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# City of Grand Island



**Tuesday, March 22, 2011**

## **Council Session Packet**

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### **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**

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**7:00:00 PM**  
**Council Chambers - City Hall**  
**100 East First Street**

## **Call to Order**

This is an open meeting of the Grand Island City Council. The City of Grand Island abides by the Open Meetings Act in conducting business. A copy of the Open Meetings Act is displayed in the back of this room as required by state law.

The City Council may vote to go into Closed Session on any agenda item as allowed by state law.

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**Invocation - Pastor Scott Friesen, Berean Bible Church, 4116 West Capital Avenue**

**Pledge of Allegiance**

**Roll Call**

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## **A - SUBMITTAL OF REQUESTS FOR FUTURE ITEMS**

Individuals who have appropriate items for City Council consideration should complete the Request for Future Agenda Items form located at the Information Booth. If the issue can be handled administratively without Council action, notification will be provided. If the item is scheduled for a meeting or study session, notification of the date will be given.

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## **B - RESERVE TIME TO SPEAK ON AGENDA ITEMS**

This is an opportunity for individuals wishing to provide input on any of tonight's agenda items to reserve time to speak. Please come forward, state your name and address, and the Agenda topic on which you will be speaking.

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## **MAYOR COMMUNICATION**

This is an opportunity for the Mayor to comment on current events, activities, and issues of interest to the community.



# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item C1

### **Presentation of Legislative Resolution 13 by Senator Mike Gloor**

*State Senator Mike Gloor will attend the City Council meeting to present Legislative Resolution 13 congratulating the City of Grand Island for a successful 2010 State Fair.*

Staff Contact: Mayor Vavricek



# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item C2

### Proclamation "Kick Butts Day 2011" March 23, 2011

*Tobacco Free Hall County is sponsoring an annual national initiative that makes elementary, middle and high school students leaders in the fight against youth tobacco use and exposure to secondhand smoke. Mayor Vavricek has proclaimed March 23, 2011 as "Kick Butts Day 2011". See attached PROCLAMATION.*

Staff Contact: Mayor Vavricek

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

PROCLAMATION

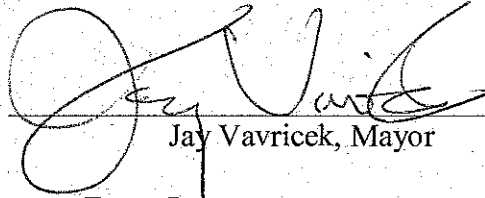
- WHEREAS, Tobacco Free Hall County estimates one fifth of all high school students (grades 9-12) are current smokers; along with nearly one out of every ten eighth graders; and
- WHEREAS, three million high school students are current smokers; and more than a third of all kids who ever try smoking a cigarette become new regular, daily smokers before leaving high school; and
- WHEREAS, one out of three youth smokers may ultimately die prematurely from smoking-related diseases, unless current trends are reversed; and
- WHEREAS, smoking kills more than 400,000 Americans each year, representing more deaths than from AIDS, alcohol, car accidents, murders, suicides, drugs and fires combined; and
- WHEREAS, most of these deaths could be prevented; and
- WHEREAS, Kick Butts Day is an annual national initiative sponsored by the Campaign for Tobacco-Free Kids that makes elementary, middle and high school students leaders in the fight against youth tobacco use and exposure to secondhand smoke; and
- WHEREAS, the Grand Island City Council of Grand Island, Nebraska wishes to stand up with the children of Grand Island, Nebraska in opposition to the sale, advertising and marketing of tobacco products to children.

NOW, THEREFORE, I, Jay Vavricek, Mayor of the City of Grand Island, Nebraska, do hereby proclaim March 23, 2011 as

***“KICK BUTTS DAY 2011”***

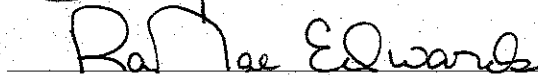
in the City of Grand Island, Nebraska.

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 March in the year of our Lord Two Thousand and Eleven.

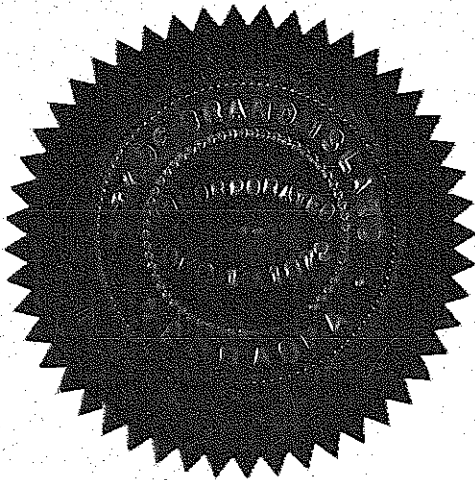


Jay Vavricek, Mayor

Attest:



RaNae Edwards, City Clerk





# **City of Grand Island**

**Tuesday, March 22, 2011**

**Council Session**

## **Item E1**

**Public Hearing on Request from Friesen Management, Inc. dba  
Sam and Louie's NYP, 928 Concord Avenue for a Class "C"  
Liquor License**

**Staff Contact: RaNae Edwards**

# **Council Agenda Memo**

**From:** RaNae Edwards, City Clerk

**Meeting:** March 22, 2011

**Subject:** Public Hearing on Request from Friesen Management, Inc. dba Sam and Louie's NYP, 928 Concord Avenue for a Class "C" Liquor License

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

**Presenter(s):** RaNae Edwards, City Clerk

## **Background**

Section 4-2 of the Grand Island City Code declares the intent of the City Council regarding liquor licenses and the sale of alcohol.

### **Declared Legislative Intent**

It is hereby declared to be the intent and purpose of the city council in adopting and administering the provisions of this chapter:

- (A) To express the community sentiment that the control of availability of alcoholic liquor to the public in general and to minors in particular promotes the public health, safety, and welfare;
- (B) To encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the sale and distribution thereof; and
- (C) To ensure that the number of retail outlets and the manner in which they are operated is such that they can be adequately policed by local law enforcement agencies so that the abuse of alcohol and the occurrence of alcohol-related crimes and offenses is kept to a minimum.

## **Discussion**

Friesen Management, Inc. dba Sam and Louie's NYP, 928 Concord Avenue has submitted an application for a Class 'C' Liquor License. A Class 'C' Liquor License allows for the sale of alcohol on and off sale inside the corporate limits of the city.

City Council action is required and forwarded to the Nebraska Liquor Control Commission for issuance of all licenses. This application has been reviewed by the Clerk, Building, Fire, Health, and Police Departments.



Also submitted with this application was a Liquor Manger Designation request from Donald Friesen, 4030 W. Husker Highway.

### **Alternatives**

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

1. Approve the application.
2. Forward to the Nebraska Liquor Control Commission with no recommendation.
3. Forward to the Nebraska Liquor Control Commission with recommendations.
4. Deny the application.

### **Recommendation**

Based on the Nebraska Liquor Control Commission's criteria for the approval of Liquor Licenses, City Administration recommends that the Council approve this application.

### **Sample Motion**

Move to approve the application for Friesen Management, Inc. dba Sam and Louie's NYP, 928 Concord Avenue for a Class "C" Liquor License contingent upon final inspections and Liquor Manager Designation for Donald Friesen, 4030 West Husker Highway contingent upon the completion of a state approved alcohol server/seller training program.

03/16/11  
15:11

Grand Island Police Department  
LAW INCIDENT TABLE

450  
Page: 1

City : Grand Island  
Occurred after : 16:31:16 03/07/2011  
Occurred before : 16:31:16 03/07/2011  
When reported : 16:31:16 03/07/2011  
Date disposition declared : 03/07/2011  
Incident number : L11030838  
Primary incident number :  
Incident nature : Liquor Lic Inv Liquor License Investigation  
Incident address : 928 Concord Ave  
State abbreviation : NE  
ZIP Code : 68803  
Contact or caller :  
Complainant name number :  
Area location code : PCID Police - CID  
Received by : Vitera D  
How received : T Telephone  
Agency code : GIPD Grand Island Police Department  
Responsible officer : Vitera D  
Offense as Taken :  
Offense as Observed :  
Disposition : ACT Active  
Misc. number :  
Geobase address ID : 34984  
Long-term call ID :  
Clearance Code : O Open Case  
Judicial Status : NCI Non-criminal Incident  
= = = = =

INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
NM	29757	03/09/11	Friesen, Donald L	Owner
NM	112438	03/09/11	Friesen, Lanette M	Owner
NM	161877	03/09/11	Sam & Louie's NYP,	Business

LAW INCIDENT CIRCUMSTANCES:

Se	Circu	Circumstance code	Miscellaneous
1	LT21	Restaurant	

LAW INCIDENT NARRATIVE:

I Received a Copy of a Liquor License Application for Sam & Louies NYP and a Copy of a Liquor Manager Application from Donald Friesen.

LAW INCIDENT RESPONDERS DETAIL:

Se Responding offi Unit n Unit number

-- -----  
1 Vitera D 318 Vitera D

03/16/11 Grand Island Police Department  
15:11 LAW INCIDENT TABLE

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Page: 2

LAW SUPPLEMENTAL NARRATIVE:

Seq	Name	Date
-----		
1	Vitera D	10:01:07 03/09/2011

03/16/11  
15:11

Grand Island Police Department  
LAW INCIDENT TABLE

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Page: 3

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Grand Island Police Department  
Supplemental Report

Date, Time: Wed Mar 09 10:01:22 CST 2011  
Reporting Officer: Vitera  
Unit- CID

Donald and Lanette Friesen applied for a liquor license for Sam & Louie's NYP back in November of 2010. They withdrew the application because Donald had an assault conviction that would have automatically excluded them from getting a license. On this application, there is a court order attached that sets aside and nullifies Donald's assault conviction.

In the section of the application where it asks for criminal convictions, Lanette Friesen disclosed "4-5" speeding tickets. Donald Disclosed "8 speeding or traffic violations and 1 not having a dog tied up." He also disclosed two separate "contributing to the delinquency of a child [non-alcohol]" charges.

I checked NCJIS and found that neither Lanette or Donald have any undisclosed convictions. In fact, Donald only had two charges listed in NCJIS. One was the assault conviction that was set aside, and the other was a contributing to the delinquency of a minor charge that was dismissed by the prosecution. The numerous traffic "convictions" he disclosed must not have been citations and convictions, or they were too long ago to register.

While continuing to look at the application, I noticed that the Friesen's are applying for a Class C License which includes "off sale." I thought it was strange that a restaurant would apply for that type of license. I also noticed that the Friesen's aren't borrowing any money to establish and/or operate the business, yet Lanette signed up for unemployment benefits with an eligibility period from 12/26/2010 through 12/24/2011. The last thing that stuck out to me on the application was the question that asks whether anyone beside the applicant will be entitled to share in the profits of the business. The yes and no box were each checked.

On 3/16/11, I stopped by Sam & Louie's NYP in an attempt to talk to the Friesen's. I was met by a restaurant manager who said that the Friesen's were each working their other job. The manager was able to reach Donald by telephone. He was in Kansas and was going to be there overnight. Donald advised that he is a manager for Taco Bell, and "corporate" was doing an inspection at one of the restaurants he oversees in Kansas. He said he had time to speak with me over the phone about his liquor license application.

The first thing I asked him was why he was applying for a Class C License. He advised that he later discovered that he doesn't need a Class C License and actually meant to apply for a Class I License. He basically wants to sell beer

and wine "on sale" only. I then asked Donald if he and his wife had borrowed any money to establish/run the business. He said that they had not. He said they were able to make some money "flipping" some houses and also used their credit cards.

Since they didn't have to borrow any money for the business, I asked Donald why Lanette would apply for unemployment benefits. He said that she works at New Holland, and they have mandatory shutdowns. He also said that initial profits they make on their business will have to go back into the business and not as a

03/16/11	Grand Island Police Department	450
15:11	LAW INCIDENT TABLE	Page: 4

salary for either of them. He said he would check to see if owning the business (and possibly not getting paid from it for an unknown amount of time) is a conflict with Lanette potentially receiving unemployment benefits. I also want to note that according to NCJIS, Lanette has not received any benefits for the current benefit period.

The last area of concern about profit sharing was addressed. Donald said the wording of the question confused him because it said "applicant" instead of "applicants." Donald advised that he and his wife are the only people sharing the profits.

In summary, Donald was able to clarify questions I had about his application. From a law enforcement perspective, there doesn't appear to be any reason that the Friesen's shouldn't have a liquor license. The GIPD has no objection to Sam & Louie's receiving a Class I Liquor License or to Donald Friesen becoming the liquor manager for the business.



# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item E2

**Public Hearing on Request from Tom Ummel and Tommy Ummel  
for a Conditional Use Permit for a Recycling Center Drop Off  
Located at 1827 East 4th Street**

Staff Contact: Craig Lewis

# **Council Agenda Memo**

**From:** Craig Lewis, Building Department Director

**Meeting:** March 22, 2011

**Subject:** Request of Tom Ummel Sr. & Tom Ummel Jr.  
Representing Heartland Disposal for Approval of a  
Conditional Use Permit to Allow for the Operation of a  
Recycling Center at 1827 East 4<sup>th</sup> Street -  
Lot 1-5 Brodsky Industrial Empire Sub.

**Item #'s:** E-2 & H-1

**Presenter(s):** Craig Lewis, Building Department Director

## **Background**

This request is for the approval of a Conditional Use permit to allow for the operation of Recycling center at the property referenced above. A conditional use permit is required by the City code as the property is currently zoned M2 Heavy Manufacturing. That zoning classification lists as a specified conditional use a salvage yard. The City code defines salvage yards as any building, lot, yard or premise used for the collection, processing, salvage, storage, bailing, or shipping of junked vehicles, vehicle parts, paper, cardboard, glass, plastic, metals, rags, scrap materials, junk, or material similar to those listed herein.

The operation of a recycling center would fall within the category of a salvage yard and is required to receive approval of the City Council in the form of a conditional use permit.

## **Discussion**

The request is for approval to operate a recycling facility in conjunction with the current operation of Heartland Disposal. The current operation at 2403 W. Old Lincoln Highway will relocate to this location due to the success of the recycling operation and out growing the current site. Outside storage of material is not anticipated but may occur at high volume times in a limited fashion. The City code sections 36-101 and 36-106 specifies standards for industrial uses and physical appearance standards for salvage yards.

Section 36-106. Conditional Uses; Salvage Yards;

All salvage yards shall be subject to the following conditions as part of their permitted conditional use:

(A) In addition to the information required pursuant to 36-88, an application for a conditional use for a salvage yard shall include a site plan for the premises showing the layout of the proposed operation, building and infrastructure locations, property dimensions, drainage and landscaping.

(B) All structures located or constructed on the salvage yard premises shall comply with the Grand Island City Code and all applicable building, electrical, plumbing, and fire codes.

(C) All hazardous materials and regulated waste shall be received, stored, and disposed of in accordance with state and federal laws and the rules and regulations of the U.S. Environmental Protection Agency and the Nebraska Department of Environmental Quality.

(D) All operations of a salvage yard, including those which are ancillary and indirectly related to the salvage yard such as administration, parking, equipment and or container storage shall be conducted on the premises subject to the permitted conditional use.

(E) All premises on a salvage yard shall be kept and maintained in a clean and orderly manner, using the best practices of the industry, with no loose garbage, litter, refuse or waste materials on the premises except those kept in short term storage for processing. The persons operating the salvage yard shall on a regular and routine basis inspect all areas adjacent to the salvage yard and clean up any materials which originated from the salvage yard.

(F) Physical Appearance: Salvage yards and other similar operations shall be effectively enclosed or shielded from adjacent properties on all sides by means of a sight-obscuring fence at least eight (8) feet in height, in good repair, and constructed of conventional fence materials and techniques as approved by the Chief Building Official. No inventory or salvage materials of any nature may be stacked within fifty (50) feet of the fence to a height greater than said fence.

## **Alternatives**

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

The Council may:

1. Approve the request for the Conditional Use Permit finding that the proposed application is and will continue to be in conformance with the purpose of the zoning regulations. .
2. Disapprove or /Deny the Request, finding that the proposed application does not conform to the purpose of the zoning regulation.
3. Approve the request with additional or revised conditions and a finding of fact.
4. Refer the matter to a special committee for a determination of a finding of fact.



## **Recommendation**

Approve the request with the conditions identified in the staff memorandum and articulated in the City Code, finding that the proposed use and application promotes the health, safety, and general welfare of the community, protects property against blight and depreciation, and is generally harmonious with the surrounding neighborhood.

## **Sample Motion**

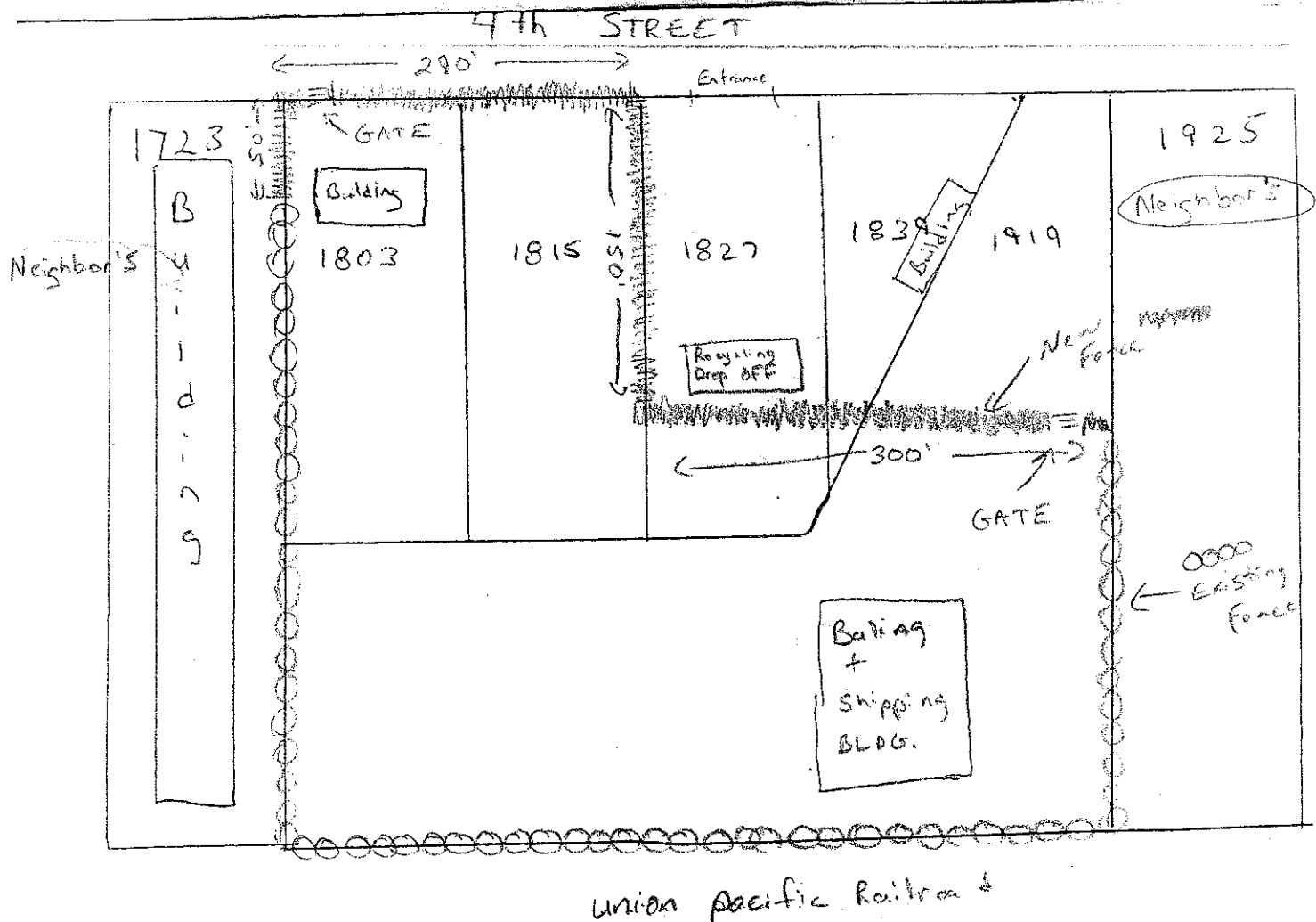
Move to approve the request for a conditional use permit with the conditions as identified in the departmental memorandum, finding that the application conforms with the purpose of the zoning regulations.

## Site Plan – Heartland Disposal & Recycling New Facilities

Operations will be expanded and a larger new community recycling drop off center will be provided for the public at this location. This location is ideal as it provides a safe area off the main street for the public to enter and to exit and provides adequate space for larger amounts of material to be recycled.

Material will be dropped off at the recycling center on lot 1827 and then moved to lot 1919 where it will be processed and baled. All baled material will then be placed onto semi trailers for shipping. A very limited amount of material will rarely be kept outside with this new facility as there is ample space for many trailers to be utilized.

Approximately 750' of new eight foot sight- obscuring hurricane fence will be constructed ~~shown~~ shown below on the drawing along the frontage of the entire properties. This new fence will connect to existing fencing ~~on~~ on the West side set back behind the building located at 1723. This new fence will then border the properties 1803 and 1815 cutting across properties 1827, 1839 and 1919 connecting to existing fence on neighbor's property 1925. This would provide the entire properties of 1803, 1815, 1827, 1839, 1919 to be isolated visually from anyone on Fourth Street. Both neighbors have existing fences and trees and buildings at 1723 and 1925 to obscure the sights of the east west visuals of our properties. The far south side of the property is neighboring with the Union Pacific railroad and there is an existing fence there. All materials will be kept well within the fifty feet requirement and not visually stacked over the height of the fence to comply with the conditional use code.





Non-Refundable Fee: \$200.00  
Return by: \_\_\_\_\_  
Council Action on: \_\_\_\_\_

## Conditional Use Permit Application

pc: Building, Legal, Utilities  
Planning, Public Works

1. The specific use/construction requested is: Recycling Center Drop off
2. The owner(s) of the described property is/are: Tom Umme1 + Tommy Umme1
3. The legal description of the property is: Lot 3 Brodsky Industrial Empire Sub
4. The address of the property is: 1827 E. 4th Street
5. The zoning classification of the property is: M 2
6. Existing improvements on the property is: Constructing a 30 x 30 Building
7. The duration of the proposed use is: Ongoing
8. Plans for construction of permanent facility is: In process
9. The character of the immediate neighborhood is: Industrial area
10. There is hereby **attached** a list of the names and addresses of all property owners within 200' of the property upon which the Conditional Use Permit is requested.
11. Explanation of request: A Free Community recycling drop off center for the city of Grand Island residents to use. materials will be dropped off at no charge at this site.

I/We do hereby certify that the above statements are true and correct and this application is signed as an acknowledgement of that fact.

2-2-11

Date

Tom Umme1 + Tommy Umme1

Owners(s)

308-382-1683

Phone Number

2423 West Old Lincoln Hwy

Address

Grand Island

City

NE

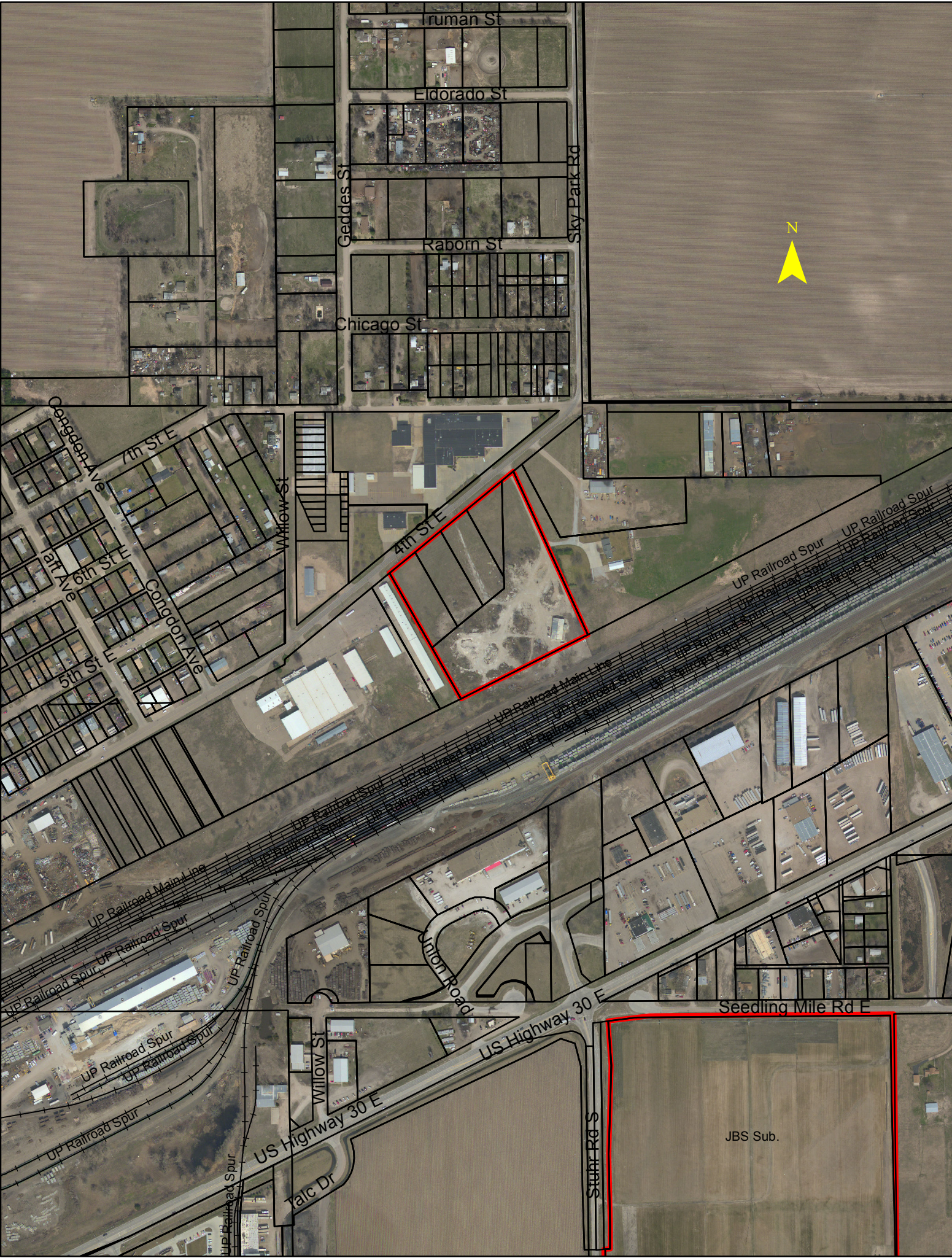
State

68003

Zip

**Please Note: Delays May Occur if Application is Incomplete or Inaccurate.**









# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item E3

**Public Hearing Concerning Acquisition of Utility Easement -  
North of Swift's Wastewater Treatment Facility, east of the Plant -  
Conagra Beef Company JBS USA, LLC**

Staff Contact: Gary R. Mader

# **Council Agenda Memo**

**From:** Robert H. Smith, Asst. Utilities Director

**Meeting:** March 22, 2011

**Subject:** Acquisition of Utility Easement – North of Swift’s Wastewater Treatment Facility, East of the Plant – Conagra Beef Company JBS USA, LLC

**Item #'s:** E-3 & G-5

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

## **Background**

Nebraska State Law requires that acquisition of property must be approved by City Council. The Utilities Department needs to acquire an easement relative to the property of Conagra Beef Company JBS USA, LLC, located to the north of Swift’s new wastewater treatment facility, east of the Plant, in the City Of Grand Island, Hall County, in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers.

## **Discussion**

JBS is constructing a new waste treatment facility on the far east side of their property. That facility will require a new power line and transformer to provide electricity. The easement will provide for the installation of a new underground electric cable and pad-mounted transformer to serve the treatment facility.

## **Alternatives**

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

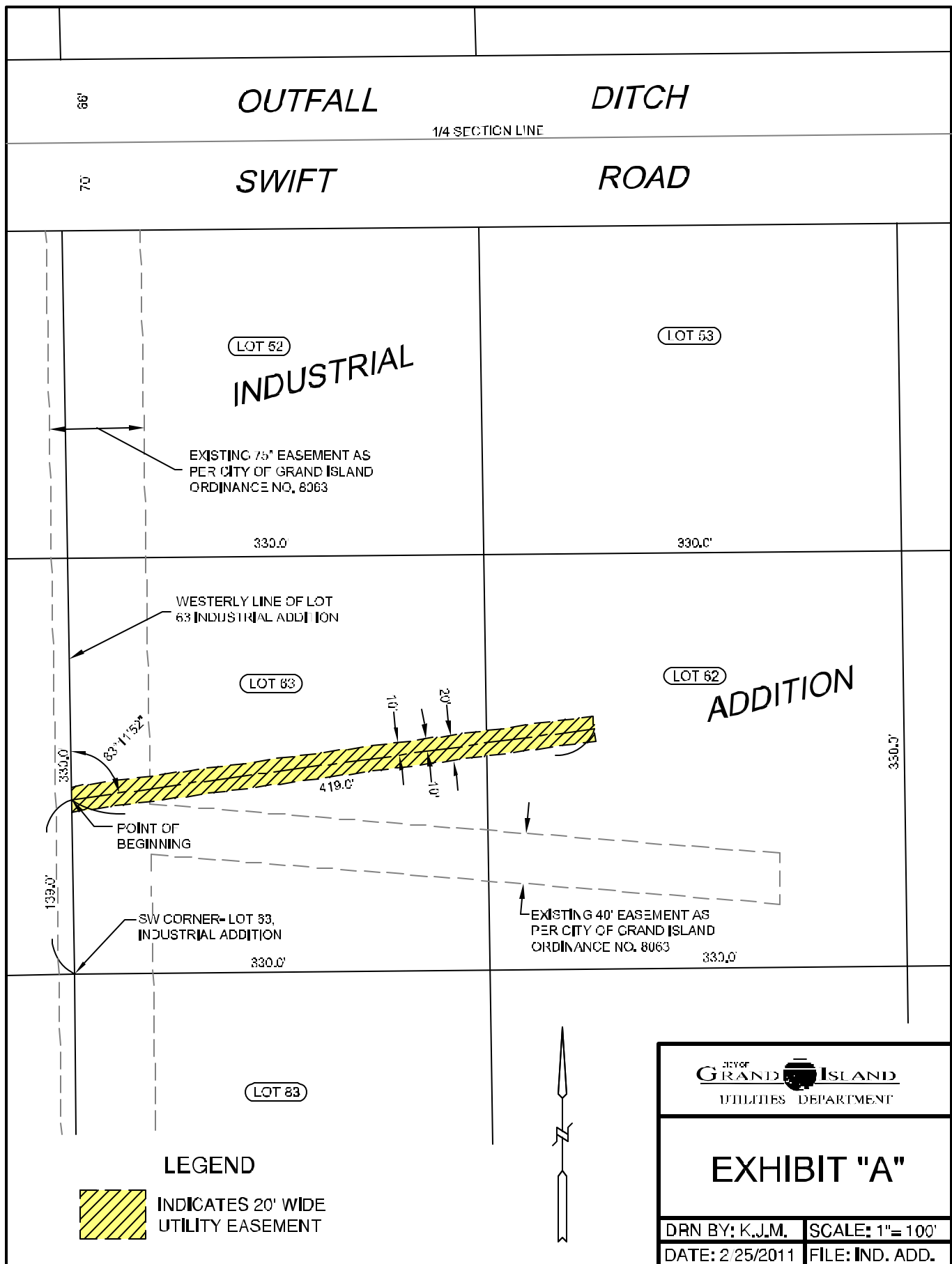
1. Make a motion to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

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

## **Sample Motion**

Move to approve acquisition of the Utility Easement.







# **City of Grand Island**

**Tuesday, March 22, 2011**

**Council Session**

## **Item G1**

**Approving Minutes of March 8, 2011 City Council Regular Meeting**

**Staff Contact: RaNae Edwards**

## CITY OF GRAND ISLAND, NEBRASKA

### MINUTES OF CITY COUNCIL REGULAR MEETING

March 8, 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 March 8, 2011. Notice of the meeting was given in *The Grand Island Independent* on March 2, 2011.

Mayor Jay Vavricek called the meeting to order at 7:00 p.m. The following City Council members were present: Chuck Haase, Larry Carney, Bob Niemann, Kirk Ramsey, Peg Gilbert, Mitch Nickerson, Linna Dee Donaldson, Scott Dugan, Randy Gard and John Gericke. 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 Matt Fowler, Faith United Methodist Church, 724 West 12<sup>th</sup> Street followed by the PLEDGE OF ALLEGIANCE.

MAYOR COMMUNICATION: Mayor Vavricek introduced Community Youth Council members Reyna Raymundo, Alex Wirth, and Tyler Barrientos. Mayor mentioned several legislative bills. Mentioned was Saturday, March 26, 2011 for City Administrator interviews instead of a Council Retreat.

#### PRESENTATIONS AND PROCLAMATIONS:

Proclamation "Week of Kindness and Sole" March 13-19, 2011. Mayor Vavricek proclaimed the week of March 13-19, 2011 as "Week of Kindness and Sole". Dr. Kent Mann commented on the campaign to raise 35,000 pairs of shoes for those in need. The following High School students were present for the presentation: Lara Bergdolt – Heartland Lutheran, Alex Wirth – Central Catholic, and Miguel Baeza & Holly Johnson – Grand Island Senior High.

Proclamation "National Athletic Training Month" March, 2011. Mayor Vavricek proclaimed the month of March 2011 as "National Athletic Training Month". Todd Goshorn, Head Athletic Trainer at Grand Island High School was present to receive the proclamation.

#### PUBLIC HEARINGS:

Public Hearing on Redevelopment Plan for Real Estate Located at 620 West State Street (Five Points located along North Broadwell, North Eddy and West State Streets). Regional Planning Director Chad Nabity reported that in 2007 the City Council declared property referred to as CRA Area #6 as blighted and substandard and approved a generalized redevelopment for the property located at 620 West State Street. 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. Wilmar Realty LLC (the developer) had 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 the Skagway supermarket building together with additional parking lot expansion at the Five Points

location. Jim Phipps, 1809 West Anna Street spoke in support. No further public testimony was heard.

### ORDINANCES:

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

#9290 – Consideration of Vacation of a Portion of a Utility Easement Located Between Sheridan Avenue and Orleans Drive, From 4<sup>th</sup> Street to 5<sup>th</sup> Street

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

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

Interim Public Works Director Gary Mader reported that Ordinance #9290 would vacate the west 18’ of the 30’ utility easement located on Lots 20, 21 & 22 in Kallos Second Subdivision.

Bruce Lefler representing Ameritas reported that Ordinance #9291 would replace the Public Safety Tax Anticipation Bonds, Series 2006 in a principal amount of \$5,535,000.00.

Motion by Haase, second by Ramsey to approve Ordinances #9290 and #9291.

City Clerk: Ordinances #9290 and #9291 on first reading. All those in favor of the passage of these ordinances on first reading, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

City Clerk: Ordinances #9290 and #9291 on final passage. All those in favor of the passage of these ordinances on final passage, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

Mayor Vavricek: By reason of the roll call votes on first reading and then upon final passage, Ordinances #9290 and #9291 are declared to be lawfully adopted upon publication as required by law.

CONSENT AGENDA: Consent Agenda items G-13 and G-15 were removed for further discussion. Motion by Gericke, second by Gard to approve the Consent Agenda excluding items G-13 and G-15. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of February 22, 2011 City Council Regular Meeting.

Approving Minutes of March 1, 2011 City Council Study Session.

#2011-49 Approving Final Plat and Subdivision Agreement for Golden Age Third Subdivision.  
It was noted that Hall County Housing Authority, owner, had submitted the Final Plat and Subdivision Agreement for Golden Age Third Subdivision for the purpose of creating 2 lots on a tract of land located west of White Avenue and north of 7<sup>th</sup> Street containing approximately 2.648 acres.

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

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

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

#2011-53 – Approving Revised Laredo Ridge Power Sales Agreement with the Nebraska Public Power District (NPPD).

#2011-54 – Approving Bid Award for 115 kV Pole Inspection and Preservation Services with Osmose Utilities Services, Inc. of Tyrone, Georgia in an Amount not to exceed \$100,000.00.

#2011-55 – Approving Bid Award for Hot-Mix Asphalt for 2011 with Gary Smith Construction Co. of Grand Island, Nebraska in an Amount of \$44.85 per ton for Type “A” Asphaltic Concrete; \$42.85 per ton to Type “BC” Asphaltic Concrete; and \$44.85 per ton for Type “C” Asphaltic Concrete.

#2011-56 – Approving Bid Award for Concrete Ready-Mix for 2011 with Gerhold Concrete Co., Inc. of Grand Island, Nebraska in an Amount of \$74.00 per cubic yard for Portland Cement Concrete Ready-Mix.

#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) and a One-Time License Fee of \$1,500.00.

#2011-58 – Approving Agreement for City Hall Copier Maintenance and Supplies with Capital Business Systems, Inc./Modern Methods of Grand Island, Nebraska.

#2011-60 – Approving Redemption of Series 2006 Public Safety Tax Anticipation Bonds.

#2011-59 – Approving Vendor for Expert Service provider for Information Technology with Duey’s Computer Service, Inc. of Lincoln, Nebraska in an Amount of \$3,125.00 per month.  
Finance Director Mary Lou Brown reported that 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.

Motion by Dugan, second by Haase to approve Resolution #2011-59.

Discussion was held regarding a termination clause in the agreement. Interim City Attorney Jason Ely stated that if the company did not live up to their end of the bargain the agreement

could be terminated. Discussed was had whether the agreement should have 30 or 60 days included for the termination clause.

Motion by Haase, second by Carney to amend the motion and add a termination clause of 60 days. Upon roll call vote, Councilmembers Haase, Carney, Niemann, Ramsey, Gilbert, Nickerson, Donaldson, Dugan, and Gericke voted aye. Councilmember Gard voted no. Motion adopted.

Upon roll call vote of the main motion, all voted aye. Motion adopted.

#2011-61 – Approving Investment Advisory Agreement with Smith Hayes Advisers, Inc. of Columbus, Nebraska. Finance Director Mary Lou Brown reported that Smith Hayes Advisers, Inc. (Smith Hayes) currently served as the investment adviser for the backstop funds to the pension obligations that were administered by Wells Fargo. The investment manager for the account was formerly McCarthy Group Advisors which was acquired by Westwood Holdings Group, Inc.

Smith Hayes informed the City that the current investment manager, Mr. Rod Cerny who had transitioned to Westwood, would no longer manage the City's account. If the account stayed with Westwood, the assets would be moved into one of their money management programs rather than being actively managed by Mr. Cerny. It was recommended that the City not move our investments into Westwood's money management program. It was recommended by staff to direct Smith Hayes to oversee the accounts.

Discussion was held concerning additional fees. Ms. Brown stated there would not be any additional costs. Comments were made concerning keeping out business local.

Motion by Gilbert, second by Niemann to approve Resolution #2011-61. Upon roll call vote, all voted aye. Motion adopted.

#### RESOLUTIONS:

#2011-62 – Consideration of Approving Appointment of Public Works Director John Collins. Mayor Vavricek submitted the appointment of John Collins for the City Engineer/Public Works Director starting March 14, 2011.

Motion by Gilbert, second by Niemann to approve Resolution #2011-62. Upon roll call vote, all voted aye. Motion adopted.

M. Collins thanked the Mayor and Council for the opportunity to serve the people of Grand Island.

#2011-63 – Consideration of Approving Redevelopment Plan for Real Estate Located at 620 West State Street (Five Points located along North Broadwell, North Eddy and West State Street). This item related to the aforementioned Public Hearing. Positive comments were made by Council regarding the redevelopment.

Motion by Haase, second by Gard to approve Resolution #2011-63. Upon roll call vote, all voted aye. Motion adopted.

#2011-64 – Consideration to Proceed with Closing the Union Pacific Railroad Crossing at Elm Street. Interim Public Works Director Gary Mader reported that Phase I Quiet Zone project was presented to the City Council on March 1, 2011. Installation of Wayside Horns at Elm Street/Union Pacific Railroad Crossing was estimated to be \$228,800. The Public Works Engineering recommended closing the Elm Street crossing at UPRR instead of constructing Wayside Horns for a savings of approximately \$208,800.

Discussion was held regarding when the Elm Street crossing would be closed. Mr. Mader stated possibly by the end of the year. The closing would coincide with the construction. Final closing would come back to Council for approval.

Motion by Carney, second by Gericke to approve Resolution #2011-64. Upon roll call vote, all voted aye.

PAYMENT OF CLAIMS:

Motion by Dugan, second by Nickerson to approve the Claims for the period of February 23, 2011 through March 8, 2011, for a total amount of \$2,587,712.22. Unanimously approved.

ADJOURN TO EXECUTIVE SESSION: Motion by Gilbert, second by Niemann to adjourn to Executive Session at 7:57 p.m. for the purpose of discussion concerning AFSCME, IAFF, FOP, IBEW – Finance, WWTP and Service/Clerical union negotiations for the protection of the public interest. Upon roll call vote, all voted aye. Motion adopted.

RETURN TO REGULAR SESSION: Motion by Gilbert, second by Ramsey to return to Regular Session at 10:34 p.m. Upon roll call vote, all voted aye. Motion adopted.

ADJOURNMENT: The meeting was adjourned at 10:34 p.m.

RaNae Edwards  
City Clerk



# **City of Grand Island**

**Tuesday, March 22, 2011**

**Council Session**

## **Item G2**

**Approving Minutes of March 15, 2011 City Council Study Session**

**Staff Contact: RaNae Edwards**

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL STUDY SESSION

March 15, 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 15, 2011. Notice of the meeting was given in the *Grand Island Independent* on March 9, 2011.

Mayor Jay Vavricek called the meeting to order at 6:00 p.m. The following Councilmember's were present: Chuck Haase, Larry Carney, Bob Niemann, Peg Gilbert, Mitch Nickerson, Linna Dee Donaldson, Randy Gard, and John Gericke. Councilmember Scott Dugan and Kirk Ramsey 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, and Public Works Director John Collins.

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

MAYOR COMMUNICATION: Mayor Vavricek introduced Community Youth Council members Sarah Ronne and board member Theresa Englehardt.

PRESENTATIONS AND PROCLAMATIONS:

Proclamation "Sunshine Week" March 13-19, 2011. Mayor Vavricek proclaimed the week of March 13-19, 2011 as "Sunshine Week". Don Smith representing The Grand Island Independent was present to receive the proclamation and spoke concerning the importance of openness in government.

OTHER ITEMS:

Presentation and Discussion Concerning Annexation Regional Planning Director Chad Nabity reported that annexation was the way cities grew. Cities were created to facilitate the infrastructure necessary for people to live together in close proximity.

The reason to present annexation at this time were:

- To determine the annexation policy preferences of this City Council
- To give notice to property owners that the City may be considering annexation
- To give notice to the Grand Island and Northwest School Districts that the City may be considering annexation
- To position the City for future growth
- To bring property that is developed near the City into the City Limits
- To allow the City to grow beyond the suburban development
- To provide for the extension of City Utilities (increase customer base)



- To increase the sales and property tax base of the City Of Grand Island to equitably split the cost of the benefits of being located near the City to everyone that benefits

Nebraska Statutes allow cities of the First Class to annex property that is adjacent to and contiguous with the municipal limits of the city and that is not agricultural land that is rural in nature. Mr. Nabity explained the process of annexation. Mentioned was the reason this was brought forward at this time was because anything annexed before the end of August would change the valuation/taxes for the School Districts.

Presented were 14 areas around the City of Grand Island that appeared to meet the qualification of being adjacent and contiguous and not agricultural land that was rural in nature.

The following six areas were recommended for Council to consider annexation with nominal upfront costs to the City:

<u>Area</u>	<u>Water</u>	<u>Sewer</u>
• Eagle Scout Park	\$100,000	\$20,000,000
• Vanosdal Fields	\$180,000	NE Interceptor
• Rainbow Lake Area		\$200,000
• 281 and Husker Highway		\$700,000
• North and Old Potash		
• 13 <sup>th</sup> and North		

Discussion was held concerning the timeline to put in infrastructure. Mr. Nabity stated it would depend on if districts were created.

The following County Industrial Parks were presented:

- Aurora Coop/Island Supply
- Platte Valley Construction
- Diamond Engineering
- Hornady

Discussion was held on the advantages of having a business in a County Industrial Park. Mr. Nabity stated they don't have to pay City sales tax. County Industrial tracts could be formed today. Mentioned was that these tracts receive all the services of being in the City including EDC funding. Police Chief Troy Hughes explained the service to Hornady since part of the building is within the City Limits and part in the County Industrial tract.

Utilities Director Gary Mader answered questions concerning Eagle Scout area and extending water service and the cost. The Utilities Department could handle the cost of \$100,000 and \$180,000 with a few years planning. Oversized lines for future growth would be paid by the water utility. Explained was the process of electric service to an annexed area that was served by a Rural Electric service.

Storm sewer, black top streets, and curb and gutter were mentioned. Impact fees were discussed. Mr. Nabity stated we would not be able to use impact fees as it was not allowed by State Statutes. Those communities that had Home Rule Charter were able to use an impact fee.

East Lakes area was reviewed. Mr. Nabity stated with the number of people in this area (approximately 1,000) would affect the redistricting of the Council Wards. Mentioned was the cost to the homeowners to connect to water. Fire Chief Troy Hughes stated the Fire Department responded to the East Lakes only on EMS services through an Interlocal, but not fire services.

Mr. Nabity explained the process if a property owner requested annexation. If they were contiguous to the City they could be annexed. Mentioned was that the Comprehensive Plan included these areas as potential areas to be annexed.

Interim City Administrator Mary Lou Brown commented on the Councils part in setting policy for City staff to move forward with annexation.

The following eight areas that were not recommended due to cost to the City were presented:

<u>Area</u>	<u>Water</u>	<u>Sewer</u>	<u>Electric</u>
• Airport Road	\$ 260,000	NE Interceptor	\$150,000
• Webb Road		NE Interceptor	
• St. Paul Road	\$ 150,000	NE Interceptor	
• East Lakes Area	\$2,700,000	NE Interceptor	
• Bismark Road			
• Wellfield Area		No Estimate	
• Schroeder Subdivision		\$ 780,000	\$500,000
• Stolley and Engleman	\$ 140,000	\$1,400,000	

Councilmember Gard stated that Bismark Road was no cost to the City and should be included in the annexation plan. Councilmember Gilbert commented on eventual expansion west to the Cornhusker Industrial Plant and the need for that to be included in the plan.

Mr. Nabity stated he would bring a Resolution to Council for the March 22, 2011 meeting for Council to identify which areas they wanted to move forward with annexation and a Resolution to have Hall County look at the County Industrial Parks as per State Statutes.

ADJOURNMENT: The meeting was adjourned at 8:38 p.m.

RaNae Edwards  
City Clerk



# **City of Grand Island**

**Tuesday, March 22, 2011**

**Council Session**

## **Item G3**

**#2011-65 - Approving Subordination Agreement for 322 East 10th Street**

**Staff Contact: Barbara Quandt**

# **Council Agenda Memo**

**From:** Barbara Quandt, Community Development

**Council Meeting:** March 22, 2011

**Subject:** Subordination Agreement for 322 East 10<sup>th</sup> Street

**Item #'s:** G-3

**Presenter(s):** Barbara Quandt  
Community Development Administrator

## **Background**

The City of Grand Island has a Deed of Trust filed on property owned by Rafael Esquivel and Cecilia Esquivel located at 322 East 10<sup>th</sup> Street, in the amount of \$13,900. On November 22, 2004, Community Development Block Grant funds in the amount of \$13,900 were loaned to Rafael Esquivel and Cecilia Esquivel, Husband and Wife, for down payment assistance for purchase of a home in the Community Development Block Grant program. The legal description is:

Lot One (1), H. A. Subdivision in the City of Grand Island, Hall County, Nebraska.

The owner is requesting permission from the City to subordinate to a new mortgage amount and accept second position to the first mortgage. The City is in second position with the current mortgage, and Wells Fargo Bank, N.A. is in senior position. The owner is refinancing the current mortgage for a better rate/term and Wells Fargo requests first position remain with them.

## **Discussion**

The City's current Deed of Trust is junior in priority to a Deed of Trust to Wells Fargo Bank N.A. in the amount of \$57,211.00, which has a balance of \$42,316.87. A new lien in the amount of \$45,450.00 with Wells Fargo Bank, N.A. would replace the senior Deed of Trust. By law, the new Deed of Trust would be junior in priority to the City's lien;

however, the Wells Fargo Bank, N.A., has asked the City to subordinate its Deed of Trust to the new Deed of Trust.

The new appraised value of the property is \$72,000.00 and is sufficient to secure the first mortgage of \$45,450.00 and the City's mortgage of \$13,900.00. This new Deed of Trust would accommodate the "Rate-Term Refinance" which would reduce the annual interest rate from 5.875% for 30 years to 4.5% for 15 years with a very minimal increase in the monthly payment. The City's loan of \$13,900.00 will be forgiven if the original owners of the property (Rafael and Cecilia Esquivel) reside in the house for a period of 10 years from the date the lien was filed, which was November 23, 2004. The lien amount decreases 10% per year and has a current balance of \$5097.00.

### **ALTERNATIVES**

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

1. Approve the Subordination Agreement
2. Refer the issue to a Committee
3. Postpone the issue to a later date
4. Take no action on the issue

### **RECOMMENDATION**

City Administration recommends that the Council approves the Subordination Agreement with Wells Fargo Bank, N.A., placing the City in the junior position to the new Deed of Trust.

### **Sample Motion**

Move to recommend approval of the Subordination Agreement with Wells Fargo Bank, N.A., placing the City in the junior position to the new Deed of Trust.

## SUBORDINATION AGREEMENT

COMES NOW the City of Grand Island, Nebraska, secured party/beneficiary and hereby partially subordinates its trust deed/real estate lien recorded November 23, 2004 on the following described real estate:

Lot One (1), H.A. Subdivision, in the City of Grand Island, Hall County, Nebraska,  
a/k/a 322 E. 10<sup>th</sup> Street

It is the intent of this Agreement that the trust deed for amounts loaned by Wells Fargo Bank, N.A. to Rafael Esquivel and Cecilia Esquivel (Borrowers) that has been or is about to be filed, shall be superior to the trust deed/real estate lien of the City of Grand Island, its successors and assigns recorded November 23, 2004, up to the amount of \$45,450.00 plus interest and amounts advanced to protect the collateral. Thereafter, the City of Grand Island's lien shall have priority. It is further understood that this subordination shall include all current obligations, extensions, renewals, advances or modifications made by the City of Grand Island, Nebraska to Borrowers which is secured by the trust deed/real estate lien recorded November 23, 2004 as Document Number 0200411385 in the records of the Register of Deeds of Hall County, Nebraska. Nothing in this Subordination Agreement is intended as a promise to provide financing or make advances to Borrowers by the City of Grand Island, Nebraska and it is not the intention of the City of Grand Island, Nebraska to warrant or guarantee the obligations of Borrowers but merely to partially subordinate its lien interests under the instrument recorded at Document Number 0200411385. It is understood that Wells Fargo Bank, N.A. intends to lend funds to Borrowers but that the subordinated amount is not to exceed \$45,450.00 plus interest and amounts advanced to protect the collateral.

Nothing in this instrument is intended to relieve Borrowers of their obligation to the City of Grand Island, Nebraska or to subordinate any other lien interests including, but not limited to, real estate taxes and special assessments.

Dated: \_\_\_\_\_ City of Grand Island, Nebraska

STATE OF NEBRASKA        )  
                                      )ss.  
COUNTY OF HALL         )

By \_\_\_\_\_  
Jay Vavricek, Mayor

The foregoing instrument was acknowledged before me on \_\_\_\_\_,  
2011, by Jay Vavricek, Mayor of the City of Grand Island, Nebraska.

\_\_\_\_\_  
Notary Public

### **SUBSTITUTION OF TRUSTEE**

Jason Eley, attorney at law, is hereby appointed successor trustee under the trust deed executed by Rafael Esquivel and Cecilia Esquivel as Trustors, in which the City of Grand Island is named Beneficiary and Doug Walker, Grand Island City Attorney, as Trustee, and filed for record November 23, 2004 and recorded as Instrument No. 0200411385 in the office of the Register of Deeds of Hall County, Nebraska. The trust property affected is legally described as follows:

Lot One (1), H. A. Subdivision in the City Of Grand Island, Hall County, Nebraska.

Beneficiary also requests reconveyance.

\_\_\_\_\_  
Jay Vavricek, Mayor

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF HALL        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned , a General Notary Public, duly commissioned and qualified, personally came Jay Vavricek, Mayor, and acknowledged the execution of this substitution to be his voluntary act and deed on behalf of the Beneficiary.

WITNESS my hand and notary seal the day and year last above written.

\_\_\_\_\_  
Notary Public

RESOLUTION 2011-65

WHEREAS, the City of Grand Island, is the lender and secured party of a Deed of Trust dated November 22, 2004 and recorded on November 23, 2004, as Instrument No.0200411385, in the amount of \$13,900.00, secured by property located at 322 E. 10th Street and owned by Rafael Esquivel and Cecilia Esquivel, husband and wife, said property being described as follows:

Lot One (1), H. A. Subdivision, in the City of Grand Island, Hall County, Nebraska.

WHEREAS, Rafael Esquivel and Cecilia Esquivel wish to execute a Deed of Trust and Note in the amount of \$45,450.00 with Wells Fargo Bank, N.A., to be secured by the above-described real estate conditioned upon the City subordinating its Deed of Trust to their lien priority; and

WHEREAS, the value of the above-described real estate is sufficient to adequately secure both loans.

WHEREAS, the requested subordination of the City's lien priority is in the best interests of all parties.

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 execute an agreement subordinating the lien priority of the above described Deeds of Trust from Rafael Esquivel and Cecilia Esquivel, husband and wife, to the City of Grand Island, as beneficiary to that of the new loan and Deed of Trust of Wells Fargo Bank, N.A., Beneficiary, as more particularly set out in the subordination agreement.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2011.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

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

Approved as to Form	☐ _____
March 18, 2011	☐ City Attorney





# **City of Grand Island**

**Tuesday, March 22, 2011**

**Council Session**

## **Item G4**

**#2011-66 - Approving Bid Award for Concrete Pavement and Storm Sewer Repairs for 2011**

**Staff Contact: John Collins, Public Works Director**

# **Council Agenda Memo**

**From:** Scott Johnson, Street Superintendent

**Meeting:** March 22, 2011

**Subject:** Approving Bid Award for Concrete Pavement and Storm Sewer Repairs for 2011

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

**Presenter(s):** John Collins, Public Works Director

## **Background**

On February 18, 2011 the Streets Division of the Public Works Department advertised for bids for concrete pavement and storm sewer repairs for the calendar year 2011. The contracted concrete pavement and storm sewer work supplements the repair work that is performed by the City's patching crews.

## **Discussion**

Two (2) bids were received and opened on March 9, 2011. All bids were submitted in compliance with the contract, plans, and specifications with no exceptions. A summary of the bids is shown below.

<b>Vendor</b>	<b>Exceptions</b>	<b>Total Bid</b>
O.K. Paving of Hordville, NE	None	\$662,780.00
The Diamond Engineering Co. of Grand Island, NE	None	\$763,894.00

There are sufficient funds in Account No. 10033506-85351 (Concrete Repair), 10033504-85318 (Storm Sewer Repair), and 10033503-85318 (Curb & Gutter) to fund this contract. This is a calendar year contract that extends beyond the current fiscal year. In the event that funds become unavailable in the fiscal year 2010/2011, the scope of work for this contract will be scaled down accordingly.

## **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 to O.K. Paving, Inc. of Hordville, Nebraska for the amount of \$662,780.00

## **Sample Motion**

Move to approve the bid award.

*Purchasing Division of Legal Department*  
**INTEROFFICE MEMORANDUM**



Jason Eley, Purchasing Agent

*Working Together for a  
Better Tomorrow, Today*

**BID OPENING**

**BID OPENING DATE:** March 9, 2011 at 2:00 p.m.

**FOR:** Concrete Pavement and Storm Sewer Repair 2011

**DEPARTMENT:** Public Works

**ESTIMATE:** \$800,000.00

**FUND/ACCOUNT:** 10033506-85351  
10033504-85318  
10033503-85318

**PUBLICATION DATE:** February 18, 2011

**NO. POTENTIAL BIDDERS:** 6

**SUMMARY**

<b>Bidder:</b>	<b><u>Diamond Engineering Co.</u></b> Grand Island, NE	<b>OK Paving, Inc.</b> Hordville, NE
<b>Bid Security:</b>	<b>Universal Surety Company</b>	<b>\$33,139.00</b>
<b>Exceptions:</b>	<b>None</b>	<b>None</b>
<b>Bid Price:</b>	<b>\$763,894.00</b>	<b>\$662,780.00</b>

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

**P1467**

RESOLUTION 2011-66

WHEREAS, the City of Grand Island invited sealed bids for Concrete Pavement and Storm Sewer Repairs 2011, according to plans and specifications on file with the Streets Division of the Public Works Department; and

WHEREAS, on March 9, 2011, bids were received, opened and reviewed; and

WHEREAS, OK Paving of Hordville, 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 \$662,780.00; and

WHEREAS, OK Paving's bid is less than the estimate for such project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of OK Paving of Hordville, Nebraska, in the amount of \$662,780.00 for Concrete Pavement and Storm Sewer Repairs 2011 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 22, 2011.

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Jay Vavricek, Mayor

Attest:

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RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 18, 2011	☐ City Attorney



# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item G5

**#2011-67 - Approving Acquisition of Utility Easement - North of Swift's Wastewater Treatment Facility, east of the Plant - Conagra Beef Company JBS USA, LLC**

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

Staff Contact: Gary R. Mader

RESOLUTION 2011-67

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

WHEREAS, a public hearing was held on March 22, 2011, for the purpose of discussing the proposed acquisition of an easement located in the City of Grand Island, Hall County, Nebraska; and more particularly described as follows:  
described as follows:

Commencing at the southwest corner of Lot Sixty Three (63), Industrial Addition to the City of Grand Island; thence northerly along the westerly line of said Lot Sixty Three (63), a distance of one hundred thirty nine (139.0) to the ACTUAL Point of Beginning; thence deflecting right 83°11'52" and running northeasterly, a distance of four hundred nineteen (419.0) feet.

The above-described easement and right-of-way containing a total of 0.19 acres, more or less, as shown on the plat dated 2/25/2011, marked Exhibit "A" attached hereto and incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island be, and hereby is, authorized to acquire a public utility easement from Conagra Beef Company JBS USA, LLC, on the above-described tracts of land.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2011.

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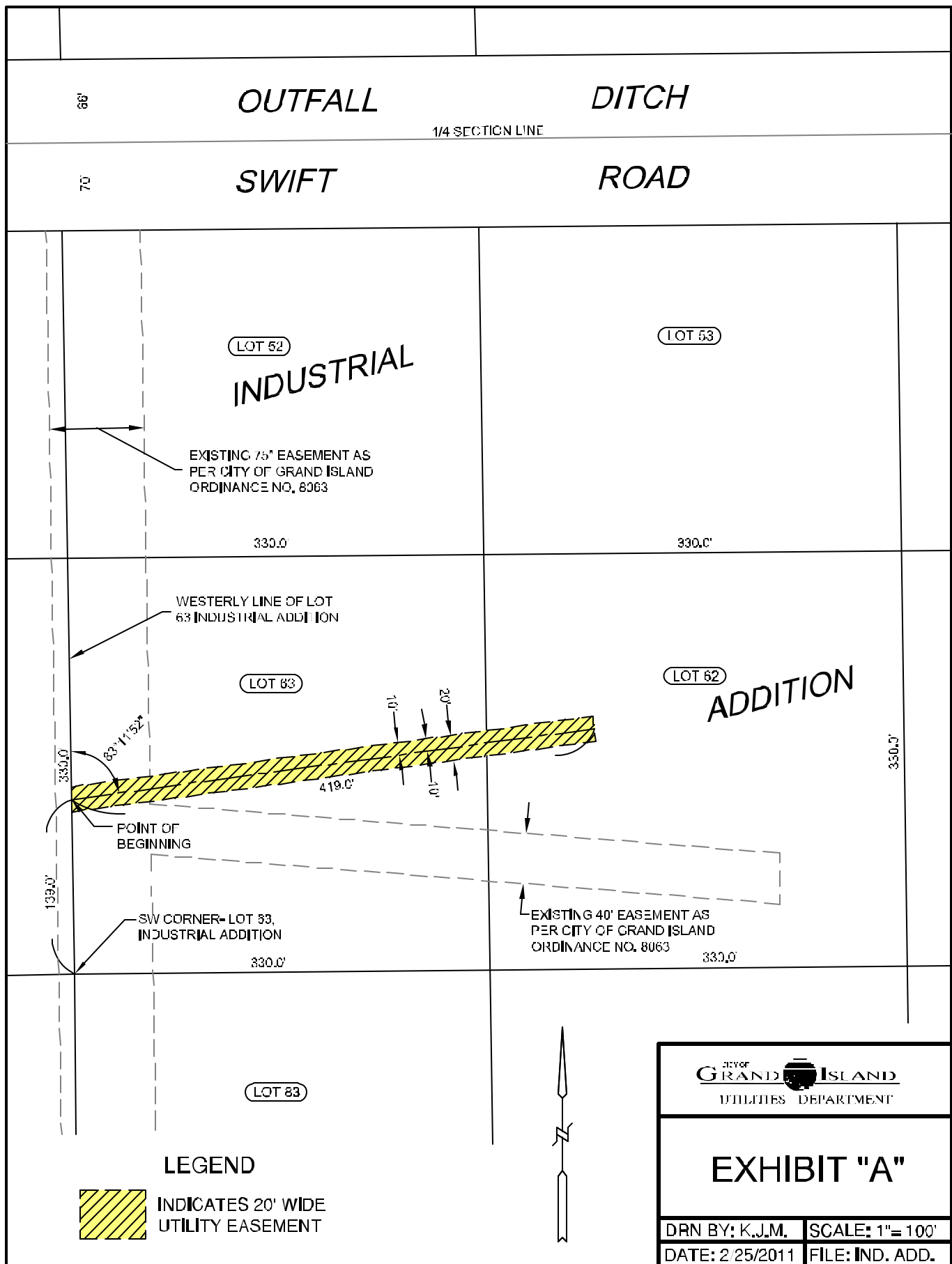
Jay Vavricek, Mayor

Attest:

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RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 18, 2011	☐ City Attorney







# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item G6

**#2011-68 - Approving Change Order #1 - Water Main District  
456T - Engleman Road and Old Potash Hwy.**

Staff Contact: Gary R. Mader

# **Council Agenda Memo**

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

**Meeting:** March 22, 2011

**Subject:** Water Main District 456T – Engleman Road and Old Potash Highway – Change Order #1

**Item #'s:** G-6

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

## **Background**

The referenced water main district is located in the westerly part of the City of Grand Island. The project will extend the main in Old Potash Highway westerly approximately 600 feet to Engleman Road, then northerly for one mile to the existing water main in 13<sup>th</sup> Street. When completed, the project will provide improved water flows, pressures, and redundancy to the northwest area of the City. A location site map is attached for reference. Diamond Engineering, of Grand Island, was the successful bidder for this project.

The current contract amount is \$497,326.50. The contractor proposes a change to the size of the water line casing to be installed under Old Potash Highway. The Change Order would decrease the amount of the contract by \$657.00. The new contract amount would be \$496,669.50.

## **Discussion**

The originally specified casing was a 32" diameter x 0.500" thick steel casing. This sizing is from the Grand Island Specifications Division VI, Section 35.02 and Standard Plan 141A.

Diamond Engineering is proposing to use instead a 30" diameter x 0.368" steel casing. That size is an industry standard diameter and more readily available. It will meet the specified clearance requirements between the casing and the new water line. The proposed replacement casing wall thickness exceeds the minimum wall thickness specified by the Nebraska Department of Roads for pipelines crossing highways, and the

proposed replacement casing also complies with all other terms of the specifications including minimum yield and tensile strength, and inside and outside protective coatings.

Attached for reference are copies of Diamond Engineering's letter of request, their subcontractor's letter of material certification, and copies of the Nebraska Department of Roads – Policy for Accommodating Utilities on State Highway Right-of-Way; Construction of Pipelines, Section V.

### **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 Change Order #1 with the Diamond Engineering Company, reducing the original contract award amount of \$497,326.50 to \$496,669.50, which would reduce the contract in the amount of \$657.00.

### **Sample Motion**

Move to approve Change Order #1 with the Diamond Engineering Company to allow use of the proposed replacement casing and to reduce the contract amount by \$657.00.



CHANGE ORDER #1

TO: The Diamond Engineering Company  
1521 West Anna Street  
PO Box 1327  
Grand Island, NE 68802-1327

PROJECT: Water Main District 456T  
Old Potash Highway and Engleman Road

You are hereby directed to make the following change in your contract:

1. Amend Contractor's Bid, Page C-1, Item C.1.01 – 32" Dia. x 0.500 Steel Casing x 73.0 L.F. x \$383.10/FT for a total price of \$27,966.30; and replace with 30" Dia. x 0.368" Steel Casing x 73.0 L.F. x \$374.10/FT for a total price of \$27,309.30, or a deduction of \$657.00.

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<b>ORIGINAL CONTRACT AMOUNT</b>	<b>\$497,326.50</b>
<b>Change Order #1</b>	<b>\$ <u>657.00</u></b>
<b>AMENDED CONTRACT AMOUNT</b>	<b>\$496,669.50</b>

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Approval and acceptance of this Change Order acknowledges understanding and agreement that the original contract amount of \$497,326.50 will be reduced by \$657.00 for an amended contract amount of \$496,669.50. Additional claims will not be considered.

APPROVED: **CITY OF GRAND ISLAND**

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

Date: \_\_\_\_\_

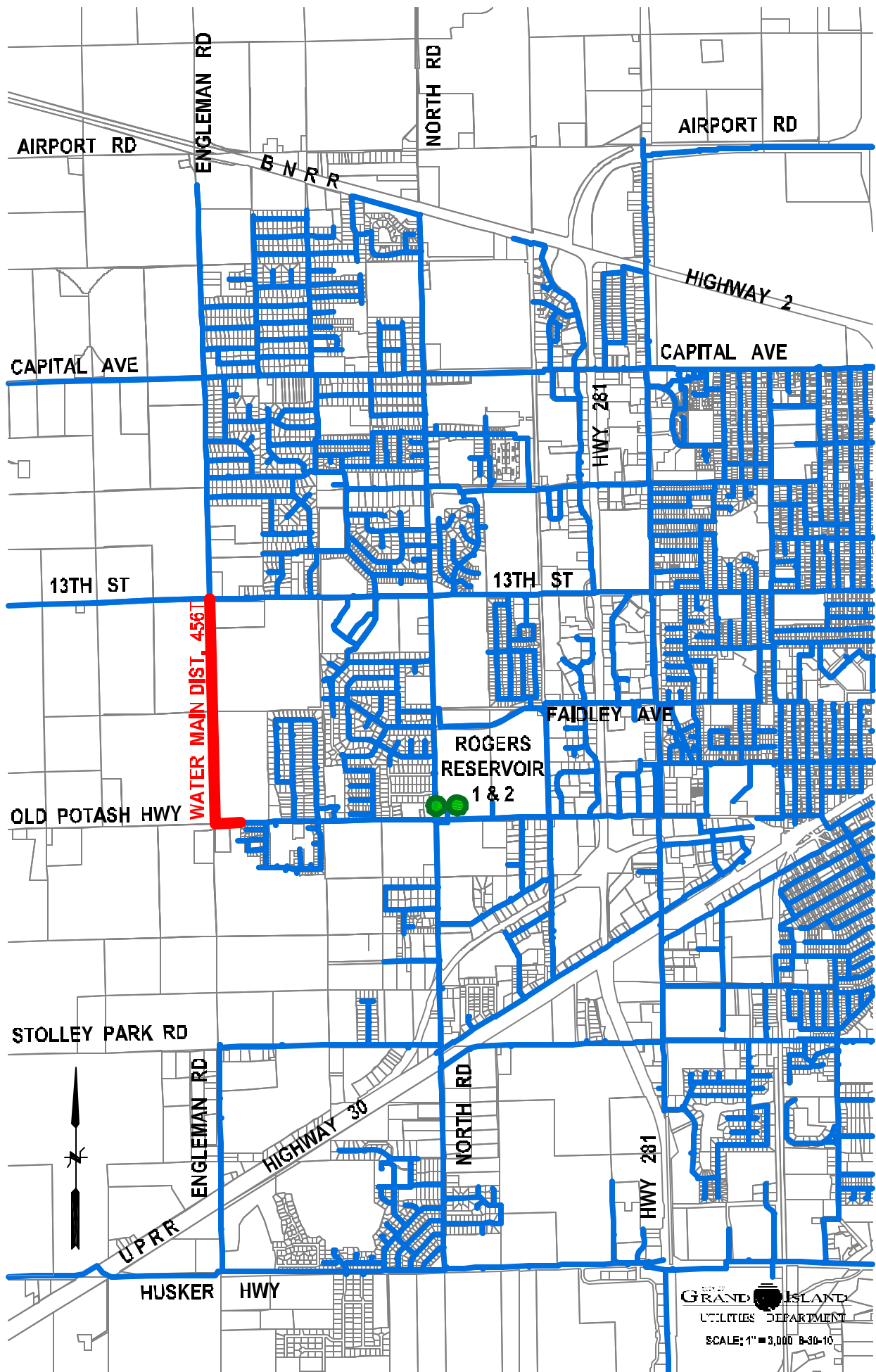
Attest: \_\_\_\_\_

\_\_\_\_\_  
Approved as to Form, City Attorney

ACCEPTED: **THE DIAMOND ENGINEERING COMPANY**

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

Date: \_\_\_\_\_



March 2, 2011

Tom Barnes  
City of Grand Island  
Utilities Department  
P.O. Box 1968  
Grand Island, Ne 68802

COPY

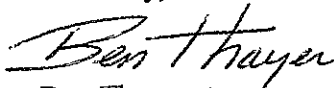
Re: Water Main District No. 456T Old Potash Hwy & Engleman Rd

Dear Mr. Barnes,

The purpose of this letter is to provide additional information as per your request regarding the 30" diameter steel casing we proposed in our letter of February 17, 2011.

- The 32" diameter casing specified in the contract documents is an odd size to the construction industry. It is difficult to find this size of casing and the required bore auger to install it.
- Our proposed 30" casing is an industry standard. The 30" casing is of adequate size to provide 4" of space between the outside diameter of the 20" carrier pipe and the inside diameter of the 30" casing as per City of Grand Island Standard Plan No. 141A.
- We propose to coat the inside and outside of the casing with two coats of IA 31 Asphaltic Coating manufactured by Iowa Paints.
- The City of Grand Island Specification requires a casing wall thickness of 0.500". This wall thickness is typically used for bores beneath railroad tracks which carry extremely heavy loads. Our proposed wall thickness of 0.368" exceeds the minimum wall thickness of 0.312" required by the State of Nebraska Department of Roads Policy for Accommodating Utilities on State Highway Right-of-Way Expressway, Major Arterial, and Scenic Highways.
- We offer a deduct in the amount of \$9.00 per linear foot of casing for a total estimated cost savings of \$657.00 for the 73 linear feet of casing called for in the contract.

Sincerely,



Ben Thayer  
Project Coordinator  
Diamond Engineering

Copy: K.W. Boring

**THE DIAMOND ENGINEERING CO.**  
**ENGINEERS AND CONTRACTORS**

February 17, 2011

Tom Barnes  
City of Grand Island  
Utilities Department  
P.O. Box 1968  
Grand Island, Ne 68802

COPY

Re: Water Main District No. 456T Old Potash Hwy & Engleman Rd

Dear Mr. Barnes,

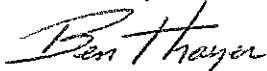
This letter is in response to your January 25, 2011 request for additional information on the 30" diameter steel casing our subcontractor proposes to use for the bore beneath Old Potash Highway. Enclosed please find:

- Letter of Certification from Crestwood Tubulars, Inc
- Nebraska Department of Roads (NDOR) Policy for Accommodating Utilities on State Highway Right-of Way, Part II

The steel casing proposed is 0.368" wall thickness. The NDOR requires a minimum wall thickness of 0.312" for 28" to 34" casing (table on page 13). The NDOR does not require a coating or lining.

There will be a cost savings offered to the City if this material substitution is acceptable.

Sincerely,



Ben Thayer  
Project Coordinator  
Diamond Engineering

Copy: K.W. Boring



***CRESTWOOD TUBULARS, INC.***

P.O. Box 6950  
ST. LOUIS, MO 63123  
800-238-7473  
314-842-8604  
(FAX) 314-842-9064

November 15, 2010

K.W. Boring  
P.O. Box 390665  
Omaha, NE 68139  
Fax: 402-896-4042  
Attn: Wendy

COPY

**Letter of Certification**

The 320' of 30" X .368 new surplus steel pipe supplied on invoice #24145 will meet or exceed the minimum yield & tensile requirements of ASTM A139-B:

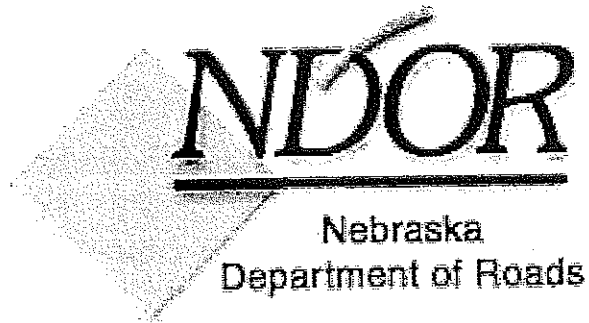
35,000 p.s.i. min. yield  
60,000 p.s.i. min tensile

Sincerely

Ross Hammond  
Crestwood Tubulars, Inc.



COPY



**Policy for  
Accommodating Utilities  
on  
State Highway  
Right-of-Way  
2001**

**Project Development Division**

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Director  
Nebraska Department of Roads

---

Date

- (4) All voids or abandoned holes caused by boring or jacking are to be filled by pressure grouting when deemed necessary by the NDOR or appropriate governmental subdivision representative.
- (C) The hole diameter resulting from bored or tunneled installations shall not exceed the outside diameter of the utility pipe, cable or casing (including coating) by more than 38 mm (1-1/2 inches) on pipes with an inside diameter of 300 mm (12 inches) or less or 50 mm (two inches) on pipes with an inside diameter greater than 300 mm (12 inches). Voids outside pipes or casings that exceed these limitations shall be pressure grouted.

### **Section V – Encasement**

- (A) An encasement shall be an oversize load-bearing casing, through which a carrier pipe is inserted in order to protect the roadway from damage and to provide for repair, removal or replacement of the pipeline without interference to highway traffic.

- (1) Encasement material:

Welded steel pipe meeting the Standard Specifications for electric fusion (arc-welded) steel pipe (designation A53 or A1 39 grade B) as specified in American Petroleum Institute Code #1102 or API 5L. (See page 13 for minimum wall thickness.)

For Plastic Polyvinyl Chloride Pipe (PVC) and Plastic Polyethylene Pipe (PE), see page 14 for minimum wall thickness.

- (2) Size of encasement:

The minimum diameter casing shall be at least two (2) nominal pipe sizes larger than the nominal size of the facility being encased, but in no case shall the casing be less than 50 mm (two inches) greater than the outside diameter of the facility being encased.

- (3) Transverse casing length:

- (a) Pipelines [except when flexible pipe is used as indicated in (b), (c) and (d) below] crossing highways with a diameter greater than 50 mm (two inches) shall wherever feasible have as a minimum, casing extending from the toe of the fill slope to the toe of the fill slope on the opposite side of the traveled way or 1.8 m (six feet) back of the curb.

- (b) Flexible pipe crossing the highway regardless of size and meeting the specifications (manufacturers' certification) under paragraphs (A) and (B) on pages 15 and 16 shall be cased as a minimum from the toe of the fill slope to the toe of the fill slope on the opposite side of the traveled way or 1.8 m (six feet) back of the curb wherever feasible.

(B) Utility Markers on the Right-of-Way:

Adequate markers shall be placed on the right-of-way line. The markers shall give the name and address of the owner and phone number to contact in case of emergency.

**Section III – Underground Electrical Power and Communication Lines Crossing Highways Currently under Construction**

Installation of underground electrical power and communication lines across or on highway construction projects may be permitted generally in accordance with the conditions of this policy if it is determined to be in the best interest of the traveling public by a representative of the NDOR or appropriate governmental subdivision having jurisdiction over the highway.

The approved methods of installation shall include open trenching, jacking, boring or tunneling. Other methods may be considered on an individual basis.

**Section IV – Direct Bury Cable**

Direct bury cable may be placed within the highway right-of-way; but, direct bury cable placed under the traveled way without casing shall have the diameter of the bored holes no more than 38 mm (1-1/2 inches) larger than the outside diameter of the cable.

**Section V – Encasement**

An easement shall be an oversize load bearing casing, conduit or duct through which a cable is inserted in order to protect the roadway from damage and to provide for repair, removal or replacement of the cable without interference to highway traffic. It is the responsibility of the owner of the utility facility to ensure that it complies with all applicable local, state, federal and franchise requirements and meets generally accepted industry standards in the selection of encasement materials.

(A) Encasement material:

- (1) Welded Steel Pipe, Smooth Wall that is in sound condition. Welded Steel Pipe shall have the following minimum wall thickness:

**Encasement Specifications**

Casing Diameter	Minimum Wall Thickness
Under 150 mm (6 in.)	Standard wall pipe of 5 mm (0.188") wall, as preferred
150 mm – 400 mm ( 6" – 16")	5 mm (0.188")
450 mm – 550 mm (18" – 22")	6 mm (0.250")
600 mm – 650 mm (24" – 26")	7 mm (0.281")
700 mm – 850 mm (28" – 34")	8 mm (0.312")
900 mm – 1200 mm (36" – 48")	8.7 mm (0.344")

RESOLUTION 2011-68

WHEREAS, the Diamond Engineering Company of Grand Island, Nebraska, was awarded the contract for Water Main District 456T, Engleman Road and Old Potash Highway, at the November 23, 2010 City Council meeting in the amount of \$497,326.50; and

WHEREAS, Diamond Engineering is proposing to use a different size steel casing that is an industry standard and more readily available than the specified casing; and

WHEREAS, the proposed replacement casing would result in a net contract price decrease of \$657.00; and

WHEREAS, Change Order #1 was prepared for the final construction contract adjustment, resulting in a final contract amount of \$496,669.50.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that Change Order #1 with the Diamond Engineering Company of Grand Island, Nebraska resulting in a final contract price of \$496,669.50, is hereby approved.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2011.

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Jay Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk



# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item G7

**#2011-69 - Approving Bid Award - Boiler Fan Motor  
Refurbishment at Platte Generating Station**

Staff Contact: Gary R. Mader

# **Council Agenda Memo**

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

**Meeting:** March 22, 2011

**Subject:** Boiler Fan Motor Refurbishment

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

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

## **Background**

The two original motors for the Boiler Draft Fans at Platte Generating Station are over 30 years old and were replaced in October, 2010, with new motors at a cost of \$350,000. These fan motors are critical to unit operation. Should either of the motors fail, the power plant would not operate. Delivery times for new motors are several months. Therefore, the original motors are planned to be retained as spares. They were sent to a repair center for inspection, where the repairs required to refurbish the motors to “as-new” specifications were determined. Based on the inspection results, specifications were developed by plant staff for motor refurbishment and issued in accordance with City purchasing procedures.

## **Discussion**

The specifications for the Boiler Fan Motor Refurbishment were advertised and issued for bid in accordance with the City Purchasing Code. Bids were publicly opened on March 8, 2011. Specifications were sent to seven potential bidders. Responses were received as listed below. The engineer’s estimate for this project was \$120,000.00.

Bidder	Bid Price
Siemens Industry	\$ 34,113.74
Illinois Electric Works	\$ 92,125.00

The bids were reviewed by plant engineering staff. The bid from Siemens did not include the specified rewinding of the induced draft fan motor and was therefore deemed noncompliant with the specifications. The bid from Illinois Electric Works is compliant with specifications and less than the engineer’s estimate.

## **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 award the Contract for Boiler Fan Motor Refurbishment to Illinois Electric Works of Granite City, Illinois, as the low responsive bidder, with the bid price of \$92,125.00.

## **Sample Motion**

Move to approve the bid of \$92,125.00 from Illinois Electric Works for the Boiler Fan Motor Refurbishment as submitted.

*Purchasing Division of Legal Department*  
**INTEROFFICE MEMORANDUM**



Jason Eley, Purchasing Agent

*Working Together for a  
Better Tomorrow, Today*

**BID OPENING**

**BID OPENING DATE:** March 8, 2011 at 2:00 p.m.  
**FOR:** Boiler Fan Motor Refurbishment 2011  
**DEPARTMENT:** Utilities  
**ESTIMATE:** \$120,000  
**FUND/ACCOUNT:** 520  
**PUBLICATION DATE:** February 17, 2011  
**NO. POTENTIAL BIDDERS:** 7

**SUMMARY**

<b>Bidder:</b>	<u>Illinois Electric Works</u> Granite City, IL	<u>Siemens</u> Kansas City, MO
<b>Bid Security:</b>	\$4,606.25	Federal Insurance Company
<b>Exceptions:</b>	Noted	Noted
<b>Bid Price:</b>		
<b>Material:</b>	\$37,500.00	\$ Included
<b>Labor:</b>	\$52,000.00	\$31,882.00
<b>Sales Tax:</b>	<u>\$ 2,625.00</u>	<u>\$ 2,231.74</u>
<b>Total Bid:</b>	\$92,125.00	\$34,113.74

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.  
Tim Luchsinger, Assist. Utilities Director

**P1466**



RESOLUTION 2011-69

WHEREAS, the City of Grand Island invited sealed bids for Boiler Fan Motor Refurbishment at Platte Generating Station, according to plans and specifications on file with the Utilities Department; and

WHEREAS, on March 8, 2011, bids were received, opened and reviewed; and

WHEREAS, Illinois Electric Works of Granite City, Illinois, 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 \$92,125.00; and

WHEREAS, the bid of Illinois Electric Works is less than the estimate for the Boiler Fan Motor Refurbishment.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Illinois Electric Works of Granite City, Illinois, in the amount of \$92,125.00 for Boiler Fan Refurbishment is hereby approved as the lowest responsible bid.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2011.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

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



# **City of Grand Island**

**Tuesday, March 22, 2011**

**Council Session**

## **Item G8**

**#2011-70 - Approving Request that Hall County Review the  
County Industrial Tracts within the City Limits**

**Staff Contact: Chad Nabity**

# **Council Agenda Memo**

**From:** Chad Nabity, AICP  
**Meeting:** March 22, 2011  
**Subject:** County Industrial Tract Resolution  
**Item #'s:** G-8  
**Presenter(s):** Chad Nabity, AICP

## **Background**

In 1957 the State of Nebraska allowed for the creation of County Industrial Tracts near municipalities for the purpose of encouraging industrial development. Under the original law it was not possible for cities to annex property designated as a County Industrial Tract as long as the property was used for industrial purposes. Nebraska Statute §13-1111 identifies those allowed uses:

### **13-1111. Terms, defined; application for designation; exceptions.**

As used in sections 13-1111 to 13-1120, unless the context otherwise requires: (1) Industrial area shall mean a tract of land used or reserved for the location of industry, except that such land may be used for agricultural purposes until the use is converted for the location of industry as set forth in sections 13-1111 to 13-1120; and (2) industry shall mean (a) any enterprise whose primary function is to manufacture, process, assemble, or blend any agricultural, manufactured, mineral, or chemical products; (b) any enterprise that has as its primary function that of storing, warehousing, or distributing, and specifically excluding those operations whose primary function is to directly sell to the general public; or (c) any enterprise whose primary function is research in connection with any of the foregoing, or primarily exists for the purpose of developing new products or new processes, or improving existing products or known processes. The owner or owners of any contiguous tract of real estate containing twenty acres or more, no part of which is within the boundaries of any incorporated city or village, except cities of the metropolitan or primary class, may file or cause to be filed with the county clerk of the county in which the greater portion of such real estate is situated if situated in more than one county, an application requesting the county board of such county to designate such contiguous tract as an industrial area.

Two County Industrial Tract Areas were approved by Hall County in 1958. The first is an area near Adams Street and Anna Street; the remaining portions of this area include the

property where Diamond Engineering, Platte Valley Construction, Aurora Coop and Island Supply are located. The second area includes the location of Hornady Manufacturing at Old Potash Highway and Claude Road.

Statutes were amended to include §13-1121 so that beginning in 1980 counties could review County Industrial Tracts for compliance with §13-1111 or that cities could request that counties conduct this review in March of even numbered years.

**13-1121. Designation; review by county board; notice; hearing; removal of designation**

Beginning in 1980 and every even-numbered year thereafter during the month of March, the appropriate county board may, of its own volition or shall, at the request of the municipal governing body having zoning jurisdiction over the designated industrial tract, review any or all industrial areas in its jurisdiction. When the review is at the request of the municipal governing body having zoning jurisdiction over the designated industrial tract, the county board shall notify such municipal governing body of the date, time, and location of the review. If the county board determines during the review that there is a problem with the industrial area designation of any tract, or a portion of such tract, the county board shall give notice of a hearing by registered or certified mail to the owners of the tract, or a portion of such tract, if such owners are known, within ninety days prior to the hearing, and if the owners are not known or cannot be located, then by publishing a notice three successive weeks in some newspaper published and of general circulation in the county or counties in which the real estate is located, and if no newspaper is published in the county, such notice shall be published in some newspaper having a general circulation in such county. If after the hearing the county board finds that the industrial area or a portion thereof is no longer suitable for industrial purposes, or is being used for nonindustrial enterprises, or has had no improvements or industrial buildings thereon within seven years from the date of original industrial designation, or is not in compliance with the zoning ordinances of any city or village exercising zoning control of it, or is not platted in accordance with such zoning ordinances or is no longer in compliance with the definition of industry as set forth in section 13-1111, such county board shall remove the designation of industrial area from such tract or portion of such tract. Any tract or portion of such tract used or reserved for industry prior to August 24, 1979, shall not be removed from the industrial area designation against the wishes of its owners as long as the use of such tract or portion continues to be in compliance with the definition of industry as set forth in section 13-1111. A certified copy of such order shall be filed with the register of deeds and the county assessor of the county or counties in which the real estate is located.

It is not known if Hall County has ever conducted such a review. The next time that Hall County can conduct this review is in March of 2012.

## **Discussion**

The City does not have any authority to annex these properties but can request that Hall County review the uses in the County Industrial Tracts to confirm that they are still consistent with the intent of the law. If the County finds that the uses are not consistent they are required to hold a hearing, make finding and if they find that the property is not being used in a manner consistent with §13-1111 remove the County Industrial Tract designation. At that point the property becomes eligible for annexation.

The attached resolution is a formal request from the City of Grand Island asking Hall County to conduct this review in March of 2012.

## **Alternatives**

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

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

## **Recommendation**

City Administration recommends that the Council approve the resolution and identify in the motion or motions which areas staff should concentrate on when preparing annexation plan and recommendations.

## **Sample Motion**

Move to approve Resolution #2011-70 requesting that Hall County review the County Industrial Tracts adjacent to the City of Grand Island in March of 2012.

R E S O L U T I O N   2011-70

WHEREAS, there are four areas within the City of Grand Island that have been designated by Hall County as County Industrial Tracts; and

WHEREAS, all four of these County Industrial Tract areas are surrounded by the municipal limits of the City of Grand Island; and

WHEREAS, the City of Grand Island desires to provide municipal services throughout the City in an efficient and cost effective manner; and

WHEREAS, these County Industrial Tracts are holes in the middle of the city that may cause confusion about who is responsible for providing services; and

WHEREAS, the Nebraska Revised State Statutes §13-1121 gives the City the authority to request that Hall County review these County Industrial Tracts to insure that they comply with the use limitation as defined in §13-1111 in March of even numbered years, and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, do hereby request that Hall County conduct a review of the four areas designated as county industrial tracts as shown on the attached map to determine if they should still qualify as county industrial tracts in March of 2012.

- - -

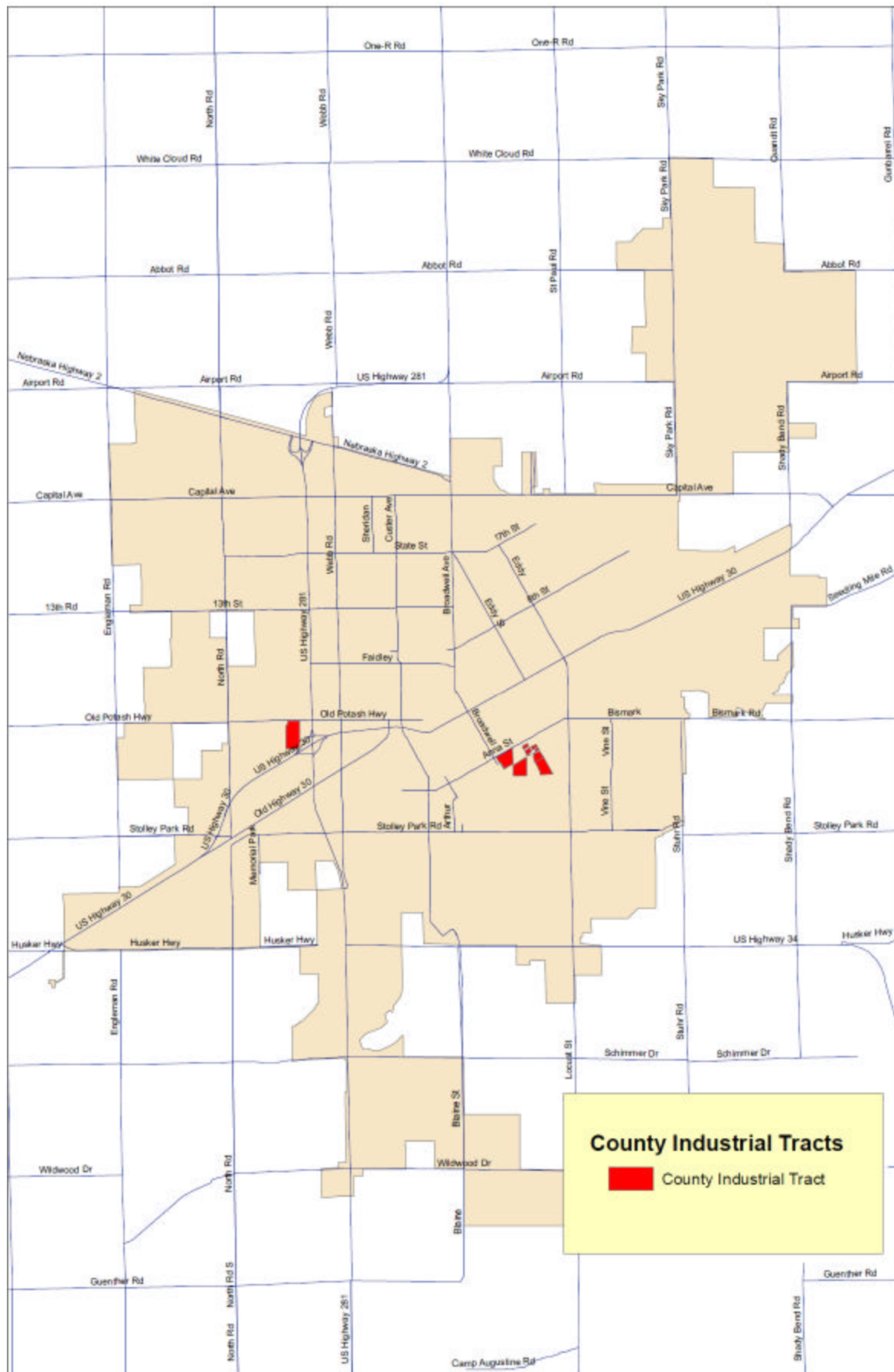
Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2011.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

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

Approved as to Form <input type="checkbox"/> _____ March 18, 2011 <input type="checkbox"/> City Attorney
---





# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item G9

**#2011-71 - Approving Physio-Control Monitors Maintenance Contract**

Staff Contact: Troy Hughes



# **Council Agenda Memo**

**From:** EMS Division Chief Russ Blackburn

**Meeting:** March 22, 2011

**Subject:** Physio-Control Monitors Maintenance Contract

**Item #'s:** G-9

**Presenter(s):** EMS Division Chief Russ Blackburn

## **Background**

On the July 10, 2007 City Council Meeting, the City entered into an agreement with Physio Control for a 5-year agreement for service of the Grand Island Fire Department heart monitors. The contract covered monitors not still under warranty, and eliminated annual increases for this service by committing to a five year agreement.

We updated the maintenance contract in January 2011 to include 4 monitors purchased last year. We have found that 2 other monitors had been omitted from the maintenance contract. This contract update ensures that all (14) Physio Control cardiac monitors are covered by the maintenance contract.

## **Discussion**

The Life-Pak 12 Cardiac monitor allows the Fire Department's EMTs to defibrillate a patient's heart, that has stopped beating, as an Automatic External Defibrillator. The Life-Pak 12 allows our paramedics to see the cardiac rhythm in 3 lead or 12 lead format, get pulse oxygenation readings, monitor end tidal CO2 levels, take automated blood pressures, mark time during treatment, record events during cardiopulmonary resuscitation efforts, and manually defibrillate patients. These monitors can be a great help in quality patient care.

Having the monitors inspected annually and repaired when needed reduces the City of Grand Island's liability for the performance of these monitors. Repairs are done at no additional cost, saving the City money over the duration of the contract. We currently have a monitor in for replacement of a printer at an estimated cost of \$1,200.00. When a monitor needs repairs Physio sends a replacement monitor to use while the repairs are completed, not reducing our available assets.

## **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 contract addendum as submitted.

## **Sample Motion**

Motion to approve the contract addendum with Physio Control as submitted.

# TECHNICAL SERVICE SUPPORT AGREEMENT ADDENDUM

**PHYSIO  
CONTROL**

Contract Number: PB12P225

End User # 00558203  
GRAND ISLAND FIRE DEPT  
1720 N BROADWELL  
GRAND ISLAND, NE 68803

Bill To # 00558202  
GRAND ISLAND FIRE DEPARTMENT  
100 E FIRST ST  
PURCHASING DIVISION  
GRAND ISLAND, NE 68802

This Technical Service Support Agreement begins on 6/1/2007 and expires on 5/31/2012.

The designated Covered Equipment and/or Software is listed on Schedule A. This Technical Service Agreement is subject to the Terms and Conditions on the reverse side of this document and any Schedule B, if attached. If any Data Management Support and Upgrade Service is included on Schedule A then this Technical Service Support Agreement is also subject to Physio-Control's Data Management Support and Upgrade Service Terms and Conditions, rev 7/99-1.

Price of coverage specified on Schedule A is \$44,869.53 per term, payable in Annual installments.

This price represents an adjustment of \$2,500.88 based on this contract's previous price of \$42,368.65

## Special Terms

10% DISCOUNT ON ACCESSORIES  
10% DISCOUNT ON ALL ELECTRODES  
17% DISCOUNT ON LP12 UPGRADES

Accepted: Physio-Control, Inc.

By:

*Judy Rogers*

Title:

*Associate Contract Analyst*

Date:

*3/18/2011*

Customer:

By:

Print:

Title:

Date:

Purchase Order Number: 1589300

Territory Rep: WEMM73

Scott Allen

Phone: 800-442-1142 x2574

FAX: 800-772-3340

Customer Contact:

Russ Blackburn

Phone: 308-385-5444 ext 227

FAX: 308-385-5423

Reference Number: M73-2872

Printed: 3/18/2011

Addendum

Page 1 of 7

**PHYSIO-CONTROL, INC.**  
**TECHNICAL SERVICE SUPPORT AGREEMENT TERMS AND CONDITIONS**

**RENEWAL TERMS**

Physio-Control, Inc.'s ("Physio-Control") acceptance of Customer's Technical Service Support Agreement is expressly conditioned on Customer's assent to the terms set forth in this document and its attachments. Physio-Control agrees to furnish the services ordered by Customer only on these terms, and Customer's acceptance of any portion of the goods and services covered by this document shall confirm their acceptance by Customer. These terms constitute the complete agreement between the parties and they shall govern any conflicting or ambiguous terms on Customer's purchase order or on other documents submitted to Physio-Control by Customer. These terms may not be revised in any manner without the prior written consent of an officer of Physio-Control.

**REPAIR SERVICES**

If "Repair" services are designated, subject to the Exclusions identified below, they shall include, for the designated Covered Equipment, all repair parts and materials required, all required Physio-Control service technician labor, and all related travel expenses. For offsite (ship-in) services, units will be returned to Customer by Physio-Control freight prepaid.

**INSPECTION SERVICES**

If "Inspection" services are designated, subject to the Exclusions identified below, they shall include, for the designated Covered Equipment, verification of proper instrument calibration, verification that instrument mechanical operations and output measurements are consistent with applicable product specifications, performance of an electrical safety check in accordance with National Fire and Protection Guidelines, all required Physio-Control service technician labor and all related travel expenses. For offsite (ship-in) services, units will be returned to Customer by Physio-Control freight prepaid.

**DOCUMENTATION**

Following each Repair and/or Inspection, Physio-Control will provide Customer with a written report of actions taken or recommended and identification of any materials replaced or recommended for replacement.

**LOANERS**

If a Physio-Control product is designated as a unit of Covered Equipment for Repair Services and needs to be removed from service to complete repairs, an appropriate Loaner unit will be provided, if available, until the removed unit is returned. Customer assumes complete responsibility for the Loaner and shall return the Loaner to Physio-Control in the same condition as received, at Customer's expense, upon the earlier of the return of the removed unit or Physio-Control's request.

**EXCLUSIONS**

This Technical Service Support Agreement does not include: supply or repair of accessories or disposables (e.g., patient cables, recorder paper, etc.); repair of damage caused by misuse, abuse, abnormal operating conditions, operator errors, and/or acts of God; repairs to return an instrument to normal operating equipment at the time of initial service by Physio-Control under this Technical Service Support Agreement; case changes; repair or replacement of items not originally distributed or installed by Physio-Control; and exclusions on Schedule B to this Technical Service Support Agreement, if any, which apply to Covered Equipment.

**SCHEDULE SERVICES**

Designated Repair and Inspections Services will be performed at the designated service frequency and during designated service hours except where service technicians are rendered unavailable due to mandatory training commitments, in which case Physio-Control will provide alternate coverage. Customer is to ensure Covered Equipment is available for Repair and/or Inspection at scheduled times. If Covered Equipment is not available as scheduled and Customer requests additional services to be performed or if Physio-Control is requested to perform Repair or Inspection services not designated in this Technical Service Support Agreement (due to the nature of services selected, instruments involved not being Covered Equipment, request being outside of designated service frequency or hours, or application of the Exclusions); Customer shall reimburse Physio-Control at Physio-Control's standard labor rates less 10% (including overtime, if appropriate), plus standard list prices for related parts and materials less 15%, plus actual travel costs incurred.

**PAYMENT**

The cost of services performed by Physio-Control shall be payable by Customer within thirty (30) days of Customer's receipt of Physio-Control's Invoice (or such other terms as Physio-Control confirms to Customer in writing). In addition to the cost of services performed, Customer shall pay or reimburse Physio-Control for any taxes assessed Physio-Control. If the number or configuration of Covered Equipment is altered during the Term of this Technical Service Support Agreement, the price of Services shall be adjusted accordingly.

Physio-Control warrants Services performed under this Technical Service Support Agreement and replacement parts provided in performing such Services against defects in material and workmanship for ninety (90) days from the date a Service was performed or a part was provided. Customer's sole remedy shall be reservicing the affected unit and/or replacement of any part determined to be defective, without any additional Customer charge, provided Customer notifies Physio-Control of any allegedly defective condition within ten (10) calendar days of its discovery by Customer. Physio-Control makes no other warranties, express or implied, including, without limitation, **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL PHYSIO-CONTROL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR OTHER DAMAGES.**

Either party may terminate this Technical Service Support Agreement at any time upon sixty (60) days prior written notice to the other, except that Physio-Control may terminate this Technical Service Support Agreement immediately upon Customer's failure to make timely payments for services rendered under this Technical Service Support Agreement. In the event of termination, Customer shall be obligated to reimburse Physio-Control for that portion of the designated price which corresponds to that portion of the Term and the scope of Services provided prior to the effective date of termination.

Physio-Control will not be liable for any loss or damage of any kind due to its failure to perform or delays in its performance resulting from any cause beyond its reasonable control, including, but not limited to, acts of God, labor disputes, labor shortages, the requirements of any governmental authority, war, civil unrest, delays in manufacture, obtaining any required license or permit, and Physio-Control's inability to obtain goods from its usual sources. Any such delay shall not be considered a breach of Physio-Control's obligations and the performance dates shall be extended for the length of such delay.

- a) Customer agrees to not employ or offer employment to anyone performing Services on Physio-Control's behalf during the Term of this Technical Service Support Agreement or for one (1) year following its expiration without Physio-Control's prior written consent.
- b) This Technical Service Support Agreement, and any related obligation of other party, may not be assigned in whole or in part without the prior written consent of the other party.
- c) The rights and obligations of Physio-Control and Customer under this Technical Service Support Agreement shall be governed by the laws of the State in which the service is provided. All costs and expenses incurred by the prevailing party related to the enforcement of its rights under this document, including reasonable attorney's fees, shall be reimbursed by the other party.

**.END**

**PHYSIO-CONTROL, INC.**  
**TECHNICAL SERVICE SUPPORT AGREEMENT**  
**SCHEDULE A**

Contract Number: PB12P225

Servicing Rep: JAMES WEATHERWAX, WEMM59

District: MIDWEST

Phone: 80044211422470

FAX: 800-772-3340

Equipment Location: GRAND ISLAND FIRE DEPT. 00558203  
 1720 N BROADWELL  
 GRAND ISLAND, NE 68803

Scope Of Service Ship In Repair - 1 On Site Inspection per year:M-F/8-5

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LIFEPAK® 12	VLP12-02-002936	14006685	1	6/1/2007	5/31/2012	5
LIFEPAK® 12	VLP12-02-002936	14307561	2	6/1/2007	5/31/2012	5
LIFEPAK® 12	VLP12-02-005956	33029188	3	6/1/2007	5/31/2012	5
LIFEPAK® 12	VLP12-02-005956	33029189	4	6/1/2007	5/31/2012	5
LIFEPAK® 12	VLP12-02-005956	33029191	5	6/1/2007	5/31/2012	5
LIFEPAK® 12	VLP12-02-005985	33029192	6	6/1/2007	5/31/2012	5
LIFEPAK® 12	VLP12-02-005985	33029622	7	6/1/2007	5/31/2012	5
LIFEPAK® 12	VLP12-02-005956	33029833	8	6/1/2007	5/31/2012	5
LIFEPAK® 12	VLP12-02-000170	11555596	13	1/1/2011	5/31/2012	1

Scope Of Service Ship In Repair Only:M-F/8-5

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LIFEPAK® 12 AC/DC PA	VLP12-06-000076	024798	9	6/1/2007	5/31/2012	0
LIFEPAK® 12 AC/DC PA	VLP12-06-000102	053129	10	6/1/2007	5/31/2012	0
LIFEPAK® 12 AC/DC PA	VLP12-06-000102	053165	11	6/1/2007	5/31/2012	0
LIFEPAK® 12 AC/DC PA	VLP12-06-000102	053880	12	6/1/2007	5/31/2012	0

\*\* Denotes an inventory line that has changed since the last contract revision or addendum.

**PHYSIO-CONTROL, INC.**  
**TECHNICAL SERVICE SUPPORT AGREEMENT**  
**SCHEDULE A**

Contract Number: PB12P225

Servicing Rep: Scott Allen, WEMM73

District: MIDWEST

Phone: 800-442-1142 x2574

FAX: 800-772-3340

Equipment Location: GRAND ISLAND FIRE DEPT, 00558203  
1720 N BROADWELL  
GRAND ISLAND, NE 68803

Scope Of Service Ship In Repair - 1 On Site Inspection per year:M-F/8-5

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LIFEPAK® 12	VLP12-02-002936	31911860	14	1/1/2011	5/31/2012	1
LIFEPAK® 12	VLP12-02-002936	31911610	15	1/1/2011	5/31/2012	1
LIFEPAK® 12	VLP12-02-002940	30132573	16	1/1/2011	5/31/2012	1
LIFEPAK® 12	VLP12-02-007228	38029138	17**	3/1/2011	5/31/2012	1
LIFEPAK® 12	VLP12-02-005985	34115232	18**	3/1/2011	5/31/2012	1

\*\* Denotes an inventory line that has changed since the last contract revision or addendum.

**PHYSIO-CONTROL, INC.**  
**TECHNICAL SERVICE SUPPORT AGREEMENT**  
**SCHEDULE B**

**LIFEPAK® 12 (LP 12) Defibrillator/Monitor Service includes:**

- Standard detachable hard paddle repairs
- LP12 upgrade installed by Physio-Control Technical Services Representative at a rate of 17% less than the then-current field-installed list price
- All Physio-Control battery charging systems owned by contract end user, up to a one-for-one basis with the total number of LP12 defibrillator/monitor's listed in Schedule A.
- AC Power Adapter repair/replacement
- DC Power Adapter repair/replacement
- Replacement of Physio-Control FASTPAK®, FASTPAK 2, LIFEPAK SLA, LIFEPAK NiCd Battery, and LIFEPAK Li-ion Battery

Battery maintenance, performance testing, evaluation, removal, recycling, and replacement are the Customer's responsibility and should be performed in accordance with the LP 12 Series Operating Instructions section entitled Discarding/Recycling Batteries.

Battery replacement is available upon completion of the second year of use on a one-for-one basis, up to the number of devices listed in Equipment Inventory, Schedule A. Replacement batteries shall be like-for-like (i.e. FASTPAK for FASTPAK, LIFEPAK LI-ion for LIFEPAK LI-ion, etc.).

One-for-one, like-for-like battery replacement is available prior to the completion of second year of use upon battery failure as determined by Customer's performance testing and evaluation in accordance with the LP 12 Operating Instructions section entitled Discarding/Recycling Batteries. During the Term of this Agreement, no-charge replacement for battery failure shall occur no more than four (4) times per two-year period for Physio-Control FASTPAK®, FASTPAK 2, LIFEPAK SLA, LIFEPAK NiCd Battery, and no more than three (3) times per two-year period for Li-ion batteries, regardless of any terms in prior Support Plans.

Battery replacement is dependent upon Customer's notice to Physio-Control of the completion of the second year of use or battery failure as determined by Customer's performance testing and evaluation. At the discretion of Physio-Control, battery replacement shall be accomplished by shipment to Customer and replacement by Customer, or by on-site delivery and replacement by a Physio-Control Service Technician. Upon Customer's receipt of replacement battery, the battery being replaced becomes the property of Physio-Control, and Customer must return the battery being replaced to Physio-Control for proper disposal. If Physio-Control does not receive the battery Customer will be charged at the then-current rate for the replacement battery.

Only batteries manufactured by Physio-Control are covered under this Service Agreement. Batteries not manufactured by Physio-Control are expressly excluded from coverage under this Service Agreement. Physio-Control does not guarantee the operation, safety, and/or performance of our product when operating with a battery not manufactured by Physio-Control. Repairs and inspections performed under this Agreement meet original equipment manufacturer's product specifications only when operating with a battery manufactured by Physio-Control. Any repairs, as determined by a Physio-Control Service Representative, resulting from the use of a battery not manufactured by Physio-Control, will be billed at Physio-Control's then current standard list prices for parts and labor, including actual travel costs incurred.

- **LIFEPAK 12 Software Updates**

If combined Repair and Inspection services are designated for LP 12 units listed in Schedule A, a Physio-Control Technical Services Representative will install LP 12 software updates at no additional cost, provided they are installed at the time of a regularly scheduled inspection. In addition, during the Term of this Agreement, where an assembly, i.e., printed circuit board, must be replaced to accommodate installation of new software, such assembly may be purchased by the Customer at a rate of 50% less than the then-current list price. Software updates, when installed at a time other than the regularly scheduled inspection, will be billed at the rate of \$205.00 per unit per software update. The cost of such software update will be billed in a separate invoice.

If Repair-Only services are designated for LP 12 units listed in Schedule A, a Physio-Control Technical Services Representative will install a LP 12 software update at the rate of \$205.00 per unit per software update. In addition, during the Term of this Agreement, where an assembly, i.e., printed circuit board, must be replaced to accommodate installation of new software, such assembly may be purchased by the Customer at a rate of 50% less than the then-current list price. The cost of such software update will be billed in a separate invoice.



**PHYSIO-CONTROL, INC.**  
**TECHNICAL SERVICE SUPPORT AGREEMENT**  
**SCHEDULE B**

- Coin Cell Battery Replacement

Physio-Control will replace the internal coin cell battery according to the number of such batteries listed in the Additional Items section of Schedule A. It is the Customer's responsibility to request such coin cell battery replacement, gather in a single location the devices that will receive such battery replacement, and to provide to the Physio-Control Technical Services Representative access to those devices. Coin cell battery replacement will take place during the Term of this Agreement, according to the number of coin cell batteries listed in the Additional Items section of Schedule A.

LP 12 Defibrillator/Monitor Service does not include repair or replacement of the following:

- Internal, sterilizable and pediatric paddles
- SpO2 sensors and cables
- Communication cables
- Therapy cables
- Patient cables
- PCMCIA modems
- Case changes

Discounts will not be combined with other special terms, discounts, and/or promotions.

RESOLUTION 2011-71

WHEREAS, the City of Grand Island Fire Department utilizes twelve LifePak-12 cardiac monitors, four of which are not currently covered by warranty or service agreement; and

WHEREAS, the Fire Department has entered into a five year contract for the previous eight monitors, and will be adding four additional monitors for the remaining term of the contract; and

WHEREAS, this proposed service support agreement between the City of Grand Island and Physio Control for such purposes has been previously reviewed by the City Attorney's office

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

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to sign such agreements on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2011.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

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



# **City of Grand Island**

**Tuesday, March 22, 2011**

**Council Session**

## **Item G10**

**#2011-72 - Approving Renewal of Leases at Cornhusker Army  
Ammunition Plant for Storage Buildings**

**Staff Contact: Steve Paustian**

# **Council Agenda Memo**

**From:** Steve Paustian, Parks & Recreation Director

**Meeting:** March 22, 2011

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

**Item #'s:** G-10

**Presenter(s):** Steve Paustian, Parks & Recreation Director

## **Background**

On May 22, 2001, City Council approved the leasing of several buildings at the former Cornhusker Army Ammunition Plant pursuant to the provisions of Resolution 2001-132. The resolution that is presented for Council consideration would authorize the City Council to renew the lease on Building's No. A-11, A-12 and A-30 located on City property at the former Cornhusker Army Ammunition Plant.

## **Discussion**

The City purchased property at the former Cornhusker Army Ammunition Plant that had several buildings on it. The City has been leasing these buildings to Dominion Construction, Jerry Harders and the Nebraska State Patrol to obtain revenue and utilize these assets. There have not been any problems with damage to the property or with non payment of rent. City Parks & Recreation Department officials are recommending that the Council extend the leases for two years.

## **Alternatives**

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

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

## **Recommendation**

City Administration recommends that the Council approve the resolution authorizing the extension of the leases for an additional two years.

## **Sample Motion**

Move to approve the resolution authorizing the City to extend the leases for an additional two years to Dominion Construction Company in the amount of \$2,900.00 per year, Jerry Harders in the amount of \$900.00 per year and the Nebraska State Patrol in the amount of \$750.00 per year.

## **BUILDING LEASE**

THIS LEASE is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the CITY OF GRAND ISLAND, NEBRASKA, A Municipal Corporation, herein referred to as "City" and DOMINION CONSTRUCTION COMPANY, a Corporation, herein referred to as "Lessee".

1.     **STATEMENT PURPOSE.** This Building Lease is made for the purpose of leasing to the Lessee the property identified as Building No. A-11, on the former Cornhusker Army Ammunition Plant (CHAAP), 2663 Alda Road South, Alda, Nebraska 68801, containing 8,000 square feet, more or less, together with three (3) concrete parking pads to the front, side and rear of the building, herein after referred to as "premises", for inert storage purposes only.

2.     **TERM OF LEASE.** The term of this Building Lease is for a period of two years beginning on May 1, 2011, and ending on April 30, 2013, subject to the revocation and renewal provisions set forth hereafter.

3.     **CONSIDERATION.** The Lessor shall pay the City rental in advance of the initial term, and any renewal terms, in the amount of Two Thousand Nine Hundred and No/100 Dollars (\$2,900.00 per year), payable to the order of The City of Grand Island, Finance Department, P.O. Box 1968, Grand Island, Nebraska, 68802. In the event the Lessee fails or refuses for any reason to pay the foregoing rentals in advance, this Building Lease shall be considered void.

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

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

6. **RIGHT TO ENTER PREMISES.** The City reserves the right to enter the premises at any time for any purpose necessary or convenient in connection with government and Lessor purposes, including but not limited to making inspections, removing debris, making repairs or performing maintenance. The Lessee shall have no claim for damages on account of such entry against the City or its officials, officers, employees, agents or representatives.

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

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

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

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

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

11. **RENEWAL FOR ADDITIONAL TERMS.** This Building Lease may be renewed by the Lessee for up to five (5) additional one year terms subject to approval of the City. The renewal terms shall run from May 1 through April 30 of each successive year. Lessee shall request each additional renewal term by sending written notice to the City of its interest in extending this Building Lease for an additional one year term not more than sixty (60) days and

not less than thirty (30) days prior to the end of the current term, which date shall be determined by the postmark appearing on the envelope bearing the renewal request or the date of hand delivery of the renewal request to the City Clerk. The only term of this Building Lease which may be modified in connection with extending the lease for a renewal term is the annual rental.

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

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

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

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

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

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

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

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

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

DATED: \_\_\_\_\_, 2011.



ATTEST: CITY OF GRAND ISLAND, NEBRASKA,  
A Municipal Corporation,

CITY OF GRAND ISLAND, NEBRASKA,  
A Municipal Corporation,

RaNae Edwards, City Clerk

By: \_\_\_\_\_  
Jay Vavricek, Mayor

DOMINION CONSTRUCTION COMPANY,  
A Corporation,

R. Michael Olmstead, President

[illegible]

Before me, a notary public, qualified in said County personally came Margaret Hornady, Mayor of the City of Grand Island, Nebraska, a municipal corporation, known to me to be such officer and the identical person who signed the foregoing Building Lease and acknowledged that the foregoing signature was her voluntary act and deed pursuant to Resolution 2011-\_\_\_\_, and that the City's corporate seal was thereto affixed by proper authority.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public

[illegible]

Before me, a notary public in and for said County and State, personally appeared R. Michael Olmstead, President of Dominion Construction Company, to me known to be the identical person who executed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public

## **BUILDING LEASE**

THIS LEASE is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the CITY OF GRAND ISLAND, NEBRASKA, A Municipal Corporation, herein referred to as "City" and JERRY HARDERS, herein referred to as "Lessee".

1.     **STATEMENT PURPOSE.** This Building Lease is made for the purpose of leasing to the Lessee the property identified as Fire/Guard Building No. A-12, on the former Cornhusker Army Ammunition Plant (CHAAP), together with three (3) concrete parking pads to the front, side and rear of the building, herein after referred to as "premises", for inert storage purposes only.

2.     **TERM OF LEASE.** The term of this Building Lease is for a period of two years beginning on May 1, 2011, and ending on April 30, 2013, subject to the revocation and renewal provisions set forth hereafter.

3.     **CONSIDERATION.** The Lessor shall pay the City rental in advance of the initial term, and any renewal terms, in the amount of Nine Hundred Dollars (\$900.00 per year), payable to the order of The City of Grand Island, Finance Department, P.O. Box 1968, Grand Island, Nebraska, 68802. In the event the Lessee fails or refuses for any reason to pay the foregoing rentals in advance, this Building Lease shall be considered void.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Jerry Harders  
10582 West 13<sup>th</sup> Street  
Wood River, NE 68883

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

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

DATED: \_\_\_\_\_, 2011.

ATTEST: CITY OF GRAND ISLAND, NEBRASKA,  
A Municipal Corporation,

A Municipal Corporation,

RaNae Edwards, City Clerk

By: \_\_\_\_\_  
Jay Vavricek, Mayor

JERRY L. HARDERS

[illegible]

Before me, a notary public, qualified in said County personally came Margaret Hornady, Mayor of the City of Grand Island, Nebraska, a municipal corporation, known to me to be such officer and the identical person who signed the foregoing Building Lease and acknowledged that the foregoing signature was her voluntary act and deed pursuant to Resolution 2011-\_\_\_\_\_, and that the City's corporate seal was thereto affixed by proper authority.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public

[illegible]

Before me, a notary public in and for said County and State, personally appeared Jerry Harders, to me known to be the identical person who executed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public

STATE OF NEBRASKA  
LEASE ADDENDUM  
CA-65971364

The Lease Agreement and subsequent Addenda between City of Grand Island as Lessor, and the Department of Administrative Services, State Building Division as Lessee, on behalf of the Nebraska State Patrol as Tenant Agency, for storage space described below is herein extended:

**Cornhusker Army Ammunition Plant Site, Building A-3  
Grand Island, Nebraska**

Lessor, Lessee and Tenant Agency hereby agree that said Lease shall be extended for two (2) years commencing May 1, 2011 and ending on April 30, 2013, at an annual rental rate of \$750.00 to be paid in one annual payment of \$750.00.

All other terms and conditions of said lease agreement and subsequent addenda shall remain the same and are hereby ratified and confirmed.

**LESSOR APPROVAL:**

\_\_\_\_\_  
Authorized Signature, City of Grand Island

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Authorized Representative

-----  
Acknowledgment

State of Nebraska

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011 by

\_\_\_\_\_, on behalf of the City of Grand Island.

\_\_\_\_\_  
Notary Public Signature

Affix seal here.

-----  
**LESSEE APPROVAL:**

\_\_\_\_\_  
Rodney Anderson, Administrator  
AS – State Building Division

\_\_\_\_\_  
Date

R E S O L U T I O N   2011-72

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

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

WHEREAS, the leases will terminate on May 1, 2011; and

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

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

<u>Lessee</u>	<u>Description</u>	<u>Rental</u>
Dominion Construction Company	Storage building	\$2,900/yr.
Jerry Harders	Fire/guard building	\$900/yr.
Nebraska State Patrol	Storage building	\$750/yr.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2011.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

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

Approved as to Form <input type="checkbox"/> _____ March 18, 2011 <input type="checkbox"/> City Attorney
---



# **City of Grand Island**

**Tuesday, March 22, 2011**

**Council Session**

## **Item G11**

**#2011-73 - Approving Agreement with Granicus, Inc. for Live Streaming/Video Archive**

**Staff Contact: Shannon Oster, Assistant to the City Administrator**



# **Council Agenda Memo**

**From:** Wendy Meyer-Jerke, Public Information Officer

**Meeting:** March 22, 2011

**Subject:** Approving Service Agreement with Granicus, Inc. for Live Streaming/Video Archive

**Item #'s:** G-11

**Presenter(s):** Wendy Meyer-Jerke, Public Information Officer  
Shannon Oster, Assistant to the City Administrator

## **Background**

Grand Island Television (GITV) was started in 1993 and is a Public Educational Governmental (PEG) station. Currently through the Cable Franchise Agreement GITV broadcasts on Charter Communications Channels 6 and 12 and is also available on analog Channel 56. Citizens who have DIRECTV cannot get GITV. GITV has been broadcasting City Council meetings live for over a decade. Today GITV also rebroadcasts several community meetings including the Citizen Review Committee, Grand Island Public School Board meetings, and Hall County Board of Supervisors meetings.

GITV also produces several recurring educational and informational segments. Each month on "City Matters," studio interviews are done with city staff on important matters that are taking place within the City of Grand Island on topics that matter to the citizens. In addition, "On the Job" segments feature a city employee and takes viewers on an inside look at the jobs at the City of Grand Island and why they are important to our citizens and community. "Community Connections" are on topics that are intended to keep citizens connected to their community either through education, non-profit work or services available, or community events taking place. The monthly "Inside Education" piece gives insight to viewers on the latest happenings in our public school system. GITV also produces other educational and informational pieces that would be streamed lived and archived including recruitment videos for police and fire, the wastewater treatment plant tour, and State Fair pieces.

In an attempt to reach a larger audience and create another alternative for citizens to easily acquire City of Grand Island and community information, city staff has researched

the option of live video streaming GITV for several years. The funding for this project was in the 2009-10 Budget, but funding reductions required that the project be postponed.

The current GITV video streaming and archive system that is offered to citizens is hosted by the City of Grand Island and has several limitations. The current system only offers minimal programming to only a few viewers at a time and has no live streaming capabilities. Furthermore, the recent City Council meetings and the limited GITV segments that are available to the public on the City's web site is only available for review for a short time period. The number of meetings and segments on the City's web site is dependent on the size of each file and the network capabilities. If someone wants to see an older video from a meeting that is not online anymore, they must request a DVD, and then the GITV Technician needs to pull that file and burn the DVD.

## **Discussion**

The service agreement with Granicus, Inc. will provide the City with the ability to stream GITV Channel 6 and 56 live and on demand through the internet, which means the web content will mirror what is being aired at the current time over the air on those channels. Streaming gives anyone with an internet connection the ability to watch live and post production videos from home, at work, or anywhere in the world. This will give GITV the opportunity to reach a bigger, untapped audience, of the homes of citizens who may have an internet connection but not have analog television or Charter Communications. Currently Granicus, Inc. works with over 700 government agencies to offer this type of service and offers phone support 24 hours a day, 7 days a week, 365 days a year.

Benefits of implementing this system will be in the form of hosting, maintenance, archival space, live streaming, and on demand service through an alternate medium than what is currently offered. This proposed system has been specifically designed to support the masses and enables a large archival system with no size limitations. With Granicus, there is unlimited storage of video content, which means that the public will have access to archived City Council meetings and recurring GITV pieces since the implementation of this proposed service if so desired by the City. The Granicus system also provides a community content library of their other clients so GITV will have the ability to pull content from other municipalities and use as content on GITV. Granicus will host this system; therefore the City of Grand Island will no longer need to worry about network limitations or the maintenance and security of archived GITV video.

A great feature of this system is that when City Council meetings are being streamed live the agenda is displayed with the video, so the viewer can easily follow along with the meeting. After each City Council meeting the video is "indexed" with each agenda item. Indexing means that the video is time stamped for every item on the agenda, so a user can easily navigate to a specific item. City Council meeting videos will also have a keyword search function based off the agenda items, so a user will easily be able to find the agenda and related video to an item of interest. Right now City Council meetings that are recorded by GITV are not searchable according to topic so viewers who want to find out

what particular discussion occurred on a certain item have a hard time using the current web site archive system to do so.

Live video streaming of City Council meetings and GITV programs will enhance the City's transparency and improve the ability of citizens to easily access local government. Not only will this improve accessibility and support open government, it will be a better user experience than currently available. In addition, it will give citizens the opportunity to engage in city government and gain more awareness of the City's web site and other possible online uses.

The service agreement with Granicus, Inc. is for a term of 18 months and renewable for three one year terms. The upfront cost is \$5,125, with a monthly cost of \$177. Even though this is viewed to be a discretionary investment, the staff believes it has great value of convenience and open government. City Council direction is sought to determine if the improvement of this city service is deemed appropriate to move forward with.

### **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 this live streaming/video archive agreement with Granicus, Inc.

### **Sample Motion**

Move to approve the live streaming/video archive agreement with Granicus, Inc.

## Example images of what Granicus, Inc Services will look like:

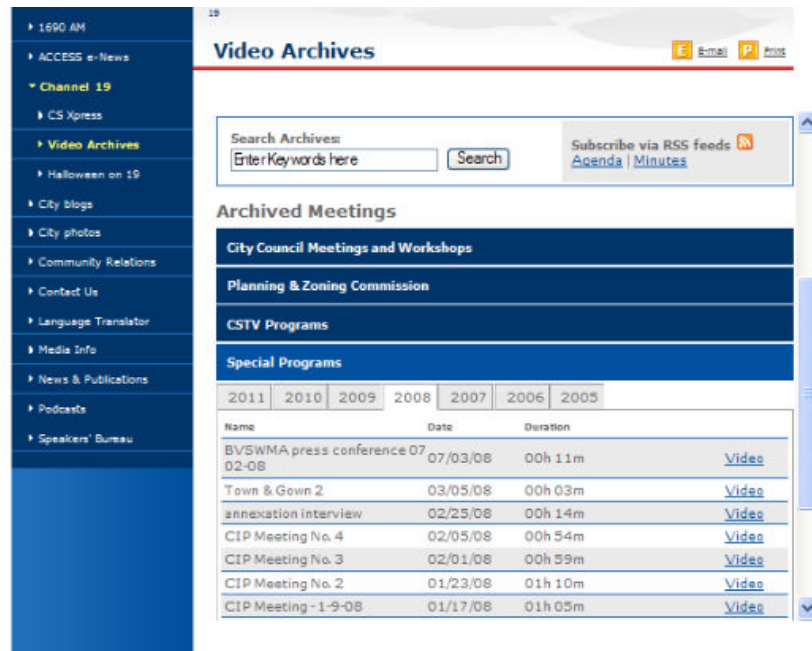
Example of video/agenda view:

This is an example of what a meeting video will look like to viewers. The agenda is immediately below. Post production videos with have agenda items time stamped, so a viewer can click on an agenda item and the video will go to that portion of the meeting.



This is an example of how archived videos will appear on the City's web site. Videos will be sorted into sections by programs or meetings, and then by year in chronological order.

Also of note is the keyword search at the top of the screen. Keyword search will search the agenda associated with each video.



## GRANICUS, INC. SERVICE AGREEMENT

THIS SERVICE AGREEMENT (the "**Agreement**"), dated as of March 8, 2011 (the "**Effective Date**"), is entered into between Granicus, Inc. ("**Granicus**"), a California Corporation, and the City of Grand Island (the "**Client**").

A. WHEREAS, Granicus is in the business of developing, licensing, and offering for sale various streaming media solutions specializing in Internet broadcasting, and related support services; and

B. WHEREAS, Granicus desires to provide and Client desires to (i) purchase the Granicus Solution as set forth in the Proposal, which is attached as Exhibit A, and incorporated herein, to facilitate streaming and distribution of live and archived digital media content, (ii) engage Granicus to integrate its Granicus Software onto the Client Website, (iii) use the Granicus Software subject to the terms and conditions set forth in this Agreement, and (iv) contract with Granicus to administer the Granicus Solution through the Managed Services set forth in Exhibit A.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, representations and warranties herein contained, the parties hereto agree as follows:

### 1. GRANICUS SOFTWARE AND MANAGED SERVICES.

1.1 Software and Services. Subject to the terms and conditions of this Agreement, Granicus will provide Client with the Granicus Software, Professional Services, and Managed Services that comprise the Granicus Solution as outlined in Exhibit A.

### 2. GRANT OF LICENSE.

2.1 Ownership. Granicus, and/or its third party supplier, owns the copyright and/or certain proprietary information protectable by law in the Granicus Software.

2.2 Use. Granicus agrees to provide Client with a revocable, non-transferable and non-exclusive license to access the Granicus Software listed in the Solution Description and a revocable, non-sublicensable, non-transferable and non-exclusive right to use the Granicus Software. All Granicus Software is proprietary to Granicus and protected by intellectual property laws and international intellectual property treaties. Pursuant to this Agreement, Client may use the Granicus Software to perform its own work and work of its customers/constituents. Cancellation of the Client's Managed Services will also result in the immediate termination of the Client's Software license as described in Section 2.2 hereof.

2.3 Limited Warranty; Exclusive Remedies. Subject to Sections 6.1 and 6.2 of this Agreement, Granicus warrants that the Granicus Software, as provided by Granicus, will substantially perform in accordance with its applicable written specifications for as long as the Client pays for and receives Managed Services. Client's sole and exclusive remedy for any breach by Granicus of this warranty is to notify Granicus, with sufficient detail of the nonconformance, and provide Granicus with a reasonable opportunity to correct or replace the defective Granicus Software. Client agrees to comply with Granicus' reasonable instructions with respect to the alleged defective Granicus Software.

2.4 Limitations. Except for the license in Section 2.2, Granicus retains all ownership and proprietary rights in and to the Granicus Software, and Client is not permitted, and will not assist or permit a third party, to: (a) utilize the Granicus Software in the capacity of a service bureau or on a time share basis; (b) reverse engineer, decompile or otherwise attempt to derive source code from the Granicus Software; (c) provide, disclose, or otherwise make available the Granicus Software, or copies thereof, to any third party; or (d) share, loan, or otherwise allow another Meeting Body, in or outside its jurisdiction, to use the Granicus Software, or copies thereof, except as expressly outlined in the Proposal.

### 3. PAYMENT OF FEES

3.1 Client agrees to pay all costs as outlined in Exhibit A.

3.2 Monthly billing for Managed Services shall begin forty-five (45) days after the receipt of a fully executed Agreement or the receipt of a purchase order for the up-front costs, whichever occurs first, as agreed upon in Exhibit A.

3.3 Client agrees to pay all invoices from Granicus within thirty (30) days of receipt of invoice, provided that Client agrees to pay the Managed Services Fee to Granicus on a monthly basis, no later than the first day of each month in advance of services. Granicus, Inc. shall send all invoices to:

Name: Norma Hernandez  
Title: Administration Receptionist  
Address:  
City of Grand Island  
PO Box 1968  
Grand Island, NE 68802-1968

3.4 Upon renewal of this Agreement, Granicus may include (in which case Client agrees to pay) a maximum increase of three (3) percent a year on Client's Managed Services Fee.

3.5 Training Cancellation Policies. Granicus' policies on Client cancellation of scheduled trainings are as follows:

(a) Onsite Training. For any cancellations within forty-eight (48) hours of the scheduled onsite training, Granicus, at its sole discretion, may invoice the Client for one hundred (100) percent of the purchased training costs and all travel expenses, including any incurred third party cancellation fees. Subsequent training will need to be purchased and scheduled at the previously quoted pricing.

(b) Online Training. For any cancellations within twenty-four (24) hours of the scheduled online training, Granicus, at its sole discretion, may invoice the Client for fifty (50) percent of the purchased training costs, including any incurred third party cancellation fees. Subsequent training will need to be purchased and scheduled at the previously quoted pricing.

3.6 Additions. Granicus, at its' sole discretion, may add features or functionality to existing product suite bundles for various reasons, including to enhance Granicus' offerings, or improve user satisfaction. During the initial period of this Agreement, the customer understands

that the use of these additional products is included in the originally agreed upon monthly managed services fees.

At contract renewal, the customer acknowledges that this added functionality may have additional monthly managed service charges associated with it and that monthly managed services rates on renewals may have a higher rate than preceding years.

#### 4. CONTENT PROVIDED TO GRANICUS

4.1 Responsibility for Content. The Client shall have sole control and responsibility over the determination of which data and information shall be included in the Content that is to be transmitted, including, if applicable, the determination of which cameras and microphones shall be operational at any particular time and at any particular location. However, Granicus has the right (but not the obligation) to remove any Content that Granicus believes violates any applicable law or this Agreement.

4.2 Restrictions. Client shall not provide Granicus with any Content that: (i) infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights; (ii) violates any law, statute, ordinance or regulation, including without limitation the laws and regulations governing export control and e-mail/spam; (iii) is defamatory or trade libelous; (iv) is pornographic or obscene, or promotes, solicits or comprises inappropriate, harassing, abusive, profane, defamatory, libelous, threatening, indecent, vulgar, or otherwise objectionable or constitutes unlawful content or activity; (v) contains any viruses, or any other similar software, data, or programs that may damage, detrimentally interfere with, intercept, or expropriate any system, data, information, or property of another.

#### 5. TRADEMARK OWNERSHIP. Granicus and Client's Trademarks are listed in the Trademark Information exhibit attached as Exhibit D.

5.1 Each Party shall retain all right, title and interest in and to their own Trademarks, including any goodwill associated therewith, subject to the limited license granted to the Client pursuant to Section 2 hereof. Upon any termination of this Agreement, each Party's right to use the other Party's Trademarks pursuant to this Section 5 terminates.

5.2 Each party grants to the other a non-exclusive, non-transferable (other than as provided in Section 5 hereof), limited license to use the other party's Trademarks as is reasonably necessary to perform its obligations under this Agreement, provided that any promotional materials containing the other party's trademarks shall be subject to the prior written approval of such other party, which approval shall not be unreasonably withheld.

#### 6. LIMITATION OF LIABILITY

6.1 Warranty Disclaimer. Except as expressly provided herein, Granicus' services, software and deliverables are provided "as is" and Granicus expressly disclaims any and all express or implied warranties, including but not limited to implied warranties of merchantability, non-infringement of third party rights, and fitness for a particular purpose. Granicus does not warrant that access to or use of its software or services will be uninterrupted or error free. In the event of any interruption, Granicus' sole obligation shall be to use commercially reasonable efforts to restore access.

6.2 Limitation of Liabilities. To the maximum extent permitted by applicable law, Granicus and its suppliers and licensors shall not be liable for any indirect, special, incidental,

consequential, or punitive damages, whether foreseeable or not, including but not limited to: those arising out of access to or inability to access the services, software, content, or related technical support; damages or costs relating to the loss of: profits or revenues, goodwill, data (including loss of use or of data, loss or inaccuracy or corruption of data); or cost of procurement of substitute goods, services or technology, even if advised of the possibility of such damages and even in the event of the failure of any exclusive remedy. In no event will Granicus' and its suppliers' and licensors' liability exceed the amounts paid by client under this agreement regardless of the form of the claim (including without limitation, any contract, product liability, or tort claim (including negligence, statutory or otherwise)).

## 7. CONFIDENTIAL INFORMATION & OWNERSHIP.

7.1 Confidentiality Obligations. Confidential Information shall mean all proprietary or confidential information disclosed or made available by the other party pursuant to this Agreement that is identified as confidential or proprietary at the time of disclosure or is of a nature that should reasonably be considered to be confidential, and includes but is not limited to the terms and conditions of this Agreement, and all business, technical and other information (including without limitation, all product, services, financial, marketing, engineering, research and development information, product specifications, technical data, data sheets, software, inventions, processes, training manuals, know-how and any other information or material), disclosed from time to time by the disclosing party to the receiving party, directly or indirectly in any manner whatsoever (including without limitation, in writing, orally, electronically, or by inspection); provided, however, that Confidential Information shall not include the Content that is to be published on the website(s) of Client.

7.2 Each party agrees to keep confidential and not disclose to any third party, and to use only for purposes of performing or as otherwise permitted under this Agreement, any Confidential Information. The receiving party shall protect the Confidential Information using measures similar to those it takes to protect its own confidential and proprietary information of a similar nature but not less than reasonable measures. Each party agrees not to disclose the Confidential Information to any of its Representatives except those who are required to have the Confidential Information in connection with this Agreement and then only if such Representative is either subject to a written confidentiality agreement or otherwise subject to fiduciary obligations of confidentiality that cover the confidential treatment of the Confidential Information.

7.3 Exceptions. The obligations of this Section 7 shall not apply if receiving party can prove by appropriate documentation that such Confidential Information (i) was known to the receiving party as shown by the receiving party's files at the time of disclosure thereof, (ii) was already in the public domain at the time of the disclosure thereof, (iii) entered the public domain through no action of the receiving party subsequent to the time of the disclosure thereof, or (iv) is required by law or government order to be disclosed by the receiving party, provided that the receiving party shall (i) notify the disclosing party in writing of such required disclosure as soon as reasonably possible prior to such disclosure, (ii) use its commercially reasonable efforts at its expense to cause such disclosed Confidential Information to be treated by such governmental authority as trade secrets and as confidential.

## 8. TERM

8.1 The term of this Agreement shall commence on the date hereof and shall continue in full force and effect for eighteen (18) months after the date hereof. This Agreement shall automatically renew for an additional three (3) terms of one (1) year each, unless either party



notifies the other in writing at least thirty (30) days prior to such automatic renewal that the party does not wish to renew this Agreement.

8.2 Rights Upon Termination. Upon any expiration or termination of this Agreement, and unless otherwise expressly provided in an exhibit to this Agreement:

(a) Client's right to access or use the Granicus Solution, including Granicus Software, terminates and Granicus has no further obligation to provide any services;

(b) Client has the right to keep any purchased hardware, provided that Client removes and/or uninstalls any Granicus Software on such hardware. However, if Client has received hardware as part of a Granicus Open Platform Suite solution ("Open Platform Hardware"), Client understands that upon termination of this Agreement, Client shall immediately return the Open Platform Hardware to Granicus, Inc. The Open Platform Hardware must be returned within fifteen (15) days of termination, and must be in substantially the same condition as when originally shipped, subject only to normal wear and tear; and

(c) Client shall immediately return the Granicus Software and all copies thereof to Granicus, and within thirty (30) days of termination, Client shall deliver a written certification to Granicus certifying that it no longer has custody of any copies of the Granicus Software.

8.3 Obligations Upon Termination. Upon any termination of this Agreement,

(a) the parties shall remain responsible for any payments that have become due and owing up to the effective date of termination;

(b) the provisions of 2.1, 2.4, 3, 4, 5, 6.1, 6.2, 7, 8.3, and 10 of the agreement, and applicable provisions of the Exhibits intended to survive, shall survive termination of this Agreement and continue in full force and effect;

(c) pursuant to the Termination or Expiration Options Regarding Content, Granicus shall allow the Client limited access to the Client's Content, including, but not limited to, all video recordings, timestamps, indices, and cross-referenced documentation. The Client shall also have the option to order hard copies of the Content in the form of compact discs or other equivalent format; and

(d) Granicus has the right to delete Content within sixty (60) days of the expiration or termination of this Agreement.

## 9. PATENT, COPYRIGHT AND TRADE SECRET INFRINGEMENT.

9.1 Granicus' Options. If the Granicus Software becomes, or in Granicus' opinion is likely to become, the subject of an infringement claim, Granicus may, at its option and sole discretion, (i) obtain for Client the right to continue to use the Granicus Software as provided in this Agreement; (ii) replace the Granicus Software with another software product that provides similar functionality; or (iii) if Granicus determines that neither of the foregoing options are reasonably available, Granicus may cease providing the applicable services or require that Client cease use of and destroy the Granicus Software. In that event, and provided that Client returns or destroys (and certify to such destruction of) all copies of the Granicus Software in Client's

possession or control, if any, Granicus will refund to Client all license fees paid by Client under the current Agreement.

10. MISCELLANEOUS.

10.1 Amendment and Waiver. This Agreement may be amended, modified, waived or canceled only in writing signed by each of the parties hereto or, in the case of a waiver, by the party waiving compliance. Any failure by either party to strictly enforce any provision of this Agreement will not be a waiver of that provision or any further default.

10.2 Governing Law. The laws of the State of California shall govern the validity, construction, and performance of this Agreement, without regard to its conflict of law principles.

10.3 Construction and Severability. Wherever possible, each provision of this Agreement shall be interpreted so that it is valid under applicable law. If any provision of this Agreement is held illegal or unenforceable, that provision will be reformed only to the extent necessary to make the provision legal and enforceable; all remaining provisions continue in full force and effect.

10.4 Independent Contractors. The parties are independent contractors, and no other relationship is intended by this Agreement.

10.5 Force Majeure. Other than payment obligations, neither party is responsible for any delay or failure in performance if caused by any event outside the reasonable control of the party, including without limitation acts of God, government regulations, shortage of supplies, act of war, act of terrorism, earthquake, or electrical, internet or telecommunications outage.

11.6 Closed Captioning Services. Client and Granicus may agree that closed captioning or transcription services will be provided by a third party under this agreement. In such case, Client expressly understands that the third party is an independent contractor and not an agent or employee of Granicus. Granicus is not liable for acts performed by such independent third party.

[The remainder of this page left blank intentionally]

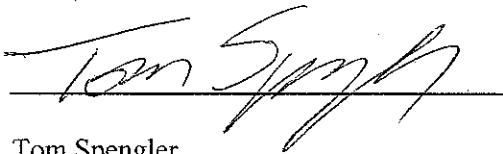
This Agreement consists of this Service Agreement as well as the following exhibits, which are incorporated herein by reference as indicated:

Exhibit A: Proposal  
Exhibit B: Support Information  
Exhibit C: Hardware Exhibit  
Exhibit D: Trademark Information  
Exhibit E: Termination or Expiration Options Regarding Content

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives,

**GRANICUS, INC.**

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



Tom Spengler

Its: Chief Executive Officer

Address:

568 Howard Street, Suite 300  
San Francisco, CA 94105

**CITY OF GRAND ISLAND**

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

Name: Jay Vavricek

Its: Mayor

Address:

City Hall, 100 East 1<sup>st</sup> Street  
Grand Island, NE 68801

Date: \_\_\_\_\_

**EXHIBIT A**

**PROPOSAL**

[The remainder of this page is left blank intentionally.]



## Granicus Proposal to the City of Grand Island

---

2-18-2011

Dear Shannon,

Thank you for considering Granicus. It has been a pleasure to learn about the unique needs of the City of Grand Island. We look forward to establishing a rewarding, long-term relationship with you.

On the following few pages, you will find a breakdown of the needs that we have uncovered, our proposed solution, some of our key differentiators, detailed pricing, and a checklist that outlines our next steps.

Nearly 700 jurisdictions have selected Granicus as a partner to help them build trust with citizens, reduce staff time spent on processing meetings, and engage citizens in new ways. We hope that you enjoy being part of the Granicus client family.

If I or any other member of the Granicus team can be of further assistance, please contact me at 214-771-2537.

Most Sincerely,

Michelle Cooper  
Software Sales Executive  
Granicus, Inc.



## Your Needs

- Live and On-Demand Streaming and Storage of Public Meetings
- Search ability
- Easy User Experience
- Live player
- Hosting & Distribution of Content
- Sectioned View Page

## Proposed Solution

### Granicus® Open Platform

The Granicus® Open Platform allows you to stream an unlimited number of meetings and events online. Publish all your content online with indefinite retention schedules. Rely on the Open Platform's Unified Encoder to give you unlimited bandwidth, storage, and intelligent routing. You can also access a library of community content and start publishing videos immediately. Finally, leverage an open architecture and connect in-house or third-party solutions to Granicus.

- Stream unlimited meeting bodies and events
- Indefinite retention schedules
- Intelligent media routing
- Open architecture and SDK
- Community content library
- Sectioned View Page
- Key Word Search



## Pricing Table

Item	Up Front Cost	Monthly Cost
Open Platform, Base Suite without hardware	\$0.00	\$150.00
Unified Encoder	\$3,500.00	\$0.00
Sectioned View Page	\$900.00	\$27.00
Live Player	\$600.00	\$0.00
Keyword Search	\$0.00	\$0.00
Shipping	\$125.00	\$0.00
Grand Total	\$5,125.00	\$177.00

*Unified Encoder sold separately from Open Platform but included in proposed solution.*

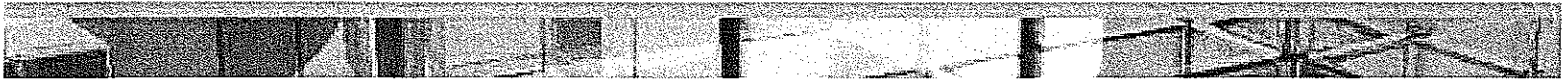
- All suites require the Granicus Open Platform
- Sales tax may apply depending on your organization's tax status and the tax laws unique to your state, county and/or municipality.
- This proposal expires on 10/31/2011.



## Granicus Differentiators

- World's most experienced provider of government transparency, citizen participation, meeting efficiency, legislative management, and training management solutions with:
  - Nearly 800 clients in all 50 states, at every level of government
  - Over 24,000,000 webcasts viewed
  - More than 190,000 government meetings online
- Open API architecture and SDK allow for seamless integrations with systems already in place
- Flexible payment terms
- Certified Integrations provide flexibility and choice of best-of-breed solutions
- Only government webcasting service to provide encoding, minutes annotation, transcription, and closed captioning services
- Truly unlimited storage and distribution for all meeting bodies and non-meeting content
- Indefinite retention schedules for all archived meeting and non-meeting content
- Only provider of both government webcasting and Citizen Participation services
- Only provider of both government webcasting and Training Management services
- Access a library of peer-created government media content from over 700 Granicus users
- 97% customer satisfaction rating, 99% client retention rating
- Ranked 185 on Deloitte 500 fastest growing companies
- Ranked 419 on Inc 500 fastest growing companies
- Client Success stories are available here: <http://www.granicus.com/Clients/Case-Studies.aspx>





## **Future Possibilities**

### **Government Transparency Suite**

The Government Transparency Suite gives your citizens access to public meetings and records online. Take the next step towards greater transparency and link related documents to your video, offer your full agenda packet, and provide keyword searching of archives. Reach a broader audience through downloadable formats (MP3, MP4) compatible with mobile devices. Granicus' reporting tools give you a detailed analysis of visitor statistics to help you better understand viewership trends.

- Publish agenda packets with video
- Link relevant materials
- Index videos live
- Offer downloadable formats (MP3 & MP4)
- Custom player and view page

### **Citizen Participation Suite**

The Citizen Participation Suite allows you to collect feedback from citizens on specific items tied to upcoming meetings. Reduce the administrative overhead of collecting, organizing, and managing citizen feedback. Automatically produce and distribute a consolidated report of comments to help elected members better understand the opinions of citizens before making policy decisions.

- Online comment form with related documents
- Website integration
- Get text and video comments on agenda items
- Build and distribute a consolidated report
- Agenda integration

### **Meeting Efficiency Suite**

The Meeting Efficiency Suite is an automated solution that combines minutes with a meeting's recording. Capture and publish minutes, saving staff time and cutting administrative costs. Record roll-call, agenda items, speakers, motions, votes, and notes through a simple interface. After the meeting, finalize minutes quickly and easily in Microsoft Word™.

- Meeting preparation tools
- Live minutes automation
- Quick notes and text expansion
- Minutes editing and publishing
- Generate Linked Minutes

**Legislative Management Suite**

The Legislative Management Suite gives elected officials a new way to participate in public meetings using touch-screen displays to record motions and votes as well as request to speak. Record actions directly from elected members and ensure greater accuracy. Through this Suite you can seamlessly integrate with agenda solutions already in place. Help your audience follow fast-paced meetings with a public display that shows current item, vote results and more.

- Touch screen displays
- Digital speaker queue
- Vote and roll call automation
- Paperless agenda packets
- Agenda Management integration connector

**Training Management Suite**

The Training Management Suite is an easy way to create, manage, and deliver online video training for staff and citizens. Web-based access allows you to manage and update content anywhere, at anytime. Synchronize video with course materials including documents, graphics, or presentations. Comply with state and federal training mandates through exam certifications and result tracking. Integrate with Learning Management Systems (LMS) and Enterprise Resource Planning (ERP) solutions.

- Trainee portal and transcript tracking
- Training course and exam builder
- Export training results
- Create certificates of completion
- API integrations

**Closed Captioning Services**

Engage new audiences and support ADA (Americans with Disabilities Act) compliance with closed captioning for your meetings. Give your audience greater accessibility and allow them to search archives for any word spoken during the meeting. Captions can be recorded in real-time or added to archive meetings.

**Transcription Services**

Produce a complete, word-for-word transcript and give the public a written account of your meeting. Transcripts can be attached to archived videos and published online as supporting documentation. This service is available for archived meetings only.

**Minutes Annotation Services**

Let Granicus help you complete and produce your meeting minutes. Stay consistent with your previously published minutes documents and choose your preferred format: action, summary, or verbatim. Minutes can be delivered as Word or PDF documents and published your website. This service includes post-meeting video trimming and time stamping.

**Indexing and Publishing**

For organizations short on staff or resources, allow Granicus to index and publish media content for you. Events will be setup and recorded in MediaManager. Once a meeting is complete, your archive is trimmed, time stamped to create easy to navigate jump to points, and published online.

**Advanced Encoding Services**

Encoding services allow our clients with existing media recordings to have files re-encoded into Granicus' preferred formats (WMV or WMA). Recordings will be trimmed and uploaded into your specified folder in MediaManager. Granicus will accept files in various formats including VHS, DVD, CD, Dv Cam, HDV, Beta SP, Beta SX, most digital files, audio cassettes, and more.

**Mobile Encoder**

Involve citizens in meetings or special events that are held off-site or in hard-to-reach locations over the Web with Mobile Encoder. Simply connect your existing audio/video source to a laptop computer and stream the event to your website live or on-demand, with or without an Internet connection. Index in real-time and run the event like any other Granicus meeting.

**U-Verse Encoder**

Increase your citizen outreach with a single piece of hardware designed to connect public, educational, and government access (PEG) programming to AT&T's U-verse Internet Protocol (IP)-based video network. Granicus Outcast Encoder supports both webcasting and the AT&T U-verse system to help you get more value from one appliance. This encoder digitally converts, manages, and transmits your video signal to an IPTV-based U-verse network in a digital broadcast format.

**Public Display**

Help your audience follow fast-paced meetings. Display live meeting actions including current agenda item, vote results, and speakers over large monitors both inside and outside the meeting chambers. Push this information to the Web or display results on TV through your cable feed.

**Performance Accelerator**

This network performance tool allows you to distribute hundreds of simultaneous on-site streams with minimal network impact. Get enterprise class on-site storage and distribution of your video content. This system was designed, architected, and tested for high-performance needs to help you avoid single points of failure.

**Advanced Website Integration**

Website integrations are customized to match the look and feel of your website. Granicus offers multiple options to give you the results you want. From sectioned view pages organized by meeting bodies, to a listing of original programming organized by content, Granicus will design and create pages to help you better manage your online media.



### Implementation Timeline

We can typically get your organization live with its new Granicus solution within 45 days of receiving your Purchase Order or Signed Service Agreement. At this point, we consider your deployment in progress and will schedule a Kickoff Call with key players at your organization and Granicus. You can follow your agency's progress 24x7 with our online deployment tracker tool, helping you stay on schedule for your next big milestone. We know how exciting it can be to get your Granicus solution up and running, so to help things run quickly and smoothly it's important that resources are allocated for at your agency. Granicus is dedicated to ensuring that your deployment stays on track and meets your needs.

### Next Steps

- Determine Project Timeline
- Determine Purchase Type
- Fund the Project
- Get Project Approval
- Collaborate on Contract Terms

## **EXHIBIT B**

### **SUPPORT INFORMATION**

1. **Contact Information.** The support staff at Granicus may be contacted by the Client at its mailing address, general and support-only telephone numbers, and via e-mail or the Internet.

(a) **Mailing Address.** Mail may be sent to the support staff at Granicus headquarters, located at 568 Howard Street, Suite 300, San Francisco, California, 94105.

(b) **Telephone Numbers.** Office staff may be reached from 8:00 AM to 7:00 PM Pacific time at (415) 357-3618 or toll-free at (877) 889-5495. The technical support staff may be reached at (415) 655-2400 from 8:00 AM to 7:00 PM Pacific time. After hours or in case of a technical support emergency, the support staff may be reached at (415) 655-2414, twenty-four (24) hours a day, seven (7) days a week.

(c) **Internet and E-mail Contact Information.** The website for Granicus is <http://www.granicus.com>. E-mail may be sent to the support staff at [support@granicus.com](mailto:support@granicus.com).

2. **Recognized Client Representatives.** Granicus strives to provide unparalleled support to its Clients by ensuring that Client staff is properly educated and is prepared to maximize its Granicus Solution. Any Client Representative who wishes to participate and receive Granicus customer advocacy services shall participate in and complete the training program that is suited for the Granicus Solution. Once a Client Representative completes the training, that Representative will be recognized in Granicus' internal system as qualified to receive support and ongoing education services. All Client Representatives are eligible to receive technical support services, regardless of participation in the training program.

3. **Support Policy.** When Granicus received notification of an issue from Client, a Granicus account manager or technical support engineer will respond directly to the Client via phone or e-mail with (a) an assessment of the issue, (b) an estimated time for resolution, and (c) will be actively working to resolve the issue as appropriate for the type of issue. Notification shall be the documented time that Granicus receives the Client's call or e-mail notifying Granicus of an issue or the documented time that Granicus notifies Client there is an issue. Granicus reserves the right to modify its support and maintenance policies, as applicable to its customers and licensees generally, from time to time, upon reasonable notice.

4. **Scheduled Maintenance.** Scheduled maintenance of the Granicus Solution will not be counted as downtime. Granicus will clearly post that the site is down for maintenance and the expected duration of the maintenance. Granicus will provide the Client with at least two (2) days prior notice for any scheduled maintenance. All system maintenance will only be performed during these times, except in the case of an emergency. In the case that emergency maintenance is required, the Client will be provided as much advance notice, if any, as possible under the circumstances.

5. **Software Enhancements or Modifications.** The Client may, from time to time, request that Granicus incorporate certain features, enhancements or modifications into the licensed Granicus Software. Subject to the terms and conditions to this exhibit and the Service Agreement, Granicus and Client will use commercially reasonable efforts to perform all tasks in the Statement of Work ("SOW"). Upon the Client's request for such enhancements/modifications, the Client shall prepare a SOW for the specific project that shall define in detail the Services to be performed. Each such SOW signed by both

parties is deemed incorporated in this exhibit by reference. Granicus shall submit a cost proposal including all costs pertaining to furnishing the Client with the enhancements/modifications.

5.1 Documentation. After the SOW has been executed by each party, a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed project staffing, anticipated project schedule, and other information relevant to the project. Such enhancements or modifications shall become part of the licensed Granicus Software.

5.2 Acceptance. Client understands that all work contemplated by this exhibit is on a "time-and-materials" basis unless otherwise stated in the SOW. Within ten (10) business days of Granicus' completion of the milestones specified in the SOW and delivery of the applicable enhancement/modification to Client, Client will provide Granicus with written notice of its acceptance or rejection of the enhancement/modification, based on the acceptance criteria set forth in the SOW. Client agrees that it will not reject any enhancement/modification so long as it substantially complies with the acceptance criteria.

5.3 Title to Modifications. All such modifications or enhancements shall be the sole property of the Granicus.

6. Limitation of Liability: Exclusive Remedy. IN THE EVENT OF ANY INTERRUPTION, GRANICUS' SOLE OBLIGATION, AND CLIENT'S EXCLUSIVE REMEDY, SHALL BE FOR GRANICUS TO USE COMMERCIALY REASONABLE EFFORTS TO RESTORE ACCESS AS SOON AS REASONABLY POSSIBLE.

*[End of Support Information]*

## EXHIBIT C

### GRANICUS, INC.

#### HARDWARE EXHIBIT

THIS HARDWARE EXHIBIT is entered into by Granicus and Client, as an attachment to the Service Agreement between Granicus and Client, for the sale of the hardware components of the Granicus Solution (the "**Hardware**") by Granicus to Client. This exhibit is an additional part of the Service Agreement and is incorporated therein by reference. This exhibit does not change any term of the Service Agreement except to the extent it is contrary to the Service Agreement. Capitalized terms used but not defined in this exhibit have the meanings given in the Service Agreement.

1. **Purchase Price.** The purchase price for the Hardware shall be the price specified in the Proposal.
2. **Title and Delivery.** Any scheduled ship date quoted is approximate and not the essence of this exhibit. Delivery is F.O.B. Granicus' point of shipment. Granicus will select the shipment method unless otherwise mutually agreed in writing. The risk of loss passes to Client upon delivery to the carrier at Granicus' point of shipment. Granicus retains title to the Hardware until Granicus has received payment in full of all sums due pursuant to this exhibit. Granicus retains title to and ownership of all Granicus Software installed by Granicus on the Hardware, notwithstanding the use of the term "sale" or "purchase."
3. **Acceptance.** Use of the Hardware by Client, its agents, employees or licensees, or the failure by Client to reject the Hardware within twenty-five (25) days following delivery of the Hardware, constitutes Client's acceptance. Client may only reject the Hardware if the Hardware does not conform to the applicable written specifications.
4. **Hardware Warranty.** Granicus will provide to Client any warranty provided by the manufacturer with respect to the Hardware. Granicus shall repair or replace any Hardware provided directly from Granicus that fails to function properly due to normal wear and tear, defective workmanship, or defective materials as long as such Hardware is then under the manufacturer's warranty.
5. **Service Response Time.** For hardware issues requiring replacement, Granicus shall respond (via written or verbal acknowledgment) to the request made by the Client within twenty-four (24) hours. Hardware service repair or replacement will occur within seventy-two (72) hours of the request by the Client, not including the time it takes for the part to ship and travel to the Client. The Client shall grant Granicus or its Representatives access to the Hardware for the purpose of repair or replacement at reasonable times. Granicus will keep the Client informed regarding the time frame and progress of the repairs or replacements.
6. **Use of Non-Approved Hardware.** The Granicus platform is designed and rigorously tested based on Granicus-approved hardware. In order to provide the highest level of support, we recommend including Granicus-approved hardware in your solution. However, Granicus does afford clients with the option of utilizing their own hardware, providing that there is successful validation by Granicus technical staff. While it is Granicus' intention to provide clients that use their own hardware with the same level of customer care and continuous software upgrades, this level of service is not guaranteed.
7. **DISCLAIMER OF WARRANTIES.** NOTWITHSTANDING THE MAINTENANCE PROVIDED UNDER SECTION 4 ABOVE, THE SOLE WARRANTY ON THE HARDWARE IS ANY MANUFACTURER'S WARRANTY AS PROVIDED IN SECTION 1 ABOVE, AND GRANICUS DISCLAIMS ANY AND ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, OF

MERCHANTABILITY AND AGAINST INFRINGEMENT, WITH RESPECT TO THE HARDWARE. NO PERSON IS AUTHORIZED TO MAKE ANY WARRANTY OR REPRESENTATION ON BEHALF OF GRANICUS.

8. **LIMITATION OF LIABILITY.** GRANICUS SHALL NOT BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATING TO THIS EXHIBIT INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF GRANICUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN. IN NO EVENT WILL GRANICUS' LIABILITY TO CLIENT ARISING OUT OF OR RELATING TO THIS EXHIBIT EXCEED THE AMOUNT OF THE PURCHASE PRICE PAID TO GRANICUS BY CLIENT FOR THE HARDWARE.

*[end of Hardware Exhibit]*



## EXHIBIT D

### TRADEMARK INFORMATION

#### Granicus Registered Trademarks ®



Granicus logo as a mark

Granicus®

MediaVault®

Mobile Encoder®

Outcast Encoder®

StreamReplicator®

#### Granicus Trademark Names ™

Integrated Public Record™

Intelligent Routing™

LinkedMinutes™

LiveManager™

MediaCenter™

MediaManager™

MeetingMember™

MeetingServer™

Simulcast Encoder™

VoteCast™

VoteCast™ Classic

VoteCast™ Touch

#### Client Trademarks

## **EXHIBIT E**

### **TERMINATION OR EXPIRATION OPTIONS REGARDING CONTENT**

In case of termination by Client or expiration of the Service Agreement, Granicus and the Client shall work together to provide the Client with a copy of its Content. The Client shall have the option to choose one (1) of the following methods to obtain a copy of its Content:

- Option 1: Video files on DVR and a compact disc (CD) that contains the index and clip name data in CSV or XML format will be created and sent to the Client. This option may result in an additional charge to Client.
- Option 2: Provide the Content via download from MediaManager or from a special site created by Granicus. This option shall be provided free of charge.
- Option 3: Granicus shall provide the means to pull the content from the MediaVault in CSV or XML format. This option shall be provided free of charge.

The Client and Granicus shall work together and make their best efforts to transfer the Content within the sixty (60) day termination period. Granicus has the right to delete Content from its services after sixty (60) days.

RESOLUTION 2011-73

WHEREAS, the City of Grand Island broadcasts City Council meetings live and produces several recurring educational and informational segments, which residents can watch on Charter Communication Channels 6 and 12, and analog Channel 56; and

WHEREAS, live and on demand video streaming of City Council meetings and GITV programming will reach a larger audience and create another alternative for citizens to easily acquire City of Grand Island and community information; and

WHEREAS, the services provided by Granicus, Inc. will improve accessibility, transparency, and be responsive to the different needs of citizens; and

WHEREAS, the term of the agreement is 18 months and renewable for three one year terms, with an upfront cost of \$5,125 and a monthly cost of \$177, and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the service agreement between the City of Grand Island and Granicus, Inc. is approved.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2011.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

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



# **City of Grand Island**

**Tuesday, March 22, 2011**

**Council Session**

## **Item G12**

**#2011-74 - Approving Service Agreement with NebraskaLink, LLC  
for Data Transport Services for Public Library**

**Staff Contact: Steve Fosselman**

# **Council Agenda Memo**

**From:** Steve Fosselman, Library Director

**Meeting:** March 22, 2011

**Subject:** Approving Service Agreement with NebraskaLink, LLC  
for Data Transport Services for Public Library

**Item #'s:** G-12

**Presenter(s):** Steve Fosselman, Library Director

## **Background**

The Grand Island Public Library has obtained significant discounts for access to Internet service since 1998 through a federal Schools and Libraries Program of the Universal Service Fund (commonly referred to as ERate). The discount level for our library is 80%. This has made it possible for the library to gradually grow from 56 Kbps service to the present 10 Mbps.

In preparing for the upcoming E-Rate year (July 1, 2011 to June 30, 2012), it has been my aim to reduce costs for service while obtaining additional bandwidth for the benefit of library users via participation in Network Nebraska. This statewide network is used mostly by educational entities throughout the state, but has become open to public libraries and municipalities. Through aggregation of demand, adoption of common standards, and collaboration with network services and applications, participants are achieving many benefits, including reduced network costs, greater efficiency for participating entities, interoperability of video conferencing systems, increased collaboration, new opportunities, and improved effectiveness of public investments.

Separate data transport services between the library and College Park (a Network Nebraska aggregation site) is necessary to obtain Internet through Network Nebraska. Through the E-Rate program, quotes were sought for 36-month data transport service with up to three one-year voluntary extensions. The library received responses from Charter Business (Kearney) and NebraskaLink, LLC (Lincoln). At a 30 Mbps service:

	Monthly Non-discounted	Monthly E-Rate Discounted	36-month E-Rate Discounted
Charter Business	\$1,090.00	\$218.00	\$7,848.00
NebraskaLink, LLC	\$843.75	\$168.75	\$6,075.00

## **Discussion**

Current 10 Mbps Internet service at the library is priced at \$1,100 per month, \$220 per month with the ERate discount. Upon Council approval of a service agreement with NebraskaLink, LLC for data transport services, and a separate purchase order for Internet through Network Nebraska via Windstream at the discounted rate of \$1.20 per Mbps per month, we will be able to expand to 20 Mbps service - and reserve 10 Mbps for community distance education video transmission and future uses - at a lower total discounted monthly cost of \$192.75.

In addition, the library is working with the Nebraska Library Commission to make use of federal BTOP (Broadband Technology Opportunities Program) awarded to assist Nebraska libraries in expanding broadband services. Through this program, various installation services will be paid by the Nebraska Library Commission on our behalf. The extent of this additional financial assistance will be known before proceeding with a work order. However, Council approval of the service agreement is necessary at this time in order to meet the March 24, 2011 deadline set by this federal E-Rate program.

Our library's participation in Network Nebraska also opens up the possibility of future savings on Internet services for other municipal services that do not qualify for ERate discounts but once connected with College Park can benefit from current \$6.00 per Mbps non-discounted pricing.

This is a budgeted expense in the library's account 10044301-85410.

## **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 the Council approve a 36-month data transport service agreement with up to three one-year voluntary extensions with NebraskaLink, LLC.

## **Sample Motion**

Move to approve a 36-month data transport service agreement with up to three one-year voluntary extensions with NebraskaLink, LLC.

## MASTER SERVICE AGREEMENT

THIS MASTER SERVICE AGREEMENT ("Agreement") is entered into this 22nd day of March, 2011 ("Effective Date") by and between NebraskaLink, LLC ("Supplier") and Grand Island Public Library ("Customer").

### ARTICLE 1. DEFINITIONS

"Acceptable Use Policy" or "AUP" shall mean a set of rules defined by Supplier that restrict the ways in which the network or system may be used. The NebraskaLink AUP can be found at <http://nebraskalink.com/about-us.html>.

"Acceptance Letter" shall mean a written communication from Supplier to Customer informing Customer of Supplier's acceptance of the Customer Order.

"Affiliate" shall mean an entity that now or in the future, directly or indirectly controls, is controlled by, or is under common control with, a party to this Agreement. For purposes of the foregoing, "control" shall mean the ownership of (i) greater than ten percent (10%) of the voting power to elect the directors of an entity, or (ii) greater than ten percent (10%) of the ownership interest in an entity.

"Agreement Term" shall have the meaning set forth in Section 5.1(A).

"Applicable Taxes" shall have the meaning set forth in Section 3.4(A).

"Cancellation Charge" shall mean the charge payable by Customer for cancellation of the Service pursuant to Section 3.7(A) below, as further described in the relevant Service Schedule.

"Customer Commit Date" shall mean the date that Service will be available to Customer, as set forth in the Acceptance Letter.

"Customer Order" shall mean a request for Service submitted by Customer in the form designated by Supplier.

"Customer Premises" shall mean any location or locations off of the Supplier Network selected by Customer or its End Users to which Service will be delivered.

"Customer Requested Date" shall mean the date inserted by Customer into the Customer Order when Service is requested to be delivered by Supplier. Notwithstanding anything in this Agreement or any Customer Order to the contrary, Supplier shall not be obligated to deliver Service by the Customer Requested Date or any other date unless and until confirmed in writing by Supplier through the delivery to Customer of the Acceptance Letter.

"End Users" shall mean any person or entity deriving use of the Services through the Customer including but not limited to the Customer, an Affiliate of the Customer or a customer of the Customer.

"Facilities" shall mean any property owned, licensed or leased by Supplier or any of its Affiliates and used to deliver Service, including terminal and other equipment, conduit, fiber optic cable, optronics, wires, lines, ports, routers, switches, channel service units, data service units, cabinets, racks, private rooms and the like.

"Force Majeure Event" shall mean any event or circumstance or combination of events or circumstances that is beyond the reasonable control of the party sought to be held liable.

"Governmental Authority" shall mean any federal, state, regional, county, city, municipal, local, territorial, prefecture, or tribal government, whether foreign or domestic, or any department, agency, bureau, or other administrative or regulatory body obtaining authority from any of the foregoing, including, without limitation, courts, public utilities and communications authorities.

"Month" shall mean a period beginning at 12:00 AM in the Central time zone of the United States on the first day of the calendar month and ending at 12:00 AM in the Central time zone of the United States on the first day of the next calendar month.

"Notice of Completion" shall mean a written notice from Supplier that the Service has been installed and tested by Supplier and is functioning properly in accordance with the Service Delivery Requirement.

"Scheduled Maintenance" shall mean any preventative, routine or scheduled maintenance that is performed on a Service, Supplier's Facilities, the Supplier Network or any component thereof, that is reasonably likely to affect the Service, for which Supplier shall provide at least five (5) days' notice of timing and scope to Customer.

"Service" shall mean any Supplier service described in a Service Schedule and identified on a particular line item of a Customer Order.

"Service Charge" shall mean charges for Service as generally described in the Service Schedules.

"Service Commencement Date" shall mean the first to occur of (i) the date set forth in any Notice of Completion, unless Customer notifies Supplier that the Service is not functioning properly as provided in Section 3.1 (or, if two or more Services are designated as "bundled" in any Customer Order, the date set forth in the Notice of Completion for all such Services); and (ii) the date Customer begins using the Service other than for testing purposes pursuant to Section 3.1.

**"Service Delivery Requirement"** shall mean the testing standard or other specification for the delivery of a Service as described in the relevant Service Schedule.

**"Service Levels"** shall mean the specific remedies Supplier provides regarding installation and performance of Service as set forth in the applicable Service Schedule.

**"Service Level Credit"** shall mean the credit calculated as a result of Supplier's failure to meet a Service Level set forth on the applicable Service Schedule.

**"Service Schedule"** shall mean the forms so entitled and applicable to each Service ordered by Customer pursuant to a Customer Order. Unless already attached to this Agreement, the relevant Service Schedule shall be attached to each applicable Customer Order, and shall in either case be incorporated into this Agreement by reference.

**"Service Term"** shall mean the duration of time (measured starting on the Service Commencement Date) for which Service is ordered, as specified in the Customer Order. At the end of the Service Term, the Service shall automatically renew on a month-to-month basis until terminated by either party on thirty (30) days' notice.

**"Supplier Network"** shall mean the telecommunications network consisting of fibers and optical and transmission equipment which is owned and/or leased and operated and maintained by Supplier and its Affiliates.

**"Supplier POP"** shall mean data center space owned or leased by Supplier or any of its Affiliates for the purpose of, among other things, locating and collocating communications equipment and to which the Supplier Network is directly connected.

**"Termination Charge"** shall mean the charge payable by Customer for termination of the Service pursuant to Section 3.7(B) below, as further described in the relevant Service Schedule.

## **ARTICLE 2. DELIVERY OF SERVICE**

**2.1 Submission of Customer Order(s).** To order any Service, Customer shall submit a Customer Order requesting Service. The Customer Order and its backup detail must include a description of the Service, the Service Charges for Service, the applicable Service Term and the Customer Requested Date.

**2.2 Acceptance by Supplier.** Upon receipt of a Customer Order, if Supplier determines (in its sole discretion) to accept the Customer Order, Supplier will deliver an Acceptance Letter for the requested Service (or some portion of the Services). Supplier will become obligated to deliver ordered Service only if Supplier has delivered a Acceptance Letter for the Service.

**2.3 Customer Premises.** Customer shall allow Supplier access to the Customer Premises to the extent necessary (as

reasonably determined by Supplier) for the installation, inspection and Scheduled Maintenance or emergency maintenance of Facilities relating to the Service. In the event of an emergency, Customer shall, upon notice from Supplier, allow access to the Customer Premises as soon as is reasonably practicable under the circumstances. Customer will be responsible for providing and maintaining, at its own expense, the level of power, heating and air conditioning necessary to maintain the proper environment for the Facilities on the Customer Premises. In the event Customer fails to do so, Customer shall reimburse Supplier for the actual cost of repairing or replacing any Facilities damaged or destroyed as a result of Customer's failure. Customer will provide a safe place to work and comply with all laws and regulations regarding the working conditions on the Customer Premises.

**2.4 Supplier Facilities.** Except as otherwise agreed, title to all Facilities shall remain with Supplier. Supplier will provide and maintain the Facilities in good working order. Customer shall not, and shall not permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Facilities, without the prior written consent of Supplier. The Facilities shall not be used for any purpose other than that for which Supplier provides them. Customer shall not take any action that causes the imposition of any lien or encumbrance on the Facilities. In no event will Supplier be liable to Customer or any other person for interruption of Service or for any other loss, cost or damage caused by or related to improper use or maintenance of the Facilities by Customer or any third party gaining access to the Facilities through Customer in violation of this Agreement, and Customer shall reimburse Supplier for any damages as a result thereof. Customer agrees (which agreement shall survive the expiration, termination or cancellation of any Customer Order) to allow Supplier to remove the Facilities from the Customer Premises:

(A) after termination, expiration or cancellation of the Service Term of any Service in connection with which the Facilities were used; or

(B) for repair, replacement or otherwise as Supplier may determine is necessary or desirable, but Supplier will use reasonable efforts to minimize disruptions to the Service caused thereby.

**2.5 Customer-Provided Equipment.** If requested by Customer, Supplier may, at its option, install certain Customer-provided communications equipment. Unless otherwise agreed by Supplier in writing, Supplier will not thereafter be responsible for the operation or maintenance of such Customer-provided equipment. Customer shall be solely responsible for the compliance of its own equipment with applicable standards and for obtaining any necessary approvals or authorizations prior to its use. Supplier will not be responsible for the transmission or reception of signals by Customer-provided equipment or for the quality of, or defects in, such transmission or reception. Customer shall ensure that Customer-provided equipment does not interfere with or otherwise degrade the operation of the Facilities or the Supplier Network. Supplier shall have full control over the



configuration of the Supplier Network used in providing the Service and shall be entitled to alter the configuration.

#### **2.6 Representations and Warranties of Customer.**

Customer represents and warrants that (i) it has the legal right and authority, and will maintain the legal right and authority during the Agreement Term, to install, use and resell the Services as contemplated hereunder; (ii) the performance of Customer's obligations under this Agreement and use of Services will not violate any applicable law, rule or regulation or any applicable manufacturers' specifications or otherwise unreasonably interfere with Supplier's customers' use of the Services or Supplier Network, and (iii) Customer is authorized and has completed all required corporate actions necessary to execute this Agreement and applicable Customer Order(s).

#### **2.7 Representations and Warranties of Supplier.**

Supplier represents and warrants that (i) it has the legal right and authority, and will maintain the legal right and authority during the Agreement Term, to provide the Services ordered by Customer hereunder; (ii) the performance of Supplier's obligations under this Agreement will not violate any applicable law, rule or regulation; and (iii) Supplier is authorized and has completed all required corporate actions necessary to execute this Agreement and applicable Customer Order(s).

### **ARTICLE 3. BILLING AND PAYMENT**

**3.1 Commencement of Billing.** Upon installation and testing of the Service, Supplier will deliver to Customer a Notice of Completion. Upon receipt of the Notice of Completion, Customer shall have a period of seventy two (72) hours to confirm that the Service has been installed and is properly functioning in accordance with the applicable Service Delivery Requirements. Unless Customer delivers written notice to Supplier within such seventy two (72) hour period that the Service is not operating in accordance with the Service Delivery Requirements, Customer will be deemed to have accepted the Service and billing for all recurring charges shall commence on the applicable Service Commencement Date. In the event that Customer notifies Supplier within the time period stated above that the Service is not operating in accordance with the Service Delivery Requirements, then Supplier shall correct any deficiencies in the Service and deliver a new Notice of Completion to Customer, after which the process stated herein shall be repeated.

#### **3.2 Service Charges.**

(A) The types of Service Charges for each Service are generally described in the corresponding Service Schedule.

(B) In addition to the Service Charges described in the Service Schedules, in the event any Service requires Supplier to install additional infrastructure, cabling, electronics or other materials in the provision of the Service or for any other reason, then Supplier may invoice Customer for additional charges, as further described in the Service Schedules.

**3.3 Payment of Invoices.** Invoices for Services shall be delivered to and payable by Customer in accordance with the

relevant Service Schedules. All invoices are due thirty (30) days after the date of invoice, unless otherwise provided in a Service Schedule. All payments shall be due and payable in U.S. Dollars, except as specified on a particular invoice. Past due amounts accrue interest at a rate of 1.5% per Month (or the highest rate allowed by law, whichever is less) beginning from the date first due until paid in full. Customer shall make all payments by check or wire transfer of immediately available funds pursuant to the payment instructions on such invoice.

#### **3.4 Taxes and Fees.**

(A) All charges for Service are net of Applicable Taxes (as defined below). Except for taxes based on Supplier's net income, Customer will be responsible for all applicable taxes that arise in any jurisdiction, including, without limitation, value added (VAT), goods and services (GST), consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, imposed on, incident to, or based upon the provision, sale or use of the Service (collectively "**Applicable Taxes**"). If Customer is or was required by law to make any deduction or withholding from any payment due hereunder to Supplier, then, notwithstanding anything to the contrary contained herein, the gross amount payable by Customer to Supplier shall be increased so that after any such deduction or withholding for Applicable Taxes, the net amount received by Supplier will not be less than Supplier would have received had no such deduction or withholding been required. If any taxing or Governmental Authority asserts that Customer should have made a deduction or withholding for or on account of any Applicable Taxes with respect to all or a portion of any payments made hereunder, or that Supplier should have collected certain Applicable Taxes from Customer which Supplier did not collect, Customer hereby agrees to indemnify Supplier for such Applicable Taxes and to hold Supplier harmless on an after-tax basis from and against any and all Applicable Taxes, interest or penalties levied or asserted in connection therewith. To the extent that Customer is or believes it is entitled to an exemption from any Applicable Taxes, Customer is responsible for presenting Supplier with a valid exemption certificate (in a form reasonably acceptable to Supplier). Supplier will give effect to any valid exemption certificate provided in accordance with the foregoing sentence to the extent it applies to any Service billed by Supplier to Customer only for the period following Supplier's receipt of such exemption certificate.

(B) Customer shall reimburse Supplier for any regulatory fees charged to Supplier by any Governmental Authority or agency, including, but not limited to, the U.S. Federal Communications Commission, for Customer's use of Service provided hereunder. In the event that any regulatory fees are imposed on Supplier in respect of Service provided hereunder (including, but not limited to, Interstate Telephone Service Provider regulatory fees and Universal Service Fund Contributions), Supplier shall provide Customer with an invoice for such regulatory fees along with supporting documentation and Customer shall pay such invoice within thirty (30) days of the date of such invoice.

**3.5 Regulatory and Legal Changes.** In the event of any change in applicable law, regulation, decision, rule or order that materially increases the costs or other terms of delivery of Service, Supplier and Customer will negotiate regarding the rates to be charged to Customer to reflect such increase in cost and, in the event that the parties are unable to reach agreement respecting new rates within thirty (30) days after Supplier's delivery of written notice requesting renegotiation, then (a) Supplier may pass such increased costs through to Customer, and (b) if Supplier elects to pass such increased costs through to Customer, Customer may terminate the affected Service without further liability, except for liabilities incurred prior to termination, by delivering written notice of termination no later than thirty (30) days after the effective date of the rate increase.

**3.6 Disputed Invoices.** If Customer reasonably disputes any portion of a Supplier invoice, Customer must pay the undisputed portion of the invoice and submit written notice of the claim (in a form reasonably requested by Supplier) for the disputed amount. All claims must be submitted to Supplier in writing within thirty (30) days from the date of the invoice for such Services. Customer waives the right to dispute any charges not disputed within such thirty (30) day period. In the event that the dispute is resolved against Customer, Customer shall pay such amounts within ten (10) business days plus interest at the rate referenced in Section 3.3.

**3.7 Cancellation and Termination Charges.**

(A) Customer may cancel a Service following Supplier's acceptance of the applicable Customer Order and prior to the Customer Commit Date upon prior written notice to Supplier (in a form reasonably requested by Supplier). In the event that Customer does so cancel, or in the event that the delivery of such Service is cancelled by Supplier prior to delivery of a Notice of Completion due to a failure of Customer to comply with the terms of this Agreement or any Customer Order, Customer shall pay Supplier a Cancellation Charge as specified in the relevant Service Schedule for each Service. Customer's right to cancel any particular Service under this Section 3.7(A) shall automatically expire and shall no longer apply upon Supplier's delivery to Customer of a Notice of Completion for such Service.

(B) In addition to Customer's right of cancellation under Section 3.7(A) above, Customer may, at any time after the Notice of Completion has been delivered and prior to the expiration of the Service Term, terminate Service upon thirty (30) days' prior written notice to Supplier. In the event that Customer does so terminate, or in the event that the delivery of Service is terminated by Supplier during such period due to a failure of Customer to comply with the terms of this Agreement or any Customer Order, Customer shall pay Supplier a Termination Charge as specified in the relevant Service Schedule for each Service.

**3.8 Fraudulent Use of Services.** Customer is responsible for all Service Charges attributable to Customer incurred with respect to Service, even if incurred as the result of fraudulent

or unauthorized use of Service; except Customer shall not be responsible for fraudulent or unauthorized use by Supplier or its employees.

**ARTICLE 4: RESALE AND USE OF SERVICES**

**4.1 Resale of Services.** Customer shall not have any right to market and/or re-brand the Services purchased by it as its own product and services, and/or to resell or sublicense the Services to End Users unless it has all required legal and/or regulatory licenses and consents from all relevant Governmental Authorities. The Customer shall strictly comply with all the legal and/or regulatory licenses and consents from all relevant Governmental Authorities with respect to the resale of Services. The Customer shall be solely responsible and liable for any misuse of Services in respect of the Customer's resale of Services and shall indemnify and hold harmless Supplier against any and all claims or proceedings from such resale or sublicense of Services by the Customer. In case of resale or sublicense of Services, the Customer shall not (i) refer to Supplier in any marketing or service literature except with Supplier's prior written consent; or (ii) act or purport to act on behalf of Supplier; or (iii) be relieved of its obligations under any applicable Customer Order or this Agreement.

**4.2 Customer's Obligation.** In the event Customer resells or sublicenses the Services to an End User, it shall do so only under the conditions that (i) any and all of such End User's acts and omissions (including any failure by the End User to comply with any applicable law rule or regulation in the jurisdiction in which its uses or resells the Services) shall be attributable to Customer for the purposes of this Agreement; and (ii) any resale or sublicense by Customer of the Services shall not relieve Customer of its obligations under any applicable Customer Order or this Agreement.

**ARTICLE 5. TERM AND TERMINATION**

**5.1 Term.**

(A) This Agreement shall become effective on the Effective Date and shall continue for the later to occur of (i) the date that is two (2) years after the Effective Date or (ii) the expiration date of the longest remaining Service Term ordered under Customer Order ("Agreement Term"), unless earlier terminated as provided herein or extended as provided in Section 5.1(B). At the end of the initial Agreement Term, the Agreement Term shall automatically renew on a Month-to-Month basis until terminated by either party on thirty (30) days' notice.

(B) Except as otherwise set forth herein, Supplier shall deliver the Service for the entire duration of the Service Term, and Customer shall pay all Service Charges for delivery thereof through the end of the Service Term. To the extent that the Service Term for any Service extends beyond the Agreement Term, then this Agreement shall remain in full force and effect for such Service until the expiration or termination of such Service Term.

**5.2 Default By Customer.** If (i) Customer makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy or other insolvency protection against Customer is filed and not dismissed within sixty (60) days; (iii) Customer fails to make any payment required hereunder when due, and such failure continues for a period of five (5) business days after written notice from Supplier; (iv) Customer fails to observe and perform any material term of this Agreement (other than payment terms) and such failure continues for a period of thirty (30) days after written notice from Supplier; or (v) Customer has violated any law, rule, regulation or policy of any Government Authority related to the Services or Customer's use thereof, then Supplier may (A) terminate this Agreement and any Customer Order, in whole or in part, in which event Supplier shall have no further duties or obligations thereunder, and/or (B) suspend the provision of Services while the default is continuing, and/or (C) subject to Section 6.1, pursue any remedies Supplier may have under this Agreement, at law or in equity.

**5.3 Default By Supplier.** If (i) Supplier makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy or other insolvency protection against Supplier is filed and not dismissed within sixty (60) days; or (iii) Supplier fails to observe and perform any material term of this Agreement (where the Service Levels do not address such failure) and such failure continues for a period of thirty (30) days after written notice from Customer; then Customer may: (A) terminate this Agreement and/or any Customer Order, in whole or in part, in which event Customer shall have no further duties or obligations thereunder, and/or (B) subject to Section 6.1, pursue any remedies Customer may have under this Agreement, at law or in equity.

## **ARTICLE 6. LIABILITIES AND INDEMNIFICATION**

**6.1 No Special Damages.** NOTWITHSTANDING ANY OTHER PROVISION HEREOF, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF CUSTOMERS, LOSS OF DATA, INTERFERENCE WITH BUSINESS OR THE COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT OR ANY CUSTOMER ORDER, WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OR NEGLIGENCE OF ITS EMPLOYEES OR AGENTS, AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OR THE LIKELIHOOD OF SUCH LOSSES.

**6.2 Limitation.** Supplier's sole liability and Customer's sole remedy for damages arising out of the furnishing or failure to furnish Service (including, but not limited to, mistakes, omission, interruptions, failure to transmit or establish connections, delays, errors or other defects) is limited to the Service Levels.

**6.3 Disclaimer of Warranties.** SUPPLIER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY APPLICABLE SERVICE SCHEDULE.

## **6.4 Indemnification.**

(A) Subject to Section 6.1, each party shall indemnify the other from any claims by third parties (including any Governmental Authority or End User) and expenses including legal fees and court costs respecting (i) damage to tangible property, personal injury or death caused by such party's negligence or willful misconduct; or (ii) a breach by either party of Section 2.6 and 2.7 respectively. The Customer shall indemnify the Supplier from any claims by third parties (including any Governmental Authority or End User) and expenses including legal fees and court costs respecting a breach by the Customer of Section 4.2(i) (in the event of any End User being in breach of any applicable law rule or regulation) or otherwise arising from Services resold or otherwise provided by Customer.

(B) Each party agrees to promptly provide each other with notice of any claim which may result in an indemnification obligation hereunder. The indemnifying party may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of the indemnified party, which consent shall not be unreasonably withheld or delayed.

## **ARTICLE 7. SERVICE LEVELS**

**7.1 Service Interruptions and Delivery.** To report issues related to Service performance, Customer may contact Supplier at the telephone number or email address provided by Supplier to Customer from time to time. In order for Supplier to investigate any reported issues, Customer agrees to provide Supplier with supporting information as reasonably requested by Supplier, which may include (as applicable), without limitation, circuit ID, circuit end-point(s), IP address(es), originating phone number and terminating phone number. In the event of a failure to deliver Service in accordance with the Service Levels, Customer's sole remedies are contained in the Service Levels applicable (if any) to the affected Service, as described in the applicable Service Schedule(s).

**7.2 Service Level Credits.** In the event Supplier does not achieve a particular Service Level in a particular Month, Supplier will issue a Service Level Credit to Customer as set forth in the applicable Service Schedule upon Customer's

request. To request a Service Level Credit, Customer must contact Supplier or deliver a written request (in a form reasonably requested by Supplier) pursuant to Section 8.4 within thirty (30) days of the end of the Month for which a Service Level Credit is requested. Supplier may be contacted at the telephone number or email address provided by Supplier to Customer from time to time.

## **ARTICLE 8. GENERAL TERMS**

**8.1 Force Majeure.** Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to a Force Majeure Event. The foregoing shall apply only if such causes arise after the Effective Date, are beyond the reasonable control of the party so affected and arise without such party's fault or negligence.

**8.2 Assignment.** Customer may not assign its rights and obligations under this Agreement or any Customer Order without the express prior written consent of Supplier. This Agreement and all obligations hereunder shall apply to any permitted transferees or assignees. Notwithstanding any assignment by Customer, Customer shall remain liable for the payment of all charges due under each Customer Order.

### **8.3 Affiliates and Contractors.**

(A) Service may be provided to Customer pursuant to this Agreement by an Affiliate or contractor of Supplier. Customer shall comply with all requirements of such Affiliate or contractor as communicated to Customer by Supplier.

(B) The parties acknowledge and agree that Customer's Affiliates may purchase Service under this Agreement; provided, however, any such Customer Affiliate purchasing Service hereunder agrees that such Service is provided pursuant to and governed by the terms and conditions of this Agreement. Customer shall be jointly and severally liable for all claims and liabilities arising under this Agreement related to Service ordered by any Customer Affiliate, and any event of default under this Agreement by any Customer Affiliate shall also be deemed an event of default by Customer. Any reference to Customer in this Agreement with respect to Service ordered by a Customer Affiliate shall also be deemed a reference to the applicable Customer Affiliate.

(C) Notwithstanding anything in this Agreement to the contrary, either party may provide a copy of this Agreement to its Affiliate or such other party's Affiliate for purposes of this Section 8.3, without notice to, or consent of, the other party.

**8.4 Notices.** Notices hereunder shall be in writing and sufficient and received if delivered in person, or when sent via facsimile, pre-paid express courier (for international correspondence), pre-paid certified mail (return receipt requested) (for United States correspondence), or electronic mail, addressed as follows:

### **IF TO SUPPLIER:**

NebraskaLink, LLC  
Suite 23  
6900 Van Dorn St.  
Lincoln, Nebraska 68506  
Attn: Chief Executive Officer  
[Email: paul.ludwick@nebraskalink.com](mailto:paul.ludwick@nebraskalink.com)

### **IF TO CUSTOMER:**

Grand Island Public Library  
211 North Washington Street  
Grand Island, NE 68801  
Attn: Steve Fosselman, Library Director  
Email: [sf@gi.lib.ne.us](mailto:sf@gi.lib.ne.us)

or at such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. All such notices shall be deemed to have been given on (i) the date delivered if delivered personally, by express courier, or by pre-paid certified mail, or (ii) the date of transmission if delivered by facsimile or electronic mail (or the business day after transmission if transmitted on a weekend or legal holiday). Notwithstanding the foregoing, any notices delivered by Supplier to Customer in the normal course of providing Service hereunder shall be deemed properly given if delivered via any of the methods described above or via electronic mail to the email address listed on any Customer Order.

**8.5 Application of Tariffs.** Supplier may elect or be required to file with the appropriate regulatory agency tariffs respecting the delivery of certain Service. In the event that such tariffs are filed respecting Service ordered by Customer, then (to the extent such provisions are not inconsistent with the terms of a Customer Order) the terms set forth in the applicable tariff shall govern Supplier's delivery of, and Customer's consumption or use of, such Service.

**8.6 Data Protection.** During the performance of this Agreement, it may be necessary for Supplier to transfer, process and store billing and utilization data and other data necessary for Supplier's operation of its network and for the performance of its obligations under this Agreement. Customer hereby consents to Supplier's (i) transfer, storage and processing of such data; and (ii) use of such data for its own internal purposes and as allowed by law. This data will not be disclosed to third parties.

**8.7 Contents of Communications.** Supplier shall have no liability or responsibility for the content of any communications transmitted via the Service and Customer shall defend, indemnify and hold Supplier harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to such content or for claims by third parties relating to Customer's or its end users' use of Service.

**8.8 Content of the Internet.** Supplier provides only access to the Internet. Supplier does not operate or control the



information, services, opinions or other content of the Internet, and Supplier makes no warranties or representations regarding any such information, services, opinions or other content. Customer agrees that it shall make no claim whatsoever against Supplier relating to the content of the Internet or respecting any information, product, service or software ordered through or provided by virtue of the Internet. Supplier reserves the right to take such measures as may be reasonably necessary, in Supplier's sole discretion, to ensure security and continuity of service on the Supplier Network, including but not limited to identification and blocking or filtering of Internet traffic sources which Supplier deems to pose a security or operational risk or a violation of its AUP. In addition, Customer understands that Supplier does not own or control other third party networks outside of the Supplier Network, and Supplier is not responsible or liable for any filtering or access restrictions imposed by such networks or for the performance (or non-performance) within such networks or within interconnection points between the Supplier Network and other third party networks.

**8.9 Marks and Publicity.** Neither party shall have the right to use the other party's or its Affiliates' trademarks, service marks or trade names or to otherwise refer to the other party in any marketing, promotional or advertising materials or activities, except as may be agreed in advance in writing by the parties. Neither party shall issue any press release relating to any contractual relationship between Supplier and Customer, except as may be required by law or agreed between the parties in writing.

**8.10 Non-Disclosure.** Any information or documentation disclosed between the parties during the performance of this Agreement shall be subject to the terms and conditions of the applicable non-disclosure or confidentiality agreement then in effect between the parties.

**8.11 Disclosure of Customer Information.** Supplier reserves the right to provide any customer or potential customer bound by a nondisclosure agreement access to a list of Supplier's customers and a description of Service purchased by such customers. Customer consents to such disclosure, including the listing of Customer's name and Service purchased by Customer, provided that financial terms relating to the purchase shall not be disclosed.

**8.12 Governing Law and Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Nebraska, without regard to its choice of law rules. Each of the parties hereby consents to the non-exclusive jurisdiction and venue of the federal and state courts in the State of Nebraska in any suit or proceeding arising out of or

relating to this Agreement or the transactions contemplated hereby.

**8.13 Entire Agreement.** This Agreement, including any Service Schedule(s) attached hereto and Customer Order(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements relating to the Service, which are of no further force or effect.

**8.14 Order of Precedence.** In the event of any conflict between this Agreement and the terms and conditions of any Service Schedule and/or Customer Order, the order of precedence is as follows: (1) the Customer Order, (2) the Service Schedule, and (3) this Agreement.

**8.15 Survival.** The provisions of this Article 8 and Articles 3, 4, 6 and 7 and any other provisions of this Agreement that by their nature are meant to survive the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

**8.16 Relationship of the Parties.** The relationship between Customer and Supplier shall be as independent contractors and shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, without limitation, for federal income tax purposes.

**8.17 Severability; Waiver.** In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, such offending provision(s) shall be stricken and the remainder of this Agreement shall remain legal, valid and binding. The failure by either Party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor to operate so as to bar the exercise or enforcement of any such or other right on any later occasion.

**8.18 Third Party Beneficiaries.** This Agreement shall be binding upon, inure solely to the benefit of and be enforceable by each party hereto and their respective successors and assigns hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**8.19 Counterparts.** This Agreement may be executed in one or more counterparts (including by means of facsimile or electronic .pdf submission), all of which taken together shall constitute one and the same instrument.

# ARTICLE 9. ADDENDUM

The service term is 36 months, with up to three one-year voluntary extensions when agreed upon by all parties.

All charges for services quoted by Supplier in relevant portions of "GIPL470/1112-2 Section 8" below shall remain applicable throughout the service term and voluntary extensions, with the exception of any future downward adjustments of charges contingent upon the use of federal BTOP funding through the Supplier and/or the Nebraska Library Commission for broadband improvements to Customer.

Telecommunications Services	Quantity and/or Capacity Sought	Current Quantity and/or Capacity	Specifications	Quotes Needed	Monthly
Digital Transmission Service/WAN	Up to 100 Mbps	10 Mbps	Up to 100 Mbps data transport priced in 10Mbps increments. Between 211 North Washington Street, Grand Island, NE 68801 308-385-5333 (library) and 3180 West Highway 34, Grand Island, NE 68801 308-398-7275 (College Park) for connection to Network Nebraska. Provide costing for 36 months with up to three one-year voluntary extensions when agreed upon by all parties. Other specifications provided. All bids will be evaluated at a predefined bandwidth, available at bid opening, but all other quotes will be considered in this evaluation.	1.a - 10 Mbps	\$ 781.25
				1.b - 20 Mbps	\$ 812.50
				1.c - 30 Mbps	\$ 843.75
				1.d - 40 Mbps	\$ 875.00
				1.e - 50 Mbps	\$ 906.25
				1.f - 60 Mbps	\$ 937.50
				1.g - 70 Mbps	\$ 968.75
				1.h - 80 Mbps	\$ 1,000.00
				1.i - 90 Mbps	\$ 1,031.25
				1.j - 100 Mbps	\$ 1,062.50

Supplier shall separately bill the Nebraska Library Commission for the initial \$2,500 installation charges, to be paid from their federal BTOP funds.

Customer shall apportion service between federal E-Rate eligible and ineligible services. Prior to Customer Commit Date, Customer retains the right to increase or decrease federal E-Rate eligible and ineligible services, and annually thereafter. Customer shall be billed only the federal E-Rate discounted portion of all eligible services (currently an 80% discount but subject to change on an annual basis). Any federal E-Rate ineligible services shall be itemized separately on such invoices.

The City of Grand Island, Nebraska operates on a fiscal year beginning October 1st and ending on the following September 30th. It is understood and agreed that any portion of this Agreement which will be performed in a future fiscal year is contingent upon the City Council adopting budget statements and appropriations sufficient to fund such performance. However, the parties agree that Services received up to the point of notice of loss of funding by Customer shall still be due and owing to Supplier.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date written above.

**NEBRASKALINK, LLC ("Supplier")**

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**CITY OF GRAND ISLAND on behalf of GRAND ISLAND  
PUBLIC LIBRARY ("Customer")**

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

W553260.05

RESOLUTION 2011-74

WHEREAS, the Grand Island Public Library has obtained significant discounts for access to Internet service since 1998 through a federal Schools and Libraries Program of the Universal Service Fund (commonly referred to as E-Rate) ; and

WHEREAS, the Grand Island Public Library requested quotes for data transport services to be provided through a 36-month service agreement with up to three one-year voluntary extensions; and

WHEREAS, NebraskaLink, LLC has responded with the lowest quote for this service; and

WHEREAS, City Council execution of a service agreement with NebraskaLink, LLC prior to March 24, 2011 will qualify the Grand Island Public Library for an 80% E-Rate discount on data transport services as well as separately provided discounts for Internet access through Network Nebraska.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the NebraskaLink, LLC data transport service agreement is hereby approved for a term of 36 months with up to three one-year voluntary extensions; and the Mayor is hereby authorized and directed to execute such Service Agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2011.

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Jay Vavricek, Mayor

Attest:

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RaNae Edwards, City Clerk

Approved as to Form	<input type="checkbox"/>	_____
March 18, 2011	<input type="checkbox"/>	City Attorney





# **City of Grand Island**

**Tuesday, March 22, 2011**

**Council Session**

## **Item G13**

**#2011-75 - Approving GIS Maintenance Contract Renewal for 911 Services**

**Staff Contact: Jon Rosenlund**

# **Council Agenda Memo**

**From:** Jon Rosenlund, Emergency Management Director

**Meeting:** March 22, 2011

**Subject:** 911 GIS Maintenance Contract Renewal

**Item #'s:** G-13

**Presenter(s):** Jon Rosenlund, Emergency Management Director

## **Background**

The Grand Island Emergency Center utilizes a series of data tools to locate and map 911 calls from landlines and wireless callers. This requires the synchronization of GIS data with the Master Street Address Guide (MSAG). To date, the State of Nebraska had funded this service through a contract with a GIS contractor. That contract has expired the Emergency Management Department recommends a renewal of this contract through May 1, 2015.

## **Discussion**

In 2006, the Department partnered with the Nebraska Public Service Commission and GIS contractor GeoComm Inc. to provide GIS/MSAG data management and synchronization services necessary in mapping emergency 911 callers from landlines and wireless networks. This three-way agreement provided GIS/MSAG synchronization, accomplished by GeoComm Inc., delivered to the Grand Island Emergency Center, and paid by the Nebraska Public Service Commission through the Wireless E911 Fund revenues paid to the State.

Beginning July 2010, the Public Service Commission began remitting a portion of the Wireless E911 Fund back to Public Safety Answering Points (PSAPs) through the Wireless E911 Support Allocation Model (911 SAM). Following the development of the 911 SAM, the State will no longer pay for new contracts or services as they have in the past. These costs are now passed directly to the PSAP.

The proposed contract is a renewal of the GIS services contract provided to the Grand Island Emergency Center which eliminates the PSC as the funding “middle-man.” Costs for this renewed contract will come from a combination of the Emergency Management Department’s landline E911 Fund (215) and the new Wireless E911 Fund (216).

## **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 accept this contract renewal.

## **Sample Motion**

Move to approve the contract renewal.

# GIS Data Maintenance Agreement

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This Maintenance Agreement ("the Agreement") is made by and between the **City of Grand Island** ("the Customer"), organized under the laws of the State of Nebraska and **GeoComm, Incorporated** ("GeoComm") a Minnesota corporation with its principal offices at 601 West St. Germain Street, St. Cloud, MN, 56301.

In this agreement the party who is contracting to receive the professional services shall be referred to as "the Customer," and the party who will be providing the services shall be referred to as "GeoComm."

GeoComm has an established background in communications engineering, geographic information systems development, cartography, software development and professional project management and is willing to provide those services to the Customer based on this background. The Customer desires to have services provided by GeoComm.

Therefore, the parties agree as follows:

## Section 1 - Description of Service and Limitations of Exhibits

Beginning upon contract signing, GeoComm will provide the goods and services (collectively the Services) described in Exhibit A and attached and incorporated herein by reference, and shall be referred to as "the Exhibits." The Services are further explained in the Exhibits and include, without limitation, explanation concerning the following:

- GIS Data Maintenance Services (Five Years)

## Section 2 - Payment

The Customer shall pay a fee to GeoComm of **\$31,066.00** for five years services as described in the Exhibits and provided under this agreement by GeoComm. The Customer agrees to pay GeoComm annual payments as follows:

\$5,850.00 to be invoiced May 1, 2011  
\$5,850.00 to be invoiced May 1, 2012  
\$6,143.00 to be invoiced May 1, 2013  
\$6,450.00 to be invoiced May 1, 2014  
\$6,773.00 to be invoiced May 1, 2015

Services under this agreement will be provided from **May 1, 2011, through April 30, 2016.**

## Section 3 - Termination

Either party, upon thirty (30) days written notice to the other party, may terminate this Agreement for violation of the material terms of this Agreement and failure to cure any deficiency within a reasonable time after notice thereof. In the event of termination for just cause by the Customer, GeoComm shall refund all amounts received to that point. In the event of termination for just cause by GeoComm, the Customer shall forfeit any funds paid and return any software and hardware received.

#### **Section 4 - Relationship of Parties**

The parties understand that GeoComm is an independent contractor and not an employee of the Customer.

#### **Section 5 - Disclosure**

GeoComm is required to disclose any outside activities or interests, including ownership or participation in the development of prior inventions, that conflict or may conflict with the best interests of the Customer. Prompt disclosure is required under this paragraph if the activity or interest is related, directly or indirectly, to any activity that GeoComm may be involved with, on behalf of the Customer.

#### **Section 6 - Employees**

GeoComm's employees and agents, if any, who perform services for the Customer under this Agreement shall also be bound by the provisions of this agreement.

#### **Section 7 - Injuries**

GeoComm acknowledges its obligation to obtain appropriate insurance coverage for the benefit of GeoComm and its employees. GeoComm waives any rights to recover damages from the Customer for any injuries that GeoComm and/or its employees may sustain while performing services under this agreement and that are a result of the negligence of GeoComm or its employees or agents.

#### **Section 8 - Indemnification**

GeoComm agrees to indemnify and hold the Customer harmless from all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against the Customer that result from the acts or omissions of GeoComm and/or its employees or agents.

#### **Section 9 - Insurance**

GeoComm shall obtain comprehensive general liability and workers compensation insurance for both personal injury and property damage with limits no less than those required under Customer State law. All policies shall not be cancelled, materially changed, or not renewed without thirty days prior notice thereof to the Customer. Minimum limits for GeoComm liability insurance shall be in the amount of \$1,000,000.00 for any number of claims arising out a single occurrence under a single limit or combined limit or excess umbrella general liability insurance policy. GeoComm shall additionally obtain Worker's Compensation Insurance extending coverage to all its employees.

#### **Section 10 - Data Confidentiality**

GeoComm agrees to review, examine, inspect or obtain Customer data only for the purposes described in this agreement, and to at all times hold such information confidential. The obligation to protect the confidentiality of confidential information disclosed to the other party shall extend for a period of five (5) years following disclosure and shall survive early termination of this Agreement. All data, whether digital or hard-copy, provided to GeoComm by the Customer shall remain the legal property of the Customer, and shall not be distributed, sold or utilized by GeoComm for any purposes other than those defined in this contract, without the express permission of the Customer.

## **Section 11 - Nondiscrimination**

During the performance of this Agreement, GeoComm agrees that no person shall, on the grounds of any status protected by law, be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all applicable federal and state laws against discrimination.

## **Section 12 - Assignment**

GeoComm's obligations under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the Customer, which consent shall not be unreasonably withheld.

## **Section 13 - Notices**

All notices required or permitted under this agreement shall be in writing and shall be deemed delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

### **City of Grand Island**

Jon Rosenlund, Emergency Management Director  
100 East First Street, Grand Island, NE 68803-1968  
Phone (308) 385-5360 Fax (308) 385-5378 E-mail [jonr@grand-island.com](mailto:jonr@grand-island.com)

### **GeoComm**

Nate Ekdahl, Assistant Geographic Services Manager  
601 West St. Germain Street, St. Cloud, MN 56301  
Phone (320) 240-0040 Fax (320) 240-2389 E-mail [nekdahl@geo-comm.com](mailto:nekdahl@geo-comm.com)

## **Section 14 - Entire Agreement**

This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This agreement supersedes any prior written or oral agreements between the parties.

## **Section 15 - Amendment**

This Agreement may not be modified or amended unless the amendment is made in writing and is signed by both parties.

## **Section 16 - Ownership**

It is agreed by and between the parties that all products created as a result of this contract will be the sole property of the Customer. With the exception of GeoComm's proprietary software products, all products created and delivered under this agreement may be used, altered and distributed at the Customer's discretion.

## **Section 17 - Severability**

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this agreement is invalid or unenforceable, but that by limiting such provision it becomes valid and

enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

#### **Section 18 - Laws to Be Observed**

GeoComm shall keep fully informed of all Federal and state laws; all regulations pertaining to the Occupational and Safety Hazards Act (OSHA); all local laws, ordinances and regulations; and all orders and decrees of bodies and tribunals having any jurisdiction or authority, which in any manner affect the conduct of work.

#### **Section 19 - Applicable Law**

If there is any dispute concerning this agreement, the laws of the state of Nebraska apply. Proper venue and jurisdiction for all lawsuits, claims, disputes, and other matters in questions between the parties to this agreement or any breach thereof shall be in the courts of the state of Nebraska.

#### **For City of Grand Island**

By: \_\_\_\_\_  
Signature/Title

Date: \_\_\_\_\_

#### **For GeoComm**

By: \_\_\_\_\_  
Janet Grones/Treasurer

Date: \_\_\_\_\_

## **Exhibit - A            Scope of Services for the City of Grand Island, Nebraska**

---

GeoComm will provide the City of Grand Island with the following maintenance services:

- Digital Map Updates (wireline)
- Digital Map Updates (wireless)
- Master Street Address Guide (MSAG) and 9-1-1 Database Updates

### **Digital Map Updates (wireline)**

GeoComm believes that proactively eliminating errors in the map data is a crucial step in map data maintenance to enhance wireline 9-1-1 call plotting accuracy. Therefore, GeoComm proposes to actively research possible call plotting issues as it relates to the GIS map data. GeoComm will periodically compare the City of Grand Island/Hall County MSAG to the map data and review provided error reports to determine possible wireline call plotting issues. Map data issues determined by either review will be discussed with the City of Grand Island and /or Hall County to ensure proper updates are made. A list of fallout along with the synchronization percentage will be provided to the City of Grand Island project contact via e-mail after each review.

In addition, GeoComm proposes to use provided hard copy or digital resources to update the map data layers for plotting wireline 9-1-1 calls.

As needed, GeoComm will:

- Update the road centerline layer in unincorporated and incorporated Hall County with additions, deletions, and corrections
- Update the Hall County Emergency Service Zones (ESZ) layer, as well as associated law, fire, and medical boundary layers when updates are requested
- Update the community boundary layer when there are annexations
- Update the water features layer(s) with any additions, deletions, and/or corrections
- Update existing additional layer(s) (if available) including:
  - Section lines
  - Section numbers
  - Railway Mile Markers
  - Railways
  - Postal boundaries
- Upload updated map data to the Nebraska PSC Data Repository (<http://psc.gisworkshop.com/Repo/login.jsp>) at a minimum of once per quarter.
- Complete regular and proactive quality control on all map layers used for 9-1-1 call plotting

In addition, GeoComm will provide the City of Grand Island with two maps, no larger than 36" x 36" on quarterly or bi-annual basis.

- Map one will display community boundaries, roads, road labels, water features, and water labels.
- Map two will display all map one elements plus ESZ boundaries.

**Note:** The number of MSAG reviews will not exceed four times per year, and the number will be determined by the City of Grand Island providing the MSAG.



## **Digital Map Updates (wireless)**

GeoComm will update the Phase I cellular coverage layer and cellular tower layer based on digital resources provided by the Nebraska Public Services Commission (PSC) for plotting wireless 9-1-1 calls. As needed, GeoComm will:

- Add new sector or omni coverages
- Attribute new sector or omni coverages with unique ID, sector ID, sector number, wireless company name, and radius
- Update sector or omni coverage attributes with current wireless information
- Change omni coverages to sectors
- Change sector orientation of cellular coverages
- Change sector or omni coverage radius
- Add new tower locations
- Periodically pull GeoLynx call logs to review wireless calls and to identify any wireless plotting errors or problems
- Report potential wireless data errors to the Nebraska PSC if found in the quarterly wireless spreadsheet that is compiled from wireless providers
- Review quarterly wireless spreadsheet from Nebraska PSC and update the wireless Phase I sector layer as needed. This may include adding or removing wireless sectors, updating wireless Phase I unique IDs, or adjusting sector orientation.

## **MSAG and 9-1-1 Database**

GeoComm will update the MSAG and 9-1-1 database based on hard copy or digital resources provided by the City of Grand Island. As needed, GeoComm will:

- Update the MSAG when new roads are added, ESZs are changed, and/or roads are extended
- Provide deletions to the MSAG, when necessary
- Review any MSAG problems, as provided by the database provider (overlaps with other MSAG entries)
- Use the City of Grand Island/Hall County 9-1-1NET account to ensure:
  - requested MSAG updates have been processed by Intrado
  - there are no outstanding ALI discrepancies
- Work with the City of Grand Island and Intrado on fallout from the geocoding process to ensure the map data and MSAG are current
- Request new ESNs from the database provider when new ESZs are created
- Assist in the resolution of telephone records with missing addresses
- Devise strategies of ensuring the ongoing 96 percent accuracy of the City of Grand Island/Hall County 9-1-1 database
- Provide assistance with telephone records that do not match the MSAG
- Contact municipalities when residents within an incorporated community do not have MSAG-valid addresses
- Send telephone record updates to the telephone companies

Synchronization of the Customer MSAG, 9-1-1 database, and map data is crucial in a 9-1-1 environment. In addition to providing ongoing updates to the City of Grand Island/Hall County MSAG and 9-1-1 database, GeoComm will complete periodic reviews of these three elements to ensure a high synchronization rate. Updates will be made to the MSAG and 9-1-1 database based on these reviews. If clarification is needed GeoComm will work closely with the City of Grand Island to ensure accurate updates are made.

R E S O L U T I O N   2011-75

WHEREAS, the City of Grand Island, Nebraska, provides 911 Services at the Grand Island Emergency Center (GIEC) through interlocal agreement to the entire Hall County; and

WHEREAS, locating 911 callers from landline and wireless sources is a vital part of 911 Service; and

WHEREAS, Geographic Information System (GIS) services which synchronize GIS map data with Master Street Address Guide (MSAG) is an essential element of 911 mapping; and

WHEREAS, GeoComm Inc. has provided this service to the Grand Island Emergency Center (GIEC) to date through previous arrangements between GeoComm and the Public Service Commission, which agreement expires April 30, 2011; and

WHEREAS, GeoComm Inc. has proposed a renewal of this agreement, for a total fee of \$31,066.00, portions billed annually as defined in the contract, for five years of service, expiring April 30, 2016,

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

1.     The Mayor is hereby authorized and directed to enter into this contract on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2011.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

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

Approved as to Form <input type="checkbox"/> _____ March 18, 2011 <input type="checkbox"/> City Attorney
---



# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item H1

**Consideration of Request from Tom Ummel and Tommy Ummel  
for a Conditional Use Permit for a Recycling Center Drop Off  
Located at 1827 East 4th Street**

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

Staff Contact: Craig Lewis



# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item I1

**#2011-76 - Consideration of Request from Friesen Management, Inc. dba Sam and Louie's NYP, 928 Concord Avenue for a Class "C" Liquor License and Liquor Manager Designation for Donald Friesen, 4030 West Husker Highway**

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

Staff Contact: RaNae Edwards

RESOLUTION 2011-76

WHEREAS, an application was filed by Friesen Management, Inc. doing business as Sam and Louie's NYP, 928 Concord Avenue for a Class "C" Liquor License; and

WHEREAS, a public hearing notice was published in the *Grand Island Independent* as required by state law on March 12, 2011; such publication cost being \$15.18; and

WHEREAS, a public hearing was held on March 22, 2011 for the purpose of discussing such liquor license application.

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

- \_\_\_\_\_ The City of Grand Island hereby recommends approval of the above-identified liquor license application contingent upon final inspections.
- \_\_\_\_\_ The City of Grand Island hereby makes no recommendation as to the above-identified liquor license application.
- \_\_\_\_\_ The City of Grand Island hereby makes no recommendation as to the above-identified liquor license application with the following stipulations: \_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ The City of Grand Island hereby recommends denial of the above-identified liquor license application for the following reasons: \_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ The City of Grand Island hereby recommends approval of Donald Friesen, 4030 W. Husker Highway as liquor manager of such business upon the completion of a state approved alcohol server/seller training program.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2011.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

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

Approved as to Form	<input type="checkbox"/>	_____
March 18, 2011	<input type="checkbox"/>	City Attorney



# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item I2

**#2011-77 - Consideration of Preparing Annexation Plan and Refer to the Planning Commission**

Staff Contact: Chad Nabity

# **Council Agenda Memo**

**From:** Chad Nabity, AICP

**Meeting:** March 22, 2011

**Subject:** Annexation Plan

**Item #'s:** I-2

**Presenter(s):** Chad Nabity, AICP

## **Background**

Cities are created to facilitate the infrastructure necessary (streets, sewer, water...) for people to live together in close proximity. Annexation is the way cities grow. Grand Island has annexed suburban development numerous times over its history including areas such as Parkview and Capital Heights. The City of Grand Island has been involved in numerous lawsuits over annexation but has ultimately continued to grow into the City it is today because of annexation. It is appropriate for the Grand Island City Council to consider suburban development and decide if Council wishes to begin the process of annexing any of the property adjacent to the City limits that is eligible for annexation.

## **Discussion**

Nebraska Statutes allow cities of the First Class to annex property that is adjacent to and contiguous with the municipal limits of the city and that is not agricultural land that is rural in nature. Agricultural land with adjacent municipal services and greater value as developed land than as farm ground has been found by Nebraska courts to be suburban in nature and therefore eligible for annexation. City staff has identified 15 (the Eagle Scout Park Area has been split into 2 areas so Council can consider the Park and the Ball Fields separate from the area east of Broadwell and U.S. Highway 281) areas around the City of Grand Island that appear to meet the qualification of being adjacent and contiguous and not agricultural land that is rural in nature.

Council's decision to consider an area for annexation should be based on the number of people, houses, and businesses in each area, the ability (or responsibility) of the city to provide city services to each area, the need for city services in each area and the potential revenue for the city through property and sales taxes in each. The attached resolution identifies fifteen potential areas for annexation. Seven of those areas have been presented as recommended areas to consider for annexation in the near future including the six

presented at the study session and the property along Bismark south of JBS Swift. The area around Rainbow Lake has been enlarged to include Hall County Park and the property north of Schimmer Road and west of Blaine Street south of the diversion channel. Council can choose to move forward with any of the areas presented by including the areas to be considered for annexation in the motion to approve this resolution.

By passing this resolution and selecting areas for consideration Council is directing staff:

- to proceed with preparing annexation plans (as required and defined by statute),
- to notify property owners and school districts as required by law, and
- to forward the annexation plans to the Regional Planning Commission for review.

Staff has prepared this resolution in response to the Study Session held on March 15, 2011.

### **Alternatives**

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

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

### **Recommendation**

City Administration recommends that the Council approve the resolution and identify in the motion or motions which areas staff should concentrate on when preparing annexation plan and recommendations.

### **Sample Motion**

Move to approve Resolution #2011-79 and include areas (list each area to be included by the number and/or name shown on page 2 of the resolution).



RESOLUTION 2011-77

WHEREAS, it is the responsibility of the City Council to periodically review areas adjacent to the City that are either developed or have the infrastructure in place necessary for development and pursue annexation of those areas; and

WHEREAS, one of the primary reasons to create and build cities is to provide municipal services to residents that allow people to live in close proximity to one another; and

WHEREAS, such developed areas or undeveloped areas with infrastructure in place exist within and adjacent to the City of Grand Island, and

WHEREAS, annexation of such areas requires that the City provide notification to property owners and school districts , and

WHEREAS, annexation of such areas requires that the City prepare an annexation plan as defined in the Nebraska Revised State Statutes §16-117; and

WHEREAS, the City of Grand Island desires to consider annexation of areas selected from the attached list by Council and identified during the March 22, 2011 meeting, and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, do hereby direct staff to prepare annexation plans for the areas identified as attached and direct city staff to prepare annexation plans for these areas, notify property owners and school districts as required, submit the plans to the Hall County Regional Planning Commission, and present these plans back to the Grand Island City Council for further consideration.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2011.

---

Jay Vavricek, Mayor

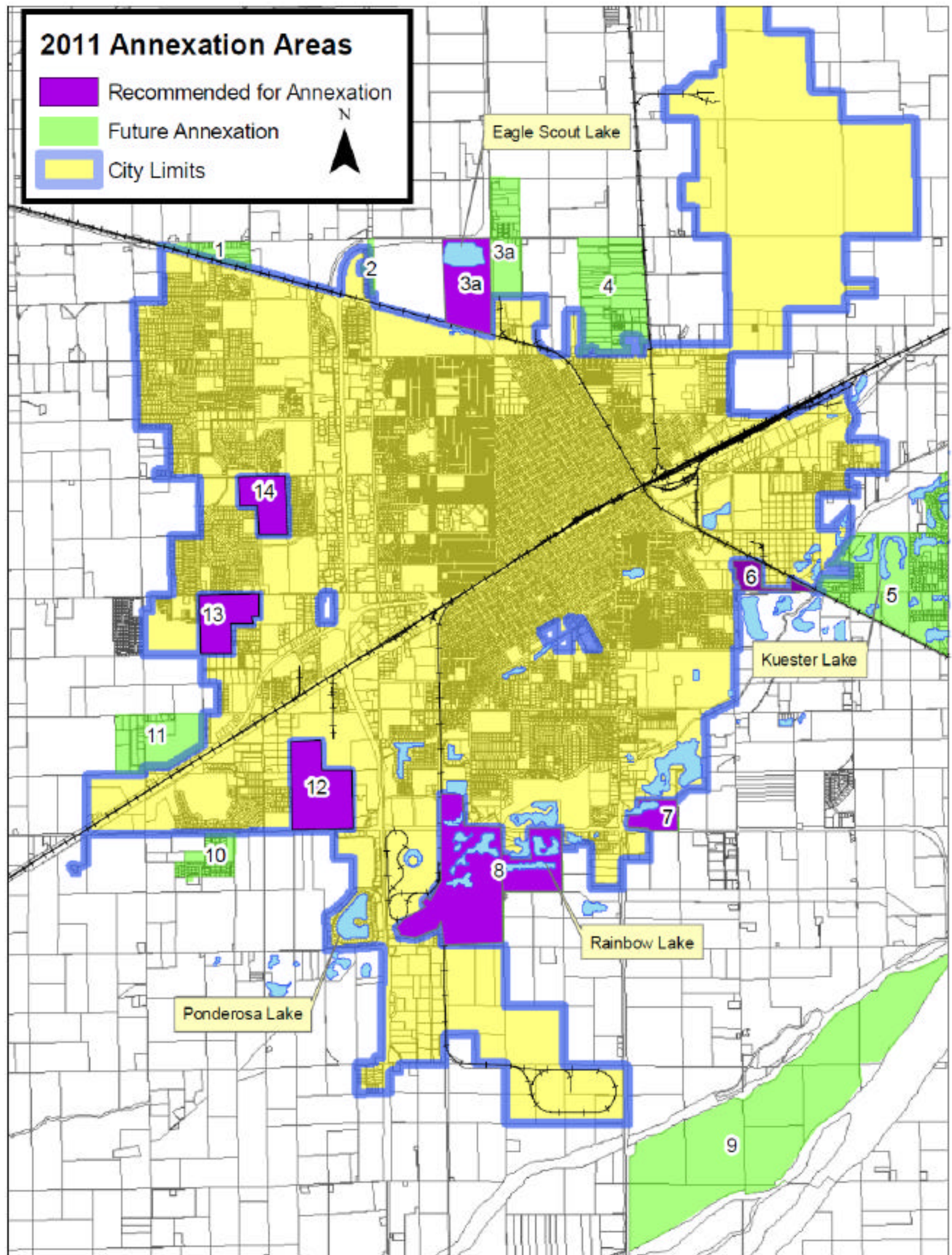
Attest:

---

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 18, 2011	☐ City Attorney

<b>Council Included Area in Passage of this Resolution</b>	<b>Name</b>	<b>Number</b>
	<b>Staff Recommended</b>	
Yes or No	Eagle Scout Park/Veteran's Field Complex	3a
Yes or No	Bismark Road	6
Yes or No	Vanosdal	7
Yes or No	Rainbow Lake/Hall County Park	8
Yes or No	Husker Hwy/281	12
Yes or No	Old Potash/North	13
Yes or No	13th/North	14
	<b>Recommended for Future Annexation</b>	
Yes or No	Airport Rd	1
Yes or No	Webb Rd	2
Yes or No	North and East of Eagle Scout Park	3b
Yes or No	St. Paul Road	4
Yes or No	East Lakes	5
Yes or No	Wellfield	9
Yes or No	Schroeder Sub	10
Yes or No	Stolley/Engleman	11





# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item J1

**Approving Payment of Claims for the Period of March 9, 2011  
through March 22, 2011**

*The Claims for the period of March 9, 2011 through March 22, 2011 for a total amount of  
\$6,139,512.84. A MOTION is in order.*

Staff Contact: Mary Lou Brown



# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item J2

**Approving Payment of Claims for the Period of February 23, 2011 through March 22, 2011 for the Veterans Athletic Field Complex**

*The Claims for the period of February 23, 2011 through March 22, 2011 for a total amount of \$27,357.47 for the Veterans Athletic Field Complex. A MOTION is in order.*

Staff Contact: Mary Lou Brown

## Veteran's Athletic Complex Appropriations

Amount to be Spent

100,000.00

Council Date	Vendor Name	Description	Amount Submitted	Total by Council Meeting
1/11/2011	Ensley Electric Services Inc	Ball field lighting	5,970.75	14,670.75
1/11/2011	Middleton Electric Inc	Parking lot light installation	8,000.00	
1/11/2011	Olsson Associates Inc	Staking for light poles	700.00	
		Subtotal		
1/25/2011	Heartland Electric	Well repair	359.42	2,247.54
1/25/2011	The Grand Island Independent	Legal filing	43.12	
1/25/2011	Nature's Helper	Consultation with well company	1,192.50	
1/25/2011	Nature's Helper	Winterization of irrigation system	652.50	
		Subtotal		
2/8/2011	American Fence Co	Provide and install gates and posts	880.00	2,381.15
2/8/2011	Echo Group Inc	Training for well computer	500.00	
2/8/2011	Ensley Electric Services Inc		1,001.15	
		Subtotal		
2/22/2011	Nature's Helper	Capped head in soccer field	183.63	3,919.44
2/22/2011	Nature's Helper	Re-wire decoders	1,053.45	
2/22/2011	Nature's Helper	Repair damages caused by concrete paving company	262.85	
2/22/2011	Nature's Helper	Repair damages caused by graders	2,157.21	
2/22/2011	City of Grand Island	Overage from Requisition No. 33 that was in excess of \$1,500,000 in escrow account	262.30	3,919.44
		Subtotal		
3/22/2011	Tri Valley Builders Inc	Relocation and reconstruction of athletic fields	18,466.47	27,357.47
3/22/2011	Ensley Electric Services Inc	Electrical in concession building	2,391.00	
3/22/2011	Nature's Helper	Irrigation change order	6,500.00	
		Subtotal		

Amount Remaining to be Spent

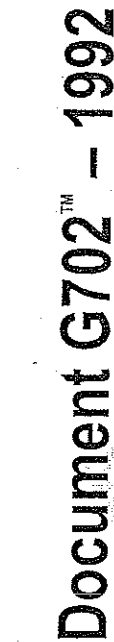
49,423.65

The escrow account with Wells Fargo for the Veteran's Athletic Complex was funded with \$1,500,000.00. That money has been depleted. The City Code Chapter 23, Article VII states in paragraph 23-79 that the food and beverage "...occupation tax imposed by this Article shall terminate and collection of the tax shall cease upon the completion of the following: ... (B) Recreational field development in the amount of \$1.6 million on the property described as follows:..." The next \$100,000.00 of payments related to the Veteran's Athletic Complex will be funded directly by the food and beverage occupation tax. This log will provide the record of the expenses.

Schedule of Bills

Vendor		Name/Number		Description		Invoice	PO #	WO#	Check #	Amount
Org	Object	PARKS & RECREATION		ATHLETIC COMPLEX		03/01/11-PAY EST 3	22860		162611	18,466.47
40044450	90122			RECONSTRUCTION						
	1	401 TRI VALLEY BUILDERS INC								
40044450 Org Total									18,466.47	

COPY



11. Reference

PO #	22860	MULTIPLICATION NO. 03/01/11 - PAY EST 3	RECONSTRUCTION	Distribution to:
Vendor #	401			
Invoice #	03/01/11 - PAY EST 3	PAY EST 3	03/01/2011	Date 3-2-11
ORIG CONTRACT FOR:	CITY OF GRAND ISLAND			OWNER <input type="checkbox"/>
CONTRACT DATE:	08/03/2010			ARCHITECT <input type="checkbox"/>
PROJECT NOS:				CONTRACTOR <input type="checkbox"/>
				FIELD <input type="checkbox"/>
				OTHER <input type="checkbox"/>

Application is made for payment, as shown below, in connection with the Contract.  
AIA Document G703™, Continuation Sheet, is attached.

- |  |              |
|--|--------------|
| 1. ORIGINAL CONTRACT SUM .....                               | \$ 88,000.00 |
| 2. NET CHANGE BY CHANGE ORDERS .....                         | \$ 0.00      |
| 3. CONTRACT SUM TO DATE (Line 1 ± 2) .....                   | \$ 88,000.00 |
| 4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) ..... | \$ 70,500.70 |

a. % of Completed Work

(Column D + E on G703)

b. % of Stored Material

(Column F on G703)

Total Retainage (Lines 5a + 5b, or Total in Column I of G703) ..... \$ 7,050.08

6. TOTAL EARNED LESS RETAINAGE

(Line 4 minus Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT

(Line 6 from prior Certificate)

8 CURRENT PAYMENT DUE 18 466 47

TO BALANCE TO FINISH INCLUDING RETAINING

BALANCE TO FINISH, INCL.

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		\$	\$
Total approved this month		\$	\$
TOTAL		\$	\$
NET CHANGES by Change Order		\$	0.00

**CAUTION:** You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

AIA Document G702™ — 1992. Copyright © 1953, 1963, 1965, 1971, 1978, 1983 and 1992 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. Purchasers are permitted to reproduce ten (10) copies of this document when completed. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, [copyright@aia.org](mailto:copyright@aia.org).

# ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED .....

*(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)*

ARCHITECT:

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.





# AIA Document G703™ - 1992

## Continuation Sheet

AIA Document G702™, Application and Certification for Payment, containing Contractor's signed certification is attached.  
In tabulations below, amounts are stated to the nearest dollar.  
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: PAY EST 3

APPLICATION DATE: 03/01/2011

PERIOD TO: 03/01/2011

ARCHITECT'S PROJECT NO:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIALS PRESENTLY STORED (Not in D or E)	G		H BALANCE TO FINISH (C - G)	I RETAINAGE (If variable rate)
			FROM PREVIOUS APPLICATION (D + E)				TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G ÷ C)		
010	GENERAL REQUIREMENTS	12,866.00	11,579.40		643.30	0.00	12,222.70	95.00	643.30	1,222.27
020	SITEWORK	13,500.00	13,500.00		0.00	0.00	13,500.00	100.00	0.00	1,350.00
030	CONCRETE	11,903.00	11,903.00		0.00	0.00	11,903.00	100.00	0.00	1,190.31
040	MASONRY	16,000.00	0.00		16,000.00	0.00	16,000.00	100.00	0.00	1,600.00
050	METALS	2,000.00	2,000.00		0.00	0.00	2,000.00	100.00	0.00	200.00
060	CARPENTRY	2,500.00	0.00		625.00	0.00	625.00	25.00	1,875.00	62.50
070	THERMAL MOISTURE	2,100.00	0.00		0.00	0.00	0.00	0.00	2,100.00	0.00
080	HOLLOW METAL	500.00	0.00		250.00	0.00	250.00	50.00	250.00	25.00
092	DRYWALL	2,000.00	0.00		0.00	0.00	0.00	0.00	2,000.00	0.00
096	FLOOR COVERING	100.00	0.00		0.00	0.00	0.00	0.00	100.00	0.00
100	MISC. SPECIALTIES	1,200.00	0.00		0.00	0.00	0.00	0.00	1,200.00	0.00
130	PRE ENGINEERED BLDG	6,000.00	6,000.00		0.00	0.00	6,000.00	100.00	0.00	600.00
150	PLUMBING	13,221.00	5,000.00		0.00	0.00	5,000.00	37.82	8,221.00	500.00
160	ELECTRICAL	4,110.00	0.00		3,000.00	0.00	3,000.00	72.99	1,110.00	300.00
GRAND TOTAL		88,000.00	49,982.40		20,518.30	0.00	70,500.70	80.11	17,499.30	7,060.08

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

AIA Document G703™ - 1992. Copyright © 1963, 1965, 1966, 1967, 1970, 1978, 1983 and 1992 by The American Institute of Architects. All rights reserved. This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. Purchasers are permitted to reproduce ten (10) copies of this document when completed. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, copyright@aia.org.

Schedule of Bills

Vendor

<u>Org</u>	<u>Object</u>	<u>Name/Number</u>	<u>Description</u>	<u>Invoice</u>	<u>PO #</u>	<u>WO#</u>	<u>Check #</u>	<u>Amount</u>
40044450		PARKS & RECREATION						
90122		ATHLETIC COMPLEX						
1	180	ENSLEY ELECTRIC SERVICES INC	ELECTRICAL INSTALL - CONCESSION BLDG	4489	24125		162152	2,391.00
1	8080	NATURE'S HELPER	IRRIGATION INSTALL-FINAL PMT-CHANGE ORDER	FEB 2011	22242		162260	6,500.00

40044450 Org Total 8,891.00

COPY

# Ensley Electrical Services, Inc.

PO Box 5822

Grand Island, NE 68802

Phone (308) 382-8432 \* Fax (308) 395-8102

## Invoice

Date	Invoice #
2/4/2011	4489

City of G.I. Parks & Rec. Dept  
PO Box 1968  
Grand Island, NE 68802

P.O. No.	TERMS
4285	Due on receipt

Description	Amount
PURCHASE ORDER #24125-00 Electrical Installation in Concession/Restroom Building--ordered by Steve Paustian	2,391.00
Voucher # <i>Partial Payment</i>	
PO # <i>24125</i>	
Vendor # <i>180</i>	
Invoice # <i>4489</i>	
Description <i>Electrical Installation Concession building</i>	
Approved by <i>[Signature]</i>	Date <i>2/7/11</i>
Org-obj# <i>40044450 - 90122</i>	Amount <i>2,391.00</i>
We appreciate your business! Please pay from this invoice---no statement will be sent.	
TERMS: Finance charges will be added to all invoices not paid within 15 days of invoice date.	
Balance Due \$2,391.00	



Jason Eley, City Attorney

Working Together for a  
Better Tomorrow, Today.

February 04, 2011

Nature's Helper Sprinkler Systems  
Howard Kucera, President  
2129 S. 156<sup>th</sup> Cir  
Omaha, NE 68130

Dear Mr. Kucera:

Voucher #	
PG#	22242
Vendor #	8080
Invoice #	2/4/11
Description	Final payment irrigation installation
Approved by	<i>[Signature]</i>
Org-obj#	40044450-90122
Amount	6,500.00

We appreciate your companies' willingness to come to an agreement regarding the completion of the sprinkler job at the City's Veteran's Ball field. This letter is to verify the final agreement to complete the work and finalize the obligations of each party.

As discussed, the City is still in need of the two "as built drawings", remote to each controller, and spare face pac for controllers before a certificate of completion can be issued for final payment of the total contract.

In speaking with Tina, we have been able to come up with an amount that would settle any discrepancies for final payment before Parks and Recreation's submission of a certificate of completion for City Council approval of final payment. The amount that would satisfy the final payment for the sprinkler work completed at the Veteran's Ball Field is \$6,500. This amount covers any and all obligations the City may have regarding any rental fees incurred by you and any potential additional expenses including but not limited to any expenses that have not been submitted to date and this will be the last payment in satisfaction of the Veteran's Ball field contract.

Also discussed was the issue of a leak that needs to be repaired on the main line in the outfield near the fence of the southwest field. The city agrees to have the leak fixed at its' own expense, however, this is no way should be considered a release from any further warranties on the workmanship and merchandise supplied at the ball field.

By signing below, you agree to accept the proposal and agree that the total balance of unpaid invoices to your company is \$00.00 after the above payment is received. Please return a signed copy of the agreement with the drawings, remote and face pac to the below address C/O Steve Paustian, Parks and Recreation Director. Upon receipt of the signed agreement with the above listed items, Parks and Recreation will complete a certificate of completion and have the \$6,500.00 final payment delivered to you. Thank you for your consideration.

Sincerely,

*[Signature: Jason C. Eley]*  
Jason Eley,  
City Attorney

*[Signature: Howard Kucera]*  
Nature's Helper Sprinkler Systems Representative

CC: Steve Paustian



# Purchase Order

100 E 1st St \* PO Box 1968 \* Grand Island NE 68802-1968  
(308) 385-5444 Ext 193

Fiscal Year 2010

Page 1 of 1

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PARKS ADMINISTRATION  
100 E 1ST ST  
PO BOX 1968  
GRAND ISLAND, NE 68801  
308-385-5444 EXT 290  
308-385-5488 FAX

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NATURE'S HELPER INC  
2129 S 156TH CR  
OMAHA NE 68130

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PARKS ADMINISTRATION  
100 E 1ST ST  
PO BOX 1968  
GRAND ISLAND, NE 68801  
308-385-5444 EXT 290  
308-385-5488 FAX

THIS NUMBER MUST APPEAR ON ALL INVOICES,  
PACKAGES AND SHIPPING PAPERS

Purchase Order # **22242-00**

Federal Tax ID #47-6006205 State Tax ID # 21-0244767

Vendor Phone Number		Vendor Fax Number		Requisition Number		Delivery Reference			
402-208-1651				21655					
Date Ordered		Vendor Number		Entered By		Requested By		Department/Location	
02/10/2010		8080		pattib		Patti Buettner		PARKS & RECREATION	
Item#	Description/Part No.			Qty	UOM	Unit Price	Extended Price		
-	CHANGE ORDER #1 FOR ADDITIONS AND MODIFICATIONS TO IRRIGATION SYSTEM INSTALLATION AS PER RESOLUTION 2010-38. 40044450 - 90122			1.0	Each	\$45,415.00	\$45,415.00		
	40044450 - 90122								

The City of Grand Island is an Affirmative Action/Equal Opportunity Employer

PO Total **\$45,415.00**



# City of Grand Island

Tuesday, March 22, 2011

Council Session

## Item X1

### Discussion Concerning City Administrator Applicants

*The City Council may vote to go into Executive Session as required by State law to discuss City Administrator applicants for the protection of the public interest.*

Staff Contact: Brenda Sutherland