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# City of Grand Island



**Tuesday, December 01, 2009**

## **Council Session Packet**

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### **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**

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**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.

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### **Invocation**

### **Pledge of Allegiance**

### **Roll Call**

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## **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.

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## **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.

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## **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, December 01, 2009

Council Session

## Item -1

### Election of City Council President

*The City Council is required to elect one Councilmember to the office of Council President. The term is for a one-year period. The Council President automatically assumes the duties of the Mayor in the event that the Mayor is absent or otherwise unable to fulfill his/her duties. Nebraska law allows the election of the Council President to be by secret ballot. The total number of votes for each candidate; however, must be stated and recorded in the Minutes. Past practice has included a run-off election between the top two nominees, if necessary. The City Clerk will prepare, distribute, and count ballots. Nominations to fill the vacancy are in order. A second is not required on nominations.*

Staff Contact: Mayor Hornady



# City of Grand Island

Tuesday, December 01, 2009

Council Session

## Item G1

**Approving Minutes of November 24, 2009 City Council Regular Meeting**

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL REGULAR MEETING

November 24, 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 November 24, 2009. Notice of the meeting was given in *The Grand Island Independent* on November 18, 2009.

Mayor Hornady called the meeting to order at 7:00 p.m. The following City Councilmember's were present: Meyer, Niemann, Gilbert, Haase, Carney, Dugan, Ramsey, Nickerson, and Zapata. Councilmember Gericke was absent. The following City Officials were present: City Administrator Jeff Pederson, City Clerk RaNae Edwards, Finance Director Mary Lou Brown, 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 Dan Carlson, Sarah Stoltenberg, and Alex Wirth. Mayor Hornady wished Bernice Southard, a former school teacher for 50 years in Grand Island a happy 90<sup>th</sup> birthday. Mayor Hornady also wished everyone a happy Thanksgiving.

PUBLIC HEARINGS:

Public Hearing on Request from James Fox dba Husker Hut, 1403 South Eddy Street for a Class "I" Liquor License. This item was pulled from the agenda at the request of the applicant.

ORDINANCES:

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

#9242 – Consideration of Vacation of a Utility Easement Located at 805 Allen Drive in Meadowlark West Fifth Subdivision (Paul Younes).

#9243 – Consideration of Vacation of a Utility Easement Located at 1808 & 1810 South Locust Street (Goodwill Industries)

#9244 – Consideration of Vacation of Lueth Drive South of Seedling Mile Road

be considered for passage on the same day upon reading by number only and that the City Clerk be permitted to call out the number of these ordinances on first reading and then upon final passage and call for a roll call vote on each reading and then upon final passage." Councilmember Ramsey second the motion. Upon roll call vote, all voted aye. Motion adopted.

Public Works Director Steve Riehle reported Ordinance #9242 was a request from a developer that would vacate a 20' utility easement in Lot 1 of Meadowlark West Fifth Subdivision for development of this property.

Mr. Riehle reported Ordinance #9243 was a request from a developer to vacate three (3) twenty foot (20') utility easements in Lots 1, 2, and 3 of Goodwill Fifth Subdivision for development of this property.

Mr. Riehle reported Ordinance #9244 was the vacation of a public right-of-way 16.5' currently know as Lueth Drive, south of Seedling Mile Road, between 2415 and 2505 East Seedling Mile Road and extends to Gregory Avenue. This vacation would accommodate the replatting of Windolph Subdivision, as Hehnke Subdivision.

Motion by Meyer, second by Nickerson to approve Ordinances #9242, #9243, and #9244.

City Clerk: Ordinances #9242, #9243, and #9244 on first reading. All those in favor of the passage of these ordinances on first reading, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

City Clerk: Ordinances #9242, #9243, and #9244 on final passage. All those in favor of the passage of these ordinances on final passage, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

Mayor Hornady: By reason of the roll call votes on first reading and then upon final passage, Ordinances #9242, #9243, and #9244 are declared to be lawfully adopted upon publication as required by law.

CONSENT AGENDA: Consent agenda item G-9 was pulled for further discussion. Motion by Zapata, second by Meyer to approve the Consent Agenda excluding item G-9. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of November 10, 2009 City Council Regular Meeting.

Approving Minutes of November 17, 2009 City Council Study Session.

Approving Appointment of Rob Czaplewski to the Library Board.

Approving Request from Carl Mayhew, 507 Plum Road for Liquor Manager Designation for the Liederkrantz, 403 West 1<sup>st</sup> Street.

#2009-2908 – Approving Natural Gas Sales Agreement with Northwestern Energy for the Wastewater Treatment Plant.

#2009-299 – Approving Change Order No. 2 for Grading Improvements at the Veterans Athletic Field Complex with Slepicka Construction Co. of Dorchester, Nebraska for an Increase of \$10,127.44 and a Revised Contract of \$98,069.69.

#2009-300 – Approving Certificate of Final Completion for Grading Improvements at the Veterans Athletic Field Complex with Slepicka Construction Co. of Dorchester, Nebraska.

#2009-301 – Approving Bid Award for (1) New 2009 4 Wheel Drive 43 HP Industrial Grade Tractor/Loader with Cab with Central Nebraska Bobcat of Grand Island, Nebraska in an Amount of \$28,717.00.

#2009-303 – Approving Bid Award for Utility Improvements at Veterans Athletic Field Complex with Diamond Engineering Co. of Grand Island, Nebraska in an Amount of \$191,335.18.

#2009-304 – Approving Medicate Enrollment Revalidation and Appointing Mary Lou Brown as Authorized Official and Karen Schneider as a Designated Official.

#2009-302 – Approving Bid Award for Paving Improvements for Veterans Athletic Field Complex with Diamond Engineering Co. of Grand Island, Nebraska in an Amount of \$364,664.80. Discussion was held regarding Section C of the bid and whether this would need to be bid again. Parks and Recreation Director Steve Paustian stated this would not have to be re-bid and work would likely take place in the spring.

Motion by Dugan, second by Gilbert to approve Resolution #2009-302. Upon roll call vote, all voted aye. Motion adopted.

#### REQUESTS AND REFERRALS:

Consideration of Request from Wayne E. Vian for Ashlar Lodge No. 33 A.F. & A.M. for Permission to Dedicate the Cornerstone at the City Owned State Fair Recreational Building. Wayne Vian representing the Mason's requested the Grand Island City Council's permission to dedicate the cornerstone at the State Fair Recreational Building.

Discussion was held regarding design changes. Mr. Vian stated this could be done after the building was completed. Installation cost would be paid by Ashlar Lodge. Also discussed was State Fair Board approval.

Motion by Meyer, second by Nickerson to approve the request of the Masons to direct staff to dedicate the cornerstone at the State Fair Recreational Building contingent upon approval from the State Fair Board. Upon roll call vote, all voted aye. Motion adopted.

#### RESOLUTIONS:

#2009-305 – Consideration of Request from James Fox dba Husker Hut, 1403 South Eddy Street for a Class "I" Liquor License. This item was pulled from the agenda at the request of the applicant.

#2009-306 – Approving the Adoption of the Resolution to Comply with Local Public Agency Guidelines Manual by Designating a Responsible Charge. Public Works Director Steve Riehle reported that since Grand Island was a Local Public Agency (LPA) and received federal transportation funding from the Federal Highway Administration (FHWA) administered through the Nebraska Department of Roads (NDOR), the City was required to comply with the NDOR's LPA Manual. One of the requirements was to designate a Manager of Engineering Services as the Responsible Charge person for federal aid transportation projects. It was recommended that

David Goedeken be designated as the City's Responsible Charge individual he had completed the training and was certified by the NDOR.

Motion by Meyer, second by Gilbert to approve Resolution #2009-306. 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 November 11, 2009 through November 24, 2009, for a total amount of \$3,521,396.45. Unanimously approved.

Motion by Dugan, second by Ramsey to approve the Claims for the Period of November 11, 2009 through November 24, 2009 for the Veterans Athletic Field Complex for a total amount of \$126,103.42. Unanimously approved.

Motion by Dugan, second by Ramsey to approve the Claims for the Period of October 28, 2009 through November 24, 2009 for the State Fair Recreation Building for a total amount of \$2,826.62. Unanimously approved.

ADJOURNMENT: The meeting was adjourned at 7:25 p.m.

RaNae Ed wards  
City Clerk





# City of Grand Island

Tuesday, December 01, 2009

Council Session

## Item G2

### **Approving Appointment of Julie Connelly and Re-Appointment of Karen Bredthauer to the Regional Planning Commission**

*The Mayor has submitted the Re-appointment of Karen Bredthauer and a new appointment of Julie Connelly to replace Lisa Heineman to the Regional Planning Commission. These appointments would become effective November 1, 2009 upon approval by the City Council and would expire on October 31, 2012. Approval is recommended.*

Staff Contact: Mayor Hornady



# City of Grand Island

Tuesday, December 01, 2009

Council Session

## Item G3

### **Approving Appointment of Steve Kunzman to the Central District Health Board**

*The Mayor has submitted the appointment of Steve Kunzman to the Central District Health board to replace Ann Marsh. This appointment would become effective January 1, 2010 upon approval by the City Council and would expire on December 31, 2013. Approval is recommended.*

Staff Contact: Mayor Hornady



# City of Grand Island

Tuesday, December 01, 2009

Council Session

## Item G4

**#2009-307 - Approving Locomotive Lease Agreement**

Staff Contact: Gary R. Mader

# Council Agenda Memo

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

**Meeting:** December 1, 2009

**Subject:** Locomotive Lease Agreement

**Item #'s:** G-4

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

## Background

The Platte Generating Station utilizes a locomotive to move the coal cars onsite during the coal unloading process. The locomotive is an EMD SW1200 built in 1959 and purchased by the City in 1982. It is periodically inspected by contractors specializing in locomotive maintenance. A recent inspection indicated that an overhaul of some of the major components is required. These include rebuilding the main generator auxiliary generator drives, engine blowers and drive gears, and replacing the main crank shaft and traction motor blower bearings.

At the November 10, 2009 Council meeting, National Railway Equipment was awarded the contract for the locomotive overhaul in the amount of \$87,424.65. In order for National Railway Equipment to begin their work on the locomotive, Platte Generating Station will need to lease an alternate locomotive during this time to continue unloading coal.

## Discussion

Bids were solicited from locomotive rental suppliers as follows.

	<u>Rental Price</u>	<u>Freight</u>
Diesel Locomotive	\$160/day	\$2,198
Union Pacific	\$570.38/day	
LRS Locomotive	\$155/day	
National Railway	\$162/day	\$3,265

LRS Locomotive could not meet our schedule requirements and Union Pacific's rate was substantially higher, therefore, freight charges were not determined for the evaluation.

The estimated amount of the locomotive rental is \$5,000.

The lease agreement was reviewed by our Legal Department and by utility staff and is 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 award of the Locomotive Lease Agreement to Diesel Locomotive Company, LLC, of New Richmond, Wisconsin in the amount of \$160 per day.

### **Sample Motion**

Move to approve award of the lease agreement in the amount of \$160 per day from Diesel Locomotive Company, LLC for the Locomotive Lease Agreement.

## LOCOMOTIVE LEASE AGREEMENT

THIS LEASE AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between DIESEL LOCOMOTIVE COMPANY, LLC, a Wisconsin Corporation, having its principal office at 1551 100<sup>th</sup> St. in New Richmond, WI (hereafter called "Lessor") and City of Grand Island, Grand Island, NE (hereafter called "Lessee") WITNESSETH:

1. TERM OF AGREEMENT:

This lease shall be effective for a term of thirty (30) days plus any additional days after, beginning at delivery /start-up and ending when the unit is set –out for RR pick-up and return

2. PURPOSE:

LESSEE hereby leases from LESSOR, and LESSOR hereby leases to LESSEE, one locomotive unit (hereafter called the "Unit") EMD GP10 #DLCX8308. LESSEE agrees to lease the Unit for commercial purposes only and agrees that this lease is not a consumer contract.

3. LOCATION:

The Unit is currently located in Blair, NE. LESSOR will ship, at LESSEE'S cost, FOB shipping point to Unit, and all risk of loss shall pass to LESSEE upon placement of the Unit on the transport for shipment. Additionally, during such move and subsequent operation, LESSEE shall maintain in effect such inland marine insurance as required under item X herein.

4. REASONABLE CARE:

LESSEE shall use the Unit in a careful and proper manner, complying with all applicable laws, ordinances or regulations pertaining to the possession, use, or maintenance of the Unit. LESSEE shall require that the Unit be operated only by competent and qualified employees, and shall ensure the Unit is not subjected to careless and needless rough usage.

5. INDEMNIFICATION:

LESSEE shall indemnify LESSOR against, and hold LESSOR harmless from, any and all claims, losses, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorneys' fees, arising out of, in connection with, or resulting from the Unit, including, without limitation, injury to or loss of the Unit or the manufacture, selection, delivery, possession, use, operation and return of the Unit. This obligation to indemnify shall also include the obligation to defend LESSOR by LESSEE and LESSEE's insurance company. Each party agrees that it will give the other prompt notice of the assertion of any claim or the institution of any action, suit or proceeding. Except for losses solely the result of LESSOR's negligence.

6. OWNERSHIP:

Ownership and title to the Unit shall at all times remain in LESSOR's name unless transferred to LESSEE. LESSEE shall have only the right to retain possession of the Unit pursuant to the terms and conditions of this Agreement. LESSEE shall keep the Unit free from any and all liens and claims, and LESSEE shall do or permit no act or thing whereby LESSOR's title or rights may be encumbered or impaired. Upon expiration or termination hereof by other than default, the Unit shall be returned unencumbered to LESSOR by LESSEE at Blair, NE. or to such other places LESSOR and LESSEE agree upon at LESSEE's sole cost and expense, and in the same condition as when received by LESSEE, reasonable wear and tear resulting from proper use thereof excepted. LESSEE shall pay rent at the said rate until all of said Unit arrives at LESSOR's premises, or other place designated by LESSOR. LESSEE shall provide LESSOR with immediate notice to any claim, levy, lien, or legal process issued against the Unit.

LESSEE shall assist LESSOR by executing and delivering to LESSOR any such instruments and assurances that LESSOR deems necessary for the confirmation or perfection of LESSOR's ownership interest in the unit.

LESSEE shall provide for registration and licensing of the Unit wherever or whenever required. If at any time LESSOR supplies LESSEE with labels, plates, or other marking indicating LESSOR's ownership of the Unit, LESSEE shall affix and keep same in a prominent place on the Unit. LESSEE shall not cover up any marks or identification or ownership, including the Unit number, displayed on the Unit.

7. ALTERATIONS:

LESSEE shall not make any alteration, additions, and improvements to the Unit, absent the written approval of LESSOR, provided that no alterations shall in any way reduce the value of the Unit. Any such alterations, additions and improvements shall immediately become a part of the Unit and ownership of the alterations, additions and improvements shall rest with LESSOR. However, at LESSOR's option, any permitted alterations, additions and improvements shall be removed by LESSEE upon the expiration or earlier termination of this Lease, if and only if such removals can be accomplished without damage to the Unit or otherwise reducing its value below that which it would have been if no such alterations, additions, or improvements had been made.

8. MAINTENANCE AND REPAIR:

LESSEE shall inspect the Unit within forty-eight (48) hours after its receipt. Unless within said time LESSEE notifies LESSOR in writing, stating the details of any defects in or other proper objection to the Unit, LESSEE shall be conclusively presumed, as between LESSOR and LESSEE, to have fully inspected and acknowledged that the Unit is in good condition and repair, and that the LESSEE is satisfied with and has accepted the Unit in its then condition. The LESSEE shall be responsible to maintain or cause to be maintained the Unit with the following items, including : all lubricating oils, all filters, brushes, lighting, fuses, brake shoes, sand, treated water or anti-freeze, batteries and battery charging system, and testing of the lube oil on a scheduled basis Thereafter, LESSEE shall effect and bear the expense of all necessary repairs, maintenance, operation and replacements required to be made to maintain the Unit in good operable condition, ordinary wear and tear from proper operation excepted. LESSEE's agreement to pay all expenses of maintaining and repairing the Unit includes labor, material, parts, and other similar expenses. LESSEE is responsible for all repairs due to operator error, negligence, or failure to report required repairs. The LESSEE is responsible to maintain and operate the wheel and axle sets and traction motor assemblies in accordance with FRA regulations / specifications; any repairs required from damage such as flat spots on the wheels from excessive wheel slip and or wheel skidding shall be to the account of the LESSEE. In the event that replacement of any part, component, or assembly, or any maintenance or repairs to said #8308 is due to negligent acts or omissions on the part of Platte Generating Station. or its employees, agents, or subcontractors; misuse, abuse, or unauthorized use of said #8308, Acts of god, collisions, derailments, vandalism, or the continued operation of the locomotive when in need of service, Platte Generating Station shall be responsible for charges incurred from such replacement, maintenance, and or repair at Diesel Locomotive Co.'s and or its authorized agents at the usual and current rates at the time such products or services are required. 92 Day FRA test shall be completed as per FRA rules, maintenance shall be done per our maintenance program on not more than an 1800 hour interval, whichever would come first. Maintenance program is attached. LESSEE shall report hour meter reading monthly to LESSOR via fax or e-mail.

9. INSPECTION

LESSEE shall, whenever requested, advise LESSOR of the exact location and condition of the Unit, and shall give LESSOR immediate notice of any attachment or other judicial process affecting the Unit, and indemnify and save LESSOR harmless from any loss or damage caused thereby. LESSOR shall have the right, upon reasonable notice, to free access to inspect the Unit and shall be afforded the necessary time for the purpose of such inspection. LESSOR shall make arrangements for such inspections so as to minimize any adverse impact upon LESSEE's normal operations. LESSOR may remove the Unit forthwith, without notice to LESSEE, if the Unit is, in the opinion of the LESSOR, used beyond its capacity or in any manner improperly cared for or abused.

10. CASUALTY AND INSURANCE:

LESSEE hereby assumes all risk or loss or damage to the Unit from any cause. Destruction of, or damage to the Unit shall not serve to relieve LESSEE of any obligations under this Agreement and such obligations shall remain in full force and effect until otherwise discharged. LESSEE agrees to insure the Unit under an inland marine policy for the sum of \$225,000 U.S. Funds and to name LESSOR as the owner and insured. LESSEE agrees to provide LESSOR proof of such insurance. In the event of the loss or damage to the Unit, LESSOR may elect to either:

- A. remit the proceeds to LESSEE to place the Unit in good repair; and
- B. retain the outstanding balance and any other amounts owing under this Agreement.

Should LESSOR elect to keep the proceeds and remit to the LESSEE, return of the unit at the end of the lease unrepaired will not be a breach of Paragraph 6 and 15. LESSEE's maximum liability for risk of loss or damage to the locomotive will not exceed \$225,000 whether paid by the LESSEE or its insurance or both.

In addition, LESSEE also agrees to purchase and carry public liability and property damage insurance covering the Unit on the amounts of not less than \$2 million in respect to bodily injury and death to any one person, not less than \$2 million in respect to any one accident, and not less than \$1 million in respect to property damage. All such public liability and property damage insurance shall designate both LESSOR and LESSEE as insureds. LESSEE may effect such coverages under its blanket policies. All such policies shall be written by companies reasonably satisfactory to LESSOR, and copies of the policies, certificates showing such coverages to be in effect, and receipts of improvements thereunder shall be furnished to LESSOR within thirty (30) days after the execution of this Lease. Each insurer shall agree, by endorsement upon the certificates issued by it or by independent instrument furnished to LESSOR, that it will give LESSOR thirty (30) days' written notice before the policy in question shall be altered or cancelled, and that any proceeds shall be paid to LESSOR.

In the case of failure of LESSEE to procure and maintain said insurances hereinabove specified, or to pay the fees, assessments, charges, and taxes described hereafter, shall be considered an event of default.

11. TAXES AND FEES:

LESSEE shall pay all taxes, assessments, licenses, and registration fees (including interest and penalties thereon) on the Unit during the term of this Agreement, based upon (a) the interest of LESSEE in the Unit or upon the use or operation thereof or the earnings arising there from; and (b) against LESSOR on account of its ownership of the Unit, or any part thereof or the use or operation thereof, exclusive, however, of any taxes based on net income of LESSOR.



LESSEE agrees to file, on behalf of the LESSOR, all required tax returns or reports concerning the Unit with all the appropriate government agencies and within not more than forty-five (45) days after the due date of such filing. LESSEE shall keep the unit free and clear of all levies, liens, and encumbrances, other than those being contested, which, as a result of such contest, do not adversely threaten the LESSORS title to the Unit.

12. DEFAULT:

A. Events of the Default – An event of the default shall be the occurrence of one or more of the following:

1. LESSEE shall fail to make any payment due under this Agreement on the date it is due.

1i. LESSEE shall fail to perform or observe any covenant, condition, or agreement to be performed or observed by it hereunder, and such failure continues uncured for ten (10) days after written notice thereof to LESSEE by LESSOR.

1ii. LESSEE shall cease too do business as a going concern or file a voluntary petition of bankruptcy, be adjudicated as bankrupt or insolvent, file a petition to seek any reorganization arrangement, composition, readjustment, liquidation, dissolution, or similar arrangements under any present or future statute, law or regulation, or file against it any such proceeding, consent to or acquiesce in the appointment of a trustee, receiver, or liquidator of it or all or a substantial part of its assets or properties, or if it or it's shareholders or members shall take any action looking to its dissolution or liquidation.

1iii. LESSEE shall become insolvent (however defined) or make any arrangements for the benefit of creditors.

1v. LESSEE commits, or fails to commit, any act that jeopardizes the rights of the LESSOR.

V. LESSEE attempts to remove, sell, transfer, assign, encumber, part with possession, or sublet the Unit or any part thereof.

Vi. LESSEE shall fail to pay insurance payments as required by this lease under paragraph 10 of this Lease.

B. Remedies for Default – Upon an event of default, LESSOR may elect any of the following remedies, as well as any other remedies available under the law.

1. All sums due under this Agreement shall become immediately payable in full.

1i. LESSOR may terminate the Agreement, except that such termination shall not serve to limit the obligations of LESSEE as incurred under this Agreement.

1ii. LESSOR may demand that the Unit be returned to LESSOR, at LESSEE's expense, at such place as the LESSOR may designate. LESSOR, without notice or legal process and without incurring any liability, may enter any premises under control of LESSEE where the Unit may or is believed to be located for the purpose of repossessing the Unit or any part thereof. Lessee expressly waives all further right to possession of the Unit and all claims for injuries suffered through the cause of repossession and not as a penalty, any unpaid rent that accrued on or before the occurrence of the event of default, plus an amount equal to the difference between the aggregate rental value of the Unit for such unexpired term; provided, however, that if any statute governing the proceeding in which such damages are to be clearly specified in the amount of such claim, LESSOR shall be entitled to prove as and for damages for the breach in an amount equal to that allowed under such statute.

1iii. LESSOR may enforce by legal proceedings, specific performance of all terms and conditions of the Agreement, as well as any other remedy available at law or in equity. Should LESSOR institute such legal proceedings to recover the Unit of any amounts owing under this Agreement, LESSEE shall pay all expenses incurred by LESSOR or on behalf of LESSOR relating to such legal proceedings.

liv. No remedy shall be exclusive of any other remedy provided herein or by law. A waiver by LESSOR of any event of default shall not constitute any other or subsequent waiver.

13. Term

The term of this Agreement shall commence upon the date first written and shall continue for a period of thirty (30) days plus any additional days required, unless earlier terminated as provided herein.

14. Daily Rental Rate:

The daily rental for the Unit shall be One Hundred sixty dollars (160.00) U.S. per day for one month and the same rate for any additional required days. This daily rental shall continue for one month during the term of this Agreement. Payment of the first months' lease shall be made by LESSEE on or about December 15, 2009 and will represent the first months' rental. All rental payments shall be made in advance and apply toward principal. In the event the unit is unavailable for operation due to failure caused by normal wear and tear, the LESSEE shall not be responsible for payment for those days after the first 72 hours out of service.

15. Return of Unit:

Upon expiration or termination of this Agreement, LESSEE shall, at LESSEE's expense, return the unit to LESSOR in good running condition, except for normal wear and tear, at such location, within reason, on any premises controlled by the LESSEE, or his affiliated rail transportation operator, as LESSOR may reasonably direct. In addition, Lessee agrees to make available, at no expense to LESSOR and at no liability to LESSEE, if required, a suitable location to store the Unit on LESSEE's premises for a period of up to ninety (90) days.

16. Acceptance Warranty:

Lessee acknowledges that LESSOR is not the manufacturer of the Unit, nor manufacturer's agent, and that LESSOR makes no warranty or representation, either expressed or implied, as to any matter whatsoever, including, without limitation, the design or condition of the Unit, its marketability, or its fitness for any particular purpose, the quality or capacity of the materials in the Unit, the condition of the Unit, or the workmanship of the Unit, and that the Unit will satisfy the requirements of any law, rule, specification or contract that provides for specific machinery or operators or special methods, it being agreed that the Unit is leased "as is" and that all risks, as between LESSOR and LESSEE, are to be borne by the LESSEE, at its sole risk and expense. LESSEE, accordingly, agrees not to assert any claim whatsoever against LESSOR for loss of anticipatory profits or consequential damages. No oral agreement, guarantee, promise, condition, representations, related hereto and/or to said Unit are integrated herein. No modification hereof shall be binding unless in writing, signed by LESSOR. No defect or unfitness of the Unit shall relieve LESSEE of the obligations to payment, or any other obligations under this Lease to LESSOR.

City of Grand Island

Diesel Locomotive Co. LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

RESOLUTION 2009-307

WHEREAS, the Platte Generating Station utilizes a locomotive to move coal cars on-site during the coal unloading process; and

WHEREAS, at the November 10, 2009 Council meeting, National Railway Equipment was awarded the contract for overhaul of the Platte Generating Station locomotive; and

WHEREAS, in order for National Railway Equipment to begin their work on the locomotive, Platte Generating Station will need to lease an alternate locomotive during this time to continue unloading coal; and

WHEREAS, bids were solicited from locomotive rental suppliers and Diesel Locomotive, LLC, of New Richmond, Wisconsin submitted a bid for locomotive lease; and

WHEREAS, a Lease Agreement was prepared to provide for the locomotive lease for \$160 per day, with an estimated total rental cost of \$5,000.00; and

WHEREAS, the Legal Department has reviewed and approved the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Locomotive Lease Agreement between the City of Grand Island and Diesel Locomotive Company, LLC, of New Richmond, Wisconsin is hereby approved; and the Mayor is hereby authorized and directed to execute such agreement on behalf on the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 1, 2009.

\_\_\_\_\_  
Margaret Hornady, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 25, 2009	☐ City Attorney



# City of Grand Island

Tuesday, December 01, 2009

Council Session

## Item G5

**#2009-308 - Approving Purchase of Dell Computers for Police  
Department**

Staff Contact: Steve Lamken

# **Council Agenda Memo**

**From:** Steven Lamken, Police Chief  
**Meeting:** December 1, 2009  
**Subject:** Purchase of Dell Computers  
**Item #'s:** G-5  
**Presenter(s):** Steven Lamken, Police Chief

## **Background**

The police department has scheduled a rotation of a portion of the computer work stations in the agency. For fiscal 2010, there are 16 work stations scheduled for rotation.

## **Discussion**

The replacements are for various stations that include the criminal division, child abuse, evidence, patrol, victim assistance, administration, and our off site at the Grand Island Public Schools Administration building.

We have planned and budgeted for this rotation.

## **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 purchase.

## **Sample Motion**

Move to approve the purchase of 16 Dell work stations from Dell Computer off of State Bid Contract Number 12551 OC in the amount of \$23,178.24.

R E S O L U T I O N 2009-308

WHEREAS, The Police Department planned a computer replacement and rotation within the fiscal 2010 budget and

WHEREAS, There exists a State bid Contract Number 12551 OC for Dell computers and

WHEREAS, the total cost of replacement off of this state bid is \$23,178.24 and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, authorization for the purchase of 16 Dell work stations for the Police Department in the amount of \$23,178.24

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 1, 2009.

\_\_\_\_\_  
Margaret Hornady, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk



# City of Grand Island

Tuesday, December 01, 2009

Council Session

## Item G6

**#2009-309 - Approving Purchase of Seven (7) Police Patrol Vehicles**

Staff Contact: Steve Lamken



# Council Agenda Memo

**From:** Steven Lamken, Police Chief  
**Meeting:** December 1, 2009  
**Subject:** Purchase of Police Patrol Vehicles  
**Item #'s:** G-6  
**Presenter(s):** Steven Lamken, Police Chief

## Background

The Police Department budgeted for the replacement of seven cars from our patrol fleet in 2009/2010. The State has released contracts for law enforcement patrol vehicles. State contracts were awarded for Dodge Charger and Ford Crown Victoria vehicles. There were no contracts awarded to local dealers. The Police Department is recommending purchasing seven Ford Crown Victoria patrol cars from Tinchner Ford under State contract 12610 OC.

## Discussion

The Police Department has budget funds to replace seven vehicles in our marked patrol fleet in this fiscal year. The State has awarded contracts for Dodge Charger and Ford Crown Victoria police fleet vehicles. The manufacturers produce only a limited number of police package vehicles based primarily off of orders received from law enforcement. Orders need to place in a timely manner to be able to purchase vehicles.

Nebraska awarded contracts for Dodge Charger and Ford Crown Victoria police vehicles. The contract price for the Dodge Charger is \$20,164. The contract price for the comparably equipped Ford Crown Victoria is \$21,198. The Police Department is recommending purchasing the Fords due to the overall costs of changing out equipment from the old cars to the new cars. Our current equipment can be installed in the Fords while we will need to purchase several items of new equipment to install in the Dodges. The following is an explanation of the overall costs:

	Dodge Charger	Ford Crown Victoria
Base Price w/ heated mirrors	\$20,164	\$21,198

Equipment console	1,200	-0-
Cage	1,100	-0-
Radio Tray	392	-0-
Rear deck lights	438	-0-
Cost per vehicle	\$23,294	\$21,198
Cost for seven vehicles	\$163,058	\$148,386
Less trade in for 6 vehicles	<u>- 19,000</u>	- 10,750
Replace one damaged radio tray		<u>- 375</u>
Total costs	\$144,058	\$138,011

The overall cost of purchasing the seven Ford Crown Victoria cars results in a total savings of just over \$6,000. The Ford Crown Victoria has a proven performance record and has been a reliable patrol vehicle for the Police Department. The Department has funds budgeted for the purchase of the vehicles. We are recommending the purchase of seven Crown Victoria police package cars from Tinchner Ford of Plattsmouth under State contract 12610 OC and the trade in of six used patrol cars for a total cost of \$138,011.

### **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 purchase of seven Ford cars for the Police Department fleet.

### **Sample Motion**

Move to purchase seven Ford Crown Victoria police package cars from Tinchner Ford of Plattsmouth, Nebraska under State contract number 12610 OC and trade in six used cars for a cost of \$138,011.

RESOLUTION 2009-309

WHEREAS, the Grand Island Police Department has budgeted funds to purchase seven police patrol vehicles and to trade in six older vehicles, and

WHEREAS, the State of Nebraska has awarded Tinchner Ford of Plattsmouth State contract number 12610 OC to sell Ford Crown Victoria police package vehicles, and

WHEREAS, the purchase of seven Ford Crown Victoria police package vehicles costs \$138,011 with the trade in of six used police fleet vehicles, and

WHEREAS, the contract for the purchase of Ford Crown Victoria vehicles provides the lowest overall cost for Police Department police package vehicles.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor be, and hereby is, authorized and directed to execute the purchase of seven 2010 Ford Crown Victoria police package patrol vehicles and trade in six used vehicles with Tinchner Ford of Plattsmouth, Nebraska for a total cost of \$138,011.

Adopted by the City Council of the City of Grand Island, Nebraska, December 1, 2009.

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Margaret Hornady, Mayor

Attest:

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RaNae Edwards, City Clerk



# City of Grand Island

Tuesday, December 01, 2009

Council Session

## Item G7

**#2009-310 - Approving Supplemental Agreement No. 1 with NDOR  
for South Locust Street for Northbound Roadway Construction**

Staff Contact: Steven P. Riehle, Public Works Director

# Council Agenda Memo

**From:** Steven P. Riehle, Public Works Director

**Meeting:** December 1, 2009

**Subject:** Approving Supplemental Agreement No. 1 with NDOR for South Locust Street for Northbound Roadway Construction

**Item #'s:** G-7

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

## Background

All agreements must be approved by the City Council. The Nebraska Department of Roads (NDOR) and the City of Grand Island entered into a program agreement for the above project. The agreement was executed by the City on June 14, 2007 and by the State on June 19, 2007 and provided for the paving of the northbound lanes on South Locust Street.

The plans, specifications and estimates (PS&E) package for the paving project was hand delivered to the NDOR on Friday, September 25, 2009. The NDOR is reviewing the PS&E packing in preparation for an anticipated February or March 2010 bid letting.

The City has requested that the paving project for the northbound lanes be completed before the 2010 State Fair. Public Works Administration believes there is enough time to complete the project as long as the environmental restrictions placed on the project do not hold up the contractor.

## Discussion

Supplemental Agreement Number 1 for this project was approved at the July 28, 2009 council meeting. This supplemental agreement allowed for Federal Stimulus Funds to be used toward the construction phase of the project modified the estimated project cost and updated the bid letting responsibilities.

During the time the City signed the supplemental agreement and the NDOR received the agreement to sign an additional item regarding the naming of a Responsible Charge has

arisen. The NDOR did not fully execute the supplemental agreement and sent a new supplemental agreement on November 16, 2009. The new one replaces the one that was approved by council in July 2009.

### **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**

Public Works Administration recommends that the Council approve a resolution authorizing the Mayor to sign the agreement.

### **Sample Motion**

Move to approve authorization for the Mayor to sign the agreement.

SUPPLEMENTAL AGREEMENT NO. 1

STATE OF NEBRASKA DEPARTMENT OF ROADS  
CITY OF GRAND ISLAND  
PROJECT NO. URB-2235(5)  
CONTROL NO. 42519  
LOCUST STREET NORTH OF I-80 (NB)

THIS SUPPLEMENTAL AGREEMENT, made and entered into by and between the City of Grand Island, Nebraska hereinafter referred to as the "City", and the State of Nebraska, Department of Roads, hereinafter referred to as the "State", and hereinafter referred to collectively as the "Parties".

WITNESSETH:

WHEREAS, the Parties hereto entered into an agreement executed by the City June 14, 2007 and by the State June 19, 2007 providing for the construction of Project No. URB-2235(5), and

WHEREAS, it now becomes necessary that the original agreement be supplemented to allow Federal Stimulus Funds to be used toward the construction phase of the project, modify the estimated project cost and update the bid letting responsibilities, and

WHEREAS, this project has been designated as being eligible for American Recovery and Reinvestment Act (ARRA) Funds by the Department of Transportation, Federal Highway Administration, in compliance with Federal Laws pertaining thereto, and

WHEREAS, the City certifies that it has been designated for ARRA funds and will use the funds provided by ARRA to create jobs, promote economic growth and certifies that this project meets the requirements of ARRA, and

WHEREAS, ARRA funds cannot be used for preliminary engineering or Right-of-Way. Federal Surface Transportation Program funds will be used for eligible preliminary engineering and Right-of-Way, and

WHEREAS, any eligible utility work authorized prior to construction will not be eligible for ARRA funds and will be 100 percent City funds. If eligible utility work is authorized with the construction, and authorized occurred after February 17, 2009, then it is eligible for ARRA funds, and

WHEREAS, Federal regulations provide that the State shall have the responsibility for all Federal-Aid projects, and will be responsible for insuring that such projects receive the same degree of supervision and inspection as projects constructed under a contract let and directly supervised by the State and that the project is completed in conformity with approved plans and specifications, and

WHEREAS, the State and the City agree that the State will advertise, conduct a letting and receive bids for the project and will pay all eligible project costs directly to the consultants and contractors, and

WHEREAS, the City has designated an available fully-qualified public employee to act as "Responsible Charge" (RC) for the subject Federal-aid Transportation project, and

WHEREAS, the RC has successfully completed training required by the State to serve as an RC for the Federal-aid Transportation project, and

WHEREAS, the RC will be in day-to-day responsible charge of all aspects of the project, from planning through post-construction activities and maintain the project's eligibility for Federal-aid Transportation project funding, and

WHEREAS, the City understands that it must comply with all terms of 23 C.F.R. 635.105 order for this Federal-aid transportation project to be eligible for Federal funding, and

WHEREAS, the City will support the RC and is ultimately responsible to ensure that, at a minimum, (1) the project receives independent and careful development, supervision and inspection, (2) the project is constructed in compliance with the plans and specifications, (3) all aspects of the project from planning through construction activities, including all environmental commitments remain eligible for Federal funding, and (4) decisions made and actions taken for the project have adequate supporting documentation filed in an organized fashion, and

WHEREAS, this project has been designated as a full Federal oversight project, and

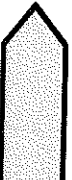
WHEREAS, ARRA funds used for construction will be capped at the award amount with no matching funds required. Any charges for construction beyond the capped ARRA amount will be 100 percent City funds, and

WHEREAS, ARRA funds will be used for construction engineering and ARRA audits with no matching funds required, and

WHEREAS, City understands that this agreement and the receipt of ARRA funds are expressly conditioned on (1) City's fulfilling all federal and state requirements for the project to be eligible for ARRA funding, (2) there being sufficient remaining ARRA funds available for this project, when eligibility is established, and (3) FHWA authorization of ARRA funding for this project, and

WHEREAS, it is the desire of the City that the project be constructed under the designation of Project No. URB-2235(5), as evidenced by the Resolution of the City Council dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, attached and identified as EXHIBIT "A" and made a part of this agreement, and

WHEREAS, the City is responsible for any costs not paid for by Federal funds.





NOW THEREFORE, in consideration of these facts, the Parties hereto agree as follows:

SECTION 1. Definitions. For purposes of this agreement, the following definitions will apply:

**Fully Qualified** means a person who has satisfactorily completed all applicable State training courses and who has met the other requirements necessary to be included on the State list of qualified Local Public Agency "Responsible Charge" (RC's).

**Full-Time Public Employee** means a public employee who meets all the requirements and is afforded all the benefits of full-time employees as that phrase is applied to other employees of the employing entity. A person is not a full-time employee if that person provides outside private consulting services, or is employed by any private entity, unless that person can prove to the State in advance, that employee's non-public employment is in a field unrelated to any aspect of the project for which Federal-aid is sought.

**Public Employee** means a person who is employed solely by a county, a municipality, a political subdivision, a Native American tribe, a school district, another entity that is either designated by statute as public or quasi-public, or entity included on a list of entities determined by the State and approved by the Federal Highway Administration (FHWA), as fulfilling public or quasi-public functions.

**Responsible Charge** means the public employee who is fully empowered by the City and has actual day-to-day working knowledge and responsibility for all decisions related to all aspects of the Federal-aid project from planning through construction project activities, including all environmental commitments. The RC is the day-to-day project manager, and the City's point-of-contact for the project. Responsible charge does not mean merely delegating the various tasks; it means active day-to-day involvement in identifying options, working directly with stakeholders, making decisions, and actively monitoring project construction. It is understood that RC may delegate or contract certain technical tasks associated with the project so long as RC actively manages and represents the owner's interests in the delegated technical tasks.

SECTION 2. This project has been designated as a full Federal oversight project and the State will present this project to the FHWA for its approval.

SECTION 3. Responsible Charge (RC)

- A. The City designates David Goedeken as RC for this project.
- B. Duties and Assurances of the City for this project.
  - 1. The City has authorized and fully empowered the RC to be in day-to-day responsible charge of the subject Federal-aid project; this does not mean merely supervising, overseeing or delegating various tasks, it means active day-to-day involvement in the

project including identifying issues, investigating options, working directly with stakeholders, and decision making.

2. The RC is a full-time employee of the City.

3. The RC is fully qualified and has successfully completed required training to serve as an RC.

4. The City shall allow the RC to spend all time reasonably necessary to properly discharge all duties associated with the project, including ensuring that all aspects of the project, from planning through post-construction activities, remain eligible for Federal-aid highway project funding.

5. The City shall not assign other duties to the RC that would affect their ability to properly carry out the duties set out in this agreement.

6. The City shall provide necessary office space, materials and administrative support for the RC.

7. The City shall fully cooperate with, support and not unreasonably interfere with day-to-day control of the RC concerning the acts necessary for making the project eligible for Federal funding.

8. The City shall take all necessary actions and make its best good faith efforts to comply and assist the RC in complying with all Federal and State requirements and policies applicable to Federal-aid transportation projects, including, but not limited to, all applicable requirements of 23 CFR 635.105.

9. The City agrees to take all necessary actions and make its best good faith efforts to ensure that the RC's work on the project would be deemed to meet the same standards that the State must meet under 23 CFR 635.105.

10. The City shall comply with the conflict-of-interest requirements of 23 CFR 1.33.

11. If the designated RC becomes no longer assigned to the project during the design phase, the City shall, within one day or sooner if possible, notify verbally and in writing the State's LPD Quality Management Engineer and the LPD Project Coordinator; after such notification the City shall replace the RC no later than thirty calendar days or sooner if possible. If the designated RC becomes no longer assigned to the project in the letting or construction phases, the City shall, within one day or sooner if possible, notify verbally and in writing the State's LPD Quality Management Engineer, the LPD Project Coordinator, and the State District Representative; after such notification, the City shall replace the RC no later than ten calendar days or sooner if possible. During any of the project phases, the State will require the City to sign a supplemental agreement designating the replacement RC.

12. The City agrees that it is ultimately responsible for complying with all Federal and State requirements and policies applicable to Federal-aid highway projects. This includes meeting all post-construction environmental commitments. The City understands that failure to meet any eligibility requirements for Federal funding may result in the loss of all Federal funding for the project. In the event that the acts or omissions of RC, the City or its agents or representatives result in a finding that a project is ineligible for Federal funding, the City will be required to repay the State some or all previously paid Federal funds and any costs or expenses the State has incurred for the project, including but not limited to, those costs for the RC.
- C. The City understands that the following are the duties of the RC:
  1. Serve as the City's contact for issues or inquiries for Federal-aid projects assigned by the City
  2. Ensure that all applicable Federal, State and local laws, regulations, policies and guidelines are followed during the development and construction of the project.
  3. Know and follow the State's LPA Guidelines Manual for Federal-Aid Projects.
  4. Have active day-to-day involvement in identifying issues, investigating options, working directly with stakeholders, and decision making.
  5. Ensure that the project plans and specifications are sealed, signed and dated by a professional licensed engineer in the State of Nebraska, and that estimates have been prepared and the construction has been observed by a professional engineer licensed in the State of Nebraska or a person under direct supervision of a professional engineer licensed in the State of Nebraska (reference Neb.Rev.Stat. §81-3445).
  6. Competently manage and coordinate the project day-to-day operations, including all project related decisions, on behalf of the City, which includes the City's governing body, staff and any extended staff dedicated to the project such as consulting engineers.
  7. Ensure that project documents are thoroughly checked, reviewed and have had quality control measures applied, prior to submitting to the State and/or FHWA.
  8. Monitor the progress and schedule of the project and be responsible for ensuring that the project is completed on time in accordance with established milestone dates.
  9. Notify and invite the State to all coordination meetings, environmental scoping meetings, Plan-In-Hand review, public meetings/hearings.
  10. Keep the State informed of all project issues.
  11. Arrange preconstruction conference.

12. Keep the State's District Construction Representative Informed of project start, and ending dates and other scheduled construction milestones.
13. Prepare contractor change orders and supplemental agreements.
14. Properly serve as the City's representative, and to visit the project site during construction frequency commensurate with the magnitude and complexity of the project.
15. Ensure that proper construction management processes have been developed and implemented for the project.
16. Serve as a steward of the public funds, i.e. ensure that the public gets what it is paying for.
17. Attend all required training including the annual workshop.
18. Fulfill continuing education requirements as specified in the State's LPA Guidelines Manual for Federal-aid projects.

SECTION 4. ARRA funds cannot be used for preliminary engineering or Right-of-Way phases. Federal Surface Transportation Program funds will be used to pay preliminary engineering and Right-of-Way phases.

SECTION 5. Acknowledging the necessity for prioritizing of funding, and the unknown availability of remaining unobligated ARRA funds at the time of eligibility is determined, the City agrees to develop this project in an effort to meet all federal and state eligibility requirements so the project may be determined eligible for ARRA funding. The City understands this supplemental agreement is null and void in the event that (1) the project is determined for any reason to be ineligible for ARRA funding, (2) after eligibility is determined, ARRA funds are not available for this project, or (3) despite the existence of unobligated ARRA funds, the project is not authorized by FHWA for any reason, including the perceived priority of this project compared to other potential ARRA projects.

SECTION 6. The City further certifies that this project meets the requirements of ARRA as follows:

1. The City will provide a qualified, full time public employee to be the RC of the project at all times.
2. The investment has received the full review and vetting as required by law.
3. The City accepts the responsibility that this infrastructure investment is an appropriate use of taxpayer dollars.
4. This investment will be used for Project No. URB-2235(5) that is included in the Statewide Transportation Plan, and has an overall cost estimate of \$4,600,601 of which \$4,424,626 is estimated to be ARRA funds, however; this is a preliminary estimate and the final award may be higher or lower than this estimate. When the actual construction contract award

amount is known, a supplemental agreement with the capped amount of ARRA funds will be executed between the City and the State.

5. The Federal ARRA share of the project is to be 100 percent of the capped ARRA amount, which includes the awarded construction amount and the construction engineering. The allowable construction engineering cost will be 13 percent of the capped construction award amount, plus a flat fee of \$2500 for ARRA audits.

6. The City's share of the project is 100 percent of all costs over the capped construction and construction engineering amounts.

7. The City shall follow ARRA reporting requirements and agrees that the State will not provide Federal Stimulus or State funds unless all ARRA reporting requirements are met and any funds already paid out by the City will not be reimbursed.

SECTION 7. The State will pay the contractor and consultant directly as follows.

A. All project contractor construction costs will be paid directly to the contractor by the State. Progress invoices and final invoices shall be prepared by the City using **SiteManager** software and must be approved by the City's Responsible Charge before payment to the Contractor can be made by the State.

B. The City's Responsible Charge shall submit the City's approved **preliminary engineering** invoice and progress report to the State's Local Projects Division Project Coordinator. The Local Projects Division Project Coordinator will forward the approved preliminary engineering invoice and the progress report to the State's Planning and Project Development Division for payment processing. The State will make payment directly to the consultant for the preliminary engineering.

C. The City's Responsible Charge shall submit the City's approved **construction engineering** invoice and progress report to the State Representative for approval of payment, with a copy to the State's Local Projects Division Project Coordinator. The State Representative will forward the approved invoice and progress report to the State's Planning and Project Development Division for payment processing with a copy to the State's Local Projects Division Project Coordinator. The State will make payment directly to the consultant for the construction engineering.

SECTION 8. Any eligible utility work authorized prior to construction will not be eligible for ARRA funds and will be paid with 100 percent City funds. If eligible utility work is authorized with the construction, and the authorization occurred after February 17, 2009, then it is eligible for ARRA funds.

SECTION 9. The final settlement between the State and the City will be made after the State accepts the project and the final costs have been determined by the State. The amount of the final settlement between the State and the City will be the difference between:

1. (a) the net expenditure by the City for actual items
- (b) plus the value of work performed by the City based upon agreed prices
- (c) less previous payments by the State to the City
- 2 The City share of the project costs.

If (1) is greater than (2), the State will pay to the City the difference within thirty days after that determination has been made. If (2) is greater than (1), the State will bill the City for the difference. The City agrees to pay the amount of such bill within thirty days of receipt.

Costs incurred by the State with respect to the entire project must be considered as a part of the cost of the project to be paid out of the City and Federal funds. The State may at its discretion, initiate progress invoices for costs incurred by the State during the progression of the project and the City agrees to pay such invoices with thirty days of their receipt. The City share of the total project cost will be all costs not paid for by Federal funds.

The criteria contained in Part 31 of the Federal Acquisition Regulation System (48 CFR 31) will be applied to determine the allowable costs incurred by the City under this agreement.

The City shall complete a State DR Form 299, "Notification of Project Completion and Materials Certification" with the State, and both the City and the State must sign it. Once the DR Form 299 is signed by the City, and the State, the project will be considered to be complete and no other costs or expenditures will be considered.

SECTION 10. Prior to advertising for bids, the City shall submit a Right-of-Way Certificate and final plans package (100 percent full size plans, specifications, summary of quantity sheets, status of utilities, environmental permits, and other PS&E required documents) to the State's Local Project Division Urban Engineer for review. The State and City agree the State will advertise, conduct a letting and receive bids for the City on the contemplated improvement. The selection of the lowest responsible bidder and the awarding of a contract or contracts must be concurred in and signed by the City prior to State award.

SECTION 11. This agreement contains the entire agreement of the City and State. No representations were made or relied upon by the City and State other than those expressly set forth herein. No agent, employee or other representative of the City and State is empowered to alter any of the terms in this agreement unless done in writing and signed by an authorized officer of the City and State.

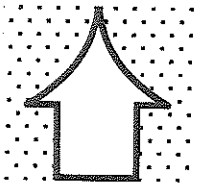
SECTION 12. Except as specifically amended by this supplemental agreement, all terms and conditions of the agreement executed by the City June 14, 2007 and by the State June 19, 2007, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the City this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

WITNESS:  
RaNae Edwards  
CITY OF GRAND ISLAND  
Margaret Hornady

City Clerk \_\_\_\_\_ Mayor \_\_\_\_\_  
EXECUTED by the State this \_\_\_\_\_ day of \_\_\_\_\_, 2009.



STATE OF NEBRASKA  
DEPARTMENT OF ROADS  
Jim Wilkinson, P.E.

\_\_\_\_\_  
Local Projects Engineer

RECOMMENDED:  
Wesley Wahlgren, P.E.

  
\_\_\_\_\_  
District 4 Engineer

LLD11-NS

RESOLUTION 2009-310

WHEREAS, the City of Grand Island is widening South Locust Street using American Recovery and Reinvestment Act (ARRA) Funds; and

WHEREAS, for such work the State and City entered into an agreement; and

WHEREAS, on July 28, 2009, by Resolution 2009-180 the Grand Island City Council approved Supplemental Agreement Number 1 to the original agreement; and

WHEREAS, the initial Supplemental Agreement Number 1 has become null and void due to required additional information; and

WHEREAS, it is now necessary to amend the original Supplemental Agreement Number 1 to allow Federal Stimulus Funds to be used toward the construction phase of the project, modify the estimated project cost, update the bid letting responsibilities and designate a Responsible Charge individual; and

WHEREAS, the construction cost is estimated to be \$4,012,600.00, all of which is proposed to be ARRA Funds; and

WHEREAS, the City's share of the project is to be 100% of the design and preliminary engineering, and all other costs over the capped construction and construction engineering amounts, and

WHEREAS, David Goedecken has been designated as the Responsible Charge for such project; and

WHEREAS, Supplemental Agreement No. 1 with the Nebraska Department of Roads is required to proceed with this project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the supplemental agreement number 1 with the Nebraska Department of Roads to amend the original agreement for the widening of South Locust Street 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.

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Adopted by the City Council of the City of Grand Island, Nebraska, December 1, 2009.

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Margaret Hornady, Mayor

Attest:

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RaNae Edwards, City Clerk



# City of Grand Island

Tuesday, December 01, 2009

Council Session

## Item J1

### **Approving Payment of Claims for the Period of November 25, 2009 through December 1, 2009**

*The Claims for the period of November 25, 2009 through December 1, 2009 for a total amount of \$1,336,682.42. A MOTION is in order.*

Staff Contact: Mary Lou Brown