon, if such transfer or rearrangement is the result of Licensee's use or proposed use of said pole.

ARTICLE VIII

CONSTRUCTION AND MAINTENANCE OF FACILITIES

(A) Licensee shall, at its own expense, make and maintain its pole attachments in a safe condition and in thorough repair, and in a manner reasonably acceptable to Licensor, and so as not to conflict with the use of Licensor's poles by Licensor or by other authorized users thereof, or interfere with other facilities thereon or which may from time to time be placed thereon. If reasonably necessary to satisfy any of the above conditions, Licensee shall, upon 30 days' notice from Licensor and at its own expense, relocate or replace its facilities on Licensor's poles, or transfer them to substituted poles, or perform any other work in connection with its facilities that may reasonably be required by Licensor; provided, however, that in cases of emergency, Licensor may arrange to relocate or replace the attachments placed on its poles by Licensee, transfer them to substituted poles or perform any other work in connection with Licensee's facilities that may be required in the maintenance, replacement, removal or relocation of Licensor's poles or of the facilities thereon, or which may be placed

thereon, or for the service needs of Licensor, and Licensee shall reimburse Licensor for the expense thereby incurred; provided further, however, that Licensee shall have no obligation to relocate, replace, or transfer its facilities solely to accommodate the service needs of any person other than Licensor, unless such person shall make arrangements, satisfactory to Licensee, to reimburse Licensee for such work.

(B) All tree trimming required on account of Licensee's attachments shall be done by Licensee at its sole risk and expense and in a manner satisfactory to Licensor. The parties may agree that Licensor shall conduct tree trimming and be reimbursed by Licensee.

ARTICLE IX

TERMINATION OF LICENSES

(A) Upon notice from Licensor to Licensee that the use of any pole is not authorized by Federal, State, County or Municipal authorities or private property owners, the license covering the use of such pole shall immediately terminate and shall be surrendered and Licensee shall remove its fiber, cables, equipment and facilities at once from the affected pole or poles at Licensee's expense.

(B) Licensee may at any time remove its facilities from any pole of Licensor, but shall immediately give Licensor written notice of such removal and surrender of License in the form of Exhibit B attached hereto and made a part hereof. If Licensee surrenders its license for a pole but fails to remove its facilities from that pole, Licensor shall have the right, upon reasonable notice, to remove Licensee's facilities at Licensee's expense and without any liability on the part of Licensor for damage or injury to Licensee's facilities. In the event that Licensee's fiber, cables, equipment and

facilities shall be removed from any pole as provided by this Article, no attachment shall again be made to such pole unless Licensee shall have first complied with all of the provisions of this Agreement as though no such attachment had previously been made.

(C) Licensors shall have the right, upon written notice, to terminate the license for a particular pole:

- (1) If, in Licensors' sole judgment, its service needs require full utilization of that pole; or
- (2) If changes in the physical facilities, space or location requirements or service requirements of Licensors render such poles inadequate to support the facilities of Licensee; provided, however, that in such event Licensee may request the substitution of suitable poles upon the same terms and conditions as would be applicable under ARTICLE VII.

ARTICLE X

INSPECTIONS OF LICENSEE'S INSTALLATIONS

(A) Licensors reserves the right to make periodic inspections of any part of the fiber, cable, equipment and facilities of Licensee on its poles, and Licensee shall reimburse Licensors for the expense of such inspections. Inspections will be made no more than once a year and only upon notice to Licensee unless, in Licensors' judgment, such inspections are required for reasons involving safety or are required because of Licensee's violation of the terms of this Agreement. The charge for the inspection shall be in accordance with the terms and conditions of APPENDIX 1. The making of such

inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation or liability assumed under this Agreement.

(B) If any fiber, cable, equipment and facilities of Licensee shall be found on a pole for which no license is outstanding, Licensor, without prejudice to its other rights or remedies under this Agreement or otherwise, may (1) impose a charge, and (2) require Licensee to remove such fiber, cable, equipment and facilities forthwith or Licensor may remove them without liability and the expense of removal shall be borne by Licensee; provided, however, that if Licensee shall forthwith make application for a license in the form of Exhibit A hereto, Licensor will not require such removal unless necessary for Licensor's service requirements and, except in the case of an emergency, will not remove Licensee's facilities without first giving 30 days notice to Licensee. For the purpose of determining the charge, absent satisfactory evidence to the contrary, the unlicensed use shall be treated as having existed for a period of two (2) years prior to its discovery or for the period beginning with the date of this Agreement, whichever period shall be the shorter; and the fee, at the appropriate rate as shown in APPENDIX 1, for each year and for any portion of a year contained in such period, shall be due and payable forthwith. Any such fee imposed by Licensor shall be in addition to its rights to any other sums due and payable and to any claims or damages under this Agreement or otherwise. No act or failure to act by Licensor with regard to said fee or said license shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement or otherwise.

ARTICLE XI

LIABILITY AND DAMAGES

(A) Licensors shall exercise precaution to avoid damaging the communication/education fiber of the Licensee and shall make an immediate report to the Licensee of the occurrence of any such damage caused by its employees, agents or contractors. Licensors agree to reimburse the Licensee for all reasonable costs incurred by the Licensee for the physical repair of such facilities damaged by the negligence of Licensors; provided, however, Licensors shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's communication/education fiber, or for any special, indirect, or consequential damages.

(B) Licensee shall exercise precaution to avoid damaging the facilities of Licensors and of others attached to poles or anchors, and shall make an immediate report to the owner of facilities so damaged; and Licensee assumes all responsibility for any and all direct loss and from such damage caused by Licensee's employees, agents or contractors.

(C) Licensee shall indemnify, protect and save harmless the Licensors from any and all damages and costs, including reasonable attorney fees, incurred by the Licensors as a result of acts by the Licensee, its employees, agents or contractors, including but not limited to the cost of relocating poles, anchors or guys resulting from a loss of right-of-way or property owner consents and/or the cost of defending those rights and/or consents.

(D) The Licensee shall indemnify, protect and save harmless the Licensors from any and all claims, demands, causes of actions and costs, including attorney fees, for damages to property and injury or death to persons, including but not limited to

payments under any Workmen's Compensation Law or under any plan for employee's disability and death benefits, which may arise out of or be caused by the erection, maintenance, presence, or use or removal of Licensee's facilities or by their proximity to the facilities of other parties attached to a pole or anchor, or by any act or omission of the Licensee's employees, agents or contractors on or in the vicinity of the Licensor's poles, anchors or guys.

(E) The Licensee shall indemnify, protect and save harmless the Licensor from any and all claims, demands, causes of action and costs, including attorney fees, which arise directly or indirectly from the construction and operation of Licensee's facilities, including but not limited to taxes, special charges by others and from and against all claims, demands and costs, including attorney fees, for infringement of patents with respect to the manufacture, use and operation of Licensee's facilities in combination with poles, anchors, guys or otherwise.

(F) Licensee shall promptly advise the Licensor of all claims relating to damage of property of injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, from the erection, maintenance, repair, replacement, presence, use or removal of the Licensee's facilities. Copies of all accident reports and statements made by the Licensee or others shall be furnished promptly to the Licensor.

ARTICLE XII

INSURANCE

(A) Licensee shall obtain and maintain insurance, including endorsements insuring the indemnification provisions of this Agreement, issued by an insurance carrier satisfactory to Licensor to protect the Licensor and joint user from and against all

claims, demands, causes of actions, judgments, costs, including attorney fees, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly from or by reason of such loss, injury or damage as covered in this Agreement including ARTICLE XI preceding.

(B) The amount of such insurance:

	<u>Insurance Coverage</u>	<u>Limits</u>
1.	Worker's Compensation	Statutory
	Employer's Liability:	
a.	Bodily Injury by Accident	\$ 500,000 each accident
b.	Bodily Injury by Disease	\$1,000,000 policy limit
c.	Bodily Injury by Disease	\$ 500,000 each employee
2.	Comprehensive Automobile	
a.	Bodily Injury and Property Damage Combined Single Limit	\$1,000,000
3.	Comprehensive General Liability	
a.	Bodily Injury and Property Damage Combined	\$1,000,000 each person \$2,000,000 aggregate
(C)	Licensee shall submit to Licensors certificates by each company insuring	

Licensee upon each new issuance or renewal to the effect that it has insured Licensee for all liabilities of Licensee covered by this Agreement and that it will not cancel or change any such policy of insurance issued to Licensee except after 60 days written notice to Licensors.

(D) All insurance required in accordance with (B) and (C) preceding must be effective before Licensors will authorize attachment to a pole and/or anchor, utilization of an anchor/guy strand or occupancy of a conduit system and shall remain in force until such Licensee's facilities have been removed from all such poles, anchors, or conduit systems. In the event that the Licensee shall fail to maintain the required insurance

coverage, Licensor may pay any premium thereon falling due, and the Licensee shall forthwith reimburse the Licensor for any such premium paid.

ARTICLE XIII

LICENSE NOT EXCLUSIVE

Nothing herein contained shall be construed as a grant of any exclusive license, right or privilege to Licensee. Licensor shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any poles covered by this Agreement.

ARTICLE XIV

ASSIGNMENT OF RIGHTS

(A) Licensee shall not assign or transfer the privileges contained in this Agreement without the prior consent in writing of Licensor. Licensor shall not unreasonably withhold such consent.

(B) Subject to the provisions of Paragraph (A) hereof, this Agreement shall extend to and bind the successors and assigns of the parties hereto.

ARTICLE XV

TERMINATION OF AGREEMENT

(A) If licensee shall fail to comply with any of the terms or conditions of this Agreement or default in any of its obligations under this Agreement and shall fail within thirty (30) days after written notice from Licensor to correct such default or noncompliance, Licensor may, at its option, forthwith terminate this Agreement and all

licenses granted hereunder, or the licenses covering the poles as to which such default or noncompliance shall have occurred.

(B) Licensors shall have the right to terminate this entire Agreement or individual licenses granted hereunder, without notice

- (1) If the Licensee's facilities are maintained or used in violation of any law or in aid of any unlawful act or understanding; or
- (2) If any permit or other authorization which may be required by any governmental authority for the operation or maintenance of Licensee's fiber, cables, wire, equipment and facilities on Licensors' poles is revoked, denied, or not granted before the date when possession of such permit or authorization becomes a condition of continued operations; or
- (3) If Licensee defaults under ARTICLE IV.

(C) Licensee may terminate this Agreement at any time by removing its facilities from all of Licensors' poles, as provided in ARTICLE IX (B).

ARTICLE XVI

TERM OF AGREEMENT

This Agreement shall, unless terminated in accordance with its provisions, continue in effect for an initial term of five years. Licensors may terminate this Agreement at the end of the initial term by notifying Licensee in writing at least one (1) year prior to the end of that term. If not so terminated, this Agreement shall continue in force upon the same terms and conditions for a further term of five (5) years, and for successive one (1) year terms thereafter, until terminated by Licensors at the end of any

such term upon not less than one (1) year's written notice to Licensee. Upon termination of the Agreement in accordance with any of its terms, all outstanding licenses shall terminate and Licensee shall immediately remove its fiber, cables, equipment and facilities from all poles of Licensor. Upon Licensee's failure to do so, Licensor shall have the right to remove Licensee's fiber, cable, equipment and facilities at the cost and expense of Licensee and without any liability therefore.

ARTICLE XVII

NOTICES

Notices under this Agreement may be given by posting the same in first class mail to the Licensee as follows:

Unite Private Networks, LLC
P.O. Box 25526
Kansas City, MO 64119

and to the Licensor as follows:

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

ARTICLE XVIII

RECORDS

The Licensee shall file a complete set of as-built records for its communication/education system, including all extensions and modification in the Grand Island Electric Utilities Department for the area where the Licensor provides electric power.

ARTICLE XIX

SERVICE AREA

The Licensee shall provide service to all properties within the service area shown on Exhibit No. C, attached hereto and made a part hereof by reference.

ARTICLE XX

WAIVER OF LIABILITY

Because the Licensor may annex all or part of the Licensee's service area and may install utility services some time in the future, the Licensee waives all liability, claims or causes of action which it may have against the Licensor for damages caused to its communication/education system in connection with the installation of utility services within designated utility easements, streets, alleys or rights-of-way except where such damages are the result of gross negligence or intentional acts on the part of the Licensor, its employees, agents or officers.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the day and year first written above.

WITNESS (ATTEST)

WITNESS (ATTEST)

UNITE PRIVATE NETWORKS, LLC

BY _____

Title _____

CITY OF GRAND ISLAND, NEBRASKA,

A Municipal Corporation

BY _____

Title: Mayor

APPLICATION AND POLE ATTACHMENT LICENSE

*Pole Attachment

Application No. _____

Date _____

(Licensee)

(Street Address)

(City and State)

CITY OF GRAND ISLAND UTILITIES DEPARTMENT:

In accordance with the terms and conditions of the License Agreement between us, dated _____, application is hereby made for a nonexclusive license to attach communications facilities to _____ poles, _____ anchors, and/or utilize _____ anchor/guy strands.

Pole Location: _____

Equipment to be attached: _____

Description of requested attachment: _____

Pole Location: _____

Equipment to be attached: _____

Description of requested attachment: _____

Pole Location: _____

Equipment to be attached: _____

Description of requested attachment: _____

USE REVERSE SIDE FOR ADDITIONAL LOCATIONS

(Licensee)

By: _____

Title: _____

Phone Number: _____

* Individual applications to be numbered in sequential ascending order by License.

Pole Attachment License Number _____ is hereby granted to attach the communications facilities described in this application to _____ poles, _____ anchors, utilize _____ anchor/guy strands.

CITY OF GRAND ISLAND UTILITIES DEPARTMENT
(Licensor)

By: _____

Title: _____

Phone Number: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

NOTIFICATION OF POLE ATTACHMENT ABANDONMENT

* Abandonment Notice No. _____

Date _____

(Licensee)

(Street Address)

(City and State)

CITY OF GRAND ISLAND UTILITIES DEPARTMENT:

In accordance with the terms and conditions of the License Agreement between us, dated _____, notification is hereby made of abandonment of pole attachments of communications equipment as listed below:

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____
(Use reverse side for additional locations)

(Licensee)

By: _____

Title: _____

Phone Number: _____

CITY OF GRAND ISLAND UTILITIES DEPARTMENT
(Licensor)

By: _____

Title: _____

Phone Number: _____

*Individual abandonment notifications to be numbered in sequential ascending order by Licensee.

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

APPENDIX 1

SCHEDULE OF FEES AND CHARGES

THIS APPENDIX 1 is, from the effective date hereof, an integral part of the License Agreement between the City of Grand Island, herein called Licensor, and Unite Private Networks, LLC, therein called Licensee, dated _____, (hereinafter called the Agreement), and contains the fees and charges governing the use of Licensor's poles to accommodate the fiber, cable, wire equipment and facilities of Licensee in the territory in which both parties hereto now or hereafter operate. The effective date of this APPENDIX 1 is _____.

POLE ATTACHMENTS

1. ATTACHMENT FEE: \$4.00 per pole per annum.

- a. Computation:

For the purpose of computing the total attachment fees due hereunder, the total fee shall be based upon the number of poles to which attachments are actually made, on the first day of June and the first day of December of each year. The first advance payment of the annual charge for Licenses granted under this Agreement shall be prorated from the date that the attachment is made to the pole to the first regular payment date.

- b. Payment Date:

Attachment fees shall be due and payable semiannually, in advance, on the first day of January for the first half of the calendar year next preceding, and on the first day of July for the last half of the calendar year.

Failure to pay such fees within 20 days after presentment of the bill therefore or on the specified payment date, whichever is later, shall constitute a default of this Agreement.

c. Termination of License:

Upon termination or surrender of a license granted hereunder, the applicable attachment fee shall be prorated for the period during which the attachment was made to Licensors' pole during the final semiannual period and shall be credited to Licensee; provided, however, that there shall be no proration of an attachment fee if the license is terminated as a result of any act or omission of Licensee in violation of this Agreement.

2. OTHER CHARGES

a. Computation:

(1) All charges incurred by Licensors as a result of inspections, engineering, rearrangements, removals of Licensee's facilities from Licensors' poles and any other work performed for Licensee shall be based upon the full cost and expense to Licensors for performing such work plus the appropriate current overhead rate on the costs incurred in performing such work for Licensee. The cost to Licensors shall be determined in accordance with the regular and customary methods used by Licensors in determining such costs.

(2) The charge for replacement of poles shall include the entire non-betterment cost to Licensors, including the increased cost of larger poles, sacrificed life value of the poles removed, cost of removal less any salvage recovery and the cost of transferring Licensors' facilities from the old to the new poles.

b. Payment Date:

All bills for such other charges shall be payable upon presentment to Licensee, and shall be deemed delinquent if not paid within 30 days after presentment to Licensee.

DATED: _____

WITNESS (ATTEST)

UNITE PRIVATE NETWORKS, LLC

BY _____

Title: _____

WITNESS (ATTEST)

CITY OF GRAND ISLAND, NE

A Municipal Corporation

BY _____

Title: Mayor

APPENDIX 2
ATTACHMENTS TO POLES

THIS APPENDIX 2 is, from the effective date hereof, an integral part of the License Agreement (hereinafter called the Agreement) between the City of Grand Island, therein called Licensor, and Unite Private Networks, LLC, therein called Licensee, dated _____ and contains certain minimum requirements and specifications governing the attachment of fiber, cables, equipment and facilities of Licensee (sometimes called Attachments in this Appendix) to poles of Licensor in the territory in which both parties hereto now or hereafter operate. The effective date of this Appendix 2 is _____.

GENERAL

1. The Licensee is responsible for the proper design, construction and maintenance of its Attachments. Attachments generally will be limited to strand support cable, wire, service drops, terminals and necessary appurtenances deemed by Licensor to be suitable for pole mounting.

2. Any rearrangement of Licensor's facilities or replacement of poles required to accommodate Licensee's Attachments shall be done by Licensor or a contractor authorized by Licensor.

3. The fees and charges specified in APPENDIX 1 shall be applicable, (to all licenses granted to Licensee hereunder) without regard to the methods of attachment used.

4. Licensee's Attachments shall be plainly identified by appropriate marking, satisfactory to Licensor.

5. Licensee's workmen shall assure themselves that any pole to be climbed has sufficient strength or is adequately braced or guyed to support the weight of the workmen.

6. All requirements of the National Electrical Safety Code referred to herein shall mean the 2007 Edition of such code, or any later amendment or replacement thereof, and shall include any additional requirements of any applicable Federal, State, County or Municipal Code. References to simply the Safety Code, or to N.E.S.C., have the same meaning.

7. While many of the standards and technical requirements for Licensee's cable, equipment and facilities are set forth herein, Licensor reserves the right to specify the type of construction required in situations not otherwise covered in this Appendix. In such cases, Licensor will in its discretion furnish to Licensee written material which will specify and explain the required construction.

8. Licensee's Attachments shall not use or carry voltages or currents in excess of the limits prescribed for cable television conductors by the National Electrical Safety Code Section 230 F1 & F2. However, all parts of the Licensee's Attachments carrying voltages in excess of 60 volts AC (rms) to ground or 135 volts DC to ground, except for momentary signaling or control voltages, shall be enclosed in an effectively grounded sheath or shield. All energized parts of Licensee's Attachments shall be suitably covered to prevent accidental contact to the general public, Licensor's workmen or workmen of another licensee having facilities on the same pole.

9. Licensors shall determine whether Licensee's Attachments cause or may cause electrical interference with Licensors or any other Licensee's communication/education facilities. Licensee shall, on demand of the Licensors, correct immediately at Licensee's expense any such interference including, if necessary, removal of the Attachments causing the interference.

10. No Attachment shall use the earth as the sole conductor for any part of the circuit.

11. Licensee shall not circumvent Licensors or any other licensee's corrosion mitigation measures (e.g., short circuit insulating joints).

GROUNDING AND BONDING

12. All power supplies shall be grounded. The neutral side of the power drop shall be continuous and not fused. The neutral line shall also be bonded to any power supply cabinet. Any cabinet shall be connected to an earth ground at the pole. In areas where the Licensors has a ground wire (which is connected to the Licensors's neutral) running down the pole, the cabinet can be connected to it. Where a Licensors vertical ground wire is not available, the Licensee must place a ground rod. All cabinets, housings and metal socket bases on a common pole shall be bonded to each other, to the Licensors's strand and to the Licensee's strand.

13. Where two or more aerial suspension strands are located on the same pole, the suspension strands shall be bonded together. Licensee shall attach the bonding wire to its strand and leave a sufficient length of wire to complete the bond. Where the strands of two or more licensees are to be bonded together, the licensee

placing the last strand, if authorized to do so by the other licensees, shall make both connections. Where such authorization is not granted by the licensee owning the existing strand, Licensee shall attach the bonding wire to its strand and leave enough wire to permit making a connection and shall be responsible for completing the bonding. Licensee may bond its cable sheath to Licensor's common neutral, vertical ground wires, and ground rods at whatever frequency Licensee desires. All vertical ground wires shall be covered by a molding. Ground rods installed by Licensee shall be in accordance with National Electrical Safety Code.

14. Suspension strands at trolley feeders and trolley contact wires located on the same street shall be bonded at the first, last and every intermediate fifth poles until the remaining section between bonds is not more than eight or less than four spans. At other locations, the strands shall be bonded at the first, last and every intermediate tenth poles until the remaining section between bonds is not more than thirteen or less than four spans. Strands shall be bonded at or near the first pole on each side of underground dips or trolley wire crossovers.

15. Strands attached to the same bolt do not have to be bonded.

16. Where a Licensee's strand leaves a pole which carries other strands supporting cable television cables, and Licensee's strand continues to a pole carrying power facilities of Licensor, Licensee's fiber cable shall be:

- (A) Bonded to other cable television strands on the pole that it leaves;
- (B) Bonded to an effective ground preferably within two spans but not greater than ten (10) spans after leaving said pole, and;

- (C) Bonded with a No. 6 solid, soft-drawn copper wire. The wire must be attached to the strand with an approved clamp, such as a lashing wire clamp, designed for attachment to each specific size of strand involved (for example, Chance Lashing Wire Clamp, Catalog Number 9000, or equivalent).

17. Strands supporting drop wire shall be bonded to the cable suspension strand.

18. Any connecting or bonding to Licensor's facilities shall be done by Licensor and the connecting or bonding wire shall be sufficient length to allow Licensor to complete the connection or bond.

CLEARANCES

19. Licensee's Attachments are subject to cable television facilities clearances and shall meet all of the pertinent clearance requirements of the National Electric Safety Code. Safety Code rules covering the most commonly encountered conditions are listed below:

NESC 2007 Edition
General Rule

- | | | |
|-----|---|-----|
| (A) | Vertical clearance on poles | 235 |
| | jointly occupied by communication fiber, | |
| | cable television facilities, and power facilities | |
| (B) | Mid-span clearance between communication | 235 |
| | fiber, cable television facilities, and | |
| | power facilities | |

(C)	Crossing clearances of facilities carried on different supports	233
(D)	Clearances from street light brackets and associated wiring	238
(E)	Clearances of conductors from another line	233
(F)	Clearances of vertical and lateral conductors from other wires and surfaces on the same support	239
(G)	Clearances in any direction from line conductors and supports, and to vertical or lateral conductors, span or guy wires, attached to the same support	235
(H)	Vertical clearance of wires above ground or rails	232
(I)	Structures for overhead lines	280
	1. Supporting structure items one (1) thru five (5)	
	2. Unusual conductor supports	

LOCATION AND SPACING

20. Licensors shall specify the location of Licensee's Attachments on each pole, including the location of Licensee's riser cables. Where Licensors have installed their own communication circuits (supervisory control circuits) for operation of their electric system, clearance of Licensee's facilities from these communication circuits shall be the same as from Licensors' common neutral conductor.

21. The minimum vertical separation between Licensee's strand, and the strand of another licensee when located on same side of pole shall be twelve (12) inches. Licensee's strand shall be located at a point on the pole that provides the minimum clearance allowed by the National Electric Safety Code from the ground. Licensee may, however, agree with another licensee to reduce the separation between their respective strands. Separation between the bolt holes must be in any event at least four (4) inches.

22. Licensee shall be required to place all of its Attachments, so not to interfere with climbing space, as defined in the National Electrical Safety Code.

23. Through bolts may not be placed less than ten inches from the top of the pole. When through bolts present a hazard to climbing; i.e., extend more than two inches beyond the nut, they shall be trimmed to a safe length.

24. Pole steps will not be allowed on any Licensors pole, except to specific cases judged to be in the interest of safety by the Licensors.

LOADING

25. The Licensee shall furnish to Licensors as a part of Exhibit A to this Agreement the details as to the ultimate strength, tension at 60F, and maximum tension in its suspension strand or conductor under the applicable storm loading specifications in Code.

26. Licensee shall furnish to Licensors as a part of Exhibit A to this Agreement details as to the weight and size of its fiber/cables, suspension strands and/or conductors, with and without the ice loading, as specified by the National Electrical Safety Code (Rule 251) or appropriate local code for the loading area concerned. NESC Rule 250 covers the degree of loading (light, medium, heavy) appropriate in different sections of the country. Where a local code designates a heavier degree of loading than the NESC, the local requirements shall govern.

27. Licensee may lash its fiber/cable to the strand of another licensee, where this is acceptable to all other licensees involved and to Licensors. Maximum tension of Licensee's strand shall not exceed 60% of the breaking strength under applicable storm loading, as defined by the National Electrical Safety Code (Rule 251). Where local codes designate a heavier degree of loading than the NESC, the local requirements shall govern.

GUYING

28. Guying will be required on poles where the total unbalanced load, including the tension due to Licensee's Attachments under the appropriate storm loading prescribed by the National Electrical Safety Code (Rule 251), exceed 200

pounds unless the pole was designed as an unguyed corner pole and the pole has adequate strength and stability, in the opinion of Licensor, to withstand the additional load.

29. Guys, when required, shall be of such material and dimensions as to provide adequate strength to withstand the transverse loads specified in the National Electrical Safety Code (Rule 252B), and the longitudinal load assumed in the Code (Rule 252C). Guys on poles which also support power facilities shall be in compliance with the National Electrical Safety Code (Rule 261C and 282).

30. Guy guards shall be installed in compliance with NESC (Rule 282E).

31. Licensee may attach its guy to Licensor's anchor rods only where Licensor specifically authorizes it in writing. Should it be necessary to replace the anchor at a later date to provide added strength for Licensor's requirements, the anchor shall be replaced at Licensee's expense if the existing anchor rod would support Licensor's Attachments without regard to Licensee's guy.

32. More than one licensee may use a common guy to sustain their combined load.

33. Guys shall be insulated as specified in the Safety Code (Rules 215 and 283) and at any location where Licensee's guy parallels Licensor's guy with insulator. Licensee's guys shall not short circuit Licensor's guy insulators.

34. Cross guying of Licensee's guys with Licensor's guys is not allowed.

35. Material used for guys shall be compatible from a corrosion standpoint with the hardware to which it is attached.

DATED: _____

WITNESS (ATTEST)

UNITE PRIVATE NETWORKS, LLC

BY _____

Title:

WITNESS (ATTEST)

CITY OF GRAND ISLAND, NEBRASKA

A Municipal Corporation

BY _____

Title: Mayor

R E S O L U T I O N 2009-110

WHEREAS, Unite Private Networks (UPN) is a telecommunications company that wishes to attach fiber optic cables to City owned utility poles; and

WHEREAS, a License Agreement is needed to allow the cable to be placed on City utility poles; and

WHEREAS, the National Electric Safety Code prescribes methods and clearances required for installation of multiple wire strand utility company facilities and equipment on power poles; and

WHEREAS, the proposed License Agreement requires UPN to pay for any “make ready” work that is required to provide the needed space on the pole to allow them to attach in accordance with the Code; and

WHEREAS, Unite Private Network will pay the same \$4.00 per pole annual fee that is received from other companies that utilize this service.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized to, on behalf of the City, execute the License Agreement between the City of Grand Island and Unite Private Networks.

- - -

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 8, 2009	☐ City Attorney



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.

ATTEST:

CITY OF GRAND ISLAND, NEBRASKA,
A Municipal Corporation,

RaNae Edwards, City Clerk

By: _____
Margaret Hornady, Mayor

DOMINION CONSTRUCTION COMPANY,
A Corporation,

R. Michael Olmstead, President

[illegible]

Before me, a notary public, qualified in said County personally came Margaret Hornady, Mayor of the City of Grand Island, Nebraska, a municipal corporation, known to me to be such officer and the identical person who signed the foregoing Building Lease and acknowledged that the foregoing signature was her voluntary act and deed pursuant to Resolution 2009-____, and that the City's corporate seal was thereto affixed by proper authority.

Witness my hand and notarial seal this ____ day of _____, 2009.

Notary Public

[illegible]

Before me, a notary public in and for said County and State, personally appeared R. Michael Olmstead, President of Dominion Construction Company, to me known to be the identical person who executed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal this _____ day of _____, 2009.

Notary Public

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.

ATTEST: CITY OF GRAND ISLAND, NEBRASKA,
A Municipal Corporation,

A Municipal Corporation,

RaNae Edwards, City Clerk

By: _____
Margaret Hornady, Mayor

JERRY L. HARDERS

[illegible]

Before me, a notary public, qualified in said County personally came Margaret Hornady, Mayor of the City of Grand Island, Nebraska, a municipal corporation, known to me to be such officer and the identical person who signed the foregoing Building Lease and acknowledged that the foregoing signature was her voluntary act and deed pursuant to Resolution 2009-_____, and that the City's corporate seal was thereto affixed by proper authority.

Witness my hand and notarial seal this ____ day of _____, 2009.

Notary Public

[illegible]

Before me, a notary public in and for said County and State, personally appeared Jerry Harders, to me known to be the identical person who executed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal this ____ day of _____, 2009.

Notary Public

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.

— — —

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

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G12

**#2009-112 - Approving 2 Hour Parking Zone on the East Side of
Elm Street From 4th Street South to the Alley**

Staff Contact: Steven P. Riehle, Public Works Director

Council Agenda Memo

From: Steven P. Riehle, Public Works Director

Meeting: May 12, 2009

Subject: Approving 2 Hour Parking Zone on the East Side of Elm Street From 4th Street South to the Alley

Item #'s: G-12

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

Background

Council action is required to change a No Parking Zone to a 2 Hour Parking Zone.

Discussion

A "No Parking" designation was approved for the east side of Elm Street from 4th Street south to the alley as a result of discussions with property owners and council action through resolution number 96-122 on April 22, 1996.

The property owner of the building in the southeast corner of 4th Street & Elm Street (521 & 523 West 4th Street) has established a restaurant at this location and is requesting parking be allowed on the east side of Elm Street adjacent to their property.

To keep the issue as simple as possible, the resolution from 1996 is being updated to show all parking restrictions along Elm Street from North Front Street to 4th Street.

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 change of the No Parking Zone along the east side of Elm Street from 4^h Street south to the alley to a 2 Hour Parking Zone.

Sample Motion

Move to approve the change of the No Parking Zone along the east side of Elm Street from 4th Street south to the alley to a 2 Hour Parking Zone.

RESOLUTION 2009-112

WHEREAS, the City Council, by authority of Section 22-77 of the Grand Island City Code, may prohibit or fix a time limit for parking vehicles in or on public streets, public property or a portion thereof;

WHEREAS, Resolution 96-122 contained parking restrictions along Elm Street between North Front Street and 4th Street that included no parking on the east side of Elm Street from 4th Street south to the alley; and

WHEREAS, the property owner at 521 and 523 W 4th Street has established a restaurant at this location and is requesting parking be allowed on the east side of Elm Street adjacent to their property.

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

1. The portion of resolution 96-122 that was approved on April 22, 1996 which prohibited parking along the east side of Elm Street from the alley north of North Front Street to Fourth Street which is inconsistent with this resolution be, and hereby is, repealed and rescinded.
2. 24-hour diagonal parking along the west side of Elm Street from North Front Street to Fourth Street remains in effect.
3. 2-hour diagonal parking along the east side of Elm Street from North Front Street to the alley north of North Front Street remains in effect.
4. 2-hour parallel parking along the east side of Elm Street from 4th Street south to the alley is hereby established and approved.
5. The Streets Division is directed to post signs and paint curbs to designate the above parking restrictions.

- - -

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

Margaret Hornady, Mayor

Attest:

Approved as to Form	☐ _____
May 8, 2009	☐ City Attorney

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G13

#2009-113 - Approving Agreement for Professional Engineering Services for a Project to Replace the Primary Clarifier Mechanisms at the Waste Water Treatment Plant

Staff Contact: Steven P. Riehle, Public Works Directory

Council Agenda Memo

From: Steven P. Riehle, Public Works Director

Meeting: May 12, 2009

Subject: Approving Agreement for Professional Engineering Services for a Project to Replace the Primary Clarifier Mechanisms at the Waste Water Treatment Plant

Item #'s: G-13

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

Background

The Waste Water Division of the Public Works Department advertised on March 4, 2009 with a Request For Proposals (RFP 101-2009) for furnishing engineering consulting services for design and services during construction of a project to replace the primary clarifier mechanisms at the Waste Water Treatment Plant. The mechanisms date back to the construction of the plant in 1964 and are in need of replacement.

Discussion

The RFP was sent to 16 potential firms and advertised in the Grand Island Independent. Three (3) proposals were received and opened on March 26, 2009. Proposals were received from Black & Veatch Corporation of Kansas City, Missouri, CH2M Hill of Denver, Colorado & HDR, Inc. of Omaha, Nebraska.

The proposals were reviewed by the Waste Water Division of the Public Works Department and Purchasing Division of the Legal Department. The selection committee conducted phone interviews with the firms that submitted proposals on April 8, 2009 and on April 9, 2009. The engineering firm Black & Veatch Corporation of Kansas City, Missouri submitted the proposal and conducted the phone interview that received the highest rating from the selection committee. The rating criteria listed in the RFP and used for the rating were as follows:

- Experience and qualifications of the team 25%
 1. Knowledge of wastewater treatment facilities
 2. Knowledge of condition assessment methodologies
 3. Firm's experience, efficiency, judgment & integrity

- | | |
|---|-----|
| 4. Knowledge of Primary Settling Basins | |
| • Work plan and understanding of the project | 15% |
| • Level of effort relative to services provided | 15% |
| • Past performance/references | 15% |
| • Ability to complete the work on time and budget | 15% |
| • Consulting Fee | 15% |

An agreement was negotiated with Black & Veatch Corporation with work to be performed at actual costs with a maximum amount of \$125,000.00. The work to be performed includes the following primary activities:

Task 1 – Design Phase

(Maximum Compensation: \$77,000.00)

Objective – Evaluate performance enhancement options and develop a Design Report summarizing design criteria including code requirements, process schematics, equipment sizing, materials of construction & site layout. Prepare final drawings and specifications to receive lump sum bids from general contractors.

- Kick Off Meeting
- Project Instructions
- Prepare Preliminary Opinion of Probable Construction Cost
- Prepare Design Report
- Submit Design Report to NDEQ
- Civil Design
- Site Survey
- Architectural Design
- Structural Design
- Process Mechanical Design
- Instrumentation and Controls Design
- Electrical Design
- 90% Contract Plans and Specifications
- Quality Assurance/Quality Control Review
- 90% Design Development Review Workshop
- Submit Contract Documents to NDEQ
- Contract Plans and Specifications
- Prepare Final Opinion of Probable Construction Cost

Task 2 – Bidding and Construction Phase Services

(Maximum Compensation: \$48,000.00)

Objective – Provide bidding phase support services to the City during advertisement of the project, and provide construction phase services through the duration of construction of the improvements.

- Distribute Documents
- Pre-Bid Conference
- Answer Bidders Questions
- Prepare and Issue Addenda

- Evaluate Bids and Recommend Award
- Shop Drawings Review
- General Construction Phase Services
- Project Completion
- Record Drawings
- Standard Operating Procedure Manual

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 award of the agreement to Black & Veatch Corporation of Kansas City, Missouri.

Sample Motion

Move to approve the award of the agreement to Black & Veatch Corporation of Kansas City, Missouri.



Wes Nespor, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL
FOR
101-2009 PRIMARY CLARIFIER MECHANISMS**

RFP DUE DATE: March 26, 2009 at 4:00 p.m.

DEPARTMENT: Public Works

PUBLICATION DATE: March 4, 2009

NO. POTENTIAL BIDDERS: 12

SUMMARY OF PROPOSALS RECEIVED

CH2M Hill, Inc.
Omaha, NE

Black & Veatch/Olsson Associates
Kansas City, MO

HDR Engineering, Inc.
Lincoln, NE

cc: Steve Riehle, Public Works Director
Jeff Pederson, City Administrator
Dale Shotkoski, City Attorney
John Henderson, WWTP Supt.

Catrina DeLosh, PW Admin. Assist.
David Springer, Finance Director
Wes Nespor, Purchasing Agent

P1330

**AGREEMENT
FOR
ENGINEERING SERVICES**

THIS AGREEMENT (Agreement) is by and between The City of Grand Island, Nebraska (Owner) and Black & Veatch Corporation (Engineer);

WITNESSETH:

WHEREAS, Owner intends to replace primary clarifier mechanisms at the existing wastewater treatment plant site (the Project);

WHEREAS, Owner requires certain engineering services in connection with the Project (the Services); and,

WHEREAS, Engineer is prepared to provide the Services.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, Owner and Engineer agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be _____, 2009.

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska without giving effect to the principles thereof relating to conflicts of law.

ARTICLE 3 - SERVICES TO BE PERFORMED BY ENGINEER

Engineer shall perform the Services described in Attachment A, Scope of Services. Engineer shall have no liability for defects in the Services attributable to Engineer's reliance upon or use of data, design

criteria, drawings, specifications, or other information furnished by Owner or third parties retained by Owner.

ARTICLE 4 – COMPENSATION

4.1 Payment shall be due and payable upon receipt by Owner to Engineer in accordance with Attachment B, Compensation.

4.2 Method of Payment. Payments due Engineer under this Agreement shall be electronically transferred either by ACH, specifically in CCD+ or CTX format, or wire transfer to the bank account and in accordance with the bank instructions identified in Engineer's most recent invoice in immediately available funds no later than the payment due date. Invoice number and project name shall be referenced in the bank wire reference fields or the ACH addenda information. In the event that such electronic funds transfer methods are not available to Owner, then payments due Engineer under this Agreement shall be made by check and mailed to the PO Box identified in the remittance instructions on the Engineer's most recent invoice, and received by Engineer no later than the payment due date. The Remittance Advice document shall be mailed with the check to the PO Box.

4.3 In the event Owner disputes any invoice item, Owner shall give Engineer written notice of such disputed item within ten (10) days after receipt of such invoice and shall pay to Engineer the undisputed portion of the invoice according to the provisions hereof. If owner fails to pay any invoiced amount when due, ENGINEER reserves the right to seek any remedy allowed by law, including, but not limited to, the right to seek judgment interest together with any principal amount due in a court of competent jurisdiction.

ARTICLE 5 - OWNER'S RESPONSIBILITIES

Owner shall at such times as may be required by Engineer for the successful and expeditious completion of the Services:

5.1 Obtain all permits and licenses required to be taken out in the name of Owner which are necessary for the performance of the Services;

5.2 Provide Engineer with all specifications necessary for the completion of the Services;

5.3 Advise Engineer of the existence and undertake the abatement and disposal of all hazardous materials, including, but not limited to, asbestos, polychlorinated biphenyls (PCBs) and radioactive material and other toxic substances, encountered by Engineer in the performance of the Services; and

5.4 Appoint an individual who shall be authorized to act on behalf of Owner, with whom Engineer may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon Owner with concurrence of the City Council as to all matters pertaining to this Agreement and the performance of the parties hereunder.

ARTICLE 6 - STANDARD OF CARE

Engineer shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional engineer under similar circumstances. ***NO OTHER WARRANTY, EXPRESSED OR IMPLIED, IS INCLUDED IN THIS AGREEMENT OR IN ANY DRAWING, SPECIFICATION, REPORT, OR OPINION PRODUCED PURSUANT TO THIS AGREEMENT.***

ARTICLE 7 - LIABILITY AND INDEMNIFICATION

7.1 General. Having considered the potential liabilities that may exist during the performance of the Services, the benefits of the Project, and the Engineer's fee for the Services, and in consideration of the promises contained in this Agreement, Owner and Engineer agree to allocate and limit such liabilities in accordance with this Article. Indemnities against, releases from, and limitations on liability expressed in this Agreement shall apply even in the event of the breach of contract or warranty, tort (including negligence), strict liability or other basis of legal liability of the party indemnified or released, or of the party whose liability is limited. Such indemnities, releases, and limitations shall extend to the partners, licensors, subcontractors, vendors and related entities of such party, and all such parties' directors, officers, shareholders, employees, and agents.

7.2 Indemnification. Engineer agrees to defend, indemnify, and hold harmless the Owner, from and against legal liability for all claims, losses, damages, and expenses resulting from death or bodily injury to any person, damage or destruction to third-party property to the extent such claims, losses, damages, or expenses are caused by its negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Engineer and Owner, they shall be borne by each party in proportion to its own negligence.

7.3 Consequential Damages. Notwithstanding any provision in this Agreement to the contrary, and to the fullest extent permitted by law, Engineer (including any of its related or affiliated companies) shall not be liable to Owner and Owner expressly waives all claims for loss of profits, revenue, use, opportunity, and goodwill; cost of substitute facilities, goods, and services; cost of capital; increased operating costs; and for any special, indirect, incidental, consequential, punitive, or exemplary damages resulting in any way from the performance or non-performance of the Services whether arising under breach of contract or warranty, tort (including negligence), indemnity, strict liability or other basis of legal liability in excess of \$2,000,000.00.

7.4 Limitations of Liability. To the fullest extent permitted by law, Engineer's (including any of its related or affiliated companies) total liability to Owner for all claims, losses, damages, and expenses, whether arising under breach of contract or warranty, tort (including negligence), indemnity, strict liability or any other basis of legal liability, resulting in any way from the performance or non-performance of the Services shall not exceed \$2,000,000.00 (whether such damages are actual or consequential in nature).

7.5 Survival. Upon completion of all Services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason whatsoever, the terms and conditions of this Article shall survive.

ARTICLE 8 – INSURANCE

During the performance of the Services under this Agreement, Engineer shall maintain the following insurance:

- (1) General Liability Insurance, with a limit of \$1,000,000 for each occurrence and in the aggregate.
- (2) Automobile Liability Insurance, with a combined single limit of \$1,000,000.
- (3) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with limits of \$500,000 for each occurrence and in the aggregate.
- (4) Professional Liability Insurance, with a limit of \$1,000,000 per occurrence and in the aggregate.

Engineer shall, upon written request, furnish Owner certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to Owner. Engineer will provide written notice of changes to policy coverage amounts or changes to the name of the insured within thirty days of such occurrence. If Owner purchases, or causes a contractor to purchase, a builders' risk or other property insurance policy for the Project, Owner shall require that Engineer be included as a named insured on such policy without liability for the payment of premiums.

Owner assumes sole responsibility and waives all rights and claims against Engineer for all loss of or damage to property owned by or in the custody of Owner and any items at the job site or in transit thereto (including, but not limited to, construction work in progress), however such loss or damage shall occur, except damage when is the fault or negligence of Engineer.

Owner shall require all Project contractors under contract with Owner to include Owner and Engineer as additional insureds on their general, automobile, excess, and umbrella liability insurance policies.

ARTICLE 9 - LIMITATIONS OF RESPONSIBILITY

Engineer shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (2) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to Engineer, to fulfill contractual responsibilities to the Owner or to comply with federal, state, or local laws, regulations, and codes; or (3) procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Engineer in Attachment A, Scope of Services.

ARTICLE 10 - OPINIONS OF COST AND SCHEDULE

Since Engineer has no control over the cost of labor, materials, or equipment furnished by others not under contract to Engineer, or over the resources provided by others not under contract to Engineer to meet Project schedules, Engineer's opinion of probable costs and of project schedules for construction shall be made on the basis of experience and qualifications as a professional engineer. Engineer does not guarantee that proposals, bids, or actual Project costs will not vary from Engineer's opinions of probable cost or that actual schedules will not vary from Engineer's projected schedules.

ARTICLE 11 - REUSE OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, and computer software prepared by Engineer pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer. Owner shall defend, indemnify, and hold harmless Engineer against all claims, losses, damages, injuries, and expenses, including attorneys' fees, arising out of or resulting from such reuse. Any verification or adaptation of documents will entitle Engineer to additional compensation at rates to be agreed upon by Owner and Engineer.

Any files delivered in electronic media may not work on systems and software different than those with which they were originally produced. Engineer makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

ARTICLE 12 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Project specific engineering documents, drawings, and specifications prepared by Engineer as part of the Services shall become the property of Owner when Engineer has been compensated for all Services rendered, provided, however, that Engineer shall have the unrestricted right to their use. Engineer shall, however, retain its rights in its standard drawing details, specifications, data bases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of Engineer.

ARTICLE 13 - TERMINATION

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The nonperforming party shall have fifteen calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Engineer. Engineer shall terminate or suspend performance of the Services on a schedule acceptable to Owner. If termination or suspension is for Owner's convenience, Owner shall pay Engineer for all the Services performed and termination or suspension expenses, including, but not limited to, demobilization, remobilization and cancellation charges approved by the Owner. Upon restart, an equitable adjustment shall be made to Engineer's compensation.

ARTICLE 14 - DELAY IN PERFORMANCE

Except for Owner's payment obligation, neither Owner nor Engineer shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to: unusually severe weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either Owner or Engineer under this Agreement.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

ARTICLE 15 - PRE-EXISTING CONTAMINATION

Anything herein to the contrary notwithstanding, title to, ownership of, and legal responsibility and liability for any and all pre-existing contamination shall at all times remain with Owner.

"Pre-existing contamination" is any hazardous or toxic substance, material, or condition present at the Project site or sites concerned which was not brought onto such site or sites by Engineer for the exclusive benefit of Engineer. Owner shall release, defend, indemnify, and hold Engineer harmless from and against any and all liability which may in any manner arise from or be in any way directly or indirectly caused by such pre-existing contamination except if, and then only to the extent, such liability is caused by Engineer's sole negligence or willful misconduct.

ARTICLE 16 - COMMUNICATIONS

Any communication required by this Agreement shall be made in writing to the address specified below:

Engineer:	Mr. Derek Cambridge Black & Veatch Corporation 8400 Ward Parkway Kansas City, MO 64114
Owner:	Mr. Steve Riehle City of Grand Island Public Works Director 100 E. First St. Grand Island, NE 68802-1968

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Engineer and Owner.

ARTICLE 17 - WAIVER

A waiver by either Owner or Engineer of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 18 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 19 - INTEGRATION

This Agreement represents the entire and integrated agreement between Owner and Engineer. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may only be modified by a written amendment executed by both parties.

ARTICLE 20 - SUCCESSORS AND ASSIGNS

Owner and Engineer each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party to this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.

ARTICLE 21 - ASSIGNMENT

Neither Owner nor Engineer shall assign any rights or duties under this Agreement without the prior written consent of the other party, except that Engineer may do so to any of its related, affiliated, or successor entities upon written notice to Owner of same. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Engineer from employing independent consultants, associates, and subcontractors to assist in the performance of the Services.

ARTICLE 22 - THIRD PARTY RIGHTS

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Owner and Engineer.

ARTICLE 23 – GRATUITIES AND KICKBACKS

City Code states that it is unethical for any person to offer, give or agree to give any city employee or former city employee, or for any city employee or former city employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

ARTICLE 24 – EXHIBITS INCORPORATED

All Attachments listed below and discussed in this AGREEMENT are hereby incorporated into the AGREEMENT by this reference.

- Proposal submittal dated 26 March 2009 by Black & Veatch Corporation; Professional Services for the Design of Primary Clarifier Mechanisms; RFP # 101-2009
- Attachment A; Scope of Services - Primary Clarifier Mechanism Replacement
- Attachment B; Compensation - Primary Clarifier Mechanism Replacement
- Attachment C; Schedule of Hourly Billing Rates and Charges - Primary Clarifier Mechanism Replacement

IN WITNESS WHEREOF, the parties hereto have executed this Consulting Services Agreement as of the date and year first above written.

Consultant: (Consultant Name, City, State)

By  Date May 5, 2009

Title VICE PRESIDENT

CITY OF GRAND ISLAND, NEBRASKA,

By _____ Date _____

Margaret Hornady, Mayor

Attest: _____ Date _____

RaNae Edwards, City Clerk

The contract is in due form according to law and is hereby approved.

_____ Date _____

Wesley D. Nespor, Assistant City Attorney

Scope of Services – Primary Clarifier Mechanism Replacement

General

This scope of work describes the services to be rendered by Black & Veatch (the “ENGINEER”) to the CITY of Grand Island (the “CITY”) for the design, bidding, and construction phase services for the replacement of the existing primary clarifier mechanisms and associated improvements at the Grand Island Wastewater Treatment Plant (WWTP). The improvements project will be bid on a lump sum basis by general contractors performing all phases of the work.

Project Information

Project Title: Primary Clarifier Mechanism Replacement for the Grand Island WWTP (the “PROJECT”)

Objective: The CITY requires the rehabilitation of both existing primary clarifiers, including mechanism replacement, weir and scum baffle replacement, and concrete and crack repair as required. In addition to the detailed design specifications and drawings for the primary clarifier rehabilitation, the CITY also requires a design report. The design report will evaluate various related future improvements and possible performance enhancements that could be implemented with the project. The design report will also be submitted to the Nebraska Department of Environmental Quality (NDEQ) for review. This scope of work is intended to provide design, bid, and construction phase services as detailed in the remainder of this Attachment A.

The ENGINEER shall complete the services described herein within three hundred sixty (360) days based on notice to proceed by May 18, 2009. This schedule assumes that documents will be provided to CITY seven (7) working days before major scheduled milestone review workshops, and that all CITY review comments will be received within a reasonable time frame after the workshops.

The CITY system goals for the project of technology proven, flexible and expandable, reliable, sustainable life cycle, architectural consistent with surrounding facilities, control odors, cost effective and avoiding proprietary solutions shall be achieved by ENGINEER in the descriptors include but are not limited to:

- Design Report outlining proposed improvements and various alternatives evaluated.
- Rehabilitation of two existing primary clarifiers.

Project Administration and Controls: The ENGINEER will provide ongoing direction and management of the PROJECT. Review staffing, budget, progress, and quality of work throughout the course of the PROJECT for ENGINEER and subcontractors. Provide PROJECT status reports to the CITY with each invoice and at the completion of each major phase of the project.

1. **Progress Reporting:** The progress report accompanying each invoice shall include an updated schedule, summary of work completed, outstanding project issues, potential scope adjustments, and a comparison of work completed compared against the invoiced amount.
2. **Trend Management:** In the event there is consideration to change the scope of the PROJECT, the ENGINEER shall develop and present a Potential Scope Adjustment (PSA) document which itemizes the potential change(s) in scope, details the anticipated cost impact on both the ENGINEER's work as well as for the PROJECT's construction, and indicates any anticipated changes in the initial PROJECT's schedule. The CITY will provide direction to ENGINEER on the implementation of any PSAs and both parties will endeavor to negotiate an amendment to the task. The approval of all PSAs, schedule, and compensation shall be authorized in resolution form by the Mayor and Council of the City of Grand Island prior to notice to proceed.
3. The fee for Project Administration and Controls was developed on the following contract duration (in calendar days):

Contract	Construction
Notice to Proceed to Project	
Substantial Completion	570 days (19 months)
Project Substantial Completion to	
Final Completion	600 days (20 months)

Any changes to the schedule may cause the ENGINEER to request an adjustment to the fee.

Project Location

The PROJECT site is the Grand Island WWTP in Grand Island, Nebraska.

Work Tasks

ENGINEER shall perform the following specific tasks as part of this Scope of Work:

Task 1 – Design Phase

Design Phase Compensation: \$ 77,000.00

Objective: Evaluate performance enhancement options and develop a Design Report

summarizing design criteria including code requirements, process schematics, equipment sizing, materials of construction, and site layout. Prepare final drawings and specifications to receive lump sum bids from General Contractors.

Subtasks:

1. Kick-off meeting: Determine needs and goals of the CITY staff. Facilitate one (1) conference call to discuss the PROJECT goals with the CITY staff. Discuss theory of operation and performance modifications suggested in the ENGINEER's proposal. It is anticipated that costs will be obtained from manufacturers for various baffling and clarifier performance improvements and a general discussion of the potential benefits will be discussed along with a conceptual level opinion of construction costs and recommendations. The improvement alternatives include:
 - Mid-radius and in-board perimeter baffling. Evaluate the additional costs for mid-radius and in-board perimeter (Stamford) baffling.
 - Energy dissipating inlets (EDIs). Evaluate the additional costs for EDIs on the primary clarifiers.
 - Raising the primary clarifier walls. Evaluate the structural feasibility of raising the perimeter walls of the primary clarifiers and determine costs. Discuss concept with clarifier manufacturers and determine additional costs to allow new mechanism to be raised in the future if the walls are raised. Hydraulics will prevent raising the walls prior to the completion of the new grit facilities.
 - Chemically Enhanced Primary Treatment (CEPT). Evaluate current chemical feed facilities to determine if adequate storage and feed facilities are available for implementing CEPT. If storage or feed facilities are not adequate, develop conceptual costs for necessary improvements. Efforts associated with design of chemical feed improvements are not currently included in this scope of work.
 - Spiral collectors. Evaluate the additional costs for using spiral collectors versus plow type collectors.
2. Project Instructions: ENGINEER shall develop a "Project Procedures Manual" to identify lines of communication, project schedule, and other appurtenant information required to initiate the PROJECT
3. Prepare Preliminary Opinion of Probable Construction Cost. Develop a preliminary opinion of probable construction cost based on preliminary layouts and sizing. ENGINEER shall use past project experience and internal cost information to develop opinion of cost.
4. Prepare Design Report. Summarize evaluations and the design criteria in a draft Design Report and submit ten (10) copies to the CITY for review. Attend a one (1) day workshop in Grand Island to review the document with the City Staff. Revise the Design

Report based on City comments and submit ten (10) hardcopies and one (1) electronic copy in PDF format to the City.

The Design Report will include:

- Summary of primary clarifier enhancements considered and associated costs.
 - Design criteria established in the schematic design documents.
 - Preliminary facility layouts, including plan and major cross-sections.
 - Conceptual structural design descriptions of facilities.
 - Process and instrumentation diagrams (P&IDs) of major systems.
 - Equipment lists (with preliminary process equipment information and control functions) and tagging conventions.
 - Regulatory and local (City of Grand Island) code requirements.
 - Preliminary cost opinion for recommended work.
 - Implementation schedule for design, bidding, and construction.
5. Submit Design Report to NDEQ. Submit four (4) copies of the design report to NDEQ for review. Respond to questions and incorporate review comments.
 6. Civil Design: Following selection of desired clarifier improvements, develop the design criteria, drawings, and specification for the rehabilitation of two primary clarifiers.
 7. Site Survey: Provide, through a subcontract, the necessary field design surveys for the preparation of construction drawings and specifications. Surveys will determine existing elevations and utility locations within limits of construction using survey data of visible above-ground features and professional judgment, adjacent existing plant structures, buildings, and above grade facilities. The survey format shall follow the CITY's existing facility coordinate and elevation datum system using three (3) established control points.
 8. Architectural Design: Develop design standards for improvements as required.
 9. Structural Design: Define design standards for improvements as required. Provide revised mechanism anchor bolt design if required.
 10. Process Mechanical Design:
 - a. Define general design guidelines for mechanical systems.
 - b. Develop preliminary major process flow schematics for coordination and inclusion in the Process and Instrumentation Diagrams (P&IDs)
 - c. Evaluate storage and feed capabilities of existing ferric chloride and polymer feed pumps to provide chemically enhanced treatment.
 11. Instrumentation and Controls Design.
 - a. Coordinate with civil and process mechanical design to create process P&IDs.

- b. Discuss with City Staff existing control philosophies and automation to determine needed control requirements and signals to the existing PLC.

12. Electrical Design.

- a. Define general design guidelines for electrical design.
- b. Develop required construction drawings and specifications to replace existing electrical supply to the primary mechanisms. It is assumed that the existing MCC and embedded conduit will be reused.

13. 90% Contract Plans and Specifications.

- a. Produce project drawings that shall include, but not limited to: 1) Title Sheet, 2) Site Plans, 3) Legends and Symbols Lists, 4) Standard Detail Sheets, and 5) Construction Drawings as needed. A total of approximately sixteen (16) drawings are anticipated in the final set of drawing which is to be bound as an appendix in the specification.
- b. Produce contract specifications including: 1) Black & Veatch Corporation standard "front-end" contract documents which include Table of Contents, Invitation to Bid, Instructions to Bidders, Bid Forms, Bond Forms, Certificate of Compliance with Fair Labor Standards, List of Subcontractors, Questionnaires, the Agreement, Nebraska Performance Bond, Nebraska Payment Bond, Insurance Certificates, General Conditions, Supplementary Conditions, and Exhibit A that lists the duties, responsibilities and limitations of the authority of the resident project representative, 2) CITY's forms, and 3) Technical Specifications. Submit front-end documents to CITY's legal department for review and recommendations

14. Quality Assurance/Quality Control Review. ENGINEER shall conduct an internal quality assurance/quality control review of the 90% contract documents.

15. 90% Design Development Review Workshop. ENGINEER shall submit ten (10) copies of the 90% Design Contract Documents to the CITY for review. Coordinate a conference call to review the documents with CITY Staff. All preliminary plan sets will be on 11-inch by 17-inch size paper. Engineer shall provide an updated opinion of probable construction costs at the workshop.

Anticipated elements in the 90% Design Development Review stage are as follows:

- Final Process and Instrumentation Diagrams (P&ID)
- Draft front-end documents
- Final power distribution functional diagram
- Final site arrangement drawings
- Equipment Control Descriptions and final Control System Block Diagram
- Major equipment specifications
- Electrical power/lighting plans

- Final civil site/utility drawings
 - Project Requirements specification including a sequence of construction
 - Commodity specifications
 - Instrumentation plans
 - Instrumentation schedules and details
 - Mechanical, electrical, and instrumentation specifications
 - Electrical schematics and one-lines
 - Remaining drawings and specifications
 - Updated Opinion of Probable Cost and summary of potential scope adjustments
16. Submit Contract Documents to NDEQ. Submit four (4) copies of the bidding documents to NDEW for construction permit approval.
 17. Contract Plans and Specifications. Integrate CITY, State, and internal quality control comments into contract documents to finalize bidding documents. Submit four (4) sets of documents including specifications, two (2) electronic copies in PDF format, and two (2) electronic copies of the drawings in AutoCAD 2008 format.
 18. Prepare Final Opinion of Probable Construction Cost. Prepare final opinion of probable construction cost based on bidding documents. ENGINEER shall use past project experience, equipment manufacturer's quotes, and internal cost information to develop opinion of cost.

Task 2 – Bidding and Construction Phase Services

Public Information Program Compensation: \$ 48,000.00

Objective: Provide bidding phase support services to the CITY during advertisement of the project, and provide construction phase services through the duration of construction of the improvements.

Subtasks:

1. Distribute Documents. Assist the CITY in establishing a bid opening date and distribute project drawings and contract specifications in accordance with CITY's procedures to all interested parties and clearinghouses. Document distribution may be on a third-party plan distribution website as approved by CITY.
2. Pre-Bid Conference. Assist with, at a date and time selected and a place provided by CITY, a pre-bid conference to:
 - a. Instruct prospective bidders and suppliers as to the types of information required by the Contract Documents and the format in which bids should be presented.
 - b. Review special project requirements and Contract Documents in general.
 - c. Receive requests for interpretations that will be issued to plan holders.

- d. CITY personal if needed, shall prepare minutes of conference and issue to plan holders.
3. Answer Bidders Questions. Interpret questions from prospective bidders regarding the construction Contract Documents.
4. Prepare and Issue Addenda. Prepare and issue addenda to the construction Contract Documents when required.
5. Evaluate Bids and Recommend Award.
 - a. Assist the CITY in reviewing the bids for completeness and accuracy.
 - b. Examine the questionnaire to identify any supplier whose equipment or materials may not conform to the construction Contract Documents.
 - c. Prepare and distribute formal bid tabulation sheets, evaluate bids, and make written recommendations to OWNER concerning qualifications of the apparent low bidder.
 - d. Assistance with bid protests and rebidding will be considered a supplemental service.
 - e. Prepare and distribute conforming copies of the construction Contract Documents. These services will include transmitting the construction Contract Documents to CITY for signature and distribution.
6. Shop Drawings Review. Review drawings and other data submitted by each Contractor as required by the construction contract documents. ENGINEER's review shall be for general conformity to the construction contract documents and shall not relieve the Contractor of any of his contractual responsibilities. Such reviews shall not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions and programs incident thereto.

Submittals shall be limited to one original submittal and one resubmittal per section or item. Costs for additional re-submittal reviews shall be borne by Contractor, as required by the contract documents.

7. General Construction Phase Services.
 - a. Interpret construction contract documents when requested by CITY or Contractor.
 - b. Receive and review drawings and other data submitted by the Contractor as required by the construction contract documents. ENGINEER's review shall be for general conformity to the construction contract documents and shall not relieve the Contractor of any of his contractual responsibilities. Such reviews shall not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.

- c. Provide general construction observation support to the CITY for a total of one hundred and thirty (130) hours as requested by CITY.
 - d. ENGINEER will work with CITY to receive, review, and recommend approval, the Contractor's monthly payment requests. Review shall be for the purpose of making a full independent mathematical check and evaluating the equity in progress of the Contractor's payment request.
 - e. Provide documentation and administer the processing of change orders, including applications for extension of construction time. Evaluate the cost and scheduling aspects of all change orders and, where necessary, negotiate with the Contractor to obtain a fair price for the work. Said negotiation shall be subject to the approval of CITY.
 - f. Work related to unusually complex or unreasonably numerous claims are covered in Supplemental Services.
 - g. Act on claims of CITY and the Contractor relating to the acceptability of the work or the interpretation of the requirements of the construction contract documents. Services related to legal claims including but not limited to preparation of legal documents, depositions, and testimony are not included in this scope of work and are considered a supplemental service.
 - h. Performance testing of equipment will be performed and supported by Contractor and equipment supplier as required by Contract Documents. ENGINEER will not be involved in performance or startup testing without written notice from OWNER and agreement of hours to be used from OWNER's allowance.
8. Project Completion.
- a. Upon substantial completion, inspect the construction work and prepare a punch-list of those items to be completed or corrected before final completion of the project. Submit results of the inspection to CITY and the Contractor.
 - b. Upon completion or correction of the items of work on the punch-list, conduct a final inspection to determine if the work is completed.
 - c. Provide warranty inspection, thirty (30) days prior to warranty expiration notify owner and establish, document, review and establish measures for correction.
9. Record Drawings. Upon completion of the project, revise the construction contract drawings to conform to the construction records. As required, each drawing shall be modified based upon field mark ups of the contract drawings provided by the Contractor and CITY. Submit to the CITY drawings on a CD as electronic images (AutoCAD). Each drawing shall be identified by a unique sheet number.

10. Standard Operating Procedure Manual. Modify, expand or edit CITY'S existing manual to the extent needed for proper procedures and changed conditions to operation of the primary clarifiers.

SUPPLEMENTAL SERVICES

Any Work requested by CITY that is not included in one of the items listed in any other phase will be classified as supplemental services. All supplemental services requested and negotiated by CITY shall have City Council approval prior to the commencement of such work. Such services are as follows:

1. Additional meetings with local, State, or Federal agencies to discuss the PROJECT.
2. Appearances at public hearings or before special boards.
3. Supplemental Engineering Work required to meet the requirements of regulatory or funding agencies that become effective subsequent to the date of this agreement.
4. Special consultants or independent professional associates requested or authorized by CITY.
5. Revisions of design, drawings, and specifications arising from external Value Engineering Review which cause changes in the general scope, extent or character of the PROJECT, including but not limited to changes in size, complexity, CITY's schedule, character of construction, or method of financing.
6. An environmental assessment report and/or environmental impact statement as requested by CITY or required by review agencies.
7. Provision, through a subcontract, of a cultural resources or archaeological study and report on the construction site.
8. Provision, through a subcontract, of archaeological consultations regarding artifacts that may be uncovered during construction.
9. Conducting pilot plant studies and tests.
10. Changes in the general scope, extent, or character of the project, including, but not limited to:
 - a. Revision of previously accepted studies, reports, design documents, or construction contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, or orders enacted subsequent to the preparation of such studies, reports, documents, or designs; or are required by any other causes beyond ENGINEER's control.

Compensation – Primary Clarifier Mechanism Replacement

For the services covered by this Agreement, the CITY agrees to pay the ENGINEER as follows:

1. For services described in Attachment A, Scope of Services, an amount equal to the ENGINEER's salary billings plus reimbursable expenses and subcontract billings. The maximum billed for these services shall not exceed One hundred and Twenty Five Thousand Dollars and no cents (\$125,000.00) without further authorization. The maximum billed for each task shall not exceed the following amounts without further authorization:

Task 1 – Design Phase \$77,000

Task 2 – Bidding and Construction Phase \$ 48,000

2. The schedule of hourly billing rates and charges by job classification is shown in Attachment C.
3. For supplemental services, an amount equal to the ENGINEER's salary billings plus reimbursable expenses and subcontract billings. Each item of supplemental services shall be specifically authorized by the CITY COUNCIL, and written notice to proceed authorized by public works director and a maximum billing limit shall be established before the work is started. The amount billed for each item of supplemental services shall not exceed the amount established for it without further authorization. Additional amounts for supplemental services may be authorized, if necessary, as the work progresses. The schedule of hourly billing rates and charges by job classification is shown in Attachment C.
4. The ENGINEER agrees to use its best efforts to perform the services within the billing limit stated above and in accordance with the agreed upon performance schedules. If, at any time, the ENGINEER has reason to believe that the cost of the services will be greater than the billing limit, the ENGINEER shall promptly notify the CITY to that effect, giving a revised billing limit for performance of the services.
5. Monthly payments shall be made to the ENGINEER by the CITY based on the ENGINEER's statement. The statement shall indicate the name of the individuals working on the project and the hours associated with each of their efforts.

Each invoice shall be accompanied by a progress report prepared by ENGINEER's Project Manager. The report shall describe, in narrative form, the work accomplished during the period covered by the invoice and present a summary of the status of the project to-date. The summary shall address the project schedule, budget, and any significant changes in the scope of the work.

In the event CITY disputes any invoice item, CITY shall give ENGINEER written notice of such disputed item within ten (10) days after receipt of such invoice and shall pay to ENGINEER the undisputed portion of the invoice according to the provisions hereof.

6. It is understood and agreed that the maximum billings is based on the start of the services being authorized not later than May 18, 2009. If start of services is not authorized by the date given, it is understood and agreed that the maximum billing limit will be adjusted accordingly by a supplement to this Agreement.

7. It is understood and agreed:

That the ENGINEER shall start the performance of services listed in Attachment A within ten days of receipt of notice to proceed.

That the ENGINEER shall keep records on the basis of generally accepted accounting practice of costs and expenses and which records shall be available to inspection at reasonable times.

Schedule of Hourly Billing Rates and Charges – Primary Mechanism Replacement

1. Compensation for personnel used in the performance of engineering services shall be in accordance with the following hourly billing rates.

<u>Black & Veatch Classification</u>	<u>2009 Hourly Billing Rates</u>
Principal – Bill Stoner	\$245
Project Manager – Derek Cambridge	\$175
Project Administration and Clerical	\$ 74
Project Accountant	\$ 84
Engineering Manager	\$163
Project Engineer	\$130
Design Engineer	\$ 98
CAD Coordinator	\$150
CAD Technician	\$ 82
Architect	\$144
Architect Tech	\$94
Senior Structural Engineer	\$155
Structural Engineer	\$119
Structural Technician	\$85
Senior Process Mechanical Engineer	\$151
Process Mechanical Engineer	\$121
Process Mechanical Technician	\$97
Senior Mechanical Engineer	\$151
Mechanical Engineer	\$103
Mechanical Tech	\$109
Mechanical CAD	\$70
Senior Process Engineer – Ed Kobylinski	\$220
Process Specialist	\$159
Process Engineer	\$129
Quality Control Reviewer	\$195
Estimator	\$140

2. Compensation for reimbursable expense items and other charges incurred in connection with the performance of the work shall be in accordance with the following schedule:

<u>Expense Item</u>	<u>Unit Cost</u>
Travel, Subsistence, and Incidental Expenses	Net Cost
Automobile/Motor Vehicles – Local Mileage	\$.55/mile
Automobile/Motor Vehicles – Rental	Net Cost
Telephone and Telegraph Costs	*
Reproduction of Reports, Drawings & Specifications	Net Cost
Postage & Shipping Charges of Job-Related Materials	*
Computer Services	*
Photograph and Video Reproductions	Net Cost
Sub-Consultant Fees	Net Charge

* Included in hourly miscellaneous expense charge of \$8.75 per hour.

3. The Schedule of Hourly Billing Rates and Charges indicated herein is effective for service in 2009. The Schedule of Hourly Billing Rates and Charges will be revised and re-issued in March of subsequent years.

RESOLUTION 2009-113

WHEREAS, the city desires to hire a professional consulting engineer to provide services for design and services during construction related to replacing the primary clarifier mechanisms at the Waste Water Treatment Plant (WWTP); and

WHEREAS, on March 4, 2009 the City of Grand Island issued a Request For Proposals (RFP) for those professional consulting engineering services according to the RFP on file with the Wastewater Division of the Public Works Department; and

WHEREAS, on March 26, 2009 proposals were received; and

WHEREAS, on April 8, 2009 and on April 9, 2009 a selection committee interviewed the engineering firms Black & Veatch Corporation of Kansas City, Missouri, CH2MHill of Denver, Colorado & HDR, Inc. of Omaha, Nebraska for selection criteria requirements; and

WHEREAS, based on the City's rating of all proposals received, in accordance with the rating system in the RFP, the engineering firm Black & Veatch Corporation has been deemed most qualified for the services called for; and

WHEREAS, the negotiated agreement, with work performed at actual costs with a maximum fee of \$125,000.00 is considered fair and reasonable; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the agreement with consulting engineering firm, Black & Veatch Corporation of Kansas City, Missouri for the professional services associated with replacing the primary clarifier mechanisms at the WWTP is hereby approved.

BE IT FURTHER RESOLVED, that 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, May 12, 2009.

Margaret Hornady, Mayor

Attest:

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

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item G14

**#2009-114 - Approving Pioneer Consortium Interlocal Agreement
for Library Services**

Staff Contact: Steve Fosselman

Council Agenda Memo

From: Steve Fosselman, Library Director

Meeting: May 12, 2009

Subject: Approving Pioneer Consortium Interlocal Agreement for Library Services

Item #'s: G-14

Presenter(s): Steve Fosselman, Library Director

Background

Through previous City Council approval, the Grand Island Public Library has been contracting with SirsiDynix (formerly Dynix) since 1993 (along with several libraries statewide) on a variety of automation system needs, including installation of hardware and software to operate the automated circulation of items. Several significant upgrades to this system have also been approved by Council since 1993 in order to stay up-to-date with advanced technologies and user needs.

Discussion

Another major upgrade to the SirsiDynix system is necessary in the near future and while the library is very pleased with SirsiDynix as a proprietary service, a statewide consortium is being developed to investigate the feasibility of migrating our systems to a new Open Source (freely distributed, non-proprietary open source code) library-system technology that could result in significant cost savings, added functionality and ease of operation through a centralized server location with Internet access at each participating library. To aid in the consortium's efforts, the public libraries in the following communities applied for and received \$100,000 in federal grant funds from the Nebraska Library Commission: Bellevue, Grand Island, Gretna, Holdrege, Lincoln, Omaha, and St. Paul.

With the adoption of this Interlocal Agreement in each of these communities, work can commence on a study to determine the best means, features, and start-up and on-going costs of such a centralized system as well as to expend grant funds for hardware and system support services to live-test such a system. During the Interlocal term ending April 30, 2010, our library's grant match share to participate in the Pioneer Consortium is

\$1,666.50. This allows our library to determine the benefits of continued participation in the consortium and to fully migrate from SirsiDynix to the consortium system if it best enables us to provide library services efficiently and effectively.

Future years' cost estimates will be determined during the grant period and this information will be analyzed in determining future consortium involvement. As a frame of reference, upgrading to the latest version of SirsiDynix will range from \$38,000 (library-hosted) to \$62,000 (Sirsi-Dynix hosted). Separately, this year's maintenance fee for SirsiDynix is \$23,000.

An added benefit to participating in this consortium is the ability to collaborate with others on a model of service that if successful will bring in even more participants and bring down costs even more than if shared among seven libraries.

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 Pioneer Consortium Interlocal Agreement.

Sample Motion

Move to approve the Pioneer Consortium Interlocal Agreement.

PIONEER CONSORTIUM

INTERLOCAL AGREEMENT

This agreement ("Agreement") is made and entered into by and between the City of Bellevue, Nebraska, City of Grand Island, Nebraska, City of Gretna, Nebraska, City of Holdrege, Nebraska, City of Lincoln, Nebraska, City of Omaha, Nebraska and the City of St. Paul, Nebraska and their respective library boards, pursuant to authority provided in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. Sec. 13-801, et seq.), without creating a separate joint entity, each party hereto maintaining its own employees and budgets in carrying out the terms of this Agreement, and whenever possible, this Agreement shall be construed in conformity therewith.

1.0 PIONEER CONSORTIUM ESTABLISHMENT AND GOALS:

1.1 Pioneer Consortium is a consortium of publicly funded libraries ("Member Libraries," singularly "member library") in the State of Nebraska. Its mission is to enrich the collections, share the resources, enhance the services and strengthen support for its Member Libraries. The mission is achieved through supporting an open source unified catalog of library resources, an efficient materials request and delivery system, and other activities that enable its Member Libraries to provide library services efficiently and effectively.

1.2 Startup funds for the Pioneer Consortium project have been provided by a \$100,000.00 grant award from the Nebraska Library Commission. In addition, Member Libraries agree to contribute grant matching funds totaling \$13,333.00 for data processing expenses.

1.3 Each member library's goal shall be to maintain and enhance a strong working relationship with Member Libraries. All Member Libraries shall subscribe to the goals and primary functions of the Pioneer Consortium as noted below.

1.4 The Pioneer Consortium is based on open source integrated library software and computer equipment located at each member library and a central site, and linked via the Internet, which in turn constitutes the automated union catalog system.

1.5 The functions of the Pioneer Consortium are listed below, not necessarily in priority order of importance:

- a. To provide access to the union catalog of the Member Libraries;
- b. To allow patrons to request needed materials from the collections of Member Libraries;
- c. To enhance cooperative electronic and physical document delivery of materials held by Member Libraries;
- d. To provide access to electronic databases other than the union catalog to Member Libraries and their patrons; and

- e. To support cooperative collection development activities by Member Libraries.

1.6 The term of this Agreement shall continue through April 30, 2010, and be subject to renewal every year so long as at least two (2) parties desire to renew this Agreement.

2.0 THE PIONEER COUNCIL AND GOVERNANCE STRUCTURE:

2.1 The Pioneer Consortium is to be governed by a governing board comprised of the library directors from each member library. That board, called the Pioneer Council, shall have the responsibility to cooperate to determine the most efficient and effective methods, materials, contractual relationships and member fees for the benefit of all Member Libraries and cities.

2.2 The Pioneer Council will elect a President. The term of service and obligations of office shall be published in the Pioneer Bylaws.

2.3 Each member library shall have one vote on the Pioneer Council.

2.4 The Pioneer Council shall develop and maintain bylaws governing the Pioneer Consortium's activities and services.

2.5 The Pioneer Council shall approve the Pioneer Consortium's budgets, expenditure plans, and member fees and charges for ongoing expenses beyond the grant project period.

2.6 The Pioneer Council shall set policies for the Pioneer Consortium and its business and contractual relationship with Member Libraries and with any third party vendors.

2.7 The Pioneer Council shall determine expenditures for and repository of Pioneer Consortium central system hardware and software during the grant period. Equipment acquired with grant funds must continue to be used for project purposes for at least five years, or the life of the equipment. Future expenditures for hardware, software and maintenance of the databases shall be determined by the Pioneer Council.

2.8 Any member library leaving the Pioneer Consortium shall forfeit any interest it may have in the property owned by the Pioneer Consortium to the remaining Member Libraries. Except as otherwise provided in this Agreement, in the event all Member Libraries shall agree to disband the Pioneer Consortium, any property owned by the Pioneer Consortium shall be distributed on a pro-rata basis to be figured as a proportion of the number of materials held in each member library compared to the overall total number of materials held by the consortium.

2.9 The Pioneer Council shall determine the reliable central site connectivity for Pioneer Consortium-related telecommunication traffic to and from the central system to each member library, sufficient for access to the union catalog and other databases per Section 1.5.

2.10 The Pioneer Council shall determine a repository for purposes of operating and maintaining a union catalog of the collections of the Member Libraries that are accessible. The individual Member Libraries shall pay for the support and coordination of locally generated data or activities. Neither the member library nor the Pioneer Council shall obligate a member library to pay additional expenses without the member library's prior approval.

2.11 The Pioneer Council shall determine the best means of insuring central site hardware, software and system against loss by fire and other means. Any settlement paid to cover the loss of items jointly owned by the Pioneer Consortium shall be used to replace Consortium property only.

2.12 The Pioneer Council shall create a Technical Advisory Council, consisting of staff designated by each member library, which shall advise the Pioneer Council on technical management issues.

2.13 The Pioneer Council may establish other advisory groups or committees as needed.

3.0 OMAHA PUBLIC LIBRARY AND LINCOLN CITY LIBRARIES DUTIES:

3.1 The Omaha Public Library shall serve as the contracting and business agent for the Pioneer Consortium and shall provide administrative support for the Pioneer Consortium as follows.

3.2 Budget and accounting activities for the Pioneer Consortium shall be maintained by the Omaha Public Library.

3.3 The staff of the Omaha Public Library shall provide the Pioneer Council with all necessary management information including but not limited to financial reports.

3.4 The Lincoln City Libraries shall draft an annual report subject to the approval of the Pioneer Council.

3.5 The Lincoln City Libraries shall be the official repository for the Pioneer Consortium documentation, correspondence, and other business records.

4.0 MEMBER LIBRARIES DUTIES:

4.1 Each member library shall pay grant matching funds in accordance with Section 1.2 as follows:

Omaha Public Library	\$4,000.00
Lincoln City Libraries	\$4,000.00
Grand Island Public Library	\$1,666.50
Bellevue Public Library	\$1,666.50
Holdrege Area Public Library	\$1,000.00
Gretna Public Library	\$ 500.00

4.2 Each member library shall be responsible for purchasing and maintaining its own local system hardware and software.

4.3 Each member library shall provide, at its expense, all costs to link and ensure reliable access from the member library's local system to the Pioneer Consortium central system.

4.4 An annual membership fee will be due each fiscal year after the initial grant contributions according to Sections 1.2 and 4.1. The payment amount for the coming fiscal year shall be determined by the Pioneer Council by March 31st of each year.

4.5 Member Libraries whose initial participation in the Pioneer Consortium was not funded by the original grant shall pay the Pioneer Consortium a pro-rata amount. The payment amount shall be determined by the Pioneer Council.

4.6 The ongoing expenses associated with the delivery of services by the Pioneer Consortium shall be assessed to each member library quarterly based on a pro-rata amount for software maintenance, supplies and equipment reserve costs. The pro-rata costs for annual software maintenance charges will be figured as a proportion of the number of materials held in each member library compared to the overall total number of materials held by the consortium. The payment amount for the coming fiscal year shall be determined by the Pioneer Council by March 31st of each year or more frequently as necessary in re-assessing costs upon approval of additional members as specified in Section 7.1.

4.7 Each member library shall provide to the Pioneer Consortium automation third party vendor a copy of its bibliographic, authority and holdings databases for loading into the central system. Each member library shall be responsible for all expenses associated with the profiling and migration of its database.

4.8 Each member library shall provide to Pioneer Consortium additional records added to the above mentioned databases using mutually acceptable catalog rules and procedures.

4.9 Each member library shall participate in central system interlibrary loan circulation according to each member library's respective current circulation policy. Provision of the widest possible Interlibrary Loan circulation of materials under these policies shall be a goal of the Pioneer Consortium.

4.10 Each member library shall participate in the Pioneer Consortium electronic and physical document delivery services that support the circulation noted in section 4.9 and other cooperative services and activities as approved by the Pioneer Council.

4.11 Each member library shall actively participate in the Pioneer Consortium by maintaining active participation in the Pioneer Council and in additional groups established by the Pioneer Council including but not limited to standing committees, ad-hoc committees, task forces, and advisory bodies.

4.12 Travel costs and other costs to participate in the Pioneer Consortium are the responsibility of each member library.

4.13 The Pioneer Council may terminate a member library's Pioneer Consortium membership only if the member library materially breaches its duties and such duties remain breached for 180 days after notification by Pioneer Consortium or if to continue participation would violate laws of the State of Nebraska.

4.14 Each member library can, at its discretion, withdraw from the Pioneer Consortium. Such withdrawal will be effective upon 60 days written notice to the Member Libraries of the Pioneer Council.

4.15 Each member library shall be responsible for verifying copyright and/or fair use status and/or obtaining copyright permission prior to its placing or introducing any information, text, graphics or data into the Pioneer Consortium database(s). Member Libraries agree they shall be solely responsible and shall indemnify the other parties to this Agreement and hold them harmless from for any claim, loss, liability or expense due to loading of copyrighted materials in the Pioneer Consortium database(s) by the employees or agents of the member library where such loading or subsequent use, viewing, printing, downloading or recopying is alleged to be infringing.

5.0 DATA RIGHTS AND OBLIGATIONS:

5.1 Data obtained by the central site from each member library shall hereby be contributed to Pioneer Consortium for use in achievement of Pioneer Consortium's goals, subject to any third-party license restrictions attached to such data.

5.2 If a member library ceases participation in Pioneer Consortium, the data submitted to the central system at that point must be removed from central system within 120 days at that withdrawing member library's expense.

6.0 MISCELLANEOUS:

6.1 Except as otherwise limited by Nebraska law, to the fullest extent permitted by law, each member library shall mutually indemnify, defend and hold harmless the Member Libraries, their officers, agents, and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of the member library, or anyone for whose acts any of them may be liable. The Member Libraries do not waive their

governmental immunity by entering into this Agreement and fully retain all immunities and defenses provided by law. This section survives any termination of this Agreement.

6.2 This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No amendment, consent or waiver of terms of this Agreement shall bind either party, unless in writing and signed by all parties. Any such amendment, consent or waiver shall be effective only in the specific instance and for the specific purpose given. The parties, by the signature below of their authorized representatives, acknowledge having read and understood the Agreement and to be bound by its terms and conditions.

6.3 Each party to this Agreement shall execute duplicate copies of this Agreement and provide one executed copy to the Pioneer Consortium. The parties agree that the separately executed copies of this Agreement which shall constitute the Pioneer Consortium Interlocal Agreement shall be given full force and effect.

7.0 ADDITIONAL MEMBERS:

7.1 Additional political subdivisions or governmental entities may apply to become members of the Pioneer Consortium by providing the Pioneer Council a letter of application, which shall be considered by the Pioneer Council at its next regular or special meeting following the receipt of the application. Upon receiving the approval of two-thirds (2/3) of the Pioneer Council and the subsequent execution of this Agreement by the applicant member, including any addendum, amendment or modification thereto, the applicant shall become a member of the Pioneer Consortium.

PIONEER CONSORTIUM
INTERLOCAL AGREEMENT

DATE: _____

THE CITY OF BELLEVUE, NEBRASKA,
A Municipal Corporation,

ATTEST:

Mayor

City Clerk

Approved as to form: _____

Bellevue City Attorney

PIONEER CONSORTIUM
INTERLOCAL AGREEMENT

DATE: _____

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

Chairman, Library Board

Mayor

ATTEST:

City Clerk

Approved as to form: _____
Grand Island City Attorney

**PIONEER CONSORTIUM
INTERLOCAL AGREEMENT**

DATE: _____

THE CITY OF GRETNA, NEBRASKA,
A Municipal Corporation,

ATTEST:

Mayor

City Clerk

Approved as to form: _____

Gretna City Attorney

PIONEER CONSORTIUM
INTERLOCAL AGREEMENT

DATE: _____

Holdrege Area Public Library, NEBRASKA

President, Library Board

Library Director

ATTEST:

Notary

Approved as to form: _____

William A. Tringe, Esq.
Board of Library Trustees

PIONEER CONSORTIUM
INTERLOCAL AGREEMENT

DATE: _____

THE CITY OF LINCOLN, NEBRASKA,
d/b/a LINCOLN CITY LIBRARIES

President, Library Board

Library Director

Approved as to form: _____

Lincoln City Attorney

PIONEER CONSORTIUM
INTERLOCAL AGREEMENT

DATE: _____

THE CITY OF OMAHA, NEBRASKA,
A Municipal Corporation,

ATTEST:

Mayor

City Clerk

Approved as to form: _____

Omaha City Attorney

PIONEER CONSORTIUM
INTERLOCAL AGREEMENT

DATE: _____

THE CITY OF ST. PAUL, NEBRASKA,
A Municipal Corporation,

Chairman, Library Board

Mayor

Superintendent, School District

ATTEST:

City Clerk

Approved as to form: _____
St. Paul City Attorney

RESOLUTION 2009-114

WHEREAS, the City of Grand Island, Nebraska desires to enter into an Interlocal Agreement with the City of Bellevue, Nebraska, City of Gretna, Nebraska, City of Holdrege, Nebraska, City of Lincoln, Nebraska, City of Omaha, Nebraska and the City of St. Paul, Nebraska and their respective library boards (the Parties) for purposes of establishing a consortium of publicly funded libraries in the State of Nebraska to support an open source unified catalog of library resources, an efficient materials request and delivery system, and other activities that enable its members to provide library services efficiently and effectively; and

WHEREAS, the Parties have received grant funding in the amount of \$100,000 from the Nebraska Library Commission for start-up funds for a joint Pioneer Consortium project; and

WHEREAS, Grand Island Public Library's grant match share to participate in the Pioneer Consortium grant project specifically for data processing expenses is \$1,666.50; and

WHEREAS, the term of this Agreement shall extend through April 30, 2010 and be subject to renewal every year so long as at least two (2) parties desire to renew this Interlocal Agreement; and

WHEREAS, the Parties agree to individual and consortium responsibilities as provided for in this Interlocal Agreement; and

WHEREAS, the parties shall cooperate to determine the most efficient and effective methods, materials, contractual relationships and member fees for the benefit of all member libraries and cities.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized to, on behalf of the City, execute the Interlocal Agreement between the City of Grand Island and the City of Bellevue, Nebraska, City of Gretna, Nebraska, City of Holdrege, Nebraska, City of Lincoln, Nebraska, City of Omaha, Nebraska and the City of St. Paul, Nebraska and their respective library boards, in accordance with the terms and conditions generally described above.

- - -

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 <input type="checkbox"/> _____ May 7, 2009 <input type="checkbox"/> City Attorney



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item I1

#2009-115 - Approving Refunding Various Purpose Bonds, Series 2002

This item relates to the aforementioned Ordinance Item F-5.

Staff Contact: David Springer

RESOLUTION 2009-115

BE IT RESOLVED by the Mayor and City Council of the City of Grand Island, Nebraska:

Section 1. The following bonds of the City of Grand Island, Nebraska, in accordance with their option provisions are hereby called for payment on June 16, 2009, after which date interest on the bonds will cease:

Various Purpose Bonds, Series 2002, date of original issue - January 15, 2002, in the principal amount of Two Million Nine Hundred Twenty-five Thousand Dollars (\$2,925,000), numbered as shown on the books of the Paying Agent and Registrar becoming due and bearing interest as follows:

<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
\$270,000	December 15, 2009	4.20%	385622 MP 7
285,000	December 15, 2010	4.30	385622 MQ 5
295,000	December 15, 2011	4.40	385622 MR 3
310,000	December 15, 2012	4.50	385622 MS 1
320,000	December 15, 2013	4.65	385622 MT 9
330,000	December 15, 2014	4.75	385622 MU 6
355,000	December 15, 2015	4.85	385622 MV 4
370,000	December 15, 2016	4.95	385622 MW 2
390,000	December 15, 2017	5.00	385622 MX 0

Said bonds are hereinafter referred to as the "Refunded Bonds."

Said bonds are subject to redemption at any time on or after January 15, 2007, at the principal amount thereof plus accrued interest, and said interest is payable semiannually.

Said Refunded Bonds were issued for the purpose of paying the costs of improving streets and alleys, intersections and areas formed by the crossing of streets, avenues or alleys and streets adjacent to real estate owned by the City in Street Improvement District No. 1221.

Section 2. The Refunded Bonds are to be paid off at the principal corporate trust office of Cornerstone Bank, in York, Nebraska (the "Paying Agent"), as paying agent and registrar.

Section 3. A true copy of this resolution shall be filed immediately with the Paying Agent and said Paying Agent is hereby irrevocably instructed to mail notice to each registered owner of said bonds not less than thirty days prior to the date fixed for redemption, all in accordance with the ordinance authorizing said called bonds.

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

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

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item I2

#2009-116 - Approving Waste Water Cost of Services Based Rate Study

Staff Contact: Steven P. Riehle, Public Works Director

Council Agenda Memo

From: Steven P. Riehle, Public Works Director

Meeting: May 12, 2009

Subject: Approving Waste Water Cost of Services Based Rate Study

Item #'s: I-2

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

Background

On August 26, 2008, by Resolution Number 2008-228, the City Council approved an agreement with the consulting engineering firm, Black & Veatch Corporation of Kansas City, Missouri using Olsson Associates of Grand Island as a sub-consultant. The agreement was for professional services associated with an anaerobic digestion system including preliminary engineering, services during construction, public awareness and a cost of services study related to the digesters only.

On December 16, 2008 by Resolution Number 2008-359, the City Council approved Amendment Number 1 to the agreement that expanded the cost of services study beyond the digesters to include the entire plant and collection system at a cost of \$19,700. The amendment also extended the timeline for the project at a cost of \$16,000 with a council presentation moved from November 2008 to March of 2009.

Discussion

Bill Stoner, Derek Cambridge and Anna White from Black & Veatch discussed digester sizing options and presented the waste water cost of services based rate study report at the May 5th City Council Study Session.

The cost of services based rate study detailed recommended rates for fiscal years 2010, 2011, 2012 and 2013. The first year of rate adjustments will be considered by the council along with other city rates as part of the normal budget process in the summer of 2009. Approving the rate study will finalize Black & Veatch's work effort on the rate study and allow the consultant and city staff to move forward with design on the digester complex.

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 waste water cost of services based rate study as presented at the May 5, 2009 city council study session.

Sample Motion

Move to approve the waste water cost of services based rate study.

RESOLUTION 2009-116

WHEREAS, on August 26, 2008, by Resolution 2008-228, the City of Grand Island approved the proposal of Black & Veatch Corporation of Kansas City, Missouri using Olsson Associates of Grand Island, Nebraska as a sub-consultant for the professional services associated with an anaerobic digestion system including preliminary engineering, services during construction, public awareness and a cost of services study related to the digesters only; and

WHEREAS, on December 16, 2008 by Resolution Number 2008-359, the City Council approved Amendment Number 1 to the agreement that expanded the cost of services study beyond the digesters to include the entire plant and collection system, and

WHEREAS, Black & Veatch Corporation has completed the rate study; and

WHEREAS, it is recommended that the rate study presented by Black & Veatch Corporation at the May 5, 2009 city council study session be approved and adopted.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the rate study presented by Black & Veatch Corporation of Kansas City, Missouri at the May 5, 2009 city council study session is hereby approved and adopted.

- - -

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 11, 2009 City Attorney



City of Grand Island

Tuesday, May 12, 2009

Council Session

Item I3

#2009-117 - Approving Addendum Number 1 to the Agreement for Professional Services for the Design of an Anaerobic Digestion System at the Waste Water Treatment Plant

Staff Contact: Steven P. Riehle, Public Works Director

Council Agenda Memo

From: Steven P. Riehle, Public Works Director

Meeting: May 12, 2009

Subject: Approving Addendum Number 1 to the Agreement for Professional Services for the Design of an Anaerobic Digestion System at the Waste Water Treatment Plant

Item #'s: I-3

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

Background

On August 26, 2008, by Resolution Number 2008-228, the City Council approved an agreement with the consulting engineering firm, Black & Veatch Corporation of Kansas City, Missouri using Olsson Associates of Grand Island as a sub-consultant. The agreement was for professional services associated with an anaerobic digestion system including preliminary engineering, services during construction, public awareness and a cost of services study related to the digesters only.

On December 16, 2008 by Resolution Number 2008-359, the City Council approved Amendment Number 1 to the agreement that expanded the cost of services study beyond the digesters to include the entire plant and collection system at a cost of \$19,700. The amendment also extended the timeline for the project at a cost of \$16,000 with a council presentation moved from November 2008 to March of 2009.

Discussion

Bill Stoner, Derek Cambridge and Anna White from Black & Veatch discussed digester sizing options and presented the waste water cost of services based rate study report at the May 5th City Council Study Session

Construction of an anaerobic digester complex at the city's waste water treatment plant remains the best long term option for sludge handling. Digestion will eliminate the cost of hauling and disposing of sewage sludge at area landfills. Option number 2 has the lowest initial cost of \$12.9 million, but does not provide capacity for future growth and is a single train without redundancy. Option 2A provides capacity for future growth and is a

double train with redundancy that provides twice the capacity of option 2 at an increased cost of just over 1 1/2 times the cost.

Approving digester sizing option 2A will allow the consultant and city staff to move forward with design on the digester complex.

The negotiated agreement and schedule for the digester project contained an aggressive timeline to keep the project moving forward. Shifting the council presentation on digester sizing from March 2009 to May 2009 necessitates an extension of the time allowance under the agreement from 490 to 550 days from the notice to proceed date of September 23, 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 addendum number 1 to the agreement with Black & Veatch Corporation and authorize them to proceed with final design work on digester option 2A as presented at the May 5, 2009 city council study session.

Sample Motion

Move to approve addendum number 1 and authorize Black & Veatch to proceed with final design work on digester option 2A.

ADDENDUM NUMBER 1 TO AGREEMENT FOR PROFESSIONAL SERVICES FOR THE DESIGN OF AN ANAEROBIC DIGESTION SYSTEM

General Provisions

A. **This Document Controlling.** To the extent that there are conflicting provisions between this document and the agreement between The City of Grand Island and Black & Veatch Corporation, this document controls.

B. **Modifications and Deletions.** The following provisions are deleted or modified from original agreement for Professional Services for the Design of an Anaerobic Digestion System; Dated September 23, 2008, and Amendment Number 1 for Professional Services for the Design of an Anaerobic Digestion System; Dated December 16, 2008 as follows:

- (i) **Attachment A; Scope of Services – Anaerobic Digestion Improvements; Page A1-1; Project Information; third paragraph; as stated:**

The ENGINEER shall complete the services described herein within ~~three hundred sixty (360) four hundred and ninety (490)~~ **five hundred fifty (550)** days based on notice to proceed by September 23, 2008. This schedule assumes City Council approval described in Task 1, subtask 3 of this scope of services will be granted by ~~November 4, 2008 March 9, 2009~~ **May 12, 2009**, that documents will be provided to CITY seven (7) working days before major scheduled milestone review workshops, and that all CITY review comments will be received within a reasonable time frame after the workshops.

IN WITNESS WHEREOF, owner and engineer have executed this Addendum Number 1.

City of Grand Island, Nebraska
OWNER

By: _____

Name: Margaret Hornady

Title: Mayor

Date: _____

Black & Veatch Corporation
ENGINEER

By: _____

Name: William S Stoner

Title: Vice President

Date: _____

Attest:

RaNae Edwards, City Clerk

Approved as to Form _____
May 12, 2009 City Attorney

RESOLUTION 2009-117

WHEREAS, on August 26, 2008, by Resolution Number 2008-228, the City Council of the City of Grand Island approved an agreement with the consulting engineering firm, Black & Veatch Corporation of Kansas City, Missouri for the professional services associated to the preliminary engineering for the design of an anaerobic digestion system, public awareness, services during construction and cost of services study related to the digesters only; and

WHEREAS, on December 16, 2008 by Resolution Number 2008-359, the City Council approved Amendment Number 1 to the agreement that expanded the cost of services study beyond the digesters to include the entire plant and collection system; and

WHEREAS, on December 16, 2008 by Resolution Number 2008-359, thru Amendment Number 1 also extended the timeline for the project, with a council presentation moved from November 2008 to March of 2009.

WHEREAS, on May 5, 2009 a Study Session was held regarding Digestion Complex sizing and the Cost of Services based Rate Study where Black & Veatch recommended digester sizing option 2A;

WHEREAS, city staff has negotiated Addendum Number 1 with the consulting engineering firm, Black & Veatch modifying the scope of the original contract with an extension of the agreement time allowance from 490 to 550 days; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the notice to proceed with Option 2A for the Digestion System with the calendar days to be adjusted from 490 to 550 days for the consulting engineering firm, Black & Veatch of Kansas City, Missouri, is hereby approved; and

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

- - -

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 11, 2009 City Attorney
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City of Grand Island

Tuesday, May 12, 2009

Council Session

Item J1

Approving Payment of Claims for the Period of April 29 2009 through May 12, 2009

The Claims for the period of April 29, 2009 through May 12, 2009 for a total amount of \$2,806,007.61. A MOTION is in order.

Staff Contact: David Springer