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# City of Grand Island



**Tuesday, October 25, 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**

### **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 - Father Chuck Peek, St. Stephen's Episcopal Church, 422 West 2nd Street**

**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, October 25, 2011

Council Session

## Item C1

### **Recognition of Grand Island Senior High Girls Golf Team for Class "A" State Championship**

*The Mayor and City Council will recognize the Grand Island Senior High Girls Golf Team and their Coach Kelli Jeffries for the Class "A" State Golf Championship held on October 10-11, 2011 at Norfolk, Nebraska. Congratulations Lady Islander's for a job well done.*

Staff Contact: Mayor Vavricek



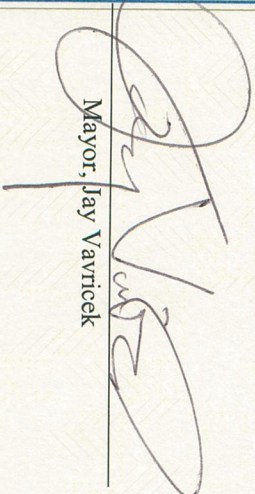


# *Certificate of Recognition*

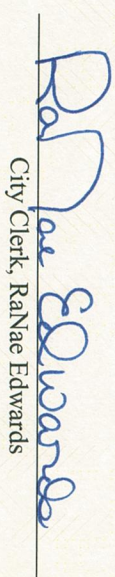
Awarded to the

**“Lady Islander Golf Team”**

at Grand Island Senior High School and Coach Kelli Jeffries for the  
Class “A” State Golf Championship on October 10-11, 2011.

  
\_\_\_\_\_  
Mayor, Jay Vavrick



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





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item C2

### Proclamation "National Adoption Month" November, 2011

*There are an estimated 107,000 children in the United States in the foster care system, some of which live in Grand Island. By December 2011, twenty-five children in Grand Island, Hall County who are in foster care will finalize adoption. Mayor Vavricek has proclaimed the month of November, 2011 as "National Adoption Month" and would encourage citizens to help secure permanent, loving homes for each and every child in Grand Island, See attached PROCLAMATION.*

Staff Contact: Mayor Vavricek



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

PROCLAMATION

- WHEREAS, this November marks the 21<sup>st</sup> annual National Adoption Month; and
- WHEREAS, there are an estimated 107,000 children across the United States in foster care, waiting for adoptive homes or for that moment of finalization of their adoptions; and
- WHEREAS, every child in the Grand Island Area, across the State, and even across the Nation deserves a loving, caring, permanent family; and
- WHEREAS, it is our goal to find families for these children, no matter where they might live; and
- WHEREAS, many of these children have physical, emotional and/or behavioral challenges; and
- WHEREAS, many of these children are brothers and sisters who want to grow up together; and
- WHEREAS, in 2010, 398 children in care of the State found permanency through adoption; and
- WHEREAS, in 2010, thirty-four children in care of the State, in the Grand Island area, were adopted; and
- WHEREAS, by the end of December 2011, twenty-five children in care of the State from the Grand Island area, will finalize adoptions; and
- WHEREAS, every child deserves a place to call home, not only now but into adulthood;

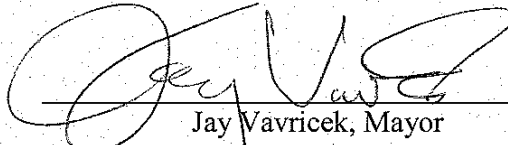
NOW, THEREFORE, I, Jay Vavricek, Mayor of the City of Grand Island, Nebraska, do hereby proclaim the month of November, 2011 as



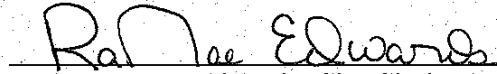
## ***"NATIONAL ADOPTION MONTH"***

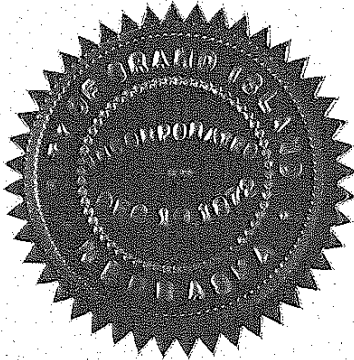
in the City of Grand Island, and encourage all citizens to help secure permanent, loving homes for each and every child in Grand Island, and the State of Nebraska, regardless of race, age, gender, health, emotional or behavioral challenge or past distress.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the City of Grand Island to be affixed this 25<sup>th</sup> day of October in the year of our Lord Two Thousand and Eleven.

  
Jay Vavricek, Mayor

Attest:

  
RaNae Edwards, City Clerk







# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item C3

### **Recognition of Tim Luchsinger, Utilities Director for 25 Years of Service with the City of Grand Island**

*The Mayor and City Council will recognize Utilities Director Tim Luchsinger for 25 years of service with the City of Grand Island. Mr. Luchsinger was hired on October 27, 1986 as a Mechanical Engineer, was promoted to Assistant Utilities Director on April 4, 1992 and to his current position of Utilities Director on April 25, 2011. We congratulate and thank Mr. Luchsinger for his dedication and service to the City of Grand Island.*

Staff Contact: Mayor Vavricek



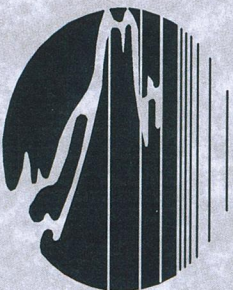
# *Sincerely Five Year Service Award*

WE HEREBY EXPRESS OUR SINCERE APPRECIATION TO

**TIM LUCHSINGER**

For your Loyalty, Diligence, and Outstanding Performance During Your Tenure With

**City of  
GRAND**



**ISLAND**

Department Director

Mayor

*Mayor Jon Buever*  
*John Buever*

Date

Date

*9/24/11*

*9-15-11*





# **City of Grand Island**

**Tuesday, October 25, 2011**

**Council Session**

## **Item E1**

**Public Hearing on Request from Zoul Hospitality, LLC dba  
Willman's Bottle Shop, 1201 South Locust Street for a Class "CK"  
Liquor License**

**Staff Contact: RaNae Edwards**



# **Council Agenda Memo**

**From:** RaNae Edwards, City Clerk

**Meeting:** October 25, 2011

**Subject:** Public Hearing on Request from Zoul Hospitality, LLC  
dba Willman's Bottle Shop, 1201 South Locust Street for  
a Class "CK" 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**

Zoul Hospitality, LLC dba Willman's Bottle Shop, 1201 South Locust Street has submitted an application for a Class "CK" Liquor License. A Class "CK" Liquor License allows for the sale of alcohol on and off sale inside the corporate limits of the city, along with a catering designation.



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 the application was a Liquor Manager Designation for Zachary Zoul, 3333 Ramada Road. Mr. Zoul has completed the state approved alcohol server/seller training program and has submitted his certificate.

### **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 Zoul Hospitality, LLC dba Willman's Bottle Shop, 1201 South Locust Street for a Class "CK" Liquor License contingent upon final inspections and Liquor Manager Designation for Zachary Zoul, 3333 Ramada Road.



10/20/11  
450

Grand Island Police Department

15:08  
1

LAW INCIDENT TABLE

Page:

City	: Grand Island
Occurred after	: **:**:** **/**/****
Occurred before	: **:**:** **/**/****
When reported	: 08:30:00 10/10/2011
Date disposition declared	: 10/12/2011
Incident number	: L11101465
Primary incident number	:
Incident nature Investigation	: Liquor Lic Inv    Liquor License
Incident address	: 1201 Locust St S
State abbreviation	: NE
ZIP Code	: 68801
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 : RaNae

Geobase address ID : 15026

Long-term call ID :

Clearance Code : CL Case Closed

Judicial Status : NCI Non-criminal Incident

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INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
NM	54537	10/17/11	Willmans Bottle Market,	Business
NM	159499	10/17/11	Zoul, Zachary Z	Applicant

LAW INCIDENT CIRCUMSTANCES:

Se Circu Circumstance code	Miscellaneous
1 LT17 Liquor Store	

LAW INCIDENT NARRATIVE:



I Received a Copy of a Liquor License Application For Wilman's Bottle Shop and a

Copy of a Liquor Manager Designation from Zachary Zoul.

LAW INCIDENT RESPONDERS DETAIL:

Se Responding offi Unit n Unit number

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1 Vitera D

10/20/11  
450

Grand Island Police Department

15:08  
2

LAW INCIDENT TABLE

Page:

LAW SUPPLEMENTAL NARRATIVE:

Seq Name Date

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1 Vitera D 15:11:32 10/17/2011



10/20/11  
450

Grand Island Police Department

15:08  
3

LAW INCIDENT TABLE

Page:

318

Grand Island Police Department

Supplemental Report

Date, Time: Mon Oct 17 15:11:46 CDT 2011

Reporting Officer: Vitera

Unit- CID

Zoul Hospitality, doing business as Willman's Bottle Shop is applying for a

Class "CK" LLC license. The "C" is for beer, wine, and distilled spirits on and

off sale. The "K" is for a Catering license. On the application next to the

definition of a Class C license is a handwritten note that says "tastings."

Since Willman's is currently a "package" store (off sale), I would assume at

this point that the "tastings" is the reason for applying for the Class C which

includes the on sale portion of the business in the license.

Zachary Zoul is the only person listed on the application. He also filled out a



manager application as well. Zachary is not married, and he has lived in Florida, South Carolina, Minnesota, and Nebraska over the last 16 years. He

stated on his application that he has been convicted of "several" speeding

charges and one "rolling stop." Zachary also said that he holds a manager

license for two establishments in Ogallala.

There are no outstanding warrants for Zachary, and he has a valid Nebraska

driver's license. I checked Zachary through Spillman and didn't really find

anything other than a traffic contact. I also checked Zachary through NCJIS and

found four speeding convictions, one stop sign conviction, and one improper

passing conviction. He has no criminal convictions in Nebraska, but it is

unknown what will turn up in Minnesota and Florida as I can't run a criminal

history on license checks.

I Googled Zachary and found lots of information describing his tumultuous tenures as city administrator in Grand Island, St. Peter, MN, and Fernandina,

FL. Controversy seemed to follow Zachary when he worked in the public sector.

I found Zachary's facebook page and didn't see anything offensive on it.

On 10/19/11, Zachary came to the LEC for an interview. He advised that he moved



back to Grand Island for personal reasons. He confirmed that he applied for the

Class C license so he can have wine tasting at the store. He also said that he

currently has no specific plans for the catering license but likes the option

of having that license. He speculated that it could be used someday in conjunction with his affiliation to the Howard Johnson motel.

We talked about some of the information I found on the Internet about him. He

advised that the average tenure of a city administrator is about 2.5 years. He

also stated that controversy will most likely surround every city administrator

because of their unique position between the mayor and city council. Zachary

said that he was never convicted of any of the criminal charges that were brought up against him as a city administrator. He also asserted that for every

negative article that can be found about him on the Internet, many more positive

ones can also be located. Zachary said most of his troubles in city government

occurred when he wouldn't succumb to special interest groups or political pressure. He advised that he always tried to do the right thing. He pointed

out that since he has gotten out of working in city government and started

working in the private sector, he hasn't had the bad press that he used to get.



10/20/11  
450

Grand Island Police Department

15:08  
4

LAW INCIDENT TABLE

Page:

All in all, the Grand Island Police Department has no objection to Zoul  
Hospitality receiving a liquor license for Willman's Bottle Shop or to  
Zachary  
Zoul being the liquor manager.





# **City of Grand Island**

**Tuesday, October 25, 2011**

**Council Session**

## **Item E2**

**Public Hearing on Request from Simara Y. Rodriguez dba El  
Trancazo Bar, 413 West 4th Street for a Class “T” Liquor License**

**Staff Contact: RaNae Edwards**



# **Council Agenda Memo**

**From:** RaNae Edwards, City Clerk

**Meeting:** October 25, 2011

**Subject:** Public Hearing on Request from Simara Y. Rodriguez dba El Trancazo Bar, 413 West 4<sup>th</sup> Street for a Class “T” Liquor License

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

**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**

Simara Y. Rodriguez dba El Trancazo Bar, 413 West 4<sup>th</sup> Street has submitted an application for a Class “T” Liquor License. A Class “T” Liquor License allows for the sale of alcohol on sale only 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.



After a background check by the Grand Island Police Department (see attached) it is recommended that the City Council deny this application based on Horacio Rodriguez, spouse of Simara Rodriguez undisclosed convictions and not a United States citizen.

### **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 deny this application.

### **Sample Motion**

Move to deny the application for Simara Y. Rodriguez dba El Trancazo Bar, 413 West 4<sup>th</sup> Street for a Class 'I' Liquor License based on the Police Department recommendation.



10/20/11  
458

Grand Island Police Department

17:34  
1

LAW INCIDENT TABLE

Page:

City	: Grand Island
Occurred after	: **:**:** **/**/****
Occurred before	: **:**:** **/**/****
When reported	: 08:30:00 10/10/2011
Date disposition declared	: 10/12/2011
Incident number	: L11101464
Primary incident number	:
Incident nature Investigation	: Liquor Lic Inv    Liquor License
Incident address	: 413 4th St W
State abbreviation	: NE
ZIP Code	: 68801
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 : RaNae  
Geobase address ID : 18196  
Long-term call ID :  
Clearance Code : CL Case Closed  
Judicial Status : NCI Non-criminal Incident

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INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
-----				
NM	67168	10/17/11	Rodriguez, Horacio	Simara's
Spouse				
NM	79558	10/17/11	Rodriguez, Simara Y	Owner
NM	158489	10/17/11	El Trancaso Bar,	Business

LAW INCIDENT CIRCUMSTANCES:

Se	Circu	Circumstance code	Miscellaneous
-- -----			
1	LT03	Bar/Night Club	

LAW INCIDENT NARRATIVE:



I Received a Copy of a Liquor License Application from Simara Rodriguez for El

Trancazo Bar.

LAW INCIDENT RESPONDERS DETAIL:

Se Responding offi Unit n Unit number

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1 Vitera D 318 Vitera D

10/20/11  
458

Grand Island Police Department

17:34  
2

LAW INCIDENT TABLE

Page:

LAW SUPPLEMENTAL NARRATIVE:

Seq Name Date

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1 Vitera D 10:02:54 10/17/2011

10/20/11  
458

Grand Island Police Department

17:34  
3

LAW INCIDENT TABLE

Page:

318



Grand Island Police Department

Supplemental Report

Date, Time: Mon Oct 17 10:03:08 CDT 2011

Reporting Officer: Vitera

Unit- CID

While reviewing the license, I noted that Simara Rodriguez is applying for an

Individual Class I license which means she is asking to sell beer, wine, and

distilled spirits on sale only. According to the application, Simara has never

been convicted of any charge, she is filing for a temporary operating permit (TOP)

and she is not borrowing any money from any source to establish or

operate the business. Simara also listed that she and her spouse (Horacio

Rodriguez) have lived in Grand Island for the last ten years. Horacio signed a

Spousal Affidavit of Non-Participation.

I did some background checks on Simara and Horacio. Neither one of them have

any outstanding warrants, and they each have a valid Nebraska driver's license.

I also checked them through Spillman and NCJIS. According to Spillman, Horacio

has a speeding conviction and possibly a DDS conviction. He has a jail photo in



Spillman for being arrested on a warrant for failing to pay on a DDS conviction.

I confirmed through NCJIS that Horacio has a speeding conviction in Garfield

County in 2007 and a DDS Conviction in Hall County in 2003. I did not find any

potential convictions for Simara in Spillman or NCJIS.

While continuing to look through the application, I noticed that Simara bought

the business and the inventory from Myriam Alvarez on 5/20/11. El Trancaso has

continued to operate and sell alcohol. On 6/17/11, a Grand Island Police

Officer issued a citation to a bartender in El Trancaso for serving an

intoxicated person. The officer observed the male stumble into the bar. The

officer entered the bar and saw that the male had a cold bottle of Bud Light in

front of him. The bartender said that the male always comes into the bar in a

drunken state but only has one beer. The male tested a .208 on a PBT. Simara's

application shows that she filed for a TOP, but she was denied. It appears that

she has been selling alcohol without a license since 5/20/11. The prior owner

should have relinquished her license at the time she sold the bar.

I Googled Simara and was unable to pinpoint a facebook page for her. Her name

did pop up in the Grand Island Independent as being a volunteer for the State



softball tournament last summer. I also found information that indicates that

she is or used to be a para-educator for GIPS. I searched her through Entersect

(paid police database that includes civil information) and didn't find anything

of interest.

I did the same searches on Horacio and found that there are too many Horacio

Rodriguez's to figure out which one he is. When I searched Entersect, it appears that it's very possible that Horacio had some financial trouble in

California.

I also checked with ICE on Simara and Horacio and was told that Horacio is a

lawful permanent resident alien from Mexico. Nothing was found on Simara that

would indicate she is not a U.S. citizen.

I tried to set up an interview with Simara and NSP Investigator Lorri Rogers at

the same time. I was unable to make the interview. Investigator Rogers typed a

report on the interview and forwarded it to me. It is attached to this report.

All in all, this license could be denied because Horacio had undisclosed convictions (technically false application), and he is a resident of the United



States as opposed to being a citizen. The liquor laws say that if the spouse of

the applicant can't qualify for a license, then the applicant can't qualify for

a license (53-125). However, if it can be proven to the NLCC that the

ineligible spouse will have nothing to do with the business and the applicant

can conform to all the provisions of the liquor act, an exception can be made.

The license could also be denied based on the citation issued by GIPD in June.

The citation was issued one month after Simara bought the bar and the liquor

inventory. From the date Simara bought the bar, she should have been operating

on a TOP or not operating at all. The TOP was denied, yet the bar was obviously

being operated at the time the citation was issued. Any way you look at it,

Simara owned the bar, she didn't have a license, and a citation was issued under

her ownership. I believe Simara is responsible whether she knew anything about

it or not.

While Investigator Rogers commented that Simara and Horacio are a nice couple,

she has concerns about Horacio being listed as a "multi state offender in NCJIS

and the number of civil judgments against the Rodriguez's over the last nine

years. See her report for more details regarding her interview with Simara.



The Grand Island Police Department recommends that the Council does not give

local approval to this license.

2 Vitera D 15:24:46 10/20/2011

10/20/11 Grand Island Police Department  
458

17:34 LAW INCIDENT TABLE Page:  
5

318- NSP Investigator Roger's Report

Grand Island Police Department

Supplemental Report

Date, Time: Thu Oct 20 15:38:20 CDT 2011

Reporting Officer: Vitera

Unit- CID

Inv. Rogers received a background investigation for Simara and Horacio

Rodriguez, DBA El Trancazo Bar, license #I-95851. The bar is located at  
413 W

4th Street, Grand Island, NE, and is currently licensed by Myriam  
Alvarez,

license #I-88393. The Rodriguez's applied for a TOP but were denied by  
the



NLCC, due to the sale occurring over 90 days prior to the application submittal.

Upon checking at the local level for criminal / civil records, Inv. Rogers

located the following: Horacio Rodriguez Driving During Suspension 6/18/2003,

Speeding 6/29/2007, operator's license was suspended for failure to comply on

3/13/98, reinstated on 3/13/2003, Suspended again for an accident from

3/26/1998, and reinstated on 6/24/2003. Additionally, Horacio's Nebraska State

Patrol Criminal History record located on NCJIS indicates he is a multi state

offender. Due to policy, Inv. Rogers is not able to run an out of state

criminal history check. The fingerprint records will need to be utilized to

determine if there are additional criminal records not located. Inv. Rogers

located no criminal records at the local level on Simara Rodriguez.

Upon checking for civil records, Inv. Rogers located 10 judgments dating from

2002 to 2011 for both of the Rodriguez's. The majority were for General

Collection Bureaus, which were paid off by garnishment of wages. Only one is

outstanding from 6/2011 for \$1,176.85 that is being paid by garnishment at this

time.

Inv. Rogers interviewed both Simara and Horacio Rodriguez at their residence.

Simara will be the one handling the day to day aspects of the license, including

the ordering of alcohol, writing of checks, etc. Horacio has submitted an



affidavit of non participation at this time. Simara advised that although she

is a citizen of the USA, Horacio is a permanent resident alien. She advised that

he is in the process of obtaining citizenship, and they will submit a request to

withdraw upon his citizenship. In the mean time, they both understand and agree

that Horacio will have nothing to do with the business. Simara works days for

the Grand Island Public Schools, and Horacio works at Gibbon Pack. They both

intend to keep their day jobs. Simara plans to operate the bar only on

weekends, from approximately 1900 to 0100. Simara admittedly has no previous

experience in the retail sells and service of alcohol, and has a lot to learn.

She plans to take either the TIPS or RBST training as soon as possible to help

her. Inv. Rogers asked when she had purchased the bar inventory, and she

advised she hasn't yet. Simara advised that although the lease is now in her

name, she has not been paying the rent. She advised that Myriam Alvarez, the

current licensee, is the one still operating the business until Simara is issued

a license. She said that although she has paid the \$3,000 for the inventory,

Myriam has said she will re-inventory upon closing. Inv. Rogers asked who paid

the suspension off from 6/14/2011, and Simara did not know anything about it.

When asked who was working when GIPD contacted the bar on 6/17/2011, again she



had no idea. Simara stated she has not worked in the bar, and is not operating

it now. Simara does not even have a key, and was unable to contact Myriam to

obtain entrance into the bar when Inv. Rogers wanted to conduct the interview at

the premise.

Inv. Rogers asked Simara why the long delay between the purchase of inventory

(May 20, 2011), signing of lease (July 25, 2011), and the submission of the

application (August 8, 2011.) Simara explained that when Myriam first

approached her with the opportunity, she thought it would be an excellent

opportunity for she and her family. She had no idea what all was required.

Simara said she paid the \$3,000, and then they were unable to contact the landlord for some time to obtain the new lease. Simara had to send to Texas for

a copy of her birth certificate, and sent off for her passport. During this

time, Horacio became very ill, and ended up in the hospital for a week. Simara

said this put everything on hold again. She stated that once things settled

down, she got everything together and submitted it. She said this was the first

time she had ever done anything like this, and didn't know how complicated it

was. Simara said she has not hired anyone yet to work, and won't until the

license is issued.

Inv. Rogers asked Simara who had filled out the application, and she stated she



had. When asked why she had not listed the DDS conviction for Horacio, she

advised that it had all been a mistake and was dismissed. Inv. Rogers pointed

out that one DDS had been dismissed, but another had not. The court records

indicated that Horacio had plead guilty, and paid a \$50 fine. Horacio advised

that he had a no operator's license ticket from California, and a speeding one

from South Dakota that he had forgotten all about from 1998. He advised that

when he was cited for the DDS that was subsequently dismissed, it all came to

light. As soon as he found that he still owed, he attempted to pay the ticket

and was told it was no longer on file to pay as it was too old. He contacted

DMV and his license was reinstated. In the meantime the other ticket had come

through and his license was again suspended which he did not now. When he was

cited, he paid the \$50 fine, and was reinstated again. Horacio advised he has

had no other problems since then. When asked about the civil records, they both

advised they were medical bills. Simara stated they have two kids, and both she

and Horacio have had surgeries and illnesses that insurance did not cover all

the costs. They said they have tried hard to get them all paid off, and are

close.



Simara advised she had not intentionally left the information of Horacio's

conviction off of the application, she had just forgotten about it. Simara said

she is a hard worker, and they are trying hard to make things better for their

family. Neither drink or smoke, and Simara thinks she can do a good job with

running the bar. She stated that when the opportunity came up, she knew she

wanted to have a business to help her family. Simara said she can't cook, so

she can't run a restaurant. She is looking forward to the opportunity to help

her family with the future. She wants to provide more for her kids, and their

future education. Simara advised she knows they have owed money, and still owe

some, but she feels the bar

will help to supplement their income and help with the finances. Simara asked

to have the chance.

Simara appears to be willing and able to properly provide the services applied

for. She appears to conform to the requirements of the rules, regulations, and

liquor control act. Horacio has filed an affidavit of non participation, and

agrees to have nothing to do with the business at this time. Although the

omission of the DDS and speeding makes the application technically false, the

convictions do not rise to the level for an automatic disqualification. The



concern that Inv. Rogers has, is the multi state offender notation for Horacio,

and not knowing at this time what all he has been convicted of. The other

concern is the number of civil judgments over the last 9 years. Inv. Rogers

feels the determination to issue the license should be made after the criminal

history information is returned to the NLCC.

The location does comply with statute 53-177, even though there is a church

within the 150' distance requirement. The location has been continuously licensed in the last two years, so the distance is not applicable





# **City of Grand Island**

**Tuesday, October 25, 2011**

**Council Session**

## **Item E3**

**Public Hearing on Acquisition of Utility Easement - 232 Wilmar  
Avenue - Texas Roadhouse**

**Staff Contact: Tim Luchsinger**



# **Council Agenda Memo**

**From:** Robert H. Smith, Asst. Utilities Director  
**Meeting:** October 25, 2011  
**Subject:** Acquisition of Utility Easement – 232 Wilmar Avenue – Texas Roadhouse  
**Item #'s:** E-3 & G-5  
**Presenter(s):** Timothy Luchsinger, 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 Texas Roadhouse Holdings, LLC, located at the northeast corner of 232 Wilmar Avenue, in the City of Grand Island, Hall County, in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers.

## **Discussion**

This easement will be used to place underground conduit, cable, and a pad-mounted transformer to provide electrical service to the new restaurant.

## **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.

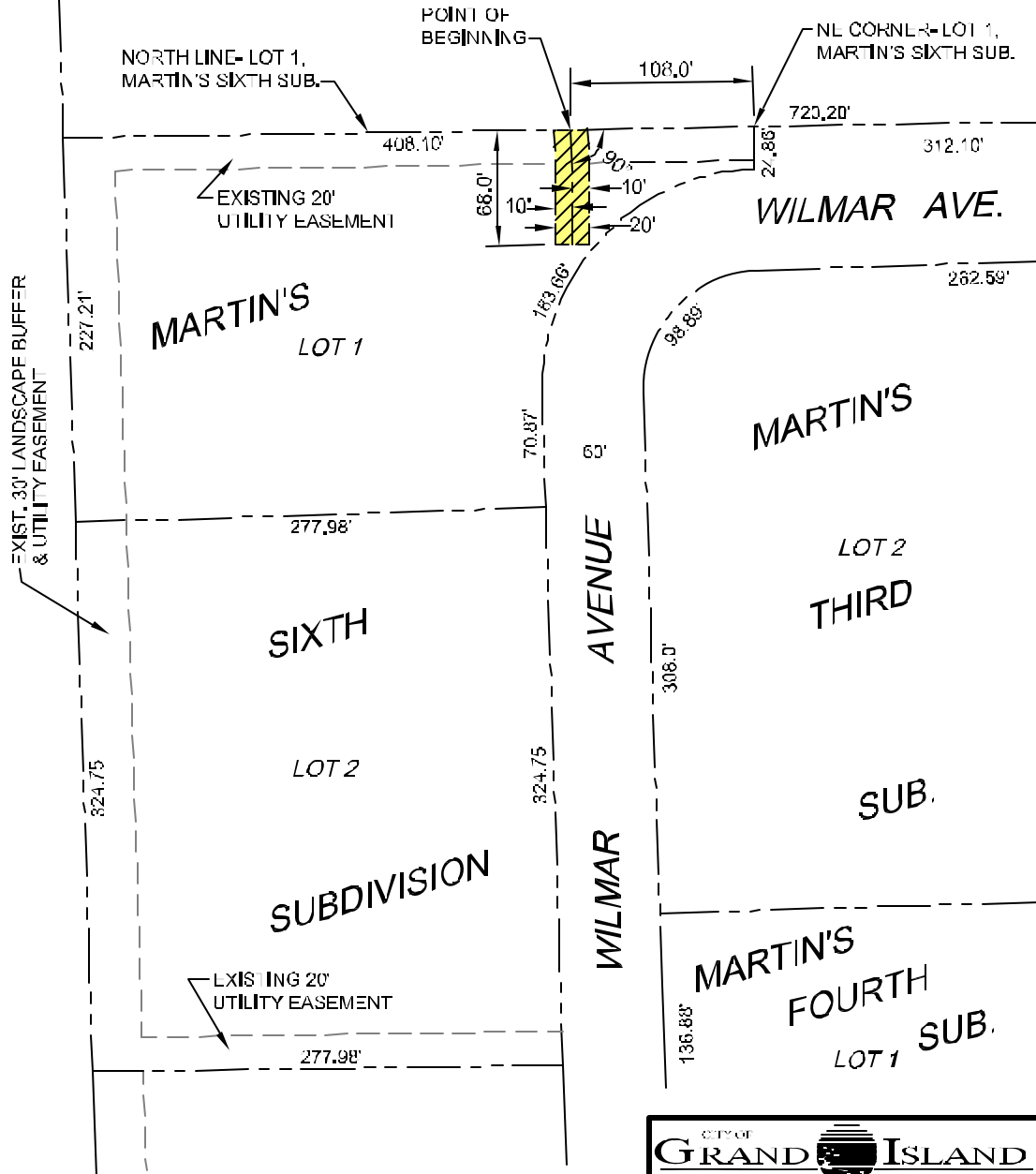


1/16 SECTION LINE

U.S. HIGHWAY 281



DETENTION CELL B-7



LEGEND



INDICATES 20' WIDE  
UTILITY EASEMENT

CITY OF  
**GRAND ISLAND**  
UTILITIES DEPARTMENT

**EXHIBIT "A"**

DRN BY: K.J.M.

SCALE: 1" = 100'

DATE: 10/10/2011

FILE: MARTIN'S 6





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item E4

**Public Hearing on Request to Rezone Properties Located West of Webb Road, South of Faidley Avenue and North of West North Front Street from LLR – Large Lot Residential to B2 – General Business Zone**

Staff Contact: Chad Nabity



# **Council Agenda Memo**

**From:** Regional Planning Commission

**Meeting:** October 25, 2011

**Subject:** Request to Rezone Properties Located West of Webb Road, North of West North Front Street and South of Faidley Avenue from Large Lot Residential to B2 – General Business Zone

**Item #'s:** E-4 & F-2

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

## **Background**

Concerning a request to rezone properties located west of Webb Road, north of west North Front Street and south of Faidley Ave. From Large Lot Residential to B2 – General Business Zone, in the City of Grand Island.

## **Discussion**

At the regular meeting of the Regional Planning Commission, held October 5, 2011 the above item was considered following a public hearing.

O'Neill opened the Public Hearing.

Nabity briefly explained this was a request to rezone properties located north of Front Street and west of Webb Road from LLR Large Lot Residential to B2 General Business Zone. This would allow for commercial development. Nabity stated the comprehensive plan for Grand Island, the long-term land use plan for the City, calls for that Webb Road area to be developed commercially in the future.

There was no further discussion.

There was no further discussion.

O'Neill closed the Public Hearing.



The Planning Director's recommendation to the Planning Commission is also attached to this recommendation from the Planning Commission.

### **Alternatives**

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

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

### **Recommendation**

A motion was made by Eriksen to approve the Rezone from LLR Large Lot Residential to B2 General Business Zone and was seconded by Reynolds. The motion carried with 9 members present and 9 voting in favor (O'Neill, Ruge, Hayes, Reynolds, Eriksen, Haskins, Connelly, Bredthauer and Snodgrass) and no member abstaining.

### **Sample Motion**

Move to approve the rezone request for property proposed for platting as Olson Subdivision.





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item E5

**Public Hearing on Annexation for Property Located South of  
Airport Road/US Highway 281 and the West Side of Broadwell  
Avenue North of the Burlington Northern Santa Fe Tracks  
Including Eagle Scout Park and the Veterans Field (Annexation  
Area 3a)**

Staff Contact: Chad Nabity



# **Council Agenda Memo**

**From:** Hall County Regional Planning Department

**Meeting:** October 25, 2011

**Subject:** Annexation Areas Identified as 3a, 6, 7, 12, 13, and 14

**Item #'s:** E-5, E-6, E-7, E-8, E-9, and E-10  
F-3, F-4, F-5, F-6, F-7, and F-8

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

## **Background**

At the March 22, 2011 meeting of the Grand Island City Council a resolution was passed that directed the planning department and other city staff as follows:

- 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

The annexation plans for 6 of the 8 eight identified areas are complete and were considered by the Regional Planning Commission after a public hearing at their meeting held July 6, 2011. The attached map identifies those areas under consideration at this meeting. Annexation plans are attached for areas identified as 3a, 6, 7, 12, 13, and 14. On October 11, 2011 The Grand Island City Council passed a resolution of intent to annex these areas, approving the annexation plans as presented and setting public hearings regarding annexation of these areas for October 25, 2011.

## **Discussion**

Nebraska Revised Statute §16-117 provides for the process of annexation. In following the process approved by Council on March 22<sup>nd</sup>, 2011 annexation plans have been prepared by staff and referred to the Regional Planning Commission for recommendation. The Planning Commission has made their recommendation and Council has passed a resolution of intent to annex these areas. The next step is for Council to hold the public



hearings and consider approval of the ordinances to annex the property. Annexation ordinances must be read on three separate occasions.

### **Alternatives**

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

1. Approve the Ordinances on First Reading
2. Choose not to approve the Ordinances.
3. Modify the ordinance to change the areas under consideration for annexation.
4. Postpone the issue

### **Recommendation**

That Council approve the ordinances for annexation of Areas 3a, 6, 7, 12, 13, and 14 as presented.

### **Sample Motion**

Move to approve the resolution of intent to annex, the attached annexation plan, and set public hearings on annexation of Areas 3a, 6, 7, 12, 13, and 14.



From the July 6<sup>th</sup> 2011 Planning Commission Minutes

4. **Public Hearing – Concerning annexation of properties identified as:**  
**Annexation Area 3a** south of Airport Road/U.S. Highway 281 and on the west side of Broadwell Avenue north of the Burlington Northern Santa Fe tracks. Eagle Scout Park and the Veterans Field Complex are in this area. **Annexation Area 6** located north of Bismark Road to the east side of Stuhr Road. **Annexation Area 7** located north of U.S. Highway 34 on the east side of South Locust Street. **Annexation Area 12** located north of Husker Highway to the west side of U.S. Highway 281 and Prairieview Street. **Annexation Area 13** located south of Old Potash Highway on the west side of North Road. **Annexation Area 14** located south of 13<sup>th</sup> Street on the east and west sides of North Road and north of Faidley Avenue (C-05-2011GI).

O'Neill opened the Public Hearing.

Nabity briefly talked about the process of annexation; he explained City Council had charged Regional Planning to look at eligible areas for Annexation. City Council had selected eight areas and six of those plans were brought forward to Regional Planning. The remaining two may be brought forward for the August meeting.

#### **Annexation Area 3a - U.S. Highway 281 and Broadwell Ave**

This property is located in the north central part of the community. It is south of Airport Road/U.S. Highway 281 the west side of Broadwell Avenue north of the Burlington Northern Santa Fe tracks. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There is about 210 acres of property included in the area that is currently used for agricultural purposes. There are no houses and no businesses included in this area. Eagle Scout Park and the Veterans Field Complex are in this area and maintained by the City Parks Department.

#### **Annexation Area 6 - Bismark Road and Stuhr Road**

This property is located in the southeast part of the community. It is mostly north of Bismark Road the east side of Stuhr Road. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There is about 50 acres of property included in the area that is currently used for agricultural purposes. There are no houses and no businesses included in this area.

Nabity stated he had received a call from Tom Pirnie who owns the majority of the land in this area and he was in support of the annexation.



### **Annexation Area 7 - U.S. Highway 34 and South Locust Street (Vanosdal Fields)**

This property is located in the southeast part of the community. It is north of U.S. Highway 34 on the east side of Locust Street. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There are about 65 acres of property included in the area. The property is currently used for agricultural and residential purposes. There are 3 houses included in this area.

Nabity stated one homeowner Heidi Aken and she was in favor of this annexation.

Janel Laub, 380 E. Highway 34, said she and her husband bought land there in 1996 to farm next to his parents. If the land were annexed into city limits, their children would no longer be eligible for school driving permits, could not have more numerous flocks of ducklings and they would be subject to higher taxes on farm equipment they purchase.

Their land would also eventually cease to be part of the Northwest School District, which has a more rural focus. Two of their children want to be farmers, and a third wants to be a veterinarian, Laub said.

If their land were to be annexed, "our whole way of life changes," she told the commission.

Evie Laub, 450 E Hwy 34, said the annexation would also separate the farm homestead from the farm ground, which runs to the east to Stuhr Road.

Commissioner John Amick of Doniphan concurred. He moved to annex just the western half of the proposed area, which includes the former ball fields and the Heidi Aken house that fronts onto Highway 34. Aken had previously spoken in favor of annexation.

Amick said water and sewer is available to the western portion of Area 7, (Aken property) but not to the Laub farmsteads on the east. The entire 65 acres is also not surrounded completely by city limits and the annexation, as originally proposed by the city, would substantially change the rural lifestyle the Laubs have, he said.

### **Annexation Area 12 - U.S. Highway 281 and Husker Highway**

This property is located in the southwest part of the community. It is north of Husker Highway the west side of U.S. Highway 281 and Prairieview Street. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There is about 200 acres of property included in the area that is currently used for agricultural purposes. There is one house and



no businesses included in this area.

### **Annexation Area 13 - Old Potash Highway and North Road**

This property is located in the northwest part of the community. It is south of Old Potash Highway on the west side of North Road. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There is about 120 acres of property included in the area that is currently used for agricultural purposes. There are no houses and no businesses included in this area.

Eric Pollock owns this property and was questioning what exactly this meant. Naby explained his property was surrounded by the city limits and Council is looking to get rid of the "islands" that have been formed. Sewer and water are available. Pollock questioned if there was a utility plan for the drainage because in the northwest quarter there is a drainage issue.

### **Annexation Area 14 - 13<sup>th</sup> and North Road**

This property is located in the northwest part of the community. It is south of 13<sup>th</sup> Street on the east and west sides of North Road and north of Faidley Avenue. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There is about 100 acres of property included in the area that is currently used for agricultural purposes. There are 3 houses and no businesses include in this area.

Landowners Ray Stander, 1104 N. North Road, and Floyd Leiser, 3550 N. Engleman Road, both objected, saying the land is being used for agricultural purposes.

"Farm ground is not necessary for city use," Leiser said. "They're not going to develop it as long as I'm alive," he added.

Northwest school Superintendent Bill Mowinkel also objected to the annexation of ag land from Areas 12, 13, 14 and the Laub ground in Area 7. He said the annexation results in a loss of tax base and property tax revenue for the Northwest School District.

Planning Commission Chairman Pat O'Neill said the commission is charged with evaluating current and future land use, not school finance.

Commissioner Les Ruge said because Grand Island has grown up around those areas, there is confusion on whether city or county forces have jurisdiction when it comes to road issues, drainage and emergency response. Annexation will clarify that.



O'Neill closed the Public Hearing.

**Area 3a: U.S. Highway 281 and Broadwell Ave**

This has 210 acres located south of Airport Road/U.S. Highway 281 and on the west side of Broadwell Avenue north of the Burlington Northern Santa Fe tracks. City sewer and water is available. It includes the Veterans Athletic Field Complex and Eagle Scout Park and is mostly city-owned so there is no property valuation and no property tax revenue. City annexation would clarify that city police have jurisdiction at the Athletic Complex, which is on ground leased by the city from the state.

A motion was made by Hayes to approve the Area 3a Annexation plan as submitted and seconded by Amick.

The motion carried with 9 members present and 9 voting in favor (Amick, O'Neill, Ruge, Hayes, Reynolds, Haskins, Bredthauer, Connelly and Snodgrass) and no member present abstaining.

**Area 6: Bismark Road and Stuhr Road**

This has 50 acres located north of Bismark Road to the east side of Stuhr Road. City sewer and water is available. Estimated tax base is \$100,053. Estimated annual property tax for all political subdivisions is \$2,181.

A motion was made by Reynolds to approve the Area 6 Annexation plan as submitted and seconded by Brethauer.

The motion carried with 9 members present and 9 voting in favor (Amick, O'Neill, Ruge, Hayes, Reynolds, Haskins, Bredthauer, Connelly and Snodgrass) and no member present abstaining.

**Area 7: U.S. Highway 34 and South Locust Street (Vanosdal Fields)**

This property is located in the southeast part of the community. It is north of U.S. Highway 34 the east side of Locust Street. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There are about 65 acres of property included in the area. The property is currently used for agricultural and residential purposes. There are 3 houses included in this area.

A motion was made by Amick to approve the Area 7 Annexation plan with the changes made to the annexation area to remove the Laub properties and to just include the Vanosdal property and the Aken property. This was seconded by Haskins.



Finding of Facts noted by Amick were this proposed annexation did not have sewer and water services available. This homestead was used as an ag use home property. Annexation of this property would adversely affect the families. Haskins agreed with Amick's findings.

The motion carried with 9 members present and 9 voting in favor (Amick, O'Neill, Ruge, Hayes, Reynolds, Haskins, Bredthauer, Connelly and Snodgrass) and no member present abstaining.

### **Area 12: U.S. Highway 281 and Husker Highway**

This is about 200 acres of farmland located north of Husker Highway and to the west side of U.S. Highway 281 and Prairieview Street. City sewer and water is available. Estimated tax base is \$481,334 and estimated property tax revenue is \$10,495 a year.

A motion was made by Bredthauer to approve the Area 12 Annexation plan as presented and was seconded by Reynolds.

Findings of fact noted by Bredthauer were water and sewer service is available and annexing of this property would have little or no impact to the owners.

The motion carried with 9 members present and 8 voting in favor (Amick, O'Neill, Hayes, Reynolds, Haskins, Bredthauer, Connelly and Snodgrass) and 1 member present voting against (Ruge) and no members abstaining.

### **Area 13: Old Potash Highway and North Road**

This property is located in the northwest part of the community. It is south of Old Potash Highway on the west side of North Road. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There is about 120 acres of property included in the area that is currently used for agricultural purposes. There are no houses and no businesses included in this area.

A motion was made by Bredthauer to approve the Area 13 Annexation plan as presented and was seconded by Amick.

Findings of fact noted by Bredthauer were water and sewer service is available and annexing of this property would have little or no impact to the owners.

The motion carried with 9 members present and 7 voting in favor (Amick, O'Neill, Ruge, Haskins, Bredthauer, Connelly and Snodgrass) and 2 members present voting against (Reynolds, Hayes) and no members abstaining.



#### **Area 14: 13<sup>th</sup> and North Road**

This property is located in the northwest part of the community. It is south of 13<sup>th</sup> Street on the east and west sides of North Road and north of Faidley Avenue. The City of Grand Island provides electric services to the area. Sewer and water are both available to this property. There is about 100 acres of property included in the area that is currently used for agricultural purposes. There are 3 houses and no businesses include in this area.

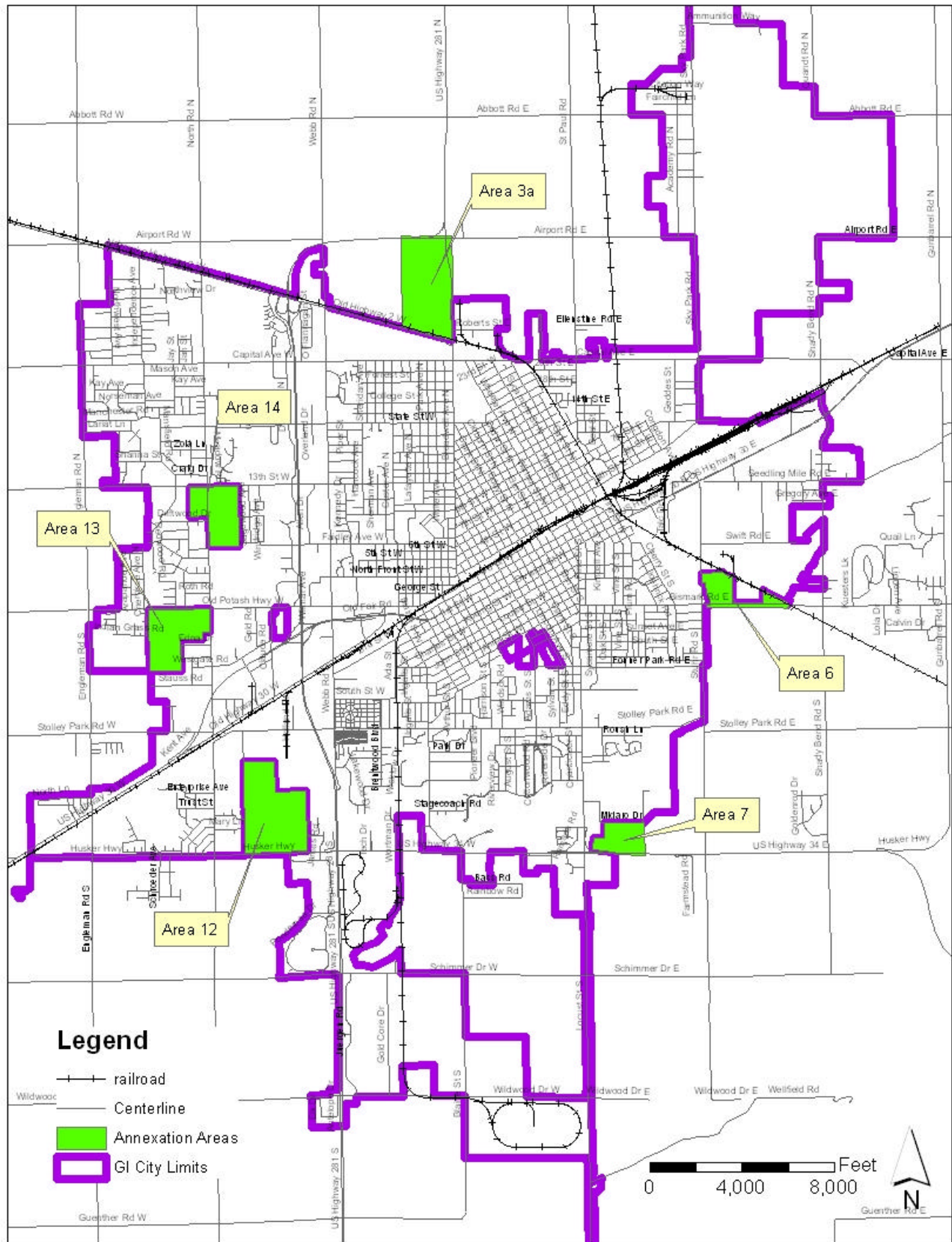
This is about 100 acres of farmland south of 13th street and west of Sagewood Avenue. City sewer and water is available. Estimated tax base is \$687,081 with estimated property tax revenue of \$14,981 a year. Planning commission voted 7-2 in favor. Commissioners Bill Hayes and Deb Reynolds objected.

A motion was made by Ruge to approve the Area 14 Annexation plan as presented and was seconded by Bredthauer.

Findings of fact noted by Ruge were water and sewer service is available and annexing of this property would have little or no impact to the owners also this clears up who needs to provide services to the area, between City and County.

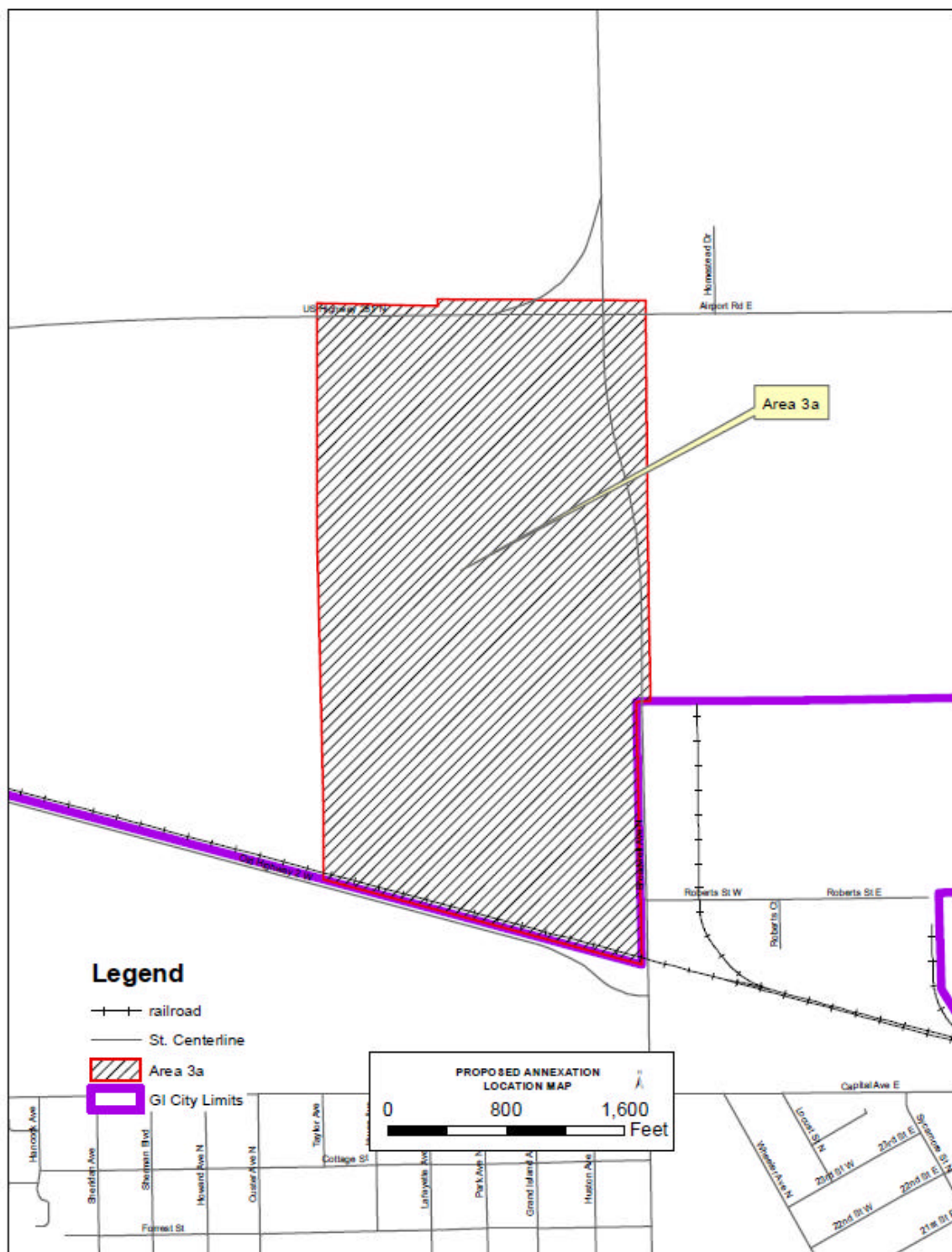
The motion carried with 9 members present and 7 voting in favor (Amick, O'Neill, Ruge, Haskins, Bredthauer, Connelly and Snodgrass) and 2 members present voting against (Reynolds, Hayes) and no member abstaining.



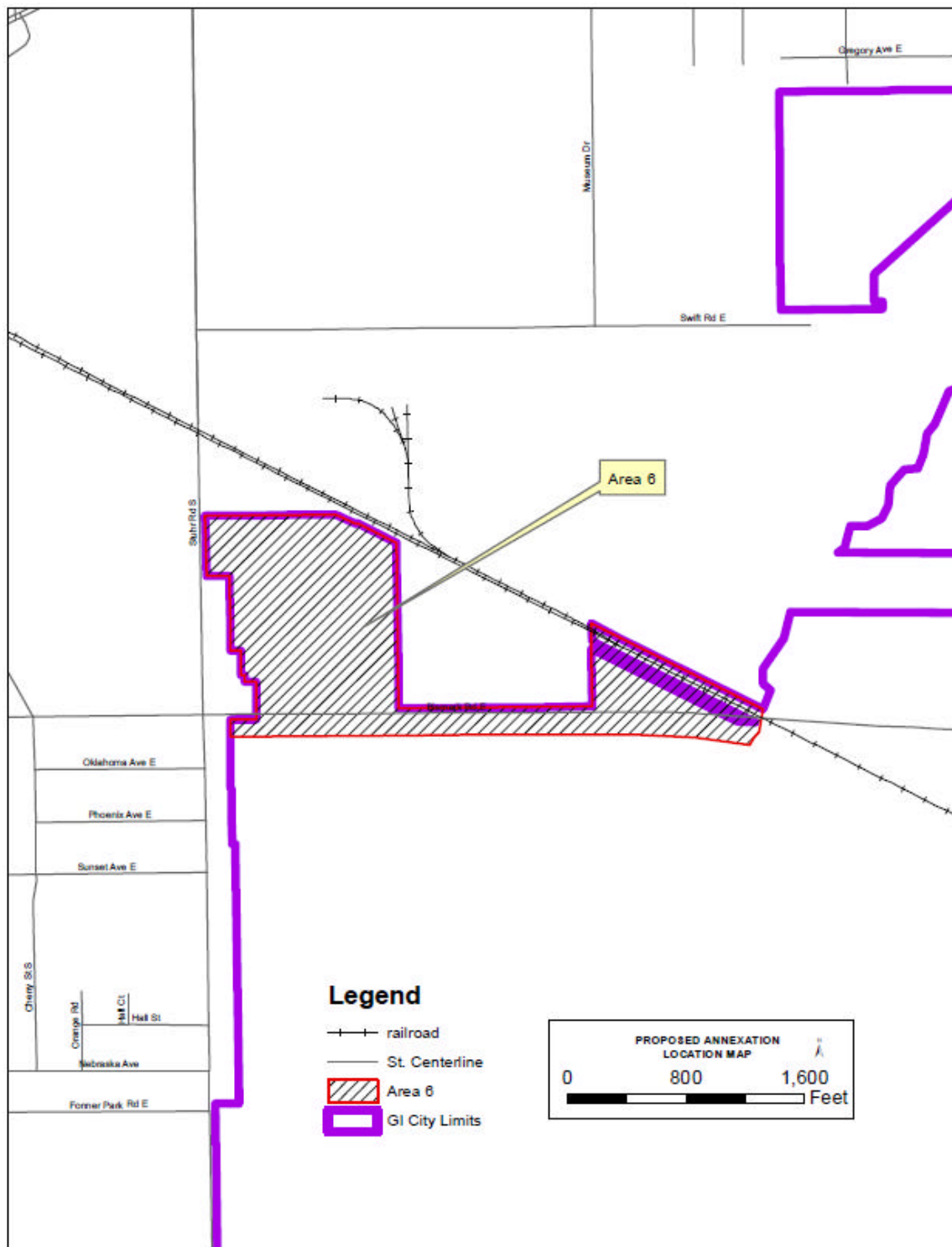


Area 7 has been modified to include fewer properties than shown on this map, but the general area of town remains the same.

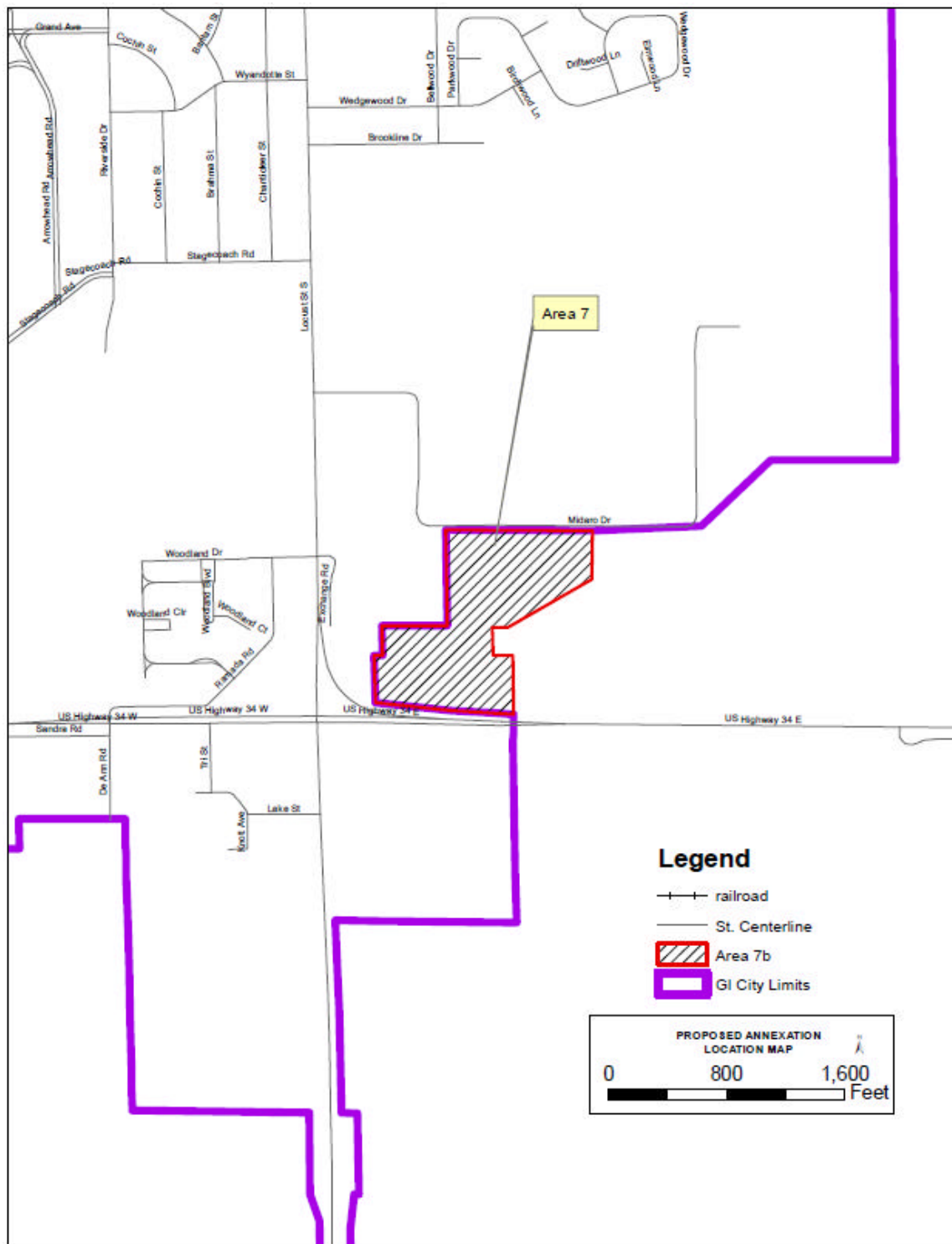




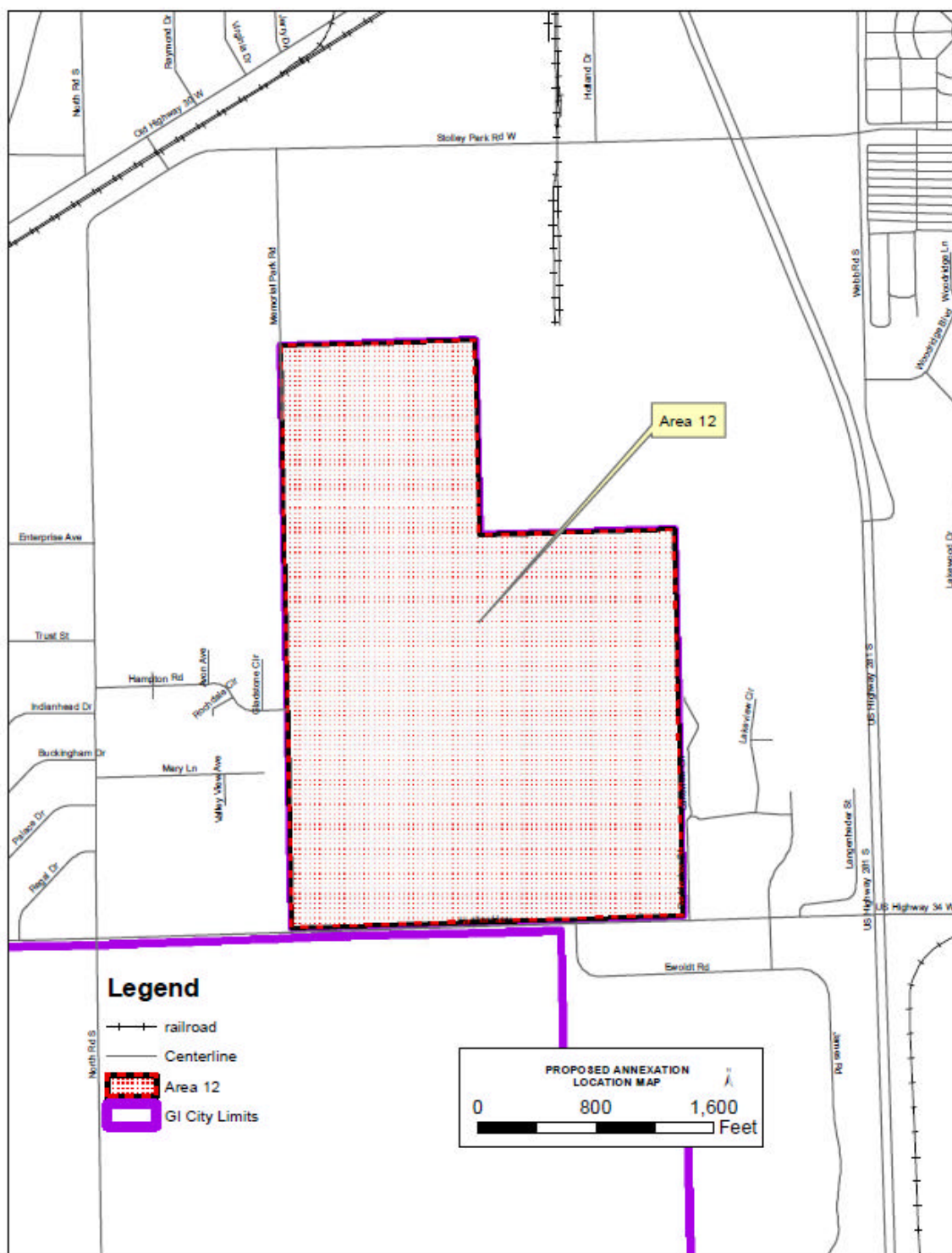




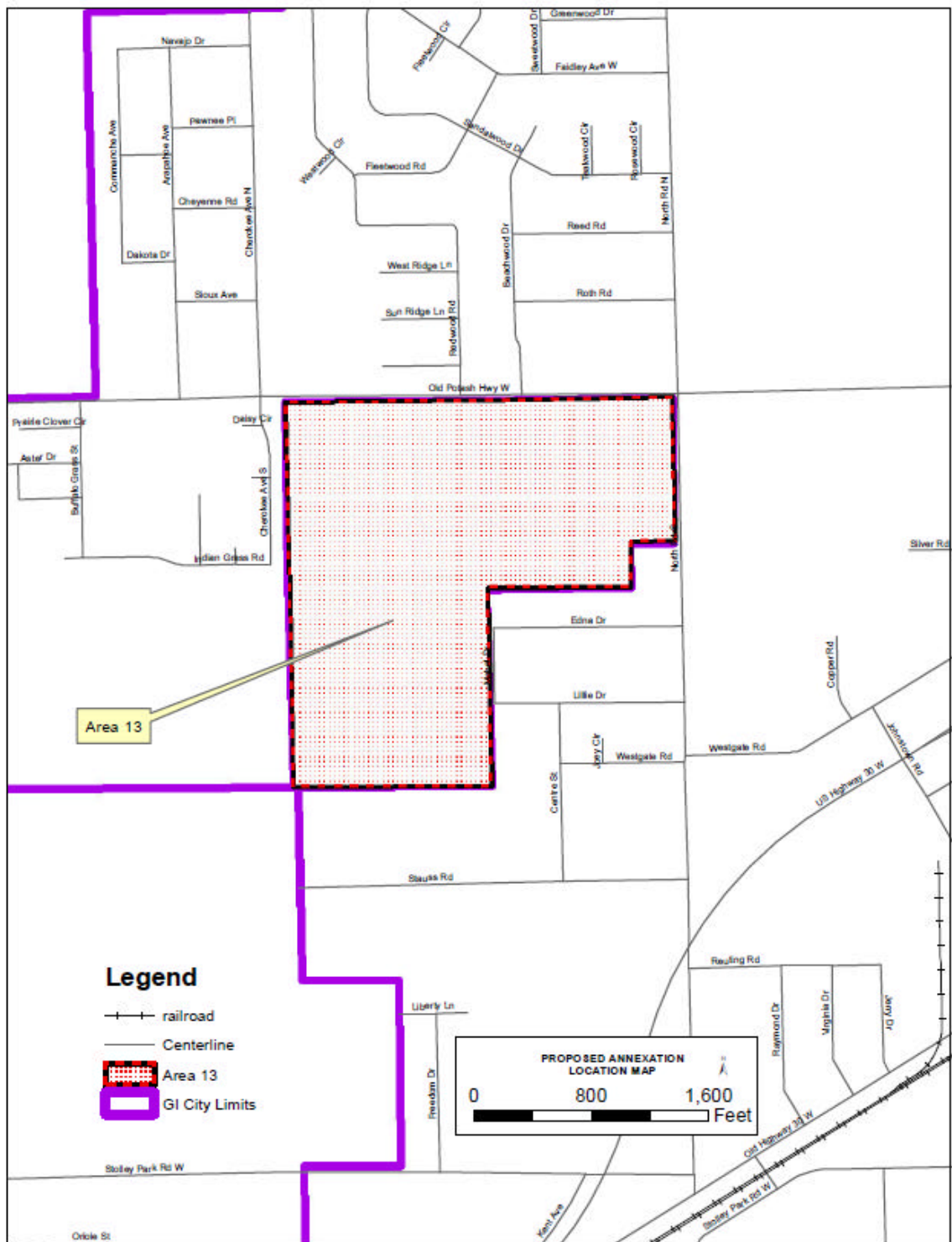




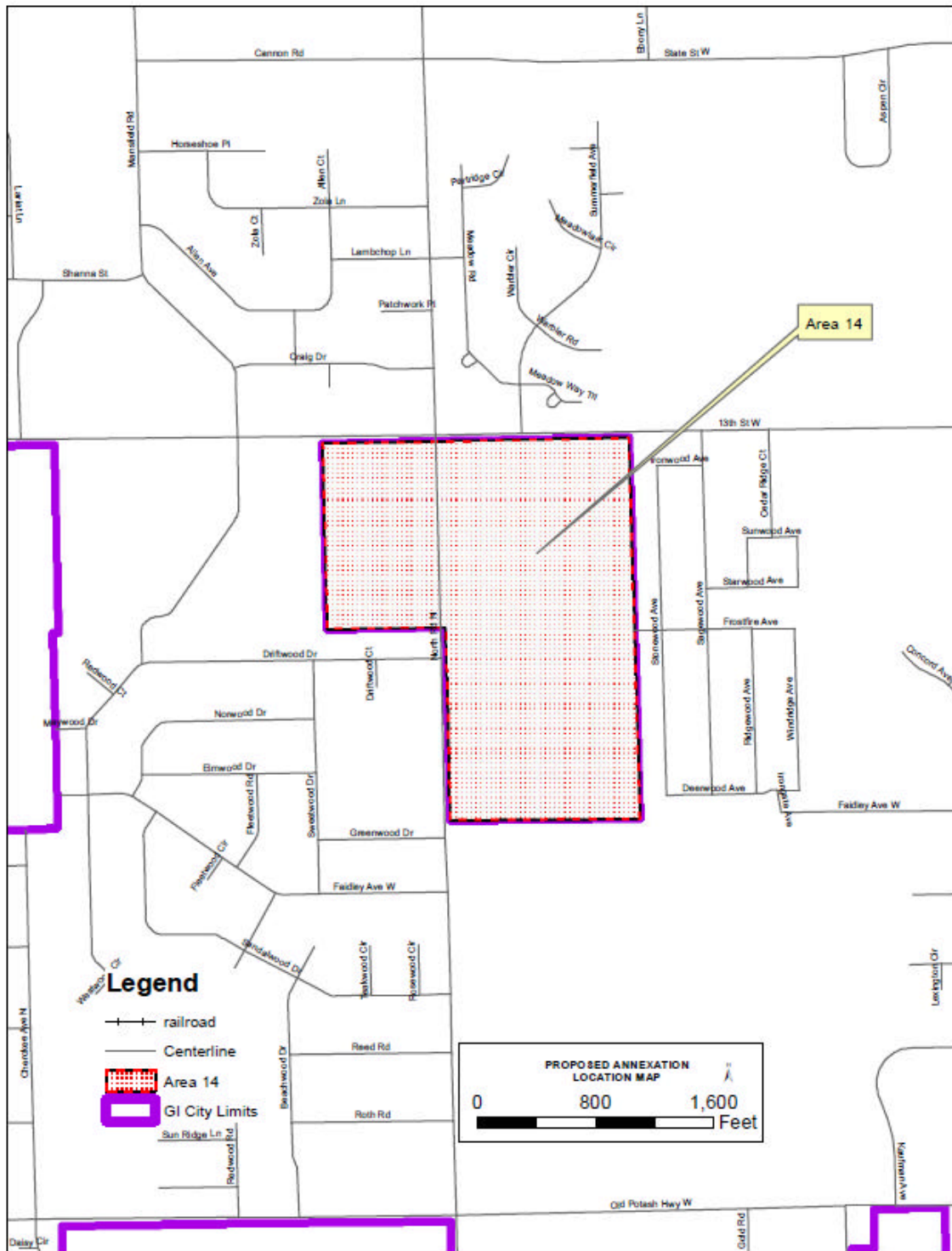
















# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item E6

**Public Hearing on Annexation of Property Located North of  
Bismark Road on the East Side of Stuhr Road (Annexation Area 6)**

*This item relates to the aforementioned Public Hearing item E-5.*

Staff Contact: Chad Nabity





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item E7

**Public Hearing on Annexation of Property Located North of US Highway 34 on the East Side of South Locust Street (Annexation Area 7)**

*This item relates to the aforementioned Public Hearing item E-5.*

Staff Contact: Chad Nabity





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item E8

**Public Hearing on Annexation of Property Located North of  
Husker Highway to the West Side of US Highway 281 and  
Prairieview Street (Annexation Area 12)**

*This item relates to the aforementioned Public Hearing item E-5.*

Staff Contact: Chad Nabity





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item E9

**Public Hearing on Annexation of Property Located South of Old Potash Highway on the West Side of North Road (Annexation Area 13)**

*This item relates to the aforementioned Public Hearing item E-5.*

Staff Contact: Chad Nabity





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item E10

**Public Hearing on Annexation of Property Located South of 13th Street on the East and West Side of North Road and North of Faidley Avenue (Annexation Area 14)**

*This item relates to the aforementioned Public Hearing item E-5.*

Staff Contact: Chad Nabity





# **City of Grand Island**

**Tuesday, October 25, 2011**

**Council Session**

## **Item E11**

**Public Hearing on Acquisition of Public Sanitary Sewer Utility  
Easement in SE 1/4 of Section 23-11N-10 – Chief Industries, Inc.**

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



# **Council Agenda Memo**

**From:** Terry Brown, Manager of Engineering Services

**Meeting:** October 25, 2011

**Subject:** Public Hearing on Acquisition of Public Sanitary Sewer Utility Easement in SE 1/4 of Section 23-11N-10 – Chief Industries, Inc.

**Item #'s:** E-11 & G-7

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

## **Background**

Nebraska State Statutes stipulate that the acquisition of property requires a public hearing to be conducted with the acquisition approved by the City Council. A public sanitary sewer utility easement is needed in the Southeast Quarter of Section 23, Township 11 North, Range 10 to accommodate public utilities. The easement will allow for the construction, operation, maintenance, extension, repair, replacement, and removal of public utilities within the easement.

## **Discussion**

The new easement will be Twenty (20) feet wide and will provide a public utility easement for extending sanitary sewer. The easement will provide sanitary sewer to a new Green Line Equipment dealership on the north side of Stolley Park Road and US Highway 30, plus allow for future developments in this area.

## **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 conduct a Public Hearing and approve acquisition of the Easement.

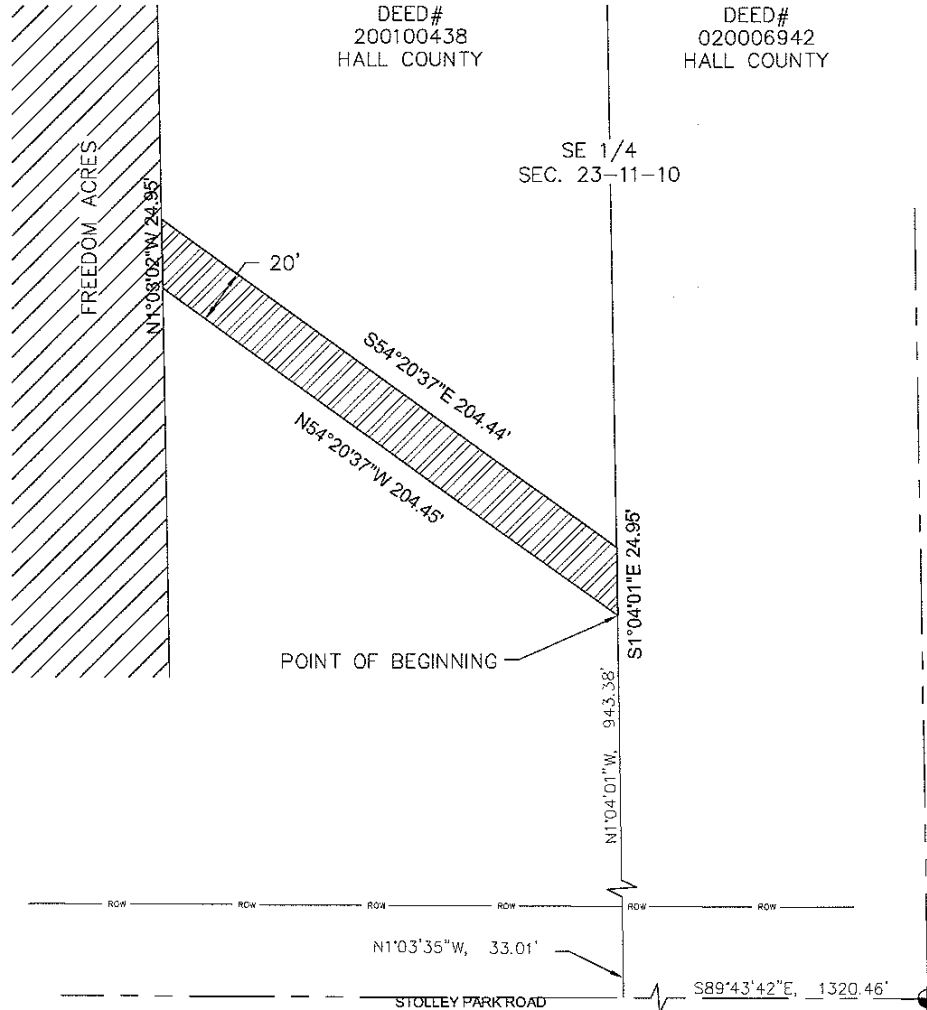
## **Sample Motion**

Move to approve the acquisition of the Easement.



# Survey Record

## SANITARY SEWER EASEMENT DESCRIPTION HALL COUNTY, NEBRASKA



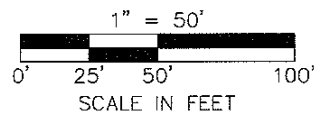
### EASEMENT DESCRIPTION

A TRACT OF LAND CONSISTING PART OF AN UNPLATTED TRACT OF LAND AS DESCRIBED IN DEED RECORD #200100438, HALL COUNTY REGISTER OF DEEDS, LOCATED IN PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE1/4 SE1/4) OF SECTION TWENTYTHREE (23), TOWNSHIP ELEVEN (11) NORTH, RANGE TEN (10) WEST OF THE 6TH P.M., HALL COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCING AT THE SOUTHEAST CORNER OF SECTION 23-11-10; THENCE WEST ALONG THE SOUTH LINE OF SECTION 23-11-10 A DISTANCE OF 1320.46 FEET; THENCE N1°03'35\"W TO THE NORTH RIGHT-OF-WAY OF SOLLEY PARK RD A DISTANCE OF 33.01 FEET; THENCE N1°04'01\"W A DISTANCE OF 943.38 FEET, SAID POINT BEING THE POINT OF BEGINNING. THENCE N54°20'37\"W TO A POINT ON THE EAST LINE OF FREEDOM ACRES SUBDIVISION A DISTANCE OF 204.45 FEET; THENCE NORTH ALONG THE EAST LINE OF FREEDOM ACRES SUBDIVISION A DISTANCE OF 24.95 FEET; THENCE S54°20'37\"E TO A POINT ON THE EAST LINE OF SAID UNPLATTED TRACT A DISTANCE OF 204.44 FEET; THENCE SOUTH ALONG THE EAST LINE OF SAID UNPLATTED TRACT A DISTANCE OF 24.95 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 0.09 ACRES MORE OR LESS.

### LEGEND

- SECTION CORNER
- SECTION LINE
- EASEMENT LINE
- LOT LINE
- RIGHT OF WAY LINE



PROJECT NO: 2011-1345  
DRAWN BY: BJD  
DATE: 9/7/11

**SANITARY SEWER  
EASEMENT**

**MOLSSON**  
ASSOCIATES

201 East 2nd Street  
P.O. Box 1072  
Grand Island, NE 68802-1072  
TEL 308.384.8750  
FAX 308.384.8752

EXHIBIT

2





# **City of Grand Island**

**Tuesday, October 25, 2011**

**Council Session**

## **Item F1**

**#9334 - Consideration of Annexation of Olson Subdivision Located  
South of Airport Road and North and West of US Highway 281  
(Final Reading)**

**Staff Contact: Chad Nabity**



# **Council Agenda Memo**

**From:** Chad Nabity, Regional Planning Director

**Meeting:** October 11, 2011

**Subject:** An Ordinance to Annex Olson Subdivision an Addition to the City of Grand Island, Nebraska and the Adjoining Right-of -Way

**Item #'s:** F-1

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

## **Background**

The Annexation Component of the Grand Island Comprehensive Development Plan as adopted by the Grand Island City Council on July 13, 2004 sets as the policy of Grand Island that any and all property subdivided adjacent to the Corporate Limit of the City of Grand Island be annexed into the City at the time of subdivision approval.

Phil A. Mader and Linda Mader, as the owners of the property, submitted Olson Subdivision as an addition to the City of Grand Island. The Hall County Regional Planning Commission recommended approval of the subdivision at their meeting on September 7, 2011.

An ordinance to approve this annexation was approved on first reading by the Grand Island City Council on September 27, 2011 and on second reading on October 11, 2011.

## **Discussion**

Staff has prepared an ordinance in accordance with the requirements of Nebraska Revised Statute §16-117. Annexation ordinances must be read on three separate occasions. This is the final reading of the ordinance. This ordinance includes exhibits showing the property to be considered for annexation and the legal descriptions of those properties.

City staff is not suggesting extension of the zoning jurisdiction as a result of this annexation. Council could request that planning commission consider extension of the zoning jurisdiction. Changes to the zoning jurisdiction cannot be made without a recommendation from the Regional Planning Commission.



No existing residences or businesses would be added to the City as a result of this annexation.

### **Alternatives**

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

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

### **Recommendation**

City Administration recommends that the Council pass the annexation ordinance.

### **Sample Motion**

Move to approve the annexation ordinance on second reading.



\* This Space Reserved For Register of Deeds \*

### ORDINANCE NO. 9334

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, a tract of land comprised of Olson Subdivision and the adjoining Right-Of-Way for Airport Road and U.S. Highway 281 in Hall County, Nebraska as more particularly described hereinafter and as shown on Exhibit "A" attached hereto; to provide service benefits thereto; to repeal any ordinance or resolutions or parts of thereof in conflict herewith; to provide for publication in pamphlet form; and to provide the effective date of this ordinance.

WHEREAS, after the Phil A Mader and Linda Mader as owners of the property submitted a plat of Olson Subdivision an Addition to the City of Grand Island for approval; and

WHEREAS, the Annexation Component of the Comprehensive Development Plan for the City of Grand Island requires that owners of property proposed for subdivision adjacent to the Corporate Limits submit such subdivisions as additions to the City; and

WHEREAS, according to NRSS §16-177 the City of Grand Island can upon petition of the property owner(s) of property contiguous and adjacent to the City Limits annex said property by ordinance; and

Approved as to Form	<input type="checkbox"/> _____
October 20, 2011	<input type="checkbox"/> City Attorney



ORDINANCE NO. 9334 (Cont.)

WHEREAS, on September 27, 2011, the City Council of the City of Grand Island approved such annexation on first reading and on October 11, 2011 such annexation was approved on second reading.

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

SECTION 1. It is hereby found and determined that:

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

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

(C) The various zoning classifications of the land shown on the Official Zoning Map of the City of Grand Island, Nebraska, are hereby confirmed and that this annexation does not extend the extraterritorial zoning jurisdiction.

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



ORDINANCE NO. 9334 (Cont.)

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

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

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

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

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

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

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

Enacted: October 25, 2011.



ORDINANCE NO. 9334 (Cont.)

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Jay Vavricek, Mayor

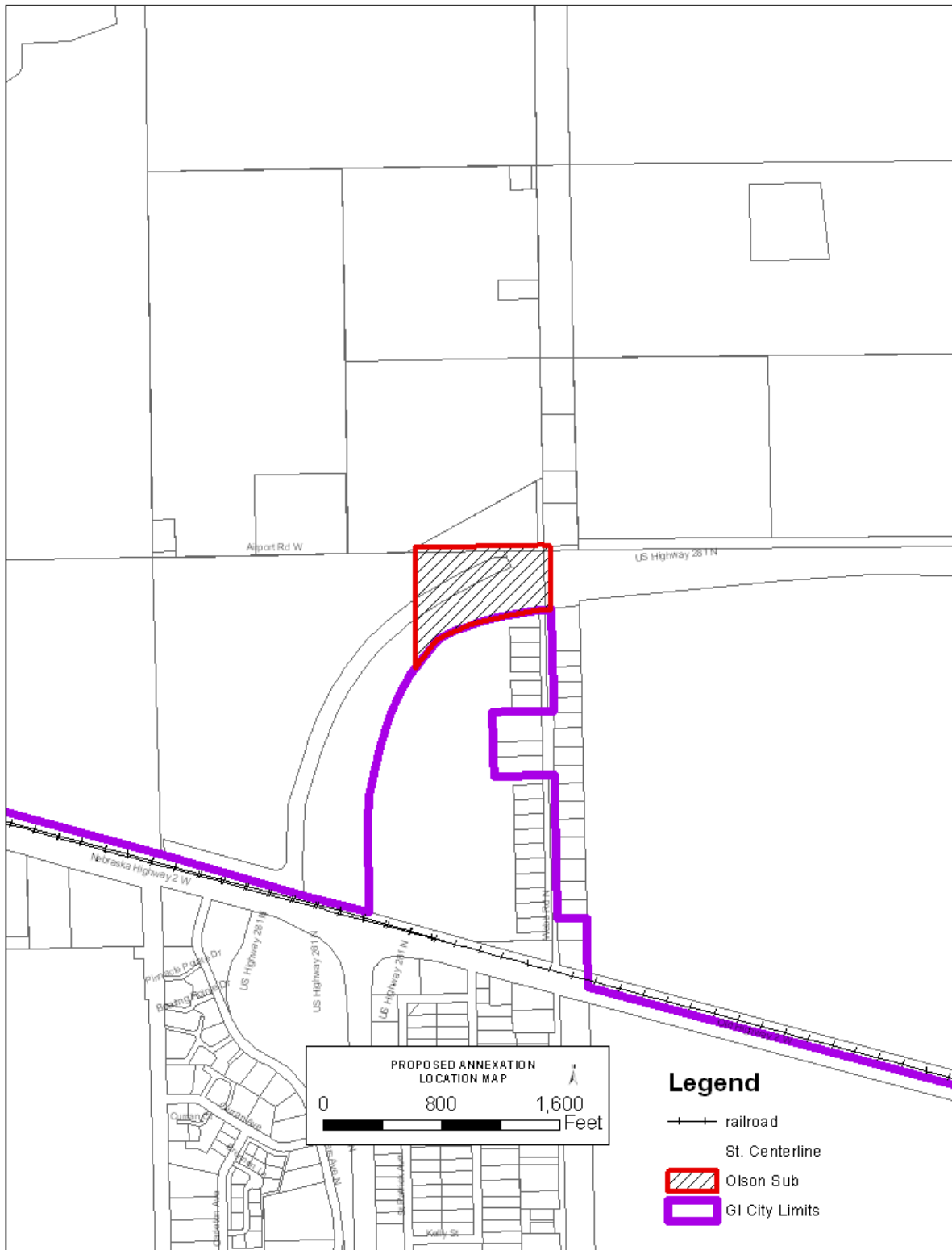
Attest:

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RaNae Edwards, City Clerk



ORDINANCE NO. 9334 (Cont.)







# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item F2

**#9338 - Consideration of Request to Rezone Properties Located West of Webb Road, South of Faidley Avenue and North of West North Front Street from LLR – Large Lot Residential to B2 – General Business Zone**

*This item relates to the aforementioned Public Hearing item E-4.*

Staff Contact: Chad Nabity



ORDINANCE NO. 9338

An ordinance rezoning a certain tract of land within the zoning jurisdiction of the City of Grand Island; changing the land use classification of a tract of land described as the easterly 290 feet and southerly 900 feet of the NE ¼ of the SE ¼ of 13-11-10, from LLR Large Lot Residential to B2 General Business Zone, directing the such zoning change and classification be shown on the Official Zoning Map of the City of Grand Island; amending the zoning map pursuant to Chapter 36; and providing for publication and an effective date of this ordinance.

WHEREAS, the Regional Planning Commission on October 5, 2011, held a public hearing and made a recommendation on the proposed zoning of such area; and

WHEREAS, notice as required by Section 19-923, R.R.S. 1943, has been given to the Boards of Education of the school districts in Hall County, Nebraska; and

WHEREAS, the requested change is found to be in compliance with the Comprehensive Development Plan of the City of Grand Island as adopted July 13, 2004 and subsequently amended; and

WHEREAS, after public hearing on October 25, 2011, the City Council found and determined the change in zoning be approved and made.

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

SECTION 1. The following tracts of land are hereby rezoned, reclassified and changed from LLR Large Lot Residential to B2 General Business Zone:

Described as the easterly 290 feet and southerly 900 feet of the NE ¼ of the SE ¼ of 13-11-10, in the City of Grand Island, Hall County, Nebraska.



ORDINANCE NO. 9338

SECTION 2. That the Official Zoning Map of the City of Grand Island, Nebraska, as established by Section 36-51 of the Grand Island City Code be, and the same is, hereby ordered to be changed, amended, and completed in accordance with this ordinance.

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

Enacted: October 25, 2011.

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Jay Vavricek, Mayor

Attest:

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RaNae Edwards, City Clerk





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item F3

**#9339 - Consideration of Annexation for Property Located South of Airport Road/US Highway 281 and the West Side of Broadwell Avenue North of the Burlington Northern Santa Fe Tracks Including Eagle Scout Park and the Veterans Field (Area 3a) (1st Reading)**

*This item relates to the aforementioned Public Hearing item E-5.*

Staff Contact: Chad Nabity



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### ORDINANCE NO. 9339

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, a tract of land west of U.S. Highway 281 and south of Airport Road along with all adjoining public Right-of-Way in Hall County, Nebraska referenced as annexation area “3a” as more particularly described hereinafter and as shown on Exhibit “A” attached hereto; to provide service benefits thereto; to repeal any ordinance or resolutions or parts of thereof in conflict herewith; to provide for publication in pamphlet form; and to provide the effective date of this ordinance.

WHEREAS, after public hearing on July 6, 2011, the Regional Planning Commission recommended the approval of annexing into the City of Grand Island, the following tract of land in Hall County, Nebraska:

Beginning At A Point On The North Line Of Airport Road, U.S. Highway 281 Said Point Being 2,544.35’ West Of And 86.51’ North Of The Northeast Corner Section 5-11-9 Thence Easterly On A Line 86.51’ North Of And Parallel To The North Of Section 5-11-9 And Section 4-11-9 To A Point On The West Line Of Homestead Second Subdivision Thence Southerly On A Line To The South Right Of Way Line Of Airport Road Thence Southwesterly To The East Right Of Way Line Of Broadwell Avenue Thence Southerly On The East Right Of Way Line Of Broadwell To A Point On The South Line Of Northwest Quarter Of Northwest Quarter Section 4-11-9 Thence Westerly On Said South Line Northwest Quarter, Northwest Quarter Section 4-11-9 To The West Line Of Section

Approved as to Form	<input type="checkbox"/> _____
October 20, 2011	<input type="checkbox"/> City Attorney



ORDINANCE NO. 9339 (Cont.)

4-11-9 Thence Southerly On The West Line Of Section 4-11-9 To A Point On The South Right Of Way Line Of The Burlington Northern Santa Fe Railroad Thence Northwesterly On The South Right Of Way Line Of The Burlington Northern Santa Fe Railroad To A Point On The West Line Of Southeast Quarter Section 5-11-9 Thence Northerly On The West Line Of Southeast Quarter And Northeast Quarter Section 5-11-9 To The Point Of Beginning.

WHEREAS, after public hearing on October 25, 2011, the City Council of the City of Grand Island found and determined that such annexation be approved; and

WHEREAS, on October 25, 2011, the City Council of the City of Grand Island approved such annexation on first reading.

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

SECTION 1. It is hereby found and determined that:

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

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

(C) The various zoning classifications of the land shown on the Official Zoning Map of the City of Grand Island, Nebraska, are hereby confirmed and that this annexation will have no impact on the extraterritorial zoning jurisdiction.

(D) There is unity of interest in the use of the said tract of land, lots, tracts, highways and streets (lands) with the use of land in the City, and the community convenience



ORDINANCE NO. 9339 (Cont.)

and welfare and in the interests of the said City will be enhanced through incorporating the subject land within the corporate limits of the City of Grand Island.

(E) The plan for extending City services is hereby approved and ratified as amended.

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

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

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

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

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

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



ORDINANCE NO. 9339 (Cont.)

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

Enacted: October 25, 2011.

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Jay Vavricek, Mayor

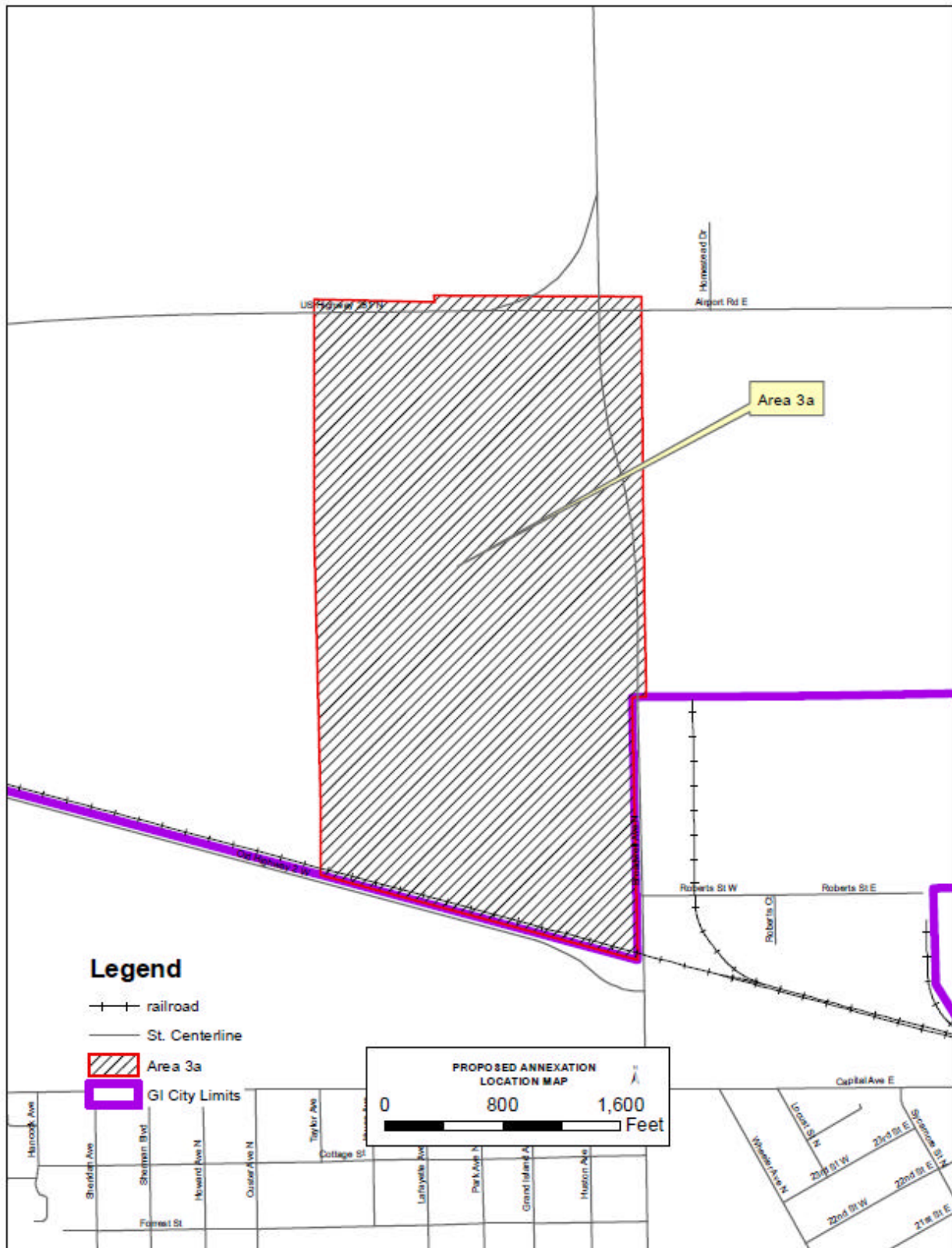
Attest:

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RaNae Edwards, City Clerk



ORDINANCE NO. 9339 (Cont.)







# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item F4

**#9340 - Consideration of Annexation of Property Located North of Bismark Road on the East Side of Stuhr Road (Annexation Area 6) (First Reading)**

*This item relates to the aforementioned Public Hearing item E-6.*

Staff Contact: Chad Nabity



\* This Space Reserved For Register of Deeds \*

### ORDINANCE NO. 9340

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, a tract of land east of Stuhr Road and north of Bismark Road along with all adjoining public Right-of-Way in Hall County, Nebraska referenced as annexation area “6” as more particularly described hereinafter and as shown on Exhibit “A” attached hereto; to provide service benefits thereto; to repeal any ordinance or resolutions or parts of thereof in conflict herewith; to provide for publication in pamphlet form; and to provide the effective date of this ordinance.

WHEREAS, after public hearing on July 6, 2011, the Regional Planning Commission recommended the approval of annexing into the City of Grand Island, the following tract of land in Hall County, Nebraska:

Beginning At A Point 33’ South Of And 183’ East Of Northwest Corner 23-11-9 Said Point Being On The South Line Of Bismark Road Thence Continuing Easterly On The South Line Of Bismark Road For A Distance Of 177.5’ Thence Northerly On A Line 360.5’ East Of And Parallel To The West Lines Of Section 23-11-9 And 14-11-9 Thence Westerly On A Line 191.1’ North Of And Parallel To The South Line Of Section 14-11-9 For A Distance Of 73.63’ Thence Northerly On A Line 286.87’ East Of And Parallel To The West Line Of Section 14-11-9 For A Distance Of 43.30’ Thence Westerly On A Line To A Point 260’ East Of West Line Section 14-11-9 And 234.4’ North Of South Line Of Section 14-11-9 Thence Northerly On A Line 260.0’ East Of And Parallel To The West

Approved as to Form	<input type="checkbox"/> _____
October 20, 2011	<input type="checkbox"/> City Attorney



ORDINANCE NO. 9340 (Cont.)

Line Of Section 14-11-9 For A Distance Of 170.0' Thence West On A Line To A Point 191.10' East Of And 404.4' North Of The South Line Of Section 14-11-9 Thence Northerly On A Line 191.1' East Of And Parallel To The West Line Of Section 14-11-9 For A Distance Of 539.47' Thence Westerly on A Line 943.87' North Of And Parallel To The South Line Of Section 14-11-9 To The East Line Of Stuhr Road Thence Northerly On The East Line Of Stuhr Road To The Southwest Corner Of Lot 101 Industrial Addition Thence Easterly On The South Line Of Lot 101, 100 & 90 Industrial Addition For A Distance of 884.63' Thence Southeasterly On The Southwest Line Of Lot 99 Industrial Addition For A Distance Of 146.53' Thence Northeasterly On The East Line Of Lot 99 Industrial Addition For A Distance Of 50' To The Southerly Line Of The Burlington Northern Santa Fe Railroad Right Of Way Thence Southeasterly On Said Southerly Line Of Burlington Northern Santa Fe Railroad To The Northwest Corner Lot 102 Industrial Addition Thence Southerly On The West Line Of Lots 102, 110, 111 & 118 Industrial Addition To The Southwest Corner Of Lot 118 Industrial Addition Thence Easterly On The South Line Of Lots 115, 116, 117 & 118 Industrial Addition To The Southeast Corner Of Lot 115 Industrial Addition Thence Northerly On The East Line Of Lots 114 & 115 For A Distance of 380' ± Thence South Easterly On A Southerly Line Of Lot 114 Industrial Addition To The Southeast Corner Of Lot 114 Industrial Addition Thence Easterly On The South Line Of Lot 114 Industrial Addition To The Southerly Line Of The Burlington Northern Santa Fe Railroad Right Of Way Thence Southeasterly On Said South Line Of The Burlington Northern Santa Fe Railroad To A Point Of The South Line Of Bismark Road Thence Southwesterly On A Line For A Distance Of 166.5'± Thence Northwesterly On A Line For A Distance Of 330' To A Said Point Being 169.4' South Of The North Line Of Section 23-11-9 Thence Westerly On A Line For A Distance of 418.9' To A Point Being 161' South Of The North Line Of Section 23-11-9 Thence Continuing Westerly On A Line For A Distance Of 1000' To A Point Being 151' South Of The North Line Of Section 23-11-9 Thence Continuing Westerly On A Line For A Distance Of 587.6' To A Point 149.63' South Of The North Line Of Section 23-11-9 Thence Continuing Westerly On A Line For A Distance Of 912.4' To A Point Being 148' South Of The North Line Of Section 23-11-9 Thence Westerly On A Line Being 148' South Of And Parallel To The North Line Of Section 23-11-9 For A Distance Of 224.6' Thence Northerly On A Line For A Distance Of 115' To The Point Of Beginning.

WHEREAS, after public hearing on October 25, 2011, the City Council of the City of Grand Island found and determined that such annexation be approved; and

WHEREAS, on October 25, 2011, the City Council of the City of Grand Island approved such annexation on first reading.

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



ORDINANCE NO. 9340 (Cont.)

SECTION 1. It is hereby found and determined that:

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

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

(C) The various zoning classifications of the land shown on the Official Zoning Map of the City of Grand Island, Nebraska, are hereby confirmed and that this annexation will have no impact on the extraterritorial zoning jurisdiction.

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

(E) The plan for extending City services is hereby approved and ratified as amended.

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

SECTION 3. The subject tract of land is hereby annexed to the City of Grand Island, Hall County, Nebraska, and said land and the persons thereon shall thereafter be subject



ORDINANCE NO. 9340 (Cont.)

to all rules, regulations, ordinances, taxes and all other burdens and benefits of other persons and territory included within the City of Grand Island, Nebraska.

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

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

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

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

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

Enacted: October 25, 2011.

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Jay Vavricek, Mayor

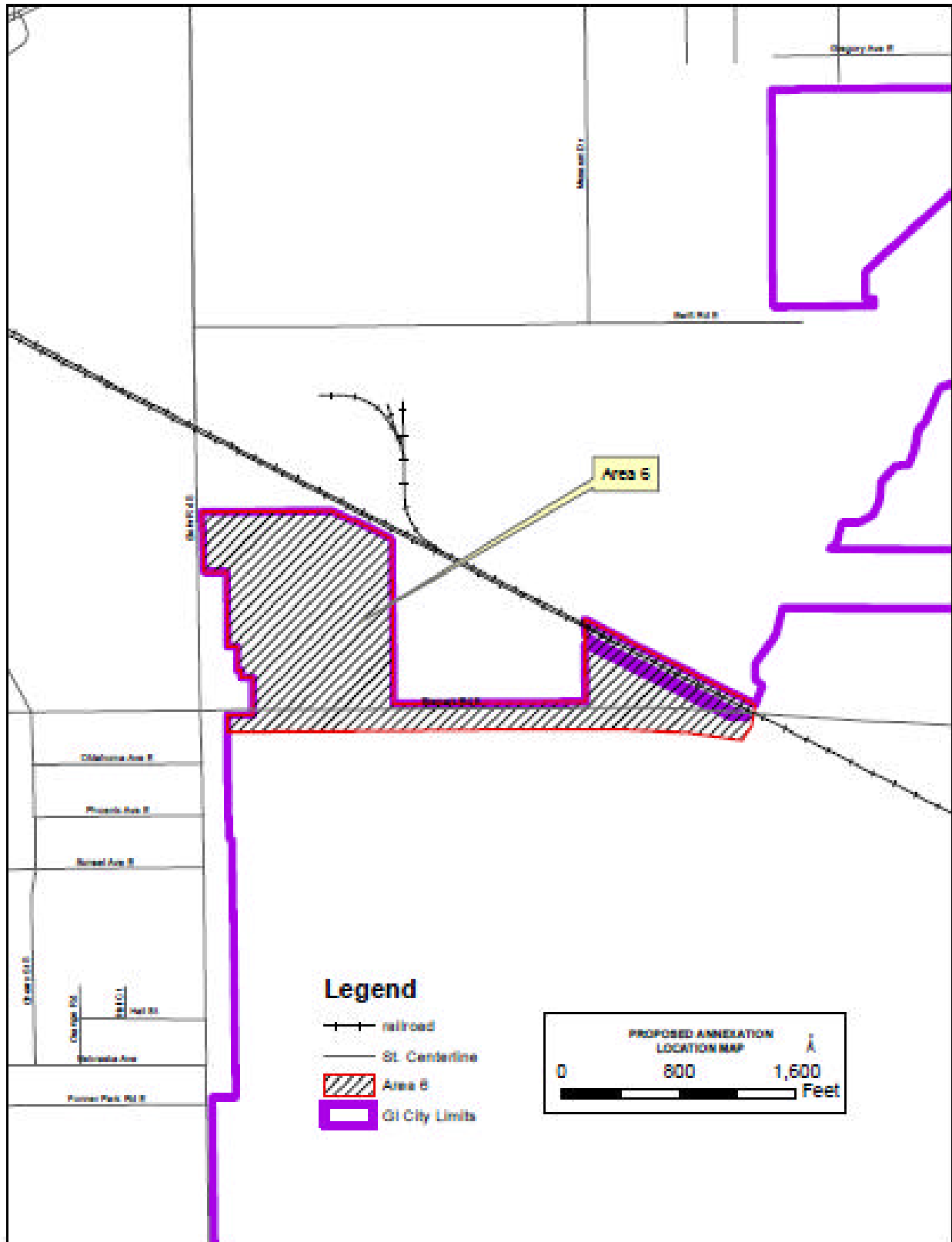
Attest:

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RaNae Edwards, City Clerk



ORDINANCE NO. 9340 (Cont.)







# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item F5

**#9341 - Consideration of Annexation of Property Located North of  
US Highway 34 on the East Side of South Locust Street  
(Annexation Area 7) (First Reading)**

*This item relates to the aforementioned Public Hearing item E-7.*

Staff Contact: Chad Nabity



\* This Space Reserved For Register of Deeds \*

### ORDINANCE NO. 9341

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, a tract of land east of Locust Street and north of U.S. Highway 34 along with all adjoining public Right-of-Way in Hall County, Nebraska referenced as annexation area “7” as more particularly described hereinafter and as shown on Exhibit “A” attached hereto; to provide service benefits thereto; to repeal any ordinance or resolutions or parts of thereof in conflict herewith; to provide for publication in pamphlet form; and to provide the effective date of this ordinance.

WHEREAS, after public hearing on July 6, 2011, the Regional Planning Commission recommended the approval of annexing into the City of Grand Island, the following tract of land in Hall County, Nebraska:

Beginning At The Southeast Corner Of Desert Rose Subdivision Thence North On The East Line Of Desert Rose Subdivision For A Distance Of 323.6’ Thence Easterly On The South Line Of Desert Rose Sub For A Distance Of 55’ Thence Northerly On The East Line Of Desert Rose Subdivision For A Distance Of 201’ To The Northeast Corner Of Desert Rose Subdivision Thence Easterly On An Extension Of The North Line Of Desert Rose Subdivision For A Distance Of 445’ ± Thence Northerly On A Line For A Distance Of 669.4’ ± To The South Line Of Firethorne Estates Subdivision Thence Easterly On The South Line Of Firethorne Estates Subdivision For A Distance Of 1,223.6’ ± Thence Southerly On A Line For A Distance Of 327.5’ ± Thence Southwesterly On A Line For A

Approved as to Form	☐ _____
October 20, 2011	☐ City Attorney



ORDINANCE NO. 9341 (Cont.)

Distance Of 654.1'± Thence Westerly On A Line For A Distance Of 106' Thence Southerly On A Line For A Distance Of 193.6'± Thence Easterly On A Line For A Distance Of 106' Thence South On A Line To A Point On The North Line Of the U.S. Highway 34, Husker Highway Thence Westerly On The South Line Of Said U.S. Highway 34, Husker Highway To The West Line Of Northeast Quarter Of Northwest Quarter Section 34-11-9 Thence Northerly On The West Line Of Northeast Quarter, Northwest Quarter Section 34-11-9 To The North Line Of Section 34-11-9 Thence Continuing Northerly On The West Line Of The Southeast Quarter Of Southwest Quarter Section 27-11-9 To The North Line Of U.S. Highway 34, Husker Highway Thence Westerly And Northerly On The North Line Of U.S. Highway 34, Husker Highway To The Point Of Beginning

WHEREAS, after public hearing on October 25, 2011, the City Council of the City of Grand Island found and determined that such annexation be approved; and

WHEREAS, on October 25, 2011, the City Council of the City of Grand Island approved such annexation on first reading.

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

SECTION 1. It is hereby found and determined that:

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

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



ORDINANCE NO. 9341 (Cont.)

(C) The various zoning classifications of the land shown on the Official Zoning Map of the City of Grand Island, Nebraska, are hereby confirmed and that this annexation will have no impact on the extraterritorial zoning jurisdiction.

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

(E) The plan for extending City services is hereby approved and ratified as amended.

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

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

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

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



ORDINANCE NO. 9341 (Cont.)

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

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

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

Enacted: October 25, 2011.

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Jay Vavricek, Mayor

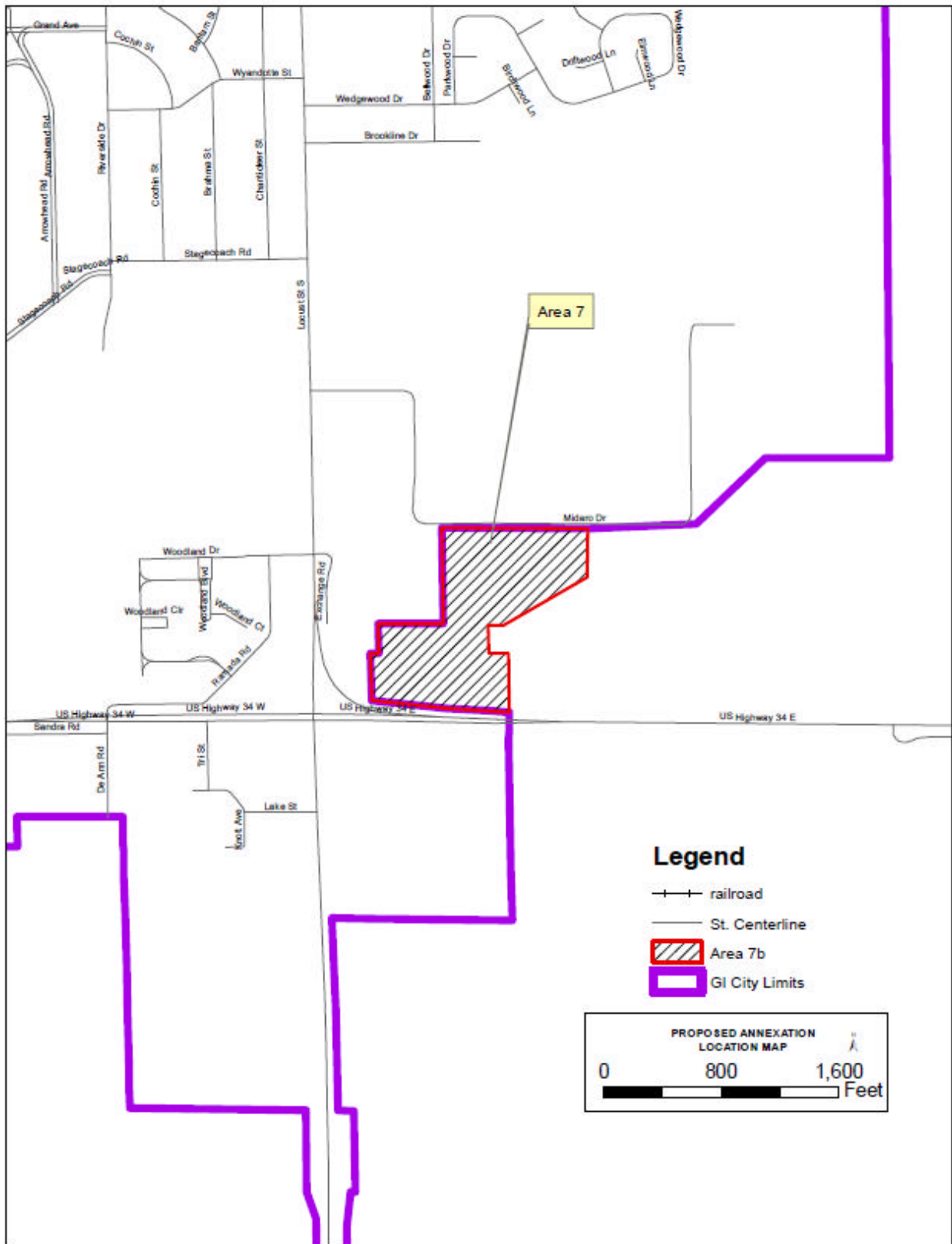
Attest:

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RaNae Edwards, City Clerk



ORDINANCE NO. 9341 (Cont.)







# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item F6

**#9342 - Consideration of Annexation of Property Located North of  
Husker Highway to the West Side of US Highway 281 and  
Prairieview Street (Annexation Area 12) (First Reading)**

*This item relates to the aforementioned Public Hearing item E-8.*

Staff Contact: Chad Nabity



\* This Space Reserved For Register of Deeds \*

## ORDINANCE NO. 9342

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, a tract of land west of U.S. Highway 281 and north of U.S. Highway 34 along with all adjoining public Right-of-Way in Hall County, Nebraska referenced as annexation area “12” as more particularly described hereinafter and as shown on Exhibit “A” attached hereto; to provide service benefits thereto; to repeal any ordinance or resolutions or parts of thereof in conflict herewith; to provide for publication in pamphlet form; and to provide the effective date of this ordinance.

WHEREAS, after public hearing on July 6, 2011, the Regional Planning Commission recommended the approval of annexing into the City of Grand Island, the following tract of land in Hall County, Nebraska:

Beginning At The Southwest Corner Of Pedcor Subdivision Thence Continuing Southerly On An Extension Of The West Line Of Pedcor Subdivision To The West Line Of Pedcor Subdivision To The Southerly Line Of U.S. Highway 34, Husker Highway Thence Westerly On The South Line Of Said Highway To A Point On The West Line Of The Northeast Quarter Of The Northwest Quarter Section 36-11-10 Thence Northerly On The West Line Of Northeast Quarter, Northwest Quarter Section 36-11-10 To The Northwest Corner Of Northeast Quarter, Northwest Quarter Section 36-11-10 Said Point Also Being The Southwest Corner Of Southeast Quarter Of Southwest Quarter Section 25-11-10 Thence Continuing Northerly On The West Line Of The Southeast Quarter,

Approved as to Form	<input type="checkbox"/> _____
October 20, 2011	<input type="checkbox"/> City Attorney



ORDINANCE NO. 9342 (Cont.)

Southwest Quarter, Northeast Quarter, Southwest Quarter And The Southeast Quarter Northwest Quarter Section 25-11-10. To The Northwest Corner Of Southeast Quarter, Northwest Quarter Section 25-11-10 Thence Easterly On The North Line Of Southeast Quarter, Northwest Quarter Section 25-11-10 To The Northeast Corner Of Southeast Quarter, Northwest Quarter Section 25-11-10 The Southerly On The East Line Of Southeast Quarter, Northwest Quarter Section 25-11-10 To The Southeast Corner Of Southeast Quarter, Northwest Quarter Section 25-11-10 Said Point Also Being The Center Of Section 25-11-10 Thence Easterly On The North Line Of Southeast Quarter Section 25-11-10 To The Northwest Corner Of Pedcor Second Subdivision Thence Southerly On The West Line Of Pedcor Second Subdivision and Pedcor Subdivision To The Point Of Beginning

WHEREAS, after public hearing on October 25, 2011, the City Council of the City of Grand Island found and determined that such annexation be approved; and

WHEREAS, on October 25, 2011, the City Council of the City of Grand Island approved such annexation on first reading.

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

SECTION 1. It is hereby found and determined that:

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

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

(C) The various zoning classifications of the land shown on the Official Zoning Map of the City of Grand Island, Nebraska, are hereby confirmed and that this annexation will have no impact on the extraterritorial zoning jurisdiction.



ORDINANCE NO. 9342 (Cont.)

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

(E) The plan for extending City services is hereby approved and ratified as amended.

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

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

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

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

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



ORDINANCE NO. 9342 (Cont.)

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

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

Enacted: October 25, 2011.

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Jay Vavricek, Mayor

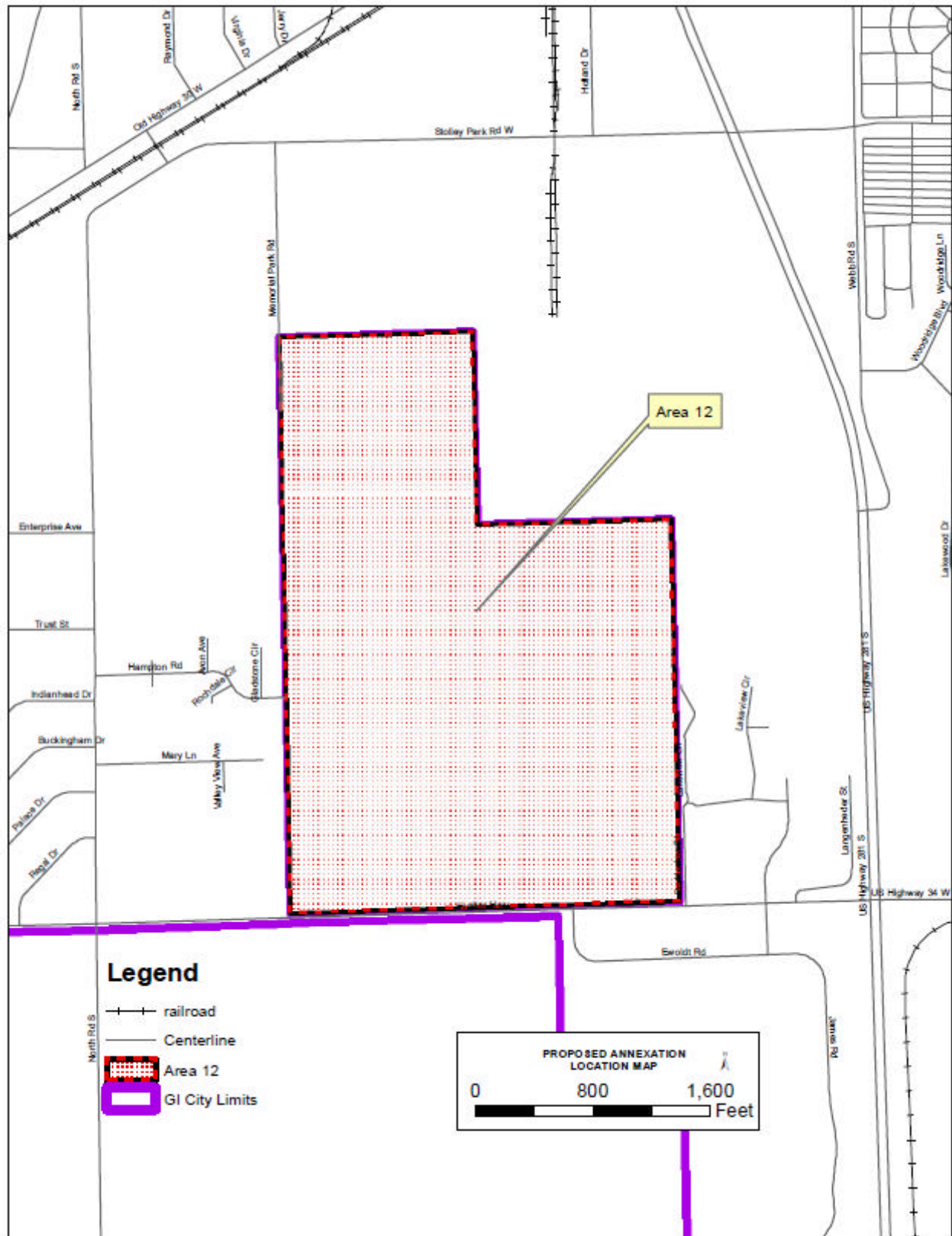
Attest:

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RaNae Edwards, City Clerk



ORDINANCE NO. 9342 (Cont.)







# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item F7

**#9343 - Consideration of Annexation of Property Located South of Old Potash Highway on the West Side of North Road (Annexation Area 13) (First Reading)**

*This item relates to the aforementioned Public Hearing item E-9.*

Staff Contact: Chad Nabity



\* This Space Reserved For Register of Deeds \*

### ORDINANCE NO. 9343

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, a tract of land west of North Road and south of Old Potash Highway along with all adjoining public Right-of-Way in Hall County, Nebraska referenced as annexation area “13” as more particularly described hereinafter and as shown on Exhibit “A” attached hereto; to provide service benefits thereto; to repeal any ordinance or resolutions or parts of thereof in conflict herewith; to provide for publication in pamphlet form; and to provide the effective date of this ordinance.

WHEREAS, after public hearing on July 6, 2011, the Regional Planning Commission recommended the approval of annexing into the City of Grand Island, the following tract of land in Hall County, Nebraska:

Beginning At The Northeast Corner Section 23-11-10 Thence Southerly On The East Line Of Said Section 23-11-10 To A Point 300' North Of The Southeast Corner Of Northeast Quarter Of Northeast Quarter section 23-11-10 Thence West On A Line For A Distance Of 333' Thence Southerly On A Line For A Distance Of 300' To A Point On The North Line Of Gosda Subdivision Thence Westerly On The North Line Of Gosda Subdivision To The Northwest Corner Of Gosda Subdivision Thence Southerly On The West Line Of Gosda Subdivision, Springdale Subdivision And Springdale Second Subdivision To The North Line Of Garland Subdivision Thence Westerly On The North Line Of Garland Subdivision To The Northwest Corner Of Garland Subdivision Also

Approved as to Form	<input type="checkbox"/> _____
October 20, 2011	<input type="checkbox"/> City Attorney



ORDINANCE NO. 9343 (Cont.)

Being The Southwest Corner Northeast Quarter Section 23-11-10 Thence Continuing Westerly On The South Line Of The Northwest Quarter Section 23-11-10 For A Distance Of 35' Thence Northerly On A Line To The Southeast Corner Of Copper Creek Estates Subdivision Thence continuing Northerly On The East Line Of Copper Creek Estates Subdivision To The Northeast Corner Of Copper Creek Estates Subdivision Being On The North Line Of Section 23-11-10 To The Point Of Beginning

WHEREAS, after public hearing on October 25, 2011, the City Council of the City of Grand Island found and determined that such annexation be approved; and

WHEREAS, on October 25, 2011, the City Council of the City of Grand Island approved such annexation on first reading.

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

SECTION 1. It is hereby found and determined that:

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

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

(C) The various zoning classifications of the land shown on the Official Zoning Map of the City of Grand Island, Nebraska, are hereby confirmed and that this annexation will have no impact on the extraterritorial zoning jurisdiction.

(D) There is unity of interest in the use of the said tract of land, lots, tracts, highways and streets (lands) with the use of land in the City, and the community convenience



ORDINANCE NO. 9343 (Cont.)

and welfare and in the interests of the said City will be enhanced through incorporating the subject land within the corporate limits of the City of Grand Island.

(E) The plan for extending City services is hereby approved and ratified as amended.

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

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

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

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

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

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



ORDINANCE NO. 9343 (Cont.)

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

Enacted: October 25, 2011.

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Jay Vavricek, Mayor

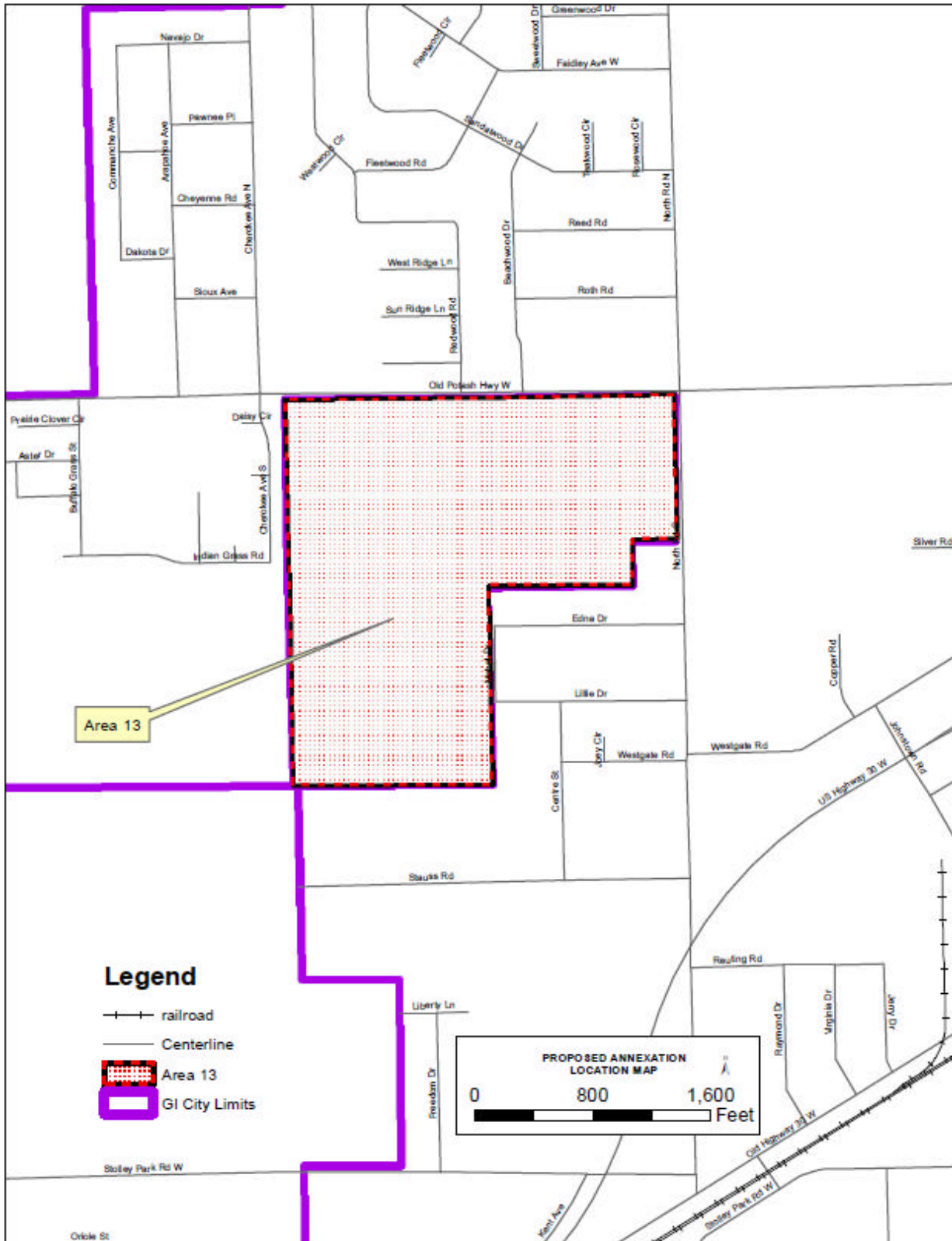
Attest:

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RaNae Edwards, City Clerk



## ORDINANCE NO. 9343 (Cont.)







# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item F8

**#9344 - Consideration of Annexation of Property Located South of 13th Street on the East and West Side of North Road and North of Faidley Avenue (Annexation Area 14) (First Reading)**

*This item relates to the aforementioned Public Hearing item E-10.*

Staff Contact: Chad Nabity



\* This Space Reserved For Register of Deeds \*

### ORDINANCE NO. 9344

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, a tracts of land east and west of North Road and south of 13<sup>th</sup> Street along with all adjoining public Right-of-Way in Hall County, Nebraska referenced as annexation area “14” as more particularly described hereinafter and as shown on Exhibit “A” attached hereto; to provide service benefits thereto; to repeal any ordinance or resolutions or parts of thereof in conflict herewith; to provide for publication in pamphlet form; and to provide the effective date of this ordinance.

WHEREAS, after public hearing on July 6, 2011, the Regional Planning Commission recommended the approval of annexing into the City of Grand Island, the following tract of land in Hall County, Nebraska:

Beginning At The Northwest Corner East Half Of Northwest Quarter Section 13-11-10, Said Point Also Being The Northwest Corner Of Larue Third Subdivision Thence Southerly On The West Line Of Larue Third Subdivision To The Southwest Corner Of Larue Third Subdivision To The Southwest Corner Of Larue Third Subdivision Said Point Also Being The Southwest Corner Of The East Half Of Northwest Quarter Of Section 13-11-10 Thence Westerly On The South Line Of The Northwest Quarter Section 13-11-10 To The West Line Section 13-11-10 Thence North On The West Line Of Section 13-11-10 Also Being The East Line Of Section 14-11-10 To The Northeast Corner Of Westwood Park Subdivision Said Point Also Being The Northeast Corner Of

Approved as to Form	<input type="checkbox"/> _____
October 20, 2011	<input type="checkbox"/> City Attorney



ORDINANCE NO. 9344 (Cont.)

Southeast Quarter Of Northeast Quarter Section 14-11-10 Thence Westerly On The North Line Of Westwood Park Subdivision To The Southeast Corner Lot 1 Block 2 Neumann Second Subdivision Thence Northerly On The East Line Of Neumann Second Subdivision And Extension There Of To The North Line Of Section 14-11-10 Thence Easterly On The North Line Of Section 14-11-10 To The Northeast Corner Of Section 14-11-10 Also Being The Northwest Corner Section 13-11-10 Thence Continuing Easterly On The North Line Of Section 13-11-10 To The Point Of Beginning

WHEREAS, after public hearing on October 25, 2011, the City Council of the City of Grand Island found and determined that such annexation be approved; and

WHEREAS, on October 25, 2011, the City Council of the City of Grand Island approved such annexation on first reading.

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

SECTION 1. It is hereby found and determined that:

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

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

(C) The various zoning classifications of the land shown on the Official Zoning Map of the City of Grand Island, Nebraska, are hereby confirmed and that this annexation will have no impact on the extraterritorial zoning jurisdiction.



ORDINANCE NO. 9344 (Cont.)

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

(E) The plan for extending City services is hereby approved and ratified as amended.

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

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

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

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

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



ORDINANCE NO. 9344 (Cont.)

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

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

Enacted: October 25, 2011.

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Jay Vavricek, Mayor

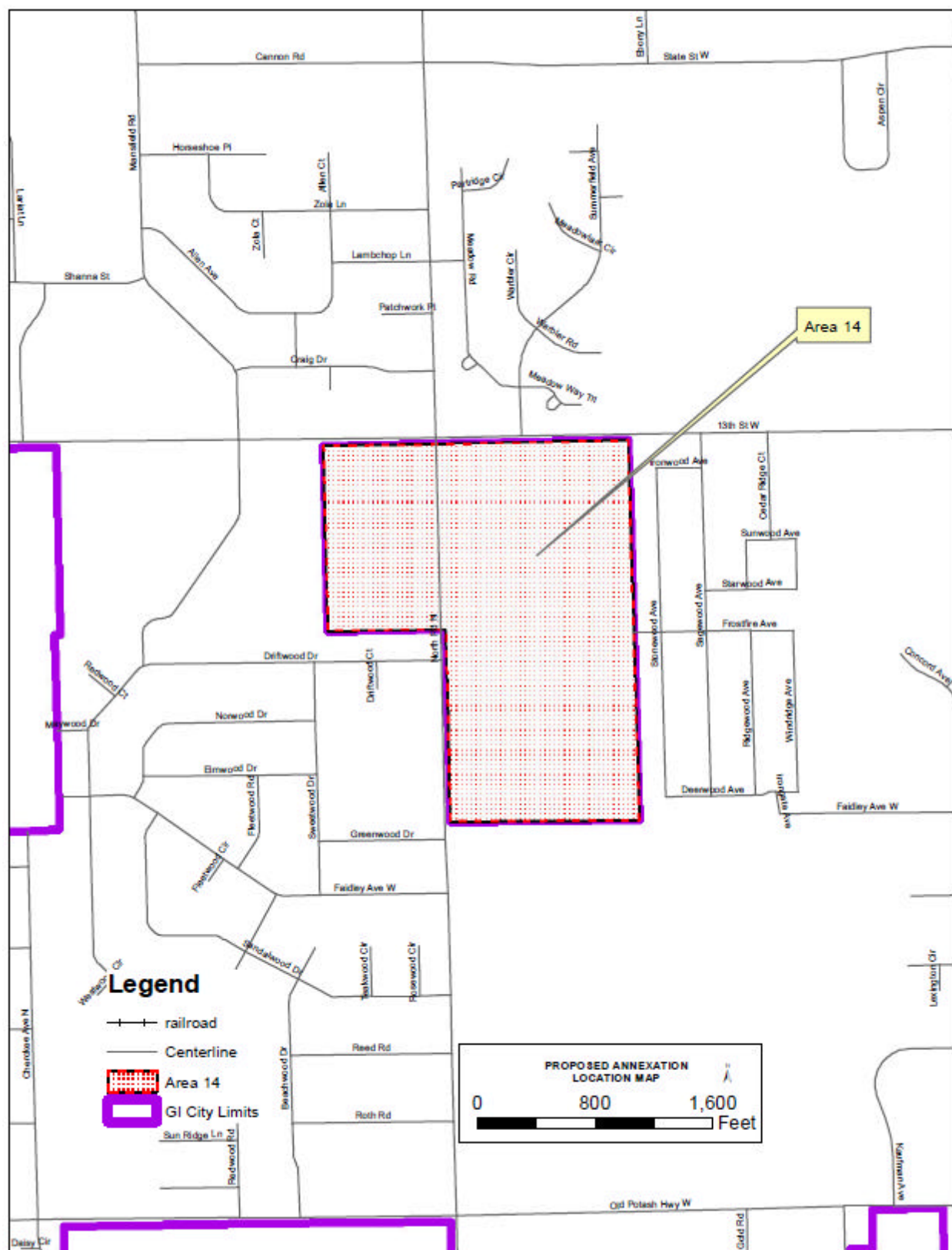
Attest:

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RaNae Edwards, City Clerk



## ORDINANCE NO. 9344 (Cont.)







# **City of Grand Island**

**Tuesday, October 25, 2011**

**Council Session**

## **Item G1**

**Approving Minutes of October 11, 2011 City Council Regular Meeting**

**Staff Contact: RaNae Edwards**



## CITY OF GRAND ISLAND, NEBRASKA

### MINUTES OF CITY COUNCIL REGULAR MEETING

October 11, 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 October 11, 2011. Notice of the meeting was given in *The Grand Island Independent* on October 5, 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, Mitch Nickerson, Linna Dee Donaldson, Scott Dugan, Randy Gard, and John Gericke. Council President Peg Gilbert was absent. The following City Officials were present: City Administrator Mary Lou Brown, City Clerk RaNae Edwards, City Attorney Robert Sivick, Public Works Director John Collins and Interim Finance Director Jaye Monter.

INVOCATION was given by Pastor Terry Brandenburg, Peace Lutheran Church, 1710 N. North Road followed by the PLEDGE OF ALLEGIANCE.

MAYOR COMMUNICATION: Mayor Vavricek introduced Community Youth Council members Emily Heineman and Brianna Vitera and Board member Jared Stockwell. Mentioned were the seven labor unions that the City had completed this year.

Councilmember Ramsey commented on the youth of our community and mentioned that the Grand Island Senior High Girls golf team won the Class "A" championship.

#### PRESENTATIONS AND PROCLAMATIONS:

Recognition of Bud Jeffries for Service on the Hall County Board of Supervisors. Mayor Vavricek and the City Council recognized Bud Jeffries for his service on the Hall County Board of Supervisors and to the community of Hall County and Grand Island. Family members of Bud Jeffries were present for the recognition.

#### PUBLIC HEARINGS:

Public Hearing on Acquisition of Utility Easement located at 2900 West US Highway 34 (Doralene Niedfelt). Utilities Director Tim Luchsinger reported that acquisition of a utility easement located at 2900 West US Highway 34 was needed in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers for the purpose of placing underground conduit, high voltage cable and a single phase pad-mounted transformer to provide electricity to two new homes to be built on adjacent lots. Staff recommended approval. No public testimony was heard.

Public Hearing on Acquisition of Utility Easement located at 4124 North Webb Road (Leonard & Marlene Mader). Utilities Director Tim Luchsinger reported that acquisition of a utility easement located at 4124 North Webb Road was needed in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers for the purpose of providing a location for the three phase underground conduit, cable, and pad-mounted



transformer to serve the new grain dryer and storage recently added to the property. Staff recommended approval. No public testimony was heard.

Public Hearing on Acquisition of Utility Easement located at 2300 West US Highway 34 (Lynn & Amy Mayhew). Utilities Director Tim Luchsinger reported that acquisition of a utility easement located at 2300 West US Highway 34 was needed in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers for the purpose placing underground conduit, high voltage cable and a single phase pad-mounted transformer to provide electricity to two new homes to be built on adjacent lots. Staff recommended approval. No public testimony was heard.

#### RESOLUTIONS:

#2011-308 – Consideration of Approving the IBEW (Finance) Labor Agreement. Human Resources Director Brenda Sutherland reported that this labor agreement was fairly status quo with few changes recommended. This was a one year agreement with a 1.75% wage increase. The I.T. Department employees were removed as they were covered under the Service/Clerical labor agreement. Other changes were: a March 15<sup>th</sup> and September 15<sup>th</sup> deadline for personal day usage, the addition of vacation scheduling language, the removal of outdated language such as medical leave buy back, and the stipulation that Chapters 1, 2, and 3 of the Personnel Rules as of October 1, 2011 were made part of the contract.

Motion by Gericke, second by Nickerson to approve Resolution #2011-308. Upon roll call vote, all voted aye. Motion adopted.

#2011-309 – Consideration of Approving the IBEW (Utilities) Labor Agreement. Human Resources Director Brenda Sutherland reported that this labor agreement was fairly status quo with few changes recommended. This was a one year agreement with a 1.75% wage increase. Other changes were: changing the GIS Technician to GIS Coordinator to reflect the change that was made a year ago, a March 15<sup>th</sup> and September 15<sup>th</sup> deadline for personal day usage, the addition of vacation scheduling language, the removal of outdated language such as medical leave buy back, and the stipulation that Chapters 1, 2, and 3 of the Personnel Rules as of October 1, 2011 were made part of the contract.

Motion by Gericke, second by Nickerson to approve Resolution #2011-309. Upon roll call vote, all voted aye. Motion adopted.

#2011-310 – Consideration of Approving the IBEW (Wastewater) Labor Agreement. Human Resources Director Brenda Sutherland reported that this labor agreement had few changes recommended. This was a one year agreement with a 1.25% wage increase. The most notable change was the increase of vacation hours to match other City employees. Other changes included changing grandchildren from non-immediate to immediate family for purposes of bereavement leave, increasing the medical leave time allowed for the care of family members and a March 15<sup>th</sup> and September 15<sup>th</sup> deadline for personal day usage.

Motion by Gericke, second by Nickerson to approve Resolution #2011-310. Upon roll call vote, all voted aye. Motion adopted.



IBEW representative Dan Quick was present to sign the IBEW Labor Agreements along with Mayor Vavricek.

ORDINANCES:

#9334 – Consideration of Annexation of Olson Subdivision Located South of Airport Road and North and West of US Highway 281 (Second Reading)

Regional Planning Director Chad Nabity reported this was the second of three readings for the annexation of Olson Subdivision.

Motion by Dugan, second by Gericke to approve Ordinance #9334 on second reading. Upon roll call vote all voted aye. Motion adopted.

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

#9336 – Consideration of Amending Grand Island City Code Chapter 22-103 Relative to Parking Fines

#9337 – Consideration of Salary Ordinance

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 Ramsey second the motion. Upon roll call vote, all voted aye. Motion adopted.

Police Chief Steve Lamken reported that Ordinance #9336 would change the City Code to \$20.00 to match the fee scheduled approved by Council relative to parking fines.

Human Resources Director Brenda Sutherland reported that Ordinance #9337 would support the three labor agreements with IBEW approved earlier.

Motion by Ramsey, second by Donaldson to approve Ordinances #9336 & #9337.

City Clerk: Ordinances #9336 & #9337 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 #9336 & #9337 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 #9336 & #9337 are declared to be lawfully adopted upon publication as required by law.



### #9335 – Consideration of City Council’s Approval of All Individual City Negotiators

City Attorney Robert Sivick reported that at the September 27, 2011 City Council meeting, the Council passed Ordinance #9335 on a 6 to 3 vote. Mayor Vavricek exercised his right to veto the Ordinance. In order to override the veto there would have to be a two-thirds vote of the Council or seven votes.

Motion by Haase, second by Carney to override the Mayor’s veto from the September 27, 2011 meeting for Ordinance #9335.

A lengthy discussion was held regarding the intent of the Ordinance. Councilmember Carney commented his desire for the Council to be more involved with the negotiation process. Comments were made regarding the current negotiators and how well the process had been working with the right people doing the job. Mentioned was this ordinance would clarify the negotiation process that was in place and the need to bring this issue back before Council with more specific language.

City Clerk: Ordinance #9335 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, Councilmember’s Haase, Carney, Niemann, and Gericke voted aye. Councilmember’s Ramsey, Nickerson, Donaldson, Dugan, and Gard voted no. Motion failed.

CONSENT AGENDA: Motion by Ramsey, second by Dugan to approve the Consent Agenda excluding item G-. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of September 27, 2011 City Council Regular Meeting.

Approving Minutes of October 4, 2011 City Council Study Session.

Approving Appointment of Dennis McCarty to the Regional Planning Commission Board.

Approving Appointment of James Phipps to the Citizens’ Review Committee Board.

#2011-296 - Approving City Council Meeting Schedule for 2012.

#2011-297 – Approving Acquisition of Utility Easement Located at 2900 West US Highway 34 (Doralene Niedfelt).

#2011-298 – Approving Acquisition of Utility Easement Located at 4124 North Webb Road (Leonard & Marlene Mader).

#2011-299 – Approving Acquisition of Utility Easement Located at 2300 West US Highway 34 (Lynn & Amy Mayhew).

#2011-300 – Approving Bid Award for Uranium Removal Water Treatment Plant – Building Construction with Chief Construction Company of Grand Island, Nebraska in an Amount of \$324,857.30.



#2011-301 – Approving Bid Award for the Broadwell Avenue Shoulder Improvement – Capital Avenue to the Veteran’s Athletic Fields with J.I.L. Asphalt Paving Company of Grand Island, Nebraska in an Amount of \$119,193.70.

#2011-302 – Approving Change Order No. 1 for the Grand Island Quiet Zone Project No. 2012-QZ-1 with The Diamond Engineering Company of Grand Island, Nebraska resulting in no change to the contract amount.

#2011-303 – Approving Change Order No. 2 for asphalt Maintenance Project 2011-AC-1 with J.I.L. Asphalt Paving Co. of Grand Island, Nebraska for a decrease of \$551.58 and a Revised Contract Amount of \$327,700.78.

#2011-304 – Consideration of Intent to Annex Areas 3a, 6, 7, 12, 13 & 14.

#2011-305 – Approving Interdepartmental Fund Transfer for Aeration Basin Improvements; Project WWTP-2010-3 at the Wastewater Treatment Plant.

#2011-306 – Approving Bid Award for Infield Soil Conditioner at the Veteran’s Athletic Field Complex with Dakota Transport of Hampton, Minnesota in an Amount of \$96,000.00.

#### REQUESTS AND REFERRALS:

Consideration of Request from Wyoming Financial Lenders, Inc. dba Payday Express, 645 South Locust Street for a Pawnbroker’s License. City Clerk RaNae Edwards reported that an application for a Pawnbroker’s License had been received from Wyoming Financial Lenders, Inc. dba Payday Express located at 645 South Locust Street. All documents had been received as required by City Code along with the Police Department recommending approval.

Motion by Donaldson, second by Nickerson to approve the request from Wyoming Financial Lenders, Inc. dba Payday Express, 645 South Locust Street for a Pawnbroker’s License. Upon roll call vote, all voted aye. Motion adopted.

#### RESOLUTIONS:

#2011-307 – Consideration of Approving Agreement for Professional Engineering Services Entitled “Wastewater Treatment Plant and Collection System Rehabilitation”. Public Works Director John Collins reported that this item was presented to Council at the October 4, 2011 Study Session. It was recommended that a contract with Black & Veatch of Kansas City, Missouri be approved.

Motion by Dugan, second by Haase to approve Resolution #2011-307. Upon roll call vote, all voted aye. Motion adopted.

#### PAYMENT OF CLAIMS:

Motion by Dugan, second by Gard to approve the Claims for the period of September 28, 2011 through October 11, 2011, for a total amount of \$4,076,452.27. Unanimously approved.



ADJOURNMENT: The meeting was adjourned at 8:05 p.m.

RaNae Edwards  
City Clerk





# **City of Grand Island**

**Tuesday, October 25, 2011**

**Council Session**

## **Item G2**

**Approving Minutes of October 18, 2011 City Council Study Session**

**Staff Contact: RaNae Edwards**



CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL STUDY SESSION

October 18, 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 October 18, 2011. Notice of the meeting was given in the *Grand Island Independent* on October 12, 2011.

Mayor Jay Vavricek called the meeting to order at 7:00 p.m. The following Councilmember's were present: Larry Carney, Bob Niemann, Kirk Ramsey, Peg Gilbert, Mitch Nickerson, Linna Dee Donaldson, Scott Dugan, and John Gericke. Councilmember's Chuck Haase and Randy Gard were absent. The following City Officials were present: City Administrator Mary Lou Brown, City Clerk RaNae Edwards, City Attorney Bob Sivick, and Interim Finance Director Jaye Monter.

INVOCATION was given by Community Youth Council member Emma Kreutzer followed by the PLEDGE OF ALLEGIANCE.

MAYOR COMMUNICATION: Mayor Vavricek introduced Community Youth Council members Emma Kreutzer and Miranda Wieczorek.

OTHER ITEMS:

Discussion Concerning US Highway 281 Sanitary Sewer Extension

City Administrator Mary Lou Brown thanked those people who had taken part in this project. Many hours of work had taken place since last May to come up with a solution to a problem.

Public Works Director John Collins gave a background of a request to the City in the fall of 2010 to extend sanitary sewer on US Highway 281 to I80 interchange. Reported was there were several meetings held with City staff and stakeholders.

Mr. Collins gave a PowerPoint presentation explaining the need for the sanitary sewer extension along US Highway 281 to the I80 interchange. Explained was that a Sanitary Improvement District (SID) was a voluntary association of property owners outside of the municipal limits of a City that join together to provide common infrastructure or services such as sewer, water, streets and electrical lines. Members of the SID pay for the improvements through an annual assessment based on the taxable valuation of the property. Assessment Districts and Tap Districts were explained.

Public Works Engineer, Terry Brown explained the Wildwood Subdivision Assessment District located south of Wildwood Road and west of US Highway 281 which was approved by the City Council. The total cost was \$655,000 assessed to property owners with the City responsible for



\$245,000 for crossing 281 and over sizing. The sewer revenues of \$28,000 per year were expected.

Explained was the tap district for this project. The initial cost of this project was \$1,093,000. The loan could be paid as people tap into this service. The projected revenues at full development were expected to \$1,250,000 per year.

Sanitary Sewer District (SID) 1 would be a force main extending from the north channel of the Platte River to the Arby's/Quality Inn properties. Initial cost was \$850,950 with \$59,519 per year payment by the property owners. The initial sewer revenues would be \$21,000 per year with projected revenues at full development of \$350,000 per year.

Sanitary Sewer District (SID) 2 would be a force main or gravity main extending from Arby's/Quality Inn to Nebraska Peterbuilt. Initial cost was \$338,000 with \$23,676 annual payment by the SID. The initial sewer revenues would be \$4,700 per year with projected revenues at full development of \$310,000 per year.

SID 1 would include: Arby's, Days Inn, Quality Inn, USA Inns, Sapp Brothers, Midwest Carrier, and Nine Bridge Restaurant. SID 2 included Nebraska Peterbuilt. Agreements and Interlocal Agreements would be needed with NE Department of Environmental Quality, NE Game and Parks, SID 1 and SID 2.

Regional Planning Director Chad Nabity presented the following benefits:

- Fosters growth toward I-80
- Provides for future development
- Encourage new jobs in transportation, shipping, manufacturing, commercial and industrial development
- Maintain current business strength
- Cost of extension is paid primarily from private sources
- City provided funding for TAP district, to be repaid as property owners connect
- Wastewater revenue will increase as pipe is extended
- Help offset loss of JBS revenue
- Poses no threat to other sewer projects
- Protects City water supply from contamination
- Provides a beneficial waste stream that can reduce treatment at the plant by offsetting some of the industrial waste

The total cost of the project was estimated at \$3,188,015 with the following breakdown.

- Wildwood \$900,000
- Tap District \$1,098,565
- SID 1 \$850,950
- SID 2 \$338,500

The annual City commitment was \$76,850 with a first payment in 2014 or 2015.

Discussion was held regarding the judgment against Swift Beef Company (JBS) in the amount of \$350,000 to be used for this project. City Attorney Bob Sivick explained the negotiation process



with the Attorney General and how this area was chosen for this money to be applied. Concern was expressed by Council as to how this project was targeted instead of other projects within the City. Mayor Vavricek explained the process of recommending this project for the judgment money from JBS.

It was recommended to apply \$245,000 to the Assessment District and \$105,000 to the loan for the Tap District.

The following people spoke in favor of the project:

- Bill Marshall, 712 Grand Avenue
- Marlan Ferguson, 2808 Apache Road, Director of Economic Development Corporation
- Steve Goans, representative from Nebraska Department of Environmental Quality
- Cindy Johnson, Chamber of Commerce President
- Mark Clymer, 2625 Lowell Road, Gibbon, NE representative of the NE Games and Parks Commission
- Charlie Bosselman, President Bosselman, Inc.

Mr. Collins stated this issue would be brought back to Council next week for approval to move forward with agreements to follow.

#### Discussion Concerning Redistricting of City Council Wards.

Regional Planning Director Chad Nabity reported that every 10 years, following the U.S. Census of Population and Housing, governments at all levels have the responsibility to examine their voting districts to ensure that our representative form of government is equally representing the citizens.

A Redistricting committee was formed along with Pat Larson, Grand Island GIS Coordinator and Dale Baker, Hall County Election Commissioner to review the current Ward maps. The goal of the committee was to create new boundaries for the equal-population requirement and to minimize the number of ballot faces that need to be printed at election time.

Reviewed were the current Ward maps and the proposed maps with changes. Mr. Nabity stated this would be brought forward to Council on November 8, 2011.

#### Update Concerning the Racquet Center.

Parks and Recreation Director Steve Paustian reported that the Racquet Center was located at 2204 Bellwood Drive which was owned by the City and leased to the Grand Island Tennis Association. The Tennis Association was in the first year of a five year lease. There were three phases of the lease agreement with the first phase of improvements having been completed which included: removing the indoor soccer area, repairing insulation, upgrading lighting, resurfacing courts, fixing water drainage issues, and updating hearing units. Phases two and three were to be completed by 2013 and 2015.



Mr. Paustian presented a PowerPoint explaining the background of the Racquet Center. The City acquired the Racquet Center in 1984 from a private group for the amount of back taxes owed, approximately \$30,000. Until 1993 the Parks and Recreation Administrative office was located at the Racquet Center. From 1997 to 2010 the Health-Plex Fitness Center leased the facility for \$1 annually to offer indoor tennis and later soccer.

The Grand Island Tennis Association expressed interest in managing and updating the facility, so on June 1, 2010 the Tennis Association began operating the facility under a five year agreement with the City. In the agreement the Tennis Association agreed to pay the City \$1 per month; pay utility bills, repairs, and general upkeep; and keep tennis as the main focus and maintain tournaments and leagues.

The Tennis Association promised to update the facility in the following three phases:

Phase 1 (2010): Remove indoor soccer court, repair insulation as required, replace lights with new energy-efficient lighting, remove heating and air-conditioning units, resurface two courts, remodel office area, add daycare area, purchase new sign, and address drainage issue around the building.

Phase 2 (by 2013): Resurface two courts (done), build four new lighted outdoor courts on property, build unisex bathroom with outside access, and rework locker rooms with updated showers and lights.

Phase 3 (by 2015): Build one additional outdoor court adjacent to current north courts, resurface the two existing outdoor courts, and build viewing area above the lobby.

Council thanked Mr. Paustian and the Tennis Association for the work and improvements that had been accomplished. Matt Westfall, 2003 W. Division Street answered questions regarding additional tournaments being brought to Grand Island. Mentioned were plans to have a viewing area in the future. Mr. Westfall thanked the Council for this opportunity.

#### Discussion Concerning Fireworks.

Assistant to the City Administrator Shannon Oster reported that on November 16, 2010 the City Council discussed the potential expansion of firework sales into December. Currently under City Code Chapter 16-12 to 16-22 fireworks are allowed from June 27 to July 3 from 8:00 a.m. – 11:00 p.m. and July 4 from 8:00 a.m. – midnight. The fee per stand was \$400.

LB 880 allowed cities to change their fire code to allow an additional fireworks season from December 28 – January 1. Currently six cities have expanded their fireworks season. The Fire Department does not support a lengthened season.

The following were potential considerations for the City Council:

- Changing the dates of sale or discharge
- Adding a second season in December
- Should the \$400/per stand fee be changed



Tom Towne, 1609 Meadow Road representing Marv's Fireworks spoke in support of extending the firework season from December 28 – January 1. Mr. Town answered questions and clarified the dates of sell in other communities from December 29 – December 31.

Interim Fire Chief Tim Hiemer responded to questions from Council regarding not supporting the extended season and the reasons. Comments were made concerning the \$400 fee.

Discussion was held concerning shortening the current number of days to sell fireworks and hours of discharge. Number of stands, parameters, regulations, code enforcement, safety issues, and cost study were mentioned.

Ms. Brown recommended bringing this back to Council in January, 2012.

ADJOURNMENT: The meeting was adjourned at 9:35 p.m.

RaNae Edwards  
City Clerk





# **City of Grand Island**

**Tuesday, October 25, 2011**

**Council Session**

## **Item G3**

**Approving Refuse Hauler Permit for Scott's Hauling, 3230  
Westside Street**

**Staff Contact: RaNae Edwards**



# **Council Agenda Memo**

**From:** RaNae Edwards, City Clerk

**Meeting:** October 25, 2011

**Subject:** Approving Garbage Refuse Haulers License for Scott's Hauling, 3230 Westside Street

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

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

## **Background**

Grand Island City Code Section 17-15 allows for the Collection, Transportation, and Disposal of Garbage and/or Refuse. These permits are effective October 1 through September 30 of each calendar year.

## **Discussion**

Roger Scott, owner of Scott's Hauling, 3230 Westside Street has submitted an application for a refuse haulers license. All City Code requirements have been met

## **Alternatives**

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

1. Move to approve the refuse hauler license for Scott's Hauling
2. Refer the issue to a Committee
3. Postpone the issue to a future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council approve the refuse hauler license for Scott's Hauling, 3230 Westside Street.

## **Sample Motion**

Move to approve the refuse hauler license for Scott's Hauling, 3230 Westside Street.





## Application for Haulers License

1 **Type of License Required:**

- a. ☐ Garbage Haulers License (entitles licensee to collect and transport both garbage and refuse)  
b. ☒ Refuse Haulers License (entitles licensee to haul only refuse)

2 **Identification of Applicant:**

a. Individual or Firm Identification

Business Name Scott's Hauling  
Business Address 3230 Westside Street  
Business Telephone 308-380-9552

b. Miscellaneous Information:

- \* Public Complaint Telephone (Sec. 17-19) 308-380-9552  
\* Name Used on Vehicles (Sec. 17-18) Scott's Hauling

3 **Residency Certification:**

- a. ☒ Individual Applicant – Resident of Hall County

Name and Home Address of Individual:

- b. ☐ Partnership or Corporation of Hall County  
Name and Address of Resident Partner/Officer: Roger Scott, 3230 Westside St., G.I. NE 68803

- c. ☐ Non-resident Individual or Corporation

Name and Home Address of Appointed Resident Agent:

3 **Required Documents to be Furnished:**

- a. ☒ List of Vehicles (Section 17-18)  
b. ☒ Certificate of Insurance (Section 17-21) Ryder Rosecrance McCue & Hensford  
c. ☐ Performance Bond – Garbage Haulers Only (Section 17-22)  
d. ☒ License Fee: **Garbage - \$225.00; Refuse - \$75.00** (Section 17-15)  
e. ☐ Appointment of Resident Agent, if applicable (Section 17-16)  
f. ☒ Equipment Inspection/Certificate from Health Department (Section 17-18)

30 Sept 2011  
Date

R. Scott  
Signature of Applicant





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item G4

**#2011-311 - Approving Final Plat and Subdivision Agreement for Olson Subdivision**

Staff Contact: Chad Nabity



# **Council Agenda Memo**

**From:** Regional Planning Commission  
**Meeting:** October 25, 2011  
**Subject:** Olson Subdivision – Final Plat  
**Item #'s:** G-4  
**Presenter(s):** Chad Nabity AICP, Regional Planning Director

## **Background**

This property is located north and west of US Hwy 281 and south of Airport Road, in the two mile extraterritorial jurisdiction of Grand Island, in Hall County, Nebraska. Consisting of (1 Lot) and 1.879 acres.

## **Discussion**

The revised final plat for Olson Subdivision was considered by the Regional Planning Commission at the September 7, 2011 meeting. A motion was made by Ruge and seconded by Hayes to approve the plat as presented. A roll call vote was taken and the motion passed with 8 members present (Amick, Ruge, Hayes, Reynolds, Haskins, O'Neill, Monter and Snodgrass) voting in favor no member present abstaining.

## **Alternatives**

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

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

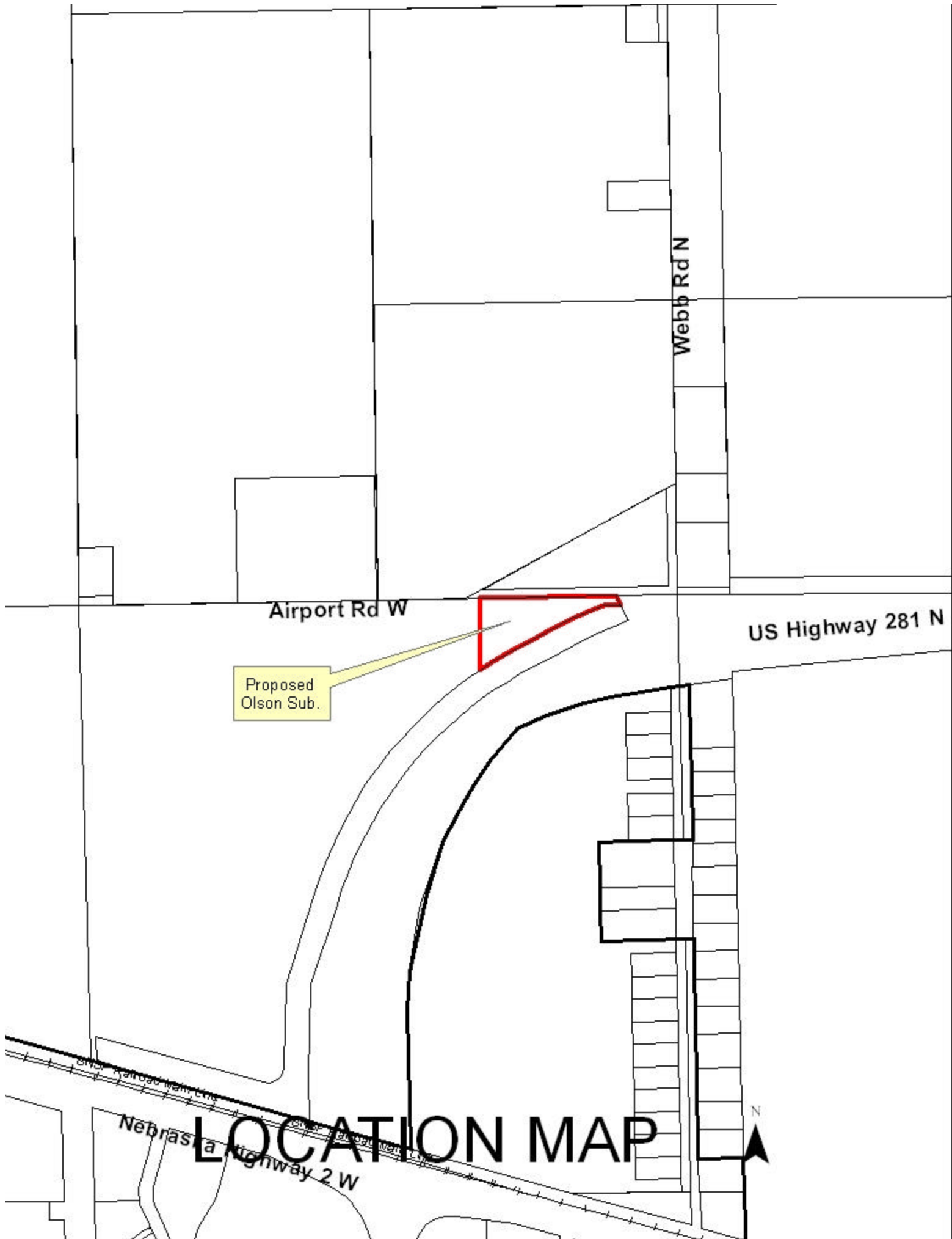
## **Recommendation**

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

## **Sample Motion**

Move to approve as recommended.





# LOCATION MAP



**Phil A. and Linda Mader**  
**Developer/Owner**  
3326 W Abbott Rd  
Grand Island NE 68803

To create 1 lot north and west of US Hwy 281 and south of Airport Rd., in the two mile extraterritorial jurisdiction of Grand Island, in Hall County, Nebraska.

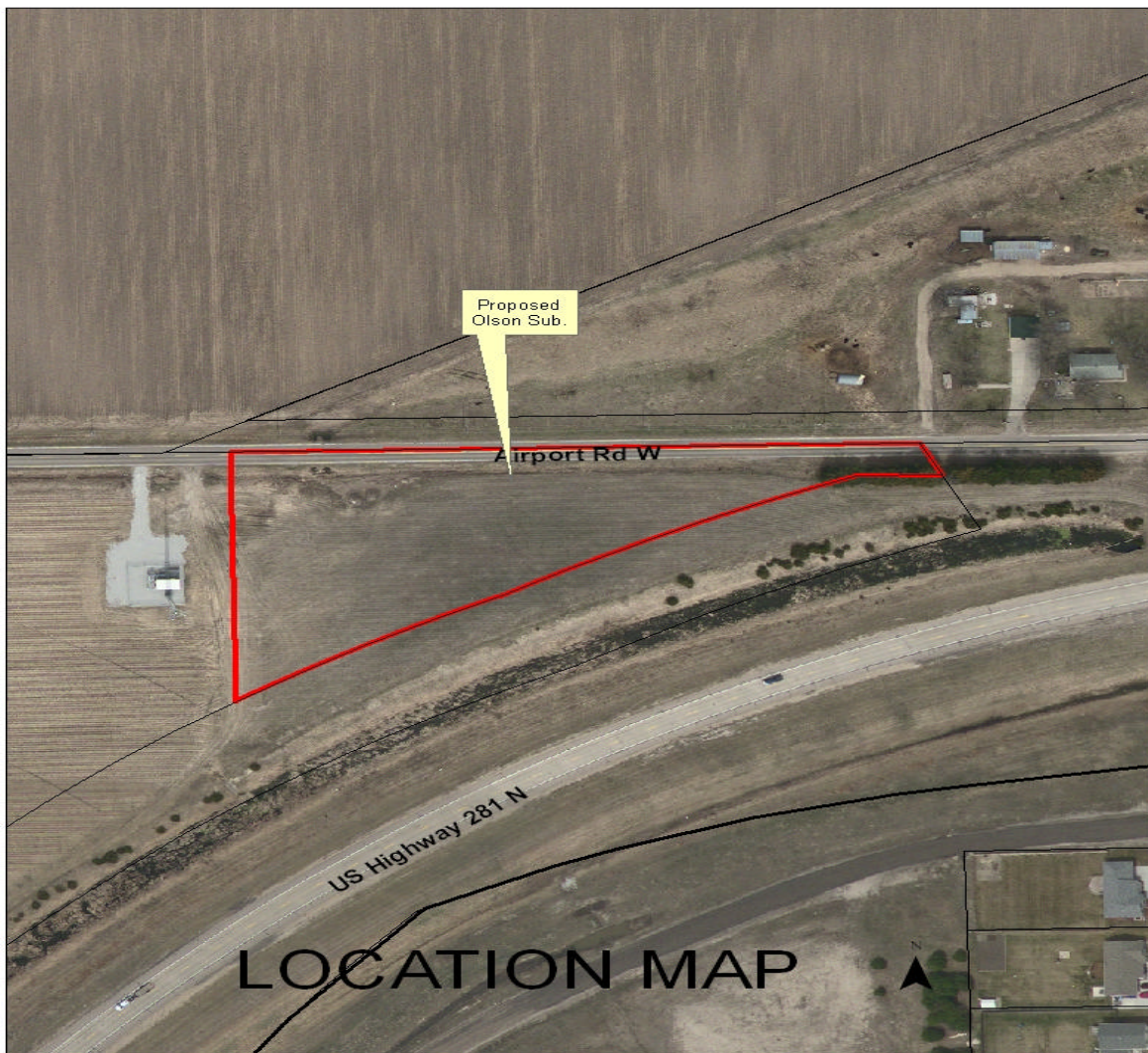
**Size:** 1.879

**Zoning:** B2 General Business Zone

**Road Access:** County Road/State Road

**Water Public:** City water is not available

**Sewer Public:** City sewer is not available





RESOLUTION 2011-311

WHEREAS, Phil A. Mader and Linda Mader, husband and wife, being the owners of the land described hereon, have caused same to be surveyed, subdivided, platted and designated as OLSON SUBDIVISION, to be laid out into 1 lot, a tract of land comprising a part of the Northeast Quarter (NE1/4) of Section One (1), Township Eleven (11) North, Range Ten (10) West of the 6<sup>th</sup> P.M., in the City of Grand Island, Hall County Nebraska, and has caused a plat thereof to be acknowledged by it; and

WHEREAS, a copy of the plat of such subdivision has been presented to the Boards of Education of the various school districts in Grand Island, Hall County, Nebraska, as required by Section 19-923, R.R.S. 1943; and

WHEREAS, a form of subdivision agreement has been agreed to between the owner of the property and the City of Grand Island.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the form of subdivision agreement hereinbefore described is hereby approved, and the Mayor is hereby authorized to execute such agreement on behalf of the City of Grand Island.

BE IT FURTHER RESOLVED that the final plat of OLSON SUBDIVISION, as made out, acknowledged, and certified, is hereby approved by the City Council of the City of Grand Island, Nebraska, and the Mayor is hereby authorized to execute the approval and acceptance of such plat by the City of Grand Island, Nebraska.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, October 25, 2011.

---

Jay Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
October 20, 2011	☐ City Attorney





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item G5

**#2011-312 - Approving Acquisition of Utility Easement - 232  
Wilmar Avenue - Texas Roadhouse**

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

Staff Contact: Tim Luchsinger



RESOLUTION 2011-312

WHEREAS, a public utility easement is required by the City of Grand Island, from Texas Roadhouse Holdings, 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 October 25, 2011, for the purpose of discussing the proposed acquisition of a 10' wide easement west of the following described line, located in the City of Grand Island, Hall County, Nebraska; and more particularly described as follows:

Commencing at the northeast corner of Lot One (1) Martin's Sixth Subdivision; thence westerly along the northerly line of said Lot One (1), a distance of one hundred eight (108.0) feet to the ACTUAL Point of Beginning; thence southerly and perpendicular to the northerly line of said Lot One (1), a distance of sixty eight (68.0) feet.

The above-described easement and right-of-way containing a total of 0.031 acres, more or less, as shown on the plat dated 10/10/2011, 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 Texas Roadhouse Holdings, LLC, on the above-described tract of land.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, October 25, 2011.

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

Attest:

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

Approved as to Form	☐ _____
October 20, 2011	☐ City Attorney

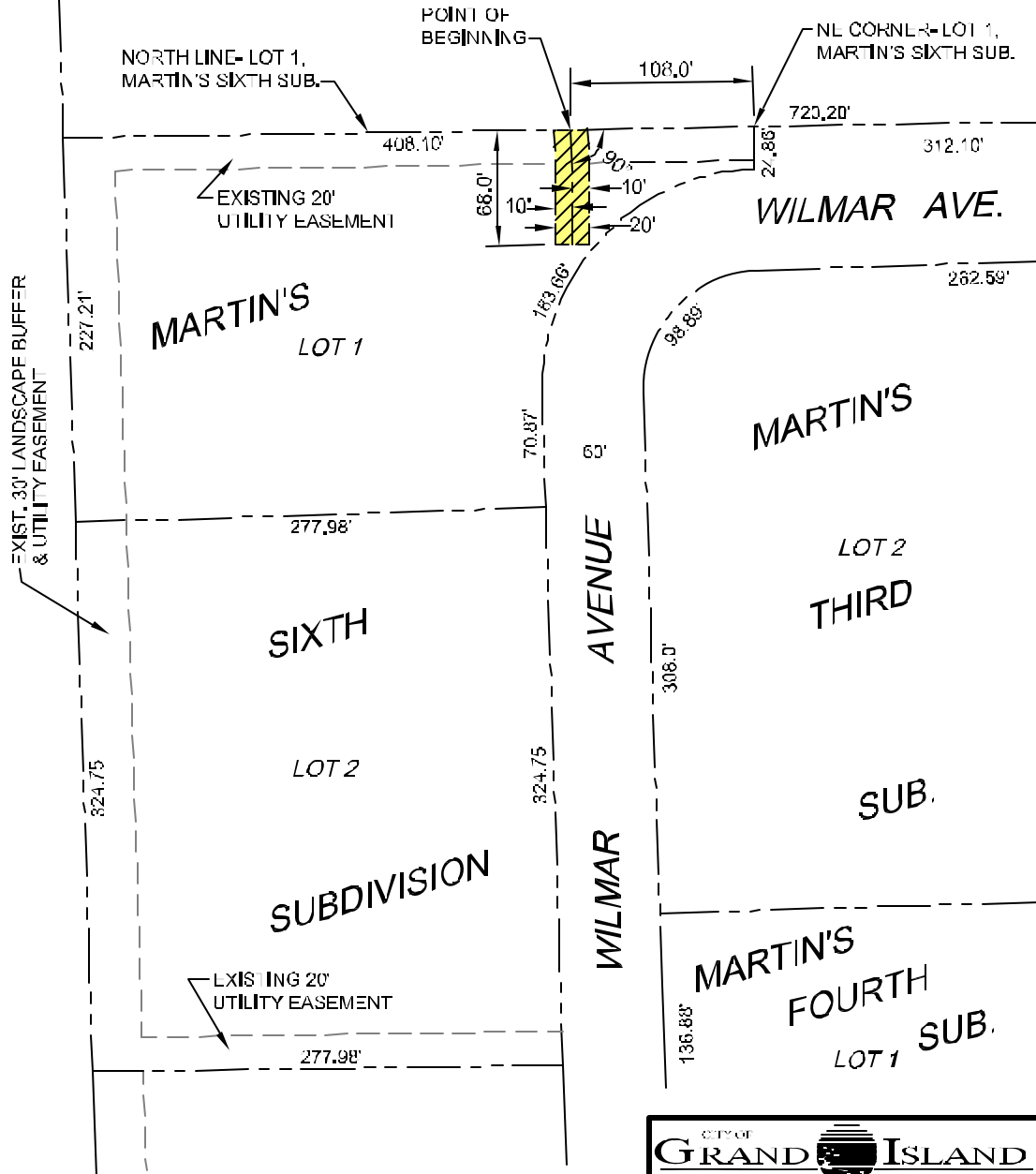


1/16 SECTION LINE

U.S. HIGHWAY 281



DETENTION CELL B-7



LEGEND



INDICATES 20' WIDE  
UTILITY EASEMENT

CITY OF  
**GRAND ISLAND**  
UTILITIES DEPARTMENT

**EXHIBIT "A"**

DRN BY: K.J.M.

SCALE: 1" = 100'

DATE: 10/10/2011

FILE: MARTIN'S 6





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item G6

**#2011-313 - Approved Bid Award - Transmission Line  
Construction - 115 kV Interconnection with NPPD at St. Libory**

Staff Contact: Tim Luchsinger



# **Council Agenda Memo**

**From:** Tim Luchsinger, Utilities Director  
Jason Eley, Assistant City Attorney/Purchasing

**Meeting:** October 25, 2011

**Subject:** Approving Transmission Line Work Contract

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

**Presenter(s):** Tim Luchsinger, Utilities Director

## **Background**

On April 21, 2009, a presentation was made during a Council Study Session summarizing a 115 kV Transmission line route study for a new transmission line to be constructed northwest of the city. During the following City Council meeting on April 28, 2009, Council authorized the Utilities Department to proceed with the necessary engineering, permits and other services required to construct the new transmission line. All required easements have been purchased. Approval has been obtained from the Nebraska Power Review Board and Nebraska Public Service Commission and a crossing permit has been obtained where the new line will cross the Burlington Northern Santa Fe (BNSF) railroad tracks just west of Highway 281 at the same location of an existing 115 kV transmission line crossing. In addition, Nebraska Public Power District (NPPD) has constructed a new substation approximately seven miles north of the City along Engleman Road for which the new transmission line will be connected. The final step in this project is the actual construction of the line. Specifications for furnishing the transmission line materials and installation were developed by our consultant on this project, Advantage Engineering, and issued in accordance with City purchasing procedures.

## **Discussion**

Bids were received by the City on October 6, 2011 for the contract labor and materials for the construction of the new seven mile 115 kV transmission line between the City's Substation F and NPPD's St Libory Substation and for maintenance work needed on the City's 115 kV transmission loop. The four bids received were:



Bidder	Amount
Watts Electric, Waverly, NE	\$2,941,846.98
IES Industrial (Kayton Electric), Holdrege, NE	\$3,732,714.50
Dominion Construction, Scottsbluff, NE	\$4,086,036.42
Mid-Plaines Power, Grand Island, NE	\$4,720,129.31

The bid from Watts Electric was significantly lower when compared to the other bids received which caused concern by our engineering staff and Advantage Engineering that there may be some items that were missed or not fully covered in their bid. A review of their bid and follow up telephone conversations with Watts Electric found the following:

1. Watts Electric did not schedule or attend a mandatory site visit to meet with the City to review the project. In addition, Watts Electric did not call and ask any questions or request clarification on any items.
2. Watts Electric's bid included pricing from a steel pole supplier, CHM Industries, who is not on the approved steel pole suppliers list. Watts Electric did not request approval of this steel pole supplier prior to submitting their bid.
3. Watts Electric's bid for installation of a majority of the tangent steel poles was significantly lower in price than the other bidders. Watts Electric indicated that their price did not include any allowance for installing poles in high water table areas, which requires additional time and equipment. Watts Electric assumed that the holes they would be digging would be mostly dry. Soil boring data for the line route indicating the presence of water was included with the bid documents.
4. Bidders were asked to submit information listing projects which the firm had completed in the past that were equal or greater in size and scope to this project. No previous project experience information was received from Watts Electric. In telephone conversations with them they acknowledged their lack of experience with complete 115 kV transmission projects. They indicated that their experience with 115 kV construction consisted of small one or two pole projects only.

IES Industrial's (Kayton Electric) bid was the second lowest bid received. A review of their bid and additional information received indicated the following:

1. IES Industrial did schedule a meeting with the City to review the project and familiarize themselves with the scope of the project. IES Industrial did call and email requests for additional information and clarifications during the bidding process.
2. IES Industrial proposed steel poles that would be supplied by Valmont/Newmark. Valmont/Newmark is an approved vendor and has supplied steel poles on City projects in the past.



3. IES Industrial proposed Tri-State Drilling as a subcontractor for installation of the concrete pier foundations and the tangent pole structure bases. Tri-State Drilling is an experienced contractor and is familiar with the area, having just completed the foundations at the NPPD St. Libory Substation, where the new line will connect.
4. IES Industrial submitted a list of similar projects that the firm has completed in the past. This list contained projects that included the installation of T-2 conductor and fiber optic shield wire similar to what will be installed in this project. They also submitted resumes for two superintendent foremen with 30 years of experience who are proposed to be used on the project.

IES Industrial's bid of \$3,732,714.50 is below the engineer's estimate of \$7,000,000. IES Industrial has the necessary experience and their bid includes the materials, equipment, and labor needed to complete the project successfully, and is recommended by the Utilities Department to be the lowest compliant bidder.

### **Alternatives**

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

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

### **Recommendation**

City Administration recommends that the Council approve the contract for Transmission Line Work with IES Industrial, of Holdrege, Nebraska in the amount of \$3,732,714.50.

### **Sample Motion**

Move to approve the contract for Transmission Line Work with IES Industrial in the amount of \$3,732,714.50.



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



Jason Eley, Purchasing Agent

*Working Together for a  
Better Tomorrow, Today*

**BID OPENING**

**BID OPENING DATE:** October 6, 2011 at 2:00 p.m.

**FOR:** Transmission Line Work – Contract 11-PCC-01

**DEPARTMENT:** Utilities

**ESTIMATE:** \$7,000,000.00

**FUND/ACCOUNT:** 520

**PUBLICATION DATE:** September 8, 2011

**NO. POTENTIAL BIDDERS:** 6

**SUMMARY**

<b>Bidder:</b>	<u>Dominion Construction Company</u> Scottsbluff, NE	<u>IES Commercial, Inc.</u> Holdrege, NE
<b>Bid Security:</b>	Travelers Casualty & Surety Co.	National Union Fire Ins. Co.
<b>Exceptions:</b>	None	None
<b>Bid Price:</b>	\$4,086,036.42	\$3,732,714.50

<b>Bidder:</b>	<u>Watts Electric Company</u> Waverly, NE	<u>Mid-Plains Power</u> Grand Island, NE
<b>Bid Security:</b>	Universal Surety Co.	Merchants Bonding Co.
<b>Exceptions:</b>	None	None
<b>Bid Price:</b>	\$2,941,846.98	\$4,720,129.31

cc: Tim Luchsinger, Utilities Director  
Jason Eley, Purchasing Agent  
Mary Lou Brown, City Administrator

Pat Gericke, Utilities Admin. Assist.  
Travis Burdett, Assist. Utilities Director



RESOLUTION 2011-313

WHEREAS, the City of Grand Island invited sealed bids for Transmission Line Construction, according to plans and specifications on file with the Utilities Department; and

WHEREAS, on October 6, 2011, bids were received, opened and reviewed; and

WHEREAS, IES Commercial, Inc., (Kayton Electric) of Holdrege, 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 \$3,732,714.50; and

WHEREAS, the bid of IES Commercial, Inc., is less than the estimate for the Transmission Line Construction.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of IES Commercial, Inc., in the amount of \$3,732,714.50, for Transmission Line construction, is hereby approved as the lowest responsible bid.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, October 25, 2011.

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

Attest:

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

Approved as to Form	☐ _____
October 20, 2011	☐ City Attorney





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item G7

**#2011-314 - Approving Acquisition of Public Sanitary Sewer  
Utility Easement in SE 1/4 of Section 23-11N-10 - Chief Industries,  
Inc.**

*This item relates to the aforementioned Public Hearing item E-11.*

Staff Contact: John Collins, Public Works Director



R E S O L U T I O N    2011-314

WHEREAS, a public sanitary sewer utility easement is required by the City of Grand Island, from Chief Industries, Inc. in the southeast quarter of the southeast quarter (SE ¼, SE 1/4 of Section Twenty Three (23), Township Eleven (11) North, Range Ten (10) west of the 6<sup>th</sup> P.M., Hall County, Nebraska and more particularly described as follows:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 23-11-10; THENCE WEST ALONG THE SOUTH LINE OF SECTION 23-11-10 A DISTANCE OF 1320.46 FEET; THENCE N1°03'35"W TO THE NORTH RIGHT OF WAY OF STOLLEY PARK ROAD A DISTANCED OF 33.01 FEET; THENCE N1°04'01"W A DISTANCE OF 943.38 FEET, SAID POINT BEING THE POINT OF BEGINNING. THENCE N54°20'37"W TO A POINT ON THE EAST LINE OF FREEDOM ACRES SUBDIVISON A DISNTANCE OF 204.45 FEET; THENCE NORTH ALONG THE EAST LINE OF FREEDOM ACRES SUBDIVISION A DISTANCE OF 24.95 FEET; THENCE S54°20'37"E TO A POINT ON THE EAST LINE OF SAID UNPLATTED TRACT A DISTANCE OF 204.44 FEET; THENCE SOUTH ALONG THE EAST LINE OF SAID UNPLATTED TRACT A DISTANCE OF 24.95 FEET TO THE POINT OF BEGINNING.

WHEREAS, an Agreement for the public sanitary sewer utility easement has been reviewed and approved by the City Legal Department.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island be, and hereby is, authorized to enter into the Agreement for the public sanitary sewer utility Easement on the above described tract of land.

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, October 25, 2011.

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

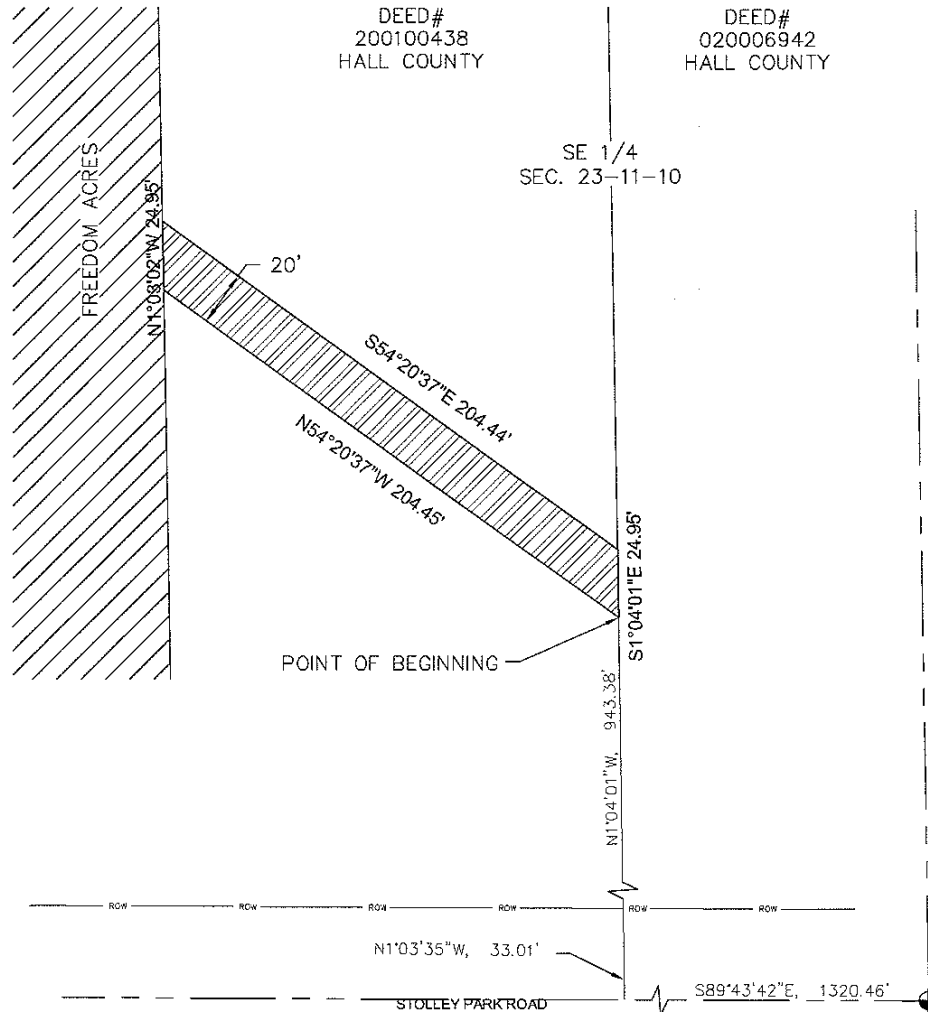
Attest:

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



# Survey Record

## SANITARY SEWER EASEMENT DESCRIPTION HALL COUNTY, NEBRASKA



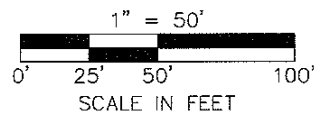
### EASEMENT DESCRIPTION

A TRACT OF LAND CONSISTING PART OF AN UNPLATTED TRACT OF LAND AS DESCRIBED IN DEED RECORD #200100438, HALL COUNTY REGISTER OF DEEDS, LOCATED IN PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE1/4 SE1/4) OF SECTION TWENTYTHREE (23), TOWNSHIP ELEVEN (11) NORTH, RANGE TEN (10) WEST OF THE 6TH P.M., HALL COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCING AT THE SOUTHEAST CORNER OF SECTION 23-11-10; THENCE WEST ALONG THE SOUTH LINE OF SECTION 23-11-10 A DISTANCE OF 1320.46 FEET; THENCE N1°03'35\"/>

SAID TRACT OF LAND CONTAINS 0.09 ACRES MORE OR LESS.

### LEGEND

- SECTION CORNER
- SECTION LINE
- EASEMENT LINE
- LOT LINE
- RIGHT OF WAY LINE



PROJECT NO: 2011-1345  
DRAWN BY: BJD  
DATE: 9/7/11

**SANITARY SEWER  
EASEMENT**

**MOLSSON**  
ASSOCIATES

201 East 2nd Street  
P.O. Box 1072  
Grand Island, NE 68802-1072  
TEL 308.384.8750  
FAX 308.384.8752

EXHIBIT

2



## **PUBLIC SANITARY SEWER UTILITY EASEMENT**

CHIEF INDUSTRIES, INC., a Delaware Corporation, herein called the Grantor, in consideration of ONE DOLLAR (\$1.00) and other consideration, receipt of which is hereby acknowledged, hereby grants and conveys unto the

CITY OF GRAND ISLAND, NEBRASKA,

a municipal corporation in Hall County, State of Nebraska, herein called the Grantee, a permanent and perpetual easement and right-of-way to construct, operate, maintain, extend, repair, replace, and remove sanitary sewers, manholes, pipelines, surface markers, and other appurtenances, upon, over, along, across, in, underneath and through a tract of land consisting part of an unplatted tract of land as described in deed record #200100438, Hall County Register of Deeds, located in part of the southeast quarter of the southeast quarter (SE ¼, SE ¼) of Section Twenty Three (23), Township Eleven (11) North, Range Ten (10) west of the 6<sup>th</sup> P.M., Hall County, Nebraska, and more particularly described as follows:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 23-11-10; THENCE WEST



ALONG THE SOUTH LINE OF SECTION 23-11-10 A DISTANCE OF 1320.46 FEET;  
THENCE N1°03'35"W TO THE NORTH RIGHT OF WAY OF STOLLEY PARK ROAD A  
DISTANCED OF 33.01 FEET; THENCE N1°04'01"W A DISTAINCE OF 943.38 FEET, SAID  
POINT BEING THE POINT OF BEGINNING. THENCE N54°20'37"W TO A POINT ON THE  
EAST LINE OF FREEDOM ACRES SUBDIVISON A DISTANCE OF 204.45 FEET; THENCE  
NORTH ALONG THE EAST LINE OF FREEDOM ACRES SUBDIVISION A DISTANCE OF  
24.95 FEET; THENCE S54°20'37"E TO A POINT ON THE EAST LINE OF SAID  
UNPLATTED TRACT A DISTANCE OF 204.44 FEET; THENCE SOUTH ALONG THE EAST  
LINE OF SAID UNPLATTED TRACT A DISTANCE OF 24.95 FEET TO THE POINT OF  
BEGINNING.

together with the following rights, namely, unrestricted ingress and egress under, over, and across such land  
for the purpose of exercising the rights herein granted, to excavate and refill ditches and trenches, and the  
right to clear and keep clear of trees, roots, brush, hedges, undergrowth, and other obstructions from the  
surface of such tracts interfering with the location, construction, inspection, repair, replacement, removal,  
and maintenance of such utilities. Any such utilities and appurtenances placed upon, over, and under such  
tracts of land shall remain the property of the Grantee and may be removed or replaced at any time.

The Grantors, for themselves, their heirs, executors, administrators, successors, and assigns, hereby  
covenant that no buildings, fences, or structures shall be erected or permitted on said tract and that the  
easement herein granted shall run with the title to such tract of land and be binding upon the Grantors, their  
successors and assigns.

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

GRANTOR:

Chief Industries, Inc.,  
A Delaware Corporatoin

BY \_\_\_\_\_

STATE OF NEBRASKA )



COUNTY OF HALL                                ) ss  
  )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ of Chief Industries, A Delaware Corproation, to me known to be the identical person who signed the foregoing Public Utilities Easement and acknowledges the execution thereof to be his voluntary act and deed for the purpose therein expressed.

WITNESS my hand and Notarial Seal the date above written.

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





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item G8

**#2011-315 - Approving Union Pacific Railroad Pipeline Crossing Agreement for Southwest Drainage Project No. 2011-D-1; Central Community College to the Wood River**

Staff Contact: John Collins, Public Works Director



# **Council Agenda Memo**

**From:** Terry Brown, Manager of Engineering Services/ Interim City Engineer

**Meeting:** October 25, 2011

**Subject:** Approving Union Pacific Railroad Pipeline Crossing Agreement for Southwest Drainage Project No. 2011-D-1; Central Community College to the Wood River

**Item #'s:** G-8

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

## **Background**

The Southwest Drainage project has been divided into three phases. Phase I will construct the drainage outlet to the Wood River and includes pipe installation and ditch improvements east of U.S. Highway 281. Phase II includes improvements on U.S Highway 281 right-of-way and areas west of U.S. Highway 281. Phase III includes construction of a west detention cell as development occurs. With the Southwest Drainage outlet in place, the City of Grand Island will be able to modify the following storm drainage flow paths:

- Provide an outlet for the existing ditches located north and east of the Central Community College;
- Provide an outlet for U.S Highway 281 right-of-way and low lying areas adjacent to the highway;
- Divert the Brentwood Lake outlet flow from the Stolley Park storm sewer system to the proposed Southwest Drainage outlet;
- Modify the Case New Holland outlet to flow to the proposed Southwest Drainage outlet.

The Engineering Division is in the final stages of completing plans and acquiring both temporary and permanent easements. A bid package will be advertised this fall for the actual project construction.

On September 13, 2011 City Council approved the purchase of pipe for this project from Rinker Materials in the amount of \$199,728.10. The next step is to enter into an



agreement with the Union Pacific Railroad (UPRR), for a sewer main crossing of the spur track to the PGS Power Plant.

### **Discussion**

The UPRR requires the City to enter into a “Pipeline Crossing Agreement” for the installation of one uncased 48 inch pipeline for transporting and conveying storm water only through their right-of-way. The City is also required to pay the UPRR a one-time License Fee of \$2,000.00, upon the execution of this agreement.

Without this agreement the City does not have legal access through the UPRR property and would not be able to complete the improvements associated with this project.

### **Alternatives**

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

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

### **Recommendation**

City Administration recommends that the Council approve a resolution allowing the City to enter into the agreement with the Union Pacific Railroad to allow the Southwest Drainage Project No. 2011-D-1; Central Community College to the Wood River.

### **Sample Motion**

Move to approve a resolution.



## **PIPELINE CROSSING AGREEMENT**

Mile Post: 20.21, River Ind Ld  
Location: Grand Island, Hall County, Nebraska

**THIS AGREEMENT ("Agreement")** is made and entered into as of July 19, 2011, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **GRAND ISLAND, CITY OF**, a Nebraska municipal corporation to be addressed at 100 E First Street, Grand Island, Nebraska 68802 ("Licensee").

### **IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

#### **Article 1. LICENSOR GRANTS RIGHT.**

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one uncased 48 inch pipeline for transporting and conveying storm water only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated July 19, 2011 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying storm water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

#### **Article 2. LICENSE FEE.**

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Two Thousand Dollars (\$2,000.00)**.

#### **Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.**

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

#### **Article 4. DEFINITION OF LICENSEE.**

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall



provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

**Article 5.      INSURANCE.**

A. During the life of the Lease, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this lease, those statutes shall apply.

D. Licensee hereby acknowledges that is has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

**Article 6.      TERM.**

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

**GRAND ISLAND, CITY OF**

By: \_\_\_\_\_  
Senior Manager - Contracts

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

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_



## **EXHIBIT B**

### **Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.**

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

### **Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.**

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support,



IN ALL OCCASIONS, U. P. COMMUNICATIONS  
DEPARTMENT MUST BE CONTACTED IN ADVANCE  
OF ANY WORK TO DETERMINE EXISTENCE AND  
LOCATION OF FIBER OPTIC CABLE.  
PHONE : 1-800-336-8183



the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.**

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

RYAN K. COLLINS  
MGR TRACK MNTCE  
Cell Phone: 402 289-7583

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensor whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for



such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.
- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.



- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

**Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.**

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

**Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.**

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

**Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.**

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.
- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.



- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

**Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

- A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. **IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

**Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.**

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or



materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

#### **Section 9. RESTORATION OF LICENSOR'S PROPERTY.**

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

#### **Section 10. INDEMNITY.**

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. **AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS OR ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

**1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR,**



**RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;**

**2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;**

**3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;**

**4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;**

**5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR**

**6. LICENSEE'S BREACH OF THIS AGREEMENT.**

**EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.**

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

**Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.**

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

**Section 12. WAIVER OF BREACH.**

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.



**Section 13. TERMINATION.**

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

**Section 14. AGREEMENT NOT TO BE ASSIGNED.**

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

**Section 15. SUCCESSORS AND ASSIGNS.**

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

**Section 16. SEVERABILITY.**

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.



## EXHIBIT C

### Union Pacific Railroad Company Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

**A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

**B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

**C. Workers Compensation and Employers Liability insurance.** Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

**D. Railroad Protective Liability insurance.** Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.



The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement

E. **Umbrella or Excess** insurance. If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

#### **Other Requirements**

F. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.



**EXHIBIT D**  
**SAFETY STANDARDS**

**MINIMUM SAFETY REQUIREMENTS**

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

**I. Clothing**

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

**II. Personal Protective Equipment**

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers



- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

### **III. On Track Safety**

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

### **IV. Equipment**

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.



**V. General Safety Requirements**

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.



RESOLUTION 2011-315

WHEREAS, in connection with the Southwest Drainage Project No. 2011-D-1; Central Community College to the Wood River a Pipeline Crossing Agreement is required by the Union Pacific Railroad in order for the City of Grand Island to cross their right-of-way with one uncased 48 inch pipeline for transporting and conveying storm water only; and

WHEREAS, the agreement also requires, upon execution, a one-time License Fee of \$2,000.00; and

WHEREAS, the agreement has been reviewed and approved by the City's Legal Department.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island be, and hereby is, authorized to enter into the Pipeline Crossing Agreement with the Union Pacific Railroad in connection with the Southwest Drainage Project No. 2011-D-1; Central Community College to the Wood River.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, October 25, 2011.

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

Attest:

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

Approved as to Form	☐ _____
October 20, 2011	☐ City Attorney





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item G9

**#2011-316 - Approving Amending the City of Grand Island Police Officers' Retirement System Plan and Trust for Changes in the Applicable Tax Laws**

Staff Contact: Jaye Monter



# **Council Agenda Memo**

**From:** Mary Lou Brown, City Administrator

**Meeting:** October 25, 2011

**Subject:** Amending the City of Grand Island Police Officers' Retirement System Plan and Trust for Changes in the Applicable Tax Laws.

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

**Presenter(s):** Jaye Monter, Interim Finance Director

## **Background**

Amendment No. 1 to the City's retirement plan documents incorporates recent changes to pension laws and regulations for which plan documents need to be updated. Following is a brief summary of each article of the amendment. Generally, requirements must be included in plan documents. However, some provisions do not apply because this is a government plan or for other reasons, as noted. All provisions nevertheless are included in the amendment to provide a record of applicable authority for reference when the plan is required to be restated in a few years.

## **Discussion**

### **ART EXPLANATION**

- I** General provisions regarding amendment, effective date, etc.
- II** Summary of provisions covered in the amendment.
- III** Specifies actuarial factors – i.e. interest rate and mortality table – that must be used to determine compliance with limitations on benefits imposed by Internal Revenue Code §415.
- IV** Any beneficiary under a qualified plan who is not a spouse and is entitled to a benefit eligible for a rollover can directly roll the distribution over to an IRA.
- V** After-tax contributions received in a distribution, if any, can be rolled over, as well, to certain types of retirement plans.
- VI** Extends period for giving participants notice of distributions from 90 to 180 days. Notice of distributions must include a statement of the effect of delaying



distributions and explanation of relative values of optional forms of benefit. Requirements do not apply to governmental plans.

- VII** Domestic relations order directing division of benefits upon a participant's divorce will not fail in certain cases due to the timing of issuance of the order.
- VIII** No in-service distributions are allowed upon reaching early retirement age.
- IX** Participants are allowed to elect qualified optional survivor annuity permitted under the plan. Requirements do not apply to governmental plans.
- X** Direct rollover of a lump sum distribution is permitted to a ROTH IRA.
- XI** Substitute "severance from employment", a defined term in the Internal Revenue Code, for "separation from service" for required "top heavy" nondiscrimination testing of the plan. Governmental plans are exempt from top heavy testing.
- XII** Changes to reflect new laws and regulations adopted in recent years regarding underfunded pension plans, specifically restricting optional payments and additional benefit accruals while a plan is in an underfunded state, and requiring annual reporting to plan participants. Requirements do not apply to governmental plans.
- XIII** Incorporate required changes for plan participants in military service, some of which do not apply because of unique terms of the plan.
- XIV** Incorporate certain interest rate and mortality assumptions for lump sum payouts and other plan provisions, to the extent applicable.
- XV** Reflect suspension of 2009 required minimum distributions for participants who reach the later of 70 ½ and retirement.

### **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 Amendment to the Police Officers' Retirement System Plan and Trust with Wells Fargo.

### **Motion**

Move to approve the Amended Services Agreement with Wells Fargo



**CITY OF GRAND ISLAND, NEBRASKA POLICE OFFICERS'  
RETIREMENT SYSTEM PLAN AND TRUST ("PLAN")**

**AMENDMENT NO. 1**

**ARTICLE I  
PREAMBLE**

- 1.1 **Plan and amendment authority.** The City of Grand Island, a Nebraska municipality, ("City" or "Employer") maintains the City of Grand Island, Nebraska Police Officers' Retirement System Plan and Trust pursuant to Neb. Rev. Stat. Sections 16-1001 through 16-1019 and Internal Revenue Code, Sections 401(a) and 501(a), as set forth in the Adoption Agreement and corresponding Basic Municipal Employees Plan and Trust Agreement, ("Plan"), and hereby adopts and approves this Amendment No. 1 to the Plan and authorizes the Mayor or his designee to execute it below.
- 1.2 **Effective date of Amendment.** This Amendment is effective as indicated below for the respective provisions; provided, however, that an effective date shall not be earlier than the effective date of the Plan.
- 1.3 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.4 **Construction.** Provisions of this Amendment that are applicable to a defined benefit plan are included to the extent the Plan provides a minimum defined benefit. Except as otherwise provided in this Amendment, any reference to "Article" or "Section" in this Amendment refers only to articles or sections within this Amendment, and is not a reference to the Plan.
- 1.5 **Effect of restatement of Plan.** If the City of Grand Island restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated into a plan document which incorporates Pension Protection Act of 2006 ("PPA"), and other provisions herein for subsequent legislation and guidance).

**ARTICLE II  
CITY ELECTIONS**

- 2.1 **Applicable Provisions.** Unless the City otherwise specifies in this Amendment, the following will apply:
- a. The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
  - b. Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
  - c. In-Service distributions prior to Normal Retirement Age are not permitted.
  - d. Once Code Section 436 benefit restrictions no longer apply, the Amendment provides for the (1) automatic restoration of benefit accruals, and (2) no "annuity starting date"; provided, however, Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and



except from the requirements of Code Sections 401(a)(29) and 436 by reason of being excluded from the funding requirements of Code Section 412.

- e. Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided. Distributions upon deemed severance of employment under the HEART Act are not permitted.
  - f. The applicable interest rate shall be based on the first month (lookback month) prior to the Plan Year (stability period) during which a distribution is made.
- 2.2 **Effective date of applicable mortality table set forth in Amendment Section 3.3.3(c).** The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
- 2.3 **Non-spousal rollovers (Article IV).** Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
- 2.4 **In-service distributions (Article VIII).** In-Service Distributions prior to Normal Retirement Age are not permitted.
- 2.5 **Code Section 436 Benefit Restrictions (Article XII)**

**Treatment of Plan as of Close of Prohibited or Cessation Period (Section XII(h)).** Unless otherwise elected below, accruals that had been limited under Code Section 436(c) will be automatically restored as of the "Section 436 measurement date" that the limitation ceases to apply; and

**Accelerated Benefit Distributions (Section XII(h)).** Unless otherwise elected below, (1) there is no new "annuity starting date" with respect to payments made as a result of the benefit limitations no longer being applicable, and (2) there are no optional forms of benefit that are only available for the period of the benefit restrictions;

Provided, however, the Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being excluded from the funding requirements of Code Section 412.

- 2.6 **Continued benefit accruals and distributions upon deemed severance (Article XIII).** Continued benefit accruals for the Heart Act (Amendment Section 13.2) will not apply. Further, distributions upon deemed severance of employment under the HEART Act (Amendment Section 13.4) will not be permitted.
- 2.7 **Applicable interest rate.** For purposes of Amendment Section 14.2, unless otherwise elected below, the stability period is the Plan Year during which a distribution is made and the lookback month is the first calendar month preceding the first day of the stability period.

### **ARTICLE III PENSION FUNDING EQUITY ACT OF 2004 AS MODIFIED BY SUBSEQUENT LEGISLATION**

- 3.1 **General Rule.** This Article applies to the determination of Code Section 415 limits.
- 3.1.1 **Effective date.** The City adopts this Article III to reflect certain provisions of the Pension Funding Equity Act of 2004 (PFEA), as modified by the Pension Protection Act of 2006 and the



Worker, Retiree and Employer Recovery Act of 2008. Except as otherwise provided herein, effective for distributions in Plan Years beginning after December 31, 2003, the required determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with this Amendment. However, this Amendment does not supersede any prior election to apply the transition rule of section 101(d)(3) of PFEA as described in Notice 2004-78.

**3.1.2 Definition of "Applicable Mortality Table."** The "applicable mortality table" means the applicable mortality table within the meaning of Code Section 417(e)(3)(B) (as described in Article XIV), subject to any special effective dates specified in this Article III.

**3.2 Benefit Forms Not Subject to the Present Value Rules of Code Section 417(e)(3)**

**3.2.1 Form of benefit.** The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Section 3.2 if the form of the Participant's benefit is either:

- (a) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or
- (b) An annuity that decreases during the life of the Participant merely because of:
  - (1) The death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or
  - (2) The cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

**3.2.2 Limitation Years beginning before July 1, 2007 --** For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount:

- (a) the interest rate and mortality table (or other tabular factor specified in the Plan for adjusting benefits in the same form; and
- (b) a 5 percent interest rate assumption and the "applicable mortality table" defined in the Plan for that annuity starting date.

**3.2.3 Limitation Years beginning on or after July 1, 2007.** For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

- (a) The annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the Participant's form of benefit; and
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in the Plan for that annuity starting date.



### **3.3 Benefit Forms Subject to the Present Value Rules of Code Section 417(e)(3).**

**3.3.1 Form of benefit.** The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined as indicated under this Section 3.3 if the form of the Participant's benefit is other than a benefit form described in Section 3.2.1 above.

**3.3.2 Annuity Starting Date in small plans for Plan Years Beginning in 2009 and later.** Notwithstanding anything in this Amendment to the contrary, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in or after 2009, and if the Plan is maintained by an eligible employer as defined in Code Section 408(p)(2)(C)(i), the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount:

- (a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and
- (b) A 5.5 percent interest rate assumption and the applicable mortality table described in Article XIV.

**3.3.3 Annuity Starting Date in Plan Years Beginning After 2005.** Except as provided in Section 3.3.2, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after December 31, 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

- (a) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form;
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below); and
- (c) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate for the distribution under Treasury Regulations Section 1.417(e)-1(d)(3) (determined in accordance with Article XIV for Plan Years after the effective date of that Article) and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below), divided by 1.05.

The effective date of the applicable mortality table above is for years beginning after December 31, 2008.

**3.3.4 Annuity Starting Date in Plan Years Beginning in 2004 or 2005 ~** If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as



the participant's form of benefit, computed using whichever of the following produces the greater annual amount:

- (a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and
- (b) A 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Regulations Section 1.417(e)-1(d)(2).

However, this Section does not supersede any prior election to apply the transition rule of section 101(d)(3) of PFEA as described in Notice 2004-78.

#### **ARTICLE IV DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION**

- 4.1 **Non-spouse beneficiary rollover right (for distributions on or after January 1, 2008).** A non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Code Section 401(a)(31).
- 4.2 **Applicability of certain requirements.** For Plan Years beginning on or after January 1, 2010, any direct rollover of a distribution by a nonspouse beneficiary shall be subject to the direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B)), the notice requirements of Code Section 402(f) and the mandatory withholding requirements of Code Section 3405(c). Before that date, any such distribution shall not be subject to said requirements. Any distribution from the Plan to a non-spouse beneficiary shall not be eligible for a 60-day (non-direct) rollover.
- 4.3 **Trust beneficiary.** Subject to Section 4.1, if the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).
- 4.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary is not permitted to roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations Section 1.401(j)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

#### **ARTICLE V ROLLOVER OF AFTER-TAX AMOUNTS**

- 5.1 **Direct rollover to qualified plan/403(b) plan (for taxable years beginning after December 31, 2006).** A Participant may elect to transfer employee after-tax contributions, if any, by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred (including interest thereon), including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.



**ARTICLE VI  
PARTICIPANT DISTRIBUTION NOTIFICATION**

- 6.1 **180-day notification period** (effective for distribution notices in Plan Years beginning after December 31, 2006). Reference to the 90-day maximum notice period requirements of Code Sections 402(f) (the rollover notice), 411(a)(1) (Participant's consent to distribution), and 417 (notice regarding the joint and survivor annuity rules), if any, is changed to 180 days.
- 6.2 **Effect of delay of distribution.** Notices given to Participants pursuant to Code Section 411(a)(1) in Plan Years beginning after December 31, 2006, if any, shall include a description of the consequences of failing to defer a distribution, including (i) for any individual account balance, a description of investment options available under the Plan (including fees) that will be available if the Participant defers distribution, (ii) for any defined benefit, how much larger benefits will be if the commencement of distributions is deferred, and (iii) the portion of the summary plan description that contains any special rules that might affect materially a Participant's decision to defer.
- 6.3 **Explanation of relative value.** Notices to Participants shall include the relative values of the various optional forms of benefit under the Plan as provided in Treasury Regulations Section 1.417(a)-3, to the extent said Regulations are applicable to the Plan. This provision is effective as of the applicable effective date set forth in Treasury Regulations (i.e., to qualified pre-retirement survivor annuity explanations provided on or after July 1, 2004; to qualified joint and survivor annuity explanations with respect to any distribution with an annuity starting date that is on or after February 1, 2006, or on or after October 1, 2004 with respect to any optional form of benefit that is subject to the requirements of Code Section 417(c)(3) if the actuarial present value of that optional form is less than the actuarial present value as determined under Code Section 417(e)(3)). Provided, however, pursuant to the flush language of Code Section 401(a) and Code Section 411(c)(1)(B), the provisions of Code Sections 401(a)(1) and 417, and consequently this Article VI, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

**ARTICLE VII  
QUALIFIED DOMESTIC RELATIONS ORDERS**

- 7.1 **Permissible QDROs** (effective on and after April 6, 2007). For purposes of provisions of the Plan regarding domestic relations orders, if any, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order (QDRO) will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.
- 7.2 **Other QDRO requirements apply.** A domestic relations order described in Section 7.1 is subject to the same requirements and protections that apply to any other QDRO.

**ARTICLE VIII  
PRE-RETIREMENT PENSION IN-SERVICE DISTRIBUTIONS**

- 8.1 **No age 62 in-service distributions.** As specified in Amendment Section 2.4, a Participant who has attained the specified age and who is not separated from employment may not elect to receive a distribution of his or her vested Accrued Benefit.



**ARTICLE IX**  
**QUALIFIED OPTIONAL SURVIVOR ANNUITY**

- 9.1 **Right to Elect Qualified Optional Survivor Annuity (effective for distributions with annuity starting dates in Plan Years beginning after December 31, 2007).** A Participant who elects to waive the qualified joint and survivor annuity form of benefit under the Plan, if provided for under the Plan, shall be entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity, if required, shall explain the terms and conditions of the "qualified optional survivor annuity." Provided, however, the following rules apply in the specified circumstances:

(a) **Special Effective Date Rules.**

1. If the Plan permits retroactive annuity starting dates and a Participant elects a distribution with a retroactive annuity starting date (pursuant to Treasury Regulations Section 1.417(e)-1(b)(3)(iv)) that is before the aforementioned effective date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of applying the rules of this paragraph.

2. In the case of a plan that is subject to Code Section 401(a)(11) and that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006 (the date of enactment of FPA '06), the changes to Code Section 417 made by Section 1004 of FPA '06 apply to distributions with annuity starting dates during plan years beginning on or after the earlier of (i) January 1, 2008 or, if later, the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extensions to a collective bargaining agreement made after August 17, 2006), or (ii) January 1, 2009.

(b) **Inapplicability to Governmental Plans.** Pursuant to the flush language of Code Section 401(a) and the provisions of Code Section 411(e)(1)(A), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article IX, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

9.2 **Definition of Qualified Optional Survivor Annuity.**

(a) For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:

- (1) For the life of the Participant with a survivor annuity for the life of the Participant's spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the Participant's spouse, and
- (2) Which is the actuarial equivalent of a single annuity for the life of the Participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(b) For purposes of this Section, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the Participant and the spouse). If the survivor annuity percentage is less than seventy-five percent (75%), then the "applicable percentage" is seventy-five percent (75%). If the



survivor annuity percentage is equal to or greater than seventy-five percent (75%), the "applicable percentage" is fifty percent (50%).

#### **ARTICLE X DIRECT ROLLOVER TO ROTH IRA**

- 10.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a Participant or beneficiary may elect to roll over directly an "eligible rollover distribution" to a Roth IRA described in Code Section 408A(b); provided, however, for taxable years beginning before January 1, 2010, an individual cannot make a qualified rollover contribution from an eligible retirement plan other than a Roth IRA if, for the year the eligible rollover distribution is made, he or she has modified adjusted gross income exceeding \$100,000 or is married and files a separate return. For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in Article V, if applicable.

#### **ARTICLE XI TOP-HEAVY PROVISIONS**

- 11.1 **Severance from employment.** Effective for any Plan Year beginning after December 31, 2001, any provisions of the Plan setting forth the top-heavy provisions of Code Section 416 are modified by substituting the term "separation from service" with "severance from employment."

#### **ARTICLE XII BENEFIT RESTRICTIONS**

- (a) **Effective Date and Application of Article.**

(1) **Effective Date.** The provisions of this Article apply to Plan Years beginning after December 31, 2007.

(2) This Article only applies to single employer plans (a plan that is not a multiemployer plan within the meaning of Code Section 414(f)) and does not apply to a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers.

(A) **Multiple Employer Plans.** In the case of a multiple employer plan to which Code Section 413(c)(4)(A) applies, Code Section 436 applies separately with respect to each employer under the plan, as if each employer maintained a separate plan. Thus, the benefit limitations under Code Section 436 could apply differently to participants who are employees of different employers under such a multiple employer plan. In the case of a multiple employer plan to which Code Section 413(c)(4)(A) does not apply (that is, a plan described in Code Section 413(c)(4)(B) that has not made the election for Code Section 413(c)(4)(A) to apply), Code Section 436 applies as if all participants in the plan were employed by a single employer.

(B) **Governmental Plans.** Code Section 436 benefit restrictions and other provisions described in this Article do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(c) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being exempt from the funding requirements of Code Section 412.

(3) The limitations described in Subsections (b), (c) and (e) do not apply to the Plan for the first five (5) Plan Years of the Plan. Except as otherwise provided by the Commissioner in guidance of general applicability, the Plan Years taken into account for this purpose include the following (in addition to Plan Years during which the Plan was maintained by the Employer):



(A) Plan Years when the Plan was maintained by a predecessor employer within the meaning of Regulations Section 1.415(f)-1(c)(1);

(B) Plan years of another defined benefit plan maintained by a predecessor employer within the meaning of Regulations Section 1.415(f)-1(c)(2) within the preceding five years if any Participants in the Plan participated in that other defined benefit plan (even if the Plan maintained by the Employer is not the plan that was maintained by the predecessor employer); and

(C) Plan years of another defined benefit plan maintained by the Employer within the preceding five years if any Participants in the Plan participated in that other defined benefit plan.

(4) Notwithstanding anything in this Article to the contrary, the provision of Code Section 436 and the Regulations thereunder are incorporated herein by reference.

(5) For Plans that have a valuation date other than the first day of the Plan Year, the provisions of Code Section 436 and this Article will be applied in accordance with Regulations.

**(b) Funding-Based Limitation on Shutdown Benefits and Other Unpredictable Contingent Event Benefits**

(1) In general, if a Participant is entitled to an "unpredictable contingent event benefit" payable with respect to any event occurring during any Plan Year, then such benefit may not be provided if the "adjusted funding target attainment percentage" for such Plan Year (A) is less than sixty percent (60%) or (B) sixty percent (60%) or more, but would be less than sixty percent (60%) percent if the "adjusted funding target attainment percentage" were redetermined applying an actuarial assumption that the likelihood of occurrence of the "unpredictable contingent event" during the Plan Year is one hundred percent (100%).

(2) Exemption. Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(iii).

**(c) Limitations on Plan Amendments Increasing Liability for Benefits**

(1) In general, No amendment which has the effect of increasing liabilities of the Plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any Plan Year if the "adjusted funding target attainment percentage" for such Plan Year is:

(A) less than eighty percent (80%), or

(B) eighty percent (80%) or more, but would be less than eighty percent (80%) if the benefits attributable to the amendment were taken into account in determining the "adjusted funding target attainment percentage."

(2) Exemption. Paragraph (c)(1) above shall cease to apply with respect to a Plan amendment upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(iv).

(3) Exception for certain benefit increases. Paragraph (1) shall not apply to any amendment as otherwise provided in Regulations Section 1.436-1(c).



(d) **Limitations on Prohibited Payments**

(1) Funding percentage less than sixty percent (60%). If the Plan's "adjusted funding target attainment percentage" for a Plan Year is less than sixty percent (60%), then a Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date."

(2) Bankruptcy. A Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" that occurs during any period in which the Employer is a debtor in a case under Title 11, United States Code, or similar Federal or State law. The preceding sentence shall not apply to payments made within a Plan Year with an "annuity starting date" that occurs on or after the date on which the enrolled actuary of the Plan certifies that the "adjusted funding target attainment percentage" of the Plan is not less than one hundred percent (100%).

(3) Limited payment if percentage at least sixty percent (60%) but less than eighty percent (80%) percent.

(A) In general. If the Plan's "adjusted funding target attainment percentage" for a Plan Year is sixty percent (60%) or greater but less than eighty percent (80%), then a Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date," unless the present value (determined in accordance with Code Section 417(e)(3)) of the portion of the benefit that is being paid in a "prohibited payment" (which portion is determined under paragraph (C)(i) below) does not exceed the lesser of:

(i) fifty (50) percent of the amount of the present value (determined in accordance with Code Section 417(e)(3)) of the benefit payable in the optional form of benefit that includes the prohibited payment; or

(ii) 100% of the "PBGC maximum benefit guarantee amount."

(B) Bifurcation if optional form unavailable.

(i) Requirement to offer bifurcation. If an optional form of benefit that is otherwise available under the terms of the plan is not available as of the "annuity starting date" because of the application of Regulations Section 1.436-1(d)(3)(i), then the Participant or Beneficiary may elect to:

(1) Receive the unrestricted portion of that optional form of benefit (determined under the rules of Regulations Section 1.436-1(d)(3)(iii)(D)) at that "annuity starting date," determined by treating the unrestricted portion of the benefit as if it were the Participant's or Beneficiary's entire benefit under the plan;

(2) Commence benefits with respect to the Participant's or Beneficiary's entire benefit under the Plan in any other optional form of benefit available under the Plan at the same "annuity starting date" that satisfies Regulations Section 1.436-1(d)(3)(i); or

(3) Defer commencement of the payments to the extent described in Regulations Section 1.436-1(d)(5).



(ii) Rules relating to bifurcation. If the Participant or Beneficiary elects payment of the unrestricted portion of the benefit as described in Regulations Section 1.436-1(d)(3)(i)(A)(1), then the Participant or Beneficiary may elect payment of the remainder of the Participant's or Beneficiary's benefits under the Plan in any optional form of benefit at that "annuity starting date" otherwise available under the Plan that would not have included a "prohibited payment" if that optional form applied to the entire benefit of the Participant or Beneficiary. The rules of Regulations Section 1.417(e)-1 are applied separately to the separate optional forms for the "unrestricted portion of the benefit" and the remainder of the benefit (the restricted portion).

(iii) Plan alternative that anticipates election of payment that includes a "prohibited payment." With respect to every optional form of benefit that includes a "prohibited payment" and that is not permitted to be paid under Regulations Section 1.436-1 (d)(3)(i), for which no additional information from the Participant or Beneficiary (such as information regarding a Social Security leveling optional form of benefit) is needed to make that determination, rather than wait for the Participant or Beneficiary to elect such optional form of benefit, the Plan will provide for separate elections with respect to the restricted and unrestricted portions of that optional form of benefit.

(C) Definitions applicable to limited payment option. The following definitions apply for purposes of this subsection (d)(3).

(i) Portion of benefit being paid in a prohibited payment. If a benefit is being paid in an optional form for which any of the payments is greater than the amount payable under a straight life annuity to the Participant or Beneficiary (plus any Social Security supplements described in the last sentence of Code Section 411(a)(9) payable to the Participant or Beneficiary) with the same "annuity starting date," then the portion of the benefit that is being paid in a "prohibited payment" is the excess of each payment over the smallest payment during the Participant's lifetime under the optional form of benefit (treating a period after the "annuity starting date" and during the Participant's lifetime in which no payments are made as a payment of zero).

(ii) PBGC maximum benefit guarantee amount. The "PBGC maximum benefit guarantee amount" is the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under Code Section 417(c)) of the maximum benefit guarantee with respect to a Participant (based on the Participant's age or the Beneficiary's age at the "annuity starting date") under ERISA Section 4022 for the year in which the "annuity starting date" occurs.

(iii) Unrestricted portion of the benefit:

(1) General rule. Except as otherwise provided in this paragraph (iii), the unrestricted portion of the benefit with respect to any optional form of benefit is fifty percent (50%) of the amount payable under the optional form of benefit.

(2) Special rule for forms which include Social Security leveling or a refund of employee contributions. For an optional form of benefit that is a prohibited payment on account of a Social Security leveling feature (as defined in Regulations Section 1.411(d)-3(g)(16)) or a refund of



employee contributions feature (as defined in Regulations Section 1.411(d)-3(g)(11)), the unrestricted portion of the benefit is the optional form of benefit that would apply if the Participant's or Beneficiary's Accrued Benefit were fifty percent (50%) smaller.

(3) Limited to PBGC maximum benefit guarantee amount. After the application of the preceding rules of this paragraph (iii), the unrestricted portion of the benefit with respect to the optional form of benefit is reduced, to the extent necessary, so that the present value (determined in accordance with Code Section 417(e)) of the unrestricted portion of that optional form of benefit does not exceed the "PBGC maximum benefit guarantee amount."

(D) Other Rules.

(i) One time application. If a Participant with respect to whom a prohibited payment (or a series of prohibited payments under a single optional form of benefit) is made pursuant to paragraph (d)(3)(A) or (B) above, no additional prohibited payment may be made with respect to that Participant during any consecutive Plan Years for which prohibited payments are limited under this subsection (d).

(ii) Treatment of beneficiaries. For purposes of this subparagraph (d)(3), benefits provided with respect to a Participant and any Beneficiary of the Participant (including an alternate payee, as defined in Code Section 414(p)(8)) are aggregated. If the only benefits paid under the plan with respect to the Participant are death benefits payable to the Beneficiary, then paragraph (d)(3)(C)(i) of this section is applied by substituting the lifetime of the Beneficiary for the lifetime of the Participant. If the Accrued Benefit of a Participant is allocated to such an alternate payee and one or more other persons, then the "unrestricted amount" of (d)(3)(C)(ii) is allocated among such persons in the same manner as the accrued benefit is allocated, unless a qualified domestic relations order (as defined in Code Section 414(p)(1)(A)) with respect to the Participant or the alternate payee provides otherwise.

(iii) Treatment of annuity purchases and plan transfers. This paragraph (d)(3)(D)(iii) applies for purposes of applying subsections (d)(3)(A) and (d)(3)(C)(iii). In the case of a prohibited payment described in Regulations Section 1.436-1(j)(6)(i)(B) (relating to purchase from an insurer), the present value of the portion of the benefit that is being paid in a prohibited payment is the cost to the plan of the irrevocable commitment and, in the case of a prohibited payment described in Regulations Section 1.436-1(j)(6)(i)(C) (relating to certain plan transfers), the present value of the portion of the benefit that is being paid in a prohibited payment is the present value of the liabilities transferred (determined in accordance with Code Section 414(l)). In addition, the present value of the accrued benefit is substituted for the present value of the benefit payable in the optional form of benefit that includes the prohibited payment in Regulations Section 1.436-1(d)(3)(i)(A).

(4) Exception. This subsection (d) shall not apply for any Plan Year if the terms of the Plan (as in effect for the period beginning on September 1, 2005, and ending with such Plan Year) provide for no benefit accruals with respect to any Participant during such period.



(5) **Right to delay commencement.** If a Participant or Beneficiary requests a distribution in an optional form of benefit that includes a "prohibited payment" that is not permitted to be paid under paragraph (c)(1), (c)(2), or (c)(3) of this Article, then the Participant retains the right to delay commencement of benefits in accordance with the terms of the plan and applicable qualification requirements (such as Code Sections 411(a)(11) and 401(a)(9)).

(6) **"Prohibited payment."** For purposes of this subsection (d), the term "prohibited payment" means:

(A) Any payment for a month that is in excess of the monthly amount paid under a single life annuity (plus any Social Security supplements described in the last sentence of Code Section 411(a)(9)), to a Participant or Beneficiary whose "annuity starting date" occurs during any period a limitation under paragraph (d) is in effect;

(B) Any payment for the purchase of an irrevocable commitment from an insurer to pay benefits; and

(C) Any transfer of assets and liabilities to another plan maintained by the same Employer (or by any member of the Employer's controlled group) that is made in order to avoid or terminate the application of Code Section 436 benefit limitations; and

(D) Any other amount that is identified as a prohibited payment by the Commissioner in revenue rulings and procedures, notices, and other guidance published in the Internal Revenue Bulletin.

Such term shall not include the payment of a benefit which under Code Section 411(a)(11) may be immediately distributed without the consent of the Participant. Furthermore, in the case of a Beneficiary that is not an individual, the amount that is a prohibited payment is determined by substituting the monthly amount payable in installments over 240 months that is actuarially equivalent to the benefit payable to the Beneficiary, as provided in Regulations Section 1.436-1(j)(6)(ii).

(e) **Limitation on Benefit Accruals for Plans with Severe Funding Shortfalls**

(1) In general. If the Plan's "adjusted funding target attainment percentage" for a Plan Year is less than sixty percent (60%), benefit accruals under the Plan shall cease as of the "section 436 measurement date." If the Plan is required to cease benefit accruals under this subsection (e), then the Plan is not permitted to be amended in a manner that would increase the liabilities of the Plan by reason of an increase in benefits or establishment of new benefits. The preceding sentence applies regardless of whether an amendment would otherwise be permissible under subsections (c)(2) or (c)(3) of this Article.

(2) **Exemption.** Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(v).

(3) **Temporary modification of limitation.** In the case of the first Plan Year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, the provisions of (e)(1) above shall be applied by substituting the Plan's "adjusted funding target attainment percentage" for the preceding Plan Year for such percentage for such Plan Year, but only if the "adjusted funding target attainment percentage" for the preceding year is greater.



**(f) Rules Relating to Contributions Required to Avoid or Terminate Benefit Limitations**

The application of the Code Section 436 benefit limitations may be avoided or terminated in accordance with any of the rules set forth in Code Section 436 and Regulations Section 1.436-1(f).

**(g) Presumed Underfunding for Purposes of Benefit Limitations**

**(1) Presumption of continued underfunding.**

(A) In general. This paragraph (g)(1) applies to a Plan for a Plan Year if a limitation under subsection (b), (c), (d), or (e) applied to the Plan on the last day of the preceding Plan Year. If this paragraph (g)(1) applies to a Plan, then the first day of the Plan Year is a "Section 436 measurement date" and the presumed "adjusted funding target attainment percentage" for the Plan is the percentage under paragraph (g)(1)(B) or (C) of this subsection, whichever applies to the Plan, beginning on that first day of the Plan Year and ending on the date specified in subparagraph (g)(1)(D) of this section.

**(B) Rule where preceding year certification issued during preceding year.**

(i) General rule. In any case in which the Plan's enrolled actuary has issued a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year preceding the current Plan Year before the first day of the current Plan Year, the presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to the prior Plan Year "adjusted funding target attainment percentage" until it is changed under Regulations Section 1.436-1(h)(1)(iv).

(ii) Special rule for late certifications. If the certification of the adjusted funding target attainment percentage for the prior Plan Year occurred after the first day of the 10th month of that prior Plan Year, the Plan is treated as if no such certification was made, unless the certification took into account the effect of any unpredictable contingent event benefits that are permitted to be paid based on unpredictable contingent events that occurred, and any Plan amendments that became effective, during the prior Plan Year but before the certification (and any associated Code Section 436 contributions).

**(C) No certification for preceding year issued during preceding year.**

(i) Deemed percentage continues. In any case in which the Plan's enrolled actuary has not issued a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" of the Plan for the Plan Year preceding the current Plan Year during that prior Plan Year, the presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to the presumed "adjusted funding target attainment percentage" that applied on the last day of the preceding Plan Year until the presumed "adjusted funding target attainment percentage" is changed under Regulations Section 1.436-1(h)(1)(iii)(B) or (h)(1)(iv).

(ii) Enrolled actuary's certification in following year. In any case in which the Plan's enrolled actuary has issued the certification under Regulations Section 1.436-1(h)(4) of the adjusted funding target attainment percentage of the Plan for the Plan Year preceding the current Plan Year on or after the first day of the current Plan Year, the date of that prior Plan Year certification is a new "Section 436 measurement date" for the current Plan Year. In such a case, the presumed



adjusted funding target attainment percentage for the current Plan Year is equal to the prior Plan Year adjusted funding target attainment percentage (reduced by 10 percentage points if Regulations Section 1.436-1(h)(2)(iv) applies to the Plan) until it is changed under Regulations Section 1.436-1(h)(1)(iv). The rules of Regulations Section 1.436-1(h)(1)(ii)(B) apply for purposes of determining whether the enrolled actuary has issued a certification of the adjusted funding target attainment percentage for the prior Plan Year during the current Plan Year.

(D) Duration of use of presumed "adjusted funding target attainment percentage." If this paragraph (g)(1) applies to a Plan for a Plan Year, then the presumed "adjusted funding target attainment percentage" determined under this paragraph (g)(1) applies until the earliest of:

- (i) The first day of the 4th month of the Plan Year if paragraph (g)(2) of this section applies;
- (ii) The first day of the 10th month of the Plan Year if paragraph (g)(3) of this section applies;
- (iii) The date of a change in the presumed adjusted funding target attainment percentage under Regulations Section 1.436-1(g)(4); or
- (iv) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year.

(2) Presumption of underfunding beginning on first day of 4th month for certain underfunded plans. This paragraph (2) applies to a Plan for a Plan Year if the enrolled actuary for the Plan has not issued a certification of the "adjusted funding target attainment percentage" for the Plan Year before the first day of the 4th month of the Plan Year, and the Plan's "adjusted funding target attainment percentage" for the preceding Plan Year was either (1) at least sixty percent (60%) but less than seventy percent (70%); or (2) at least eighty percent (80%) but less than ninety percent (90%). This paragraph (2) also applies to a Plan for the first effective Plan Year if the enrolled actuary for the Plan has not issued a certification of the "adjusted funding target attainment percentage" for the Plan Year before the first day of the 4th month of the Plan Year, and the prior Plan Year "adjusted funding target attainment percentage" is at least seventy percent (70%) but less than eighty percent (80%).

(A) Presumed adjusted funding target attainment percentage. Application of this paragraph. If this paragraph (2) applies to a Plan for a Plan Year and the date of the enrolled actuary's certification of the "adjusted funding target attainment percentage" under Regulations Section 1.436-1(h)(4) for the prior Plan Year (taking into account the special rules for late certifications under Regulations Section 1.436-1(h)(1)(ii)(B)) occurred before the first day of the 4th month of the current Plan Year, then, commencing on the first day of the 30th month of the current Plan Year:

- (i) The presumed "adjusted funding target attainment percentage" of the Plan for the Plan Year is reduced by 10 percentage points; and
- (ii) The first day of the 4th month of the Plan Year is a "Section 436 measurement date."

(B) Certification for prior Plan Year. If this paragraph (2) applies to a Plan and the date of the enrolled actuary's certification of the "adjusted funding target attainment



percentage" under Regulations Section 1.436-1(h)(4) for the prior Plan Year (taking into account the rules for late certifications under Regulations Section 1.436-1(h)(1)(ii)(B)) occurs on or after the first day of the 4th month of the current Plan Year, then, commencing on the date of that prior Plan Year certification:

(i) The presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to 10 percentage points less than the prior Plan Year "adjusted funding target attainment percentage"; and

(ii) The date of the prior Plan Year certification is a "Section 436 measurement date."

(C) Duration of use of presumed "adjusted funding target attainment percentage." If this paragraph (2) applies to a Plan for a Plan Year, the presumed adjusted funding target attainment percentage determined under this paragraph (2) applies until the earliest of:

(i) The first day of the 10th month of the Plan Year if paragraph (3) of this section applies;

(ii) The date of a change in the presumed "adjusted funding target attainment percentage" under Regulations Section 1.436-1(g)(4); or

(iii) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year.

(3) Presumption of underfunding beginning on first day of 10th month. In any case in which no certification of the specific adjusted funding target attainment percentage for the current Plan Year under Regulations Section 1.436-1(h)(4) is made with respect to the Plan before the first day of the 10th month of the Plan Year, then, commencing on the first day of the 10th month of the current Plan Year:

(A) The presumed "adjusted funding target attainment percentage" of the Plan for the Plan Year is presumed to be less than sixty percent (60%); and

(B) The first day of the 10th month of the Plan Year is a "Section 436 measurement date."

**(h) Treatment of Plan as of Close of Prohibited or Cessation Period.**

(1) Application to prohibited payments and accruals.

(A) Resumption of prohibited payments. If a limitation on prohibited payments under Section (d) of this Article applied to a Plan as of a "Section 436 measurement date," but that limit no longer applies to the Plan as of a later "Section 436 measurement date," then the limitation on prohibited payments under the Plan does not apply to benefits with "annuity starting dates" that are on or after that later "Section 436 measurement date." Any amendment to eliminate an optional form of benefit that contains a prohibited payment with respect to an "annuity starting date" during a period in which the limitations of Code Section 436(d) and Regulations Section 1.436-1(d) do not apply to the Plan is subject to the rules of Code Section 411(d)(6).

(B) Resumption of benefit accruals. If a limitation on benefit accruals under Regulations Section 1.436-1(e) applied to a Plan as of a "Section 436 measurement date,"



but that limit no longer applies to the Plan as of a later "Section 436 measurement date," then that limitation does not apply to benefit accruals that are based on service on or after that later "Section 436 measurement date," except to the extent that the Plan provides that benefit accruals will not resume when the limitation ceases to apply. The Plan will comply with the rules relating to partial years of participation and the prohibition on double promotion under Department of Labor regulation 29 CFR Section 2530.204-2(c) and (d).

(2) Restoration of options and missed benefit accruals. If elected at Amendment Section 2.5, then Participants who had an "annuity starting date" within a period during which a limitation under Regulations Section 1.436-1(d) applied to the Plan will be provided with the opportunity to have a new "annuity starting date" (which would constitute a new "annuity starting date" under Code Sections 415 and 417) under which the form of benefit previously elected may be modified, subject to applicable qualification requirements, once the limitations of Regulations Section 1.436-1(d) cease to apply. In addition, subject to the rules of Regulations Section 1.436-1(e)(3) and any election made at Amendment Section 2.5, the Plan will automatically restore benefit accruals that had been limited under Code Section 436(e) as of the "Section 436 measurement date" that the limitation ceases to apply.

(3) Shutdown and other unpredictable contingent event benefits. If unpredictable contingent event benefits with respect to an unpredictable contingent event that occurs during the Plan Year are not permitted to be paid after the occurrence of the event because of the limitations of Code Section 436(b) and Regulations Section 1.436-1(b), but are permitted to be paid later in the Plan Year as a result of additional contributions under Regulations Section 1.436-1(f)(2) or pursuant to the enrolled actuary's certification of the "adjusted funding target attainment percentage" for the Plan Year that meets the requirements of Regulations Section 1.436-1(g)(5)(i)(B), then those unpredictable contingent event benefits must automatically become payable, retroactive to the period those benefits would have been payable under the terms of the Plan (other than Plan terms implementing the requirements of Code Section 436(b)). If the benefits do not become payable during the Plan Year in accordance with the preceding sentence, then the Plan is treated as if it does not provide for those benefits. However, all or any portion of those benefits can be restored pursuant to a Plan amendment that meets the requirements of Code Section 436(c) and Regulations Section 1.436-1(c) and other applicable qualification requirements.

(4) Treatment of Plan amendments that do not take effect. If a Plan amendment does not take effect as of the effective date of the amendment because of the limitations of Code Section 436(c) and Regulations Section 1.436-1, but is permitted to take effect later in the Plan Year as a result of additional contributions under paragraph Regulations Section 1.436-1(f)(2) or pursuant to the enrolled actuary's certification of the "adjusted funding target attainment percentage" for the Plan Year that meets the requirements of paragraph Regulations Section 1.436-1(g)(5)(i)(C), then the Plan amendment must automatically take effect as of the first day of the Plan Year (or, if later, the original effective date of the amendment). If the Plan amendment cannot take effect during the Plan Year, then it must be treated as if it were never adopted, unless the Plan amendment provides otherwise.

(i) **Definitions.** Defined terms shall have the meaning set forth below and as contained in Regulations Section 1.436-1(g) and shall be interpreted consistent with said Regulations.

(1) The term "adjusted funding target attainment percentage" means the "funding target attainment percentage" per paragraph (A) below, and increasing each of the amounts under subparagraphs (A) and (B) of Code Section 438(d)(2) by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in Code Section 414(q)) which were made by the Plan during the preceding two (2) Plan Years.



(A) The term "funding target attainment percentage" has the same meaning given such term by Code Section 430(d)(2) and the Regulations thereunder, except as otherwise provided herein. However, in the case of Plan Years beginning in 2008, the "funding target attainment percentage" for the preceding Plan Year may be determined using such methods of estimation as the Secretary may provide.

(B) Application to plans which are fully funded without regard to reductions for funding balances.

(1) In general. In the case of a Plan for any Plan Year, if the "funding target attainment percentage" is one hundred percent (100%) or more (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)), the "funding target attainment percentage" for purposes of paragraphs (1) and (1)(A) above shall be determined without regard to such reduction.

(2) Transition rule. Subparagraph (B)(1) shall be applied to Plan Years beginning after 2007 and before 2011 by substituting for "one hundred percent (100%)" the applicable percentage determined in accordance with the following table:

In the case of a Plan Year beginning in calendar year:	The applicable percentage is:
--	-------------------------------

2008	92%
2009	94%
2010	96%

(3) Subparagraph (B)(2) shall not apply with respect to the current Plan Year unless the "funding target attainment percentage" (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)) of the Plan for each preceding Plan Year beginning after 2007 and before the current Plan Year was not less than the applicable percentage with respect to such preceding Plan Year determined under subparagraph (B)(2).

(2) Section 436 measurement date. A "Section 436 measurement date" is the date that is used to determine when the limitations of Code Sections 436(d) and 436(e) apply or cease to apply, and is also used for calculations with respect to applying the limitations of Sections (b) and (c) of this Article.

(3) Annuity starting date. The term "annuity starting date" means the annuity starting date as defined in Regulations Section 1.436-1(j)(2).

(4) Unpredictable contingent event benefit. The term "unpredictable contingent event benefit" means an unpredictable contingent event as defined in Regulations Section 1.436-1(j)(9).

### ARTICLE XIII HEART ACT PROVISIONS

13.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death. Moreover, the Plan will credit the Participant's



qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

- 13.2 **Benefit accrual.** If, pursuant to Amendment Section 2.6, the City elects to apply this Section 13.2, then effective on or after the effective date specified in Section 2.6, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated said employment on the actual date of death or disability.

- (a) **Determination of benefits.** The Plan will determine the amount of employee contributions, if any, of an individual treated as reemployed under this Section 13.2 for purposes of applying Code Section 414(u)(8)(C) on the basis of the individual's average actual employee contributions for the lesser of: (i) the 12-month period of service with the employer immediately prior to qualified military service; or (ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

- 13.3 **Differential wage payments.** For years beginning after December 31, 2008:

(i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation for purposes of Code Section 415(c)(3) and Regulations Section 1.415(c)-2 (e.g. for purposes of Code Section 415, top heavy provisions of Code Section 416 and determination of highly compensated employees under Code Section 414(q)), and

(iii) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(n)(1)(C) (or any corresponding plan provisions, including, but not limited to, Plan provisions related to the average deferral percentage or average contribution percentage, to the extent applicable) by reason of any contribution or benefit which is based on the differential wage payment. Differential wage payments (as described herein) shall constitute compensation for all Plan purposes.

- (a) **Nondiscrimination Requirements.** Provided, however, for purposes of subparagraph (iii), all employees of the employer (as determined under Code Section 414(b), (c), (m) and (o)) performing service in the uniformed services described in Code Section 3401(h)(2)(A) shall be entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions, if contributions are permitted, based on the payments on reasonably equivalent terms (taking into account the provisions of Code Section 410(b)(3), (4) and (5) to the extent applicable).

- 13.4 **Deemed Severance.** As provided in Section 2.6, the Plan does not permit distribution upon deemed severance of employment.

#### ARTICLE XIV CHANGE IN APPLICABLE INTEREST RATE AND APPLICABLE MORTALITY ASSUMPTION

- 14.1 **Effective date.** Except as provided in regulations or other guidance by the Pension Benefit Guaranty Corporation (PBGC) and IRS, to the extent said regulations or guidance is applicable in



this Plan, the limitations of this Article shall first apply in determining the amount payable to a Participant having an annuity starting date in a Plan Year beginning on or after January 1, 2008.

- 14.2 **Applicable interest rate.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate" or "applicable mortality table" used for purposes of Code Section 417(e), any provision prescribing the use of the annual rate of interest on 30-year U.S. Treasury securities shall be implemented by instead using the rate of interest determined by the applicable interest rate described by Code Section 417(e) after its amendment by PPA. Specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) for the calendar month (lookback month) before the first day of the Plan Year in which the annuity starting date occurs (stability period). For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:

- (a) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and
- (b) Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(i)(II)" for "Section 412(b)(5)(B)(ii)(II)," and
- (c) The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.

- 14.3 **Applicable mortality assumption.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate," any Plan provision directly or indirectly prescribing the use of the mortality table described in Revenue Ruling 2001-62 shall be amended to prescribe the use of the applicable annual mortality table within the meaning set forth in Code Section 417(e)(3)(B), as initially described in Revenue Ruling 2007-57.

#### ARTICLE XV 2009 REQUIRED MINIMUM DISTRIBUTIONS (IRC SECTION 401(a)(9)(H))

- 15.1 Notwithstanding anything to the contrary in the Plan to the contrary:

- (a) **Suspension of Required Minimum Distributions for 2009.** A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated "Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence; and



(b) **Direct Rollovers.** For purposes of applying the direct rollover provisions of the Plan, a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(H).

This amendment is hereby executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF GRAND ISLAND, a Nebraska municipality

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



RESOLUTION 2011-316

WHEREAS, the City of Grand Island currently has a contract with Wells Fargo for the Police Officers' Retirement System Plan and Trust.

WHEREAS, The City's retirement plan documents must incorporate recent changes to pension laws and regulations for which plan documents need to be updated.

WHEREAS, the City must change retirement plan documents to incorporate laws and regulations for which plan documents need to be updated at no additional cost to the City.

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 for such services on behalf of the City of Grand Island. City Administration recommends that the Council approve Amendment 1 to the Police Officers Retirement System Plan and Trust with Wells Fargo.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, October 25, 2011.

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

Attest:

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





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item G10

**#2011-317 - Approving Amending the City of Grand Island  
Firefighters' Retirement System Plan and Trust for Changes in the  
Applicable Tax Laws**

Staff Contact: Jaye Monter



# **Council Agenda Memo**

**From:** Mary Lou Brown, City Administrator

**Meeting:** October 25, 2011

**Subject:** Amending the City of Grand Island Firefighters' Retirement System Plan and Trust for Changes in the Applicable Tax Laws.

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

**Presenter(s):** Jaye Monter, Interim Finance Director

## **Background**

Amendment No. 1 to the City's retirement plan documents incorporates recent changes to pension laws and regulations for which plan documents need to be updated. Following is a brief summary of each article of the amendment. Generally, requirements must be included in plan documents. However, some provisions do not apply because this is a government plan or for other reasons, as noted. All provisions nevertheless are included in the amendment to provide a record of applicable authority for reference when the plan is required to be restated in a few years.

## **Discussion**

### **ART EXPLANATION**

- |            |  |
|------------|--|
| <b>I</b>   | General provisions regarding amendment, effective date, etc.   |
| <b>II</b>  | Summary of provisions covered in the amendment.  |
| <b>III</b> | Specifies actuarial factors – i.e. interest rate and mortality table – that must be used to determine compliance with limitations on benefits imposed by Internal Revenue Code §415. |
| <b>IV</b>  | Any beneficiary under a qualified plan who is not a spouse and is entitled to a benefit eligible for a rollover can directly roll the distribution over to an IRA.                   |
| <b>V</b>   | After-tax contributions received in a distribution, if any, can be rolled over, as well, to certain types of retirement plans.   |
| <b>VI</b>  | Extends period for giving participants notice of distributions from 90 to 180 days. Notice of distributions must include a statement of the effect of delaying                       |



distributions and explanation of relative values of optional forms of benefit. Requirements do not apply to governmental plans.

- VII** Domestic relations order directing division of benefits upon a participant's divorce will not fail in certain cases due to the timing of issuance of the order.
- VIII** No in-service distributions are allowed upon reaching early retirement age.
- IX** Participants are allowed to elect qualified optional survivor annuity permitted under the plan. Requirements do not apply to governmental plans.
- X** Direct rollover of a lump sum distribution is permitted to a ROTH IRA.
- XI** Substitute "severance from employment", a defined term in the Internal Revenue Code, for "separation from service" for required "top heavy" nondiscrimination testing of the plan. Governmental plans are exempt from top heavy testing.
- XII** Changes to reflect new laws and regulations adopted in recent years regarding underfunded pension plans, specifically restricting optional payments and additional benefit accruals while a plan is in an underfunded state, and requiring annual reporting to plan participants. Requirements do not apply to governmental plans.
- XIII** Incorporate required changes for plan participants in military service, some of which do not apply because of unique terms of the plan.
- XIV** Incorporate certain interest rate and mortality assumptions for lump sum payouts and other plan provisions, to the extent applicable.
- XV** Reflect suspension of 2009 required minimum distributions for participants who reach the later of 70 ½ and retirement.

### **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 Amendment to the Firefighters' Retirement System Plan and Trust with Wells Fargo.

### **Motion**

Move to approve the Amended Services Agreement with Wells Fargo.



**CITY OF GRAND ISLAND, NEBRASKA FIREFIGHTERS'  
RETIREMENT SYSTEM PLAN AND TRUST ("PLAN")**

**AMENDMENT NO. 1**

**ARTICLE I  
PREAMBLE**

- 1.1 **Plan and amendment authority.** The City of Grand Island, a Nebraska municipality, ("City" or "Employer") maintains the City of Grand Island, Nebraska Firefighters' Retirement System Plan and Trust pursuant to Neb. Rev. Stat. Sections 16-1020 through 16-1042 and Internal Revenue Code, Sections 401(a) and 501(a), as set forth in the Adoption Agreement and corresponding Basic Municipal Employees Plan and Trust Agreement, ("Plan"), and hereby adopts and approves this Amendment No. 1 to the Plan and authorizes the Mayor or his designee to execute it below.
- 1.2 **Effective date of Amendment.** This Amendment is effective as indicated below for the respective provisions; provided, however, that an effective date shall not be earlier than the effective date of the Plan.
- 1.3 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent these provisions are inconsistent with the provisions of this Amendment.
- 1.4 **Construction.** Provisions of this Amendment that are applicable to a defined benefit plan are included to the extent the Plan provides a minimum defined benefit. Except as otherwise provided in this Amendment, any reference to "Article" or "Section" in this Amendment refers only to articles or sections within this Amendment, and is not a reference to the Plan.
- 1.5 **Effect of restatement of Plan.** If the City of Grand Island restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated into a plan document which incorporates Pension Protection Act of 2006 ("PPA"), and other provisions herein for subsequent legislation and guidance).

**ARTICLE II  
CITY ELECTIONS**

- 2.1 **Applicable Provisions.** Unless the City otherwise specifies in this Amendment, the following will apply:
  - a. The applicable mortality table described in Amendment Section 3.3.3(c) is effective for years beginning after December 31, 2008.
  - b. Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.
  - c. In-Service distributions prior to Normal Retirement Age are not permitted.
  - d. Once Code Section 436 benefit restrictions no longer apply, the Amendment provides for the (1) automatic restoration of benefit accruals, and (2) no "annuity starting date"; provided, however, Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and



exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being excluded from the funding requirements of Code Section 412.

e. Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided. Distributions upon deemed severance of employment under the HEART Act are not permitted.

f. The applicable interest rate shall be based on the first month (lookback month) prior to the Plan Year (stability period) during which a distribution is made.

2.2 **Effective date of applicable mortality table set forth in Amendment Section 3.3.3(e).** The applicable mortality table described in Amendment Section 3.3.3(e) is effective for years beginning after December 31, 2008.

2.3 **Non-spousal rollovers (Article IV).** Nonspousal beneficiary rollovers shall be permitted effective for distributions made on or after January 1, 2008.

2.4 **In-service distributions (Article VIII).** In-Service Distributions prior to Normal Retirement Age are not permitted.

2.5 **Code Section 436 Benefit Restrictions (Article XII)**

**Treatment of Plan as of Close of Prohibited or Cessation Period (Section XII(h)).** Unless otherwise elected below, accruals that had been limited under Code Section 436(e) will be automatically restored as of the "Section 436 measurement date" that the limitation ceases to apply; and

**Accelerated Benefit Distributions (Section XII(h)).** Unless otherwise elected below, (1) there is no new "annuity starting date" with respect to payments made as a result of the benefit limitations no longer being applicable, and (2) there are no optional forms of benefit that are only available for the period of the benefit restrictions;

Provided, however, the Code Section 436 benefit restriction provisions do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being excluded from the funding requirements of Code Section 412.

2.6 **Continued benefit accruals and distributions upon deemed severance (Article XIII).** Continued benefit accruals for the Heart Act (Amendment Section 13.2) will not apply. Further, distributions upon deemed severance of employment under the HEART Act (Amendment Section 13.4) will not be permitted.

2.7 **Applicable interest rate.** For purposes of Amendment Section 14.2, unless otherwise elected below, the stability period is the Plan Year during which a distribution is made and the lookback month is the first calendar month preceding the first day of the stability period.

### **ARTICLE III PENSION FUNDING EQUITY ACT OF 2004 AS MODIFIED BY SUBSEQUENT LEGISLATION**

3.1 **General Rule.** This Article applies to the determination of Code Section 415 limits.

3.1.1 **Effective date.** The City adopts this Article III to reflect certain provisions of the Pension Funding Equity Act of 2004 (PFEA), as modified by the Pension Protection Act of 2006 and the



Worker, Retiree and Employer Recovery Act of 2008. Except as otherwise provided herein, effective for distributions in Plan Years beginning after December 31, 2003, the required determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with this Amendment. However, this Amendment does not supersede any prior election to apply the transition rule of section 101(d)(3) of PFEA as described in Notice 2004-78.

**3.1.2 Definition of "Applicable Mortality Table."** The "applicable mortality table" means the applicable mortality table within the meaning of Code Section 417(e)(3)(B) (as described in Article XIV), subject to any special effective dates specified in this Article III.

## **3.2 Benefit Forms Not Subject to the Present Value Rules of Code Section 417(e)(3)**

**3.2.1 Form of benefit.** The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Section 3.2 if the form of the Participant's benefit is either:

- (a) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or
- (b) An annuity that decreases during the life of the Participant merely because of:
  - (1) The death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or
  - (2) The cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

**3.2.2 Limitation Years beginning before July 1, 2007 --** For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount:

- (a) the interest rate and mortality table (or other tabular factor specified in the Plan for adjusting benefits in the same form; and
- (b) a 5 percent interest rate assumption and the "applicable mortality table" defined in the Plan for that annuity starting date.

**3.2.3 Limitation Years beginning on or after July 1, 2007.** For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

- (a) The annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the Participant's form of benefit, and
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in the Plan for that annuity starting date.



### **3.3 Benefit Forms Subject to the Present Value Rules of Code Section 417(e)(3).**

**3.3.1 Form of benefit.** The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined as indicated under this Section 3.3 if the form of the Participant's benefit is other than a benefit form described in Section 3.2.1 above.

**3.3.2 Annuity Starting Date in small plans for Plan Years Beginning in 2009 and later.** Notwithstanding anything in this Amendment to the contrary, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in or after 2009, and if the Plan is maintained by an eligible employer as defined in Code Section 408(p)(2)(C)(i), the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount:

- (a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and
- (b) A 5.5 percent interest rate assumption and the applicable mortality table described in Article XIV.

**3.3.3 Annuity Starting Date in Plan Years Beginning After 2005.** Except as provided in Section 3.3.2, if the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after December 31, 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

- (a) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form;
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below); and
- (c) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate for the distribution under Treasury Regulations Section 1.417(e)-1(d)(3) (determined in accordance with Article XIV for Plan Years after the effective date of that Article) and the applicable mortality table for the distribution under Treasury Regulations Section 1.417(e)-1(d)(2) (determined in accordance with Article XIV for Plan Years after the effective date specified below), divided by 1.05.

The effective date of the applicable mortality table above is for years beginning after December 31, 2008.

**3.3.4 Annuity Starting Date in Plan Years Beginning in 2004 or 2005** – If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as



the participant's form of benefit, computed using whichever of the following produces the greater annual amount:

(a) The interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and

(b) A 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Regulations Section 1.417(e)-1(d)(2).

However, this Section does not supersede any prior election to apply the transition rule of section 101(d)(3) of PFEA as described in Notice 2004-78.

#### **ARTICLE IV DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION**

- 4.1 **Non-spouse beneficiary rollover right (for distributions on or after January 1, 2008).** A non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Code Section 401(a)(31).
- 4.2 **Applicability of certain requirements.** For Plan Years beginning on or after January 1, 2010, any direct rollover of a distribution by a nonspouse beneficiary shall be subject to the direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B)), the notice requirements of Code Section 402(f) and the mandatory withholding requirements of Code Section 3405(e). Before that date, any such distribution shall not be subject to said requirements. Any distribution from the Plan to a non-spouse beneficiary shall not be eligible for a 60-day (non-direct) rollover.
- 4.3 **Trust beneficiary.** Subject to Section 4.1, if the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).
- 4.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary is not permitted to roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

#### **ARTICLE V ROLLOVER OF AFTER-TAX AMOUNTS**

- 5.1 **Direct rollover to qualified plan/403(b) plan (for taxable years beginning after December 31, 2006).** A Participant may elect to transfer employee after-tax contributions, if any, by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred (including interest thereon), including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.



**ARTICLE VI  
PARTICIPANT DISTRIBUTION NOTIFICATION**

- 6.1 **180-day notification period** (effective for distribution notices in Plan Years beginning after December 31, 2006). Reference to the 90-day maximum notice period requirements of Code Sections 402(f) (the rollover notice), 411(a)(11) (Participant's consent to distribution), and 417 (notice regarding the joint and survivor annuity rules), if any, is changed to 180 days.
- 6.2 **Effect of delay of distribution.** Notices given to Participants pursuant to Code Section 411(a)(11) in Plan Years beginning after December 31, 2006, if any, shall include a description of the consequences of failing to defer a distribution, including (i) for any individual account balance, a description of investment options available under the Plan (including fees) that will be available if the Participant defers distribution, (ii) for any defined benefit, how much larger benefits will be if the commencement of distributions is deferred, and (iii) the portion of the summary plan description that contains any special rules that might affect materially a Participant's decision to defer.
- 6.3 **Explanation of relative value.** Notices to Participants shall include the relative values of the various optional forms of benefit under the Plan as provided in Treasury Regulations Section 1.417(a)-3, to the extent said Regulations are applicable to the Plan. This provision is effective as of the applicable effective date set forth in Treasury Regulations (i.e., to qualified pre-retirement survivor annuity explanations provided on or after July 1, 2004; to qualified joint and survivor annuity explanations with respect to any distribution with an annuity starting date that is on or after February 1, 2006, or on or after October 1, 2004 with respect to any optional form of benefit that is subject to the requirements of Code Section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value as determined under Code Section 417(e)(3)). Provided, however, pursuant to the flush language of Code Section 401(a) and Code Section 411(e)(1)(B), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article VI, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

**ARTICLE VII  
QUALIFIED DOMESTIC RELATIONS ORDERS**

- 7.1 **Permissible QDROs** (effective on and after April 6, 2007). For purposes of provisions of the Plan regarding domestic relations orders, if any, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order (QDRO) will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.
- 7.2 **Other QDRO requirements apply.** A domestic relations order described in Section 7.1 is subject to the same requirements and protections that apply to any other QDRO.

**ARTICLE VIII  
PRE-RETIREMENT PENSION IN-SERVICE DISTRIBUTIONS**

- 8.1 **No age 62 in-service distributions.** As specified in Amendment Section 2.4, a Participant who has attained the specified age and who is not separated from employment may not elect to receive a distribution of his or her vested Accrued Benefit.



**ARTICLE IX**  
**QUALIFIED OPTIONAL SURVIVOR ANNUITY**

- 9.1 **Right to Elect Qualified Optional Survivor Annuity (effective for distributions with annuity starting dates in Plan Years beginning after December 31, 2007).** A Participant who elects to waive the qualified joint and survivor annuity form of benefit under the Plan, if provided for under the Plan, shall be entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity, if required, shall explain the terms and conditions of the "qualified optional survivor annuity." Provided, however, the following rules apply in the specified circumstances:

(a) **Special Effective Date Rules.**

1. If the Plan permits retroactive annuity starting dates and a Participant elects a distribution with a retroactive annuity starting date (pursuant to Treasury Regulations Section 1.417(e)-1(b)(3)(iv)) that is before the aforementioned effective date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of applying the rules of this paragraph.

2. In the case of a plan that is subject to Code Section 401(a)(11) and that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006 (the date of enactment of PPA '06), the changes to Code Section 417 made by Section 1004 of PPA '06 apply to distributions with annuity starting dates during plan years beginning on or after the earlier of (i) January 1, 2008 or, if later, the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extensions to a collective bargaining agreement made after August 17, 2006), or (ii) January 1, 2009.

(b) **Inapplicability to Governmental Plans.** Pursuant to the flush language of Code Section 401(a) and the provisions of Code Section 411(e)(1)(A), the provisions of Code Sections 401(a)(11) and 417, and consequently this Article IX, shall not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d).

9.2 **Definition of Qualified Optional Survivor Annuity.**

(a) For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:

- (1) For the life of the Participant with a survivor annuity for the life of the Participant's spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the Participant's spouse, and
- (2) Which is the actuarial equivalent of a single annuity for the life of the Participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(b) For purposes of this Section, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the Participant and the spouse). If the survivor annuity percentage is less than seventy-five percent (75%), then the "applicable percentage" is seventy-five percent (75%). If the



survivor annuity percentage is equal to or greater than seventy-five percent (75%), the "applicable percentage" is fifty percent (50%).

#### **ARTICLE X DIRECT ROLLOVER TO ROTH IRA**

- 10.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a Participant or beneficiary may elect to roll over directly an "eligible rollover distribution" to a Roth IRA described in Code Section 408A(b); provided, however, for taxable years beginning before January 1, 2018, an individual cannot make a qualified rollover contribution from an eligible retirement plan other than a Roth IRA if, for the year the eligible rollover distribution is made, he or she has modified adjusted gross income exceeding \$100,000 or is married and files a separate return. For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in Article V, if applicable.

#### **ARTICLE XI TOP-HEAVY PROVISIONS**

- 11.1 **Severance from employment.** Effective for any Plan Year beginning after December 31, 2001, any provisions of the Plan setting forth the top-heavy provisions of Code Section 416 are modified by substituting the term "separation from service" with "severance from employment."

#### **ARTICLE XII BENEFIT RESTRICTIONS**

- (a) **Effective Date and Application of Article.**

(1) **Effective Date.** The provisions of this Article apply to Plan Years beginning after December 31, 2007.

(2) This Article only applies to single employer plans (a plan that is not a multiemployer plan within the meaning of Code Section 414(f)) and does not apply to a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers.

(A) **Multiple Employer Plans.** In the case of a multiple employer plan to which Code Section 413(c)(4)(A) applies, Code Section 436 applies separately with respect to each employer under the plan, as if each employer maintained a separate plan. Thus, the benefit limitations under Code Section 436 could apply differently to participants who are employees of different employers under such a multiple employer plan. In the case of a multiple employer plan to which Code Section 413(c)(4)(A) does not apply (that is, a plan described in Code Section 413(c)(4)(B) that has not made the election for Code Section 413(c)(4)(A) to apply), Code Section 436 applies as if all participants in the plan were employed by a single employer.

(B) **Governmental Plans.** Code Section 436 benefit restrictions and other provisions described in this Article do not apply to this Plan because it is a governmental plan within the meaning of Code Section 414(d) and exempt from the requirements of Code Sections 401(a)(29) and 436 by reason of being exempt from the funding requirements of Code Section 412.

(3) The limitations described in Subsections (b), (c) and (e) do not apply to the Plan for the first five (5) Plan Years of the Plan. Except as otherwise provided by the Commissioner in guidance of general applicability, the Plan Years taken into account for this purpose include the following (in addition to Plan Years during which the Plan was maintained by the Employer):



(A) Plan Years when the Plan was maintained by a predecessor employer within the meaning of Regulations Section 1.415(f)-1(v)(1);

(B) Plan years of another defined benefit plan maintained by a predecessor employer within the meaning of Regulations Section 1.415(f)-1(c)(2) within the preceding five years if any Participants in the Plan participated in that other defined benefit plan (even if the Plan maintained by the Employer is not the plan that was maintained by the predecessor employer); and

(C) Plan years of another defined benefit plan maintained by the Employer within the preceding five years if any Participants in the Plan participated in that other defined benefit plan.

(4) Notwithstanding anything in this Article to the contrary, the provision of Code Section 436 and the Regulations thereunder are incorporated herein by reference.

(5) For Plans that have a valuation date other than the first day of the Plan Year, the provisions of Code Section 436 and this Article will be applied in accordance with Regulations.

**(b) Funding-Based Limitation on Shutdown Benefits and Other Unpredictable Contingent Event Benefits**

(1) In general, If a Participant is entitled to an "unpredictable contingent event benefit" payable with respect to any event occurring during any Plan Year, then such benefit may not be provided if the "adjusted funding target attainment percentage" for such Plan Year (A) is less than sixty percent (60%) or, (B) sixty percent (60%) or more, but would be less than sixty percent (60%) percent if the "adjusted funding target attainment percentage" were redetermined applying an actuarial assumption that the likelihood of occurrence of the "unpredictable contingent event" during the Plan Year is one hundred percent (100%).

(2) Exemption. Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(iii).

**(c) Limitations on Plan Amendments Increasing Liability for Benefits**

(1) In general, No amendment which has the effect of increasing liabilities of the Plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any Plan Year if the "adjusted funding target attainment percentage" for such Plan Year is:

(A) less than eighty percent (80%), or

(B) eighty percent (80%) or more, but would be less than eighty percent (80%) if the benefits attributable to the amendment were taken into account in determining the "adjusted funding target attainment percentage."

(2) Exemption. Paragraph (c)(1) above shall cease to apply with respect to a Plan amendment upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(iv).

(3) Exception for certain benefit increases. Paragraph (1) shall not apply to any amendment as otherwise provided in Regulations Section 1.436-1(c).



(d) **Limitations on Prohibited Payments**

(1) Funding percentage less than sixty percent (60%). If the Plan's "adjusted funding target attainment percentage" for a Plan Year is less than sixty percent (60%), then a Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date."

(2) Bankruptcy. A Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" that occurs during any period in which the Employer is a debtor in a case under Title 11, United States Code, or similar Federal or State law. The preceding sentence shall not apply to payments made within a Plan Year with an "annuity starting date" that occurs on or after the date on which the enrolled actuary of the Plan certifies that the "adjusted funding target attainment percentage" of the Plan is not less than one hundred percent (100%).

(3) Limited payment if percentage at least sixty percent (60%) but less than eighty percent (80%) percent.

(A) In general. If the Plan's "adjusted funding target attainment percentage" for a Plan Year is sixty percent (60%) or greater but less than eighty percent (80%), then a Participant or Beneficiary shall not be permitted to elect, and the Plan may not pay, any "prohibited payment" with an "annuity starting date" on or after the applicable "Section 436 measurement date," unless the present value (determined in accordance with Code Section 417(e)(3)) of the portion of the benefit that is being paid in a "prohibited payment" (which portion is determined under paragraph (C)(i) below) does not exceed the lesser of:

(i) fifty (50) percent of the amount of the present value (determined in accordance with Code Section 417(e)(3)) of the benefit payable in the optional form of benefit that includes the prohibited payment; or

(ii) 100% of the "PBGC maximum benefit guarantee amount."

(B) Bifurcation if optional form unavailable.

(i) Requirement to offer bifurcation. If an optional form of benefit that is otherwise available under the terms of the plan is not available as of the "annuity starting date" because of the application of Regulations Section 1.436-1(d)(3)(i), then the Participant or Beneficiary may elect to:

(1) Receive the unrestricted portion of that optional form of benefit (determined under the rules of Regulations Section 1.436-1(d)(3)(ii)(D)) at that "annuity starting date," determined by treating the unrestricted portion of the benefit as if it were the Participant's or Beneficiary's entire benefit under the plan;

(2) Commence benefits with respect to the Participant's or Beneficiary's entire benefit under the Plan in any other optional form of benefit available under the Plan at the same "annuity starting date" that satisfies Regulations Section 1.436-1(d)(3)(i); or

(3) Defer commencement of the payments to the extent described in Regulations Section 1.436-1(d)(5).



(ii) Rules relating to bifurcation. If the Participant or Beneficiary elects payment of the unrestricted portion of the benefit as described in Regulations Section 1.436-1(d)(3)(i)(A)(1), then the Participant or Beneficiary may elect payment of the remainder of the Participant's or Beneficiary's benefits under the Plan in any optional form of benefit at that "annuity starting date" otherwise available under the Plan that would not have included a "prohibited payment" if that optional form applied to the entire benefit of the Participant or Beneficiary. The rules of Regulations Section 1.417(e)-1 are applied separately to the separate optional forms for the "unrestricted portion of the benefit" and the remainder of the benefit (the restricted portion).

(iii) Plan alternative that anticipates election of payment that includes a "prohibited payment." With respect to every optional form of benefit that includes a "prohibited payment" and that is not permitted to be paid under Regulations Section 1.436-1 (d)(3)(i), for which no additional information from the Participant or Beneficiary (such as information regarding a Social Security leveling optional form of benefit) is needed to make that determination, rather than wait for the Participant or Beneficiary to elect such optional form of benefit, the Plan will provide for separate elections with respect to the restricted and unrestricted portions of that optional form of benefit.

(C) Definitions applicable to limited payment option. The following definitions apply for purposes of this subsection (d)(3).

(i) Portion of benefit being paid in a prohibited payment. If a benefit is being paid in an optional form for which any of the payments is greater than the amount payable under a straight life annuity to the Participant or Beneficiary (plus any Social Security supplements described in the last sentence of Code Section 411(e)(9) payable to the Participant or Beneficiary) with the same "annuity starting date," then the portion of the benefit that is being paid in a "prohibited payment" is the excess of each payment over the smallest payment during the Participant's lifetime under the optional form of benefit (treating a period after the "annuity starting date" and during the Participant's lifetime in which no payments are made as a payment of zero).

(ii) PBGC maximum benefit guarantee amount. The "PBGC maximum benefit guarantee amount" is the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under Code Section 417(e)) of the maximum benefit guarantee with respect to a Participant (based on the Participant's age or the Beneficiary's age at the "annuity starting date") under ERISA Section 4022 for the year in which the "annuity starting date" occurs.

(iii) Unrestricted portion of the benefit:

(1) General rule. Except as otherwise provided in this paragraph (iii), the unrestricted portion of the benefit with respect to any optional form of benefit is fifty percent (50%) of the amount payable under the optional form of benefit.

(2) Special rule for forms which include Social Security leveling or a refund of employee contributions. For an optional form of benefit that is a prohibited payment on account of a Social Security leveling feature (as defined in Regulations Section 1.411(d)-3(g)(16)) or a refund of



employee contributions feature (as defined in Regulations Section 1.411(d)-3(g)(11)), the unrestricted portion of the benefit is the optional form of benefit that would apply if the Participant's or Beneficiary's Accrued Benefit were fifty percent (50%) smaller.

(3) Limited to PBGC maximum benefit guarantee amount. After the application of the preceding rules of this paragraph (iii), the unrestricted portion of the benefit with respect to the optional form of benefit is reduced, to the extent necessary, so that the present value (determined in accordance with Code Section 417(e)) of the unrestricted portion of that optional form of benefit does not exceed the "PBGC maximum benefit guarantee amount."

(D) Other Rules.

(i) One time application. If a Participant with respect to whom a prohibited payment (or a series of prohibited payments under a single optional form of benefit) is made pursuant to paragraph (d)(3)(A) or (B) above, no additional prohibited payment may be made with respect to that Participant during any consecutive Plan Years for which prohibited payments are limited under this subsection (d).

(ii) Treatment of beneficiaries. For purposes of this subparagraph (d)(3), benefits provided with respect to a Participant and any Beneficiary of the Participant (including an alternate payee, as defined in Code Section 414(p)(8)) are aggregated. If the only benefits paid under the plan with respect to the Participant are death benefits payable to the Beneficiary, then paragraph (d)(3)(C)(i) of this section is applied by substituting the lifetime of the Beneficiary for the lifetime of the Participant. If the Accrued Benefit of a Participant is allocated to such an alternate payee and one or more other persons, then the "unrestricted amount" of (d)(3)(C)(iii) is allocated among such persons in the same manner as the accrued benefit is allocated, unless a qualified domestic relations order (as defined in Code Section 414(p)(1)(A)) with respect to the Participant or the alternate payee provides otherwise.

(iii) Treatment of annuity purchases and plan transfers. This paragraph (d)(3)(D)(iii) applies for purposes of applying subsections (d)(3)(A) and (d)(3)(C)(ii). In the case of a prohibited payment described in Regulations Section 1.436-1(j)(6)(i)(B) (relating to purchase from an insurer), the present value of the portion of the benefit that is being paid in a prohibited payment is the cost to the plan of the irrevocable commitment and, in the case of a prohibited payment described in Regulations Section 1.436-1(j)(6)(i)(C) (relating to certain plan transfers), the present value of the portion of the benefit that is being paid in a prohibited payment is the present value of the liabilities transferred (determined in accordance with Code Section 414(f)). In addition, the present value of the accrued benefit is substituted for the present value of the benefit payable in the optional form of benefit that includes the prohibited payment in Regulations Section 1.436-1(d)(3)(i)(A).

(4) Exception. This subsection (d) shall not apply for any Plan Year if the terms of the Plan (as in effect for the period beginning on September 1, 2005, and ending with such Plan Year) provide for no benefit accruals with respect to any Participant during such period.



(5) **Right to delay commencement.** If a Participant or Beneficiary requests a distribution in an optional form of benefit that includes a "prohibited payment" that is not permitted to be paid under paragraph (d)(1), (d)(2), or (d)(3) of this Article, then the Participant retains the right to delay commencement of benefits in accordance with the terms of the plan and applicable qualification requirements (such as Code Sections 411(a)(11) and 401(a)(9)).

(6) **"Prohibited payment."** For purposes of this subsection (d), the term "prohibited payment" means:

(A) Any payment for a month that is in excess of the monthly amount paid under a single life annuity (plus any Social Security supplements described in the last sentence of Code Section 411(a)(9)), to a Participant or Beneficiary whose "annuity starting date" occurs during any period a limitation under paragraph (d) is in effect;

(B) Any payment for the purchase of an irrevocable commitment from an insurer to pay benefits; and

(C) Any transfer of assets and liabilities to another plan maintained by the same Employer (or by any member of the Employer's controlled group) that is made in order to avoid or terminate the application of Code Section 436 benefit limitations; and

(D) Any other amount that is identified as a prohibited payment by the Commissioner in revenue rulings and procedures, notices, and other guidance published in the Internal Revenue Bulletin.

Such term shall not include the payment of a benefit which under Code Section 411(a)(11) may be immediately distributed without the consent of the Participant. Furthermore, in the case of a Beneficiary that is not an individual, the amount that is a prohibited payment is determined by substituting the monthly amount payable in installments over 240 months that is actuarially equivalent to the benefit payable to the Beneficiary, as provided in Regulations Section 1.436-1(i)(6)(ii).

**(e) Limitation on Benefit Accruals for Plans with Severe Funding Shortfalls**

(1) In general. If the Plan's "adjusted funding target attainment percentage" for a Plan Year is less than sixty percent (60%), benefit accruals under the Plan shall cease as of the "section 436 measurement date." If the Plan is required to cease benefit accruals under this subsection (e), then the Plan is not permitted to be amended in a manner that would increase the liabilities of the Plan by reason of an increase in benefits or establishment of new benefits. The preceding sentence applies regardless of whether an amendment would otherwise be permissible under subsections (c)(2) or (c)(3) of this Article.

(2) **Exemption.** Paragraph (1) shall cease to apply with respect to any Plan Year, effective as of the first day of the Plan Year, upon payment by the Employer of the contribution described in Regulations Section 1.436-1(f)(2)(v).

(3) **Temporary modification of limitation.** In the case of the first Plan Year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, the provisions of (e)(1) above shall be applied by substituting the Plan's "adjusted funding target attainment percentage" for the preceding Plan Year for such percentage for such Plan Year, but only if the "adjusted funding target attainment percentage" for the preceding year is greater.



**(f) Rules Relating to Contributions Required to Avoid or Terminate Benefit Limitations**

The application of the Code Section 436 benefit limitations may be avoided or terminated in accordance with any of the rules set forth in Code Section 436 and Regulations Section 1.436-1(f).

**(g) Presumed Underfunding for Purposes of Benefit Limitations**

**(1) Presumption of continued underfunding.**

(A) In general. This paragraph (g)(1) applies to a Plan for a Plan Year if a limitation under subsection (b), (c), (d), or (e) applied to the Plan on the last day of the preceding Plan Year. If this paragraph (g)(1) applies to a Plan, then the first day of the Plan Year is a "Section 436 measurement date" and the presumed "adjusted funding target attainment percentage" for the Plan is the percentage under paragraph (g)(1)(B) or (C) of this subsection, whichever applies to the Plan, beginning on that first day of the Plan Year and ending on the date specified in subparagraph (g)(1)(D) of this section.

**(B) Rule where preceding year certification issued during preceding year.**

(i) General rule. In any case in which the Plan's enrolled actuary has issued a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year preceding the current Plan Year before the first day of the current Plan Year, the presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to the prior Plan Year "adjusted funding target attainment percentage" until it is changed under Regulations Section 1.436-1(h)(1)(iv).

(ii) Special rule for late certifications. If the certification of the adjusted funding target attainment percentage for the prior Plan Year occurred after the first day of the 10th month of that prior Plan Year, the Plan is treated as if no such certification was made, unless the certification took into account the effect of any unpredictable contingent event benefits that are permitted to be paid based on unpredictable contingent events that occurred, and any Plan amendments that became effective, during the prior Plan Year but before the certification (and any associated Code Section 436 contributions).

**(C) No certification for preceding year issued during preceding year.**

(i) Decayed percentage continues. In any case in which the Plan's enrolled actuary has not issued a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" of the Plan for the Plan Year preceding the current Plan Year during that prior Plan Year, the presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to the presumed "adjusted funding target attainment percentage" that applied on the last day of the preceding Plan Year until the presumed "adjusted funding target attainment percentage" is changed under Regulations Section 1.436-1(h)(1)(ii)(B) or (h)(1)(iv).

(ii) Enrolled actuary's certification in following year. In any case in which the Plan's enrolled actuary has issued the certification under Regulations Section 1.436-1(h)(4) of the adjusted funding target attainment percentage of the Plan for the Plan Year preceding the current Plan Year on or after the first day of the current Plan Year, the date of that prior Plan Year certification is a new "Section 436 measurement date" for the current Plan Year. In such a case, the presumed



adjusted funding target attainment percentage for the current Plan Year is equal to the prior Plan Year adjusted funding target attainment percentage (reduced by 10 percentage points if Regulations Section 1.436-1(h)(2)(iv) applies to the Plan) until it is changed under Regulations Section 1.436-1(h)(1)(iv). The rules of Regulations Section 1.436-1(h)(1)(i)(B) apply for purposes of determining whether the enrolled actuary has issued a certification of the adjusted funding target attainment percentage for the prior Plan Year during the current Plan Year.

(D) Duration of use of presumed "adjusted funding target attainment percentage." If this paragraph (g)(1) applies to a Plan for a Plan Year, then the presumed "adjusted funding target attainment percentage" determined under this paragraph (g)(1) applies until the earliest of:

- (i) The first day of the 4th month of the Plan Year if paragraph (g)(2) of this section applies;
- (ii) The first day of the 10th month of the Plan Year if paragraph (g)(3) of this section applies;
- (iii) The date of a change in the presumed adjusted funding target attainment percentage under Regulations Section 1.436-1(g)(4); or
- (iv) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year.

(2) Presumption of underfunding beginning on first day of 4th month for certain underfunded plans. This paragraph (2) applies to a Plan for a Plan Year if the enrolled actuary for the Plan has not issued a certification of the "adjusted funding target attainment percentage" for the Plan Year before the first day of the 4th month of the Plan Year, and the Plan's "adjusted funding target attainment percentage" for the preceding Plan Year was either (1) at least sixty percent (60%) but less than seventy percent (70%); or (2) at least eighty percent (80%) but less than ninety percent (90%). This paragraph (2) also applies to a Plan for the first effective Plan Year if the enrolled actuary for the Plan has not issued a certification of the "adjusted funding target attainment percentage" for the Plan Year before the first day of the 4th month of the Plan Year, and the prior Plan Year "adjusted funding target attainment percentage" is at least seventy percent (70%) but less than eighty percent (80%).

(A) Presumed adjusted funding target attainment percentage. Application of this paragraph. If this paragraph (2) applies to a Plan for a Plan Year and the date of the enrolled actuary's certification of the "adjusted funding target attainment percentage" under Regulations Section 1.436-1(h)(4) for the prior Plan Year (taking into account the special rules for late certifications under Regulations Section 1.436-1(h)(1)(i)(B)) occurred before the first day of the 4th month of the current Plan Year, then, commencing on the first day of the 4th month of the current Plan Year:

- (i) The presumed "adjusted funding target attainment percentage" of the Plan for the Plan Year is reduced by 10 percentage points; and
- (ii) The first day of the 4th month of the Plan Year is a "Section 436 measurement date."

(B) Certification for prior Plan Year. If this paragraph (2) applies to a Plan and the date of the enrolled actuary's certification of the "adjusted funding target attainment



percentage" under Regulations Section 1.436-1(h)(4) for the prior Plan Year (taking into account the rules for late certifications under Regulations Section 1.436-1(h)(1)(i)(B)) occurs on or after the first day of the 4th month of the current Plan Year, then, commencing on the date of that prior Plan Year certification:

(i) The presumed "adjusted funding target attainment percentage" of the Plan for the current Plan Year is equal to 10 percentage points less than the prior Plan Year "adjusted funding target attainment percentage"; and

(ii) The date of the prior Plan Year certification is a "Section 436 measurement date."

(C) Duration of use of presumed "adjusted funding target attainment percentage." If this paragraph (2) applies to a Plan for a Plan Year, the presumed adjusted funding target attainment percentage determined under this paragraph (2) applies until the earliest of:

(i) The first day of the 10th month of the Plan Year if paragraph (3) of this section applies;

(ii) The date of a change in the presumed "adjusted funding target attainment percentage" under Regulations Section 1.436-1(g)(4); or

(iii) The date the enrolled actuary issues a certification under Regulations Section 1.436-1(h)(4) of the "adjusted funding target attainment percentage" for the Plan Year.

(3) Presumption of underfunding beginning on first day of 10th month. In any case in which no certification of the specific adjusted funding target attainment percentage for the current Plan Year under Regulations Section 1.436-1(h)(4) is made with respect to the Plan before the first day of the 10th month of the Plan Year, then, commencing on the first day of the 10th month of the current Plan Year:

(A) The presumed "adjusted funding target attainment percentage" of the Plan for the Plan Year is presumed to be less than sixty percent (60%); and

(B) The first day of the 10th month of the Plan Year is a "Section 436 measurement date."

**(h) Treatment of Plan as of Close of Prohibited or Cessation Period.**

(1) Application to prohibited payments and accruals.

(A) Resumption of prohibited payments. If a limitation on prohibited payments under Section (d) of this Article applied to a Plan as of a "Section 436 measurement date," but that limit no longer applies to the Plan as of a later "Section 436 measurement date," then the limitation on prohibited payments under the Plan does not apply to benefits with "annuity starting dates" that are on or after that later "Section 436 measurement date." Any amendment to eliminate an optional form of benefit that contains a prohibited payment with respect to an "annuity starting date" during a period in which the limitations of Code Section 436(d) and Regulations Section 1.436-1(d) do not apply to the Plan is subject to the rules of Code Section 411(d)(6).

(B) Resumption of benefit accruals. If a limitation on benefit accruals under Regulations Section 1.436-1(e) applied to a Plan as of a "Section 436 measurement date,"



but that limit no longer applies to the Plan as of a later "Section 436 measurement date," then that limitation does not apply to benefit accruals that are based on service on or after that later "Section 436 measurement date," except to the extent that the Plan provides that benefit accruals will not resume when the limitation ceases to apply. The Plan will comply with the rules relating to partial years of participation and the prohibition on double payment under Department of Labor regulation 29 CFR Section 2530.204-2(c) and (d).

(2) **Restoration of options and missed benefit accruals.** If elected at Amendment Section 2.5, then Participants who had an "annuity starting date" within a period during which a limitation under Regulations Section 1.436-1(d) applied to the Plan will be provided with the opportunity to have a new "annuity starting date" (which would constitute a new "annuity starting date" under Code Sections 415 and 417) under which the form of benefit previously elected may be modified, subject to applicable qualification requirements, once the limitations of Regulations Section 1.436-1(d) cease to apply. In addition, subject to the rules of Regulations Section 1.436-1(c)(3) and any election made at Amendment Section 2.5, the Plan will automatically restore benefit accruals that had been limited under Code Section 436(e) as of the "Section 436 measurement date" that the limitation ceases to apply.

(3) **Shutdown and other unpredictable contingent event benefits.** If unpredictable contingent event benefits with respect to an unpredictable contingent event that occurs during the Plan Year are not permitted to be paid after the occurrence of the event because of the limitations of Code Section 436(b) and Regulations Section 1.436-1(b), but are permitted to be paid later in the Plan Year as a result of additional contributions under Regulations Section 1.436-1(f)(2) or pursuant to the enrolled actuary's certification of the "adjusted funding target attainment percentage" for the Plan Year that meets the requirements of Regulations Section 1.436-1(g)(5)(ii)(B), then those unpredictable contingent event benefits must automatically become payable, retroactive to the period those benefits would have been payable under the terms of the Plan (other than Plan terms implementing the requirements of Code Section 436(b)). If the benefits do not become payable during the Plan Year in accordance with the preceding sentence, then the Plan is treated as if it does not provide for those benefits. However, all or any portion of those benefits can be restored pursuant to a Plan amendment that meets the requirements of Code Section 436(c) and Regulations Section 1.436-1(c) and other applicable qualification requirements.

(4) **Treatment of Plan amendments that do not take effect.** If a Plan amendment does not take effect as of the effective date of the amendment because of the limitations of Code Section 436(e) and Regulations Section 1.436-1, but is permitted to take effect later in the Plan Year as a result of additional contributions under paragraph Regulations Section 1.436-1(f)(2) or pursuant to the enrolled actuary's certification of the "adjusted funding target attainment percentage" for the Plan Year that meets the requirements of paragraph Regulations Section 1.436-1(g)(5)(ii)(C), then the Plan amendment must automatically take effect as of the first day of the Plan Year (or, if later, the original effective date of the amendment). If the Plan amendment cannot take effect during the Plan Year, then it must be treated as if it were never adopted, unless the Plan amendment provides otherwise.

(5) **Definitions.** Defined terms shall have the meaning set forth below and as contained in Regulations Section 1.436-1(j) and shall be interpreted consistent with said Regulations.

(1) The term "adjusted funding target attainment percentage" means the "funding target attainment percentage" per paragraph (A) below, and increasing each of the amounts under subparagraphs (A) and (B) of Code Section 430(d)(2) by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in Code Section 414(q)) which were made by the Plan during the preceding two (2) Plan Years.



(A) The term "funding target attainment percentage" has the same meaning given such term by Code Section 430(d)(2) and the Regulations thereunder, except as otherwise provided herein. However, in the case of Plan Years beginning in 2008, the "funding target attainment percentage" for the preceding Plan Year may be determined using such methods of estimation as the Secretary may provide.

(B) Application to plans which are fully funded without regard to reductions for funding balances.

(1) In general, In the case of a Plan for any Plan Year, if the "funding target attainment percentage" is one hundred percent (100%) or more (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)), the "funding target attainment percentage" for purposes of paragraphs (1) and (1)(A) above shall be determined without regard to such reduction.

(2) Transition rule. Subparagraph (B)(1) shall be applied to Plan Years beginning after 2007 and before 2011 by substituting for "one hundred percent (100%)" the applicable percentage determined in accordance with the following table:

In the case of a Plan Year beginning in calendar year:	The applicable percentage is:
2008	92%
2009	94%
2010	96%

(3) Subparagraph (B)(2) shall not apply with respect to the current Plan Year unless the "funding target attainment percentage" (determined without regard to the reduction in the value of assets under Code Section 430(f)(4)) of the Plan for each preceding Plan Year beginning after 2007 and before the current Plan Year was not less than the applicable percentage with respect to such preceding Plan Year determined under subparagraph (B)(2).

(2) Section 436 measurement date. A "Section 436 measurement date" is the date that is used to determine when the limitations of Code Sections 436(d) and 436(e) apply or cease to apply, and is also used for calculations with respect to applying the limitations of Sections (b) and (c) of this Article.

(3) Annuity starting date. The term "annuity starting date" means the annuity starting date as defined in Regulations Section 1.436-1(j)(2).

(4) Unpredictable contingent event benefit. The term "unpredictable contingent event benefit" means an unpredictable contingent event as defined in Regulations Section 1.436-1(j)(9).

### ARTICLE XIII HEART ACT PROVISIONS

13.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death. Moreover, the Plan will credit the Participant's



qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

- 13.2 **Benefit accrual.** If, pursuant to Amendment Section 2.6, the City elects to apply this Section 13.2, then effective on or after the effective date specified in Section 2.6, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated said employment on the actual date of death or disability.

- (a) **Determination of benefits.** The Plan will determine the amount of employee contributions, if any, of an individual treated as reemployed under this Section 13.2 for purposes of applying Code Section 414(u)(8)(C) on the basis of the individual's average actual employee contributions for the lesser of: (i) the 12-month period of service with the employer immediately prior to qualified military service; or (ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

- 13.3 **Differential wage payments.** For years beginning after December 31, 2008:

(i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation for purposes of Code Section 415(c)(3) and Regulations Section 1.415(c)-2 (e.g. for purposes of Code Section 415, top heavy provisions of Code Section 416 and determination of highly compensated employees under Code Section 414(u)), and

(iii) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) (or any corresponding plan provisions, including, but not limited to, Plan provisions related to the average deferral percentage or average contribution percentage, to the extent applicable) by reason of any contribution or benefit which is based on the differential wage payment. Differential wage payments (as described herein) shall constitute compensation for all Plan purposes.

- (a) **Nondiscrimination Requirements.** Provided, however, for purposes of subparagraph (iii), all employees of the employer (as determined under Code Section 414(b), (c), (m) and (o)) performing service in the uniformed services described in Code Section 3401(h)(2)(A) shall be entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions, if contributions are permitted, based on the payments on reasonably equivalent terms (taking into account the provisions of Code Section 410(b)(3), (4) and (5) to the extent applicable).

- 13.4 **Deemed Severance.** As provided in Section 2.6, the Plan does not permit distribution upon deemed severance of employment.

#### ARTICLE XIV CHANGE IN APPLICABLE INTEREST RATE AND APPLICABLE MORTALITY ASSUMPTION

- 14.1 **Effective date.** Except as provided in regulations or other guidance by the Pension Benefit Guaranty Corporation (PBGC) and IRS, to the extent said regulations or guidance is applicable to this Plan, the limitations of this Article shall first apply in determining the amount payable to a



Participant having an annuity starting date in a Plan Year beginning on or after January 1, 2008.

- 14.2 **Applicable interest rate.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate" or "applicable mortality table" used for purposes of Code Section 417(e), any provision prescribing the use of the annual rate of interest on 30-year U.S. Treasury securities shall be implemented by instead using the rate of interest determined by the applicable interest rate described by Code Section 417(e) after its amendment by PPA. Specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) for the calendar month (lookback month) before the first day of the Plan Year in which the annuity starting date occurs (stability period). For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:
- (a) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section; and
  - (b) Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(i)(II)" for "Section 412(h)(5)(B)(ii)(II)." and
  - (c) The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.
- 14.3 **Applicable mortality assumption.** For purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Code Section 417(e), as well as any other Plan provision referring directly or indirectly to the "applicable interest rate," any Plan provision directly or indirectly prescribing the use of the mortality table described in Revenue Ruling 2001-62 shall be amended to prescribe the use of the applicable annual mortality table within the meaning set forth in Code Section 417(e)(3)(B), as initially described in Revenue Ruling 2007-67.

**ARTICLE XV  
2009 REQUIRED MINIMUM DISTRIBUTIONS  
(IRC SECTION 401(a)(9)(H))**

- 15.1 Notwithstanding anything in the Plan to the contrary:
- (a) **Suspension of Required Minimum Distributions for 2009.** A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated "Beneficiary," or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence; and
  - (b) **Direct Rollovers.** For purposes of applying the direct rollover provisions of the Plan, a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(H).



This amendment is hereby executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010,

CITY OF GRAND ISLAND, a Nebraska municipality

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



RESOLUTION 2011-317

WHEREAS, the City of Grand Island currently has a contract with Wells Fargo for the Firefighters' Retirement System Plan and Trust.

WHEREAS, The City's retirement plan documents must incorporate recent changes to pension laws and regulations for which plan documents need to be updated.

WHEREAS, the City must change retirement plan documents to incorporate laws and regulations for which plan documents need to be updated at no additional cost to the City.

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 for such services on behalf of the City of Grand Island. City Administration recommends that the Council approve Amendment 1 to the Firefighters' Retirement System Plan and Trust with Wells Fargo.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, October 25, 2011.

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

Attest:

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

Approved as to Form	☐ _____
October 21, 2011	☐ City Attorney





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item I1

**#2011-318 - Consideration of Request from Zoul Hospitality, LLC  
dba Willman's Bottle Shop, 1201 South Locust Street for a Class  
"CK" Liquor License and Liquor Manager Designation for  
Zachary Zoul, 3333 Ramada Road**

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

Staff Contact: RaNae Edwards



RESOLUTION 2011-318

WHEREAS, an application was filed by Zoul Hospitality, LLC doing business as Willman's Bottle Shop, 1201 South Locust Street for a Class "CK" Liquor License; and

WHEREAS, a public hearing notice was published in the *Grand Island Independent* as required by state law on October 15, 2011; such publication cost being \$15.18; and

WHEREAS, a public hearing was held on October 25, 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 Zachary Zoul, 3333 Ramada Road as liquor manager of such business.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, October 25, 2011.

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

Attest:

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

Approved as to Form	☐ _____
October 21, 2011	☐ City Attorney





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item I2

**#2011-319 - Consideration of Request from Simara Y. Rodriguez dba El Trancazo Bar, 413 West 4th Street for a Class “T” Liquor License**

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

Staff Contact: RaNae Edwards



RESOLUTION 2011-319

WHEREAS, an application was filed by Simara Y. Rodriguez doing business as El Trancazo Bar, 413 West 4th Street for a Class "T" Liquor License; and

WHEREAS, a public hearing notice was published in the *Grand Island Independent* as required by state law on October 15, 2011; such publication cost being \$15.18; and

WHEREAS, a public hearing was held on October 25, 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: \_\_\_\_\_  
\_\_\_\_\_

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, October 25, 2011.

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

Attest:

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

Approved as to Form	☐ _____
October 21, 2011	☐ City Attorney





# **City of Grand Island**

**Tuesday, October 25, 2011**

**Council Session**

## **Item I3**

**#2011-320 - Consideration of Designating No Parking on 2nd Street, Between Walnut Street and Cedar Street**

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



# **Council Agenda Memo**

**From:** Terry Brown, Manager of Engineering Services

**Meeting:** October 25, 2011

**Subject:** Approving Designating No Parking on 2<sup>nd</sup> Street,  
Between Walnut Street and Cedar Street

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

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

## **Background**

Council action is required to designate No Parking on any public street.

The Public Works Department has received a request from St. Steven's Episcopal Church to remove parking between Walnut Street and Cedar Street, on the north side of 2<sup>nd</sup> Street.

## **Discussion**

The Engineering Division of the Public Works Department reviewed traffic flows and safety in the area and recommends the designation of No Parking on the north side of 2<sup>nd</sup> Street, between Walnut Street and Cedar Street. The No Parking restriction will make existing both of the parking lots within this area safer, as the roadway will be unencumbered by parked vehicles and remove the sight restrictions. A sketch of the desired No Parking area is attached for reference.

## **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 designating No Parking on 2<sup>nd</sup> Street, between Walnut Street and Cedar Street.

## **Sample Motion**

Move to approve the resolution.



# St. Stephen's Episcopal Church

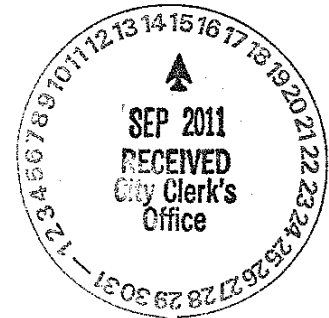
410 West Second Street Suite 10

Grand Island, NE 68801

Phone: 308-382-4961 Fax: 308-384-6688

Email: [parishsecretary@ststephengi.org](mailto:parishsecretary@ststephengi.org)

Website: <http://st-stephens-church-grand-island.episcopal-ne.org>



September 12, 2011

City Clerk (% Renee)  
City of Grand Island  
Grand Island, NE 68801

Dear Renee,

St. Stephen's Episcopal Church, in its capacity as the owner and operator of St. Stephen's Community Center, 410 West Second Street, Grand Island, Nebraska, 68801, is petitioning the city for a change in the parking regulations and signage directly in front of the Community Center along Second Street.

We request that the city change the parking as follows:

A.

Extend a no-parking zone one yard to the east of the drive into St. Stephen's Church (on the corner of 2<sup>nd</sup> and Cedar) and one yard to the west of the drive into Monte Hack's insurance agency (on the corner of 2<sup>nd</sup> and Walnut).

B.

Reserve the first parking space east of the drive into St. Stephen's Church for handicap parking.

C.


Make the remainder of the parking east of the handicap zone and west of the no parking zone next to Monte Hack's driveway into a limited-time loading/unloading zone.

Thank you for implementing these changes.

Sincerely,

  
Fr. Charles Peek, Rector of St. Stephen's

Cc: City Councilman Larry Carney  
Monte Hack

cc:   
9-15-11



CHURCH

HACK

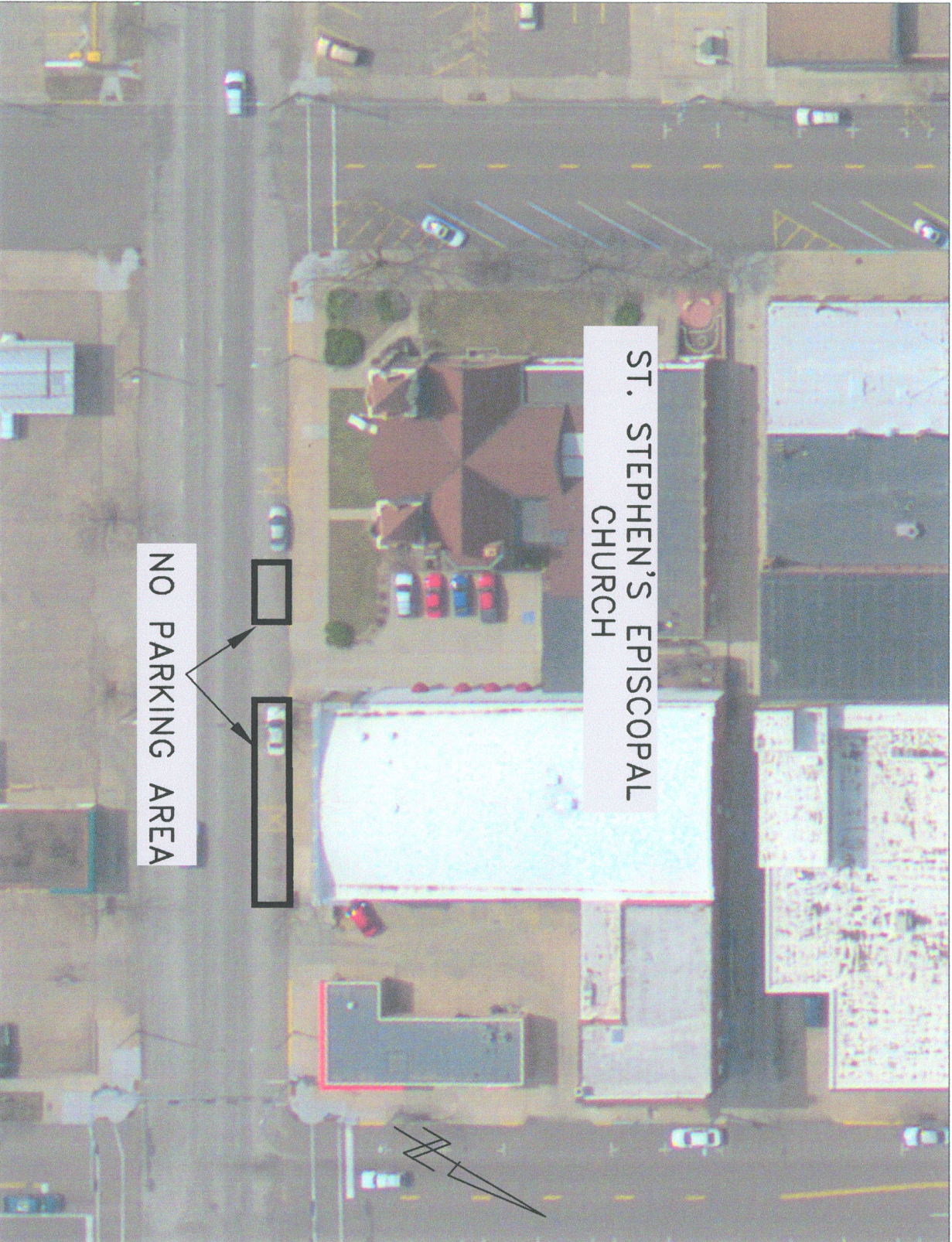
|\_\_COMMUNITY CENTER\_\_|  
|Handicap| Loading |

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\_\_\_\_\_2<sup>nd</sup> Street





ST. STEPHEN'S EPISCOPAL  
CHURCH

NO PARKING AREA

NO PARKING AT 410 W. 2ND ST.



RESOLUTION 2011-320

WHEREAS, the City Council, by authority of §22-77 of the Grand Island City Code, may by resolution, entirely prohibit or fix a time limit for the parking and stopping of vehicles in or on any public street, public property, or portion thereof; and

WHEREAS, the Public Works Department is requesting that No Parking be allowed on the north side of 2<sup>nd</sup> Street, between Walnut Street and Cedar Street; and

WHEREAS, it is recommended that such restricted parking request be approved.

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

1. A No Parking Zone is hereby designated along the north side of 2<sup>nd</sup> Street, between Walnut Street and Cedar Street; and
2. On the north side of 2<sup>nd</sup> Street the 1<sup>st</sup> parking stall west of the most westerly driveway shall be removed; and
3. On the north side of 2<sup>nd</sup> street all parking shall be removed between the two driveways in this section of roadway; and
4. The City's Street Division of the Public Works Department shall erect and maintain the signs necessary to effect the above regulation.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, October 25, 2011.

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Jay Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk





# **City of Grand Island**

**Tuesday, October 25, 2011**

**Council Session**

## **Item I4**

**#2011-321 - Consideration of Advancement of the US Highway 281  
Sanitary Sewer Extension to Interstate 80 Project**

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



# **Council Agenda Memo**

**From:** Terry Brown, Manager of Engineering Services

**Meeting:** October 25, 2011

**Subject:** Approving Advancement of the US Highway 281  
Sanitary Sewer Extension to Interstate 80 Project

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

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

## **Background**

On September 27, 2011 City Council approved a sanitary sewer district in the Wildwood Subdivision. This district will give support to the sanitary sewer extension south along US Highway 281 past Interstate 80.

City Staff presented an update to City Council on October 18, 2011 regarding this sanitary sewer extension.

The City is being granted \$350,000 from a settlement between JBS and NDEQ and this settlement may be applied to the Highway 281 project.

## **Discussion**

City Administration is seeking approval to proceed with: (1) the sanitary sewer extension south of Wildwood Road along US Highway 281 and (2) direction on where to apply the \$350,000 settlement from JBS. It is recommended that \$245,000 of the settlement be applied to the assessment district, and the remaining \$105,000 be applied to the loan for the tap district. The application of these funds to the project will reduce the cash identified in the Study Session held on October 18, 2011. The \$245,000 application to the assessment district will free up dollars that will become available for other projects. The application of the \$105,000 to the tap district loan will reduce the annual loan payment from \$76,838 to approximately \$69,500. The reduced loan payment will free up dollars that can also become available for other projects.



## **Alternatives**

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

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

## **Recommendation**

City Administration recommends that the Council approve a resolution authorizing advancement of the US Highway 281 sanitary sewer extension to Interstate 80 project, as well as the allocation of the \$350,000 settlement from JBS towards this project.

## **Sample Motion**

Move to approve the resolution.



## RESOLUTION 2011-321

WHEREAS, the City of Grand Island and its elected officials are always seeking to increase economic development because of the employment and benefits it brings to the people of Grand Island; and

WHEREAS, the City of Grand Island recognizes economic development often requires good public infrastructure be in place before it can occur; and

WHEREAS, the City of Grand Island is aware of the economic success of other cities in Nebraska resulting from extending public infrastructure to Interstate Highway 80,

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

That the City Administration take the following action:

1. Draft an ordinance for future Council consideration creating a Sanitary Sewer Connection or Tap District extending South along Highway 281 from south of Wildwood Subdivision to the north channel of the Platte River; and
2. Finalize discussions with the Nebraska Department of Environmental Quality to utilize the Nebraska Clean Water State Revolving Loan Fund for financing of the proposed sewer extension; and
3. Finalize discussions with the Nebraska Game and Parks Commission to enter into an Interlocal Agreement regarding the proposed sewer extension; and
4. Finalize discussions to enter into Interlocal Agreements with any Sanitary Improvement Districts that may be created along the Highway 281 corridor in conjunction with the proposed sewer extension; and
5. Accept the \$350,000.00 awarded the City pursuant to the Consent Decree in *U.S.A., et. al. v. Swift Beef Company*; and
6. Apply the \$350,000.00 awarded the City to the Highway 281 sewer extension project in the following manner:
  - a. \$245,000.00 to fund Sanitary Sewer District No. 528, Wildwood Subdivision; and
  - b. \$105,00.00 to be applied to the proposed Tap District loan from the Nebraska Clean Water State Revolving Loan Fund.
7. Send a copy of this Resolution to the Nebraska Department of Environmental Quality as evidence of the City's intent regarding the proposed Tap District.



Adopted by the City Council of the City of Grand Island, Nebraska, October 25, 2011.

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Jay Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk





# City of Grand Island

Tuesday, October 25, 2011

Council Session

## Item J1

### **Approving Payment of Claims for the Period of October 12, 2011 through October 25, 2011**

*The Claims for the period of October 12, 2011 through October 25, 2011 for a total amount of \$3,272,015.40. A MOTION is in order.*

Staff Contact: Jaye Monter