



City of Grand Island

Tuesday, April 12, 2011

Council Session

Item F1

**#9292 - Consideration of Authorizing Series 2011 Grand Island
Facilities Corporation Building Bonds for Library Project**

Staff Contact: Mary Lou Brown

Council Agenda Memo

From: Mary Lou Brown, Finance Director

Meeting: April 12, 2011

Subject: Consideration of Authorizing Series 2011 Library Project Refunding Building Bonds and Approving Redemption of Series 2005 Building Bonds for Library Project

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

Presenter(s): Mary Lou Brown, Finance Director

Background

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

Discussion

The Library Project Building Bonds, Series 2005, date of original issue – October 1, 2005 – in the principal amount of \$7,000,000 are being called for payment on May 1, 2011; after such time, interest on the bonds will cease. These bonds were originally issued for the purpose of providing funds for the construction of the addition to the library and miscellaneous costs associated therewith.

These bonds will be replaced with the issuance of Refunding Building Bonds (Library Project), Series 2011 in the principal amount of \$3,795,000. The purpose of these bonds is to pay and redeem the \$7,000,000 of the City's Bonds referenced above.

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

Alternatives

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

1. Move to approve the Redemption of Series 2005 Library Project Refunding Building Bonds in the principal amount of \$7,000,000 and Authorize the Issuance of Series 2011 Refunding Building Bonds (Library Project) in the principal amount of \$3,795,000
2. Postpone the issue to a future meeting.
3. Take no action.

Recommendation

City Administration recommends that the Council approve the Redemption of Series 2005 Refunding Building Bonds (Library Project) in the principal amount of \$7,000,000 and the Issuance of Series 2011 Refunding Building Bonds (Library Project) in the principal amount of \$3,795,000.

Sample Motion

Move to approve the Redemption of Series 2005 Refunding Building Bonds (Library Project) in the principal amount of \$7,000,000 and the Issuance of Series 2011 Refunding Building Bonds (Library Project) in the principal amount of \$3,795,000.

(Trustee's Original)

SECOND ADDENDUM TO LEASE PURCHASE AGREEMENT

This Second Addendum to Lease Purchase Agreement (the "Second Addendum") is dated as of the first day of May, 2011 by and between the CITY OF GRAND ISLAND, NEBRASKA, a city of the first class of the State of Nebraska ("City") and GRAND ISLAND FACILITIES CORPORATION, a Nebraska nonprofit corporation (the "Corporation").

RECITALS

WHEREAS, the City and the Corporation have entered into a Lease Purchase Agreement dated as of July 12, 2005 (the "Original Lease Purchase Agreement") relating to the construction and acquisition of a library addition which the City proposed to lease and acquire for the benefit of the City and its inhabitants in accordance with the authorization provided for in Section 19-2421, R.R.S. Neb. 2007, as amended;

WHEREAS, Corporation has entered into a Trust Indenture and Security Agreement dated as of October 1, 2005, with Wells Fargo Bank, National Association, as trustee (the "Trustee") under which the Corporation issued, on behalf of the City, the Corporation's Building Bonds (Library Project), Series 2005, in the original principal amount of Seven Million Dollars (\$7,000,000) (the "2005 Bonds");

WHEREAS, the City and the Corporation have entered into an Addendum to Lease Purchase Agreement dated as of October 1, 2005 (the "First Addendum"), which First Addendum finalized certain terms of the Original Lease Purchase Agreement relating to the issuance of the 2005 Bonds;

WHEREAS, Corporation has entered into a Trust Indenture and Security Agreement dated as of May 1, 2011 (the "Indenture") with Wells Fargo Bank, National Association, as trustee (the "Trustee") under which the Corporation is issuing, on behalf of the City, the Corporation's Refunding Building Bonds (Library Project), Series 2011, in the principal amount of Three Million Seven Hundred Ninety-five Thousand Dollars (\$3,795,000) (the "2011 Bonds") for the purpose of refunding the outstanding 2005 Bonds;

WHEREAS, in connection with the issuance of the 2011 Bonds, it is necessary and advisable for the City and the Corporation to enter into this Second Addendum of the Lease Purchase Agreement in order to modify certain provisions related to the 2011 Bonds;

NOW THEREFORE, in consideration of the mutual covenants contained herein and of the purchase of the 2011 Bonds by the original and subsequent purchasers of the 2011 Bonds, the parties do hereby agree and contract as follows:

Section I. Amendment of Definitions of Terms. The definitions of terms set forth in the recitals to the Original Lease Purchase Agreement and the First Addendum are hereby amended and supplemented as follows:

“Agreement” shall mean the Original Lease Purchase Agreement as supplemented and amended by the First Addendum and this Second Addendum.

“Rebate Fund” shall, in addition to the definition in the First Addendum, also mean the fund created pursuant to Section 5.10 of Article V of the Indenture to be maintained by the Trustee and into which certain payments to provide for rebate amounts, if any, owing to the United States are to be made by the City with respect to the 2011 Bonds, to be disbursed as provided in said Section 5.10.

“Trustee” shall mean Wells Fargo Bank, National Association, as trustee under the Indenture, or any successor thereto having trust powers under applicable federal and state law which has been designated as successor trustee under the Indenture in accordance with the terms thereof.

Section II. Approval of Terms of Indenture. The City and the Corporation hereby approve the terms of the Indenture and of the 2011 Bonds and the sale thereof as set forth in the Indenture.

Section III. Agreement to Make Payments. The City hereby agrees to make installment purchase payments as the purchase price and basic rent due under the Original Lease Purchase Agreement as amended by the First Addendum and as further amended by this Second Addendum as follows:

Payment Date	Amount Due
October 25, 2011	\$729,378.13
April 25, 2012	19,933.75
October 25, 2012	779,933.75
April 25, 2013	16,593.75
October 25, 2013	781,893.75
April 25, 2014	12,686.25
October 14, 2014	787,686.25
April 25, 2015	7,261.25
October 25, 2015	792,261.25

All such payments (the “Payments”) shall be made without abatement or set-off and without regard to whether the Project is occupied. The City shall have the right to make prepayment of the Payments at any time and to cause such prepayments to be applied to the satisfaction of the 2011 Bonds. Any amount of the Payments not required for the payment of principal and interest on the 2011 Bonds or the satisfaction thereof shall be considered satisfied in full upon any payment and/or satisfaction in full of the 2011 Bonds.

Section IV. Agreement to Make Payment of Amounts Necessary for Redemption of 2005 Bonds. The City hereby agrees to pay \$_____ in addition to the Payments described above which amount is necessary, in addition to the proceeds of the 2011 Bonds, to effect the redemption of the 2005 Bonds. Such additional amount shall be considered additional rent as described in Article II of the Original Lease Purchase Agreement. Such additional amount shall be remitted directly to the Trustee on or before the date of redemption of the 2005 Bonds.

Section V. Amendments to Lease Purchase Agreement as Amended by Addendum. The Original Lease Purchase Agreement as amended by the First Addendum and this Second Addendum may be amended only in accordance with the terms of the Indenture.

Section VI. Assignment of Payments; Obligations of City Unconditional. Under the Indenture the Payments have been assigned on an absolute and unconditional basis in order to effect the payment of principal and interest on the 2011 Bonds. The City hereby agrees that no amendment reducing the amount of the Payments or extending the time of payment thereof shall be made without the consent of the registered owners of each of the 2011 Bonds affected thereby. The Payments may be reduced in the event of any refunding of the 2011 Bonds, provided that no such reduction shall take effect so long as any of the 2011 Bonds remain outstanding under the terms of the Indenture. The City hereby agrees that the Trustee shall have the right to enforce any and all of its obligations with respect to the Payments under the Original Lease Purchase Agreement as amended by the First Addendum and this Second Addendum.

Section VII. Payment for Rebates to the United States. In addition to the additional payments provided for in paragraph 2.02 of the Original Lease Purchase Agreement and in Section VIII of the First Addendum, the City agrees that it will make payment, as an additional payment due under the Agreement, of all amounts due to the Rebate Fund in order for the 2011 Bonds to comply with the requirements of Section 148(f) of the Code.

Section VIII. Amendment to Terms of Original Lease Purchase Agreement. The following amendment to the terms of the Original Lease Purchase Agreement are hereby made and agreed to by the City and the Corporation:

Amendment of Section 5.03. Section 5.03 of Article V of the Original Lease Purchase Agreement is hereby amended to read as follows:

Section 5.03. In accordance with the requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission, the City, being the only "obligated person" with respect to the 2011 Bonds, agrees that it will provide the following continuing disclosure information to the Municipal Securities Rulemaking Board (the "MSRB") in an electronic format as prescribed by the MSRB:

- (a) not later than seven months after the end of each fiscal year of the City (the "Delivery Date"), financial information or operating data for the City of the type

accompanying the audited financial statements of the City entitled “Management’s Discussion and Analysis” (“Annual Financial Information”);

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

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

(1) principal and interest payment delinquencies;

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

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

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

(5) substitution of credit or liquidity providers, or their failure to perform (not applicable to the 2011 Bonds);

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

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

(8) bond calls, if material, and tender offers;

(9) defeasances;

(10) release, substitution, or sale of property securing repayment of the 2011 Bonds, if material;

(11) rating changes (the 2011 Bonds are not rated and no rating for the 2011 Bonds is expected to be requested);

(12) bankruptcy, insolvency, receivership or similar events of the City (this event is considered to occur when any of the following occur: the

appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City);

(13) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(14) appointment of a successor or additional trustee or the change of name of a trustee, if material.

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

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

The City agrees that all documents provided to the MSRB under the terms of this continuing disclosure undertaking shall be in such electronic format and accompanied by such identifying information as shall be prescribed by the MSRB. The City reserves the right to modify from time to time the specific types of information provided or the format of the presentation of such information or the accounting methods in accordance with which such information is presented, to the extent necessary or appropriate in the judgment of the City, consistent with the Rule. The City agrees that such covenants are for the benefit of the registered owners of the 2011 Bonds (including Beneficial Owners) and that such covenants may be enforced by any registered owner or Beneficial Owner, provided that any such right to enforcement shall be limited to specific enforcement of such undertaking and any failure shall not constitute an event of default under the Resolution. The continuing disclosure obligations of the City, as described above, shall cease when none of the 2011 Bonds remain outstanding.

Section IX. Confirmation of Terms of Original Lease Purchase Agreement and First Addendum. Except as specifically modified and amended by this Second Addendum, all other terms and provision of the Original Lease Purchase Agreement and the First Addendum previously executed by and between the City and Corporation shall remain in full force and effect.

Section X. Trustee's Original. Only that copy of the Agreement consisting of that copy of this Second Addendum which is labeled as "Trustee's Original" and to which there is attached a signed copy of the Original Lease Purchase Agreement and the First Addendum shall constitute the Agreement. Duplicate originals may be prepared and executed for the convenience of the parties only.

Section XI. Date of Addendum. This Second Addendum has been dated for convenience of reference as shown on the initial page hereof. This Second Addendum has been actually executed on the date set forth below for each of the parties.

Date for Execution by City: May __, 2011

ATTEST:

CITY OF GRAND ISLAND, NEBRASKA

RaNae Edwards, City Clerk

By: _____
Jay Vavricek, Mayor

Date for Execution by Corporation: May __, 2011

ATTEST:

GRAND ISLAND FACILITIES CORPORATION

Dee Price, Secretary

By: _____
Terry Loschen, President

STATE OF NEBRASKA)
) SS:
COUNTY OF HALL)

The foregoing instrument was acknowledged before me this ____ day of May, 2011, by Jay Vavricek, Mayor of the City of Grand Island, Nebraska, a city of the first class of the State of Nebraska, on behalf of such city.

Witness my hand and notarial seal, this ____ day of May, 2011.

Notary Public

STATE OF NEBRASKA)
) SS:
COUNTY OF HALL)

The foregoing instrument was acknowledged before me this ____ day of May, 2011, by Terry Loschen, President of Grand Island Facilities Corporation, a Nebraska nonprofit corporation, on behalf of the corporation.

Witness my hand and notarial seal, this ____ day of May, 2011.

Notary Public

Ordinance No. 9292

AN ORDINANCE AUTHORIZING EXECUTION AND DELIVERY OF A SECOND ADDENDUM TO LEASE PURCHASE AGREEMENT WITH GRAND ISLAND FACILITIES CORPORATION, AMENDING AND CONFIRMING THE TERMS OF A LEASE PURCHASE AGREEMENT AND AN ADDENDUM TO LEASE PURCHASE AGREEMENT PREVIOUSLY ENTERED INTO, RELATING TO THE ACQUISITION OF A LIBRARY ADDITION FOR USE BY THE CITY; APPROVING THE EXECUTION OF DOCUMENTS WITH RESPECT TO SAID SECOND ADDENDUM; APPROVING THE TERMS OF A TRUST INDENTURE AND SECURITY AGREEMENT; MAKING CERTAIN DETERMINATIONS WITH RESPECT TO BONDS TO BE ISSUED UNDER SUCH INDENTURE; PROVIDING FOR THE REFUNDING OF CERTAIN OUTSTANDING BONDS; APPROVING THE TERMS OF A BOND PURCHASE AGREEMENT; AND PROVIDING FOR THE PUBLISHING OF THIS ORDINANCE.

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

Section 1. The Mayor and Council hereby find and determine: that the City has previously approved the execution and delivery of that Lease Purchase Agreement dated as of July 12, 2005 (the "Original Lease Purchase Agreement") by and between the City and Grand Island Facilities Corporation (the "Corporation"), a Nebraska nonprofit corporation, as amended and supplemented by that First Addendum to Lease Purchase Agreement dated as of October 1, 2005 (the "First Addendum") also by and between the City and the Corporation; that the Corporation has been formed under the Nebraska nonprofit corporation laws exclusively for purposes permitted by Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"); that the Corporation has issued and outstanding its Building Bonds (Library Project), Series 2005, date of original issue – November 2, 2005 (the "Building Bonds") which were issued for the purpose of providing funds for the acquisition of an addition to the City's existing library facilities to serve the City and its inhabitants (the "Project"); that since the Building Bonds were issued, the rates of interest available in the market have so declined that by issuing its refunding bonds to provide for the payment and redemption of the Building Bonds, a substantial savings in the amount of yearly running interest will be made, thereby reducing the amount of payments required of the City under the Original Lease Purchase Agreement and the First Addendum; that the Original Lease Purchase Agreement, as supplemented and amended by the First Addendum, provides for the construction and acquisition of the Project pursuant to the provisions of Section 19-2421, R.R.S. Neb. 2007 and provides for payments required to be made by the City for the purchase of the Project in amounts related to the debt service on the Building Bonds; that it is necessary and advisable for the terms of the Original Lease Purchase Agreement, as supplemented and amended by the First Addendum, to be further supplemented and amended to set forth modified payments required to be made by the City for the purchase of the Project and relating to the refunding of the Building Bonds; that the documents necessary for such purposes have been prepared and said documents should be approved and their execution authorized.

Section 2. The City of Grand Island shall enter into the Second Addendum to Lease Purchase Agreement to be dated as of May 1, 2011, with the Corporation, modifying the terms of

Approved as to Form	☐ _____
April 8, 2011	☐ City Attorney

ORDINANCE NO. 9292 (Cont.)

the Original Lease Purchase Agreement as previously supplemented and amended by the First Addendum (the "Second Addendum" and together with the Original Lease Purchase Agreement and the First Addendum, the "Agreement") and whereby the Corporation will lease the Project to the City and with a set schedule of payments relating to the acquisition of the Project. The Second Addendum in the form presented at this meeting is hereby approved.

Section 3. The Mayor and City Clerk of the City be and they are hereby authorized and directed to execute and deliver on behalf of the City the Second Addendum, including any necessary counterparts, in substantially the form and content as presented to this meeting, but with such changes or modifications therein as to them seem necessary, desirable or appropriate on behalf of the City; and said Mayor and City Clerk are further authorized and directed to execute and deliver any other documents or certificates and to do all other things necessary or appropriate in connection with the Agreement.

Section 4. The Mayor and Council hereby ratify and confirm their approval of the formation of the Corporation, including the Articles of Incorporation and Bylaws thereof and the five directors thereof; and further approve the Trust Indenture and Security Agreement, dated as of May 1, 2011, (the "Indenture") from the Corporation in favor of Wells Fargo Bank, National Association, under which Refunding Building Bonds (Library Project), Series 2011, in the aggregate principal amount of \$3,795,000 (the "Refunding Bonds") are to be issued to refund the Building Bonds, and the City hereby approves the issuance of the Refunding Bonds, in such principal amount and bearing interest as set forth in the Indenture; and the sale of said bonds to Ameritas Investment Corp. (the "Underwriter") in accordance with the terms of a Bond Purchase Agreement dated April 12, 2011 (the "Bond Purchase Agreement"), at the price of \$3,757,050 (which price takes into consideration Underwriter's discount in the amount of \$37,950), is hereby approved. The Mayor is hereby further authorized to sign the approval form on the Bond Purchase Agreement on behalf of the City and to approve at the time of closing of the purchase of the Refunding Bonds the final form of the Indenture.

Section 5. In connection with the execution and delivery of the Second Addendum and the issuance by the Corporation of the Refunding Bonds, the following determinations and approvals are hereby made by the Mayor and Council:

(a) The City hereby confirms its declaration, as provided in the Agreement, that it will take title to the Project (including additions) when the Refunding Bonds are discharged.

(b) The City hereby approves the Direction to Give Notice of Redemption of the Building Bonds in the form presented herewith and authorizes and directs the Corporation to execute and deliver such Direction for Call, with any changes deemed necessary and appropriate by the Corporation, to the Trustee. The City further authorizes the Mayor, City Clerk and City Treasurer (Finance Director) to

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take any and all actions necessary and appropriate to effect the redemption of the Building Bonds.

Section 6. The Mayor and Council hereby state that it is the intention of the City that interest on the Refunding Bonds issued by The Corporation shall be excludable from gross income under the federal income tax by virtue of Section 103 of the Code and Revenue Ruling 63-20 and Revenue Procedure 82-26 of the Internal Revenue Service and the Mayor and Council hereby authorize the Mayor, the City Clerk and the City Treasurer (Finance Director) (or any one of more of them) to take all actions necessary or appropriate to carry out said intention and for obtaining such interest exclusion. The City hereby covenants with The Corporation for the benefit of the purchasers and holders of the Refunding Bonds that it will make no use of the proceeds of said issue, including monies held in any sinking fund for the payments set forth in the Second Addendum or principal and interest on the Refunding Bonds, which would cause the Refunding Bonds to be arbitrage bonds within the meaning of Section 103 and 148 and other related sections of the Code and further covenants to comply with said Sections 103 and 148 and related sections and all applicable regulations thereunder throughout the term of said issue, including all requirements with respect to reporting and payment of rebates, if applicable. The Refunding Bonds, as issued on behalf of the City are hereby designated by the City as “qualified tax-exempt obligations” under Section 265(b)(3)(B)(i)(III) of the Code and the City in connection with entering into the Agreement hereby covenants and warrants that it does not anticipate issuance directly by it or on its behalf of tax-exempt bonds or other tax-exempt interest bearing obligations in an amount exceeding \$10,000,000 in calendar 2011 (taking into consideration the exception for current refunding issues) provided that the amount of the Refunding Bonds hereby designated shall be reduced as and to the extent that a portion of the Refunding Bonds may be determined to be “deemed designated” in accordance with the provisions of Section 265(b)(3)(D) of the Code.

Section 7. The Mayor and Council hereby approve the Preliminary Official Statement dated April 1, 2011 with respect to the Refunding Bonds and hereby authorize the Mayor to approve the final Official Statement for the Refunding Bonds with appropriate changes to reflect the final terms for the Refunding Bonds as sold pursuant to the Bond Purchase Agreement.

Section 8. This Ordinance shall be in force and take effect from and after its publication as provided by law.

Passed and approved this 12th day of April, 2011.

Jay Vavricek, Mayor

RaNae Edwards, City Clerk