

### Tuesday, February 28, 2012

### **Council Session Packet**

**City Council:** 

T

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

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

### **Call to Order**

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

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

### Invocation - Pastor Bill Pabuk, St. Paul's Lutheran Church, 1515 South Harrison Street

### **Pledge of Allegiance**

**Roll Call** 

### A - SUBMITTAL OF REQUESTS FOR FUTURE ITEMS

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

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

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

### MAYOR COMMUNICATION

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



Tuesday, February 28, 2012 Council Session

### Item C1

### **Proclamation ''City Employee Appreciation Month'' March, 2012**

In appreciation of the 500-plus employee's who work for the City of Grand Island, the Mayor has proclaimed the month of March, 2012 as "City of Grand Island Employee Appreciation Month". Thanks go to city employee's for their effort, service, and sacrifice that define our city. See attached PROCLAMATION.

Staff Contact: Mayor Vavricek



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



### PROCLAMATION

WHEREAS, people of our nation were bestowed certain unalienable rights among them life, liberty and the pursuit of happiness; and WHEREAS, a large number of people who are bonded by these principals is called a city; and WHEREAS. services for health, peace and protection, education, the ability to worship and raise a family are dependent upon so many needs and many services in a city; and WHEREAS, people are dependent on certain needs and expected reliable and affordable services and to provide such needs and services are dependent upon dedicated talented people; and WHEREAS, as a service provider, the City of Grand Island was formed in 1872, and today, its efforts are entrusted to a 500-plus strong organization of employees who have demonstrated over many generations and continues to do so today; and WHEREAS, it is only fitting to recognize each city employee for their effort. thank each for their service, appreciate each for their sacrifice, acknowledge each for their success in providing services that may at times be taken for granted for services so essential that defines our city and defines what we hold dear; and WHEREAS. it is important to acknowledge and appreciate each person for their employment and 24 hour a day, 365 day a year municipal service to 48,548.

NOW, THEREFORE, I, Jay Vavricek, Mayor of the City of Grand Island, Nebraska, in recognition that March 2 is Employee Appreciation Day, do hereby proclaim the month of March, 2012 as

> *"CITY OF GRAND ISLAND EMPLOYEE APPRECIATION MONTH"*









Tuesday, February 28, 2012 Council Session

### Item C2

### **Recognition of Ken Gnadt former Mayor of Grand Island for the Distinguished Nebraskalander Award**

Mayor Vavricek and the City Council will recognize former Mayor Ken Gnadt (1994 - 2002) who will receive the Distinguished Nebraskalander Award at the annual Statehood Day Dinner on March 3, 2012 at the State Capitol. This award is given to Nebraskans dedicated to public service. Mr. Gnadt was instrumental in securing the Interstate 80 South Locust interchange and the move of the Nebraska State Fair to Grand Island. He is active in the Grand Island Chamber of Commerce, Stuhr Museum, Husker Harvest Days and Rotary. Thanks to Mr. Gnadt for his public service to the community of Grand Island.

Staff Contact: Mayor Vavricek



# Certificate of Recognition

Awarded to

### "Ken Gnadt"

received on March 3, 2012 at the annual Statehood Day Dinner at the State Capitol. former Mayor of Grand Island for the Distinguished Nebraskalander Award to be





Tuesday, February 28, 2012 Council Session

### Item C3

**State Championship Wrestling Recognition for Northwest High School** 

Staff Contact: Mayor Vavricek





Tuesday, February 28, 2012 Council Session

### Item C4

**State Championship Wrestling Recognition for Grand Island Senior High School** 

Staff Contact: Mayor Vavricek



# Certificate of Recognition

Awarded to

### "Grand Island Senior High Wrestling Team and Coach Mike Schadwinkel"

for the fourth straight Class "A" State Wrestling Championship and an outstanding and successful season. City Clerk, RaNae Edwards

dayor,∬ay Vavricek



Tuesday, February 28, 2012 Council Session

### Item E1

Public Hearing on Request from Javier Rodriguez dba El Trancaso, 415 West 4th Street for a Class "C" Liquor License

Staff Contact: RaNae Edwards

### **Council Agenda Memo**

From:	RaNae Edwards, City Clerk
Meeting:	February 28, 2012
Subject:	Public Hearing on Request from Javier Rodriguez dba El Trancaso, 413 West 4 <sup>th</sup> Street for a Class "C" Liquor License
Item #'s:	E-1 & I-1
Presenter(s):	RaNae Edwards, City Clerk

### **Background**

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

### **Declared Legislative Intent**

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

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

### **Discussion**

Javier Rodriguez dba El Trancaso, 413 West 4th Street has submitted an application for a Class "C" Liquor License. A Class "C" Liquor License allows for the sale of alcohol on and off sale inside the corporate limits of the city.

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

### **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 Javier Rodriguez dba El Trancaso, 413 West 4th Street for a Class "C" Liquor License contingent upon final inspections and completion of a state approve alcohol server/seller training program.

02/22/12	Grand Island	Police Department	495
17:24	LAW INC	CIDENT TABLE	Page: 1
City		: Grand Island	
Occurred after		: 12:06:10 02/01/2012	
Occurred before	2	: 12:06:10 02/01/2012	
When reported		: 12:06:10 02/01/2012	
Date dispositio	n declared	: 02/01/2012	
Incident number		: L12020036	
Primary inciden	it number	:	
Incident nature Investigation	2	: Liquor Lic Inv	Liquor License
Incident addres	S	: 413 4th St W	
State abbreviat	ion	: NE	
ZIP Code		: 68801	
Contact or call	er	:	
Complainant nam	ne number	:	
Area location c	ode	: PCID Police - CID	
Received by		: Vitera D	
How received		: T Telephone	
Agency code		: GIPD Grand Island Polic	e Department
Responsible off	icer	: Vitera D	
Offense as Take	en	:	
Offense as Obse	erved	:	
Disposition		: ACT Active	
Misc. number		: RaNae	
Geobase address ID		: 18196	

Long-term call ID : : CL Case Closed Clearance Code : NCI Non-criminal Incident Judicial Status INVOLVEMENTS: Px Record # Date Description Relationship \_\_\_\_\_ NM 122140 02/20/12 Rodriguez, Javier SR Owner NM 158489 02/20/12 El Trancaso Bar, Business Involved LAW INCIDENT CIRCUMSTANCES: Se Circu Circumstance code Miscellaneous \_\_ \_\_\_\_ \_ \_\_\_\_ 1 LT03 Bar/Night Club LAW INCIDENT NARRATIVE: I Received a Copy of an Individual Liquor License from Javier Rodriguez for El Trancaso LAW INCIDENT RESPONDERS DETAIL: Se Responding offi Unit n Unit number \_\_ \_\_\_\_\_ 1 Vitera D 318 Vitera D LAW SUPPLEMENTAL NARRATIVE: Seq Name Date --- ------1 Vitera D 10:29:47 02/20/2012

### Grand Island Police Department

### Supplemental Report

Date, Time: Mon Feb 20 10:29:59 CST 2012

Reporting Officer: Vitera

Unit- CID

Javier Rodriguez Sr. is buying El Trancaso and applying for a Class ID (beer,

wine, distilled spirits on and off sale) Individual License. Javier is the only

person listed on the license. The application says that he is filing for a

Temporary Operating Permit (TOP), but I don't see a copy of the permit attached.

The application also says that Javier is not borrowing any money to

establish/operate the business. Javier stated that he has never been convicted

of any charge, and he has lived in Nebraska for at least the last twelve years.

I checked Javier through Spillman and NCJIS and didn't locate and convictions.

I noticed in Spillman that another officer ran a nation-wide criminal history

check on Javier during another investigation in December of last year. It was

negative. I checked Javier for warrants. He doesn't have any warrants for his

arrest, and he has a valid driver's license. I also sent a request to our local

Homeland Security Investigations office to check on Javier's immigration status.

I was later informed that Javier became a Naturalized Citizen in 2010.

I also checked Javier through a police Internet database and didn't find much. It appears that Javier had a judgment against him in Hall County in 2008 for the amount of \$3,165. I will check into this later. I also learned that Javier is apparently a member of corporation called "Artistas Latinos а Promotions." On 2/21/12, I called the Hall County Court and was told that the file dealing with the civil suit involving Javier Rodriguez was in storage and there was no computer access to it. On 2/22/12, I met with Javier at El Trancaso. Javier told me a little bit about himself. He said that he is originally from Columbia and has lived nowhere else but Nebraska since he moved from Columbia. He has two adult children who each have advanced degrees. One son has a PHD, and the other has a Master's Degree and is working on his PHD. Javier used to be a veterinarian in Columbia. Не currently works as a nursing assistant and a medical aide. He plans on collecting Social Security next year and would like some supplemental income. Javier applied for a TOP but doesn't have it yet. He showed me a letter from the NLCC requiring a purchase agreement before a TOP would be issued. Even though he has paid Myriam Alvarez and technically owns the bar, Myriam is running it until he gets his TOP and eventually gets his license.

I asked Javier about the information I found through the police only Internet database. He confirmed that he paid Fernando Mejia over \$3,000 for a civil suit. Javier said he financed Fernando on the purchase of a truck. Fernando quit paying him. Javier repossessed the truck. Fernando claimed he had personal property in the truck that was never returned to him. I also asked Javier about Artistas Latinos Promotions. Javier said he ran а corporation that contracted with known musical artists to perform at certain venues. He doesn't do it anymore and hasn't for about a year. He said he didn't like that business and many of the people he dealt with. After discussing some common problems that get liquor license holders in trouble, I asked him if he had any questions. The only question he had dealt with dancers (strippers). There is a pole in El Trancaso. Javier said some of the female customers like to use the pole to dance. He wondered how much of their body they can show. He hinted that in the future he would consider having paid dancers. I told him that he can't have topless and/or bottomless dancers in Grand Island. If I understood him correctly, he was more interested in making sure it wasn't against the law if some of his customers poledanced while being scantily clad. As long as Javier doesn't have exotic dancers at his bar, the Grand Island Police Department has no objection to him receiving a liquor license.





Tuesday, February 28, 2012 Council Session

### Item E2

Public Hearing Concerning Acquisition of Utility Easement - West of Blaine Street and North of Wildwood Drive - GI Economic Development Corp.

Staff Contact: Tim Luchsinger

### **Council Agenda Memo**

From:	Robert H. Smith, Asst. Utilities Director
Meeting:	February 28, 2012
Subject:	Acquisition of Utility Easement – West of Blaine Street, and north of Wildwood Drive – Grand Island Area Economic Development Corporation
Item #'s:	E-2 & G-4
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 Grand Island Area Economic Development Corporation, located just west of Blaine Street, and north of Wildwood Drive (part of Section Five (5), Township Ten (10) North, Range Nine (9) West of the 6<sup>th</sup> PM), in the City of Grand Island, Hall County, in order to have access to install, upgrade, maintain, and repair water and sewer appurtenances, including pipes, valves, and manholes.

### **Discussion**

This easement will be used to construct water and sewer main lines to serve the east section of the Platte Valley Industrial Park. The cost of the easement will be \$1.00.

### **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.





Tuesday, February 28, 2012 Council Session

### Item E3

Public Hearing on Request from Salvador and Sandra Juarez for a Conditional Use Permit for a Parking Lot located at 2108 North Custer and Lot 9, Block 16, University Place

**Staff Contact: Craig Lewis** 

### **Council Agenda Memo**

From:	Craig A. Lewis, Building Department Director
Meeting:	February 28, 2012
Subject:	Request of Grand Island Public Schools for Approval of a Conditional Use Permit to Construct a Parking Lot at 2108 N. Custer Street
Item #'s:	E-3 & H-1
Presenter(s):	Craig Lewis, Building Department Director

### **Background**

This request is for approval of a conditional use permit to allow for the construction of a parking lot at the above referenced address. The property is adjacent to a previously approved conditional use for a parking lot at 2104 N. Custer. The property is currently zoned R-2 Low Density Residential and as such a parking lot is a listed conditional use if associated with a school and located within 300 feet of the principal building. Conditional uses as listed in the zoning code must be approved by the city council after a finding that the proposed use promotes the health, safety, and general welfare of the community, protects property against blight and depreciation, and is generally harmonious with the surrounding neighborhood.

### **Discussion**

This proposal will allow for the expansion of the conditional use approved in November of 2010 for the properties at 2104 N Custer. Approval will allow for a total of 4 residential lots to be constructed into a parking lot approximately 132' east and west and 187' north and south. The property is located west of the school at the northwest corner of the intersection of Custer and College Streets. An additional dwelling is proposed to be removed to facilitate the construction and provide parking for the school.

Because the property is zoned R-2 the landscaping regulations provided in the City code would not be required. I would again suggest that as this property is in a predominantly residential neighborhood and the Council has the opportunity to provide conditions with the approval, that the landscaping requirements provided in section 36-102 of the City code again be applicable with the construction of this parking lot. The landscape provisions in the City code would require a ten foot landscape buffer adjacent to the

street and plantings of three canopy trees, three understory trees, and nine shrubs, within the landscape buffer.

With the approval of the last conditional use permit, one of the conditions required by the City Council was to restrict the vehicle access to the lot to and from the alley access. As this lot now is proposed to expand to the north it appears that adequate access is available from Custer Street and I would suggest that access now be limited to and from the existing driveway that currently serves the property at 2108 N Custer.

Two additional conditions were placed on the prior approval; one was to limit the parking to non-student parking and to pave the alley adjacent to the parking lot.

If access is restricted to the existing drive onto Custer I would suggest that curbing be installed to restrict any access into the alley and eliminate any need for improvements in the alley and lessen concerns about traffic from the parking lot into the alley.

### **Alternatives**

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

- 1. Approve the request for a conditional Use Permit finding that the proposed use is a listed conditional use in the zoning code and that it will not be detrimental to public health, safety, and the general welfare of the community.
- 2. Disapprove or /Deny the request finding that the proposal does not conform to the purpose of the zoning regulations.
- 3. Modify the request to meet the wishes of the Council.
- 4. Refer the matter to a special committee for a determination of a finding of fact.
- 5. Table the issue

### **Recommendation**

City Staff recommends that the Council approve the conditional use permit with the condition; 1. that landscaping is provided in compliance with section 36-102 of the zoning regulations,

2. that vehicle access be restricted and accomplished from the existing drive location at 2108 N. Custer,

3. a curb barrier is installed adjacent to the alley to restrict access from the parking lot, and

4. that the lot be designated non-student parking,

finding that the request does promote the health, safety, and general welfare of the community, protects property against blight and depreciation, and is generally harmonious with the surrounding neighborhood.

### **Sample Motion**

Move to approve the requested conditional use permit as specified in the staff recommendation published in the Council packet and presented at the City Council meeting and finding that the application will conform with the purpose of the zoning regulations. and the second second



Non-Refundable Fee: <u>\$1,000.00</u> Return by: Council Action on:

### **Conditional Use Permit Application**

pc: Building, Legal, Utilities Planning, Public Works

- Grand Island Public Schools 1. The specific use/construction requested is: Parking Lot 132 x 93.5 A) 2108 N. Custer - George N. & Maritza Jones The owner(s) of the described property is/are: 2. B) Lt 9,Blk 16,University Place-Salvador M & Sandra Juarez A) Lt 11, Blk 16, University Place The legal description of the property is: З. B) Lt 9, Blk 16, University Place A) 2108 N. Custer The address of the property is: 4. B) Lt 9, Blk 16, University Place The zoning classification of the property is: R2 5. A) 1 story single-family home Existing improvements on the property is: 6. B) Vacant lot A)& B) Perpetual 7. The duration of the proposed use is: A)& B) Parking lot Plans for construction of permanent facility is: 8. The character of the immediate neighborhood is: A) & B) Single-family homes, duplexes, school 9.
- 10. There is hereby <u>attached</u> a list of the names and addresses of all property owners within 200' of the property upon which the Conditional Use Permit is requested.
- 11. Explanation of request: Grand Island Public Schools has agreed to purchase 2108 N. Custer and Lt 9, Blk 16, University Place, contingent upon the City of Grand Island allowing the property to be used for off-site parking for Grand Island Senior High School.

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

01-26-12 Date 08) 380-1328 Phone Number

Owners(s) and Island State

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

We do hereby certity .... <u>1-30-2012</u> Date
<u>X DomAtria</u> <u>Bowners(s)</u>
<u>(308)930-0275</u> Phone Number
<u>2311 N. Kruse an</u> Address
<u>Grand ISlancl, NP. 68803</u> <u>City</u> State Zip I/We do hereby certify that the above statements are true and correct and this application is signed as an acknowledgement of that fact.  $\frac{-30-2012}{Date}$ 

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





Tuesday, February 28, 2012 Council Session

### Item F1

**#9363 - Consideration of Annexation of Property Located South of US Highway 34 and West of South Blaine Street – Annexation Area 8b (includes Rainbow Lake Area) (Second Reading)** 

**Staff Contact: Chad Nabity** 

### **Council Agenda Memo**

From:	Hall County Regional Planning Department
Meeting:	February 28, 2012
Subject:	Annexation Area Identified as 8b (Second Reading)
Item #'s:	F-1
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.

Eight areas were identified as eligible for annexation into the Grand Island municipal limits. Council has acted on 6 of the 8 areas. An annexation plan is available for annexation area 8b the  $7^{\text{th}}$  of 8 areas.

The annexation plan for area 8b (Rainbow Lake) is complete and was considered by the Regional Planning Commission after a public hearing at their meeting held January 4, 2012. The annexation plans for the area identified as 8b are available from the Grand Island City Clerk, the Hall County Regional Planning Department and on the Grand Island Website at www.grand-island.com.

Council approved Resolution #2012-13 on January 10, 2012. This resolution set a public hearing date for annexation of this area and approved the attached annexation plan. Council held a public hearing and approved this annexation on first reading on February 14, 2012.

### **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 second action in this process is for Council to pass a resolution stating their intent to annex, approve annexation plans and set public hearings for comment on the annexations before council.

### **Alternatives**

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

- 1. Approve the ordinance to annex on first reading,
- 2. Choose not to approve the ordinance to annex,
- 3. Modify the ordinance to annex, or
- 4. Postpone the issue

### **Recommendation**

At the January 4, 2012 meeting of the Hall County Regional Planning Commission a public hearing was held to take comment on the annexation plans for area 8b. Two members of the public spoke in opposition to the annexation of area 8b. One, was a resident of Rainbow Lake and the other represented the owner of a 40+ acre parcel with a single house located between Rainbow Lake and U.S. Highway 34. The minutes of the Planning Commission Meeting pertaining to this item are attached. Planning Commission took separate votes on each area and recommended approval of all of the areas.

City staff also recommends that the Council approve the ordinance to annex this area on second reading.

### **Sample Motion**

Move to approve the Ordinance to annex Area 8b on second reading.

From the January 4, 2012 Planning Commission Minutes

### 4. Public Hearing – Public Hearing – Annexation - (C-04-2012GI)

**Annexation Area 8b** - This property is located in the southwest part of the city. It is south of US Hwy 34 and east of south Blaine Street. This property includes the Rainbow Lake area. Part of the SW <sup>1</sup>/<sub>4</sub> of Section 28, Township 11 North, Range 9 and Part of the NW <sup>1</sup>/<sub>4</sub> of Section 33, Township 11 North, Range 9 West of the 6<sup>th</sup> P.M.

O'Neill opened the Public Hearing.

Nabity explained to the Planning Commission and to the members of the audience that annexation was first talked about back in January of 2011 at the City Council retreat. Council then decided on potential area for Annexation and how this is part of the Comprehensive Plan for Grand Island. The Comprehensive Plan was adopted in 2004. On March 22, 2011, Council gave the go ahead to Planning to state the annexation process. Last fall there were five areas annexed into the City of Grand Island.

The City provides police, EMS and Fire protection. This area is also within the city's two mile jurisdiction and is subject to the current City building codes. With the annexation this would allow access to the City library without having to pay the Hall County fee.

Nabity noted that privately owned lakes within the City limits would still be privately owned lakes with no public access.

Vi Sheeks, 3623 S Blaine spoke against the annexation, she commented a few years ago when the Rainbow Lake area had issues with the sewer and came to the City for help they were refused. Homeowners then gathered together and paid to fix the issue themselves. She asked about Northwest High School and how they would be affected? She noted that those wanting sewer and water should be the ones to pay for this not the homeowner who already has functioning service and like the way things are now.

John Niedfelt, 1515 W Husker Hwy., spoke against the annexation. His mother owns 40+ acres and this would be an extreme expense to install sewer and water to the house. Niedfelt said this property will not become a developed property. He also questioned the upfront costs or future costs.

Nabity stated public works has formulated a plan to eliminate the lift station that is currently serving Rainbow Lake. A gravity main could be extended from the Knot subdivision northeast of Rainbow across the Robb property east of Catfish Avenue. The cost to run a gravity sewer line to the Rainbow Lake area is estimated at \$410,000.

O'Neill closed the Public Hearing.

A motion was made by Eriksen to not recommend Annexation of Area 8b, Rainbow Lakes to City Council and was seconded by Connelly. The motion failed with 5 members present voting in favor of not recommending Annexation to City Council (Hayes, Reynolds, Eriksen, Connelly and Snodgrass) and 6 voting against (McCarty, O'Neill, Ruge, Monter, Haskins and Bredthauer).

O'Neill looked for a new motion.

A motion was made by Bredthauer to approve the Annexation of Area 8b, Rainbow Lakes and recommend Annexation to City Council. Bredthauer noted some findings of facts were the City will assume the sewer responsibility, city sewer and water could be readily available and this area is surrounded by the City Limits and this does meet the guidelines as set forth in the Grand Island Comprehensive Plan. This was seconded by Haskins. The motion carried with 7 members present voting in favor of recommending the Annexation of Area 8b to City Council (McCarty, O'Neill, Ruge, Monter, Haskins, Bredthauer, and Snodgrass) and 4 voting no (Hayes, Reynolds, Eriksen and Connelly).


\* This Space Reserved For Register of Deeds \*

## **ORDINANCE NO. 9363**

An ordinance to extend the boundaries and include within the corporate limits of, and to annex into the City of Grand Island, Nebraska, tracts of land east of Blaine Street and south of U.S. Highway 34 along with all adjoining public Right-of-Way in Hall County, Nebraska referenced as annexation area "8b" 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 January 4, 2012, 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 East Line Of The Southwest Quarter Section 28-11-9 Where It Intersects The North Right Of Way Line Of Nebraska Hwy 34, Husker Highway Said Point Being 92.4' North Of The Quarter Corner Common To The Southwest Quarter Section 28-11-9 And The Northwest Quarter Section 33-11-9 Thence Southerly On The Easterly Line Of Southwest Quarter Of Section 28-11-9 For A Distance Of 92.4' To The Southeast Corner Of Southwest Quarter Section 28-11-9 Thence Continuing Southerly On The East Line Of Northwest Quarter Section 33-11-9 To The Southeast Corner Of Said Northwest Quarter Section 33-11-9 To The Southeast Corner Of Southwest Quarter Section 33-11-9 Southerly On The East Line Of The Southwest Quarter Section 33-11-9 For A Distance

Approved as to Form¤February 24, 2012¤ City Attorney

Of 153.29' Thence Westerly On A Line153.29' South Of And Parallel To The North Line Of Said Southwest Quarter Section 33-11-9 To A Point On The West Line Of Section 33-11-9 Thence Northerly On The West Line Of Section 33-11-9 To The Southwest Corner Of Rainbow Lake Third Subdivision Thence Continuing North On The West Line Of Rainbow Lake Third Subdivision, Rainbow Lake Subdivision To The Northwest Corner Of Rainbow Lake Subdivision, Said Point Also Being The Northwest Corner Of North Half Of South Half Of Northwest Quarter Section 33-11-9 Thence Continuing Northerly On The West Line Of Section 33-11-9 To The Northwest Corner Lake Heritage Subdivision Thence Easterly On The North Line Of Lake Heritage Subdivision For A Distance Of 357' The Southeasterly On A Line For A Distance Of 136.52' Thence Southwesterly On A Line For A Distance Of 91.01' To The North Line Of Bass Road Thence South On A Line Perpendicular To The North Line Of Bass Road To The South Line Of Bass Road Thence Easterly On The South Line Of Bass Road To A Point Being An Extension Of The East Line Of Lake Heritage Second Subdivision Thence Northerly On The Line Of Lake Heritage Second Subdivision And Said Extension To A Point 223.81' North Of The North Line Of Bass Road Thence Northeasterly On A Line For A Distance Of 128.88' Thence Northerly On A Line For A Distance Of 588.44' To A Point On The South Line Of Lot 5 Lake Heritage Second Subdivision Thence Northeasterly On A Line For A Distance Of 74.74' Thence Northerly On The East Line Of Lot 5 Lake Heritage Second Subdivision And An Extension There Of To The North Line Of Nebraska State Highway No. 34 Thence Easterly On The North Line Of Nebraska Highway 34, Husker Highway To the Point Of Being.

WHEREAS, after public hearing on February 14, 2012, the City Council of the

City of Grand Island found and determined that such annexation be approved; and

WHEREAS, on February 14, 2012, 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.

### ORDINANCE NO. 9363 (Cont.)

(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 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,

- 3 -

## ORDINANCE NO. 9363 (Cont.)

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: February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

## ORDINANCE NO. 9363 (Cont.)



Exhibit A



# **City of Grand Island**

Tuesday, February 28, 2012 Council Session

# Item F2

**#9365 - Consideration of Amending Chapter 8 of the Grand Island** City Code Relative to Adopting the 2009 International Building and Residential Code

**Staff Contact: Craig Lewis** 

# **Council Agenda Memo**

From:	Craig A. Lewis, Building Department Director
Meeting:	February 28, 2012
Subject:	Amendment to Chapter 8 of the Grand Island City Code to Adopt the 2009 International Building Code and the 2009 International Residential Code
Item #'s:	F-2
<b>Presenter</b> (s):	Craig Lewis, Building Department Director

# **Background**

The City of Grand Island has for generations adopted and enforced building codes which regulate the construction of buildings within the City and jurisdictional areas. The purpose of these codes is to provide minimum requirements to safeguard the public safety, health and general welfare, through affordability, structural strength, means of egress facilities, stability, sanitation, light and ventilation, energy conversation and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to firefighters and emergency responders during emergency operations.

# **Discussion**

The City currently enforces the 2006 edition of the International Building and Residential codes as published by the International Code Council. The Building Code Advisory Board has recently reviewed the 2009 editions of these two codes and recommends their adoption with the revisions as outlined in the attached amended chapter 8 of the City Code.

The State of Nebraska does require that political subdivisions who enforce building codes adopt the State Building Code, which is the latest edition of the International codes. The 2009 edition is the latest edition.

# **Alternatives**

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

- 1. Approve the request and amend the City Code to adopt the International Building and Residential codes.
- 2. Disapprove or /Deny the request.
- 3. Modify the conditional use to meet the wishes of the Council
- 4. Table the issue

# **Recommendation**

City Administration recommends that the Council approve the recommendation of the Building Code Advisory Board and amend Chapter 8 to adopt the 2009 International Building and Residential codes and begin enforcement March 30, 2012.

# **Sample Motion**

Move to approve Ordinance No. 9365 amending Chapter 8 of the Grand Island City Code and adopting the 2009 Editions of the International Building and Residential Codes.



BUILDING

2009 International Building Code

Fire sprinklers greater then 12,000 square feet ♥ 903.2.3 Group E Occupancy

Fire sprinklers all upholstered furniture ♥ 903.2.7 Group M Occupancy



BUILDING

2009 International Residential Code

- Delete requirement for fire sprinklers in single family dwellings. 😴 R313
- Require Carbon Monoxide Detectors hard wired in new construction. 😴 R315



### **ORDINANCE NO. 9365**

An ordinance to amend Chapter 8 of the Grand Island City Code; to amend

Sections 8-1 through 8-5; 8-7 through 8-9; 8-11 through 8-20; 8-22; 8-76; and 8-100; to clarify

and/or make general corrections to various code sections; to repeal Sections 8-1 through 8-5; 8-7

through 8-9; 8-11 through 8-20; 8-22; 8-76; and 8-100 as now existing, and any ordinance or

parts of ordinances in conflict herewith; and to provide for publication and the effective date of

this ordinance.

## BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF

## GRAND ISLAND, NEBRASKA:

SECTION 1. Sections 8-1 through 8-5; Sections 8-7 through 8-9; Sections 8-11 through

8-20, and Section 8-22 of the Grand Island City Code are hereby amended to read as follows:

#### §8-1. International Building Code (IBC) Adopted

The International Building Code, 20093 Edition, published by the International Code Council, is hereby adopted, together with any amendments thereto as may be made from time to time, except such portions as are hereinafter deleted, modified, or amended by ordinance and set forth in this chapter of the City Code. The following sections of the Appendix shall also be adopted:

Appendix C Group U – Agricultural Buildings

Appendix I – Patio Covers

One copy of the International Building Code, 20093 Edition, and all supplements or amendments thereto shall be filed in the office of the city clerk as provided by law.

Amended by Ordinance No. 8955, effective 3-31-2005

#### §8-2. International Residential Code (IRC) Adopted

The International Residential Code, 200<u>96</u><sup>3</sup> Edition, published by the International Code Council, is hereby adopted, together with any amendments thereto as may be made from time to time, except such portions as are hereinafter deleted, modified, or amended by ordinance and set forth in this chapter of the City Code.

One copy of the International Residential Code, 200<u>96</u><sup>3</sup> Edition, and all supplements or amendments thereto shall be filed in the office of the City Clerk as provided by law.

Amended by Ordinance No. 8955, effective 3-31-2005

# **§8-3.** International Building Code (IBC) and International Residential Code (IRC); Standards Adopted

The following standards shall be used with the International Building Code and the International Residential Code adopted by §8-1 and §8-2 above:

Acceptable Wind Load Design Procedures:

200<u>96</u>3 I.B.C. - Basic Wind Speed 90 mph Exposure C only

## ORDINANCE NO. 9365 (Cont.)

Roof Snow Load - 30 pounds per sq. ft. Frost Depth - 36 inch minimum Seismic Design Category A, Site Class D IRC, Table R301.5 Amend live load for sleeping rooms from 30 pounds to 40 pounds per square foot. Amended by Ordinance No. 8955, effective 3-31-2005

#### §8-4. IBC - Certain Sections Not Adopted

It is especially provided that the following chapters, sections, and tables of the International Building Code are not adopted or approved, and the same shall be of no force and effect:

Chapter 1 Section 101.4.1 GasElectrical Section 101.4.2 MechanicalGas Section 101.4.3 PlumbingMechanical Section 101.4.4 Property MaintenancePlumbing Section 101.4.6 Energy5 Property Maintenance Section 101.4.7 Energy Section 103 Department of Safety Section 106 Floor and Roof design Loads Section 107.2.5.1 Design Flood Elevations Section 108 Temporary Structures and Uses-Temporary Structures and Uses Section 112 Service Utilities Section 113 Board of Appeals Board of Appeals Chapter 13 – Energy Efficiency Chapter 18 Section 1809.5 5.2.1(2) - Frost Protection; #2 Constructing in accordance with ASCE-32, and Exception:1,2,3. Chapter 27 – Electrical Chapter 28 – Mechanical Chapter 30 – Elevators and Conveying Systems Chapter 32 - Encroachments into the Public Right-of-Way Chapter 33 – Safeguards During Construction Chapter 34 – Existing Structures Appendix A Employee Qualifications Appendix B Board of Appeals Appendix D Fire Districts Appendix E Supplementary Accessibility Requirements Appendix F Rodent Proofing Appendix G Flood-Resistant Construction Appendix H Signs Appendix J Grading

Appendix K Administrative ProvisionsICC Electrical Code

Amended by Ordinance No. 8955, effective 3-31-2005

#### §8-5. IRC – Certain Sections and Parts Not Adopted

It is especially provided that the following parts, chapters, and sections of the International Residential Code are not adopted or approved, and the same shall be of no force and effect:

Section R101.2 Scope; Exception

Section R102.7 – Existing Structures Section R105.3.1.1 Determination of Substantially improved or substantially damaged existing buildings in flood hazard areas.

Section R107 – Temporary Structures and Uses Section R109.1.3 – Floodplain Inspections Section R112 – Board of Appeals Section 313 Automatic Fire Sprinkler Systems

Section R32<u>24</u>3 – Flood-Resistant Construction Section R403.1.4.1(2) Frost Protection; <u>2.</u> Constructing in Accordance with Section R403.3

### ORDINANCE NO. 9365 (Cont.)

Section R403.1.4.1(3) Frost Protection; 3. Constructing in Accordance with ASCE 32.-01 Section R403.1.4.1 Frost Protection; Exceptions: 1. 2. & 3. Section R403.3 - Frost Protected Shallow Foundations Section R403.3.1 - Foundations Adjoining Frost Protected Shallow Foundations Section R403.3.1.1 – Attachment to Unheated Slab-on Ground Structure Section R403.3.1.2 – Attachment to Heated Structure Section R403.3.3.2 – Protection of Horizontal Insulation Below Ground Section R403.3.3.3 – Drainage Section R403.3.4 - Termite Damage Section R406.2 - Concrete and masonry foundation waterproofing Part IV - Energy Conservation Part V - Mechanical Part VI - Fuel Gas Part VII - Plumbing Part VIII - Electrical Part X Appendices, A'B,C.D,E,F,G,H,I,J,K,L,M,N,O,P,&Q.

Amended by Ordinance No. 8955, effective 3-31-2005

#### §8-7. IBC - Amendment of Section 1704

Section 1704.1 of the International Building Code is hereby amended to read as follows:

Section 1704 General. Where application is made for construction as described in this section, the owner or the registered design professional in responsible charge acting as the owner's agent may be required to employ one or more special inspectors to who shall provide inspections during construction on the types of work listed under Section 1704.

Amended by Ordinance No. 8955, effective 3-31-2005

### §8-8. IBC - Amendment of Section 1098; Fees; Plan Review Fee

Section 10<u>98.4 & 108.6</u> of the International Building Code is hereby amended by adding the following to read as follows:

Section 108.6 Refunds

-(a) *General*. Fees shall be assessed in accordance with the provisions of this section or shall be as set forth in the fee schedule adopted by the jurisdiction.

(b) *Permit Fees.* The fee for each permit shall be as set forth in the City of Grand Island Fee Schedule. The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems and any other permanent equipment.

-(c) *Plan Review Fees.* When a plan or other data are required to be submitted by Section 106, a plan review fee shall be paid in accordance with the City of Grand Island Fee Schedule at the time of submitting plans and specifications for review. The plan review fees specified in this subsection are separate fees from the permit fees, and are in addition to the permit fees.

Where plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate shown in the City of Grand Island Fee Schedule.

-(d) *Expiration of Plan Review*. Applications for which no permit is issued within 180 days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action by the applicant for a period not exceeding 180 days on request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

<u>\*\*\* Section 108.4</u> (e) Investigation Fees: Work Without a Permit.

(1) Investigation. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work.

(2) Fee. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be in accordance with the City of Grand Island Fee

Schedule. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

<u>Section108.6 (f)</u> Fee Refunds. The building official may authorize refunding of any fee paid hereunder which was erroneously paid or collected.

The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

The building official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

Section 109.7 Investigation Fees: Work Without a Permit.

- (1) Investigation. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work.
- Fee. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be in accordance with the City of Grand Island Fee Schedule. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from nay penalty prescribed by law.

Amended by Ordinance No. 8955, effective 3-31-2005

#### §8-9. IBC - Amendment of Section 11009

Section  $1\underline{1099}$  of the International Building Code shall be amended to include the following subsection: Section  $1\underline{1099}$ .7. Reinspections.

A reinspection fee may be assessed for each inspection or reinspection when such portion of work for which inspection is called is not complete or when corrections called for are not made.

This section is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with the requirements of this code, but as controlling the practice of calling for inspections before the job is ready for such inspection or reinspection.

Reinspection fees may be assessed when the inspection record card is not posted or otherwise available on the work site, the approved plans are not readily available to the inspector, for failure to provide access on the date for which inspection is requested, or for deviating from plans requiring the approval of the building official.

To obtain a reinspection, the applicant shall file an application therefore in writing on a form furnished for that purpose and pay the reinspection fee in accordance with the City of Grand Island Fee Schedule.

In instances where reinspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

Amended by Ordinance No. 8955, effective 3-31-2005

8-9.1 IBC -- Amend Section 309 by adding section 309.3 Tenant Separation.

A tenant separation wall complying with section 7098 shall be required between any tenant space in all buildings with independent tenants with exits to the exterior.

8-9.2 IBC Amend Section 406.1.2 #2 by adding 2' or more in residential zoned properties.

§8-11. IBC - Amendment of Section 102965.1 and IRC – Amendment of Section R303& R310

The following are hereby <u>amended</u> <del>added as exceptions</del> to Section 102<u>965</u>.1 <u>exception 7</u> of the International Building Code and Section R310 of the International Residential Code add exceptions</u>:

EXCEPTION: 7.Basements used exclusively for the service of buildings and which do not exceed 300 square feet.

R303.1 add exception #4. Basements shall be provided with glazed areas of not less than 2% of the floor area.

Section 310.1 Exceptions : Basements used only to house mechanical equipment and not exceeding total floor area of 300 square feet.

In existing single family residential occupancies other than apartments, a sleeping room may be added in an existing basement if the following conditions are met:

(1) The sleeping room must have an openable window.

## ORDINANCE NO. 9365 (Cont.)

(2) Smoke detectors have been installed in the sleeping room, the furnace room, and in the exitway of the basement.

Amended by Ordinance No. 8955, effective 3-31-2005

#### §8-12. IBC - Amendment of Section 18095.1 and ;18095.72.1

Section 18025.74 of the International Building Code is hereby amended by adding the following:

Bearing Walls

Bearing walls shall be supported on masonry or concrete foundations or piles or other approved foundation system which shall be of sufficient size to support all loads. Where a design is not provided herein, the minimum foundation requirements for stud bearing walls shall be as set forth in Table No. 1809.75.4.2. EXCEPTIONS:

(1) A one-story wood or metal frame building not used for human occupancy and not over 200 square feet in floor area, may be placed upon a concrete slab of four inch minimum thickness.

(2) Detached accessory buildings not exceeding 625 feet in floor area may use a six-inch wide by eighteen inch deep foundation system with at least twelve inches below grade.

1805.2.1 Omit 2. Constructing in accordance with ASCE 32.

Omit Exceptions, 1.2.&3.

Amended by Ordinance No. 8955, effective 3-31-2005

#### §8-13. IRC – Amendment to Sections R403 and R404, and Tables R404.1.1(1) & R404.1(2)

Sections R403 Footings and R404 Foundation Walls of the International Residential Code are hereby amended by adding the following to read as follows:

Minimum Footing and Foundation Requirements for Residential Construction

(1) The minimum footing foundation requirement, balanced fill, for a one-story residence shall be six (6) inches in width by thirty-six (36) inches below grade, with two #4 horizontal rebar continuous.

(2) The minimum footing foundation requirement, unbalanced fill, for a one- or two-story frame residence shall be sixteen (16) inches in width by eight (8) inches deep, with two #4 rebar continuous and a minimum eight (8) inch wall of block or concrete.

(3) In addition to the requirements set forth in subparagraphs (1) and (2) above, the following reinforcement requirements for wall foundation must be met:

8" solid concrete from 60" up to 84" unbalanced fill – three #4 horizontal strands, equally spaced throughout height of wall;

8" block - from 48" to 60" unbalanced fill - one #4 rebar vertical, 4' on center to grade height;

8" block - from 60" to 84" unbalanced fill - one #4 rebar vertical, 4' on center to top of foundation. R403.1.6 Foundation Anchorage.

Maximum anchor-bolt spacing shall be 6 feet on center, there shall be a minimum of two bolts per plate section with one bolt located not more than 12 inches from each end of the plate section. Bolts shall be at least ½ inch in diameter and shall extend a minimum of 7 inches into masonry or concrete.

Amended by Ordinance No. 8955, effective 3-31-2005

#### §8-14. IBC – Amendment of Section 18057 and IRC- Amendment of R406

Section 180<u>5</u><sup>7</sup> of the International Building Code and Section R406 of the International Residential Code is hereby amended by adding thereto the following:

<u>18057.2.2 & 18057.2.2.1-</u> Walls. & Surface preparation of walls, and R406, R406.2, subsurface drainage system shall be included as an alternative to waterproofing. Add Backplaster and Dampproofing

Exterior foundation walls below grade of any building consisting of masonry units having a basement shall be backplastered with one-half inch (1/2") Portland cement and sand mix  $(1:2 \ 1/2 \ by \ volume)$  or two one-fourth inch (1/4") coats of Type M mortar, and with an approved dampproofing material. Poured concrete foundations shall be coated with dampproofing without back plaster. Alternative dampproofing may be approved by the building official.

## 1805.4 Delete existing and add ;Subsurface Drainage Systems

All buildings constructed with basements or floor levels twenty-four (24) inches or more below the elevation of the center line of the adjacent public street shall be provided with a subsurface drainage system. A subsurface drainage system shall consist of the minimum following elements:

## ORDINANCE NO. 9365 (Cont.)

(1) Minimum four (4") diameter perforated or scored drain pipe embedded in four inches (4") of coarse gravel installed around the inside of the perimeter footing such that no floor location is greater than ten feet (10') to such drain pipe.

(2) Minimum fifteen inch (15") diameter by thirty inch (30") deep sump pump pit for each one thousand five hundred (1,500) square feet of floor area to be drained.

(3) Minimum two inch (2") diameter weep holes through the footing at eight foot (8') on center intervals with a minimum of four inch (4") of gravel cover on the exterior of the footing.

(4) Minimum four inch (4") gravel bed under floor slab.

Section 1807.2.1 Floors. Omit this section.

Amended by Ordinance No. 8955, effective 3-31-2005

**§8-15.** <u>Amend Chapter 29 section 2901.1 replace reference to International Plumbing Code to Uniform Plumbing Code.</u>

Amend table 2902.1 footnote F replace the number 15 to 30.Reserved IRC - Amendment of Section R105.2 Section R105.2 of the International Residential Code is hereby amended as follows:

Building: (1) One story detached accessory structures, provided the floor area does not exceed 120 square feet.

Amended by Ordinance No. 8955, effective 3-31-2005

#### §8-16. IRC – Amendment of TableSection R301.2(1) and Table 301.5

Section R301.2 of the International Residential Code is hereby amended by <u>adding criteria asdeleting "and</u> set forth in Table R301.2(1). <u>"Ground snow load- 25#</u>

Wind Speed- 90
Seismic Design Category A, Site Class D.
Weathering – sever
Frost line Depth – 36"
Termite – M/H
Winter Design Temp3
Ice Barrier Underlayment Required NO
Flood Hazard - Firm
Air Freezing Index >1000-2000
Mean Annual Temp – 50 F

Amend Table 301.5 Minimum Uniform Distributed Live Loads – Sleeping Rooms - 40#

Amended by Ordinance No. 8955, effective 3-31-2005

#### **§8-17. IRC – Amendment of Section R302.1**

The <u>Eexception #2</u> within Section R302.1 of the International Residential Code is hereby amended to read as follows:

Detached garages accessory to a dwelling located within 2 feet of a property line may have roof eaves projections not exceeding 12 inches.

Amended by Ordinance No. 8955, effective 3-31-2005

#### §8-18. IRC – Amendment of Section R311.4.3

Section R311.4.3 of the International Residential Code is hereby amended by deleting the following exception: <u>#1.</u> Where a stairway of two or fewer risers is located on the exterior side of a door, other than the required exit door, a landing is not required for the exterior side of the door provided the door, other than an exterior storm or screen door does not swing over the stairway.

Amended by Ordinance No. 8955, effective 3-31-2005

#### §8-19. IRC – Amendment of Section R311.7.4.15.3.1

Section  $R311.\underline{75.43}.1$  of the International Residential Code is hereby amended to reflect that the maximum riser height shall be 8 inches.

Amended by Ordinance No. 8955, effective 3-31-2005

§8-20. IRC Delete section R313 Automatic Fire SprinklersReserved and amend section R315 Carbon Monoxide Alarms.
SectionR315 shall be amended by adding power requirements shall as specified in R314.4.

#### §8-22. Permits Required; Amendment of IBC Section 105 and IRC Section R105

Section 105 of the International Building Code and Section R105 of the International Residential Code shall be amended by adding the following:

No person, firm, or corporation shall erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish, equip, use, occupy, or maintain any building or structure in the city, or cause the same to be done without first obtaining a separate building permit for each such building or structure from the Building Department; provided, no permit shall be issued by the Building Department unless and until authorized by resolution of the City Council in any one or more of the following cases:

(1) Where the real property described in the application for permit does not front upon a dedicated street or public road;

(2) Where a subdivision as required by state statutes has not been lawfully approved and recorded with the Register of Deeds.

(3) When the City Engineer certifies that surface water drainage is unavailable or inadequate to drain the public street or road abutting upon the real property described in the application for permit.

(4) Where the City Engineer certifies that surface water drainage from the real property described in the application for permit will create or add to an impounding of surface water upon a public street or road.

Amend section R105.2 Work exempt from building permit. Buildings 1. replace 200 square feet with 120 square feet.

Amended by Ordinance No. 8955, effective 3-31-2005

SECTION 2. Section 8-76 of the Grand Island City Code is hereby amended to read as

follows:

#### §8-76. Insurance

(A) Every registration shall maintain in full force and effect insurance policies written by a company or companies authorized to do business in Nebraska, with the following coverages and amounts:

(1) Comprehensive General Liability Insurance covering the operations of the registrant, including coverage for completed operations, with limits of not less than <u>\$1,000,000</u>\$300,000 per occurrence for bodily injury and property damage.

(2) A provision that the City of Grand Island is an additional insured as to any third party claims for bodily injury or property damage based upon occurrences in connection with the registrant's operations, including completed operations, within the City's zoning jurisdiction.

(B) The registrant shall furnish the city building department with a certificate or certificates of insurance for the above insurance coverage which shall contain a statement that said policies contain a provision that said policies may not be canceled without written notice of such cancellation having been served on the City at least thirty (30) days prior to the date of cancellation.

SECTION 3. Section 8-100 of the Grand Island City Code is hereby amended to read as

#### follows:

#### §8-100. Insurance

(1) Every registrant shall maintain in full force and effect insurance policies written by a company or companies authorized to do business in Nebraska, with the following coverages and amounts:

(a) Comprehensive General Liability Insurance covering the operations of the registrant, including coverage for completed operations, with limits of not less than  $\frac{1,000,000300,000}{1,000,000}$  per occurrence for bodily injury and property damage.

## ORDINANCE NO. 9365 (Cont.)

(b) The City of Grand Island shall be listed as an additional party insured as to any third party claims for bodily injury or property damage based upon occurrences in connection with the registrant's operations, including completed operations, within the City's zoning jurisdiction.

(2) The registrant shall furnish the City building department with a certificate or certificates of insurance for the above insurance coverage which shall contain a statement that said policies contain a provision that said policies may not be canceled without written notice of such cancellation having been served on the City at least thirty (30) days prior to the date of cancellation.

SECTION 4. Sections 8-1 through 8-5; 8-7 through 8-9; 8-11 through 8-20; 8-22;

8-76; and 8-100 as now existing, and any ordinances or parts of ordinances in conflict herewith

are repealed.

SECTION 5. The validity of any section, subsection, sentence, clause, or phrase

of this ordinance shall not affect the validity or enforceability of any other section, subsection,

sentence, clause, or phrase thereof.

SECTION 6. That this ordinance shall be in force and take effect March 30, 2012

and shall be published within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



# **City of Grand Island**

Tuesday, February 28, 2012 Council Session

# Item F3

**#9366 - Consideration of Amending Chapter 15 of the Grand** Island City Code Relative to Adopting the 2011 National Electrical Code

**Staff Contact: Craig Lewis** 

# **Council Agenda Memo**

From:	Craig A. Lewis, Building Department Director
Meeting:	February 28, 2012
Subject:	City Code Amendments to Chapter 15, Electricity Adoptions of the 2011 National Electrical Code
Item #'s:	F-3
Presenter(s):	Craig Lewis, Building Department Director

# **Background**

This request is for City Council approval to modify the City Code by adopting the 2011 Edition of the National Electric Code. The City has for several decades adopted and enforced electrical codes to safeguard persons and property from the hazards arising from the use of electricity. The 2011 National Electric Code (NEC) is the current edition of the national standard for the installation of electrical wiring systems. Typically the State of Nebraska adopts the current edition of the NEC and requires local inspection programs to adopt and enforce the current regulations as part of the State approval of local programs.

## **Discussion**

The proposed amendment to Chapter 15 of the Grand Island City code will adopt the current edition of the National Electric Code. The City's electrical board has reviewed the 2011 NEC and recommends approval with the local amendments as outlined in the proposed ordinance. The local amendments basically provide some restrictions and clarifications in the installation of required wiring.

# **Alternatives**

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

- 1. Approve the ordinance.
- 2. Disapprove or /Deny the adoption of the ordinance.
- 3. Modify the ordinance to meet the wishes of the Council
- 4. Table the issue

# **Recommendation**

The City Electrical Board and City Staff recommends that the City Council approve Ordinance No. 9366 adopting the 2011 NEC, with the local amendments identified and begin enforcement on March 30, 2012.

# **Sample Motion**

Move to approve Ordinance No. 9366.



BUILDING

- ≈ 2011 National Electrical Code
- 😴 110.24 Available Fault current
- 210.12 Arc-fault Circuit Protection, extension and modifications.
- 404.2 Switches grounded circuit conductors
- Replacement devices, tamper or water resistant 👕 406

## **ORDINANCE NO. 9366**

An ordinance to amend Chapter 15 of the Grand Island City Code; to amend Section 15-1 pertaining to electricity; to amend Section 15-2 to adopt the 2011 National Electrical Code; to amend Section 15-3 pertaining to amendments to the National Electrical Code; to amend Section 15-8 pertaining to wiring; and to amend Section 15-41pertaining to registration; to repeal Sections 15-1; 15-2; 15-3; 15-6; 15-8; and 15-41 as now existing, and any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF

## GRAND ISLAND, NEBRASKA:

SECTION 1. Section 15-1 of the Grand Island City Code is hereby amended to read as

follows:

### §15-1. Applicability of Article

This article shall apply to all structures, constructed, assembled or placed within the City, and provides standards for electrical wiring as identified in the Nebraska State Electrical Act.

SECTION 2. Section 15-2 of the Grand Island City Code is hereby amended to read as

follows:

#### §15-2. National Electrical Code Adopted

(A) There is hereby adopted by the City of Grand Island for the purpose of safeguarding persons and buildings from hazards arising from the use of electricity for light, heat, power, radio, signaling, and other purposes, that certain code known as the National Electrical Code, <u>2008–2011</u>Edition, recommended by the National Fire Protection Association, except as modified by this section.

(B) The National Electrical Code adopted by subsection (A) above is modified by deleting Article 362, Article 210-52C Subsection 2 and 3, which are not adopted and shall have no force or effect. Articles 320, 330, 334, 348, and 352 are amended by §15-3 of the Grand Island City Code.

(C) One copy of the National Electrical Code, <u>2008–2011</u>Edition, shall be on file in the city clerk's office for public use and inspection as provided by law.

Amended by Ordinance No. 8990, effective 8-10-2005 Amended by Ordinance No. 9194, effective 11-1-2008

SECTION 3. Section 15-3 of the Grand Island City Code is hereby amended to read as

follows:

#### §15-3. Amendments to National Electrical Code, <u>2008</u> <u>2011</u> Edition

The following sections are adopted as amendments to the same numbered sections of the National Electrical Code, 2008–2011Edition:

Article 320 – Armored cable (type AC)

320.10. Uses permitted. Armored cable may be used for indoor branch circuits when installed with a grounding conductor in the cable with the branch circuit conductors and sized to the overcurrent protective devise. Anti short bushings shall be used.

320.12. Uses not permitted. Armored cable shall not be used in hazardous locations, where buried or in direct contact with the earth, concrete, cinder fill or where exposed to chemicals or acids.

Article 330 - Metal-Clad Cable (Type MC)

330.10. Uses Permitted. Metal-clad cable may be used for indoor branch circuit use only when installed with a grounding conductor in the cable with the circuit conductors and sized to the overcurrent protective devise. Anti short bushing shall be used.

330.12. Uses Not Permitted. Metal-clad cable shall not be used in hazardous locations where subject to physical damage, buried in direct contact with the earth, concrete, cinder fill, or where exposed to chemicals or acids.

Article 334 - Nonmetallic-Sheathed Cable (Types NM, NMC, and NMS)

334.12. Uses Not Permitted. In any multifamily dwelling or structure exceeding three floors above grade. For the purpose of this article, the floor of a building shall be that floor that has fifty percent (50%) or more of the exterior wall surface area level with or above finished grade. One additional level that is the first level and not designed for human habitation and only for vehicle parking, storage or similar use shall be permitted.

### Article 352 - Rigid Nonmetallic Conduit (PVC)

352.10. Uses Permitted

- (A) Where encased in concrete
- (B) Underground installations
- (C) For service entrances on the outside of buildings where not subject to physical damage
- (D) For raceways to feed subpanels
- (E)In wet locations where used with proper connections and fittings

#### (F)For physical protection of ground wires

352.12. Uses Not Permitted

<u>(A) In hazardous (classified) locations (except as provided in National Electrical Code Sections 503.3, 504.20, 514.8)</u>

\_(B) For support of fixtures or other equipment

(C) Where subject to physical damage

(D) Where subject to ambient temperatures exceeding those for which the conduit is approved

(E) (A) In alleys or utility easements, the first section of conduit out of the ground

(F)-(B) For branch circuits

Article 348 - Flexible Metal Conduit

348.10. Uses Permitted.

Flexible metal conduit may be used for fish work in old buildings or other places where rigid conduit is impractical to install. Special permission shall be obtained from the electrical inspector before it is used in, any installations, lengths longer than six feet.

Amended by Ordinance No. 8990, effective 8-10-2005 Amended by Ordinance No. 9194, effective 11-1-2008

SECTION 4. Section 15-6 of the Grand Island City Code is hereby amended to read as

follows:

#### §15-6. Service Entrances

(A)-Each service entrance with 2,000 amperes capacity or less shall be provided with a readily accessible

## ORDINANCE NO. 9366(Cont.)

main disconnecting device with appropriate overcurrent protection; provided, each service entrance larger than 2,000 amperes capacity shall comply with the provisions of the National Electric Code. The device shall disconnect all ungrounded conductors from the source of supply in one motion or operation of the hand. For overhead services, said overcurrent protection shall be installed within twenty-five (25) feet from the weatherhead, but within ten (10) feet from where the conductors enter the building. For underground services, said overcurrent protection shall be installed within ten (10) feet from where the conductors enter the building. No service entrance conductors shall be installed within the hollow spaces of a frame wall unless provided with overcurrent protection at their outer end. Attachment devices or insulators for the service drop shall be installed by the electrical contractor on the alley or easement side of the building in such a manner so that the clearances as required by this Code can be maintained by the utility company.

(B) (A) Manufactured Homes. Pedestals shall be required for power to manufactured homes on private lots, unless (1) the manufactured home comes with the service equipment factory installed or (2) the manufactured home is secured to a permanent foundation that complies with applicable building codes. This pedestal shall have proper overcurrent protection and provisions for metering.

(C)-(B)*Provisions for Metering*. Provisions for metering shall be in accordance with standards set out by the Grand Island Utilities Department.

(D)-(C)*Electrical Service Panels for Dwellings.* The minimum size of electrical panel that can be installed in a dwelling shall be 20 circuit for 100 amp, 30 circuit for a 150 amp, and 40 circuit for a 200 amp.

(D) *Multiple Family Units*. New multiple family units constructed in compliance with Chapter 8 of the Grand Island Code may be allowed up to 6 switches, one switch per unit. All switches shall be grouped together in one listed and approved assembly.

(E) *Number of Services*. One electrical service shall be provided for each tract or parcel of land, except upon written request and approval by the Utilities Director and Building Department Director, and/or their respective designee<sub>s</sub>, and in conformance with the National Electrical Code.

(F) *Multiple Occupancy Building*. Each tenant shall have access to their disconnecting means and overcurrent protection. This disconnecting means and overcurrent protection shall not be guarded by locked doors. Exceptions: (1) The disconnecting means and overcurrent protection are located in the tenant space.

(2) All electrical equipment is located in a common area with access to all tenants.

(3) Electrical equipment is located outside.

Amended by Ordinance No. 8990, effective 8-10-2005 Amended by Ordinance No. 9194, effective 11-1-2008

SECTION 5. Section 15-8 of the Grand Island City Code is hereby amended to read as

## follows:

#### §15-8. Wiring In Single and Multiple-Family Units

(A) Multiple family units may have branch circuits in individual units wired with nonmetallic sheathed cable if construction complies with Chapter 8 of the Grand Island City Code.

(B) Existing residential buildings containing more than six family units not having a two-hour fire wall rating separation as provided in Chapter 8 of the Grand Island City Code shall be wired with Electrical Metallic Tubing (EMT type) in compliance with the provisions of this chapter.

(C) All wiring in basements below the floor joist on exterior walls shall be wired with metallic tubing (EMT type). All electrical wiring in unfinished basements below the floor joist level on interior and exterior walls shall be guarded. All feeders from the main panel to the individual apartments in multiple family units shall be in conduit. The electrical panels shall be the circuit breaker type.

SECTION 6. Section 15-41 of the Grand Island City Code is hereby amended to read as

follows:

#### §15-41. Registration; Required

No person shall be engaged in the installation of any electrical wiring, fixtures, equipment, or devices for any purpose whatsoever in the City without having registered in the office of the Building Department.

(A) *Examination; Required.* Any applicant for a license or registration certificate shall pass an examination before the Board of Examination, unless he or she is the holder of a valid State of Nebraska Electricians License.

(B) *Licenses; Expiration; Renewal.* All journeyman electrician's and master electrician's licenses or certificates of registration issued by the electrical board shall expire on December 31 of the year in which such license or certificates are issued, but such licenses or certificates may be renewed within thirty days thereafter upon application and payment of fees in accordance with the City of Grand Island Fee Schedule.

Notice of the expiration date of all licenses issued pursuant to this article shall be mailed to all such license holders not less than fifteen days before such date. Such notice shall be sent to the last known address of the license holder.

Any master electrician or journeyman electrician who does not renew his or her license or certificate of registration pursuant to this article within the thirty day grace period provided by this section shall automatically forfeit such license or certificate. In the event of forfeiture of a license or certificate in this manner, the holder thereof may apply for and qualify to recover such lapsed license by applying to the electrical board for renewal.

SECTION 7. Sections 15-1; 15-2; 15-3; 15-6; 15-8; and 15-41 as now existing,

and any ordinances or parts of ordinances in conflict herewith are repealed.

SECTION 8. The validity of any section, subsection, sentence, clause, or phrase

of this ordinance shall not affect the validity or enforceability of any other section, subsection,

sentence, clause, or phrase thereof.

SECTION 9. That this ordinance shall be in force and take effect March 30, 2012

and shall be published within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



# **City of Grand Island**

Tuesday, February 28, 2012 Council Session

# Item F4

# **#9367 - Consideration of Amending Salary Ordinance**

Staff Contact: Brenda Sutherland

# **Council Agenda Memo**

From:	Brenda Sutherland, Human Resources Director
Meeting:	February 28, 2012
Subject:	Salary Ordinance No. 9367
Item #'s:	F-4 & I-2
<b>Presenter</b> (s):	Brenda Sutherland, Human Resources Director

# **Background**

Wages for City employees are presented to the City Council for approval in the form of a salary ordinance. An ordinance is being brought forward for Council consideration to support the recommendation to add two new positions to the Wastewater Treatment Plant. The two new positions are a Wastewater Plant Engineer and a Wastewater Operations Engineer. These positions were approved by the City Council at the February 14, 2012 meeting under Resolution 2012-41 (B).

# **Discussion**

The proposed salary ordinance along with an FTE amendment which is also presented on this Council agenda are the action items needed to move forward with the direction provided by Council on February 14<sup>th</sup>. The wage scale for the Wastewater Plant Engineer is \$65,248.56 - \$93,650.70 and the scale for the Wastewater Operations Engineer is \$62,816.00 - \$88,400.00. These positions are professional positions and would be exempt from overtime per FLSA guidelines. Once approved, the Human Resources Department can begin recruitment efforts.

# **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**

Salary Ordinance No. 9367 implements Council Resolution #2012-41 (B) and is recommended for approval.

# **Sample Motion**

Move to approve Salary Ordinance No. 9367.

## RESOLUTION 2012-41 (B)

WHEREAS, the City Of Grand Island City Council has reviewed options for improving the cost efficiency of the Wastewater Treatment Plant's operations, including contract operations with Veolia Water, and initiation of an internal improvement plan; and

WHEREAS, staff in the form of a Wastewater Plant Engineer and a Wastewater Operations Engineer is needed to provide the expertise and guidance necessary for this initiative; and

WHEREAS, the positions of Wastewater Plant Engineer and Wastewater Operations Engineer need to be created; and

WHEREAS, identification of available Asset Management software and services is needed to further develop this improvement plan; and

WHEREAS, it is necessary to identify types and locations for monitoring devices to develop an installation plan and estimate; and

WHEREAS, the additional expertise and the information expected from the Asset Management and Monitoring and Automation studies is required to develop the internal improvement plan; and

WHEREAS, additional funding not to exceed \$500,000 is needed to immediately initiate this plan and cash reserves are available; and

WHEREAS, after all information has been presented to City Council to allow for a well informed decision to be made; and

WHEREAS, City Council has voted and approved the initiation of an alternate improvement plan at the Wastewater Treatment Plant.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Wastewater budget is amended to include an expenditure of an amount not to exceed \$500,000 in fiscal year 2011/12 to fund the salaries of a Wastewater Plant Engineer and a Wastewater Operations Engineer and to fund Asset Management and Monitoring and Automation studies; and the Salary Ordinance is amended to include the titles of Wastewater Plant Engineer and Wastewater Operations Engineer.

> Approved as to Form February 13, 2012 City Attorney

Adopted by the City Council of the City of Grand Island, Nebraska, February 14, 2012.

Jay Vavricek, Mayor

Attest:

וחמ RaNae Edwards, City Clerk

### ORDINANCE NO. 9367

An ordinance to amend Ordinance <u>9337–9357</u> known as the Salary Ordinance which lists the currently occupied classifications of officers and employees of the City of Grand Island, Nebraska and established the ranges of compensation of such officers and employees; to amend Overtime Eligibility for the Community Development Administrator from Exempt to 40 hrs/week; to amend the classification of Assistant Utility Director Administration to Assistant Utilities Director — Distribution; to amend the classifications of Assistant Utility Director — PGS & PCC to Assistant Utilities Director — Production and Assistant Utilities Director — Transmission —; to add the classifications and ranges of Wastewater Plant Engineer and Wastewater Plant Operations Engineer; and to repeal those portions of Ordinance No. <u>9337-9357</u> and any parts of other ordinances in conflict herewith; to provide for severability; to provide for the effective date thereof; and to provide for publication of this ordinance in pamphlet form.

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

SECTION 1. The currently occupied classifications of officers and general employees of the City of Grand Island, and the ranges of compensation (salary and wages, excluding shift differential as provided by Personnel Rules & Regulations) to be paid for such classifications, and the number of hours and work period which certain officers and general employees shall work prior to overtime eligibility are as follows:

Classification	Hourly Pay Range Min/Max	Overtime Eligibility
Accountant	21.9881/31.0033	Exempt
Accounting Technician – Solid Waste	15.2625/20.0651	40 hrs/week
Assistant to the City Administrator	21.3879/30.1079	Exempt
Assistant Utilities Director – Distribution	41.4936/58.4045	Exempt
Assistant Utilities Director – Production	44.9328/63.2681	Exempt

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

Classification	Hourly Pay Range Min/Max	Overtime Eligibility
Assistant Utilities Director – Transmission	44.9328/63.2681	Exempt
Attorney	27.3606/42.2161	Exempt
Biosolids Technician	17.3383/24.4065	40 hrs/week
Building Department Director	32.0513/45.6044	Exempt
Cemetery Superintendent	18.6323/26.2314	Exempt
City Administrator	54.8239/77.1429	Exempt
City Attorney	37.8815/53.3170	Exempt
City Clerk	22.8836/32.2140	Exempt
Civil Engineering Manager – Utility PCC	32.5600/46.4896	Exempt
Collection System Supervisor	21.9678/31.2271	40 hrs/week
Community Service Officer	12.3118/16.7379	40 hrs/week
Custodian – Library, Police	11.2825/15.9214	40 hrs/week
Customer Service Representative – Part time	8.1400/12.21000	40 hrs/week
Electric Distribution Superintendent	31.7969/43.5795	Exempt
Electric Distribution Supervisor	26.8518/36.8223	40 hrs/week
Electric Underground Superintendent	28.3170/38.8176	Exempt
Electrical Engineer I	25.7733/35.5718	Exempt
Electrical Engineer II	29.8941/41.2189	Exempt
Emergency Management Deputy Director	21.7338/29.7221	Exempt
Emergency Management Director	30.9320/42.2873	Exempt
Engineering Technician - WWTP	19.2002/27.1266	40 hrs/week
Equipment Operator - Solid Waste	15.3864/21.6684	40 hrs/week
Finance Director	36.3126/51.0998	Exempt
Fire Chief	34.6459/49.0944	Exempt
Fire Division Chief	28.3344/40.8994	Exempt
Fleet Services Shop Foreman	19.5462/27.2283	40 hrs/week
Golf Course Superintendent	23.2091/33.4961	Exempt
Grounds Management Crew Chief – Cemetery	17.4024/24.4899	40 hrs/week
Grounds Management Crew Chief – Parks	17.9244/25.2244	40 hrs/week
Human Resources Director	32.7736/46.6931	Exempt
Human Resources Benefits & Risk Management	17.5519/25.7936	40 hrs/week

## ORDINANCE NO. 9367(Cont.)

Classification	Hourly Pay Range Min/Max	Overtime Eligibility
Coordinator		
Human Resources Recruiter	17.5519/25.7936	40 hrs/week
Human Resources Specialist	16.2210/22.8215	40 hrs/week
Information Technology Manager	29.4608/41.4516	Exempt
Legal Secretary	19.3020/25.9564	40 hrs/week
Librarian I	16.8600/23.4534	Exempt
Librarian II	18.6711/26.3024	Exempt
Library Assistant I	11.8132/16.2597	40 hrs/week
Library Assistant II	13.0138/17.9385	40 hrs/week
Library Assistant Director	21.2658/30.3114	Exempt
Library Director	28.7745/40.5034	Exempt
Library Page	7.5600/10.4599	40 hrs/week
Library Secretary	14.1331/20.0855	40 hrs/week
Maintenance Worker – Golf	14.1865/20.0066	40 hrs/week
Manager of Engineering Services	31.3695/45.0244	Exempt
Meter Reader Supervisor	17.8435/25.1290	Exempt
Office Manager – Police Department	15.4558/21.4088	40 hrs/week
Parks and Recreation Director	32.5449/45.7755	Exempt
Parks Superintendent	22.7411/32.1631	Exempt
Payroll Specialist	16.2210/22.8215	40 hrs/week
Planning Director	32.2698/45.3986	Exempt
Police Captain	27.2486/38.3293	Exempt
Police Chief	34.6459/49.0944	Exempt
Power Plant Maintenance Supervisor	28.5419/40.1479	Exempt
Power Plant Operations Supervisor	29.7110/42.7758	Exempt
Power Plant Superintendent – Burdick	32.5404/45.7903	Exempt
Power Plant Superintendent – PGS	37.5140/52.7646	Exempt
Project Manager – Public Works	28.9275/40.7000	Exempt
Public Information Officer	20.4314/28.7545	Exempt
Public Works Director	36.4524/51.2964	Exempt
Public Works Engineer	30.2000/42.5000	Exempt

## ORDINANCE NO. 9367(Cont.)

Classification	Hourly Pay Range Min/Max	Overtime Eligibility
Receptionist	12.6170/18.2540	40 hrs/week
Recreation Coordinator	16.4835/22.9955	Exempt
Recreation Superintendent	21.2963/30.5555	Exempt
Regulatory and Environmental Manager	28.1473/39.5929	Exempt
Senior Accountant	26.7806/37.2813	Exempt
Senior Electrical Engineer	32.7126/45.1058	Exempt
Senior Public Safety Dispatcher	16.4835/22.5275	40 hrs/week
Senior Utility Secretary	14.5757/20.8130	40 hrs/week
Shooting Range Superintendent	21.2963/30.5555	Exempt
Solid Waste Division Clerk - Full Time	14.5401/19.4750	40 hrs/week
Solid Waste Division Clerk - Part Time	12.9463/17.6842	40 hrs/week
Solid Waste Foreman	16.1559/22.7331	40 hrs/week
Solid Waste Superintendent	23.3808/32.9011	Exempt
Street Superintendent	23.9113/34.8086	Exempt
Street Foreman	18.8034/26.7195	40 hrs/week
Turf Management Specialist	20.8588/29.5279	40 hrs/week
Utilities Director	52.8795/75.7733	Exempt
Utility Production Engineer	33.4540/47.0808	Exempt
Utility Services Manager	27.2181/37.8815	Exempt
Utility Warehouse Supervisor	22.2019/31.0134	40 hrs/week
Victim Assistance Unit Coordinator	12.7696/17.9792	40 hrs/week
Wastewater Engineering/Operations Superintendent	26.0989/36.9251	Exempt
Wastewater Plant Chief Operator	19.2816/27.1774	40 hrs/week
Wastewater Plant Engineer	<u>31.3695/45.0244</u>	Exempt
Wastewater Plant Operations Engineer	30.2000/42.5000	Exempt
Wastewater Plant Maintenance Supervisor	23.3109/31.3899	40 hrs/week
Wastewater Plant Process Supervisor	24.1656/32.5804	40 hrs/week
Water Superintendent	24.6449/34.8086	Exempt
Water Supervisor	21.2759/30.6573	40 hrs/week
Worker / Seasonal	7.2500/20.0000	Exempt
Worker / Temporary	7.2500/20.0000	40 hrs/week

## ORDINANCE NO. 9367(Cont.)
A shift differential of \$0.10 per hour shall be added to the base hourly wage for persons in the employee classification Senior Public Safety Dispatcher who work a **complete** shift that begins between 3:00 p.m. and 11:00 p.m. This does not include persons who work the day shift. Shift differential will only be paid for actual hours worked. Paid leave will not qualify for the shift differential pay.

SECTION 2. The currently occupied classifications of employees of the City of Grand Island included under the AFSCME labor agreement, and the ranges of compensation (salary and wages, excluding shift differential as provided by contract) to be paid for such classifications, and the number of hours and work period which certain such employees included under the AFSCME labor agreement shall work prior to overtime eligibility are as follows:

Classification	Hourly Pay Range Min/Max	Overtime Eligibility
Equipment Operator – Streets	14.3613/21.2743	40 hrs/week
Fleet Services Mechanic	16.3825/24.2718	40 hrs/week
Horticulturist	15.1638/22.5063	40 hrs/week
Maintenance Worker – Cemetery	14.2525/21.1310	40 hrs/week
Maintenance Worker – Parks	14.1574/21.0022	40 hrs/week
Maintenance Worker – Streets	13.8581/20.5436	40 hrs/week
Senior Equipment Operator – Streets	15.7348/23.3375	40 hrs/week
Senior Maintenance Worker – Streets	15.7348/23.3375	40 hrs/week
Traffic Signal Technician	15.7348/23.3375	40 hrs/week

SECTION 3. The currently occupied classifications of employees of the City of Grand Island included under the IBEW labor agreements, and the ranges of compensation (salary and wages, excluding shift differential as provided by contract) to be paid for such

classifications, and the number of hours and work period which certain such employees included under the IBEW labor agreements shall work prior to overtime eligibility are as follows:

Classification	Hourly Pay Range Min/Max	Overtime Eligibility
Accounting Clerk	14.6738/19.4178	40 hrs/week
Cashier	13.4680/18.3525	40 hrs/week
Custodian	15.7268/18.5712	40 hrs/week
Electric Distribution Crew Chief	28.7270/36.5353	40 hrs/week
Electric Underground Crew Chief	28.7270/36.5353	40 hrs/week
Engineering Technician I	18.1032/25.9023	40 hrs/week
Engineering Technician II	22.3791/30.6848	40 hrs/week
GIS Coordinator	23.0246/32.3083	40 hrs/week
Instrument Technician	27.0030/35.6731	40 hrs/week
Lineworker Apprentice	17.5111/25.6767	40 hrs/week
Lineworker First Class	26.5428/31.3925	40 hrs/week
Materials Handler	21.8556/29.2968	40 hrs/week
Meter Reader	15.7469/20.5343	40 hrs/week
Meter Technician	21.1717/26.1661	40 hrs/week
Power Dispatcher I	26.5134/36.8640	40 hrs/week
Power Dispatcher II	27.8474/38.7126	40 hrs/week
Power Plant Maintenance Mechanic	25.0977/31.2514	40 hrs/week
Power Plant Operator	29.6493/34.5364	40 hrs/week
Senior Accounting Clerk	16.4937/21.6054	40 hrs/week
Senior Engineering Technician	28.3158/34.6522	40 hrs/week
Senior Materials Handler	25.1644/32.8236	40 hrs/week
Senior Meter Reader	18.6499/22.1352	40 hrs/week
Senior Power Dispatcher	32.2133/44.2057	40 hrs/week
Senior Power Plant Operator	29.2327/37.4754	40 hrs/week
Senior Substation Technician	34.4193/35.6731	40 hrs/week
Senior Water Maintenance Worker	20.4500/26.9280	40 hrs/week
Substation Technician	31.8632/33.1281	40 hrs/week
Systems Technician	28.0805/35.6731	40 hrs/week
Tree Trim Crew Chief	25.1546/31.2384	40 hrs/week

Classification	Hourly Pay Range Min/Max	Overtime Eligibility
Utility Electrician	25.2079/33.1281	40 hrs/week
Utility Technician	24.6204/34.6321	40 hrs/week
Utility Warehouse Clerk	18.1921/22.4447	40 hrs/week
Water Maintenance Worker	17.0380/23.5619	40 hrs/week
Wireworker I	19.1407/27.0649	40 hrs/week
Wireworker II	26.5428/31.3925	40 hrs/week

SECTION 4. The currently occupied classifications of employees of the City of Grand Island included under the FOP labor agreement, and the ranges of compensation (salary and wages, excluding shift differential as provided by contract) to be paid for such classifications, and the number of hours and work period which certain such employees included under the FOP labor agreement shall work prior to overtime eligibility are as follows:

Classification	Hourly Pay Range Min/Max	
Police Officer	17.8037/24.8884	
Police Sergeant	22.2831/30.5330	

### **OVERTIME ELIGIBILITY**

The City has reserved its right to the utilization of the 207(k) FLSA exemption and will implement this as the hours of work effective the first full pay period following the execution of the labor agreement. The pay period for purposes of calculating overtime shall consist of a fourteen (14) day cycle that runs concurrent with the City's current payroll cycle. For purposes of calculating eligibility for overtime, "hours worked" shall include actual hours worked, vacation, personal leave and holiday hours. Employees shall be eligible for overtime when they exceed their hours scheduled for work in the fourteen (14) day pay cycle with a minimum of

eighty (80) hours. There shall also be established for each employee in the bargaining unit a Training and Special Events bank of fifty (50) hours per individual per contract year. Each employee may be scheduled for training or special event duty with a minimum of seven (7) days notice prior to the commencement of the pay period and the training and special events bank hours may be added to the eighty (80) hour, two (2) week pay period up to eighty-six (86) hours and these hours shall not be eligible for overtime. Training and special events hours worked in excess of eighty-six (86) hours in a two week pay period will be eligible for overtime, but will not be subtracted from the training and special events bank. All work completed after eighty (80) hours in a pay period that is performed for work that is funded by grants from parties outside or other than the City of Grand Island, shall be paid overtime for the time worked after eighty (80) hours, if the time is funded at overtime rates by the grant. Any such grant hours are not deducted from the training and special events bank.

SECTION 5. The currently occupied classifications of employees of the City of Grand Island included under the IAFF labor agreement, and the ranges of compensation (salary and wages, excluding shift differential as provided by contract) to be paid for such classifications, and the number of hours and work period which certain such employees included under the IAFF labor agreement shall work prior to overtime eligibility are as follows:

Classification	Hourly Pay Range Min/Max	Overtime Eligibility
Fire Captain	16.9624/23.5195	212 hrs/28 days
Firefighter / EMT	12.6022/18.2885	212 hrs/28 days
Firefighter / Paramedic	14.0702/19.8718	212 hrs/28 days

IAFF employees will be eligible for overtime pay for hours worked in excess of 212 hours in each 28-day pay period.

SECTION 6. The currently occupied classifications of the employees of the City of Grand Island included under the IBEW-WWTP labor agreement, and the ranges of compensation salary and wages, excluding shift differential as provided by contract, to be paid for such classifications, and the number of hours and work period which certain such employees included under the IBEW-WWTP labor agreement shall work prior to overtime eligibility are as follows:

Classification	Hourly Pay Range Min/Max	Overtime Eligibility
Accounting Technician – WWTP	14.5040/20.4084	40 hrs/week
Equipment Operator – WWTP	16.4663/23.1698	40 hrs/week
Maintenance Mechanic I	16.4663/23.1698	40 hrs/week
Maintenance Mechanic II	18.4369/25.9426	40 hrs/week
Maintenance Worker – WWTP	16.4663/23.1698	40 hrs/week
Senior Equipment Operator – WWTP	17.7987/25.0445	40 hrs/week
Wastewater Clerk	12.3898/17.4334	40 hrs/week
Wastewater Plant Laboratory Technician	17.4796/24.5955	40 hrs/week
Wastewater Plant Operator I	14.7271/20.7227	40 hrs/week
Wastewater Plant Operator II	16.4663/23.1698	40 hrs/week

SECTION 7. The currently occupied classifications of the employees of the City of Grand Island included under the IBEW-Service/Clerical labor agreement, and the ranges of compensation salary and wages to be paid for such classifications, and the number of hours and work period which certain such employees included under the IBEW-Service/Clerical labor agreement shall work prior to overtime eligibility are as follows:

Classification	Hourly Pay Range Min/Max	Overtime Eligibility
Accounting Technician – Streets	15.5354/20.7381	40 hrs/week
Accounts Payable Clerk	14.7357/21.3196	40 hrs/week
Administrative Assistant	15.3277/21.9842	40 hrs/week

	15,4520/21,0204	401 / 1
Audio Video Technician	15.4730/21.8284	40 hrs/week
Building Inspector	19.1389/27.1558	40 hrs/week
Building Secretary	14.4242/20.4992	40 hrs/week
Community Development Administrator	16.6985/24.0093	40 hrs/week
Community Development Specialist	15.3277/21.9842	40 hrs/week
Computer Operator	18.6196/24.4767	40 hrs/week
Computer Programmer	21.2365/31.1227	40 hrs/week
Computer Technician	19.1782/25.2114	40 hrs/week
Electrical Inspector	19.1389/27.1558	40 hrs/week
Emergency Management Coordinator	14.4242/20.4992	40 hrs/week
Engineering Technician – Public Works	19.6892/27.7684	40 hrs/week
Evidence Technician	14.3204/20.9561	40 hrs/week
Finance Secretary	14.4242/20.4992	40 hrs/week
GIS Coordinator	21.8310/30.6333	40 hrs/week
Maintenance Worker I – Building, Library	15.0473/20.3642	40 hrs/week
Maintenance Worker II – Building, Police	15.8573/21.4961	40 hrs/week
Parks and Recreation Secretary	14.4242/20.4992	40 hrs/week
Planning Secretary	14.4242/20.4992	40 hrs/week
Planning Technician	19.7483/27.7850	40/hrs/week
Plans Examiner	19.1389/27.1558	40 hrs/week
Plumbing Inspector	19.1389/27.1558	40 hrs/week
Police Records Clerk – Full Time	12.8769/17.9239	40 hrs/week
Public Safety Dispatcher	14.5384/21.2365	40 hrs/week
Shooting Range Operator	19.9799/27.0830	40 hrs/week
Stormwater Technician	19.6892/27.7684	40 hrs/week
Utility Secretary	14.4242/20.4992	40 hrs/week

A shift differential of \$0.10 per hour shall be added to the base hourly wage for persons in the employee classification Public Safety Dispatcher who work a **complete** shift that begins between 3:00 p.m. and 11:00 p.m. This does not include persons who work the day shift. Shift differential will only be paid for actual hours worked. Paid leave will not qualify for the shift differential pay.

SECTION 8. The classification of employees included under labor agreements with the City of Grand Island, and the ranges of compensation (salary and wages, excluding shift differential as provided by contract) to be paid for such classifications, and the number of hours and work period which certain such employees shall work prior to overtime eligibility are as stated above. All employees covered by the IAFF labor agreement shall be paid a clothing and uniform allowance in addition to regular salary in the amount of \$484.00 per year, divided into twenty-four (24) pay periods. All employees of the FOP labor agreement shall be paid a clothing and uniform allowance in addition to regular salary of \$25.00 per pay period. If any such employee covered by the IAFF or FOP labor agreements shall resign, or his or her employment be terminated for any reason whatsoever, the clothing allowance shall be paid on a prorata basis, but no allowance shall be made for a fraction of a month.

Fire Chief and Fire Division Chiefs shall be paid a clothing allowance of \$484.08 per year, divided into 24 pay periods. Police Chief and Police Captains shall be paid a clothing allowance of \$650.00 per year, divided into 26 pay periods.

Non-union employees and employees covered by the FOP labor agreement, the IBEW Utilities, Finance and Service/Clerical labor agreements may receive an annual stipend not to exceed \$1,000 for bilingual pay.

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Employees covered by the AFSCME labor agreement shall be granted a meal allowance of \$4.50 if they are required to work two (2) hours overtime consecutively with their normal working hours during an emergency situation, and if such overtime would normally interfere with and disrupt the employee's normal meal schedule. Employees covered by the IBEW - Utilities and IBEW – Finance labor agreements shall be allowed a meal allowance for actual cost, or up to \$7.00 per meal, if they are required to work two (2) hours overtime consecutively with their normal working hours and if such overtime would normally interfere with and disrupt the employee's normal meal schedule. Direct supervisors of employees who are covered by labor agreements which allow overtime meal allowance shall be entitled to the same meal allowance benefit.

Non-exempt direct supervisors of employees who are covered by labor agreements which allow stand-pay shall be entitled to the same stand-by pay benefit.

Utilities Department personnel in the IBEW bargaining unit and the classifications of Meter Reader Supervisor, Power Plant Superintendent, Power Plant Supervisor, Electric Distribution Superintendent, Electric Distribution Supervisor, Water Superintendent, Water Supervisor, Electric Underground Superintendent, and Engineering Technician Supervisor shall be eligible to participate in a voluntary uniform program providing an allowance up to \$18.00 per month. When protective clothing is required for Utilities Department and Wastewater Treatment Plant personnel covered by the IBEW labor agreement and employees covered by the AFSCME labor agreement, except the Fleet Services Division of the Public Works Department, the City shall pay 60% of the cost of providing and cleaning said clothing and the employees 40% of said cost. Full-time Fleet Services personnel shall receive a uniform allowance of \$12

biweekly. Public Works Department personnel in the job classifications of Fleet Services Shop Foreman and Fleet Services Mechanic shall receive a tool allowance of \$10 biweekly.

SECTION 9. Employees shall be compensated for unused medical leave as follows:

All employees covered in the IBEW Utilities and IBEW Finance labor (A) agreements shall be paid for forty-seven percent (47%) of their accumulated medical leave at the time of their retirement, early retirement, or death, not to exceed four hundred eighty-eight and one third hours (calculated at 47% x 1039 hours = 488.33 hours), the rate of compensation to be based on the employee's salary at the time of retirement or death. Employees covered in the IAFF labor agreement shall have a contribution to a VEBA made on their behalf in lieu of payment for thirty-eight percent (38%) of their accumulated medical leave at the time of their retirement, not to exceed five hundred ninety-eight and eighty-eight hundredths hours (calculated at  $38\% \times 1,576$  hours = 598.88 hours). The amount of contribution will be based upon the employee's salary at the time of retirement. Employees covered by the IBEW Wastewater labor agreement shall be paid 37.5% of their accumulated medical leave at the time of retirement or death, based on the employee's salary at the time of retirement not to exceed three hundred ninety-nine hours (calculated at  $37.5\% \times 1064$  hours = 399 hours). Employees covered by the IBEW Service/Clerical labor agreement shall have a contribution to a VEBA made on their behalf in lieu of payment for forty percent (40%) of their accumulated medical leave at the time of retirement or death, based on the employee's salary at the time of retirement not to exceed 433.60 hours

(calculated at  $40\% \times 1084$  hours = 433.60 hours.) Non-union employees shall have a contribution to a VEBA made on their behalf in lieu of payment for fifty percent (50%) of their accumulated medical leave at the time of their retirement, not to exceed five hundred forty-two hours (calculated at  $50\% \times 1084 = 542$ ). The amount of contribution will be based upon the employee's salary at the time of retirement. All employees covered by the AFSCME labor agreement shall be paid forty-five (45%) of their accumulated medical leave bank at the time of their retirement, based on the employee's salary at the time of retirement not to exceed four hundred seventy-eight and eighty hundredths hours (calculated at 45% x 1064 hours = 478.80 hours). All employees covered under the FOP labor agreement shall be paid thirty-seven and one-half percent (37.5%) of their accumulated medical leave bank at the time of their retirement, not to exceed four hundred five hours (calculated at  $37.5\% \times 1,080$  hours = 405 hrs.), based on the employee's salary at the time of retirement. If death occurs while in the line of duty, employees covered under the FOP labor agreement shall be paid fifty percent (50%) of their accumulated medical leave bank at the time of their death, not to exceed five hundred forty hours (50% x 1,080 hours = 540 hrs.), based on the employee's salary at the time of their death.

(B) The City Administrator and department heads shall have a contribution made to their VEBA for one-half of their accumulated medical leave, not to exceed 30 days of pay, upon their resignation, the rate of compensation to be based upon the salary at the time of termination. Compensation for unused medical leave at retirement shall be as provided for non-union employees.

(C) The death of an employee shall be treated the same as retirement, and payment shall be made to the employee's beneficiary or estate for one-half of all unused medical leave for non-union employees and as defined in labor agreements for all other employees.

SECTION 10. Non-union employees shall have a contribution made on their behalf to their VEBA account in the amount of \$30.00 per pay period. Employees represented by the IBEW Service/Clerical labor agreement shall have a contribution made on their behalf to the VEBA account of \$15 per pay period.

SECTION 11. The validity of any section, subsection, sentence, clause, or phrase of this ordinance shall not affect the validity or enforceability of any other section, subsection, sentence, clause, or phrase thereof.

SECTION 12. The adjustments identified herein shall be effective on the date of passage and publication in pamphlet form in one issue of the Grand Island Independent as provided by law.

SECTION 13. Those portions of Ordinance No. <u>9337-9357</u> and all other parts of ordinances in conflict herewith be, and the same are, hereby repealed.

Enacted: February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk



# **City of Grand Island**

Tuesday, February 28, 2012 Council Session

# Item F5

# **#9368 - Consideration of Changes to Chapter 16-11 of the Grand Island City Code Relative to Open Burning**

Staff Contact: Robert Sivick

# **Council Agenda Memo**

From:	Robert J. Sivick, City Attorney
Meeting:	February 28, 2012
Subject:	Open Burning
Item #'s:	F-5
Presenter(s):	Tim Hiemer, Fire Operations Division Chief

# **Background**

The first restriction on open burning in the City of Grand Island (City) was Ordinance 437 approved on July 21, 1909. This ordinance prohibited the burning of paper or refuse in the streets and alleys of the City.

On October 3, 1951 Ordinance 2540 was approved which regulated the burning of garbage and other refuse. This ordinance restricted burning to certain hours on Sunday, Tuesday, Thursday, and Saturday.

Ordinance 5216 approved on June 1, 1972 reduced the days open burning was permitted to Wednesday and Saturday. This ordinance also empowered the Fire Chief to ban open burning when otherwise permitted if warranted by weather conditions or other circumstances.

On July 8, 1991 Ordinance 7729 was approved which essentially banned open burning in the City with very narrow exceptions.

In May, 1994 the citizens of Grand Island overturned the ban on open burning through their approval of a ballot referendum. This was memorialized in Ordinance 7993, approved on May 23, 1994. This ordinance permitted the open burning of leaves and brush for two week periods in the Spring and Autumn.

# **Discussion**

Open Burning was the subject of a Grand Island City Council (Council) Study Session meeting on January 31, 2012. At that meeting it was suggested this issue was one to be decided by the electorate.

On February 14, 2012 the matter was brought back before the Council in the form of two resolutions containing separate ballot referenda offering the electorate the opportunity to ban open burning in the City. The Council rejected both proposals and directed City staff to bring the matter back in the form of an Ordinance for Council consideration.

The proposed ordinance bans open burning in the City with the exception of cooking food for human consumption and other narrow exceptions approved by the Fire Chief. It also addresses the concerns of Council members expressed at the February 14th meeting. Finally, it imposes a ten dollar fee for obtaining a permit for open burning.

Because the present ordinance was a result of a referendum election in May, 1994 Neb. Rev. Stat. §18-2531 sets forth the conditions for repealing or amending the ordinance. That statute requires passage of the proposed ordinance "by a two-thirds majority of the members of the governing body" and no attempt to do so may be made "within one year of the repeal or amendment of the measure by the electors." Far more than a year has passed since the referendum election of May, 1994 which means the only requirement for passage is a two-thirds majority or seven votes of the Council.

# **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.

### ORDINANCE NO. 9368

WHEREAS, the City of Grand Island finds it necessary to amend Grand Island City Code

§16-11, its laws regulating open fires, to reflect modern fire safety and health standards,

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND

ISLAND, NEBRASKA:

I. That Grand Island City Code §16-11 be amended to read as follows:

### §16-11. Open Fires; When Allowed; Permit; Fire Locations; Hours of Burning

(1) For purposes of this section, Open Fire shall mean burning under such conditions that the products of combustion are emitted directly into the ambient air and are not conducted thereto through a stack, chimney, duct, or pipe.

(2) No person shall cause or permit any open fire within the limits of the City.

(3) Exceptions:

(a) Fires set solely for the outdoor cooking of food for human consumption on other than commercial premises where no nuisance or hazard is created;

(b) Fires set with the written permission of the Fire Chief of the City of Grand Island or <u>his or her</u> designated representative:

(i) for the purpose of training public or industrial fire fighting personnel.

(ii) for essential agricultural operation in the growing of crops where no nuisance or hazard is created.

(iii) for the purpose of destroying dangerous materials or diseased trees.

(iv) for the purpose of clearing land for roads or other construction activity.

(v) for <u>ceremonial</u>, <u>educational</u>, <u>or</u> recreational purposes <u>by a legally established</u> and recognized non-profit organization or governmental entity.

(vi) for the <del>purpose of burning leaves and brush where no nuisance or hazard is created</del> <u>destruction of animal carcasses for health reasons</u>.

(c) Fires set in operation of smokeless flare stacks for the combustion of waste gases, provided they meet the requirements of the Nebraska Department of Environmental Control.

(d) For opening burning of leaves and brush where no nuisance or hazard is created during the following periods: (1) A fourteen (14) day period beginning the third Sunday in April, and (2) A fourteen (14) day period beginning the second Sunday in October or as the Fire Chief may designate due to inclimate weather during the foregoing specified periods the private, residential use of outdoor fireplaces as defined below and with the following restrictions:

(i) portable fire pits which are designed and commercially sold to confine outdoor wood fires;

(ii) chimineas, constructed of clay or some other fire safe material which are designed and commercially sold to confine outdoor wood fires;

(iii) fire rings which are designed to enclose an outdoor fire with a metal tube, poured concrete, stones, or some other fire safe material partially buried in the ground;

(iv) all outdoor fireplaces must be at a minimum of fifteen (15) feet distance from any structure and placed on a stable, non-combustible surface such as a concrete pad;

(v) the fuel area for all outdoor fireplaces shall be no more than three (3) feet in diameter and completely enclosed by a non-combustible screening material;

(vi) fuel for outdoor fireplaces shall be limited to untreated wood;

(vii) while in operation, all outdoor fireplaces shall be continuously monitored by at least one (1) person eighteen (18) years of age or older and an operable garden hose connected to a water supply shall be available for extinguishing flames; and

(viii) outdoor fireplaces shall not be operated when local average wind speed is twenty miles per hour (20 mph) or greater.

(4) Open fires shall be constantly attended by a competent person until the fire is extinguished. The person so attending shall have a water supply or other fire extinguishing equipment readily available for use, and no such fire shall be abandoned until it has been completely extinguished A fee of ten dollars (\$10.00) shall be paid by any person or organization before receiving a permit for any of the activities listed in paragraph (3)(b) above.

(5) Permits to burn leaves and brush shall only be issued to the owner or occupant of private residential property fire locations. Permits may be issued during each open burning period and the week prior thereto. A separate permit shall be required for each open burning period and shall be maintained in the possession of a person tending the fire at all times.

(6) Fire locations for leaf and brush piles greater than three (3.0) feet in diameter or two (2.0) feet in height must be at least fifty (50.0) feet away from any structure or other combustible material. Fire locations for leaf and brush piles less than three (3.0) feet in diameter and two (2.0) feet in height must be at least twenty five (25.0) feet from any structure or other combustible material unless the fire is contained within an approved burning appliance or barrel with one half (1/2") inch wire mesh screen covering the entire opening and such container or barrel is located not less than fifteen (15.0) feet from any structure or other combustible material.

(7) Leaf and brush fires may only be burned between the hours of 8:00 a.m. and 8:00 p.m. of the open burning periods.

-(8) The Fire Chief of the <u>Grand Island</u> Fire Department may prohibit any and all <u>open</u> burning when <u>he or she determines</u> atmospheric conditions or local circumstances make such fires hazardous.

II. Any ordinances or parts of ordinances in conflict are hereby repealed.

III. This ordinance shall be in full force and will take effect from and after its passage and

publication pursuant to law.

Enacted: February 28, 2012.

Jay Vavricek, Mayor

ATTEST:

RaNae Edwards, City Clerk



# **City of Grand Island**

Tuesday, February 28, 2012 Council Session

# Item F6

# **#9369 - Consideration of Authorizing Series 2012 Electric System Revenue Refunding Bonds**

Staff Contact: Tim Luchsinger

# **Council Agenda Memo**

From:	Timothy Luchsinger, Utilities Director
Meeting:	February 28, 2012
Subject:	Consideration of Authorizing Series 2012 Electric System Revenue Refunding Bonds and Approving Redemption of Series 2001 Electric System Revenue Bonds
Item #'s:	F-6 & I-3
Presenter(s):	Timothy Luchsinger, Utilities Director

### **Background**

Potential bond refinancing activities were reviewed with the Council during a Study Session on January 4, 2011. The Resolution and Ordinance for the third refinancing is now ready to be presented to Council for action. The Electric System Revenue Bonds, Series 2001, were originally issued for the construction of two 40-megawatt combustion turbines at the Burdick Station. The fifteen year term of the 2001 bonds was determined at the time to coincide with the projected need for additional generating capacity around 2016, and the need to finance that capacity addition, however, the City's participation in the Nebraska City 2 and Whelan Energy Center 2 units, and the integration of debt service for these units with the power costs in the participation, avoided this capacity addition and the financing burden. The refinancing of these bonds will take advantage of current low interest rates and, along with extending the remaining term from five years to ten years, will allow lower debt service coverage and reduce the impact of projected financing requirements for air emission control additions to the Platte Generating Station in 2014.

## **Discussion**

The Electric System Revenue Bonds, Series 2001, date of original issue June 27, 2001, in the principal amount of \$51,500,000 will be called for payment on around the end of April, 2012; after such time, interest on the bonds will cease. These bonds were originally issued for the purpose of the construction of two 40-megawatt combustion turbines.

These bonds will be replaced with the issuance of Refunding Electric System Revenue Bonds, Series 2012 in the principal amount not to exceed \$24,000,000. The purpose of these bonds is to pay and redeem the City's Bonds referenced above.

The estimated present value debt service savings is \$1,248,176, based on changes of the average interest rate from 4.95% to 2.22%, maturity date from 8/15/2016 to 8/15/2022, and average annual debt service from \$5,852,613 to \$2,091,082.

The Utilities Department financial condition is presently being reviewed by ratings agencies to determine credit ratings. The recommendation ordinance would authorize the Mayor to execute the bond refinancing documents upon determination of the final rates and financing costs.

## **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 Redemption of Series 2001 Electric System Revenue Bonds and the Issuance of Series 2012 Electric System Revenue Bonds in the principal amount not to exceed \$24,000,000.

## **Sample Motion**

Move to approve the Redemption of Series 2001 Electric System Revenue Bonds and the Issuance of Series 2012 Electric System Revenue Bonds in the principal amount not to exceed \$24,000,000.

### ORDINANCE NO. 9369

AN ORDINANCE AUTHORIZING THE ISSUANCE OF ELECTRIC SYSTEM REVENUE REFUNDING BONDS, SERIES 2012, OF THE CITY OF GRAND ISLAND, NEBRASKA, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED TWENTY FOUR MILLION DOLLARS (\$24,000,000) FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING ELECTRIC SYSTEM REVENUE BONDS, SERIES 2001, WHICH WERE ISSUED FOR THE PURPOSE OF PAYING THE COSTS OF IMPROVING, EXTENDING AND EQUIPPING THE CITY'S ELECTRIC LIGHT AND POWER PLANT AND ELECTRIC DISTRIBUTION SYSTEM; DIRECTING THE APPLICATION OF THE PROCEEDS OF SAID BONDS; PRESCRIBING THE FORM, TERMS AND DETAILS OF SAID BONDS: PLEDGING AND HYPOTHECATING THE REVENUE AND EARNINGS OF THE ELECTRIC LIGHT AND POWER PLANT AND ELECTRIC DISTRIBUTION SYSTEM OF SAID CITY FOR THE PAYMENT OF SAID BONDS AND INTEREST THEREON; PROVIDING FOR THE COLLECTION, SEGREGATION AND APPLICATION OF THE REVENUES OF SAID PLANT AND SYSTEM; ENTERING INTO A CONTRACT ON BEHALF OF THE CITY WITH THE HOLDERS OF SAID BONDS; AND PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM.

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

Section 1. Findings and Determinations. The Mayor and Council of the City of Grand

Island hereby find and determine:

(a) The City owns and operates its own electric light and power plant and electric distribution system (the "Electric System", but hereinafter more specifically defined) which represents a revenue-producing undertaking of the City. References herein to the Electric System shall include all additions and improvements thereto hereafter constructed or acquired by the City.

(b) The City currently has outstanding the following indebtedness payable from the revenues of the Electric System:

Electric System Revenue Bonds, 2001 Series, (the "2001 Bonds") issued pursuant to Ordinance No. 8677 passed and approved on May 22, 2001, (the "2001 Ordinance") of which there remain outstanding under the terms of the 2001 Ordinance bonds in the principal amount of \$25,405,000.

(c) The City has no bonds outstanding which are secured by the Revenues of the Electric System, other than the 2001 Bonds.

(d) Since the issuance of the 2001 Bonds, interest rates have declined in the municipal bond markets so that the City can obtain a savings in the amount of yearly running interest by the issuance of its refunding bonds to refund the 2001 Bonds as provided in this Ordinance, and it is advisable and necessary for the City to extend the maturities of the 2001 Bonds as provided in this Ordinance in order to achieve a reduced annual debt service.

(e) It is necessary and advisable for the City to issue and sell its refunding bonds in the principal amount of not to exceed \$24,000,000 to provide for the redemption of the 2001 Bonds, which have been authorized to be called for redemption on a date (the "Redemption Date") determined pursuant to a resolution passed contemporaneously herewith (the "Call Resolution").

(f) Upon the issuance of the 2012 Bonds herein authorized and after the application of funds of the City as herein directed, the 2001 Bonds will no longer be outstanding under the terms of the 2001 Ordinance and there will be no other outstanding bonds of the City for which the Revenues of the Electric System have been pledged and the 2012 Bonds herein authorized shall constitute a first and prior lien upon such Revenues.

Section 2. **Definitions of Terms.** In addition to the definitions provided in parentheses elsewhere in this Ordinance, the following definitions of terms shall apply; unless the context shall clearly indicate otherwise or may otherwise require, the words and terms defined in this Section 2 shall, for all purposes of this Ordinance and of any ordinance or resolution amendatory hereof or supplemental hereto and of any certificate, opinion, order, direction, instrument or document herein or therein mentioned, have the respective meanings specified in this section, and such definitions shall be equally applicable to both the singular and plural forms of any word or term defined and *vice versa*.

(a) "Additional Bonds" shall mean any Bonds authorized and issued pursuant to Section 14 of this Ordinance, payable from Revenues *pari passu* with the 2012 Bonds.

(b) "Average Interest Rate" when used with reference to any Bonds shall mean the aggregate amount of interest payable on such Bonds from their date to the date of maturity thereof, either at their stated maturity, or in accordance with any schedule of mandatory sinking fund installments provided therefor, divided by the sum of the bond

years of such Bonds (the bond years with respect to each \$1,000 principal amount of Bonds being the number of years from the date thereof to the maturity thereof, either at their stated maturity or in accordance with any schedule of mandatory sinking fund installments provided therefor), expressed as a percentage, without regard to the discount or premium, if any, on the principal amount of such Bonds specified in the purchase price for said Bonds paid to the City by the initial purchasers thereof.

(c) "Bond" or "Bonds" shall mean any bond, some of the bonds or all of the bonds at any time Outstanding issued under and pursuant to this Ordinance, including the 2012 Bonds and any Additional Bonds.

(d) "2012 Bonds" shall mean the Electric System Revenue Refunding Bonds, Series 2012, issued pursuant to Section 3 of this Ordinance.

(e) "Bond Account" shall mean the Electric System Revenue Bond Account created by Section 12 of this Ordinance.

(f) "Bondholder" or "holder of a Bond" or "holder" or "owner" or "registered owner" shall mean any person who shall be the registered owner of any Bond or such person's duly authorized attorney in fact, representative or assigns.

(g) "Capital Improvement Account" shall mean the Capital Improvement Account created by Section 12 of this Ordinance.

(h) "Construction Engineer" when used with reference to a Facility shall mean the design or construction engineer or engineering firm or corporation at the time retained by the City pursuant to Section 16 of this Ordinance to perform the acts and carry out the duties provided for such Construction Engineer in this Ordinance.

(i) "Consulting Engineer" shall mean the engineer or engineering firm or corporation retained by the City from time to time pursuant to Section 16 hereof to perform the acts and carry out the duties provided for such Consulting Engineer in this Ordinance.

(j) "Costs of Construction" shall mean all costs paid or incurred by the City in connection with acquiring, constructing, reconstructing, improving, extending, equipping and furnishing the Electric System, including, without limiting the generality of the foregoing, paying or reimbursing the cost of surveys, investigations, engineering and other fees and expenses properly incurred therefor; obligations incurred for labor and materials and to contractors, builders and materialmen in connection therewith; the cost of machinery and equipment; paying the cost of restoring, or relocating property either damaged or destroyed in connection with acquiring, constructing, reconstructing, improving, extending, equipping and furnishing the Electric System, or of removing and relocating structures and clearing lands; the cost of acquiring by purchase or condemnation such lands, property, rights, rights of way, franchises, easements or other interests as may be deemed necessary or convenient by the City for acquiring, constructing, reconstructing, improving, extending, equipping and furnishing the Electric System; paying the interest on the series or series of Bonds issued to pay said Costs of Construction, and until and not later than six months after

the Date of Commercial Operation of the Facility being acquired, constructed, reconstructed, improved, extended, equipped or furnished; paying into the Bond Account for credit to any reserve sub-account therein from the proceeds of said Bonds all or a portion of the amount or amounts required to make the amount therein equal to the reserve account requirement for such reserve sub-account; the cost of engineering services rendered in connection with acquiring, constructing, reconstructing, improving, extending, equipping and furnishing the Electric System and the issuance of Bonds therefor; paying or reimbursing the City or any fund for expenses of the City incident and properly allocable to acquiring, constructing, reconstructing, improving, extending, equipping and furnishing the Electric System and placing the same in operation; paying legal, financing and accounting expenses and fees, costs of printing and of preparing and issuing the Bonds therefor, and all other items of expenses incident and properly allocable to acquiring, constructing, reconstructing, improving, extending, equipping and furnishing the Electric System and placing the same in operation, including allowances for working capital required to place in operation the Facility being acquired, constructed, reconstructed, improved, extended, equipped or furnished.

(k) "Date of Commercial Operation" and words of like import when used with reference to a Facility paid for out of the proceeds of Bonds shall mean the date upon which such Facility is first ready for normal continued operation as determined by the Construction Engineer thereof, or, if there be no Construction Engineer for such Facility, by the Consulting Engineer.

(1) "Debt Service Sub-account" shall mean the Debt Service Sub-account in the Bond Account created by Section 12 of this Ordinance.

(m) "Debt Service Requirement" shall mean with respect to the 2012 Bonds, or any series of Additional Bonds the total as of any particular date of computation and for any particular Fiscal Year or period of the amounts required pursuant to the provisions of Section 13 hereof to be paid or set aside during such year into the Debt Service Sub-account created by Section 12 in the Bond Account to provide for the retirement of, and payment of interest on, such Bonds, less the amount of such interest for which payment is provided from the proceeds of sale of Bonds or from sources other than Revenues.

(n) "Electric System Fund" shall mean the "Electric System Fund" created by Section 12 of this Ordinance.

(o) "Electric System" shall mean all properties and assets, real and personal and tangible and intangible, of the City, now or hereafter existing, used for or pertaining to the generation, transmission and distribution and sale of electric power and energy. Without limiting the generality of the foregoing, the term "Electric System" shall include (i) all Facilities owned by the City on the date of passage of this Ordinance; (ii) all Facilities acquired or constructed by the City after the passage of this Ordinance; and (iii) all additions, extensions, enlargements and improvements hereafter made to any of the assets or properties referred to in clauses (i) and (ii) preceding in this definition; provided that, where the City is a co-owner with another person of an asset or property, only the City's ownership share of such asset or property, or of any addition, extension and improvement of the asset

or property, so co-owned shall be included in the Electric System hereunder; provided further, that the Electric System hereunder shall not include any facilities for the generation, transmission and distribution of electric power and energy constructed or acquired by the City as a separate utility system with the proceeds of sale of bonds or other evidences of indebtedness (other than Bonds) which shall be payable solely from the revenues or other income derived from the ownership or operation of such separate utility system.

"Facility" or "Facilities" shall mean all properties and assets of the City used (p) for the generation, transmission and distribution and sale of electric power and energy. Without limiting the generality of the foregoing, the term "Facility" shall mean and include (i) generating facilities and related transmission, fuel and water facilities, including the City's undivided co-ownership share in any such facility owned in part by the City and in part by another person, firm, corporation or other entity; (ii) transmission facilities used to transmit electric power and energy to the distribution facilities included in the Electric System or used to connect with generating plants and stations or used to connect with other such transmission lines; (iii) distribution facilities used to distribute electric power and energy to the ultimate consumers thereof; (iv) related fuel or water resources or transportation facilities of or pertaining to the generation and related transmission of power and energy; and (v) initial working capital or initial fuel or supply reserves or increases in such reserves; provided that the City's membership or participation under any Interlocal Agreement, and any related residual rights thereunder, shall not be included in the definition of "Facility" or "Facilities".

(q) "Fiscal Year" shall mean the fiscal year of the Electric System as established from time to time.

(r) "Government Obligations" shall mean direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America.

(s) "Independent Accountant" shall mean the firm of independent certified public accountants retained by the City pursuant to Section 16 hereof.

(t) "Interlocal Agreement" shall mean any agreement entered into for the provision of power to parties under any such agreement, including for the ownership of power generating facilities, pursuant to the Nebraska Interlocal Cooperation Act, the Nebraska Joint Public Agency Act, the Nebraska Municipal Cooperative Financing Act or pursuant to any other similar statutory provision or Act under Nebraska law.

(u) "Investment Securities" shall mean any of the following which at the time are legal investments under the laws of the State of Nebraska for the moneys held hereunder then proposed to be invested therein: :

(i) Government Obligations;

(ii) bonds, notes or other obligations of any state of the United States or any political subdivision of any state, which at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized Rating Agency;

(iii) certificates of deposit or time or demand deposits constituting direct obligations of any bank, bank holding company, savings and loan association or trust company organized under the laws of the United States or any state thereof (including the Trustee or any of its affiliates), except that investments may be made only in certificates of deposit or time or demand deposits which are:

(1) insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation, or any other similar United States Government deposit insurance program then in existence;

(2) continuously and fully secured by Government Obligations, which have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such certificates of deposit or time or demand deposits; or

(3) issued by a bank, bank holding company, savings and loan association or trust company organized under the laws of the United States or any state thereof (including the Trustee or any of its affiliates) whose outstanding unsecured long-term debt is rated at the time of issuance in either of the two highest rating categories by a nationally recognized Rating Agency;

(iv) repurchase agreements with any bank, bank holding company, savings and loan association, trust company or other financial institution organized under the laws of the United States or any state thereof (including the Trustee or any of its affiliates), that are continuously and fully secured by Government Obligations and which have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such repurchase agreements, provided that each such repurchase agreement conforms to current industry standards as to form and time, is in commercially reasonable form, is for a commercially reasonable period, results in transfer of legal title to identified Government Obligations which are segregated in a custodial or trust account for the benefit of the Trustee, and further provided that Government Obligations acquired pursuant to such repurchase agreements shall be valued at the lower of the then current market value thereof or the repurchase price thereof set forth in the repurchase agreement;

(v) investment agreements constituting an obligation of a bank, bank holding company, savings and loan association, trust company, insurance company or other financial institution whose outstanding unsecured long-term debt is rated at the time of such agreement in either of the two highest rating categories by a nationally recognized Rating Agency;

(vi) short term discount obligations of the Federal National Mortgage Association and the Government National Mortgage Association; and

(vii) money market mutual funds (1) that invest in Government Obligations or that are registered with the federal Securities and Exchange Commission (SEC), meeting the requirements of Rule 2a-7 under the Investment Company Act of 1940, and (2) that are rated in either of the two highest categories by a nationally recognized Rating Agency.

(v) "Net Receipts" shall mean Operating Revenues less Operating Expenses.

(w) "Operating Expenses" shall mean the costs and expenses of operating and maintaining the Electric System, including, without limiting the generality of the foregoing, (i) all expenses includable in the operation and maintenance expense accounts according to the Uniform System of Accounts, exclusive of depreciation and amortization of property values or property losses and advance fuel payments if the same shall then be includable in the operation and maintenance expense accounts according to the Operating Expenses (as heretofore defined in the preceding clause, the City's share of the Operating Expenses (as heretofore defined in this subparagraph) of any electric plants and properties co-owned with others, provided that, whether or not includable in operation and maintenance expenses accounts according to be paid by the City under any contract for the purchase of power from any supplier of power (including the Omaha Public Power District and the Public Power Generation Agency) with which the City has or may have long term power purchase contracts.

(x) "Operating Revenues" shall mean Revenues less (i) insurance proceeds or condemnation awards, and (ii) any other receipt constituting Revenues hereunder which would not constitute "Utility Operating Income" as determined in accordance with the Uniform System of Accounts, provided, however that for purposes of this Ordinance, anything in the Uniform System of Accounts to the contrary notwithstanding, there shall not be excluded from Operating Revenues the items described in (ii) and (iii) of the definition of Revenues subject, however, to the proviso appearing at the end of such definition.

(y) "Operation and Maintenance Account" shall mean the "Operation and Maintenance Account" created by Section 12 of this Ordinance.

(z) "Ordinance," "this Ordinance" or "the Ordinance" shall mean this Ordinance as the same may be amended and supplemented from time to time, and unless the context shall clearly indicate otherwise, shall include all Series Ordinances and Supplemental Ordinances.

(aa) "Outstanding" when used with reference to Bonds shall mean, as of any date, Bonds theretofore or thereupon issued pursuant to this Ordinance, except:

(i) Any Bonds cancelled by the Trustee or paid at or prior to such date;

(ii) Bonds in lieu of or in substitution for which other Bonds shall have been delivered pursuant to this Ordinance; and

(iii) Bonds fully discharged and satisfied as provided in Section, 24 of this Ordinance.

(bb) "Paying Agent" or "Paying Agent and Registrar" shall mean the Trustee as paying agent for each series of Bonds, and its successors, if any, as such paying agent.

(cc) "Program of Rate Changes" shall mean a schedule of rate changes set forth in, or adopted by the City in an ordinance or resolution acknowledging the intent of the City to effect the rate changes specified therein at the times specified therein; provided, that (i) such schedule need not reflect changes in rates of particular classes of customers of the Electric System (such as residential or commercial), but may simply set forth an acknowledgment or commitment to change rates so that by the times specified in such schedule percentage changes in Revenues will be accomplished; and (ii) such changes need not be imposed or become effective to the extent that the Director of Utility Operations (or other board, department or officer administering the Electric System) advises the City, based on a report of the Consulting Engineer, that such changes in the rates are not required to meet the provisions of Section 14 hereof, and, if any Additional Bonds are required to pay a portion of the Costs of Construction of any Facility for which Bonds are being or have been issued, to produce the debt service coverage which would then be required for the issuance of Additional Bonds pursuant to Section 14 hereof.

(dd) "Series 2012 Reserve Sub-Account" shall mean the Series 2012 Reserve Sub-Account in the Bond Account created by Section 12 of this Ordinance, which shall be held separate and apart from all other reserve funds or accounts and shall secure only the payments of principal and interest on the 2012 Bonds.

(ee) "Series 2012 Reserve Requirement" shall mean an amount equal to the least of (a) 10% of the original principal amount of the 2012 Bonds, (b) the maximum annual debt service on the 2012 Bonds, and (c) 125% of the average annual debt service on the Bonds, as shall be more particularly determined in the Designation; provided, however, that if the Trustee shall receive an opinion from Recognized Bond Counsel to the effect that the Series 2012 Reserve Requirement for the Bonds must be reduced in order that the amounts on deposit in the Series 2012 Reserve Sub-Account may continue to be invested without yield restriction under the Code, the Series 2012 Reserve Requirement shall be reduced in conformity with said opinion.

(ff) "Revenues" shall mean and include all income, earnings, fees, charges, receipts, profits and other moneys derived by the City from its ownership or operation of the Electric System, including, without limiting the generality of the foregoing, (i) all income, fees, charges, receipts, profits and other moneys derived from the sale, furnishing or supplying of the services, facilities, commodities and electric energy, power and steam of the Electric System; (ii) the earnings on and the income from the investment of any moneys held in funds under the Ordinance; (iii) the earnings on and the income from the investment of other moneys derived from the ownership or operation of the Electric System to the

extent that such earnings and income are allocated by or pursuant to law to the Electric System, (iv) the proceeds derived by the City directly or indirectly from the sale, lease or other disposition of all or an part of the Electric System, and the proceeds of insurance and condemnation awards received with respect to the Electric System; and (v) any other moneys of the City which are required by the provisions hereof to be applied to the payment of Bonds; provided, however, that Revenues shall not include (A) customers' deposits or any other deposits subject to refund, until such deposits have become the property of the City, (B) earnings on and income derived from the investment of moneys or Government Obligations being held irrevocably for the retirement of indebtedness of the Electric System, or (C) moneys deposited with the City by employees for employee benefit purposes.

(gg) "Series Ordinance" shall mean an Ordinance adopted hereunder providing for the issuance of a series of Bonds (other than the 2012 Bonds).

(hh) "Supplemental Ordinance" shall mean any Ordinance amending or supplementing this Ordinance, as originally adopted, adopted under and pursuant to Section 17 or Section 19 of this Ordinance.

(ii) "Surplus Account" shall mean the "Electric Plant Surplus Account" created by Section 12 of this Ordinance.

(jj) "Trustee" shall mean the trustee appointed pursuant to Section 4 of this Ordinance, and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to this Ordinance.

(kk) "Uniform System of Accounts" shall mean the Uniform System of Accounts prescribed by the Federal Power Commission (now the Federal Energy Regulatory Commission) for public utilities subject to the provisions of the Federal Power Act (or a uniform system of accounts prescribed by some other Federal authority having jurisdiction over public utility companies owning properties and engaged in business similar to the Electric System).

In addition, unless the context shall clearly indicate some other meaning or may otherwise require, the words and terms defined in this Section shall, for all purposes of the Ordinance and of any ordinance or resolution amendatory hereof, of any Supplemental Ordinance and Series Ordinance and of any certificate, opinion, order, direction, instrument or document herein or therein mentioned, have the meaning specified in this Section, and such definitions to be equally applicable to both the singular and plural forms of any words or terms defined and *vice versa*.

(1) The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms, refer to the Ordinance and to the Ordinance as a whole and not to an particular section or subdivision hereof.

(2) The word "person" or words importing persons shall include firms, partnerships, associations, corporations (public and private), public bodies, natural persons, executors, administrators, trustees and receivers.

In the Ordinance (not including in such term wherever used in this paragraph any Supplemental Ordinance or Series Ordinance) : (a) references to articles, sections and other subdivisions, whether by number or letter or otherwise, are to the respective or corresponding articles, sections or subdivisions of the Ordinance, as such articles, sections or subdivisions may be amended from time to time; and (b) the word "heretofore" means before the time of adoption of the Ordinance, the word "now" means at the time of adoption of the Ordinance; and the word "hereafter" means after the time of adoption of the Ordinance.

Unless the facts shall then be otherwise, all computations required for the purposes of the Ordinance shall be made on the assumption that: (a) the principal of and interest on all Bonds shall be paid as and when the same become due; (b) all sinking fund installments required by the Ordinance or any Series Ordinance to be deposited into the Debt Service Sub-Account in the Bond Account shall be made in the amounts and at the times required by the Ordinance providing for their issuance to be redeemed from sinking fund installments to be deposited into the Debt Service Sub-Account shall be redeemed from sinking fund installments to be deposited into the Debt Service Sub-Account in the Bond Account in the Bond Account shall be redeemed on the respective sinking fund installment dates therefor in the amounts and at the times as required by the Ordinance or such Series Ordinance.

Section 3. Authorization of 2012 Bonds. For the purpose set forth in Section 1, there shall be and there are hereby ordered issued the negotiable refunding bonds of City of Grand Island, Nebraska, to be known as "Electric System Revenue Refunding Bonds, Series 2012" (the "2012 Bonds"), in the principal amount of not to exceed Twenty Four Million Dollars (\$24,000,000), with said 2012 Bonds to become due as indicated below:

Principal	Maturing
Amount	<u>August 15,</u>
595,000	2012
1,785,000	2013
1,795,000	2014
1,810,000	2015
1,830,000	2016
1,855,000	2017
1,875,000	2018
1,905,000	2019
1,940,000	2020
1,980,000	2021
2,025,000	2022

provided, that the Bonds shall bear interest at the rates per annum as shall be determined in a written designation (the "Designation") signed by the Mayor or City Clerk or the City Finance Director (the "Authorized Officers") on behalf of the Mayor and City Council and which may be agreed to by Ameritas Investment Corp. (the "Underwriter"), which Designation may also determine or modify the principal amount for each maturity of the Bonds, the aggregate principal amount of the Bonds, mandatory redemption provisions (if any), and pricing terms as set forth in Section 9 below, all within the following limitations:

- (a) the longest maturity of the Bonds may not be later than August 15, 2022;
- (b) the principal amount due in any year (including principal due as mandatory redemption amounts) for each maturity, and the aggregate principal amount of \$24,000,000, may be decreased by any amount determined or increased by the greater of 15% or \$300,000;
- (c) the net present value debt service savings attributable to the refunding of the 2001 Bonds shall not be less than 3.00% of the principal amount of the 2001 Bonds;
- (d) the Bonds may be sold at such aggregate original issue discount or original issue premium as may be determined in the Designation, so long as the net proceeds of the Bonds produces such amount as is necessary, together with not more than \$7,000,000 in funds available to the City (including debt service and debt service reserve funds attributable to the 2001 Bonds) to provide for redemption of the 2001 Bonds on the Redemption Date and pay all costs of issuance of the Bonds;
- (e) the true interest cost on the Bonds shall not be more than 3.00%; and

(f) two or more of the principal maturities may be combined and issued as "term bonds" and the Authorized Officer may determine the mandatory sinking fund payments and mandatory redemption amounts. Any Bonds issued as "term bonds" shall be redeemed at a redemption price equal to 100% of the principal amount thereof plus accrued interest thereon to the date of redemption and may be selected for redemption by any random method of selection determined appropriate by the Registrar (as hereinafter designated) or by the Depository (as hereinafter designated).

The Authorized Officers (or any one of them) are hereby authorized to make such determinations on behalf of the Mayor and City Council of the City and to evidence the same by execution and delivery of the Designation and such determinations, when made and agreed to by the Underwriter, shall constitute the action of the Mayor and City Council of the City without further action of the Mayor and City Council.

The 2012 Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The date of original issue for the 2012 Bonds shall be the date of delivery thereof. Interest on the 2012 Bonds, at the respective rates for each maturity, shall be payable commencing on August 15, 2012, (or such other date as determined in the Designation) and on each February 15 and August 15 thereafter (each of said dates an "Interest Payment Date") and the 2012 Bonds shall bear such interest from the date of original issue or the most recent Interest Payment Date, whichever is later. Interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the close of business on the fifteenth day immediately preceding the Interest Payment Date (the "Record Date"), subject to the provisions of Section 5 hereof. The 2012 Bonds shall be numbered from 1 upwards in the order of their issuance. No 2012 Bond shall be issued originally or upon transfer or partial redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the 2012 Bonds issued shall be designated by the City's Treasurer as directed by the initial purchaser thereof. Payments of interest due prior to maturity or earlier redemption on the 2012 Bonds shall be made by the Paying Agent and Registrar, as designated pursuant to Section 4 hereof, by mailing a check or draft in the amount

due for such interest on each Interest Payment Date to the registered owner of each 2012 Bond, as of the Record Date for such Interest Payment Date, to such owner's registered address as shown on the books of registration as required to be maintained in Section 4 hereof. Payments of principal and unpaid accrued interest thereon due at maturity or at any date fixed for redemption prior to maturity shall be made by said Paying Agent and Registrar to the registered owners upon presentation and surrender of the 2012 Bonds to said Paying Agent and Registrar. The City and said Paying Agent and Registrar may treat the registered owner of any 2012 Bond as the absolute owner of such bond for the purpose of making payments thereon and for all other purposes and neither the City nor the Paying Agent and Registrar shall be affected by any notice or knowledge to the contrary, whether such bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest or principal made to the registered owner of any 2012 Bond in accordance with the terms of this Ordinance shall be valid and effectual and shall be a discharge of the City and said Paying Agent and Registrar, in respect of the liability upon the 2012 Bonds or claims for interest to the extent of the sum or sums so paid.

Section 4. **Trustee, Paying Agent and Registrar.** Wells Fargo Bank, National Association, of Minneapolis, Minnesota, is hereby designated as the Trustee, Paying Agent and Registrar for the 2012 Bonds and any Additional Bonds. Said Paying Agent and Registrar shall serve in such capacities under the terms of an agreement entitled "Trustee, Paying Agent and Registrar's Agreement" between the City and said Paying Agent and Registrar, the form of which is hereby approved. The Mayor and City Clerk are hereby authorized to execute said agreement in substantially the form presented but with such changes as they shall deem appropriate or necessary. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the 2012 Bonds at its designated corporate trust office, initially located in Minneapolis, Minnesota, or such other corporate trust office as may be designated in writing from time to time

(the "Designated Office"). The names and registered addresses of the registered owner or owners of the 2012 Bonds shall at all times be recorded in such books. Any 2012 Bond may be transferred pursuant to its provisions at the principal corporate trust office of said Paying Agent and Registrar by surrender of such bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to said Paying Agent and Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Paying Agent and Registrar on behalf of the City will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of such transferee owner or owners, a new 2012 Bond or 2012 Bonds of the same interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the 2012 Bonds by this Ordinance, one such bond may be transferred for several such bonds of the same interest rate and maturity, and for a like aggregate principal amount, and several such bonds may be transferred for one or several such bonds, respectively, of the same interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a 2012 Bond, the surrendered 2012 Bond or Bonds shall be cancelled and destroyed. All 2012 Bonds issued upon transfer of the 2012 Bonds so surrendered shall be valid obligations of the City evidencing the same obligations as the 2012 Bonds surrendered and shall be entitled to all the benefits and protection of this Ordinance to the same extent as the 2012 Bonds upon transfer of which they were delivered. The City and said Paying Agent and Registrar shall not be required to transfer any 2012 Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any 2012 Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

Section 5. **Special Record Date.** In the event that payments of interest due on the 2012 Bonds on an Interest Payment Date are not timely made, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the 2012 Bonds as of a special date of record for payment of such defaulted interest as shall be designated by the Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

Section 6. **Non-Business Days.** If the date for payment of the principal of or interest on the 2012 Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the city where the principal corporate trust office of the Paying Agent and Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

Section 7. **2012** Bonds Subject to Redemption. 2012 Bonds shall be subject to redemption, in whole or in part, prior to maturity at any time on or after the tenth anniversary of the date of original issue of the 2012 Bonds, or such earlier date as determined in the Designation, at prices equal to the principal amount being redeemed, plus accrued interest to the date fixed for redemption. The 2012 Bonds from any maturity may be designated for redemption in the sole discretion of the City. If less than an entire maturity is to be redeemed, the Trustee shall determine the selection of 2012 Bonds in any random manner deemed appropriate by the Trustee. 2012 Bonds shall be subject to redemption in part in a principal amount equal to \$5,000 or any integral multiples thereof. Any 2012 Bond redeemed in part only shall be surrendered to the Paying Agent and Registrar in exchange for a new 2012 Bond evidencing the unredeemed principal thereof. Notice of redemption of any 2012 Bond called for redemption shall be given, at the direction of the City in the case of optional redemptions and without further direction in the case of mandatory redemptions (if any), by said Paying Agent and Registrar by mail not less than 30 days prior to the date fixed for redemption, first class, postage prepaid, sent to the

registered owner of such 2012 Bond at said owner's registered address. Such notice shall designate the 2012 Bond to be redeemed by maturity or otherwise, the date of original issue and the date fixed for redemption and shall state that such 2012 Bond or 2012 Bonds are to be presented for prepayment at the principal office of said Paying Agent and Registrar. In case of any 2012 Bond partially redeemed, such notice shall specify the portion of the principal amount of such 2012 Bond to be redeemed. No defect in the mailing of notice for any 2012 Bond shall affect the sufficiency of the proceedings of the City designating the 2012 Bonds called for redemption or the effectiveness of such call for 2012 Bonds for which notice by mail has been properly given and the City shall have the right to direct further notice for redemption for any such bond for which defective notice has been given. In the event term maturities and mandatory redemption amounts are determined in the Designation, the provisions of this Section 7 shall apply generally to mandatory redemptions. Any such mandatory redemptions shall be at the principal amount redeemed plus accrued interest to the date set for redemption. The Paying Agent and Registrar shall select the term bonds to be redeemed in any maturity using any random method of selection deemed appropriate, subject to the provisions of Section 9 of this Resolution.

Section 8. Form of 2012 Bonds. The 2012 Bonds shall be in substantially the following form:

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# UNITED STATES OF AMERICA STATE OF NEBRASKA COUNTY OF HALL CITY OF GRAND ISLAND

## **ELECTRIC SYSTEM REVENUE REFUNDING BOND, SERIES 2012**

Maturity Date

August 15, \_\_\_\_

No.\_\_\_\_\_

Interest Rate

Date of Original Issue, 2012

CUSIP No.

\$

Registered Owner:

Principal Amount:

KNOW ALL PERSONS BY THESE PRESENTS: That the City of Grand Island, in the County of Hall, in the State of Nebraska, hereby acknowledges itself to owe and for value received promises to pay, but only from the special sources hereinafter described, to the registered owner specified above, or registered assigns, the principal amount specified above in lawful money of the United States of America on the date of maturity specified above with interest thereon to maturity (or earlier redemption) from the date of original issue or most recent Interest Payment Date, whichever is later, at the rate per annum specified above (said interest to be computed on the basis of a 360-day year consisting of twelve 30-day months), payable on February 15 and August 15 of each year, commencing August 15, 2012 (each of said dates an "Interest Payment Date"). The principal hereof and unpaid accrued interest hereon due at maturity or upon earlier redemption are payable upon presentation and surrender of this bond at the principal corporate trust office of Wells Fargo Bank, National Association, the Paying Agent and Registrar, in Minneapolis, Minnesota. Interest on this bond due prior to maturity or earlier redemption will be paid on each Interest Payment Date by a check or draft mailed by the Paying Agent and Registrar to the registered owner of this bond, as shown on the books of record maintained by the Paying Agent and Registrar, at the close of business on the fifteenth day immediately preceding the Interest Payment Date, to such owner's address as shown on such books and records. Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the record date such interest was payable, and shall be payable to the person who is the registered owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Paying Agent and Registrar whenever monies for such purpose become available.

This bond is one of an issue of fully registered bonds of the total principal amount of \_\_\_\_\_\_ Dollars (\$\_\_\_\_\_\_), of even date and like tenor except as to date of maturity, rate of interest and denomination which were issued by the City for the purpose of refunding the City's Electric System Revenue Bonds, Series 2001, date of original issue – June 27, 2001, in the outstanding principal amount of \$25,405,000, which were issued for the purpose of paying the costs of improving extending and equipping the City's electric light and power plant and electric distribution system, all in pursuance of Sections 18-1803 to 18-1805, R.R.S. Neb. 2007, and Section 10-142, R.R.S. Neb \_\_\_\_\_, and has been duly authorized by ordinance (the "Ordinance")

legally passed, approved and published and by proceedings duly had by the Mayor and Council of said City.

Any or all of the bonds of said issue maturing on or after August 15, 20\_\_\_, are subject to redemption at the option of the City, in whole or in part, at any time on or after \_\_\_\_\_, 20\_\_\_, at prices equal to the principal amount redeemed, plus accrued interest to the date fixed for redemption. Notice of redemption shall be given by mail to the registered owner of any bond to be redeemed at said registered owner's address in the manner specified in the Ordinance. Individual bonds may be redeemed in part but only in \$5,000 amounts or integral multiples thereof.

This bond is transferable by the registered owner or such owner's attorney duly authorized in writing at the principal corporate trust office of the Paying Agent and Registrar upon surrender and cancellation of this bond, and thereupon a new bond or bonds of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the Ordinance authorizing said issue of bonds, subject to the limitations therein prescribed. The City, the Paying Agent and Registrar and any other person may treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment due hereunder and for all purposes and shall not be affected by any notice to the contrary, whether this bond be overdue or not.

If the date for payment of the principal of or interest on this bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the city where the principal corporate trust office of the Paying Agent and Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

The revenue and earnings of the electric light and power plant and electric distribution system (the "Electric System") owned by the City of Grand Island, Nebraska, have been pledged and hypothecated, equally and ratably for the payment of this bond and the other bonds of this issue, and any additional bonds of equal priority issued in accordance with the Ordinance authorizing the bonds of this issue. The bonds of this issue are a lien only upon said revenue and earnings and are not general obligations of the City of Grand Island, Nebraska.

The Ordinance authorizing the issuance of this bond and the other bonds of this issue sets forth the covenants and obligations of the City with respect to the Electric System and the application of the revenues to be derived therefrom, which revenues are by the terms of said Ordinance to be deposited into the "Electric System Fund" (as established under such ordinance) and disbursed to pay costs of operation and maintenance, make payments of principal and interest on the bonds of this issue and make other payments as specified in said Ordinance. Said Ordinance designates the terms and conditions on which additional bonds of equal lien to the bonds of this issue may be issued. Said Ordinance also designates the terms and conditions on which this bond shall cease to be entitled to any lien, benefit or security under such Ordinance and all covenants, agreements and obligations of the City under such Ordinance may be discharged and satisfied at or prior to the maturity or redemption of this bond if monies or certain specified securities shall have

been deposited with the Paying Agent and Registrar or other trustee. The City also reserves the right to issue bonds junior in lien to the bonds of this issue, the principal and interest of which shall be payable from monies in the "Surplus Account" of such Electric System Fund, as described in said Ordinance.

This bond shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar.

AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SECURITIES DEPOSITORY APPOINTED PURSUANT SUCCESSOR TO THE ORDINANCE, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE PAYING AGENT AND REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE ORDINANCE.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE PAYING AGENT AND REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE PAYING AGENT AND REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.

IT IS HEREBY CERTIFIED AND WARRANTED that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this bond did exist, did happen and were done and performed in regular and due form and time as required by law.

IN WITNESS WHEREOF, the Mayor and Council of the City of Grand Island, Nebraska, have caused this bond to be executed on behalf of the City with the facsimile signatures of the Mayor and the City Clerk and by causing the official seal of the City to be imprinted hereon, all as of the date of original issue specified above.

# CITY OF GRAND ISLAND, NEBRASKA

(facsimile signature) Mayor

ATTEST:

(facsimile signature) City Clerk

(SEAL)

# Certificate of Authentication

This bond is one of the bonds authorized by ordinance of the Mayor and Council of the City of Grand Island, in the County of Hall, in the State of Nebraska, described in the foregoing bond.

WELLS FARGO BANK, NATIONAL ASSOCIATION Paying Agent and Registrar

By:\_\_\_\_\_ Authorized Signature

## (FORM OF ASSIGNMENT)

Fo	or value	received					hereby
sells, assig	gns, and	transfers unto					the
within	bond	and	hereby	irrevocably	constitutes	and	appoints
			,	Attorney, to	transfer the same	on the	books of
U		office of the premises.	within mer	ntioned Paying	Agent and Registrat	r with ful	l power of

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

Registered Owner

Signature Guaranteed

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

Authorized Officer

Note: The signature(s) on this assignment MUST CORRESPOND with the name(s) as written on the face of the within bond in every particular, without alteration, enlargement or any change whatsoever, and must be guaranteed by a commercial bank or a trust company or by a firm having membership on the New York, Midwest or other stock exchange.

Section 9. Execution of 2012 Bonds - Book-entry Securities; Sale of 2012 Bonds. Each of the 2012 Bonds shall be executed on behalf of the City with the facsimile signatures of the Mayor and the City Clerk and shall have imprinted thereon the City's seal. The 2012 Bonds shall be issued initially as "book-entry-only" bonds under the services of The Depository Trust Company (the "Depository"), with one typewritten bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a Letter of Representations (the "Letter of Representations") in the form required by the Depository, for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the 2012 Bonds. The Letter of Representations may be in the form of a blanket letter previously or concurrently executed and delivered. With respect to the issuance of the 2012 Bonds as "book-entry-only" bonds, the following provisions shall apply:

(a) The City and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds 2012 Bonds as securities depository (each, a "Bond Participant") or to any person who is an actual purchaser of a 2012 Bond from a Bond Participant while the 2012 Bonds are in book-entry form (each, a "Beneficial Owner") with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the 2012 Bonds,

(ii) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the 2012 Bonds, including any notice of redemption, or

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the 2012 Bonds. The Paying Agent and Registrar shall make payments with respect to the 2012 Bonds only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such 2012 Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Bond, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange 2012 Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the 2012 Bonds or (ii) to make available 2012 Bonds registered in whatever name or names as the Beneficial Owners transferring or exchanging such 2012 Bonds shall designate.

(c) If the City determines that it is desirable that certificates representing the 2012 Bonds be delivered to the ultimate beneficial owners of the 2012 Bonds and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates representing the 2012 Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the 2012 Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any 2012 Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such 2012 Bond and all notices with respect to such 2012 Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the 2012 Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the 2012 Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee;

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section and the terms of the Paying Agent and Registrar's Agreement.

(f) In the event of any partial redemption of a Bond unless and until such partially redeemed Bond has been replaced in accordance with the provisions of this Ordinance, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such Bond as is then outstanding and all of the Bonds issued to the Depository or its nominee shall contain a legend to such effect.

(g) Delivery of the 2012 Bonds to the Depository is hereby authorized to be made through the Paying Agent and Registrar, with the Paying Agent and Registrar holding bond certificates for the Depository under such Depository's "FAST" procedures as in effect from time to time.

If for any reason the Depository resigns and is not replaced, the City shall immediately provide a supply of printed bond certificates, duly executed by manual or facsimile signatures of the Mayor and City Clerk and sealed with the City's seal, for issuance upon the transfers from the Depository and subsequent transfers or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of such certificates and to direct their execution by manual or facsimile signatures of its then duly qualified and acting Mayor and City Clerk and by imprinting thereon or affixing thereto the City's seal. In case any officer whose signature or facsimile thereof shall appear on any 2012 Bond shall cease to be such officer before the delivery of such bond (including such certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption), such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such bond. The 2012 Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The City Treasurer shall cause the 2012 Bonds to be registered in the office of the Auditor of Public Accounts of the State of Nebraska and in the office of the City Treasurer as finance officer of the City. Thereafter the 2012 Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the 2012 Bonds, they shall be delivered to the City Treasurer, who is authorized to deliver them to Ameritas Investment Corp., as the initial purchaser thereof, upon receipt of not less than 99.0% (or such greater amount as determined in the Designation) of the principal amount of the Bonds plus

accrued interest thereon to date of payment of the Bonds (which purchase price may be modified as determined in the Designation to account for original issue premium and original issue discount on the Bonds, if any, within the parameters provided in Section 3 of this Ordinance). Such sale of the 2012 Bonds shall be made to said purchaser pursuant to the terms of a Bond Purchase Agreement in substantially the form presented and an Authorized Officer is hereby authorized to approve the final form and execute and deliver said Bond Purchase Agreement. Such purchaser and its agents, representatives and counsel (including bond counsel for the City) are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and sale of the 2012 Bonds, including, without limitation, authorizing the release of the 2012 Bonds by the Depository (as defined herein) at closing.

Section 10. **Applications of Funds and Proceeds.** Any accrued interest received from the sale of the 2012 Bonds shall be applied to pay interest falling due on August 15, 2012, and shall be credited to the Debt Service Sub-Account in the Bond Account as described in Section 12 hereof. Expenses of issuance of the 2012 Bonds may be paid from the proceeds of the 2012 Bonds. The remaining proceeds of the 2012 Bonds, together with such other funds of the City as may be required for such purpose, shall be deposited with the trustee for the 2001 Bonds and applied to the redemption in full of the 2001 Bonds on the Redemption Date. Funds of the City in an amount equal to the Series 2012 Reserve Requirement will be credited to the Series 2012 Reserve Sub-Account as provided in Section 13(d) below. The Mayor, the City Clerk and the City Treasurer, or any one or more of them, are hereby authorized to take all actions necessary to provide for the transfers and deposits described in this Section and are further authorized to execute and deliver appropriate instructions to the trustee for the 2001 Bonds and the Trustee for such purposes.

Section 11. **Pledge of Revenues.** The principal of and premium, if any, and interest on the Bonds shall be payable solely from and shall be secured solely by the Revenues which are hereby

pledged in this Ordinance to the payment thereof, subject to the charge on Revenues for the payment of Operating Expenses. All the Bonds shall be equally and ratably secured without priority by reason of series, number, date of Bonds, date of issuance, date of sale, date of execution or date of delivery or otherwise, by a lien and charge on Revenues, which lien shall constitute a first and prior lien on Revenues subject to the charge on Revenues for the payment of the Operating Expenses. The covenants and agreements herein set forth to be performed by the City shall be for the equal and proportionate benefit, security and protection of all holders of the Bonds without preference, priority or distinction as to payment or security or otherwise (except that a separate reserve sub-account shall be established for the 2012 Bonds and a separate reserve sub-account may be established for any series of Additional Bonds and except as to maturity and sinking fund installments which may be established for the Bonds of any series authorized hereunder) of any of the Bonds or interest payments over any of the others by reason of series, date, number, date of execution, time of issue, sale or negotiation thereof or otherwise for any cause whatsoever, except as expressly provided therein or herein, and all Bonds shall rank *pari passu* and shall be secured equally and ratably without discrimination or preference whatsoever.

The lien, pledges, charges, trusts and assignments of Revenues made herein and hereby shall be valid and binding, and shall be deemed continuously perfected for the purposes of the Uniform Commercial Code (as and to the extent applicable) or any other statute, from the time of the passage and approval of this Ordinance and the Revenues shall thereupon be immediately subject to the lien, pledge and charge hereof and the trusts created hereby subject to the condition that receipt be made for the proceeds of the 2012 Bonds by or for the City or by the Trustee or a Paying Agent hereunder.

The Bonds shall not be a debt of the State of Nebraska or of the City within the meaning of any constitutional or statutory limitation upon the creation of general obligation indebtedness of the State of Nebraska or of the City. The State of Nebraska shall not be liable for the payment of the Bonds out of any moneys of the State of Nebraska, and the City shall not be liable for the payment thereof out of any moneys of the City other than Revenues pledged to the payment thereof as aforesaid, and all Bonds shall contain a recital to that effect.

Section 12. Creation of Funds and Accounts. The City does hereby agree with the

holders of said 2012 Bonds and Additional Bonds as follows:

(a) **ELECTRIC SYSTEM FUND** - There is hereby ordered established a special fund of the City to be designated as the Electric System Fund which shall be maintained as long as any of the Bonds are outstanding. The Electric System Fund and all accounts and sub-accounts therein shall be held in trust and administered by the City in accordance with this Ordinance. The City covenants and agrees that it will pay and deposit in the Electric System Fund, as promptly as practicable after the receipt thereof, all Revenues, and that said Revenues will be segregated and kept apart from all other revenues and funds of the City.

(b) **BOND ACCOUNT** - There is hereby created within the Electric System Fund a special account to be known as the "Electric System Revenue Bond Account" (hereinafter referred to as the "Bond Account"). The Bond Account shall be used solely for the purpose of paying the principal of and premium, if any, and interest on the Bonds and of retiring the Bonds prior to maturity in the manner herein provided.

(c) **DEBT SERVICE SUB-ACCOUNT WITHIN THE BOND ACCOUNT** - There is hereby created within the Bond Account, for the purpose of paying principal of and premium, if any, and interest on the Bonds and of retiring the Bonds prior to maturity in the manner herein provided, a special account in the Bond Account to be known as the "Debt Service Sub-Account."

(d) **SERIES 2012 RESERVE SUB-ACCOUNT** - There is hereby created within the Bond Account, for the purpose of providing a reserve for the payment of the principal of and premium, if any, and interest on the 2012 Bonds and only on the 2012 Bonds, a special account in the Bond Account to be known as the "Series 2012 Reserve Sub-Account."

(e) **CAPITAL IMPROVEMENT ACCOUNT** - There is hereby created within the Electric System Fund, for the purpose of making replacements, improvements, enlargements, extensions and betterments of the Electric System, a special account to be known as the "Capital Improvement Account."

(f) **OPERATION AND MAINTENANCE ACCOUNT** – There is hereby created within the Electric System Fund, for the purpose of paying Operating

Expenses, a special account to be know as the "Operation and Maintenance Account."

(g) **ELECTRIC PLANT SURPLUS ACCOUNT** - There is hereby created within the Electric System Fund a special account of the City to be known as the "Surplus Account."

A separate reserve sub-account may be established for any issue of Additional Bonds in the Series Ordinance for such issue which sub-account or sub-accounts shall be of equal standing and priority with the Series 2012 Reserve Sub-Account as to priority of payment for purposes of restoring withdrawals as set forth in Section 13 hereof and in the event of insufficiency of funds for restoring any and all such withdrawals amounts shall be allocated among deficient reserve sub-accounts pro rata in accordance with the respective outstanding principal amounts of those issues of Bonds for which there are deficient reserve sub-accounts.

Section 13. **Application of Revenues.** Each month the moneys in the Electric System Fund shall be applied in the amounts and in the order of priority set forth in this Section 13. In the event that in any month the moneys in the Electric System Fund are insufficient to make in full in the order of priorities set forth in this Section the credits, reservations and payments required by the provision of this Section 13, such credits, reservations and payments shall be made in such manner in order of priority to the fullest extent possible, an item having higher priority being satisfied in full (including the making up of any deficiencies) before an item having a lower priority. The amount of any deficiency in a credit, reservation or payment over to or for a priority item shall be added to the requirement for such item in succeeding months until such deficiency is satisfied.

FIRST: There shall be reserved in the Electric System Fund and credited to the Operation and Maintenance Account each month such amounts as shall be necessary to pay the Operating Expenses during the ensuing month, which amounts so reserved shall be used for and applied to such payments in such month or, to the extent not so applied, in succeeding months.

SECOND: There shall next be paid from the Electric System Fund for deposit in the Bond Account to be credited to the Debt Service Sub-Account and the Series 2012 Reserve Sub-Account therein, simultaneously and without preference of one over the other, with consideration given to and allowance made for moneys deposited in, credited or accrued to the Debt Service Sub-Account and the Series 2012 Reserve Sub-Account, the following:

(a) Not later than the 25th day of the month following the issuance and delivery of any series of Bonds, including the 2012 Bonds, and not later than the 25th day of each calendar month thereafter, the City shall pay to the Trustee for deposit in the Bond Account to be credited to the Debt Service Sub-Account with respect to each series of Bonds then Outstanding, an amount such that, if the same amount were so paid and credited to the Debt Service Sub-Account on the 25th day of each succeeding calendar month thereafter and prior to the next date upon which an installment of interest falls due on the Bonds of such series, the aggregate of the amounts so paid and credited to the Debt Service Sub-Account for the purpose of paying interest on such series of Bonds would on such date be equal to the installment of interest then falling due on all Bonds of such series of Bonds then

Outstanding. In making credits to the Debt Service Sub-Account required by this subparagraph, consideration shall be given to and allowance made for any amounts representing accrued interest received on the sale of Bonds paid or to be paid into the Bond Account and credited to the Debt Service Sub-Account, and interest capitalized from the proceeds of Bonds.

(b) Not later than the 25th day of the 12th month prior to each date upon which an installment of principal of the Bonds of any series of Bonds falls due, and not later than the 25th day of each calendar month thereafter, the City shall pay to the Trustee for deposit in the Bond Account to the credit of the Debt Service Sub-Account with respect to an installment of principal on such series of Bonds, an amount such that, if the same amount were so paid and credited to the Debt Service Sub-Account on the 25th day of each calendar month thereafter and prior to the next day upon which an installment of principal falls due on the Bonds of such series of Bonds, the aggregate of the amounts so paid and credited to the Debt Service Sub-Account for the purpose of paying in installment of principal of such series would on such date be equal to the installment of principal of such series of Bonds then falling due, provided, however, with respect to the 2012 Bonds such deposits and credits shall commence with the 25th day of such month as determined in the Designation.

(c) Not later than the 25th day of the 12th month prior to the date upon which the first sinking fund installment for mandatory redemptions, if any, is payable with respect to the Bonds of any series of Bonds and not later than the 25th day of each calendar month thereafter, the City shall pay to the Trustee for deposit in the Bond Account for credit to the Debt Service Sub-Account with respect to a sinking fund installment on such series of Bonds, an amount such that, if the same amount were so paid and credited to the Debt Service Sub-Account on the 25th day of each calendar month thereafter and prior to the next date upon which a sinking fund installment falls due, the aggregate of the amounts so paid and credited to the Debt Service Sub-Account for the purpose of retiring the Bonds of such series would be sufficient to redeem such Bonds in the principal amounts and at the times specified in the Series ordinance or Ordinances authorizing the issuance of such Additional Bonds.

The Trustee may apply the moneys paid into the Bond Account for credit to the Debt Service Sub-Account pursuant to this subsection (c) for the purpose of retiring the Bonds of each series of Bonds to the purchase of such Bonds, in which event the principal amount of said Bonds of the maturity purchased required to be redeemed on the next ensuing sinking fund installment mandatory redemption date shall be reduced by the principal amount of such Bonds so purchased; provided, however, that no Bonds shall be purchased during the interval between the date on which notice of redemption of said Bonds from sinking fund installments is given and the date of redemption set forth in such notice, unless the Bonds so purchased are Bonds called for redemption in such notice or are purchased from moneys other than those credited to the Debt Service Sub-Account pursuant to this subsection (c) as part of a sinking fund installment; and provided further, that no purchases of Bonds shall be made if such purchase would require the sale at a loss of securities in

the Bond Account for credit to the Debt Service Sub-Account unless the difference between the actual purchase price (including accrued interest and any brokerage or other charge) paid for such Bonds and the then maximum purchase price (plus accrued interest) permitted to be paid therefor, is greater than the loss upon the sale of any such securities. Any purchase of Bonds pursuant to this subsection (c) may be made with or without tenders of Bonds and at either public or private sale, but in any event at a purchase price (including accrued interest and any brokerage or other charge) not to exceed the then applicable redemption price of such Bonds, plus accrued interest. All Bonds purchased or redeemed pursuant to this subsection (c) shall be cancelled and not reissued.

At the option of the City, the City may, in lieu of making all or any part of the cash payments into the Bond Account required by the foregoing provisions of this subsection (c), furnish the Trustee with a certificate of the Treasurer of the City, stating that the City has purchased and cancelled Bonds of a series of Bonds in the principal amount, and bearing the numbers, specified therein, and that said Bonds have not been previously included in any such certificate; and thereupon the cash payments required by the foregoing provisions of this subsection (c) with respect to the Bonds of such series of the maturity purchased may be reduced accordingly by the principal amount of such Bonds cancelled, as evidenced by such certificate.

In the event notice of redemption shall have been given as provided in the authorizing ordinance with respect to a redemption other than pursuant to the foregoing provisions of this subsection (c), the City shall pay to the Trustee for deposit in the Bond Account for credit to the Debt Service Sub-Account at least six (6) days prior to the redemption date, an amount in cash which, in addition to other moneys, if any, available therefor in the Debt Service Sub-Account, will be sufficient to redeem on the redemption date at the applicable redemption prices thereof, plus interest accrued thereon to the redemption date, all of the Bonds to be redeemed.

(d) Upon or prior to the issuance of the 2012 Bonds there shall be transferred to the Series 2012 Reserve Sub-Account from the City's separate funds of the City's Electric System (and not from proceeds of the Series 2012 Bonds) an amount equal to the Series 2012 Reserve Requirement. If at any time the moneys and the value of Investment Securities in the Bond Account for credit to the Series 2012 Reserve Requirement as the result of a withdrawal from the Series 2012 Reserve Sub-Account from the first moneys available therefor, such amounts as shall be necessary until there is again on credit to the Series 2012 Reserve Sub-Account an amount at least equal to the Series 2012 Reserve Requirement. As set forth in Section 12, amounts available for restoring reserve sub-accounts for separate series of Bonds shall be applied pro rata in accordance with the respective outstanding principal amounts of each such series for which restoration of withdrawals is required.

If at any time the moneys and value of Investment Securities in the Bond Account for credit to the Series 2012 Reserve Sub-Account therein are in excess of the Reserve Account Requirement, the amount of such excess shall, at the request of the City, be paid into the Debt Service Sub-Account of the Bond Account, to be used and applied as credit against the amounts next required to be deposited thereto by the City with respect to the 2012 Bonds. The moneys and value of Investment Securities in the Bond Account for credit to the Series 2012 Reserve Sub-Account therein shall, except for the transfer therefrom to the Debt Service Sub-Account of excess amounts therein as heretofore permitted in this subsection (d), be used and applied solely for the purpose of paying the principal of and premium, if any, and interest on the 2012 Bonds when due, whether at their maturity or upon the redemption or purchase thereof from moneys credited to the Debt Service Sub-Account and shall be so used and applied whenever there are insufficient moneys in the Bond Account for credit to the Debt Service Sub-Account therein for such purposes.

The term "value of Investment Securities" and words of like import as used herein, shall mean the purchase price of such obligations paid by the City, excluding accrued interest, but shall not be more than the par value of such obligations.

Moneys in the Debt Service Sub-Account shall be transmitted by the Trustee without further authorization or direction from the City to the Paying Agents prior to the date upon which any interest is due on the Bonds and prior to the date upon which any principal is due on the Bonds pursuant to a stated maturity, a sinking fund installment or a notice of redemption, as the case may be. In the event that there shall be a deficiency in the Debt Service Sub-Account in the Bond Account, and if moneys in the Electric System Fund are not deposited with the Trustee in an amount sufficient to make up any deficiency, the Trustee shall promptly make up such deficiency from the Series 2012 Reserve Sub-Account for the 2012 Bonds by the withdrawal of cash therefrom for that purpose and by the sale or redemption of obligations held in the Series 2012 Reserve Sub-Account, if necessary, in such amounts as will provide cash in the Series 2012 Reserve Sub-Account sufficient to make up any such deficiency. With respect to any Additional Bonds in any such case withdrawals shall be made from the respective reserve account, if any, established with respect to such Additional Bonds in the respective authorizing ordinance.

Moneys set aside from time to time with the Paying Agent for the purpose of paying the principal of and premium, if any, and the interest on the Bonds shall be held in trust for the holders of the Bonds in respect of which the same shall have been so set aside. Until so set aside, all moneys in the Bond Account, except for monies held in the Series 2012 Reserve Sub-Account or any reserve account established for Additional Bonds, shall be held in trust for the benefit of the holders of all Bonds at the time Outstanding, equally and ratably.

Whenever the amounts on deposit in the Bond Account shall be sufficient to provide moneys to retire all Bonds then Outstanding, including such interest thereon as thereafter may become due and payable and any premiums upon redemption thereof, no further payments need be made into the Bond Account. All moneys remaining in the Bond Account after provisions for the payment in full of the principal of and premium, if any, and interest on the Bonds shall be returned to the Electric System Fund.

THIRD: There shall be paid from the Electric System Fund for deposit in the Capital Improvement Account the amounts provided for by Section 16 of this Ordinance. Moneys in said account shall be used for the purposes specified in said Section 16.

FOURTH: Within 120 days after the end of each Fiscal Year, the City shall next have the right to withdraw from the Electric System Fund and to pay into the general fund of the City an amount equal to five per cent (5%) of Operating Revenues less Operating Expenses for such Fiscal Year, such payment being in lieu of taxes. No withdrawal from the Electric System Fund and payment to the City hereinbefore authorized shall be made at any time when the City shall be in default in the performance of any covenant or agreement contained in the Ordinance or when such withdrawal would cause the City to be in default in the performance of any such covenant or agreement. Except as aforesaid, no moneys derived by the City from the operation of the Electric System shall be diverted or applied to the general governmental or municipal functions of the City so long as any of the Bonds remain Outstanding. Anything in this Section 13, including this paragraph FOURTH, to the contrary notwithstanding, the City shall be permitted to include allocable administrative costs attributable to services furnished by the City's general operations for the benefit of the Electric System in Operating Expenses, payable from the Operation and Maintenance Account.

FIFTH: Subject to the second last sentence of paragraph FOURTH above, all moneys remaining in the Electric System Fund, after making provision for payments required to be made into the Operation and Maintenance Account, the Bond Account, and the Capital Improvement Account, and any withdrawals by the City pursuant to paragraph FOURTH above, shall be credited to the Surplus Account and may be expended for any lawful purpose of the Electric System.

Moneys in the Electric System Fund shall, to the fullest extent practicable, be invested in Investment Securities maturing at such times and in such amounts as shall be required to provide moneys to make payments required to be made from said Fund. Moneys held for credit to the Debt Service Sub-Account in the Bond Account shall, to the fullest extent practicable and reasonable, be invested by the Trustee at the direction of the City in Investment Securities which shall mature prior to the respective dates when the moneys held for the credit of such Account will be required for the purposes intended. Moneys in the Series 2012 Reserve Sub-Account in the Bond Account not required for immediate disbursement for the purposes for which said Account is created shall, to the fullest extent practicable and reasonable, be invested and reinvested by the Trustee at the direction of the City solely in, and obligations deposited in said Series 2012 Reserve Sub-Account shall be, Investment Securities maturing, or subject to redemption at the option of the holder thereof, within

ten (10) years from the date of such investment (but maturing prior to the final maturity date of the 2012 Bonds). The Trustee shall not be liable for any depreciation in value of any such investment. Moneys held in the Capital Improvement Account shall be invested as provided in Section 16 and income resulted from such investments shall be applied as provided in such Section. All income resulting from the investment or reinvestment of moneys held in the Electric System Fund pursuant to this Section shall be treated as Revenues, and shall be retained in the Electric System Fund and allocated as provided herein, except for income attributable to the Series 2012 Reserve Sub-Account which is required above to be transferred to the Debt Service Sub-Account for making payments due on the 2012 Bonds.

Earnings on the investment of moneys in the construction and acquisition account established for the proceeds of the 2012 Bonds and any construction account that may be established with the proceeds of Additional Bonds shall be deposited in such account. Expenses of purchase, safekeeping, sale and redemption and all other expenses attributable to such investments shall be treated as expenses of such account.

The provisions of this Section 13 shall require the City to maintain a set of books and records in accordance with such accounting methods and procedures as are generally applicable to municipal utility enterprises, which books and records shall show credits to and expenditures from the Electric System Fund and the several accounts and sub-accounts required by this Section 13.

Section 14. Additional Bonds. At any time and from time to time after the issuance of the 2012 Bonds, one or more series of Additional Bonds may be issued hereunder for the purpose of acquiring, constructing, reconstructing, improving, extending, equipping or furnishing the Electric System or for the purpose of refunding or purchasing Bonds upon compliance with the conditions and limitations hereinafter set forth in this Section 14. Such conditions and limitations with respect to Additional Bonds other than refunding bonds (as described below) are as follows:

(a) Prior to the issuance, sale and delivery of any Additional Bonds, the City shall obtain and file with the Trustee a letter of the Independent Accountant stating that, based upon their most recent examination, nothing came to their attention that would indicate that the City is not in compliance with the covenants, agreements and conditions contained in this Ordinance;

(b) Prior to the issuance, sale and delivery of any Additional Bonds, the City shall obtain and file with the Trustee an opinion of the Consulting Engineer stating that Net Receipts, computed as hereinafter provided in this section, in each Fiscal Year following the issuance of the Additional Bonds then proposed to be issued will be at least equal to the greater of:

(i) 1.30 times the Debt Service Requirement in such year for (A) the Bonds to be Outstanding after the issuance of such Additional Bonds, and (B) any Additional Bonds which, in the opinion of the Consulting Engineer, will be required to complete payment of the Costs of Construction of a Facility for which any Bonds have theretofore been issued or are then being issued hereunder; or

(ii) the Debt Service Requirement on all Bonds referred to in (A) and (B) of subparagraph (i) above plus (A) payments, if any, scheduled (after the time of any credit to be made upon initial issuance of any issue of Additional Bonds) by the City to be made from Revenues into the Series 2012 Reserve Sub-Account and any reserve sub-account established or to be established for any issue of Additional Bonds fulfill the Series 2012 Reserve Requirement, any reserve requirement established for any issue of Additional Bonds then Outstanding and any reserve requirement established for the issue of Additional Bonds to be issued, and (B) the amounts required to be expended pursuant to Section 16 hereof.

(c) In making the computation of Net Receipts for each succeeding Fiscal Year as hereinabove provided, the Consulting Engineer shall use as a basis the Net Receipts for any period of twelve consecutive months during the eighteen months next preceding the month in which Additional Bonds then being issued are sold to the initial purchasers thereof (hereinafter referred to as the "Base Period"). In making such computations the Consulting Engineer shall adjust the Net Receipts for the Base Period as follows:

(i) If any changes have been made in the schedule of rates and charges imposed by the City on sales of power and energy and services furnished by the Electric System, including rates contained in power sales contracts, which are in effect at the time of adoption of the Series Ordinance authorizing the issuance of the Additional Bonds then being issued and were not in effect for all or any part of the Base Period, the Consulting Engineer may, if such changes result in increases in such rates and charges, and shall, if such changes result in reductions in such rates and charges, adjust the Net Receipts for the Base Period to reflect any change in such Net Receipts

which would have occurred if the schedule of rates and charges in effect at the time of the adoption of the Series Ordinance authorizing the issuance of the Additional Bonds had been in effect during that portion of the Base Period in which such schedule was not in effect.

(ii) In computing the projected Net Receipts for each of the Fiscal Years covered by this Section, the Consulting Engineer may adjust the amount of Net Receipts for the Base Period, as adjusted pursuant to the preceding paragraph, by his estimate of the net increase over, or net decrease under, such Net Receipts for the Base Period by reason of any one or more of the following factors:

(A) changes in the amounts payable to the City pursuant to existing power sales contracts;

(B) changes in Operating Revenues to result from existing power sales contracts for future deliveries of power and energy;

(C) changes in Operating Revenues to result from increases of sales of power and energy to customers of the Electric System under existing rate schedules for the various classes of such customers, or as such rate schedules may be revised under the Program of Rate Changes;

(D) projected revisions of the cost of labor, wages and salaries;

(E) projected revisions of the cost of fuel;

(F) projected revisions of the cost of machinery, equipment and supplies;

(G) projected revisions of production, transmission, distribution and administrative costs associated with the increases in sales of power and energy and the acquisition and construction of additional facilities;

(H) the projected cost of purchasing power and energy;

(I) projected sales of surplus energy or capacity; provided, however, that no Revenues from sales of surplus energy or capacity shall be included in projected Net Receipts unless the Consulting Engineer shall state in the opinion delivered pursuant to subsection (b) of this Section that he believes there will be a market for such surplus energy or capacity at the rates used in computing the projected Revenues from this source in the Fiscal Years in which such projected Revenues are included; and

(J) such projection of additional Operating Revenues and Operating Expenses as the Consulting Engineer shall deem reasonable and proper.

(d) If the Consulting Engineer is required pursuant to this Section 14 to estimate the Debt Service Requirement on any Bonds which in his opinion will be required to be issued in the future to pay Costs of Construction of a Facility for which Bonds have been or are then being issued, he shall estimate the Debt Service Requirement for such future Additional Bonds based upon:

(i) the assumption that such future Additional Bonds will be issued in an amount not less than the amount required to complete payment of the Costs of Construction of such Facility as estimated by the Construction Engineer for such Facility, or if there be no Construction Engineer therefor, by the Consulting Engineer;

(ii) the assumption that the Debt Service Requirement on such future Additional Bonds in each Fiscal Year in which payments to the Bond Account with respect to principal on such future Additional Bonds will be made will be as nearly equal as practicable;

(iii) the assumption that the first installment of principal of such future Additional Bonds will be payable on or before the date which is thirtysix months following the estimated Date of Commercial Operation of such Facility to pay the Costs of Construction of which such future Additional Bonds will be required to be issued;

(iv) the assumption that the final maturity of such future Additional Bonds will be not later than the final maturity date of any Bonds or Additional Bonds theretofore issued or then being issued to pay the Costs of Construction of such Facility;

(v) the assumption that the interest rate to be borne by such future Additional Bonds will be at least equal to the Average Interest Rate (to the next higher multiple of 1/10 of 1%) as is to be borne by the Additional Bonds then being issued; and

(vi) such other assumptions with respect to the issuance of such Bonds as the Consulting Engineer may consider proper.

The Consulting Engineer may reduce his estimate of the amount of future Additional Bonds required to be issued to pay Costs of Construction of a Facility for which Bonds have been or are being issued by:

(i) an amount equal to the income which the Consulting Engineer estimates will be derived from the investment of the proceeds of

the Additional Bonds issued or the future Additional Bonds to be issued to pay the Costs of Construction of such Facility pending their application to the payment of the Costs of Construction of such Facility at an interest rate which shall not be greater than the Average Interest Rate borne by the Additional Bonds then being issued; and

(ii) any amounts which the Consulting Engineer estimates are or will be available to the City from Revenues or any other moneys for the purpose of paying a portion of the Costs of Construction of such Facility.

(e) Any certificate of the Consulting Engineer filed with the Trustee pursuant to this Section shall be conclusive and binding upon the holders of Bonds and the Trustee and shall be the only evidence required to show compliance by the City and the Consulting Engineer with the provisions and requirements of subsections (b), (c) and (d) of this section.

(f) Unless upon the issuance, sale and delivery of any Additional Bonds there shall then already be on deposit in the Bond Account for credit to the Series 2012 Reserve Sub-Account therein an amount equal to the Series 2012 Reserve Requirement and any reserve requirements for any reserve accounts for Additional Bonds to be in effect after the issuance of such Additional Bonds, there shall either (i) be paid into the Bond Account for credit to the Series 2012 Reserve Sub-Account and all other reserve sub-accounts therein such amount, if any, of the proceeds of the sale of such Additional Bonds so that there shall be on deposit in the Bond Account for credit to the Series 2012 Reserve Sub-Account and any reserve sub-account established for any issue of Additional Bonds therein an amount equal to the Series 2012 Reserve Requirement and any reserve account requirement for Additional Bonds to be in effect immediately after the issuance of such Additional Bonds or (ii) if and to the extent there shall not be paid into the Bond Account for credit to the Series 2012 Reserve Sub-Account and/or the respective reserve sub-accounts for each issue of Additional Bonds to be outstanding, proceeds of such Additional Bonds in an amount so that there shall then be on credit to the Series 2012 Reserve Sub-Account and any such reserve sub-account established for Additional Bonds to be outstanding an amount equal to the Series 2012 Reserve Requirement and the reserve requirement, if any, for each such issue of Additional Bonds, there shall be credited to the Series 2012 Reserve Sub-Account and any such reserve sub-account for Additional Bonds to be outstanding, at such time, or from time to time, as the City may deem proper, such amount or amounts, as the City may deem proper, of the moneys available therefor after all payments and credits required by Section 13 hereof have been made, so that by any date to which interest on such Additional Bonds then being issued has been provided for by deposits in the Debt Service Sub-Account in the Bond Account from the proceeds of Bonds, there shall be on deposit in the Series 2012 Reserve Sub-Account and any such reserve account or subaccount established for Additional Bonds an amount equal to the Series 2012 Reserve Requirement and any such reserve requirement for Additional Bonds to be outstanding, all as then in effect.

At any time and from time to time after the issuance of the 2012 Bonds, the City may issue one or more series of Additional Bonds on a parity with the 2012 Bonds and any Additional Bonds then Outstanding for the purpose of refunding or purchasing Bonds, including amounts to pay principal, premium and interest to the redemption or purchase date and the expenses of issuing such Additional Bonds and refunding or purchasing the Bonds being refunded or purchased, provided, that the Debt Service Requirement for the Bonds to be Outstanding after the issuance of such refunding Bonds in any Fiscal Year in which any Bonds to be refunded or purchased would otherwise be Outstanding shall not be greater than the Debt Service Requirement if the Bonds to be refunded or purchased were not so refunded or purchased. Refunding bonds may be issued under the terms provided for above in this Section 14, provided that any showing of the coverage required by (b)(i) or (b)(ii) may be shown by a statement of the City's Treasurer accompanied by audited financial statements and certified calculations as to the Debt Service Requirement for all Bonds to be outstanding after the issuance of any such refunding bonds.

The City may also issue Bonds on a parity with the 2012 Bonds and any Additional Bonds then Outstanding for the purpose of refunding at any time within one year prior to maturity any of the Bonds for the payment of which the City does not have sufficient funds. Any Additional Bonds issued for such purpose shall mature in a year not earlier than the latest stated maturity of the Bonds not refunded to be Outstanding after the completion of such refunding.

Except for the issuance of the 2012 Bonds and except for the issuance of, and to the extent permitted in this Section 14, Additional Bonds, from and after the effective date of this Ordinance and for so long as any of the Bonds are Outstanding, the City will not create or permit the creation of any indebtedness or issue any bonds, notes, warrants, certificates or other obligations or evidences of indebtedness payable in any manner from moneys derived from Revenues or from the Electric System Fund which (a) will in any way be superior to or rank on a parity with the Bonds

authorized in accordance with this Section 14 or (b) will in any way be secured by a lien and charge on Revenues or on the moneys deposited in or to be deposited in the Electric System Fund prior to or equal with the lien and charge created herein for the security of the Bonds, or (c) will be payable prior to or equal with the payments to be made from moneys derived from Revenues and the Electric System Fund into the Bond Account and the Capital Improvement Account, and from the Bond Account for the payment of the Bonds, including the payments to be made into the Series 2012 Reserve Sub-Account or any reserve sub-account established for any issue of Additional Bonds in the Bond Account.

Nothing in this Ordinance, and particularly nothing in this Section 14 shall prevent the City from authorizing and issuing bonds, notes, bond anticipation notes, warrants, certificates or other obligations or evidences of indebtedness (a) the payment of the principal of and premium, if any, and interest on which shall be made from evidences of indebtedness of the City (other than Bonds) or from moneys derived from Revenues in the Surplus Account, or from any other special fund or account to be maintained from Revenues, so long as the payments from Revenues or from such other special fund or account shall be made junior and subordinate to the payment of the principal of and interest on the Bonds to all payments for Operating Expenses or required to be made to the Bond Account by the provisions of Section 13 hereof and to the Capital Improvement Account by the provisions of Section 16 hereof; and (b) which are secured as to principal, premium, if any, and interest, or if payable from another special fund or account (as aforesaid) the payments into which other special fund or account are secured, by a lien and charge on Revenues and the moneys in the Electric System Fund junior and inferior to the lien and charge thereon of the Bonds, which lien shall also be junior and inferior to the payments to be made from Revenues and the Electric System Fund for Operating Expenses, to provide for the payment of the Bonds, including the payments to

be made into the Bond Account for credit to the Series 2012 Reserve Sub-Account and any reserve sub-account established for Additional Bonds therein and the Capital Improvement Account.

Nothing in this Ordinance shall prevent the City from authorizing and issuing bonds, notes, warrants, certificates or other obligations or evidences of indebtedness, other than Bonds, to acquire or construct facilities for the generation, transmission or distribution of electric power and energy, which facilities shall be a separate electric utility system (separate and apart from the Electric System) and which bonds or other obligations or evidences of indebtedness shall not be a charge upon or payable from the Revenues but shall be payable solely from the revenues or other income derived from the ownership or operation of such separate electric system.

Section 15. **Depositories, the Trustee, the Paying Agents.** All moneys in the Electric System Fund shall be deposited in the name of the City in banks and trust companies selected by the City as depositaries. All moneys deposited with any depositary at any time shall be secured in the manner then prescribed by the laws of the State of Nebraska for the securing of funds of the City.

The Trustee may be removed for cause at the request of and upon the affirmative vote of the holders of more than fifty percent (50%) of the principal amount of Bonds Outstanding. In the event of the removal, resignation, disability or refusal to act of the Trustee, a successor may be appointed by the holders of more than fifty percent (50%) of the principal amount of Bonds Outstanding, excluding any Bonds held by or for the account of the City, and such successor shall have all the powers and obligations of the Trustee under this Ordinance theretofore vested in its predecessor, or in any Bondholders' Committee created under Section 18 hereof, provided, that unless a successor Trustee shall have been appointed by the holders of Bonds as aforesaid, the City by a duly adopted ordinance shall forthwith appoint an interim Trustee to fill such vacancy until a successor Trustee shall be appointed by the holders of Bonds as authorized in this Section 15. Any

interim Trustee appointed by the City shall, immediately and without further act, be superseded by the successor Trustee appointed by the holders of Bonds.

Any company into which the Trustee may be merged or with which it may be consolidated or any company resulting from any merger or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business shall, upon the consummation of such merger, consolidation, sale or transfer, become successor Trustee, provided such company otherwise qualifies for the office as provided in this Section 15.

The Trustee may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than sixty (60) days' written notice to the City and mailing notice thereof to all registered owners of the Bonds and such resignation shall take effect upon the day specified in such notice unless previously a successor shall have been appointed by the City or the Bondholders as above provided, in which event such resignation shall take effect immediately on the appointment of such successor.

The Trustee is hereby appointed as the sole Paying Agent for all Bonds Outstanding under this Ordinance. The appropriate accounts of the Bond Account shall be drawn upon by the Trustee for the purpose of paying the principal of and premium, if any, and interest on the Bonds or transferring moneys to the Paying Agent for that purpose.

The duties and obligation of the Trustee appointed by or pursuant to the provisions of this Ordinance prior to the occurrence of an Event of Default (hereinafter defined), and subsequent to the curing of such Event of Default, shall be determined solely by the express provisions of this Ordinance, and such Trustee shall not be liable for any action of any other trustee and shall not otherwise be liable except for the performance of its duties and obligations as specifically set forth herein and to act in good faith in the performance thereof, and no implied duties or obligation shall

be incurred by such Trustee other than those specified herein, and such Trustee shall be protected when acting in good faith and upon advice of counsel, who may be counsel to the City.

In case an Event of Default has occurred which has not been cured, such Trustee shall exercise such of the rights and powers vested in it by this Ordinance and use the same degree of care and skill in the exercise thereof as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. The Trustee shall not be deemed to have knowledge of any Event of Default not known to such Trustee.

Subject to the provisions of this Section 15, the Trustee may conclusively rely, as to the correctness of the statements, conclusions and opinions expressed therein, upon any certificate, report, opinion or other document furnished to such Trustee pursuant to any provisions of this Ordinance. Except as otherwise expressly provided in this Ordinance, any request, consent, certificate, demand, notice, order, appointment, or other direction made or given by the City to such Trustee or the Paying Agent shall be deemed to have been sufficiently made or given by the proper party or parties if executed on behalf of the City by its Mayor.

None of the provisions contained in this Ordinance shall require the Trustee to spend or risk its own funds or otherwise incur individual financial responsibility in the performance of any of its duties or in the exercise of any of its right or powers, if there are reasonable grounds for believing that the repayment thereof is not reasonably assured to it under the terms of this Ordinance.

The Trustee and the Paying Agent shall be entitled to reasonable compensation for all services rendered by them in the execution, exercise and performance of any of the powers and duties to be exercised or performed by the Trustee and the Paying Agent, respectively, pursuant to the provisions of this Ordinance or any Series Ordinance, and the City will pay or reimburse the Trustee and the Paying Agent upon request for all expenses, disbursements and advances incurred or made by the Trustee or Paying Agent, as the case may be, in accordance with any of the

provisions hereof (including the reasonable compensation and expenses and disbursements of counsel for the Trustee, or Paying Agent, as the case may be, and of any persons not regularly in the employ thereof). The Trustee shall be entitled to indemnity from the City against any loss, liability or expense incurred on the part of the Trustee arising out of or in connection with the acceptance or administration of the powers and duties of the trust created pursuant to the provisions of this Ordinance, including the cost and expense of defending against any claim or liability in the premises, and, to the extent permitted by law, the Trustee shall have a lien or claim for payment of such compensation, expenses and disbursements of counsel, losses, liabilities and expenses prior to that of the holders of the Bonds upon any funds held by it under this Ordinance.

The Trustee shall not be responsible in any manner whatsoever for the correctness of the recitals, statements and representations herein or in the Bonds, all of which are made by the City solely. The Trustee makes no representation as to the value or condition of the Electric System, or any part thereof, or as to any addition or improvement to the Electric System, or as to the right, title and interest of the City in the Electric System or any addition or improvement to the Electric System, or as to the lien created by this Ordinance, or as to the validity of this Ordinance or of the Bonds issued hereunder, and the Trustee shall incur no liability or responsibility in respect of any such matters. The Trustee shall not have any responsibility as to the amount of Bonds issued or Outstanding at any time.

In case at any time it shall be necessary or desirable for the Trustee to make any investigation respecting any fact preparatory to taking or not taking any action or doing or not doing any thing, and in any case in which this Ordinance provides for permitting or taking any action, the Trustee may rely upon any certificate required or permitted to be filed with it under the provisions of the Ordinance, and any such certificate shall be evidence of such fact to protect it in any action

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that it may or may not take or in respect of any thing it may or may not do, by reason of the supposed existence of such fact.

The Trustee and its directors, officers, employees or agents, may in good faith buy, sell, own and hold any of the Bonds issued under the provisions of this Ordinance, and may join in any action which any Bondholder may be entitled to take with like effect as if such Trustee were not the Trustee under the Ordinance. The Trustee may in good faith hold any other form of indebtedness of the City; own, accept or negotiate any drafts, bills of exchange, acceptance or obligations thereof; make disbursements therefor and enter into any commercial or business arrangement therewith. The Trustee shall not be deemed to have any conflict of interest solely by reason of any such transaction.

Section 16. **Covenants to Secure Bonds.** The City covenants and agrees with the purchaser and registered owners of the Bonds from time to time Outstanding under this Ordinance, that so long as any of the Bonds are Outstanding hereunder:

(a) Within one hundred twenty (120) days after the end of each Fiscal Year, beginning with the Fiscal Year ending September 30, 2012, so long as any Bonds shall be Outstanding, the City will withdraw from the Electric System Fund for deposit in the Capital Improvement Account, an amount at least equal to ten percent (10%) of the average annual Operating Revenues for the preceding three Fiscal Years after deducting therefrom "fuel" expense and "purchased power expense," as such expenses are determined in accordance with the Uniform System of Accounts. Amounts deposited in the Capital Improvement Account shall be expended by the City for replacements, improvements, enlargements, extensions and betterments of the Electric System, and such amounts, at the option of the City, shall (a) be expended within two years as of the date of deposit therein for said purposes, or if not so expended within said two (2) years, shall be used for the purchase or cancellation or redemption of Bonds in advance of maturity, or (b) be used as promptly as possible to purchase and cancel or to redeem Bonds in advance of maturity.

Moneys held in the Capital Improvement Account shall, to the fullest extent practicable and reasonable, be invested by the City in Investment Securities which shall mature prior to the respective dates when the moneys held for the credit of such Account will be required for the purposes intended. All income resulting from the investment or reinvestment of such moneys shall accrue to and become a part of the Capital Improvement Account, except that the City, at its option, may transfer such income to the other accounts and sub-accounts within the Electric System Fund in the order established in Section 13 hereof. In the event that income resulting from the investment or reinvestment of moneys held in the Capital Improvement Account is retained therein, the obligation of the City, with respect to the Fiscal Year in which such income is paid to the City to deposit moneys into the Capital Improvement Account pursuant to the first sentence of this Section, shall be reduced by an amount equal to the income resulting from such investment or reinvestment.

(b) The City will fix, establish and collect or cause to be fixed, established and collected rates, tolls, rents and other charges for electric energy, and all other commodities, services and facilities sold, furnished or supplied through the properties of the Electric System or any part thereof, adequate to provide Revenues sufficient to pay the principal of and premium, if any and interest on all Bonds Outstanding, to make the payments required by this Ordinance to the Bond Account, when due, to pay the costs of proper operation and maintenance of the properties of the Electric System, including provision for all necessary repairs, replacements and renewals thereof and working capital necessary for the operation thereof, to enable the City to make in each Fiscal Year the payments or expenditures required by Section 16(a) hereof and to pay all other charges and liens whatsoever payable from said Revenues including payments in lieu of taxes referred to in Section 13, FOURTH.

(c) The City will duly and punctually pay, or cause to be paid, but only from the Revenues, the principal of and premium, if any, and interest on each and every Bond on the dates and at the places, and in the manner provided in the Bonds according to the true intent and meaning thereof, and will faithfully do and perform and at all times fully observe and keep any and all covenants, undertakings, stipulations and provisions contained in the Bonds and in this Ordinance and any Series Ordinance.

(d) The City will not at any time create or permit to accrue or to exist any lien or other encumbrance upon the Revenues pledged hereby, or upon any Revenues at any time derived by the City through the operation by it of the properties of the Electric System or upon any other moneys pertaining to the Electric System which the City may be authorized by applicable law to apply to the payment of the Bonds or upon any funds or accounts pertaining to the Electric System at any time held by the City, or by any Paying Agent, the Trustee, or any depositary for the Electric System Fund, or upon the properties of the Electric System, or any part thereof, unless adequate provision is made in the agreement, mortgage, ordinance, indenture, or other instrument creating such lien or other encumbrance or indebtedness, or otherwise, so that the Bonds shall constitute a lien upon all such Revenues, moneys, funds and other property, prior to any such subsequent lien or other encumbrance or indebtedness.

(e) The City will not sell, lease or otherwise dispose of all or any part of the properties of the Electric System (except such equipment, materials or supplies as

may be acquired for the purpose of resale, and such machinery, equipment, tools or other property, real or personal, which shall be or shall have become unserviceable, inadequate, obsolete, worn out, unfit or unadapted for use in connection with the operations of any Facility, or no longer necessary or useful in such operations), for a consideration other than money, and if payment thereof be deferred the City shall retain a prior lien or charge on the income and revenues from the property sold, leased or otherwise disposed of until payment of such consideration, plus the costs and expenses of the City in servicing such deferred payment sales, is made in full. Prior to any such sale, lease or other disposition the City shall cause an appraisal of the property to be sold, leased or otherwise disposed of to be made by the Consulting Engineer and filed with the City Clerk of the City and the Trustee; provided, however, that no such appraisal shall be required for any sale of property for less than Two Hundred Fifty Thousand Dollars (\$250,000). The City further covenants and agrees that no such sale, lease or other disposition of such property shall be made until seven (7) days after the date of such filing, or at a price less than the value as shown by such appraisal, or in any event for such amounts or on such terms as will impair or destroy the ability of the City to continue to operate the portion of the properties of the Electric System remaining under the possession, control and operation of the City in an efficient manner, or to collect and receive therefrom directly or indirectly Revenues sufficient in amount to provide for the required payments into the Bond Account and for all necessary and proper expenses to be thereafter incurred in the operation and maintenance of the properties of the Electric System remaining in the City, the proper renewal, replacement, extension and betterment of said remaining properties, the payments and expenditures required by Section 13 FIRST and SECOND hereof, the payment of the cost of all power purchased by the City and distributed through the Electric System and all other charges or liens of whatever nature payable from Revenues.

The proceeds of any sale, lease or other disposition of all or any portion of the properties of the Electric System pursuant to this subsection 16(e), shall be placed in the Electric System Fund and shall be applied promptly first to make up any deficiency then existing in the Bond Account. Any balance remaining thereafter shall be disposed of as follows:

(i) To the extent that such balance represents the proceeds of any sale, lease or other disposition of such properties other than cash sales or advance payments on account of leases or installment sales, such balance may be used for any of the purposes for which other moneys in the Electric System Fund may be used;

(ii) To the extent that such balance represents the proceeds of any cash sale or any advance payment on account of a lease or installment sale, such balance shall be used for the purpose of making extensions, betterments or capital improvements to the properties of the Electric System, and any sums not so used shall be used for the purpose of retiring Bonds by purchase or redemption.

In the event that the proceeds of any cash sale or any advance payment on amount of a lease or installment sale pursuant to this subsection 16(e), any moneys received by the City as a result of the transfer of any properties of the Electric System from the City through the operation of law as provided by the next to last paragraph of this Section, or moneys in the Capital Improvement Account or otherwise required pursuant to Section 16(a) hereof to be used to retire Bonds, are to be applied to the purchase or redemption of Bonds, and if more than one series of Bonds shall then be Outstanding hereunder, the City shall determine from which series such purchases or redemptions shall be made and may elect that all such purchases or redemptions shall be made from only one series or from more than one series. Any such purchases of Bonds may be made with or without tenders of Bonds and at either public or private sale, but in any event at a purchase price (including accrued interest and any brokerage or other charge) not to exceed the principal amount thereof, the then applicable redemption premium if the Bonds to be purchased are then subject to redemption or the applicable redemption premium payable on their next ensuing redemption date if the Bonds being purchased are not then subject to redemption, plus accrued interest. All Bonds so purchased or redeemed shall be cancelled and not reissued. Any moneys which are to be applied to the redemption of Bonds shall, prior to such redemption, be transferred to and deposited in the Bond Account to the credit of the appropriate account therein.

The term "cash sales" as used in this Ordinance shall mean the disposition of property of the Electric System and the transfer of the title thereto upon payment of the purchase price therefor in full at the time of such transfer.

The term "installment sales" as used in this Ordinance shall mean the sale of property of the Electric System and the transfer of title thereto under a contract or other agreement whereby the purchase price of the property is to be paid in installments over a period of years.

In the event that the ownership of the properties of the Electric System, or any part thereof, shall be transferred from the City through the operation of law, any moneys received by the City as a result of any such transfer shall be paid into the Electric System Fund and shall be used for the purpose of making extensions, betterments, or capital additions to the remaining part of the Electric System or shall be used to purchase or redeem Bonds.

Nothing contained in this subsection 16(e) shall prevent the City from creating a separate electric utility system as permitted under Section 14 hereof.

(f) The City will at all times maintain, preserve and keep, or cause to be maintained, preserved and kept, the properties of the Electric System and all additions and betterments to and extensions of the said properties, and every part and parcel thereof, in good repair, working order and condition, and will from time to time make or cause to be made all necessary and proper repairs, renewals, replacements, extensions and betterments thereto so that at all times the business carried on in connection therewith may be properly and advantageously conducted, and the City shall at all times operate or cause to be operated said properties of the City and the business in connection therewith in an efficient manner and at a reasonable cost.

(g) The City will from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, or payments in lieu thereof, lawfully imposed upon the properties constituting the Electric System or upon Revenues or income received therefrom when the same shall become due, as well as all lawful claims for labor, material and supplies, which, if not paid, might become a lien or charge upon the said properties or any part thereof, or upon Revenues derived from the operation thereof, or which might in any way impair the security of the Bonds, except any such assessments, charges or claims which the City shall in good faith contest as to validity by appropriate legal proceedings.

(h) The City will keep, or cause to be kept, its Facilities insured and will carry such other insurance, with responsible insurers with policies payable to the City, against fire and other risks, accidents or casualties at least to the extent and of the kinds that insurance is usually carried by corporations operating like properties in the same area. The City will, with respect to each such loss, (a) promptly repair and reconstruct, to the extent necessary to the proper conduct of the operations of the Electric System, the damaged or lost Facility (unless the Facility so lost or damaged was carried in the books and accounts of the Electric System at less than Two Hundred Fifty Thousand Dollars (\$250,000) and unless, in the case of loss or damage involving Two Hundred Fifty Thousand Dollars (\$250,000) or more, such repair and reconstruction shall not be recommended by the Consulting Engineer), and shall apply the proceeds of any insurance covering such damage or loss for that purpose to the extent required therefor, and (b) if the City should not use the entire proceeds of such insurance to repair or reconstruct such damaged or lost Facility, the proceeds of such insurance, or any portion thereof not required for such repair or reconstruction, as the case may be, shall be paid into the Electric System Fund, and shall be applied promptly to make up any deficiency then existing in the Bond Account. If the proceeds of such insurance not required for such repair or reconstruction are in excess of Five Hundred Thousand Dollars (\$500,000), such excess insurance proceeds shall be used for the purpose of purchasing or redeeming Bonds in accordance with Section 7 hereof, or during a period of two (2) years following the receipt thereof, for extensions, betterments and improvements to the Electric System. Within sixty (60) days after the close of each Fiscal Year the City will file with the Trustee a certificate of the Director of Utility Operations or the Consulting Engineer describing in reasonable detail the insurance then in effect pursuant to the requirements of this subsection 16(h) and all reserves therefor and stating that such insurance and reserves thereof comply in all respects with such requirements. Such certificate shall be conclusive, and the Trustee shall have no duty or responsibility with respect thereto except to make the same available for inspection by any holder of Bonds, upon request.

(i) The City will not make any extensions, betterments or improvements to the Electric System which are not economically sound and which will not properly and advantageously contribute to the conduct of the business of the Electric System in an efficient and economical manner unless required to do so by or pursuant to law to permit the continued operation of the Electric System, and will at all times maintain for the operation and maintenance of the Electric System an adequate management and supervisory staff, the personnel of which is experienced and skilled in the operation and maintenance of electric generation, transmission and distribution properties, and business incidental thereto.

(j) The City will keep, or cause to kept, proper books of account in accordance with the Uniform System of Accounts and this Ordinance. The City will cause said books of account to be audited annually as of the end of each Fiscal Year, beginning with the Fiscal Year ending September 30, 2012, by a recognized firm of independent certified public accountants, and will annually within one hundred twenty (120) days after the close of such Fiscal Year and each Fiscal Year thereafter, file or cause to be filed with the Trustee copies of its annual report, accompanied by a certificate of such independent public accountant, relating to the Electric System and including the following statements in reasonable detail:

(i) a balance sheet of the Electric System as of the end of the preceding Fiscal Year;

(ii) a statement of income and equity of the Electric System for such Fiscal Year, including a statement of Revenues, Operating Revenues and Operating Expenses of the Electric System for such Fiscal Year;

(iii) a summary with respect to each fund, account and sub-account continued or created under this Ordinance, the receipts therein and disbursements therefrom during such Fiscal Year and the amount held therein at the end of such Fiscal Year;

(iv) a letter from the independent public accountant stating whether anything came to their attention during their examination that would indicate that the City was not in compliance with the covenants, agreements and conditions contained in Ordinance; and

(v) a statement of Net Receipts of the Electric System for such Fiscal Year.

The Trustee shall have no duty or responsibility with respect to such certificate or annual reports, except to furnish copies thereof to any registered owner of Bonds upon request, and the City shall furnish to the Trustee sufficient copies for that purpose.

(k) The City shall, until the Date of Commercial Operation of any Facility for the generation of electric power and energy for which Bonds are authorized here-

under, retain a nationally recognized independent engineer or engineering firm or corporation having a reputation for skill and experience in the design of facilities for the generation of electric power and energy and estimating the cost thereof, to design and inspect the construction of such Facility, to prepare the cost estimates and to perform the other acts and carry out the other duties provided for the Construction Engineer for such Facility by this Ordinance.

(1) The City shall, as long as any of the Bonds are Outstanding, retain a competent consulting engineer or engineering firm on a continuous basis for the purpose of providing to the City immediate and continuous engineering counsel in its operation of the properties of the Electric System. Such consulting engineer or engineering firm shall be selected with special reference to his or its knowledge and experience in the construction and operation of electric utility systems and may be the Construction Engineer employed by the City in connection with a Facility. The City may also employ the Consulting Engineer as provided in this Section, for making inventories of any of the properties of the Electric System, for preparing valuations of all or any part of the properties thereof, and for testifying before any board, commission or other tribunal in matters or proceedings involving the operations and properties of the Electric System. The expenses and fees for any services performed in connection with the Electric System are to be paid out of the Electric System Fund. As a part of such service, the Consulting Engineer shall prepare as of the end of the Fiscal Year ending September 30, 2012, and biennially thereafter a report or survey with respect to the Electric System, the management of the business thereof, and the operation and maintenance of the properties thereof, each such report or survey to be in sufficient detail so as to show whether the City has satisfactorily performed and complied with the covenants set forth in this Ordinance with respect to the efficient management of the properties of the Electric System, and its business, the rates charged for services and the sufficiency thereof under the requirements of this Ordinance, the proper maintenance of the properties of the Electric System, and the making of necessary repairs, renewals and replacements thereto and thereof, necessity for capital improvements and recommendations in connection therewith, and if the City shall have in any way failed to perform or comply with such covenants and agreements, such report or survey shall specify the details of such failure. In the making of such report or survey, the Consulting Engineer may rely on the certified statements of the Independent Accountant and on the opinions of other engineers or engineering firms or corporations to the extent the Consulting Engineer deems such reliance proper. Each such report or survey shall also include information with respect to sufficiency of power supply and the equity or reasonableness of contracts and rates in connection therewith. Copies of each such report and survey shall be placed on file with the City and with the Trustee, and shall be open to inspection by any holder of Bonds.

In the event of any loss or damage to the properties of the City in excess of Two Hundred Fifty Thousand Dollars (\$250,000), whether or not covered by insurance, the Consulting Engineer shall ascertain the amount of damage and shall

issue and deliver to the City and the Trustee a certificate setting forth such damages and recommendations as to whether or not to replace such property.

In the event that the properties of the Electric System or any part thereof shall be sold, leased, or otherwise disposed of for a consideration of Two Hundred Fifty Thousand Dollars (\$250,000) or more, the Consulting Engineer, prior to any such sale, lease, or other disposition of the properties, shall make an examination of the properties to be leased, sold, or otherwise disposed of and shall issue and deliver to the City and the Trustee a certificate setting forth the value of such properties, taking into consideration the loss of Revenues sustained by the properties remaining as a result of such sale, lease, or other disposition, and also setting forth an estimate of Revenues to be derived from operation of the remaining properties and the sufficiency thereof in terms of the requirements of this Ordinance.

The Trustee shall have no duty or responsibility with respect to any of the foregoing documents prepared by the Consulting Engineer, except to make the same available for inspection by any holder of Bonds, upon request.

(m) The City will not permit or allow franchises, permits, privileges, easements or other rights necessary or desirable in the operation of the properties of the Electric System to lapse or to be forfeited so long as the same shall be necessary or desirable for said purposes, and will from time to time take reasonable steps to secure the renewal of all such franchises, permits, privileges, easements and rights at the expiration thereof if the same shall expire prior to the maturity of all Bonds then Outstanding. The City shall file all statements, maps and other documents regarding its service area and customers as may be required by law to protect and preserve such area.

(n) The City will as permitted by law require all employees or agencies of the City collecting or handling money in connection with the operation of the properties of the Electric System to obtain fidelity bonds with a responsible surety company or companies as surety, in reasonable amounts permitted by law and usually retained by municipalities operating like systems.

(o) The City will not furnish or supply or permit the furnishing or supplying of electric energy or any other commodity, service or facility through or in connection with the operation of the properties of the Electric System free of charge to any person, firm or corporation, public or private, so long as any of the Bonds are Outstanding, unless required so to do by the terms of an existing contract or franchise with a political subdivision of the State.

(p) The City will not hereafter enter into any lease, contract, or agreement (except for cash sales as defined in subsection 16(e) hereof) in and by which the possession, operation, management, or control of any Facility, or any part thereof, are transferred to any person, firm or corporation, or any municipality or other public agency, except subject to all the terms, conditions, covenants and agreements in this Ordinance and in any Series Ordinance and in any Bonds contained (including

without limiting the generality of the foregoing, the provisions of subsection 16(f) hereof), and upon the further conditions (a) that all payments required to be made to or for the account of the City thereunder shall be a prior charge and lien upon the gross revenues to be derived from the operation of the properties covered by such lease, contract or other agreement; (b) that the Trustee or any Bondholders' Committee, created as hereinafter provided, representing the holders of Bonds may, in its name or in the name of the City, enforce the obligations of the parties to any such lease, contract or agreement to the same extent that such obligations may be enforced by the City; and (c) that neither party to such lease, contract or agreement will at any time insist upon or plead or in any manner whatsoever claim to take the benefit or advantage of any stay or extension law now or at any time hereafter in force which may affect the covenants and agreements contained in any such lease, contract or agreement, and in this Ordinance, any Series Ordinance or in the Bonds, but all benefit or advantage of any such law or laws shall be therein expressly waived by the said parties. The City further covenants that any such lease, contract or agreement shall contain reasonable provisions for the enforcement of the same in the event of a default in the performance of any of the provisions thereof, or in the event of a material violation by either party thereto of any of the covenants or agreements contained in this Ordinance, any Series Ordinance or in the Bonds.

The City further covenants and agrees that no lease or sale of any portion of any facility, including any lease or sale made pursuant to subsection 16(e) hereof but exclusive of any lease or sale of equipment, materials or supplies as may be acquired for the purposes of resale and such machinery, equipment, tools or other property, real or personal which shall be or shall become unserviceable, inadequate, obsolete, worn out, unfit or unadapted for use in connection with the operations of any Facility, or no longer necessary or useful in such operations, shall be made where the total consideration therefor is not paid at the time of transfer of the possession of such property, unless the contract of sale or lease shall contain covenants or agreements reserving to the City the following rights and privileges, to-wit:

(i) The City shall have the right to make an inspection of any such properties so sold or leased at such times as the City shall deem necessary, the reasonable cost of such inspection to be paid from the operating funds of such properties so sold or leased;

(ii) The City shall have the right to approve an independent public accounting firm to be used for the annual audit of the books of any such properties so sold or leased and to supervise the accounting procedure with reference thereto;

(iii) The City, shall have the right to require that monthly progress reports showing such details as the City may request will be rendered to the City by the operators of any such properties so sold or leased, such reports to include as a minimum the following:
(y) A report, by type and class of service, of the, number of customers receiving service, the total kilowatt hour sales thereto, total revenues therefrom, operating and maintenance expenses in reasonable detail, new construction and progress thereof, new business added, rate changes with estimates of annual revenue changes occasioned thereby, a balance sheet, and cash income and disbursement statements; and

(z) Explanations, accompanying such reports, of any unusual occurrences relative to the properties and the condition thereof.

Nothing contained in this subsection 16(p) shall prevent the City from creating a separate electric utility system as permitted under Section 14 hereof.

(q) At any and all times the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver all and every such further resolution, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, Revenues and other funds, accounts and sub-accounts hereby pledged or assigned, or intended so to be, or which the City may hereafter become bound to pledge or assign.

Section 17. Supplemental Ordinances. The City may adopt at any time and from time to

time and without the consent or concurrence of the registered owner of any Bond, an ordinance or ordinances supplemental to this Ordinance for any one or more of the following purposes, and any such supplemental ordinance or ordinances shall become effective in accordance with its terms upon the filing with the Trustee of a certified copy thereof and the opinion of counsel for the City that such supplemental ordinance has been duly adopted, the provisions thereof are valid and binding upon the City, and the provisions thereof do not adversely affect the rights of the holders of

Bonds then outstanding, to wit:

(a) To provide for the issuance of Additional Bonds pursuant to Section 14 hereof, and to prescribe the terms and conditions pursuant to which such Bonds may be issued, paid or redeemed;

(b) To make any changes, modifications, amendments or deletions hereto which may be required to permit the Ordinance to be qualified under the Trust Indenture Act of 1939 of the United States of America or laws analogous thereto applicable to governmental bodies; (c) To add additional covenants and agreements of the City for the purpose of further securing the payment of the Bonds; provided, that such additional covenants and agreements are not contrary to or inconsistent with the covenants and agreements of the City contained in this Ordinance;

(d) To prescribe further limitations and restrictions upon the issuance of Bonds and the incurring of indebtedness by the City payable from the Revenues which are not contrary to or inconsistent with the limitations and restrictions thereon theretofore in effect;

(e) To surrender any right, power or privilege reserved to or conferred upon the City by the terms of this Ordinance;

(f) To confirm as further assurance any pledge under, and the subjection to, any lien, claim or pledge created or to be created by the provisions of this Ordinance of Revenues or of any other moneys, securities or funds;

(g) To modify any of the provisions of this Ordinance in any other respects; provided, that such modification shall not be effective until after the Bonds Outstanding as of the date of adoption of such ordinance shall cease to be Outstanding, and any Bonds issued after the date of adoption of such ordinance shall contain a specific reference to the modifications contained in such subsequent ordinance; or

(h) With consent of the Trustee, to cure any ambiguity or defect or inconsistent provision in this Ordinance or to insert such provisions clarifying matters or questions arising under this Ordinance as are necessary or desirable in the event an, such modifications are not contrary to or inconsistent with this ordinance as theretofore in effect.

The provisions of this Ordinance may be modified at any time or from time to time by a

Supplemental Ordinance, subject to the consent of Bondholders in accordance with and subject to

the provisions of Section 19 hereof, such resolution to become effective as provided in said Section

19.

No ordinance changing, amending or modifying any of the rights or obligations of the Trustee or any other fiduciary may be adopted by the City or be consented to by the Bondholders without the written consent of such Trustee or fiduciary. The Trustee is hereby authorized to accept the delivery of certified copies of any ordinance amending the provisions of this Ordinance and shall be fully protected in relying upon a certification by the City Clerk that such ordinance has been adopted in full compliance with the terms and provisions of this Ordinance. Section 18. Defaults and Remedies. The following shall constitute "Events of Default":

(a) If the City shall default in the performance of any obligation with respect to payments into the Electric System Fund;

(b) If default shall be made in the due and punctual payment of the principal of and premium, if any, on any of the Bonds when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise,

(c) If default shall be made in the due and punctual payment of any installment of interest on any Bond, or any sinking fund installment for Bonds when and as such installment of interest or sinking fund installment shall become due and payable;

(d) If the City shall default in the observance and performance of any other of the covenants, conditions and agreements on the part of the City contained in this Ordinance and such default or defaults shall have continued for a period of ninety (90) days;

(e) If the City shall (except as herein permitted) sell, transfer, assign or convey any properties constituting the Electric System or interests therein, or any part or parts thereof, or shall make any agreement for such sale or transfer (except as expressly authorized by this Ordinance), or shall voluntarily forfeit or allow any of its licenses, franchises, permits, privileges, easements or rights of way necessary or desirable in the operation of the Electric System to lapse or terminate prior to the expiration date thereof by neglect or default;

(f) If an order, judgment or decree shall be entered by any court of competent jurisdiction (i) appointing a receiver, trustee or liquidator for the City, or the whole or any substantial part of the Electric System, (ii) approving a petition filed against the City under the provisions of Chapter 9 of the United States Bankruptcy Code, (iii) granting relief to the City under any amendment to said Bankruptcy Code which shall give relief substantially similar to that afforded by said Chapter 9 or (iv) assuming custody or control of the City or of the whole or any substantial part of the Electric System under the provision of any other law for the relief or aid of debtors and such order, judgment or decree shall not be vacated or set aside or stayed (or, in case custody or control is assumed by said order, such custody or control shall not be otherwise terminated), within sixty (60) days from the date of the entry of such order, judgment or decree; or

(g) If the City shall (i) admit in writing its inability to pay its debts generally as they become due, (ii) file a petition in bankruptcy or seeking a composition of indebtedness, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a receiver of the whole or any substantial part of the Electric System, (v) file a petition or an answer seeking relief under any amendment to said Bankruptcy Code which shall give relief substantially the same as that afforded by said Chapter 9, or (vi) consent to the assumption by any court of competent jurisdiction under the provisions of any other law for the relief or aid of debtors of custody or control of the City or of the whole or any substantial part of the Electric System.

The City covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and account of the City and all other records relating to the Electric System shall at all times be subject to the inspection and use of the Trustee and any persons holding at least twenty-five percent (25%) of the principal amount of Bonds Outstanding and of their respective agents and attorneys.

The City covenants that if an Event of Default shall happen and shall not have been remedied, the City will continue to account, as a trustee of an express trust, for all Revenues and other moneys, securities and funds pledged under this Ordinance.

If an Event of Default specified in subsections (b), (c), (f) or (g) of this Section 18 shall have occurred and be continuing, then the Trustee or a Bondholders' Committee, as the case may be, may by notice in writing delivered to the City and to the Trustee, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable; provided, however, that such declaration may be annulled by the Trustee or the Bondholders' Committee, as the case may be, if such an Event of Default is no longer continuing.

The City covenants that if an Event of Default shall happen and shall not have been remedied, the City upon demand of the Trustee, shall pay over to the Trustee (a) forthwith, all moneys, securities and funds then held by the City and pledged under this Ordinance and (b) as promptly as practicable after receipt thereof, all Revenues.

During the continuance of an Event of Default, Revenues received by the Trustee, or Bondholders' Committee, as the case may be, whether pursuant to the provisions of the preceding paragraph, or as the result of taking possession of the business and properties of the Electric System, shall be applied by the Trustee or Bondholders' Committee, as the case may be, first to the payment of all necessary and proper Operating Expenses and all other proper disbursements or liabilities

made or incurred by the Trustee, or Bondholders' Committee, as the case may be, and thereafter to the payment of all arrears of interest on the Bonds, so far as such Revenues will go, or to the payment pro rata of the interest due on the Bonds when there is not enough to pay in full all the interest, and, after the payment of interest as aforesaid, to the payment of the principal of the Bonds which by the terms thereof shall be due and payable, or to the payment pro rata of such principal when the moneys are not sufficient to pay all such principal in full.

If and whenever all overdue installments of interest on all Bonds, together with the reasonable and proper charges, expenses and liabilities of the Trustee and the holders of Bonds, their respective agents and attorneys, and all other sums payable by the City under the Ordinance including the principal and premium, if any, and interest on all Bonds which shall then be payable, shall either be paid in full by or for the account of the City, or provision satisfactory to the Trustee shall be made for such payment, and all defaults under this Ordinance or the Bonds shall be made good or secured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall be made therefor, the Trustee, or the Bondholders' Committee, as the case may be, shall pay over to the City all moneys, securities, funds and Revenues then remaining unexpended in the hands of the Trustee or the Bondholders' Committee, as the case may be (except moneys, securities, funds or Revenues deposited or pledged, or required by the terms of this Ordinance to be deposited or pledged, with the Trustee), control of the Electric System shall be restored to the City, and thereupon the City and the Trustee shall be restored, respectively, to their former positions and rights under this Ordinance, and all Revenues shall thereafter be applied as provided in Section 13. No such payment over to the City by the Trustee or resumption of the application of Revenues as provided in Section 13, shall extend to or affect any subsequent default under this Ordinance or impair any right consequent thereon.

If an Event of Default shall happen and shall not have been remedied, then and in every such case, the Trustee, either in its own name or as trustee of an express trust, or as attorney in fact for the registered owners of the Bonds or in any one or more of such capacities, by its agents and attorneys, shall be entitled and empowered to proceed forthwith to institute such suits, actions and proceedings at law, or in equity for the collection of all sums due in connection with the Bonds and to protect and enforce its rights and the rights of the holders of the Bonds under this Ordinance for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against the City as trustee of an express trust, or in the enforcement of any other legal or equitable right as the Trustee, being advised by counsel, shall deem most effectual to enforce any of its rights, or to perform any of its duties under the Ordinance. The Trustee shall be entitled and empowered either in its own name or as a trustee of an express trust, or as an attorney in fact for the holders of the Bonds and the coupons appurtenant thereto, or in any one or more of such capacities, to file such proof of debt, amendment of proof of debt, claim, petition or other document as may be necessary or advisable in order to have the claims of the Trustee and of the holders of the Bonds allowed in any equity, receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization or other similar proceedings relative to the City. For this purpose the Trustee is hereby irrevocably appointed the true and lawful attorney in fact of the respective registered owners of the Bonds (and the successive registered owners of the Bonds by taking and holding the same shall be conclusively deemed to have so appointed the Trustee) with authority to make and file in the respective names of the registered owners of the Bonds any such proof of debt, amendment of proof of debt, claim, petition or other document in any such proceedings, and to receive payment of any sums becoming distributable on account thereof, and to execute any such other papers and documents and to do and perform any and all acts and things for and on behalf of the registered owners of the Bonds as may be necessary or advisable in the opinion

of the Trustee in order to have the respective claims of the Trustee and of the holders of the Bonds allowed in any such proceedings and to receive payment of and on account of such claims; provided, however, that nothing contained herein shall be deemed to give the Trustee any right to accept or consent to any plan of reorganization or compromise or otherwise take any action of any character in any such proceeding to waive or change in any way any right of any registered owner of Bonds.

All rights of action under this Ordinance may be enforced by the Trustee without the possession of any of the Bonds or the production thereof at trial or other proceedings.

The registered owners of not less than a majority in principal amount of the Bonds at the time Outstanding, may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, provided that the Trustee shall be provided with reasonable security and indemnity and shall have the right to decline to follow any such direction only (a) if the Trustee shall be advised by counsel that the action or proceeding so directed may not lawfully be taken; or (b) if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or that the action or proceeding so directed would be unjustly prejudicial to the holders of Bonds not parties to such direction.

At any time after the occurrence of an Event of Default and prior to the curing of such Event of Default, the Trustee or the Bondholders' Committee, as a matter of right against the City, without notice or demand, and without regard to the adequacy of the security for the Bonds, shall, to the extent permitted by law, be entitled to take possession and control of the business and properties of the Electric System. Upon taking such possession, the Trustee or the Bondholders' Committee shall operate and maintain the Electric System, make any necessary repairs, renewals and replacements in respect thereof, prescribe rates and charges for power and energy sold, furnished or supplied

through the facilities of the Electric System and collect the Revenues. At any such time the Trustee or the Bondholders' Committee shall be entitled to the appointment of a receiver of the business and property of the Electric System, the moneys, securities and funds of the City pledged under this Ordinance, and the Revenues thereof, and the income therefrom, with power to operate and maintain the Electric System, collect, receive and apply the Revenues thereof and prescribe rates, tolls and charges in the same way as the City might do. Notwithstanding the appointment of any receiver, the Trustee shall be entitled to retain possession and control of and to collect and receive income from any moneys, securities, funds and Revenues deposited or pledged with it under this Ordinance or agreed or provided to be delivered to or deposited or pledged with it under this Ordinance.

The Trustee may without the happening of an Event of Default and, at the request of the holders of not less than a majority of the Bonds then Outstanding and upon being furnished with reasonable security and indemnity, shall take such steps and institute such suits, actions or proceedings in its own name, or as trustee, or in the name of the City, all as the Trustee may deem appropriate, for the protection and enforcement of the rights of the registered owners of Bonds, to collect any amount due and owing the City, or by injunction, mandamus, foreclosure or other appropriate proceeding in law and in equity to obtain other appropriate relief.

Except as otherwise specifically provided in this Section, no registered owner (or Beneficial Owner) shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of any provision of this Ordinance or the execution of any trust under this Ordinance or for any remedy under this Ordinance unless such registered owner or owners (or Beneficial Owner or Owners) previously shall have given to the Trustee written notice of the Event of Default, as provided in this Article on account of which such suit, action or proceeding is to be instituted, and unless, also, the registered owners of not less than twenty percent (20%) in aggregate principal

amount of the Bonds then Outstanding shall have filed a written request with the Trustee after the right to exercise such powers or right of action, as the case may be, shall have occurred, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for a period of sixty (60) days after the receipt by it of such notice, request and offer of indemnity shall have failed to proceed to exercise such powers or to institute any such action, suit or proceeding, and no direction inconsistent with such written request shall have been given to the Trustee pursuant to this Section 18; it being understood and intended that, except as otherwise above provided, no one or more registered owners (or Beneficial Owners) of the Bonds shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the pledge created by this Ordinance, or to enforce any right under this Ordinance except in the manner herein provided and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided for the benefit of all of the registered owners of the Outstanding Bonds.

Without limiting the generality of this Section 18, at any time after the occurrence of an Event of Default and prior to the curing of such Event of Default, the registered owner or owners of not less than twenty percent (20%) in principal amount of the Bonds then Outstanding may call a meeting of the registered owners of Bonds for the purpose of electing a Bondholders' Committee. Such meeting shall be called and proceedings thereat shall be conducted as provided for other meetings of Bondholders pursuant to Section 19 hereof. At such meeting the registered owner or owners of not less than a majority of the principal amount of the Bonds then Outstanding must be present in person or by proxy in order to constitute a quorum for the transaction of business, less than a quorum, however, having power to adjourn from time to time without any notice other than the announcement thereof at the meeting. A quorum being present at such meeting, the Bondholders present in person or by proxy may, by the votes cast by the registered owners of a

majority in principal amount of the Bonds, so present in person or by proxy, elect one or more persons who may or may not be Bondholders to the Bondholders' Committee which shall act as trustee for all Bondholders. The Bondholders present in person or by proxy at said meeting, or at any adjourned meeting thereof, shall prescribe the manner in which the successors of the persons elected to the Bondholders' Committee at such Bondholders' meeting shall be elected or appointed, and may prescribe rules and regulations governing the exercise by the Bondholders' Committee of the power conferred upon it herein, and may provide for the termination of the existence of the Notwithstanding the provisions of Section 19, the Bondholders' Bondholders' Committee. Committee may, with the consent of the registered owners of not less than fifty percent (50%) of the principal amount of Bonds Outstanding, remove the Trustee. After the removal of the Trustee pursuant to the provisions of this Section and prior to the appointment of a successor Trustee pursuant to the provisions of Section 19 hereof, the members of the Bondholders' Committee elected by the Bondholders in the manner herein provided, and their successors, as a committee will be deemed to be trustees for the holders of all the Bonds then Outstanding, and may exercise in the name of the Bondholders' Committee as trustee, all the rights and powers conferred in this Section 18 on the Trustee or any Bondholder.

Nothing in this Ordinance or in the Bonds shall affect or impair the obligations of the City, which is absolute and unconditional, to pay, from the limited sources herein described, at the respective dates of maturity and places therein expressed the principal of and premium, if any, and interest on the Bonds to the respective holders thereof, or affect or impair the rights of action, which are also absolute and unconditional, of any holder to enforce the payment of such holder's Bond or Bonds or to reduce to judgment his claim against the City for the payment, from the limited sources herein described, of the principal of and interest on such holder's Bond or Bonds, without reference to or consent of the Trustee or any other holder of Bonds.

No remedy by the terms of the Ordinance conferred upon or reserved to the Trustee or the registered owners of the Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Ordinance or existing at law or in equity or by statute on or after the date of adoption of this Ordinance.

No delay or omission of the Trustee or of any registered owner of Bonds to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default or to be an acquiescence therein; and every power and remedy given by this Article to the Trustee or to the holder of Bonds may be exercised from time to time and as often as may be deemed expedient by the Trustee or by such registered owners.

The registered owners of not less than sixty-six and two-thirds per cent (66-2/3%) in principal amount of the Bonds at the time Outstanding, or their attorneys in fact duly authorized, may on behalf of the holders of all of the Bonds waive any past default under this Ordinance and its consequences, except a default in the payment of the principal of and premium, if any, and interest on any of the Bonds. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

To the fullest extent permitted by law, the City agrees that the City will not at any time insist upon or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force which may affect the covenants and agreements contained in this Ordinance or in the Bonds, but all benefit or advantage of any such law or laws is hereby expressly waived by the City.

The Trustee shall, within ninety (90) days after the occurrence of an Event of Default, give notice by mail to the registered owners of all defaults known to the Trustee, unless such defaults

shall have been cured before the giving of such notice (the term "default" or "defaults" for the purpose of this Section being hereby defined to be any Event or Events of Default specified in this Section 18); provided, that, except in the case of default in the payment of principal of and premium, if any, and interest on any of the Bonds or in the payment of any sinking fund installment, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or responsible officers, of the Trustee in good faith determines that the withholding of such notice is in the interests of the Bondholders.

Section 19. Amendments and Bondholders' Meetings. The City, the Trustee or the registered owners of not less than twenty percent (20%) in principal amount of the Bonds then Outstanding may at any time call a meeting of the registered owners of the Bonds. Every such meeting shall be held at such place in the United States as may be specified in the notice calling such meeting. Written notice of such meeting, stating the place and time of the meeting and in general terms the business to be submitted, shall be mailed to the registered owners by the City, the Trustee or the registered owners calling such meeting not less than thirty (30) nor more than sixty (60) days before such meeting. Any meeting of registered owners shall, however, be valid without notice if the registered owners of all Bonds then Outstanding are present in person or by proxy or if notice is waived before or within thirty (30) days after the meeting by those not so present.

Except as otherwise provided in this Ordinance, any provision in this Ordinance for the mailing of a notice or other paper to registered owners shall be fully complied with if it is mailed postage prepaid to each registered owner of any of the Bonds then Outstanding at such owner's address appearing upon the registry books maintained by the Trustee.

Attendance and voting by registered owners at such meeting may be in person or by proxy. Registered owners of Bonds may, by an instrument in writing under their hands appoint any person or persons, with full power of substitution, as their proxy to vote at any meeting for them.

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Officers or nominees of the City, and officers or nominees of the Trustee may be present or represented at any such meeting and take part therein, but shall not be entitled to vote thereat, except as such officers or nominees are registered owners or proxies for registered owners (including the Trustee).

Any registered owner of a Bond shall be entitled in person or by proxy to attend and vote at such meeting as registered owner of the Bonds registered in such owner's name without producing such Bonds (unless the Bonds described in such certificate shall be registered in the name of some other person at such meeting), and such persons and their proxies shall, if required, produce such proof of personal identity as shall be satisfactory to the Secretary of the meeting. All proxies presented at such meeting shall be delivered to the Inspectors of Votes (appointed by the Chairperson as provided below) and filed with the Secretary of the meeting.

The vote at any such meeting of the registered owner of any Bond entitled to vote thereat shall be binding upon such owner and upon every subsequent registered owner of such Bond (whether or not such subsequent registered owner has notice thereof).

Any request, direction, consent or other instrument in writing required or permitted by this Ordinance to be signed or executed by registered owners may be in any number of concurrent instruments of similar tenor and may be signed or executed by such registered owners in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument shall be sufficient for any purpose of this Ordinance, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument, if made in the following manner:

The fact and date of the execution by any person of any such instrument may be proved by either (a) an acknowledgment executed by a notary public or other officer empowered to take acknowledgments of deeds to be recorded in the particular jurisdiction, or (b) an affidavit of a witness to such execution sworn to before such a notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such

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corporation, association or partnership, such acknowledgment or affidavit shall also constitute sufficient proof of such person's authority.

The foregoing shall not be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which it may deem sufficient. Any request or consent of the registered owner of any Bond shall bind every future registered owner of the same Bond in respect of anything done by the Trustee in pursuance of such request, direction or consent.

The right of a proxy for a registered owner to act may be proved (subject to the Trustee's right to require additional proof) by a written proxy executed by such registered owner as aforesaid.

Persons named by the Trustee, or elected by the registered owners of a majority in principal amount of the Bonds represented at the meeting in person or by proxy, in the event the Trustee is not represented at such meeting, shall act as temporary Chairperson and temporary Secretary of any meeting of registered owners. A permanent Chairperson and a permanent Secretary of such meeting shall be elected by the registered owners of a majority in principal amount of the Bonds represented at such meeting in person or by proxy. The permanent Chairperson of the meeting shall appoint two (2) Inspectors of Votes who shall count all votes cast at such meeting, except votes on the election of Chairperson and Secretary as aforesaid, and who shall make and file with the Secretary of the meeting and with the City and with the Trustee their verified report of all such votes cast at the meeting.

The registered owners of not less than the principal amount of the Bonds required for any action to be taken at such meeting must be present at such meeting in person or by proxy in order to constitute a quorum for the transaction of business, less than a quorum, however, having power to adjourn from time to time without any other, notice than the announcement thereof at the meeting; provided, however, that, if such meeting is adjourned by less than a quorum for more than ten (10)

days, notice thereof shall be given by mail by the City or the Trustee at least five (5) days prior to the adjourned date of the meeting.

With the consent of the registered owners of not less than sixty-six and two-thirds percent (66-2/3%) of the Bonds then Outstanding, such consent to be given by a resolution duly adopted at a meeting of registered owners duly convened and held, or by written consent as hereinafter provided, the City from time to time and at any time, may adopt an ordinance amending or supplementing the provisions of this Ordinance for the purposes of adding any provisions to this Ordinance or a Supplemental Ordinance, or modifying in any manner the rights of the registered owners of the Bonds then Outstanding; provided, however, that, without the specific consent of the registered owner of each such Bond which would be affected thereby, no such resolution amending or supplementing the provisions hereof shall: (a) permit the creation of a lien on Revenues pledged under this Ordinance superior or prior to or on a parity with the lien of the Bonds except to the extent presently provided in Section 14 of this Ordinance; (b) extend the fixed maturity date for the payment of the principal of any Bond, or reduce the principal amount of any Bond, or reduce the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption or prepayment thereof, or advance the date upon which any Bond may first be called for redemption prior to its fixed maturity date; (c) reduce the aforesaid percentage of Bonds, the registered owners of which are required to consent to any such ordinance amending or supplementing the provisions hereof; or (d) give to any Bond or Bonds any preference over any other Bond or Bonds secured hereby. A modification or amendment of the provisions of Section 12 and 13 hereof with respect to the Bond Account or the Debt Service Sub-Account or Series 2012 Reserve Sub-Account or any other reserve sub-account for Additional Bonds therein shall not be deemed a change in terms of payment; provided, however, that no such modification or amendment shall, except upon the consent of the registered owners of all Bonds then Outstanding affected

thereby, reduce the amount or amounts required to be deposited in the Bond Account for credit to the Debt Service Sub-Account therein. Nothing herein contained, however, shall be construed as making necessary the approval by the registered owners of the Bonds of the adoption of any supplemental ordinance authorized by Section 17 of this Ordinance without consent of registered owners.

The City may at any time adopt an ordinance amending the provisions of this Ordinance to the extent that such amendment is permitted by the provisions of this Section 19, to take effect when and as provided in this Section 19. Upon the adoption of such ordinance, a copy thereof, certified by the City Clerk, shall be filed with the Trustee. At any time thereafter such ordinance may be submitted by the City for approval to a meeting of the registered owners duly convened and held in accordance with the provisions of this Ordinance. A record in duplicate of the proceedings of each meeting of the registered owners shall be prepared by the permanent Secretary of the meeting and shall have attached thereto the original reports of the Inspectors of Votes and affidavits by a person or persons having knowledge of the facts, showing a copy of the notice of the meeting and setting forth the facts with respect to the mailing thereof under the provisions of this Ordinance. Such a record shall be signed and verified by the affidavits of the permanent Chairperson and the permanent Secretary of the meeting, and one duplicate thereof shall be delivered to the City and the other to the Trustee for preservation by the Trustee. Any record so signed and verified shall be proof of the matters therein stated. If the ordinance of the City making such amendment shall be approved by a resolution duly adopted at such meeting of registered owners by the affirmative vote of the registered owners of the required percentages of Bonds, a notice stating that a resolution approving such amendment has been so adopted shall be mailed by the City to the registered owners (but failure so to mail copies of such notice shall not affect the validity of such resolution). Proof of such mailing by the affidavit or affidavits of a person or persons having knowledge of the facts shall

be filed with the Trustee. Such ordinance of the City making such amendment shall be deemed conclusively to be binding upon the City, the Trustee, the Paying Agent, and the registered owners of all Bonds at the expiration of thirty (30) days after the mailing of the notice provided for in this Section, except in the event of a final decree of a court of competent jurisdiction setting aside such ordinance or annulling the action taken thereby in a legal action or equitable proceeding for such purpose commenced within such period; provided, that the Trustee, any Paying Agent and the City during such thirty (30) day period and any such further period during which such action or proceeding may be pending, shall be entitled in their absolute discretion to take such action, or to refrain from taking such action, with respect to such ordinance as they may deem expedient. Nothing contained in this Ordinance shall be deemed or construed to authorize or permit, by reason of any call of a meeting of registered owners or of any right conferred hereunder to make such call, any hindrance or delay in the exercise of any rights conferred upon or reserved to the Trustee, the Paying Agent, or the registered owners under any of the provisions of this Ordinance.

The City may at any time adopt an ordinance amending or supplementing the provisions of this Ordinance, or of any Bonds, to the extent that such amendment is permitted by the provisions of this Section 19 or Section 17, to take effect when and as provided in this Section 19. Upon adoption of such ordinance, a copy thereof, certified by the City Clerk, shall be delivered to and held by the Trustee for the inspection of the registered owners. A copy of such ordinance (or summary thereof in form approved by the Trustee) together with a request to registered owners for their consent thereto in form satisfactory to the Trustee, shall be mailed by the City to registered owners. Such ordinance shall not be effective unless and until there shall have been filed with the Trustee the written consents of the percentages of registered owners of Outstanding Bonds specified in Sections 17 or Section 19 hereof and a notice shall have been mailed to all registered owners as hereinafter in this Section provided. Each such consent shall be effective only if accompanied by proof of

ownership of the Bonds for which such consent is given. A certificate or certificates of the Trustee that it has examined such proof and that such proof is sufficient shall be conclusive that the consents have been given by the registered owners of the Bonds described in such certificate or certificates. Any such consent shall be binding upon each registered owner of the Bonds giving such consent and on every subsequent registered owner of such Bonds, whether or not such subsequent registered owner has notice thereof. A notice stating that the ordinance has been consented to by the registered owners of the required percentages of Bonds and will be effective as provided in this Section 19 shall be given to the registered owners by mailing such notice to the registered owners at their registered addresses. The City shall file with the Trustee proof of giving such notice. A record, consisting of the papers required by this Section to be filed with the Trustee, shall be proof of the matters therein stated, and the ordinance shall be deemed conclusively to be binding upon the City, the Trustee, the Paying Agent, and the registered owners of all Bonds at the expiration of thirty (30) days after the mailing of such notice, except in the event of a final decree of a court of competent jurisdiction setting aside such consent or annulling the action taken thereby in a legal action or equitable proceeding for such purpose commenced within such period; provided that the Trustee, and Paying Agent and the City during such thirty (30) day period and any such further period during which such action or proceeding may be pending, shall be entitled in their absolute discretion to take such action, or to refrain from taking such action, with respect to such ordinance as they may deem expedient.

Notwithstanding anything contained in the foregoing provisions of this Section 19, the rights and obligations of the City and of the registered owners of the Bonds and the terms and provisions of the Bonds and of this Ordinance, may be amended in any respect with the consent of the City, by the affirmative vote of the registered owners of all said Bonds then Outstanding at a meeting of registered owners called and held as hereinabove provided, or upon the adoption of an ordinance adopted by the City and the consent of the registered owners of all of the Bonds then Outstanding, such consent to be given as provided in this Section 19, except that no notice to registered owners either by mailing shall be required and the amendment shall be effective immediately upon such unanimous vote or written consent of all of the registered owners.

Bonds owned or held by or for the account of the City shall not be deemed Outstanding for the purpose of any vote or consent or other action or any calculation of Outstanding Bonds in this Ordinance provided for, and shall not be entitled to vote or consent or take any other action in this Ordinance provided for.

Bonds delivered after the effective date of any action amending this Ordinance taken as hereinabove provided may, and if the Trustee so determines, shall, bear a notation by endorsement or otherwise in form approved by the City and the Trustee as to such action, and in that case, upon demand of the registered owner of any Bond Outstanding at such effective date and presentation of such owner's Bond for the purpose at the principal office of the Trustee, suitable notation shall be made on such Bond by the Trustee as to any such action. If the City shall so determine, new Bonds so modified as in the opinion of the City and its counsel to conform to such registered owners' action shall be prepared, delivered and upon demand of the registered owner of any Bond then Outstanding shall be exchanged without cost to such Bondholder for Bonds then Outstanding hereunder, upon surrender of such Bonds.

Section 20. Authorization of Officers. The Mayor, the City Clerk and the City Treasurer of the City are hereby authorized to do all things and execute all such documents as may by them be deemed necessary and proper to complete the issuance and sale of the 2012 Bonds and payment and redemption of the 2001 Bonds as contemplated by this Ordinance.

Section 21. Covenant with Respect to Arbitrage. The City hereby covenants to the purchasers and registered owners of the 2012 Bonds hereby authorized that it will make no use of

the proceeds of said bond issue, including monies held in any sinking fund for the 2012 Bonds, which would cause the 2012 Bonds to be arbitrage bonds within the meaning of Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and further covenants to comply with said Sections 103(b) and 148 and all applicable regulations thereunder throughout the term of said bond issue, including but not limited to the payment and reporting of rebate as and to the extent required under Section 148 of the Code. The City hereby agrees that it will not take any action which would cause the 2012 Bonds to be or become "private activity bonds" within the meaning of Section 141 of the Code. The City hereby covenants and agrees to take all actions necessary under the Code to maintain the tax exempt status (as to taxpayers generally) of interest payable on the 2012 Bonds. The City hereby covenants and warrants that the 2012 Bonds are not "private activity bonds" within the meaning of Section 141 of the Code to maintain the tax exempt status (as to taxpayers generally) of interest payable on the 2012 Bonds. The City hereby covenants and warrants that the 2012 Bonds are not "private activity bonds" within the meaning of Section 141 of the Code to maintain the tax exempt status (as to taxpayers generally) of interest payable on the 2012 Bonds. The City hereby covenants and warrants that the 2012 Bonds are not "private activity bonds" within the meaning of Section 141 of the Code and covenants and agrees that it will not take any action which would cause the 2012 Bonds not to qualify as "qualified tax-exempt obligations" as so designated.

Section 22. **Disclosure Undertaking.** In accordance with the requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission, the City, being the only "obligated person" with respect to the Bonds, agrees that it will provide the following continuing disclosure information to the Municipal Securities Rulemaking Board (the "MSRB") in an electronic format as prescribed by the MSRB:

(a) not later than seven months after the end of each fiscal year of the City (the "Delivery Date"), financial information or operating data for the City of the type included in the final official statement under the heading "FINANCIAL STATEMENT" and the financial information for the Electric System as shown in Appendix B to the Official Statement ("Annual Financial Information");

(b) when and if available, audited financial statements for the City; audited financial information shall be prepared on the basis of generally accepted accounting principles and the standards applicable to financial audits contained in *Governmental Auditing* Standards, issued by the Comptroller General of the United States; and

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

(1) principal and interest payment delinquencies;

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

(3) unscheduled draws on debt service reserves reflecting financial difficulties;

(4) unscheduled draws on credit enhancements reflecting financial difficulties;

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

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

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

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

(9) defeasances;

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

(11) rating changes;

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

(13) the consummation of a merger, consolidation, or acquisition

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

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

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

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

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

Section 21. **Severability.** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 22. Approval of Preliminary Official Statement. The Preliminary Official Statement is hereby approved and deemed final as of its date and the Mayor and City Clerk are

hereby authorized to approve on behalf of the City a final Official Statement with any changes deemed appropriate by them.

Section 23. Ordinance and Laws a Contract with Bondholders. This Ordinance is adopted under the authority of and in full compliance with the Constitution and laws of the State of Nebraska. In consideration of the purchase and acceptance of the Bonds by those who shall own the same from time to time, the provisions of this Ordinance and of said laws shall constitute a contract with the registered owner or owners of each Bond and the obligations of the City under said laws and under this Ordinance shall be enforceable by any court of competent jurisdiction; and the covenants and agreements herein set forth to be performed on behalf of the City shall be for the equal benefit, protection and security of the holders of any and all of the registered owners of the Bonds, all of which, regardless of the time or times of their issue or maturity, shall be of equal rank without preference, priority or distinction of any of said Bonds over any others thereof except as expressly provided herein.

Section 24. **Bonds No Longer Deemed Outstanding Hereunder.** The obligations of the City under this Ordinance and any Bond and the liens, pledges, charges, trusts, assignments, covenants and agreements of the City herein or therein made or provided for, shall be fully discharged and satisfied as to any Bond and such Bond shall no longer be deemed to be Outstanding hereunder;

(a) when such Bond which the City may have acquired in any manner whatsoever shall have been cancelled, or surrendered for cancellation or is subject to cancellation, or shall have been purchased by the Trustee from moneys in the Bond Account or by the City; or

(b) as to any Bond not theretofore cancelled, surrendered for cancellation or subject to cancellation, when payment of the principal and the applicable redemption premium, if any (or the applicable redemption price), on such Bond, plus interest on such principal to the due date thereof, whether such due date be by reason of maturity or upon redemption or prepayment or otherwise, (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided by irrevocably depositing

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with the Trustee, in trust and irrevocably appropriated and set aside exclusively for such payment, (A) moneys sufficient to make such payment and/or (B) Government Obligations maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee and the Paying Agent pertaining to the Bonds with respect to which said deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee and said Paying Agent.

At such time as a Bond shall be deemed to be no longer Outstanding hereunder, as aforesaid, such Bond shall cease to draw interest from the due date thereof (whether such due date be by reason of maturity or upon redemption or prepayment, or otherwise), and, except for the purposes of any such payment from such moneys or Government Obligations, such Bond shall no longer be secured by or entitled to the benefits of this Ordinance.

Notwithstanding the foregoing, in the case of Bonds which are to be prepaid prior to the stated maturities thereof, no deposit under (ii) of subparagraph (b) above shall constitute such payment, discharge and satisfaction as aforesaid until proper notice of such redemption or prepayment shall have been given as provided in Section 7 hereof, or provision satisfactory to the Trustee shall have been irrevocably made for the giving of such notice.

Any such moneys so deposited with the Trustee as provided in this Section may at the direction of the City be invested and reinvested in Government Obligations maturing in the amounts and times as hereinbefore set forth, and all income from all such Government Obligations in the hands of the Trustee which is not required for the payment of the Bonds and interest and premium (or the applicable redemption price) thereon with respect to which such moneys or Government Obligations shall have been so deposited, shall be paid to the City as and when realized and collected.

If any Bond shall not be presented for payment when the principal thereof shall become due, whether at maturity or upon redemption or prepayment or otherwise, and if moneys or Government Obligations shall have been deposited in accordance with terms hereof with the Trustee, in trust for

that purpose sufficient and available to pay the principal and premium, if any (or the redemption price), of such Bond, together with all interest due on such Bond to the due date thereof or to the date fixed for the redemption or prepayment thereof, all liability of the City for such payment shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold said monies or said Government Obligations, without liability to such Bondholder for interest thereon, in trust for the benefit of the registered owner of such Bond, who thereafter shall be restricted exclusively for said moneys or said Government Obligations for any claim for such payment of whatsoever nature on his part.

Notwithstanding any other provisions of this Ordinance, which may be contrary to the provisions of this Section 24, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Section 24 for the payment of Bonds (including interest and redemption premium thereof, if any, or the redemption price thereof) and the interest thereon shall be applied to and used solely for the payment of the particular Bonds (including interest and redemption premium thereon, if any, or the redemption price thereof) with respect to which such moneys and said Government Obligations have been so set aside in trust.

Anything in Section 17 or Section 19 hereof to the contrary notwithstanding, if moneys or Government Obligations have been deposited or set aside with the Trustee pursuant to this Section 24 for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Section 24 shall be made without the consent of the registered owner of each Bond affected thereby.

Section 25. **Benefits of Ordinance Limited to City, Bondholders, Trustee and Paying Agent.** Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon or give to any person or corporation other than the City, the Trustee, the Paying Agent and the

registered owners of the Bonds any rights, remedies or claims under or by reason of this Ordinance or any covenant, condition or stipulation thereof; and all the covenants, stipulations, promises and agreements in this Ordinance contained by or on behalf of the City shall be for the sole and exclusive benefit of the City, the Trustee, the Paying Agent and the registered owners of the Bonds.

Section 26. **Term "City" to Include Successors.** Whenever in this Ordinance the City is named or referred to, it shall be deemed to include its successors and assigns, including any successor by merger or consolidation, and all the covenants and agreements in this Ordinance contained by or on behalf of the City shall bind and inure to the benefit of its successors and assigns whether so expressed or not.

Section 27. **Notices.** Except as otherwise provided herein, all notices, requests, demands and other communications required or permitted under this Ordinance shall be deemed to have been duly given if delivered or mailed, first class, postage prepaid, as follows:

(a) If to the City:

City of Grand Island Grand Island, Nebraska Attention: Mayor

(b) If to the Trustee:

Wells Fargo Bank, National Association 625 Marquette Avenue, 11th Floor MAC N9311-115 Minneapolis, MN 55479

Attention: Corporate Trust Services

or to such other persons or addresses as the respective party hereafter designates in writing to the other.

Section 29. Post Issuance Compliance Procedures. In order to promote compliance with certain federal tax and securities laws relating to the bonds herein authorized (as well as other

outstanding bonds) the policy and procedures attached hereto as <u>Exhibit "A"</u> (the "Post-Issuance Compliance Policy and Procedures") are hereby adopted and approved in all respects. To the extent that there is any inconsistency between the attached Post-Issuance Compliance Policy and Procedures and any similar policy or procedures previously adopted and approved, the Post-Issuance Compliance Policy and Procedures shall control.

Section 28. Article and Section Headings; Table of Contents. The headings or titles of the several sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning or construction, interpretation or effect of this Ordinance.

Section 29 **Repealer.** All other ordinances and parts of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 30. **Effectiveness of Ordinance; Publication.** This Ordinance shall be in force and take effect from and after its passage and approval according to law. This Ordinance shall be published in pamphlet form.

PASSED AND APPROVED this 28th day of February, 2012.

Jay Vavricek, Mayor

ATTEST:

RaNae Edwards, City Clerk

(SEAL)

# Policy and Procedures Federal Tax Law and Disclosure Requirements for Tax-exempt Bonds and/or Build America Bonds

# ISSUER NAME: CITY OF GRAND ISLAND, NEBRASKA

# COMPLIANCE OFFICER (BY TITLE):

# POLICY

It is the policy of the Issuer identified above (the "Issuer") to comply with all Federal tax requirements and securities law continuing disclosure obligations for its obligations issued as tax-exempt bonds (or as direct pay build America bonds, as applicable) to ensure, as applicable (a) that interest on its tax-exempt bonds remains exempt from Federal income tax, (b) that the direct payments associated with its bonds issued as "build America bonds" are received by the Issuer in a timely manner and (c) compliance with any continuing disclosure obligations of the Issuer with respect to its outstanding bonds.

# PROCEDURES

<u>Compliance Officer</u>. Review of compliance with Federal tax requirements and securities law continuing disclosure obligations as generally outlined below shall be conducted by the Compliance Officer identified above (the "Compliance Officer"). To the extent more than one person has been delegated specific responsibilities, the Compliance Officer shall be responsible for ensuring coordination of all compliance review efforts.

<u>Training</u>. The Compliance Officer shall evaluate and review educational resources regarding post-issuance compliance with Federal tax and securities laws, including periodic review of resources published for issuers of tax-exempt obligations by the Internal Revenue Service (either on its website at <u>http://www.irs.gov/taxexemptbond</u>, or elsewhere) and the Municipal Securities Rulemaking Board (either on its Electronic Municipal Market Access website ["EMMA"] at <u>http://www.emma.msrb.org</u>, or elsewhere).

<u>Compliance Review</u>. A compliance review shall be conducted at least annually by or at the direction of the Compliance Officer. The review shall occur at the time the Issuer's annual audit takes place, unless the Compliance Officer otherwise specifically determines a different time period or frequency of review would be more appropriate.

### Scope of Review.

*Document Review*. At the compliance review, the following documents (the "Bond Documents") shall be reviewed for general compliance with covenants and agreements and applicable regulations with respect to each outstanding bond issue:

- (a) the resolution(s) and/or ordinance(s), as applicable, adopted by the governing body of the Issuer authorizing the issuance of its outstanding bonds, together with any documents setting the final rates and terms of such bonds (the "Authorizing Proceedings"),
- (b) the tax documentation associated with each bond issue, which may include some or all of the following (the "Tax Documents"):
  - (i) covenants, certifications and expectations regarding Federal tax requirements which are described in the Authorizing Proceedings;
  - (ii) Form 8038 series filed with the Internal Revenue Service;
  - (iii)tax certificates, tax compliance agreements, tax regulatory agreement or similar documents;
  - (iv)covenants, agreements, instructions or memoranda with respect to rebate or private use;
  - (v) any reports from rebate analysts received as a result of prior compliance review or evaluation efforts; and
  - (vi)any and all other agreements, certificates and documents contained in the transcript associated with the Authorizing Proceedings relating to federal tax matters.
- (c) the Issuer's continuing disclosure obligations, if any, contained in the Authorizing Proceedings or in a separate agreement (the "Continuing Disclosure Obligations"), and
- (d) any communications or other materials received by the Issuer or its counsel, from bond counsel, the underwriter or placement agent or its counsel, the IRS, or any other material correspondence relating to the tax-exempt status of the Issuer's bonds or relating to the Issuer's Continuing Disclosure Obligations.

*Use and Timely Expenditure of Bond Proceeds.* Expenditure of bond proceeds shall be reviewed by the Compliance Officer to ensure (a) such proceeds are spent for the purpose stated in the Authorizing Proceedings and as described in the Tax Documents and (b) that the proceeds, together with investment earnings on such proceeds, are spent within the timeframes described in the Tax Documents, and (c) that any mandatory redemptions from excess bond proceeds are timely made if required under the Authorizing Proceedings and Tax Documents.

*Arbitrage Yield Restrictions and Rebate Matters.* The Tax Documents shall be reviewed by the Compliance Officer to ensure compliance with any applicable yield restriction requirements under Section 148(a) of the Internal Revenue Code (the "Code") and timely calculation and payment of any rebate and the filing of any associated returns pursuant to Section 148(f) of the Code. A qualified rebate analyst shall be engaged as appropriate or as may be required under the Tax Documents.

*Use of Bond Financed Property.* Expectations and covenants contained in the Bond Documents regarding private use shall be reviewed by the Compliance Officer to ensure compliance. Bond-financed properties shall be clearly identified (by mapping or other reasonable means). Prior to execution, the Compliance Officer (and bond counsel, if deemed appropriate by the Compliance Officer) shall review (a) all proposed leases, contracts related to operation or management of bond-financed property, sponsored research agreements, take-or-pay contracts or other agreements or arrangements or proposed uses which have the potential to give any entity any

special legal entitlement to the bond-financed property, (b) all proposed agreements which would result in disposal of any bond-financed property, and (c) all proposed uses of bond-financed property which were not anticipated at the time the bonds were issued. Such actions could be prohibited by the Authorizing Proceedings, the Tax Documents or Federal tax law.

*Continuing Disclosure*. Compliance with the Continuing Disclosure Obligations with respect to each bond issue shall be evaluated (a) to ensure timely compliance with any annual disclosure requirement, and (b) to ensure that any material events have been properly disclosed as required by the Continuing Disclosure Obligation.

<u>Record Keeping</u>. If not otherwise specified in the Bond Documents, all records related to each bond issue shall be kept for the life of the indebtedness associated with such bond issue (including all tax-exempt refundings) plus six (6) years.

<u>Incorporation of Tax Documents</u>. The requirements, agreements and procedures set forth in the Tax Documents, now or hereafter in existence, are hereby incorporated into these procedures by this reference and are adopted as procedures of the Issuer with respect to the series of bonds to which such Tax Documents relate.

<u>Consultation Regarding Questions or Concerns</u>. Any questions or concerns which arise as a result of any review by the Compliance Officer shall be raised by the Compliance Officer with the Issuer's counsel or with bond counsel to determine whether non-compliance exists and what measures should be taken with respect to any non-compliance.

<u>VCAP and Remedial Actions</u>. The Issuer is aware of (a) the Voluntary Closing Agreement Program (known as "VCAP") operated by the Internal Revenue Service which allows issuers under certain circumstances to voluntarily enter into a closing agreement in the event of certain non-compliance with Federal tax requirements and (b) the remedial actions available to issuers of certain bonds under Section 1.141-12 of the Income Tax Regulations for private use of bond financed property which was not expected at the time the bonds were issued.

DOCS/1082174.4



# **City of Grand Island**

Tuesday, February 28, 2012 Council Session

# Item G1

**Approving Minutes of February 14, 2012 City Council Regular Meeting** 

Staff Contact: RaNae Edwards

# CITY OF GRAND ISLAND, NEBRASKA

# MINUTES OF CITY COUNCIL REGULAR MEETING February 14, 2012

Pursuant to due call and notice thereof, a Regular Meeting of the City Council of the City of Grand Island, Nebraska was conducted in the Council Chambers of City Hall, 100 East First Street, on February 14, 2012. Notice of the meeting was given in *The Grand Island Independent* on February 8, 2012.

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

<u>INVOCATION</u> was given by Pastor Jay Vetter, Trinity United Methodist Church, 511 North Elm Street followed by the <u>PLEDGE OF ALLEGIANCE</u>.

Mayor Vavricek introduced Community Youth Council members Emily Heineman and Reyna Raymundo.

# PRESENTATIONS AND PROCLAMATIONS:

<u>Proclamation "Nebraska Danger Week" February 20, 2012.</u> Mayor Vavricek proclaimed the week of February 20, 2012 as "Nebraska Danger Week". Owner Charlie Bosselman, Brandi Bosselman, Head Coach Mike Davis, General Manager Mike McCoy, and Chief Operations Officer Brian Fausch were present for the presentation.

<u>BOARD OF EQUALIZATION:</u> Motion by Gilbert, second by Ramsey, carried unanimously to adjourn to the Board of Equalization.

<u>#2012-BE-1 – Consideration of Determining Benefits for Street Improvement District No. 1256;</u> <u>Capital Avenue from the Moores Creek Drain to Webb Road.</u> Public Works Engineer Terry Brown reported that the City Council in its capacity as the Board of Equalization was required to determine the benefits for Street Improvement District No. 1256. Special assessments were for the amount of \$732,831.98.

Jeff Vinson, 3010 Gladstone Circle and Curtis Cellar, 4220 Shanna Street spoke in opposition.

Discussion was held regarding reasons for the Capital Avenue widening project. Councilmembers Haase and Dugan commented on inconsistencies of the City's policy for determining assessments. Mr. Brown answered questions concerning the South Locust widening project done years ago and Capital Avenue widening project as not a fair comparison. Mr. Collins answered questions regarding truck traffic on Capital Avenue.

City Attorney Bob Sivick stated that previous actions by the City Council in 2006 were binding today and the City could be held liable if this Resolution was not approved.

Motion by Gilbert, second by Gard to approve Resolutions #2012-BE-1. Upon roll call vote, Councilmembers Carney, Niemann, Ramsey, Gilbert, Nickerson, Donaldson, Dugan, Gard and Gericke voted aye. Councilmember Haase voted no. Motion adopted.

RETURN TO REGULAR SESSION: Motion by Gilbert, second by Ramsey carried unanimously to return to Regular Session.

# **PUBLIC HEARINGS:**

Public Hearing on Request from Baldo, Inc. dba El Farayon Cantina & Grill, 1403 South Eddy Street for a Class "C" Liquor License. RaNae Edwards, City Clerk reported that an application for a Class "C" Liquor License had been received from Baldo, Inc. dba El Farayon Cantina & Grill, 1403 South Eddy Street. Ms. Edwards presented the following exhibits for the record: application submitted to the Liquor Control Commission and received by the City on January 17, 2012; notice to the general public of date, time, and place of hearing published on February 4, 2012; notice to the applicant of date, time, and place of hearing mailed on January 17, 2012; along with Chapter 4 of the City Code. Staff recommended Council make no recommendation based on the Nebraska Liquor Control Act 53-125 – Classes of persons to whom no license is issued. Steve Dowding, Attorney for the applicant spoke in support and requested the Council approve the application. No further public testimony was heard.

<u>Public Hearing on Request to Rezone Property Located at 1115 & 1116 Cedar Ridge Court from</u> <u>RD – Residential Development to R4 – High Density Residential.</u> Regional Planning Director Chad Nabity reported that a request had been received to rezone properties located south of 13<sup>th</sup> Street, east of Sagewood Avenue and west of US Hwy 281 from RD - Residential Development to R4 - High Density Residential. This change would allow the developer to build additional housing units in Grand Island. Staff recommended approval. No public testimony was heard.

<u>Public Hearing on Annexation of Property Located South of US Highway 34 and West of South Blaine Street – Annexation Area 8b (includes Rainbow Lake Area).</u> Regional Planning Director Chad Nabity reported that the annexation plan for area 8b (Rainbow Lake) was completed and approved by the Regional Planning Commission. Staff recommended approving the ordinance to annex this area on first reading. Vi Sheeks, 3623 South Blaine Street and John Hanssen, 3715 South Blaine Street spoke in opposition. No further public testimony was heard.

<u>Public Hearing on Re-Adoption of the City of Grand Island Official Zoning Map.</u> Regional Planning Director Chad Nabity reported that there were several changes to the Official Zoning Map which were consistent with the existing uses and the Future Land Use map for the City of Grand Island. The proposed changes would harmonize the map and make enforcement of the zoning regulations more consistent. Staff recommended approval. No public testimony was heard.

<u>Public Hearing on Redevelopment Plan for Property Located at US Highway 34 and South Locust Street (Howard Johnson).</u> Regional Planning Director Chad Nabity reported that an amendment to the Redevelopment Plan for CRA Area #2 was needed in order to authorize the CRA to execute a contract for Tax Increment Financing (TIF) based on the plan amendment for property located at 3333 Ramada Road. The redevelopment plan amendment permits

rehabilitation and redevelopment of the convention center, hotel and restaurant at this location. The total TIF allowed for this project would not exceed \$524,520 during its 15 year period. Staff recommended approval. Zachery Zoul, 3333 Ramada Road spoke in support. No further public testimony was heard.

<u>Public Hearing on Addition to Chapter 36 of the Grand Island City Code Relative to Airport</u> <u>Approach and Turning Zones.</u> Regional Planning Director Chad Nabity reported that changes to Section 36-46 – Airport Approach and Turning Zones - of the Grand Island City code were needed in order to protect the airport from encroachments in the approach and turning zones. Staff recommended approval. No public testimony was heard.

<u>Public Hearing on the One & Six Year Street Improvement Plan.</u> Public Works Engineer Terry Brown reported that adoption of a One and Six Year Street Improvement Program was required by State law as part of the requirements to receive approximately three million dollars of state gas tax funds each year. This item was referred to the Regional Planning Commission by Council at their January 24, 2012 Regular Meeting. The Regional Planning Commission conducted a Public Hearing at their February 1, 2012 meeting. Public Works Engineer Terry Brown presented a PowerPoint explaining the recommendations. Staff recommended approval. No public testimony was heard.

Public Hearing on Acquisition of Utility Easement Located at 1819 East 7<sup>th</sup> Street (Global Industries & D. J. Eihusen). Utilities Director Tim Luchsinger reported that acquisition of a utility easement located at 1819 East 7<sup>th</sup> Street 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 power cable, and a pad-mounted transformer to provide electrical power to the new business opened by Global Industries. Staff recommended approval. No public testimony was heard.

# **ORDINANCES:**

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

#9361 – Consideration of Determining Benefits for Street Improvement District No. 1256; Capital Avenue from the Moores Creek Drain to Webb Road

#9362 – Consideration of Request to Rezone Property Located at 1115 & 1116 Cedar Ridge Court from RD – Residential Development to R4 – High Density Residential

#9533 – Consideration of Annexation of Property Located South of US Highway 34 and West of South Blaine Street – Annexation Area 8b (included Rainbow Lake Area) (First Reading)

#9364 – Consideration of Addition to Chapter 36 of the Grand Island City Code Relative to Airport Approach and Turning Zones

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 Dugan second the motion. Upon roll call vote, all voted aye. Motion adopted. #9361 – Consideration of Determining Benefits for Street Improvement District No. 1256; Capital Avenue from the Moores Creek Drain to Webb Road

Motion by Gilbert, second by Gard to approve Ordinance #9361.

City Clerk: Ordinance #9361 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, Councilmembers Carney, Niemann, Ramsey, Gilbert, Nickerson, Donaldson, Dugan, Gard, and Gericke voted aye. Councilmember Haase voted no. Motion adopted.

City Clerk: Ordinance #9361 on final passage. All those in favor of the passage of this ordinance on final passage, answer roll call vote. Upon roll call vote, Councilmembers Carney, Niemann, Ramsey, Gilbert, Nickerson, Donaldson, Dugan, Gard, and Gericke voted aye. Councilmember Haase voted no. Motion adopted.

Mayor Vavricek: By reason of the roll call votes on first reading and then upon final passage, Ordinance #9361 is declared to be lawfully adopted upon publication as required by law.

#9362 – Consideration of Request to Rezone Property Located at 1115 & 1116 Cedar
Ridge Court from RD – Residential Development to R4 – High Density Residential
#9364 – Consideration of Addition to Chapter 36 of the Grand Island City Code Relative
to Airport Approach and Turning Zones

Motion by Gilbert, second by Donaldson to approve Ordinances #9362 and #9364.

City Clerk: Ordinances #9362 and #9364 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 #9362 and #9364 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 #9362 and #9364 are declared to be lawfully adopted upon publication as required by law.

#9363 – Consideration of Annexation of Property Located South of US Highway 34 and West of South Blaine Street – Annexation Area 8b (included Rainbow Lake Area) (First Reading)

Comments were made concerning the reasons for annexing this area. Mr. Nabity answered questions concerning the cost to land owner and notification of this meeting.

Motion by Gard, second by Nickerson to approve Ordinance #9363 on first reading only. Upon roll call vote, all voted aye. Motion adopted.

<u>CONSENT AGENDA</u>: Consent agenda item G-12 was pulled for further discussion. Motion by Ramsey, second by Haase to approve the Consent Agenda excluding item G-12. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of January 24, 2012 City Council Regular Meeting.

Approving Minutes of January 31, 2012 City Council Study Session.

Approving Appointment of Amos Anson to the Business Improvement District #8 Board.

#2012-26 – Approving Change of March 27, 2012 City Council Regular Meeting to March 26, 2012.

<u>#2012-27 – Approving Re-Adoption of the City of Grand Island Official Zoning Map.</u>

<u>#2012-28 – Approving Extension Request for Community Development Block Grant #08-DPI-005.</u>

#2012-29 – Approving Business Continuity and Recovery Services Agreement with IBM for a Three Year Contract in the Amount of \$10,152.00.

<u>#2012-30 – Approving Acquisition of Utility Easement Located at 1819 East 7<sup>th</sup> Street (Global Industries & D.J. Eihusen).</u>

<u>#2012-31 – Approving Purchase of 2012 Utility Truck – Water Division, Utilities Department</u> from State Contract with Sid Dillon Ford Lincoln Mercury from Crete, Nebraska in an Amount of \$46,802.00.

<u>#2012-32 – Approving Parkview Well Superfund Site Access Agreement Amendment #4.</u>

<u>#2012-33 – Approving Microsoft Home Use Program.</u>

#2012-35 – Approving Revised Contract Amount of \$344,807.42 to Resolution 2012-7; Bid Award to Midlands Contracting, Inc. for Lift Station No. 7 Repairs Project No. 2011-S-1.

#2012-34 – Approving Lease Agreement for a 2002 Ford Medtec Ambulance with Arrow Manufacturing, Inc. of Rock Rapids, Iowa in an Amount of \$1,000.00 per month for six months. Division Chief Tim Hiemer reported this was a lease agreement for 6 months to replace a current ambulance which had mechanical problems.

Lewis Kent, 624 Meves Avenue questioned the warranty/guarantee on the current ambulance.

Motion by Donaldson, second by Dugan to approve Resolution #2012-34. Upon roll call vote, all voted aye. Motion adopted.
### **RESOLUTIONS:**

<u>#2012-36 – Consideration of Request from Baldo, Inc. dba El Farayon Cantina & Grill, 1403</u> South Eddy Street for a Class "C" Liquor License and Liquor Manager Designation for Alberto Baldovinos, 235 North Custer Avenue. This item related to the aforementioned Public Hearing.

Motion by Nickerson, second by Gard to approve Resolution #2012-36. Upon roll call vote, Councilmembers Haase, Carney, Niemann, Ramsey, Gilbert, Nickerson, Dugan, Gard, and Gericke voted aye. Councilmember Donaldson voted no. Motion adopted.

<u>#2012-37 – Consideration of Redevelopment Plan for Property Located at US Highway 34 and</u> <u>South Locust Street (Howard Johnson).</u> This item related to the aforementioned Public Hearing. Discussion was held regarding the "but for" clause as it related to the TIF application. Mr. Nabity stated the City Council was responsible to make the final decision on the "but for" clause. Explained were the benefits to the South Locust area regarding this project.

Motion by Haase, second by Gilbert to approve Resolution #2012-37. Upon roll call vote, all voted aye. Motion adopted.

<u>#2012-38 – Consideration of Appointment of Jaye Monter as Finance Director.</u> Mayor Vavricek turned the meeting over to Council President Gilbert due to his partiality of this appointment. City Administrator Mary Lou Brown reported that the Mayor was recommending Jaye Monter for the position of Treasurer/Finance Director. Explained were the search process and the search committee recommendation.

Paul Wicht, 936 South Kimball and Joyce Haase, 3024 Colonial Lane spoke in opposition.

Discussion was held regarding the requirement to live within 10 miles of the 2 mile jurisdiction. Ms. Brown stated that Ms. Monter met this requirement. Councilmembers Niemann and Gilbert commented about serving on the search committee and supported the recommendation. Comments were made regarding her skill to lead and vision of the Finance Department in the future.

Motion by Donaldson, second by Niemann to approve Resolution #2012-38. Upon roll call vote, Councilmembers Carney, Niemann, Ramsey, Gilbert, Nickerson, Donaldson, Gard, and Gericke voted aye. Councilmembers Haase and Dugan voted no. Motion adopted.

Mayor Vavricek thanked the search committee for their work on this matter. Ms. Monter thanked the Council for her appointment as Finance Director.

<u>#2012-39 – Consideration of Proposing a Ballot Measure for Open Burning Ban.</u> Fire Division Chief Tim Hiemer gave a brief background of open burning. Environmental issues were mentioned as a factor in support of a burning ban. Staff recommended having a burning ban on the May primary ballot. City Attorney Sivick clarified the two resolutions. Resolution #2012-39 (A) was a ballot measure to repeal Ordinance #7993 and if approved by the voters would come back to Council to decide the issue of open burning. Resolution #2012-39 (B) was also a ballot measure with exceptions.

Lewis Kent, 624 Meves Avenue spoke in support of the burning ban.

Comments were made regarding the importance of a ballot measure as this was originally decided by a ballot measure. Comments were also made that the Council should decide this issue without going to a vote of the people. Mr. Sivick stated this issue would have to come back to Council at a later date if Council wanted to ban open burning.

Motion by Niemann, second by Carney to approve Resolution #2012-39 (A). Upon roll call vote, Councilmembers Carney, Niemann, and Nickerson voted aye. Councilmembers Haase, Ramsey, Gilbert, Donaldson, Dugan, Gard, and Gericke voted no. Motion failed.

Discussion was held regarding the State Statutes as they related to the exemptions.

Motion by Carney, second by Nickerson to approve Resolution #2012-39 (B). Upon roll call vote, Councilmember Nickerson voted aye. Councilmembers Haase, Carney, Niemann, Ramsey, Gilbert, Donaldson, Dugan, Gard, and Gericke voted no. Motion failed.

This item would be brought back to Council at a future meeting.

<u>#2012-40 – Consideration of the One & Six Year Street Improvement Plan.</u> This item related to the aforementioned Public Hearing.

Motion by Gard, second by Ramsey to approve Resolution #2012-40. Upon roll call vote, all voted aye. Motion adopted.

Council recessed at 9:40 p.m. and reconvened at 9:54 p.m.

<u>#2012-41 – Consideration of Direction of Wastewater Treatment Plant Management.</u> Public Works Director John Collins reported that at the request of City Council, information had been presented regarding the Wastewater Treatment Plant management. The following two options had been presented to Council: 1) contract operations and move forward with Veolia; or 2) initiate an internal improvement plan with multiple external contractors. A PowerPoint was presented on the two options.

If the decision was to contract with Veolia, the contract would be presented at the February 21, 2012 Study Session and brought forward for final approval at a later date. If the decision was to initiate a plan without Veolia, the 2012 fiscal year budget would be increased by \$500,000 and two new positions would be created: Wastewater Plant Engineer and Wastewater Operations Engineer.

Deficiencies to be addressed without Veolia were:

- Contracted Asset Management Monitoring and Automation Process Review (Treatment)
- Internal with Potential for Contracted Support Procurement Review Technical Skills

### Staff Utilization and Process Review (Activities)

With Veolia the following would be realized:

- Optimize plant operations by utilizing expertise gained through years of operating dozens or even hundreds of these facilities
- Reduce operating costs
- Advice during the infrastructure rehabilitation projects
- Local control and ownership

With Veolia Plant Staff would see the following:

- Retain their current pay
- Receive more and better training
- Have more and better opportunities
- IBEW 1597 recognized immediately

Mr. Collins reviewed the contract negotiation process and summary of contract revisions.

The following people spoke in opposition:

- John Henderson, 1068 Hwy 281, St. Paul
- Paul Wicht, 936 South Kimball
- Dave De La Motte, 623 Meves Avenue
- Dan Quick, 1019 Kennedy Drvie
- Ron Calihan, 4150 W. Capital Avenue
- Tom Olsen, 3819 Rochdale
- Robert Meyer, 648 E. Memorial Drive
- Scott Kuehl, 1419 Independence Avenue
- Lewis Kent, 624 Meves Avenue

Motion by Haase, second by Carney to reject all proposals to contract management and continue the operations in-house.

Comment was made concerning the motion on the table. Discussion was held regarding moving forward with this project and the public support to keep the Wastewater Treatment Plant management local. Mr. Sivick stated the agenda item before the Council was to approve either Resolution 2012-41 (A) which would move forward with Veolia or #2012-41 (B) which would keep the management of the WWTP in house.

Councilmember Haase withdrew his motion and Councilmember Carney withdrew his second.

Motion by Gard, second by Ramsey to approve Resolution #2012-41 (B). Upon roll call vote, all voted aye. Motion adopted.

Comments were made by Council regarding the community's overwhelming response and dedication of the WWTP employees. Mr. Sivick responded to questions concerning the contract negotiation and that if Council approved Resolution #2012-41 (B), Veolia would not be a part of the management of the WWTP. Mr. Collins answered questions concerning the \$500,000 additional funding to the 2011/2012 Budget.

Motion by Gericke to amend the motion by deleting the \$500,000 and two engineering positions. Motion died due to lack of second.

Councilmember Gericke suggested moving the WWTP to the Utilities Department. Comments were made regarding the process and to do what was right.

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

### PAYMENT OF CLAIMS:

Motion by Dugan, second by Donaldson to approve the Claims for the period of January 25, 2012 through February 14, 2012, for a total amount of \$3,514,033.95. Unanimously approved.

ADJOURNMENT: The meeting was adjourned at 11:23 p.m.

RaNae Edwards City Clerk



# **City of Grand Island**

Tuesday, February 28, 2012 Council Session

# Item G2

**Approving Minutes of February 21, 2012 City Council Study** Session

Staff Contact: RaNae Edwards

### CITY OF GRAND ISLAND, NEBRASKA

### MINUTES OF CITY COUNCIL STUDY SESSION February 21, 2012

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 February 21, 2012. Notice of the meeting was given in the *Grand Island Independent* on February 15, 2012.

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

<u>INVOCATION</u> was given by Community Youth Council member Danny Gamboa followed by the <u>PLEDGE OF ALLEGIANCE</u>.

Mayor Vavricek introduced Community Youth Council members Danny Gamboa and Evan Dexter.

### **OTHER ITEMS:**

Presentation by Almquist, Maltzahn, Galloway, & Luth for Fiscal Year 2011 City Single Audit and General Purpose Financial Statements and Electric and Water Audit Reports. City Administrator Mary Lou Brown introduced Terry Galloway from Almquist, Maltzahn, Galloway & Luth to give the 2011 City Single Audit and General Purpose financial statements and electric and water audit reports.

A brief overview and review of all the reports were given. A clean opinion was given. The City is operating efficiently while being good stewards.

There was an increase in cash reserves from \$23,000,000 to \$27,000,000 in the Electric Department. The Water Department ending cash balance was up. Mr. Galloway stated the City had great financial strength in the Electric and Water Departments.

Reviewed in depth was the Fiscal Year 2011 City Single Audit and General Purpose Financial Statements. Discussion was held concerning encumbrance balances, those contractual amounts that were not paid for by the end of the fiscal year but were carried over. Explained was that best practices were compared to other cities within Nebraska. Reviewed were best practices in several funds.

Comments were made by Council requesting the PowerPoint presented be put in the packet in the future.

Discussion was held concerning the rate increase for the Sewer Fund relative to the anticipated debt. The following top 5 sources of revenues were presented: sales tax, property taxes, grants and contributions, State allocation, and charges for services.

Overall, the City's current economic condition will continue to provide resources to meet its strategic priorities.

<u>Presentation of Fiscal and Investment Policies.</u> Finance Director Jaye Monter reported that the fiscal policies were approved by Council in January of 1992 and updated in March of 2006. The following six categories were Fiscal Policies of 2006:

- General Financial objectives
- Accounting, Auditing and Financial Reporting
- Investment Policies
- Capital Improvement Policies
- Debt Management Policies
- Communication and Disclosure Policies

Discussion was held regarding transferring funds from one fund to another without Council approval. Mr. Galloway stated the City was within the State laws and current City policies. Ms. Brown stated contracts were approved by Council which affected the budget.

Explained was the difference between a cash basis budget versus an accrual basis budget. State required cities to function under a cash basis budget. Ms. Monter explained the overruns on the General Fund budget for last fiscal year.

The following five Financial Appropriation Types were presented:

- Personnel Costs-employee compensation and benefits
- Operating Expenses-expenses required for operations
- Capital Expenditures-asset purchases
- Debt Service
- Fund Transfers

Explained was the Government Software Program that the Finance Department uses. Mentioned was that there were 36 funds in the City budget. A lengthy discussion was held regarding encumbrances.

Investment Policy was presented. Ms. Monter answered questions concerning the investment of approximately \$80,000,000. Ms. Brown stated the City invested primarily in CDs and was protected.

The following future policy updates were presented:

- Remove the working "net" and "for that fund" in the portion of the sentence "that at no time shall the net expenditures exceed the total appropriation for that fund" as originally authorized or amended by the Mayor and City Council-page 3 of Fiscal Policies
- Delete all references of "NCGA", this organization National Council Government Accounting no longer exists-page 2 & 4 of Fiscal Policies

- Change Five Financial Appropriation Types to match state budget appropriation types
- Appropriate Cash Reserves-Restricted Cash
- Interfund Borrowing
- Internal Controls
- Lone Range Planning
- Grants
- Balanced budget
- TIF Projects
- Self-Insurance

Council recessed at 9:36 p.m. and reconvened at 9:46 p.m.

<u>Presentation of Procurement Policy.</u> Assistant City Attorney Jason Eley presented a PowerPoint on the Procurement Code. The purpose was to provide for the fair and equitable treatment of all persons involved in public purchasing by the City to maximize the purchasing value of public funds.

Small purchases were less than \$20K and \$40K for electric system improvements. Small purchases for materials over \$2,500 and for labor over \$7,500 must be accompanied by 3 quotes from potential vendors. Sole Source was a contract that may be awarded without competition if after advertising there was only one source that responds with a bid. Emergency procurements authorize individuals to make emergency procurements of supplies, services, or construction when there exists a threat to public health, welfare, or safety.

Discussion was held regarding purchasing locally.

Competition was explained as all specifications shall promote overall economy and encourage competition in satisfying the City's needs, and shall not be unduly restrictive. Unless the purchasing agent determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

City employees may not participate directly or indirectly in a procurement contract when the City employee knows there is a conflict. Discussion was held concerning conflict of interest, confidentiality, gratuity, etc.

Individual purchasing by Department versus centrally purchasing was discussed. Ms. Brown stated the majority of cellular contracts were through a state contract. Storage of supplies was mentioned as a problem of joint purchasing. Several Councilmembers encouraged joint purchasing of supplies. Mayor Vavricek commented on the economic impact of buying locally.

<u>Update Concerning the Wastewater Treatment Plant and Collection System Rehabilitation</u> <u>Project (Engineering Phase).</u> Public Works Director John Collins introduced Public Works Manager of Engineering Services Terry Brown who stated this was an update on the Engineering Phase of the Wastewater Treatment Plant and Collection System Rehabilitation Project. This presentation was to provide the City with the results of the conceptual design work associated with the WWTP portion of the project.

Derek Cambridge with Black & Veatch presented the conceptual design results. The comp plan budget used in the CIP and Rate Study was \$9.22M. Explained were the following constructability issues/limitations with the comp plan concept:

- Requires extended period of temporary pumping to complete work = \$\$\$
- Limited to vertical screens
- Building expansion for screening washing/compaction
- No ability to isolate equipment for maintenance
- Maximum of five 8 mgd pumps, installed capacity of 50 mgd. 32 mgd firm capacity (one unit out of service)
- Potential for change orders (Unknown condition of existing concrete and gates)
- Reusing a 45 year old structure

The updated probable project costs for the comp plan approach was \$12.96M. Mentioned was that this would still be a 45 year old facility, but with rehabilitation.

The additional alternatives evaluated were presented along with cost:

- No. 1 Build new 25 mgd dry pit pump station, rehab existing pump station for 25 mgd (\$18.9M)
- No. 2 Build new 25 mgd submersible pump station, rehab existing pump station for 25 mgd (\$17.6M)
- No. 3 New combined 25 mgd pump station and grit removal facility, rehab existing pump station for 25 mgd (\$18.6M)
- No. 4 New 50 mgd dry pit pump station, reuse existing pump station for plant drain system (\$18.8M)
- No. 5 New 50 mgd submersible pump station, reuse existing pump station for plant drain system (\$16.9M)

Reviewed were the minimum capacity requirements.

Mr. Cambridge mentioned the benefits of Alternative No. 5 would provide required pumping capacity for 20 years and beyond with 50 mgd firm capacity. It would simplify construction which would reduce unknowns, have the ability to coordinate construction with interceptor sewer work, and no temporary pumping. It would also reduce O&M (6 versus 10 pumps, 2 versus 4 screens) and have a single point for screening disposal pickup. This would be a new structure which would last 50 years.

Discussion was held regarding the location of a new collection system. Mr. Cambridge stated it would be to the west and north of the current facility. Mr. Cambridge answered questions regarding odor emissions and explained the process.

Councilmember Gard made a comment concerning the leadership of the WWTP not being present for such an important issue facing the WWTP.

Mr. Collins stated it would take several months to fill the engineering positions and that this project needed to move forward. Discussion was held concerning the need for two engineers.

Mr. Cambridge stated to build a new facility like we have today would be \$80 to \$100 million.

Brad Titman, Operations Supervisor of the Wastewater Treatment Plant was present and stated Mr. Henderson wanted to be at the meeting but had a conflict. Mr. Titman complimented Mr. Cambridge for his work.

ADJOURNMENT: The meeting was adjourned at 11:18 p.m.

RaNae Edwards City Clerk



# **City of Grand Island**

Tuesday, February 28, 2012 Council Session

## Item G3

Approving Request from Wayne Gappa, 11 East 48th Street, Kearney, Nebraska for Liquor Manager Designation for Nebraskaland Distributors, LLC

**Staff Contact: RaNae Edwards** 

# **Council Agenda Memo**

From:	RaNae Edwards, City Clerk
Meeting:	February 28, 2012
Subject:	Request from Wayne Gappa, 11 East 48 <sup>th</sup> Street, Kearney, Nebraska for Liquor Manager Designation for Nebraskaland Distributors LLC, 4845 Juergen Road
Item #'s:	G-3
Presenter(s):	RaNae Edwards, City Clerk

## **Background**

Wayne Gapa, 11 East 48<sup>th</sup> Street, Kearney has submitted an application with the City Clerk's Office for a Liquor Manager Designation in conjunction with the Class "W-46607" Liquor License for Nebraskaland Distributors, LLC, 4845 Juergen Road.

This application has been reviewed by the Police Department and City Clerk's Office.

## **Discussion**

City Council action is required and forwarded to the Nebraska Liquor Control Commission for issuance of all liquor manager designations. All departmental reports have been received. See attached Police Department report.

## **Alternatives**

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

- 1. Approve the request.
- 2. Forward the request with no recommendation.
- 3. Take no action on the request.

## **Recommendation**

City Administration recommends that the Council approve the request for Liquor Manager Designation.

## **Sample Motion**

Move to approve the request from Wayne Gappa, 11 East 48th Street, Kearney, Nebraska for Liquor Manager Designation in conjunction with the Class "W-46607" Liquor License for Nebraskland Distributors, 4845 Juergen Road with the stipulation that Mr. Gappa complete a state approved alcohol server/seller training program.

	l Police Department 450 CIDENT TABLE Page: 1
City	: Grand Island
Occurred after	: 12:03:16 02/01/2012
Occurred before	: 12:03:16 02/01/2012
When reported	: 12:03:16 02/01/2012
Date disposition declared	: 02/01/2012
Incident number	: L12020035
Primary incident number	:
Incident nature Investigation	: Liquor Lic Inv Liquor License
Incident address	: 4845 Juergen Rd
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 : 26752 Long-term call ID : Clearance Code : CL Case Closed Judicial Status : NCI Non-criminal Incident INVOLVEMENTS: Px Record # Date Description Relationship \_\_\_\_ NM 173845 02/21/12 Gappa, Wayne Liquor Manager NM 54817 02/20/12 Nebraskaland Distributors Inc, Business Involved NM 135166 02/20/12 Gappa, Kathryn K Wayne's Wife LAW INCIDENT NARRATIVE: I Received a Copy of a Liquor Manager Application from Wayne Gappa for Nebraskaland Distributors. LAW INCIDENT OFFENSES DETAIL: Se Offe Offense code Arson Dama \_\_ \_\_\_\_ \_\_\_\_\_ 1 AOFF Alcohol Offense 0.00 LAW INCIDENT RESPONDERS DETAIL: Se Responding offi Unit n Unit number \_\_ \_\_\_\_\_ 1 Vitera D 318 Vitera D

#### LAW SUPPLEMENTAL NARRATIVE:

Seq Name Date

1 Vitera D 14:15:39 02/20/2012

318

Grand Island Police Department

Supplemental Report

Date, Time: Mon Feb 20 14:15:51 CST 2012

Reporting Officer: Vitera

Unit- CID

I received a copy of a liquor manager application from Nebraskaland Distributors

for Wayne Gappa. The application states that Wayne and his wife Kathryn were

each born in Loup City, Nebraska and have lived in Kearney since 1977. No

convictions were disclosed.

I checked Spillman and NCJIS. No potential violations were found for either of

them in Spillman. Kathryn didn't have any convictions listed in NCJIS. Wayne

had a conviction in 1997 for "Unlawful entry without a permit." The conviction

is a Class V Misdemeanor which resulted in a  $10\$  fine. The conviction would

not automatically preclude him from becoming a liquor manager.

I also checked Wayne and Kathryn through a police only Internet database. I did

not find anything of interest. I checked them for warrants. They don't have

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

In summary, the Grand Island Police Department has no objection to Wayne Gappa

becoming the liquor manager for Nebraskaland Distributors.



# **City of Grand Island**

Tuesday, February 28, 2012 Council Session

## Item G4

#2012-42 - Approving Acquisition of Utility Easement - West of Blaine Street and North of Wildwood Drive - GI Economic Development Corp.

This item relates to the aforementioned Public Hearing item E-2.

Staff Contact: Tim Luchsinger

### RESOLUTION 2012-42

WHEREAS, a public utility easement is required by the City of Grand Island, from the Grand Island Area Economic Development Corporation, to survey, construct, inspect, maintain, repair, replace, relocate, extend, remove, and operate thereon, public utilities and appurtenances, including water and sewer appurtenances, including pipes, valves, and manholes; and

WHEREAS, a public hearing was held on February 28, 2012, for the purpose of discussing the proposed acquisition of an easement located in the City of Grand Island, Hall County, Nebraska; and more particularly described as follows:

Beginning at the intersection of the westerly line of the Southeast Quarter of the Southeast Quarter (SE1/4, SE1/4) of Section Five (5), Township Ten (10) North, Range Nine (9) West and the northerly right-of-way line of Wildwood Drive; thence northerly along the westerly line of the Southeast Quarter of the Southeast Quarter (SE1/4, SE1/4) said Section Five (5), to a point eighty (80.0) feet north of the southerly line of the Southeast Quarter of the Southeast Quarter (SE1/4, SE1/4) said Section Five (5); thence easterly parallel with the southerly line of the Southeast Quarter of the Southeast Quarter (SE1/4, SE1/4) said Section Five (5), to a point one hundred eight (108.0) feet west of the easterly line of the Southeast Quarter of the Southeast Quarter (SE1/4, SE1/4) said Section Five (5); thence northerly and parallel with the easterly line of the Southeast Quarter of the Southeast Quarter (SE1/4, SE1/4) said Section Five (5), to a point on the northerly line of the Southeast Quarter of the Southeast Quarter (SE1/4, SE1/4) said Section Five (5); thence easterly along the northerly line of the Southeast Quarter of the Southeast Quarter (SE1/4, SE1/4) said Section Five (5), to a point fifty eight (58.0) feet west of the easterly line of the Southeast Quarter of the Southeast Quarter (SE1/4, SE1/4) said Section Five (5); thence southerly along the westerly line of a twenty five (25.0) foot wide easement as described in Document 79-007464 recorded in the Register of Deeds Office, Hall County, Nebraska, to a point on the northerly right-of-way line of said Wildwood Drive; thence westerly along the northerly right-of-way line of said Wildwood Drive to a point on the westerly line of the Southeast Quarter of the Southeast Quarter (SE1/4, SE1/4) said Section Five (5), being the said Point of Beginning.

The above-described easement and right-of-way containing a total of 2.75 acres, more or less, as shown on the plat dated 2/02/2012, 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 the Grand Island Area Economic Development Corporation, on the above-described tract of land.

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Adopted by the City Council of the City of Grand Island, Nebraska, February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk





# **City of Grand Island**

Tuesday, February 28, 2012 Council Session

# Item G5

#2012-43 - Approving Supplemental Agreements to Utilities Relocation Agreement with Burlington Northern Santa Fe Railroad - Double Track Project - Electric MP 94.70 & Sewer MP 94.56

Staff Contact: Tim Luchsinger

## **Council Agenda Memo**

From:	Timothy Luchsinger, Utilities Director John Collins, Public Works Director Robert Sivick, City Attorney
Meeting:	February 28, 2012
Subject:	Burlington North Santa Fe Supplemental Agreements – Double Track Project
Item #'s:	G-5
Presenter(s):	Timothy Luchsinger, Utilities Director

## **Background**

Burlington Northern Santa Fe (BNSF) is in the process of constructing a second track through Grand Island. To facilitate that construction and as a result of the Agreement entered into between the City and BNSF on December 6, 2011, a number of supplemental agreements will need to be approved. The first two to come before City Council are for an agreement for relocating a transmission pole at Mile Post 94-70 to a location outside of the new BNSF property. The second is to extend a sanitary sewer casing under BNSF tracks at Mile Post 94.56.

## **Discussion**

The agreement for relocation of the transmission pole provides for the work to be done by the City and costs to be fully reimbursed by BNSF. The extension of the sanitary sewer line casing is to be done and paid for by BNSF. The supplemental agreements also include insurance requirements and working conditions for parties performing activities on railroad property.

## **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 two supplemental agreements with BNSF for the relocation of the electric transmission pole and extension of the sanitary sewer casing.

## **Sample Motion**

Move to approve the two supplemental agreements with BNSF for the Double Track Project.

#### SUPPLEMENTAL AGREEMENT

This SUPPLEMENTAL AGREEMENT, made this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2012, subject to the terms and conditions set forth in the original agreement, between BNSF RAILWAY COMPANY, a Delaware corporation, its successors and assigns, (hereinafter called "Licensor") and CITY OF GRAND ISLAND (hereinafter called "Licensee").

#### RECITALS:

Licensor and Licensee are now parties to an agreement dated March 1, 1976, Licensor's Wire Line Crossing Permit No. 221,146, together with any and all modifications, supplements and amendments thereto (hereinafter called "Original Contract"), relating to a 115kv power line.

#### <u>AGREEMENT:</u>

It is mutually agreed that the following modification(s) will be made to the Original Contract:

1. PREMISES. That property at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 94.70, shown by bold line upon the print No. 1-53535, dated December 22, 2011, marked "Exhibit A", attached hereto and made a part hereof ("Premises").

2.(a) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction, maintenance, and use of the electrical transmission line, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$800.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.

(b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-orientation program at the following Internet Website "http://contractororientation.com". This program must be completed no more than one year in advance of Licensee's entry on the Premises.

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(c) Licensee shall notify Licensor's Roadmaster at telephone 402-362-5501, at least five (5) business days prior to installation of the Electric Supply Line and prior to entering the Premises for any subsequent maintenance thereon.

3. The following new Section shall be added to the Original Contract:

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$ 4,000,000 but in no event less than the amount otherwise carried by the Licensee. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
  - Bodily Injury and Property Damage
  - Personal Injury and Advertising Injury
  - ✤ Fire legal liability

Products and completed operations

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to *Licensor*.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones, Lang, LaSalle Global Services RR, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by *Licensor*.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to *Licensor* employees.

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

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

- Bodily injury and property damage
- Any and all vehicles owned, used or hired
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor or and acceptable to *Licensor*.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by *Licensor*.

- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:
  - Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
  - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee. This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Licensor.
- D. If further maintenance of the Electric Supply Line is needed at a later date, a Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
  - Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
  - Endorsed to include the Limited Seepage and Pollution Endorsement.
  - Endorsed to include Evacuation Expense Coverage Endorsement.
  - No other endorsements restricting coverage may be added.
  - The original policy must be provided to the Licensor prior to performing any work or services under this Agreement

Other Requirements:

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

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

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

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

on the certificate of insurance. Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.

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

If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

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

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

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

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

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

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

3. (a) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL [AND SHALL CAUSE ITS CONTRACTOR TO] RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

(i) THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,

(ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,

(iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR

(v) ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

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

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

- TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER (c) AGREES, AND SHALL CAUSE ITS CONTRACTOR TO REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.
- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any 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, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

### PERSONAL PROPERTY WAIVER

4. ALL PERSONAL PROPERTY OF LICENSEE, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE. Except as herein modified, the Original Contract shall continue in full force and effect.

Staubach Global Services, Inc. is acting as representative for BNSF Railway Company.

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

## **BNSF RAILWAY COMPANY**

By:

karn.

Manager - Land Revenue Management

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### **CITY OF GRAND ISLAND**

By:

Title:





DRAWING NO. 1-53535

### SUPPLEMENTAL AGREEMENT

2012- This SUPPLEMENTAL AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_, 2011, subject to the terms and conditions set forth in the original agreement, between BNSF RAILWAY COMPANY, a Delaware corporation, its successors and assigns, (hereinafter called "Licensor") and the CITY OF GRAND ISLAND (hereinafter called "Licensee").

### RECITALS:

Licensor and Licensee are now parties to an agreement dated July 27, 1965, Licensor's Contract No. Q-543, together with any and all modifications, supplements and amendments thereto (hereinafter called "Original Contract"), relating to an underground sanitary sewer pipe line.

### AGREEMENT:

It is mutually agreed that the following modification(s) will be made to the Original Contract:

1. The Original Contract shall be modified as follows:

PREMISES. That property at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 94.56, shown by bold line upon the print No. 1-53210, dated November 10, 2011, marked "Exhibit A", attached hereto and made a part hereof ("Premises").

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the Licensee. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
  - Bodily Injury and Property Damage
  - Personal Injury and Advertising Injury
  - Fire legal liability
  - Products and completed operations

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to *Licensor*.

- Additional insured endorsement in favor of and acceptable to *Licensor and* Jones, Lang, LaSalle Global Services RR, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by *Licensor*.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to *Licensor* employees.

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

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

- Bodily injury and property damage
- Any and all vehicles owned, used or hired
- Waiver of subrogation in favor of and acceptable to *Licensor*.
- Additional insured endorsement in favor or and acceptable to *Licensor*.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by *Licensor*.
- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:
  - Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
  - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee. This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to *Licensor*.
- D. Railroad Protective Liability Insurance. This insurance shall name only the Licensor as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the sanitary sewer pipeline THE CONSTRUCTION OF THE PIPE LINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE. If further maintenance of the sanitary sewer pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
  - Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
  - Endorsed to include the Limited Seepage and Pollution Endorsement.

- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the Licensor prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1000.00.

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

Other Requirements:

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

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

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

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

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

If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

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

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

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

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

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

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

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The insurance is procured from an underwriter of BNSF and the price is subject to change if the cost from the underwriter changes. Licensor will cover the RPLI cost for this relocation project under AFE# A110658.

2. (a) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction, maintenance, and use of the sanitary sewer pipeline, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway,

• :
when deemed necessary by the Railway's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$800.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.

- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-orientation program at the following Internet Website "http://contractororientation.com". This program must be completed no more than one year in advance of Licensee's entry on the Premises.
- (c) Licensee shall notify Licensor's Roadmaster, Don Marget, at York, NE, telephone (402) 362-5501, cell (402) 429-4055, at least five (5) business days prior to installation of the natural gas pipeline and prior to entering the Premises for any subsequent maintenance thereon.
- 3. (a) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL **RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND** LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL **REPRESENTATIVES**, **OFFICERS**, DIRECTORS, SHAREHOLDERS, **EMPLOYEES** AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND **GOVERNMENTAL** OVERSIGHT COSTS) **ENVIRONMENTAL** OR **OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND** OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

(i) THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,

(ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,

(iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR

(v) ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

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

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

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

(d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any 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, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

#### PERSONAL PROPERTY WAIVER

4. ALL PERSONAL PROPERTY OF LICENSEE, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE. Except as herein modified, the Original Contract shall continue in full force and effect.

Staubach Global Services, Inc. is acting as representative for BNSF Railway Company.

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

#### **BNSF RAILWAY COMPANY**

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

By:

Ed Darte

#### **CITY OF GRAND ISLAND**

By:

Title:

TRACKING NO. 11-43616



**REVISION 1** 

DRAWING NO. 1-53210

#### RESOLUTION 2012-43

WHEREAS, in April of 2011, the City was advised by Burlington Northern Santa Fe (BNSF) that they were proceeding with a project to widen the elevated rail overpass to a double track to alleviate train traffic congestion; and

WHEREAS, as a result of this project, multiple electrical, water and sewer utility crossings by the City across the BNSF right-of-way will need to be modified to accommodate the track improvement project; and

WHEREAS, the BNSF entered into an Agreement to pay for the modifications; and

WHEREAS, the contract requires the City's passage of supplemental agreements for each crossing; and

WHEREAS, modifications include either relocating utilities or encasement of the utilities to current railroad crossing standards.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the two Supplemental Agreements presented at this meeting are hereby approved, and that the Mayor is authorized to sign the agreements on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	¤
February 22, 2012	¤ City Attorney



## **City of Grand Island**

Tuesday, February 28, 2012 Council Session

## Item G6

**#2012-44 - Approving Bid Award - Precipitator & Duct Cleaning at Platte Generating Station** 

Staff Contact: Tim Luchsinger

## **Council Agenda Memo**

From:	Timothy G. Luchsinger, Utilities Director Jason Eley, Assistant City Attorney
Meeting Date:	February 28, 2012
Subject:	Precipitator and Duct Cleaning and High Pressure Wash – Platte Generating Station
Item #'s:	G-6
Presenter(s):	Timothy G. Luchsinger, Utilities Director

#### **Background**

The electrostatic precipitator at the Platte Generating Station is the air quality control equipment used to remove coal ash particulates from the plant's boiler flue gas stream. Proper performance of this equipment is required as part of the plant's operating permit. Due to volume and characteristics of the coal ash, the precipitator must be grit blasted twice a year to remove ash build-up to allow the plant to remain below permitted emission levels. In addition to maintaining performance, removal of the ash deposits also allows an inspection of the precipitator internal surfaces and components. The next outage is scheduled for April of this year. Specifications were developed by the plant maintenance staff to include grit blasting of the electrostatic precipitator and bulk vacuuming of the associated ductwork, and high pressure water wash of the Induced Draft fan blades and bottom ash system.

#### **Discussion**

The specifications for the Precipitator and Duct Cleaning and High Pressure Wash were advertised and issued for bid in accordance with the City Purchasing Code. Bids were publicly opened on February 2, 2012. Specifications were sent to four potential bidders and responses were received as listed below. The engineer's estimate for this project was \$80,000.00.

Bidder	Bid Price
W-S Industrial Services, Inc., Council Bluffs, Iowa	\$ 73,380.45
Meylan Enterprises, Inc., Omaha, Nebraska	\$ 65,950.00

Both bidders listed no exceptions to the specification. The bid from Meylan Enterprises, Inc., is compliant with specifications and less than the engineer's estimate.

#### **Alternatives**

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

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

#### **Recommendation**

City Administration recommends that the Council award the Contract for Precipitator and Duct Cleaning and High Pressure Wash to Meylan Enterprises, Inc,. of Omaha, Nebraska, as the low responsive bidder, in the amount of \$65,950.00.

#### **Sample Motion**

Move to approve the bid award of \$65,950.00, from Meylan Enterprises, Inc., for the Precipitator and Duct Cleaning and High Pressure Wash.

#### Purchasing Division of Legal Department INTEROFFICE MEMORANDUM



Jason Eley, Purchasing Agent

Working Together for a Better Tomorrow, Today

#### **BID OPENING**

<b>BID OPENING DATE:</b>	February 2, 2012 at 2:00 p.m.
FOR:	Precipitator & Duct Cleaning & High Pressure Wash
DEPARTMENT:	Utilities
ESTIMATE:	\$80,000.00
FUND/ACCOUNT:	520
PUBLICATION DATE:	January 11, 2012

NO. POTENTIAL BIDDERS: 4

#### **SUMMARY**

Bidder:	<u>W-S Industrial Services, Inc.</u> Council Bluffs, IA	<u>Meylan Enterprises, Inc.</u> Omaha, NE
<b>Bid Security:</b>	Merchants Bonding Co.	Universal Surety Co.
Exceptions:	None	None
<b>Bid Price:</b>		
Material:	\$23,750.00	\$18,490.65
Labor:	\$44,764.40	\$43,144.86
Sales Tax:	<u>\$ 4,866.05</u>	<u>\$ 4,314.49</u>
Total Bid:	\$73,380.45	\$65,950.00

cc:	Tim Luchsinger, Utilities Director	Bob Smith, Assist. Utilities Director
	Jason Eley, Purchasing Agent	Pat Gericke, Utilities Admin. Assist.
	Mary Lou Brown, City Administrator	Lynn Mayhew, Utility Eng.

#### RESOLUTION 2012-44

WHEREAS, the City of Grand Island invited sealed bids for Precipitator and Duct Cleaning and High Pressure Wash at the Platte Generation Station according to plans and specifications on file with the Utilities Department; and

WHEREAS, on February 2, 2012, bids were received, opened and reviewed; and

WHEREAS, Meylan Enterprises, Inc., of Omaha, 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 \$65,950.00; and

WHEREAS, the bid Meylan Enterprises, Inc., is less than the estimate for the Precipitator and Duct Cleaning and High Pressure Wash.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Meylan Enterprises, Inc., in the amount of \$65,950.00, for Precipitator and Duct Cleaning and High Pressure Wash at the Platte Generating Station, is hereby approved as the lowest responsible bid.

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Adopted by the City Council of the City of Grand Island, Nebraska, February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form ¤\_\_\_\_\_ February 22, 2012 ¤ City Attorney



## **City of Grand Island**

Tuesday, February 28, 2012 Council Session

## Item G7

**#2012-45 - Approving Bid Award - Uranium Removal Water Treatment Plant Equipment Installation and Pump Modifications** 

Staff Contact: Tim Luchsinger

## **Council Agenda Memo**

From:	Timothy G. Luchsinger, Utilities Director Jason Eley, Assistant City Attorney
Meeting Date:	February 14, 2012
Subject:	Uranium Removal Water Treatment Plant – Equipment Installation and Pump Modifications
Item #'s:	G-7
Presenter(s):	Timothy G. Luchsinger, Utilities Director

#### **Background**

The City's municipal water system is supplied primarily from its Platte River Well Field. This well field is comprised of 21 wells and a pumping station. Testing for State regulatory requirements indicated composite uranium levels to be approaching the Maximum Containment Level (MCL) established by the EPA. Uranium is not an acute concern but rather is a chronic concern over a lifetime of exposure, and sampling and testing of the Grand Island water system thus far show full compliance with the EPA regulation. Testing of individual wells for uranium has indicated most wells exceed this MCL. To allow use of these wells during high water system demand periods, additional piping was installed in the past year for blending with lower uranium concentration wells. Recent testing of uranium concentrations in the wells indicated a trend towards increasing levels, reducing the effectiveness of well blending to reduce overall levels, therefore, based on Department recommendations, the Utilities Department was authorized by Council on February 22, 2011, to proceed with the procurement and installation of the large-scale pilot uranium removal system. Based on the multiple phase structure of the uranium engineering services RFP, HDR, the City's consultant on this project, was requested to provide a proposal for preparing specifications to issue for bids for an adsorptive media pilot plant. On June 28, 2011, Council awarded the contract for the Uranium Removal System – Equipment Procurement to Water Remediation Technology.

On August 23, 2011, Council approved the proposal of HDR Engineering, Inc., of Lincoln, Nebraska, for Uranium Removal Water Plant – Task Order No. 2. This task order authorized the detailed engineering services which included preparation of specifications for bidding of a new building and foundations, underground piping, well modifications, and installation of the uranium removal equipment. As part of these

engineering services, HDR developed the specifications for the pump modifications of well field wells and installation of the uranium removal system equipment.

#### **Discussion**

The specifications for the Uranium Removal Water Treatment Plant – Equipment Installation and pump modifications were advertised and issued for bid in accordance with the City Purchasing Code. Bids were publicly opened on January 31, 2012. Specifications were sent to four potential bidders and responses were received as listed below. The engineer's estimate for this project was \$450,000.00.

Bidder	Bid Price
Midlands Mechanical	\$399,826.00
Lincoln, Nebraska	
Judds Brothers Construction Lincoln, Nebraska	\$309,250.00
	<b>A</b> 0
Industrial Process Technology, Inc. Mitchell, SD	\$0
Fischer Construction, Inc.	\$423,525.00
Longmont, CO	

The bids have been evaluated by Engineering Staff, and only Fischer Construction listed an exception to exclude all permits and fees, all other bidders listed no exceptions. The bid submitted by Industrial Process Technology included all the required documents, but no amounts were submitted on the bid data form. Judds Brothers Construction's bid has no exceptions and is below the engineer's estimate of \$450,000.00 and meets City contract requirements.

#### **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 Council award the contract for Uranium Removal Water Treatment Plant – Equipment Installation and Pump Modifications to Judds Brothers Construction of Lincoln, Nebraska, in the amount of \$309,250.00.

#### **Sample Motion**

Move to approve the contract for Uranium Removal Water Treatment Plant – Equipment Installation and Pump Modifications to Judds Brothers Construction of Lincoln, Nebraska, in the amount of \$309,250.00.

#### Purchasing Division of Legal Department INTEROFFICE MEMORANDUM



Jason Eley, Purchasing Agent

Working Together for a Better Tomorrow, Today

#### **BID OPENING**

BID OPENING DATE: January 31, 2012 at 2:00 p.m.

FOR:

Uranium Removal Water Treatment Plant – Equipment Installation And Pump Modifications

**DEPARTMENT:** Utilities

ESTIMATE: \$450,000.00

FUND/ACCOUNT:525

PUBLICATION DATE:January 17, 2012

NO. POTENTIAL BIDDERS: 6

#### **SUMMARY**

Bidder: Bid Security: Exceptions:	<u>Midlands Mechanical, Inc.</u> Lincoln, NE Universal Surety Co. Noted	<u>Judds Brothers Construction Co.</u> Lincoln, NE International Fidelity Ins. Co. None
Addendum #1 Rec:	Received	Received
<b>Bid Price:</b>		
Material:	\$252,548.00	\$163,534.00
Labor:	\$129,846.00	\$134,268.00
Sales Tax:	<u>\$ 17,432.00</u>	<u>\$ 11,448.00</u>
Total Bid:	\$399,826.00	\$309,250.00
Bidder:	<u>Industrial Process Technology, Inc.</u> Mitchell, SD	<u>Fischer Construction, Inc.</u> Longmont, CO
<b>Bid Security:</b>	The Guarantee Co. of North America	Western Surety Co.
Exceptions:	None	Noted
Addendum #1 Rec:	Received	Received
Bid Price:		
Material:	-0-	\$180,589.00
Labor:	-0-	\$230,295.00
Sales Tax:	-0	<u>\$ 12,641.00</u>
Total Bid:	-0-	\$423,525.00

cc: Tim Luchsinger, Utilities Director Jason Eley, Purchasing Agent Mary Lou Brown, City Administrator Bob Smith, Assist. Utilities Director Pat Gericke, Utilities Admin. Assist. Lynn Mayhew, Utility Eng.

P1532

#### RESOLUTION 2012-45

WHEREAS, the City of Grand Island invited sealed bids for Uranium Removal Water Treatment Plant Equipment Installation and Pump Modifications, according to plans and specifications on file with the Utilities Department; and

WHEREAS, on January 31, 2012, bids were received, opened and reviewed; and

WHEREAS, Judds Brothers Construction of Lincoln, 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 \$309,205.00; and

WHEREAS, the bid of Judds Brothers Construction is less than the estimate for the Uranium Removal Water Treatment Plant Equipment Installation and Pump Modifications.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Judds Brothers Construction of Lincoln, Nebraska, in the amount of \$309,250.00, for Uranium Removal Water Treatment Plant Equipment Installation and Pump Modifications is hereby approved as the lowest responsible bid.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, February 14, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form ¤\_\_\_\_\_ February 22, 2012 ¤ City Attorney



## **City of Grand Island**

Tuesday, February 28, 2012 Council Session

## Item G8

#2012-46 - Approving Lease Agreement with the Hall County Historical Society Regarding the Stolley Campus

Staff Contact: Steve Paustian

### **Council Agenda Memo**

From:	Steve Paustian, Parks and Recreation Director
Meeting:	February 28, 2012
Subject:	Stolley House Memorandum of Understanding
Item #'s:	G-8
Presenter(s):	Steve Paustian, Parks and Recreation Director

#### **Background**

The Stolley house has been managed under a Memorandum of Understanding (MOU) with the Hall County Historical Society for the past 10 years. The current MOU is set to expire and a new MOU is being presented to you to continue with this arrangement.

#### **Discussion**

The MOU is basically a continuation of the previous MOU, two significant items that have been added to the proposed MOU include an arieal photo of the area showing a delineation of the area impacted by the MOU and a statement regarding an annual fee of \$1,000.00 payable to the City to offset utility costs associated with the house.

#### **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 MOU for the management and maintenance of the Stolley House.

#### **Sample Motion**

Move to approve the MOU.

# MEMORANDUM OF UNDERSTANDING Preservation and occupancy of Stolley House

THIS MEMORANDUM OF UNDERSTANDING (MOU) is approved and executed on  $24^{74}$  day of  $\overline{J}_{a,a,u,a,v,v}$ , 2012, by the City of Grand Island, Nebraska, a Municipal , 2012, by the City of Grand Island, Nebraska, a Municipal Corporation (City) and the Hall County Historical Society (Society). this

terms, conditions and commitments of the respective parties in considering the possible renovation, repair and occupancy of the historic Stolley House, located in Stolley Park, including the interior and exterior renovation and maintenance of the building and grounds. The log cabin PROJECT DESCRIPTION. The purpose of this MOU is to generally state the Attached as may be used jointly by the City parks department and the Society for storage. Exhibit A, building and grounds aerial view. 

persons or less. 2. Functions serving meals shall be limited to twice monthly with a maximum of RENT. Society agrees to rent the Stolley House for ten (10) years, 2012 through the rent shall be the sum of Ten Dollars (\$10.00) for the term of this agreement, which shall be due and payable on January 31, 2012. After the primary term of this lease it shall renew automatically on an annual basis. This lease may be terminated by either of the parties hereto upon sixty (60) days written notice. Society will not sublet the premises without the consent of the City, and then, only for single day events. The following restrictions apply to subletting the premises for single day events: 1. Must be non-profit social or civic group functions limited to 30 20 persons or less. 3. For life safety concerns, no meeting or dinning events shall be allowed on the second floor and at no time shall any exterior doors be blocked or exiting restricted. 2022,

pe The Society shall furnish and maintain the interior of the house in a condition that resembles the building's appearance as originally constructed wherever possible. The City Parks and Recreation Director, or designee, shall be comparable to standard park operations at any time, but excluding repair and renovation which shall be handled by the financing provided in paragraph number 6 below. The City shall be consulted and approve any repair, maintenance or renovation of the structure and/or grounds. The City shall do all grounds maintenance, including mowing and gardening, which shall be or designee, consulted about maintenance and renovation done to the premises by the Society. MAINTENANCE AND REPAIR. e

INSURANCE. The City shall be responsible for insuring the house. The Society shall be responsible for insuring the contents. 4

The Society shall be responsible for an annual payment of onethousand dollars (\$1,000.00) for utility costs, which will be due on January  $31_2 \ p_0/3$ UTILITIES. in

House and campus, The Grace Carmody Fund for the William Stolley House, The Lillian F. Lappe Fund for the William Stolley House, The Richard Stolley Palmer fund for the William Stolley House, and the Stolley House-Hall County Historical society fund, and the funds from FINANCING. Four Nebraska State Historical Society Foundation funds have been established to provide funds for the repair, maintenance, and renovations of the Stolley .e

each respective fund shall be utilized in accordance with the parameters of each fund for the repair, maintenance, and renovations.

MOU constitutes the entire agreement between the parties, notwithstanding any other written or verbal The parties acknowledge and agree that this agreements, communications or documents to the contrary. ENTIRE AGREEMENT.

This MOU shall be governed by the laws of the United States and the State of Nebraska and the ordinances of the City of Grand Island. CHOICE OF LAWS. ŝ

agree that the City and Society have not made any warranties or representations concerning this property located in Stolley Park, Grand Island, Hall County, Nebraska; and that neither party has acted in reliance upon any alleged warranty or representations by the other party. Irrespective of The parties acknowledge and any such warranty or representation, the respective parties acknowledge and agree that each may rely only upon such information as is developed and verified by the relying party. WARRANTIES AND REPRESENTATIONS. 6

10. **NOTICES.** All notices issued in furtherance of this MOU shall be in writing and sent to the other party by first class, U.S. mail, postage prepaid, to the following addresses:

City of Grand Island Attn: Steve Paustian, Parks & Recreation Director P.O. Box 1968 Grand Island, Nebraska 68802-1968

Hall County Historical Society P. o. Box 1683Grand Island, Nebraska 68801

Attest:

CITY OF GRAND ISLAND, NEBRASKA, A Municipal Corporation,

By:

RaNae Edwards, City Clerk Approved as to form by City Attorney Approved by Resolution 2012-

Jay Vavricek, Mayor

HALL COUNTY HISTORICAL SOCIETY,

, 2012, , 2012, by Jay The foregoing instrument was acknowledged before me this 297 day of  $\sqrt{\pi}$  and  $\sqrt{2}$  by Freed E Roeser, on behalf of the Hall County Historical Society. Notary Public Y The foregoing instrument was acknowledged before me this \_\_\_\_\_\_ day of Vavricek, Mayor on behalf of the City of Grand Island, Nebraska, a municipal corporation. Ş e home a President 10 3 By GENERAL NOTARY - State of Nebraska THOMAS J. CORKLE My Comm. Exp. Feb. 20, 2014 STATE OF NEBRASKA ) ) SS. COUNTY OF HALL ) STATE OF NEBRASKA ) ) SS. COUNTY OF HALL ) COUNTY OF HALL COUNTY OF HALL -



#### RESOLUTION 2012-46

WHEREAS, for the past ten years, the City of Grand Island has been working with the Hall County Historical Society to renovate, repair and occupy the historic Stolley House and campus located in Stolley Park; and

WHEREAS, it is recommended that the terms, conditions, and responsibilities of each party be set out in a Memorandum of Understanding in order to continue with the renovation, repair and occupancy of such buildings and campus; and

WHEREAS, a proposed Memorandum of Understanding has been prepared by the City Attorney, and

WHEREAS, it is recommended that such Memorandum of Understanding be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Memorandum of Understanding by and between the City and the Hall County Historical Society for the renovation, repair and occupancy of the historic Stolley House and campus including the interior and exterior renovation and maintenance of the buildings and grounds is hereby approved.

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

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Adopted by the City Council of the City of Grand Island, Nebraska, February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	¤ į	
February 23, 2012	¤	City Attorney



## **City of Grand Island**

Tuesday, February 28, 2012 Council Session

## Item G9

#2012-47 - Approving Amendment and Activity Approval to the 2010 Storm Water Management Plan Program Grant

Staff Contact: John Collins, Public Works Director

## **Council Agenda Memo**

From:	Scott Sekutera, Storm Water Technician
Meeting:	February 28, 2012
Subject:	Approving Amendment and Activity Approval to the 2010 Storm Water Management Plan Program Grant
Item #'s:	G-9
Presenter(s):	John Collins, Public Works Director

#### **Background**

The City of Grand Island was awarded \$88,659 for the 2010 Storm Water Management Plan Program Grant on October 19, 2010. A 20% match is required by the City, which equates to \$17,732.00.

Grant activities are restricted to the Best Management Practices (BMP's) and seven Minimum Control Measures (MCM's) identified in the City storm water permit. The seven MCM's are:

- 1) Education and Outreach
- 2) Public Involvement/Participation
- 3) Illicit Discharge Detection and Elimination
- 4) Construction Site Storm Water Runoff Control
- 5) Post-Construction Storm Water Management in new development and redevelopment
- 6) Pollution Prevention good housekeeping for municipal operations
- 7) Wet Weather Monitoring

#### **Discussion**

The City of Grand Island has received approval to amend the 2010 Grant to include the following activities: a geospatidal data collection survey, the construction of a bioswale and rain garden as a teaching tool in managing storm water runoff, inspections of detention cells throughout the City of Grand Island and a storm water television commerical and radio Public Service Announcement (PSA).

#### **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 and activity for the 2010 Storm Water Management Plan Program Grant and authorize the Mayor to sign all related documents.

#### **Sample Motion**

Move to approve the amendment and activity for the 2010 Storm Water Management Plan Program Grant and authorize the Mayor to sign all related documents.



#### STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY Michael J. Linder

Director Suite 400, The Atrium 1200 'N' Street P.O. Box 98922 Lincoln, Nebraska 68509-8922 Phone (402) 471-2186 FAX (402) 471-2909 website: www.deg.state.ne.us

FEB 1 4 2012

Mr. Scott Sekutera City of Grand Island 100 East 1<sup>st</sup> Street Grand Island, NE 68802

RE: 2010 Storm Water Management Plan Program Grant Amendment and Activity Approval-City of Grand Island

Dear Scott:

The Department of Environmental Quality has received the City of Grand Island's request to amend the 2010 Stormwater Management Plan Program work plan to include the following activities: a geospatial data collection survey, the construction of a bioswale and rain garden as a teaching tool in managing storm water runoff, inspections of BMP detention cells throughout the City of Grand Island and a stormwater television commercial and radio PSA.

The above activities and amended work plan has been approved. Please sign the enclosed intergovernmental agreement amendment, making a copy for your files, and submit the original to me. If you have any questions please call Mary Schroer at 402-471-6988 or by email at mary.schroer@nebraska.gov.

Sincerely,

Marty Link Acting Water Quality Division Administrator

Enclosures

#### INTERGOVERNMENTAL AGREEMENT AMENDMENT

This is an amendment to the Intergovernmental Agreement between the Nebraska Department of Environmental Quality and the City of Grand Island that was executed on October 20, 2010. The project is regarding the Implementation of the Storm Water Management Plan Program for the City of Grand Island.

Pursuant to Section II subsection E of the above referenced Intergovernmental Agreement, the following amendments are made to the Intergovernmental Agreement.

Work Description. The workplan percentages will be amended as per Attachment A

IN WITNESS THEREOF, the parties hereto have executed this amendment.

#### NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

BY Thomas Rampleson DATE Feb 10, 2012

Thomas R. Lamberson, Deputy Director

#### CITY OF GRAND ISLAND

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

\_\_\_\_\_ DATE\_\_\_

## STORM WATER MANAGEMENT PLAN PROGRAM 2010 Workplan Amended

From the City of Grand Island (Sponsor) Regarding Implementation of the Storm Water Management Plan for Permit NER300010

	CONTACI	INFORMATION		
PROJECT MANAGER NAME		TITLE		
Scott Sekutera		Storm Water Technician		
STREET ADDRESS		E-MAIL ADDRESS		
PO Box 1968		ssekutera@grand-island.com		
CITY / STATE / ZIP CODE		PHONE NUMBER		
Grand Island, NE 68802-1968		308-385-5440 ext 270		
AWARD AMOUNT \$88,659	MATCH REQUIRED \$17,732	PROJECT END DATE 6-30-2012		

ACTIVITY ELEMENTS & TIMELINE						
	Minimum Control Measure	Section/Subsection and Activity Element Description from Approved SWMP	Cost (percentage of grant)	Expected Completion Date		
1	Education & Outreach	<b>1.1</b> Develop and Distribute Education material on stormwater related issues in various media forms.	20% \$15,000 (\$2,731.00) carried over from last year	6/29/12		
2	Public Involvement/Participation	2.2 Participate/Sponsor Community Cleanup	10% \$8,865.00	6/29/12		
3	Illicit Discharge Detection & Elimination	<b>3.2</b> Perform dry weather inspections of stormwater outfalls.	5% \$4,432.00	6/29/12		
4	Illicit Discharge Detection & Elimination	<b>3.3</b> Continue mapping of stormwater sewer system.	50% \$44,329.00	6/29/12		
5	Construction Site Stormwater Runoff Control	<b>4.3</b> Educate contractors and the development community.	0%	6/29/12		

	Minimum Control Measure	Section/Subsection and Activity Element Description from Approved SWMP	Cost (percentage of grant)	Expected Completion Date
6	Construction Site Stormwater Runoff Control	<b>4.4</b> Develop design standards for stormwater runoff control measures	0%	6/29/12
7	Post Construction Stormwater Management	<b>5.2</b> Develop BMP inspection and plan review Standard Operating Procedure.	10% \$8,865.00	6/29/12
8	Pollution Prevention/Good Housekeeping for Municipal Operations	<b>6.3</b> Evaluate municipal operations.	0%	6/29/12
9	Wet Weather Monitoring	7.2 BMP Assessment Monitoring	5% \$4,432.00	6-29-12

#### RESOLUTION 2012-47

WHEREAS, the City of Grand Island was awarded \$88,659.00 for the 2010 Storm Water Management Plan Program Grant, with the City matching 20%, or \$17,732.00, on October 19, 2010; and

WHEREAS, the City of Grand Island has received approval from the State of Nebraska for amendment and activity to such grant award; and

WHEREAS, the amendment to the work plan includes the following activities; a geospatial data collection survey; the construction of a bioswale and rain garden as a teaching tool in managing storm water runoff, inspections of detention cells throughout the City of Grand Island and a stormwater television commercial and radio Public Service Announcement (PSA).

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island, Nebraska, is hereby authorized to approve the amendment and activity for the 2010 Storm Water Management Plan Program Grant.

BE IT FURTHER RESOLVED that the Mayor is hereby authorized and directed to execute all related documents.

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Adopted by the City Council of the City of Grand Island, Nebraska, February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form ¤\_\_\_\_\_ February 22, 2012 ¤ City Attorney



## **City of Grand Island**

Tuesday, February 28, 2012 Council Session

## Item G10

#2012-48 - Approving Agreement with NDOR for US Highway 34 Improvements from US Highway 281 to South Locust Street

Staff Contact: John Collins, Public Works Director

## **Council Agenda Memo**

From:	Terry Brown, Manager of Engineering Services	
Meeting:	February 28, 2012	
Subject:	Approving Agreement with NDOR for US Highway 34 Improvements from US Highway 281 to South Locust Street	
Item #'s:	G-10	
Presenter(s):	John Collins, Public Works Director	

#### **Background**

All agreements must be approved by the City Council. The Nebraska Department of Roads (NDOR) is preparing plans for improvements to US Highway 34 from US Highway 281 to South Locust Street.

#### **Discussion**

The improvements to US Highway 34 that require City participation begin approximately 300' west of DeAnn Road and continue east to South Locust Street.

Improvements to this stretch of roadway consist of the following:

- Concrete Repair, as necessary;
- Milling and resurfacing the existing roadway and shoulders with asphaltic concrete;
- Widening the existing roadway to add left-turn lanes at the intersection with Blaine Street;
- New roadway lighting for the left-turn lanes;
- Widening of the Wood River Bridge between Garland and Blaine Street, with new guardrail installed;
- Removal and replacement of the Wood River overflow bridge just west of Blaine Street with a concrete box culvert; and
- Culverts under US Highway 34 will be extended between Blaine Street and Catfish Avenue.

The City of Grand Island will pay 50% of the preliminary engineering, construction and construction engineering total costs for the portion of the project that is within the City's corporate limits. The City's share is currently estimated to be \$124,889.00, with a total project estimate of \$3,083,007.88.

#### **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 the Mayor to sign the agreement.

#### **Sample Motion**

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

PROJECT NO. STPD-34-4(126) CONTROL NO. 41994 CITY OF GRAND ISLAND STATE OF NEBRASKA, DEPARTMENT OF ROADS IMPROVING HIGHWAY US-34 IN GRAND ISLAND

State of Nebraska, Department of Roads, hereinafter referred to as the "State municipal corporation of the State of Nebraska, hereinafter referred to as the "City," and the THIS AGREEMENT made and entered into by and between the City of Grand Island, യ

WITNESSETH:

agreement, and at the location as shown in Exhibit "A" which is attached and hereby made a part of this WHEREAS, it is the desire of the parties that a portion of Highway US-34 be improved

Funds," have been made available for the construction of improvements such as this, Grand Island, Nebraska, and funds administered by the State, hereinafter known as "State WHEREAS, said improvement is located within the designated urban area Q and

from local property assessments that exceed the City's share of project costs, WHEREAS, Federal Regulations provide that the City shall not profit or otherwise gain and

Exhibit "B", which is attached and hereby made a part of this agreement, and of the City Council dated the included in a project under the designation of STPD-34-4(126), as evidenced by the Resolution WHEREAS, it is the further desire of the City that the proposed urban construction . day of 2012, identified as be

WHEREAS, the description of the project is as follows:

from ರ (between Blaine Street and Catfish Avenue). The City will participate in 50% of the project cost concrete box culvert. Culverts under US-34 will be extended at R.P. 232+04 and R.P. 232+47 overflow bridge at R.P. 232+01 (just west of Blaine Street) will be removed and replaced with a lighting will be provided for the left-turn lanes. Garland and Blaine Streets will be widened and new guardrail will be installed. The Wood River existing roadway and shoulders with asphaltic concrete. add left-turn lanes at the intersection with Blaine Street at R.P. 232+03. New roadway Sta. 95+50 to 111+47 Right and from Sta. This project will consist of concrete repair as needed, milling and resurfacing the The Wood River Bridge at R.P. 104+00 to 111+47 Left. The existing roadway will be widened 231+85 between

highway between construction limits described in Exhibit "A" shall be accomplished according to parties hereto, it is hereby agreed that the construction or reconstruction of the aforesaid NOW THEREFORE, in consideration of these facts and the mutual promises of the

by this reference, made a part of this agreement. and in the manner provided by plans and specifications to be prepared by the State, which are

And the parties agree further as follows:

SECTION 1. The City agrees for the portion of the project within its corporate limits:

- (a) within the project limits: No Parking along entire length of project. To pass and enforce an ordinance as required effecting the following restrictions
- <u></u> being served will be required to stand on said public highway right of way. To prohibit business establishments being located in such a way that vehicles
- <u></u> authorized representative way within the limits of this project receive prior approval of the Director or his To require that all future entrances from private property to the public right of
- ē Highway Administration authorized by permit from the City and approved by the State and Federal keep the old and new right of way free of future encroachments, except thos maintenance and operation of the improvement planned in this project, and to other privately owned facility or thing that may interfere with the construction, advertising signs. To clear, at no cost to the State, the present right of way of this project of all The City also agrees, at no cost to the State, to clear any
- (e) attached and hereby made a part of this agreement. provided by Neb.Rev.Stat. §48-1101 through 48-1126, and all regulations "Contractor" in this exhibit shall mean the "City." Transportation, Title 49 CFR, Parts 21 and 27 as set forth in Exhibit "C" which is relative to nondiscrimination in federally assisted programs of the Department of abide by the provisions of the Nebraska Fair Employment Practices Act as If the City performs any part of the work on this project itself, the City agrees The reference to ರ
- (f) DISADVANTAGED BUSINESS ENTERPRISES
- (1) Policy

whole or in part with Federal funds under this agreement. the disadvantaged business requirements of 49 CFR Part 26 are opportunity to participate in the performance of contracts financed in enterprises as defined in 49 CFR Part 26 shall have the maximum made a part of and incorporated by this reference into this agreement. The City and State further agree to ensure that disadvantaged business Consequently, hereby

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(2) Disadvantaged Business Enterprises Obligation

contracts national origin, or sex in the award and performance of FHWA assisted contracts. enterprises have the maximum opportunity to compete for and perform accordance with 49 CFR Part 26 to ensure that disadvantaged business this regard, the City shall take all necessary and reasonable steps in in whole or in part with Federal funds provided under this agreement. to participate in the performance of contracts and subcontracts financed enterprises as defined in 49 CFR Part 26 have the maximum opportunity The City and State further agree to ensure that disadvantaged business The City shall not discriminate on the basis of race, color, Ξ

project. project agrees to adopt the disadvantaged business enterprise program of the State for the Federal-aid contracts the City enters into on this The City acting as a subrecipient of Federal-aid funds on this

the requirements set forth above shall constitute breach of appropriate agreement or contract by the State or such remedy as the State deems after the notification of the FHWA, may result in termination of the On any work performed by the City, failure of the City to carry out contract and

- (<u>0</u> concurrence shall require prior approval of the State with Federal Highway Administration driveways, median breaks, parking restrictions or any other traffic control items after the project is completed, including but not limited to access control Any changes in the roadway geometrics, either during project construction q
- (h) reestablishing said grades as shown in the plans without cost to the State established by City ordinance, that an amendment to said ordinance be passed To provide, where the proposed construction involves a change in the grades
- Ξ between made a part of this agreement. The project will be open to local traffic except duration of this project, as shown in Exhibit "D" which is attached and hereby during construction of the bridge and box culvert, when US-34 will be closed The State will detour US-34 traffic onto I-80 and South Locust Street for the Garland Street and Blaine Street. During this time US-34 will be open

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establish remediation State agree to inspect Locust Street prior to and following its use as a detour to detour in the condition as they existed prior to their use as a detour. The City and detour and to return said street to the City at the conclusion of their use as a to local traffic from US-281 to Garland Street and from Blaine Street to South Locust Street. The State agrees to maintain Locust Street during its use as യ

contemplated in this agreement the Nebraska Department of Roads' Policy for Accommodating ß Utilities on State Highway Right of Way issued by the State August, 1998, and its subsequent reference. heretofore, is hereby expressly made a part of and incorporated into this agreement by this Guide, revisions or additions Transportation, Federal Highway Administration, as supplemented, revised or updated SECTION 2. CFR 645A, "Utility ъ СЗ CFR 645B, By signing this agreement, the City agrees to adopt, on the improvement It is agreed and understood by the parties hereto that Federal-Aid Policy Guide Relocations, Adjustments and Reimbursement", and Federal-Aid Policy "Accommodation of Utilities" issued by the U.S. Department

The City further agrees:

- (a) shall be responsible to see that all such work is performed according to the rules excavation, pavement cuts or performing other activity upon said highway, and Roads of the State of Nebraska and regulations of, and by authority of a permit granted by the Department of Department of Roads before making or allowing to be made, To comply with Neb.Rev.Stat. §39-1361, and the rules and regulations of the any utility
- Θ To furnish or cause to be furnished all of the labor, tools, equipment and necessary by the construction of this project. materials for the rehabilitation of its municipally owned utilities as made
- <u></u> plans portion of the rehabilitation costs of facilities currently occupying private right of municipal utility rehabilitation costs within the corporate limits of the City will become a project cost, but that outside said City limits only the nonbetterment made necessary by this project. It is mutually understood that all nonbetterment nonbetterment costs for the rehabilitation of all municipally owned utilities as To prepare and submit to the State upon receipt of preliminary construction for this project a plan and estimate detailing anticipated location and

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way will be reimbursed.

The cost of nonbetterment rehabilitation of municipally

owned and operated utilities within the corporate limits is currently unknown be entered into prior to utility work beginning. utilities and the reimbursement to the City for the State's share of the costs of the agreement to provide for the design and construction of the nonbetterment municipally owned and operated utilities, the parties hereto agree to enter into an rehabilitation of municipally owned and operated utilities. Should this project necessitate the nonbetterment rehabilitation of any Said agreement shall

- SECTION 3. The City and State agree the City's project funding share will be as follows
- ω by the final audits and when the final costs have been determined by the State costs. the State. The final settlement between the State and the City will be made following construction, construction engineering and 50% of the unbilted preliminary engineering construction contract the State will invoice the City for their 50% share of the shall be well be higher or lower. \$124,889. Both parties recognize this is a preliminary estimate and the final cost may State/Federal funds. be used for the City's cost share. City will not relinquish Federal STP Funds for the City's cost share, only local funds will shown in Exhibit "E" which is attached and hereby made a part of this agreement. The project centerline and from Sta. 104+00 to Sta. 111+47 left of project centerline, as The City's funding share will be 50% of the preliminary engineering, construction and construction engineering costs for the project from Sta. 95+50 to Sta.111+47 right of State prior to letting and during the progression of the project. The City agrees to pay the State within 30 days after receipt of the invoice from considered as a part of the total cost of the project to be paid out of City and The State may, at its discretion, invoice the City for costs incurred Costs incurred by the State with respect to the entire project The City's cost share is currently estimated to be Upon award of a
- <u>o</u> the The City and State agree the final City Cost Share shall be determined in accordance terms and conditions set forth as follows: ರ
- City's construction cost share. The City's share of the preliminary engineering costs is project's total construction cost and then multiplying the resulting percentage times the engineering cost share by dividing the project's total preliminary engineering cost by the Ξ Preliminary Engineering: The State will determine the City's preliminary
- 3 currently estimated to be \$7,333 Construction: The City's share of the construction costs shall be determined by
- the State from bid prices and plan quantities, and any construction credits or additional

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percentage of the additional costs or savings that result from said Change. Prior to the City's share of the cost shall be adjusted in an amount equal to the City's cost share construction of this project. When a Change is ordered or approved by the State, the City's share of the construction costs is currently estimated to be \$106,821 issuing of a Change, the State will notify the City of any change in participation. "Change". The State will have sole authority to allow any Change required for orders, changed quantities and plan revisions, hereinafter collectively referred to as charges due. Construction Engineering: Construction credits or additional charges due will be made via change The State will determine the City's construction The g

the City's construction cost share. The City's share of the construction engineering the project's total construction cost and then multiplying the resulting percentage times costs is currently estimated to be \$10,735 engineering cost share by dividing the project's total construction engineering cost by ω

property assessments that exceed the appropriate local share on this project. This is subject to State review SECTION 4. The Federal share of this project shall be reduced by any project specific local

be revealed by at least monthly routine maintenance patrols, the routine cleaning of luminaires the State. City shall also provide all required maintenance for the said lighting system at no expense to permit any of the luminaires to remain inoperative for any unreasonable length of time. level shall be uniform and constant through the hours of darkness. system testing. during the construction period of the project for lamp stabilization, luminaire adjustment, and provided to the State's Project Manager for approval and acceptance. It will be the City's replacement of all defective and burned out lamps as may be discovered or reported or as may constructed as a part of this project, including the electrical energy which may be required electrical energy for all of the luminaires of the roadway lighting system which may b perform or contract for any work, they will develop a traffic control plan. SECTION 6. responsibility for the operation and maintenance of the approved traffic control plan on Uniform Traffic SECTION 5. Such required maintenance will include but not be limited to the repair or All traffic control devices will conform to the latest approved edition of the Manual The City agrees that it will, without any cost to the State, provide and pay for the Electrical energy shall be provided for dusk to dawn lighting, and the lighting **Control Devices** and the Nebraska Supplement thereto. The City shall not knowingly The plan will be If the City is The ਰ

Project No. STPD-34-4(126) Control No. 41994 City of Grand Island

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annually and also for repair or replacement of any part of the roadway lighting system which

way, will be owned by the City and are located within the corporate limits the aforesaid project, of all pipe lines, poles or other underground or overhead services not SECTION 10. SECTION 9. SECTION 8. to direct traffic and to use caution when working in the State right of way and provide appropriate traffic control those prescribed in the latest approved edition of the Manual of Uniform Traffic Control Devices this agreement. The City further agrees to comply with all traffic safety regulations, including purpose of operating, repairing and maintaining the said roadway lighting in accordance with the vicinity where such highway lighting will be constructed, for ingress and egress for the SECTION 7. parts shown in the approved plans or an approved equal as determined by the State Parts furnished by the City for the repair or maintenance of the lighting systems will be those who may have put the City to the expense of having to repair the damaged lighting installation further understood that the City shall be entitled to all damages collected from any wrongdoer all labor and other material necessary and will complete the repairs at no cost to the State. It is responsible for furnishing replacements for any equipment which is so damaged and will furnish electrical failure. might be necessary as a result of material deterioration, pole knockdown, mechanical or or correction or alteration in the public right of way, as necessary for the on file in the office of the Department of Roads, Lincoln, Nebraska (a) The The It is hereby agreed that plans and specifications for the above mentioned project The State hereby agrees: To prepare and convey to the City, prior to construction, plans for the proposed In the event any part of the lighting system is damaged, the City will be City and State will fully cooperate to cause the removal from public right of State hereby grants to the City a permit to use State highway right of way construction <del>ç</del> 3.

- <u></u> To advertise and conduct a letting and receive bids on the contemplated subject project
- State lowest responsible bidder and that said contract shall be signed only by the improvement. The City agrees that the State will award the contract to the
- <u></u> shown in the plans To supervise and cause completion of the construction of the improvement as
- ġ aforesaid project, not specifically assumed by the City To acquire all additional right of way and do all things, in pursuance <u>q</u> the

Project No. STPD-34-4(126) Control No. 41994 City of Grand Island

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SECTION 11. The parties here agree that the State shall make sole determination as to the scheduling of the construction for this project. IN WITNESS WHEREOF, the parties here on have caused these prosents to be executed by their proper officials thereunto duly authorized as of the dates below indicated. EXECUTED by the City this day of, 2012. City Clerk day of, 2012. EXECUTED by the State this day of, 2012. EXECUTED by the State this, day of, 2012. EXECUTED by the State this, day of, day of
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AND

ISLAND

# NONDISCRIMINATION CLAUSES

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

- Ξ <u>Compliance with Regulations</u>: The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- N subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A," "B," and "C" of Part 21 of the Regulations. disability, race, color, sex, religion or national origin in the selection and retention of and prior to completion of the contract work, will not discriminate on the basis of Nondiscrimination: The contractor, with regard to the work performed by it after award
- ω nondiscrimination on the basis of disability, race, color, sex, religion or national origin equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to work to be performed under a subcontract, including procurements of materials or all solicitations either by competitive bidding or negotiation made by the contractor for Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In
- 4 possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State Highway Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information. instructions. may be determined by the State Highway Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and access to its books, records, accounts, other sources of information, and its facilities as by the Regulations, or orders and instructions issued pursuant thereto, and will permit Information and Reports: Where any information required of a contractor is in the exclusive The contractor will provide all information and reports required
- <u></u>ତ determine to be appropriate, including but not limited to, nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may Sanctions for Noncompliance: In the event of the contractor's noncompliance with the
- (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
- ਭ cancellation, termination or suspension of the contract, in whole or in part
- ම enter into such litigation to protect the interests of the United States direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and in addition, the contractor may request the United States to or is threatened with, litigation with a subcontractor or supplier as a result of such may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, procurement as the State Highway Department or the Federal Highway Administration thereto. The contractor will take such action with respect to any subcontract or equipment, unless exempt by the Regulations, order, or instructions issued pursuant through (6) in every subcontract, including procurements of materials and leases of Incorporation of Provisions: The contractor will include the provisions of paragraph (1)

EXHIBIT "C"

**34-4(126)** C.N. 41994



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C.N. 41994 4(126)





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ISLAND

HALL COUNTY NEBRASKA

### RESOLUTION 2012-48

WHEREAS, the Nebraska Department of Roads is improving US Highway 34 from US Highway 281 to South Locust Street; and

WHEREAS, such improvements shall consist of concrete repair, as necessary; milling and resurfacing the existing roadway and shoulders with asphaltic concrete; widening the existing roadway to add left-turn lanes at the intersection with Blaine Street; new roadway lighting for the left-turn lanes; widening of the Wood River Bridge between Garland and Blaine Street, with new guardrail installed; removal and replacement of the Wood River overflow bridge just west of Blaine Street with a concrete box culvert; and culverts under US Highway 34 will be extended between Blaine Street and Catfish Avenue; and

WHEREAS, the City's share is estimated to be \$124,889.00; and

WHEREAS, an agreement with the Nebraska Department of Roads is required to proceed with this project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the agreement with the Nebraska Department of Roads for the improvement to US Highway 34 is hereby approved.

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	¤		_
ebruary 22, 2012	¤С	ity Attorne	y



# **City of Grand Island**

Tuesday, February 28, 2012 Council Session

# Item G11

**#2012-49 - Approving Amendment #2 to the Consent to Access for EPA Environmental Response Action Agreement** 

Staff Contact: John Collins, Public Works Director

# **Council Agenda Memo**

From:	Terry Brown, PW Manager of Engineering Services
Meeting:	February 28, 2012
Subject:	Approving Amendment #2 to the Consent to Access for EPA Environmental Response Action Agreement
Item #'s:	G-11
Presenter(s):	John Collins, Public Works Director

### **Background**

As part of the EPA program for remediation of the Parkview Superfund site groundwater contamination, the City entered into an agreement on July 14, 2009 with EPA to allow utilization of City right-of-way for the installation of several of the components of the remediation system and the installation groundwater monitoring wells that will be used to measure the effectiveness of the system once it goes into service next month.

On May 25, 2010, by Resolution #2010-138 the Grand Island City Council approved Amendment #1 to the original consent to access agreement, which allowed for the installation of additional groundwater monitoring wells in the City right-of-way in the area of the leading edge of the contamination plume.

### **Discussion**

The EPA has requested to install a water pipeline for groundwater cleanup to connect the new extraction well with the treatment system. This will also include control conduit for well system fiber optics and electrical power. The pipelines and conduit will be installed beneath City roads and within City controlled right-of-ways, consistent with all prior work performed at the Parkview Well Site in 2010.

Attached is the proprosed Amendment #2 to the Consent to Access for EPA Environmental repsonce Action ("Agreement") and a copy of both the original agreement and Amendment #1.

### **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 Amendment #2 to the Consent to Access for EPA Environmental Response Action ("Agreement") and authorize the Mayor to sign all related documents.

### **Sample Motion**

Move to approve Amendment #2 to the Consent to Access for EPA Environmental Response Action ("Agreement") and authorize the Mayor to sign all related documents.

# CONSENT TO ACCESS FOR EPA ENVIRONMENTAL RESPONSE ACTION ("AGREEMENT")

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# RIGHT of ENTRY

The City of Grand Island, Nebraska ("Grantor"), pursuant to the terms of this Agreement, ("EPA") and its employees, authorized representatives, agents and contractors to enter upon and perform environmental response actions upon certain properties owned by the City as generally set forth in Attachment A ("Property"). The Property that is the subject of this Agreement are within the Parkview Well Superfund Site ("Site") located in Grand Island, Hall County, hereby knowingly consents to and permits the United States Environmental Protection Agency Nebraska. Grantor understands that this grant of consent does not limit EPA's right of access under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, or any other law.

# PURPOSE OF ACCESS

Pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R Part 300, EPA has requested that Grantor allow EPA and its employees and representatives access to the Property for the purpose of investigating and/or responding to a release of hazardous substances, pollutants and/or contaminants at and from the Site.

# ENVIRONMENTAL RESPONSE ACTIONS TO BE TAKEN

The planned environmental response actions to be taken at the Property include, but are not limited to, the following:

- Perform geoprobe sampling involving the installation of temporary boreholes into the subsurface to allow collection of environmental samples; .
- monitoring wells, including the periodic collection of groundwater samples from those Install new groundwater monitoring wells, and monitor and maintain new and existing wells (generally depicted on Drawings C-16, C-19, and Figures 3-2, and 3-3);
- along North Road South (generally depicted on Figure 3-2). Injections to be performed using temporary boreholes that will be grouted after completion. Perform chemical oxidation injections to subsurface areas using geoprobe equipment
- Construct, operate and maintain one groundwater extraction well (EX-10) and associated well house, piping to convey contaminated groundwater to groundwater treatment plant, pipeline provision in anticipation of future City water main expansion, protective barricade around well house, and associated electrical lines (generally depicted on Drawings A-8, C-2, C-6 through C-10, and E-4). e

Construct, operate and maintain groundwater treatment plant and associated discharge piping and discharge control features, including necessary connection to the City's storm sewer inlet (generally depicted on Drawings A-4 through A-6, C-3 through C-5, and C-15).

General access for vehicles and support equipment to perform the activities identified above. •

# TERM OF AGREEMENT

This Consent to Access will be effective on the date signed by EPA, and will extend until the completion of all environmental response actions at the Site.

# AGREEMENT NOT TO INTERFERE

welfare or the environment, or allow others to use the Property in such manner during the term of this Consent. Grantor agrees to provide notice and a copy of this agreement to prospective the Property, or take any actions regarding the use of the Property which may endanger human or Property, tamper with any property that EPA may bring on to or add to the Site, which includes 2 purchasers, lessee, assigns, or grantees of the Property or any portion of it. Grantor agrees provide 30 day notice to EPA prior to any transfer of ownership rights to the Property. Grantor agrees not to interfere with any of the activities undertaken by EPA at the

the Property prior to the date of the Agreement. EPA agrees not to interfere with said easement Grantor agrees to notify EPA of any existing easement or license granted with respect to or license without the consent of the party who granted the easement or license.

Consent to Access, EPA agrees that reasonable measures will be taken to leave the Property in a condition reasonably similar to the condition the Property was in immediately prior to entry. RESTORATION OF PROPERTY. Upon the completion of the activities authorized by this

seq.). Nothing in this Agreement shall be construed to transfer title of any Property interest at the Site from Grantor to EPA. In addition, nothing in this Agreement is intended nor shall it be provided under the Federal Tort Claims Act, and the Federal Employees Compensation Act (28 construed to absolve Grantor of any claims or rights that EPA or any other governmental entity LIMITATION OF LIABILITY. EPA shall be liable for damages to the Property or injuries to U.S.C. Section 2671, et seq., 5 U.S.C. Section 8101, et seq., and 31 U.S.C. Section 3701, et persons which result from or are caused by the activities on the Property only to the extent may have against Grantor with respect to the Site. The undersigned Grantor has read this Agreement and understands that it grants permission to the EPA, its employees, authorized representatives, agents and contractors to enter undersigned Grantor certifies that he or she is fully authorized to enter into this Agreement, and The the above-described Property and perform certain activities for purposes of conducting the aforementioned environmental response actions and agrees to its terms and conditions. legally bind Grantor to all terms and conditions of this Agreement. 2

GRANTOR:

Hornady 107 stor MAME (type or print) TTTLE (type or print) Marcare & SIGNATURE 7- 14-09 DATE 15 J

Remechal Frajech Marcyer Vann Brevelley W. I NAME (type of print) 60% SIGNATURE DATE

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### <u>CONSENT TO ACCESS FOR EPA</u> ENVIRONMENTAL RESPONSE ACTION ("AGREEMENT")

### Amendment #1

### ENVIRONMENTAL RESPONSE ACTIONS TO BE TAKEN

The planned environmental response actions to be taken at the Property include, but are not limited to, the following:

Install new groundwater monitoring wells, and monitor and maintain new and existing monitoring wells, including the periodic collection of groundwater samples from those wells (generally depicted on Drawings C-16, C-19, and Figures 3-2, 3-3, and as generally shown on drawing titled – 3 Proposed Monitoring Well Locations added in 2010);

**GRANTOR:** 

Gomody SIGNATURE

<u>May 25, 2010</u> DATE

Margaret Hornady

NAME (type or print)

Mayor

TITLE (type or print)

DNS 5-18-10

Project Manager Remedia (Pr TITLE (type or print)

In. Al

SIGNATURE

**3** Proposed Monitoring Well Locations added in 2010





and exact GPS survey coordinates shall be provided to the City of Grand Island Public Works Director upon completion. Note: Monitoring well locations are approximate and may be relocated to avoid existing utilities. Documentation of well construction

### CONSENT TO ACCESS FOR EPA ENVIRONMENTAL RESPONSE ACTION ("AGREEMENT")

### Amendment #2

### ENVIRONMENTAL RESPONSE ACTIONS TO BE TAKEN

The planned environmental response actions to be taken at the Property include, but are not limited to, the following:

- Install new groundwater monitoring wells, and monitor and maintain new and existing monitoring wells, including the periodic collection of groundwater samples from those wells (generally depicted on Attachment "A"; and as generally shown on drawing titled "Parkview Well Superfund Site – Operable Unit 1; Proposed DPT and Monitoring Well Locations")
- Installation of water pipeline for United States Environmental Protection Agency (USEPA) groundwater cleanup to connect new extraction well located at 804 West Stolley Park Road with the existing treatment system; which is located at 2508 South Blaine Street (generally depicted on Attachment "B"; and as generally shown on drawing titled "Parkview Well Superfund Site – Operable Unit 1; Proposed Utility Routing for New Extraction Well [EX-50])

### IMPORTANT UTILITY COMMENTS TO NOTE

- Coordination of all utility locations will be the responsibility of the Environmental Protection Agency (EPA)
- There are 36", 42" & 48" storm sewer main lines on Stolley Park Road
- Sanitary sewer main lines run on Pioneer Boulevard; Stolley Park Road; east of Riverview Drive and cross August Street in the easement
- A ten (10') foot separation must be maintained from existing and proposed new water lines
- Water pipeline in connection with the proposed EPA project must be identified and marked as "Non-Potable"
- A Building permit must be obtained for the proposed well house
- While the City of Grand Island and EPA prefer the most direct route for the proposed water pipeline, which is north on Pioneer Boulevard and east on Stolley Park Road, costs associated with this route are significantly higher to the taxpayer; requiring placement of the proposed water pipeline through the impacted neighborhood West on Stolley Park Roads, south on August Street, west on Hagge Ave, south on William Street, west beneath city utility easement, under city parcel 2211 Pioneer Boulevard, and south on Pioneer Boulevard

GRANTOR:	GRANTEE:
SIGNATURE	SIGNATURE
DATE	DATE
NAME (type or print)	NAME (type or print)
TITLE (type or print)	TITLE (type or print)

TITLE (type or print)

TITLE (type or print)





### RESOLUTION 2012-49

WHEREAS, on July 14, 2009 the City entered into an agreement with EPA to allow utilization of City right-of-way for the installation of several of the components of the remediation system and the installation groundwater monitoring wells to be used to measure the effectiveness of the remediation system; and

WHEREAS, on May 25, 2010 the City entered into Amendment #1 to allow for the installation of additional monitoring wells; and

WHEREAS, as time has passed the groundwater contamination plume has continued to move in the aquifer; and

WHEREAS, EPA wishes to install a new extraction well, as well as a water pipeline for groundwater cleanup to connect the new extraction well with the treatment system.

WHEREAS, Amendment #2 to the original Consent to Access for EPA Environmental Response Action ("Agreement") is recommended to allow the project to proceed.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that Amendment #2 to the Consent to Access for EPA Environmental Response Action ("Agreement") is hereby approved.

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	¤ į	
February 22, 2012	¤	City Attorney



# **City of Grand Island**

Tuesday, February 28, 2012 Council Session

# Item G12

**#2012-50 - Approving Agreement with NDOR for 2012 Fracture Critical Bridge Inspections** 

Staff Contact: John Collins, Public Works Director

# **Council Agenda Memo**

From:	Scott Griepenstroh, PW Project Manager
Meeting:	February 28, 2012
Subject:	Approving Agreement with NDOR for 2012 Fracture Critical Bridge Inspections
Item #'s:	G-12
Presenter(s):	John Collins, Public Works Director

### **Background**

All agreements must be approved by the City Council. The Nebraska Department of Roads (NDOR) is willing to obtain Federal approval and funds, which provide for the inspection and re-load rating (re-load rating is not necessary if bridge condition remains the same) of the fracture critical bridges on its public roads.

### **Discussion**

The State is responsible for the inspection and evaluation of all State Highway System bridges, while the City is responsible for the inspection and evaluation of all bridges on streets and roadways within it's jurisdiction. Bridge inspections and load ratings are a requirement of the National Bridge Inspection Standards (NBIS) and the Nebraska Bridge Inspection Program (BIP). A BIP Manual was developed by the NDOR to set forth methods and proceduress that enable local public bridge owners to comply with the NBIS.

The State will be responsible for arranging for the inspection by consultants, for the City, on their fracture critical bridges. It is the intent of the parties that this agreement does not shift to the City any jurisdictional responsibility for bridges on the State highway system, and does not shift any duty to the State for jurisdictional responsibility of any bridges off of the State highway system.

The total cost of this work is currently estimated to be \$1,300.00, with the City's twenty (20) percent share being \$260.00. The City of Grand Island currently has only one Fracture Critical Bridge, which is located on Blaine Street approximately 250' north of US Highway 34.

Funding for such inspections will be from a combination of federal aid and local funds.

### **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 the Mayor to sign the agreement.

### **Sample Motion**

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

# AGREEMENT FOR CONSULTANT INSPECTION AND RE-LOAD RATING ON FRACTURE CRITICAL BRIDGES

PROJECT NO. BR-NBIS(95) CONTROL NO. 00872 CITY OF GRAND ISLAND STATE OF NEBRASKA DEPARTMENT OF ROADS STATEWIDE 2012 FRACTURE CRITICAL BRIDGE INSPECTIONS AND RE- LOAD RATINGS

đ referred to as the as the "State" THIS AGREEMENT, entered into by and between the City of Grand Island, hereinafter "City", and the State of Nebraska, Department of Roads, hereinafter referred

WITNESSETH

thereto, and Highway Administration, hereinafter for Federal-Aid Bridge Replacement funds by the Department of Transportation, WHEREAS, certain bridges on roads in said City have been designated call FHWA, Ξ. compliance with Federal laws as being eligible , Federal pertaining

roads, Title S not necessary if bridge condition remains the same) of the fracture critical bridges on its public 23 of the United States and WHEREAS Federal-Aid Bridge Replacement Funds have been made available by code, providing for the inspection and re-load rating (re-load l rating

inspection and re-load rating costs thereof, and mentioned code shall not exceed eighty (80) percent of the eligible WHEREAS, the Federal share payable on any project provided for by the above engineering for bridge

and code provide that the Federal share of the cost of such project shall be paid only to the State WHEREAS, regulations for carrying into effect the provisions of the above mentioned

actual project costs and this share shall be from City funds, and WHEREAS, the City's share of the proposed project shall be twenty (20) percent of the

State Federal funds for the proposed project, with the understanding that no Aid Bridge funds WHEREAS, the State is willing to obtain Federal approval of the proposed work and are to be expended on this project, , and State funds including

due pay participation are currently estimated to be \$260.00, but such costs may increase or decrease ਰ all project costs not paid for by Federal funds; WHEREAS, the City has earmarked and will place in its fiscal budget sufficient funds to variations between the estimated and actual project costs, such costs based on twenty (20) percent City and

made critical bridges a part of this agreement, WHEREAS, the City desires the inspection and re-load rating (if necessary) of the fracture , day of on its public roads, as evidenced by the Resolution of the City Council dated the and 2012, attached hereto, identified as Exhibit "A", and hereby

rating (if necessary) costs thereof not exceed eighty (80) percent of the eligible engineering for bridge inspection and re-load SECTION 1. NOW THEREFORE, in consideration of these facts, the parties hereto agree as follows: The State and the City agree that the Federal share payable on this project shall

highway system does not shift any duty to the State for jurisdictional responsibility of any bridges off of the State not shift to the City any jurisdictional responsibility for bridges on the State highway system, and the city, on their fracture critical bridges. It is the intent of the parties that this agreement does system. State will continue to have jurisdictional responsibility for all public bridges on the State highway necessary) of the fracture critical bridges that are due for inspection in 2012 in the City. The SECTION 3 necessary, and the City understands that no State funds will be expended for this project SECTION 2 Further, the State will be responsible for arranging for the inspection by consultants, for The The State agrees to cause to be performed the inspection and re-load rating State hereby agrees to present this project to the FHWA for its approval, Ê =;;

following publications: SECTION 4. The proposed work of the Consultant shall be performed in accordance with the

<u>.</u> AASHTO Manual for Bridge Evaluation (MBE) First Edition 2008

Ν AASHTO Standard Specifications for Highway Bridges, 17<sup>th</sup> Edition, 2002 (LFD)

ω Minimum Design Standards, 2008, Board of Public Roads Classifications and Standards

4 Safety Inspection of In-Service Bridges, 2004

Ω1 Fracture Critical Techniques for Steel Bridges, 2006

<u>о</u> Bridge Inspection Program Manual, 2010

7 Coding Guide for Structure Inventory and Appraisal, published by the State, March 2002

 $\infty$ AASHTO LRFD Bridge Design Specifications, 4th Edition, 2007

and Federal funds. entire project shall be considered as a part of the total cost of the project to be paid out of City and the final costs may well be higher or lower. twenty (20) percent share being \$260.00. SECTION 5 project, will not include any administrative cost or expenses of State administrative officials The total cost of this work is currently estimated to be \$1,300.00, with the City's It is also understood that the costs incurred by the State attributable to this Both parties recognize this is a preliminary estimate Costs incurred by the State with respect to the

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	Control No. 00872 2012 Fracture Critical Bridge Inspections
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Local Projects Secondary Roads Engineer	
	· · ·
STATE OF NEBRASKA DEPARTMENT OF ROADS Larry L. Legg	
, 2012.	EXECUTED by the State this day of
Mayor	City Clerk
<u>c</u>	
CITY OF COAND ISI AND	CUTED by the City this day of
as of the dates below indicated.	by their proper officials thereunto duly authorized as of the dates below indicated
o have caused these presents to be executed	IN WITNESS WHEREOF, the parties hereto have caused these
red by the State prior to such abandonment.	before completion, the City will pay all costs incurred by the State prior to such abandonment.
<b>A</b>	in the project or any portion thereof, the City is responsible for full project payment with no
if the Federal government refuses to participate	costs not paid for by Federal funds. Therefore, if t
s share of the total project costs shall be all	determined by the State. <u>SECTION 6</u> It is further understood that the City's
final audits and when final costs have been	between the State and City will be made following final audits
he billing from the State. The final settlement	to pay the State within thirty days after receipt of the
vill invoice the City \$260.00. The City agrees	Upon full execution of this agreement, the State will invoice the

	Signature of City Clerk
dopted	Resolution adopted, signed and billed as adopted Attest:
Seconded the Motion AbstainedAbsent	Board/Council Member Moved the adoption of said resolution MemberYesNoAt
	The City Council of the City of Grand Island, Nebraska:
Nebraska.	Adopted this day of, <u>2012</u> at
	Project No. BR-NBIS(95) Control No. 00872 Project Name: 2012 Statewide Fracture Critical Bridge Inspections
sign the attached I the NDOR.	Jay Vavricek, Mayor of the City of Grand Island is hereby authorized to sign the attached Engineering Services Agreement between the City of Grand Island and the NDOR.
ska that:	Be It Resolved: by the City Council of the City of Grand Island, Nebraska that
igineering Services ng (if necessary) services	Whereas: City of Grand Island and the NDOR wish to enter into an Engineering Services Agreement to provide fracture critical bridge inspection and re-load rating (if necessary) services for the Federal-aid project.
a transportation project, ng is charged with the e and local laws, rules, leral-aid project;	<ul> <li>Whereas: the Nebraska Department of Roads (NDOR) is developing a transportation project, on the behalf of the county, for which it intends to obtain Federal funds;</li> <li>Whereas: City of Grand Island as a sub-recipient of Federal-Aid funding is charged with the responsibility of expending said funds in accordance with Federal, State and local laws, rules, regulations, policies and guidelines applicable to the funding of the Federal-aid project;</li> </ul>
Resolution No.	Res
City of Grand Island	
FIONS	SIGNING OF AN ENGINEERING SERVICES AGREEMENT FOR FRACTURE CRITICAL BRIDGE INSPECTIONS

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RESOLUTION

### RESOLUTION 2012-50

WHEREAS, the Nebraska Department of Roads is willing to obtain Federal approval and funds, which provide for the inspection and re-load rating (re-load rating is not necessary if bridge condition remains the same) of the fracture critical bridges on its public roads; and

WHEREAS, the State will be responsible for arranging for the inspection by consultants, for the City, on their fracture critical bridges; and

WHEREAS, the total cost of the work is currently estimated to be \$1,300.00, with the City's twenty (20) percent share being \$260.00; and

WHEREAS, an agreement with the Nebraska Department of Roads is required to proceed with this project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the agreement with the Nebraska Department of Roads for the 2012 fracture critical bridge inspection is hereby approved.

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

\_ \_ \_

Adopted by the City Council of the City of Grand Island, Nebraska, February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form ¤\_\_\_\_\_ February 22, 2012 ¤ City Attorney



# **City of Grand Island**

Tuesday, February 28, 2012 Council Session

## Item G13

#2012-51 - Approving Bid Award for One (1) 2012 Solid Waste Transfer Trailer (Solid Waste Division)

Staff Contact: John Collins, Public Works Director

## **Council Agenda Memo**

From:	Jeff Wattier, Solid Waste Superintendent
Meeting:	February 28, 2012
Subject:	Approving Bid Award for One (1) 2012 Solid Waste Transfer Trailer (Solid Waste Division)
Item #'s:	G-13
Presenter(s):	John Collins, P.E., Public Works Director

### **Background**

On January 17, 2012 the Solid Waste Division of the Public Works Department advertised for a 2012 Model Solid Waste Transfer Trailer. Funds for the transfer trailer are in the approved 2011/2012 budget.

### **Discussion**

Two (2) bids were received and opened on February 2, 2012. The Solid Waste Division of the Public Works Department and the Purchasing Division reviewed the bids that were received. The transfer trailer bid by STECO Trailers of Morris, MN meets all of the specifications. This transfer trailer is a front-line piece of equipment that is utilized on a daily basis for hauling solid waste from the Transfer Station to the Landfill for disposal.

This transfer trailer will replace the 2001 model transfer trailer that is being traded in with this purchase. The 2001 model year transfer trailer that is being traded is eleven years old and is in need of a new walking floor, which would cost \$6,500 to \$8,000 to replace. The transfer trailer is in need of new tires, hydraulic hoses, brakes, and several other repairs are needed due to years of severe use in Transfer Station and Landfill operations.

Bidder	<b>Base Price</b>	Trade-In	Net Cost
STECO Trailers of Morris, MN	\$59,210	\$8,000	\$51,210
Wilkens Industries of Morris, MN	\$66,165	\$13,800	\$52,365

### **Alternatives**

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

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

### **Recommendation**

City Administration recommends that the Council approve the purchase of the solid waste transfer trailer from STECO Trailers of Morris, MN for the net cost of \$51,210.

### **Sample Motion**

Move to approve the purchase of the solid waste transfer trailer from STECO Trailers of Morris, MN for the net cost of \$51,210.
WHEREAS, the City of Grand Island invited sealed bids for one (1) 2012 Model Solid Waste Transfer Trailer for the Solid Waste Division of the Public Works Department, according to specifications on file with the Public Works Department; and

WHEREAS, on February 2, 2012 bids were received, opened and reviewed; and

WHEREAS, STECO Trailers of Morris, Minnesota submitted a bid in accordance with the terms of the advertisement of bids and specifications and all other statutory requirements contained therein, such bid being in the net amount of \$51,210.00; and

WHEREAS, STECO Trailer's bid is fair and reasonable for such item.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of STECO Trailer of Morris, Minnesota in the net amount of \$51,210.00 for one (1) 2012 Model Solid Waste Transfer Trailer is hereby approved as the lowest responsive and responsible bid.

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Adopted by the City Council of the City of Grand Island, Nebraska, February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form ¤\_\_\_\_\_ February 22, 20122 ¤ City Attorney



Tuesday, February 28, 2012 Council Session

## Item H1

**Consideration of Request from Salvador and Sandra Juarez for a Conditional Use Permit for a Parking Lot located at 2108 North Custer and Lot 9, Block 16, University Place** 

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

**Staff Contact: Craig Lewis** 



Tuesday, February 28, 2012 Council Session

### Item I1

#2012-52 - Consideration of Request from Javier Rodriguez dba El Trancaso, 415 West 4th Street for a Class "C" Liquor License

This item relates to the aforementioned Public Hearing item E-1.

**Staff Contact: RaNae Edwards** 

WHEREAS, an application was filed by Javier Rodriguez doing business as El Trancaso, 413 West 4th Street for a Class "C" Liquor License; and

WHEREAS, a public hearing notice was published in the *Grand Island Independent* as required by state law on February 18, 2012; such publication cost being \$15.78; and

WHEREAS, a public hearing was held on February 28, 2012 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 aboveidentified liquor license application contingent upon final inspections.
- \_\_\_\_\_ The City of Grand Island hereby makes no recommendation as to the aboveidentified liquor license application.
- \_\_\_\_\_ The City of Grand Island hereby makes no recommendation as to the aboveidentified 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, February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	¤
ebruary 22, 2012	¤ City Attorney



Tuesday, February 28, 2012 Council Session

### Item I2

# **#2012-53 - Consideration of FTE Amendment for the Wastewater Treatment Plant**

This item relates to the aforementioned Ordinance item F-4. Staff Contact: Brenda Sutherland

## **Council Agenda Memo**

From:	Brenda Sutherland, Human Resources Director
Meeting:	February 28, 2012
Subject:	FTE Amendment
Item #'s:	I-2 & F-4
Presenter(s):	Brenda Sutherland, Human Resources Director

#### **Background**

An FTE (full time equivalent) schedule is presented each year during the budget preparation presentations. An FTE schedule was approved by the City Council as part of the 2011/2012 budget and is printed in the budget book. Currently the City has an approved FTE schedule of 546.1384. A full time equivalent equals a forty hour per week employee or two thousand, eighty hours per year. The actual number of employees the City has is greater than the FTE count as there can be several part-time employees to cover the forty hour work week. The best example of this would be at the water park where we might hire more than one hundred people to fill eighteen FTEs.

#### **Discussion**

A lengthy process to review and evaluate the operations at the City's Wastewater Treatment Plant resulted in a decision by the Council to handle plant upgrades with internal staff as opposed to contracting with an outside vendor for the daily management of the plant. The Council approved Resolution 2012-41 (B) at the February 14, 2012 Council meeting. That Resolution approved the addition of two new positions at the City Wastewater Treat Plant. The two positions approved were the Wastewater Plant Engineer and The Wastewater Operations Engineer. Also approved was the funding for the positions as well as recommended operational upgrades. The proposed salary range for the Wastewater Plant Engineer is \$65,248.56 - \$93,650.70 and for the Wastewater Operations Engineer is \$62,816.00 - \$88,400.00.

An FTE Amendment is needed to approve the changes in the 2011/2012 budget FTE schedule and also to put into motion the Council directive in Resolution 2012-41 (B).

#### **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**

Recommend amending the City's current FTE schedule to reflect the addition of the Wastewater Plant Engineer and the Wastewater Operations Engineer.

#### **Sample Motion**

Move to approve amending the City's current FTE schedule to include the positions of Wastewater Plant Engineer and Wastewater Operations Engineer.

WHEREAS, the City Council approved the addition of two FTEs in Resolution 2012-41 (B) and additional funding to support these FTEs; and

WHEREAS, the two FTEs approved by the City Council are the Wastewater Plant Engineer and the Wastewater Operations Engineer; and

WHEREAS, the annual salary range for the Wastewater Plant Engineer is \$65,248.56 - \$93,650.70 and the annual salary range for the Wastewater Operations Engineer is \$62,816.00 - \$88,400.00 and these ranges shall move in accordance with salary range changes approved by the City Council; and

WHEREAS, the City Council approves amending the current FTE schedule that was approved as part of the 2011/2012 budget to include the two aforementioned positions.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, the City's FTE schedule is amended to include the addition of the Wastewater Plant Engineer and the Wastewater Operations Engineer.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, February 28, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form ¤ \_\_\_\_\_ February 24, 2012 ¤ City Attorney



Tuesday, February 28, 2012 Council Session

## Item I3

# **#2012-54 - Consideration of Redemption of Series 2001 Electric System Revenue Bonds**

This item relates to the aforementioned Ordinance item F-6.

**Staff Contact: Tim Luchsinger** 

### BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GRAND ISLAND, IN THE STATE OF NEBRASKA (THE "CITY"):

Section 1. That the following bonds of the City (the "Refunded Bonds") are hereby authorized to be irrevocably called for redemption on such date as provided in a Direction for Call (as defined below):

Electric System Revenue Bonds, Series 2001, date of original issue – June 27, 2001, in the principal amount of Twenty-five Million Four Hundred Five Thousand Dollars (\$25,405,000), numbered as shown on the books of the Trustee, Paying Agent and Registrar, becoming due and bearing interest as follows:

Principal Amount	Maturity Date	Interest Rate
\$ 4,610,000	August 15, 2012	5.000%
4,845,000	August 15, 2013	5.000
5,085,000	August 15, 2014	5.000
5,340,000	August 15, 2015	5.125
5,610,000	August 15, 2016	5.125

The Refunded Bonds are subject to redemption at any time on or after June 27, 2011, at the principal amount thereof plus accrued interest to date fixed for redemption, and said interest is payable semiannually. Said Refunded Bonds were authorized by an ordinance duly passed and approved by the Mayor and City Council of the City and were issued for the purpose of paying the costs of additions, extensions and improvements, including two 40-megawatt simple-cycle gas/oil fired turbines and related equipment and improvements, for the City's existing electric system.

Section 2. The Refunded Bonds are to be paid off at the corporate trust office of JPMorgan Chase & Co., successor in interest to Bank One Trust Company, National Association, Chicago, Illinois, (the "Paying Agent") as trustee, paying agent and registrar for the Refunded Bonds.

Section 3. The Mayor or City Clerk of the City (each, an "Authorized Officer") are each individually hereby authorized at any time on or after the date of this resolution to direct the irrevocable call of the Refunded Bonds on behalf of the City and such direction, when made in writing (the "Direction for Call"), shall constitute the action of the City without further action of the Mayor and City Council of the City. The Call Date shall be set for such date as determined in the Direction for Call, and such direction shall be made by an Authorized Officer not later than August 15, 2012, after which the Authorized Officers shall have no authority to make any such determination hereunder without further action of the Mayor and City Council of the City and this resolution shall be of no further force and effect.

Section 4. An executed Direction for Call shall be filed with JPMorgan Chase & Co., as the successor to Bank One Trust Company, National Association, which delivery is necessary in

order for the call of the Refunded Bonds to be effective hereunder. JPMorgan Chase & Co., shall be directed in the Direction for Call to mail notice to all registered owners of the Bonds to be redeemed not less than thirty days prior to the date fixed for redemption in accordance with resolution authorizing the issuance of the Refunded Bonds and to take all other actions deemed necessary in connection therewith. The Authorized Officers are hereby authorized to take any and all additional action necessary to effect the call of the Refunded Bonds for redemption as described in this resolution.

ADOPTED this 28th day of February, 2012.

[SEAL]

Jay Vavricek, Mayor

RaNae Edwards, City Clerk



Tuesday, February 28, 2012 Council Session

### Item J1

#### **Approving Payment of Claims for the Period of February 15, 2012 through February 28, 2012**

The Claims for the period of February 15, 2012 through February 28, 2012 for a total amount of \$2,447,517.64. A MOTION is in order.

Staff Contact: Jaye Monter



Tuesday, February 28, 2012 Council Session

## Item X1

### Strategy Session with Respect to Litigation which is Imminent as Evidenced by Communication of a Claim or Threat of Litigation to or by the Public Body

The City Council may hold a closed or Executive Session as permitted by Neb. Rev. Stat. Sec. 84-1410. Closed sessions may be held for, but shall not be limited to such reasons as:

- 1. Protection of the public interest.
- 2. Needless injury to the reputation of an individual.
- 3. Strategy sessions with respect to

a. collective bargaining,

- b. real estate purchases,
- c. pending litigation, or
- d. imminent or threatened litigation.
- 4. Discussion regarding deployment of security personnel or devices.

5. For the Community Trust created under Sec. 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster.

**Staff Contact: Robert Sivick** 



Tuesday, February 28, 2012 Council Session

### Item X2

# **Strategy Session with Respect to Collective Bargaining (IBEW Local 1597 - Wastewater, Service/Clerical, Finance, Utilities)**

The City Council may hold a closed or Executive Session as permitted by Neb. Rev. Stat. Sec. 84-1410. Closed sessions may be held for, but shall not be limited to such reasons as:

- 1. Protection of the public interest.
- 2. Needless injury to the reputation of an individual.
- 3. Strategy sessions with respect to
  - a. collective bargaining,
  - b. real estate purchases,
  - c. pending litigation, or
  - d. imminent or threatened litigation.
- 4. Discussion regarding deployment of security personnel or devices.

5. For the Community Trust created under Sec. 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster.

Staff Contact: Brenda Sutherland



### Tuesday, February 28, 2012 Council Session

## Item X3

# **Strategy Session with Respect to Collective Bargaining (IAFF Local 647)**

The City Council may hold a closed or Executive Session as permitted by Neb. Rev. Stat. Sec. 84-1410. Closed sessions may be held for, but shall not be limited to such reasons as:

- 1. Protection of the public interest.
- 2. Needless injury to the reputation of an individual.
- 3. Strategy sessions with respect to
  - a. collective bargaining,
  - b. real estate purchases,
  - c. pending litigation, or
  - d. imminent or threatened litigation.
- 4. Discussion regarding deployment of security personnel or devices.

5. For the Community Trust created under Sec. 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster.

Staff Contact: Brenda Sutherland



Tuesday, February 28, 2012 Council Session

## Item X4

#### **Strategy Session with Respect to Pending Litigation**

The City Council may hold a closed or Executive Session as permitted by Neb. Rev. Stat. Sec. 84-1410. Closed sessions may be held for, but shall not be limited to such reasons as:

- 1. Protection of the public interest.
- 2. Needless injury to the reputation of an individual.
- 3. Strategy sessions with respect to
  - a. collective bargaining,
  - b. real estate purchases,
  - c. pending litigation, or
  - d. imminent or threatened litigation.
- 4. Discussion regarding deployment of security personnel or devices.

5. For the Community Trust created under Sec. 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster.

**Staff Contact: Robert Sivick**