
City of Grand Island



Tuesday, March 08, 2011

Council Session Packet

City Council:

Larry Carney
Linna Dee Donaldson
Scott Dugan
Randy Gard
John Gericke
Peg Gilbert
Chuck Haase
Mitchell Nickerson
Bob Niemann
Kirk Ramsey

Mayor:

Jay Vavricek

Interim City Administrator:

Mary Lou Brown

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 - Pastor Matthew Fowler, Faith United Methodist Church, 724 West 12th Street

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, March 08, 2011

Council Session

Item C1

Proclamation "Week of Kindness and Sole" March 13-19, 2011

Grand Island Senior High, Grand Island Northwest, Grand Island Central Catholic, and Heartland Lutheran High School are joining the Think Kindness organization to help place shoes on the feet of children around the world. The goal is to raise 35,000 pairs of shoes to give to children in need. The Mayor has proclaimed the week of March 13-19, 2011 as "Week of Kindness and Sole". See attached PROCLAMATION.

Staff Contact: Mayor Vavricek

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

PROCLAMATION

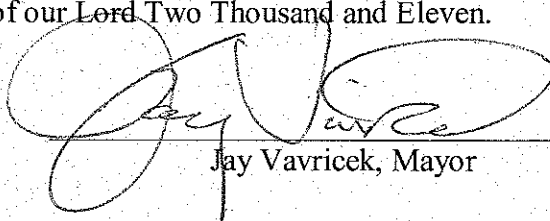
- WHEREAS, 300 million children in the world do not have shoes, while over 2 billion shoes are collecting dust in the closets of Americans around the country; and
- WHEREAS, Think Kindness is an organization works to inspire the simplest acts of kindness to make a difference in the world; and
- WHEREAS, kindness is one of the most powerful interpersonal tools that we, as human beings, use to connect with one another. Kindness is a language that everyone understands; and
- WHEREAS, kindness crosses all those distinctions that we sometimes place among ourselves – distinctions of race, religion, culture, gender, age. Through kindness, we celebrate diversity; and
- WHEREAS, we as United State Citizens have not only the privilege but the responsibility to make our world a better place. Even by small, everyday, seemingly simple acts of kindness; and
- WHEREAS, the City of Grand Island is celebrating its Week of Kindness and Sole by encouraging schools, employees and community groups to participate to make a massive difference in our community and world from the feet up; and
- WHEREAS, the four Grand Island High Schools, Grand Island Senior High, Grand Island Northwest, Grand Island Central Catholic, and Heartland Lutheran High School are about to join the Think Kindness organization in embracing the world with kindness; and partake in their challenge to Change The World.

NOW, THEREFORE, I, Jay Vavricek, Mayor of the City of Grand Island, Nebraska, do hereby proclaim the week of March 13-19, 2011 as

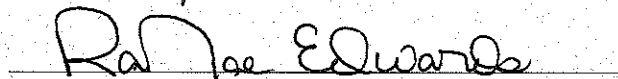
“WEEK OF KINDNESS AND SOLE”

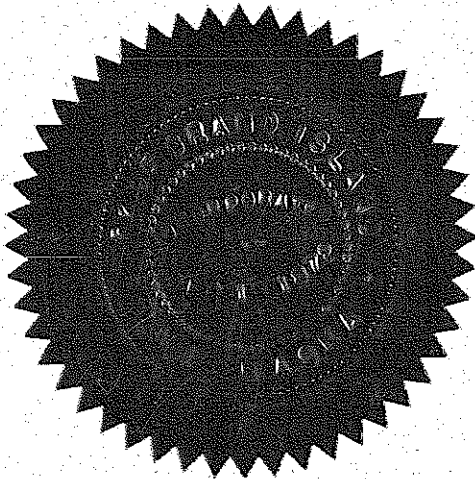
in the City of Grand Island, and encourage all citizens to participate by helping us place shoes on the feet of children around the world. While spreading kindness and practicing respect, generosity, patience, and consideration of others at all times in order to create a better, kinder, safer and more peaceful community.

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


Jay Vavricek, Mayor

Attest:


RaNae Edwards, City Clerk





City of Grand Island

Tuesday, March 08, 2011

Council Session

Item C2

Proclamation "National Athletic Training Month" March, 2011

Certified athletic trainers provide health care for athletes. They provide services such as prevention of injuries, recognition, evaluation and aggressive treatment, rehabilitation, and education. The National Athletic Trainers' Association represents more than 30,000 members of the athletic training profession of professional sports, colleges and universities, high schools, clinics and hospitals, corporate and industrial settings and military branches. The Mayor has proclaimed the month of March, 2011 as "National Athletic Training Month". See attached PROCLAMATION.

Staff Contact: Mayor Vavricek

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

PROCLAMATION

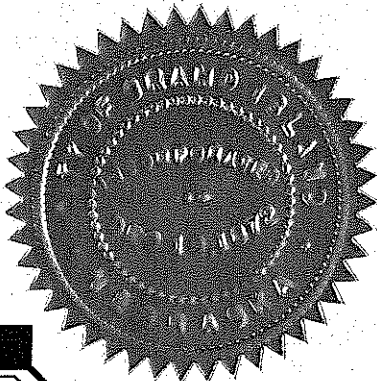
- WHEREAS, certified athletic trainers have a long history of providing quality health care for athletes and those engaged in physical activity based on specific tasks, knowledge and skills acquired through their nationally regulated educational processes; and
- WHEREAS, certified athletic trainers provide services such as prevention of injuries; recognition, evaluation and aggressive treatment; rehabilitation; health care administration; and education and guidance; and
- WHEREAS, the National Athletic Trainers' Association represents more than 30,000 members of the athletic training profession employed in the settings of professional sports, colleges and universities, high schools, clinics and hospitals, corporate and industrial settings and military branches; and
- WHEREAS, leading organizations concerned with athletic training and health care have joined together in a common desire to raise public awareness of the importance of the athletic training profession and to emphasize the importance of quality health care within the aforementioned settings; and
- WHEREAS, such an effort will improve health care for athletes and those engaged in physical activity and will promote certified athletic trainers as allied health care professionals.

NOW, THEREFORE, I, Jay Vavricek, Mayor of the City of Grand Island, Nebraska, do hereby proclaim the month of March, 2011 as

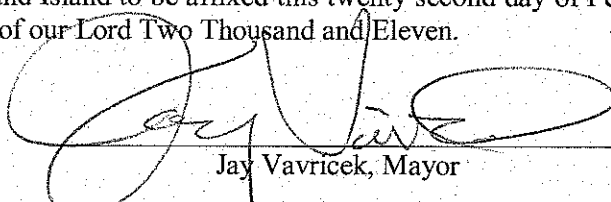
***"NATIONAL ATHLETIC
TRAINING MONTH"***

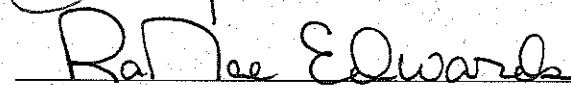
in the City of Grand Island.

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



Attest:


Jay Vavricek, Mayor


RaNae Edwards, City Clerk



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item E1

**Public Hearing on Redevelopment Plan for Real Estate Located at
620 West State Street (Five Points located along N Broadwell, N
Eddy & W State)**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Chad Nabity, AICP

Meeting: March 8, 2011

Subject: Amendment to Redevelopment Plan for CRA Area #6

Item #'s: E-1 & I-2

Presenter(s): Chad Nabity, AICP CRA Director

Background

In 2007, the Grand Island City Council declared property referred to as CRA Area #6 as blighted and substandard and approved a generalized redevelopment plan for the property. The generalized redevelopment plan authorized the use of Tax Increment Financing (TIF) for the acquisition of property, redevelopment of property, site preparation including demolition, landscaping and parking. TIF can also be used for improvements to and expansion of existing infrastructure including but not limited to: streets, water, sewer, drainage.

Wilmar Realty LLC (the developer) has submitted a proposed amendment to the redevelopment plan that would provide for site acquisition, demolition and construction of an exterior façade and interior remodeling of Skagway supermarket building together with additional parking lot expansion at the Five Points Location in Grand Island, Nebraska.

The CRA reviewed the proposed development plan and forwarded it to the Hall County Regional Planning Commission for recommendation at their meeting on March 2nd. The CRA also sent notification to the City Clerk of their intent to enter into a redevelopment contract for this project pending Council approval of the plan amendment.

The Hall County Regional Planning Commission held a public hearing on the plan amendment at a meeting on March 2nd. The Planning Commission approved Resolution 2011-01 in support of the proposed amendment, declaring the proposed amendment to be consistent with the Comprehensive Development Plan for the City of Grand Island.

Discussion

Tonight, Council will hold a public hearing to take testimony on the proposed plan amendment (including the cost benefit analysis that was performed regarding this proposed project) and to enter into the record a copy of the plan amendment, the draft TIF contract under consideration by the CRA.

Council is being asked to approve a resolution approving the cost benefit analysis as presented in the redevelopment plan along with the amended redevelopment plan for CRA Area #6 and authorizes the CRA to execute a contract for TIF based on the plan amendment. The redevelopment plan for amendment permits site acquisition, demolition and construction of an exterior façade and interior remodeling of Skagway supermarket building together with additional parking lot expansion at the Five Points Location. The cost benefit analysis included in the plan finds that this project meets the statutory requirements for as eligible TIF project and that it will not negatively impact existing services within the community or shift additional costs onto the current residents of Grand Island and the impacted school districts. The total tax increment financing allowed for this project may not exceed \$798,654 during this 15 year period.

Alternatives

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

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

Recommendation

The CRA and Hall County Regional Planning Commission recommend that the Council approve the Resolution necessary for the adoption and implementation of this plan.

Sample Motion

Move to approve the resolution as submitted.

**Redevelopment Plan Amendment
Grand Island CRA Area #6
January 2011**

The Community Redevelopment Authority (CRA) of the City of Grand Island intends to amend the Redevelopment Plan for Area #6 with in the city, pursuant to the Nebraska Community Development Law (the “Act”) and provide for the financing of a specific infrastructure related project in Area #6.

**Executive Summary:
Project Description**

THE ACQUISITION OF PROPERTY FIVE POINTS EAST OF BROADWELL AVENUE AND NORTH OF STATE STREET BY THE DEVELOPER AND SUBSEQUENT UTILITY IMPROVEMENTS, LANDSCAPING AND PARKING IMPROVEMENTS NECESSARY FOR REMODELING AND RECONSTRUCTING THE EXISTING SKAGWAY STORE AT THIS LOCATION.

The use of Tax Increment Financing to aid in the acquisition of property and demolition of existing structures along with costs associated with redevelopment and remodeling the existing Skagway store. The use of Tax Increment Finance makes it feasible to complete all of the phases of the proposed project within the timeline presented. This project could be completed without the use of TIF however the timeline for completion would be stretched out over several years.

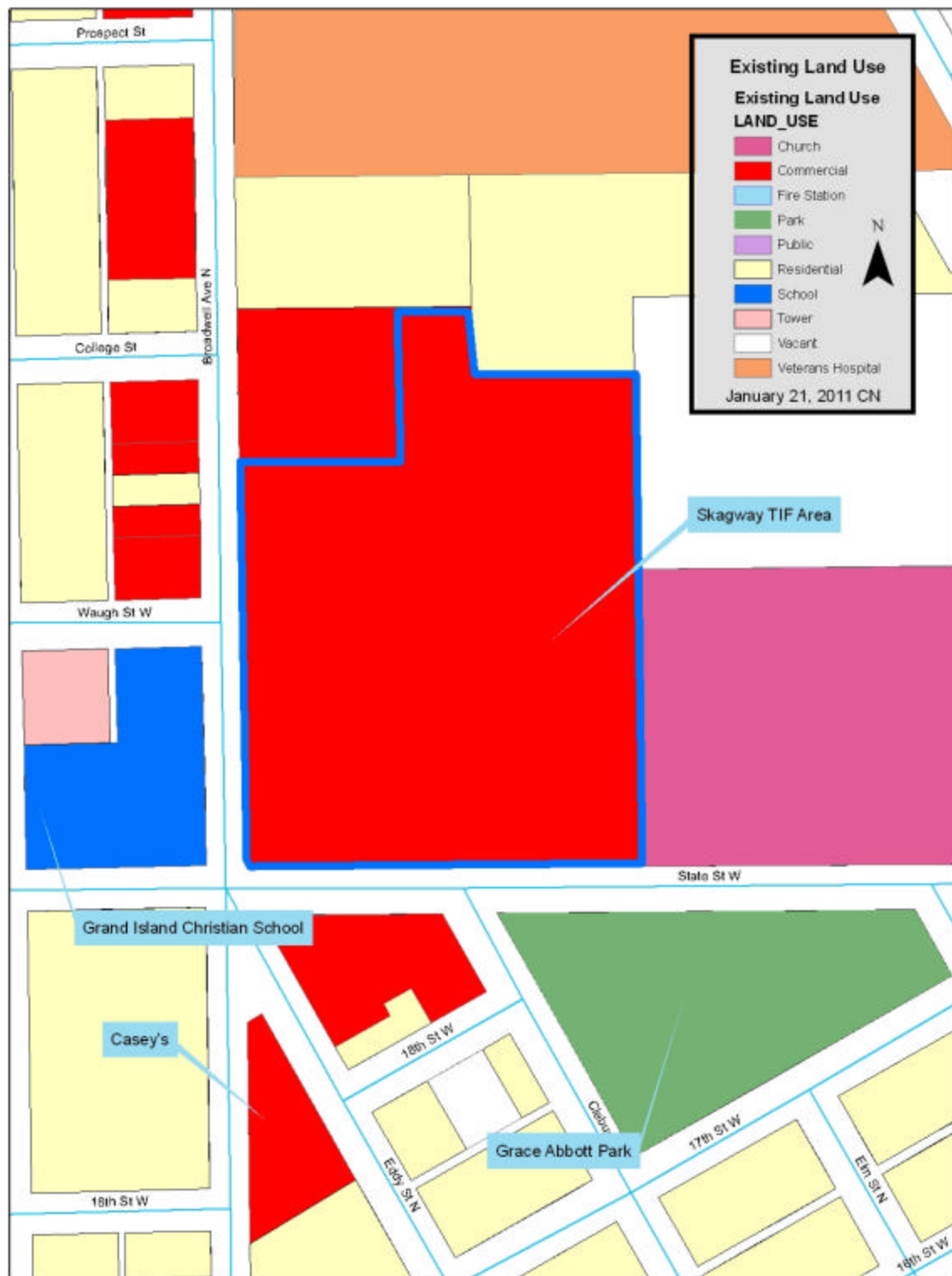
The acquisition, site work and remodeling will be paid for by the developer. The developer is responsible for and has provided evidence that they can secure adequate debt financing to cover the costs associated with the acquisition, site work and remodeling. The Grand Island Community Redevelopment Authority (CRA) intends to pledge the ad valorem taxes generated over the 15 year period beginning January 1, 2012 towards the allowable costs and associated financing for the acquisition and site work.

TAX INCREMENT FINANCING TO PAY FOR THE ACQUISITION OF THE PROPERTY AND RELATED SITE WORK WILL COME FROM THE FOLLOWING REAL PROPERTY:

Property Description (the “Redevelopment Project Area”)

This property is located at the northeast corner of Broadwell Avenue and State Street in northeast Grand Island including the attached map identifies the subject property and the surrounding land uses:

- **Legal Descriptions** Lots 1, 2 and 3 of Skag-Way Subdivision.



The tax increment will be captured for the tax years the payments for which become delinquent in years 2013 through 2027, inclusive.

The real property ad valorem taxes on the current valuation will continue to be paid to the normal taxing entities. The increase will come from renovation of the existing retail space at the Skagway store.

Statutory Pledge of Taxes.

Pursuant to Section 18-2147 of the Act, any ad valorem tax levied upon real property in the Redevelopment Project Area shall be divided, for the period not to exceed 15 years after the effective date of the provision, which effective date shall be January 1, 2012.

a. That portion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the redevelopment project valuation shall be paid into the funds, of each such public body in the same proportion as all other taxes collected by or for the bodies; and

b. That portion of the ad valorem tax on real property in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the Authority to pay the principal of; the interest on, and any premiums due in connection with the bonds, loans, notes, or advances on money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Authority for financing or refinancing, in whole or in part, a redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness including interest and premium due have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in such redevelopment project shall be paid into the funds of the respective public bodies.

Pursuant to Section 18-2150 of the Act, the ad valorem tax so divided is hereby pledged to the repayment of loans or advances of money, or the incurring of any indebtedness, whether funded, refunded, assumed, or otherwise, by the CRA to finance or refinance, in whole or in part, the redevelopment project, including the payment of the principal of, premium, if any, and interest on such bonds, loans, notes, advances, or indebtedness.

Redevelopment Plan Amendment Complies with the Act:

The Community Development Law requires that a Redevelopment Plan and Project consider and comply with a number of requirements. This Plan Amendment meets the statutory qualifications as set forth below.

1. The Redevelopment Project Area has been declared blighted and substandard by action of the Grand Island City Council on October 9, 2007.[§18-2109] Such declaration was made after a public hearing with full compliance with the public notice requirements of §18-2115 of the Act.

2. Conformation to the General Plan for the Municipality as a whole. [§18-2103 (13) (a) and §18-2110]

Grand Island adopted a Comprehensive Plan on July 13, 2004. This redevelopment plan amendment and project are consistent with the Comprehensive Plan, in that no changes in the Comprehensive Plan elements are intended. This plan merely provides funding for the developer to acquire the necessary property and provide the necessary site work for the construction of a permitted use on this property.

3. The Redevelopment Plan must be sufficiently complete to address the following items: [§18-2103(13) (b)]

a. Land Acquisition:

The Redevelopment Plan for Area #6 provides for real property acquisition and this plan amendment does not prohibit such acquisition. There is no proposed acquisition by the authority.

b. Demolition and Removal of Structures:

The project to be implemented with this plan does intend several structures along Broadwell Avenue be removed or demolished. The structures to be demolished are all non-residential in nature and use.

c. Future Land Use Plan

See the attached map from the 2004 Grand Island Comprehensive Plan. The site is planned for commercial development. [§18-2103(b) and §18-2111] The attached map also is an accurate site plan of the area after redevelopment. [§18-2111(5)]

d. Changes to zoning, street layouts and grades or building codes or ordinances or other Planning changes.

The area is zoned B2- General Business zone. No zoning changes are anticipated with this project. No changes are anticipated in street layouts or grades. No changes are anticipated in building codes or ordinances. Nor are any other planning changes contemplated. [§18-2103(b) and §18-2111]

e. Site Coverage and Intensity of Use

The developer is proposing remove several structures adjacent to Broadwell Avenue. The existing Skagway store will be renovated with a single main entrance on the west side of the building. Primary parking will be on the west side of the building. Tenant spaces will be made available along the west side of the building. A drive through will be added for the pharmacy. The main building will be remodeled to incorporate a banquet center with a primary entrance from the east side of the building. The property is zoned B2 and could accommodate a building of up to 100% of the property [§18-2103(b) and §18-2111]

f. Additional Public Facilities or Utilities

Sewer and water are available to support this development. New water and sewer services may be required for this building.

No other utilities would be impacted by the development.

The developer will be responsible for replacing any sidewalks damaged during construction of the project.

No other utilities would be impacted by the development. [§18-2103(b) and §18-2111]

4. The Act requires a Redevelopment Plan provide for relocation of individuals and families displaced as a result of plan implementation. This amendment does not provide for acquisition of any residences and therefore, no relocation is contemplated. [§18-2103.02]

5. No member of the Authority, nor any employee thereof holds any interest in any property in this Redevelopment Project Area. [§18-2106]

Barry Sandstrom, Chairman of the Grand Island Community Redevelopment Authority, is President of Home Federal Bank in Grand Island and Home Federal is contemplating a branch office in the redeveloped property. Mr. Sandstrom will recuse himself from action on this application.

6. Section 18-2114 of the Act requires that the Authority consider:

a. Method and cost of acquisition and preparation for redevelopment and estimated proceeds from disposal to redevelopers.

The developer has purchased the property for this redevelopment for \$733,224 since January 1 of 2008. Other properties included in the redevelopment have been owned by the developer for more than 40 years. The cost of property acquisition is being included as a TIF eligible expense. Costs for demolition, site preparation and parking improvements for development are estimated at \$1,503,500 portions of this as related to the demolition and site preparation are included as a TIF eligible expense. Renovation costs for the existing building are estimated at \$1,175,000 and are being included as a TIF eligible expense. Engineering and design fees are estimated at \$140,000 and are included as a TIF eligible expense.

No property will be transferred to redevelopers by the Authority. The developer will provide and secure all necessary financing.

b. Statement of proposed method of financing the redevelopment project.

The developer will provide all necessary financing for the project. The Authority will assist the project by granting the sum of \$798,654 from the proceeds of the TIF Indebtedness issued by the Authority. This indebtedness will be repaid from the Tax Increment Revenues generated from the project. TIF revenues shall be made available to repay the original debt and associated interest after January 1, 2012 through December 2027. The Authority may also at its discretion and under the terms of the generalized redevelopment plan for CRA area #6 offer façade improvement assistance to the developer of up to \$300,000.

c. Statement of feasible method of relocating displaced families.

No families will be displaced as a result of this plan.

7. Section 18-2113 of the Act requires:

Prior to recommending a redevelopment plan to the governing body for approval, an authority shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the city and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of insanitary or unsafe dwelling accommodations or conditions of blight.

The Authority has considered these elements in proposing this Plan Amendment. This amendment, in and of itself will promote consistency with the Comprehensive Plan, in that it will allow for the utilization of and redevelopment of commercial lots. This will not significantly impact traffic on at the Five Points intersection. Renovated commercial development will raise property values and provide a stimulus to keep surrounding properties properly maintained. This will have the intended result of preventing recurring elements of unsafe buildings and blighting conditions.

8. Time Frame for Development

Development of this project (including demolition, parking lot improvements and building renovation) is anticipated to be completed between April and September of 2011. Excess valuation should be available for this project for 15 years beginning with the 2012 tax year.

9. Justification of Project

Skagway has been a commercial anchor for the Five Points neighborhood since the 1950's. This redevelopment and reinvestment by Wilmar Realty, LLC in this Skagway location represents a great opportunity to strengthen and sustain this neighborhood commercial development. This is infill development in an area with all city services available. This project does not propose to tear down any buildings with historic value.

10. Cost Benefit Analysis Section 18-2113 of the Act, further requires the Authority conduct a cost benefit analysis of the plan amendment in the event that Tax Increment Financing will be used. This analysis must address specific statutory issues.

(a) Tax shifts resulting from the approval of the use of Tax Increment Financing;

The redevelopment project area currently has an estimated valuation of \$2,390,110. The proposed demolition, new parking lot and renovations at this location will result in an additional \$2,507,556 of taxable valuation based on an analysis by the Hall County Assessor's office. No tax shifts are anticipated from the project. The project creates additional valuation that will support taxing entities long after the project is paid off.

(b) Public infrastructure and community public service needs impacts and local tax impacts arising from the approval of the redevelopment project;

No additional public service needs have been identified. Existing water and waste water facilities will not be impacted by this development. The electric utility has sufficient capacity to support the development. It is not anticipated that this will impact schools. Fire and police protection are available and should not be impacted by this development.

(c) Impacts on employers and employees of firms locating or expanding within the boundaries of the area of the redevelopment project;

The proposed facility will continue to provide jobs for persons employed at Skagway and for employees of the people who rent the proposed tenant spaces that are part of this redevelopment.

(d) Impacts on other employers and employees within the city or village and the immediate area that are located outside of the boundaries of the area of the redevelopment project; and

This facility could draw employees from other similar facilities within the City. If the project is not completed it is possible that Skagway would shut down resulting in a net loss of employment and sale tax dollars.

(e) Any other impacts determined by the authority to be relevant to the consideration of costs and benefits arising from the redevelopment project.

This will provide appropriate development at a key entrance into the City of Grand Island. Five Points is an iconic location in Grand Island. This redevelopment plan will result in better visibility for all business located near Five Points. Skagway has been a key business at the Five Points location for more than 60 years. This reinvestment on the part of Wilmar LLC and the City of Grand Island will encourage them to remain a key business for the next 60 years.

Time Frame for Development

Development of this project is anticipated to be completed during between April 1 and September 1 of 2011. The base tax year should be calculated on the value of the property as of January 1, 2011. Excess valuation should be available for this project for 15 years

beginning in 2012. Excess valuation will be used to pay the TIF Indebtedness issued by the CRA per the contract between the CRA and the developer for a period not to exceed 15 years or an amount not to exceed \$798,654, the projected amount of increment based upon the anticipated value of the project and current tax rate. Based on the purchase price of the property and estimates of the expenses of renovation activities and associated engineering fees, but excluding the cost of demolition, site preparation and rebuilding the parking lot, the developer will spend more than \$1,748,000¹ on TIF eligible activities.

See Attached Site Plan and Interior Renovation Plan

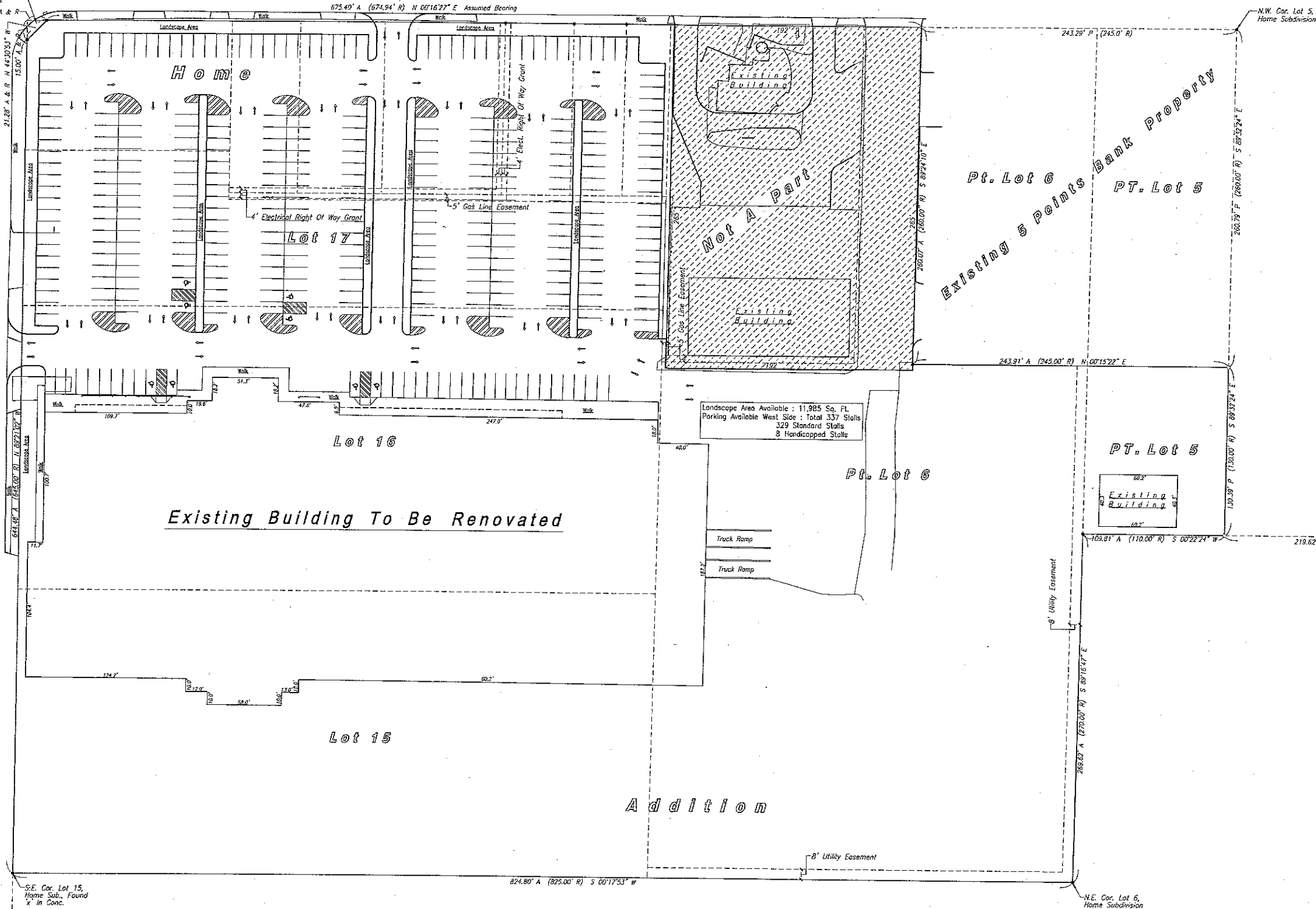
¹ This is the total less \$300,000 of façade improvement funding provided by the CRA.

Broadwell Avenue

Scale: 1" = 40'

Deeded To City Of Grand Island
For Street Right Of Way, Filed
Filed in Bk. 158, Page 552

State Street

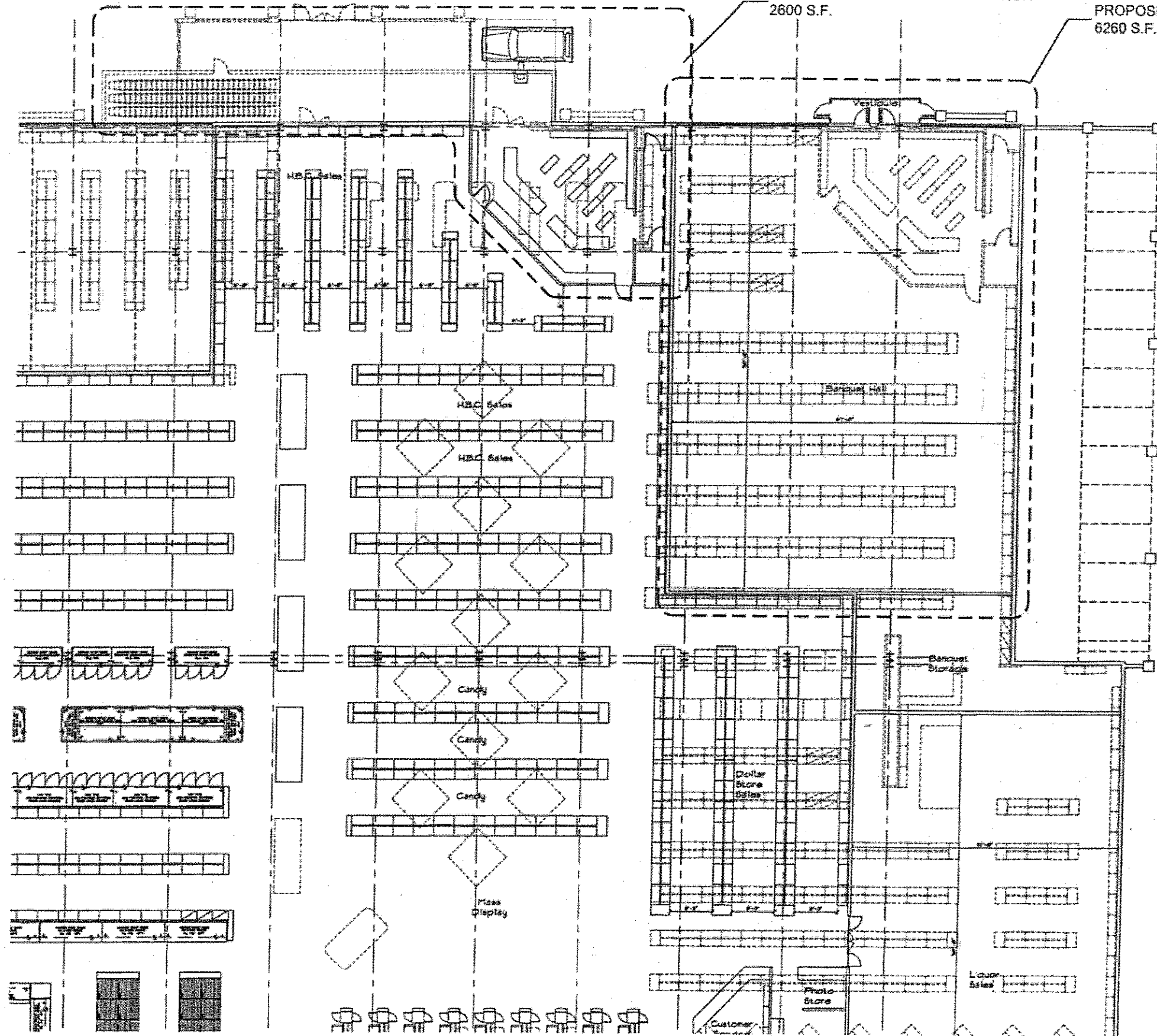


REDA 2510 NORTH WEBB ROAD, GRAND ISLAND, NEBRASKA 68802 P.O. BOX 648 E-MAIL: surveyor@computer-concepts.com PHONE (308) 382-1472 FAX (308) 382-1423		
SITE LAYOUT PLAN Pt. Lots 5, 6 & 17, And All Lots 15 & 16, Home Addition In The City Of Grand Island, Nebraska		
SUBMITTED BY:	DRAWN BY: Deryl S.	
CHECKED BY: D.O.S.	SHEET No.	DWG. No.
APPROVED BY:	1 OF 1	
DATE: January 31, 2011	REVISIONS	
PROJECT No.		

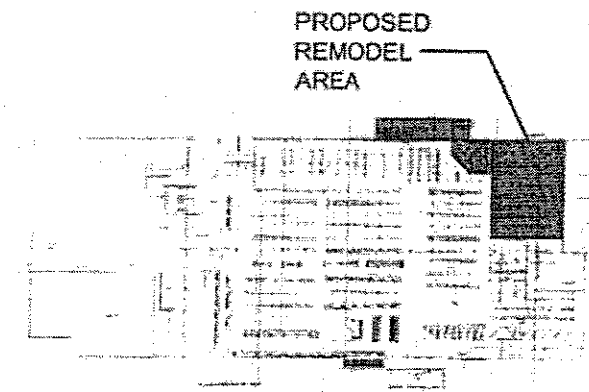
NOV 09, 2010 12:11:50 Location: C:\Projects\145145-145-001\Drawings\Interior_Remodel.dwg

PROPOSED PHARMACY RELOCATION
2600 S.F.

PROPOSED CATERING HALL
6260 S.F.



PARTIAL FLOOR PLAN
SCALE: 1/8" = 1'-0"



KEY PLAN
SCALE: 1/8" = 1'-0"

REVISIONS

NO.	DESCRIPTION	DATE

MA
Miller & Associates
Consulting Engineers, P.C.
Kearney, NE (308) 234-8456
Lincoln, NE (402) 343-3712

SKAGWAY INTERIOR REMODEL
PARTIAL FLOOR PLAN
GRAND ISLAND, NEBRASKA

VERIFY SCALES	
BAR IS ONE INCH ON ORIGINAL DRAWING	
IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY	
SCALE:	AS NOTED
PROJECT NO.	145-145-001
DATE:	FEBRUARY 2011
FIELD BOOK:	USA INC. NO.
DRAWN BY:	APPROV BY:
SHEET	



BACKGROUND INFORMATION RELATIVE TO TAX INCREMENT FINANCING REQUEST

Project Redeveloper Information

Business Name: Wilmar Realty, LLC

Address: P.O. Box 1647; Grand Island, NE 68802

Telephone No.: 308-384-8222 Fax No.: 308-384-4308

Contact: Bill Martin or Tim Bolton

Brief Description of Applicant's Business: Manages Real Estate Property at the 5-Points location, in Grand Island, Nebraska

Present Ownership Proposed Project Site: Wilmar Realty, LLC ; P.O. Box 1647; Grand
Island , NE 68802_____

Proposed Project: Building square footage, size of property, description of
buildings – materials, etc. Please attach site plan, if available.

- 1.) Demolition and site preparation for new parking lot on west side of Skagway.
 - 2.) New façade on west side of Skagway Building
 - 3.) Remodel inside of Skagway Store
-
-

If Property is to be Subdivided, Show Division Planned:

VI. Estimated Project Costs:

Acquisition Costs:

A. Land \$ 199,086

B. Building \$ 534,138

Construction Costs:

A. Renovation or Building Costs: \$ 1,175,000 *

New façade and remodel of inside of Skagway

* based on engineer estimates

B. On-Site Improvements: \$ 1,503,500

Parking Lot

Soft Costs:

A. Architectural & Engineering Fees: \$

B. Financing Fees: \$

C. Legal/Developer/Audit Fees: \$

D. Contingency Reserves: \$

E. Other (Please Specify)	\$
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TOTAL \$ 3,411,723

Total Estimated Market Value at Completion: \$ 4,576,840
Assuming a valuation increase of \$2,000,000

Source of Financing:

A. Developer Equity:	\$ 733,224
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B. Commercial Bank Loan:	\$ 2,400,000
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Tax Credits:

1. N.I.F.A. \$

2. Historic Tax Credits

D. Industrial Revenue Bonds:	\$
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E. Tax Increment Assistance:	\$ 615,000
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F. Other -	Façade Improvement Program Grant	\$ 300,000
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Name, Address, Phone & Fax Numbers of Architect, Engineer and General Contractor:

1.) Rockwell & Associates

2510 N. Webb Rd

Grand Island, NE 68803

(308) 382-1472

2.) Miller & Associates

1111 Central Ave.

Kearney, NE 68847

(308) 234-6456

Estimated Real Estate Taxes on Project Site Upon Completion of Project:
(Please Show Calculations)

Current Real Estate Taxes on just Skagway site without acquisitions \$ 34,135

Assuming \$ 2,000,000 valuation increase taxes would be \$ 41,000

Total Real Estate Taxes on renovated site \$ 75,135

Project Construction Schedule:

Construction Start Date:

02/01/2011_____

Construction Completion Date:

07/01/2011_____

If Phased Project:

_____ Year _____ %

Complete

_____ Year _____ %

Complete

XII. Please Attach Construction Pro Forma

XIII. Please Attach Annual Income & Expense Pro Forma

(With Appropriate Schedules)

TAX INCREMENT FINANCING REQUEST INFORMATION

Describe Amount and Purpose for Which Tax Increment Financing is Requested:

Assuming a \$ 2,000,000 increase in valuation, we are requesting \$ 615,000 to cover a portion of the acquisition, demolition and renovation.

(\$2,000,000*.0205*15 years) _____

Statement Identifying Financial Gap and Necessity for use of Tax Increment Financing

for Proposed Project: The affordability of the project is dependent on keeping things at their current cost level without the valuation increase which leads to an increase in taxes. Things are very competitive in the retail business and we must do what others have done in the same line of business in regards to tax increment financing.

Municipal and Corporate References (if applicable). Please identify all other Municipalities, and other Corporations the Applicant has been involved with, or

has completed developments in, within the last five (5) years, providing contact person, telephone and fax numbers for each:

None_____

IV. Please Attach Applicant's Corporate/Business Annual Financial Statements for the Last Three Years.

Willmar Realty, LLC started in January 1, 2008 and will provide the third year of financials when completed in early February of 2011.

Post Office Box 1968
Grand Island, Nebraska 68802-1968
Phone: 308 385-5240
Fax: 308 385-5423
Email: cnabity@grand-island.com

COMMUNITY REDEVELOPMENT AUTHORITY
OF THE CITY OF GRAND ISLAND, NEBRASKA

RESOLUTION NO. 118

RESOLUTION OF THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY
OF GRAND ISLAND, NEBRASKA, SUBMITTING A PROPOSED
REDEVELOPMENT PLAN TO THE HALL COUNTY REGIONAL PLANNING
COMMISSION FOR ITS RECOMMENDATION

WHEREAS, this Community Redevelopment Authority of the City of Grand Island, Nebraska ("Authority"), pursuant to the Nebraska Community Development Law (the "Act"), PREPARED a proposed redevelopment plan (the "Plan"), for redevelopment of an area within the city limits of the City of Grand Island, Hall County, Nebraska; and

WHEREAS, the Authority is required by Section 18-2112 of the Act to submit said to the planning board having jurisdiction of the area proposed for redevelopment for review and recommendation as to its conformity with the general plan for the development of the City of Grand Island, Hall County, Nebraska;

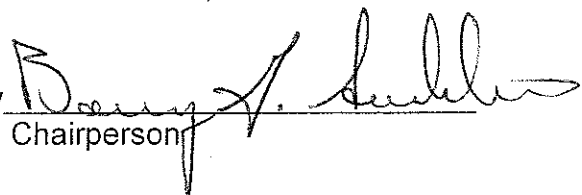
NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

The Authority submits to the Hall County Regional Planning Commission the proposed Plan attached to this Resolution, for review and recommendation as to its conformity with the general plan for the development of the City of Grand Island, Hall County, Nebraska.

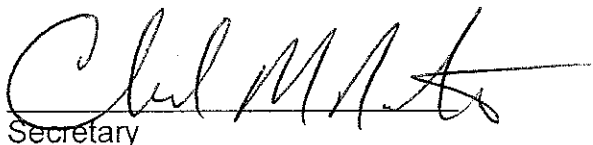
Passed and approved this 9th day of February, 2011.

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
GRAND ISLAND, NEBRASKA.

By


Chairperson

ATTEST:


Secretary

**COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY
OF GRAND ISLAND, NEBRASKA**

RESOLUTION NO. 119

RESOLUTION OF THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF GRAND ISLAND, NEBRASKA, PROVIDING NOTICE OF INTENT TO ENTER INTO A REDEVELOPMENT AFTER THE PASSAGE OF 30 DAYS AND OTHER MATTERS

WHEREAS, this Community Redevelopment Authority of the City of Grand Island, Nebraska ("Authority"), has received an Application for Tax Increment Financing under the Nebraska Community Development Law (the "Act") on a project within redevelopment area #6, from Wilmar Realty LLC, (The "Developer") for redevelopment of an area within the city limits of the City of Grand Island as set forth in Exhibit 1 attached hereto area; and

WHEREAS, this Community Redevelopment Authority of the City of Grand Island, Nebraska ("Authority"), is proposing to use Tax Increment Financing on a project within redevelopment area #6;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. In compliance with section 18-2114 of the Act, the Authority hereby gives the governing body of the City notice that it intends to enter into the Redevelopment Contract, attached as Exhibit 1, with such changes as are deemed appropriate by the Authority, after approval of the redevelopment plan amendment related to the redevelopment project described in the Redevelopment Contract, and after the passage of 30 days from the date hereof.

Section 2. The Secretary of the Authority is directed to file a copy of this resolution with the City Clerk of the City of Grand Island, forthwith.

Passed and approved this 9th day of February, 2011.

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
GRAND ISLAND, NEBRASKA.

By 
Chairperson

ATTEST:


Secretary

Resolution Number 2011-01

HALL COUNTY REGIONAL PLANNING COMMISSION

A RESOLUTION RECOMMENDING APPROVAL OF A REDEVELOPMENT
PLAN OF THE CITY OF GRAND ISLAND, NEBRASKA; AND APPROVAL OF
RELATED ACTIONS

WHEREAS, the Chairman and Board of the Community Redevelopment Authority of the City of Grand Island, Nebraska (the "Authority"), referred that certain Redevelopment Plan to the Hall County Regional Planning Commission, (the "Commission") a copy of which is attached hereto as Exhibit "A" for review and recommendation as to its conformity with the general plan for the development of the City of Grand Island, Hall County, Nebraska, pursuant to Section 18-2112 of the Community Development Law, Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended (the "Act"); and

WHEREAS, the Commission has reviewed said Redevelopment Plan as to its conformity with the general plan for the development of the City of Grand Island, Hall County;

NOW, THEREFORE, BE IT RESOLVED BY THE HALL COUNTY REGIONAL PLANNING COMMISSION AS FOLLOWS:

Section 1. The Commission hereby recommends approval of the Redevelopment Plan.

Section 2. All prior resolutions of the Commission in conflict with the terms and provisions of this resolution are hereby expressly repealed to the extent of such conflicts.

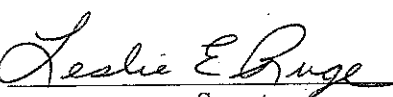
Section 3. This resolution shall be in full force and effect from and after its passage as provided by law.

DATED: March 2, 2011.

HALL COUNTY REGIONAL PLANNING
COMMISSION

ATTEST:

By: 
Chair

By: 
Secretary

REDEVELOPMENT CONTRACT

This Redevelopment Contract is made and entered into as of the ____th day of _____, 2011, by and between the City of Grand Island, Nebraska, acting as the Community Redevelopment Authority of the City of Grand Island, Nebraska (“**City**”), and Wilmar Realty, LLC, a Nebraska limited liability company (“**Redeveloper**”).

WITNESSETH:

WHEREAS, the City of Grand Island, Nebraska (the “**City**”), in furtherance of the purposes and pursuant to the provisions of Section 12 of Article VIII of the Nebraska Constitution and Sections 18-2101 to 18-2154, Reissue Revised Statutes of Nebraska, 2007, as amended (collectively the “**Act**”), has designated an area in the City as blighted and substandard; and

WHEREAS, City and Redeveloper desire to enter into this Redevelopment Contract for acquisition and redevelopment of a parcel in the blighted and substandard area;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, Authority and Redeveloper do hereby covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01 Terms Defined in this Redevelopment Contract.

Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Redevelopment Contract, such definitions to be equally applicable to both the singular and plural forms and masculine, feminine and neuter gender of any of the terms defined:

“**Act**” means Section 12 of Article VIII of the Nebraska Constitution, Sections 18-2101 through 18-2154, Reissue Revised Statutes of Nebraska, 2007, as amended, and acts amendatory thereof and supplemental thereto

“**Authority**” means the Community Redevelopment Authority of the City of Grand Island, Nebraska.

“**City**” means the City of Grand Island, Nebraska.

“**Governing Body**” means the Mayor and City Council of the City.

“Holder” means the holders of TIF indebtedness issued by the Authority from time to time outstanding.

“Liquidated Damages Amount” means the amounts to be repaid to Authority by Redeveloper pursuant to Section 6.02 of this Redevelopment Contract.

“Project” means the improvements to the Redevelopment Area, as further described in Exhibit B attached hereto and incorporated herein by reference and, as used herein, shall include the Redevelopment Area real estate.

“Project Cost Certification” means a statement prepared and signed by the Redeveloper verifying the Redeveloper has been legally obligated for the payment of Project Costs identified on Exhibit D

“Project Costs” means only costs or expenses incurred by Redeveloper for the purposes set forth in §18-2103 (a) through (f), inclusive, of the Act as identified on Exhibit D.

“Redeveloper” means Wilmar Realty, LLC, a Nebraska limited liability company.

“Redevelopment Area” means that certain real property situated in the City of Grand Island, Hall County, Nebraska, which has been declared blighted and substandard by the City pursuant to the Act, and which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

“Redevelopment Contract” means this redevelopment contract between the Authority and Redeveloper with respect to the Project.

“Redevelopment Plan” means the Amended Redevelopment Plan for the Redevelopment Area related to the Project, prepared by the Authority and approved by the City pursuant to the Act.

“Resolution” means the Resolution of the Authority, as supplemented from time to time, approving this Redevelopment Contract and the issuance of the TIF Indebtedness.

“TIF Indebtedness” means any bonds, notes, loans, and advances of money or other indebtedness, including interest and premiums, if any, thereon, incurred by the Authority pursuant to Article III hereof and secured in whole or in part by TIF Revenues.

“TIF Revenues” means incremental ad valorem taxes generated by the Project which are allocated to and paid to the Authority pursuant to the Act.

Section 1.02 Construction and Interpretation.

The provisions of this Redevelopment Contract shall be construed and interpreted in accordance with the following provisions:

(a) Wherever in this Redevelopment Contract it is provided that any person may do or perform any act or thing the word “may” shall be deemed permissive and not mandatory and it shall be construed that such person shall have the right, but shall not be obligated, to do and perform any such act or thing.

(b) The phrase “at any time” shall be construed as meaning “at any time or from time to time.”

(c) The word “including” shall be construed as meaning “including, but not limited to.”

(d) The words “will” and “shall” shall each be construed as mandatory.

(e) The words “herein,” “hereof,” “hereunder,” “hereinafter” and words of similar import shall refer to the Redevelopment Contract as a whole rather than to any particular paragraph, section or subsection, unless the context specifically refers thereto.

(f) Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as the context may require.

(g) The captions to the sections of this Redevelopment Contract are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary by implication or otherwise any of the provisions hereof.

ARTICLE II

REPRESENTATIONS

Section 2.01 Representations by Authority.

The Authority makes the following representations and findings:

(a) the Authority is a duly organized and validly existing Community Redevelopment Authority under the Act.

(b) The Redevelopment Plan has been duly approved and adopted by the City pursuant to Section 18-2109 through 18-2117 of the Act.

(c) The Authority deems it to be in the public interest and in furtherance of the purposes of the Act to accept the proposal submitted by Redeveloper as specified herein.

(d) The Redevelopment Project will achieve the public purposes of the Act by, among other things, increasing employment, improving public infrastructure, increasing the tax base, and lessening conditions of blight and substandard in the Redevelopment Area.

(e) (1) The Redevelopment Plan is feasible and in conformity with the general plan for the development of the City as a whole and the plan is in conformity with the legislative declarations and determinations set forth in the Act, and

(2) Based on Representations made by the Redeveloper:

(i) the Project would not be economically feasible without the use of tax-increment financing,

(ii) the Project would not occur in the Redevelopment Area without the use of tax-increment financing, and

(iii) the costs and benefits of the Project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the Authority and have been found to be in the long-term best interest of the community impacted by the Project.

(f) The Authority has determined that the proposed land uses and building requirements in the Redevelopment Area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development: including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of insanitary or unsafe dwelling accommodations, or conditions of blight.

Section 2.02 Representations of Redeveloper.

The Redeveloper makes the following representations:

(a) The Redeveloper is a Nebraska limited liability company, having the power to enter into this Redevelopment Contract and perform all obligations contained herein and by proper action has been duly authorized to execute and deliver this Redevelopment Contract.

(b) The execution and delivery of the Redevelopment Contract and the consummation of the transactions therein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which Redeveloper is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Redeveloper contrary to the terms of any instrument or agreement.

(c) There is no litigation pending or to the best of its knowledge threatened against Redeveloper affecting its ability to carry out the acquisition, construction, equipping and furnishing of the Project or the carrying into effect of this Redevelopment Contract or, except as disclosed in writing to the Authority, as in any other matter materially affecting the ability of Redeveloper to perform its obligations hereunder.

(d) Any financial statements of the Redeveloper or its Members delivered to the Authority prior to the date hereof are true and correct in all respects and fairly present the financial condition of the Redeveloper and the Project as of the dates thereof; no materially adverse change has occurred in the financial condition reflected therein since the respective dates thereof; and no additional borrowings have been made by the Redeveloper since the date thereof except in the ordinary course of business, other than the borrowing contemplated hereby or borrowings disclosed to or approved by the Authority.

(e) The Project would not be economically feasible without the use of tax increment financing.

(f) The Project would not occur in the Redevelopment Area without the use of tax-increment financing.

(g) The Redeveloper is an accredited investor as that term is defined for purposes Regulation D, issued pursuant to the Securities Act of 1933, as amended.

ARTICLE III

OBLIGATIONS OF THE AUTHORITY

Section 3.01 Division of Taxes.

In accordance with Section 18-2147 of the Act, the Authority hereby provides that any ad valorem tax on the following real property in the Project: to wit: the property shown on attached Exhibit A, for the benefit of any public body be divided for a period of fifteen years after the effective date of this provision as set forth in this section. The effective date of this provision shall be January 1, 2012.

(a) That proportion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the Redevelopment Project Valuation (as defined in the Act) shall be paid into the funds of each such public body in the same proportion as all other taxes collected by or for the bodies; and

(b) That proportion of the ad valorem tax on real property in the Redevelopment Area in excess of such amount (the "Incremental Ad Valorem Tax"), if any, shall be allocated to, is pledged to, and, when collected, paid into a special fund of the Authority to pay the principal of, the interest on, and any premiums due in connection

with the bonds, loans, notes or advances of money to, or indebtedness incurred by whether funded, refunded, assumed, or otherwise, such Authority for financing or refinancing, in whole or in part, such Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premium due have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in such Project shall be paid into the funds of the respective public bodies.

Section 3.02 Issuance of TIF Indebtedness

Authority shall incur TIF Indebtedness in the form and principal amount and bearing interest and being subject to such terms and conditions as are specified on the attached exhibit C. No TIF Indebtedness will be issued until Redeveloper has (a) acquired fee title to the Redevelopment Area; (b) obtained financing commitments as described in Section 5.01; and (c) entered into a contract for construction of the Project. The Authority shall have no obligation to find a lender or investor to acquire the TIF Indebtedness, but rather shall issue the TIF Indebtedness to the Redeveloper upon payment of the principal amount thereof. The purchase price of the TIF Indebtedness may be offset against the Grant described in Section 3.04 hereof, in the sole discretion of the Authority.

The TIF Indebtedness issued pursuant to the provisions of this contract constitutes a limited obligation of the Authority payable exclusively from that portion of the ad valorem real estate taxes mentioned in subdivision (1)(b) of Section 18-2147, R.R.S. Neb. 2007, as levied, collected and apportioned from year to year with respect to certain real estate located within the "Redevelopment Area". The TIF Indebtedness shall not constitute a general obligation of the Authority and the Authority shall be liable for the payment thereof only out of said portion of taxes as described in this paragraph. The TIF Indebtedness shall not constitute an obligation of the State of Nebraska or of the City or the Authority (except for such receipts as have been pledged pursuant to Section 3.03) and neither the State or Nebraska, the Authority nor the City shall be liable for the payment thereof from any fund or source including but not limited to tax monies belonging to either thereof (except for such receipts as have been pledged pursuant to Section 3.03). Neither the members of the Authority's governing body nor any person executing the TIF Indebtedness shall be liable personally on the TIF Indebtedness by reason of the issuance thereof. The Authority's obligation to the holder of the TIF Indebtedness shall terminate, in all events no later than 15 years from the effective date set forth in Section 3.01 hereof.

Section 3.03 Pledge of TIF Revenues.

The Authority hereby pledges 100% of the annual TIF Revenues as security for the TIF Indebtedness.

Section 3.04 Grant of Proceeds of TIF Indebtedness.

From the proceeds of the TIF indebtedness incurred as described on Exhibit C, the Authority shall grant the following sums to the following entities, to wit: 100% to the Redeveloper for Project Costs.

Notwithstanding the foregoing, the amount of the grant shall not exceed the amount of Project Costs certified pursuant to Section 4.02. The grants shall be paid to the Redeveloper upon certification that the Redeveloper has incurred or is obligated to incur such Project Costs which include supporting documentation requested by Authority and shall, if requested by Redeveloper, be made in one or more advances.

Section 3.05 Creation of Fund.

The Authority will create a special fund to collect and hold the TIF Revenues. Such special fund shall be used for no purpose other than to pay TIF Indebtedness issued pursuant to Sections 3.02 above.

ARTICLE IV

OBLIGATIONS OF REDEVELOPER

Section 4.01 Construction of Project; Insurance.

(a) Redeveloper will complete the Project and install all infrastructure, improvements, buildings, fixtures, equipment and furnishings necessary to operate the Project. Redeveloper shall be solely responsible for obtaining all permits and approvals necessary to acquire, construct and equip the Project. Until construction of the Project has been completed, Redeveloper shall make reports in such detail and at such times as may be reasonably requested by the Authority as to the actual progress of Redeveloper with respect to construction of the Project. Promptly after completion by the Redeveloper of the Project, the Redeveloper shall furnish to the Authority a Certificate of Completion. The certification by the Redeveloper shall be a conclusive determination of satisfaction of the agreements and covenants in this Redevelopment Contract with respect to the obligations of Redeveloper and its successors and assigns to construct the Project. As used herein, the term "completion" shall mean substantial completion of the Project.

(b) Any general contractor chosen by the Redeveloper or the Redeveloper itself shall be required to obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations and a penal bond as required by the Act. The City, the Authority and the Redeveloper shall be named as additional insured. Any contractor chosen by the Redeveloper or the Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the Project to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and shall include "All Risk" insurance for physical loss or damage. The contractor or the Redeveloper, as the case may be, shall furnish the Authority with a Certificate of Insurance evidencing policies as required above. Such certificates shall state that the insurance companies shall give the Authority prior written notice in the event of cancellation of or material change in any of any of the policies.

(c) Redeveloper shall replat the Redevelopment Project Area.

(d) Redeveloper shall pay, on execution hereof the sum of \$1,000.00 to the City of Grand Island for administrative expenses related to payment of the tax increment revenue.

Section 4.02 Cost Certification.

Redeveloper shall submit to Authority a certification of Project Costs, on or before the issuance of the TIF Indebtedness which shall contain detail and documentation showing the payment or obligation for payment of Project Costs specified on the attached Exhibit D in an amount at least equal to the grant to Redeveloper pursuant to Section 3.05.

Section 4.03 Legal Costs.

Redeveloper shall pay the Authority the sum of \$5,000 for the costs incurred by the Authority associated with the issuance of the TIF Indebtedness. Redeveloper understands that the law firm assisting with the issuance of the TIF Indebtedness represents the Authority and not the Redeveloper.

Section 4.04 No Discrimination.

Redeveloper agrees and covenants for itself, its successors and assigns that as long as any TIF Indebtedness is outstanding, it will not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status or receipt of public assistance in connection with the Project. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Project, Redeveloper will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, ancestry, disability, marital status or receipt of public assistance. Redeveloper will comply with all applicable federal, state and local laws related to the Project.

Section 4.05 Pay Real Estate Taxes.

Redeveloper intends to create a taxable real property valuation [over and above the valuation thereof as the same existed on January 1, 2011] of the Redevelopment Project Area of Two Million Five Hundred Thousand Dollars (\$2,500,000) no later than January 1, 2012. During the period that any TIF Indebtedness is outstanding, neither the Redeveloper, nor its assigns, will (1) file a protest seeking to obtain a real estate property valuation on the Redevelopment Area of less than the sum of: (a) Two Million Five Hundred Thousand Dollars (\$2,500,000) and (b) the valuation of the Redevelopment Project Area as the same existed on January 1, 2011; (2) convey the Redevelopment Area or structures thereon to any entity which would be exempt from the payment of real estate taxes or cause the nonpayment of such real estate taxes; nor (3) allow real estate taxes and assessments levied on the Redevelopment Area and Project to become delinquent during the term that any TIF Indebtedness is outstanding.

Section 4.07 Assignment or Conveyance.

Any assignment or conveyance of the any portion of the Redevelopment, the Project or any interest therein prior to the termination of the 15 year period commencing on the effective

date specified in Section 3.01 hereof Area by the Redeveloper shall be subject to the terms and conditions of this Redevelopment Contract.

Section 4.08 Purchase of TIF Indebtedness.

The Redeveloper shall purchase the TIF Indebtedness at 100% of the principal amount thereof upon issuance of such debt. The Authority may provide that such purchase be offset against the grant provided in Section 3.04 hereof.

Section 4.09 Penal Bond.

The Developer shall execute a penal bond for the Project with good and sufficient surety to be approved by the Authority meeting the requirements of Section 18-2151, Reissue Revised Statutes of Nebraska, as amended, on or prior to its execution of this Contract.

ARTICLE V

FINANCING REDEVELOPMENT PROJECT; ENCUMBRANCES

Section 5.01 Financing.

Redeveloper shall pay all Project Costs and any and all other costs related to the Redevelopment Area and the Project which are in excess of the amounts paid from the proceeds of the TIF Indebtedness granted to Redeveloper. Prior to issuance of the TIF Indebtedness, Redeveloper shall provide Authority with evidence satisfactory to the Authority that private funds have been committed to the Redevelopment Project in amounts sufficient to complete the Redevelopment Project. Redeveloper shall timely pay all costs, expenses, fees, charges and other amounts associated with the Project which shall include such other fees and expenses imposed by the Authority.

ARTICLE VI

DEFAULT, REMEDIES; INDEMNIFICATION

Section 6.01 General Remedies of Authority and Redeveloper.

Subject to the further provisions of this Article VI, in the event of any failure to perform or breach of this Redevelopment Contract or any of its terms or conditions, by any party hereto or any successor to such party, such party, or successor, shall, upon written notice from the other, proceed immediately to commence such actions as may be reasonably designed to cure or remedy such failure to perform or breach which cure or remedy shall be accomplished within a reasonable time by the diligent pursuit of corrective action. In case such action is not taken, or diligently pursued, or the failure to perform or breach shall not be cured or remedied within a reasonable time, this Redevelopment Contract shall be in default and the aggrieved party may institute such proceedings as may be necessary or desirable to enforce its rights under this Redevelopment Contract, including, but not limited to, proceedings to compel specific

performance by the party failing to perform on in breach of its obligations.

Section 6.02 Additional Remedies of Authority

In the event that:

(a) the Redeveloper, on successor in interest, shall fail to complete the construction of the Project on or before January 1, 2012, or shall abandon construction work for any period of 90 days,

(b) the Redeveloper, on successor in interest, shall fail to pay real estate taxes or assessments on the Redevelopment Area on any part thereof or payments in lieu of taxes pursuant to Section 4.07 when due; or

(c) There is, in violation of Section 4.08 of this Redevelopment Contract, and such failure or action by the Redeveloper has not been cured within 30 days following written notice from Authority, then the Redeveloper shall be in default of this Redevelopment Contract.

In the event of such failure to perform, breach or default occurs and is not cured in the period herein provided, the parties agree that the damages caused to the Authority would be difficult to determine with certainty and that a reasonable estimation of the amount of damages that could be incurred is the amount of the grant to Redeveloper pursuant to Section 3.04 of this Redevelopment Contract, less any reductions in the principal amount of the TIF Indebtedness, plus interest on such amounts as provided herein (the **"Liquidated Damages Amount"**). The Liquidated Damages Amount shall be paid by Redeveloper to Authority within 30 days of demand from Authority.

Interest shall accrue on the Liquidated Damages Amount at the rate of one percent (1%) over the prime rate as published and modified in the Wall Street Journal from time to time and interest shall commence from the date that the Authority gives notice to the Redeveloper demanding payment.

Payment of the Liquidated Damages Amount shall not relieve Redeveloper of its obligation to pay real estate taxes or assessments with respect to the Project.

Section 6.03 Remedies in the Event of Other Redeveloper Defaults.

In the event the Redeveloper fails to perform any other provisions of this Redevelopment Contract (other than those specific provisions contained in Section 6.02), the Redeveloper shall be in default. In such an instance, the Authority may seek to enforce the terms of this Redevelopment Contract or exercise any other remedies that may be provided in this Redevelopment Contract or by applicable law; provided, however, that the default covered by this Section shall not give rise to a right or rescission or termination of this Redevelopment Contract, and shall not be covered by the Liquidated Damages Amount.

Section 6.04 Forced Delay Beyond Party's Control.

For the purposes of any of the provisions of this Redevelopment Contract, neither the Authority nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of or default in its obligations with respect to the conveyance or preparation of the Redevelopment Area for redevelopment, or the beginning and completion of construction of the Project, or progress in respect thereto, in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays in subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of the Authority or of the Redeveloper with respect to construction of the Project, as the case may be, shall be extended for the period of the forced delay: Provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such forced delay, have first notified the other party thereto in writing, and of the cause or causes thereof and requested an extension for the period of the forced delay.

Section 6.05 Limitations of Liability; Indemnification.

Notwithstanding anything in this Article VI or this Redevelopment Contract to the contrary, neither the City, the Authority, nor their officers, directors, employees, agents or their governing bodies shall have any pecuniary obligation or monetary liability under this Redevelopment Contract. The sole obligation of the Authority under this Redevelopment Contract shall be the issuance of the TIF Indebtedness and granting of a portion of the proceeds thereof to Redeveloper, as specifically set forth in Sections 3.02 and 3.04. The obligation of the City and Authority on any TIF Indebtedness shall be limited solely to the payment of the TIF Revenues on the TIF Indebtedness. Specifically, but without limitation, neither the City or Authority shall be liable for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder. The Redeveloper releases the City and Authority from, agrees that neither the City or Authority shall be liable for, and agrees to indemnify and hold the City and Authority harmless from any liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project.

The Redeveloper will indemnify and hold each of the City and Authority and their directors, officers, agents, employees and member of their governing bodies free and harmless from any loss, claim, damage, demand, tax, penalty, liability, disbursement, expense, including litigation expenses, attorneys' fees and expenses, or court costs arising out of any damage or injury, actual or claimed, of whatsoever kind or character, to property (including loss of use thereof) or persons, occurring or allegedly occurring in, on or about the Project during the term of this Redevelopment Contract or arising out of any action or inaction of Redeveloper, whether on not related to the Project, or resulting from or in any way connected with specified events,

including the management of the Project, or in any way related to the enforcement of this Redevelopment Contract or any other cause pertaining to the Project.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Notice Recording.

This Redevelopment Contract or a notice memorandum of this Redevelopment Contract shall be recorded with the County Register of Deeds in which the Redevelopment Area is located.

Section 7.02 Governing Law.

This Redevelopment Contract shall be governed by the laws of the State of Nebraska, including but not limited to the Act.

Section 7.03 Binding Effect; Amendment.

This Redevelopment Contract shall be binding on the parties hereto and their respective successors and assigns. This Redevelopment Contract shall run with the Redevelopment Area. The Redevelopment Contract shall not be amended except by a writing signed by the party to be bound.

Section 7.04 Third Party Enforcement.

The provisions of this Redevelopment Contract which obligate the Redeveloper shall inure to the benefit of the holder of the TIF Indebtedness, the Hall County Assessor, the City and the Authority, any of whom may, but are not obligated to enforce the terms of this Redevelopment Contract in a court of law.

IN WITNESS WHEREOF, City and Redeveloper have signed this Redevelopment Contract as of the date and year first above written.

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF
GRAND ISLAND, NEBRASKA

ATTEST:

Secretary

By: _____
Chairman

Wilmar Realty, LLC

By: _____
Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF HALL)

The foregoing instrument was acknowledged before me this _____ day of _____,
_____, by _____ and _____, Chair and Secretary, respectively, of the
Community Redevelopment Authority of the City of Grand Island, Nebraska, on behalf of the
Authority.

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____, Manager of Wilmar Realty, LLC, on behalf of the limited liability company.

Notary Public

EXHIBIT A

DESCRIPTION OF REDEVELOPMENT AREA

HOME SUB LTS 15 & 16 & PT LTS 5 & 6 & 17
HOME SUB 158' X 100' SW CORNER LT 17 XC 112 SQ FT FOR
STR

HOME SUB N 117'8" OF S 275'8" OF W 132' OF LT 17

HOME SUB N 93.2' OF S 368.8' OF W 132' LT 17

HOME SUB S 40' OF N 73.66' OF W 132' OF LT 17

HOME SUB N 33.67' OF W 132' OF LT 17

HOME SUB 150' X 260' PT LT 6

all located in the City of Grand Island, Hall County, Nebraska, which shall be re platted as Lots One and Two, Skag-Way Subdivision to City of Grand Island, Hall County, Nebraska.

EXHIBIT B

DESCRIPTION OF PROJECT

Site acquisition, demolition and construction of a exterior façade and interior remodeling of Skagway supermarket building together with additional parking lot expansion.

EXHIBIT C

TIF INDEBTEDNESS

1. Principal Amount: \$798,654.00 [annual payment amounts assumed are \$53,250]
2. Payments: Semi-annually or more frequent, with payments limited to annual incremental taxes revenues from the project.
3. Interest Rate: Zero percent (0.00%)
4. Maturity Date: On or before December 31, 2026.

EXHIBIT D

PROJECT COSTS

All Project Costs payable from the proceeds of TIF indebtedness pursuant to the Act including:

1. Redevelopment Area Acquisition cost
2. Site demolition work and site preparation
3. Utility extensions, installation of gas, water, sewer and electrical lines and equipment
4. Façade improvements
5. Interior rehabilitation



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item F1

**#9290 - Consideration of Vacation of a Portion of a Utility
Easement Located Between Sheridan Avenue & Orleans Drive,
From 4th Street to 5th Street**

Staff Contact: Gary R. Mader, Interim Public Works Director

Council Agenda Memo

From: Gary R. Mader, Interim Public Works Director

Meeting: March 8, 2011

Subject: Consideration of Vacation of a Portion of a Utility Easement Located Between Sheridan Avenue & Orleans Drive, From 4th Street to 5th Street

Item #'s: F-1

Presenter(s): Gary R. Mader, Interim Public Works Director

Background

A thirty (30) foot wide utility easement was retained on August 15, 1979, by Ordinance No. 6484 when Hancock Avenue, in Kallos Second Subdivision was vacated. There isn't a need for the full thirty (30) foot easement any longer.

Discussion

The property owner of Lots 20, 21 & 22 in Kallos Second Subdivision is requesting to vacate the west eighteen (18) feet of the easement, due to the construction of a building within that portion of the easement. The City will retain the east twelve (12) feet of the easement, along with eight (8) feet on the east side of the east property line, for utility access. This will allow for a total of twenty (20) feet of utility easement.

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 pass an ordinance vacating the west eighteen (18) feet of the utility easement in Kallos Second Subdivision.

Sample Motion

Move to pass an ordinance vacating the west eighteen (18) feet of the utility easement in Kallos Second Subdivision.

ORDINANCE NO. 9290

An ordinance to vacate a portion of an existing utility easement and to provide for filing this ordinance in the office of the Register of Deeds of Hall County, Nebraska; to repeal any ordinance or parts of ordinances in conflict herewith, and to provide for publication and the effective date of this ordinance.

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

SECTION 1. That a portion of the existing utility easement at 2904, 2905 & 2906 West 5th Street in Grand Island, Hall County, Nebraska, more particularly described as follows:

VACATING THE WESTERLY 18' OF THE EASTERLY 30' OF THE EASEMENT BEING THE EASTERLY 30' OF LOTS 20, 21, 22 KALLOS SECOND SUBDIVISION, CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA.

is hereby vacated. Such easement to be vacated is shown and more particularly described on Exhibit A attached hereto.

SECTION 2. The title to the property vacated by Section 1 of this ordinance shall revert to the owner or owners of the real estate upon which the easement is located.

SECTION 3. This ordinance is directed to be filed, with the drawing, in the office of the Register of Deeds of Hall County, Nebraska.

ORDINANCE NO. 9290 (Cont.)

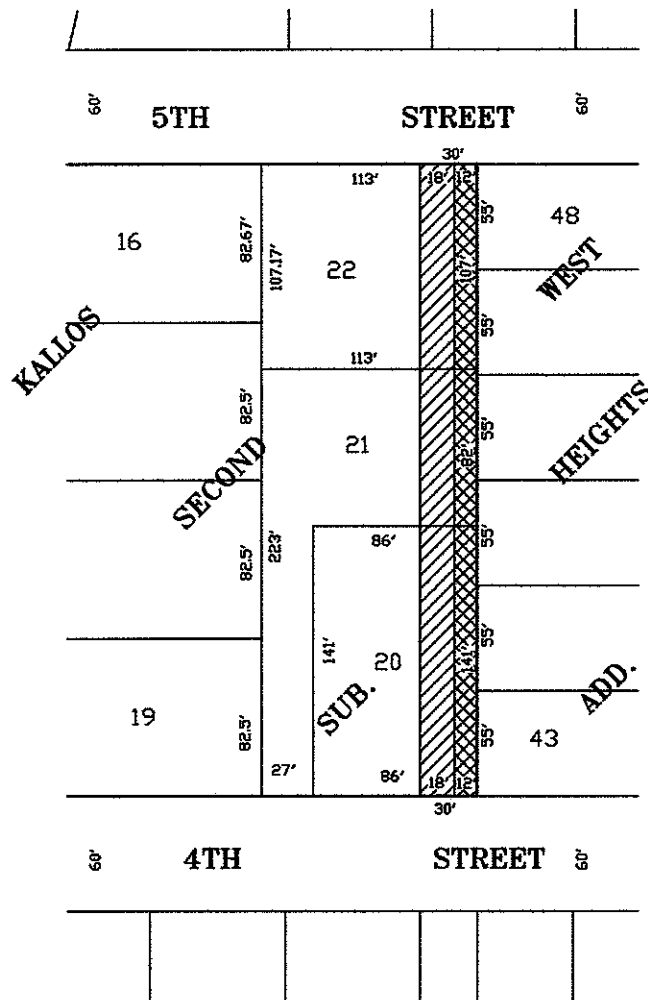
SECTION 3. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: March 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



LEGEND

 EASEMENT AREA TO BE VACATED

 EASEMENT AREA TO BE RETAINED



EXHIBIT "A"

CITY OF
GRAND ISLAND
PUBLIC WORKS DEPARTMENT

DATE: 1/26/11
 DRN BY: L.D.C.
 SCALE: 1"=100'

PLAT TO ACCOMPANY
 ORDINANCE NO.



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item F2

**#9291 - Consideration of Authorizing Series 2011 Public Safety
Tax Anticipation Refunding Bonds**

Staff Contact: Mary Lou Brown

Council Agenda Memo

From: Mary Lou Brown, Finance Director

Meeting: March 8, 2011

Subject: Consideration of Authorizing Series 2011 Public Safety Tax Anticipation Refunding Bonds and Approving Redemption of Series 2006 Public Safety Tax Anticipation Bonds

Item #'s: F-2 & G-14

Presenter(s): Mary Lou Brown, Finance Director

Background

Potential bond refinancing activities were reviewed with the Council during a Study Session late last year. The Resolution and Ordinance for the first refinancing is now ready to be presented to Council for action.

Discussion

The Public Safety Tax Anticipation Bonds, Series 2006, date of original issue – August 29, 2006 – in the principal amount of \$5,735,000 are being called for payment on August 29, 2011; after such time, interest on the bonds will cease. These bonds were originally issued for the purpose of providing funds for the construction and equipping of the law enforcement center and miscellaneous costs associated therewith.

These bonds will be replaced with the issuance of Public Safety Tax Anticipation Refunding Bonds, Series 2011 in the principal amount of \$5,535,000. The purpose of these bonds is to pay and redeem the \$5,735,000 of the City's Bonds referenced above.

Cornerstone Bank of York, Nebraska will serve as the escrow agent, paying agent and registrar.

The final numbers and debt service savings will be available at the Council meeting Tuesday night.

Alternatives

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

1. Move to approve the Redemption of Series 2006 Public Safety Tax Anticipation Bonds in the principal amount of \$5,735,000 and Authorize the Issuance of Series 2011 Public Safety Tax Anticipation Refunding Bonds in the principal amount of \$5,535,000
2. Postpone the issue to a future meeting.
3. Take no action.

Recommendation

City Administration recommends that the Council approve the Redemption of Series 2006 Public Safety Tax Anticipation Bonds in the principal amount of \$5,735,000 and the Issuance of Series 2011 Public Safety Tax Anticipation Refunding Bonds in the principal amount of \$5,535,000.

Sample Motion

Move to approve the Redemption of Series 2006 Public Safety Tax Anticipation Bonds in the principal amount of \$5,735,000 and the Issuance of Series 2011 Public Safety Tax Anticipation Refunding Bonds in the principal amount of \$5,535,000.

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of _____, is made by and between the City of Grand Island, Nebraska (the "City") and Cornerstone Bank, York, Nebraska (the "Escrow Agent").

WITNESSETH:

The City is issuing contemporaneously with the execution of this Escrow Agreement \$5,535,000 of its Public Safety Tax Anticipation Refunding Bonds, date of original issue - _____, 2011 (the "Refunding Bonds"), for the purpose, among other things, of providing in full for the payment of certain outstanding bonds as described below. The Refunding Bonds have been authorized to be issued by ordinance passed on _____ (the "Ordinance"). For purposes of assuring that payments are made as required by the Ordinance, the City desires to establish a special escrow account. The Escrow Agent is willing to serve as the City's agent and trustee for such purpose.

The City has issued and outstanding the following bonds which constitute its valid and binding legal obligations:

Public Safety Tax Anticipation Bonds, Series 2006, date of original issue - August 29, 2006, in the principal amount of Five Million Seven Hundred Thirty-five Thousand Dollars (\$5,735,000), numbered as shown on the books of the Paying Agent and Registrar, and becoming due and bearing interest as follows:

<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
\$ 620,000	September 1, 2011	3.95%	385654 AE 8
645,000	September 1, 2012	4.00	385654 AF 5
670,000	September 1, 2013	4.00	385654 AG 3
700,000	September 1, 2014	4.10	385654 AH 1
725,000	September 1, 2015	4.15	385654 AJ 7
755,000	September 1, 2016	4.20	385654 AK 4
790,000	September 1, 2017	4.30	385654 AL 2
830,000	September 1, 2018	4.35	385654 AM 0

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

The Refunded Bonds are subject to redemption at any time on or after August 29, 2011, at par and accrued interest, and said interest is payable semiannually.

Said Refunded Bonds were issued for the purpose of providing funds for the construction and equipping of a law enforcement center and miscellaneous costs associated therewith.

All of said bonds are outstanding and a legal liability of this City.

The City has determined by the Ordinance that it is necessary and advisable for the City to provide for the payment in full of the Refunded Bonds by a deposit of cash and United States Treasury Securities with the Escrow Agent in order to satisfy its obligation on the Refunded Bonds.

NOW, THEREFORE, the City and the Escrow Agent agree as follows:

Section 1. The Refunded Bonds have been called for redemption on August 29, 2011 (the "Redemption Date"). Attached hereto as Exhibit "A", is a schedule of the principal and interest payments due on the Refunded Bonds as called for redemption. Said Bonds shall remain payable at Cornerstone Bank, York, Nebraska, as paying agent and registrar for the Refunded Bonds.

Section 2. There is hereby created and established with the Escrow Agent a special escrow to be designated "City of Grand Island Escrow Deposit Fund" (the "Escrow Deposit Fund") to be held in trust, by Escrow Agent. On April 12, 2011, or as soon thereafter as practicable, there shall be transferred to Escrow Agent the United States government obligations listed in Exhibit "B". The monies and obligations deposited with Escrow Agent will be sufficient to provide Escrow Agent with sufficient monies to pay the principal of, and premium and interest on, the Refunded Bonds as set forth in Exhibit "A". All investment earnings on government obligations listed in Exhibit "B" are to be applied to payments of interest and principal falling due on the Refunded Bonds. Except as set forth in Exhibit "B", the Escrow Agent shall not invest any monies held in the Escrow Deposit Fund and any such monies in excess of current payment requirements shall be held in a non-interest bearing bank depository account which shall be fully insured or fully secured in the manner required by law for cities of the first class deposits and may be maintained as an account with Escrow Agent itself.

Section 3. On or before each interest payment date on the Refunded Bonds, without further direction, Escrow Agent shall provide sufficient funds from monies on hand in the Escrow Deposit Fund from payments of the maturing principal and interest on the United States government obligations for the payment of interest on the Refunded Bonds due and payable on said date. Monies in the Escrow Deposit Fund shall be applied to payments on the Refunded Bonds as directed in Exhibit "B". All such payments shall be made by Escrow Agent on or before the respective payment dates shown in Exhibit "A", paid to Cornerstone Bank, as paying agent for the Refunded Bonds, in current bankable funds.

Section 4. The escrow created hereby shall be irrevocable. All right, title and interest of the City in the United States government obligations and monies listed on Exhibit "B" and the payments to be received therefrom are hereby irrevocably assigned to Escrow Agent for purposes of paying in full, and as payment in full for principal and interest due on the Refunded Bonds. All monies and securities held or assigned to Escrow Agent hereunder shall be subject to an express trust as created by this Escrow Agreement until paid out, used and applied in accordance with this Escrow Agreement.

Section 5. Except as provided in Section 2, Escrow Agent shall have no power or duty to invest or reinvest any monies held hereunder or to make any substitutions for the United States government obligations or to sell, transfer or otherwise dispose of said obligations and the duties of the Escrow Agent shall be limited to receiving and paying out monies hereunder for purposes of paying principal and interest on the Refunded Bonds as the same fall due and as called for redemption.

Section 6. In consideration of the services rendered by Escrow Agent under this Escrow Agreement, Escrow Agent shall receive the sum of \$_____ which payment is to be made by the City and shall constitute the compensation for all services to be rendered by Escrow Agent hereunder. Escrow Agent shall have no lien or claim against any of the cash or securities in the Escrow Deposit Fund for the payment of its fees and expenses.

Section 7. This Escrow Agreement shall terminate when the Refunded Bonds and interest due thereon have been paid in full by making the payments required hereunder to be made to Cornerstone Bank, as paying agent for the Refunded Bonds. Any monies held in the Escrow Deposit Fund at the termination of this Escrow Agreement which are not required for the payment of the principal or interest on the Refunded Bonds shall be paid over to the City upon the termination hereof.

Section 8. Escrow Agent and the City covenant and agree that neither of them will take or omit to take any action which would cause the Refunded Bonds or the Refunding Bonds to be arbitrage bonds within the meaning of Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder (the "Code"), or take or omit to take any action which would cause the Refunded Bonds or the Refunding Bonds to lose their tax-exempt status under said Code.

Section 9. The City agrees to execute for purposes of further assuring the rights of Escrow Agent hereunder and the rights of the holders of the Refunded Bonds, any Uniform Commercial Code Financing Statement or Statements which Escrow Agent may require.

Section 10. If any one or more of the covenants or agreements to be performed by either of the parties to this Escrow Agreement shall be determined by a court of competent jurisdiction to be unenforceable, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements contained herein and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

Section 11. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 12. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have each caused this Escrow Agreement to be executed by their duly authorized officers and attested as of the date first above written.

THE CITY OF GRAND ISLAND,
IN THE STATE OF NEBRASKA

By: _____
Mayor

ATTEST

City Clerk

Cornerstone Bank
York, Nebraska
Escrow Agent

By: _____
Its: _____

EXHIBIT "A"

TO ESCROW AGREEMENT

PAYMENTS DUE ON OUTSTANDING BONDS

Payment Date
August 29, 2011

Amount Due

EXHIBIT "B"
TO ESCROW AGREEMENT

LIST OF UNITED STATES GOVERNMENT OBLIGATIONS
HELD IN ESCROW DEPOSIT FUND

Principal <u>Amount</u>	<u>Title</u>	Rate of <u>Interest</u>	First Interest Payment to be <u>Received</u>	<u>Maturity</u>
----------------------------	--------------	----------------------------	--	-----------------

Plus _____ in cash to be held in a non-interest bearing demand deposit account which is fully insured by insurance of the Federal Deposit Insurance Corporation until _____.

LIST OF PAYMENTS TO BE RECEIVED
FOR ESCROW DEPOSIT FUND

<u>Date</u>	<u>Amount</u>
08-29-11	

APPLICATION OF MONIES
ESCROW DEPOSIT FUND

<u>Payment Date</u>	<u>Refunded Bonds</u>	<u>Applied from Escrow Deposit Fund</u>
August 29, 2011		

All remaining monies after all the above payments have been made in full shall be transferred to the Paying Agent and Registrar to be applied to the payments of principal and interest next due on the Refunding Bonds.

PAYING AGENT AND REGISTRAR'S AGREEMENT

This Agreement made and entered into as of the _____ day of _____, 2011, by and between the City of Grand Island, Nebraska (the "City") and Cornerstone Bank, York, Nebraska (the "Registrar").

WITNESSETH:

WHEREAS, the City has authorized the issuance of \$_____ of its Public Safety Tax Anticipation Refunding Bonds, Series 2011, date of original issue - _____, (the "Bonds") by Ordinance No. _____ (the "Ordinance") and requires the services of a paying agent and registrar for said issue: and

WHEREAS, the Registrar is willing to provide services as paying agent and registrar pursuant to the terms of this Agreement and the Ordinance in consideration for the compensation described in this Agreement.

NOW, THEREFORE, the City and the Registrar do hereby agree as follows:

1. The Registrar agrees that it shall maintain on behalf of the City books of record in which the registered owners of the Bonds and their registered addresses shall be duly recorded.

2. The Registrar agrees that it shall serve as paying agent for the City in making the payments of principal and interest falling due on the Bonds. The City shall, not later than each interest and principal payment date on the Bonds, deposit with the Registrar an amount sufficient to make such payment and the Registrar shall apply such deposit by mailing a check or draft to each of the registered owners of the Bonds as shown on the books of record maintained pursuant to paragraph 1 hereof for the appropriate amounts of interest due on each respective Bond, and pay principal and interest upon presentation of each respective Bond in accordance with the terms of the Ordinance. The provisions of this paragraph 2 are subject to the terms set forth in paragraph 15 as to the Bonds while outstanding as "book-entry-only bonds."

3. Registrar hereby accepts and agrees to perform all duties directed by the Ordinance to be performed by the "Paying Agent and Registrar" as described in the Ordinance and the terms of the Ordinance are hereby incorporated by reference. Registrar acknowledges receipt of a copy of the Ordinance. Registrar acknowledges that the City may make deposits of money or securities as provided in the Ordinance. In the event of any such deposit, the compensation provided for under this Agreement shall not be altered or abated.

4. The City shall furnish to the Registrar a sufficient supply of forms in blank of the Bonds to be issued upon transfer, signed by the facsimile signatures of the Mayor and City Clerk and sealed with the City seal and shall renew such supply pursuant to the Ordinance upon request by the Registrar.

5. The Registrar shall make the initial registration of the Bonds upon written directions from the original purchaser thereof as designated in the Ordinance.

6. Transfer of the Bonds shall be registered and new Bonds issued in replacement thereof, pursuant to the limitations prescribed in the Ordinance, upon surrender to the Registrar of any outstanding Bond in form deemed by the Registrar properly endorsed for transfer with all necessary signatures guaranteed in such manner and form as the Registrar may require by a signature guarantor reasonably believed by Registrar to be responsible, accompanied by such assurances as the Registrar shall deem

necessary or appropriate to evidence the genuineness and effectiveness of each necessary signature and, if deemed appropriate by the Registrar, satisfactory evidence of compliance with all applicable laws relating to the collection of taxes. In registering transfer of the Bonds, the Registrar may rely upon the Uniform Commercial Code or any other statutes which in the opinion of counsel protect the Registrar and the City in not requiring complete documentation, in registering Bonds without inquiry into adverse claims, in delaying registration for purposes of such inquiry or in refusing registration where in Registrar's judgment an adverse claim requires such refusal.

7. Replacement Bonds for any of the Bonds damaged, lost or stolen shall be issued by the Registrar upon a duly certified resolution or resolutions in compliance with the requirements of Sections 10-127 to 10-130, R.R.S. Neb. 2007, as now existing or as hereafter amended.

8. As provided by law, the books of registration maintained by the Registrar shall not be deemed public records and shall be available for inspection solely pursuant to a court order or a subpoena of any governmental agency having jurisdiction to issue such subpoena.

9. At least annually, the Registrar shall give a report to the City accounting for all funds received and disbursements made. The Registrar shall maintain customary records in connection with its exercise of its duties under this Agreement and the Ordinance.

10. At anytime the Registrar may apply to the City for instructions and may consult with the City's attorney or the Registrar's own counsel in respect to any matter arising in connection with its duties under this Agreement and the Ordinance and the Registrar shall not be liable or accountable for any action taken or omitted by it in good faith in accordance with such instructions or with the opinion of such counsel. The Registrar may rely on any paper or document reasonably believed by it to be genuine and to have been signed by the proper person or persons.

11. The City hereby agrees to pay any expenses reasonably incurred by the Registrar in connection with the performance of its duties under this Agreement and the Ordinance, including counsel fees, and in addition shall pay to the Registrar as compensation for its services the following:

See Attachment

12. Any corporation or association into which the Registrar may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall, ipso facto, be and become successor Registrar hereunder and vested with all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

13. The City shall have the right to remove the Registrar only in the event of a material breach of the Registrar's duties under this Agreement and the Ordinance. In such event the Mayor and Council of the City shall have the right to designate a successor and the Registrar hereby agrees that it shall turn over all of its records with respect to the Bonds to any such successor upon request by the City.

14. This Agreement shall terminate when the Bonds have been paid in full. The Registrar shall have no duties with respect to the investment of monies paid to it under this Agreement and the Ordinance. Any deposit of such monies shall be either fully insured by insurance of the Federal Deposit Insurance Corporation or fully secured in the manner required by law for deposit of funds of the City.

Any such deposit may be in an account maintained with the Registrar or an affiliate of the Registrar.

15. Under the terms of the Ordinance, the Bonds are to be issued initially as "book-entry-only bonds" using the services of The Depository Trust Company (the "Depository") and initially the entire issue of the Bonds shall be registered in the name of Cede & Co., as nominee for the Depository, with one typewritten bond for each separate stated maturity. Payment of semiannual interest for any Bond registered as of each Record Date in the name of Cede & Co. shall be made by wire transfer to the Depository in accordance with its procedures as in effect from time to time. The Registrar agrees that it will execute and observe the terms and conditions of the Letter of Representations (the "Letter of Representations") as authorized by the Ordinance. The Letter of Representations may be in the form of separate undertakings executed by the Registrar and the City in connection with services provided by the Depository.

The Registrar and the City may treat the Depository (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to bondholders under the Ordinance, registering the transfer of Bonds, obtaining any consent or other action to be taken by bondholders and for all other purposes whatsoever, and neither the Registrar nor the City shall be affected by any notice to the contrary. Neither the Registrar nor the City shall have any responsibility or obligation to any participant of the Depository ("Participant"), any person claiming a beneficial ownership interest in the Bonds under or through the Depository or any Participant, or any other person which is not shown on the registration books of the Registrar as being a bondholder, with respect to the accuracy of any records maintained by the Depository or any Participant; the payment by the Depository or any Participant of any amount in respect of the principal of or interest on the Bonds; any notice which is permitted or required to be given to bondholders under the Ordinance; the selection by the Depository or any Participant of any person to receive payment in the event of a partial redemption of the Bonds; or any consent given or other action taken by the Depository as bondholder. The Registrar shall pay all principal of and interest on the Bonds only to the Depository, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. Except under the conditions directed below, no person other than the Depository shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the City to make payments of principal and interest pursuant to the Ordinance. Upon delivery by the Depository to the Registrar of written notice to the effect that the Depository has determined to substitute a new nominee in the place of Cede & Co., and subject to the provisions in the Ordinance with respect to Record Dates, the term "Cede & Co." in this Agreement shall refer to such new nominee of the Depository. If the Depository gives notice to the City or the Registrar pursuant to the Letter of Representations that it will discontinue providing its services as securities depository with respect to the Bonds, the City shall either appoint a successor securities depository or terminate the book-entry system for the Bonds under the following conditions:

(i) Any successor securities depository must be a clearing agency registered with the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934 and must enter into an agreement with the City and the Registrar agreeing to act as the depository and clearing agency for all the Bonds. After such agreement has become effective, the Depository shall present the Bonds for registration of transfer in accordance with Section 3 of the Ordinance and the Registrar shall register them in the name of the successor securities depository or its nominee. If a successor securities depository has not accepted such position prior to the effective date of the Depository's termination of its services, the book-entry system shall automatically terminate.

(ii) If the City elects to terminate the book-entry system for the Bonds, it shall so notify the

Registrar in writing. Thereafter, upon presentation of the Bonds, or any of them, by the Depository or its nominee to the Registrar for registration of transfer in accordance with Section 3 of the Ordinance, the Registrar shall register the transfer in accordance with such Section 3 of the Ordinance and all provisions of this paragraph 15 shall immediately cease to be in effect.

The City may elect to terminate the book-entry system for the Bonds at any time by giving written notice to the Depository and the Registrar. On the effective date of such termination, the provisions of this paragraph 15 shall cease to be in effect, except that the Registrar shall continue to comply with applicable provisions of the Letter of Representations with respect to Bonds as to which the Depository remains the registered owner. After such termination, the Registrar shall, upon presentation of Bonds by the Depository or its nominee for registration of transfer or exchange in accordance with Section 3 of the Ordinance make such transfer or exchange in accordance with said Section 3. Upon the appointment of a successor securities depository or termination of the book-entry system, the Registrar shall give notice of such event to the registered owners of Bonds (through the Depository) and (1) of the name and address of the successor securities depository or (2) that Bonds may now be obtained by the beneficial owners of the Bonds, or their nominees, upon proper instructions being given to the Depository by the relevant Participant and compliance by the Depository with the provisions of the Ordinance regarding registration of transfers. Notwithstanding any other provision of this Agreement to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of the Depository (or any successor nominee), all payments with respect to the principal and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations. In connection with any notice or other communication to be provided to bondholders pursuant to the Ordinance by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository notice of such record date not less than 15 calendar days in advance of such record date to the extent possible.

16. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have each caused this Paying Agent and Registrar's Agreement to be executed by their duly authorized officers as of the date first above written.

THE CITY OF GRAND ISLAND, NEBRASKA

(SEAL)

By: _____

Mayor

ATTEST

City Clerk

Cornerstone Bank,
York, Nebraska
Paying Agent and Registrar

By: _____

Its: _____

ORDINANCE NO. 9291

AN ORDINANCE AUTHORIZING THE ISSUANCE OF PUBLIC SAFETY TAX ANTICIPATION REFUNDING BONDS OF THE CITY OF GRAND ISLAND, NEBRASKA, IN THE PRINCIPAL AMOUNT OF FIVE MILLION FIVE HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$5,535,000) FOR THE PURPOSE OF PAYING AND REDEEMING \$5,735,000 OF THE CITY'S OUTSTANDING PUBLIC SAFETY TAX ANTICIPATION BONDS, SERIES 2006, DATE OF ORIGINAL ISSUE – AUGUST 29, 2006; 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:

a. 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:

Public Safety Tax Anticipation Bonds, Series 2006, date of original issue - August 29, 2006, in the principal amount of Five Million Seven Hundred Thirty-five Thousand Dollars (\$5,735,000), numbered as shown on the books of the Paying Agent and Registrar, and becoming due and bearing interest as follows:

<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
\$ 620,000	September 1, 2011	3.95%	385654 AE 8
645,000	September 1, 2012	4.00	385654 AF 5
670,000	September 1, 2013	4.00	385654 AG 3
700,000	September 1, 2014	4.10	385654 AH 1
725,000	September 1, 2015	4.15	385654 AJ 7
755,000	September 1, 2016	4.20	385654 AK 4
790,000	September 1, 2017	4.30	385654 AL 2
830,000	September 1, 2018	4.35	385654 AM 0

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

The Refunded Bonds are subject to redemption at any time on or after August 29, 2011, at par and accrued interest, and said interest is payable semiannually.

Said Refunded Bonds were issued for the purpose of providing funds for the

ORDINANCE No. 9291 (Cont.)

construction and equipping of a law enforcement center and miscellaneous costs associated therewith.

The Refunded Bonds are valid, interest bearing obligations of the City of Grand Island, Nebraska, and have been called for redemption on August 29, 2011 (the "Redemption Date"). Since the Refunded Bonds were issued, the rates of interest have so declined in the markets that by taking up and paying off said Refunded Bonds on the Redemption Date, a substantial savings in the amount of yearly running interest will be made to the City; that 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 \$5,535,000; that all conditions, acts and things required to exist or to be done precedent to the issuance of refunding bonds of the City of Grand Island, Nebraska, in the principal amount of Five Million Five Hundred Thirty-five Thousand Dollars (\$5,535,000), pursuant to Section 10-142 and Sections 18-1201 and 18-1202 R.R.S. Neb. 2007, do exist and have been done as required by law.

(b) that the taxable valuation of all taxable property within the City as most recently determined, is \$2,395,497,486; that the City has no outstanding bonds outstanding under the provisions of Section 18-1202 R.R.S. Neb. 2007, as amended; that pursuant to Section 18-1201 R.R.S. Nebraska, 2007, as amended, the Mayor and Council of the City of Grand Island do hereby provide for the levying of a special tax, all as more specifically described in Section 10 hereof; and that the annual debt service on the bonds herein authorized does not in any year exceed \$_____.

Section 2. To provide for the refunding of the Refunded Bonds as specified in Section 1 hereof, there shall be and there are hereby ordered issued Public Safety Tax Anticipation Refunding Bonds, Series 2011, of the City of Grand Island, Nebraska, in the principal amount of Five Million Five Hundred Thirty-five Thousand Dollars (\$5,535,000) (the "Series 2011 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 September 1 of each year in the principal amounts as follows:

ORDINANCE No. 9291 (Cont.)

<i><u>Principal Amount</u></i>	<i><u>Date of Maturity</u></i>	<i><u>Rate of Interest</u></i>
\$ 280,000	September 1, 2011	
715,000	September 1, 2012	
720,000	September 1, 2013	
735,000	September 1, 2014	
740,000	September 1, 2015	
760,000	September 1, 2016	
780,000	September 1, 2017	
805,000	September 1, 2018	

The Series 2011 Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The Series 2011 Bonds shall bear date of original issue of the date of delivery thereof. Interest on the Series 2011 Bonds, at the respective rates for each maturity, shall be payable semiannually on March 1 and September 1 of each year, commencing September 1, 2011 (each of said dates an “Interest Payment Date”) and the Series 2011 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 fifteenth 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 2011 Bonds shall be numbered from 1 upwards in the order of their issuance. No Series 2011 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 2011 Bonds issued shall be designated by the City’s Treasurer as directed by the initial purchaser thereof. Payments of interest due on the Series 2011 Bonds prior to maturity or date of redemption shall be made by the Paying Agent and Registrar, as designated pursuant to

ORDINANCE No. 9291 (Cont.)

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 2011 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 2011 Bonds to said Paying Agent and Registrar. The City and said Paying Agent and Registrar may treat the registered owner of any Series 2011 Bond as the absolute owner of such Series 2011 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 2011 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 2011 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 2011 Bonds or claims for interest to the extent of the sum or sums so paid.

Section 3. Cornerstone Bank, York, Nebraska, is hereby designated as Paying Agent and Registrar for the Series 2011 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

ORDINANCE No. 9291 (Cont.)

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 2011 Bonds at its principal corporate trust office. The names and registered addresses of the registered owner or owners of the Series 2011 Bonds shall at all times be recorded in such books. Any Series 2011 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 2011 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 2011 Bond or Series 2011 Bonds of the same interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the Series 2011 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 2011 Bond, the surrendered Series 2011 Bond or Bonds shall be canceled and destroyed. All Series 2011 Bonds issued upon transfer of the Series 2011 Bonds so surrendered shall be valid obligations of the City evidencing the same obligations as the Series 2011 Bonds surrendered and shall be entitled to all the benefits and protection of this Ordinance to the same extent as the Series 2011 Bonds upon transfer of which they

ORDINANCE No. 9291 (Cont.)

were delivered. The City and said Paying Agent and Registrar shall not be required to transfer any Series 2011 Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any Series 2011 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 2011 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 2011 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 2011 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 2011 Bonds maturing September 1, 2016 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

ORDINANCE No. 9291 (Cont.)

Series 2011 Bonds to be redeemed in its sole discretion but the Series 2011 Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Series 2011 Bonds redeemed in part only shall be surrendered to said Paying Agent and Registrar in exchange for new Series 2011 Bonds evidencing the unredeemed principal thereof. Notice of redemption of any Series 2011 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 2011 Bond at said owner's registered address. Such notice shall designate the Series 2011 Bond or Series 2011 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 2011 Bond or Series 2011 Bonds are to be presented for prepayment at the office of said Paying Agent and Registrar. In case of any Series 2011 Bond partially redeemed, such notice shall specify the portion of the principal amount of such Series 2011 Bond to be redeemed. No defect in the mailing of notice for any Series 2011 Bond shall affect the sufficiency of the proceedings of the City designating the Series 2011 Bonds called for redemption or the effectiveness of such call for Series 2011 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 2011 Bond for which defective notice has been given.

Section 7. The Series 2011 Bonds shall be in substantially the following form:

**UNITED STATES OF AMERICA
STATE OF NEBRASKA
COUNTY OF HALL
PUBLIC SAFETY TAX ANTICIPATION REFUNDING BOND
OF THE CITY OF GRAND ISLAND, NEBRASKA
SERIES 2011**

No. _____ \$ _____

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
<u>No.</u>	_____	_____, 2011	

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 March 1 and September 1 of each year, commencing September 1, 2011 (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 fifteenth 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.

This bond is one of an issue of fully registered bonds of the total principal amount of Five Million Five Hundred Thirty-five Thousand Dollars (\$5,535,000), 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 refunding on August 29, 2011, \$5,735,000 Public

ORDINANCE No. 9291 (Cont.)

Safety Tax Anticipation Bonds, Series 2006, of the City, date of original issue - August 29, 2006, all in strict compliance with Sections 10-142, 18-1201 and 18-1202 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 (the "Ordinance").

Bonds of this issue maturing September 1, 2016, 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. 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 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, 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 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, does not exceed any limitation imposed by law. The City has agreed to make a special levy of taxes as permitted by Section 18-1201 R.R.S. Neb., 2007, as amended, of not more than 5¢ per \$100 of taxable value on all the taxable property within the City, which tax shall be 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. The City agrees that said bonds shall be secured by such tax so assessed and levied and shall be payable only out of the funds derived from such tax.

AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS

ORDINANCE No. 9291 (Cont.)

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 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.

NEBRASKA CITY OF GRAND ISLAND,

(Do not sign) _____
Mayor

ATTEST:

(Do not sign) _____
City Clerk

(SEAL)

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 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 2011 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 Series 2011 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 2011 Bonds. With respect to the issuance of the Series 2011 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 2011 Bonds as securities depository (each, a "Bond Participant") or to any person who is an actual purchaser of a Series 2011 Bond from a Bond Participant while the Series 2011 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 2011 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 2011 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 2011 Bonds. The Paying Agent and Registrar shall make

ORDINANCE No. 9291 (Cont.)

payments with respect to the Series 2011 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 2011 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 2011 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 2011 Bonds or (ii) to make available Series 2011 Bonds registered in whatever name or names as the Beneficial Owners transferring or exchanging such Series 2011 Bonds shall designate.

(c) If the City determines that it is desirable that certificates representing the Series 2011 Bonds be delivered to the ultimate beneficial owners of the Series 2011 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 2011 Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the Series 2011 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 2011 Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such Series 2011 Bond and all notices with respect to such Series 2011 Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the Series 2011 Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the Series 2011 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.

ORDINANCE No. 9291 (Cont.)

(f) In the event of any partial redemption of a Series 2011 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 2011 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, duly executed by manual or facsimile signatures of the Mayor and City Clerk and sealed with the City's seal, 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 2011 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 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 2011 Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The Series 2011 Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration, and authentication of the Series 2011 Bonds, they shall be delivered to the City Treasurer, who is authorized to deliver them to Ameritas Investment Corp., as initial purchaser

ORDINANCE No. 9291 (Cont.)

thereof. The Series 2011 Bonds are hereby sold to said purchaser for the sum of \$_____, plus accrued interest, if any, thereon to date of payment and delivery. Such purchaser and its agents, representatives and counsel (including its 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 2011 Bonds, including without limitation, authorizing the release of the Series 2011 Bonds by the Depository at closing. Said initial purchaser shall have the right to direct the registration of the Series 2011 Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. 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. The Treasurer of the City shall maintain a record of information with respect to the Series 2011 Bonds as required under Section 10-140, R.R.S. 2007, and shall cause the same to be filed in the office of the Auditor of Public Accounts of the State of Nebraska. The City Clerk shall make and certify a duplicate transcript of the proceedings of the Mayor and Council with respect to the Series 2011 Bonds which shall be delivered to said purchaser. The officers of the City are further authorized to take such actions as such officers may deem necessary or appropriate in order to carry out the terms of this Ordinance.

Section 9. The proceeds of the Series 2011 Bonds herein authorized shall be applied to: (a) the payment of principal of and interest on the Refunded Bonds as the same fall due on and prior to the Redemption Date, and as called for redemption on the Redemption Date and paying the costs of issuance of the Series 2011 Bonds. Accrued interest, if any, received upon closing of the Series 2011 Bonds shall be applied to pay

ORDINANCE No. 9291 (Cont.)

interest falling due on September 1, 2011. All of the proceeds of the Series 2011 Bonds remaining after payment of costs of issuance, together with such other available funds of the City as may be required to fully fund the escrow for the Refunded Bonds, shall be set aside and held and invested in a special trust account for payment of the Refunded Bonds which is hereby ordered established. Cornerstone Bank, York, Nebraska, is hereby designated to serve as the escrow agent ("Escrow Agent"), to have custody and safekeeping of the funds and investments which are to be set aside for the payment of the Refunded Bonds. For purposes of governing such escrow account and the holding and application of such funds and investments, the City shall enter into a contract entitled "Escrow Agreement" with the Escrow Agent. The Mayor and City Clerk are hereby authorized and directed to execute and deliver on behalf of the City said Escrow Agreement, including necessary counterparts, in substantially the form and content as presented to the meeting at which this Ordinance is passed, but with such changes and modifications therein as to them seem necessary, desirable, or appropriate for and on behalf of the City. Said Mayor and City Clerk are further authorized to approve the investments provided for in said Escrow Agreement, and to make any necessary subscriptions for United States Treasury Securities, State and Local Government Series, or to contract for the purchase of securities in the open market. Said proceeds shall be invested in obligations of the United States Government, direct or guaranteed, including United States Treasury Securities, State and Local Government Series. To the extent that such proceeds are held in a bank depository account, such deposits shall be insured by insurance of the Federal Deposit Insurance Corporation or, to the extent not fully insured, fully collateralized in the same manner as is required for deposit of public funds. Any

ORDINANCE No. 9291 (Cont.)

investment from the proceeds of the Series 2011 Bonds herein authorized shall mature not later than August 29, 2011. As provided in said Escrow Agreement, the proceeds of the Series 2011 Bonds herein authorized and investment earnings thereon shall be applied to the payment of the principal of and interest on the Refunded Bonds as the same become due on and prior to the Redemption Date, and as called for redemption on the Redemption Date. The City agrees that on the date of issuance of the Series 2011 Bonds, or as soon thereafter as practicable, it shall deposit or otherwise have on hand with the Escrow Agent from City funds on hand sufficient after taking into consideration available proceeds of the Series 2011 Bonds and investment earnings to provide funds for all payments due on the Refunded Bonds on or before the Redemption Date, and as called for redemption on the Redemption Date. The City hereby covenants and agrees to take all steps necessary and appropriate, including transfer and deposit of any additional required funds, to provide for the calling and redemption of the Refunded Bonds on August 29, 2011.

Section 10. The holders of the Series 2011 Bonds shall be subrogated to all rights of the holders of the Refunded Bonds. The City agrees that it shall, pursuant to Section 18-1201 R.R.S. Neb. 2011, as amended, levy a special tax so long as any of the Series 2011 Bonds remain outstanding of not more than 5¢ per \$100 of taxable value on all the taxable property within the City. The City further agrees that such tax shall be levied in such amount so that in each calendar year in which payments of principal and interest fall due on the Series 2011 Bonds, the anticipated amount to be collected from such tax shall be an amount of not less than 112% of the total amount of principal and interest payable on the Series 2011 Bonds in such calendar year. The Series 2011 Bonds shall be secured

ORDINANCE No. 9291 (Cont.)

by such tax and shall be payable out of the funds derived from such tax. On receipt of such taxes, the City Treasurer shall hold such tax in a separate fund for the purpose of paying the Series 2011 Bonds or making redemptions as provided in Section 6 of this Ordinance.

Section 11. The City hereby covenants to the purchasers and holders of the Series 2011 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 2011 Bonds, which would cause the Series 2011 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 2011 Bonds. The City hereby designates the Series 2011 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 tax-exempt bonds or other tax-exempt obligations aggregating in principal amount more than \$10,000,000 during calendar 2011 (taking into consideration the exception for current refunding issues), provided that the amount of the Series 2011 Bonds hereby designated shall be reduced as and to the extent that a portion of the Series 2011 Bonds may be determined to be "deemed designated" in accordance with the provisions of Section 265(b)(3)(D) of the Code.

Section 12 The City's obligations under this Ordinance with respect to any or all of the Series 2011 Bonds herein authorized shall be fully discharged and satisfied as to

ORDINANCE No. 9291 (Cont.)

any or all of such Series 2011 Bonds and any such Series 2011 Bond shall no longer be deemed to be outstanding hereunder if such Series 2011 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 2011 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 2011 Bonds for which such monies or U.S. Government Obligations were deposited shall be paid over to the City as and when collected.

ORDINANCE No. 9291 (Cont.)

Section 13. In accordance with the requirements of Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission, the City, being the only “obligated person” with respect to the Series 2011 Bonds, agrees that it will provide the following continuing disclosure information to the Municipal Securities Rulemaking Board (the “MSRB”) in an electronic format as prescribed by the MSRB:

(a) not later than seven months after the end of each fiscal year of the City (the “Delivery Date”), financial information or operating data for the City of the type accompanying the audited financial statements of the City entitled “Management’s Discussion and Analysis” (“Annual Financial Information”);

(b) when and if available, audited financial statements for the City; audited financial information shall be prepared on the basis of generally accepted accounting principles; and

(c) in a timely manner not in excess of ten business days after the occurrence of the event, notice of the occurrence of any of the following events with respect to the Series 2011 Bonds:

(1) principal and interest payment delinquencies;

(2) non-payment related defaults, if material;

(3) unscheduled draws on debt service reserves reflecting financial difficulties (there are no debt service reserves established for the Series 2011 Bonds under the terms of this Ordinance);

(4) unscheduled draws on credit enhancements reflecting financial difficulties (not applicable to the Series 2011 Bonds);

(5) substitution of credit or liquidity providers, or their failure to perform;

(6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Series 2011 Bonds, or other material events affecting the tax status of the Series 2011 Bonds;

(7) modifications to rights of the holders of the Series 2011 Bonds, if material;

ORDINANCE No. 9291 (Cont.)

- (8) bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution, or sale of property securing repayment of the Series 2011 Bonds, if material;
- (11) rating changes (the Series 2011 Bonds are not rated and no rating for the Series 2011 Bonds is expected to be requested);
- (12) bankruptcy, insolvency, receivership or similar events of the City (this event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City);
- (13) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) appointment of a successor or additional trustee or the change of name of a trustee, if material.

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

(d) in a timely manner, notice of any failure on the part of the City to provide Annual Financial Information not later than the Delivery Date.

The City agrees that all documents provided to the MSRB under the terms of this continuing disclosure undertaking shall be in such electronic format and accompanied by such identifying information as shall be prescribed by the MSRB. The City reserves the right to modify from time to time the specific types of information provided or the format

ORDINANCE No. 9291 (Cont.)

of the presentation of such information or the accounting methods in accordance with which such information is presented, to the extent necessary or appropriate in the judgment of the City, consistent with the Rule. The City agrees that such covenants are for the benefit of the registered owners of the Series 2011 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 the Resolution. The continuing disclosure obligations of the City, as described above, shall cease when none of the Series 2011 Bonds remain outstanding.

Section 14. The Preliminary Official Statement 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.

PASSED AND APPROVED this 8th day of March, 2011.

City Clerk

Mayor

(SEAL)



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G1

Approving Minutes of February 22, 2011 City Council Regular Meeting

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL REGULAR MEETING

February 22, 2011

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 February 22, 2011. Notice of the meeting was given in *The Grand Island Independent* on February 16, 2011.

Mayor Jay Vavricek called the meeting to order at 7:00 p.m. The following City Council members were present: Larry Carney, Kirk Ramsey, Mitch Nickerson, Linna Dee Donaldson, Scott Dugan, Randy Gard and John Gericke. Councilmembers Bob Niemann, Chuck Haase and Peg Gilbert were absent. The following City Officials were present: Interim City Administrator/Finance Director Mary Lou Brown, City Clerk RaNae Edwards, Interim City Attorney Jason Eley, Interim Public Works Engineer Terry Brown, and Interim Public Works/Utilities Director Gary Mader.

INVOCATION was given by Pastor Nick Schonlau, Third City Christian Church, 4100 West 13th Street followed by the PLEDGE OF ALLEGIANCE.

MAYOR COMMUNICATION: Mayor Vavricek introduced Community Youth Council members Danielle Jim and Dillon Spies.

Interim City Administrator/Finance Director Mary Lou Brown gave the January financials. Overall, financials were looking good. Interest income was soft with a \$100,000 less than planned. Sales taxes reflected in December were very good. Food and beverage taxes were very strong. Gas tax was doing fairly well, somewhat of a drop possibly due to winter weather.

PRESENTATIONS AND PROCLAMATIONS:

Proclamation "Nebraska Danger Week" March 7-13, 2011. Mayor Vavricek proclaimed the week of March 7-13, 2011 as "Nebraska Danger Week". Owners Charlie and Brandi Bosselman, Chuck Bosselman and General Manager Mike McCoy were present to receive the proclamation. Comments were made concerning the first Nebraska Indoor Pro Football Team.

Proclamation "National Athletic Training Month" March, 2011. This item was postponed to the March 8, 2011 meeting.

Presentation by Almquist, Maltzahn, Galloway, & Luth for Fiscal Year 2010 City Single Audit and General Purpose Financial Statements and Electric and Water Audit Reports. Terry Galloway from Almquist, Maltzahn, Galloway & Luth gave the 2010 City Single Audit and General Purpose financial statements and electric and water audit reports. A brief overview and review of the report was given. A clean opinion was given. The City is operating efficiently while being good stewards.

The following future considerations were presented:

- Impact of New Bills in Legislation

- Value of an Internal Auditor
- Audit Finds and other Issues
- Continuation of Program Prioritization

Mr. Galloway explained the recommended figures in the audit. Municipal Equalization and State Aid were also explained.

ORDINANCES:

#9286 – Consideration of Annexation Right-of-Way along a Portion of South Locust Street between the Grand Island City Limits and the Northernmost Terminus of the Exit Ramps to the Interstate 80 Interchange (Final Reading)

Regional Planning Director Chad Nabity reported this was the final reading of three readings and was not suggesting extension of the zoning jurisdiction as a result of this annexation. Staff recommended approval.

Motion by Nickerson, second by Gericke to approve Ordinance #9286 on final reading. Upon roll call vote, all voted aye. Motion adopted.

CONSENT AGENDA: Consent agenda items G-8, G-9, and G-10 were removed for further discussion. Motion by Carney, second by Gard to approve the Consent Agenda excluding items G-8, G-9, and G-10. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of February 8, 2011 City Council Regular Meeting.

#2011-37 – Approving Bid Award for One (1) 30,000 Pound Front-Wheel Drive Front End Loader for the Streets Division with Fairbanks of Grand Island, Nebraska in an Amount of \$99,750.00.

#2011-38 – Approving the Adoption of a Resolution to Revise the National Functional Classification.

#2011-39 – Approving the Purchase of Recycle Pump Parts for the Wastewater Division from Bert Gurney & Associations of Omaha, Nebraska in an Amount of \$29,996.00.

#2011-40 – Approving Bid Award for Burdick Station Boiler Roof Replacement from Tri-Cities Group of Grand Island, Nebraska in an Amount of \$40,755.00.

#2011-41 – Approving Bid Award for Precipitator and Duct Cleaning at Platte Generating Station with W-S Industrial Services of Council Bluffs, Iowa in an Amount of \$52,087.00.

#2011-42 – Approving Certificate of Final Completion for Water Main Project 2009-W-6 (Sixth Street, Elm to Pine Street) with K2 Construction of Lincoln, Nebraska.

#2011-43 – Approving Consideration to Proceed with Uranium Removal Installation System. Utilities Director Gary Mader explained the process and reasons for the uranium removal.

Mentioned was the Study Session of January 18, 2011 and the presentation by HDR Engineering. Mr. Mader stated that our water is safe and we were being proactive to stay within compliance.

Discussion was held regarding a timeline of when we would not be in compliance. Mr. Mader stated we were very close to not being in compliance with State regulations. Explained was the technology to be used in this process, which had been successful in a small pilot project at the well fields. Water rate increases were mentioned.

Lewis Kent, 624 East Meves Avenue spoke in opposition.

Motion by Ramsey, second by Dugan to approve Resolution #2011-43. Upon roll call vote, all voted aye. Motion adopted.

#2011-44 – Approving Certificate of Final Completion for Irrigation Installation at Veterans Athletic Field Complex with Nature’s Helper Sprinkler Systems of Omaha, Nebraska. Interim City Attorney Jason Eley answered questions concerning testing the system. He stated the system had been tested and winterized.

Motion by Dugan, second by Gard to approve Resolution #2011-44. Upon roll call vote, all voted aye. Motion adopted.

#2011-45 – Approving Interlocal Agreement with hall County for Aerial Photography. Regional Planning Director Chad Nabity stated this was an Interlocal Agreement with Hall County paying 50% of the cost. Explained were the quality of pictures and uses. Discussion was held regarding whether the City was mandated to take pictures since we just took them last year. Mr. Nabity stated this was not mandated.

Motion by Gard, second by Carney to approve Resolution #2011-45. Upon roll call vote, all voted aye. Motion adopted.

RESOLUTIONS:

#2011-35 – Consideration of Requesting the Nebraska Liquor Control Commission to Require El Diamante Night Club, 1600 South Eddy Street to Complete a Long Renewal Form. This item was postponed from the February 8, 2011 City Council meeting.

Police Captain Pete Kortum reported that due to numerous violations of El Diamante Night Club the Police Department recommended the City Council vote to ask the Nebraska Liquor Control Commission to require Club 69 to submit a new application for the renewal of the liquor license.

Bill Francis, Attorney for El Diamante Night Club spoke in opposition and requested this be referred to a committee. Submitted into the record were copies of 3 letters, health certificate, and 4 pictures. Discussion was held regarding the area covered by the liquor license. Interim City Attorney Jason Eley clarified City Code Section 4-23.

Motion by Gericke, second by Gard to approve Resolution #2011-35. Upon roll call vote, all voted aye. Motion adopted.

#2011-46 – Consideration of Requesting the Nebraska Liquor Control Commission to Require Rafa’s Tacos, 911 West 2nd Street to Complete a Long Renewal Form. Interim City Administrator Mary Lou Brown reported that Rafa’s Tacos had failed to pay \$6,400.46 for food and beverage occupation taxes. This was a violation of City Code which is sufficient to request a long form application for renewal.

Bill Francis, Attorney spoke in opposition. Discussion was held regarding collecting delinquent food and beverage taxes. Captain Kortum stated through the investigation Rafa’s Taco was leasing this property to someone else and was not selling alcohol at this time. Lorri Rogers, Investigation with the State Patrol reviewed the history of Rafa’s Tacos liquor license.

Motion by Gard, second by Ramsey to approve Resolution #2011-46. Upon roll call vote, Councilmembers Ramsey, Donaldson, and Gericke voted aye. Councilmembers Carney, Nickerson, Dugan, and Gard voted no. Motion failed.

#2011-47 – Consideration of Approving Funding of Economic Development Request for Standard Iron, Inc. Interim City Administrator Mary Lou Brown reported that Grand Island Area Economic Development Corporation had submitted an application for LB840 funding in the amount of \$225,000.00 to be used for job incentive and infrastructure by Standard Iron, Inc. for expanding its business in Grand Island.

Mark Stelk, 3117 Brentwood Drive, Chairman of the Citizens’ Review Committee and Marlan Ferguson, EDC President spoke in support. Rich Demules representing Standard Iron was present and thanked the Council for the opportunity to have their business in Grand Island.

Motion by Gericke, second by Donaldson to approve Resolution #2011-47. Upon roll call vote, all voted aye. Motion adopted.

#2011-48 – Consideration of Dissolution of the Grand Island Area Solid Waste Agency. Interim Public Works Director Gray Mader reported that the Grand Island Area Solid Waste Agency was formed through an Interlocal Agreement with Hall County on August 4, 1992. The primary purpose of the agreement was to issue revenue bonds to acquire the existing Transfer Station and Landfill properties from Hall County. On December 7, 2010 the City Council approved the redemption of Solid Waste refunding bonds, Series 2004 thereby completing the purpose of the original agreement.

Motion by Dugan, second by Ramsey to approve Resolution #2011-48. Upon roll call vote, all voted aye.

PAYMENT OF CLAIMS:

Motion by Dugan, second by Gard to approve the Claims for the period of February 9, 2011 through February 22, 2011, for a total amount of \$3,141,645.24. Unanimously approved.

Motion by Dugan, second by Gard to approve the Claims for the Period of February 9, 2011 through February 22, 2011 for the Veterans Athletic Field Complex for a total amount of \$3,919.44. Unanimously approved.

ADJOURNMENT: The meeting was adjourned at 9:46 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G2

Approving Minutes of March 1, 2011 City Council Study Session

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL STUDY SESSION

March 1, 2011

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 Council Chambers of City Hall, 100 East First Street, on March 1, 2011. Notice of the meeting was given in the *Grand Island Independent* on February 24, 2011.

Mayor Jay Vavricek called the meeting to order at 6:00 p.m. The following Councilmember's were present: Larry Carney, Bob Niemann, Kirk Ramsey, Peg Gilbert, Mitch Nickerson, Linna Dee Donaldson, Scott Dugan, Randy Gard, and John Gericke. Councilmember Chuck Haase was absent. The following City Officials were present: Interim City Administrator/Finance Director Mary Lou Brown, City Clerk RaNae Edwards, Interim City Attorney Jason Eley, Interim Public Works/Utilities Director Gary Mader and Public Works Engineer Terry Brown.

INVOCATION was given by Councilmember Niemann followed by the PLEDGE OF ALLEGIANCE.

MAYOR COMMUNICATION: Mayor Vavricek introduced Community Youth Council members Daniel Carlson and Brandon Pfeifer. Recognized were the Grand Island Senior High wrestling team and coach for the State Championship Team Title for Class A and individual medals won.

Discussion Concerning Commission of Industrial Relations (CIR). Human Resources Director Brenda Sutherland reported that 74% of all regular status employees with the City were represented by a union. Seven unions represented these employees and those agreements would expire on September 30, 2011.

Ms. Sutherland gave a history of the CIR. The CIR was created in 1947 originally for public utility employees. In 1969 it was expanded to all public employees. Any public employee whether represented by a union or not has the right to go to the CIR. The five member commission is appointed by the Governor with legislative approval and serve a six year term.

Councilmember Scott Dugan was present at 6:30 p.m.

CIR orders are "binding on all parties involved and shall be deemed to be the same force and effect as like orders entered by a district court" according to State Statue 48-819. The Commission handles three types of cases: 1) Wages – negotiations reach impasse; 2) Representation – petition to be recognized as bargained for by a labor group or union. A certification election and vote of the employees; and 3) Other – unfair labor practices.

Wage Cases:

- State Statue 48-818 describes the authority

- CIR can determine two parts in a wage case: Array of Comparable Employers and Employee Compensation (wages & benefits)
- Overall compensation is required to be comparable to same/similar work or working conditions
- Array is based on size and proximity – a town no more than twice the size, or no less than half the size

Discussion was held on the array of cities used for comparables. Areas of comparability were: pay scale, personal leave & holidays, medical leave, bereavement leave, vacation, comp. time, overtime, Health Insurance, uniform allowance, and pension contribution.

Explained was the difference between Defined Benefit Plan and Defined Contribution Plan. Defined Benefit Plan tells employee that after they retire there is a set amount. Defined Contribution Plan is a fund where employee and employer set money aside for employee's retirement.

Proposed legislation at the state level for 2011 was reviewed. Presented were nine different bills before the legislature.

Robert Meyer, 648 East Memorial Drive spoke that both sides needed to negotiate in good faith and felt CIR should be a last resort. He stated CIR was a good thing as they looked at everything on both sides.

Legislative and Lobbyist Discussion. Human Resources Director Brenda Sutherland reported that there were many legislative considerations before the Nebraska Legislature. Reviewed was the current practice the City used for Legislative Policy. Mentioned were the major issues facing the cities: State Aid to Cities, occupation tax revenue, CIR, Horseracing, Defined benefits retirement plan for firefighters, and Firefighter scheduling. Pros and Cons were presented concerning hiring a lobbyist.

Robert Meyer, 648 East Memorial Drive spoke in opposition of hiring a lobbyist and stated part of the City Administrator's job description was to represent the City in the Nebraska Legislature.

Comments were made by Council regarding the importance of being involved with the State Senators. Pros and cons of hiring a lobbyist were mentioned. Mayor Vavricek commented on our current lack of legislative policy and the importance of having a lobbyist to represent the City of Grand Island. Mentioned were Request for Proposal's that had been received for hiring a lobbyist.

Council took a break at 8:06 p.m. and reconvened at 8:18 p.m.

Discussion Concerning Closing the Elm Street/Union Pacific Railroad Crossing. Interim Public Works Director Gary Mader reported that staff had been working through the railroad quiet zones and found a cost saving of approximately \$250,000. Introduced was Public Works Project Manager Scott Gripenstroh who gave a PowerPoint presentation on Phase I of the Quiet Zone Improvements.

Union Pacific Railroad (UPRR) requested that the quiet zone project at Walnut and Elm Streets upgrade the sidewalk crossing panels on the siding tracks that serve the Peavey Elevator. UPRR also requested that the project at Walnut and Elm Streets fill in the area between the existing street surfacing and the sidewalks with crossing panels.

Costs (Phase I):

• Elm Street Wayside Horns	\$228,800
• Walnut Street Wayside Horns	\$219,500
• Pine Street Supplemental Safety Measures	\$ 78,900
• Oak Street Supplemental Safety Measures	\$ 63,000

Total Costs for Phase I	\$590,200
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Cost to Close Elm Street:

• Close Elm (estimate)	up to \$20,000*
• Walnut Street Wayside Horns	\$219,500
• Pine Street Supplemental Safety Measures	\$78,900
• Oak Street Supplemental Safety measures	\$63,000

Total Costs for Phase I	\$381,400 (\$208,800 savings)
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*Assumes \$40,000 contributions from NDOR, UPRR and Gavilon (Peavey)

Mentioned was that Elm Street had the least number of vehicles compared to Walnut Street, Pine Street, Oak Street, Broadwell Avenue, Lincoln Avenue and Eddy Street. Pros and cons of closing Elm Street were presented.

Robert Meyer, 648 East Memorial Drive commented on the number of years the City had been working on the quiet zones. He spoke in opposition of closing Elm Street. Jim Spiehs, representing Gavilon Grain (Peavey) spoke in support of closing Elm Street. Billy Rapp, 1221 North Beal spoke in opposition of closing Elm Street.

Discussion was held regarding a comprehensive traffic study of Elm, Walnut, Pine and Oak Streets and closing more crossings than just Elm Street. Comments were made by Council of the importance of moving forward with this project.

Mr. Gripenstroh stated to get a grade separation at Broadwell Avenue the City would need to close Lincoln Street, but the Nebraska Department of Roads and UPRR would pay for 90% of the cost. It was mentioned that closing Elm Street would not benefit any other possible grade separation project.

Police Captain Pete Kortum answered questions concerning accidents on Elm Street crossing. He stated there were none and closing Elm Street would not be an issue for the Police Department.

Community Redevelopment Authority (CRA) would contribute \$140,000 to Phase I. with the City contributing \$160,000. Interim City Administrator Mary Lou Brown commented on Phase II. The City was researching funding and moving forward with it. The use of the Transportation Committee was mentioned.

ADJOURNMENT: The meeting was adjourned at 9:13 p.m.

RaNae Edwards
City Clerk



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G3

**#2011-49 - Approving Final Plat and Subdivision Agreement
Golden Age Third Subdivision**

Staff Contact: Chad Nabity

Council Agenda Memo

From: Regional Planning Commission

Meeting: March 8, 2011

Subject: Golden Age Third Subdivision – Final Plat

Item #'s: G-3

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

Background

This property is located west of White Ave., and north of 7th St., this final plat proposes to create 2 lots on a tract of land consisting of all of Block 4, Golden Age Sub., in the city of Grand Island in Hall County, Nebraska, said tract containing 2.648 acres.

Discussion

The revised final plat for Golden Age Third Subdivision was considered by the Regional Planning Commission at the March 2, 2011 meeting. A motion was made by Haskins and seconded by Connely to approve the plat as presented. A roll call vote was taken and the motion passed with 10 members present (Amick, Aguilar, O'Neill, Ruge, Hayes, Reynolds, Monter, Haskins, Connely, Snodgrass) voting in favor no member present abstaining.

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.



LOCATION MAP

Anderson Third Final Plat Summary

Developer/Owner

Hall County Housing Authority
911 Baumann Drive
Grand Island NE 68803

To create 2 lots west of White Ave., and north of 7th St., in the City of Grand Island, in Hall County, Nebraska.

Size: 2.648 acres

Zoning: RO – Residential Office Zone

Road Access: City Roads

Water Public: City water is available

Sewer Public: City sewer is available



RESOLUTION 2011-49

WHEREAS, Hall County Housing Authority, being the said owner of the land described hereon, has caused same to be surveyed, subdivided, platted and designated as "GOLDEN AGE THIRD SUBDIVISION", to be laid out into 2 lots, a tract of land consisting of all of Block 4, Golden Age Subdivision, West of the 6th P.M., in the City of Grand Island, Hall County Nebraska, under the name of GOLDEN AGE THIRD 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 GOLDEN AGE THIRD 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.

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Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 4, 2011	☐ City Attorney



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G4

#2011-50 - Approving Renewal of Golf Pro Contract with Don Kruse

Staff Contact: Steve Paustian

Council Agenda Memo

From: Steve Paustian, Parks and Recreation Director

Meeting: March 8, 2011

Subject: Jackrabbit Run Golf Course – Golf Professional Contract

Item #'s: G-4

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

Background

Jackrabbit Run Golf Course has been operated by the City since its inception in 1977. A PGA Golf Professional has been under contract since its opening as well. It is an industry standard to contract with a PGA Golf Professional as opposed to having that position filled by an employee. Commissions and incentives are a large part of a successful golf operation. As an employee, incentives and commissions are not allowed. The contractor also takes all risk associated with purchasing merchandise for resale at the Pro Shop and is not eligible for City benefits. The Golf Pro's responsibilities include day to day operation of the pro shop and snack bar. Pro Shop responsibilities include collection of Green Fees, sale of season passes, golf cart rental, pro shop merchandise purchases and sales and many other services to provide for a well run operation. Mr. Donald Kruse, the current PGA Professional at Jackrabbit Run has worked at the Pro Shop since its opening. He has been under contract as the Head Professional since 2007.

Discussion

Mr. Kruse's contract expires this year. Under his leadership, rounds of golf have increased and the facility has run in the black since his services were contracted. Many positive comments have been received by this office regarding the operation of the golf course under Mr. Kruse's leadership. It is appropriate at this time to evaluate the existing contract and determine if changes are appropriate. It is staffs opinion that Mr. Kruse should remain as the Golf Professional at Jackrabbit Run. Several modifications to the existing contract have been negotiated by staff and Mr. Kruse. These modifications are being brought forward for your review. (See attached proposed contract.)

1. Change the contract period from four to five years. Contract language allows for either party to terminate the contract with proper notice.

2. Change the green fee percentage from 10% to 11%. This would result in an approximate increase in the contract value by \$3,700.00 using last years number of rounds.
3. Extend the bonuses out for cart rental income as most current contract levels have been surpassed.

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 renew Mr. Kruse's contract with the proposed modifications.

Sample Motion

Move to renew Mr. Kruse's contract as modified, to remain the PGA Golf Professional at Jackrabbitt Run.

**GOLF LICENSE AGREEMENT
BETWEEN
THE CITY OF GRAND ISLAND, NEBRASKA
AND
DON E. KRUSE**

THIS LICENSE AGREEMENT is made and entered into this ____ day of March, 2011, by and between the CITY OF GRAND ISLAND, NEBRASKA, a Municipal Corporation, hereinafter referred to as "City" and Don E. Kruse, a golf professional and Director of Golf for Jackrabbit Run Golf Course, hereinafter referred to as "Manager".

WHEREAS, the City is the owner of Jackrabbit Run Golf Course and operates a municipal golf course and clubhouse therein; and

WHEREAS, Manager is a Class "A" PGA Golf Professional and Director of Golf for Jackrabbit Run Golf Course; and

WHEREAS, the City desires the services of someone to operate the snack bar concessions and serve as golf professional and Director of Golf for the Jackrabbit Run Golf Course and Manager is qualified to perform these services.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein, the parties agree as follows:

1. **License.** The City grants to Manager the exclusive privilege of operating business concessions and rendering professional golf services at Jackrabbit Run Golf Course and clubhouse for the period of time commencing March 8, 2011 through December 31, 2016, in accordance with the terms and conditions hereinafter set forth. This license may be renewed for one additional five (5) year term provided that the Manager has complied with all conditions set forth in this agreement to the satisfaction of the City and subject to the further approval of the City Council for such renewal period.

2. **Services.** Manager is to be recognized as the pro-manager of the Jackrabbit Run Golf Course and shall make professional golf services and concession services available to the patrons of said golf course at all reasonable times as determined by the Director of Parks & Recreation. Said services shall include, but not be limited to, the following: sale of alcohol, public relations, teaching, coaching, promotion of golf play, leagues and tournaments, pull carts, sales and rental of equipment from the pro shop, and operation of the driving range and facilities. The City will be responsible for motorized golf cart rentals as outlined in paragraph 14.

3. **Supervision by Manager.** In addition to the services to be rendered by Manager as set forth in paragraph 2, Manager agrees to supervise all activities within that part of the clubhouse and surrounding area designated by the City for use by the public, to supervise all personnel in the employ of Manager and to supervise the performance of such duties and services in the clubhouse, golf course, or adjacent thereto as may be included in this agreement,

including recreational programs in the areas needed for this purpose. Employees of the Manager shall remain on duty during the entire event for concession sales, and to lock the buildings at the close of all events and secure the premises.

4. **Maintenance.** Manager agrees to keep the clubhouse in a clean and sanitary condition at all times. This shall include the snack bar, public restrooms, public lounge, pro shop, and general interior and immediate exterior maintenance. All papers, rubbish, broken and empty bottles, garbage and other trash accumulating in the operation of the clubhouse shall be picked up by Manager or his designee and placed in suitable containers. Goods, bottles or empty containers shall not be sold, piled or stored outside of the clubhouse except upon written permission of the City. Manager shall keep concession premises in a neat, clean, orderly and sanitary condition at all times in conformance with the standards required by the Central District Health Department and the State Department of Health. The City will provide refuse containers and be responsible for refuse service. Manager agrees to keep all city golf carts in a clean and safe working condition at all times. This shall include washing and removal of trash after each round, examining each cart for damage after each round, staging golf carts in the morning and securing in the evenings. Assist maintenance staff in fueling/charging and taking care of damaged carts. Manager shall be responsible for charging electric carts and report all maintenance deficiencies to the City.

5. **Money Collection.** Manager agrees to collect greens fees and to issue greens fees tickets/tapes/cash register receipts; motorized golf cart rental fees, memberships, capital improvement fees, surcharges, and sales tax; to keep records of all such transactions; and to properly account for and remit to the City such documentation. Manager will be required to complete a daily sales report, which shall be balanced to match all rounds played and all motorized golf cart rentals. All transactions shall be remitted twice weekly or daily as determined by the City, during the season and as needed during the off season.

6. **Starting and Managing Play.** Manager agrees to provide supervisory services for the first and tenth tee of the golf course to control starting play. Manager further agrees to provide rangers or marshals when play is heavy or playtime starts to slow to an unacceptable pace.

7. **Inspection, Audit.** It is understood and agreed between the parties that the operation and services performed by Manager under this agreement shall be subject at all times to inspection and control by designated representatives of the City. Manager will confer only with said representatives on all problems of general policy in connection with this agreement. Manager shall permit the examination and audit of all books and records of Manager relating to this agreement by officers or representatives of the City and shall make said books and records available at all reasonable hours.

8. **Attendants.** Manager shall have adequate and efficient attendants on duty in readiness to serve the public at such times as necessary to provide concession and professional golf services. The City shall determine minimum operation time.

9. **Improvements.** Manager shall not remodel clubhouse or install any permanent fixtures or additions to the clubhouse without first obtaining the written approval of the City. All improvements shall become the property of the City upon termination of this agreement unless the parties hereto agree otherwise.

10. **Advertising.** Manager shall not display paid advertising outside the clubhouse, and advertising inside the clubhouse shall be confined to that portion of the clubhouse designated for the exclusive use of Manager. No display signs or advertising shall be placed on the grounds, building or affixed in any manner, except upon written approval of the Parks and Recreation Director in advance.

11. **City Supervision.** The City reserves the right to exercise general supervision and control over the clubhouse with respect to the management of advertising displays; staff employed; concessions; kind, character, and quality of goods dispensed; and the cleanliness and sanitation of the buildings and adjacent grounds. Manager shall operate under the provisions of this agreement in such a manner as to conform with all the ordinances of the City of Grand Island and the laws of the State of Nebraska, and shall give assistance to the City in seeking conformity with the ordinances of the City and laws of the State by public users. Further, Manager agrees to enforce all rules and regulations adopted by the City's Director of Parks & Recreation covering the conduct of the public and services offered in the use of the park property.

12. **City Equipment.** Manager shall exercise general supervision over and shall be responsible for the proper use and care of all equipment and furniture owned by the City now located in the clubhouse. Such property shall be maintained specifically for the use and convenience of all public users of the clubhouse. An inventory of this property, as taken by a representative of each of the parties, is marked Exhibit "A" and attached hereto and made a part hereof.

13. **Risk of Loss.** The City shall not be responsible for the property of Manager kept, stored, or maintained on the leased premises and assumes no responsibility for loss of Manager's property through fire, theft, pilferage, malicious mischief or any other happening whatsoever.

14. **Manager Compensation.** Manager shall be entitled to a percentage of the gross proceeds (described below) generated by operation of the snack bar, pro shop, alcohol sales and the provision of golf lessons. Manager will operate driving range and share with the City a percentage of gross revenues as detailed below. Any additional revenue generated as a result of the operation of Jackrabbit Run, other than outlined below shall belong and be paid to the City.

The City shall own and maintain the motorized golf cart rental fleet. In return for promoting and renting out motorized golf carts and keeping the fleet clean and presentable the City shall pay to the Manager a percent of the monthly gross revenue generated by motorized golf cart usage as detailed below. The following is the schedule of the remuneration for the Manager and the City.

	<u>Manager</u>	<u>City</u>
Green Fees	11%	89%
(includes annual passes & maintenance fees)	11%	89%
Driving Range(including range passes)	80%	20%
Carts	25%	75%
Concessions	98%	2%
Alcohol	75%	25%
Lessons	98%	2%
Pro Shop	98%	2%
Sponsor Income	98%	2%

Green fees for the Mayor's Cup, the Grand Island City Tournament and the Islander Two Man Scramble in 2007 will be paid to the City in the amount of ten dollars (\$10) per round, plus tax. All junior tournament green fees will be \$5.50 per round, plus tax. In 2008 and beyond green fees to the City will be 60% of the standard fee for these three tournaments and other named tournaments developed in the future. For the Association Tournament, the green fees will be the standard fee or for a season pass holder, only the capital maintenance fee.

Manager agrees to pay the owner 2% of the gross proceeds from the Junior Golf Program. Manager also agrees to pay one maintenance fee for the every nine holes of golf played by the juniors in said program.

All other league and tournament fees will go to the manager except for the green fees collected. Both the City and the Manager will be paid within twenty (20) days of receipt of the accounting report of revenue generated.

The City will reward for each year of this contract the Manager with a monetary amount based on the following schedule. Each year will commence October 1st and conclude September 30th for the term of this contract.

<u>Number of Rounds</u>	<u>Bonus</u>	<u>Carts</u>	<u>Bonus</u>
33,500 - 36,000	\$ 2,000.00	\$155,000-\$160,000	\$ 6,000.00
36,001 - 38,500	\$ 6,000.00	\$160,001-\$165,000	\$ 7,000.00
38,501 - 41,000	\$ 8,000.00	\$165,001-\$170,000	\$ 8,000.00
41,001 - 43,500	\$10,000.00	\$170,001-\$175,000	\$ 9,000.00
43,501 - 46,000	\$12,000.00	\$175,001-\$180,000	\$10,000.00

A collected capital maintenance fee will be counted as a round of golf. Cart bonus amount will be based on daily cart revenue not to include sales tax. After the \$10,000 bonus, every \$5,000 increase in cart revenue will allow for an additional \$1,000 bonus.

15. **High School Participation.** The following rates shall apply to high school students, with a limit of 18 athletes per season:

	<u>Boys' Fee</u>	<u>Girls' Fee</u>	<u>Manager</u>	<u>City</u>
Season Pass	\$150.00	\$150.00	10%	90%
Range	\$250.00	\$250.00	80%	20%
Green Fees (Practice Rounds)	\$ 2.00 per round	\$ 2.00 per round	10%	90%
Green Fees (Meets):				
	\$7.45 per round		10%	90%
		\$5.25 per round	10%	90%

16. **Manager's Personnel.** It will be Manager's responsibility to employ the needed personnel to conduct the business and carry out the operations associated with the clubhouse which includes, but is not limited to, the concession operation, collection of fees, and custodial maintenance. Both parties recognize and agree that Manager is an independent contractor. Manager and his agents and employees shall not be considered to be employees of the City and shall not be eligible for any fringe benefits or premium pay from the City.

17. **Conflict of Interest.** During the term of this agreement, Manager shall not engage in the following activities within fifty (50) miles of the corporate limits of the City of Grand Island:

- a. Promoting in any way or manner golf activities, special events, tournaments or leagues at other than the city's golf course, except as approved by the City Parks and Recreation Director.
- b. Endorsing, either by name or other manner, the activities or special events at non-city golf courses.
- c. Participating in the operation of golf courses in activities such as the operation of the Pro Shop, the food and beverage operation, golf lessons, cart rental business, driving range or special events without the written permission of the City.
- d. Participating in the management of golf courses such as, but not limited to, establishing fees and charges or the selection, hiring and evaluation of staff.
- e. Displaying advertising or promotional materials for golf courses such as posters, wearing hats or other clothing items that display the name or logo of non-city of Grand Island golf courses.
- f. Being named or recognized as a Director of Golf, Head Golf Professional or other staff title at any non-city golf course.

This language shall not be construed to prohibit Manager or members of immediate family from having a financial interest in non-city golf courses or related developments; provided, however, that Manager must submit a written detailed description of such financial interest or the financial interest of any member of his immediate family to the City for approval. Updated information must be submitted annually in a format determined by the City by January 31st of each year.

For purposes of this agreement, "immediate family" shall include any child residing in Manager's household, Manager's spouse, or an individual claimed by Manager as a dependent for federal income tax purposes.

18. **Concession Operation.** All materials, supplies and assistance required in the operation of the concession shall be furnished at Manager's own expense. Manager agrees to conduct and operate the concession strictly in accordance with all the ordinances of the City of Grand Island and laws of the State of Nebraska now and hereafter in effect during the terms of this agreement and in a manner wholly acceptable to the City. Manager agrees to maintain a current liquor license and obey all laws and rules set forth by the State Liquor Control Commission. Manager agrees to keep all concession areas open seven (7) days of the week during such hours, meetings or special events as the City's Director of Parks & Recreation shall determine.

19. **PGA License.** During the full term of this agreement, Manager must maintain a Class "A" PGA Golf Professional Classification. Should Manager cease to be a Class "A" Professional, this License Agreement shall immediately and automatically terminate and Manager shall no longer be entitled to the rights and privileges granted hereunder.

20. **Financial Statements.** Manager shall submit to the City annual financial statements of the operation not covered in paragraphs above by the terms of this License Agreement. Said financial statement shall include a detailed operating statement setting forth all operating revenues not covered in paragraph No. 5 and personnel service costs and other operating expenses in accordance with the requirements set by the Finance Director of the City. Annual financial statements shall be due by November 1st of each year this agreement is in force and effect. In the event that this agreement is terminated, either at its expiration or for any other reason during the course of a calendar year, a financial statement shall be required within thirty (30) days of such termination covering the period from the prior financial statement to date of termination. In addition, the City may conduct its own audits during the terms of this agreement and for a period of one year thereafter pursuant to paragraph 7 above.

21. **Free Play.** Manager, members of the PGA of America and any assistants registered in the PGA Assistant Program may play the course at no cost. Jackrabbit Run PGA staff shall be allowed to use golf carts at no cost. The names of the PGA members and assistants shall be given to the Director of Parks & Recreation. Except for the preceding, special privileges shall not be granted to anyone under any circumstances. Failure to comply will result in termination and cancellation of said contract as outlined in paragraph 25.

22. **Equal Employment.** Neither Manager nor anyone acting under or by virtue of the terms of this agreement shall discriminate against employees or applicants for employment with respect to such person's hire, tenure, terms, conditions or privileges of employment because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Neb. Rev. Stat., §48-1122, as amended; nor shall Manager nor anyone acting under or by virtue of the terms of this agreement discriminate against any such patron of said golf course or against anyone else because of race, color, religion, sex, disability, national origin, ancestry, age or marital status. Special privileges shall not be granted to anyone under any circumstance.

23. **Insurance.** Manager shall indemnify and save harmless the City of Grand Island, Nebraska, from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the License Agreement that results in bodily injury, sickness, disease, death or injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Manager to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the City.

Manager shall take out and maintain during the life of this agreement the applicable statutory workers compensation insurance with an insurance company authorized to write such insurance in this state covering all of his employees.

Manager shall secure and maintain in full force and effect during the entire period of this agreement, public liability insurance, naming and protecting manager and the City, its officials, employees, and volunteers as insureds, against claims for damages resulting from (a) bodily injury, including wrongful death (b) personal injury liability and (c) property damage for all operations of Manager, his agents and employees under and by virtue of the terms of this agreement. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

Bodily Injury and Property Damage	\$2,000,000 Each Occurrence
Personal Injury Damage	\$1,000,000 Each Occurrence
Contractual Liability	\$1,000,000 Each Occurrence
Products Liability	\$1,000,000 Each Occurrence

The public liability insurance required by the preceding paragraph shall include the following extension of coverage:

- a. The coverage shall be provided under a Commercial General Liability form or similar thereto.
- b. The property damage coverage shall include a Broad Form Property Damage Endorsement or similar thereto.

- c. Contractual liability shall be included.
- d. Products liability coverage shall be included.
- e. Personal injury liability shall be included.

The Manager shall take out and maintain during the life of this agreement such automobile liability insurance as shall protect him against claims for damages resulting from bodily injury, including wrongful death, and property damages which may arise from the operations of any owned, hired or non-owned automobiles used by or for Manager in any capacity in connection with the carrying out of this agreement. The minimum acceptable limits of liability to be provided by such automobile liability insurance shall be as follows:

Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
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All liability insurance policies shall be written on an "occurrence" basis only. All insurance coverage is to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of not less than A:VII unless specific approval has been granted by the City.

All certificates of insurance shall be filed with the City on the standard Accord Certificate of Insurance form showing the specific limits of insurance coverage required by this section and showing the City as an additional insured. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the City thirty (30) days notice of cancellation, non-renewal, or any material reduction of insurance coverage.

24. **Assignment.** This agreement shall not be assigned or sold, nor the premises sublet in whole or in part by the Manager except with the prior written consent of the City.

25. **Terminations and Cancellation.** It is an express condition of this License Agreement that Manager shall do and perform the agreement as set out herein.

If Manager breaches any of the terms of this agreement or fails to make payments provided for herein, the City may, upon thirty (30) days written notice, cancel and terminate this License Agreement if such breach or failure is not cured within such 30 day notice period.

For good and substantial cause, including but not limited to, by Manager or any employee of the Manager, continued absenteeism, drunkenness, alcohol or drug abuse, illegal gambling or conduct which reflects discredit on the City or is a direct hindrance to the effective performance of this agreement or in the event City shall conclude that the operation of said concession in any respect is substantially detrimental to the best interest of the City, City may, upon written notice delivered to Manager personally or to the clubhouse, terminate said agreement and order Manager to vacate the premises immediately, all without further liability to the City.

The exercise of any remedy provided herein shall not preclude the City from exercising any other remedy, legal or equitable that it may have.

Either party may terminate this agreement with or without cause by giving ninety (90) days written notice to the other party, at any time during this license.

26. **Complete Agreement.** This License Agreement constitutes the entire agreement between the parties for the stated period and supersedes all previous agreements and resolutions. There are no oral agreements nor is this license based upon any oral representation covering the subject matter of this License.

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

By: Don E. Kruse
Don E. Kruse, Manager
Jackrabbit Run Golf Course

STATE OF NEBRASKA)
) ss
COUNTY OF HALL)

On March 4, 2011, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Don E. Kruse, known personally to me to be the identical person and such officer who signed the foregoing License Agreement and acknowledged the execution thereof to be his voluntary act and deed for the purpose therein expressed on behalf of the corporation.

WITNESS my hand and notarial seal the date above written.



Ranae Edwards
Notary Public

CITY OF GRAND ISLAND, NEBRASKA
A Municipal Corporation

By: _____
Jay Vavricek, Mayor

Attest: _____
Ranae Edwards, City Clerk

STATE OF NEBRASKA)
) ss
COUNTY OF HALL)

Before me, a notary public, qualified in said County personally came Jay Vavricek, 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 License Agreement and acknowledged that the foregoing signature was his voluntary act and deed pursuant to Resolution 2011-50, and that the City's corporate seal was thereto affixed by proper authority.

WITNESS my hand and notarial seal on _____, 2011.

Notary Public

Exhibit "A"

Two Beer Coolers

One Ice Machine

One Range Picker and Cart

One Beverage Cart

* Range Balls

* Range Ball Washer

* Hot Dog Machine

* Coffee Pot

* Microwave

* Serving Cart

* Items marked are provided by the City but will be the Manager's responsibility to replace or repair as needed. If these are replaced, they shall then become the property of the manager.

RESOLUTION 2011-50

WHEREAS, on March 13, 2007, by Resolution 2007-59, the City of Grand Island entered into a contract with an independent contractor for a golf professional and for the management of the municipal golf course facility; and

WHEREAS, said contract expired on December 31, 2011; and

WHEREAS, on February 1, 2007, Requests for Qualifications were received, opened and reviewed for operation and management services for Jackrabbit Run Golf Course; and

WHEREAS, Don E. Kruse of Grand Island, Nebraska, was awarded the contract for Jackrabbit Run Golf Course; and

WHEREAS, Don E. Kruse, has been recommended to have his contract renewed in accordance with the terms of the new contract; and

WHEREAS, a proposed contract has been reviewed and approved by the City Attorney's office.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the contract of Don E. Kruse of Grand Island, Nebraska, for the operation and management services for Jackrabbit Run Golf Course is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute an agreement for such services on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska on March 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form ? _____
March 4, 2011 ? City Attorney



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G5

**#2011-51 - Approving Burlington Northern Santa Fe Crossing
Permit for the 115 kV Transmission Line to St. Libory**

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Gary Mader, Utilities Director
Jason Eley, Interim City Attorney

Meeting: March 8, 2011

Subject: Approving BNSF Transmission Line Crossing Permit

Item #'s: G-5

Presenter(s): Gary Mader, Utilities Director

Background

On April 21, 2009, a presentation was made during a Council Study Session summarizing a 115 kV Transmission line route study for a new transmission line to be constructed northwest of the city. During the following City Council meeting on April 28, 2009, Council authorized the Utilities Department to proceed with the necessary engineering, permits and other services required to construct the new transmission line. All required easements have been purchased. Approval has been obtained from the Nebraska Power Review Board. The new line will cross the Burlington Northern Santa Fe (BNSF) railroad tracks just west of Highway 281 at the same location of an existing 115 kV transmission line crossing. Because the transmission line project will add a second circuit to the pole line, a new crossing permit is required.

Discussion

Earlier this year, survey data was obtained of the new route including the crossing of the BNSF tracks. The transmission line design was completed for the crossing in order to produce the detailed drawings required by the railroad. A permit application was submitted to BNSF and the attached crossing permit was returned. The execution of this permit requires a payment of \$2,500 to cover all contract fees as well as a payment of \$400 for Railroad Protection Liability Insurance during construction.

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 a future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the License for Electric Supply Line Across or Along Railroad Property with BNSF.

Sample Motion

Move to approve the License for Electric Supply Line Across or Along Railroad Property with BNSF.

**LICENSE FOR ELECTRIC SUPPLY LINE
ACROSS OR ALONG RAILWAY PROPERTY**

(Electric Light, Power Supply, Irrespective of Voltage, Overhead or Underground)

THIS LICENSE ("License"), made as of the ____ day of _____, 20__ ("Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor"), and **CITY OF GRAND ISLAND**, a Nebraska corporation ("Licensee").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties including, without limitation, any leases, use rights, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to construct, maintain, and use in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process ("the Drawings and Specifications") an electric supply line containing a maximum of eight (8) cables, together with its supporting or containing structures ("Electric Supply Line") across or along the premises of Licensor at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 99.57, shown by bold line upon the Drawing No. 1-50962 dated February 11, 2011, marked "Exhibit A", attached hereto and made a part hereof ("Premises").
2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, Licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. Licensee shall use the Premises solely for construction, maintenance, and use of an Electric Supply Line in accordance with the Drawings and Specifications. Licensee shall not use the Premises for any other purpose. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.
4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Licensor shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.
5. Any contractors or subcontractors performing work on the Electric Supply Line or entering the Premises on behalf of Licensee, shall be deemed servants and agents of Licensee for purposes of this License.

TERM

6. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

COMPENSATION

7. (a) Licensee shall pay Licensor, prior to the Effective Date, the sum of Twenty Five Hundred and No/100 Dollars (\$2,500) as compensation for the use of the Premises.
- (b) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction, maintenance, and use of the Electric Supply Line, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$800.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- (c) All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

COMPLIANCE WITH LAWS

8. (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance and use of the Electric Supply Line and the use of the Premises.
- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-training program at the following Internet Website "<http://www.contractororientation.com>". This training must be completed no more than one year in advance of Licensee's entry on the Premises.

DEFINITION OF COST AND EXPENSE

9. For the purpose of this License, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

RIGHT OF LICENSOR TO USE

10. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
 - (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or
 - (c) to use the Premises in any manner as the Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 3 above.

LICENSEE'S OPERATIONS

11. (a) Licensee shall notify Licensor's Roadmaster at 14th & Grant Ave, York, Nebraska 68467, telephone 402-362-551 or cell 402-429-4055, at least ten (10) business days prior to construction of the Electric Supply Line and prior to entering the Premises for any subsequent maintenance thereon.
- (b) In performing the work described in Section 3, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
12. (a) Licensee shall, at its sole cost and expense, construct and at all times maintain the Electric Supply Line in accordance with the National Electric Code.
- (b) If the operation or maintenance of said Electric Supply Line shall at any time cause interference, including but not limited to physical interference from electromagnetic induction, electrostatic induction, or from stray or other currents, with the facilities of the Licensor or of any lessee or Licensee of the Licensor, or in any manner interfere with the operation, maintenance, or use by the Licensor of its right-of-way, tracks, structures, pole lines, signal and communication lines, radio, or other equipment, devices, other property or appurtenances thereto, Licensee agrees immediately to make such changes in its Electric Supply Line and furnish such protective devices and/or replacement equipment to Licensor and its lessees or Licensees as shall be necessary, in the judgement of the Licensor's representative, to eliminate such interference. The cost of such protective devices and their installations shall be borne solely by Licensee. If any of the interference covered by this paragraph shall be, in the judgement of the Licensor, or such importance to the safety of the Licensor's operations as to

require immediate corrective action, Licensee, upon notice from the Licensor, shall either, at the Licensor's election, cease using said Electric Supply Line for any purpose whatsoever and remove same, or reduce the voltage or load on said Electric Supply Line, or take such other interim protective measures as the Licensor may deem advisable, until the protective devices and/or replacement equipment required by this paragraph have been installed, put in operation, tested, and found to be satisfactory to correct the interference.

13. (a) Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- (b) Licensee shall, at its sole cost and expense, and subject to the supervision of Licensor's Roadmaster, locate, construct and maintain the Electric Supply Line in such a manner and of such material that it will not at any time be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of its railroad. Further, the Electric Supply Line shall be constructed, installed and maintained in conformity with the plans and specifications shown on the print attached hereto as Exhibit A and made a part hereof (which, if present, are to be deemed part of the Drawings and Specifications). Licensor may direct one of its field engineers to observe or inspect the construction and/or maintenance of the Electric Supply Line at any time for compliance with the Drawings and Specifications. If ordered at any time to halt construction or maintenance of the Electric Supply Line by Licensor's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Electric Supply Line, it being solely Licensee's responsibility to ensure that the Electric Supply Line is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by Licensor to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee

shall promptly reimburse Licensor for all costs and expenses of such work, upon receipt of an invoice for the same. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

14. Licensee shall, at its sole cost and expense, remove all combustible material from around wooden poles and will at all times keep the space around such poles free of such material, and if removal of such combustible material shall not be attended to within fifteen (15) days after having been requested by Licensor to do so, Licensor shall have the right itself to perform the work and Licensee hereby agrees to reimburse Licensor for the expense so incurred.
15. During the construction and any subsequent maintenance performed on Electric Supply Line, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. The construction of the Electric Supply Line shall be completed within one (1) year of the Effective Date. Upon completion of the construction of the Electric Supply Line and after performing any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore Licensor's premises to their former state as of the Effective Date of this License.
16. If at any time during the term of this License, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Electric Supply Line, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Electric Supply Line as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the existing or the construction of a new Electric Supply Line.
17.
 - (a) Prior to Licensee conducting any boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, the Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested construction of the Electric Supply Line, Licensor will provide Licensee any information that Licensor's Engineering Department has in its possession concerning the existence and approximate location of Licensor's underground utilities and pipelines at or near the vicinity of the proposed Electric Supply Line. Prior to conducting any such boring work, the Licensee will review all such material. Licensor does not warrant the accuracy of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.
 - (b) For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by the Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable

opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

18. Any open hole, boring or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
 - (a) filled in to surrounding ground level with compacted bentonite grout; or
 - (b) otherwise secured or retired in accordance with any applicable Legal Requirement. All excavated materials shall not remain on Licensor's property for more than ten (10) days and shall be properly disposed of by Licensee in accordance with applicable Legal Requirements.
19. Upon termination of this License, Licensee shall, at its sole cost and expense:
 - (a) remove all of its equipment from the Premises;
 - (b) remove the Electric Supply Line at Licensor's sole discretion;
 - (c) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
 - (d) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
 - (e) leave the Premises in the condition which existed as of the Effective Date of this License.
20. Licensee's on-site supervision shall retain/maintain a fully-executed copy of this License at all times while on the Premises.

LIABILITY

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY**

"LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- (i) THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
- (iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR**
- (v) ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,**

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

- (b) FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 21(a), LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON THE STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE ELECTRIC SUPPLY LINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- (c) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR TO, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND**

ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

PERSONAL PROPERTY WAIVER

- 22. ALL PERSONAL PROPERTY OF LICENSEE, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

INSURANCE

23. Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:
- A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
- ◆ Bodily Injury and Property Damage
 - ◆ Personal Injury and Advertising Injury
 - ◆ Fire legal liability
 - ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to Licensor's payments related to the Federal Employers Liability Act or a Licensor Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed

under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:

- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability Insurance. This insurance shall name only the Licensor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Electric Supply Line. **THE CONSTRUCTION OF THE ELECTRIC SUPPLY LINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Electric Supply Line is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the Licensor prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$400.

- ☐ I **elect** to participate in Licensor's Blanket Policy;
- ☐ I **elect not** to participate in Licensor's Blanket Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licensor for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody or control.

Licensee's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Licensor. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Licensor and Jones Lang LaSalle Global Services – RR, Inc. as an additional insured with respect to work performed under this agreement. Severability of interest and naming Licensor and Jones Lang LaSalle Global Services - RR, Inc. as additional insureds shall be indicated on the certificate of insurance.

Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing the Work, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Licensee WARRANTS that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

For purposes of this section, Licensor shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

ENVIRONMENTAL

24. (a) Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- (b) Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- (c) In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Electric supply Line which occurred or may occur during the term of this License,

Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

- (d) Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

ALTERATIONS

- 25. Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

NO WARRANTIES

- 26. **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

QUIET ENJOYMENT

- 27. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

DEFAULT

- 28. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this License by operation of law, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 28 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

LIENS AND CHARGES

29. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensors is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensors to take any such action shall not relieve Licensee of any obligation or liability under this Section 29 or any other Section of this License. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Licensors or the Premises that are attributable to the Improvements.

TERMINATION

30. This License may be terminated by Licensors, at any time, by serving thirty (30) days' written notice of termination upon Licensee. This License may be terminated by Licensee upon execution of Licensors's Mutual Termination Letter Agreement then in effect. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.
31. If Licensee fails to surrender to Licensors the Premises, upon any termination of this License, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

ASSIGNMENT

32. Neither Licensee, nor the heirs, legal representatives, successors, or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this License or any interest herein, without the prior written consent and approval of Licensors, which may be withheld in Licensors's sole discretion.

NOTICES

33. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB-3
Fort Worth, TX 76131
Attn: Manager – Land Revenue Management

If to Licensee: City of Grand Island
P O Box 1968
Grand Island, Nebraska 68801

SURVIVAL

34. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Electric Supply Line and improvements are removed and the Premises are restored to its condition as of the Effective Date.

RECORDATION

35. It is understood and agreed that this License shall not be placed on public record.

APPLICABLE LAW

36. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the state of Texas without regard to conflicts of law provisions.

SEVERABILITY

37. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

INTEGRATION

38. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

MISCELLANEOUS

39. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
40. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

Jones Lang LaSalle Global Services – RR, Inc. is acting as representative for BNSF Railway Company.

IN WITNESS WHEREOF, this License has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

BNSF RAILWAY COMPANY

Jones Lang LaSalle Global Services - RR, Inc., its
Attorney in Fact
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800

Ed Darter
Title: Vice President - National Accounts

CITY OF GRAND ISLAND

P O Box 1968
Grand Island, Nebraska 68801

By: _____
Title: _____

CITY OF GRAND ISLAND

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JWD

RESOLUTION 2011-51

WHEREAS, on April 28, 2009 City Council authorized the Utilities Department to proceed with the necessary engineering, permits and other services required to construct a new 115 kV transmission line northwest of the City; and

WHEREAS, the new line will cross the Burlington Northern Santa Fe (BNSF) railroad tracks just west of Highway 281 at the same location as an existing 115 kV transmission line crossing; and

WHEREAS, the new transmission line project will add a second circuit to the pole line, and a new crossing permit is required; and

WHEREAS, a permit application was submitted to BNSF and a License for Electric Supply Line Across or Along Railway Property was returned for execution.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized, on behalf of the City, to execute the License for Electric Supply Line Across or Along Railway Property between the City of Grand Island and Burlington Northern Santa Fe Railway Company.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G6

**#2011-52 - Approving Agreement for Marketing Services for
WEC2 Energy between the City of Grand Island and the
Municipal Energy Agency of Nebraska (MEAN)**

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Jason Eley, Interim City Attorney

Meeting: March 8, 2011

Subject: Approving Agreement for Marketing Services for WEC2 Energy

Item #'s: G-6

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

Background

Grand Island is a participant in the Public Power Generating Agency (PPGA) which is a group of public power utilities organized under the Interlocal Agreement provisions of state law. The purpose of the PPGA is the construction and operation of a base load, coal fired power plant that will provide electric power to the project participants to meet future load growth. The plant is located in Hastings, being built on the same site as the current Hastings power plant, Whelan Energy Center (WEC) #1. The new unit is termed WEC#2. With the addition of this facility, there will be opportunity for increased wholesale sales of electric energy to the regional grid, when that generation resource is not needed to serve Grand Island's native load. It is proposed that a marketing agreement be put in place to facilitate wholesale power sales. WEC#2 construction is nearly completed, and the generating unit is undergoing start-up and performance testing at this time. It is anticipated that commercial operation will be achieved within the next 90 days.

Prior to the de-regulation of the nation's electric industry in the late 1990's, electric power sales were made primarily between adjacent electric utilities that had transmission interconnections. With deregulation, the goal of the federal government has been to expand the opportunities for wholesale sales among utilities, with the theory that lowest cost generators should be used before more expensive generation, and with the theory that these transactions could be on a national scale. To that end, the Federal Energy Regulatory Commission (FERC) had promulgated extensive new regulations to govern the interactions of utilities and the wholesale power markets, and has mandated the creation of bureaucracies to control both the sales transactions and security of the nation's electric grid. Power markets are now created, governed and administered by Regional Transmission Organizations (RTOs). The RTOs have in turn generated their own governing regulatory structure in compliance with the FERC regulatory

requirements. Electric Utilities with regional interconnections have added full time staffs dedicated to the transactions associated with power purchase and sale and documenting compliance with the FERC/RTO regulatory requirements. The Southwest Power Pool (SPP) is the regional RTO for most of Nebraska. SPP governs electric transmission in most of Nebraska, Kansas and Oklahoma and in parts of five other states. Because of the increased regulatory requirements load, administrative requirements and additional staffing needed to participate in the RTO markets, Grand Island has accomplished wholesale power sales through NPPD and OPPD, who are SPP members and staffed and interconnected to operate in the SPP RTO. The addition of WEC#2 increases the potential for wholesale electric power sales.

Discussion

Prior to the development of RTOs, utilities purchased and sold power directly with each other in what is commonly termed bilateral sales. That is the type of sale that Grand Island has used historically. In the new world of RTOs, utilities are more commonly participating in the real-time regional power markets that are strictly price based. The Municipal Energy Agency of Nebraska (MEAN) is the wholesale marketing and electricity supply organization of the Nebraska Municipal Power Pool. MEAN provides power supply, transmission and related services to more than 60 communities, one public power district and one joint-action agency in four states; Nebraska, Colorado, Iowa, and Wyoming. MEAN is also a participant in the WEC#2 power plant project. As partners in the WEC#2 power plant, the Nebraska participants, MEAN, Nebraska City, Hastings Utilities and Grand Island are developing agreements with MEAN to jointly market the available excess power from WEC#2, with MEAN as the marketer. Aggregating the participant share into a larger block for sale offers some advantages in the power market. The marketing agreement establishes the parameters of the marketing effort. It is not an exclusive agreement, and Grand Island would retain its current arrangements with NPPD and OPPD. A copy of the proposed agreement is attached for Council review. Exhibit B of the agreement includes detailed pricing information that is considered confidential. Exhibit B is provided under separate cover and delivered to the Mayor and Council in their City Hall mail boxes.

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 Agreement for Marketing Services for WEC2 Energy with the Municipal Energy Agency of Nebraska.

Sample Motion

Move to approve the Agreement for Marketing Services for WEC2 Energy with the Municipal Energy Agency of Nebraska.

AGREEMENT FOR MARKETING SERVICES FOR WEC2 ENERGY

Dated March 1, 2011

This Agreement for Marketing Services for WEC2 Energy ("Agreement") is entered into by and among the Municipal Energy Agency of Nebraska ("MEAN") and the undersigned participants (each a "Participant" and collectively referred to herein as the "Participants"). MEAN and the Participants are collectively referred to as the "Parties".

1. Each of the undersigned Participants requests, and MEAN hereby agrees, that MEAN will perform the services described on Exhibit A, attached hereto and made part of this Agreement, for such Participant. Exhibit A may be modified from time to time upon written agreement of all of the Parties hereto.

2. Compensation for services, transmission and any other charges or costs shall be as set forth in Exhibit B, attached hereto and made part of this Agreement, and will be netted against revenue from the sale of the Parties' energy from the Whelan Energy Center Unit 2 ("WEC2") as described herein. Exhibit B may be modified from time to time upon written agreement of all the Parties hereto. The net balance each month as calculated by MEAN for each Participant will then be invoiced by MEAN. Each such invoice will be paid by Participant to MEAN if expenses and compensation due for such month exceed the revenue due to Participant from WEC2 energy sales in such month, or will be paid by MEAN to Participant if the revenue from WEC2 energy sales in such month exceeds the expenses and compensation due for such month. Payments are due within thirty (30) days of the date of invoice. Interest on any unpaid amount from the date due until the date upon which payment is made shall accrue at the rate of one percent per month or fraction thereof.

3. This Agreement shall be legally binding upon execution by MEAN and at least one Participant. The services hereunder shall take effect upon the Commercial Operation Date of WEC2. After the initial execution by any Participant and MEAN, any other participant in WEC2 may become a Participant by the execution of this Agreement with MEAN and delivery of the Agreement to MEAN. The list of Participants shall be set forth on Exhibit C, attached hereto and made part of this Agreement. MEAN may terminate this Agreement on ninety (90) days written notice to all Participants. Any Participant may terminate its participation in this Agreement by ninety (90) days written notice to MEAN, which will then send written notice to all other Participants notifying them of the termination.

4. Notwithstanding any other provision of this Agreement, MEAN's total liability to each Participant for any loss or damage, including, but not limited to, special and/or consequential damages arising out of or in connection with the performance of services or any other cause shall not exceed the compensation received by MEAN from such Participant for scheduling, marketing and settlement services under this Agreement (excluding costs of transmission service, transmission losses and electrical energy, and other fees payable to transact energy schedules), and each Participant hereby releases and waives any and all contractual or legal rights against MEAN for any liability above such amount. The Participants further agree, to the fullest extent permitted by law, to defend, indemnify, and hold harmless MEAN and its officers, directors, employees and agents from and against all third party claims for damages, losses and expenses, direct or indirect, or consequential damages including, but not limited to, attorney's fees arising out of or resulting from the failure of its timely and proper performance hereunder.

5. MEAN shall at all times and for all purposes be an independent contractor under this Agreement. It is understood that MEAN, pursuant to the terms and conditions of this Agreement, shall not assume duties of any existing agent(s) or manager(s) that have been established under other agreements regarding Public Power Generation Agency's WEC2.

6. The Parties hereby deem subsections (i), (ii), (iii) and (iv) of Exhibit B of this Agreement to constitute confidential information ("Confidential Information"), subject to the provisions of this paragraph. Each Party agrees that it will use reasonable care to prevent unauthorized disclosure of Confidential Information. Each Party agrees that it will not make any copies of Confidential Information except for use by its authorized officers, employees, agents and members of its governing body(ies) with a need to know in connection with this Agreement ("Representatives"), and each Party agrees to inform its Representatives having access to Confidential Information of the terms of the confidentiality and non-disclosure terms within this Agreement. Each Party agrees not to distribute, disclose or disseminate Confidential Information in any way to anyone, except Representatives who have such need to know. The obligations imposed in this paragraph shall not apply to Confidential Information which must be disclosed pursuant to any law, order or regulatory requirement (including, but not limited to, the Open Meetings Act, Neb. Rev. Stat. § 84-1407 et seq., and the Nebraska public records Laws, Neb. Rev. Stat. § 84-712 et seq.). If disclosure is requested or demanded as to Confidential Information pursuant to any law, order or regulatory requirement, the Party receiving the request or demand shall provide MEAN with prompt notice to enable MEAN to seek protective legal remedies, and the Party receiving the request or demand shall reasonably cooperate in connection therewith.

7. Except as otherwise provided herein, this Agreement may be amended only by a written instrument duly executed by all of the Parties hereto.

8. This Agreement does not and is not intended to confer any rights or remedies upon any person other than MEAN and the Participants.

9. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

10. Separate copies of this Agreement are executed by the Parties with the understanding that, when each of the Parties has executed a copy with MEAN, its separately executed copy will be joined together with all other similarly executed copies and one conformed master copy of said Agreement shall be prepared, which shall bind all of the Parties to the same extent and purpose as if all of said Parties has joined in the execution of said master copy.

11. This document, along with exhibits marked A through C, encompass the whole and total agreement on the matters contained in this Agreement, and except as provided in Section 7 above, no other document shall be incorporated into this Agreement.

[SIGNATURE PAGES FOLLOWING.]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement for Marketing Services for WEC2 Energy to be executed by its duly authorized officer as of the day and year shown below.

MUNICIPAL ENERGY AGENCY OF NEBRASKA

By _____
Executive Director

Date _____

PARTICIPANT: GRAND ISLAND UTILITIES, ACTING FOR
AND ON BEHALF OF THE CITY OF GRAND ISLAND,
NEBRASKA

By _____

Title _____

Date _____

**EXHIBIT A, SCOPE OF SERVICES
TO
AGREEMENT FOR MARKETING SERVICES FOR WEC2 ENERGY**

Issued March 1, 2011

Pursuant to the Agreement for Marketing Services for WEC2 Energy ("Agreement"), the Municipal Energy Agency of Nebraska ("MEAN") shall be responsible for the performance of the following services for Participant on a non-exclusive basis for any day on which Participant requests MEAN to perform such service, beginning on the Commercial Operation Date of WEC2, subject to the terms of this Exhibit and the Agreement:

- i. MEAN will use reasonable efforts, with the limitations described in this Exhibit, to schedule and market in the Eastern Interconnection and/or Western Interconnection each Party's share of energy generated by WEC2, or the portion thereof that is desired by such Party to be marketed by MEAN. All marketing efforts and the completion of marketing transactions by MEAN under this Agreement are subject to transmission availability and market conditions. In the event MEAN cannot find a buyer or determines in its sole discretion that marketing the energy is not feasible because the WEC2 incremental cost exceeds the bilateral market, MEAN shall allow the Parties' WEC2 energy to be delivered into the Southwest Power Pool, Inc. ("SPP") market and the Parties will receive the revenue or pay the cost associated with the resulting energy imbalance pricing in the SPP market according to Exhibit B. Each Party's share of energy generated by WEC2 will be combined with the shares of the other Parties for whom MEAN is providing this service. For purposes of clarity, it is intended that MEAN's share of WEC2 energy that is not scheduled to MEAN's load will be included with the other Parties' shares. MEAN shall allocate all revenues and expenses associated with this service according to Exhibit B.
- ii. MEAN will tag and settle the WEC2 energy of the Parties for sales to third parties or SPP made pursuant to subsection i above.
- iii. Any request for MEAN to market energy must be received by MEAN from Participant by 6:00 a.m. Central Prevailing Time in the then-current day ahead marketing period.
- iv. MEAN will tag and schedule any Party's share of WEC2 energy to such Party's load as requested by such Party.

The Participants acknowledge that in the performance of services hereunder by MEAN, conflicts of interest may arise due to the nature of MEAN's duty to serve its participating municipalities and manage its power system. Further, the Participants acknowledge that MEAN's duty to acquire and supply the lowest-cost, reliable energy supply to its participating municipalities is superior to MEAN's duty to the Participants under this Agreement. Accordingly, each determination of MEAN to dispose of the energy will be made with the intent, first, to keep MEAN whole and second, to maximize profit and minimize losses for the Parties, with no particular Participant's interests being superior to any other Participant's interests. Nothing in this Exhibit or the Agreement shall be deemed to require MEAN to take any action or make any sale of energy that causes a negative financial impact to MEAN. THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY.

Terms used but not defined in this Exhibit shall have the meaning ascribed thereto in the Agreement.

This Exhibit A may be modified from time to time as described in the Agreement.

Exhibit B

**(Fees, Revenue Sharing)
Is a Confidential Agreement**

Provided to Council under separate cover

EXHIBIT C, LIST OF PARTICIPANTS
TO
AGREEMENT FOR MARKETING SERVICES FOR WEC2 ENERGY

Issued _____, 2011

[LIST TO BE ISSUED AFTER EXECUTION]

RESOLUTION 2011-52

WHEREAS, Grand Island is a participant in the Public Power Generating Agency (PPGA) which is a group of public power utilities organized under the Interlocal Agreement provisions of state law; and

WHEREAS, the purpose of the PPGA is the construction and operation of a base load, coal fired power plant that will provide electric power to the project participants to meet future load growth; and

WHEREAS, the plant is located in Hastings, being built on the same site as the current Hastings power plant, Whelan Energy Center (WEC) #1, the new unit is termed WEC #2; and

WHEREAS, with the addition of this facility, there will be opportunity for increased wholesale sales of electric energy to the regional grid, when that generation resource is not needed to serve Grand Island's native load; and

WHEREAS, a marketing agreement is needed to facilitate wholesale power sales; and

WHEREAS, the Municipal Energy Agency of Nebraska (MEAN) is the wholesale marketing and electricity supply organization of the Nebraska Municipal Power Pool, and a participant in the WEC #2 power plant project; and

WHEREAS, the Nebraska Participants, MEAN, Nebraska City, Hastings Utilities and Grand Island have developed an agreement with MEAN to jointly market the available excess power from WEC #2 with MEAN as the marketer.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized, on behalf of the City, to execute the Agreement for Marketing Services for WEC2 Energy between the City of Grand Island and the Municipal Energy Agency of Nebraska (MEAN).

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011

Jay Vavricek, Mayor

Attest:

Approved as to Form	☐ _____
March 4, 2011	☐ City Attorney

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G7

#2011-53 - Approving Revised Laredo Ridge Power Sales Agreement

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Jason Eley, Interim City Attorney

Meeting: March 8, 2011

Subject: Restated and Amended Power Sales Agreement for
Laredo Ridge Wind Farm

Item #'s: G-7

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

Background

On December 7, 2010, Grand Island City Council approved the Laredo Ridge Wind Farm Power Sales Agreement (PSA) with Nebraska Public Power District (NPPD). This agreement allows Grand Island to receive 1.25% of the power generated at Laredo Ridge Wind Farm located near Petersburg, Nebraska. Other participants of this wind farm are Lincoln Electric Systems (LES), Municipal Energy Agency of Nebraska (MEAN) and NPPD. After Grand Island's approval in December, changes were made to the PSA on behalf of LES and MEAN. It is NPPD's desire to keep the PSAs with each utility identical. Attached for reference are both the redline of the amended document and the final Restated and Amended Power Sales Agreement.

Discussion

The Restated and Amended PSA was reviewed by City Utilities and the Legal Department and determined to have no significant differences from the original PSA. The changes include several clarifications and the inclusion of additional provisions regarding reimbursed of project development costs in the event of sales agreement termination. The changes provide better financial protection to the participants in the event of termination.

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 Restated and Amended Power Sales Agreement with NPPD for Grand Island's share of the Laredo Ridge Wind Farm.

Sample Motion

Move to approve the Restated and Amended Power Sales Agreement with NPPD.

POWER SALES AGREEMENT

Between

NEBRASKA PUBLIC POWER DISTRICT

And

THE CITY GRAND ISLAND, NEBRASKA

For a

WIND ENERGY SHARE

From The

LAREDO RIDGE WIND, LLC, PLANT

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POWER SALES AGREEMENT

Between

NEBRASKA PUBLIC POWER DISTRICT

And

THE CITY OF GRAND ISLAND, NEBRASKA

For a

WIND ENERGY SHARE

From The

LAREDO RIDGE WIND, LLC, PLANT

This POWER SALES AGREEMENT ("Agreement") made this ____ day of _____, 2010, by and between NEBRASKA PUBLIC POWER DISTRICT, a public corporation and political subdivision of the State of Nebraska (hereinafter "NPPD") and the CITY OF GRAND ISLAND, NEBRASKA, a municipal corporation and political subdivision of the State of Nebraska (hereinafter "City").

WITNESSETH:

WHEREAS, NPPD is authorized by the State of Nebraska to engage in the generation, transmission, ~~sale~~ and distribution of electricity; and

WHEREAS, NPPD has a Power Purchase Agreement (as defined herein) with Laredo Ridge Wind, LLC, to purchase one hundred percent (100%) of the output of the LRW Plant (as hereinafter defined); and

WHEREAS, NPPD desires to sell Purchased Power generated at the LRW Plant (as hereinafter defined); and

WHEREAS, City desires to enter into an agreement with NPPD to buy Purchased Power (as hereinafter defined) generated at the LRW Plant (as hereinafter defined) in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

SECTION 1 DEFINITIONS

In addition to the initially capitalized terms and phrases defined in the above recitals, and those set forth in the Schedules attached to this Agreement, the following initially capitalized terms and phrases as and when used in this Agreement shall have the respective meaning set forth below:

- 1.1 "Bankruptcy Proceeding" means, with respect to a Party, that such Party (i) makes any general assignment or any general arrangement for the benefit of creditors, (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition involuntarily filed against it and such petition is not withdrawn or dismissed within thirty (30) Days after such filing, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) is unable (or admits in writing its inability) generally to pay its debts as they fall due, (v) is dissolved (other than pursuant to a consolidation, acquisition, amalgamation or merger), (vi) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, acquisition, amalgamation or merger), (vii) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for all or substantially all of its assets, (viii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) Days thereafter, (ix) causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (viii) (inclusive); or (x) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

- 1.2 "Business Day" means a day on which the Federal Reserve Member Banks in Nebraska are open for business; and a Business Day shall open at 8:00 A.M. and close at 5:00 P.M. local time in Omaha, Nebraska.
- 1.3 "Capacity" means the same as "capability" for electric power supply, and refers to the maximum electric generation, less losses to the interconnection and energy used by the LRW Plant, that the LRW Plant can be expected to supply to the electric transmission system under specified conditions for a given time interval. The Capacity of generating equipment is generally expressed in megawatts.
- 1.4 "Commercial Operation Date" shall have the meaning specified in the Power Purchase Agreement (as hereinafter defined).
- 1.5 "Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any action required to be made, attempted or taken by a Party under this Agreement, such efforts as a reasonable prudent business Person would undertake for the protection of its own interest under the conditions affecting such action, including without limitation, the amount of notice of the need to take such action, and the duration and type of action.
- 1.6 "Compensable Curtailment" shall have the meaning specified in Section 5.5.2.
- 1.7 "Confidential Information" means information about the real, personal and intellectual properties, finances, operations, development strategies, business plans and other business information of each Party, which is designated as "Confidential" in accordance with Section 17. Confidential information, when disclosed in written, machine readable, or other tangible form by one Party to the other Party, shall be clearly marked as "Confidential." Information which is disclosed orally and is promptly followed by a written summary of the oral disclosure which identifies the material as "Confidential" shall be treated as Confidential Information and used only according to the terms of Section 17.
- 1.8 "Contract Year" shall have the meaning specified in the Power Purchase Agreement (as hereinafter defined).
- 1.9 "Day" means a calendar day.

- 1.10 "Delivered Energy" means that portion of the MWh generated by the LRW Plant and delivered by NPPD to City at the Delivery Point.
- 1.11 "Delivery Point" shall have the meaning specified in Section 8.1.
- 1.12 "Due Date" shall have the meaning specified in Section 6.1.
- 1.13 "Effective Date" shall have the meaning specified in Section 18.10.
- 1.14 "Environmental Attributes" means any and all credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, howsoever described or entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the generation of the Delivered Energy, but specifically excluding the Production Tax Credits (PTCs). Environmental Attributes include, but shall not be limited to, those attributes that are created or recognized by regulations, statutes, or other action by a Governmental Authority, and include, but shall not be limited to, those attributes that can be used to 1) claim responsibility for the reduction of emissions and/or pollutants, 2) claim ownership of emission and/or pollutant reduction rights, 3) claim reduction or avoidance of emissions or pollutants, and 4) claim compliance with a renewable energy standard or renewable portfolio standard. Emissions and pollutants as referred to above include, but are not limited to, acid rain precursors, carbon dioxide, carbon monoxide, chlorinated hydrocarbons, greenhouse gases, mercury, metals, methane, nitrogen oxides, nitrogen-oxygen compounds, ozone precursors, particulate matter, sulfur dioxide, toxic air pollutants, other carbon and sulfur compounds, and similar or dissimilar pollutants, emissions, or contaminants of air, water or soil. Environmental Attributes shall be based on Delivered Energy.
- 1.15 "Event of Default" or "Default" means either an City or an NPPD Default, all as specified in Section 12.
- 1.16 "Governmental Authority" means any municipal, local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department or other such entity of competent jurisdiction, but excluding the Parties and any

agency, commission, department or other such entity acting in its capacity as lender or guarantor to the Parties.

- 1.17 "Guaranteed Price" means the year-by-year price expressed in dollars per MWh, based upon the date of generation, as set forth in Section 5.3 of the Power Purchase Agreement.
- 1.18 "Late Payment Rate" shall have the meaning specified in Section 6.2.
- 1.19 "Law" means any law, code, statute, regulation, writ, decree, rule, ordinance, resolution, judgment, injunction, order or other legal or regulatory requirement of a Governmental Authority having jurisdiction over the matter in question, which is valid and applicable to the matter in question (i) at the time of the execution of this Agreement or (ii) any time thereafter during the Term.
- 1.20 "Legal Proceeding" means any suit, proceeding, judgment, ruling or order by or before any Governmental Authority.
- 1.21 "LRW Plant" means the generating units and facilities located on the Site utilized for the generation of wind-powered energy, said plant located near the Village of Petersburg, Boone County, Nebraska, and currently owned by Laredo Ridge Wind, LLC, a Delaware limited liability company.
- 1.22 "Month" means a calendar month, commencing at the beginning of the first Day of such calendar month. "Monthly" has a meaning correlative to that of "Month".
- 1.23 "MW" means, in the singular context, one megawatt, and in the plural context, megawatts.
- 1.24 "MWh" means, in the singular context, one megawatt hour, and in the plural context, megawatt hours.
- 1.25 "Party" or "Parties" means either NPPD or City, or both.
- 1.26 "Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, Governmental Authority or other entity, including the Parties.

- 1.27 "Power Purchase Agreement" means the Power Purchase Agreement Between Nebraska Public Power District and Laredo Ridge Wind, LLC, effective February 5, 2010, together with any later amendments, assignments or transfers.
- 1.28 "Prime Rate" means for any Day, the per annum rate of interest announced by the Wall Street Journal Midwest Edition in the Money Rates Section as its "prime" rate for commercial loans, effective for such Day (or if not published on such Day, on the most recent preceding Day on which published). If not available from the Wall Street Journal, an alternate will be agreed to.
- 1.29 "Production Tax Credits" or "PTCs" means tax credits applicable to electricity produced from certain renewable resources pursuant to 26 U.S.C. § 45, which tax credits provide a federal income tax credit based on electricity production from any portion of the LRW Plant.
- 1.30 "Prudent Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior to such time, or any of the practices, methods and acts, which in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts generally acceptable in the region in light of the circumstances.
- 1.31 "Purchased Power" means City's one and one-quarter percent (1.25%) share, in any given hour, of the total of, as defined in the Power Purchase Agreement, 1) Capacity, 2) Delivered Energy, and 3) Environmental Attributes from the LRW Plant which NPPD purchases pursuant to the Power Purchase Agreement.
- 1.32 "Scheduling Procedures" shall have the meaning specified in Appendix B attached hereto.
- 1.33 "Site" means the parcels of real property on which the LRW Plant will be constructed and located, including any easements, rights of way, surface use

agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the LRW Plant and LRW's interconnection facilities.

- 1.34 "SPP" refers to the Southwest Power Pool, Inc. "SPP Agreement" means the membership agreement entered into by NPPD with SPP, effective April 1, 2009, as amended. NPPD is a member and party to such Agreement. Should NPPD withdraw from the SPP or any of ~~SPP's~~ functions be replaced by a successor entity or function, the requirements of such successor entity or function shall apply to this Agreement.

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- 1.35 "Term" shall have the meaning specified in Section 3.
- 1.36 "Test Energy" shall have the meaning specified in Section 4.2.

SECTION 2 REPRESENTATIONS, WARRANTIES AND COVENANTS

- 2.1 **Representations, Warranties and Covenants of NPPD.** NPPD hereby makes the following representations, warranties and covenants to City as of the Effective Date:
- 2.1.1 NPPD is a public corporation and political subdivision of the State of Nebraska duly organized, validly existing and in good standing under the Laws of the State of Nebraska, and has the legal power and authority to conduct its business and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- 2.1.2 The execution, delivery and performance by NPPD of this Agreement have been duly authorized by all necessary action.
- 2.1.3 This Agreement constitutes the legal, valid and binding obligation of NPPD, enforceable in accordance with its terms.

- 2.1.4 There is no pending, or to the knowledge of NPPD, threatened action or proceeding affecting NPPD before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof.
- 2.1.5 There are no approvals, authorizations, consents, or other action required by any Governmental Authority necessary to authorize NPPD's execution and delivery of this Agreement.
- 2.1.6 The execution and performance of this Agreement does not conflict with or constitute a breach or default under any contract or agreement of any kind to which NPPD is a party or any judgment, order, statute, or regulation that is applicable to NPPD.
- 2.2 **Representations, Warranties and Covenants of City.** City hereby makes the following representations, warranties and covenants to NPPD as of the Effective Date:
- 2.2.1 City is a municipal corporation and political subdivision of the State of Nebraska duly organized, validly existing and in good standing under the Laws of the State of Nebraska, and has the legal power and authority to conduct its business and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- 2.2.2 City is a governmental entity and is tax exempt under the Internal Revenue Code and ~~the~~ applicable regulations promulgated thereunder. Deleted: any other
- 2.2.3 The execution, delivery and performance by City of this Agreement have been duly authorized by all necessary action.
- 2.2.4 This Agreement constitutes the legal, valid and binding obligation of City, enforceable in accordance with its terms.
- 2.2.5 There is no pending or, to the knowledge of City, threatened action or proceeding affecting City before any Governmental Authority which

purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof.

- 2.2.6 The execution and performance of this Agreement does not conflict with or constitute a breach or default under any contract or agreement of any kind to which City is a party or any judgment, order, statute, or regulation that is applicable to City.
- 2.2.7 There are no approvals, authorizations, consents, or other action required by any Governmental Authority necessary to authorize Soller's execution and delivery of this Agreement.

SECTION 3 TERM OF AGREEMENT

3.1 **Term.** This Agreement shall become effective on the Effective Date and, unless terminated pursuant to item (ii), (iii), (iv) or (v) below, shall remain in effect for a period of twenty (20) years following the Commercial Operation Date of the Plant (the "Term"); provided:

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- (i) In no event shall the Term exceed the term of the Power Purchase Agreement, and
- (ii) In the event NPPD exercises its option under the Power Purchase Agreement to purchase the LRW Plant after Contract Year 10, NPPD shall have the right, in its sole discretion, to terminate this Agreement with six (6) Months prior written notice to City, and the Parties will enter into good faith negotiations at that time to enter into a new power sales agreement for a wind energy share from the LRW Plant, if so desired by the Parties. If the Parties are unable to enter into a new power sales agreement, NPPD agrees to reimburse City for unrealized benefits of Capital Costs and Wind Site Costs described in Appendix D which City has already paid NPPD under Section 5.7, using a factor of 0.417 percent for each Month remaining in the Term on the date of termination, and
- (iii) In the event of a proposed amendment to the Power Purchase Agreement, NPPD shall provide to City, prior to signing of the amendment

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Redline Identifying changes to be proposed by Amendment 1

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by NPPD, a copy of said amendment for review and submittal of comments to NPPD. NPPD in its sole discretion may provide a voluntary response to any City comments on the amendment. City shall have the right to terminate this Agreement by giving written notice to NPPD within thirty (30) Days of receiving a copy of the amendment. In the event of such termination, NPPD agrees to reimburse City for unrealized benefits of Capital Costs and Wind Site Costs described in Appendix D which City has already paid NPPD under Section 5.7, using a factor of 0.417 percent for each Month remaining in the Term on the date of termination.

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- (iv) In the event the SPP transmission service request study indicates that network transmission upgrades are required that will result in assigned direct incremental annual cost to City which is greater than twenty-five thousand dollars (\$25,000), City shall have the right to terminate this Agreement by giving written notice to NPPD within thirty (30) days of receiving the final transmission service request study results. In the event of such termination, NPPD agrees to reimburse City for unrealized benefits of Capital Costs and Wind Site Costs described in Appendix D which City has already paid NPPD under Section 5.7, using a factor of 0.417 percent (0.417%) for each Month remaining in the Term on the date of termination.

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- (v) In the event of termination by City for cause as described in Section 12, NPPD agrees to reimburse City for unrealized benefits of Capital Costs and Wind Site Costs described in Appendix D which City has already paid NPPD under Section 5.7, using a factor of 0.417 percent (0.417%) for each Month remaining in the Term on the date of termination.

3.2 Survivability. Applicable provisions of this Agreement shall continue in effect (i) after termination to the extent necessary to provide for final billings and adjustments, and (ii) as provided herein.

3.3 Contingency. This Agreement and obligations hereunder are contingent upon the Power Purchase Agreement being in full force and effect as to NPPD.

SECTION 4 PURCHASED POWER AND TEST ENERGY

- 4.1 Sale of Purchased Power.** Pursuant to the provisions of the Power Purchase Agreement, attached hereto and incorporated herein as Appendix A, NPPD has agreed to buy Purchased Power produced by or attributable to the LRW Plant during the term of the Power Purchase Agreement. NPPD immediately will provide City with written notice of the Commercial Operation Date when the same has been communicated to NPPD by Laredo Ridge Wind, LLC.
- 4.2 Test Energy.** Prior to Commercial Operation Date, any and all wind energy that is produced by the LRW Plant and delivered to NPPD ("Test Energy") shall be purchased by NPPD from Laredo Ridge Wind, LLC, pursuant to the terms of the Power Purchase Agreement, and such Test Energy shall not be sold to City under the terms of this Agreement. On and after the Commercial Operation Date, NPPD will sell to City and City will purchase from NPPD Purchased Power at the Guaranteed Price, pursuant to the terms and conditions of this Agreement, all as more specifically set forth in Section 5.

Deleted: NPPD anticipates a Commercial Operation Date for the LRW Plant on or about January 1, 2011.

SECTION 5 SALE AND PURCHASE OBLIGATION

- 5.1 Purchase Obligation.** City's obligation to buy Purchased Power from NPPD shall commence on the Commercial Operation Date. For any Purchased Power purchased by City from NPPD pursuant to this Agreement, NPPD shall utilize the invoicing procedures set forth in Section 6.
- 5.2 Sale and Purchase**
- 5.2.1** NPPD shall sell Purchased Power to City during the Term and deliver the associated Delivered Energy during the Term, subject to the terms of this Agreement. City shall purchase Purchased Power during the Term and accept delivery of all the Delivered Energy at the Delivery Point, subject to the terms of this Agreement. NPPD shall not sell or contract to sell any Capacity, Delivered Energy or Environmental Attributes associated with the Purchased Power to any Person other than City for the Term.

- 5.2.2 City, in its capacity as the purchaser under this Agreement, shall not be obligated to pay for any Purchased Power on any basis other than the amount of Delivered Energy that NPPD delivers at the Delivery Point from the LRW Plant, except as provided in Section 5.5 and Section 5.7.
- 5.2.3 For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NPPD hereby sells, transfers and conveys to City, its successors and assigns, all of NPPD's right, title and interest in and to all Environmental Attributes that now exist or are hereafter created or recognized as being associated with the Purchased Power. The Parties intend that this transfer of Environmental Attributes, and City's right with respect to such Environmental Attributes, shall be immediate, absolute and unconditional. City's rights to the Environmental Attributes will terminate upon the cancellation or other termination of this Agreement prior to the expiration of the Term, but shall not be affected by the fact that City is for any other reason not receiving the Purchased Power of the LRW Plant at any time or times. NPPD agrees that it will provide to City one or more bills of sale, or other documentation that City might from time to time request, to help City establish or evidence City's absolute and unconditional right, title and interest in and to the Environmental Attributes, and NPPD further acknowledges and agrees that this Agreement may be used by City to establish or evidence City's absolute and unconditional right, title and interest.
- 5.2.4 City shall be responsible for scheduling Delivered Energy deliveries at the Delivery Point, in accordance with the provisions of Section 9, and shall be responsible for all transmission line losses, transmission and ancillary service arrangements and costs required to deliver such energy beyond the Delivery Point. NPPD shall cooperate with City in connection with scheduling and provide City with information available to NPPD, such as, but not limited to, site meteorological, generation and turbine availability data, to enable City to schedule such Delivered Energy. Deleted: reasonably
- 5.3 **Guaranteed Price.** During the Term, City shall pay NPPD the Guaranteed Price set forth in Section 5.3 of the Power Purchase Agreement for each applicable Contract Year.

5.4 **Environmental Attributes.** NPPD shall present to City an attestation form in the form set forth in Appendix C or such other form agreeable between the Parties as proper and appropriate for the particular Environmental Attributes, with each invoice designating the quantity of Environmental Attributes associated with the relevant invoice period. In the event that City determines that it requires amendment or modification to the form of attestation to be received from NPPD with future invoices, NPPD agrees to use commercially reasonable efforts to amend or modify the form of attestation it provides to City, in order to accommodate City's needs. NPPD agrees to provide certification for one hundred percent (100%) of the Environmental Attributes on forms that are Green-e® eligible, and such other documentation as may be reasonably requested by City from time to time in order to realize the benefits of the Environmental Attributes. NPPD represents and warrants it has and at all times will have exclusive right to sell the Environmental Attributes that exist under current Laws called for in this Agreement, and if there are changes in Laws after the Effective Date, NPPD shall take all actions within its rights and control to establish and maintain its exclusive rights to sell and transfer such Environmental Attributes to City, and NPPD further declares that the Environmental Attributes have not been sold or otherwise transferred to a third party. NPPD shall not sell, market, or otherwise transfer Environmental Attributes to a third party. NPPD's full and exclusive ownership rights to the Environmental Attributes described herein are not being disputed; and the Delivered Energy that was generated with the Environmental Attributes was not and will not be separately sold, marketed or otherwise represented as renewable energy by NPPD and was not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by NPPD.

5.5 **Title, Risk of Loss, Seller's Benefits and Compensable Curtailments.**

5.5.1 As between the Parties, NPPD shall own and control the Purchased Power up to and until delivery and receipt at the Delivery Point and City shall own and control such Purchased Power from and after delivery and receipt at the Delivery Point. Title and risk of loss related to the Purchased Power shall transfer from NPPD to City at the Delivery Point.

- 5.5.2 In the event of a Compensable Curtailment, as provided for in Sections 5.7.3, 5.7.4 and 5.7.5 of the Power Purchase Agreement, City shall be obligated to pay NPPD an amount equal to one and one-quarter percent (1.25%) of NPPD's obligations.
- 5.5.3 NPPD shall invoice City for amounts due as a result of a Compensable Curtailment together with its regular Monthly invoice for the applicable Month.
- 5.6 **No Dedication of Resources.** The sale by NPPD to City of Purchased Power under this Agreement shall not constitute a sale, lease, transfer, dedication or conveyance of any type of an ownership interest in or to the LRW Plant and Site.
- 5.7 **Developmental and Administrative Costs**
- 5.7.1 **Prior to the Effective Date.** Prior to the Effective Date, NPPD has incurred costs associated with the development of the Power Purchase Agreement, as identified in Appendix D. NPPD will invoice City for one and one-quarter percent (1.25%) of such administrative costs incurred prior to the Effective Date and City shall make payment to NPPD in accordance with Section 6.1.
- 5.7.2 **After the Effective Date.** NPPD will continue to expend administrative and operational costs, including, for example, but not limited to wind forecasting services, transmission system studies and facilities to meet reliability requirements, and other costs related to this Agreement and the Power Purchase Agreement, as well as attorneys' fees related to the performance and management of the Power Purchase Agreement. NPPD will invoice City for normal administrative and operational costs at a flat rate of thirty (30) cents/MWh, and City shall make payment to NPPD in accordance with Section 6.1. Should unanticipated expenditures in compliance with Prudent Utility Practice occur, NPPD reserves the right to invoice City actual pro-rata charges as incurred on a calendar year basis, and City shall make payment to NPPD in accordance with Section 6.1. Should NPPD bill for unanticipated expenditures in compliance with Prudent Utility Practice on an actual pro-rata basis, NPPD will provide supporting documentation of costs incurred and billed. As soon as

reasonably practicable after Commercial Operation Date, NPPD will invoice City for one and one-quarter percent (1.25%) of such identified costs incurred by NPPD, and City shall make payment to NPPD in accordance with Section 6.1. Provided and except, however, that City shall not be invoiced under this Agreement and shall not be liable for any due diligence costs, attorneys' fees or other costs incurred by NPPD related to Section 10.4 of the Power Purchase Agreement.

SECTION 6 PAYMENTS AND BILLING

- 6.1 Payment.** City's payment to NPPD for Purchased Power, Compensable Curtailments, operational, developmental and administrative costs identified in Section 5.7 shall be made by electronic transfer of funds by the "Due Date", which is fifteen (15) Days after the invoice is received by City, as set forth in Section 6.2. City shall make payments to a bank account as designated from time to time by NPPD. If such Due Date falls on a non-Business Day, such Due Date shall be the next Business Day. City shall be entitled to conclusively presume, without any liability whatsoever, that the payment information furnished by NPPD (including name, financial institution, account numbers, payee, etc.) is accurate.
- 6.2 Billing.** NPPD shall read the meter at the Delivery Point at the end of each Month of the Term and shall create an invoice for Purchased Power based upon the meter data for Delivered Energy and the Guaranteed Price and City's share of other applicable charges for which NPPD is obligated under the Power Purchase Agreement. NPPD shall send the Monthly invoice to the Assistant Utilities Director at the Phelps Control Center or an individual designated by the Assistant Utilities Director. If the amount due is not paid on or before the Due Date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the Prime Rate plus 200 basis points, but in no event shall such interest exceed the maximum interest rate permitted by Law (the "Late Payment Rate"). If the Due Date occurs on a Day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

- 6.3 **Billing Disputes.** Either Party may dispute invoiced amounts, but shall pay to the other Party at least the undisputed portion of invoiced amounts on or before the invoice Due Date. Section 7 shall apply to any billing dispute. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed at the Late Payment Rate. The late payment interest shall begin to accrue on the next Business Day after the Due Date.

SECTION 7

DISPUTE RESOLUTION AND STATUTE OF LIMITATIONS

- 7.1 **Dispute Resolution.** In the event of a dispute under this Agreement, the following shall occur:
- 7.1.1 All questions of fact, and any and all disputes with references thereto, arising out of the performance of this Agreement, or changes therein, or work in connection therewith, shall initially be submitted to NPPD for decision.
- 7.1.2 In the event that City disagrees with NPPD's decision, a senior executive of NPPD and a senior executive of City shall immediately confer, discuss and review NPPD's decision.
- 7.1.3 In the event that the meeting referred to in Section 7.1.2 fails to resolve the dispute between the Parties, NPPD's decision shall be conclusive on the Parties hereto, unless thereafter determined by a Governmental Authority to be unsupported by Law or substantial evidence. In that regard, City may pursue all remedies available at Law or in equity, specifically excluding termination of this Agreement.

Pending final decision of any dispute hereunder, City shall proceed with its obligations and performance in accordance with the written decision of NPPD. No arbitration will be allowed under this Agreement.

- 7.2 **Limitation on Time Period for Claims.** Any claim against NPPD for a billing adjustment or for any other claim shall be limited to the twenty-four (24) Months

immediately preceding the date such claim or error is raised by City whether or not such error or claim was discoverable. NPPD shall retain records and accounts relating to the LRW Plant for a period of at least twenty-four (24) Months.

SECTION 8 DELIVERY POINT AND TRANSMISSION

- 8.1 Delivery Point.** The Delivery Point for Purchased Power purchased by City from NPPD under this Agreement shall be at the point where the LRW Plant and interconnection facilities connect to the NPPD transmission system at NPPD's Petersburg North 115 kV substation, as the same is further described in Exhibit B of the Power Purchase Agreement. Title to Purchased Power shall pass from NPPD to City at the Delivery Point. Upon receipt from NPPD, City shall be in exclusive control of the Purchased Power at and from the Delivery Point.
- 8.2 Transmission.** City shall be solely responsible for providing, at its sole cost and expense, transmission of the Purchased Power from the Delivery Point and any associated ancillary services. Such transmission and ancillary service(s) shall be provided by SPP under the appropriate rates, terms and conditions included in the transmission rate schedule currently in effect for SPP, as it may be superseded from time to time; provided, however, if SPP is not the provider for all such ancillary services under the SPP transmission rate schedule, City shall self-supply the ancillary services which are not provided by SPP (if City has the ability to do so) or obtain them from a provider other than SPP. City shall have the right, in whatever form such right may exist, to review transmission and ancillary service rates, terms and conditions, and any proposed revisions to the same, as may be imposed upon NPPD by its transmission service provider, if applicable. NPPD will recognize and honor arrangements completed by City for transmission services to facilitate delivery of Purchased Power; provided, however, if a Governmental Authority or any regional transmission authority does not approve or limits City's transmission path from the Delivery Point to City, City shall not be entitled to receive Purchased Power for which it does not have a transmission path; further provided that NPPD may to the extent legally and technically feasible attempt to make non-firm power available to City at the Delivery Point so that City receives full Purchased Power. Delivered Energy for which City does

not have firm or non-firm transmission may, at City's option, be sold to NPPD at a price determined by mutual agreement between the Parties.

- 8.3 Termination of Transmission.** NPPD has made or intends to make a request to SPP on behalf of the City for firm transmission. If the LRW Plant is decommissioned during the Term of this Agreement, NPPD will request that such transmission request be terminated.

SECTION 9 SCHEDULING

- 9.1 Scheduling Procedures.** All deliveries of power to City shall be in accordance with written procedures determined by NPPD, in its sole discretion (the "Scheduling Procedures"), attached hereto as Appendix B, which may be amended from time to time by NPPD upon thirty (30) Days notice, unless shorter notice is necessary due to extenuating circumstances. The Scheduling Procedures shall provide for adaptation of such schedules for day-to-day operational requirements. The amount of City Delivered Energy shall not exceed City's Purchased Power.
- 9.2 Determination of City Delivered Energy.** The calculation of the City Delivered Energy will be determined by NPPD after accounting for any changes in scheduling. The basis for such determination will be maintained by NPPD in accordance with NPPD's regular record retention policy, and may be inspected by City upon advance notice.
- 9.3 Schedules and Final Schedules.** City recognizes that City Delivered Energy may be zero at times, for example, when the wind is not sufficient to generate electricity or when the LRW Plant is consuming more station power than generating or due to other losses between the individual generation units and the Delivery Point. Final schedules will be determined after the fact in accordance with the Scheduling Procedures of Appendix B.
- 9.4 Wind Integration Rate.** City shall pay to NPPD a wind integration rate under this Agreement, until such time as said wind integration rate is replaced by a rate or fee contained in NPPD's T-2 Rate Schedule, the SPP tariff, or other applicable rate schedule or tariff for transmission services, to compensate NPPD for wind

integration. The wind integration rate under this Agreement shall be determined by NPPD, in its sole discretion, and shall initially be \$4.00/MWh. NPPD reserves the right to make modifications to or replace such wind integration rate, rate schedule or tariff at its sole discretion. NPPD anticipates that it will adopt a replacement wind integration rate schedule following the completion of the NPA NREL/DOE funded Wind Integration Study, to replace the initial wind integration rate of \$4.00/MWh. In the event such NPPD T-2 replacement wind integration rate is different than \$4.00/MWh, NPPD will perform a true-up calculation using the replacement rate and City shall pay any additional amount owed, not to exceed \$6.00/MWh, if said NPPD T-2 replacement rate is greater than \$4.00/MWh, and NPPD shall refund any overpayment by City, not less than \$2.00/MWh, if the replacement wind integration rate is less than \$4.00/MWh, but NPPD shall not refund for difference exceeding a reduction from \$4.00/MWh to \$2.00/MWh.

SECTION 10 METERING

- 10.1 **Meter Readings.** Purchased Power delivered hereunder shall be metered ~~at the~~ Delivery Point. All meters shall be read by NPPD.

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- 10.2 **Meter Testing.** All metering equipment shall be provided and maintained by NPPD. NPPD shall make or cause to be made special meter tests from time to time. The reading of any meter which shall have been disclosed by test to be inaccurate shall be corrected for the period the inaccuracy is known, or lacking knowledge or agreement, a period of ninety (90) Days from the date of discovery of such inaccuracy or malfunction in accordance with the percentage of inaccuracy found by such test. If any meter shall fail to register for any period, NPPD shall determine the amount of power furnished during such period, and NPPD shall adjust the billing statement for such period. NPPD shall also provide written notification to City of any event of meter inaccuracy and describe and provide details of the determination of the amount of energy supplied. All billing disputes shall be resolved in accordance with Section 7.

- 10.3 **Meter Records.** Meter readings and testing records shall be maintained in accordance with NPPD's regular record retention policy, and may be inspected by City with two (2) Business Days notice.

- 10.4 Access.** Authorized representatives of City shall at all reasonable times, and with reasonable prior notice, and while accompanied by NPPD representatives, have access to the LRW Plant and NPPD's Petersburg North 115 kV substation to witness equipment tests and perform all inspections, as may be appropriate to determine whether NPPD is in compliance with this Agreement. While there, such representatives of City shall observe such safety procedures as may be required by NPPD and the LRW Plant and shall conduct themselves in a manner that will not interfere with the operation of the LRW Plant or the operation of NPPD's transmission facilities.

SECTION 11 ASSIGNMENTS AND TRANSFERS

11.1 Permitted Transactions

11.1.1 Except as provided herein, neither Party shall assign or transfer this Agreement or any of its rights or obligations under this Agreement to any Person whether in a single transaction or series of transactions, unless such assignment or transfer is expressly approved in writing by the other Party.

11.1.2 No assignment or transfer of this Agreement shall relieve a Party of its obligations hereunder, unless provided in the written approval of the transaction.

- 11.2 Specific Performance.** Each Party acknowledges and agrees that the failure or threatened failure to comply with the terms of this Section 11 may cause irreparable injury to the other Party, which cannot properly or adequately be compensated by the mere payment of money. The Parties agree, therefore, that in the event of a breach or threatened breach of this Section 11, in addition to any other remedies that may be available, the non-breaching Party shall have the right to obtain from any competent court a decree enjoining such breach or threatened breach of this Section 11 or providing that the terms of this Section 11 be specifically enforced.

**SECTION 12
EVENTS OF DEFAULT**

12.1 Events of Default by City. The following shall each constitute an Event of Default by City:

12.1.1 After the Commercial Operation Date, City refuses to purchase Delivered Energy for either thirty (30) consecutive Days or sixty (60) nonconsecutive Days in any three hundred and sixty-five (365) Day period for any reason other than a condition of Force Majeure.

12.1.2 City fails to make any undisputed payment due under this Agreement within ten (10) Days after such payment is due and fails to cure such Default within twenty (20) Days after written notice from NPPD.

12.1.3 City substantially breaches any other material obligation under this Agreement, and fails to cure such breach within thirty (30) Days after written notification by NPPD of the breach; provided, however, that in the case of an Event of Default described above by City, failure to complete the cure of such Default or breach within the thirty (30) Day period after NPPD notice shall not constitute an Event of Default if the breach is not capable of being cured within thirty (30) Days and City begins the cure within the thirty (30) Day period and uses Commercially Reasonable Efforts to cure the Default or breach within sixty (60) Days (as extended for a Force Majeure event).

12.2 Events of Default by NPPD. The following shall each constitute an Event of Default by NPPD:

12.2.1 NPPD fails to make any undisputed payment due under this Agreement within ten (10) Days after such payment is due and fails to cure such Default within twenty (20) Days of the written notice from City.

12.2.2 NPPD substantially breaches any other material obligation under this Agreement and fails to cure such breach within thirty (30) Days after written notification by City of the breach; provided, however, that in the case of an Event of Default described above by NPPD, failure to complete

the cure of such Default or breach within the thirty (30) Day period after City notice shall not constitute an Event of Default if the breach is not capable of being cured within thirty (30) Days and NPPD begins the cure within the thirty (30) Day period and uses Commercially Reasonable Efforts to cure the Default or breach within sixty (60) Days (as extended for a Force Majeure event).

12.3 Termination for Cause. If any Event of Default as defined in Section 12.1 or 12.2 has occurred, the non-defaulting Party may provide written notice to the defaulting Party specifying the basis for its belief that such event has occurred, and that the Agreement may be terminated unless the Event of Default is cured within thirty (30) Days of the written notice of intent to terminate or such longer cure period as the Parties may agree or is provided in Section 12.1.3 and Section 12.2.2. If the Event of Default has not been fully cured within the thirty (30) Day cure period, or such longer cure period as the Parties might have agreed or is provided in Section 12.1.3 and Section 12.2.2, then the non-defaulting Party may thereafter terminate this Agreement within ninety (90) days of written notice of the Event of Default, as its sole remedy. Notwithstanding the previous sentence, however, if money is owed the non-defaulting Party by the defaulting Party for events, occurrences or obligations occurring or accruing before the termination, the non-defaulting Party shall be entitled to recover the money that is owed.

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12.4 Remedy. If either Party provides a notice of termination to the other under this Section 12, all provisions of this Agreement, and all rights and obligations of the Parties hereunder, will continue in full force and effect from and after the date of the notice of termination until the effective date of termination, including any right, remedy or liability resulting from nonperformance or other breach of the Agreement that occurs prior to the effective date of termination. Except as may be provided in Section 12.3 and subject to Section 3.1 obligations of NPPD, if either Party terminates for cause, then such non-defaulting Party shall have no further obligations under this Agreement to the defaulting Party from and after the date of such termination. The rights to terminate set out in this Section 12 are exclusive to any other right or remedy provided under this Agreement, or now or hereafter existing at Law or in equity, and the exercise of said right shall be deemed as a waiver or relinquishment by the terminating Party of any of its other rights or remedies to recover damages for any breach of this Agreement or for any unperformed balance.

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12.5 Force Majeure

12.5.1 The term "Force Majeure" as used herein shall mean any cause or causes not reasonably within the control and without the fault or negligence of the affected Party which wholly or partly prevents the performance of any of its obligations under this Agreement, including, without limitation by enumeration, acts of God, acts of the public enemy, acts of terrorism or threats thereof (or actions to prevent the same), blockades, strikes or differences with workmen, civil disturbances, fires, explosions, storms, floods, landslides, washouts, labor and material shortages, boycotts, breakdowns of or damage to equipment or facilities and actions to prevent the same, interruptions to supply or delays in transportation, embargoes, inability to obtain or renew a necessary license, permit or approval, acts of military authorities, acts of local, state or federal agencies or regulatory bodies, court actions, bankruptcy court actions and restraints.

12.5.2 If an event defined as Force Majeure occurs, and the affected Party is unable to carry out any of its obligations under this Agreement, then upon the affected Party giving written notice to the other Party of such Force Majeure, the affected Party's obligations shall be suspended from and after the date of the Force Majeure specified in the notice to the extent made necessary by such Force Majeure and during its continuance. The notice shall specify in detail (to the extent known) the nature of the Force Majeure, the obligations which the affected Party is unable to perform or furnish due to Force Majeure, and the affected Party's best estimate of the probable duration of the Force Majeure. The affected Party shall use Commercially Reasonable Efforts to eliminate and cure such Force Majeure insofar as possible and with a minimum of delay, and to resume full performance of its obligations.

SECTION 13 WAIVERS

13.1 **Waivers.** Any waiver at any time by either Party of its rights with respect to any Default under this Agreement, or with respect to any other matter arising in

connection with this Agreement, shall not be deemed a waiver with respect to any other Default or matter.

**SECTION 14
NOTICES**

- 14.1 Notices.** Any notice or demand under or required by this Agreement shall be in writing and shall be deemed properly given when (i) mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To NPPD: Nebraska Public Power District
Attention: Energy Manager
2060 W. Platte River Dr.
P.O. Box 1000
Doniphan, Nebraska 68832-1000
Fax: (402) 845-5224

Copy to: Nebraska Public Power District
Attention: Contracts Manager
1414-15th Street
P.O. Box 499
Columbus, NE 68602-0499
Fax: (402) 563-5466

Nebraska Public Power District
Attention: Office of the General Counsel
1414-15th Street
P.O. Box 499
Columbus, NE 68602-0499
Fax: (402) 563-5837

To City: City of Grand Island
Attention: Assistant Utilities Director - PCC
700 E. Bischeld Street
Grand Island, NE 68801

Fax: (308) 385-5449

(ii) when sent by telefax or e-mail, provided such telefax or e-mail is confirmed by United States registered or certified mail, postage prepaid, return receipt requested, (iii) when sent by overnight courier to the address provided in clause (i), (iv) such other method as agreed to by the Parties in writing, or (v) to such other address as may be designated in writing by the Parties.

SECTION 15 SUCCESSORS AND ASSIGNS

15.1 Binding Effect

15.1.1 All rights and obligations under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the respective Parties. Any assignment made in violation of Section 11 shall be void and of no force or effect as against the non-consenting Party.

15.1.2 No sale, assignment, transfer or other disposition permitted by this Agreement shall affect, release or discharge either Party from its rights or obligations under this Agreement, except as may be expressly provided by this Agreement.

15.2 Receiver or Trustee in Bankruptcy. The Parties intend that the obligations of City under this Agreement shall not be affected by a Bankruptcy Proceeding or a receiver, a trustee in bankruptcy, or an indenture trustee taking charge of the assets or business of NPPD, and that such receiver, trustee or indenture trustee may exercise all of the rights of, and make all of the determinations provided to be made in this Agreement.

SECTION 16 INDEMNIFICATION AND LIMITATION OF LIABILITY

16.1 Indemnity

16.1.1 City expressly agrees to indemnify, hold harmless and defend NPPD against any and all claims, liability, costs or expenses (including

reasonable attorneys' fees and expenses) for loss, damage or injury to Persons or property directly connected with or growing out of, the transmission or distribution of Purchased Power after the Delivery Point, unless such loss, damage or injury is the result of bad faith, negligence, or reckless or willful misconduct of or attributable to NPPD.

16.1.2 NPPD expressly agrees to indemnify, hold harmless and defend City against any and all claims, liability, costs or expenses (including reasonable attorneys' fees and expenses) for loss, damage or injury to Persons or property directly connected with or growing out of, the generation, transmission, or distribution of Purchased Power up to the Delivery Point, unless such loss, damage or injury is the result of bad faith, negligence, or reckless or willful misconduct of or attributable to City.

16.2 No Liability to Third Parties. Nothing herein shall create, or be interpreted as creating any standard of care with reference to, or any duty or liability to any Person not a Party.

16.3 No Consequential Damages. To the fullest extent permitted by Law and notwithstanding anything to the contrary herein, in no event shall either Party be liable to the other for punitive, indirect, exemplary, consequential, or incidental damages, including, without limitation, claims of customers of the indemnified Party arising in connection with this Agreement.

SECTION 17 CONFIDENTIAL INFORMATION

17.1 Use of Confidential Information. During the course of this Agreement, the Parties may disclose to each other certain Confidential Information, by either oral or written communications. To constitute Confidential Information for purposes of this Agreement, the same shall be clearly so designated (if oral) or conspicuously so marked (if tangible) by the disclosing Party. Notwithstanding any prior nondisclosure agreement, the Parties hereby deem Section 5 of Appendix A to constitute Confidential Information and otherwise not be subject to public disclosure, but the Agreement otherwise is not Confidential Information. These disclosures have been or will be made upon the basis of the confidential

relationship between the Parties, and unless specifically authorized in writing by the other, the Parties will:

17.1.1 Use such Confidential Information solely for purposes contemplated by this Agreement; and

17.1.2 Promptly return to each other, upon request, any and all tangible material concerning such Confidential Information, including all copies and notes, or destroy the same and provide the other Party with a written statement that such destruction has occurred; provided that a Party may retain a copy with its general counsel to show compliance with this section. Under no circumstances shall any Confidential Information or copy thereof be retained, except with the express written approval of the owner of such Confidential Information.

17.2 Nondisclosure

17.2.1 Each Party agrees that it will use reasonable care to prevent unauthorized disclosure of Confidential Information. Neither Party will make any copies of Confidential Information that is in written or other tangible form except for use by authorized Persons with a need to know in connection with this Agreement (including contractors and subcontractors), and all Persons having access to Confidential Information shall agree to comply with the terms of this Agreement.

17.2.2 Each Party agrees not to distribute, disclose or disseminate Confidential Information in any way to anyone, except Persons who have such need to know (including contractors and subcontractors), or use Confidential Information for its own purpose. Each Party agrees that its disclosure of Confidential Information to a Person who has a need to know shall be limited to only so much of the Confidential Information as is necessary for that Person to perform his/her function in connection with the Confidential Information.

17.3 Exceptions. The obligations imposed in this Section 17 shall not apply to Confidential Information:

- 17.3.1 Which becomes available to the public through no wrongful act of the receiving Party;
- 17.3.2 Which may be published or otherwise made available to the public prior to the date hereof;
- 17.3.3 Which is received from a third party without restriction known to the receiving Party and without breach of this Agreement;
- 17.3.4 Which is independently developed by the receiving Party;
- 17.3.5 Which is disclosed to a director, officer, employee, agent, or legal counsel of a Party, or to a Party's outside accountants, auditors, rating agencies, financial advisors, legal counsel, actual or potential lenders, underwriters, or the legal counsel or advisors of any thereof; or
- 17.3.6 Which must be disclosed pursuant to any Law (including, but not limited to, the Open Meetings Act, Neb. Rev. Stat. § 84-1407 et seq., and the Nebraska public records Laws, Neb. Rev. Stat. § 84-712 et seq.). If disclosure is requested or demanded as to Confidential Information pursuant to any Law, the Party receiving the request or demand shall provide the owner of such Confidential Information with prompt notice to enable the owner to seek protective legal remedies, and the receiving Party shall reasonably cooperate in connection therewith.

SECTION 18 MISCELLANEOUS

- 18.1 Audit.** The Parties shall maintain such books, records and accounts as are required for the performance of this Agreement, beginning with the Commercial Operation Date. Each Party, upon making a written request to the other Party, and at its sole expense, shall have the right to examine such books, records and accounts of the other Party to permit audits or confirmation of compliance with the provisions of this Agreement, subject to Section 7.2. Such examinations shall occur at mutually agreed times, during normal working hours of the Parties.

2-2-2011/rab

18.2 **Amendments.** This Agreement may be amended by agreement between NPPD and City, but no such amendment to this Agreement shall be effective unless it is in writing and executed by both Parties. Prior to the effective date of any amendment to the Agreement between NPPD and City regarding the purchase of energy from the LRW Plant, NPPD shall provide written notice of such amendment(s) to LES and MEAN. Prior to the effective date of any amendment between NPPD and LES and/or NPPD and MEAN regarding the purchase of energy from the LRW Plant, NPPD shall provide written notice of such amendment(s) to City. City shall have thirty (30) Days to determine whether such amendments will have an adverse material effect on City and to terminate for cause under Section 12.3.

Deleted: Written notice of amendments to the Agreement regarding the purchase of energy from LRW shall be sent by NPPD to LES and MEAN prior to the effective date of any amendment

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18.3 **Approvals.** Any approval required under this Agreement shall be given in writing and notice of such approval shall be required before any action is taken.

18.4 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement and supersedes all prior agreements, whether oral or written.

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18.4.1 Appendices A, B, C and D attached hereto are made a part of this Agreement as though fully set out verbatim herein.

18.5 **Counterparts.** This Agreement may be executed in multiple counterparts to be construed as one.

18.6 **Severability.** If any part, term or provision of this Agreement is held by a Governmental Authority to be unenforceable, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be unenforceable, and a new provision shall be deemed to be substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the Parties hereto as evidenced by the provision so severed.

18.7 **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Nebraska without regard to conflict of Law principles.

18.8 Jurisdiction. In the event any Party to this Agreement commences a Legal Proceeding in connection with or relating to this Agreement, the Parties hereby:

18.8.1 Agree under all circumstances absolutely and irrevocably to institute any Legal Proceeding in a court of competent jurisdiction located within the State of Nebraska, whether a state or federal court; and

18.8.2 Agree that in the event of any Legal Proceeding, the Parties will consent and submit to the personal jurisdiction of such court of competent jurisdiction located in Nebraska.

18.9 No Third-Party Beneficiaries. NPPD and City agree that no other Person is an intended third-party beneficiary of this Agreement, except as may be provided in a separate instrument executed by both NPPD and City.

18.10 Effective Date. The "Effective Date" of this Agreement shall be the date when the Agreement is signed by both Parties.

18.11 Rules of Construction

18.11.1 The descriptive headings of the various articles, sections and subsections of this Agreement have been inserted for convenience of reference only and shall not be construed as to define, expand, or restrict the rights and obligations of the Parties.

18.11.2 Wherever the term "including" is used in this Agreement, such term shall not be construed as limiting the generality of any statement, clause, phrase or term.

18.11.3 The terms defined in this Agreement shall include the plural as well as the singular and the singular as well as the plural.

18.11.4 Whenever a statute, code or regulation is used in this Agreement, such term shall also include all successor statutes, codes and regulations.

Redline identifying changes to be proposed by Amendment 1

2-2-2011/rab

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

ATTEST:

NEBRASKA PUBLIC POWER DISTRICT

By: _____ By: _____

Printed Name: _____ Printed Name: _____

Title: _____ Title: _____

ATTEST:

CITY OF GRAND ISLAND, NEBRASKA

By: _____ By: _____

Printed Name: _____ Printed Name: _____

Title: _____ Title: _____

Redline identifying changes to be proposed by Amendment 1

2-2-2011/rab

APPENDIX A

POWER PURCHASE AGREEMENT

BETWEEN

NPPD AND LAREDO RIDGE WIND, LLC

APPENDIX B

SCHEDULING PROCEDURES

Purpose

The purpose of this document is to provide policies, procedures, and guidelines to establish common expectations and a common understanding of coordinated operation among NPPD and City.

Scheduling of Energy

1. **Scheduling.** NPPD will provide energy real time from the LRW Plant. Energy schedules will normally be a pro-rata share of the output of the LRW Plant, except as otherwise provided in the Agreement. All schedules will be in whole MWh per hour and will account for hours with negative production.
2. **Tagging and Transmission Service.** City is responsible for ensuring that all NERC Tags and Transmission Reservations are completed and approved consistent with the timing requirements of NERC and the Transmission Provider. For purposes of NERC Tags and OASIS requests, the source Control Area shall be "NPPD", and the POR shall be "NPPD's Petersburg North 115 kV substation." The source PSE shall be "NPPD."
3. **Transmission Loading Relief (TLR).** During TLR, schedules will be adjusted consistent with the adjusted NERC Tag.
4. **Testing.** It is recognized that the LRW Plant will require testing from time to time. These tests will include, but not be limited to, maintenance (calibration of controls, etc.). During these test periods, City must take delivery of its 1.25% share of the energy produced. NPPD will make reasonable efforts to inform City of scheduled testing activities. NPPD will make available hourly production data for accreditation purposes should City so desire.
5. **Emergencies.** If the LRW Plant trips off line or is suddenly forced out of service for any reason NPPD shall communicate the same to City as soon as reasonably practicable.

6. **Communications.** NPPD shall make best efforts to inform City as soon as practicable of any significant change in the status of the LRW Plant, such as impending derates or outages.

Redline identifying changes to be proposed by Amendment 1

2-2-2011/rab

APPENDIX C

FORM OF ATTESTATION OF ENVIRONMENTAL ATTRIBUTES

Form of Attestation of Environmental Attributes

Nebraska Public Power District

Renewable Energy Credit [Environmental Attributes] Attestation and Transfer

NPPD ("Seller") hereby sells, transfers and delivers to the City of Grand Island, Nebraska ("City"), the Renewable Energy Credits ("RECs") [Environmental Attributes] described below associated with the Purchased Power generated (as such Purchased Power is defined in the Power Sales Agreement [the "Agreement"], dated _____, 2010, between City and Seller). Seller hereby attests and certifies that such Purchased Power was delivered to the City transmission system on or about the date identified and that Seller holds good and merchantable title to the RECs [Environmental Attributes] identified below.

Facility name and location: Laredo Ridge Wind Energy Facility, near Petersburg,
Nebraska
Energy Source: Wind
Capacity (MW): 79.9 MW
Operational Date: _____, [2010]

Wind Generator Identification Number: DOE EIA # _____

<u>Dates</u>	<u>MWh generated</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Seller further attests, warrants, and represents as follows:

- i) The information provided herein is true and correct;
- ii) Seller holds good and merchantable title to the RECs [Environmental Attributes] identified for sale herein and that the sale to City is its one and only sale of the above identified RECs [and the associated Environmental Attributes] referenced herein;
- iii) The Laredo Ridge Wind Energy Facility generated and delivered to the NPPD transmission system the Purchased Power in the amount indicated as undifferentiated energy;
- iv) Each of the RECs [Environmental Attributes] associated with the generation of the Purchased Power has been generated and sold from the Laredo Ridge Wind Energy Facility on or about the date specified above; and
- v) The foregoing RECs [Environmental Attributes] and associated RECs [Environmental Attributes] are transferred free and clear of any liens or security interests.

Pursuant to this ***Renewable Energy Credit [Environmental Attributes] Attestation and Transfer***, Seller transfers to City all of Seller's right, title, and interest in and to the RECs [Environmental Attributes] associated with the generation of the Purchased Power.

Nebraska Public Power District

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX D

DEVELOPMENTAL AND ADMINISTRATIVE COSTS

Capital Costs

Network upgrades, including new Petersburg North Substation and relay upgrades at Neligh and Albion Substations	\$2,710,000
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Project Development Costs, Including:

RFP Development/Evaluation	
Transmission Cluster Study	
PPA and GIA Development & Negotiation	
Legal Costs	\$ 273,899

Wind Site Costs (1)

Allocated costs for wind site selection, wind monitoring, landowner agreements and NPPD labor associated with sites.	\$1,710,731
--	-------------

Total Costs to be Allocated	<u>\$4,694,630</u>
------------------------------------	---------------------------

- (1) During the Term of this Agreement, should NPPD determine that one or more of the sites is surplus to NPPD, and NPPD is able to recover expenditures through the assignment or transfer of one or more such sites, NPPD will provide a credit to the Parties based on each of their pro rata shares.

Costs recovered by NPPD prior to Commercial Operation Date will be credited to the initial development costs. If costs are recovered by NPPD in subsequent years, a notice with a description of recovered costs during a Contract Year shall be provided to the Parties at the end of the Contract Year. The next monthly billing for each Party following the notice will be credited with a Party's pro rata share of recovered costs.

If, at the expiration or termination (except for termination for cause due to Default by City) of the Power Sales Agreement, NPPD has retained one or more of the sites, and NPPD decides to keep the site(s), NPPD, ~~and~~ the Parties, will select an appraiser to advise NPPD on the value to NPPD ~~and the Parties~~ of the remaining site(s).

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After the expiration or termination of the Power Purchase Agreement, NPPD will refund to the Parties their proportionate share of recovered expenditures for the previous year, as well as the pro rata share of the value to NPPD of sites retained by NPPD, if any.

RESOLUTION 2011-53

WHEREAS, Grand Island is a participant in the Laredo Ridge Wind Farm Power Sales Agreement (PSA) with the Nebraska Public Power District (NPPD); and

WHEREAS, the original Agreement was approved by Council at the December 7, 2010 Council meeting; and

WHEREAS, the parties wish to restate and amend the original Power Sales Agreement; and

WHEREAS, the City Utilities Department and the Legal Department have reviewed the Restated and Amended Power Sales Agreement for Laredo Ridge Wind Farm, and have determined the restated agreement includes appropriate modifications and clarifications.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized, on behalf of the City, to execute the Restated and Amended Power Sales Agreement for Laredo Ridge Wind Farm between the City of Grand Island and Nebraska Public Power District.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G8

#2011-54 - Approving Bid Award - 115 kV Pole Inspection and Preservation Services

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Gary Mader, Utilities Director
Jason Eley, Interim City Attorney

Meeting: March 8, 2011

Subject: 115 kV Pole Inspection and Preservation Services

Item #'s: G-8

Presenter(s): Gary Mader, Utilities Director

Background

The City of Grand Island electric system utilizes a 115 kV transmission loop that encompasses the entire city. This loop is the backbone of the electric system and ensures a reliable source of power to each of the electrical substations located around the city. The transmission lines use a variety of wood and steel poles. In order to most effectively reduce the chances of pole failure during wind and ice events, it is important to perform a thorough inspection and preservation treatment every ten to fifteen years. The last inspection was performed in 1996.

Discussion

A Request for Proposals was issued in February with a requested completion date of May 15, 2011. An advertisement was published in the Grand Island Independent and the bid package was sent to two known contractors. One proposal was received from Osmose Utilities Services, Inc. Osmose is an industry leader in the area of pole preservation and has extensive experience and references including the City of Grand Island. Osmose submitted a proposal with a "Not to Exceed" amount of \$100,000. The engineer's estimate for this project was \$100,000.

The specifications provided an inventory of the transmission line poles to be included in the inspections process. Because the complete extent of preservation treatment is not known until the inspections are conducted, the bidders were required to provide unit prices for various aspects of the contract, including such things as actual pole inspections, attachment inspections, treatment if needed for wood and steel poles etc., along with a "not to exceed" contract price. Actual payment to the contractor will be based on the unit prices for work as included in the specifications.

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 enter into an agreement with Osmose Utilities Services, Inc for 115 kV Pole Inspection and Preservation Services, in accordance with the February 2011 proposal.

Sample Motion

Move to accept the February 2011 Proposal for 115 kV Pole Inspection and Preservation Services from Osmose Utilities Services, Inc.

Purchasing Division of Legal Department
INTEROFFICE MEMORANDUM



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

BID OPENING

BID OPENING DATE: February 24, 2011 at 2:00 p.m.

FOR: 115 kV Pole Inspection and Preservation Services

DEPARTMENT: Utilities

ESTIMATE: \$100,000.00

FUND/ACCOUNT: 520

PUBLICATION DATE: February 7, 2011

NO. POTENTIAL BIDDERS: 2

SUMMARY

Bidder: Osmose Utilities Services, Inc
Tyrone, GA

Bid Security: Liberty Mutual Insurance Co

Exceptions: Noted

Bid Price: \$100,000.00

cc: Gary Mader, Utilities Director
Jason Eley, Purchasing Agent
Mary Lou Brown, Interim City Administrator

Bob Smith, Assist. Utilities Director
Pat Gericke, Utilities Admin. Assist.
Travis Burdett, Assist. Utilities Director

P1462

RESOLUTION 2011-54

WHEREAS, the City of Grand Island invited sealed bids for 115 kV Pole Inspection and Preservation Services, according to plans and specifications on file with the Utilities Department; and

WHEREAS, on February 24, 2011, bids were received, opened and reviewed; and

WHEREAS, Osmose Utilities Services, Inc., of Tyrone, Georgia, submitted a bid in accordance with the terms of the advertisement of bids and plans and specifications and all other statutory requirements contained therein, such bid being not to exceed \$100,000; and

WHEREAS, the bid of Osmose Utilities Services, Inc., is the same as the estimate for the 115 kV Pole Inspection and Preservation Services.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Osmose Utilities Services, Inc., in an amount not to exceed \$100,000 for 115 kV Pole Inspection and Preservation Services, is hereby approved as the lowest responsible bid.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 4, 2011	☐ City Attorney



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G9

#2011-55 - Approving Bid Award for Hot-Mix Asphalt for 2011

Staff Contact: Gary R. Mader, Interim Public Works Director

Council Agenda Memo

From: Scott Johnson, Street Superintendent

Meeting: March 8, 2011

Subject: Approving Bid Award for Hot-Mix Asphalt for 2011

Item #'s: G-9

Presenter(s): Gary R. Mader, Interim Public Works Director

Background

On February 11, 2011 the Streets Division of the Public Works Department advertised for bids for the purchase of hot-mix asphalt to be used in conjunction with in-house asphalt work throughout the calendar year 2011. The hot-mix asphalt is used by the City's asphalt patching crew.

Discussion

Two (2) bids were received and opened on February 23, 2011. Each bid was submitted in compliance with the contract, plans, and specifications with no exceptions. A summary of the bids is shown below.

Vendor	Exceptions	Unit Prices
Gary Smith Construction Co., Inc. of Grand Island, NE	None	Type "A" - \$44.85/ton Type "BC" - \$42.85/ton Type "C" - \$44.85/ton
J.I.L. Asphalt Paving Co. of Grand Island, NE	None	Type "A" - \$47.50/ton Type "BC" - \$44.00/ton Type "C" - \$47.20/ton

Gary Smith Construction Co. provided the lowest bid.

The type of asphalt used for patching each day from the plant will be the type they are making for that particular day. The average cost of the three types of asphalt bid is \$44.18. The estimated amount of asphalt to be used is 1,600 tons which equates to an estimated total cost of \$70,688.00 for the 2011 year.

There are sufficient funds in Account No. 10033503.85547 to purchase this material.

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 awarding the purchase of the hot-mix asphalt to Gary Smith Construction Co. of Grand Island, Nebraska.

Sample Motion

Move to approve the award of the contract to Gary Smith Construction Co. of Grand Island, Nebraska.

Purchasing Division of Legal Department
INTEROFFICE MEMORANDUM



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

BID OPENING

BID OPENING DATE: February 23, 2011 at 2:15 p.m.

FOR: Asphalt Hot Mix for 2011

DEPARTMENT: Public Works

ESTIMATE: \$55.00 per ton average for A, BC, and C estimated use of 1,600 tons for a season total of \$88,000.00

FUND/ACCOUNT: 10033503-85547

PUBLICATION DATE: February 11, 2011

NO. POTENTIAL BIDDERS: 2

SUMMARY

Bidder:	<u>Gary Smith Const. Co., Inc.</u> Grand Island, NE	<u>J.I.L. Asphalt Paving Co.</u> Grand Island, NE
Exceptions:	None	None
Bid Price:		
Type "A":	\$44.85 per ton	\$47.50 per ton
Type "BC":	\$42.85 per ton	\$44.00 per ton
Type "C":	\$44.85 per ton	\$47.20 per ton

cc: Gary Mader, Interim Public Works Director
Jason Eley, Purchasing Agent
Mary Lou Brown, Interim City Administrator

Catrina DeLosh, PW Admin. Assist.
Scott Johnson, Street Superintendent

P1465

RESOLUTION 2011-55

WHEREAS, the City of Grand Island invited sealed bids for furnishing Hot-Mix Asphalt for 2011, according to plans and specifications on file with the Streets Division of the Public Works Department; and

WHEREAS, on February 23, 2011 bids were received, opened and reviewed; and

WHEREAS, Gary Smith Construction Co. of Grand Island, Nebraska submitted a bid in accordance with the terms of the advertisement of bids and plans and specifications and all other statutory requirements contained therein, such bid being in the amount of \$44.85 per ton for Type "A" asphaltic concrete, \$42.85 per ton for Type "BC" asphaltic concrete and \$44.85 per ton for Type "C" asphaltic concrete.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, the bid of Gary Smith Construction Co. of Grand Island, Nebraska in the amount of \$44.85 per ton for Type "A" asphaltic concrete, \$42.85 per ton for Type "BC" asphaltic concrete and \$44.85 per ton for Type "C" asphaltic concrete is hereby approved as the lowest responsible bid.

BE IT FURTHER RESOLVED, that a contract for such project between the City and such contractor be entered into, and the Mayor is hereby authorized and directed to execute such contract on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	<input type="checkbox"/> _____
March 4, 2011	<input type="checkbox"/> City Attorney



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G10

#2011-56 - Approving Bid Award for Concrete Ready-Mix for 2011

Staff Contact: Gary R. Mader, Interim Public Works Director

Council Agenda Memo

From: Scott Johnson, Street Superintendent

Meeting: March 8, 2011

Subject: Approving Bid Award for Concrete Ready-Mix for 2011

Item #'s: G-10

Presenter(s): Gary R. Mader, Interim Public Works Director

Background

On February 11, 2011 the Streets Division of the Public Works Department advertised for bids for the purchase of portland cement concrete ready-mix to be used in conjunction with in-house concrete repairs throughout the calendar year 2011. The concrete ready mix is used by the City's concrete patching crew.

Discussion

Two (2) bids were received and opened on February 23, 2011. Each bid was submitted in compliance with the contract and specifications with no exceptions. A summary of the bids is shown below.

Vendor	Exceptions	Unit Prices
Gerhold Concrete Co., Inc. of Grand Island, NE	None	\$74.00 per cubic yard
Consolidated Concrete of Grand Island, NE	None	\$75.00 per cubic yard

The estimated quantity of portland cement concrete ready-mix required for 2011 is 1,500 cubic yards; for an estimated total cost of \$111,000.00 for the 2011 year.

There are sufficient funds in Account No. 10033503-85547 to purchase this material.

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 awarding the contract for the purchase of the Portland cement concrete ready-mix to Gerhold Concrete Co., Inc. of Grand Island, Nebraska in the amount of \$74.00 per cubic yard.

Sample Motion

Move to approve the award of the contract to Gerhold Concrete Co., Inc. of Grand Island, Nebraska.

Purchasing Division of Legal Department
INTEROFFICE MEMORANDUM



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

BID OPENING

BID OPENING DATE: February 23, 2011 at 2:00 p.m.

FOR: Concrete Ready Mix for 2011

DEPARTMENT: Public Works

ESTIMATE: \$80.00 per cubic yard estimated use of 1,500 cubic yards for a
Season total of \$120,000.00

FUND/ACCOUNT: 10033503-85547

PUBLICATION DATE: February 11, 2011

NO. POTENTIAL BIDDERS: 2

SUMMARY

Bidder:	<u>Consolidated Concrete</u> Grand Island, NE	<u>Gerhold Concrete Co., Inc.</u> Grand Island, NE
Exceptions:	None	None
Bid Price:	\$75.00 per cubic yard	\$74.00 per cubic yard

cc: Gary Mader, Interim Public Works Director
Jason Eley, Purchasing Agent
Mary Lou Brown, Interim City Administrator

Catrina DeLosh, PW Admin. Assist.
Scott Johnson, Street Superintendent

P1464

RESOLUTION 2011-56

WHEREAS, the City of Grand Island invited sealed bids for furnishing Portland Cement Concrete Ready-Mix for 2011 for the Streets Division of the Public Works Department, according to specifications on file with the Streets Division of the Public Works Department; and

WHEREAS, on February 23, 2011, bids were received, opened and reviewed; and

WHEREAS, Gerhold Concrete Co., Inc. of Grand Island, Nebraska, submitted a bid in accordance with the terms of the advertisement of bids and specifications and all other statutory requirements contained therein, such bid being in the amount of \$74.00 per cubic yard; and

WHEREAS, the total cost based on the estimated usage of 1,500 cubic yards for the 2011 construction season at the above-identified price, is estimated at \$111,000.00.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Gerhold Concrete Co., Inc. of Grand Island, Nebraska, in the amount of \$74.00 per cubic yard for Portland cement concrete ready-mix is hereby approved as the lowest responsible bid.

BE IT FURTHER RESOLVED, that the contract for such project between the City and such contractor be entered into, and the Mayor is hereby authorized and directed to execute such contract on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G11

#2011-57 - Approving Union Pacific Railroad Pipeline Crossing Agreement for Lift Station #7 Disaster Recovery Project Area (Grant Street to Arthur Street, between Oklahoma Avenue and Phoenix Avenue)

Staff Contact: Gary R. Mader, Interim Public Works Director

Council Agenda Memo

From: Terry Brown, Manager of Engineering Services/ Interim City Engineer

Meeting: March 8, 2011

Subject: Approving Union Pacific Railroad Pipeline Crossing Agreement for Lift Station #7 Disaster Recovery Project Area (Grant Street to Arthur Street, between Oklahoma Avenue and Phoenix Avenue)

Item #'s: G-11

Presenter(s): Gary R. Mader, Interim Public Works Director

Background

The Lift Station #7 Disaster Recovery project is for work to update the pumping capacity of that lift station, located on Grant Street near Oklahoma Avenue, and to repair or replace as necessary broken and leaking sewer mains within the Lift Station #7 collection area. Lift Station #7 serves the general area from John Street to Stolley Park Road and from Ada Street to Harrison Street.

On February 8, 2011 City Council approved the temporary construction easements needed for this project. The next step is to enter into an agreement with the Union Pacific Railroad (UPRR), for a sewer main crossing of the spur track to the PGS Power Plant.

Discussion

The UPRR requires the City to enter into a "Pipeline Crossing Agreement" for the installation of one 8 inch encased pipeline for transporting and conveying raw sewage only through their right-of-way. The City is also required to pay the UPRR a one-time License Fee of \$1,500.00, upon the execution of this agreement.

Without this agreement the City does not have legal access through the UPRR property and would not be able to complete the improvements associated with this project.

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 a resolution allowing the City to enter into the agreement with the Union Pacific Railroad to allow the Lift Station #7 improvements to progress.

Sample Motion

Move to approve a resolution allowing the City to enter into an agreement with the Union Pacific, allowing access through the railroad's right-of-way.



February 10, 2011
Folder: 2659-58

TERRY BROWN
GRAND ISLAND, CITY OF
100 E. 1ST STREET
GRAND ISLAND NE 68802

Re: Proposed 8 Inch Encased raw sewage Pipeline Crossing of Railroad Property at Mile Post 21.5 on the River Ind Lead at or near Grand Island, Hall County, Nebraska

Terry Brown:

Attached are duplicate originals of an agreement covering your use of the Railroad Company's right of way. Please execute the attached documents IN DUPLICATE and return in the enclosed self-addressed envelope.


An original copy of the fully-executed document will be returned to you, when approved and processed by the Railroad Company. Also, please provide a resolution or other authorization for the party executing the documents, *if signature authorization is required by your Entity*.

- Payment in the amount of **One Thousand Five Hundred Dollars (\$1,500.00)** is due and payable to Union Pacific Railroad Company upon your execution of the agreement. Please include your payment, **with Folder No. 2659-58 noted on that document**. If you require formal billing, you may consider this letter as a formal bill and that 94-6001323 is this Corporation's correct Federal Taxpayer Identification Number.

If we have not received the executed documents within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

If you have any questions, please contact me at (402) 544-8549.

Sincerely,



Kathleen L. Nesser
Senior Manager - Contracts

PIPELINE CROSSING AGREEMENT

Mile Post: 21.5, River Ind Lead
Location: Grand Island, Hall County, Nebraska

THIS AGREEMENT ("Agreement") is made and entered into as of February 09, 2011, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **GRAND ISLAND, CITY OF**, a Nebraska municipal corporation to be addressed at 100 E. 1st Street, Grand Island, Nebraska 68802 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 8 inch encased pipeline for transporting and conveying raw sewage only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated February 09, 2011 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying raw sewage, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **One Thousand Five Hundred Dollars (\$1,500.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall

provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 5. INSURANCE.

A. During the life of the Lease, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this lease, those statutes shall apply.

D. Licensee hereby acknowledges that is has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 6. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

GRAND ISLAND, CITY OF

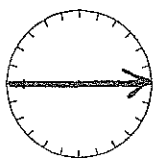
By: _____
Senior Manager - Contracts

By: _____

Name Printed: _____

Title: _____

PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSING

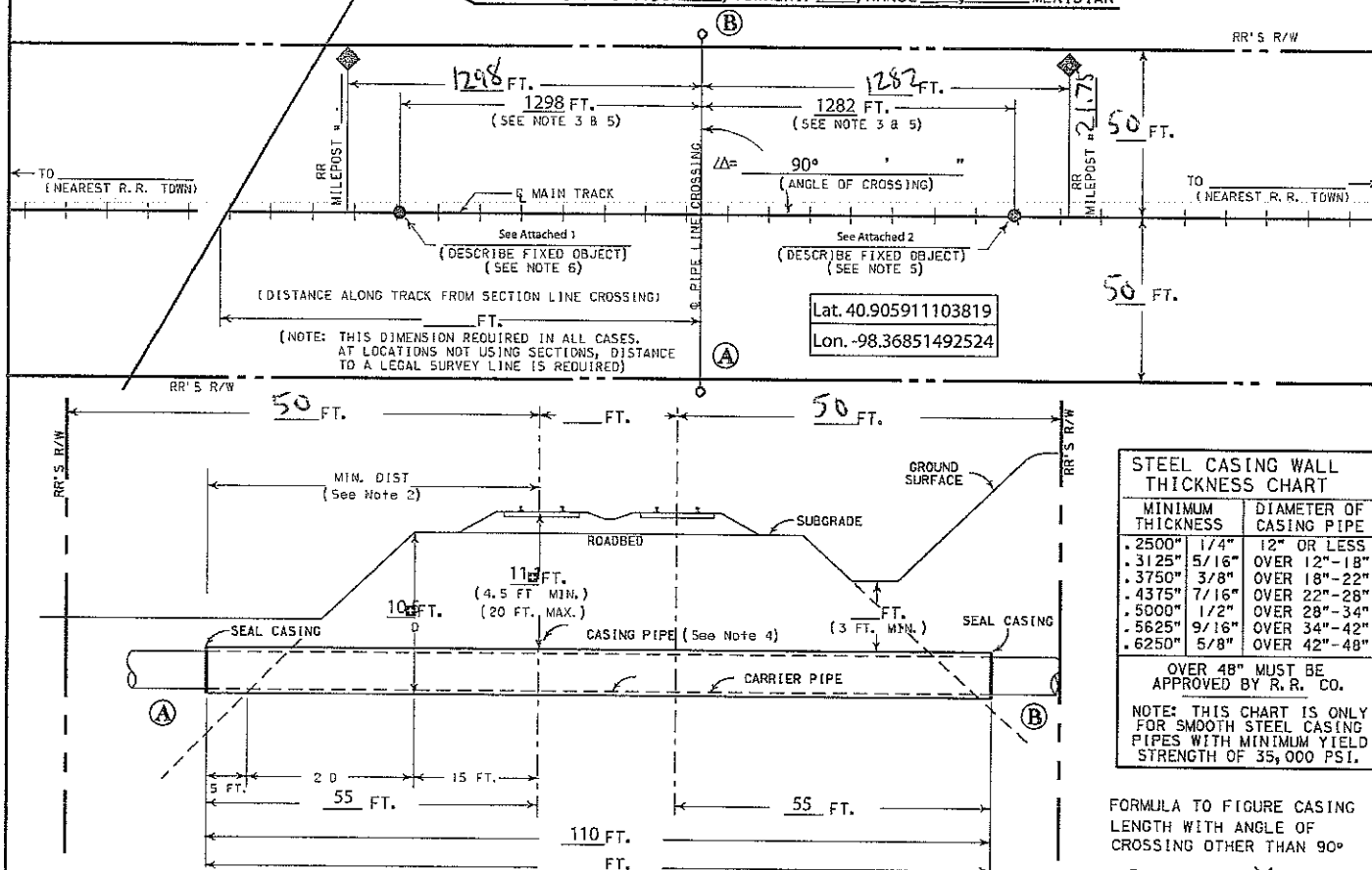


ENCASED NON-FLAMMABLE PIPELINE CROSSING

FORM DR-0404-B
REV 10-22-2007
www.uprr.com
NO SCALE

NOTE: ALL AVAILABLE DIMENSIONS MUST BE
FILLED IN TO PROCESS THIS APPLICATION.

(OR LEGAL SURVEY LINE, WHERE APPLICABLE)
LINE OF SECTION____, TOWNSHIP____, RANGE____, _____ MERIDIAN

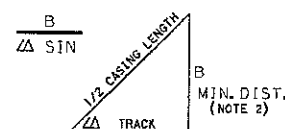


STEEL CASING WALL THICKNESS CHART		
MINIMUM THICKNESS		DIAMETER OF CASING PIPE
.2500"	1/4"	12" OR LESS
.3125"	5/16"	OVER 12" - 18"
.3750"	3/8"	OVER 18" - 22"
.4375"	7/16"	OVER 22" - 28"
.5000"	1/2"	OVER 28" - 34"
.5625"	9/16"	OVER 34" - 42"
.6250"	5/8"	OVER 42" - 48"

OVER 48" MUST BE APPROVED BY R. R. CO.

NOTE: THIS CHART IS ONLY FOR SMOOTH STEEL CASING PIPES WITH MINIMUM YIELD STRENGTH OF 35,000 PSI.

FORMULA TO FIGURE CASING
LENGTH WITH ANGLE OF
CROSSING OTHER THAN 90°



- NOTES :
- (CASING LENGTH WHEN MEASURED ALONG PIPELINE.)
- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM ϕ OF TRACK.
 - 2) CASING TO EXTEND BEYOND THE ϕ OF TRACK AT RIGHT ANGLES THE GREATER OF 20 + 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
 - 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, ϕ OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
 - 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
 - 5) ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; ϕ OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
 - 6) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET ? ☐ YES; ☒ NO;
- B) IF YES, NAME OF STREET _____
- D) DISTRIBUTION LINE ☐ OR TRANSMISSION LINE ☒
- C) CARRIER PIPE :
COMMODITY TO BE CONVEYED DRAW SEWAGE
OPERATING PRESSURE 50 PSI
WALL THICKNESS 0.532 ; DIAMETER 8 ; MATERIAL HDPE ;
- E) CASING PIPE :
WALL THICKNESS 0.3125 ; DIAMETER 16 ; MATERIAL STEEL ;
NOTE : CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST
OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF
CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF
CARRIER PIPE AND INSIDE OF CASING PIPE.
- F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
☒ DRY BORE AND JACK (WET BORE NOT PERMITTED) ;
☐ TUNNEL ; OTHER _____
- G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? ☐ YES; ☐ NO;
- H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND
JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 55 { 30' MIN. }
- I) APPLICANT HAS CONTACTED 1-800-336-9193,
U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER
OPTIC CABLE ☐ DOES ; ☒ DOES NOT ; EXIST IN VICINITY OF
WORK TO BE PERFORMED . TICKET NO. 20110126038

EXHIBIT 99 A 99

FOR RAILROAD USE ONLY

UNION PACIFIC RAILROAD CO.

River Ind. Lead

1 SUBD (VISION)

M. P. 21.5 E. S. 13115+71±

ENCASED RAW SEWAGE CROSSING AT

GRAND ISLAND	Hall	NE
(NEAREST CITY)	(COUNTY)	(STATE)

CITY OF GRAND ISLAND

(APPLICANT)

RR FILE NO. 0265958 DATE 2-9-11

W A R N I N G

IN ALL OCCASIONS, U. P. COMMUNICATIONS
DEPARTMENT MUST BE CONTACTED IN ADVANCE
OF ANY WORK TO DETERMINE EXISTENCE AND
LOCATION OF FIBER OPTIC CABLE.
PHONE : 1-800-336-9193

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support,

the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

Jody Wilkerson
2511 12th St
Columbus NE 68601

402 501-3817

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensor whether a flagman need be present and

whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.
- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.
- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. **IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. **AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM**

ANY LOSS WHICH IS DUE TO OR ARISES FROM:

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

- C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C

Union Pacific Railroad Company Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement

E. **Umbrella or Excess** insurance. If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D

SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

RESOLUTION 2011-57

WHEREAS, in connection with the Lift Station #7 improvements a Pipeline Crossing Agreement is required by the Union Pacific Railroad in order for the City of Grand Island to cross their right-of-way with one 8 inch encased pipeline for transporting and conveying raw sewage only; and

WHEREAS, the agreement also requires, upon execution, a one-time License Fee of \$1,500.00; and

WHEREAS, the agreement has been reviewed and approved by the City's Legal Department.

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 enter into the Pipeline Crossing Agreement with the Union Pacific Railroad in connection with the Lift Station #7 improvements.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	<input type="checkbox"/> _____
March 4, 2011	<input type="checkbox"/> City Attorney



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G12

**#2011-58 - Approving Agreement for City Hall Copier
Maintenance and Supplies with Capital Business Systems Inc.**

Staff Contact: Robyn Splattstoesser

Council Agenda Memo

From: Mary Lou Brown, Finance Director

Meeting: March 8, 2011

Subject: Approving Agreement for City Hall Copier Maintenance & Supplies with Capital Business Systems Inc./Modern Methods

Item #'s: G-12

Presenter(s): Mary Lou Brown, Finance Director

Background

On February 27, 2007, Council approved a 36 month Lease Agreement with Modern Methods for five copier/printer/scanners in City Hall for \$48,792.00 with a \$1 buyout at the end of the term. In addition, the City would pay a per copy/print cost which amounted to approximately \$10,000 per year.

On March 9, 2010, the City Council opted to retain the existing copiers and purchased a one year Maintenance Agreement with a per copy/print cost amounting to \$7,668.80 which represents billings for 10 months.

Discussion

The Maintenance Agreement for the copier/printer/scanner now needs to be extended for an additional twelve months. Considering the current usage counts and lifetime expectancy of each copier, it is appropriate to extend the Maintenance Agreement for the current machines.

The Maintenance Agreement is with Capital Business Systems Inc./Modern Methods. The Agreement states that the cost per copy/print will be \$.008904 for model LANIER LD345SP; the cost per copy/print was \$.0084 in the previous agreement. The cost for model LANIER LD160C per black and white copy/print is \$.006572 and \$.0583 for color copy/print. The previous agreement costs for this model were \$.0062 for black and white and \$.055 for color. The Maintenance Agreement covers all parts, labor, and supplies (excluding paper and staples).

Alternatives

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

1. Approve the one year Maintenance Agreement with Capital Business Systems Inc./Modern Methods.
2. Take no action on the issue.

Recommendation

City Administration recommends that the Council approve the one year Maintenance Agreement with Capital Business Systems Inc./Modern Methods for cost per copy/print of \$.008904 for model LANIER LD345SP and the cost per black and white copy/print of \$.006572 and the cost per color copy/print of \$.0583 for model LANIER LD160C.

Sample Motion

Move to approve the one year Maintenance Agreement with Capital Business Systems Inc./Modern Methods.



CAPITAL BUSINESS SYSTEMS, INC. MODERN METHODS

Maintenance & Supply Agreement

SHIP TO	Customer Name CITY OF GRAND ISLAND	BILL TO	Customer Name
	Address 100 EAST FIRST ST, PO BOX 1968		Address
	Telephone #		Telephone #
	Attention		Attention

POOL BILLING: Yes ☐ No ☐

Make/Model	ID #	Serial #	Annual Base Rate
LD160C	1973 Mailroom	612000928	

Contract Term: 12 months. Start: _____ End: _____
Month/Day/Year Month/Day/Year

Beginning Meter Reading:

Color: _____
Black: _____

Other Meter: _____

Terms of Agreement:

- Maintenance Agreement covers all parts, labor, and supplies. Supplies will be shipped at the request of the customer. Paper, staples, and masters for duplicators are excluded and must be purchased separately by the customer.
- Annual Base Rate: (Billed _____ at \$ 0)
- Color copies/prints included: 0 per ☐ month ☐ quarter ☐ year.
Additional color copies billed at .085.0583 billed ☒ month ☐ quarter ☐ year.
- Black copies/prints included: 0 per ☐ month ☐ quarter ☐ year.
Additional black copies billed at .0062.006572 billed ☒ month ☐ quarter ☐ year.
- Approximate toner and ink yields _____ color copies per ☐ carton ☐ cartridge ☐ bottle
black copies per ☐ carton ☐ cartridge ☐ bottle
- For duplicators, all masters will be billed at _____ \$ per master. Billing will be completed on a quarterly basis.

Capital Business Systems, Inc. / Modern Methods reserves the right to increase the cost of contract annually during the contract period.

This is a non-cancelable contract - customer acknowledges to have read the terms above and on the reverse side, and agrees to all of these terms & conditions.

Special Provisions:

X

Customer Acceptance
Capital Business Systems/Modern Methods

Title
SERVICE MANAGER
Title

Date
2-28-11
Date
Revised: 7/30/2007

**CAPITAL BUSINESS SYSTEMS, INC.**
MODERN METHODS**Maintenance & Supply Agreement**

SHIP TO	Customer Name CITY OF GRAND ISLAND	BILL TO	Customer Name
	Address 100 EAST FIRST ST, PO BOX 1968		Address
	Telephone #		Telephone #
	Attention		Attention

POOL BILLING: Yes ☐ No ☐

Make/Model	ID	Serial	Annual Base Rate
LD345SP	1966 <i>Unity I/PW</i>	75000818	

Contract Term: 12 months.

Start:

Month/Day/Year

End:

Month/Day/Year

Beginning Meter Reading:

Color: _____

Black: _____

Other Meter: _____

Terms of Agreement:

1. Maintenance Agreement covers all parts, labor, and supplies. Supplies will be shipped at the request of the customer. Paper, staples, and masters for duplicators are excluded and must be purchased separately by the customer.

2. Annual Base Rate: (Billed _____ at \$ 0)

3. Color copies/prints included: _____ per ☐ month ☐ quarter ☐ year.
Additional color copies billed at _____ billed ☐ month ☐ quarter ☐ year.

4. Black copies/prints included: 0 per ☐ month ☐ quarter ☐ year.
Additional black copies billed at 0084.008904 billed ☒ month ☐ quarter ☐ year.

5. Approximate toner and ink yields _____ color copies per ☐ carton ☐ cartridge ☐ bottle.
_____ black copies per ☐ carton ☐ cartridge ☐ bottle

6. For duplicators, all masters will be billed at _____ \$ per master. Billing will be completed on a quarterly basis.

Capital Business Systems, Inc. / Modern Methods reserves the right to increase the cost of contract annually during the contract period.

This is a non-cancelable contract - customer acknowledges to have read the terms above and on the reverse side, and agrees to all of these terms & conditions.

Special Provisions: _____

X

Levy Phillips
Customer Acceptance
Capital Business Systems/Modern Methods

SERVICE MANAGER
Title
Title

2-28-11
Date
Date
Revised: 7/20/2007



CAPITAL BUSINESS SYSTEMS, INC. MODERN METHODS

Maintenance & Supply Agreement

SHIP TO	Customer Name CITY OF GRAND ISLAND	BILL TO	Customer Name
	Address 100 EAST FIRST ST, PO BOX 1968		Address
	Telephone #		Telephone #
	Attention		Attention

POOL BILLING: Yes ☐ No ☐

Make/Model	ID #	Serial #	Annual Base Rate
LD345SP	1930 Admin/Legal	74900773	

Contract Term: 12 months. Start: _____ End: _____
Month/Day/Year Month/Day/Year

Beginning Meter Reading:
Color: _____
Black: _____
Other Meter: _____

Terms of Agreement:

- Maintenance Agreement covers all parts, labor, and supplies. Supplies will be shipped at the request of the customer. Paper, staples, and masters for duplicators are excluded and must be purchased separately by the customer.
- Annual Base Rate: (Billed _____ at \$ 0)
- Color copies/prints Included: _____ per ☐ month ☐ quarter ☐ year.
Additional color copies billed at _____ billed ☐ month ☐ quarter ☐ year.
- Black copies/prints Included: 0 per ☐ month ☐ quarter ☐ year.
Additional black copies billed at 0084, 008904 billed ☒ month ☐ quarter ☐ year.
- Approximate toner and ink yields _____ color copies per ☐ carton ☐ cartridge ☐ bottle
_____ black copies per ☐ carton ☐ cartridge ☐ bottle
- For duplicators, all masters will be billed at _____ \$ per master. Billing will be completed on a quarterly basis.

Capital Business Systems, Inc. / Modern Methods reserves the right to increase the cost of contract annually during the contract period.

This is a non-cancelable contract - customer acknowledges to have read the terms above and on the reverse side, and agrees to all of these terms & conditions.

Special Provisions: _____

X

Jimmy Phillips
Customer Acceptance
Capital Business Systems/Modern Methods

SE SERVICE MANAGER
Title
Title

2-28-11
Date
Date
Revised: 7/02/2007



CAPITAL BUSINESS SYSTEMS, INC. MODERN METHODS

Maintenance & Supply Agreement

SHIP TO	Customer Name CITY OF GRAND ISLAND	BILL TO	Customer Name
	Address 100 EAST FIRST ST, PO BOX 1968		Address
	Telephone #		Telephone #
	Attention		Attention

POOL BILLING: Yes ☐ No ☐

Make/Model	ID #	Serial #	Annual Base Rate
LD345SP	1964 <i>Finard/HR</i>	75000744	

Contract Term: 12 months. Start: _____ End: _____
Month/Day/Year Month/Day/Year

Beginning Meter Reading:

Color: _____
Black: _____

Other Meter: _____

Terms of Agreement:

- Maintenance Agreement covers all parts, labor, and supplies. Supplies will be shipped at the request of the customer. Paper, staples, and masters for duplicators are excluded and must be purchased separately by the customer.
- Annual Base Rate: (Billed _____ at \$ 0)
- Color copies/prints included: _____ per ☐ month ☐ quarter ☐ year.
Additional color copies billed at _____ billed ☐ month ☐ quarter ☐ year.
- Black copies/prints included: 0 per ☐ month ☐ quarter ☐ year.
Additional black copies billed at 0084 - 008904 billed ☒ month ☐ quarter ☐ year.
- Approximate toner and ink yields _____ color copies per ☐ carton ☐ cartridge ☐ bottle
_____ black copies per ☐ carton ☐ cartridge ☐ bottle
- For duplicators, all masters will be billed at _____ \$ per master. Billing will be completed on a quarterly basis.

Capital Business Systems, Inc. / Modern Methods reserves the right to increase the cost of contract annually during the contract period.

This is a non-cancelable contract - customer acknowledges to have read the terms above and on the reverse side, and agrees to all of these terms & conditions.

Special Provisions: _____

X

Customer Acceptance
Capital Business Systems/Modern Methods

Title
SERVICE MANAGER
Title

Date
2-28-11
Date
Revised: 7/30/2007



CAPITAL BUSINESS SYSTEMS, INC.
MODERN METHODS

Maintenance & Supply Agreement

SHIP TO	Customer Name CITY OF GRAND ISLAND	BILL TO	Customer Name
	Address 100 EAST FIRST ST, PO BOX 1968		Address
	Telephone #		Telephone #
	Attention		Attention

POOL BILLING: Yes ☐ No ☐

Make/Model	ID #	Serial #	Annual Base Rate
LD345SP	1985 <i>Bldg</i>	75000739	

Contract Term: 12 months. Start: _____ End: _____
Month/Day/Year Month/Day/Year

Beginning Meter Reading:

Color: _____
Black: _____

Other Meter: _____

Terms of Agreement:

- Maintenance Agreement covers all parts, labor, and supplies. Supplies will be shipped at the request of the customer. Paper, staples, and masters for duplicators are excluded and must be purchased separately by the customer.
- Annual Base Rate: (Billed _____ at \$ 0)
- Color copies/prints included: _____ per ☐ month ☐ quarter ☐ year.
Additional color copies billed at _____ billed ☐ month ☐ quarter ☐ year.
- Black copies/prints included: 0 per ☐ month ☐ quarter ☐ year.
Additional black copies billed at 0084.008904 billed ☒ month ☐ quarter ☐ year.
- Approximate toner and ink yields _____ color copies per ☐ carton ☐ cartridge ☐ bottle.
_____ black copies per ☐ carton ☐ cartridge ☐ bottle
- For duplicators, all masters will be billed at _____ ¢ per master. Billing will be completed on a quarterly basis.

Capital Business Systems, Inc. / Modern Methods reserves the right to increase the cost of contract annually during the contract period.

This is a non-cancelable contract - customer acknowledges to have read the terms above and on the reverse side, and agrees to all of these terms & conditions.

Special Provisions: _____

X
Levy Phillips
Customer Acceptance
Capital Business Systems/Modern Methods

SERVICE MANAGER
Title
Title

2-28-11
Date
Date
Revised: 7/30/2007

RESOLUTION 2011-58

WHEREAS, on February 27, 2007, by Resolution 2007-50, the City of Grand Island entered into a three year lease for the use of copy machines within City Hall; and

WHEREAS, on March 9, 2010 by Resolution 2010-70 the City of Grand Island opted to buy the copiers for \$1.00 and entered into a one year Maintenance agreement for the 5 copy machines agreeing to pay per copy/print costs at a cost per copy of \$.0084 for model LANIER LD345. The cost for model LANIER LD160C agreed upon per black and white copy/print is \$.0062 and color copy/print is \$.055 for 12 months. The Maintenance Agreement covered all parts, labor, and supplies (excluding paper and staples); and

WHEREAS, it has been deemed appropriate to renew a one year Maintenance Agreement that states that we agree to pay per copy/print costs at a cost per copy of \$.008904 for model LANIER LD345. The cost for model LANIER LD160C agreed upon per black and white copy/print is \$.006572 and per color copy/print is \$.0583 for 12 months. The Maintenance Agreement covers all parts, labor, and supplies (excluding paper and staples); and

WHEREAS, the proposed agreements have been reviewed and approved by the City Attorney's office;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the one year Maintenance Agreement as stated above by and between the City and Capital Business Systems, Inc./Modern Methods, is hereby approved.

BE IT FURTHER RESOLVED, that the mayor is hereby authorized and directed to execute such agreements on behalf of the City Of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, on March 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 4, 2011	☐ City Attorney



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G13

**#2011-59 - Approving Recommendation of Vendor for Expert
Service Provider for Information Technology**

Staff Contact: Robyn Splattstoesser

Council Agenda Memo

From: Mary Lou Brown, Finance Director

Meeting: March 8, 2011

Subject: Approving Contract for Information Technology
Network Administration Support

Item #'s: G-13

Presenter(s): Mary Lou Brown, Finance Director

Background

As part of the 2011 budget process the Information Technology division of Finance eliminated one full time position to provide funding for the outsourcing of network administration support.

Discussion

Council approved the increase of \$58,000 for Consulting Services to facilitate Network Administration Support and maintenance of the City's network in the 2011 budget. The Information Technology division went out for proposals and received bids from (2) two vendors. Duey's Computer Service, Inc of Lincoln, received the highest total score based on the criteria set forth in the RFP. The attached contract details the services and costs that Duey's Computer Service will charge. The second proposal received scored lower on the established criteria and their cost was almost triple the budgeted amount.

Alternatives

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

1. Approve the 36 month Network Administration Support agreement with Duey's Computer Service, Inc.
2. Postpone the request.
3. Take no action.

Recommendation

City Administration recommends that the Council approve the 36 month agreement with Duey's Computer Service, Inc.

Sample Motion

Move to approve the 36 month Network Administration Support Agreement with Duey's Computer Service, Inc.



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL
FOR
EXPERT SERVICE PROVIDER (ESP) FOR INFORMATION TECHNOLOGY DEPARTMENT**

RFP DUE DATE: February 15, 2011 at 4:00 p.m.

DEPARTMENT: Finance

PUBLICATION DATE: January 27, 2011

NO. POTENTIAL BIDDERS: 2

SUMMARY OF PROPOSALS RECEIVED

Duey's Computer Service, Inc
Lincoln, NE

NetStandard
Kansas City, Kansas

cc: Mary Lou Brown, Finance Director
Robyn Splattstoesser, IT Manager

Jason Eley, Purchasing Agent

P1456

**REQUEST FOR PROPOSALS
INFORMATION TECHNOLOGY NETWORK ADMINISTRATION SUPPORT
FOR THE CITY OF GRAND ISLAND, NEBRASKA**

**I.
GENERAL**

The City of Grand Island is pleased to release this Request for Proposal for the outsourcing of a portion of the City's information technology and associated support services. The City seeks an Expert Service Provider (**ESP**) with strong capabilities and a minimum of 10 years experience in outsourcing, and partnering with large, complex, public-sector organizations. The partnership formed as a result of this process will be founded upon open communications and the City expects full answers to Proposal questions and encourages its ESP candidates to propose alternatives that are in the best mutual interest of both parties. The selected ESP, working in partnership with the City, will provide the resources and expertise necessary to develop and promote the City's information technology systems.

The City of Grand Island, located in Grand Island, Nebraska, is soliciting proposals from service providers qualified to assist with the administration and overall strategy of an in-house server/network system. The IT services required can be summarized into three categories, 1) Network Administration & Troubleshooting, 2) Server Administration and 3) Hardware Purchase Consultation. The period of the contract will be 36 consecutive months commencing on the date of award.

Servers

The City of Grand Island is currently connected to the internet through a bonded DSL. A server farm consisting of more than 20 servers currently exists in the Data Center at City Hall. Also inclusive are several remote site networks. Internet connection, security, email and file storage are provided by the City of Grand Island.

Workstations

The City of Grand Island utilizes Intel based workstations (approximately 500) using Windows XP/7, and Microsoft Office 2003/2007 as well as some thin client applications.

Peripherals

The City of Grand Island utilizes network peripherals such as Extreme, 3com, and Netgear to support infrastructure covering the Ethernet environment, wireless access, fiber optic connections, and support for remote access.

II. SCOPE OF WORK

The selected ESP will be expected to provide innovative and responsive support to meet the evolving needs of the City of Grand Island. In addition to current issues that may arise, the ESP will also help develop long term goals in the form of a 5 and 10 year plan. Services required of the selected ESP may include, but not be limited to, the following:

1. Network Administration & Troubleshooting
 - Identify and correct problems with the network as they arise
 - Configure firewall for maximum security and flexibility
 - Frequent monitoring of network status
2. Server Administration
 - Server maintenance including MS Exchange Server
 - SPAM control management
 - Disaster recovery solution identified and implemented
 - Keep servers up to date and secured
 - Ensure backups are being performed correctly
 - Assist staff with various computer related questions to ensure smooth day-to-day operation of the facility
 - Frequently review event logs and system alerts.
3. Hardware/Software Purchase Consultation
 - Assist in hardware purchase decisions and assist in educating the City Council
 - Provide software recommendations based on industry trends.

III. PROPOSAL CONTENT

To facilitate evaluation, proposals should address and be organized in the order of the outline given below and include the following information:

Background Information: Provide general information regarding the organization and the structure of your firm including, but not limited to:

1. Years in business as an ESP
2. Number of MCSE and A+ Certified staff at the Firm
3. Provide profiles for all personnel who would perform hands on maintenance and support including years of experience, experience with network administration, and areas of expertise.
4. Describe knowledge of, and experience supporting the various software applications noted in the “Technical requirement” section of this RFP.
5. Describe experience, providing examples, of IT project management and implementation, such as hardware and software deployment or upgrades.

6. Describe processes that would be put in place to monitor and rectify network performance issues, latency, capacity planning, etc.
7. List current recommendations for changes/upgrades/automation of network maintenance, etc. for The City (future Planning)
8. Describe experience working with Geographic Information Systems software.
9. Describe experience working with IBM AS400 I Series system.
10. Describe experience working with Laserfiche document archival system.

Internet connectivity and Email account access are mission critical applications. Significant loss in productivity would be experienced by any outages to these services.

1. What is your standard response time to be on site for “emergency calls” to restore outages of mission critical services? During regular business hours (8:00 – 5:00 Monday – Friday)? During off hours?
2. What is your standard response time for regular, ongoing maintenance issues and day-to-day work orders?
3. Is your standard procedure to provide one primary account support contact or send different technicians depending on availability and technical need?
4. What will you do to ensure all technical staff is familiar with The City environment, business needs of users, mission critical applications, and protocols to be followed when responding to a service call?
5. What training of end users do you provide when new technology is implemented?
6. Describe your experience with, and willingness to set up, automated notification protocols when outages occur to connectivity, servers, etc
7. Please provide 3 references of existing customers that we may contact
8. Please confirm coverage of your Commercial General Liability Insurance coverage, including limit of liability per occurrence.
9. What is your experience in customer relationships with publicly funded municipality organizations?
10. What rates do you charge for labor? Provide details and breakdown.
11. What are your regular terms for payment of invoices?

IV. EVALUATION CRITERIA

ESPs’ submittals will be evaluated based on the criteria listed in this section. Evaluation of responses to this RFP will be based only on the information provided in the submittal package, and if applicable, interviews and reference responses. The City reserves the right to request additional information or documentation from the firm regarding its submittal documents, personnel, financial viability or other items in order to complete the selection process.

The evaluation criteria are as follows:

Responsiveness of Firm	15%
Qualifications	10%
Depth of Technical Knowledge	25%
Fee Structure	25%
Experience	25%

Following the evaluation, the following steps may be taken:

1. Contract negotiations with one or more proposers will commence; or
2. (a) Request additional information from the proposer whose responses appear to have the greatest likelihood of success; and/or
(b) Invite one or more proposers whose responses appear to have the greatest likelihood of success to attend an interview/presentation to discuss their proposal; and then
(c) Begin contract negotiations with one or more proposers.

The City of Grand Island reserves the right to conduct reference checks, at either or both of the following two points of the evaluation process:

1. After proposals are evaluated, for the proposer with the highest-scoring proposal;
2. In the event that interviews are held, for the proposer with the highest-scoring proposal and interview.

In the event that information obtained from the reference checks reveals concerns about the proposer's past performance and their ability to successfully perform the contract to be executed based on this RFP, the City of Grand Island may, at its sole discretion, determine that the proposer is not a responsible proposer and may select the next highest-ranked proposer whose reference checks validate the ability of the proposer to successfully perform the contract to be executed based on this RFP.

V. SUBMITALS

Proposals must be delivered to the Grand Island City Clerk's Office no later than **4:00 P.M.** on the **15th** day of **February 2011**. Please provide **three (3) copies** of your proposal in a sealed envelope clearly marked on the exterior as containing "Proposal for Information Technology Network Administration Support". Submit proposals to RaNae Edwards, City Clerk, City of Grand Island, 100 East First Street, Grand Island, Nebraska 68801. Interested persons should submit their questions to the Grand Island Information Technology Manager at 308-385-5444 ext. 188.

COMPUTER/NETWORK MAINTENANCE AGREEMENT

This Computer/Network Maintenance Agreement is entered into by and between Duey's Computer Service, Inc. and The City of Grand Island, a city government located in Grand Island, Nebraska this _____ day of _____, 2011.

In consideration of the promises, covenants, obligations and other consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby mutually agree as follows, to wit:

1. Term. The term of this Agreement shall begin the 1st day of April, 2011 and end on the last day of March, 2014. After the last day of March, 2014 this agreement shall continue on a month to month basis until cancelled by either party in writing.

2. Scope of the Service Provided. Duey's Computer Service, Inc. (hereinafter "Duey's") shall be the primary provider of computer and network support for The City of Grand Island (hereafter "The City"), during the term of this Agreement. Duey's will provide The City 35 hours of standard service per month at the rate set forth hereinafter. The 35 hours per month must be used in the designated month or used in the month immediately following the designated month providing this contract is still in effect. If the hours in the 35 hour provision are not used in the designated month or immediately following month the hours shall be forfeited and shall lapse. Duey's will provide two monthly onsite visits without travel charges. Additional onsite visits during any given month will incur travel charges, at the rate set forth below. The City hereby agrees that no other computer service provider, or equipment vendor of any kind shall install, upgrade, adjust, or otherwise alter the configuration of the network system, or any component thereof, during the term of this Agreement without first contacting Duey's to obtain the necessary information with which to make the installation, upgrade, adjustment or alteration, so as to avoid jeopardizing the network system. Duey's will not charge for e-mail or telephone calls with a vendor called by The City under the foregoing circumstances, if said e-mails or phone calls require less than 15 minutes of Duey's time. If additional assistance is required by the service provider, or vendor, The City hereby agrees to pay Duey's the "Priority Rate" for such services, as set forth below.

Duey's shall also provide telephone and e-mail support for The City at The City's request. Any computer related issue not resulting in a service call, and brought to Duey's attention shall be considered telephone or e-mail support. Duey's shall provide telephone or e-mail support out of the monthly pool of hours as part of the monthly fee set forth hereinafter.

Duey's shall further provide proactive network monitoring from its home location, Lincoln, Nebraska. The City shall promptly notify Duey's of any computer related problems as they occur, and shall allow Duey's access to its computer systems, and all components thereof, in order to document and resolve the network and computer problems. Any alarms generated by the monitoring system implemented by Duey's shall be considered an incident, as set forth in the preceding paragraph.

3. Service Rates.

- A. Contract Rates. In exchange for the services to be provided by Duey's to The City, The City hereby agrees that it shall pay to Duey's the sum of \$3125 per month, for each month during the term hereof. Duey's shall provide an invoice to The City on a monthly basis, setting forth this charge, together with any additional charges for time spent by Duey's in servicing the needs of The City under the terms and provisions hereof.
- B. Standard Rate. For a standard service call, Duey's will respond within 1 to 3 business days. Included within this Computer/Network Maintenance Agreement is 35 hours of standard service per month, for the charges set forth in the preceding paragraph. In the event that 35 hours have not been used by The City in any calendar month or immediately following calendar month as outlined above in section 2, said time shall be forfeited, and shall lapse. Additional time for standard service calls will be billed at \$95 per hour for the first hour, and \$23.75 for each 15 minute segment or any portion thereof, thereafter. As stated previously, Duey's will waive travel charges for two visits per month. Additional on-site visits during any given month will incur a charge of \$142.50 per trip.
- C. Priority Rate. For all priority service calls, Duey's will make itself available within one hour of being contacted by The City for said service (plus any additional travel time). Priority service calls shall be billed at \$180.00 per hour for the first hour, and \$45 for each 15 minute segment, or any portion thereof, thereafter.

All service requests shall be considered standard service calls unless The City specifically requests a priority service call.

4. Parts and Equipment. If parts or other equipment are required to repair or upgrade existing equipment, Duey's shall contact The City for authorization before any such parts or other equipment are purchased or installed.

5. Indemnification and Hold Harmless. Duey's hereby agrees that it shall handle all computers, equipment, and data owned by The City with utmost care. However, Duey's cannot and shall not be liable for any hardware failures, software failures, or data loss as a result of the services provided hereunder. The City hereby agrees to indemnify and hold Duey's harmless from and against any and all claims, damages, losses or expenses arising out of or related to acts, negligence, or failures of its employees, or agents, with respect to the computers, network equipment and software being serviced by Duey's hereunder.

6. Invoice and Payment. Duey's shall submit monthly invoices to The City, containing the monthly charge of \$3125, and an itemization of any charges for additional services provided, pursuant to the rates set forth herein above, and any additional costs which have been incurred for parts and equipment, in each month during the term of their Agreement. The monthly

maintenance fee shall be prepaid each month. The City shall pay the full amount of each such invoice within 30 days of the date of its receipt. Any balances not paid within 30 days of receipt by The City shall bear interest at the rate of 1.5% per month, beginning 30 days after the date of the unpaid invoice. Any and all costs of collection, including postage, attorneys fees, and costs shall be paid by The City.

7. Governing Law. This Agreement shall be construed, governed, and interpreted according to the laws of the State of Nebraska.

8. Time of the Essence. Time is of the essence of this Agreement, and the parties hereby agree that any and all obligations as set forth herein shall be performed in a reasonably timely manner.

9. Severance. If any paragraph, section, or portion of this Agreement shall be unenforceable under the laws of the State of Nebraska, for any reason, the remaining portions of the Agreement which are otherwise enforceable shall remain in full force and effect.

10. Assignability. Neither this Agreement nor any of the parties' rights hereunder shall be assignable by any party hereto, without the prior written consent of the other party.

11. Entire Agreement. This Agreement, shall constitute the final written expression of all of the agreements between the parties, and is a complete and exclusive statement of those terms. It shall supersede all understandings and negotiations concerning the matters specified herein. Any representations, promises, warranties or statements made by either party that differ in any way from the terms of this written Agreement shall be given no force or effect. The parties specifically represent, each to the other, that there are no additional or supplemental agreements between them related in any way to the matters set forth herein unless specifically included or referred to herein. No addition to or modification of any provision of this Agreement shall be binding upon any party unless made in writing, and signed by all parties hereto.

12. Headings. Headings of the articles and sections of this Agreement are for the convenience of the parties only, and shall be given no substantive or interpretative effect whatsoever.

IN WITNESS WHEREOF, the parties have executed this Computer/Network Maintenance Agreement on the day and year herein above first set forth.

DUEY'S COMPUTER SERVICE, INC.

Date: _____

By: _____
Andrew Duey, President

THE CITY OF GRAND ISLAND.

Date: _____

By: _____
Authorized Representative

RESOLUTION 2011-59

WHEREAS, the Information Technology Division of Finance included funds of \$58,000 in the 2011 budget for the outsourcing of Network Administration Support; and

WHEREAS, on February 15, 2011 (2) two proposals were received, reviewed and evaluated in accordance with established criteria in the RFP; and

WHEREAS, Duey's Computer Service, Inc of Lincoln, Nebraska submitted a proposal for established services for a period of 36 consecutive months; and

WHEREAS, the Contract would cover the term of April 1, 2011 through March 31, 2014; and

WHEREAS, the proposed agreement has been reviewed and approved by the City Attorney's office

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Information Technology Network Administration Support and Maintenance Agreement by and between the City and Duey's Computer Service, Inc, is hereby approved.

BE IT FURTHER RESOLVED, that the mayor is hereby authorized and directed to execute such agreements on behalf of the City Of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 4, 2011	☐ City Attorney



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G14

#2011-60 - Approving Redemption of Series 2006 Public Safety Tax Anticipation Bonds

This item relates to the aforementioned Ordinance item F-2.

Staff Contact: Mary Lou Brown

RESOLUTION 2011-60

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 August 29, 2011, after which date interest on the bonds will cease:

Public Safety Tax Anticipation Bonds, Series 2006, date of original issue - August 29, 2006, in the principal amount of Five Million Seven Hundred Thirty-five Thousand Dollars (\$5,735,000), numbered as shown on the books of the Paying Agent and Registrar, and becoming due and bearing interest as follows:

<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
\$ 620,000	September 1, 2011	3.95%	385654 AE 8
645,000	September 1, 2012	4.00	385654 AF 5
670,000	September 1, 2013	4.00	385654 AG 3
700,000	September 1, 2014	4.10	385654 AH 1
725,000	September 1, 2015	4.15	385654 AJ 7
755,000	September 1, 2016	4.20	385654 AK 4
790,000	September 1, 2017	4.30	385654 AL 2
830,000	September 1, 2018	4.35	385654 AM 0

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

The Refunded Bonds are subject to redemption at any time on or after August 29, 2011, at par and accrued interest, and said interest is payable semiannually.

Said Refunded Bonds were issued for the purpose of providing funds for the construction and equipping of a law enforcement center and miscellaneous costs associated therewith.

Section 2. Said bonds are to be paid at the principal corporate trust office of Cornerstone Bank, York, Nebraska (formerly Cornerstone Bank, National Association, York, Nebraska), as paying agent and registrar (the "Paying Agent and Registrar").

Section 3. A true copy of this resolution shall be filed immediately with the Paying Agent and Registrar, and said Paying Agent and Registrar 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 Refunded Bonds.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G15

**#2011-61 - Approving Investment Advisory Agreement with Smith
Hayes Advisers, Inc.**

Staff Contact: Mary Lou Brown

Council Agenda Memo

From: Mary Lou Brown, Finance Director

Meeting: March 8, 2011

Subject: Approval of Investment Advisory Agreement with Smith Hayes Advisers Inc.

Item #'s: G-15

Presenter(s): Mary Lou Brown, Finance Director

Background

Mr. Rod Cerny and Smith Hayes Advisers, Inc. have been the co-managers for the backstop funds to the pension obligations that are administered by Wells Fargo. Mr. Cerny, the day-to-day investment manager, was formerly with McCarthy Group Advisors (MGA). MGA was acquired by Westwood Holdings Group Inc. (Westwood) of Dallas, Texas last fall. That transition was approved by Council at the October 12, 2010 Council meeting.

Discussion

Mr. Cerny has recently moved from Westwood to Smith Hayes Advisers, Inc. and will be providing the same day-to-day investment management functions as in the past. As a result of this change, it is necessary that the investment funds be moved from Smith Hayes Financial Services to Smith Hayes Advisers, Inc. The attached Investment Advisory Agreement enables this change to occur.

The attached Investment Advisory Agreement directs Smith Hayes Advisers, Inc. to oversee the management, investment, reinvestment, buying, selling, brokerage and all other aspects of the assets contained in the portfolio. In addition, Smith Hayes Advisers, Inc. will have the right and power to make all decisions regarding the nature, amount and timing of purchase and sell decisions and will keep the City apprised of account information and provide general investment advice.

Alternatives

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

1. Move to approve the Investment Advisory Agreement with Smith Hayes Advisers Inc.
2. Postpone the issue to a future meeting.
3. Take no action.

Recommendation

City Administration recommends that the Council approve the Investment Advisory Agreement with Smith Hayes Advisers, Inc.

Sample Motion

Move to approve the Investment Advisory Agreement with Smith Hayes Advisers, Inc.

SMITH HAYES

Financial Services Corporation

Terence A. Millard
Vice President

February 3, 2011

Mary Lou Brown
Finance Director/City Treasurer
City of Grand Island
P.O. Box 1968
Grand Island, NE 68802-1968

Dear Mary Lou,

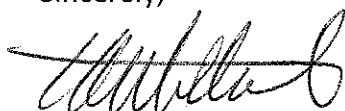
We are writing today to provide you with information about your investment account managed by Rod Cerny. As you know Rod was employed by McCarthy Group Advisors which was acquired by Westwood Holdings of Dallas, Texas last fall. Smith Hayes Advisers, Inc ("Smith Hayes") has been working with the folks at Westwood to ensure the seamless management of your account during this transition. We had hoped that things would continue without disruption to you.

However, on February 2, 2011 we were informed by Westwood that Rod Cerny would no longer be managing your accounts, and Westwood will be reaching out to each of you to sign paperwork to move your assets into one of their money management programs. We do not think a liquidation of your current account is in your best interest. We had only pursued the relationship with Westwood because of our confidence in Rod.

We have included paperwork necessary to terminate your relationship with Westwood Holdings. It is up to you to determine if you would like to continue your relationship with Smith Hayes, and to have your account managed in the same manner you are accustomed to, or move to the Westwood model. Your business is important to us, and we hope you will continue to do business with Smith Hayes. **If that is the choice you make please execute the enclosed paperwork and return to Smith Hayes.**

If you are unsure of which course is best for you at this time, please take the time you need to make this decision. Because your account is held with Smith Hayes, you are always able to call us and provide instructions on the assets in your account.

Sincerely,



Terence A. Millard
Vice President

1553 27th Avenue
Columbus, Nebraska 68602-0963
402-564-1878 888-881-1878 Fax 402-564-2753
Member NASD & SIPC

February 3, 2011

Westwood Management Corp
1125 South 103rd Street, Suite 580
Omaha, NE 68124

Client Account Registration – City of Grand Island Firefighters Fund

To Westwood Holdings:

This letter has been sent to inform you that I wish to terminate any and all management, advisory or sub-advisory agreements with Westwood holding Group, Inc. or any of its affiliates. This letter is effective immediately upon receipt by your firm.

Sincerely,
City of Grand Island, Nebraska

Finance Director/City Treasurer

Date

INVESTMENT ADVISORY AGREEMENT

This INVESTMENT ADVISORY AGREEMENT ("Agreement") is made as of , 20 11
between SMITH HAYES Advisers Inc. (the "ADVISER"), a Nebraska corporation and a registered investment adviser, and
City of Grand Island ("Client").

The purpose of this Agreement is to set forth terms and conditions of an undertaking whereby, for a fee, ADVISER provides certain investment advisory and related services to Client. Such services shall be rendered with respect to those assets described on the attached Schedule I together with proceeds and the income derived there from (the "Portfolio") held in an account (the "Account").

NOW THEREFORE, for good and valuable consideration, ADVISER and Client agree as follows:

1. Investment Advisory Relationship. Client hereby engages ADVISER to provide investment advisory services to Client for the Portfolio and ADVISER hereby accepts such engagement, subject to and upon the terms and conditions set forth herein.

2. Permitted Investments. Subject to Schedule I and any other applicable written limitations provided by Client, the Portfolio may be invested in every type and kind of corporate common and preferred stocks, options, warrants, rights, debt obligations, corporate and government bonds and notes, mutual and money market funds and all such other securities and assets as Client may hereafter direct to ADVISER in writing from time to time. All or a portion of the Portfolio may also be held in cash or cash equivalents.

3. Investment Advisory Services. ADVISER shall conduct periodic reviews, and in light of Client's investment objectives, provide general investment advice to Client from time to time. To enable ADVISER to provide such investment advisory services, Client shall develop with ADVISER or provide to ADVISER a written statement setting forth Client's investment objectives and any restriction constraining the management or investment of the Portfolio. Client shall provide ADVISER written directions regarding any revision of its investment objective and restrictions applicable to the Portfolio.

4. Discretionary/Non Discretionary Basis. It is agreed that Client's Account shall be managed by ADVISER in the following manner [choose one alternative]:

- ☐ (i) Advisory I Account. Adviser shall from time to time make recommendations to Client regarding specific purchases and sales for the Client's portfolio. All purchases and sales for the Client's portfolio shall be solely at the Client's direction. Adviser shall from time to time also review and make recommendations to Client regarding the allocation of exposure in equity and debt securities, foreign and domestic securities, mutual funds and cash or cash equivalents.
- ☒ (ii) Advisory II Account. ADVISER shall in its sole and absolute discretion, as Client's agent and attorney in fact and without further direction or ratification from Client, direct the management, investment, reinvestment, buying, selling, brokerage, and all other aspects of the assets contained in the Portfolio. ADVISER's power hereunder includes, without limitation, the right and power to make all decisions regarding the nature, amount and timing of purchase and sell decisions.

5. Brokerage of the Portfolio. Unless Client specifically directs otherwise in writing, ADVISER shall select the entities that will provide brokerage and execution services for the purchase and sale of the assets comprising the Portfolio. ADVISER anticipates that its affiliate, SMITH HAYES Financial Services Corporation ("SMITH HAYES"), will generally provide all brokerage and execution services through SMITH HAYES' clearing broker-dealer. SMITH HAYES will act as agent to Client on all brokerage transactions except when SMITH HAYES acts as a dealer in the execution of fixed income securities. If appropriate, and with the Client's authorization, transactions may be executed by SMITH HAYES as "principal." Any commissions charged by SMITH HAYES will be prominently disclosed on the trade confirmations. If the Client chooses not to conduct its transactions through SMITH HAYES, any following references in

this Agreement to SMITH HAYES will refer to the Client's selected broker-dealer. If appropriate and with notice provided to clients SMITH HAYES may execute cross transactions with among clients. Client authorizes SMITH HAYES to conduct such transactions. Client is hereby notified that their written consent to conduct cross transactions may be revoked at any time by providing written notice to their investment advisory representative.

Trades initiated by any investment adviser representative of the Adviser in securities recommended by the Adviser or by the investment adviser representative shall be placed only after the recommendation is communicated to those clients for which the recommendation is appropriate given their investment objectives and policies and then only after such clients have been given a reasonable time that day to place an order of the security. At times, ADVISER and SMITH HAYES may aggregate client orders to obtain lower execution costs and better fill prices. It is also possible that the ADVISER'S and SMITH HAYES employees' personal trades, if any may be included in such bundled trades. Upon execution of such bundled trades, orders will be averaged, priced and rebilled to the appropriate client's account. Partial executions will be allocated on a pro rata basis. No client will be favored over another.

6. Custody of Portfolio. ADVISER shall have the authority, in its sole discretion, to have the Client's securities which are subject to this Agreement held in "street name" or the Client's name by whatever clearing agency, broker, dealer, custodian or other depository it shall choose.

7. Fee for ADVISER's Services. It is agreed that [choose one alternative]:

- ☐ (i) ADVISER's fee shall be paid by Client by check from resources outside of the Portfolio.
- ☒ (ii) ADVISER's fee shall be paid out of the assets comprising the Portfolio.

In consideration of the investment advisory services described in Section 3 above, ADVISER shall be paid fees in accordance with the Fee Schedule attached hereto as Schedule II, or as otherwise set forth on Exhibit A. If option (i) above is selected such fee shall be paid within 14 days of the date of ADVISER's billing, and if such fee is not paid promptly, ADVISER may deduct the amount of the unpaid fee from the Account. If option (ii) above is selected, such fee shall be deducted from the account promptly after the start of the subject billing term.

8. Client Acknowledgment. Client understands that ADVISER assumes no responsibility other than to render the services called for hereunder in accordance with ADVISER's best judgment, and ADVISER does not imply or guarantee profits or freedom from loss in connection with its activities with respect to the Portfolio. Client understands that the ADVISER will be acting in a similar capacity for other customers who may or may not be similarly situated as is Client and have similar investment objectives, and that the account activity for such other customers (including those who are similarly situated) may differ in kind and quantity from those taken with respect to Client's Portfolio.

Client also acknowledges and understands that ADVISER may make recommendations with respect to securities of issuers of which ADVISER or SMITH HAYES, its officers, directors, employees or affiliates may (i) be directors, officers, financial advisers or consultants, or (ii) own securities of or otherwise have a financial interest therein.

9. Client Authority. If client is not a natural person, the individual executing and delivering this Agreement on behalf of Client hereby represents and warrants in their individual capacity that (i) the individual has the authority to bind Client, and (ii) Client possesses the requisite power and authority to enter into this Agreement. The individual executing this Agreement and Client further represent and warrant that Client's contemplated investment activities hereunder are in compliance with, and do not violate, any laws, regulations, and agreements applicable to Client.

10. Purchase Order Settlements. When Client has directed that a security be purchased, Client agrees to provide sufficient funds to cover such purchase on the settlement date. In the event Client fails to provide sufficient funds, SMITH HAYES may, at its option and without notice to Client, (i) settle on behalf of Client and collect the settlement amount and a reasonable rate of interest from Client, (ii) liquidate the security subject of the purchase order and recover any losses from Client or (iii) sell other assets owned by Client and held in any Account and recover any consequential loss from Client.

INVESTMENT ADVISORY AGREEMENT

11. Temporary Investment. Without in any way limiting any discretion otherwise given by Client to ADVISER hereunder or elsewhere, Client authorizes ADVISER to invest from time to time the free credit balances in any Account. Any such temporary investment shall be made in preselected money market funds and will accrue interest to the Client's benefit. Interest shall not accrue to and will not be paid on any non-invested free credit balances in an Account.

12. Reports and Communications. Client agrees that confirmations of orders and statements of Client's Account shall be considered to be accurate reflections of the activity subject of such reports, unless, within ten (10) days following receipt thereof, Client shall object to ADVISER. Such objection may be oral or in writing, but any oral objection must be immediately confirmed in writing by Client.

Portfolio Value for securities listed on a national securities exchange shall be valued at the last quoted sale price as of the applicable valuation date and all other assets comprising the Portfolio shall be valued in a manner determined in good faith by SMITH HAYES and to reflect fair market value.

13. Security Interest. As security for any and all liability of Client arising in favor of ADVISER, Client pledges to ADVISER a security interest and lien in all property held by the custodian in any account managed by ADVISER for Client. ADVISER is hereby authorized to make whatever disposition of pledged property it may deem appropriate to realize the security afforded by this provision. Client further agrees that ADVISER shall be entitled to exercise the rights and remedies in respect of the pledged property generally afforded a secured party under the Nebraska Uniform Commercial Code.

14. Proxy Voting. All securities of the Portfolio shall continue to be voted by Client unless ADVISER receives written instructions from Client directing ADVISER to exercise such voting privileges. Notwithstanding the receipt of such instructions, ADVISER may, upon written notice to Client, decline to accept responsibility for voting any securities of the Portfolio.

15. Dividends/Interest. All dividends and interest with respect to the securities in the Portfolio shall remain in and become part of the Portfolio (rather than being paid outside of the Portfolio directly to Client), unless otherwise stipulated in writing by Client.

16. Assignment and Termination. No assignment of this Agreement shall be made by ADVISER or Client without the prior consent of the other. Either Client or ADVISER may terminate this Agreement at any time by giving written notice of termination to the other, at which time all prorated fees (if previously received by ADVISER) for the incomplete portion of the subject quarter shall become due and payable to the Client. In addition, Client may terminate this Agreement upon notice given to ADVISER at any time within five (5) business days from the date of this Agreement without penalty.

17. Arbitration Disclosure. This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

- a. All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed
- b. Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.
- c. The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.
- d. The arbitrators do not have to explain the reason(s) for their award.

INVESTMENT ADVISORY AGREEMENT

- e. The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.
- f. The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.
- g. The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

No person shall bring a putative or certified class action to arbitration, nor seek to enforce any predispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class action who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.

18. **Arbitration.** To the fullest extent allowed by law, any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in or as near to the Client or Lincoln, Nebraska, as is reasonably possible in accordance with the rules then in effect by one of the following arbitration tribunals: (i) the National Association of Securities Dealers, Inc., or (ii) the American Arbitration Association. Client understands that upon ADVISER's written demand, Client must select the arbitration tribunal within 10 calendar days after demand is made. Client agrees to provide written evidence (via certified mail) of that selection to ADVISER within said 10 days. If Client does not timely select the arbitration tribunal and inform ADVISER, then ADVISER may select the arbitration tribunal by notifying Client of ADVISER's selection in writing by certified mail. Client agrees that any judgment upon an award rendered by arbitration may be entered in any court having proper jurisdiction.

19. **Applicable Regulations.** All transactions made by ADVISER on behalf of Client pursuant to this Agreement are subject to applicable federal and state laws, and to the constitution, rules, regulations, customs and usage of the exchange or market (and its clearing house) here executed.

20. **Miscellaneous Provisions.**

ADVISER shall be entitled to act upon oral instruction given by Client so long as ADVISER reasonably believes such instruction was actually given by Client.

This Agreement shall be governed by the laws of the State of Nebraska. This Agreement shall bind Client's heirs, assigns, executors, successors, conservators and administrators, and inure to the benefit of ADVISER's successors and assigns. If any provision of this Agreement shall be determined to be invalid or without legal effect, the remaining provisions shall retain their respective force and effect.

In compliance with SEC Rule 14B-1 (c), unless Client provides a written objection, the custodian of the portfolio may release Client's name, address and security position to requesting companies in which Client holds securities.

No provision of this Agreement may be altered, changed or revised except by a written instrument signed by both parties.

Notwithstanding the provisions set forth in Section 13, in the event the Account is an Individual Retirement Account, or is governed by ERISA, then the assets comprising the Portfolio shall not be pledged as security for a loan and may not be assigned, transferred or otherwise encumbered, and no benefit, right or interest of Client shall in any way be subject to any legal process of execution, garnishment or attachment.

INVESTMENT ADVISORY AGREEMENT

If Client shall (i) become associated with a stock exchange or FINRA member firm or bank, trust company, insurance company or other financial institution, or (ii) become related to an employee or agent of ADVISER or SMITH HAYES, or (iii) become an officer, director or 10% stockholder of any publicly traded company, then Client agrees to inform SMITH HAYES in writing immediately.

No person, except Client, has any interest in the Account opened pursuant to this Agreement.

Client acknowledges that Client has received and reviewed Part II of ADVISER's Form ADV prior to the date of execution of this Agreement.

INVESTMENT ADVISORY AGREEMENT

AUTHORIZATION TO DEBIT ACCOUNT FOR PAYMENT OF FEE – If you have elected to have your fee payment debited out of your advisory account discussed in Section 7 of the Agreement, your signature below will serve as your acknowledgement and authorization of such election.

AUTHORIZATION TO RECEIVE PROSPECTUS VIA ELECTRONIC DELIVERY – SMITH HAYES may elect to deliver prospectuses to you via an electronic format. Generally, this will mean via cd rom or e-mail. Your signature below will serve as your acknowledgement and authorization of such election. If you would prefer to receive prospectuses via paper copy you may revoke this authorization by providing written notice to your investment adviser representative.

THIS AGREEMENT CONTAINS A PRE-DISPUTE ARBITRATION CLAUSE (PAGE 5) WHICH CLIENT HAS READ.

ACCEPTANCE BY CLIENT

Client Name: City of Grand Island

Signature: _____

Dated: _____

Account Number: _____

If joint account:

Client Name: _____

Signature: _____

Dated: _____

ACCEPTANCE BY SMITH HAYES ADVISERS, INC.

Client Elects to Receive Transaction Confirmations: ☐ Daily ☐ Quarterly

Fee: .75

If charging less than the minimum required fee please indicate and provide the reason:

Investment Adviser Name: Terence A. Millard

Investment Adviser Signature: _____

Dated: _____

Principal Approval: _____

INVESTMENT ADVISORY AGREEMENT

SCHEDULE I

NAME: City of Grand Island

ACCOUNT NUMBER: _____

ADDRESS: P.O. Box 1968
Grand Island, NE 68802-1968

INITIAL ASSETS

CASH: \$ (ALL)

SECURITIES: (ALL) transfer from account K3X083127

ADDITIONAL COMMENTS: _____

Unsupervised Assets

I understand the following with respect to those securities listed below and held in my account, served by Smith Hayes Advisers, Inc.:

_____	_____
_____	_____
_____	_____
_____	_____

- 1) The securities holdings listed as unsupervised assets are included on the consolidated account statement for informational purposes only.
- 2) Smith Hayes Advisers, Inc. is **not** managing, monitoring or providing advice regarding the securities holdings listed in the Unsupervised Assets section of the agreement.
- 3) Smith Hayes Advisers, Inc. is not charging an investment advisory fee for these securities holdings.

INVESTMENT ADVISORY AGREEMENT

SCHEDULE II

FEE SCHEDULE

The fee charged for the investment advisory services hereunder is based upon the fair market value as of the last business day of a calendar quarter, on the assets contained in the Portfolio. However, there is a minimum annual fee of \$1,000.00. Fees may be negotiated and may be adjusted on a sliding scale based on the size of the account. The fees stated below reflect the annual fees. Fees are billed and charged on a quarterly basis. The securities in this account are subject to the following maximum investment advisory fees:

Choose option A, B or C. You must complete the chosen section completely.

A.

Fee	
Equity Positions	_____ %
Fixed Income Positions	_____ %
Mutual Fund Positions	_____ %
Cash/ Cash Equivalents	_____ %
Other	_____ %

***If choosing the above option, a fee must be indicated for each category. You cannot charge 0% for any category.**

B.

Fee	
Advisory Fee for entire account	<u>.75</u> %

C.

Fee	
\$ _____ to \$ _____	_____ %
\$ _____ to \$ _____	_____ %
\$ _____ to \$ _____	_____ %

Fees for quarters when ADVISER does not provide investment advisory services for the entire quarter (i.e. those instances when the account is opened on a date other than the beginning of a calendar quarter or closed on a date other than the end of a calendar quarter) shall be pro-rated based on the number of days that this Agreement was in effect during the quarter and the total number of days in the quarter.

The advisory fees set forth above do not include charges for exchange fees, transfer taxes, and interest charges on debit balances (whether pursuant to a margin agreement or otherwise), wire transfer charges. IRA set up or termination charges, postage and handling charges and similar charges imposed on trades in securities which are additional charges that Client pays in connection with any brokerage account maintained at SMITH HAYES and or, National Financial Services Corporation or any other broker dealer that holds Clients funds and securities. See Exhibit A for additional Fee information.

INVESTMENT ADVISORY AGREEMENT

The Client is aware that should they hold any variable products, mutual funds, money market funds or similar funds, certain fees are separately charged by these products and funds in accordance with the product's and funds' prospectuses. Please refer to ADVISER's Schedule F for more discussion regarding commissions, fees and cost that may be associated with an advisory account.

For purposes of determining the fees customers are charged, the Portfolio Value for securities listed on a national securities exchange shall be valued at the last quoted sale price as of the applicable valuation date and all other assets comprising the Portfolio shall be valued in a manner determined in good faith by ADVISER to reflect the fair market value of the assets.

INVESTMENT ADVISORY AGREEMENT

EXHIBIT A

NEGOTIATED NON-WRAP ACCOUNT TERMS AND FEES

The custodian of the Portfolio is National Financial Services or other clearing brokers or custodians. Such custodians may impose fees for services rendered. Such fees include but are not limited to: postage and handling charges, asset transfer, legal, wire charges, annual IRA fees, account termination fees, debit card, check writing, insufficient funds fee, alternative investment fees, and overnight delivery fees. All confirmed trades are subject to postage and handling charges. SMITH HAYES may be re-allowed a portion of these fees by National Financial Services or such other custodians or clearing brokers.

INVESTMENT ADVISORY AGREEMENT

LIMITED POWER OF ATTORNEY – TRADING AUTHORIZATION

Limited to Purchase and Sales of Securities by:

SMITH HAYES Financial Services Corporation and/or
SMITH HAYES Advisers, Inc.
P.O. Box 83000
Lincoln NE 6850 1-3000

The undersigned hereby authorizes Terence A. Millard ("Agent") (whose signature appears below) as his/her agent and attorney in fact to buy, sell (including short sales) and trade in stocks, bonds, options and any other securities and/or contracts relating to the same, on margin or otherwise, in accordance with the terms and conditions of the undersigned's account at SMITH HAYES Financial Services Corporation or SMITH HAYES Advisers, Inc. (collectively "SMITH HAYES"). The undersigned agrees to indemnify and hold SMITH HAYES harmless from, and to pay SMITH HAYES promptly on demand, any and all losses arising there from or debit balance due in the undersigned account.

SMITH HAYES is authorized to follow the instructions of the Agent in every respect concerning the undersigned's account. The Agent is authorized to act in the undersigned's behalf in the same manner and with the same force and effect as the undersigned might or could do.

The undersigned ratifies and confirms any and all transactions previously made by the Agent for the undersigned's account.

This authorization and indemnity is in addition to (and in no way limits or restricts) any rights which SMITH HAYES may have under any other agreements with the undersigned.

This authorization and indemnity is continuing and shall remain in full force and effect until revoked by the undersigned by a written notice addressed to SMITH HAYES at the address listed above, but such revocation shall not effect any liability in any way resulting from transactions initiated prior to such revocation. This authorization and indemnity shall inure to the benefit of SMITH HAYES and its heirs and assigns.

Client Name: City of Grand Island

Signature: _____

Dated: _____

If joint account:

Client Name: _____

Signature: _____

Dated: _____

Authorized Agent Name: Terence A. Millard

Authorized Agent Signature: _____

Dated: _____

For Branch Use Only		
K3U		
BRANCH PREFIX	ACCOUNT NO.	
541	541	
RR	RR2	AGENCY
Are Holders Employees of your B/D? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		

BROKERAGE ACCOUNT APPLICATION

Important Information To help the government fight the funding of terrorism and money-laundering activities, Federal law and contractual obligations to National Financial Services LLC ("NFS") require that your Broker/Dealer verify your identity by obtaining your name, date of birth, address, and a government-issued identification number before opening your account. In certain circumstances, your Broker/Dealer may obtain and verify this information with respect to any person(s) authorized to effect transactions in an account. For certain entities, such as trusts, estates, corporations, partnerships, or other organizations, identifying documentation is also required. Your account may be restricted and/or closed if your Broker/Dealer cannot verify this information. Neither your Broker/Dealer nor NFS will be responsible for any losses or damages (including, but not limited to, lost opportunities) resulting from any failure to provide this information, or from any restriction placed upon, or closing of, your account.

► All items marked with this symbol are required. Applications that are missing required information will not be processed.

1. ACCOUNT SETUP

You must indicate an account type (either personal or entity). Types of ownership are governed by the laws of your state of residence. If you need information about which are appropriate in your state, please consult your state tax officials or your tax advisor. Additional paperwork is required for estate or entity accounts.

► No. of Account Holders: _____ Owners, trustees, custodians, authorized individuals

Personal Accounts

- | | | |
|--|--|--|
| <input type="checkbox"/> Individual | Transfer on Death: | Custodial: |
| Joint: | <input type="checkbox"/> TOD – Individual | <input type="checkbox"/> UGMA |
| <input type="checkbox"/> Tenants with Rights of Survivorship | <input type="checkbox"/> TOD – Joint Tenants with Rights of Survivorship | <input type="checkbox"/> UTMA |
| <input type="checkbox"/> Tenants in Common | <input type="checkbox"/> TOD – Joint Tenants in Entirety | Estate: |
| <input type="checkbox"/> Tenants in Entirety | | <input type="checkbox"/> Administrator |
| <input type="checkbox"/> Community Property | | <input type="checkbox"/> Executor |
| <input type="checkbox"/> Usufruct | | <input type="checkbox"/> Personal Representative |

Entity Accounts

- | | | |
|--|--|--------------------------------|
| <input checked="" type="checkbox"/> Corporation | Trust: | Non-Prototype: |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Under Agreement | <input type="checkbox"/> IRA |
| <input type="checkbox"/> Unincorporated Association | <input type="checkbox"/> Under Will | <input type="checkbox"/> Plan |
| <input type="checkbox"/> Limited Liability Company | | <input type="checkbox"/> Trust |
| Enter the tax classification (D = disregarded entity, C = corporation, P = partnership): _____ | <input type="checkbox"/> Other: _____ | |

For entity accounts, complete the Primary Account Holder section below for one authorized individual associated with the account. Provide entity details in Section 3.

2. PRIMARY ACCOUNT HOLDER

Provide personal information on the primary individual associated with this account.

Personal Information

For Tenants in Common, indicate this owner's share: _____

► FULL LEGAL NAME <i>first, middle, last</i>		► DATE OF BIRTH <i>mm/dd/yyyy</i>
DAY PHONE		EVENING PHONE
E-MAIL		
<input type="checkbox"/> Single/Divorced/Widowed	<input type="checkbox"/> Married	No. of Dependents: _____
► Legal Address <i>No P.O. boxes</i>		
ADDRESS LINE 1		
ADDRESS LINE 2		
CITY	STATE/PROVINCE	ZIP/POSTAL CODE
USA		
COUNTRY		

USA		
► COUNTRY OF CITIZENSHIP		
<input type="checkbox"/> SOCIAL SECURITY NO.	<input type="checkbox"/> TAXPAYER ID NO.	► COUNTRY OF TAX RESIDENCE
► TYPE OF GOVERNMENT-ISSUED ID		► ID NUMBER
► STATE/COUNTRY OF ID ISSUANCE	► ID ISSUANCE DATE	► ID EXPIRATION DATE
► Mailing Address <input type="checkbox"/> Same as Legal Address		
ADDRESS LINE 1		
ADDRESS LINE 2		
CITY	STATE/PROVINCE	ZIP/POSTAL CODE
COUNTRY		

PRIMARY ACCOUNT HOLDER *continued*

ACCOUNT NUMBER

Employer Information and Affiliations *Attach additional sheet if needed.*

► **Employment Status** ☐ Employed ☐ Retired ☐ Not Employed

OCCUPATION INCOME SOURCE *If retired or not employed*

EMPLOYER NAME

ADDRESS LINE 1

ADDRESS LINE 2

CITY STATE/PROVINCE ZIP COUNTRY USA

► ☐ I am ☒ I am not a senior foreign political figure, or a family member or close relative of a senior foreign political figure.

List additional account holders in Section 7.

► ☐ Check this box if you are a control person or affiliate or an immediate family/household member of a control person or affiliate of a publicly traded company under SEC Rule 144 (this would include, but is not limited to, a director, 10% shareholder, policy-making officer, and members of the board of directors). If yes, provide name of company:

COMPANY NAME COMPANY SYMBOL/CUSIP

► ☐ Check this box if you are affiliated with, or employed by, a stock exchange, or a member firm of an exchange or Financial Industry Regulatory Authority (FINRA), or a municipal securities dealer. If yes, provide name of entity:

☐ Same as My Employer.

AFFILIATED ENTITY NAME

ADDRESS LINE 1

ADDRESS LINE 2

CITY STATE/PROVINCE ZIP COUNTRY

3. ENTITY ACCOUNT INFORMATION

This section is only required for entity accounts. For additional holders, go to section 7 or 8.

► ENTITY NAME City of Grand Island Firefighters Fund
 ► TAX ID NUMBER 47-6006205 COUNTRY OF TAX RESIDENCE USA

► **Legal Address** *No P.O. boxes*

100 E. 1st Street
 ADDRESS LINE 1

ADDRESS LINE 2
Grand Island, NE 68802
 CITY STATE/PROVINCE ZIP/POSTAL CODE

USA
 COUNTRY

USA
 ► COUNTRY OF ORGANIZATION TRUST DATE *Required for Trusts*

► ENTITY ID DOCUMENT STATE/COUNTRY OF ID ISSUANCE

► **Mailing Address** ☐ Same as Legal Address

P.O. Box 1968
 ADDRESS LINE 1

ADDRESS LINE 2
Grand Island, NE 68802
 CITY STATE/PROVINCE ZIP/POSTAL CODE

USA
 COUNTRY

4. SUITABILITY

Financial Profile *For joint accounts, provide combined information.*

► **Annual Income**

From all sources

- ☐ Under \$25,000
☐ \$25,000 - \$50,000
☐ \$50,001 - \$100,000
☐ Over \$100,000

\$

► **Estimated Net Worth**

Excluding primary residence

- ☐ Under \$50,000
☐ \$50,000 - \$100,000
☐ \$100,001 - \$500,000
☐ Over \$500,000

\$

► **Investable/Liquid Assets**

Including cash and securities

- ☐ Under \$50,000
☐ \$50,000 - \$100,000
☐ \$100,001 - \$500,000
☐ Over \$500,000

\$

► **Federal Tax Bracket**

- ☐ 15% or below
☐ 25% to 27.5%
☐ 27.5% or above

Account Funding Source

- ☐ Asset appreciation
☐ Business revenue
☐ Inheritance
☐ Legal/insurance settlement
☐ Sale of assets
☐ Savings from earnings

☐ Other: _____

Investment Profile

► **Investment Objectives** Rank your investment objectives for this account in order of importance (1 being the highest). Review the attached Customer Agreement for important information on investment objectives.

- ___ Preservation of capital
 ___ Income
 ___ Capital appreciation
 ___ Speculation
 ___ Trading profits
 ___ Other: _____

► **Risk Tolerance**

- ☐ Conservative
☐ Moderate
☐ Aggressive

☐ Combination: _____

► **Investment Time Horizon**

- ☐ Short (0-5 years)
☐ Intermediate (6-10 years)
☐ Long (over 10 years)

☐ Combination: _____

► **General Investment Knowledge** ☐ Good ☐ Limited ☐ Extensive

► **Investment Product Knowledge**

Please enter the account holder's level of knowledge in each of the following:

	None	Limited	Good	Extensive
Stocks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bonds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mutual Funds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Options	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Variable Contracts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Limited Partnerships	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ACCOUNT NUMBER

5. ACCOUNT CHARACTERISTICS**Service Instructions****► Proceeds from Sales** Choose one.

- ☐ Hold in core account investment vehicle (if specified) or in brokerage account
- ☐ Send by check to mailing address of account
- ☐ Send by external bank link (EFT)
- ☐ Send by intra-bank payment (IBP)
Consult Broker/Dealer for availability
- ☐ Delivery vs. payment (DVP)

► Security Purchases Choose one.

- ☐ Hold in street name
- ☐ Register certificates to account name and send to mailing address
- ☐ Delivery vs. payment (DVP)

► Dividend/Distribution Income Choose one. Note that any dividend/distribution income sent to a DVP account will remain there pending additional instructions.

- ☐ Handle all dividends and distributions like sales proceeds
- ☐ Reinvest mutual fund and equity dividends, handle all other distributions like sales proceeds
- ☐ Reinvest mutual fund dividends, handle all other distributions like sales proceeds
- ☐ Reinvest equity dividends, handle all other distributions like sales proceeds
- Pay all distributions in cash and send a check:
- ☐ Weekly ☐ Twice a Month ☐ Monthly ☐ Quarterly

Bank Information

Required if you choose external or internal bank link. Also required if you want to establish standing instructions for electronic transfers between your brokerage account and your bank account.

Bank Account Type ☐ Checking ☐ Savings

ABA NUMBER

ACCOUNT NUMBER

Core Account Investment Vehicle

Consult your Broker/Dealer for a list of available investment vehicles. If you do not choose an investment vehicle for your Core Account (the "Core Account Investment Vehicle"), your Broker/Dealer may invest your cash/credit balances in a taxable interest-bearing credit account or in a default Core Account Investment Vehicle of its choice while awaiting reinvestment. Different Core Account Investment Vehicles may have different rates of return and different terms and conditions, such as FDIC insurance or SIPC protection. If you do not select a Core Account Investment Vehicle, your Broker/Dealer may not consider these differences when selecting a default Core Account Investment Vehicle for you. You authorize your Broker/Dealer to change the investment vehicle in your Core Account at its discretion.

Prime
INVESTMENT VEHICLE NAMEPRXX
INVESTMENT VEHICLE SYMBOL**Additional Authorized Trader**

Attach additional sheet if necessary. You must also submit a Trade Authorization form.

Authorize this person to trade on this account.

NAME

- ☐ Limited Trading Authority
- ☐ Full Trading Authority
- ☐ Power of Attorney
- ☐ Other: _____

Duplicate Information**To Account Holders**

- ☐ If selected, New Account Profiles (NAPs) and Revised Account Profiles (RAPs) regarding changes to investment objectives, additional account holder address changes, and name changes will be sent to each account holder's mailing address. If not selected, these communications will be mailed to the mailing address of the account and deemed to have been delivered to all account holders.

To Third Party

Attach additional sheet if necessary. Completing this section will be considered your request to your Broker/Dealer to instruct NFS to send the type(s) of duplicate documents checked to the party or parties indicated.

Send this party duplicate: ☐ Statements ☐ Trade Confirmations

NAME

ADDRESS

CITY

STATE/PROVINCE

ZIP/POSTAL CODE

COUNTRY

Optional Features You must qualify to add these features to your account. Additional applications will be required.

Indicate any features in this section that you would like to request. Consult your Broker/Dealer for availability and eligibility, and to obtain the appropriate additional application(s) to apply for the features(s) you want.

Account Features

- ☐ Margin
- ☐ Options
- ☐ Fee-Based Account *Indicate type below.*

ACCOUNT TYPE

Cash Management and Banking Features

Choose no more than one.

- ☐ Brokerage Portfolio
- ☐ Brokerage Access

ACCOUNT NUMBER

6. BENEFICIARY/FBO INFORMATION

This section is required for Transfer on Death, Custodial, Estate, Trust and Non-Prototype accounts, and does not apply to other types of accounts.

Share percentages must total 100% for primary and 100% for contingent. Use percentages only, not dollar amounts.

If beneficiary is a trust, provide trust name, names of all trustees, beneficiaries, date trust was established.

Before making a Per Stirpes designation, consult with an estate planning attorney and see the Customer Agreement for important information. If you make any Per Stirpes designation, provide name of executor or other contact:

CONTACT/EXECUTOR NAME

PRIMARY Beneficiaries/FBO

NAME OF BENEFICIARY ☐ Spouse ☐ Non-Spouse ☐ Trust ☐ Entity

☐ SOCIAL SECURITY NO. ☐ TAXPAYER ID NO. DATE OF BIRTH/TRUST mm/dd/yyyy

COUNTRY OF CITIZENSHIP/ORGANIZATION % SHARE

NAME OF TRUSTEES *if applicable* ☐ Per Stirpes

NAME OF BENEFICIARY ☐ Spouse ☐ Non-Spouse ☐ Trust ☐ Entity

☐ SOCIAL SECURITY NO. ☐ TAXPAYER ID NO. DATE OF BIRTH/TRUST mm/dd/yyyy

COUNTRY OF CITIZENSHIP/ORGANIZATION % SHARE

NAME OF TRUSTEES *if applicable* ☐ Per Stirpes

NAME OF BENEFICIARY ☐ Spouse ☐ Non-Spouse ☐ Trust ☐ Entity

☐ SOCIAL SECURITY NO. ☐ TAXPAYER ID NO. DATE OF BIRTH/TRUST mm/dd/yyyy

COUNTRY OF CITIZENSHIP/ORGANIZATION % SHARE

NAME OF TRUSTEES *if applicable* ☐ Per Stirpes

NAME OF BENEFICIARY ☐ Spouse ☐ Non-Spouse ☐ Trust ☐ Entity

☐ SOCIAL SECURITY NO. ☐ TAXPAYER ID NO. DATE OF BIRTH/TRUST mm/dd/yyyy

COUNTRY OF CITIZENSHIP/ORGANIZATION % SHARE

NAME OF TRUSTEES *if applicable* ☐ Per Stirpes

NAME OF BENEFICIARY ☐ Spouse ☐ Non-Spouse ☐ Trust ☐ Entity

☐ SOCIAL SECURITY NO. ☐ TAXPAYER ID NO. DATE OF BIRTH/TRUST mm/dd/yyyy

COUNTRY OF CITIZENSHIP/ORGANIZATION % SHARE

NAME OF TRUSTEES *if applicable* ☐ Per Stirpes

CONTINGENT Beneficiaries

NAME OF BENEFICIARY ☐ Spouse ☐ Non-Spouse ☐ Trust ☐ Entity

☐ SOCIAL SECURITY NO. ☐ TAXPAYER ID NO. DATE OF BIRTH/TRUST mm/dd/yyyy

COUNTRY OF CITIZENSHIP/ORGANIZATION % SHARE

NAME OF TRUSTEES *if applicable* ☐ Per Stirpes

NAME OF BENEFICIARY ☐ Spouse ☐ Non-Spouse ☐ Trust ☐ Entity

☐ SOCIAL SECURITY NO. ☐ TAXPAYER ID NO. DATE OF BIRTH/TRUST mm/dd/yyyy

COUNTRY OF CITIZENSHIP/ORGANIZATION % SHARE

NAME OF TRUSTEES *if applicable* ☐ Per Stirpes

NAME OF BENEFICIARY ☐ Spouse ☐ Non-Spouse ☐ Trust ☐ Entity

☐ SOCIAL SECURITY NO. ☐ TAXPAYER ID NO. DATE OF BIRTH/TRUST mm/dd/yyyy

COUNTRY OF CITIZENSHIP/ORGANIZATION % SHARE

NAME OF TRUSTEES *if applicable* ☐ Per Stirpes

NAME OF BENEFICIARY ☐ Spouse ☐ Non-Spouse ☐ Trust ☐ Entity

☐ SOCIAL SECURITY NO. ☐ TAXPAYER ID NO. DATE OF BIRTH/TRUST mm/dd/yyyy

COUNTRY OF CITIZENSHIP/ORGANIZATION % SHARE

NAME OF TRUSTEES *if applicable* ☐ Per Stirpes

NAME OF BENEFICIARY ☐ Spouse ☐ Non-Spouse ☐ Trust ☐ Entity

☐ SOCIAL SECURITY NO. ☐ TAXPAYER ID NO. DATE OF BIRTH/TRUST mm/dd/yyyy

COUNTRY OF CITIZENSHIP/ORGANIZATION % SHARE

NAME OF TRUSTEES *if applicable* ☐ Per Stirpes

ACCOUNT NUMBER

7. ADDITIONAL ACCOUNT HOLDERS

Use this section to provide personal information on any additional individuals associated with this account (such as a joint owner, authorized individual, custodian, administrator, trustee, partner, or participant). If there are more than two account holders, see instructions at bottom of page.

Personal Information

For Tenants in Common, indicate this owner's share: _____

► FULL LEGAL NAME *first, middle, last* ► DATE OF BIRTH *mm/dd/yyyy*

DAY PHONE EVENING PHONE

E-MAIL

☐ Single/Divorced/Widowed ☐ Married No. of Dependents: _____► Legal Address *No P.O. boxes* ☐ Same as Primary Holder's Legal Address

ADDRESS LINE 1

ADDRESS LINE 2

CITY STATE/PROVINCE ZIP/POSTAL CODE

COUNTRY

► COUNTRY OF CITIZENSHIP

► ☐ SOCIAL SECURITY NO. ☐ TAXPAYER ID NO. ► COUNTRY OF TAX RESIDENCE

► TYPE OF GOVERNMENT-ISSUED ID ► ID NUMBER

► STATE/COUNTRY OF ID ISSUANCE ID ISSUANCE DATE ► ID EXPIRATION DATE

► Mailing Address ☐ Same as Legal Address of This Account Holder

ADDRESS LINE 1

ADDRESS LINE 2

CITY STATE/PROVINCE ZIP/POSTAL CODE

COUNTRY

Employer Information and Affiliations *Attach additional sheet if needed.*► Employment Status ☐ Employed ☐ Retired ☐ Not EmployedOCCUPATION INCOME SOURCE *If retired or not employed*

EMPLOYER NAME

ADDRESS LINE 1

ADDRESS LINE 2

CITY STATE/PROVINCE ZIP COUNTRY

► ☐ I am ☐ I am not a senior foreign political figure, or a family member or close relative of a senior foreign political figure.

► ☐ Check this box if you are a control person or affiliate or an immediate family/household member of a control person or affiliate of a publicly traded company under SEC Rule 144 (this would include, but is not limited to, a director, 10% shareholder, policy-making officer, and members of the board of directors). If yes, provide name of company:

COMPANY NAME COMPANY SYMBOL/CUSIP

► ☐ Check this box if you are affiliated with, or employed by, a stock exchange, or a member firm of an exchange or Financial Industry Regulatory Authority (FINRA), or a municipal securities dealer. If yes, provide name of entity: ☐ Same as My Employer.

AFFILIATED ENTITY NAME

ADDRESS LINE 1

ADDRESS LINE 2

CITY STATE/PROVINCE ZIP COUNTRY

8. ENTITIES THAT ARE ACCOUNT HOLDERS

Provide information on any entity that is an account holder. Be sure to also provide, in Section 2 or 7, personal information on at least one individual associated with this account. If there is more than one entity that is an account holder, see instructions at bottom of page.

Entity Information *If this account holder is an entity, provide information below.*

► ENTITY NAME

► TAX ID NO. ► COUNTRY OF TAX RESIDENCE

► Legal Address *No P.O. boxes*

ADDRESS LINE 1

ADDRESS LINE 2

CITY STATE/PROVINCE ZIP/POSTAL CODE

COUNTRY

► STATE/COUNTRY OF ORGANIZATION ► TRUST DATE *For Trusts Only*

► ENTITY ID DOCUMENT ► STATE/COUNTRY OF ID ISSUANCE

► Mailing Address ☐ Same as Legal Address

ADDRESS LINE 1

ADDRESS LINE 2

CITY STATE/PROVINCE ZIP/POSTAL CODE

COUNTRY

Copy and complete this page for each additional owner (whether an individual or an entity). Number each copied page as follows: 5.1, 5.2, 5.3, etc.

9. CUSTOMER AGREEMENT AND SIGNATURE**To My Broker/Dealer and National Financial Services LLC**

I am at least 18 years of age and am of full legal age in the state in which I reside. In consideration of your accepting one or more accounts, I hereby acknowledge that I have read, understood and agree to the terms set forth in the Customer Agreement herein. I understand that upon issuer's request, in accordance with applicable rules and regulations, my Broker/Dealer will disclose my name to issuers of securities if securities are held in my account so that I can receive important information unless I do not consent to disclosure, and I will notify my Broker/Dealer if I do not consent (I may not be able to object to this disclosure for certain securities issued by investment companies that are registered under the Investment Company Act of 1940, or as required by law).

If I have not checked the box for Affiliations, I represent and warrant that I am not affiliated with or employed by a stock exchange or a broker/dealer or I am not a control person or affiliate of a public company under SEC Rule 144 (such as a director, 10% shareholder, or a policy-making officer), or an immediate family or household member of such a person.

I understand that telephone calls to my Broker/Dealer may be recorded, and I hereby consent to such recording. Reports of executions of orders and statements of my account shall be conclusive if not objected to in writing within five (5) days and ten (10) days, respectively, after transmitted to me by mail or otherwise.

I understand that it is my responsibility to read the prospectus or disclosure document, as applicable, for any mutual fund which I purchase or exchange or Bank Deposit Sweep Program into which I have funds transferred or invest. I have received and read the applicable prospectus or disclosure document for the mutual fund or Bank Deposit Sweep Program in which I am investing or to which I am transferring funds — including, but not limited to, any mutual fund or Bank Deposit Sweep Program that I choose for my Core Account — and I agree to the terms of the prospectus or disclosure document, as applicable, and the Customer Agreement.

If I choose the consumer (non-business) version of a Bank Deposit Sweep Program for my core account investment vehicle, I represent that I am:

If I am a U.S. citizen, U.S. resident alien or other U.S. person, I certify under penalties of perjury that: (1) the Social Security Number or Taxpayer Identification Number that I provided on this application is correct (or I am waiting for a number to be issued to me); and (2) I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding for failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and (3) I am a U.S. citizen or other U.S. person, including a U.S. resident alien.

☐ If you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return, check this box to indicate that you do not certify item 2 above.

If I am not a U.S. citizen, U.S. resident alien or other U.S. person, I am submitting the applicable Form W-8 with this form to certify my foreign status and, if applicable, claim tax treaty benefits.

Pre-Dispute Arbitration

This account is governed by a pre-dispute arbitration clause, which appears on the last page of the Client Agreement, and you acknowledge that you have received a copy of this clause.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature and Date are required.

► **SIGNATURES.** All account holders (owners and authorized individuals) must sign and date in accordance with the signature requirements outlined in the account's supporting documents.

X

1. SIGNATURE

DATE mm/dd/yyyy

X

4. SIGNATURE

DATE mm/dd/yyyy

X

2. SIGNATURE

DATE mm/dd/yyyy

X

5. SIGNATURE

DATE mm/dd/yyyy

X

3. SIGNATURE

DATE mm/dd/yyyy

X

6. SIGNATURE

DATE mm/dd/yyyy

For Branch Use Only

541 Millard

REGISTERED REP. NO./NAME

SIGNATURE

DATE mm/dd/yyyy

OFFICE MANAGER/PRINCIPAL NAME

SIGNATURE

DATE mm/dd/yyyy

SMITH HAYES

Financial Services Corporation

Member FINRA & SIPC

LETTER OF AUTHORIZATION

☒ One - Time

☐ Standing (*all future disbursements*)

☐ Cash

☐ Securities

☐ Cash & Securities

☐ Dividends/Interest Only

This is to authorize **SMITH HAYES Financial Services Corporation** to disburse/transfer

From Account: K3X-083127

Account Registration: CITY OF GRAND ISLAND FIREFIGHTERS FUND

TRANSFER to another **SMITH HAYES Financial Services Corporation** account

Account Number: _____

Account Registration: _____

☒ **Cash** ALL

☒ **Securities** (*please list below*)

Quantity

Description

Cusip

ALL

CASH DISBURSEMENT

☐ **Wire**

Recipient: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Acct #: _____

Bank: _____

ABA #: _____

City: _____

State: _____

Zip Code: _____

☐ **Issue Check**

Payable to: _____

For Account of: _____

Account Number : _____

Address: _____

City: _____

State: _____

Zip Code: _____

Signatures: All registered owners of account must sign below.

Client Signature _____

Date _____

Client Signature _____

Date _____

1225 L Street, Ste. 200
Lincoln, NE 68508
(800) 279-7437

10250 Regency Circle, Ste. 400
Omaha, NE 68114
(866) 865-1700

1553 27th Avenue
Columbus, NE 68601
(888) 881-1878

OPS121107.1

FORM ADV**Part II - Page 1 Uniform Application for Investment Adviser Registration**

Name of Investment Adviser: SMITH HAYES Advisers, Inc.			
Address:	(Number and Street)	(City) (State) (Zip Code)	Area Code: Telephone Number:
1225 "L" Street, 200 Centre Terrace	Lincoln, NE 68508	(402)	476-3000

This part of Form ADV gives information about the investment adviser and its business for the use of clients.
The information has not been approved or verified by any governmental authority.

Table of Contents

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	Continuation Sheet	Schedule F
	Balance Sheet, if required	Schedule G

{L0682775.1}(Schedules A, B, C, D, and E are included with Part I of this Form,
for the use of regulatory bodies, and are not distributed to clients.)

Potential persons who are to respond to the collection of information contained in this form
are not required to respond unless the form displays a currently valid OMB control number.

FORM ADV
Part II - Page 2

Applicant:
SMITH HAYES Advisers, Inc.

SEC File Number:
801-56902

Date:
6/10/2009

1. A. Advisory Services and Fees.
(check the applicable boxes)

For each type of service provided, state the approximate %
of total advisory billings from that service.
(See instruction below.)

Applicant:

- X (1) Provides investment supervisory services 94 %
— (2) Manages investment advisory accounts not involving investment
supervisory services %
X (3) Furnishes investment advice through consultations not included in
either service described above 2 %
— (4) Issues periodicals about securities by subscription %
— (5) Issues special reports about securities not included in any service described above %
— (6) Issues, not as part of any service described above, any charts, graphs, formulas,
or other devices which clients may use to evaluate securities %
X (7) On more than an occasional basis, furnishes advice to clients on
matters not involving securities 2 %
— (8) Provides a timing service %
X (9) Furnishes advice about securities in any manner not described above 2 %

- B. Does applicant call any of the services it checked above
financial planning or some similar term? Yes No
X —

C. Applicant offers investment advisory services for: (check all that apply)

- X (1) A percentage of assets under management — (4) Subscription fees
X (2) Hourly charges — (5) Commissions
X (3) Fixed fees (not including subscription fees) X (6) Other

D. For each checked box in A above, describe on Schedule F:

- the services provided, including the name of any publication or report issued by the adviser on a subscription basis or for a fee
- applicant's basic fee schedule, how fees are charged and whether its fees are negotiable
- when compensation is payable, and if compensation is payable before service is provided, how a client may get a refund or may terminate an investment advisory contract before its expiration date

2. Types of clients – Applicant generally provides investment advice to: (check those that apply)

- X A. Individuals X E. Trusts, estates or charitable organizations
X B. Banks or thrift institutions X F. Corporations or business entities other than
those listed above.
— C. Investment companies — G. Other (describe on Schedule F)
X D. Pension and profit sharing plans

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV
Part II - Page 3

Applicant:
SMITH HAYES Advisers, Inc.

SEC File Number:
801-56902

Date:
6/10/2009

3. Types of Investments. Applicant offers advice on the following: (check those that apply)

- | | |
|---|--|
| <input checked="" type="checkbox"/> A. Equity securities | <input checked="" type="checkbox"/> H. United States government securities |
| <input checked="" type="checkbox"/> (1) exchange-listed securities | |
| <input checked="" type="checkbox"/> (2) securities traded over-the-counter | <input type="checkbox"/> I. Options contracts on: |
| <input checked="" type="checkbox"/> (3) foreign issuers | <input checked="" type="checkbox"/> (1) securities |
| | <input type="checkbox"/> (2) commodities |
| <input checked="" type="checkbox"/> B. Warrants | |
| | <input type="checkbox"/> J. Futures contracts on: |
| <input checked="" type="checkbox"/> C. Corporate debt securities
(other than commercial paper) | <input type="checkbox"/> (1) tangibles |
| | <input type="checkbox"/> (2) intangibles |
| <input checked="" type="checkbox"/> D. Commercial paper | <input type="checkbox"/> K. Interests in partnerships investing in: |
| | <input checked="" type="checkbox"/> (1) real estate |
| <input checked="" type="checkbox"/> E. Certificates of deposit | <input checked="" type="checkbox"/> (2) oil and gas interests |
| | <input checked="" type="checkbox"/> (3) other (explain on Schedule F) |
| <input checked="" type="checkbox"/> F. Municipal securities | <input type="checkbox"/> L. Other (explain on Schedule F) |
| <input type="checkbox"/> G. Investment company securities | |
| <input checked="" type="checkbox"/> (1) variable life insurance | |
| <input checked="" type="checkbox"/> (2) variable annuities | |
| <input checked="" type="checkbox"/> (3) mutual fund shares | |

4. Methods of Analysis, Sources of Information and Investment Strategies.

A. Applicant's security analysis methods include: (check those that apply)

- | | |
|---|---|
| <input type="checkbox"/> (1) Charting | <input type="checkbox"/> (4) Cyclical |
| <input checked="" type="checkbox"/> (2) Fundamental | <input checked="" type="checkbox"/> (5) Other (explain on Schedule F) |
| <input checked="" type="checkbox"/> (3) Technical | |

B. The main sources of information applicant uses include: (check those that apply)

- | | |
|---|--|
| <input checked="" type="checkbox"/> (1) Financial newspapers and magazines | <input type="checkbox"/> (5) Timing services |
| <input checked="" type="checkbox"/> (2) Inspections of corporate activities | <input checked="" type="checkbox"/> (6) Annual reports, prospectuses, filings with
the Securities and Exchange Commission |
| <input checked="" type="checkbox"/> (3) Research materials prepared by others | <input checked="" type="checkbox"/> (7) Company press releases |
| <input checked="" type="checkbox"/> (4) Corporate rating services | <input type="checkbox"/> (8) Other (explain on Schedule F) |

C. The investment strategies used to implement any investment advice given to clients include: (check those that apply)

- | | |
|--|---|
| <input checked="" type="checkbox"/> (1) Long term purchases
(securities held at least a year) | <input checked="" type="checkbox"/> (4) Short sales |
| <input checked="" type="checkbox"/> (2) Short term purchases
(securities sold within a year) | <input checked="" type="checkbox"/> (5) Margin transactions |
| <input checked="" type="checkbox"/> (3) Trading
(securities sold within 30 days) | <input checked="" type="checkbox"/> (6) Option writing, including covered options,
uncovered options or spreading strategies |
| | <input type="checkbox"/> (7) Other (explain on Schedule F) |

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV
Part II - Page 4

Applicant:
SMITH HAYES Advisers, Inc.

SEC File Number:
801-56902

Date:
6/10/2009

5. Education and Business Standards.

Are there any general standards of education or business experience that applicant requires of those involved in determining or giving investment advice to clients? Yes No
X —

(If yes, describe these standards on Schedule F.)

6. Education and Business Background.

For:

- each member of the investment committee or group that determines general investment advice to be given to clients, or
- if the applicant has no investment committee or group, each individual who determines general investment advice given to clients (if more than five, respond only for their supervisors)
- each principal executive officer of applicant or each person with similar status or performing similar functions.

On Schedule F, give the:

- name
- formal education after high school
- year of birth
- business background for the preceding five years

7. Other Business Activities. (check those that apply)

- ☐ A. Applicant is actively engaged in a business other than giving investment advice.
- ☒ B. Applicant sells products or services other than investment advice to clients.
- ☒ C. The principal business of applicant or its principal executive officers involves something other than providing investment advice.

(For each box checked, describe the other activities, including the time spent on them, on Schedule F.)

8. Other Financial Industry Activities or Affiliations. (check those that apply)

- ☐ A. Applicant is registered (or has an application pending) as a securities broker-dealer.
- ☐ B. Applicant is registered (or has an application pending) as a futures commission merchant, commodity pool operator or commodity trading adviser.
- C. Applicant has arrangements that are material to its advisory business or its clients with a related person who is a:
- | | |
|--|---|
| <input checked="" type="checkbox"/> (1) broker-dealer | <input type="checkbox"/> (7) accounting firm |
| <input type="checkbox"/> (2) investment company | <input type="checkbox"/> (8) law firm |
| <input type="checkbox"/> (3) other investment adviser | <input checked="" type="checkbox"/> (9) insurance company or agency |
| <input type="checkbox"/> (4) financial planning firm | <input checked="" type="checkbox"/> (10) pension consultant |
| <input type="checkbox"/> (5) commodity pool operator, commodity trading adviser or futures commission merchant | <input type="checkbox"/> (11) real estate broker or dealer |
| <input type="checkbox"/> (6) banking or thrift institution | <input checked="" type="checkbox"/> (12) entity that creates or packages limited partnerships |

(For each checked box in C, on Schedule F identify the related person and describe the relationship and the arrangements.)

- D. Is applicant or a related person a general partner in any partnership in which clients are solicited to invest? Yes No
X —

(If yes, describe on Schedule F the partnerships and what they invest in.)

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV
Part II - Page 5

Applicant:
SMITH HAYES Advisers, Inc.

SEC File Number:
801-56902

Date:
6/10/2009

9. Participation or Interest in Client Transactions

Applicant or a related person: (check those that apply)

- ☒ A. As principal, buys securities for itself from or sells securities it owns to any client.
- ☒ B. As broker or agent, effects securities transactions for compensation for any client.
- ☐ C. As broker or agent for any person other than a client, effects transactions in which client securities are sold to or bought from another brokerage customer.
- ☒ D. Recommends to clients that they buy or sell securities or investment products in which the applicant or a related person has some financial interest.
- ☒ E. Buys or sells for itself securities that it also recommends to clients.

(For each box checked, describe on Schedule F when the applicant or a related person engages in these transactions and what restrictions, internal procedures, or disclosures are used for conflicts of interest in those transactions. Describe on Schedule F, your Code of Ethics, and state that you will provide a copy of your Code of Ethics to any client or prospective client upon request.)

10. Conditions for Managing Accounts

Does the applicant provide investment supervisory services, manage investment advisory accounts or hold itself out as providing financial planning or some similarly termed services *and* impose a minimum dollar value of assets or other conditions for starting or maintaining an account?

Yes No
X —

(If yes, describe on Schedule F.)

11. Review of accounts.

If applicant provides investment supervisory services, manages investment advisory accounts, or holds itself out as providing financial planning or some similarly termed services:

- A. Describe below the reviews and reviewers of the accounts. For reviews, include their frequency, different levels, and triggering factors. For reviewers, include the number of reviewers, their titles and functions, instructions they receive from applicant on performing reviews, and number of accounts assigned each.

The primary supervision is the responsibility of the Designated Supervisors. The Designated Supervisors delegate to the designees to perform daily transaction review and random audits to test compliance of internal policies, and review account portfolios for suitability and portfolio management practices. Material discrepancies are brought to the attention of the Designated Supervisors for resolution. Branch managers, including but not limited to Mr. Moore, perform quarterly reviews of the advisory accounts. The Compliance officer will perform a review of the Company's advisory services and supervision at least annually.

- B. Describe below the nature and frequency of regular reports to clients on their accounts.

Clients receive confirmations of executed transactions, monthly or quarterly brokerage account statements (depending on account activity) and quarterly performance reports.

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV
Part II - Page 6

Applicant:
SMITH HAYES Advisers, Inc.

SEC File Number:
801-56902

Date:
6/10/2009

12. Investment or Brokerage Discretion

A. Does applicant or any related person have authority to determine, without obtaining specific client consent, the:

(1) securities to be bought or sold?	Yes X	No —
(2) amount of the securities to be bought or sold?	Yes X	No —
(3) broker or dealer to be used?	Yes X	No —
(4) commission rates paid?	Yes X	No —

B. Does applicant or a related person suggest brokers to clients? Yes No
X —

For each yes answer to A, describe on Schedule F any limitations on the authority. For each yes to A(3), A(4) or B, describe on Schedule F the factors considered in selecting brokers and determining the reasonableness of their commissions. If the value of products, research and services given to the applicant or a related person is a factor, describe:

- the products, research and services
- whether clients may pay commissions higher than those obtainable from other brokers in return for those products and services
- whether research is used to service all of applicant's accounts or just those accounts paying for it; and
- any procedures the applicant used during the last fiscal year to direct client transactions to a particular broker in return for products and research services received.

13. Additional Compensation

Does the applicant or a related person have any arrangements, oral or in writing, where it:

A. is paid cash by or receives some economic benefit (including commissions, equipment or non-research services) from a non-client in connection with giving advice to a client Yes No
X —

B. directly or indirectly compensates any person for client referrals? Yes No
— X

(For each yes, describe the arrangements on Schedule F.)

14. Balance Sheet.

Applicant must provide a balance sheet for the most recent fiscal year on Schedule G if applicant:

- has custody of client funds or securities; or
- requires prepayment of more than \$500 in fees per client and 6 or more months in advance

Has applicant provided a Schedule G balance sheet? Yes No
— X

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

**Schedule F of
FORM ADV**

Continuation Sheet for Form ADV Part II

Applicant: SMITH HAYES Advisers, Inc.	SEC File Number: 801-56902	Date: 6/10/2009
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: SMITH HAYES Advisers, Inc.	IRS Empl. Ident. No.: 47-0805744
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Item of Form (identify)	Answer
Part II Page 2 Item 1 (D)	<p>SMITH HAYES Advisers, Inc. ("SHAI") provides investment supervisory services for a fee based upon a percentage of assets under management. In addition, SHAI furnishes advice to clients on matters relating to investments. This includes project consultation and general financial advice to individuals, businesses and corporations.</p> <p>SHAI and its representatives will generally not accept the responsibility to vote proxies. Unless otherwise directed in writing, the customer will retain sole authority to vote the proxy. Any written request to direct the Adviser to vote proxies must be submitted to Compliance and approved by a Designated Supervisor. The Designated Supervisors will generally not approve requests to vote client proxies unless client and investment advisory service can provide sound reasoning as to why the advisory rep should vote the proxy. Managers of The Concordant Fund, SMITH HAYES Capital 25 or future similar offerings will accept the responsibility to vote client proxies for holdings within the funds. Proxies will be voted in client's best interest. For specific procedures regarding proxy voting or for information regarding how your proxies were voted contact your investment advisory representative</p> <p>Fees for Advantage I and II accounts are largely of the "wrap account" variety and we refer you to Schedule H (written Disclosure Statement) for more information. Generally, wrap accounts are structured so that no brokerage commissions are charged to the clients. Compensation earned by the investment adviser representative and SHAI is the quarterly advisory charge and any other charges specifically disclosed to the client.</p> <p>Advisory I and II accounts are individually managed accounts and are charged a fee for the management and advice. Generally, these accounts are structured so that no commissions will be charged by SMITH HAYES Financial Services Corp. ("SHFSC"). However, charges for services imposed by SHFSC's clearing firm, National Financial Services, L.L.C., will be assessed to the client.</p> <p>The Managed Account Solutions platform includes the Strategic Advisers Program, Sigma, Separate Account Program, Multi-Manager Account Program, Rep as Portfolio Manager accounts. These accounts are largely of the wrap account variety as defined above. These accounts are offered in conjunction with Envestnet Asset Management, Inc "Envestnet" as the platform manager and National Financial Services "NFS". Envestnet will provide the technology program on which these accounts function and render investment advice to Adviser and/or Client, including recommending an appropriate asset allocation for Client and specific investment managers or investment products. NFS provides trade execution and custodial services with respect to these accounts. Clients electing these options will pay the fee stated in their investment advisory agreement. A portion of this fee will be paid to Envestnet, NFS, and any applicable third party or sub-manager with the remainder being retained by SHAI. Please refer to the Managed Account Terms and Conditions and Statement of Investment Selection documents for more specific information on these accounts.</p> <p>SHAI and its investment advisor representatives may act as a solicitor and refer clients to unaffiliated third-party investment advisors that offer asset management services to clients. As a result, SHAI and its investment advisor representatives may be paid a portion of the fee charged and collected by the third-party investment advisor in the form of solicitor fees or consulting fees. Moreover, the unaffiliated third-party investment advisor may execute trades in a client's account through an affiliated broker-dealer of SHAI, and consequently SHAI's affiliated broker-dealer and SHAI's investment advisor representatives as registered representatives of SHAI's affiliated broker-dealer also collect commissions for the execution of such trades. Each solicitation</p>

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

**Schedule F of
FORM ADV**

Continuation Sheet for Form ADV Part II

Applicant: SMITH HAYES Advisers, Inc.	SEC File Number: 801-56902	Date: 6/10/2009
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

I. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: SMITH HAYES Advisers, Inc.		IRS Empl. Ident. No.: 47-0805744
Item of Form (identify)	Answer	
	<p>arrangement is performed pursuant to a written solicitation agreement and is in compliance with SEC Rule 206(4)-3.</p> <p>SHAI and/or its investment advisor representatives will assist the client with identifying the client's risk tolerance and investment objectives. Advisor and/or its investment advisor representatives will recommend third-party investment advisors in relation to client's stated investment objectives and risk tolerance. A client may select a recommended third-party investment advisor based upon the client's needs. Clients will enter into an agreement directly with the unaffiliated third-party investment advisor.</p> <p>Investment advisor representatives will be available to answer questions the client may have regarding their account and act as the communication conduit between the client and the third-party investment advisors. Third-party investment advisors may take discretionary authority to determine the securities to be purchased and sold for the client. Neither SHAI nor its investment advisor representatives will have any trading authority with respect to client's managed account with the third-party investment advisor(s).</p> <p>Third-party managed programs generally have account minimum requirements that will vary from investment advisor to investment advisor. Account minimums are generally higher on fixed income accounts than equity based accounts. A complete description of the third-party investment advisor's services, fee schedules and account minimums will be disclosed in the third party investment advisor's Form ADV, Schedule H Disclosure Brochure, or similar Disclosure Brochure which will be provided to clients at the time an agreement for services is executed and account is established. Client reports will depend upon the third-party investment advisor.</p> <p>Clients are advised that SHAI and its investment advisor representatives may have a conflict of interest by only offering those third-party investment advisors that have agreed to pay a portion of their advisory fee to advisor and investment advisor representative and execute client trades through SHAI's affiliated broker-dealer and consequently pay a commission to SHAI's broker-dealer and SHAI's investment advisor representatives in their separate capacity as a registered representative of SHAI's affiliated broker-dealer. Clients are advised that there may be other third-party managed programs that may be suitable to the client that may be less costly with respect the investment advisory fees and trade execution costs borne by the clients. No guarantees can be made that client's financial goals or objectives will be achieved. Further, no guarantees of performance can be offered. Investments involve risk, including the possible loss of principal.</p> <p>SHAI may invest client accounts in mutual funds ("Mutual Funds"). The Mutual Funds are purchased through SHFSC under selling agreements between SHFSC and the Mutual Funds which permit SHAI clients to purchase them with no load. An investment of a client's account in a Mutual Fund will result in a layering of fees. That is, the client will pay indirectly an investment management fee and other fees to the Mutual Fund's investment adviser and will also pay SHAI its investment advisory fee.</p> <p>As a result of the investment of a client's account in Mutual Funds, additional compensation may be paid to SHAI and or SHFSC in the form of "Rule 12b-1 fees" and/or "shareholder and or administrative servicing fees." This compensation is not paid directly by the client, but is paid by the Mutual Fund, the Mutual Fund's sponsor and or its distributor. However, to the extent that the compensation is paid by the Mutual Fund, the compensation is indirectly paid by the client. This compensation is paid to SHAI for assisting the Mutual Fund, its sponsor and distributor in the distribution of the Mutual Funds and for providing certain other services.</p> <p>The Rule 12b-1 fees and shareholder and administrative services compensation paid by Funds are described in the Mutual Funds' Prospectuses and Statements of Additional Information.</p>	

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

**Schedule F of
FORM ADV**

Continuation Sheet for Form ADV Part II

Applicant:
SMITH HAYES Advisers,
Inc.

SEC File Number:
801-56902

Date:
6/10/2009

(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: SMITH HAYES Advisers, Inc.	IRS Empl. Ident. No.: 47-0805744
---	-------------------------------------

Item of Form (identify)	Answer
	<p>Additionally, in some cases Mutual Fund sponsors and distributors pay additional amounts to supplement what a Mutual Fund pays. These are required to also be disclosed by the Mutual Funds in their Prospectuses and Statements of Additional Information, although in many cases these are negotiated. The Rule 12b-1 and shareholder servicing and administrative services fees and supplements, if any, vary between Mutual Funds.</p> <p>SHAI may have an incentive and conflict of interest to recommend one Mutual Fund over another Mutual Fund as a result of the compensation paid to it by the various Mutual Funds. SHAI Investment Advisor Representatives may also be paid a portion of the compensation paid which also may create an incentive and a conflict of interest for them in recommending investments in their client's accounts. Notwithstanding such incentives and conflicts of interest, SHAI recommends Mutual Funds to their clients based on among other things, the client's investment objectives and directions, the comparative quality of the Mutual Funds management, Mutual Fund expense ratios and Mutual Fund performance.</p> <p>Clients should read the Mutual Funds' Prospectuses and Statements of Additional Information regarding compensation paid by the Mutual Funds. More specific additional information about the compensation paid to SHAI and SHFSC in connection with investments in Mutual Funds is available on request.</p> <p>The Advantage I and II and Advisory I and II accounts do not have a minimum asset value requirement. All accounts are subject to a minimum fee of \$250 per quarter or \$1,000 annually, unless otherwise approved by the President. Fees for Advantage and Advisory accounts are payable at the beginning of each quarter or at the end of each quarter, as indicated by the client's account agreement. The client may terminate the contract at any time and receive a prorated refund, or only be required to pay a pro-rated portion of the advisory fee.</p> <p>The applicant may offer education or other services to retirement plan sponsors in compliance with 404 (c) ERISA regulations. Fees for education or other services are determined on a case-by-case basis, taking into consideration the number of plan participants, location and number of sites to service and the features of the plan itself.</p> <p>Fees for The Concordant Fund ("Concordant Fund") are a combination of percentage of assets under management and a performance-based fee. Every member in Concordant Fund pays a base annual fee equal to .7% of the assets in Concordant Fund. If the managers of Concordant Fund meet or exceed its benchmark index, the S&P 500, the base fee shall increase to 1% of the assets in Concordant Fund. If the managers' performance exceeds the S&P 500, an additional performance fee of 20% of the amount of over performance shall be charged.</p> <p>Fees for SMITH HAYES Capital 25, Limited Partnership ("Cap 25 Fund") are equal to 1.65% per annum of the aggregate value of the portfolio stocks owned by Cap 25, as determined by their closing sale prices as of the last business day of each calendar quarter, and all of Cap 25 Fund's cash items. The fee is payable on a quarterly basis in advance.</p> <p>Fees and other expenses applicable to the Concordant Fund and the Cap 25 Fund are described in detail in the Private Placement Memorandums for each which are only available to selected and accredited investors.</p>
Part II Page 3	The applicant and its affiliated broker/dealer have advised customers on investments in partnerships in many different industries. Some include venture capital and partnerships investing

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

**Schedule F of
FORM ADV**

Continuation Sheet for Form ADV Part II

Applicant:
SMITH HAYES Advisers,
Inc.

SEC File Number:
801-56902

Date:
6/10/2009

(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

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Item of Form (identify)	Answer																																	
Item 3 K (3)	directly in equity securities. These are not deemed material to the applicant's business.																																	
Part II Page 4 Item 5	SHAI investment advisor representatives are required to pass all requirements of the particular states in which they conduct business.																																	
Part II Page 4 Item 6	<p>EDUCATION AND BUSINESS BACKGROUND</p> <p>Supervisors of SMITH HAYES Advisers, Inc Investment Adviser Representatives are as follows: Thomas C. Smith and Allen J. Moore.</p> <p>EDUCATION</p> <table border="0"> <tr> <td>Allen J. Moore</td> <td>Thomas C. Smith</td> </tr> <tr> <td>Doane College, Crete, NE</td> <td>University of Nebraska, Lincoln, NE</td> </tr> <tr> <td>BA Psychology</td> <td>BS Business</td> </tr> <tr> <td></td> <td>Administration/Economics</td> </tr> </table> <p>John L. Decker, Jr.</p> <p>University of Nebraska- Lincoln</p> <p>BSBA- Economics</p> <p>Masters of Business Administration</p> <p>BUSINESS BACKGROUND</p> <table border="0"> <tr> <td>Allen J. Moore</td> <td>Thomas C. Smith</td> </tr> <tr> <td>CONLEY SMITH Investment Advisers</td> <td>CONLEY SMITH Investment Advisers</td> </tr> <tr> <td>6/95 to 9/99, Representative</td> <td>4/95 to 8/99, Chairperson</td> </tr> <tr> <td>SMITH HAYES Financial Services Corp.</td> <td>SMITH HAYES Financial Services Corp.</td> </tr> <tr> <td>7/99 to Current, President</td> <td>12/85 to Current, Chairperson</td> </tr> <tr> <td>5/91 to 7/99, Vice President & Sales</td> <td>SMITH HAYES Companies</td> </tr> <tr> <td>Manager</td> <td>9/85 to Current, Chairman</td> </tr> <tr> <td>SMITH HAYES Advisers, Inc</td> <td>SMITH HAYES Portfolio Mgmt.</td> </tr> <tr> <td>10/97 to Current, President</td> <td>12/85 to 4/95, President</td> </tr> <tr> <td>Kirkpatrick Pettis Smith Polian</td> <td>SMITH HAYES Advisers, Inc</td> </tr> <tr> <td>5/77 to 5/91, Vice President & Sales</td> <td>10/97 to Current, Chief Executive Officer</td> </tr> <tr> <td>Manager</td> <td></td> </tr> </table> <p>John L. Decker, Jr.</p> <p>SMITH HAYES Financial Services Corp.</p> <p>9/96 to 4/02, Representative,</p> <p>VP of Public & Corp. Finance</p> <p>Douglas Theatre Co.</p> <p>5/02 to 4/08, Chief Financial Officer</p> <p>SMITH HAYES Financial Services Corp.</p> <p>5/08 to Current, Representative, EVP</p> <p>SMITH HAYES Advisers, Inc., EVP</p>		Allen J. Moore	Thomas C. Smith	Doane College, Crete, NE	University of Nebraska, Lincoln, NE	BA Psychology	BS Business		Administration/Economics	Allen J. Moore	Thomas C. Smith	CONLEY SMITH Investment Advisers	CONLEY SMITH Investment Advisers	6/95 to 9/99, Representative	4/95 to 8/99, Chairperson	SMITH HAYES Financial Services Corp.	SMITH HAYES Financial Services Corp.	7/99 to Current, President	12/85 to Current, Chairperson	5/91 to 7/99, Vice President & Sales	SMITH HAYES Companies	Manager	9/85 to Current, Chairman	SMITH HAYES Advisers, Inc	SMITH HAYES Portfolio Mgmt.	10/97 to Current, President	12/85 to 4/95, President	Kirkpatrick Pettis Smith Polian	SMITH HAYES Advisers, Inc	5/77 to 5/91, Vice President & Sales	10/97 to Current, Chief Executive Officer	Manager	
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Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

**Schedule F of
FORM ADV**

Continuation Sheet for Form ADV Part II

Applicant: SMITH HAYES Advisers, Inc.	SEC File Number: 801-56902	Date: 6/10/2009
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Item of Form (identify)	Answer	
Part II Page 4 Item 7 B & C	The applicant may be involved from time to time in brokerage and life insurance sales. Such sales are a minor part of the applicants' business, as most of such sales are offered through the applicant's affiliate, SMITH HAYES Financial Services Corporation ("SHFSC"). The applicant's executive officers spend approximately 70% of their collective time on SHFSC business and 30% of their time on SHAI business.	
Part II Page 4 Item 8 C (1)	SHAI is wholly owned by SMITH HAYES Companies. SHFSC (also wholly owned by SMITH HAYES Companies) may effect purchases and sales of securities on behalf of the adviser.	
Part II Page 4 Item 8 C (9)	SHFSC, a wholly owned subsidiary of SMITH HAYES Companies, is a registered Insurance Agency in several states.	
Part II Page 4 Item 8 D	Thomas C. Smith, Chairman of SHAI, is 50% owner of Midwest First Financial ("MWFF") and Concorde Opportunity Fund Advisers, LLC, ("Concorde"). MWFF is the general partner of four real estate limited partnerships in which customers of SHAI have invested. Concorde is the managing member of a real estate limited liability company.	
	<p>Allen Moore, President of SHAI, is managing member of SMITH HAYES Investment Partners ("SHIP"). SHIP is the General Partner of Cap 25 Fund.</p> <p>SHAI is controlled by SMITH HAYES Companies. SMITH HAYES Companies is the manager of Energy Partners.</p> <p>SHAI is the managing member for The Concordant Fund.</p> <p>SHAI customers may be informed of any future offerings of MWFF partnerships, Concorde Funds, Cap 25 Fund, Energy Partners, or the Concordant Fund. However, SHAI clients will purchase such assets through SHFSC, and not SHAI.</p>	
Part II Page 5 Item 9 A	Principal transactions with advisory clients are primarily limited to public underwritings covered by a prospectus for fixed-income investments. When appropriate and with the consent of the advisory client upon execution, transactions may be executed between the client and SHFSC acting in its dealer capacity. The client must receive disclosure information regarding pricing, best execution and possible conflict of interest when SHFSC acts in the capacity of principal prior to settlement of the transaction.	

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

**Schedule F of
FORM ADV**

Continuation Sheet for Form ADV Part II

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SMITH HAYES Advisers,
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Item of Form (identify)	Answer	
Part II Page 5 Item 9 B, D, E	<p>Clients are generally directed to SHFSC, an affiliated broker dealer, for brokerage services. SHFSC's clearing broker dealer provides SHFSC with trade execution and custodial services for advisory accounts. The use of one broker dealer may limit the ability to provide best price and execution to its clients. Clients may incur additional transaction costs when over-the-counter trades are affected on their behalf through the broker dealer on an agency basis.</p> <p>As disclosed under Part II, Page 4, Item 8 D customer of SHAI may be informed of investment opportunities in Midwest First Financial, Concorde Opportunity Fund, Capital 25 Fund, Energy Partners, and/or the Concordant Fund.</p> <p>Related persons of the advisor may, on occasion, purchase and sell securities that are recommended to advisory investors. Applicable oversight is performed to monitor related persons' transactions.</p> <p>The purpose of the SMITH HAYES Advisers, Inc. Code of Ethics (the Code) is to outline general standards of conduct for our employees and to our clients. SHAI related persons may purchase investments that it recommends to clients. The Code of Ethics defines Access Persons and addresses the following: Confidentiality and Conduct, Conflicts of Interest and Reporting Requirements, and Gifts and Entertainment. A copy of SHAI Code of Ethics is available upon request.</p>	
Part II Page 5 Item 10	<p>The Advantage and Advisory I and II accounts do not have a minimum asset value requirement, but will incur a minimum charge of \$1000 annually unless otherwise approved. All accounts on the MAS platform will incur a minimum fee of \$500 in addition to the charges assessed by the manager, Envestnet, and National Financial Services. Please refer to the MAS Fee schedule for specific charges.</p>	

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Part II Page 6 Item 12 A, B	<p>SHAI's authority to exercise investment discretion is dependent upon the nature of the authority granted the applicant by each individual client. Generally, all clients will be directed to SHFSC, its affiliate, for execution of transactions. Executing through one broker dealer may limit the ability for SHAI to provide the best price and execution to its clients. Clients may incur additional transaction cost when over the counter trades are effected on their behalf through the broker dealer on an agency basis. If commissions are paid as a part of the negotiated compensation paid to the advisor, the commission will be at or below the standard commissions charged to other brokerage customers.</p> <p>SHAI and SHFSC may execute cross transactions between an advisory account and a brokerage account where there is no reasonable secondary market for securities (generally local and/or non-rated fixed income municipal securities or small lot fixed income securities). Cross transactions are not allowed where clients are "advised" on both sides of the transaction, which includes solicited, discretion-exercised and advisory transactions. Pricing of securities transactions will be calculated as follows: (i) SHAI will obtain two independent bid-and-ask quotes, take the midpoint of such bids and asks and average the midpoints; or (ii) if no reasonable bid-and-ask quote can be obtained due to the type of security (ex. local and/or non-rated fixed income municipal security), the Investment Committee made up of Al Moore and Tom Smith will determine the appropriate price. There will be no commission charged to advisory clients in a cross transaction other than the investment advisory fee, unless otherwise agreed upon in writing.</p> <p>SHAI may aggregate clients' orders to obtain lower execution costs and better fill prices. Upon execution with multiple fills, orders will be averaged, priced and rebilled to the appropriate client's account. Partial fills will be allocated on a pro rata basis. No client will be favored over another. SHAI employees' trades may be bundled with client orders, but will never take precedence over a client's order. If an order must be allocated in a different manner than described above, SHAI's Compliance Officer must approve rationale for the departure from procedure.</p>	
Part II Page 6 Item 13 A	<p>SHFSC may route trades to specific market makers since it does not act as a market maker. In return, SHFSC would receive remuneration, which is based on the total number of trades routed to a specific market maker.</p> <p>SHAI and its investment advisor representatives may receive referral fees for referring clients to unaffiliated third-party investment advisors. Moreover, SHAI's affiliated broker-dealer and SHAI's investment advisor representatives as registered representatives of SHAI's affiliated broker-dealer also collect commissions for the execution of client trades at the direction of unaffiliated third-party investment advisors through SHAI's affiliated broker-dealer. The amount of fees received may increase as the amount of assets referred to the unaffiliated third-party investment advisor increases. The services provided as well as the fee sharing arrangements with unaffiliated investment advisors will vary. Clients will be provided a copy of the unaffiliated investment advisor's solicitation disclosure document and Form ADV Part II or similar disclosure document, containing at least the information contained in the ADV Part II that will disclose specific details of the referral arrangement and the fees that will be paid.</p>	

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

RESOLUTION 2011-61

WHEREAS, Mr. Rod Cerny and Smith Hayes Advisers, Inc. currently serve as the City of Grand Island's co-investment managers for the backstop funds to the pension obligations that are administered by Wells Fargo; and

WHEREAS, Mr. Cerny was formerly with McCarthy Group Advisors and they were acquired by Westwood Holding Group, Inc. last fall; and

WHEREAS, Mr. Cerny is joining Smith Hayes Advisers, Inc. and will be providing the same day-to-day investment management functions as in the past; and

WHEREAS, it is necessary to transfer the investment funds from Smith Hayes Financial Services to Smith Hayes Advisers, Inc.; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized and directed to sign on behalf of the City of Grand Island, the Investment Advisory Agreement that directs Smith Hayes Advisers, Inc. to oversee the management, investment, reinvestment, buying, selling, brokerage and all other aspects of the assets contained in the portfolio. In addition, Smith Hayes Advisers, Inc. will have the right and power to make all decisions regarding the nature, amount and timing of purchase and sell decisions and will keep the City apprised of account information and provide general investment advice.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such Agreement with Smith Hayes Advisers, Inc. on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	<input type="checkbox"/>	_____
March 4, 2011	<input type="checkbox"/>	City Attorney



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item I1

#2011-62 - Consideration of Approving Appointment of Public Works Director John Collins

Staff Contact: Mayor Vavricek

Council Agenda Memo

From: Mayor Jay Vavricek

Meeting: March 8, 2011

Subject: Consideration of Appointment of Public Works Director

Item #'s: I-1

Presenter(s): Mayor Jay Vavricek

Background

The Public Works Director position became vacant with the resignation of Steve Riehle in January 2011. An interim appointment was made to ensure continuity in the department until a replacement could be found. The City's Human Resources Department conducted a national recruitment. Sixteen applications were received.

Discussion

I am pleased to present John Collins as my choice for appointment to the Public Works Director position. Collins' public works experience includes 25 years in various statewide engineering and management positions with the State of Louisiana Department of Transportation. He is a registered Professional Engineer in the State of Nebraska as well as the State of Louisiana. He obtained a Bachelor of Science degree in Mechanical Engineering from Louisiana State University.

Collins managed a staff of 89 employees and an operating budget of \$40 million. Collins and his staff worked with the rehabilitation efforts during the aftermath of hurricanes Katrina and Rita. In addition he has in-depth experience with the State of Louisiana Legislative budget process.

Pending City Council approval Collins' employment will commence on March 14. His starting salary will be at step four of the Public Works Director pay scale which is \$86,286.99 annually. As Public Works Director he will supervise the Engineering, Solid Waste, Streets, Fleet Services, and Wastewater Treatment divisions.

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

As Mayor, I recommend John Collins be appointed to the position of Public Works Director/City Engineer.

Sample Motion

Move to approve the appointment of John Collins as the Public Works Director/City Engineer.

RESOLUTION 2011-62

WHEREAS, under Neb. Rev. Stat., §16-308, the office of City Engineer, for the City of Grand Island, Nebraska, is an appointed position; and

WHEREAS, under Grand Island City Code, §2-30, the office of City Engineer and Public Works Director have been consolidated into one position for the City of Grand Island, Nebraska, and is an appointed position; and

WHEREAS, the Mayor, with the approval of the City Council, may appoint the position of City Engineer/Public Works Director; and

WHEREAS, this position appointed by the Mayor and confirmed by the City Council shall hold the position to which they may be appointed until the end of the Mayor's term of office; and

WHEREAS, this position appointed by the Mayor may be removed at any time by the Mayor with approval of a majority of the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that John Collins is hereby duly appointed the City Engineer/Public Works Director for the City of Grand Island, Nebraska, until the end of the Mayor's term of office.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 4, 2011	☐ City Attorney



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item I2

#2011-63 - Consideration of Approving Redevelopment Plan for Real Estate Located at 620 West State Street (Five Points located along N Broadwell, N Eddy & W State)

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

Staff Contact: Chad Nabity

RESOLUTION 2011-63

WHEREAS, the City of Grand Island, Nebraska, a municipal corporation and city of the first class, has determined it be desirable to undertake and carry out urban redevelopment projects in areas of the City which are determined to be substandard and blighted and in need of redevelopment; and

WHEREAS, the Nebraska Community Development Law, Chapter 18, Article 21, Nebraska Reissue Revised Statutes of 2007, as amended (the "Act"), prescribes the requirements and procedures for the planning and implementation of redevelopment projects; and

WHEREAS, the City has previously declared Redevelopment Area No. 6 of the City to be substandard and blighted and in need of redevelopment pursuant to the Act; and

WHEREAS, the Community Redevelopment Authority of the City of Grand Island, Nebraska (the "Authority"), has prepared a Redevelopment Plan pursuant to Section 18-2111 of the Act, and recommended the Redevelopment Plan to the Planning Commission of the City; and

WHEREAS, the Planning Commission of the City reviewed the Redevelopment Plan pursuant to the Act and submitted its recommendations, to the City, pursuant to Section 18-2114 of the Act; and

WHEREAS, following consideration of the recommendations of the Authority to the Planning Commission, the recommendations of the Planning Commission to the City, and following the public hearing with respect to the Redevelopment Plan, the City approved the Plan; and

WHEREAS, there has been presented to the City by the Authority for approval a specific Redevelopment Project within the Redevelopment Plan and as authorized in the Redevelopment Plan, such project to be as follows: Demolition of buildings along the Broadwell Street Frontage of lot 2 of Skag-Way Subdivision and remodeling and renovation of the Skagway Store on lot 1 Skag-Way Subdivision in the City of Grand Island. All redevelopment activities will occur in Grand Island, Hall County, Nebraska; and

WHEREAS, the City published notices of a public hearing and mailed notices as required pursuant to Section 18-2115 of the Act and has, on the date of the Resolution held a public hearing on the proposal to amend the Redevelopment Plan to include the Redevelopment Project described above.

NOW, THEREFORE, be it resolved by the City Council of the City of Grand Island, Nebraska:

1. The Redevelopment Plan of the City approved for Redevelopment Area No. 6 in the city of Grand Island, Hall County, Nebraska, including the Redevelopment Project described above, is hereby determined to be feasible and in conformity with the general plan for the development of the City of Grand Island as a whole and the Redevelopment Plan, including the Redevelopment Project identified above, is in conformity with the legislative declarations and determinations set forth in the Act; and it is hereby found and determined that (a) the redevelopment project in the plan would not be economically feasible without the use of tax-increment financing, (b) the redevelopment project would not occur in the community redevelopment area without the use of tax-increment financing, and (c) the costs and benefits of the redevelopment project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the City and have been found to be in the long-term best interest of the community impacted by the redevelopment project. The City acknowledges receipt of notice of intent to enter into the Redevelopment Contract in accordance with Section 18-2119 of the Act and of the recommendations of the Authority and the Planning Commission with respect to the Redevelopment Contract.
2. Approval of the Redevelopment Plan is hereby ratified and reaffirmed, as amended by this Resolution, and the Authority is hereby directed to implement the Redevelopment Plan in accordance with the Act.
3. Pursuant to Section 18-2147 of the Act, ad valorem taxes levied upon real property in the Redevelopment Project included or authorized in the Plan which is described above shall be divided, for a period not to exceed 15 years after the effective date of this provision, which effective date shall be January 1, 2012 as follows:
 - a. That proportion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the Redevelopment Project Valuation (as defined in the Act) shall be paid into the funds of each such public body in the same proportion as all other taxes collected by or for the bodies; and
 - b. That proportion of the ad valorem tax on real property in the Redevelopment Project in excess of such amount, if any, shall be allocated to, is pledged to, and, when collected, paid into a special fund of the Authority to pay the principal of, the interest on, and any premiums due in connection with the bonds, loans, notes or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Authority for financing or refinancing, in whole or in part, such Redevelopment Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premium due have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in such Redevelopment Project shall be paid into the funds of the respective public bodies.
 - c. The Mayor and City Clerk are authorized and directed to execute and file with the Treasurer and Assessor of Hall County, Nebraska, an Allocation Agreement and Notice of Pledge of Taxes with respect to each Redevelopment Project.

4. The City hereby finds and determines that the proposed land uses and building requirements in the Redevelopment Area are designed with the general purposes of accomplishing, in accordance with the general plan for development of the City, a coordinated, adjusted and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity; and the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of a healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreation and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, or conditions of blight.

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Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item I3

**#2011-64 - Consideration to Proceed with Closing the Union
Pacific Railroad Crossing at Elm Street**

Staff Contact: Gary R. Mader, Interim Public Works Director

Council Agenda Memo

From: Gary R. Mader, Interim Public Works Director

Meeting: March 8, 2011

Subject: Consideration to Proceed with Closing the Union Pacific Railroad Crossing at Elm Street

Item #'s: I-3

Presenter(s): Gary R. Mader, Interim Public Works Director

Background

During detailed development of the Phase I Quiet Zone Project, Public Works Department staff had a number of meetings with Nebraska Department of Roads (NDOR), Union Pacific Railroad (UPRR) and local business in the area of the project to finalize the design of the modifications necessary to accomplish the Quiet Zone along the reach included in Phase I. Of the four crossings included in Phase I, two (Pine Street and Oak Street) can be “quieted” by making modifications to the configuration of the approaches to the railroad crossing without having to install Wayside Horns, which is a relatively inexpensive method. The other two crossings (Pine Street and Elm Street) require the installation of Way Side horns along with modifications to the configurations of the streets, which is significantly more expensive, approximately three times the cost of the other two. Also during these discussions with the involved parties, it was found that there was substantial interest in closing the Elm Street crossing permanently and those parties expressed a willingness to contribute funding to the costs associated with closing the street at the Elm railroad crossing.

At an estimated cost of \$228,800, the Elm Street Quiet Zone modifications are the most expensive of those included in the Phase I Project, representing approximately 40% of the total project cost of \$590,200. Elm Street is also the least traveled of all of the crossings in the central part of the City, with only 7% of the number of crossings at Broadwell and 8% of the crossings at Eddy Street. Given that the most expensive Quiet Zone crossing had the least traffic and that there was interest from other parties in contributing to the costs to close that crossing, Public Works Department staff took a more detailed look at what the net costs savings might be for a change in the approach to the Phase I Quiet Zone Project. Closing the crossing eliminates the need for Wayside Horn installation, but adds cost to complete the closing of the street. With the indicated contributions to closing costs by the other parties included in the analysis, the net savings achieved by

permanently closing the Elm Street Crossing are estimated at \$209,000, reducing the total Phase I Project cost to approximately \$382,000. Additionally, recognizing that the potential change in project scope would affect the property owners adjacent to Elm Street railroad crossing, Department staff contacted the owners to advise them of the potential change. Department staff also consulted the Police and Fire Departments of the City. Closing of the Elm Street crossing is not expected to have adverse impact on the emergency responses from those departments.

With the potential for major cost savings, but also with major changes to the scope of the project, the Department decided that it was appropriate to advise the City Council of the option as it developed. That presentation was made at the Study Session of March 1, 2011.

Discussion

The Public Works Department solicits the City Council's direction regarding future development of the Phase I Quiet Zone Project. The options are to retain the current project scope which retains the crossing, with a total Phase I cost estimated at \$590,200; or to alter the scope of the project including closing the Elm street crossing, reducing the total project cost to an estimated \$382,000. At the Study Session, the Council expressed an interest in traffic pattern changes resulting from the closing of the Elm Street crossing. Please see the attached bar graph illustrating the relative crossing locations and the frequency of traffic crossings through the central portion of the city, from Broadwell to Oak. Elm is located near the center of the reach depicted. The two railroad crossings located closest to Elm are Eddy on the west and Walnut on the east. As evidenced by the attached bar graph, either of these adjacent streets has adequate carrying capacity to absorb the total flow diverted from Elm Street. Increased traffic on existing crossings is not expected to be a problem.

In order to provide a mechanism to determine the City Council's direction, a resolution has been crafted directing staff to proceed with the project in a manner to work toward the closing of the Elm Street railroad crossing.

Alternatives

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

1. Move to approve the change in scope of the Quiet Zone Phase I Project to include permanently closing the Elm Street railroad crossing
2. Vote to deny the change in project scope
3. Move to retain the current scope of the Quiet Zone Phase I Project
4. Refer the issue to a Committee for further study
5. Postpone the issue to a future date

6. Take no action on the issue – Department staff would view “no action” as direction to maintain the current scope of the project

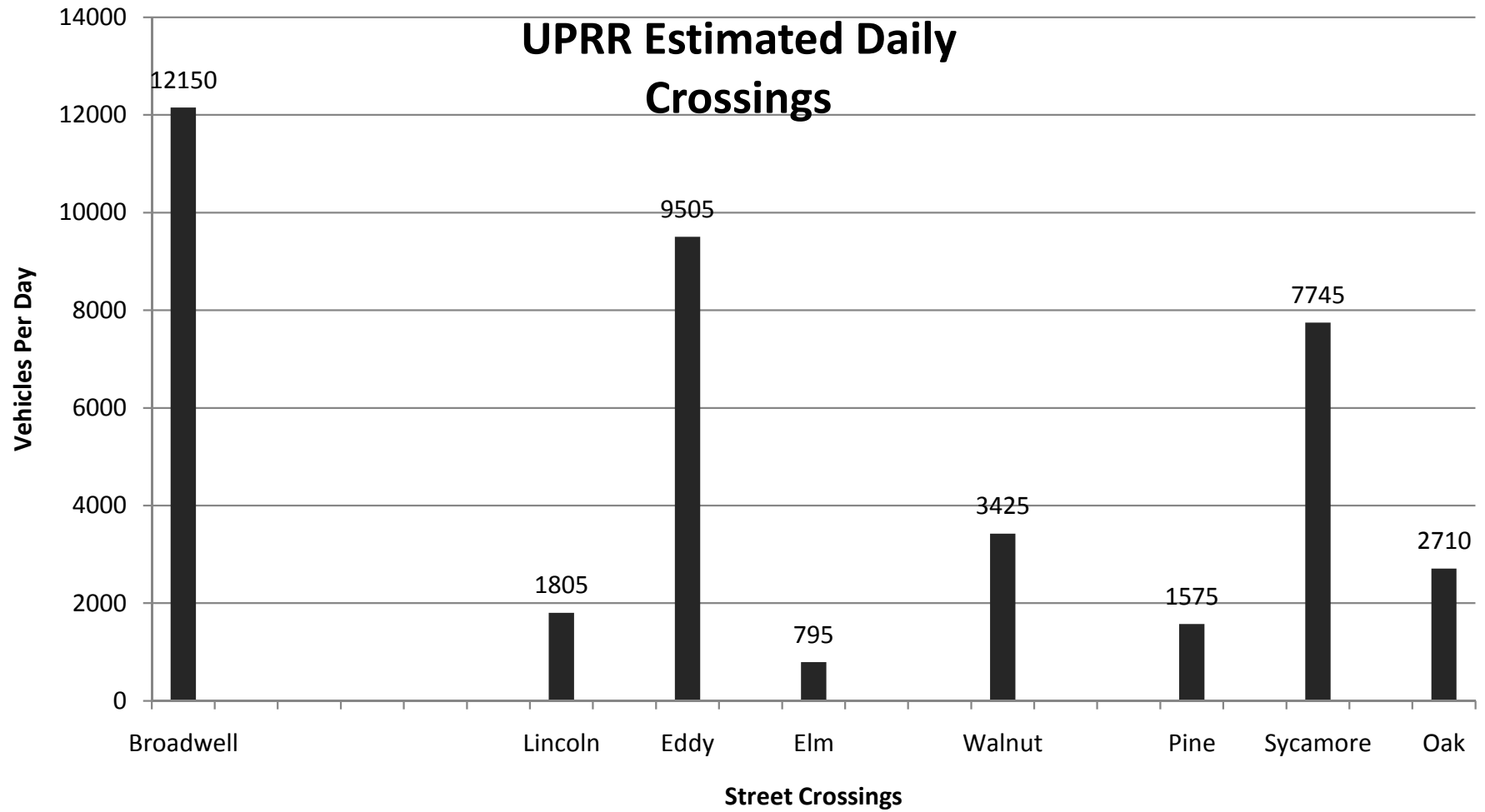
Recommendation

Because the closing of the Elm Street crossing is projected to significantly reduce the total cost of Quiet Zone Phase I construction and because that crossing is currently serving the least number of traffic crossings, it is the recommendation of the Public Works Department that the scope of the project be altered to work to the permanent closing of the Elm Street Railroad Crossing.

Sample Motion

Move to approve a resolution to proceed with closing the Union Pacific Railroad Crossing at Elm Street.

UPRR Estimated Daily Crossings



RESOLUTION 2011-64

WHEREAS, during the design stage of the Phase I Quiet Zone project, significant, unanticipated costs were realized; and

WHEREAS, the installation of Wayside Horns at Elm Street/Union Pacific Railroad (UPRR) Crossing is estimated to be \$228,800; and

WHEREAS, Elm Street at the UPRR crossing has the lowest traffic volume, at 795 vehicles per day, of all the City's crossings along the UPRR corridor; and

WHEREAS, Public Works Engineering is recommending closing the Elm Street crossing at UPRR instead of construction Wayside Horns, which would result in savings of approximately \$208,800.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the process to close the Union Pacific Railroad Crossing at Elm Street may proceed.

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Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 4, 2011	☐ City Attorney



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item J1

Approving Payment of Claims for the Period of February 23, 2011 through March 8, 2011

The Claims for the period of February 3, 2011 through March 8, 2011 for a total amount of \$2,587,712.22. A MOTION is in order.

Staff Contact: Mary Lou Brown



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item X1

Discussion Concerning AFSCME, IAFF, FOP, IBEW (Utilities) (Finance) (WWTP) and (Service/Clerical) Union Negotiations

The City Council may vote to go into Executive Session as required by State law to discuss AFSCME, IAFF, FOP, IBEW (Utilities) (Finance) (WWTP) and (Service/Clerical) Union Negotiations for the protection of the public interest.

Staff Contact: Brenda Sutherland