

---

# City of Grand Island



**Tuesday, May 22, 2012**  
**Council Session Packet**

---

**City Council:**

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

**Mayor:**

Jay Vavricek

**City Administrator:**

Mary Lou Brown

**City Clerk:**

RaNae Edwards

---

**7:00 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 - Invocation - Pastor Brad Jenkins, Calvary Baptist Church, 3221 West 13th 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.



# **City of Grand Island**

**Tuesday, May 22, 2012**

**Council Session**

## **Item E1**

**Public Hearing on Request from Casey's Retail Company dba  
Casey's General Store #2882, 1404 West 2nd Street for an Addition  
to Class "B-86850" Liquor License**

**Staff Contact: RaNae Edwards**

# **Council Agenda Memo**

**From:** RaNae Edwards, City Clerk

**Meeting:** May 22, 2012

**Subject:** Public Hearing on Request from Casey's Retail Company dba Casey's General Store #2882, 1404 West 2<sup>nd</sup> Street for an Addition to Class "B-86850" Liquor License

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

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

## **Background**

Casey's Retail Company dba Casey's General Store #2882, 1404 West 2<sup>nd</sup> Street has submitted an application for an addition to their Class "B-86850" Liquor License. The request includes an addition to the east side of the existing building comprising of approximately 54'6" x 16'8".

## **Discussion**

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, and Health 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 the application.

### **Sample Motion**

Move to approve the application for an addition to Casey's Retail Company dba Casey's General Store #2882, 1404 West 2<sup>nd</sup> Street Liquor License "B-86850" contingent upon final inspections.



# **City of Grand Island**

**Tuesday, May 22, 2012**

**Council Session**

## **Item E2**

**Public Hearing on Acquisition of Utility Easement - 315 Wyandotte Street - School District of Grand Island**

**Staff Contact: Tim Luchsinger**

# **Council Agenda Memo**

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

**Meeting:** May 22, 2012

**Subject:** Acquisition of Utility Easement – 315 Wyandotte Street  
School District of Grand Island

**Item #'s:** E-2 & G-9

**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 the School District of Grand Island, located at 315 Wyandotte Street, in the City of Grand Island, Hall County, in order to have access to install, upgrade, maintain, and repair power appurtenances, including lines and transformers.

## **Discussion**

The transformer serving the electrical feed of Starr School needs to be replaced. At the same time, the Department wishes to add a loop feed to the transformer for reliability. The easement will provide for the existing primary cable and the looped cable to the transformer. This work will be completed during the summer when school is not in session.

## **Alternatives**

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

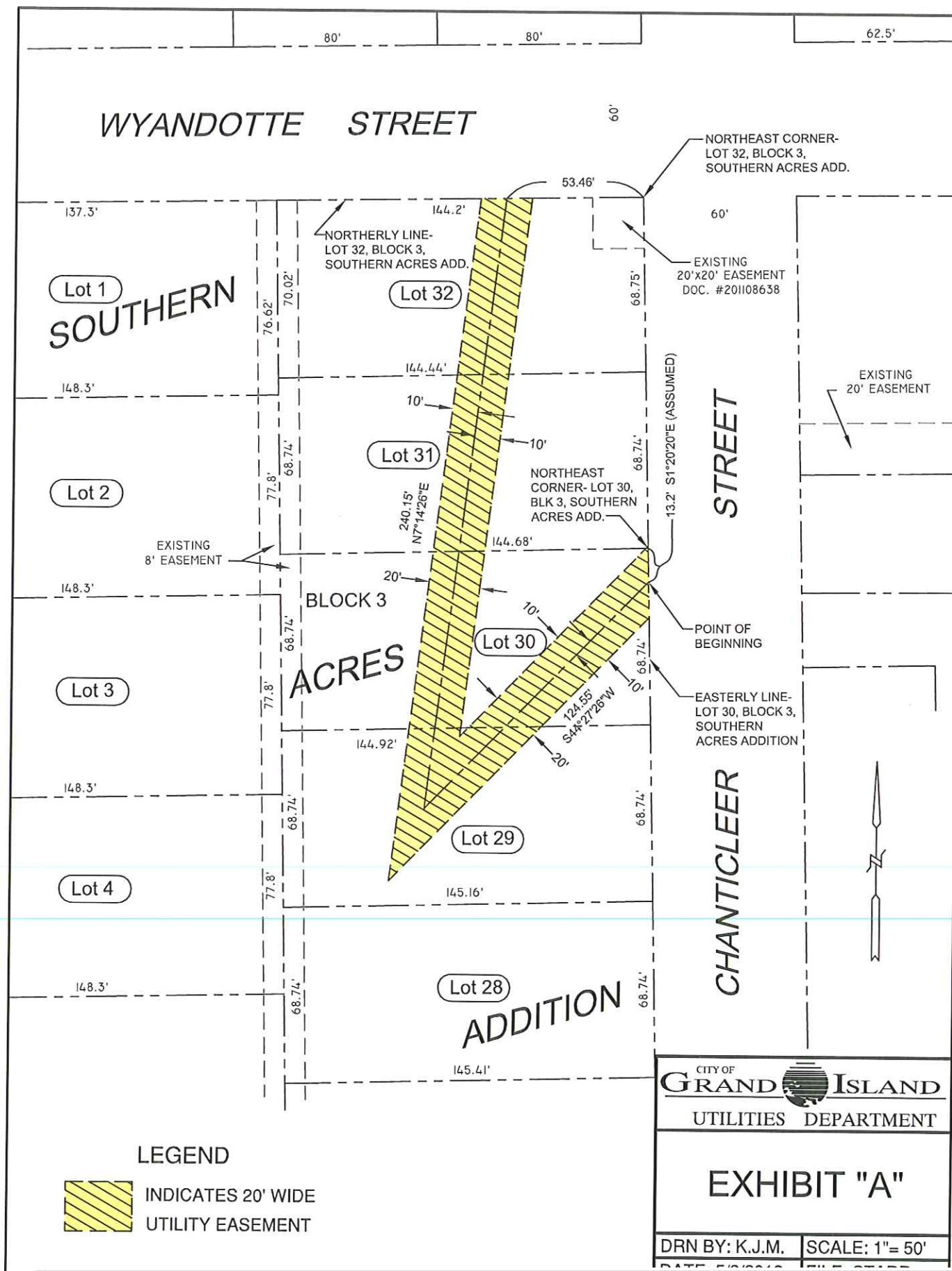
1. Make a motion to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

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

## **Sample Motion**

Move to approve acquisition of the Utility Easement.





# **City of Grand Island**

**Tuesday, May 22, 2012**

**Council Session**

## **Item E3**

**Public Hearing on Request to Rezone Property Consisting of 2.86 Acres Located East of Pennsylvania and South of Idaho Avenue and Lot 5-7 of Woodland Park Eleventh Subdivision from R1-Suburban Density Residential to R2-Low Density Residential**

**Staff Contact: Chad Nabity**

# **Council Agenda Memo**

**From:** Regional Planning Commission

**Meeting:** May 22, 2012

**Subject:** Rezone Properties located East of Pennsylvania and South of Idaho Avenue from R1 Suburban Residential Zone to R2 Low Density Residential Zone

**Item #'s:** E-3 & F-1

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

## **Background**

Concerning a request to rezone properties consisting of 2.86 acres located east of Pennsylvania and south of Idaho Avenue and Lots 5-7 of Woodland Park Eleventh Subdivision from R1 Suburban Residential Zone to R2 Low Density Residential.

## **Discussion**

At the regular meeting of the Regional Planning Commission, held May 2, 2012 the above item was considered following a public hearing.

O'Neill opened the Public Hearing.

Nabity explained this was a request to rezone approximately 2.86 acres of land east of Independence Avenue along Idaho Avenue and south of Vermont Avenue including lots 5 & 6 of Woodland Park 11<sup>th</sup> Subdivision, from R1 Suburban Density Residential to R2 Low Density Residential, in the City of Grand Island. The purpose of this rezoning request is to allow the subdivision of this property in a manner that is consistent with the current market conditions.

Les Ruge, didn't like the proposed changes, stating he felt the lot sizes would be too small, being backed up to a LLR (Large Lot Residential) zone.

There was no other discussion.

O'Neill closed the Public Hearing.

A motion was made by Eriksen and seconded by Bredthauer to approve the rezone from R1 Suburban Residential Zone to R2 Low Density Residential.

A roll call vote was taken and the motion passed with 8 members present and 6 voting in favor (Amick, O'Neill, Hayes, Eriksen, Bredthauer and Snodgrass) and 2 voting against (Ruge, Reynolds).

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

### **Alternatives**

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

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

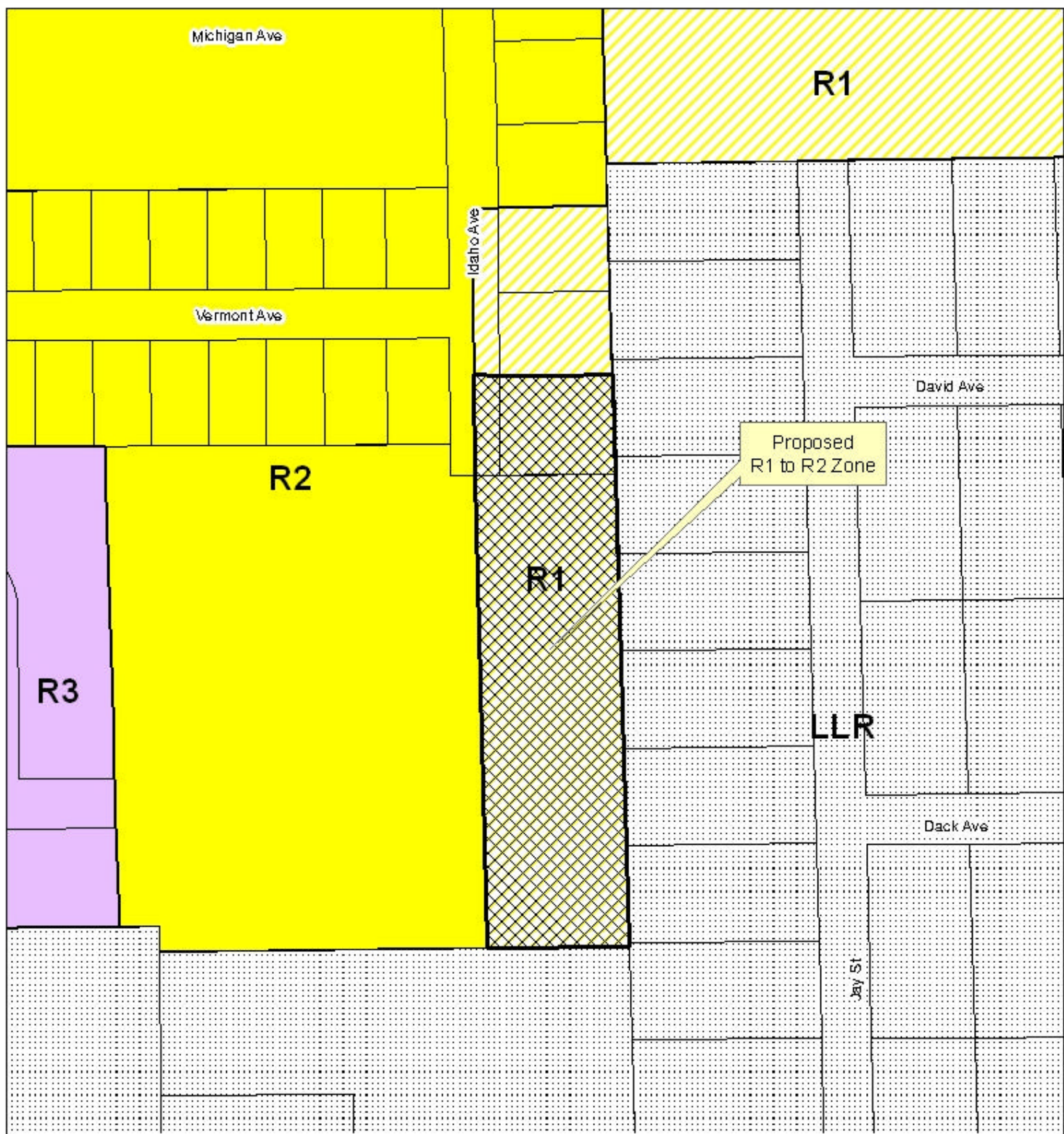
### **Recommendation**

City Administration recommends that the Council approve the proposed changes as recommended.

### **Sample Motion**



Approve the rezone request for property proposed for platting as Woodland Park 12<sup>th</sup> Subdivision.





# Requested Zoning



-  From R1 : Suburban Residential Zone
-  to R2 : Low Density Residential Zone

Scale : NONE

C-14-2012GI



GRAND ISLAND PLANNING COMMISSION  
1111 1st Ave. S.E. Grand Island, NE 68801  
781.633.1234



April 20, 2012

Dear Members of the Board:

**RE: Rezoning – Change of Zoning. Rezone request changing property from R1 Suburban Residential Zone to R2 Low Density Residential, located in the City of Grand Island.**

For reasons of Section 19-923 Revised Statutes of Nebraska, as amended, there is herewith submitted a rezone request to the Grand Island Zoning Map from R1 Suburban Residential Zone to R2 Low Density Residential, located in part of the West Half of the Southeast Quarter (W1/2, SE1/4) of Section Two (2), Township Eleven (11) North, Range Ten (10) West of the 6<sup>th</sup> P.M. in the City of Grand Island, in Hall County Nebraska. As shown on the enclosed map.

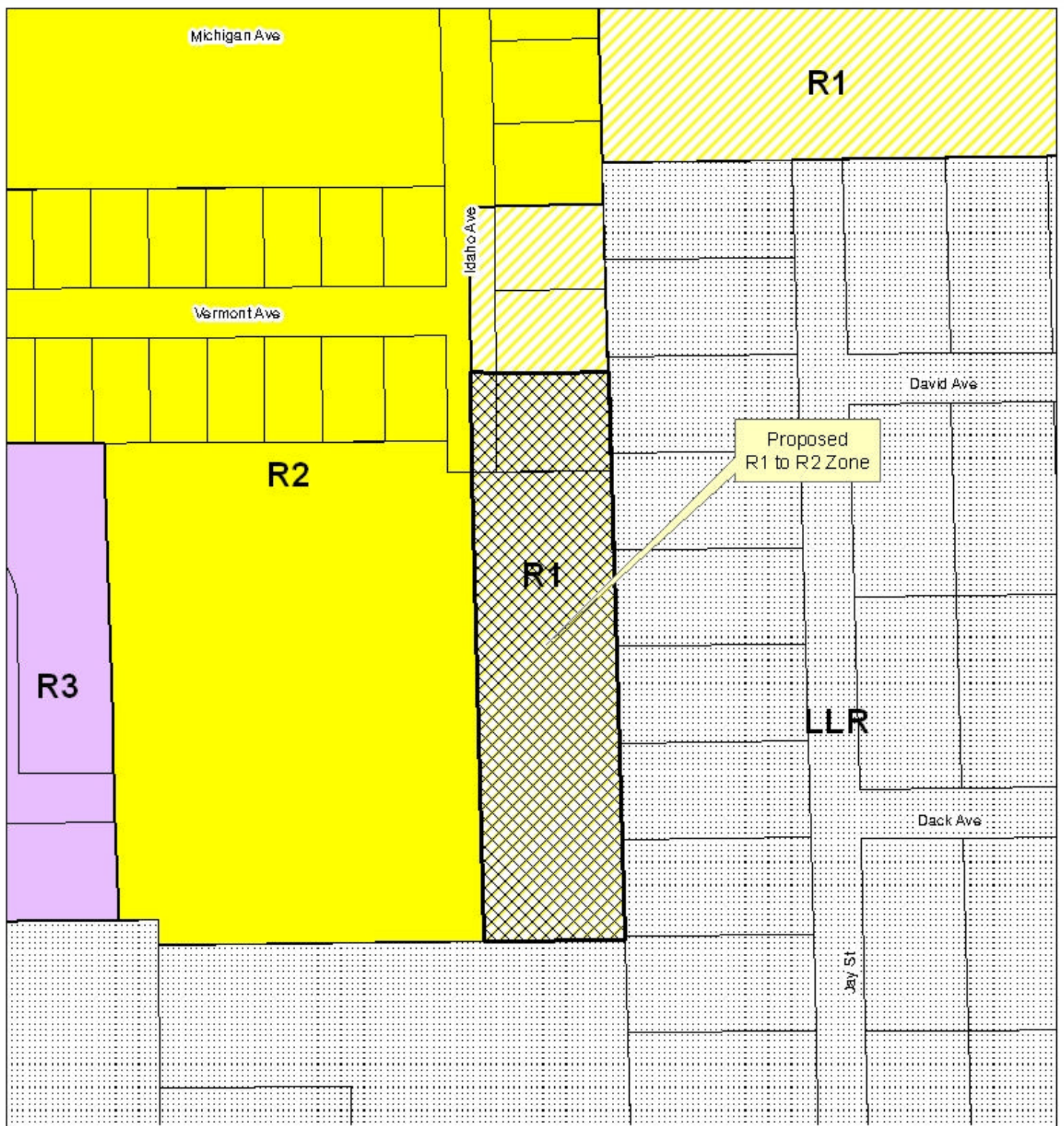
You are hereby notified that the Regional Planning Commission will consider this zoning change at the next meeting that will be held at 6:00 p.m. on May 2, 2012 in the Council Chambers located in Grand Island's City Hall.

Sincerely,

Chad Nabity, AICP  
Planning Director



cc: City Clerk  
City Attorney  
City Public Works  
City Building Department  
City Utilities

This letter was sent to the following School Districts 1R, 2, 3, 8, 12, 19, 82, 83, 100, 126.



# Requested Zoning



-  From R1 : Suburban Residential Zone
-  to R2 : Low Density Residential Zone

Scale : NONE  
C-14-2012GI



GRAND ISLAND PLANNING COMMISSION  
1111 1st Ave. S.E. Grand Island, NE 68801  
781.333.3333  
www.grandislandplanning.com



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item E4

**Public Hearing on Request to Rezone Property Consisting of 5.789 Acres located East of New Mexico Avenue and North of Idaho Avenue of Woodland Park Thirteenth Subdivision from R1-Suburban Density Residential to R2-Low Density Residential**

Staff Contact: Chad Nabity

# **Council Agenda Memo**

**From:** Regional Planning Commission

**Meeting:** May 22, 2012

**Subject:** Rezone Properties located East of New Mexico Avenue and North of Idaho Ave from R1 Suburban Residential Zone to R2 Low Density Residential Zone

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

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

## **Background**

Concerning a request to rezone properties consisting of 5.789 acres located east of New Mexico Avenue and north of Idaho Avenue of Woodland Park Thirteenth Subdivision from R1 Suburban Residential Zone to R2 Low Density Residential Zone.

## **Discussion**

At the regular meeting of the Regional Planning Commission, held May 2, 2012 the above item was considered following a public hearing.

O'Neill opened the Public Hearing.

Nabity explained this was to rezone approximately 5.789 acres of land east of Independence Avenue along New Mexico Avenue, from R1 Suburban Density Residential to R2 Low Density Residential, in the City of Grand Island. The purpose of this rezoning request is to allow the subdivision of this property in a manner that is consistent with the current market conditions.

Chad Essex, 2827 Idaho Avenue, Grand Island spoke of the smaller lots and would this impact resale of his property.

Ruge again spoke against the closing of Idaho Ave to the north and the smaller lots.

Eriksen who used to live on Idaho Ave spoke in favor of the closing to help slow traffic would be a plus in the residential area.

O'Neill closed the Public Hearing.

A motion was made by Eriksen and seconded by Bredthauer to approve the rezone from R1 Suburban Residential Zone to R2 Low Density Residential.

A roll call vote was taken and the motion passed with 8 members present and 6 voting in favor (Amick, O'Neill, Hayes, Eriksen, Bredthauer and Snodgrass) and 2 voting against (Ruge, Reynolds).

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

### **Alternatives**

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

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

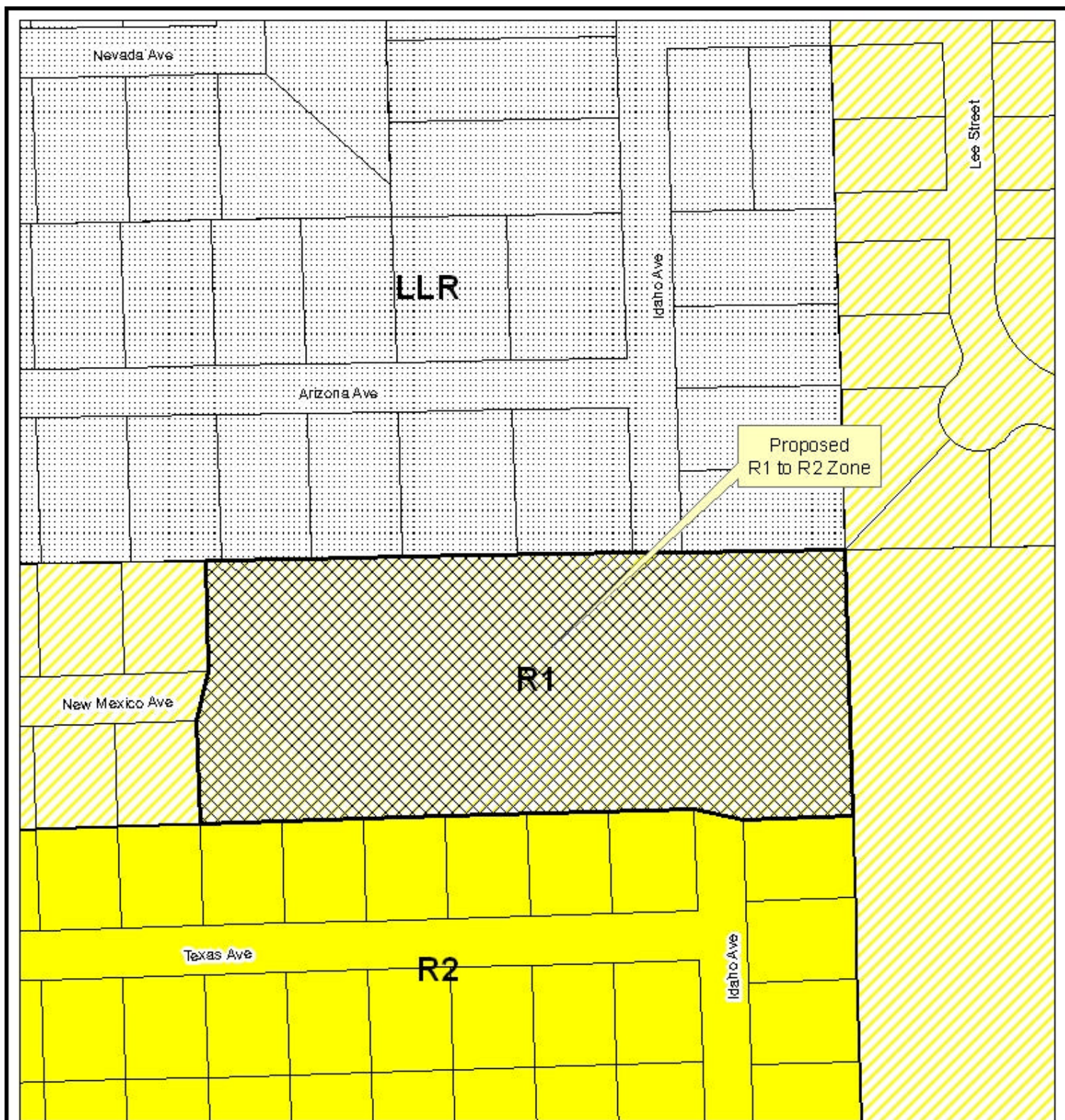
### **Recommendation**

City Administration recommends that the Council approve the proposed changes as recommended.

### **Sample Motion**



Approve the rezone request for property proposed for platting as Woodland Park 13<sup>th</sup> Subdivision.





# Requested Zoning



-  From R1 : Suburban Residential Zone
-  to R2 : Low Density Residential Zone

Scale : NONE

C-15-2012GI



Grand Island Planning Commission  
1111 1st Ave. S.E. Grand Island, NE 68801  
Phone: 402.338.1234 Fax: 402.338.1235  
www.grandislandne.org

April 20, 2012

Dear Members of the Board:

**RE: Rezoning – Change of Zoning. Rezone request changing property from R1 Suburban Residential Zone to R2 Low Density Residential, located in the City of Grand Island.**

For reasons of Section 19-923 Revised Statutes of Nebraska, as amended, there is herewith submitted a rezone request to the Grand Island Zoning Map from R1 Suburban Residential Zone to R2 Low Density Residential, located in part of the West Half of the Southeast Quarter (W1/2, SE1/4) of Section Two (2), Township Eleven (11) North, Range Ten (10) West of the 6<sup>th</sup> P.M. in the City of Grand Island, in Hall County Nebraska. As shown on the enclosed map.

You are hereby notified that the Regional Planning Commission will consider this zoning change at the next meeting that will be held at 6:00 p.m. on May 2, 2012 in the Council Chambers located in Grand Island's City Hall.

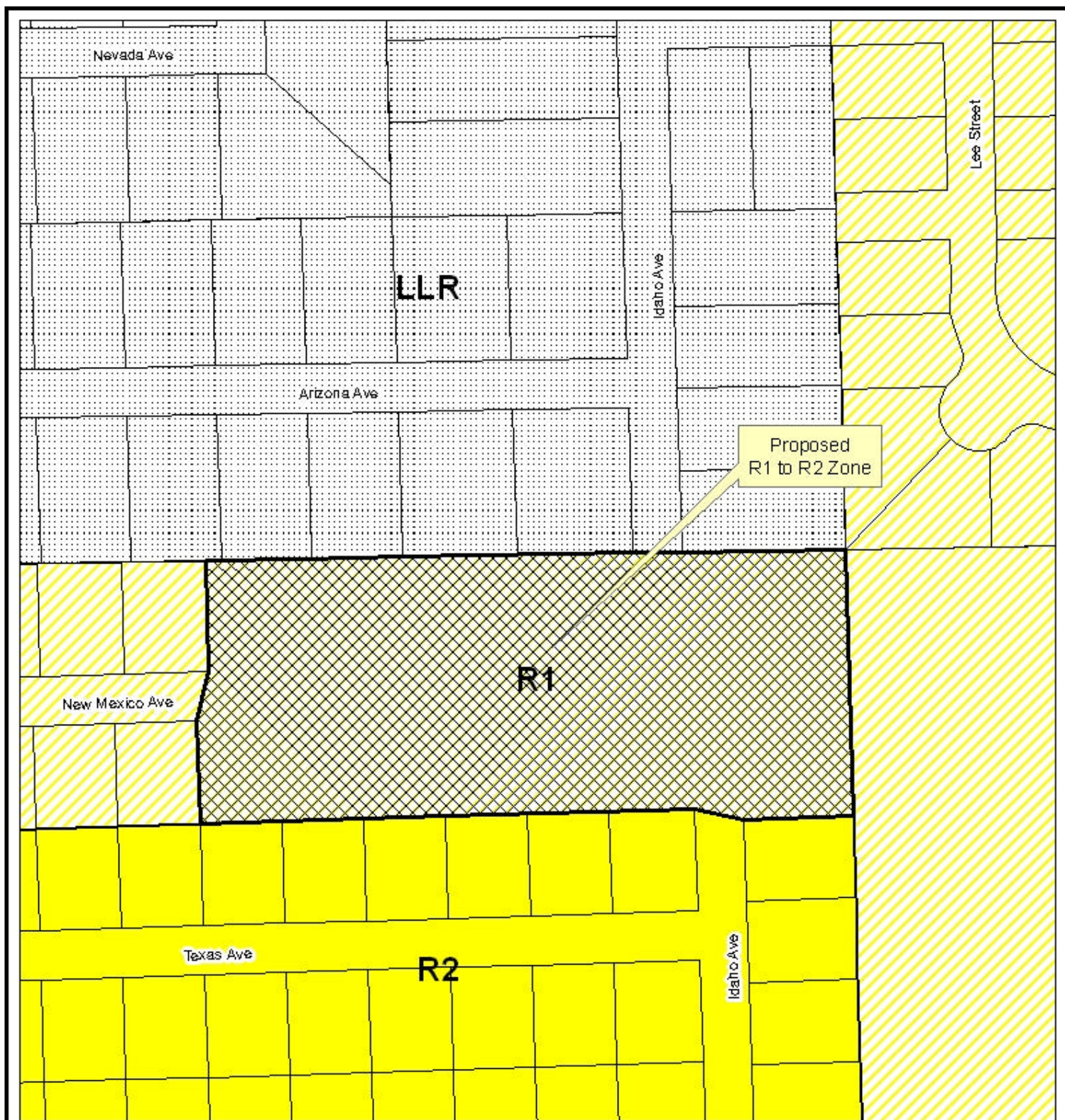
Sincerely,

Chad Nabity, AICP  
Planning Director

cc: City Clerk  
City Attorney  
City Public Works  
City Building Department  
City Utilities



This letter was sent to the following School Districts 1R, 2, 3, 8, 12, 19, 82, 83, 100, 126.





# Requested Zoning



-  From R1 : Suburban Residential Zone
-  to R2 : Low Density Residential Zone

Scale : NONE  
C-15-2012GI



Grand Island Planning Commission  
1000 Grand Island Blvd., Suite 100  
Grand Island, NE 68881





# **City of Grand Island**

**Tuesday, May 22, 2012**

**Council Session**

## **Item E5**

### **Public Hearing on Proposed Economic Development Program**

**Staff Contact: Mary Lou Brown, City Administrator**

# **Council Agenda Memo**

**From:** Mary Lou Brown, City Administrator

**Meeting:** May 22, 2012

**Subject:** LB840, Economic Development Plan

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

**Presenter(s):** Mary Lou Brown, City Administrator

## **Background**

Almost ten years ago, the citizens of Grand Island joined together to take advantage of legislation that allowed our community to leverage existing resources in order to create the Grand Island Economic Development Program whose purpose is to retain and create jobs in our city.

By all accounts the program has been incredibly successful. Even better, the momentum we have generated is only just beginning.

Other communities in the state have looked to Grand Island as a leader in the economic development arena and we are proud to have served as a model for taking steps to encourage jobs and investment. It is imperative that we continue to move forward before they catch up!

The legislation that serves as the basis for this program requires voter approval every ten years. In order to continue the progress that has taken place, the citizens of Grand Island need to once again support this program at the ballot box.

Now, more than ever, cities need to be proactive about economic development. The health of Grand Island is directly tied to our economy. This program is important if our community wants to grow and add employment opportunities because it provides a strong foundation that allows us to increase investments in our community and puts us in a position to compete for businesses, not only statewide, but on a national level as well.

The Grand Island Economic Development Program has proved to be a community tool that encourages and stimulates quality job growth, attracts permanent investment and broadens the tax base, all of which leads to additional opportunities for all citizens.

Grand Island's potential is limitless. We can, and should expect to invite high paying jobs, meaningful capital investment and redevelopment efforts that complement existing industries, expand our economy and benefit taxpayers.

The most important thing we can do for our Grand Island is to retain and create jobs and investment. That is what the Grand Island Economic Development Program is all about.

## **Discussion**

Included are a copy of the proposed Economic Development Program, ballot language for the November 2012 general election and the resolution.

A study session was held on this topic May 1, 2012. In addition to clean up items, the following are the substantive changes made to the Program document following the study session:

- 1) Section I, sixth full paragraph: The City Council President is now included as a liaison to the Citizen Advisor Review Committee.
- 2) Section IV (B): This section now reads as follows: "A qualifying business must be located within the city limits or the two mile planning and zoning jurisdiction of the City and applicants located within the County Industrial Tracts must be willing to request annexation to be eligible. Any exceptions to this policy must be granted by the City Council."
- 3) Section V, (D): The reference to the EDC has been removed and replaced with "as set forth by the approved agreement".
- 4) Section V, (G): A reference to the City Council has been added at the end of the second sentence of the section.
- 5) Section VI, first paragraph: The first sentence has been revised to read "The Program will be funded from all legally permissible sources of revenue. Funds generated..."
- 6) Section VI, first paragraph: The word "property" has been added to clarify the reference to "an amount in excess of four-tenths of one percent of actual valuation".
- 7) Section VII (C): The phrase "if available" has been added to the introductory comment: "For each application the GIAEDC will obtain, if available, the following..."
- 8) Section VII, (C): The second item in the list has been revised to read "Credit Report".
- 9) Section VII, (C), number 6: The following has been added to what was there "...including evaluating the existence of and the declaration of any conflicts of interest concerning the applicant's eligibility."
- 10) Section VIII, number 3: The phrase "GIAEDC Board of Trustees" has been added along with "GIAEDC" in the phrase, "...staff assisting the GIAEDC President..."
- 11) Section IX, number 1: This has been revised to reference only the Citizen Advisory Review Committee. Reference to the role of the City Council President and the City Administrator is now contained in Section I.
- 12) Section X, (C): The words "at the City's expense" have been added in regard to the work the City Attorney will complete.
- 13) Section XI, number 4: The wording in the first paragraph has been changed to mirror that used earlier in the document, "Must be located within the City limits or the two

mile planning and zoning jurisdiction of the City unless an exception is granted by City Council.

### **Alternatives**

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

1. Move to approve the Economic Development Program and corresponding November 2012 general election ballot language
2. Postpone the issue to a future meeting.
3. Take no action.

### **Recommendation**

City Administration recommends that the Council approve the Economic Development Program and corresponding November 2012 general election ballot language.

### **Sample Motion**

Move to approve the Economic Development Program and corresponding November 2012 general election ballot language.

## CITY OF GRAND ISLAND, NEBRASKA ECONOMIC DEVELOPMENT PROGRAM

Almost ten years ago, the citizens of Grand Island joined together to take advantage of legislation that allowed our community to leverage existing resources in order to create the Grand Island Economic Development Program whose purpose is to retain and create jobs in our city.

By all accounts the program has been incredibly successful. Even better, the momentum we have generated is only just beginning.

Other communities in the state have looked to Grand Island as a leader in the economic development arena and we are proud to have served as a model for taking steps to encourage jobs and investment. It is imperative that we continue to move forward before they catch up!

The legislation that serves as the basis for this program requires voter approval every ten years. In order to continue the progress that has taken place, the citizens of Grand Island need to once again support this program at the ballot box.

Now, more than ever, cities need to be proactive about economic development. The health of Grand Island is directly tied to our economy. This program is important if our community wants to grow and add employment opportunities because it provides a strong foundation that allows us to increase investments in our community and puts us in a position to compete for businesses, not only statewide, but on a national level as well.

The Grand Island Economic Development Program has proved to be a community tool that encourages and stimulates quality job growth, attracts permanent investment and broadens the tax base, all of which leads to additional opportunities for all citizens.

Grand Island's potential is limitless. We can, and should expect to invite high paying jobs, meaningful capital investment and redevelopment efforts that complement existing industries, expand our economy and benefit taxpayers.

The most important thing we can do for our Grand Island is to retain and create jobs and investment. That is what the Grand Island Economic Development Program is all about.

### **Need and Purpose**

The economic development program is a community tool that encourages and stimulates the growth of quality jobs, attracts permanent investment, broadens the tax base, and diversifies the region's economic base that will lead to new opportunities and options for all citizens, ultimately improving the quality of life for all taxpayers in Grand Island and the surrounding region.

Grand Island's success for long term growth and prosperity has come with increased diversification with an overall goal of increasing per capita and median household incomes

throughout Grand Island and Hall County. Taking into consideration the very low unemployment rates that Hall County has experienced in recent years, our focus will be on attracting capital intensive instead of labor intensive businesses – businesses that hire skilled laborers to complement million-dollar production equipment and machinery. In addition, we will be targeting businesses that will provide employment opportunities for those who are underemployed in Hall County and those seeking professional positions.

## **SECTION I. GENERAL COMMUNITY AND ECONOMIC DEVELOPMENT STRATEGY**

The Nebraska Legislature, in the Local Option Municipal Economic Development Act Neb. Rev. Statutes 18-2701, et seq., has made the following legislative findings: (1) there is a high degree of competition among states and municipalities in our nation in their efforts to provide incentives for businesses to expand or locate in their respective jurisdictions; (2) municipalities in Nebraska are hampered in their efforts to effectively compete because of their inability under Nebraska law to respond quickly to opportunities or to raise sufficient capital from local sources to provide incentives for business location and expansion decisions which are tailored to meet the needs of the local community; (3) the ability of a municipality to encourage business location and expansion has a direct impact not only upon the economic well-being of the community and its residents but upon the whole State as well; and (4) there is a need to provide Nebraska municipalities with the opportunity of providing assistance to business enterprises in their communities, whether for expansion of existing operations or creation of new businesses, by the use of funds raised by local taxation when the voters of the municipality determine that it is in the best interests of their community to do so.

The City of Grand Island faces stiff competition to recruit businesses to the community and to retain businesses that not only are presently operating in the community but also are considered anchors of the economic vitality of the City.

Prior to the passage of the Grand Island Economic Development Program, the City, through the Economic Development Corporation, competed as best it could to bring new business and new well-paying jobs to the community, but frankly had less ability to compete by not having available the tools granted by the Local Option Municipal Economic Development Act. The City believed that not having the ability to directly fund economic development activities in the past may have cost jobs and capital investment which otherwise would have been realized.

With the adoption of the economic development program, the City of Grand Island was able to directly contribute to economic development projects and thereby compete successfully for location of manufacturing facilities and other businesses to our community and retain those excellent employers currently within our community. The well-paying jobs and talented employees employed in these fields are critical to Grand Island. Those jobs are among the highest paying in the community and they attract the most capable and talented people in the work force.

The Local Option Municipal Economic Development Act became effective June 3, 1991, and authorizes cities and villages to appropriate and spend local sales tax and property tax revenues for certain economic development purposes. In 2011 the Nebraska Legislature added language to the act to allow other sources of revenue to be utilized including: funds generated from municipally owned utilities or grants, donations, or state and federal funds received by the city. An economic development program formulated by the City to implement this legislation is subject to the vote of the people.

The core of the process involves the formulation of a proposed plan for a local economic development program. The program forms the foundation for the expenditure of local revenues for economic development. As outlined in the legislation, a Citizen Advisory Review Committee appointed by the Mayor and approved by the City Council was created to advise, review and recommend proposals. This committee would continue in place with the new plan. The Committee will be comprised of seven members. All members must be registered voters in the City of Grand Island. It is recommended that professionals in the fields of accounting, banking and finance, business owners and business professionals be included on the Citizen Advisory Review Committee. At least one member of the Committee shall have expertise or experience in business, finance and accounting. Members may be removed in the same manner as appointed, subject to City Council approval. The term of four members will end in even numbered years and the term of the remaining three members will end in odd numbered years. Eligibility to continue service beyond the initial term is based on City Council approval. No member shall be an elected or appointed City Official, an employee of the City, a participant in a decision making position regarding expenditures of program funds, an official or employee of any qualifying business receiving financial assistance under the Program or an official or employee of any financial institution participating directly in the Program. Both the City Council President and the City Administrator or designee will serve as Liaison to the Citizen Advisory Review Committee. All Citizen Advisory Review Committee meetings are subject to open meeting laws. A quorum of four members is needed to officially hold a meeting.

The Citizen Advisory Review Committee (Section 18-2715) shall: (a) review the economic development program's function and progress at quarterly meetings and advise the City Council with regard to the program; and (b) report to the City Council on its findings and suggestions at a public hearing called for that purpose, at least once in every six-month period after the effective date of the ordinance.

An Economic Development Program has been prepared for submission, first to the City Council and, upon Council approval, to the voters of Grand Island. The City intends to use this tool to support economic development within the City.

## **SECTION II. STATEMENT OF PURPOSE DESCRIBING GENERAL INTENT AND PROPOSED GOALS**

The general intent and goal of the Grand Island Economic Development Program is to provide jobs to the citizens of Grand Island, Nebraska, by encouraging and assisting local businesses to expand, create jobs and invest capital. An additional goal is to recruit businesses which results in creation of jobs and expansion of the tax base. The impact of the Program will be based on the

results attained by the approved applicants. The following are the measurements: jobs created and retained by the approved applicants as measured at the end of ten years, the dollars invested by the approved applicants in fixed assets and business equipment over the ten years and the growth in valuation of the approved applicants' real property. Each applicant will be considered on its merits, but priority will be given to jobs created and/or retained at or above average wage and benefits for the community.

### **SECTION III. TYPES OF ECONOMIC ACTIVITIES THAT WILL BE ELIGIBLE FOR ASSISTANCE**

#### **A. Definition of Program**

Economic Development shall mean any project or program utilizing funds derived from the Program which funds will be expended primarily for the purpose of providing direct financial assistance to a qualifying non-retail business, the payment of related costs and expenses, and/or through a revolving loan fund. The purpose of the Program is to increase employment opportunities, business investment within the community and greater economic viability and stability.

#### **B. Eligible Activities**

The Economic Development Program may include, but shall not be limited to, the following activities:

- 1) A revolving loan fund from which performance based loans will be made to non-retail qualifying businesses on a match basis from the grantee business and based upon job creation and/or retention, said jobs to be above the average wage scale for the community.
- 2) Public works improvements and/or purchase of fixed assets, including potential land grants or real estate options essential to the location or expansion of a qualifying business or for capital improvements when tied to job creation criteria or when critical to retention of jobs of a major employer within the community, which equity investment may be secured by a Deed of Trust, Promissory Note, UCC filing, personal and/or corporate guarantees or other financial instrument.
- 3) The provision of technical assistance to businesses, such as preparation of financial packages, survey, engineering, legal, architectural or other similar assistance and payment of relocation or initial location expenses.
- 4) The authority to issue bonds pursuant to the Act.
- 5) Grants or agreements for job training.
- 6) Interest buy down agreements or loan guarantees.



- 7) Other creative and flexible initiatives to stimulate the economic growth in the Grand Island area (activities which may be funded through the Economic Development Program or General Fund as authorized by Section 13-315 R.R.S.).
- 8) Commercial/industrial recruitment and promotional activities.
- 9) Payments for salaries and support of City staff or the contracting of an outside entity to implement any part of the Program.
- 10) End destination tourism related activities.
- 11) Reduction of real estate property taxes for City of Grand Island to stimulate local economy.
- 12) Direct loans or grants to qualifying businesses for fixed assets, working capital or both.

#### **SECTION IV. DESCRIPTION OF TYPES OF BUSINESSES THAT WILL BE ELIGIBLE**

- A. A qualifying business shall mean any corporation, partnership, limited liability company or sole proprietorship that derives its principal source of income from any of the following:
  1. The manufacturer of articles of commerce;
  2. The conduct of research and development;
  3. The processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce;
  4. The sale of services in interstate commerce;
  5. Headquarters facilities relating to eligible activities as listed in this section;
  6. Telecommunications activities; or
  7. End destination tourism-related activities.
- B. A qualifying business must be located within the City limits or the two mile planning and zoning jurisdiction of the City (18-2709) and applicants located within the County Industrial Tracts must be willing to request annexation to be eligible. Any exceptions to this policy must be granted by the City Council.
- C. Any other business deemed a qualifying business through future action of the Legislature.

#### **SECTION V. REVOLVING LOAN FUND/ PERFORMANCE BASED LOANS**

- A. The amount of funds available for any single project shall not exceed the amount of funds available under the Economic Development Program during the project term, nor shall it provide for more than fifty percent (50%) of total project costs. An applicant must provide participation and evidence of participation through private funding as distinguished from federal, state, or local funding in the minimum amount of fifteen percent (15%) equity

investment. The right is reserved to negotiate the terms and conditions of the loan with each applicant, which terms and conditions may differ substantially from applicant to applicant.

- B. The interest rate shall be negotiated on an individual basis. The term shall not exceed fifteen (15) years for loans used for real estate and building assets and not to exceed seven (7) years for loans involving any other asset category such as furniture, fixtures, equipment or working capital. Security for loans will include, but will not be limited to, Promissory Notes, a Deed of Trust, UCC filings and personal and/or corporate guarantees as appropriate and may be in a subordinate position to the primary commercial or government lender.
- C. The amount of funds available for any project in excess of \$50,000 will be disbursed to the applicant in a defined schedule.
- D. If the loan is approved as performance based, a qualifying business may be approved to recapture on a grant basis all or a portion of the loan amount as set forth by the approved agreement based upon job creation or retention and economic impact of the project to the community.
- E. A loan repayment schedule providing for monthly, quarterly or annual payments will be approved in conjunction with project approval. Repayments will be held in the LB-840 Economic Development fund for future projects as approved.
- F. The City Administrator or his/her designee is responsible for auditing and verifying job creation and retention and determines grant credits toward any loans made. No grant credits are available unless pre-approved in the initial application and project approval and no grant credits are available beyond the level initially approved.
- G. The Revolving Loan Fund and its portfolio of loan funds will be audited annually by a selected firm of certified public accountants. The audits will be funded by the Economic Development Fund and the findings will be presented to the Citizens' Review Committee and the City Council.
- H. The City Administrator will be the Program Administrator. The City Administrator may appoint a designee with the consent of the Mayor. The Finance Director will be responsible for the financial and auditing portions of the plan.

## **SECTION VI. SOURCE OF FUNDING**

The Program will be funded from all legally permissible sources of revenue. Funds generated from the Grand Island Utilities shall be used for utility-related purposes or activities associated with the economic development program, including, but not limited to, load management, energy efficiency, energy conservation, incentives for load growth, line extensions, land purchase, site development, and demand side management measures. The City shall not appropriate from the general fund for approved Economic Programs, in any year during which such programs are in existence, an amount in excess of four-tenths of one percent of actual property valuation of the City of Grand Island in the year in which the funds are collected, and further, will be subject to

the limitation that no city of the First Class shall appropriate more than two million dollars in any one year. The City of Grand Island shall appropriate \$750,000 in some combination of General Fund and Electric Utility Fund and any Federal or State Grants and any donations annually for the Economic Development Program. If, after five full budget years following initiation of the approved Economic Development Program, less than fifty percent of the money collected from local sources of revenue is spent or committed by contract for the Economic Development Program, the governing body of the City shall place the question of the continuation of the City's Economic Development Program on the ballot at the next regular election.

**A. Time Period for Collection of Funds**

Annual funding for the program will be \$750,000. These funds will be allocated commencing with the FY 2014 budget year, beginning October 1, 2013 and will continue for 10 years. The annual amount of \$750,000 will be divided each year into incentive and administrative/promotion authorized expense levels. The portion allocated to administrative/promotion will be paid in four quarterly payments to the GIAEDC who administers the program on behalf of the city.

**B. Time Period for Existence of the Program**

The Economic Development Program will be in effect beginning October 1, 2013 and will continue for 10 years.

**C. Proposed Total Collections from Local Sources**

The total amount of City General Fund revenues to be committed to the Economic Development Fund Program for 10 years is \$7,500,000.

**D. Basic Preliminary Proposed Budget**

It is anticipated that the proposed annual total budget of \$750,000 will be allocated to the Economic Development Fund.

**SECTION VII. APPLICATION PROCESS FOR FINANCIAL ASSISTANCE TO BUSINESSES**

**A. Application Process and Selection of Participants:**

Businesses seeking assistance will be required to:

1. Complete an application which may be obtained from the GIAEDC or the City of Grand Island.
2. Submit the completed application together with all information as set out below to the GIAEDC or the City of Grand Island. The GIAEDC Board of Trustees will review, along with the Program Administrator, the application and supporting information. The board will make a determination: a) as to the eligibility of the application and organization making the application; b) verify the accuracy of the information

provided; c) take action as to deny the application and proposed agreement or forward it to the Citizen Review Committee to approve or deny the application and proposed agreement or forward it to the City Council for action. An overview of the proposed application shall contain sufficient information to make an informed decision yet maintain confidentiality of information that, if released, could cause harm to such business or give unfair advantage to competitors.

#### B. Information Required:

The qualifying applicant shall provide the following information before any application is considered by the GIAEDC Board of Trustees:

1. A business description verifying that the business satisfies program goals and intentions and is an eligible project and company
2. A business plan for the project
3. Income statements covering the last three years and pro forma for the next three years
4. Financing requirements and commitments from financial institutions, investors, etc., relating to the project/purpose being funded
5. A list of key management, employees and their skills and experience related to the project

#### C. Verification Process:

For each eligible application the GIAEDC will obtain, if available, the following reports and complete the listed examinations:

- 1). Credit check
- 2). Credit Report
- 3). Examine information required
- 4). Examine internal records
- 5). Obtain oral and written verification of application information
- 6). Other investigations as may be deemed necessary including evaluating the existence of and the declaration of any conflicts of interest concerning the applicant's eligibility.

Once the information has been compiled, the Plan Administrator will review the application and related information. Additional information may be requested at this time from the applicant.

### **SECTION VIII. PROCESS TO ENSURE CONFIDENTIALITY OF BUSINESS INFORMATION RECEIVED**

In the process of gathering information about a qualifying business, the GIAEDC and City may receive information about the business that is confidential and, if released, could cause harm to such business or give unfair advantage to competitors. The GIAEDC and City shall endeavor to maintain the confidentiality of business records that come into its possession.

To protect businesses applying for assistance and to encourage them to make full and frank disclosure of business information relevant to their application, the GIAEDC and City has or will take the following steps to ensure confidentiality of the information it receives:

- 1) City Code §38-10 has been enacted to make such information confidential and punishes disclosure in violation of State or City law by any City elected or appointed officials, City employees, GIAEDC employees, and members of the Citizen Advisory Review Committee;
- 2) The GIAEDC office will maintain the files and will be primarily responsible for their safekeeping and any distribution of information contained therein; and
- 3) Require personnel involved in the Program Review, including GIAEDC President, GIAEDC Board of Trustees staff assisting the GIAEDC President, Citizen Advisory Review Committee, and City staff, to sign statements of confidentiality regarding all personal and private submittals by qualified businesses.

## **SECTION IX. ADMINISTRATION SYSTEM FOR ECONOMIC DEVELOPMENT PROGRAM**

### **A. Program Administration**

- 1). The GIAEDC will administer the program on behalf of the City. If that organization were to no longer exist, the City reserves the right to administer the Program itself or name a new agent who would perform the administration functions of the Program.  
The Citizen Advisory Review Committee will hold quarterly meetings to review the functioning and process of the Economic Development Program and advise the City Council with regard to the Program. The Citizen Review Committee will track participating businesses' employment figures for two years if said businesses employ persons in other Nebraska communities. (Section 18-2709)
- 2). The Program Administrator, in cooperation with the GIAEDC President, will review on a quarterly basis, the progress of ongoing projects to ensure the qualifying businesses are complying with the terms of any approved project.
- 3). The Program Administrator, in cooperation with the GIAEDC President, will advise the Mayor and City Council on a semi-annual basis regarding the status of ongoing activities in the Economic Development Program.
- 4). A 3% fee will be retained by the City of Grand Island for program administration.

### **B. Revolving Loan Program Administrator**

1. Provide to the City Council on a quarterly basis an account of the status of:
  - a. Each outstanding loan.
  - b. Program income.
  - c. Quarterly updates of current investments of unexpended funds (Section 18-2720)
2. Keep records on accounts and compile reports that include:
  - a. Name of borrower
  - b. Purpose, date, amount and basic terms of loan.
3. Payments made to date and current balance due (Section 18-27200)

4. Regularly monitor each loan's status and, with cooperation from the City Council and primary lender(s), take appropriate action on any delinquent loans (Section 18-2720)

## **SECTION X. PROCESS TO ASSURE LAWS, REGULATIONS AND REQUIREMENTS ARE MET BY THE CITY AND QUALIFYING BUSINESSES**

The City will assure that all applicable laws, regulations and requirements are met by the City and the qualifying businesses that will receive assistance as follows:

### **A. Program Review**

The Ordinance establishing the Program shall provide for the ongoing existence of a Citizen Advisory Review Committee to:

- 1). Review the functioning and progress of the Economic Development Program at quarterly meetings as set forth by ordinance and to advise City Council with regard to the Program, and
- 2). Report to the City Council on its findings and suggestions at a public hearing called for that purpose at least once in every six-month period after the effective date of the ordinance.
- 3). Maintain confidentiality of all business information supplied by applicants pursuant to City Code §38-10.

### **B. Monitor Participating Businesses**

The Program Administrator, in cooperation with the GIAEDC President or appointed contract loan administrator, will conduct reviews on a quarterly basis to ensure that qualifying businesses are following the appropriate laws and regulations and meeting the terms and conditions of assistance.

### **C. Monitor Regulatory Changes**

The City Attorney will be responsible for keeping the City informed of relevant changes in the law that could affect the Economic Development Program and will review Agreements, Deeds, Leases, Deeds of Trust, Promissory notes, security documents, personal and/or corporate guarantees and other documents relating to specific projects or to the Program as a whole.

The City Attorney will prepare, at the City's expense, all legal and binding agreements for potential City Council approval.

D. The City shall provide for an annual, outside, independent audit of its Economic Development Program by a qualified private auditing business.

## **SECTION XI. PURCHASE OF REAL ESTATE OR OPTION TO PURCHASE**

If and when real estate is to be purchased or optioned by the City under the Program, it should meet the following general criteria:

- 1). Be properly zoned with no excessive easements, covenants, or other encumbrances;
- 2). Should conform and be able to be re-zoned to comply with the City's or County's Comprehensive Plan;
- 3). Should have commercial or industrial development potential within a ten-year period; and
- 4). Must be located within the City limits or the two mile planning and zoning jurisdiction of the City unless an exception is granted by City Council.

Any decision to purchase land will be made in a manner consistent with that used to approve applications for financial assistance as detailed in Section VII. Any proposal to purchase land must be approved by the GIAEDC Board, the Citizen Review Committee and finally, the City Council. The proceeds from the future sale of such land would be returned to the Economic Development Program Fund for reuse for any activities eligible in the Program or for additional land purchases.

## **SECTION XII. INVESTMENT OF ECONOMIC DEVELOPMENT FUND**

The City will establish a separate Economic Development Program Fund. All funds derived from local sources of revenue for the Economic Development Program, any earnings from the investment of such funds, any loan payments, any proceeds from the sale by the City of assets purchased by the City under its Economic Development Program, or other money received by the City by reason of the Economic Development Program shall be deposited into the Economic Development Fund. No money in the Economic Development Program Fund shall be deposited in the General Fund of the City except as provided by statute. A 3% administrative fee will be retained by the City for program administration. The City shall not transfer or remove funds from the Economic Development Fund other than for the purposes prescribed in the Act and this Program, and the money in the Economic Development Fund shall not be co-mingled with any other City funds. Any money in the Economic Development Fund not currently required or committed for the purposes of Economic Development shall be invested as provided in Section 77-2341 R.R.S. Nebraska. In the event the Economic Development Program is terminated, any funds remaining will be transferred as provided by statute to the General Fund of the City.



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item F1

**#9382 - Consideration of Request to Rezone Property Consisting of 2.86 Acres Located East of Pennsylvania and South of Idaho Avenue and Lot 5-7 of Woodland Park Eleventh Subdivision from R1-Suburban Density Residential to R2-Low Density Residential.**

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

Staff Contact: Chad Nabity



ORDINANCE NO. 9382

An ordinance rezoning a certain tract of land within the zoning jurisdiction of the City of Grand Island; changing the land use classification of a tract of land described as:

A TRACT OF LAND CONSISTING OF LOT 5-7 OF WOODLAND PARK ELEVENTH SUBDIVISION IN THE CITY OF GRAND ISLAND, AND A PART OF THE WEST HALF OF THE SOUTHEAST QUARTER (W1/2, SE1/4) OF SECTION TWO (2), TOWNSHIP ELEVEN (11) NORTH, RANGE TEN (10) WEST OF THE 6TH P.M., CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER (SW1/4, SE1/4) OF SEC. 2-T11N-R10W, SAID POINT BEING THE NORTHWEST CORNER OF LOT 11, BLOCK 5, JENKINSON SUBDIVISION, IN THE CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA; THENCE ON AN ASSUMED BEARING OF S00°15'03"W, ALONG THE WEST LINE OF JENKINSON SUBDIVISION, A DISTANCE OF 52.79 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 5, WOODLAND PARK ELEVENTH SUBDIVISION; THENCE S00°15'02"W, ALONG SAID WEST LINE OF JENKINSON SUBDIVISION, A DISTANCE OF 885.33 FEET TO A POINT BEING THE NORTHEAST CORNER OF BEREAN BIBLE CHURCH SUBDIVISION; THENCE N88°44'38"W, ALONG THE NORTH LINE OF SAID BEREAN BIBLE CHURCH SUBDIVISION, A DISTANCE OF 150.85 FEET; THENCE N01°32'50"E A DISTANCE OF 885.83 FEET TO A POINT BEING THE NORTHWEST CORNER OF SAID LOT 5, WOODLAND PARK ELEVENTH SUBDIVISION; THENCE S88°28'19"E, ALONG THE NORTH LINE OF SAID LOT 5, A DISTANCE OF 130.81 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 124,706.348 SQUARE FEET OR 2.863 ACRES MORE OR LESS.

from R1 Suburban Density Residential Zone to R2 Low Density Residential, directing the such zoning change and classification be shown on the Official Zoning Map of the City of Grand Island; amending the zoning map pursuant to Chapter 36; and providing for publication and an effective date of this ordinance.

WHEREAS, the Regional Planning Commission on May 2, 2012, held a public hearing and made a recommendation on the proposed zoning of such area; and

Approved as to Form	by _____
October 18, 2006	City Attorney

ORDINANCE NO. 9382 (Cont.)

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

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

WHEREAS, after public hearing on May 22, 2012, the City Council found and determined the change in zoning be approved and made.

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

SECTION 1. The following tracts of land are hereby rezoned, reclassified and changed from R1 Suburban Density Residential Zone to R2 Low Density Residential:

A TRACT OF LAND CONSISTING OF LOT 5-7 OF WOODLAND PARK ELEVENTH SUBDIVISION IN THE CITY OF GRAND ISLAND, AND A PART OF THE WEST HALF OF THE SOUTHEAST QUARTER (W1/2, SE1/4) OF SECTION TWO (2), TOWNSHIP ELEVEN (11) NORTH, RANGE TEN (10) WEST OF THE 6TH P.M., CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER (SW1/4, SE1/4) OF SEC. 2-T11N-R10W, SAID POINT BEING THE NORTHWEST CORNER OF LOT 11, BLOCK 5, JENKINSON SUBDIVISION, IN THE CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA; THENCE ON AN ASSUMED BEARING OF S00°15'03"W, ALONG THE WEST LINE OF JENKINSON SUBDIVISION, A DISTANCE OF 52.79 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 5, WOODLAND PARK ELEVENTH SUBDIVISION; THENCE S00°15'02"W, ALONG SAID WEST LINE OF JENKINSON SUBDIVISION, A DISTANCE OF 885.33 FEET TO A POINT BEING THE NORTHEAST CORNER OF BEREAN BIBLE CHURCH SUBDIVISION; THENCE N88°44'38"W, ALONG THE NORTH LINE OF SAID BEREAN BIBLE CHURCH SUBDIVISION, A DISTANCE OF 150.85 FEET; THENCE N01°32'50"E A DISTANCE OF 885.83 FEET TO A POINT BEING THE NORTHWEST CORNER OF SAID LOT 5, WOODLAND PARK ELEVENTH SUBDIVISION; THENCE S88°28'19"E, ALONG THE NORTH LINE OF SAID LOT 5, A DISTANCE OF 130.81

ORDINANCE NO. 9382 (Cont.)

FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 124,706.348 SQUARE FEET OR 2.863 ACRES MORE OR LESS.

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

SECTION 3. That this ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in pamphlet format as provided by law.

Enacted: May 22, 2012.

---

Jay Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item F2

**#9383 - Consideration of Request to Rezone Property Consisting of 5.789 Acres located East of New Mexico Avenue and North of Idaho Avenue of Woodland Park Thirteenth Subdivision from R1-Suburban Density Residential to R2-Low Density Residential**

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

Staff Contact: Chad Nabity

ORDINANCE NO. 9383

An ordinance rezoning a certain tract of land within the zoning jurisdiction of the City of Grand Island; changing the land use classification of a tract of land described as:

A TRACT OF LAND CONSISTING OF PART OF THE WEST HALF OF THE SOUTHEAST QUARTER (W1/2, SE1/4) OF SECTION TWO (2), TOWNSHIP ELEVEN (11) NORTH, RANGE TEN (10) WEST OF THE 6TH P.M., CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF ROSS-THEASMEYER SUBDIVISION IN THE CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA AND THE POINT OF BEGINNING; THENCE ON A ASSUMED BEARING OF S00°16'04"W, ALONG THE EAST LINE OF SAID W1/2, SE1/4, A DISTANCE OF 326.26 FEET TO A POINT BEING THE NORTHEAST CORNER OF WOODLAND PARK FOURTH SUBDIVISION; THENCE N89°52'13"W, ALONG SAID NORTH LINE OF WOODLAND PARK FOURTH SUBDIVISION, A DISTANCE OF 132.64 FEET TO A POINT ON THE EAST RIGHT-OF-WAY (ROW) LINE OF IDAHO AVENUE; THENCE N75°50'18"W, ALONG SAID NORTH LINE OF WOODLAND PARK FOURTH SUBDIVISION, A DISTANCE OF 61.85 FEET TO A POINT ON THE WEST ROW LINE OF SAID IDAHO AVENUE; THENCE N89°52'13"W, ALONG SAID NORTH LINE OF WOODLAND PARK FOURTH SUBDIVISION, A DISTANCE OF 605.00 FEET TO A POINT BEING THE NORTHWEST CORNER OF SAID WOODLAND PARK FOURTH SUBDIVISION, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 5, BLOCK 2, WOODLAND PARK FIRST SUBDIVISION; THENCE N00°07'47"E, ALONG THE EAST LINE OF SAID WOODLAND PARK FIRST SUBDIVISION, A DISTANCE OF 125.00 FEET TO A POINT ON THE SOUTH ROW LINE OF NEW MEXICO AVENUE; THENCE N15°40'39"E, ALONG SAID EAST LINE OF SAID WOODLAND PARK FIRST SUBDIVISION, A DISTANCE OF 62.28 FEET TO A POINT ON THE NORTH ROW LINE OF SAID NEW MEXICO AVENUE; THENCE N00°07'47"E, ALONG SAID EAST LINE OF SAID WOODLAND PARK FIRST SUBDIVISION, A DISTANCE OF 136.30 FEET TO A POINT BEING THE NORTHEAST CORNER OF SAID WOODLAND PARK FIRST SUBDIVISION, SAID POINT ALSO BEING ON THE SOUTH LINE OF ROSS HEIGHTS SUBDIVISION; THENCE S89°08'04"E, ALONG THE SOUTH LINE OF ROSS HEIGHTS SUBDIVISION AND ROSS-THEASMEYER SUBDIVISION, A DISTANCE OF 781.79 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 252,156.05 SQUARE FEET OR 5.789 ACRES MORE OR LESS OF WHICH 1.165 ACRES IS NEW DEDICATED PUBLIC ROAD RIGHT-OF-WAY.

Approved as to Form	☐ _____
October 18, 2006	☐ City Attorney

ORDINANCE NO. 9383 (Cont.)

from R1 Suburban Density Residential Zone to R2 Low Density Residential, directing the such zoning change and classification be shown on the Official Zoning Map of the City of Grand Island; amending the zoning map pursuant to Chapter 36; and providing for publication and an effective date of this ordinance.

WHEREAS, the Regional Planning Commission on May 2, 2012, held a public hearing and made a recommendation on the proposed zoning of such area; and

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

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

WHEREAS, after public hearing on May 22, 2012, the City Council found and determined the change in zoning be approved and made.

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

SECTION 1. The following tracts of land are hereby rezoned, reclassified and changed from R1 Suburban Density Residential Zone to R2 Low Density Residential:

A TRACT OF LAND CONSISTING OF PART OF THE WEST HALF OF THE SOUTHEAST QUARTER (W1/2, SE1/4) OF SECTION TWO (2), TOWNSHIP ELEVEN (11) NORTH, RANGE TEN (10) WEST OF THE 6TH P.M., CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF ROSS-THEASMEYER SUBDIVISION IN THE CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA AND THE POINT OF BEGINNING; THENCE ON A ASSUMED BEARING OF S00°16'04"W, ALONG THE EAST LINE OF SAID W1/2, SE1/4, A DISTANCE OF 326.26 FEET TO A POINT BEING THE NORTHEAST CORNER OF WOODLAND PARK FOURTH

ORDINANCE NO. 9383 (Cont.)

SUBDIVISION; THENCE N89°52'13"W, ALONG SAID NORTH LINE OF WOODLAND PARK FOURTH SUBDIVISION, A DISTANCE OF 132.64 FEET TO A POINT ON THE EAST RIGHT-OF-WAY (ROW) LINE OF IDAHO AVENUE; THENCE N75°50'18"W, ALONG SAID NORTH LINE OF WOODLAND PARK FOURTH SUBDIVISION, A DISTANCE OF 61.85 FEET TO A POINT ON THE WEST ROW LINE OF SAID IDAHO AVENUE; THENCE N89°52'13"W, ALONG SAID NORTH LINE OF WOODLAND PARK FOURTH SUBDIVISION, A DISTANCE OF 605.00 FEET TO A POINT BEING THE NORTHWEST CORNER OF SAID WOODLAND PARK FOURTH SUBDIVISION, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 5, BLOCK 2, WOODLAND PARK FIRST SUBDIVISION; THENCE N00°07'47"E, ALONG THE EAST LINE OF SAID WOODLAND PARK FIRST SUBDIVISION, A DISTANCE OF 125.00 FEET TO A POINT ON THE SOUTH ROW LINE OF NEW MEXICO AVENUE; THENCE N15°40'39"E, ALONG SAID EAST LINE OF SAID WOODLAND PARK FIRST SUBDIVISION, A DISTANCE OF 62.28 FEET TO A POINT ON THE NORTH ROW LINE OF SAID NEW MEXICO AVENUE; THENCE N00°07'47"E, ALONG SAID EAST LINE OF SAID WOODLAND PARK FIRST SUBDIVISION, A DISTANCE OF 136.30 FEET TO A POINT BEING THE NORTHEAST CORNER OF SAID WOODLAND PARK FIRST SUBDIVISION, SAID POINT ALSO BEING ON THE SOUTH LINE OF ROSS HEIGHTS SUBDIVISION; THENCE S89°08'04"E, ALONG THE SOUTH LINE OF ROSS HEIGHTS SUBDIVISION AND ROSS-THEASMEYER SUBDIVISION, A DISTANCE OF 781.79 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 252,156.05 SQUARE FEET OR 5.789 ACRES MORE OR LESS OF WHICH 1.165 ACRES IS NEW DEDICATED PUBLIC ROAD RIGHT-OF-WAY.

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

SECTION 3. That this ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in pamphlet format as provided by law.

Enacted: May 22, 2012.

---

Jay Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item F3

**#9384 - Consideration of Vacation of Utility & Sidewalk Easements  
Located in Westwood Park Eleventh Subdivision (Tim C. Plate)**

Staff Contact: John Collins, Public Works Director



# **Council Agenda Memo**

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

**Meeting:** May 22, 2012

**Subject:** Consideration of Vacation of Utility & Sidewalk Easements Located in Westwood Park Eleventh Subdivision (Tim C. Plate)

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

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

## **Background**

Two (2) twenty (20) foot wide utility easements, as well as a ten (10) foot sidewalk easement were dedicated on March 11, 2008 through the Westwood Park Eleventh Subdivision plat. There are no conflicts with utilities.

## **Discussion**

The developer of the Westwood Park Eleventh Subdivision has requested that each of the three (3) easements be vacated to allow for redesign of the development. The Planning Department is presenting the Westwood Park Twelfth Subdivision at tonight's meeting, which will dedicate new easements for this area.

## **Alternatives**

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

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

### **Recommendation**

City Administration recommends that the Council approve the passing of an ordinance vacating the utility and sidewalk easements in Westwood Park Eleventh Subdivision.

### **Sample Motion**

Move to approve the passing of an ordinance vacating the utility and sidewalk easements in Westwood Park Eleventh Subdivision.

ORDINANCE NO. 9384

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

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

SECTION 1. That the existing utilities easement located in a tract of land comprising that portion of Westwood Park Eleventh Subdivision, more particularly described as follows:

**20' WIDE UTILITY EASEMENT**

A TRACT OF LAND LYING TEN (10) FEET EITHER SIDE OF THE NORTHERLY LINE OF LOT FIVE (5), WESTWOOD PARK ELEVENTH SUBDIVISION, IN THE CITY OF GRAND ISLAND, NEBRASKA, EXCEPTING THEREFROM THE WESTERLY TEN (10) FEET THEREOF, SAID TRACT CONTAINING APPROXIMATELY 1,200 SQ. FT. (0.028 ACRES) MORE OR LESS.

**10' WIDE SIDEWALK EASEMENT**

A TRACT OF LAND LYING FIVE (5) FEET EITHER SIDE OF THE NORTHERLY LINE OF LOT FOUR (4), WESTWOOD PARK ELEVENTH SUBDIVISION, IN THE CITY OF GRAND ISLAND, NEBRASKA, EXCEPTING THEREFROM THE WESTERLY TEN (10) FEET THEREOF, SAID TRACT CONTAINING APPROXIMATELY 1,206 SQ FT (0.028 ACRES) MORE OR LESS.

Approved as to Form	<input type="checkbox"/>	_____
May 21, 2012	<input type="checkbox"/>	City Attorney

ORDINANCE NO. 9384 (Cont.)

**20' WIDE UTILITY EASEMENT**

A TRACT OF LAND LYING TEN (10) FEET EITHER SIDE OF THE EASTERLY LINE OF LOT THREE (3), WESTWOOD PARK ELEVENTH SUBDIVISION, IN THE CITY OF GRAND ISLAND, NEBRASKA, EXCEPTING THEREFROM THE SOUTHERLY TEN (10) FEET THEREOF, SAID TRACT CONTAINING APPROXIMATELY 1,262 SQ. FT. (0.050 ACRES) MORE OR LESS.

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

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

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

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

Enacted: May 22, 2012.

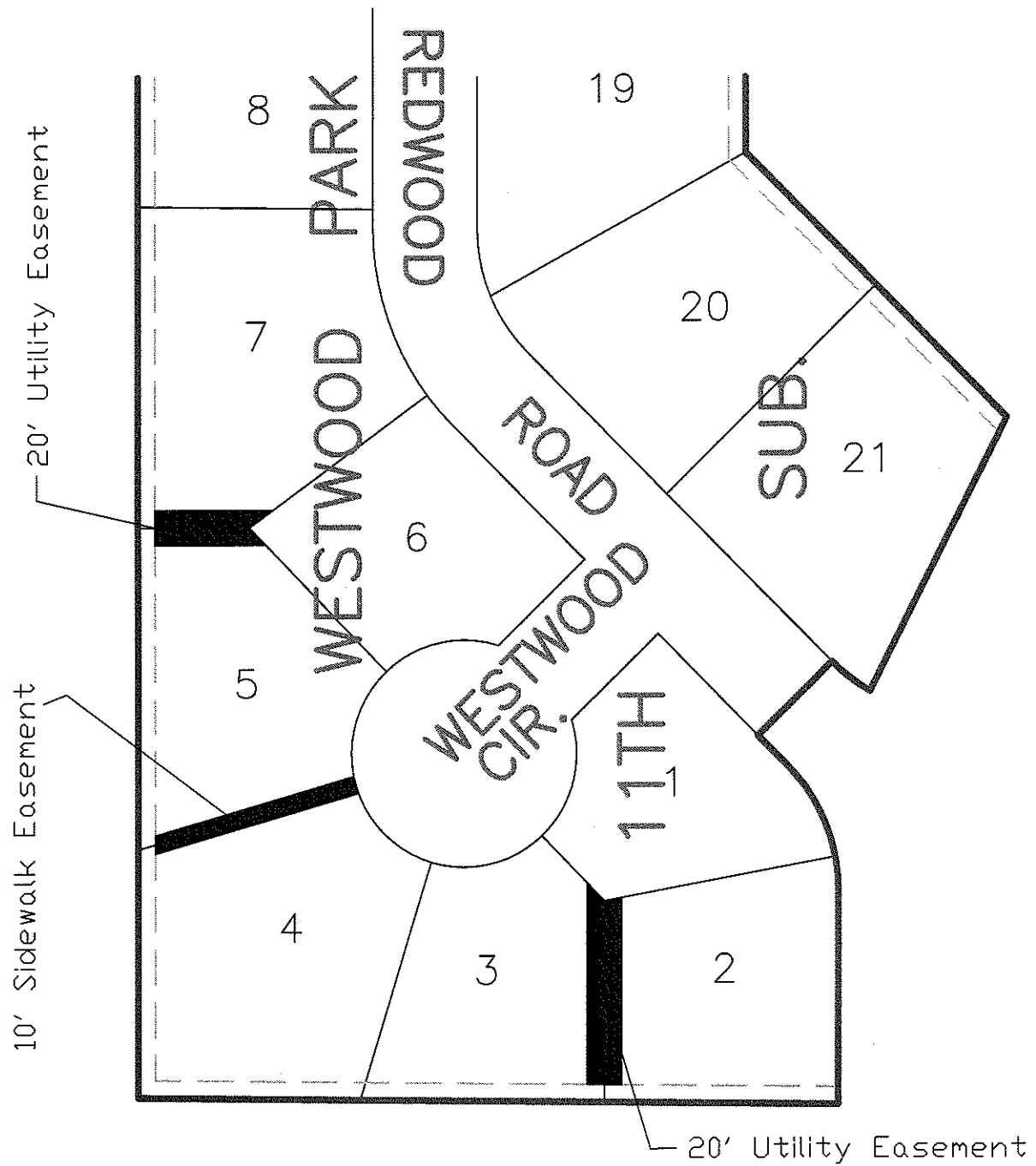
---

Jay Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk





# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item F4

### **#9385 - Consideration of Authorization of Series 2012 Water Revenue Bonds**

Staff Contact: Tim Luchsinger, Utilities Director

# **Council Agenda Memo**

**From:** Timothy Luchsinger, Utilities Director

**Meeting:** May 22, 2012

**Subject:** Consideration of Authorizing Series 2012 Water System Revenue Refunding Bonds

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

**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 fourth refinancing is now ready to be presented to Council for action.

The Water System Revenue Bonds, Series 1999, were originally issued for a refinancing of bonds issued in 1993. The original principal amount was \$4,390,000, of which \$1,095,000 remains outstanding.

The refinancing of these bonds will take advantage of current low interest rates and, along with extending the remaining term from 2014 to 2027, will allow the funding of \$3,000,000 for the capital cost of the uranium removal equipment, while allowing lower debt service coverage and avoiding impact to water utility rates for this expenditure.

## **Discussion**

The Water System Revenue Bonds, Series 1999, date of original issue March 3, 1999, in the principal amount of \$1,095,000 will be called for payment on June 26, 2012; after such time, interest on the bonds will cease.

These bonds will be replaced with the issuance of Water Revenue and Refunding Bonds, Series 2012 in the principal amount of approximately \$3,725,000. The purpose of these bonds is to pay and redeem the City's Bonds referenced above and provide an additional \$3,000,000 for capital costs of the new uranium removal system.

The anticipated changes will be an average interest rate from 4.95% to 2.47%, a maturity date from 7/01/2014 to 7/01/2027, and average annual debt service from \$391,740 to \$296,361.

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 approve the Redemption of Water Revenue Refunding Bonds, Series 1999 and the Issuance of Water Revenue and Refunding Bonds, Series 2012 in the principal amount of approximately \$3,725,000.

## **Sample Motion**

Move to approve the Redemption of Water Revenue Refunding Bonds, Series 1999 and the Issuance of Water Revenue and Refunding Bonds, Series 2012 in the principal amount of approximately \$3,725,000.



ORDINANCE NO. 9385

AN ORDINANCE AUTHORIZING THE ISSUANCE OF WATER REVENUE AND REFUNDING BONDS, SERIES 2012, OF THE CITY OF GRAND ISLAND, NEBRASKA, IN THE AGGREGATE PRINCIPAL AMOUNT OF \_\_\_\_\_ THOUSAND DOLLARS (\$\_\_\_\_\_) FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT AND REDEMPTION OF THE CITY'S OUTSTANDING WATER REVENUE REFUNDING BONDS, SERIES 1999, IN THE PRINCIPAL AMOUNT OF \$1,095,000, AND FOR THE PURPOSE OF PAYING THE COSTS OF ADDITIONS AND IMPROVEMENTS TO THE WATERWORKS PLANT AND WATER SYSTEM OF SAID CITY; DIRECTING THE APPLICATION OF THE PROCEEDS OF SAID BONDS; PRESCRIBING THE FORM, TERMS AND DETAILS OF SAID BONDS; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE WATERWORKS PLANT AND WATER 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 WATERWORKS PLANT AND WATER SYSTEM OF SAID CITY; 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 Council of the City of Grand Island, Nebraska, as follows:

Section 1. The Mayor and Council of the City of Grand Island, Nebraska, hereby find and determine:

(a) The City owns and operates a waterworks plant and system (such plant and system, together with all additions and improvements thereto hereafter acquired are herein referred to as the "Water System") which represents a revenue-producing undertaking of the City;

(b) The City has heretofore issued and outstanding the following revenue bonds which are a lien upon and secured by a pledge of the revenue and earnings of the Water System:

Water Revenue Refunding Bonds, Series 1999, Date of Issue – March 3, 1999, authorized pursuant to Ordinance No. 8439 of the City, in the original principal amount of \$4,390,000 of which bonds in the principal amount of \$1,095,000 are outstanding and unpaid (the "1999 Bonds").

The 1999 Bonds constitute the only presently outstanding indebtedness of the City payable from the revenues of the Water System.

(c) In order to effect a savings in interest costs, it is necessary and advisable for the City to provide funds for the purpose of refunding the 1999 Bonds, and said bonds have been called for redemption on June 26, 2012 (the "Redemption Date"). 1999 Bonds maturing July 1, 2012 and a portion maturing July 1, 2013, shall be paid from City funds on hand as called for redemption on the Redemption Date.

(d) The City has constructed or will construct certain improvements to the Water System which include a new plant to treat approximately 5 mgd of the water supply and to remove uranium and related equipment for which the total construction cost is not less than \$3,000,000, and it is further necessary and appropriate to borrow amounts to cover issuance expense, and for all of such purposes it is necessary to borrow monies to provide for such costs as provided herein.

Approved as to Form	by _____
May 21, 2012	City Attorney

ORDINANCE NO. 9385 (Cont.)

(e) To satisfy the funding requirements described in this Section 1, including payment of issuance costs, it is necessary for the City to issue its Water Revenue and Refunding Bonds, Series 2012, in the total principal amount of \$\_\_\_\_\_ pursuant to Sections 18-1803 to 18-1805 R.R.S. Neb. 2007, as amended. All conditions, acts and things required by law to exist or to be done precedent to the issuance of the City's Water Revenue and Refunding Bonds in the principal amount of \$\_\_\_\_\_ do exist and have been done and performed in regular and due time and form as required by law. Said bonds will be payable from the revenues of the Water System.

Section 2. 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:

(a) the term "revenues" shall mean all of the rates, rentals, fees and charges, earnings and other monies, including investment income, from any source derived by the City of Grand Island, Nebraska, through its ownership and operation of the Water System.

(b) the term "Additional Bonds" shall mean any and all bonds hereafter issued by the City pursuant to the terms of this Ordinance including all such bonds issued pursuant to Section 13 and refunding bonds issued pursuant to Section 14.

(c) the term "Average Annual Debt Service Requirements" shall mean that number computed by adding all of the principal and interest due when computed to the absolute maturity of the bonds for which such computation is required and dividing by the number of years remaining that the longest bond of any issue for which such computation is required has to run to maturity. In making such computation, the principal of any bonds for which mandatory redemptions are scheduled shall be treated as maturing in accordance with such schedule of mandatory redemptions.

(d) the term "Deposit Securities" shall mean obligations of the United States of America, direct or unconditionally guaranteed, including any such obligations issued in book entry form.

(e) the term "Net Revenues" shall mean the gross revenues derived by the City from the ownership or operation of the Water System, including investment income, but not including any income from sale or disposition of any property belonging to or forming a part of the Water System, less the ordinary expenses for operating and maintaining the Water System payable from the Operation and Maintenance Account described in Section 11 of this Ordinance. Operation and Maintenance expenses for purposes of determining "Net Revenues" shall not include depreciation, amortization of financing expenses or interest on any bonds or other indebtedness. Net Revenues for all purposes of this Ordinance shall be shown by an audit for the fiscal year in question as conducted by an independent certified public accountant or firm of such accountants, provided, however, for purposes of determining compliance with requirements for issuing Additional Bonds, in the event that as of the time of authorization or issuance of Additional Bonds, the financial statements for the most recently completed fiscal year have not yet been completed and reported on by the City's certified public accountant, compliance may be shown using the audited financial statements for the most recently completed fiscal year for which audited financial statements are available and unaudited financial statements (certified by the City Treasurer) for the most recently completed fiscal year so long as compliance is shown for both such fiscal years.

ORDINANCE NO. 9385 (Cont.)

(f) the term "Paying Agent and Registrar" shall mean Wells Fargo Bank, National Association, Minneapolis, Minnesota, as appointed to act as paying agent and registrar for the Series 2012 Bonds pursuant to Section 4 hereof, or any successor thereto.

Section 3. To provide funds for the purposes described in Section 1, there shall be and there are hereby ordered issued the negotiable bonds of the City of Grand Island, Nebraska, to be designated as "Water Revenue and Refunding Bonds, Series 2012" (the "2012 Bonds"), in the aggregate principal amount of \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_), with said bonds bearing interest at the rates per annum and to become due on July 1 of the years as indicated below:

<u>Maturing on July 1 of Year</u>	<u>Amount of Principal Maturing</u>	<u>Interest Rate Per Annum</u>
2013	\$ 225,000	
2014	225,000	
2015	225,000	
2016	230,000	
2017	230,000	
2018	235,000	
2019	240,000	
2020	245,000	
2021	250,000	
2022	255,000	
2023	260,000	
2024	265,000	
2025	275,000	
2026	280,000	
2027	290,000	

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 semiannually on January 1 and July 1 of each year commencing January 1, 2013 (each 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 fifteenth day immediately preceding each 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

ORDINANCE NO. 9385 (Cont.)

redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the 2012 Bonds issued shall be as designated by the City Treasurer as directed by the initial purchaser thereof. Payments of interest due on the 2012 Bonds prior to maturity or earlier redemption 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 due at maturity or at any date fixed for redemption prior to maturity together with any unpaid interest accrued thereon shall be made by said Paying Agent and Registrar to the registered owners upon presentation and surrender of the 2012 Bonds to the Paying Agent and Registrar. The City and the Paying Agent and Registrar may treat the registered owner of any 2012 Bond as the absolute owner of such 2012 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 2012 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 the 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. Wells Fargo Bank, National Association, is hereby designated as Paying Agent and Registrar for the 2012 Bonds. Said Paying Agent and Registrar shall serve in such capacities under the terms of an agreement entitled "Paying Agent and Registrar's Agreement" between the City and said Paying Agent and Registrar, in substantially the form presented in connection with the adoption of this Ordinance, which form is hereby approved. The Mayor and City Clerk are hereby authorized to execute said agreement on behalf of the City in the form presented or with such changes, modifications and completions as such officers shall deem appropriate on behalf of the City. 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. The names and registered addresses of the registered owner or

## ORDINANCE NO. 9385 (Cont.)

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 designated 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 2012 Bond may be transferred for several such 2012 Bonds of the same interest rate and maturity, and for a like aggregate principal amount, and several such 2012 Bonds may be transferred for one or several such 2012 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 2012 Bonds shall be canceled 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. For purposes of this Ordinance, the designated corporate trust office of the Paying Agent and Registrar shall be the Paying Agent and Registrar's Operating Center in Minneapolis, Minnesota, but such designation may be changed from time to time by notice to the City and the registered owners of the 2012 Bonds.

Section 5. 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

## ORDINANCE NO. 9385 (Cont.)

Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

Section 6. The 2012 Bonds maturing on or after July 1, 2017 shall be subject to redemption, in whole or in part, prior to maturity at any time on or after the fifth anniversary of the date of original issue thereof, at the principal amount thereof together with accrued interest on the principal amount redeemed to the date fixed for redemption. Such optional redemption shall be made from time to time as shall be directed by the Mayor and Council of the City. The City may select the 2012 Bonds for optional redemption in its sole discretion. The 2012 Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Any 2012 Bond redeemed in part only shall be surrendered to said 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 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 or 2012 Bonds 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 designated corporate trust 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 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 further direct notice of redemption for any such 2012 Bond for which defective notice has been given.

Section 7. 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 designated 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

ORDINANCE NO. 9385 (Cont.)

payment on such day shall have the same force and effect as if made on the nominal date of payment.

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

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

**WATER REVENUE AND REFUNDING BOND, SERIES 2012**

No. R-\_\_\_\_\_ \$ \_\_\_\_\_

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP No.</u>
	July 1, _____	_____, 2012	

Registered Owner:

Principal Amount: \_\_\_\_\_ Thousand Dollars (\$ \_\_\_\_\_)

KNOW ALL PERSONS BY THESE PRESENTS: That the City of Grand Island, in the County of Hall, in the State of Nebraska, hereby acknowledges itself to owe and for value received promises to pay, 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 payable semiannually on January 1 and July 1 of each year, commencing January 1, 2013 (each, an "Interest Payment Date"). Such interest shall be computed on the basis of a 360-day year consisting of twelve 30 day months. The principal of this bond together with interest thereon unpaid and accrued at maturity (or earlier redemption) is payable upon presentation and surrender of this bond at the designated corporate trust office of Wells Fargo Bank, National Association, as 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 each 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 \_\_\_\_\_ Thousand Dollars (\$ \_\_\_\_\_), of even date and like tenor except as to date of maturity, rate of interest and denomination, (the "2012 Bonds") which were issued by the City for the purposes of, 1) paying and redeeming the City's outstanding Water Revenue Refunding Bonds, Series 1999, date of original issue – March 3, 1999, in the principal amount of \$1,095,000, and 2) paying the costs of enlarging, expanding and improving the waterworks plant and water system of the City (the "Water System"), and is issued pursuant to the terms of an ordinance (the "Ordinance") passed and approved by the Mayor and Council of said City in accordance with and under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2007, as amended.

Any or all of the bonds of said issue maturing on or after July 1, 2017, are subject to redemption at the option of the City, in whole or in part, at any time on or after the fifth anniversary of the date of original issue thereof, or at any time thereafter at the principal amount thereof, together with accrued interest on the principal amount redeemed to the date fixed for redemption. Such optional redemption



## ORDINANCE NO. 9385 (Cont.)

shall be made from time to time as shall be directed by the Mayor and Council of the City. The City may select the 2012 Bonds for optional redemption in its sole discretion.

Notice of redemption shall be given by mail to the registered owner of any 2012 Bond called for redemption in the manner specified in the Ordinance authorizing said issue of bonds. 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 designated 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, 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 designated 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 revenues and earnings of the Water System, including all improvements and additions thereto hereafter constructed or acquired, are pledged and hypothecated, equally and ratably for the payment of this bond and the other 2012 Bonds, and for the payment of any additional bonds of equal priority issued in accordance with the terms of the Ordinance. The 2012 Bonds are a lien only upon said revenue and earnings and are not general obligations of the City of Grand Island, Nebraska.

The Ordinance sets forth the covenants and obligations of the City with respect to the Water System and the applications of the revenues and earnings thereof, which revenues and earnings under the terms of the Ordinance are required to be deposited to the "Grand Island Water System Fund" (as maintained in the Ordinance) and disbursed to pay costs of operation and maintenance of the Water System, make payments of principal and interest on the 2012 Bonds and any additional bonds of equal priority with the 2012 Bonds and other payments as specified in the Ordinance. The Ordinance also designates the terms and conditions under which additional bonds of equal priority with the 2012 Bonds may be issued. The Ordinance also designates the terms and conditions upon 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 the 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 a trustee bank. In the Ordinance the City also reserves the right to issue bonds or notes junior in lien to 2012 Bonds and additional bonds of equal priority to the 2012 Bonds, the principal and interest of which shall be payable from monies in the "Surplus Account" of the Grand Island Water System Fund as described in the Ordinance.

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.

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

ORDINANCE NO. 9385 (Cont.)

SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE ORDINANCE, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE 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 REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE 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.

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

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

CITY OF GRAND ISLAND, NEBRASKA

\_\_\_\_\_  
(facsimile signature)

Mayor

ATTEST:

\_\_\_\_\_  
(facsimile signature)

City Clerk

(SEAL)

ORDINANCE NO. 9385 (Cont.)

**CERTIFICATE OF AUTHENTICATION**

This bond is one of the bonds authorized by Ordinance passed and approved by the Mayor and Council of the City of Grand Island, in the State of Nebraska, as described in said bond.

Wells Fargo Bank, National Association,  
Minneapolis, Minnesota,  
Paying Agent and Registrar

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

**(FORM OF ASSIGNMENT)**

For value received \_\_\_\_\_ hereby sells,  
assigns, and transfers unto \_\_\_\_\_ the within  
bond and hereby irrevocably constitutes and appoints \_\_\_\_\_  
\_\_\_\_\_, Attorney, to transfer the same on the books of  
registration in the office of the within mentioned Paying Agent and Registrar with full power of  
substitution in the premises.

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.

ORDINANCE NO. 9385 (Cont.)

Section 9. 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 of the City are authorized to execute and deliver a Letter of Representations (the "Letter of Representations") in the form required by the Depository (including any blanket letter previously executed and delivered), for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the 2012 Bonds. 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

ORDINANCE NO. 9385 (Cont.)

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; or

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

(f) In the event of any partial redemption of a 2012 Bond unless and until such partially redeemed 2012 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 2012 Bonds issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository is terminated or resigns and is not replaced, or upon termination by the City of book-entry-only form, the City shall immediately provide a supply of printed bond certificates, 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 bond certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of bond certificates and to direct their execution by manual or facsimile signatures of its then duly qualified and acting officers. 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 the 2012 Bond. The 2012 Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The 2012 Bonds shall be delivered to the Paying

ORDINANCE NO. 9385 (Cont.)

Agent and Registrar for registration and authentication. Upon execution, registration, and authentication of the 2012 Bonds, they shall be delivered to the City Treasurer, acting on behalf of the City, who is authorized to deliver them to Ameritas Investment Corp., as initial purchaser thereof. The 2012 Bonds are hereby sold to said purchaser for the sum of \$ \_\_\_\_\_, plus accrued interest, if any, thereon to date of payment and delivery. The officers of the City (or any one of them) are hereby authorized to execute and deliver the Bond Purchase Agreement for and on behalf of the City. Said initial purchaser shall have the right to direct the registration of the 2012 Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. Such purchaser and its agents, representatives and bond counsel are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and sale of the 2012 Bonds, including without limitation, authorizing the release of the 2012 Bonds by the Depository at closing. The City Clerk shall make and certify a transcript of the proceedings of the Mayor and Council with respect to the 2012 Bonds which shall be delivered to said purchaser.

Section 10. Accrued interest, if any, received from the sale of the 2012 Bonds shall be applied to pay interest falling due on January 1, 2013, and shall be credited to the Bond Payment Account as described in Section 11 hereof. Expenses of issuance of the 2012 Bonds may be paid from the proceeds of the 2012 Bonds. \$ \_\_\_\_\_ from other funds of the City, specifically reserves attributed to the Refunded Bonds, shall be deposited to the Debt Service Reserve Account (into the sub-account for the 2012 Bonds). \$ \_\_\_\_\_ from proceeds of the 2012 Bonds and reserves attributed to the Refunded Bonds shall be applied to the payment of principal and interest on the Refunded Bonds as called for redemption on June 26, 2012. The City hereby agrees to take all actions necessary to effect the payment and redemption in full of the Refunded Bonds upon the issuance and delivery of the 2012 Bonds. The registered owners and Beneficial Owners of the 2012 Bonds shall be subrogated to the rights of the holders of the Refunded Bonds from and after their redemption. The remaining net proceeds of the 2012 Bonds shall be held in a separate construction account by the City Treasurer and applied to the payment of costs of the improvements to the Water System as directed by the Mayor and Council. Pending disbursement for project costs, such funds shall be invested by the City Treasurer in such investments as

ORDINANCE NO. 9385 (Cont.)

are legal investments for a city of the first class as shall be determined by the City Treasurer.

Section 11. The revenues and earnings of the Water System (including any and all additions and improvements thereto hereafter acquired) are hereby pledged and hypothecated for the payment of the 2012 Bonds and any Additional Bonds as authorized by this Ordinance and interest on such 2012 Bonds and any such Additional Bonds and the City does hereby agree with the holders of said 2012 Bonds as follows:

(a) **GRAND ISLAND WATER SYSTEM FUND** - The entire gross revenues and income derived from the operation of the Water System shall be set aside as collected and deposited in a separate fund which has been previously established and designated as the "Grand Island Water System Fund." For purposes of allocating the monies in the Grand Island Water System Fund, the City shall maintain the following accounts: (1) Operation and Maintenance Account; (2) Bond Payment Account; (3) Debt Service Reserve Account; and (4) Surplus Account.

(b) **OPERATION AND MAINTENANCE ACCOUNT** - Out of the Grand Island Water System Fund there shall be monthly credited into the Operation and Maintenance Account such amounts as the City shall from time to time determine to be necessary to pay the reasonable and necessary expenses of operating and maintaining the Water System and the City may withdraw funds credited to the Operation and Maintenance Account as necessary from time to time to pay such expenses.

(c) **BOND PAYMENT ACCOUNT** - Out of the Grand Island Water System Fund there shall be credited monthly on or before the fifteenth day of each month to the Bond Payment Account, starting with the month of July 2012, the following amounts:

- (1) For the period from and inclusive of July 15, 2012, until the 2012 Bonds have been paid in full, an amount equal to 1/6th of the next interest payment due on the 2012 Bonds; and
- (2) For the period from and inclusive of July 15, 2012, until the 2012 Bonds have been paid in full, an amount equal to 1/12th of the next maturing principal payment for the 2012 Bonds, as may then be the next required payment for principal with respect to the 2012 Bonds;

The City Treasurer is hereby authorized and directed, without further authorization, to withdraw monies credited to the Bond Payment Account, or if the monies in such Account are insufficient, then from the sub-accounts within the Debt Service Reserve Account (but only for the series of bonds for which each respective sub-account has been established) and next from the Surplus Account, an amount sufficient to pay, when due, the principal of and interest on the 2012 Bonds or any Additional Bonds and to transfer such amounts due to the respective paying agent and registrar (or other paying agent for Additional Bonds), at least five (5) business days before each principal and interest payment date. Upon the issuance of any Additional Bonds pursuant to this Ordinance, appropriate additional credits to the Bond Payment Account shall be provided for sufficient to pay principal and interest on said Additional Bonds.

(d) **DEBT SERVICE RESERVE ACCOUNT** -The City agrees that it shall deposit from funds on hand of the City the amount of \$ \_\_\_\_\_ as the amount required to be maintained attributable to the 2012 Bonds in a separate sub-account in the Debt Service Reserve Account. Monies credited to the Debt Service Reserve Account may be withdrawn, but only from the designated sub-account for a specific issue, as needed, to provide funds to pay, when due, the principal of and interest on the 2012 Bonds and any Additional Bonds issued pursuant to this Ordinance, as the case may be, if the Bond Payment Account contains insufficient funds for that purpose, and the City Treasurer is hereby authorized and directed to make such withdrawal if and when needed. In the event of a withdrawal from the Debt Service Reserve Account, there shall be credited to the Debt Service Reserve Account in the month following such withdrawal all monies in the Grand Island Water System Fund remaining after making the payments required to be made in such month to the Operation and Maintenance Account and Bond Payment Account and each month thereafter all such remaining monies shall be credited to the appropriate sub-account in the Debt Service Reserve Account until such sub-account has been restored to the required balance. Upon the issuance of any Additional Bonds, the amount required to be accumulated and maintained in the Debt Service Reserve Account, in a separate sub-account for such Additional Bonds, shall be set at an amount (which may be \$-0-) as determined appropriate by the Mayor and Council in connection with any such issue of Additional Bonds. Any such required increase shall be provided for either by credit made from bond proceeds or current funds of the Water System then available or by equal monthly credits from the Grand Island Water System Fund made in such amounts so that the required amount shall be accumulated in a period of not more than five years. Each sub-account in the Debt Service Reserve Account shall be held solely for the specific issue for which it is established. In the event of withdrawal from any such sub-account which results in the amount in such sub-account being deficient to meet the required balance, available amounts for restoring sub-account balances shall be credited to each deficient sub-account on a pro rata basis in accordance with the respective outstanding principal amounts for those issues for which the respective sub-accounts are then deficient. When the 2012 Bonds or any issue of Additional Bonds for which a sub-account has been established are no longer outstanding, the particular sub-account for such issue shall no longer be required to be maintained. Anything in this subsection 11(d) to the contrary notwithstanding, the amount required to be maintained in the Debt Service Reserve Account with respect to the 2012 Bonds or any issue of Additional Bonds shall not at any time exceed the maximum amount permitted to be invested without yield restriction under Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations of the United States Treasury Department.

(e) **SURPLUS ACCOUNT** - Monies in the Grand Island Water System Fund remaining after the credits required in the foregoing Subsections 11(b), 11(c), and 11(d) shall be credited to the Surplus Account. Monies in the Surplus Account may be used to make up any deficiencies in any of the preceding Accounts, to retire any of the 2012 Bonds or any Additional Bonds prior to their maturity, to pay principal of and interest on any junior lien indebtedness incurred with respect to the Water System, to provide for replacements or improvements for the Water System or to provide for any other lawful purpose of the City including payments in lieu of taxes in an amount not to exceed 1% of the gross revenues of the Water System in any fiscal year (as and to the extent permitted by law) or interfund transfers as directed by the Mayor and City Council.

The provisions of this Section 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 several Accounts required by



## ORDINANCE NO. 9385 (Cont.)

this Section. Monies credited to the Grand Island Water System Fund or any of the Accounts therein as established by this Ordinance shall be deposited or invested separate and apart from other City funds. Except as specified below for the Debt Service Reserve Account, the City shall not be required to establish separate bank or investment accounts for the Accounts described in Subsections 11(b), 11(c), 11(d), and 11(e). Monies credited to the Debt Service Reserve Account shall, if maintained in a demand or time deposit account, be kept in a separate account and not commingled with other Water System funds or accounts. If invested, monies credited to the Debt Service Reserve Account may be commingled with other Water System funds or accounts so long as the City maintains books and records clearly identifying the specific investments, or portions thereof, which belong to the Debt Service Reserve Account.

Monies in any of said Accounts except the Debt Service Reserve Account may be invested in investments permissible for a city of the first class. Monies in the Debt Service Reserve Account may be invested in Deposit Securities. Monies invested from the Debt Service Reserve Account shall be invested to mature in not more than ten years. Investments held for the Debt Service Reserve Account will be valued at cost for purposes of determining compliance with the requirements of this Ordinance as to the amount required to be maintained in the Debt Service Reserve Account or any sub-account therein. Income from or profit realized from investments for any Account or any sub-account shall be credited to such Account or sub-account until such Account or sub-account contains any amount then required to be therein, and thereafter such income or profit shall be transferred to the Grand Island Water System Fund and treated as other revenues from the operation of the Water System. The ordinance authorizing any series of Additional Bonds for which a debt service reserve sub-account is to be established shall establish the terms for investment related to such sub-account.

The pledge and hypothecation provided for the 2012 Bonds and any Additional Bonds as provided for in this ordinance is intended to and shall provide for a first and prior pledge on, lien upon and security interest in the revenues of the Water System superior to any pledge, lien or security interest made or given with respect to any other indebtedness of the City as to its Water System and is intended as a full exercise of the powers of the City provided for in Sections 18-1803 to 18-1805, R.R.S. Neb. 2007, as now or hereafter amended, with respect to the City's Water System and the revenues and earnings thereof.

## ORDINANCE NO. 9385 (Cont.)

Section 12. So long as any of the 2012 Bonds and any Additional Bonds issued pursuant to this Ordinance shall remain outstanding and unpaid, the City covenants and agrees to establish, revise, from time to time as necessary, and collect such rates and charges for the service furnished from the Water System adequate to produce revenues and earnings sufficient at all times:

(a) To provide funds to pay, when due, the principal of and interest on the 2012 Bonds and any Additional Bonds issued pursuant to this Ordinance;

(b) To pay all proper and necessary costs of operation and maintenance of the Water System and to pay for the necessary and proper repairs, replacements, enlargements, extensions and improvements to the Water System and to pay and perform all contractual obligations of the City related to the Water System;

(c) To provide funds sufficient to make the credits into the Accounts and at the times and in the amounts required by Section 11 of this Ordinance; and

(d) To maintain Net Revenues in each fiscal year adopted by the City for the Water System in an amount not less than 1.20 times the total amount of principal paid or payable (exclusive of any principal redeemed prior to maturity other than principal redeemed pursuant to a schedule of mandatory redemptions) and interest falling due during such fiscal year on the 2012 Bonds and any Additional Bonds.

Section 13. To provide funds for any purpose related to the Water System, the City may issue Additional Bonds, except for Additional Bonds issued for refunding purposes which are governed by Section 14 of this Ordinance, payable from the revenues of the Water System having equal priority and on a parity with the 2012 Bonds and any Additional Bonds then outstanding, only upon compliance with the following conditions:

(a) Such Additional Bonds shall be issued only pursuant to an ordinance which shall provide for an increase in the monthly credits into the Bond Payment Account in amounts sufficient to pay, when due, the principal of and interest on the 2012, any Additional Bonds then outstanding and the proposed Additional Bonds and for any monthly credits to the Debt Service Reserve Account as are required under Subsection 11(d).

(b) The City shall have complied with one or the other of the two following requirements:

- 1) The Net Revenues derived by the City from its Water System for the fiscal year next preceding the issuance of the Additional Bonds shall have been at least equal to 1.25 times the Average Annual Debt Service Requirements of the 2012 Bonds and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds; or
- 2) The City shall have received a projection made by a consulting engineer or firm of consulting engineers, recognized as having experience and expertise in municipal utility systems, projecting that the Net Revenues of the Water System in each of the three full fiscal years after the issuance of such Additional Bonds

## ORDINANCE NO. 9385 (Cont.)

will be at least equal to 1.25 times the Average Annual Debt Service Requirements of the 2012 Bonds and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds. In making such projection, the consulting engineer shall use as a basis the Net Revenues of the Water System during the last fiscal year for which an independent audit has been prepared and shall adjust such Net Revenues as follows: (A) to reflect changes in rates which have gone into effect since the beginning of the year for which the audit was made, (B) to reflect such engineer's estimate of the net increase over or net decrease under the Net Revenues of the Water System for the year for which the audit was made by reason of: (i) changes of amounts payable under existing contracts for services; (ii) additional general income from sales to customers under existing rate schedules for various classes of customers or as such schedules may be revised under a program of changes which has been adopted by the Mayor and Council of the City; (iii) projected revisions in costs for labor, wages, salaries, machinery, equipment, supplies and other operational items; (iv) revisions in the amount of service to be supplied and any related administrative or other costs associated with such increases due to increased supply from the acquisition of any new facility; and (v) such other factors affecting the projections of revenues and expenses as the consulting engineer deems reasonable and proper. Annual debt service on any proposed Additional Bonds to be issued may be estimated by the consulting engineer in projecting Average Annual Debt Service Requirements, but no Additional Bonds shall be issued requiring any annual debt service payment in excess of the amount so estimated by the consulting engineer.

The City hereby covenants and agrees that so long as any of the 2012 Bonds and any Additional Bonds are outstanding, it will not issue any bonds or notes payable from the revenues of the Water System except in accordance with the provisions of this Ordinance, provided, however, the City reserves the right to issue bonds or notes which are junior in lien to the 2012 Bonds and any such Additional Bonds with the principal and interest of such bonds or notes to be payable from monies credited to the Surplus Account as provided in Subsection 11(e).

Section 14. The City may issue refunding bonds which shall qualify as Additional Bonds of equal lien to refund any 2012 Bonds or Additional Bonds then outstanding, provided, that if any such 2012 Bonds or Additional Bonds are to remain outstanding after the issuance of such refunding bonds, the principal payments due in any calendar year in which those bonds which are to remain outstanding mature, or in any calendar year prior thereto, shall not be increased over the amount of such principal payments due in such calendar years immediately prior to such refunding. Refunding bonds issued in accordance with this paragraph of this Section 14 may be issued as Additional Bonds of equal lien without compliance with the conditions set forth in Subsection 13(b) of this Ordinance.

The City may also issue refunding bonds which shall qualify as Additional Bonds of equal lien to

## ORDINANCE NO. 9385 (Cont.)

refund any 2012 Bonds or Additional Bonds then outstanding provided, that, if any such 2012 Bonds or Additional Bonds are to remain outstanding after the application of the proceeds of the refunding bonds to the payment of the bonds which are to be refunded, such issuance must comply with the Net Revenues test set forth in Subsection 13(b)(1) of this Ordinance and, if the proceeds of such refunding bonds are not to be applied immediately to the satisfaction of the bonds which are to be refunded, then such refunding bonds must provide by their terms that they shall be junior in lien to all 2012 Bonds and any Additional Bonds outstanding at the time of issuance of such refunding bonds until the time of application of their proceeds to the satisfaction of the bonds which are to be refunded. In computing Average Annual Debt Service Requirements to show compliance with said Net Revenues test for such refunding bonds, all payments of principal and interest due on such refunding bonds from the time of their issuance to the time of application of the proceeds of such refunding bonds to the satisfaction of the bonds which are to be refunded shall be excluded from such computation to the extent that such principal and interest are payable from sources other than the revenues of the Water System (such as bond proceeds held in escrow or investment earnings thereon) or from monies in the Surplus Account, and all payments of principal and interest due on the bonds which are to be refunded from and after the time of such application shall also be excluded. For purposes of this paragraph of this Section 14, the time of application of the proceeds of the refunding bonds to the satisfaction of the bonds which are to be refunded shall be the time of deposit with the paying agent for such bonds which are to be refunded pursuant to Section 10-126 R.R.S. Neb. 2007 (or any successor statutory provision thereto) or the time when such bonds which are to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner.

Section 15. So long as any 2012 Bonds or Additional Bonds are outstanding, the City hereby covenants and agrees as follows:

(a) The City will maintain the Water System in good condition and will continuously operate the same in a reasonable and efficient manner, and the City will punctually perform all the duties with reference to said system required by the Constitution and statutes of the State of Nebraska, but this covenant shall not prevent the City from discontinuing the use and operation of all or any portion of the Water System so long as the revenues derived from the City's ownership of the properties constituting the Water System shall be sufficient to fulfill this City's obligations under Sections 11 and 12 of this Ordinance.

(b) The City will not grant any franchise or right to any person, firm or corporation to

## ORDINANCE NO. 9385 (Cont.)

own or operate a utility system or systems in competition with the Water System.

(c) The City will maintain insurance on the property constituting the Water System (other than such portions of the system as are not normally insured) against risks customarily carried by similar utilities, but including fire and extended coverage insurance in an amount which would enable the City to repair, restore or replace the property damaged to the extent necessary to make the Water System operable in an efficient and proper manner to carry out the City's obligations under this Ordinance. The Mayor and Council shall annually, after the end of each fiscal year adopted by the City for the Water System, examine the amount of insurance carried with respect to the Water System and shall evidence approval of such insurance by resolution. The proceeds of any such insurance received by the City shall be used to repair, replace or restore the property damaged or destroyed to the extent necessary to make the Water System operable in an efficient and proper manner, and any amount of insurance proceeds not so used shall be credited to the Surplus Account. In the event of any such insured casualty loss, the City may advance funds to make temporary repairs or provide for an advance on costs of the permanent repair, restoration or replacement from the Operation and Maintenance Account and any such advances shall be repaid from insurance proceeds received.

(d) The City will keep proper books, records, and accounts separate from all other records and accounts in which complete and correct entries will be made of all transactions relating to the Water System. The City will have its operating and financial statements relating to the Water System audited annually by a certified public accountant or firm of certified public accountants. The City will furnish to the original purchaser of the 2012 Bonds and to the original purchaser or purchasers of each series of Additional Bonds issued hereunder, within six months after the end of each fiscal year of the Water System, a copy of the financial statements of the Water System and the report thereon of the certified public accountants.

(e) The City shall cause each person handling any of the monies in the Grand Island Water System Fund to be bonded by an insurance company licensed to do business in Nebraska in an amount or amounts deemed sufficient by the Mayor and Council to cover the amount of money belonging to said system reasonably expected to be in the possession or control of such person. The amount of such bond or bonds shall be fixed by the Mayor and Council and the costs thereof shall be paid as an operating and maintenance expense from the Operation and Maintenance Account.

Section 16. The City's obligations under this ordinance and the liens, pledges, covenants and agreements of the City herein made or provided for, shall be fully discharged and satisfied as to the 2012 Bonds, and any such bonds shall no longer be deemed outstanding hereunder if such bonds shall have been purchased and canceled by the City, or when payment of the principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof; or (b) shall have been provided for by depositing with the Paying Agent and Registrar or with a national or state bank having trust powers, or trust company, in trust, solely for such payment (1) sufficient money to make such payment deposited in a bank account or bank accounts which are fully insured by insurance of the Federal Deposit Insurance Corporation and/or (2) Deposit Securities

## ORDINANCE NO. 9385 (Cont.)

in such amount and bearing interest at such rates and payable at such time or times and maturing or redeemable at stated fixed prices at the option of the holder as to principal at such time or times as will ensure the availability of sufficient money to make such payment; provided, however, that, with respect to any bond to be paid prior to maturity, the City shall have duly given notice of redemption of such bonds as provided by law or made irrevocable provision for the giving of such notice. Any money so deposited with the Paying Agent and Registrar or with such bank or trust company may be invested or reinvested in U.S. Government Obligations at the direction of the City, and all interest and income from U.S. Government Obligations in the hands of the Paying Agent and Registrar or such bank or trust company in excess of the amount required to pay principal of and interest on the 2012 Bonds for which such monies or U.S. Government Obligations were deposited shall be paid over to the City as and when collected.

For purposes of this Section 16, any Deposit Securities shall be noncallable or callable only at the option of the holder.

Section 17. The terms and provisions of this Ordinance do and shall constitute a contract between the City and the registered owner or owners of the 2012 Bonds and no changes, variations or alterations of any kind, except for changes necessary to cure any ambiguity, formal defect or omission, shall be made to this Ordinance without the written consent of the holders of two-thirds (2/3rds) in principal amount of the 2012 Bonds then outstanding, provided, however, that neither the principal and interest to be paid upon any bond nor the maturity date of any 2012 Bond shall be changed without the written consent of the registered owner of all such bonds then outstanding. Any registered owner of a 2012 Bond may by mandamus or other appropriate action or proceedings at law or in equity in any court of competent jurisdiction enforce or compel performance of any and all of the acts and duties required by this Ordinance, and every provision and covenant hereof, including without limiting the generality of the foregoing, the enforcement of the performance of all duties required of the City by this Ordinance and the applicable laws of the State of Nebraska, including in such duties the collecting of revenues of the Water System and the segregation and application of such revenues as described in Section 11 of this Ordinance. After any default in payment or other default in performance, the registered owners of the 2012 Bonds, the 2007 Bond or any Additional Bonds shall be entitled to the appointment of a receiver for the Water

ORDINANCE NO. 9385 (Cont.)

System. Any and all actions brought by any registered owner or owners of the 2012 Bonds or Additional Bonds shall be maintained for the equal and ratable benefit of all registered owners of the 2012 Bonds or Additional Bonds outstanding and no registered owners of any of the 2012 Bonds or Additional Bonds shall have any right in any manner whatsoever by any action or proceedings to affect, disturb or prejudice the pledge created by this Ordinance.

Section 18. 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 2012 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 Water System as shown in 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

(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 2012 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 2012 Bonds;
- (7) modifications to rights of the holders of the 2012 Bonds, if material;
- (8) bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution, or sale of property securing repayment of the 2012

ORDINANCE NO. 9385 (Cont.)

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 2012 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 2012 Bonds remain outstanding.

Section 19. The City hereby covenants and agrees that it will make no use of the proceeds of the



## ORDINANCE NO. 9385 (Cont.)

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 issue, including all requirements with respect to payment and reporting of rebates. The City further agrees that it will not take any actions which would cause the 2012 Bonds to constitute "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 of interest payable on the 2012 Bonds with respect to taxpayers generally. The City hereby designates the 2012 Bonds as its "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B)(i)(III) of the Code and covenants and warrants that it does not reasonably expect to issue tax-exempt bonds or other tax-exempt interest bearing obligations aggregating in principal amount more than \$10,000,000 during calendar year 2012 (taking into consideration the exception for current refunding issues), provided that the amount of the 2012 Bonds hereby designated shall be reduced as and to the extent that a portion of the 2012 Bonds may be determined to be "deemed designated" in accordance with the provisions of Section 265(b)(3)(D) of the Code. The officers of the City (or any one of them) are hereby authorized to make allocations of the 2012 Bonds (as to principal maturities) and of the proceeds of the 2012 Bonds and debt service funds of the City as may be deemed appropriate under the federal tax laws and regulations. Any such allocations made and determinations set forth in a certificate by an officer of the City shall be and constitute authorized determinations made on behalf of the City with the same force and effect as if set forth in this Ordinance.

Section 20. 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 Exhibit "A" (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 21. If any section, paragraph, clause or provision of this Ordinance shall be held invalid,

ORDINANCE NO. 9385 (Cont.)

the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 22. 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 22nd day of May, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

ORDINANCE NO. 9385 (Cont.)

EXHIBIT “A”

POLICY AND PROCEDURES

[SEE ATTACHED]

**Policy and Procedures  
Federal Tax Law and Disclosure Requirements for  
Tax-exempt Bonds and/or Build America Bonds**

**ISSUER NAME:** The City of Grand Island, Nebraska

**COMPLIANCE OFFICER (BY TITLE):** Finance Director/Treasurer, City of Grand Island, Nebraska

**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 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**

Compliance Officer. 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.

Training. 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 <http://www.irs.gov/taxexemptbond>, or elsewhere) and the Municipal Securities Rulemaking Board (either on its Electronic Municipal Market Access website [“EMMA”] at <http://www.emma.msrb.org>, or elsewhere).

Compliance Review. 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

## ORDINANCE NO. 9385 (Cont.)

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.

Record Keeping. 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.

Incorporation of Tax Documents. 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.

Consultation Regarding Questions or Concerns. 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.

VCAP and Remedial Actions. 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. In general, if the Issuer identifies a violation of Federal tax requirements in accordance with the implementation of the foregoing procedures the Issuer can generally expect to receive more favorable treatment in resolving its tax violation under VCAP than if the Issuer had not implemented such procedures.

**PAYING AGENT AND REGISTRAR'S AGREEMENT**

This Agreement made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Grand Island, Nebraska (the "City") and Wells Fargo Bank, National Association, Minneapolis, Minnesota (the "Registrar").

WITNESSETH:

WHEREAS, the City has authorized the issuance of \$\_\_\_\_\_ of its Water System Revenue and Refunding Bonds, Series 2012, dated the date of delivery thereof, (the "Bonds") by Ordinance No. \_\_\_\_\_(the "Ordinance") and requires the services of a paying agent and registrar for said issue: and

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

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

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

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

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

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

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

ORDINANCE NO. 9385 (Cont.)

6. Transfer of the Bonds shall be registered and new Bonds issued in replacement thereof, pursuant to the limitations prescribed in the Ordinance, upon surrender to the Registrar of any outstanding Bond in form deemed by the Registrar properly endorsed for transfer with all necessary signatures guaranteed in such manner and form as the Registrar may require by a signature guarantor reasonably believed by Registrar to be responsible, accompanied by such assurances as the Registrar shall deem necessary or appropriate to evidence the genuineness and effectiveness of each necessary signature and, if deemed appropriate by the Registrar, satisfactory evidence of compliance with all applicable laws relating to the collection of taxes. In registering transfer of the Bonds, the Registrar may rely upon the Uniform Commercial Code or any other statutes which in the opinion of counsel protect the Registrar and the City in not requiring complete documentation, in registering Bonds without inquiry into adverse claims, in delaying registration for purposes of such inquiry or in refusing registration where in Registrar's judgment an adverse claim requires such refusal.

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

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

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

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

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

See Attachment

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

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

14. This Agreement shall terminate when the Bonds have been paid in full. The Registrar shall

## ORDINANCE NO. 9385 (Cont.)

have no duties with respect to the investment of monies paid to it under this Agreement and the Ordinance. Any deposit of such monies shall be either fully insured by insurance of the Federal Deposit Insurance Corporation or fully secured in the manner required by law for deposit of funds of the City. Any such deposit may be in an account maintained with the Registrar or an affiliate of the Registrar.

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

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

(i) Any successor securities depository must be a clearing agency registered with the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934 and must enter into an agreement with the City and the Registrar agreeing to act as the depository and clearing agency for all the Bonds. After such agreement has become effective, the Depository shall present the Bonds for registration of transfer in accordance with Section 4 of the Ordinance and the Registrar shall register them in the name of the successor securities depository or its nominee. If a successor securities depository has not accepted such position prior to the effective date of the Depository's termination of its services, the book-entry system shall automatically terminate.



ORDINANCE NO. 9385 (Cont.)

(ii) If the City elects to terminate the book-entry system for the Bonds, it shall so notify the Registrar in writing. Thereafter, upon presentation of the Bonds, or any of them, by the Depository or its nominee to the Registrar for registration of transfer in accordance with Section 4 of the Ordinance, the Registrar shall register the transfer in accordance with such Section 4 of the Ordinance and all provisions of this paragraph 15 shall immediately cease to be in effect, except as and to the extent provided below in this paragraph 15.

The City may elect to terminate the book-entry system for the Bonds at any time by giving written notice to the Depository and the Registrar. On the effective date of such termination, the provisions of this paragraph 15 shall cease to be in effect, except that the Registrar shall continue to comply with applicable provisions of the Letter of Representations with respect to the Bonds as to which the Depository remains the registered owner. After such termination, the Registrar shall, upon presentation of the Bonds by the Depository or its nominee for registration of transfer or exchange in accordance with Section 4 of the Ordinance make such transfer or exchange in accordance with said Section 4. Upon the appointment of a successor securities depository or termination of the book-entry system, the Registrar shall give notice of such event to the registered owners of the Bonds (through the Depository) and (1) of the name and address of the successor securities depository or (2) that the Bonds may now be obtained by the beneficial owners of the Bonds, or their nominees, upon proper instructions being given to the Depository by the relevant Participant and compliance by the Depository with the provisions of the Ordinance regarding registration of transfers. Notwithstanding any other provision of this Agreement to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of the Depository (or any successor nominee), all payments with respect to the principal and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations. In connection with any notice or other communication to be provided to bondholders pursuant to the Ordinance by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository notice of such record date not less than 15 calendar days in advance of such record date to the extent possible.

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

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

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

THE CITY OF GRAND ISLAND, NEBRASKA

(SEAL)

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

ATTEST

\_\_\_\_\_  
City Clerk

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Minneapolis, Minnesota  
Paying Agent and Registrar

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



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item F5

### **#9386 - Consideration of Amending Chapter 16 of the Grand Island City Code Relative to Fireworks**

Staff Contact: Tim Hiemer, Fire Division Chief

# **Council Agenda Memo**

**From:** Robert J. Sivick, City Attorney

**Meeting:** May 22, 2012

**Subject:** Consideration of Amending Chapter 16 of the Grand Island City Code Relative to Fireworks

**Item #'s:** F-5

**Presenter(s):** Tim Hiemer, Fire Operations Division Chief

## **Background**

The topic of fireworks was discussed at Study Session meetings of the Grand Island City Council (Council) held on October 18, 2011 and April 3, 2012. A proposed ordinance was presented to the Council at the regular meeting held on April 10, 2012. At the direction of the Council, City staff has revised the ordinance for further review.

At each meeting referenced above City staff presented and the Council discussed among other things, the following topics:

1. Limiting the dates of sale of fireworks.
2. Limiting the permissible dates and times for the discharge of fireworks.
3. Insuring the Fire Department is aware of fireworks storage locations in the City.
4. The need to protect the City's interests by requiring adequate insurance coverage for fireworks vendors.
5. Limiting the total number of fireworks stands.
6. Insuring changes do not go into effect until 2013 to allow fireworks vendors adequate time to adjust their business practices.
7. Increasing the fee for fireworks vendor permits to cover the City's expenses in administering and enforcing its fireworks laws.

## **Discussion**

The proposed ordinance generally makes the following changes to the Chapter 16, Article II of the Grand Island City Code regarding fireworks:

1. Beginning in 2013 fireworks vendors must disclose fireworks storage locations within

- the City.
2. Beginning in 2013 fireworks vendors must maintain a liability policy of no less than one million dollars listing the City as an additional insured.
  3. Beginning in 2013 fireworks sales will be limited from June 28 to July 4.
  4. Beginning in 2013 the sale and discharge of fireworks will be limited to 8 AM to 10 PM for June 28 to July 2, 8 AM to 11 PM for July 3, and 8 AM to midnight for July 4. Signage requirements at fireworks stands will incorporate the new discharge date and time limits when they take effect.
  5. Beginning immediately the discharge of fireworks will be prohibited within 300 feet of stands.
  6. The State statute listing permissible fireworks has been added for reference.
  7. The fee for obtaining a permit to sell fireworks is not listed in this Ordinance. City staff believes waiting to adjust the fee until the 2012-13 fiscal year budget is drafted will allow the compilation of additional data as to the costs borne by the City related to the sale and discharge of fireworks.

The recommendations presented to Council in the attached Ordinance reflect a discussion held between the City, Marv Kohler and Tom Towne.

### **Alternatives**

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

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

### **Recommendation**

City Administration recommends the Council approve Ordinance No. 9386 amending Chapter 16, Article II of the Grand Island City Code related to fireworks

### **Sample Motion**

Move to approve Ordinance No. 9386 amending Chapter 16, Article II of the Grand Island City Code related to fireworks.

## ORDINANCE NO. 9386

WHEREAS, the Grand Island City Council finds it necessary to amend Chapter 16, Article II of the Grand Island City Code, its laws regulating fireworks, to reflect existing community standards,

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

I. That Chapter 16, Article II of the Grand Island City Code be amended to read as follows:

### Article II. Fireworks

#### §16-12. Generally

It shall be unlawful for any person to possess, sell, offer for sale, bring into this City, or discharge any pyrotechnics, commonly known as fireworks other than permissible fireworks; provided, that the provisions of this section shall not apply to:

- (1) Any fireworks for purposes of public exhibitions or displays purchased from a licensed distributor or the holder of a display license to be issued by the State Fire Marshal, which license shall be good only for the calendar year in which issued and which shall not authorize the holder to sell or hold for sale any permissible fireworks as defined in §16-20 or any firecrackers of any description, whether soft shell or hard shell;
- (2) Any public exhibition or display under the auspices of the City of Grand Island;
- (3) Any fireworks brought into this state for storage by a licensed distributor and held for sale outside of this State;
- (4) Any fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal to any holder of a distributor's license; or
- (5) Toy cap pistols or toy caps each of which does not contain more than twenty-five hundredths of a grain of explosive material.

#### §16-13. Permit to Sell Fireworks

It shall be unlawful for any person to sell or offer for sale permissible fireworks in the City without first having made making application to the Fire Administration Office (City Hall) for a permit and received ing a permit to do so from the ~~Fire Prevention~~ Life Safety Division. Beginning in 2013, such permits shall require that applicants disclose any location within the geographic boundaries of the City where they are storing fireworks for sale. Beginning in 2013 such permits shall require applicants to offer proof of a valid liability insurance policy of at least one million dollars (\$1,000,000.00) naming the City as an additional insured party. This policy must be in full force and effect for the entire period of lawful fireworks sales as set forth in §16-15. Such permits shall be in accordance with the City of Grand Island Fee Schedule and shall be valid for the calendar year in which issued, and shall at all times be displayed at the place of business of the holder thereof. Such permits shall not be transferable.

Amended by Ord. No. 8895, effective 5-12-2004

#### §16-14. Repealed by Ordinance No. 8895

#### §16-15. Dates and Times of Lawful Sale

Permissible fireworks may be sold or offered for sale in the City of Grand Island on June 27 through and including July 4 of each year. Beginning in 2013 and each year thereafter permissible fireworks may be sold or offered for sale in the City of Grand Island on June 28 through and including July 4. Beginning in 2013 permissible fireworks may only be sold during the following times:

June 28 through July 2 – 8:00 a.m. to 10:00 p.m.  
July 3 – 8:00 a.m. to 11:00 p.m.

Approved as to Form	▣ _____
May 21, 2012	▣ City Attorney

July 4 – 8:00 a.m. to midnight

#### **§16-16. Temporary Fireworks Stands**

Any person having obtained a permit to sell permissible fireworks may sell or offer for sale such fireworks only from a temporary stand or enclosure erected or placed on real estate for that purpose. No fireworks shall be sold from permanent buildings or structures in the City. If fireworks are to be sold from a temporary stand or enclosure, such stand or enclosure shall be of wood or steel frame construction covered with metal or wood. Any temporary enclosure or stand shall be permitted only in those areas of the City zoned for business or manufacturing, and only after a permit is obtained from the ~~Fire Prevention~~ Life Safety Division for the erection or placement of such temporary enclosures or stands. Such temporary enclosures or stands shall be permitted to remain on real estate where permissible fireworks are sold for only the period beginning on June 22 through and including July 9 of each year. Any such temporary stand or enclosure shall not be located closer than twenty-five feet from any building, and at least one hundred feet from any station where gasoline and oil for motor vehicles is sold. Such temporary stand or enclosure shall not exceed five hundred square feet in size.

Amended by Ord. No. 8895, effective 5-12-2004

#### **§16-16.1. Signage Required**

Smoking shall not be permitted inside or within 50 feet of the temporary fireworks stand or sales area. At least one sign that reads as follows, in letters at least 2 inches in height on a contrasting background, shall be conspicuously posted on the exterior of each side of the fireworks stand:

NO SMOKING WITHIN FIFTY FEET OR  
DISCHARGE OF FIREWORKS  
WITHIN THREE HUNDRED FEET  
~~ON~~ OF THE PREMISES

In addition to the "no smoking" sign, at least one sign, 2 foot by 3 foot in size, on a contrasting background, shall be posted on the exterior of the fireworks stand that reads as follows:

THE GRAND ISLAND CITY CODE ALLOWS  
FIREWORKS TO BE DISCHARGED ONLY ON THE  
FOLLOWING DATES AND TIMES:  
June 27 through July 3 – 8:00 a.m. to 11:00 p.m.  
July 4 – 8:00 a.m. to midnight

Beginning in 2013 and each year thereafter the language of the sign listed immediately above shall be altered to read as follows:

THE GRAND ISLAND CITY CODE ALLOWS  
FIREWORKS TO BE DISCHARGED ONLY ON THE  
FOLLOWING DATES AND TIMES:  
June 28 through July 2 – 8:00 a.m. to 10:00 p.m.  
July 3 – 8:00 a.m. to 11:00 p.m.  
July 4 – 8:00 a.m. to midnight

Added by Ord. No. 8895, effective 5-12-2004

#### **§16-17. Age Limitation for Selling Fireworks**

Retail sales establishments shall, at all times, be supervised by a person of at least sixteen (16) years of age. Failure to comply with this regulation may result in immediate revocation of the retail license.

#### **§16-18. Discharging Fireworks Where Sold**

It shall be unlawful for any person to discharge fireworks in or upon the premises where fireworks are sold or within three hundred (300) feet of the premises.

Amended by Ord. No. 8895, effective 5-12-2004

#### **§16-19. Explosives; Throwing Prohibited**

It shall be unlawful for any person to throw any firecracker, or any object which explodes upon contact with another object: (1) from, at, or into a motor vehicle; (2) onto any street, highway, or sidewalk; (3) at or near any person; (4) into any building; or (5) into or at any group of persons.

**§16-20. Definitions**

Permissible fireworks shall mean only sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, firecrackers not to exceed two inches in length and three-eighths of an inch in diameter, total pyrotechnic composition not to exceed 50.0 milligrams each in weight, color wheels, and any other fireworks approved under Sections 28-1241(7) and 28-1247 of the ~~State Fire Marshal's Act Book~~ Nebraska Revised Statutes. See also *Rules and Regulations concerning fireworks in the State of Nebraska Administrative Code, Title 157*.

Person as used in this Article shall include any person, firm, partnership, association of persons, or corporation.

Sale shall include barter, exchange, or gift or offer therefor, and each such transaction made by any person whether as principal, proprietor, agent, servant, or employee.

Amended by Ord. No. 8895, effective 5-12-2004

**§16-21. Repealed by Ordinance No. 8895**

**§16-22. Discharge of Fireworks**

Permissible fireworks may be discharged, exploded, or used in the City of Grand Island on June 27 through and including July 4 of each year; provided that on such days the discharge and explosion of fireworks shall be permitted during the following times:

June 27 through July 3 ..... 8 a.m. to 11 p.m.  
July 4 ..... 8 a.m. to midnight

Beginning in 2013 and each year thereafter, the following fireworks discharge schedule shall be in effect:

June 28 through July 2 – 8:00 a.m. to 10:00 p.m.  
July 3 – 8:00 a.m. to 11:00 p.m.  
July 4 – 8:00 a.m. to midnight

The discharge of fireworks within the City of Grand Island on any dates or times other than as set out in this section shall require a permit from the ~~Fire Prevention~~ Life Safety Division. Public exhibition applications shall be accompanied by documentation of a display license issued by the State Fire Marshal. Private party display applications will not require a State Fire Marshal license, but displays will be limited to permissible fireworks as described in §16-20 of this Article. Applicant shall also show that there will not be any substantial danger to people or property. Factors that will be considered when reviewing an application will include, but not be limited to, where the fireworks will be discharged, the procedures used to discharge the fireworks and the qualifications of the individuals discharging the fireworks.

Amended by Ord. No. 8895, effective 5-12-2004

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: May 22, 2012.

---

Jay Vavricek, Mayor

ATTEST:

---

RaNae Edwards, City Clerk





# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item F6

**#9387 - Conveyance of Real Estate and Granting of Easement for the BNSF Second Track Project**

Staff Contact: Tim Luchsinger

# **Council Agenda Memo**

**From:** Robert J. Sivick, City Attorney

**Meeting:** May 22, 2012

**Subject:** Conveyance of Real Estate and Granting of Easement for the BNSF Second Track Project

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

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

## **Background**

In 1993, Burlington Northern Railroad completed an elevated rail overpass to eliminate traffic conflicts caused by an at-grade crossing with the Union Pacific Railroad. In April, 2011 the City of Grand Island (City) was advised by BNSF Railway (BNSF) it was proceeding with a project to widen this overpass to a double track to alleviate traffic congestion as a result of multiple tracks reducing to a single track through Grand Island. As a result of this, multiple electrical, water, and sewer utility crossings by the City across BNSF right-of-way will need to be modified to accommodate the track improvement project. These modifications include either relocating utilities or encasement of the utilities to current railroad crossing standards. To accomplish this, BNSF needs to acquire portions of Utilities Department properties adjoining BNSF property south of the JBS facility and at the Burdick Station.

On November 29, 2011 this project was the subject of a City Council Study Session. On December 6, 2011 the Grand Island City Council (Council) unanimously voted to approve the proposed Master Utility Relocation Agreement (Agreement) between the City and BNSF. On January 10, 2012 the Council voted to convey six parcels to BNSF. In March, 2012 it was discovered that the legal description for one of the parcels was incorrect. That legal description has since been corrected.

## **Discussion**

Pursuant to paragraph 2f and Exhibit D of the Agreement, the City is obligated to convey six parcels of real estate it owns to BNSF. Because Neb. Rev. Stat. §16-202 grants the public the right to remonstrance within thirty days of the passage and publication of any sale of publicly owned real estate, BNSF will not take title to the real estate unless the Council approves and until the expiration of the remonstrance period. To allow BNSF to

begin work on the property in the meantime, the Agreement obligates the City to grant a temporary construction easement for the parcel.

### **Alternatives**

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

1. Move to approve.
2. Take no action on the issue.

### **Recommendation**

City Administration recommends that the Council approve Ordinance No. 9387 and authorize the Mayor to execute the Warranty Deed and Temporary Construction Easement.

### **Sample Motion**

Move to approve Ordinance No. 9387 and authorize the Mayor to execute the Warranty Deed and Temporary Construction Easement.

## **WARRANTY DEED**

The City of Grand Island, a(n) Nebraska Municipal Corporation ("**GRANTOR**"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash and other good and valuable consideration to it paid by BNSF RAILWAY COMPANY, a Delaware corporation ("**GRANTEE**"), whose mailing address is 2500 Lou Menk Drive, Fort Worth, Texas 76131, the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto the Grantee that certain tract of land ("**Land**") described on Exhibit "A" hereto, together with all improvements thereon and all rights and appurtenances appertaining thereto, and all of Seller's rights and interest, if any, in and to all easements and alleys, highways, or streets in, on, across or adjoining the Land (herein collectively called the "**Property**").

This Deed is executed by GRANTOR and accepted by GRANTEE subject to validly existing and enforceable rights, interests, and estates, if any do in fact exist, but only to the extent that the same do in fact exist, of third parties in connection with those items set out and listed on Exhibit "B" hereto (herein called the "**Permitted Encumbrances**"). GRANTOR covenants with GRANTEE that GRANTOR has legal power and lawful authority to convey the Land.

TO HAVE AND TO HOLD the Property together with all and singular the rights and appurtenances thereto in anywise belonging unto GRANTEE, its legal representatives, successors, and assigns forever; and GRANTOR does hereby bind itself, its legal representatives, successors, and assigns to WARRANT AND FOREVER DEFEND all and singular the Property, subject to the Permitted Encumbrances, unto GRANTEE, its legal representatives, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS THE EXECUTION HEREOF as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

### **GRANTOR:**

The City of Grand Island

By: \_\_\_\_\_  
Name: Jay Vavricek  
Title: Mayor

STATE OF NEBRASKA       )  
  )ss.  
COUNTY OF HALL        )

*This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
Jay Vavricek, Mayor of The City of Grand Island a(n) Nebraska Municipal Corporation, on behalf of said  
Municipal Corporation..*

WITNESS my hand and notarial seal on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

My Commission Expires: \_\_\_\_\_

Deed Exhibits:

Exhibit A: Legal Description

Exhibit B: Permitted Encumbrances

LEGAL DESCRIPTION – EXHIBIT A (Parcel 35)

A tract of land located in the North Half (N1/2) of Section Fifteen (15), Township Eleven (11) North, Range Nine (9) West of the 6<sup>th</sup> P.M., City of Grand Island, Hall County, Nebraska, more particularly described as follows:

Commencing at the East Quarter corner of said Section Fifteen (15); thence on an assumed bearing of South 89° 41' 12" West along the South line of the North Half (N 1/2) of said Section Fifteen (15), a distance of one thousand four hundred ninety nine and eighty six hundredths (1,499.86) feet to a point on the southerly Right-of-Way line of the BNSF Railroad also being the Point of Beginning; thence South 89° 41' 12" West along said South line, a distance of twenty three and fifty five hundredths (23.55) feet; thence North 62° 33' 35" West, a distance of one thousand three hundred thirty seven and fifty nine hundredths (1,337.59) feet; thence on a curve to the right having a radius of four thousand one hundred thirty nine and eighty nine hundredths (4,139.89) feet, an arc length of one hundred eight and ninety eight hundredths (108.98) feet being subtended by a chord of North 16° 44' 30" West, a length of one hundred eight and ninety seven hundredths (108.97) feet to a point on the southerly Right-of-Way line of the BNSF Railroad; thence South 59° 52' 40" East along said Right-of-Way line, a distance of one thousand four hundred thirty five and eighty seven hundredths (1,435.87) feet to the said Point of Beginning.

Together with and subject to covenants, easement and restrictions of record.

Said tract of land contains 1.40 acres more or less.

EXCEPTIONS

Reservations of rights as contained in Deed and Release recorded September 8, 1922 in Book 61, Page 69; records of Hall County, Nebraska.

Platte Valley Public Power and Irrigation District Resolution No. 19-68 transferring Right of Way Easements for Transmission Line to the City of Grand Island, a municipal corporation, recorded April 5, 1968 in Book 17, Page 333; records of Hall County, Nebraska.

Easement granted to MCI Telecommunications Corporation, recorded April 19, 1993 as Instrument No. 1993103010; records of Hall County, Nebraska.

## TEMPORARY CONSTRUCTION EASEMENT

**KNOW ALL MEN BY THESE PRESENTS**, that the **CITY OF GRAND ISLAND, NEBRASKA**, referred to hereinafter as "**Grantor**", for Ten and No/100 Dollars (\$10.00) to it paid by **BNSF RAILWAY COMPANY**, a Delaware corporation, whose address for purposes of this instrument is 2650 Lou Menk Drive, Fort Worth, Texas 76131-2830, the "**Grantee**", and for the promises of the Grantee hereinafter specified, does hereby grant, bargain, sell, and convey unto the Grantee and its employees, officers, affiliates, contractors, agents and/or assigns (the "**BNSF Parties**"), subject to the terms and conditions hereinafter set forth, an exclusive **TEMPORARY CONSTRUCTION EASEMENT** (the "**Temporary Construction Easement**") for the construction and installation of that certain "double track" expansion of railroad tracks and related equipment and facilities (collectively, the "**Double Track Facilities**") in, on, over, under, and through those certain premises (the "**Easement Area**"), situated in Hall County, Nebraska, to-wit:

See **Exhibit "A"**, attached hereto and made a part hereof, for the description of the Easement Area.

The foregoing Temporary Construction Easement is made subject to and upon the following express conditions:

1. The Grantor on behalf of itself, its successors, and assigns hereby agrees that, as of the Commencement Date (defined below), Grantee and the BNSF Parties shall enjoy the Temporary Construction Easement in, on, over, under, and through the Easement Area and may use the Easement Area in any way they see fit in order to construct the Double Track Facilities and all related equipment, facilities, structures, and/or infrastructure deemed necessary or beneficial by Grantee and/or the BNSF Parties.
2. The Temporary Construction Easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of Grantor, Grantee, and the BNSF Parties.
3. The Temporary Construction Easement shall be exclusive in favor of Grantee and the BNSF Parties. Grantor shall not occupy, undertake any work on, or interfere with Grantee's and/or the BNSF Parties' use of the Easement Area. Further, Grantor shall use its best reasonable efforts to ensure that third parties do not interfere with use of the Easement Area by Grantee and/or the BNSF Parties.
4. In connection with the Temporary Construction Easement, Grantee and/or the BNSF Parties shall have the right, but not the obligation, to remove all trees, brush, and other vegetation from the above-described Easement Area and to reconfigure the Easement Area in any way they deem necessary or beneficial.

The Temporary Construction Easement shall commence in favor of Grantee and the BNSF Parties on **May 22, 2012** (the "**Commencement Date**"), and shall continue in full effect until its termination upon the earlier of (i) July 1, 2014, (ii) completion of the Double Track Facilities by Grantee and/or the BNSF Parties (with completion of the Double Track Facilities to be signified by Grantee's delivery of written notification of completion to Grantor), or (iii) Grantee's acquisition of fee simple title to the Easement Area from Grantor.

TEMPORARY CONSTRUCTION EASEMENT  
CITY OF GRAND ISLAND, NEBRASKA TO BNSF

**TO HAVE AND TO HOLD THE SAME**, together with all the hereditaments and appurtenances thereunto belonging to Grantee and the BNSF Parties for their use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

**EXECUTED** to be effective as of the 22nd day of May, 2012.

**GRANTOR:**

**CITY OF GRAND ISLAND, NEBRASKA**

By: \_\_\_\_\_  
Name: Jay Vavricek  
Title: Mayor

THE STATE OF NEBRASKA       §  
   §  
COUNTY OF HALL               §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, as the voluntary act of the person known by me to be Jay Vavricek, the Mayor of the City of Grand Island, Nebraska, on behalf of and with the full authority of the City of Grand Island, Nebraska.

\_\_\_\_\_  
Notary Public, State of Nebraska

\_\_\_\_\_  
Notary's Typed or Printed Name

My Commission Expires: \_\_\_\_\_

TEMPORARY CONSTRUCTION EASEMENT  
CITY OF GRAND ISLAND, NEBRASKA TO BNSF



**EXHIBIT "A"**  
**TO THE TEMPORARY CONSTRUCTION EASEMENT INSTRUMENT FROM**  
**THE CITY OF GRAND ISLAND, NEBRASKA, TO BNSF AND THE BNSF PARTIES**

**Legal Description of the Easement Area**

(Parcel 35)

A tract of land located in the North Half (N1/2) of Section Fifteen (15), Township Eleven (11) North, Range Nine (9) West of the 6<sup>th</sup> P.M., City of Grand Island, Hall County, Nebraska, more particularly described as follows:

Commencing at the East Quarter corner of said Section Fifteen (15); thence on an assumed bearing of South 89° 41' 12" West along the South line of the North Half (N 1/2) of said Section Fifteen (15), a distance of one thousand four hundred ninety nine and eighty six hundredths (1,499.86) feet to a point on the southerly Right-of-Way line of the BNSF Railroad also being the Point of Beginning; thence South 89° 41' 12" West along said South line, a distance of twenty three and fifty five hundredths (23.55) feet; thence North 62° 33' 35" West, a distance of one thousand three hundred thirty seven and fifty nine hundredths (1,337.59) feet; thence on a curve to the right having a radius of four thousand one hundred thirty nine and eighty nine hundredths (4,139.89) feet, an arc length of one hundred eight and ninety eight hundredths (108.98) feet being subtended by a chord of North 16° 44' 30" West, a length of one hundred eight and ninety seven hundredths (108.97) feet to a point on the southerly Right-of-Way line of the BNSF Railroad; thence South 59° 52' 40" East along said Right-of-Way line, a distance of one thousand four hundred thirty five and eighty seven hundredths (1,435.87) feet to the said Point of Beginning.

Together with and subject to covenants, easement and restrictions of record.

Said tract of land contains 1.40 acres more or less.

ORDINANCE NO. 9387

An ordinance directing and authorizing the sale of a parcel of real estate to the BNSF Railway Company, providing for a temporary construction easement for that parcel, providing for the giving of notice of such conveyance and the terms thereof; providing for the right to file a remonstrance against such conveyance; and providing for the publication and effective date of this ordinance.

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

SECTION 1. The City of Grand Island will convey to the BNSF Railway Company and provide a temporary construction easement for a tract of real estate legally described as follows:

A tract of land located in the North Half (N1/2) of Section Fifteen (15), Township Eleven (11) North, Range Nine (9) West of the 6<sup>th</sup> P.M., City of Grand Island, Hall County, Nebraska, more particularly described as follows:

Commencing at the East Quarter corner of said Section Fifteen (15); thence on an assumed bearing of South 89° 41' 12" West along the South line of the North Half (N 1/2) of said Section Fifteen (15), a distance of one thousand four hundred ninety nine and eighty six hundredths (1,499.86) feet to a point on the southerly Right-of-Way line of the BNSF Railroad also being the Point of Beginning; thence South 89° 41' 12" West along said South line, a distance of twenty three and fifty five hundredths (23.55) feet; thence North 62° 33' 35" West, a distance of one thousand three hundred thirty seven and fifty nine hundredths (1,337.59) feet; thence on a curve to the right having a radius of four thousand one hundred thirty nine and eighty nine hundredths (4,139.89) feet, an arc length of one hundred eight and ninety eight hundredths (108.98) feet being subtended by a chord of North 16° 44' 30" West, a length of one hundred eight and ninety seven hundredths (108.97) feet to a point on the southerly Right-of-Way line of the BNSF Railroad; thence South 59° 52' 40" East along said Right-of-Way line, a distance of one thousand four hundred thirty five and eighty seven hundredths (1,435.87) feet to the said Point of Beginning.

Together with and subject to covenants, easement and restrictions of record.

Said tract of land contains 1.40 acres more or less.

Approved as to Form	by _____
May 21, 2012	City Attorney

ORDINANCE NO. 9387 (Cont.)

SECTION 2. In consideration of Twenty Dollars (\$20.00) and other consideration as set forth in the Master Utility Relocation Agreement approved pursuant to Resolution 2011-364, the City of Grand Island shall convey the real estate as listed above by Warranty Deed and shall grant a temporary construction easement to BNSF Railway Company pursuant to the terms and conditions of the Warranty Deed and Temporary Construction Easement agreement between the parties.

SECTION 3. As provided by law, notice of such conveyance and the terms thereof shall be published for three (3) consecutive weeks in the *Grand Island Independent*, a newspaper published for general circulation in the City of Grand Island. Immediately after the passage and publication of this ordinance, the City Clerk is hereby directed and instructed to prepare and publish said notice.

SECTION 4. Authority is hereby granted to the electors of the City of Grand Island to file a remonstrance against the conveyance of such within described real estate; and if a remonstrance against such conveyance signed by registered voters of the City of Grand Island equal or greater in number to thirty percent (30%) of the registered voters of the City of Grand Island voting at the last regular municipal election held in such City be filed with the City Council within thirty (30) days of passage and publication of such ordinance, said property shall not then, nor within one (1) year thereafter, be conveyed.

SECTION 5. The conveyance of said real estate is hereby authorized, directed, and confirmed; and if no remonstrance is filed against such conveyance, the Mayor shall make, execute, and deliver to the BNSF Railway Company, a Warranty Deed for the parcel as described above, and the execution of that Deed is hereby authorized without further action on behalf of the City Council.

ORDINANCE NO. 9387 (Cont.)

SECTION 6. The Mayor shall make, execute, and deliver to the BNSF Railway Company a Temporary Construction Easement for the parcel as described above.

SECTION 7. The City Clerk is directed to file this ordinance in the Office of the Register of Deeds of Hall County, Nebraska.

SECTION 8. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen (15) days in one (1) issue of the *Grand Island Independent* as provided by law.

Enacted: May 22, 2012.

---

Jay Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk



# **City of Grand Island**

**Tuesday, May 22, 2012**

**Council Session**

## **Item G1**

### **Approving Minutes of May 8, 2012 City Council Regular Meeting**

**Staff Contact: RaNae Edwards**

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL REGULAR MEETING  
May 8, 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 May 8, 2012. Notice of the meeting was given in *The Grand Island Independent* on May 2, 2012.

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

INVOCATION was given by Pastor Fred Locasto, Spirit of Life Church, 2304 Macron Street followed by the PLEDGE OF ALLEGIANCE.

Mayor Vavricek introduced Community Youth Council members Alec Baxter and Mitch Maginnis.

PUBLIC HEARINGS:

Public Hearing on Request from Roebuck Investments LLC dba Sam & Louies, 928 Concord Avenue for a Class "I" Liquor License. City Clerk RaNae Edwards reported that an application for a Class "I" Liquor License had been received from Roebuck Investments LLC dba Sam & Louies, 928 Concord Avenue. Ms. Edwards presented the following exhibits for the record: application submitted to the Liquor Control Commission and received by the City on April 16, 2012; notice to the general public of date, time, and place of hearing published on April 28, 2012; notice to the applicant of date, time, and place of hearing mailed on April 16, 2012; along with Chapter 4 of the City Code. Staff recommended approval. No public testimony was heard.

RESOLUTION:

#2012-125 – Consideration of Approving FTE Amendment. Human Resources Director Brenda Sutherland reported that the Public Works Department requested the Engineering Technician FTE be replaced by a CADD Operator FTE with no change to the salary range.

Discussion was held regarding comparability with other Cities regarding the CADD position pay scale. Mentioned was this position would be a non-union position.

Motion by Gilbert, second by Dugan to approve Resolution #2012-125. Upon roll call vote, Councilmembers Haase, Niemann, Ramsey, Gilbert, Nickerson, Donaldson, Dugan, and Minton voted aye. Councilmember Gericke voted no. Motion adopted.

## ORDINANCES:

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

### #9381 – Consideration of Salary Ordinance Amendment

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 this ordinance 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 seconded the motion. Upon roll call vote, all voted aye. Motion adopted.

Ms. Sutherland stated Ordinance #9381 related to Resolution #2012-125 just approved.

Motion by Donaldson, second by Ramsey to approve Ordinance #9381.

City Clerk: Ordinance #9381 on first reading. All those in favor of the passage of this ordinance on first reading, answer roll call vote. Upon roll call vote, all voted aye. Motion adopted.

City Clerk: Ordinance #9381 on final passage. All those in favor of the passage of this ordinance 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, Ordinance #9381 is declared to be lawfully adopted upon publication as required by law.

CONSENT AGENDA: Consent Agenda item G-9 was pulled for further discussion. Motion by Niemann, second by Dugan to approve the Consent Agenda excluding item G-9. Upon roll call vote, all voted aye. Motion adopted.

Approving Minutes of April 24, 2012 City Council Regular Meeting.

Approving Minutes of April 28, 2012 City Council Special Study Session.

Approving Minutes of May 1, 2012 City Council Study Session.

Approving Re-Appointments of Julie Connelly, Scott Eriksen, and Karen Bredthauer to the Interjurisdictional Planning Commission.

Approving Appointments of James Goodman and Bennett Chamness to the Business Improvement District #4 Board.

Approving Appointment of Norm Saale to the Business Improvement District #7 Board.

Approving Request from Roy Ussary, 836 Sagewood Avenue for Liquor Manager Designation for Olive Garden #4416, 1010 Allen Drive.

Approving Request from Scott Klone, 1404 East 57<sup>th</sup> Street Place, Kearney, NE for Liquor Manager Designation for Buffalo Wild Wings Grill & Bar #313, 809 Allen Drive.

#2012-116 – Approving Bid Award for One (1) Tandem Axle Chassis, 10 Cubic Yard Dump Truck for the Streets Division with Hansen International Truck, Inc. of Grand Island, Nebraska in an Amount of \$83,572.00.

#2012-117 – Approving Bid Award for the 2012 Asphalt Resurfacing Project No. 2012-AC-1 with Gary Smith Construction Co., Inc. of Grand Island, Nebraska in an Amount of \$309,967.70.

#2012-118 – Approving Bid Award for the 2012 Chip Seal Project No. 2012-CS-1 with Sta-bilt Construction Co. of Harlan, Iowa in an Amount of \$68,015.00.

#2012-119 – Approving Certificate of Final Completion for Sanitary Sewer Manhole Rehabilitation Project 2011-MH REHAB-1 with Midlands Contracting, Inc., of Kearney, Nebraska.

#2012-120 – Approving Change Order No. 4 for Grand Island Quiet Zone Project No. 2012-QZ-1 with The Diamond Engineering Company of Grand Island, Nebraska for an increase of \$2,080.00 and a Revised Contract Amount of \$250,604.99.

#2012-121 – Approving Subordination Agreement with Cuong Xuan Nguyen and Hang Ngoc Ho for Property Located at 917 Lambert Street.

#2012-122 – Approving Subordination Agreement with Joba Luz Mencia-Zuniga for Property Located at 1216 Warren Lane.

#2012-115 – Approving Bid Award for Water Main Project 2011-W-4 – Water Main Extension to Merrick County with Van Kirk Brothers Contracting of Sutton, Nebraska in an Amount of \$4,109,998.35. Utilities Director Tim Luchsinger reported that Water Main Project 2011-W-4 would extend City water east one mile into Merrick County. The project was a remediation action by the Union Pacific Railroad to replace private wells that had been contaminated. UPRR would reimburse the City for the costs associated with the extension.

Discussion was held regarding the process of connecting to the water line. Future connections would be paid for by the customer. Routine maintenance would be paid for by the City. Rates would be the same as those within the City.

Motion by Haase, second by Niemann to approve Resolution #2012-115. Upon roll call vote, all voted aye. Motion adopted.

#### RESOLUTIONS:

#2012-123 – Consideration of Request from Roebuck Investments LLC dba Sam & Louies, 928 Concord Avenue for a “I” Liquor License and Liquor Manager Designation for Larry Roebuck 1003 NE Hwy 2, Phillips, NE. This item related to the aforementioned Public Hearing.

Motion by Gilbert, second by Niemann to approve Resolution #2012-123 contingent upon Mr. Roebuck completing a state approved alcohol server/seller training program. Upon roll call vote, all voted aye. Motion adopted.



#2012-124 – Consideration of Approving Renewable Energy Goal. Utilities Director Tim Luchsinger reported that State Statutes required public utilities to provide its customers with adequate electric service at as low of an overall cost as possible. The Utilities Department had evaluated alternative renewable energy sources, primarily wind generation. Staff recommended participation as needed to maintain a balanced energy portfolio.

Discussion was held regarding moving forward when inquiries were presented on a case-by-case basis.

Motion by Donaldson, second by Niemann to approve Resolution #2012-124. Upon roll call vote, all voted aye. Motion adopted.

PAYMENT OF CLAIMS:

Motion by Dugan, second by Haase to approve the Claims for the period of April 25, 2012 through May 8, 2012, for a total amount of \$2,553,176.32. Unanimously approved.

ADJOURN TO EXECUTIVE SESSION: Motion by Gilbert, second by Dugan to adjourn to Executive Session at 7:26 p.m. for the purpose of a strategy session with respect to collective bargaining (IBEW Local 1597 – Wastewater, Service/Clerical, Finance, Utilities). Upon roll call vote, all voted aye. Motion adopted.

RETURN TO REGULAR SESSION: Motion by Haase, second by Nickerson to return to Regular Session at 8:00 p.m. Upon roll call vote, all voted aye. Motion adopted.

ADJOURNMENT: The meeting was adjourned at 8:00 p.m.

RaNae Edwards  
City Clerk



# **City of Grand Island**

**Tuesday, May 22, 2012**

**Council Session**

## **Item G2**

**Approving Minutes of May 15, 2012 City Council Study Session**

**Staff Contact: RaNae Edwards**

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL STUDY SESSION

May 15, 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 May 15, 2012. Notice of the meeting was given in the *Grand Island Independent* on May 9, 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, Scott Dugan, Vaughn Minton, and John Gericke. Councilmember Linna Dee Donaldson was absent. The following City Officials were present: City Administrator Mary Lou Brown, City Clerk RaNae Edwards, City Attorney Bob Sivick, Public Works Director John Collins and Finance Director Jaye Monter.

INVOCATION was given by CYC Student Miranda Wieczorek followed by the PLEDGE OF ALLEGIANCE.

Mayor Vavricek introduced Community Youth Council member Miranda Wieczorek.

SPECIAL ITEMS:

Grand Island Dewatering Study 2012 Update. Public Works Director John Collins reported that on December 21, 1998 the City had entered into an agreement with the Central Platte Natural Resources District (CPNRD) to provide for the installation of test and monitoring wells to study lowering groundwater levels. The study was concluded in September 2000 with a recommendation to implement a dewatering program.

Kevin Prior and Karen O'Connor representing Olsson Associates gave a PowerPoint to update the September 2000 Groundwater Study. Reviewed was the project background and dewatering areas of concern. The 2012 updated project scope included the following:

- Evaluate previous options and current GW conditions
- Assess current groundwater contamination plumes
- Develop updated groundwater model – to evaluate dewatering well layouts
- Prepare conceptual layout of conveyance piping
- Develop preliminary opinion of probable cost
- Identify project financing options

Councilmember Donaldson was present at 7:15 p.m.

Mentioned was there were three Groundwater Control Area sites. Groundwater Control Area No. 1 was the northwest portion of the city west of Highway 281, Groundwater Control Area No. 2 was in the south part of the city between Highway 281 to Fonner Park and south of Highway 30

and Groundwater Control Area No. 3 was in the eastern part of the city north of the Wastewater Treatment Plant.

Area 1 had eleven dewatering wells, two discharge points, and five new and five existing monitoring wells. Area 2 had sixteen dewatering wells, four discharge points and five new and five existing monitoring wells. Area 3 had six dewatering wells, three discharge points and one new monitoring well. Total preliminary opinion probable cost for all three areas was \$18,928,000. Annual costs for 20 years at 7% A/P were \$1,786,669.00 and annual costs for 20 years at 5% A/P were \$1,272,259.

Financing options mentioned were: dewatering districts, user fees, revenue and various purpose bonds, and water banking.

The following recommendations were made for implementation:

- Conduct neighborhood meetings for education and public outreach
- Work with CPNRD for funding options
- Develop Dewatering Districts
- Determine financing schedule
- Complete final design including plans and specifications
- Solicit bids for construction
- Conduct final public hearings on assessment fees – Dewatering Districts
- Finalize project financing

Discussion was held regarding the cost from the 2000 study and the 2012 study which had decreased because of interest rates. City Attorney Bob Sivick explained the state statutes allowing the creation of dewatering districts. Comments were made concerning this impacting the entire community and should be paid for by the whole community.

Mr. Prior explained water banking where they accounted for water. Mentioned was the dewatering wells would affect the lakes very little within the City. Discussion was held regarding the time frame for a project like this. Mr. Prior stated actual construction could be done within 2 to 3 years. Upfront design, financing, etc. would take a couple of years before construction could even begin.

City Administration Mary Lou Brown stated this project would be addressed during the 2012-2013 budget sessions.

Randy Stueven, 233 South Gunbarrel Road spoke in opposition and stated concerns of moving water into Merrick County. Eric Benson, 2727 W. Highway 34 spoke in opposition.

Terry Brown, manager of engineering service stated the NRD would be a partner in this project. Mentioned was that not all water would be put into the Wood River diversion channel.

Analysis of Utility Rates for City/Non-City Customers. Utilities Director Tim Luchsinger reported that water had traditionally been offered only to customers within the City limits, but

had been provided on a limited basis to areas affected by groundwater quality issues. Currently there were no differential utility rates for City/non-City customers.

The Grand Island Electric Service Area was established in 1964 as determined by the Nebraska Power Review Board. Newly annexed areas must be requested to be added by the electric utility within one year of annexation. The local governing bodies set the rates.

The following Outside of City Limits – Electric System was presented:

- 2000 of 24,600 (8%) of electric customers are outside of City limits
- \$260,000 of \$55,000,000 (0.5%) of electric revenue is from sales outside of City limits
- 112 miles of 459 miles (24%) of electric circuits are outside of City limits
- 10% of annual line maintenance budget is for lines outside of City limits

Outside of City Limits – Water System:

- 85 of 15,800 (0.5%) of water customers are outside of City limits
- \$38,000 of \$4,200,000 (0.9%) of water revenue is from sales outside of City limits
- 13 miles of 278 miles (5%) of water distribution lines are outside of City limits

Half of the surveyed municipalities over 10,000 population had no difference in rates. Those establishing different rates varied from 25% to 100% of the urban rate.

The following Considerations were presented:

- All utilities customers contribute to City general fund by Utilities Department in-lieu-of-tax payment
- Suburban customers do not pay 1.5% City sales tax on utility bills (\$4,500 annually)
- Primary motive for annexation has been fire protection
- Electric distribution expense was \$3,000,000 of \$56,000,000 (5.3%) total electric expense in 2011
- Water distribution expense was \$920,000 of \$5,000,000 (18.6%) total water expense in 2011

In summary, Mr. Luchsinger stated out-of City utilities revenues were less than 1% of the total revenues. Cost of electricity and water production and administrative costs were independent of customer location and distribution expense was a minor component of the total utilities expense.

Discussion was held regarding customers outside the City paying for the benefits of having water, sewer and electric service without being annexed into the City and paying for those services. Comments were mentioned regarding greater costs outside the service area for water, sewer and electric services. Mentioned were the benefits of being a resident versus a non-resident.

Randy Stueven, 233 South Gunbarrel Road and Eric Benson, 2727 W. Highway 34 spoke in opposition.

Mr. Luchsinger stated the well fields were owned by the City but were not in the City limits. Ms. Brown stated this item would be discussed further internally as whether this would come back to Council before the budget sessions.

ADJOURNMENT: The meeting was adjourned at 9:30 p.m.

RaNae Edwards  
City Clerk



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item G3

### **Approving Appointment of James Phipps to the Civil Service Commission**

*The Mayor has submitted the appointment of James Phipps to the Civil Service Commission to replace Duane Burns. This appointment would become effective June 1, 2012 upon approval by the City Council and would expire on June 1, 2018.*

Staff Contact: Mayor Vavricek



# **City of Grand Island**

**Tuesday, May 22, 2012**

**Council Session**

## **Item G4**

**Approving Request from James Bryant, 2830 Fort Worth Avenue  
for Liquor Manager Designation for Whiskey Creek Steakhouse,  
1016 Diers Avenue**

**Staff Contact: RaNae Edwards**



# **Council Agenda Memo**

**From:** RaNae Edwards, City Clerk

**Meeting:** May 22, 2012

**Subject:** Request from James Bryant, 2830 Fort Worth Avenue for Liquor Manager Designation for Whiskey Creek Steakhouse, 1016 Diers Avenue

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

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

## **Background**

James Bryant, 2830 Fort Worth Avenue has submitted an application with the City Clerk's Office for a Liquor Manager Designation in conjunction with the Class "IK-39333" Liquor License for Whiskey Creek Steakhouse, 1016 Diers Avenue.

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 James Bryant, 2830 Fort Worth Avenue for Liquor Manager Designation in conjunction with the Class “IK-39333” Liquor License for Whiskey Creek Steakhouse, 1016 Diers Avenue with the stipulation that Mr. Bryant complete a state approved alcohol server/seller training program.

05/09/12

Grand Island Police Department

450

15:59

LAW INCIDENT TABLE

Page: 1

City : Grand Island

Occurred after : 16:28:42 05/02/2012

Occurred before : 16:28:42 05/02/2012

When reported : 16:28:42 05/02/2012

Date disposition declared : 05/02/2012

Incident number : L12050200

Primary incident number :

Incident nature : Liquor Lic Inv    Liquor License  
Investigation

Incident address : 1016 Diers Ave N

State abbreviation : NE

ZIP Code : 68803

Contact or caller :

Complainant name number :

Area location code : PCID    Police - CID

Received by : Vitera D

How received : T Telephone

Agency code : GIPD Grand Island Police Department

Responsible officer : Vitera D

Offense as Taken :

Offense as Observed :

Disposition : ACT Active

Misc. number : RaNae

Geobase address ID : 6374

Long-term call ID :  
Clearance Code : CL Case Closed  
Judicial Status : NCI Non-criminal Incident

= = = = =

INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
-----				
NM	72241	05/03/12	Bryant, James L	Liquor Manager
NM	54053	05/02/12	Whiskey Creek,	Business Involved

LAW INCIDENT CIRCUMSTANCES:

Se Circu Circumstance code	Miscellaneous
-----	
1	LT21 Restaurant

LAW INCIDENT NARRATIVE:

I Received a Copy of a Liquor Manager Application from James Bryant for Whiskey Creek.

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                    11:04:32 05/08/2012

318

Grand Island Police Department

Supplemental Report

Date, Time: Tue May 08 11:04:43 CDT 2012

Reporting Officer: Vitera

Unit- CID

While looking at the application, I noted that James stated he has lived in

Grand Island for at least ten years. He is not married. James disclosed a DUI,

and no other convictions. I checked James through Spillman and NCJIS. Spillman

indicates a possible undisclosed traffic conviction. NCJIS shows a DDS

conviction in 1977, Willful Reckless Driving in 1989 (appears plead down from a DUI), and Speeding in 2003 and 2004.

On the liquor manager application, it clearly asks "Has anyone who is a party to

this application, or their spouse, ever been convicted of or plead guilty to any

charge. Charge means any charge alleging a felony, misdemeanor, violation of a

federal or state law, a violation of a local law, ordinance or resolution." It

further asks that the applicant, "List the nature of the charge, where the

charge occurred and the year and the month of the conviction or plea. Also list

any charges pending at the time of this application. If more than one party,

please list charges by each individual's name."

James' failure to disclose his traffic convictions technically makes the application false according to the Nebraska Liquor Control Act (Part II Chapter

2 Section 010.01) which states:

"No applicant for a liquor license, or partner, principal, agent or employee of any applicant for a liquor license shall provide false or

misleading information to the Nebraska Liquor Control Commission, its

executive director, or employees. Any violation of this provision may

result in denial of application for a liquor license or, in the event that

a license has already been issued, suspension, cancellation or revocation

of such license."

The undisclosed convictions would fall under state law or local ordinance.

Either way, the convictions are either an infraction or a misdemeanor that do

not rise to the level of a Class I Misdemeanor in a specified crime under Nebraska State Statute Chapter 28 that would automatically nullify the application.

I checked James for warrants through NCIC. He doesn't have any warrants for his

arrest, and he has a valid driver's license. I searched James in a law

enforcement-only Internet database that includes lots of personal, business, and

non-criminal information. It appears that James had some financial issues in

the late 80's and early 90's but nothing recently. I tried to check James through face book, but there are almost 5,000 James Bryant's on face book.

Since James hasn't had any recent documented criminal or civil problems, and his

undisclosed convictions were either minor or happened many years ago, the Grand

Island Police Department has no objection to James Bryant becoming the liquor

manager at Whiskey Creek.



# **City of Grand Island**

**Tuesday, May 22, 2012**

**Council Session**

## **Item G5**

**Approving Request from Nebraskaland Distributors, LLC dba  
Nebraskaland Distributors, 4845 Juergen Road for a Class “X”  
Liquor License and Liquor Manager Designation for Wayne  
Gappa, 11 East 48th Street, Kearney, NE**

**Staff Contact: RaNae Edwards**



# **Council Agenda Memo**

**From:** RaNae Edwards, City Clerk

**Meeting:** May 22, 2012

**Subject:** Request from Nebraskaland Distributors, LLC dba Nebraskaland Distributors, 4845 Juergen Road for a Class “X” Liquor License and Liquor Manager Designation for Wayne Gappa, 11 East 48<sup>th</sup> Street, Kearney, NE

**Item #'s:** G-5

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

## **Background**

Nebraskaland Distributors, LLC dba Nebraskaland Distributors, 4845 Juergen Road has submitted an application for a Class “X” Liquor License. A Class “X” Liquor License allows for the sale of wholesale liquor. Currently Nebraskaland Distributors has a Class “W” Liquor License which allows for wholesale beer.

Also submitted with the application was a request from Wayne Gappa, 11 East 48th Street, Kearney, NE for a Liquor Manager Designation in conjunction with the Class “X” Liquor License.

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.

## **Discussion**

City Council action is required and forwarded to the Nebraska Liquor Control Commission for issuance of all liquor licenses and 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 the Class “X” Liquor License and Liquor Manager Designation.

## **Sample Motion**

Move to approve the request from Nebraskaland Distributors, LLC dba Nebraskaland Distributors, 4845 Juergen Road for a Class “X” Liquor License and Liquor Manager Designation for Wayne Gappa, 11 East 48<sup>th</sup> Street, Kearney, NE with the stipulation that Mr. Gappa complete a state approved alcohol server/seller training program.

05/10/12

Grand Island Police Department

450

16:03

LAW INCIDENT TABLE

Page: 1

City : Grand Island

Occurred after : 14:38:07 05/10/2012

Occurred before : 14:38:07 05/10/2012

When reported : 14:38:07 05/10/2012

Date disposition declared : 05/10/2012

Incident number : L12051309

Primary incident number :

Incident nature : Liquor Lic Inv Liquor License  
Investigation

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	49370	05/10/12	Boyd, Michael J	Owner
NM	54817	05/10/12	Nebraskaland Distributors Inc,	Business
			Involved	
NM	81167	05/10/12	Boyd, William J	Owner
NM	135166	05/10/12	Gappa, Kathryn K	Owner
NM	173782	05/10/12	Boyd, Dana H	Owner
NM	173845	05/10/12	Gappa, Wayne	Owner/Liquor
			Manage	
NM	175863	05/10/12	Boyd, Martha M	Owner

LAW INCIDENT CIRCUMSTANCES:

Se Circu Circumstance code Miscellaneous

-- -----

1 LT25 Other/Unknown Location

LAW INCIDENT NARRATIVE:

I Received a Copy of a Liquor License Application for Nebraskaland Distributors  
and a Copy of a Liquor Manager Application from Wayne Gappa. Nebraskaland Distributors already has a Class W (beer) Wholesale License. They are applying  
for a Class X (Liquor) Wholesale License.

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	14:48:24 05/10/2012

318

Grand Island Police Department

Supplemental Report

Date, Time: Thu May 10 14:48:36 CDT 2012

Reporting Officer: Vitera

Unit- CID

Nebraskaland Distributors has a Class W (beer) Wholesale Liquor License. They

are applying for a Class X (Liquor) Wholesale Liquor License. Wayne Gappa is

applying to be the liquor manager. He is the current liquor manager. Wayne is

also part owner of the company along with his wife Kathryn Gappa. Other owners

of the company are William and Martha Boyd, and Michael and Dana Boyd. The

Gappa's have lived in Kearney since at least 1991. The Boyd's have lived in Hastings since at least 1999.

No convictions were disclosed on the liquor license application or the manager

application. I looked everyone up in Spillman and NCJIS. None of the applicants had any potential convictions listed in Spillman. I just did a liquor manager investigation on Wayne Gappa in February of this year. No problems were discovered then, and nothing has changed. Kathryn Gappa has no

convictions in NCJIS. Dana Boyd has no convictions in NCJIS. The rest of the Boyd's each have one speeding conviction.

The wholesale business for alcoholic beverages is something that I haven't dealt

with from a law enforcement (alcohol problems) perspective. I have not heard of

any problems at Nebraskaland Distributors. They already have a license, they

are just expanding. None of the applicants have anything criminally that would

preclude them from getting a new license. The Grand Island Police Department

has no objection to Nebraskaland Distributors receiving a Class X Wholesale

Liquor License or to Wayne Gappa being the liquor manager.



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item G6

**#2012-126 - Approving Final Plat and Subdivision Agreement for  
Westwood Park 12th Subdivision**

Staff Contact: Chad Nabity

# **Council Agenda Memo**

**From:** Regional Planning Commission

**Meeting:** May 22, 2012

**Subject:** Westwood Park 12<sup>th</sup> – Final Plat

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

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

## **Background**

This property is located north Husker Hwy., and west of Sandalwood Drive. This final plat proposes to create 26 lots on a tract of land consisting of all of Lots One (1) thru Twenty One (21), Westwood Park Eleventh Subdivision located in a part of the Northwest Quarter of the Southeast Quarter (NW1/4 SE1/4), of Section Fourteen (14), Township Eleven (11) North, Range Ten (10) West of the 6<sup>th</sup> P.M., in the City of Grand Island, Hall County, Nebraska, said tract containing 8.765 acres.

## **Discussion**

The revised final plat for Westwood Park 12<sup>th</sup> Subdivision was considered by the Regional Planning Commission at the May 2, 2012 meeting. A motion was made by Ruge and seconded by Amick to approve the plat as presented. A roll call vote was taken and the motion passed with 8 members present (Amick, O'Neill, Ruge, Hayes, Reynolds, Bredthauer, Eriksen and Snodgrass) voting in favor, no member present abstaining. Connelly recused herself from discussion and voting due to a conflict of interest.

## **Alternatives**

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

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

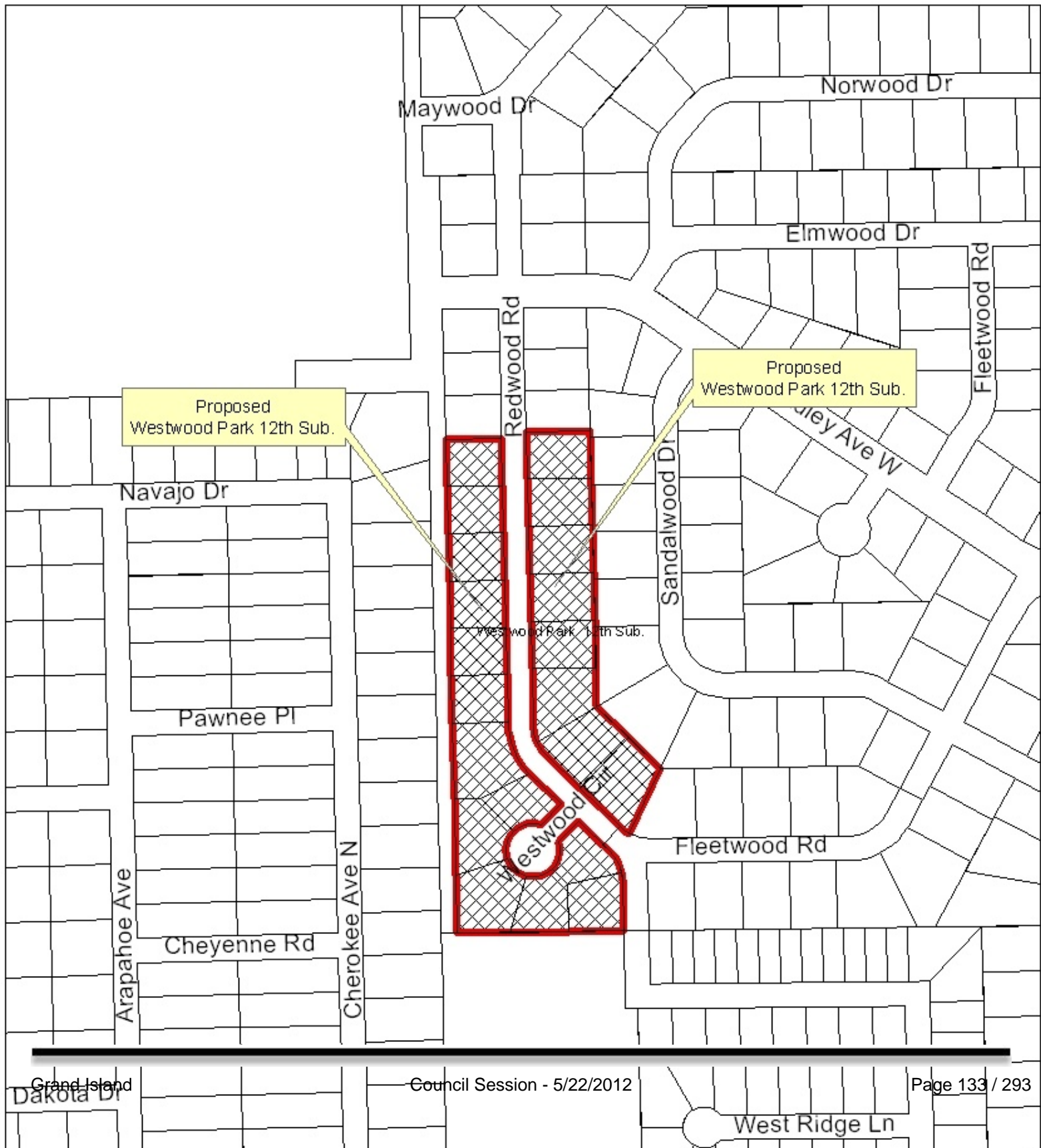


## **Recommendation**

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

## **Sample Motion**

Move to approve as recommended.



## Westwood Park 12<sup>th</sup> Subdivision

### Developer/Owner

Tim C. Plate

620 N Webb Road

Grand Island NE 68803

To create 26 lots north of Husker Hwy., and west of Sandalwood Drive, in the City of Grand Island, in Hall County, Nebraska.

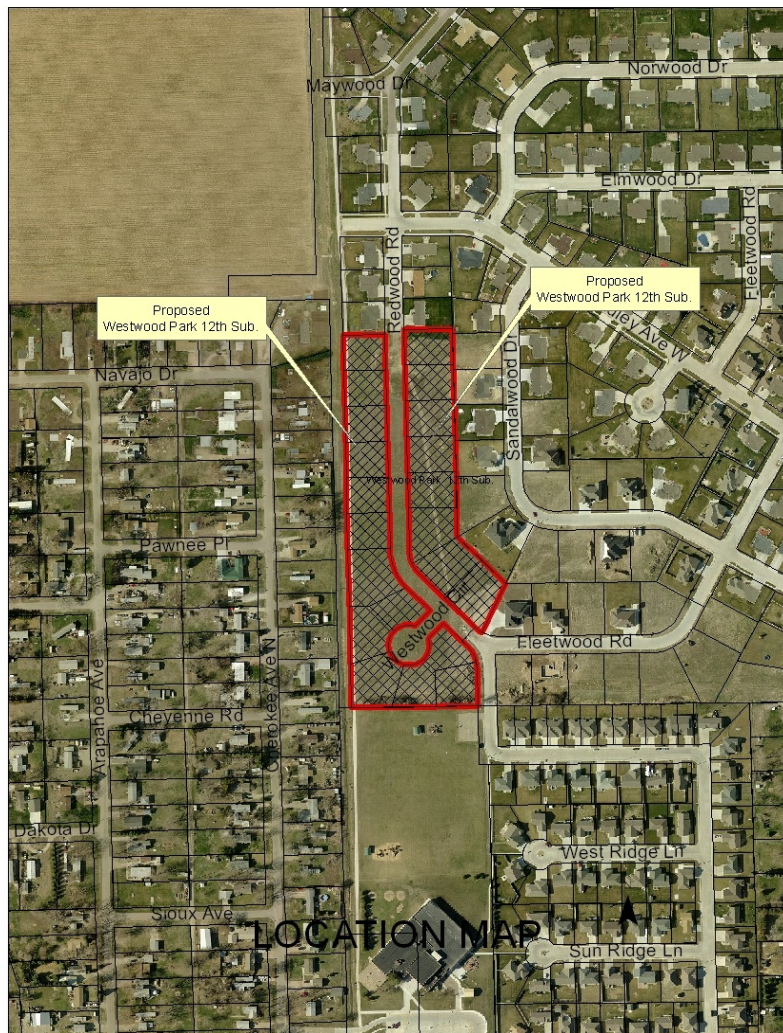
**Size:** 8.765

**Zoning:** R2 – Low Density Residential Zone

**Road Access:** City Roads

**Water Public:** City water is available

**Sewer Public:** City sewer is available



April 20, 2012

Dear Members of the Board:

**RE: Final Plat – Westwood Park 12<sup>th</sup> Subdivision**

For reasons of Section 19-923 Revised Statutes of Nebraska, as amended, there is herewith submitted a final plat of Westwood Park 12<sup>th</sup> Subdivision, located in the City of Grand Island, in Hall County Nebraska.

This final plat proposes to create 26 lots on a tract of land comprising all of Lots One (One) thru Twenty One (21), Westwood Park Eleventh Subdivision located in a part of the Northwest Quarter of the Southeast Quarter (NW1/4 SE1/4) of Section Fourteen (14), Township Eleven (11) North, Range Ten (10) West of the 6<sup>th</sup> P.M. in the City of Grand Island Hall County, Nebraska, said tract containing 8.765 acres.

You are hereby notified that the Regional Planning Commission will consider this final plat at the next meeting that will be held at 6:00 p.m. on May 2, 2012 in the Council Chambers located in Grand Island's City Hall.

Sincerely,

Chad Nabity, AICP  
Planning Director

Cc: City Clerk  
City Attorney  
City Public Works  
City Building Department  
City Utilities  
Manager of Postal Operations  
Rockwell and Associates LLC

This letter was sent to the following School Districts 1R, 2, 3, 8, 12, 19, 82, 83, 100, 126.





RESOLUTION 2012-126

WHEREAS, Tim C. Plate, a single person, being the owner of the land described hereon, has caused same to be surveyed, subdivided, platted and designated as "WESTWOOD PARK TWELTH SUBDIVISION", to be laid out into 26 lots, a tract of land comprising all of Lots One (1) thru Twenty One (21), Westwood Park Eleventh Subdivision located in a part of the Northwest Quarter of the Southeast Quarter (NW1/4 SE1/4), of Section Fourteen (14), Township Eleven (11) North, Range Ten (10) West of the 6<sup>th</sup> P.M., in the City of Grand Island, Hall County Nebraska, and has caused a plat thereof to be acknowledged by it; and

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

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

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

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, May 22, 2012.

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

Attest:

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

Approved as to Form	☐ _____
May 21, 2012	☐ City Attorney



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item G7

**#2012-127 - Approving Final Plat and Subdivision Agreement for  
Woodland Park 12th Subdivision**

Staff Contact: Chad Nabity

# **Council Agenda Memo**

**From:** Regional Planning Commission

**Meeting:** May 22, 2012

**Subject:** Woodland Park 12<sup>th</sup> Subdivision – Final Plat

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

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

## **Background**

This property is located north of Capital Ave., and south of Vermont Ave., this final plat proposes to create 32 lots on a tract of land consisting of Lot 7 of Woodland Park Eleventh Subdivision in the City of Grand Island, located in part of the West Half of the Southeast Quarter (W1/2, SE1/4) of Section (2), Township Eleven (11) North, Range Ten (10) West of the 6<sup>th</sup> P.M. in the city of Grand Island in Hall County, Nebraska, said tract containing 8.63 acres.

## **Discussion**

The revised final plat for Woodland Park 12<sup>th</sup> Subdivision was considered by the Regional Planning Commission at the May 2, 2012 meeting. A motion was made by Amick and seconded by Hayes to approve the plat as presented. A roll call vote was taken and the motion passed with 8 members present (Amick, O'Neill, Ruge, Hayes, Reynolds, Bredthauer, Eriksen and Snodgrass) voting in favor no member present abstaining.

## **Alternatives**

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

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

## **Recommendation**

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

## **Sample Motion**

Move to approve as recommended.





## Woodland Park 12th Subdivision Summary

### Developer/Owner

Hastings Ventures, LLC  
429 Industrial Lane  
Grand Island NE 68803

To create 32 lots north of Capital Ave. and south of Vermont Ave., in the City of Grand Island, in Hall County, Nebraska.

**Size:** 8.63 Acres

**Zoning** R2 – Low Density Residential

**Road Access:** Public Streets will be built throughout the subdivision.

**Water:** City water is available.

**Sewer:** City sewer is available.



April 20, 2012

Dear Members of the Board:

**RE: Final Plat – Woodland Park 12<sup>th</sup> Subdivision**

For reasons of Section 19-923 Revised Statutes of Nebraska, as amended, there is herewith submitted a final plat of Woodland Park 12<sup>th</sup> Subdivision, located in the City of Grand Island, in Hall County Nebraska.

This final plat of Woodland Park 12th proposes to create 32 lots on a tract of land consisting of Lot 7 of Woodland Park 11<sup>th</sup> Subdivision in the City of Grand Island, Located in Part of the West Half of the Southeast Quarter (W1/2, SE1/4) of Section Two (2), Township Eleven (11) North, Range Ten (10) in the City of Grand Island, Nebraska, said tract containing 8.63 acres.

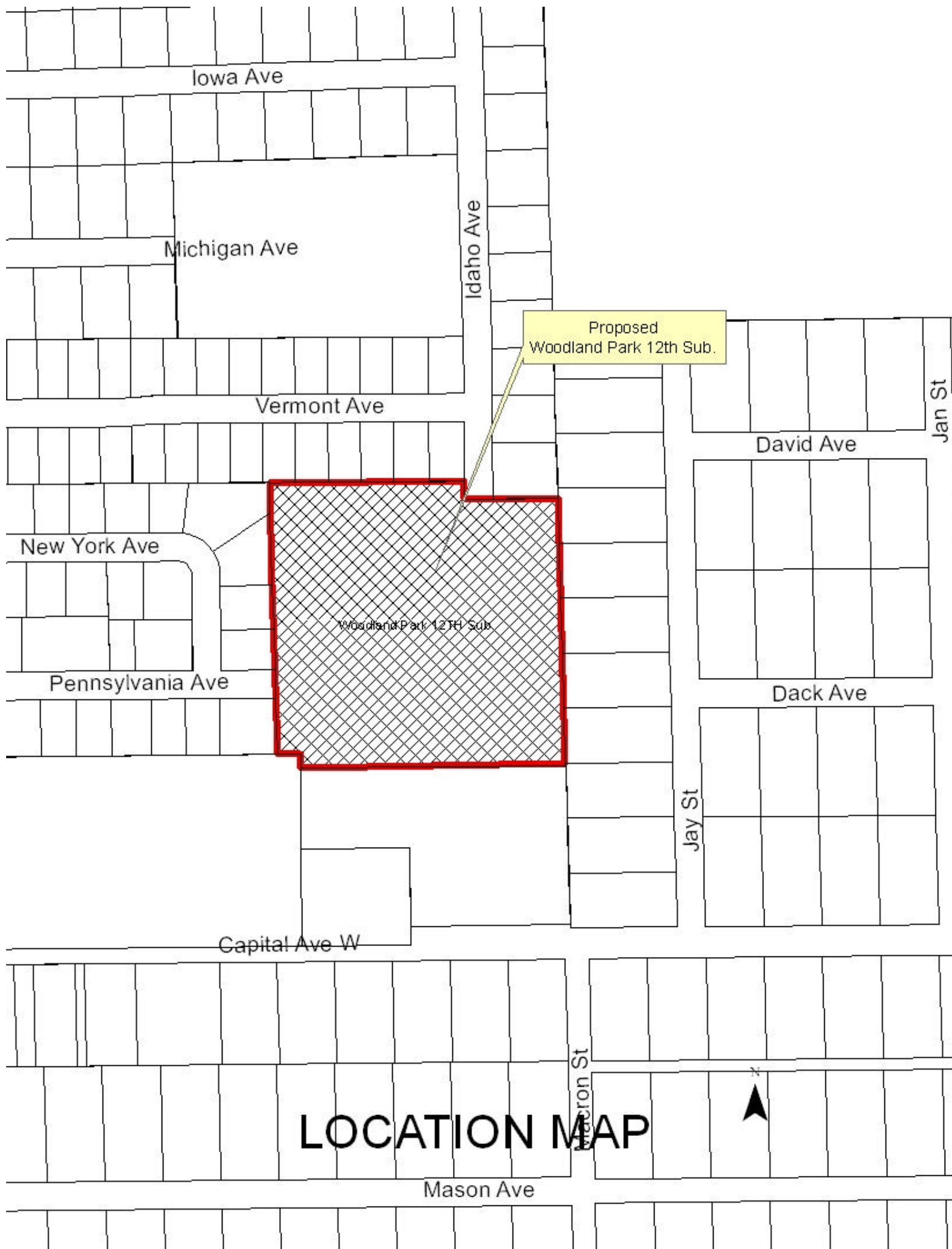
You are hereby notified that the Regional Planning Commission will consider this final plat at the next meeting that will be held at 6:00 p.m. on May 2, 2012 in the Council Chambers located in Grand Island's City Hall.

Sincerely,

Chad Nabity, AICP  
Planning Director

Cc: City Clerk  
City Attorney  
City Public Works  
City Building Department  
City Utilities  
Manager of Postal Operations  
Olsson Associates

This letter was sent to the following School Districts 1R, 2, 3, 8, 12, 19, 82, 83, 100, 126.



# LOCATION MAP

RESOLUTION 2012-127

WHEREAS, Hastings Ventures L.L.C., a Nebraska Limited Liability Company, being the said owners of the land described hereon, has caused same to be surveyed, subdivided, platted and designated as "WOODLAND PARK TWELTH SUBDIVISION", to be laid out into 32 lots, a tract of land consisting of Lot 7 of Woodland Park Eleventh Subdivision in the City of Grand Island, and a Part of the West Half of the Southeast Quarter (W1/2, SE1/4) of Section Two (2), Township Eleven (11) North, Range Ten (10) West of the 6<sup>th</sup> P.M., in the City of Grand Island, Hall County Nebraska, and has caused a plat thereof to be acknowledged by it; and

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

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

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

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, May 22, 2012.

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

Attest:

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

Approved as to Form	☐ _____
May 21, 2012	☐ City Attorney



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item G8

**#2012-128 - Approving Preliminary Plat, Final Plat and Subdvision Agreement for Woodland Park 13th Subdivision**

Staff Contact: Chad Nabity

# **Council Agenda Memo**

**From:** Regional Planning Commission

**Meeting:** May 22, 2012

**Subject:** Woodland Park 13<sup>th</sup> - Preliminary Plat & Final Plat

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

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

## **Background**

This property is located north of Texas Ave. and south of Arizona Ave., this final plat proposes to create 20 lots on a tract of land located in Part of the West Half of the Southeast Quarter (W1/2, SE1/4) of Section Two (2), Township Eleven (11) North, Range Ten (10) West of the 6<sup>th</sup> P.M. in the city of Grand Island in Hall County, Nebraska, said tract containing 5.79 acres.

## **Discussion**

The preliminary plat and revised final plat for Woodland Park 13<sup>th</sup> Subdivision was considered by the Regional Planning Commission at the May 2<sup>nd</sup>, 2012 meeting. A motion was made by Amick and seconded by Eriksen to approve the plat as presented. A roll call vote was taken and the motion passed with 7 members present (Amick, O'Neill, Hayes, Reynolds, Bredthauer, Eriksen and Snodgrass) voting in favor one member present voting no (Ruge).

## **Alternatives**

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

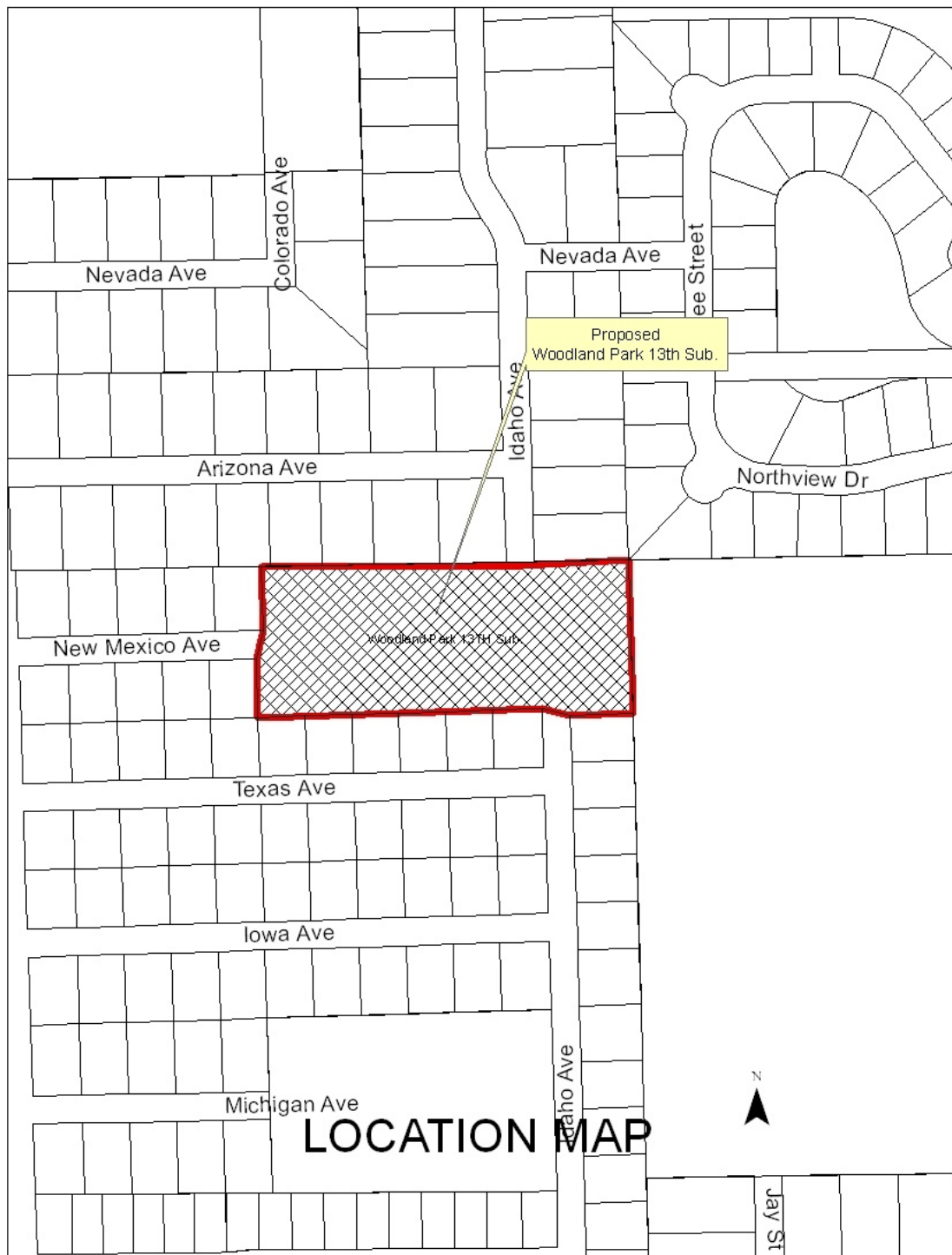
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

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

## **Sample Motion**

Move to approve as recommended.





## Woodland Park 13th Subdivision Summary

### Developer/Owner

Hastings Ventures, LLC  
429 Industrial Lane  
Grand Island NE 68803

To create 32 lots north of Capital Ave. and south of Vermont Ave., in the City of Grand Island, in Hall County, Nebraska.

**Size:** 8.63 Acres

**Zoning:** R2 – Low Density Residential

**Road Access:** Public Streets will be built throughout the subdivision.

**Water:** City water is available.

**Sewer:** City sewer is available.





April 20, 2012

Dear Members of the Board:

**RE: Preliminary Plat – Woodland Park 13<sup>th</sup> Subdivision  
Final Plat – Woodland Park 13<sup>th</sup> Subdivision**

For reasons of Section 19-923 Revised Statutes of Nebraska, as amended, there is herewith submitted a Preliminary Plat and a Final Plat of Woodland Park 13<sup>th</sup> Subdivision, located in the City of Grand Island, in Hall County Nebraska.

This final plat of Woodland Park 13<sup>th</sup> proposes to create 20 lots on a tract of land, located in Part of the West Half of the Southeast Quarter (W1/2, SE1/4) of Section Two (2), Township Eleven (11) North, Range Ten (10) in the City of Grand Island, Nebraska, said tract containing 5.79 acres.

You are hereby notified that the Regional Planning Commission will consider this final plat at the next meeting that will be held at 6:00 p.m. on May 2, 2012 in the Council Chambers located in Grand Island's City Hall.

Sincerely,

Chad Nabity, AICP  
Planning Director

Cc: City Clerk  
City Attorney  
City Public Works  
City Building Department  
City Utilities  
Manager of Postal Operations  
Olsson Associates

This letter was sent to the following School Districts 1R, 2, 3, 8, 12, 19, 82, 83, 100, 126.



RESOLUTION 2012-128

WHEREAS, Hastings Ventures L.L.C., a Nebraska Limited Liability Company, being the said owners of the land described hereon, has caused same to be surveyed, subdivided, platted and designated as "WOODLAND PARK THIRTEENTH SUBDIVISION", to be laid out into 20 lots, a tract of land consisting of part of the West Half of the Southeast Quarter (W1/2, SE1/4) of Section Two (2), Township Eleven (11) North, Range Ten (10) West of the 6<sup>th</sup> P.M., in the City of Grand Island, Hall County Nebraska, and has caused a plat thereof to be acknowledged by it; and

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

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

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

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, May 22, 2012.

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

Attest:

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

Approved as to Form	☐ _____
May 21, 2012	☐ City Attorney



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item G9

### **#2012-129 - Approving Acquisition of Utility Easement - 315 Wyandotte Street - School District of Grand Island**

*This item relates to the aforementioned Public Hearing item E-2.*

**Staff Contact: Tim Luchsinger**

RESOLUTION 2012-129

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

WHEREAS, a public hearing was held on May 22, 2012, for the purpose of discussing the proposed acquisition of an easement twenty feet in width, the centerline of which is located in the City of Grand Island, Hall County, Nebraska; and more particularly described as follows:

Commencing at the northeast corner of Lot Thirty (30), Block Three (3), Southern Acres Addition, thence along the easterly line of said Lot Thirty (30) on an

assumed bearing of S1° 20' 20" E, a distance of thirteen and two tenths (13.2) feet to the ACTUAL Point of Beginning; thence S44° 27' 26" W, a distance of one hundred twenty four and fifty five hundredths (124.55) feet; thence N7° 14' 26" E, a distance of two hundred forty and fifteen hundredths (240.15) feet to a point of termination on the northerly line of Lot Thirty Two (32), Block Three (3), Southern Acres Addition, said point being fifty three and forty six hundredths (53.46) feet west of the northeast corner of said Lot Thirty Two (32). The side lines of the above described tract shall be prolonged or shortened as required to terminate on the boundary of Grantor's property.

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 School District of Grand Island, on the above-described tract of land.

- - -

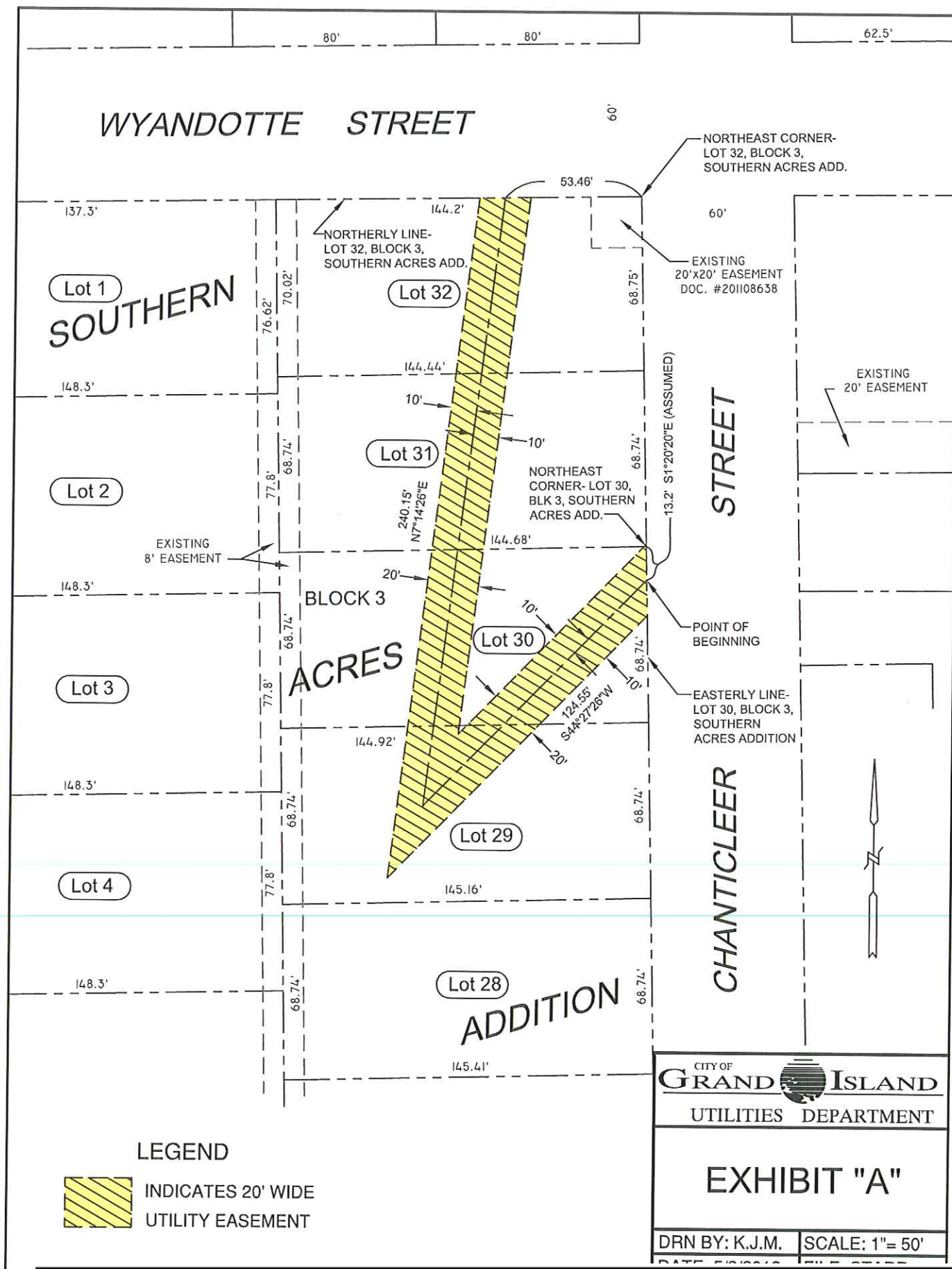
Adopted by the City Council of the City of Grand Island, Nebraska, May 22, 2012.

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

Attest:

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

Approved as to Form	☐ _____
May 21, 2012	☐ City Attorney





# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item G10

**#2012-130 - Approving Contract with Tenaska for Southwest Power Pool Participation Services**

Staff Contact: Tim Luchsinger

# **Council Agenda Memo**

**From:** Tim Luchsinger, Utilities Director  
**Meeting:** May 22, 2012  
**Subject:** Marketing Agreement with Tenaska  
**Item #'s:** G-10  
**Presenter(s):** Tim Luchsinger, Utilities Director

## **Background**

Prior to 2009, Nebraska utilities conducted power purchases and sales with each other via bilateral transactions. Bilateral transactions are simply two utilities agreeing on a quantity and price. In 2009, all large Nebraska utilities including Nebraska Public Power District, Omaha Public Power District and Lincoln Electric Systems officially joined Southwest Power Pool (SPP). SPP is a regional transmission operator that, among other things provides a real-time energy market that allows participants to buy and sell power directly into the market and avoid the interaction with multiple companies that come with bilateral transactions. Bilateral transactions still continue and this is the only way that Grand Island currently buys and sells power with other companies.

In 2014, SPP plans to deploy a new market called the Integrated Market. This market increases in complexity and requires utilities to provide next day forecasting and pricing information in an effort to utilize the lowest cost energy for load. It will also have a real-time energy market for correcting imbalances from the day-ahead market. With the onset of the integrated market, bilateral transactions will most likely be phased out entirely, and SPP will serve Grand Island's load requirements and dispatch its generating units as required provide for the system's demand. In order to participate in the integrated market, a party must be registered as a Market Participant, which requires qualified staff and software systems for monitoring the market and recording transactions. Many electric utilities, including NPPD, are using third parties to perform this Market Participant function.

## **Discussion**

Several options were explored on how Grand Island may participate in the upcoming Integrated Market. Due to a need of necessary and qualified staff, it was determined that the best way for Grand Island to participate was via a third party. A Request for Proposal (RFP) was developed and sent out to several known companies. Four proposals were



received. City staff evaluated the proposals and determined that Tenaska had the best proposal that included a very experienced staff and reasonable pricing. Within the agreement, Tenaska receives financial incentives for power sold from Grand Island or lower cost power purchased for Grand Island's load. This will provide incentive for Tenaska to transact as much as possible on behalf of Grand Island. Tenaska will help Grand Island position itself and provide the needed expertise to guide Grand Island's decisions regarding pricing and participation in the power markets. It is recommended that the confidential agreement with Tenaska, furnished under separate cover, be approved.

### **Alternatives**

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

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

### **Recommendation**

City Administration recommends that the Council approve the Tenaska SPP Marketing Agreement.

### **Sample Motion**

Move to approve the Tenaska SPP Marketing Agreement.



Jason Eley, Purchasing Agent

*Working Together for a  
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL  
FOR  
SOUTHWEST POWER POOL PARTICIPATION SERVICES**

**RFP DUE DATE:** March 13, 2012 at 4:00 p.m.

**DEPARTMENT:** Utilities

**PUBLICATION DATE:** February 15, 2012

**NO. POTENTIAL BIDDERS:** 3

**SUMMARY OF PROPOSALS RECEIVED**

**NMPP Energy**  
Lincoln, NE

**Tenaska**  
Arlington, TX

**Constellation Energy**  
Baltimore, MD

**The Energy Authority, Inc.**  
Jacksonville, FL

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

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

**P1534**

RESOLUTION 2012-130

WHEREAS, Grand Island Utilities Department currently buys and sells power via bilateral transactions; and

WHEREAS, in 2014, a new Integrated Market will be deployed by the regional grid operator, Southwest Power Pool; and

WHEREAS, it was determined that the best way for Grand Island to participate in this integrated market is via a third party; and

WHEREAS, a Request for Proposal was developed and sent out to several companies, and it was determined that Tenaska of Arlington, Texas, offers the best marketing proposal; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal submitted by Tenaska for Marketing Services for the Grand Island Utilities Department, is hereby approved.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, May 22, 2012.

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

Attest:

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

Approved as to Form	☐ _____
May 21, 2012	☐ City Attorney



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item G11

**#2012-131 - Approving Integrated Resource Plan - 2012**

Staff Contact: Tim Luchsinger

# **Council Agenda Memo**

**From:** Tim Luchsinger, Utilities Director  
**Meeting:** May 22, 2012  
**Subject:** Integrated Resources Plan, 2012  
**Item #'s:** G-11  
**Presenter(s):** Tim Luchsinger, Utilities Director

## **Background**

The Utilities Department receives a portion of its power supply from the hydro-generation projects on the Missouri River. The operation and administration of the hydro-generation power is done by an agency of the Federal Government, the Western Area Power Administration (WAPA). In order to maintain this power contract with a federal agency, the Department is required to comply with applicable federal regulations. Part of those regulations requires the periodic submittal of an Integrated Resources Plan (IRP) to be submitted under specific formatting and topics.

## **Discussion**

The Integrated Resource Plan is power supply study reporting the current operating conditions and anticipated future electric needs. It contains analyses of the City's current load growth, recent past power supply decisions, option evaluations, and planned future actions to meet continued load growth and to optimize generation mix for the most economical power supply.

IRP 2012 reviews the affects of past load growth and power supply analyses done in IRP 2002 and IRP 2007, and looks to the future as Grand Island's electric demand continues to grow with the City. It is required to be submitted to WAPA by May 31, 2012.

## **Alternatives**

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

1. Move to approve
2. Refer the issue to a Committee

3. Postpone the issue to a future date
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council approve the Integrated Resources Plan, 2012 for submittal to the Western Area Power Administration.

### **Sample Motion**

Move to approve the Integrated Resources Plan, 2012 for submittal to the Western Area Power Administration.

**GRAND ISLAND UTILITIES**

**INTEGRATED RESOURCE PLAN**

*Prepared for:*  
*Western Area Power Administration*

*Prepared by:*  
*Grand Island Utilities*

*April 2012*

## **1.0 Background Information**

The Grand Island Utilities Department (GIUD) generates and distributes electricity and water to homes, businesses, and industries in and near Grand Island, Nebraska. Within the boundaries of its 83 square mile service area the Utilities Department supplies approximately 24,500 customers with electrical service, and provides water distribution service to approximately 15,700 customers. GIUD is owned by the customers it serves and is governed by the Grand Island City Council as a financially self-supporting entity of the City of Grand Island. No taxes are used for the operation of the Utilities Department as all departmental operations are financed through electric and water sales revenue.

## **2.0 Integrated Resource Plan History**

The Energy Policy Act of 1992 mandated that electric utilities periodically produce and adopt an Integrated Resource Plan (IRP). Grand Island's Integrated Resource Planning process began in 1996. This consisted of initial consideration of: 58 conservation options, 3 load building options, 2 load management options, and 18 supply side options. After screening, 9 supply side options and 5 demand side programs were examined in greater detail. Ultimately, supply side expansion was the realistic option. Subsequent Integrated Resource Plans, in 2001 and 2003, examined supply side options.

The initial concern was to satisfy an impending capacity need. IRP, 2001 resulted in the addition of two 34 MW (summer rating) combustion turbines at Burdick Station. IRP, 2001 was adopted by the Grand Island City Council on March 27, 2001, followed by a Public Hearing at the Nebraska Power Review Board on May 4, 2001.

IRP, 2003 considered the integration of 30 MW of Omaha Public Power District's (OPPD) Nebraska City Unit #2 (NC2) participation with GIUD generation. In the decade following the 2009 commissioning, Grand Island anticipates saving a total of \$37 million, by not operating Burdick Station steam units on natural gas. In addition to the savings, GIUD gained additional generating capacity. After construction contracts were negotiated by OPPD, GIUD's participation share increased to 33 MW.

Certainty of Whelan Energy Center #2 (WEC2) project was not established until 2006, IRP, 2007 documented the consideration of issues which lead to contract ratification. Integrated Resource Plan, 2007 (IRP, 2007) was a continuation of the financial analysis presented in IRP, 2003. There were two significant differences which prevented WEC2 from being as cost effective as NC2. First, capital costs experienced a rapid and unexpected escalation. Second, the NC2 analysis had already claimed the most lucrative displacement of natural gas fired



energy; this is recognized with IRP, 2003 stating that additional base-load generation will not be needed until after 2014.

The concern of IRP, 2007 was the fine-tuning of a planning window with other regional utilities, in contrast to IRP, 2003 which considered acquisition of base-load resources and IRP, 2001's concern with satisfying an impending capacity deficit.

Since the release of IRP, 2007, the economy has gone through a significant decline. This decline has reduced load growth and pushed out the need for additional capacity from 2018 to approximately 2030. IRP, 2012 provides a summary of current capacity conditions and estimates for future capacity needs. With the addition of NC2 and WEC2 in recent years, Grand Island's capacity is satisfied for the foreseeable future.

### 3.0 Existing Supply

Grand Island Utilities owns and operates two power stations with a combined rated capability of 273 megawatts (MW). GIUD also participates in several jointly utilized facilities. The capability and fuel mix of the generating capacity at each site is summarized in Table 3-1. The power stations are individually summarized in the following subsections.

Summary of Grand Island Utilities Existing Power Supply			
Station & Unit No.	In-Service Year	Primary Fuel	Rated Capability MW
Platte Generating Station	1982	Coal	100.0
Burdick Station Steam Unit #1	1957	Natl Gas	16.0
Burdick Station Steam Unit #2	1963	Natl Gas	22.0
Burdick Station Steam Unit #3	1972	Natl Gas	54.0
Burdick Station Combustion Turbine #1	1968	Natl Gas	13.0
Burdick Station Combustion Turbine #2	2003	Natl Gas	34.0
Burdick Station Combustion Turbine #3	2003	Natl Gas	34.0
Nebraska City Unit #2 – Joint	2009	Coal	33.0
Whelen Energy Center Unit #2 – Joint	2011	Coal	15.0
Ainsworth Wind Farm – Joint	2005	Wind	1.0
Elkhorn Ridge Wind Farm – Joint	2009	Wind	1.0
Laredo Ridge Wind Farm – Joint	2011	Wind	1.0
WAPA Firm - Contract	1991	Hydro	9.0
TOTAL			333.0

Table 3-1

### **3.1 Platte Generating Station**

The Grand Island Electric Utility's primary power plant is the Platte Generating Station (PGS). The facility consists of one coal fired unit that went into commercial operation in 1982 with a net output of 100 MW. PGS has enjoyed a high level of reliability since going into commercial operation in 1982. During the past five years, PGS has had a unit availability of 93.7%, with a forced outage rate of 0.34% and operating at a capacity factor of 70.9%.

### **3.2 Burdick Station**

The Burdick Station includes three steam turbine generators and three gas turbine generators. The station was placed in service in 1957 with additional units placed in service in 1963, 1968, 1972 and 2003. All units are equipped for natural gas and fuel oil operation.

Since the placement of the Platte Generating Station into service in 1982, the Burdick steam units have moved from intermediate service to peaking reserve capacity. Over the past five year period, the Burdick Station generation averaged only 0.4% of the total Grand Island Electric System generation.

### **3.3 Nebraska City Unit #2**

Beginning in 2009, GIUD began receiving power from Omaha Public Power District's (OPPD) Nebraska City Unit #2. This unit is a 660 MW coal-fired power plant. It is one of two coal-fired power plants located on the site just south and east of Nebraska City, NE.

### **3.4 Whelen Energy Center Unit #2**

Beginning in 2011, GIUD began receiving power from Public Power Generation Agency's (PPGA) Whelen Energy Center Unit #2. This unit is a 220 MW coal-fired power plant. It is one of two coal-fired power plants located on the site just east of Hastings, NE.

### **3.5 Wind Farm Participation**

GIUD has made efforts to be involved in developing technologies regarding renewable energy. Presently, the most cost effective form of renewable energy is large scale wind energy. Since 1998, GIUD has participated with other Nebraska utilities in wind turbine projects. Presently, the state of Nebraska doesn't have a Renewable Portfolio Standard

(RPS) and GIUD doesn't have an internal renewable energy goal. However, Nebraska Public Power District (NPPD), for example, maintains an internal goal of 10% renewable energy by 2020. If GIUD were to set a similar goal, a total of approximately 25 MW of Wind capacity would be needed. In 2011, 0.876% of GIUD's energy needs were generated by wind energy.

### **3.5.1 Springview Project**

GIUD first became involved with wind energy in 1998 with the development of the "Nebraska Distributed Wind Generation Project" or NDWG, often referred to as the "Springview Project" because of its proximity to that community in north central Nebraska. The project included two 750 kilowatt wind turbines installed near Springview, Nebraska. Half of the cost of the project was funded by a grant from the Electric Power Research Institute/Department of Energy-Turbine Verification Program. NDWG was a joint project among Nebraska utilities that included Auburn Utilities, GIUD, KBR Power District, Lincoln Electric System, the Municipal Energy Agency of Nebraska and NPPD. GIUD received an average of six megawatt hours of energy per month from NDWG. Due to rising maintenance costs, increasing equipment failures and unit downtime, this facility was decommissioned in August of 2007. Including the salvage value of the turbines, the final production cost was approximately \$23/megawatt hour. Two new direct drive wind turbines were recently installed at the Springview site as another joint project that GIUD is pursuing participation in.

### **3.5.2 Ainsworth Project**

In addition to NDWG, GIUD is also a participant in the Ainsworth Wind Energy Farm (AWEF) near Ainsworth, NE. This facility was constructed in 2005 and consists of thirty-six 1.65 megawatt turbines for a total project output of 59.4 megawatts. GIUD has a one megawatt participation level in AWEF. AWEF is another joint project that is operated by Nebraska Public Power District, and includes participation by Omaha Public Power District, the Municipal Energy Agency of Nebraska, GIUD, and JEA of Jacksonville, Florida. Since the start of AWEF, GIUD has received an average of 274 megawatt hours of energy per month. Currently, the total production cost of power received from AWEF is approximately \$47 per megawatt hour.

### **3.5.3 Elkhorn Ridge**

Elkhorn Ridge Wind, LLC (Elkhorn) is an 80 MW wind farm located near the town of Bloomfield in northeast Nebraska. It consists of twenty-seven 3 megawatt

turbines. It began commercial operation January 1, 2009. Unlike AWEF, Elkhorn is a privately owned facility. NPPD entered into a Power Purchase Agreement with Elkhorn to purchase all power produced by the facility. GIUD then signed a Power Sales Agreement with NPPD to purchase a 1 MW share of the power produced at Elkhorn.

### 3.5.4 Laredo Ridge

Laredo Ridge Wind, LLC (LRW) is an 80 MW wind farm located near the town of Petersburg in northeast Nebraska. It consists of fifty-four 1.5 megawatt turbines. It began commercial operation February 1, 2011. Similarly to Elkhorn, LRW is a privately owned facility. NPPD entered into a Power Purchase Agreement with LRW to purchase all power produced by the facility. GIUD then signed a Power Sales Agreement with NPPD to purchase a 1 MW share of the power produced at LRW.

## 3.6 Purchase Power Agreement with WAPA

GIUD has a long-term agreement with the Western Area Power Administration (WAPA) providing capacity and energy to the City. The firm energy and capacity provided by WAPA is summarized in Table 3-2.

Month	Energy (kWh)	Capacity (KW)
January	2,763	4,790
February	2,721	5,113
March	2,237	4,790
April	2,450	4,790
May	2,547	6,182
June	3,504	9,153
July	3,294	9,153
August	3,924	9,057
September	2,702	6,709
October	2,442	5,751
November	2,437	4,790
December	2,440	4,790

Table 3-2

### 3.7 Station Capacity Factors

PGS is on-line most hours of the year, and provides the majority of electric energy for GIUD retail customers. The Burdick Station generating units operate primarily in peaking mode. Burdick Station has run fewer hours during the past several years with the addition of NC2 and WEC2. Table 3-3 shows the percentage supply for all GIUD resources and capacity factor for each GIUD owned unit for the past four years.

	2008		2009		2010		2011	
	% Supply	Capacity Factor	% Supply	Capacity Factor	% Supply	Capacity Factor	% Supply	Capacity Factor
PGS	91.61%	75.81%	82.78%	67.54%	75.68%	64.33%	74.05%	63.35%
Burdick Steam Unit #1	0.01%	0.07%	0.03%	0.18%	0.01%	0.03%	0.01%	0.03%
Burdick Steam Unit #2	0.04%	0.14%	0.07%	0.26%	0.01%	0.03%	0.01%	0.03%
Burdick Steam Unit #3	0.00%	0.00%	0.63%	0.95%	0.00%	0.00%	0.00%	0.00%
Burdick Gas Turbine #1	0.01%	0.06%	0.01%	0.06%	0.06%	0.40%	0.03%	0.23%
Burdick Gas Turbine #2	0.85%	2.06%	0.16%	0.39%	0.08%	0.21%	0.04%	0.09%
Burdick Gas Turbine #3	0.57%	1.39%	0.13%	0.31%	0.06%	0.15%	0.12%	0.31%
NC2	0.00%	N/A	14.88%	N/A	23.00%	N/A	27.00%	N/A
WEC2	0.00%	N/A	0.00%	N/A	0.00%	N/A	3.40%	N/A
Wind	0.42%	N/A	0.72%	N/A	0.75%	N/A	1.39%	N/A
WAPA	4.62%	N/A	4.67%	N/A	4.48%	N/A	4.45%	N/A
Purchases /Sales	1.87%	N/A	-4.09%	N/A	-4.13%	N/A	-10.50%	N/A

Table 3-3

## 4.0 Public Input

GIUD operates under a Mayor - Council form of government. Formal public meetings are conducted twice monthly. In addition, there are frequent planning sessions, open to the public, during which no formal action may be taken. Meetings are advertised and reported by the local

news media. Proceedings are also broadcast on low power City television, with cable TV access. All decisions regarding additional capacity acquisition must be approved by the City Council.

## 5.0 Environmental Considerations

### 5.1 Emissions Limits

The Clean Air Act of 1990, and in particular the Acid Rain Rule, placed emissions limitations on generating facilities for SO<sub>2</sub> and NO<sub>x</sub>, and required the installation of continuous emissions monitoring systems (CEMS) to monitor CO<sub>2</sub>, NO<sub>x</sub>, SO<sub>2</sub> and opacity for proving compliance and providing accounting for the above mentioned emissions. Burdick Units B-3, GT-2, and GT-3 and Platte Unit 1 are subject to the Acid Rain Rule.

Burdick Generating Station burns natural gas and oil and only emits a few tons per year of SO<sub>2</sub>.

Under the Acid Rain Rule, Platte Generating Station (PGS) Unit 1 has SO<sub>2</sub> allowances for 2,926 tons of emissions per year. In the calendar year 2011, PGS Unit 1 emitted 2,301 tons of SO<sub>2</sub> which equates to 0.67 pounds of SO<sub>2</sub> per million Btus of heat input. Under Acid Rain rule, PGS is required to hold SO<sub>2</sub> allowances equal to their emissions. This is accomplished by banking unused allowances from previous years.

A summary of the monitored pollutant limits and their averages are listed in Table 5-1.

Pollutant	3 Year Average 2009-2011	Emission Limitation
<b>NO<sub>x</sub> –annual average</b>	0.343 lb/MMBtu	0.40 lb/MMBtu
<b>SO<sub>2</sub> – 3 hour average</b>	0.694 lb/MMBtu	1.2 lb/MMBtu
<b>Opacity</b>	3.3 %	20% 6-minute average

Table 5-1

The Nebraska Department of Environmental Quality (NDEQ) insures these and other permitted requirements are met under their Title V Air Permit Program. Recent air inspections performed by NDEQ indicate GIUD is compliance with all conditions of plant air operating permits.

### 5.2 Regulations

Over the past year the electric utility industry has seen increased regulatory action from the Environmental Protection Agency (EPA). The EPA published a new regulation for power plant

air emissions on July 7, 2011, the Cross State Air Pollution Rule (CSAPR), which was scheduled to replace the Clean Air Interstate Rule on January 1, 2012. The rule has lowered the annual amount of nitrous oxides (NO<sub>x</sub>) emissions that can be released as a result of the combustion process in the plant boiler, and this lower amount becomes the limiting constraint on the generating output of the Platte Generating Station, about 45% of its maximum capacity. This loss in generating capacity must be replaced by higher cost options of purchasing power from the regional market or using the gas-fueled facilities at Burdick Station. To meet the requirements of the CSAPR, the plant engineering staff researched methods to reduce the amount of NO<sub>x</sub> released from the boiler. Installing new low NO<sub>x</sub> burners with separate over-fire air ducts to lower the NO<sub>x</sub> emission rate from the unit was evaluated to be the long-term solution to allow full operating capacity for the plant. The project includes furnishing and installing all of the combustion system components necessary to lower the NO<sub>x</sub> emissions from the Platte boiler to a rate of 14 #/mmBtu, or about one-fourth of its current permitted rate. The system is planned to be installed during a plant maintenance outage in the last quarter of 2012. Although the CSAPR is currently stayed pending court action, staff has elected to continue with the long term compliance plans in expectation of a final ruling mid-year 2012.

On February 16, 2012 the EPA published the Mercury and Air Toxics Standards (MATS), requiring the maximum achievable control technology for mercury and other hazardous pollutants from electric generating units. Compliance is required by March, 2015, although an additional one year for compliance may be granted by individual states. This rule is independent from the CSAPR proceedings.

To achieve long-term compliance for MATS, it is anticipated that GIUD will need to install a fabric filter, carbon injection system, and either a dry sorbent injection or a dry scrubber at Platte Generating Station, along with associated by-product removal systems and disposal sites, in the next three to four years. It is estimated that these modifications will cost the utility approximately \$35 Million and take 3 to 5 years for financing, design, and construction. Current plans are to complete this installation during the last quarter of 2014 to coincide with a scheduled plant maintenance outage. This will provide a margin for the implementation of the system and minimize plant downtime. Currently GIUD is working with outside contractors to fully evaluate control equipment options.

Other rules in various stages of promulgation are anticipated to have a potential impact on utilities. They include revisions to the National Ambient Air Quality Standards (NAAQS), the clean water effluent guidelines, and coal combustion waste management rules. In late March 2012 the EPA decided to not make an adjustment to the current NO<sub>x</sub> and SO<sub>x</sub> NAAQS. States

now have the duty to develop State Implementation Plans or SIPs outlining to the EPA how they anticipate meeting ambient air standards. Nebraska currently meets all NAAQS but will be making changes to the SO<sub>2</sub> SIP pending EPA approval. With a high degree of uncertainty surrounding future regulatory action GIUD staff closely monitors the regulatory rulings.

## **6.0 Conservation/Demand Side Management**

Nebraska consistently ranks within the top ten lowest electricity cost states in the nation. This low cost along with abundant excess capacity makes conservation and demand side management programs difficult to justify. The low costs are a direct result of abundant low cost coal generation. If EPA regulations continue to be implemented, limiting the use of and increasing the cost of coal generation, Nebraska utilities could see a significant shift in average prices. Conservation and demand side management will continue to be examined in the future as additional environmental regulations are added. There may be a point in the future where an aggressive conservation program is economically feasible.

## **7.0 Excess Power Sales**

GIUD has had an abundance of excess power during the past few years. When possible, this power is sold to surrounding utilities. Arrangements have been made with several utilities in an effort to maximize sales of excess power. The down economy and the recent commercial operation of several large baseload units in the area have made the market extremely soft. In addition, Southwest Power Pool (SPP), the Regional Transmission Operator (RTO) for Nebraska, is moving toward an integrated market to begin in 2014. These market changes have the potential of making the current way of selling excess power obsolete. Because of these changes, GIUD is pursuing load and generation registration with SPP in order to participate in the market. This has the potential for maximizing profits on excess power during off peak periods as well as reducing energy prices for customers.

## **8.0 Load Projections**

GIUD makes monthly projections of demand and energy requirements. A times series is used based upon historical load. This series originally included data beginning in 1978. However, it was apparent that including the late 1970's time frame produced an inaccurate projection due to the aggressive addition of air conditioning load during that period of time. Since 2007, the time series is based upon data beginning in 2000. This provides a much more

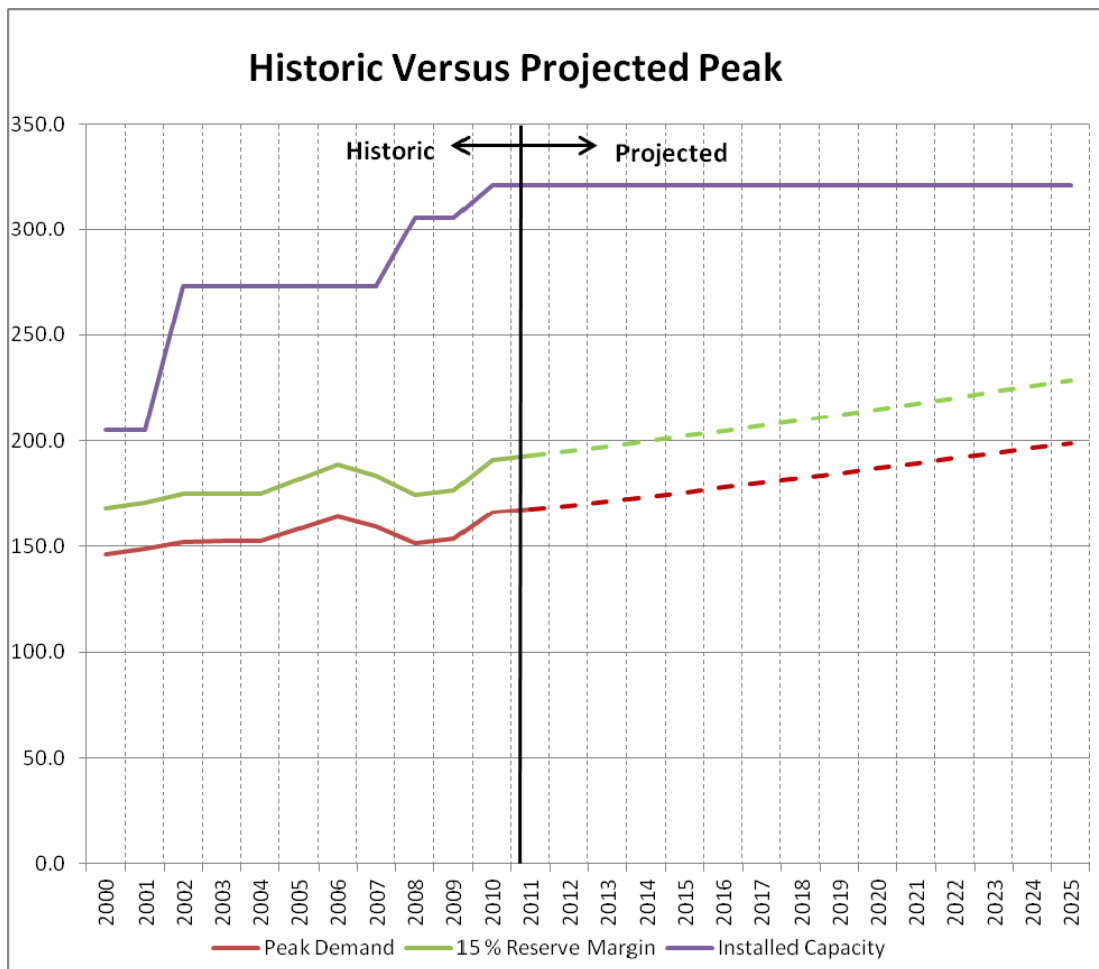


accurate projection. Results are graphically displayed in order to identify anomalies which may evolve into trends. The graphs are included as Appendix A. Table 8-1 shows the current projections out to 2025 with five years of historical data.

<b>Year</b>	<b>Summer Peak Demand</b>	<b>Winter Peak Demand</b>
2007	159.6 MW	107.6 MW
2008	151.8 MW	114.4 MW
2009	153.6 MW	117.6 MW
2010	166.1 MW	118.3 MW
2011	167.9 MW	110.5 MW
2012	170 MW	120 MW
2013	172 MW	123 MW
2014	174 MW	126 MW
2015	176 MW	130 MW
2016	179 MW	133 MW
2017	181 MW	137 MW
2018	183 MW	140 MW
2019	185 MW	144 MW
2020	187 MW	148 MW
2021	190 MW	152 MW
2022	192 MW	156 MW
2023	194 MW	160 MW
2024	196 MW	165 MW
2025	199 MW	169 MW

Table 8-1

With the addition of NC2 and WEC2, the use of Burdick generation for peaking is minimized. At the current load growth rate, Burdick generation will not see pre NC2 and WEC2 usage until approximately 2025. From a capacity standpoint, GIUD has plenty of capacity to satisfy needs beyond 2025. See graph 8-2 below.



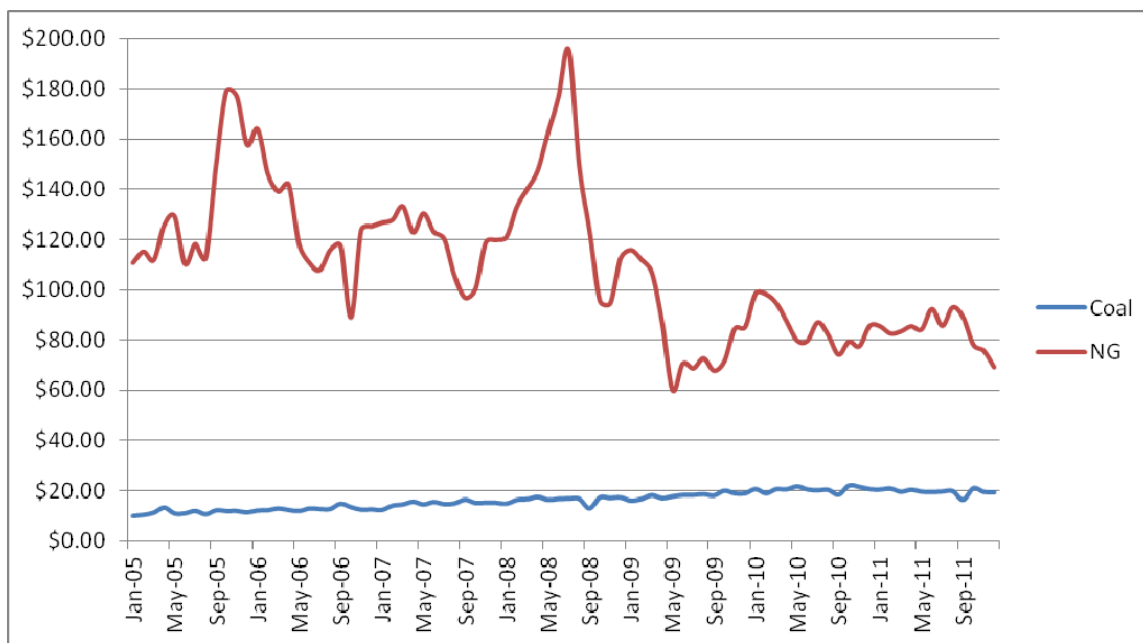
Graph 8-2

## 9.0 Reliability

GIUD tracks reliability statistics in an effort to curb negative trends and attract new industry. GIUD maintains a high level of reliable electric service. The current reliability statistics are shown in Appendix B.

## 10.0 Historic And Average Power Cost

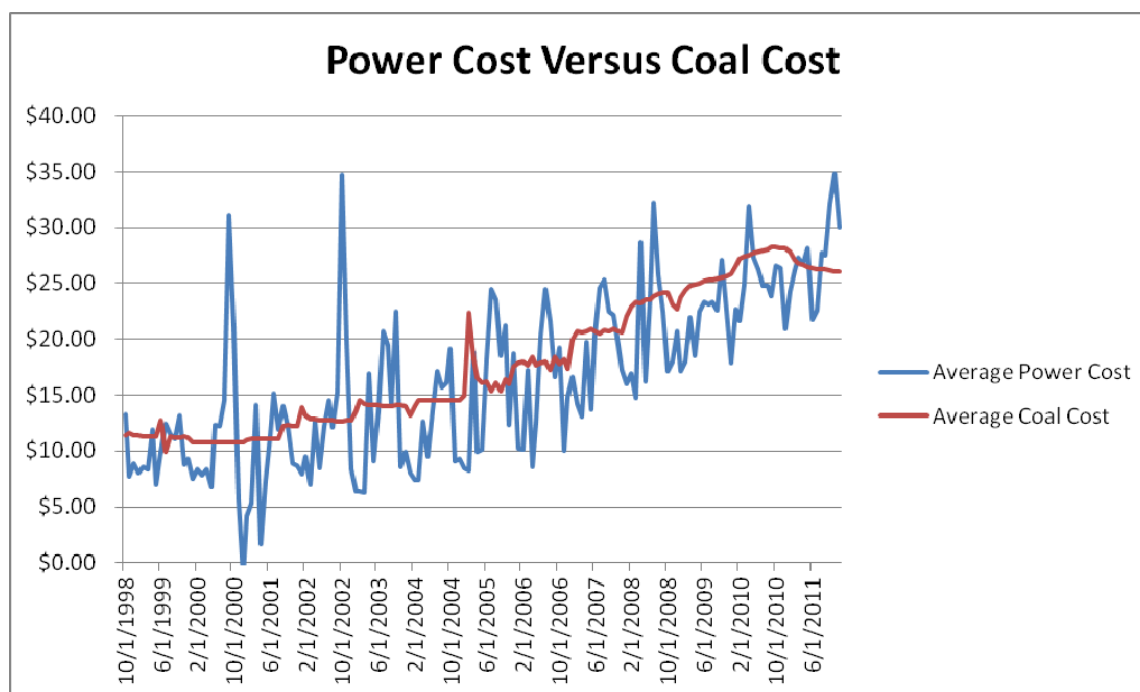
Coal and natural gas prices have experienced an incline over the past several years. Coal prices, historically, have been much more constant than natural gas prices. GIUD is hesitant to rely heavily on natural gas fired generation due to the fuel volatility. Graph 10-1 below shows the historical prices of GIUD coal and natural gas generation in \$/MWh during the past seven years:



Graph 10-1

GIUD expects PGS coal generation costs to go up during the next several years due to new EPA emissions standards and regulations. However, NC2 and WEC2 prices should remain fairly flat since both units are new and already meet the latest proposed regulations.

For years, average cost of power for GIUD customers stayed consistently in the \$10 per MWh price range. This was due to low cost local generation and low cost supplemental power available for purchase from surrounding utilities. During the past eight years, average cost of power has increased with a current average cost approaching \$35 per MWh. This rise is due to several factors including the addition of NC2 and WEC2 and associated transmission and debt service, increased transportation cost for coal and an increase in the price of coal itself. Graph 10-2 shows the rise in both coal prices and corresponding power prices since 1998.



Graph 10-2

With NC2 and WEC2 fully incorporated into the average power cost, it is anticipated that, despite rising PGS generation costs, prices will stabilize in the near future. However, this could drastically be impacted by more stringent EPA coal restrictions.

## 11.0 Implementation Plan

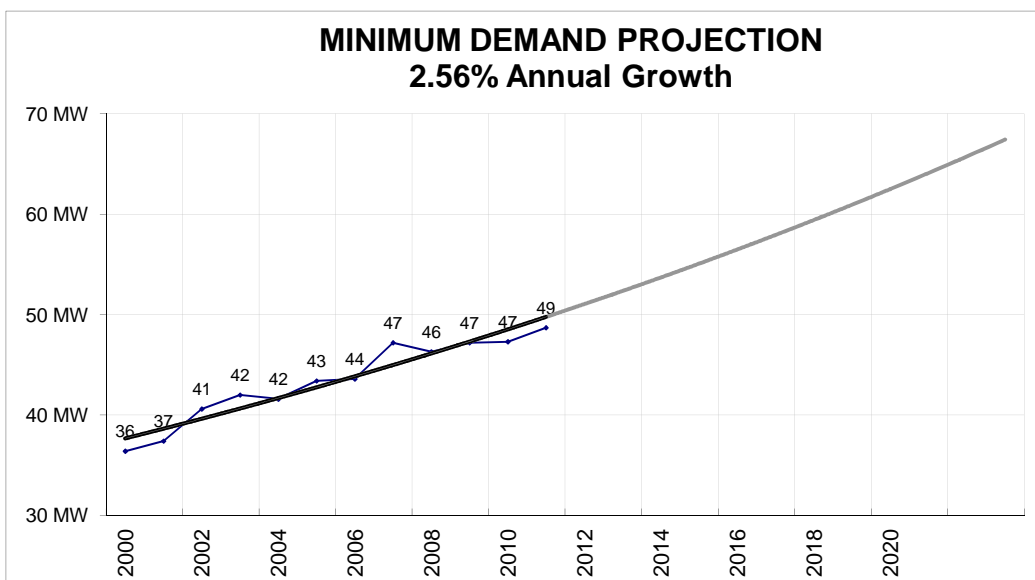
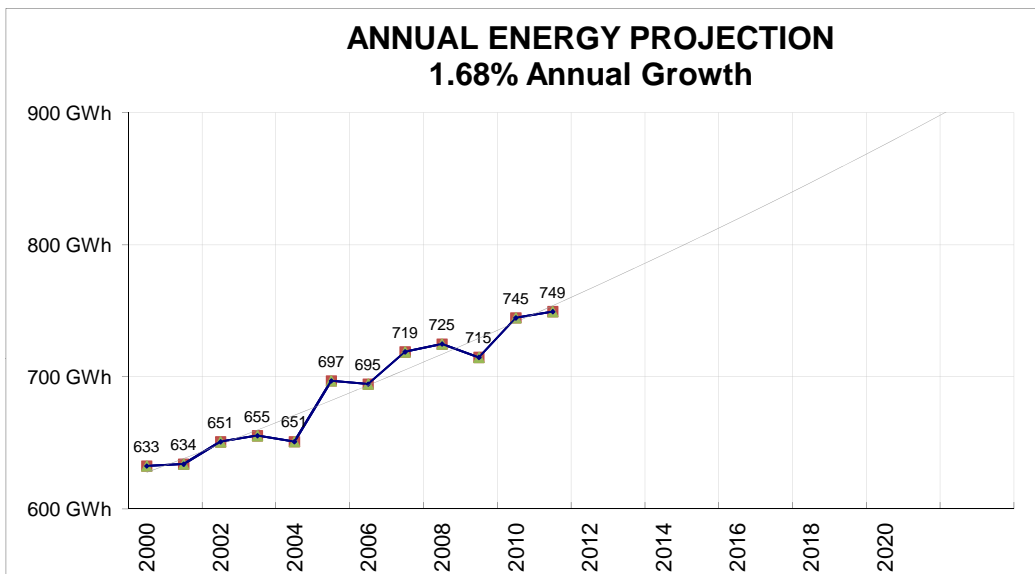
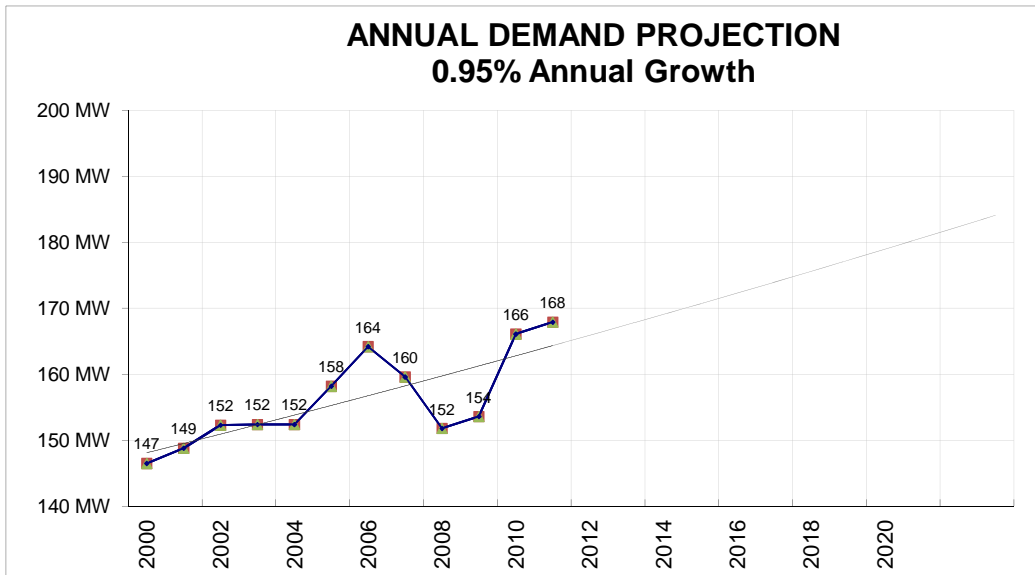
With the current trends and the recent addition of NC2 and WEC2 capacity, GIUD has enough excess capacity to last well beyond 2020. This additional capacity should allow GIUD to obtain some profit by selling additional energy utilizing the current and future energy markets. Load will continue to be trended and additional capacity will be added as needed. However, at the present time, additional capacity is not expected to be needed until beyond 2025.

## **APPENDIX “A”**

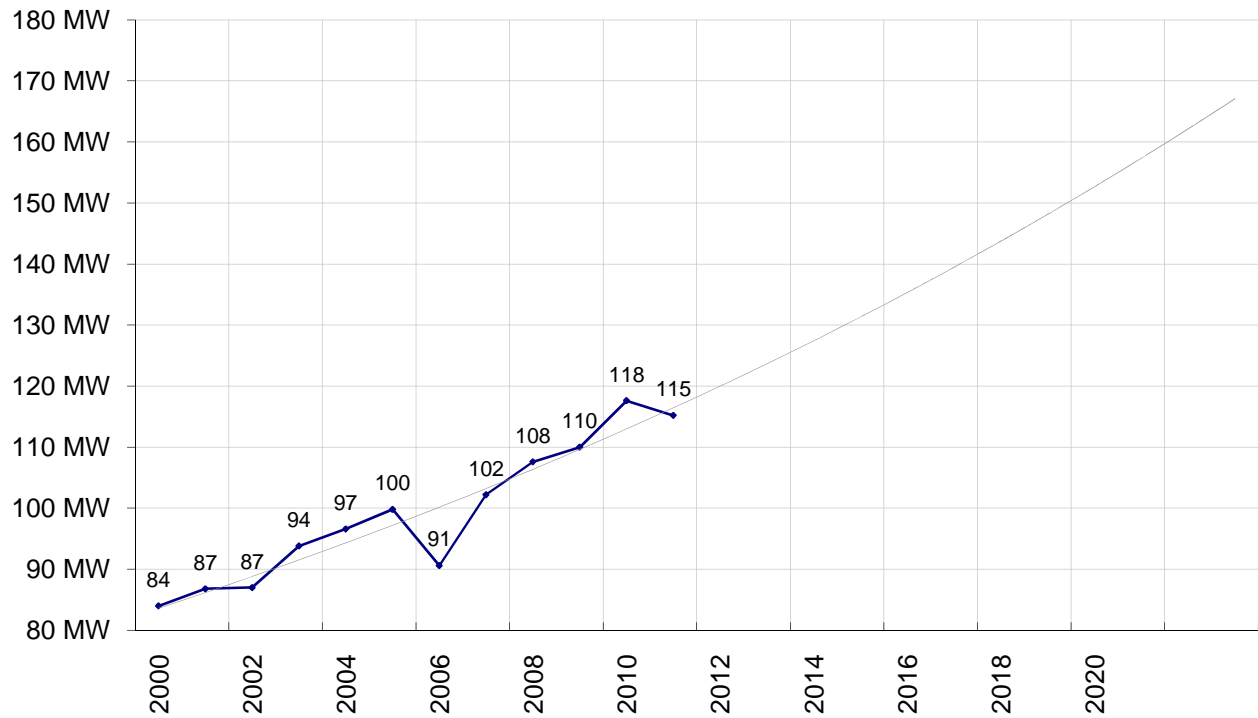
# MONTHLY DEMAND & ENERGY SUMMARY

26-Mar-12

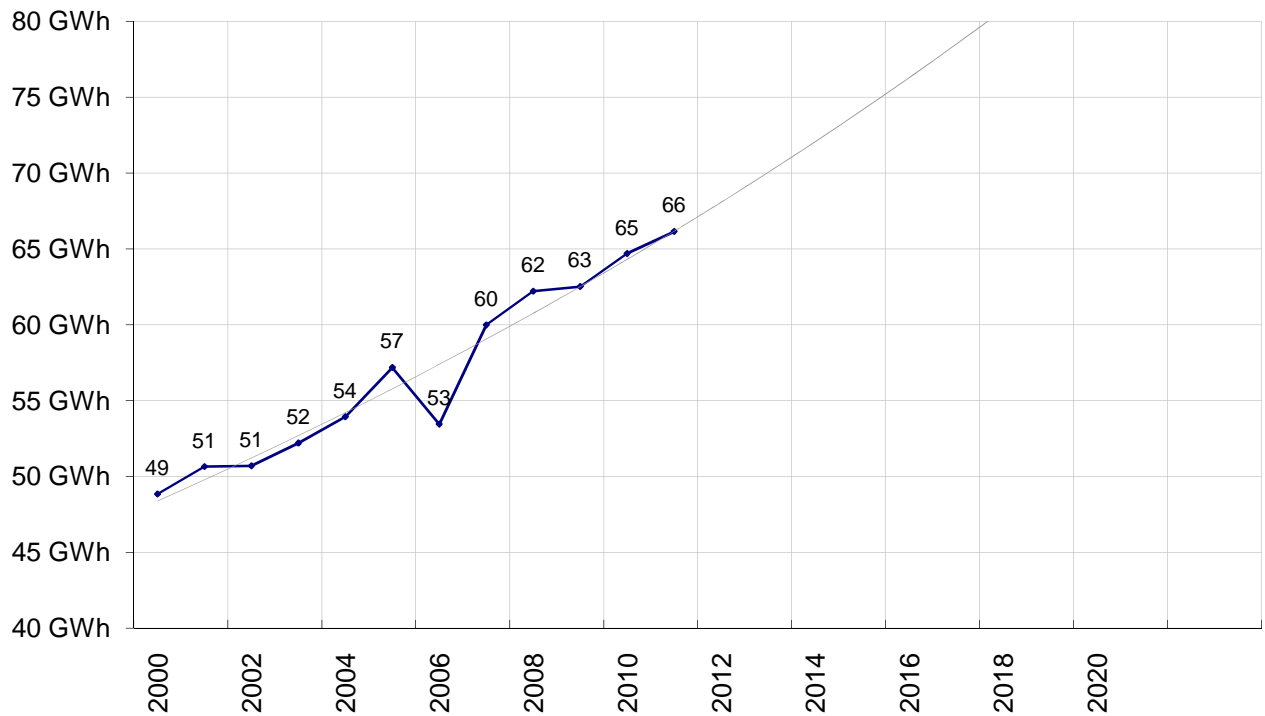
YEAR	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
JAN	87.0 MW	93.8 MW	96.6 MW	99.8 MW	90.6 MW	102.2 MW	107.6 MW	110.0 MW	117.6 MW	115.2 MW
FEB	88.4 MW	89.2 MW	92.2 MW	94.0 MW	101.8 MW	104.8 MW	103.4 MW	103.1 MW	105.5 MW	118.3 MW
MAR	88.8 MW	92.8 MW	87.4 MW	90.4 MW	91.0 MW	95.0 MW	99.2 MW	103.6 MW	97.8 MW	102.2 MW
APR	100.4 MW	98.3 MW	99.0 MW	89.4 MW	96.8 MW	95.0 MW	99.2 MW	99.1 MW	94.2 MW	96.9 MW
MAY	125.7 MW	105.3 MW	109.4 MW	125.8 MW	123.6 MW	117.0 MW	103.2 MW	114.4 MW	123.6 MW	128.9 MW
JUN	140.1 MW	138.4 MW	133.4 MW	144.6 MW	144.2 MW	142.0 MW	143.8 MW	153.6 MW	147.5 MW	152.0 MW
JUL	152.3 MW	152.4 MW	152.4 MW	158.2 MW	164.2 MW	154.8 MW	151.8 MW	150.1 MW	154.0 MW	165.9 MW
AUG	142.9 MW	150.7 MW	145.8 MW	157.6 MW	159.0 MW	159.6 MW	147.4 MW	145.8 MW	166.1 MW	167.9 MW
SEP	135.2 MW	121.8 MW	131.4 MW	135.2 MW	108.4 MW	132.2 MW	118.6 MW	113.0 MW	133.4 MW	152.0 MW
OCT	103.5 MW	99.2 MW	89.2 MW	127.8 MW	112.0 MW	112.8 MW	95.4 MW	97.3 MW	106.8 MW	108.2 MW
NOV	87.9 MW	87.0 MW	95.8 MW	99.8 MW	102.6 MW	97.4 MW	100.4 MW	93.6 MW	107.2 MW	99.2 MW
DEC	91.0 MW	94.8 MW	99.2 MW	106.4 MW	100.0 MW	107.4 MW	114.4 MW	113.6 MW	106.5 MW	110.5 MW
SUM. MAX.	152.3 MW	152.4 MW	152.4 MW	158.2 MW	164.2 MW	159.6 MW	151.8 MW	153.6 MW	166.1 MW	167.9 MW
WIN. MAX.	98.3 MW	99.0 MW	99.2 MW	106.4 MW	104.8 MW	107.6 MW	114.4 MW	117.6 MW	118.3 MW	110.5 MW
JAN	50,689 MWh	52,190 MWh	53,931 MWh	57,176 MWh	53,447 MWh	59,992 MWh	62,212 MWh	62,522 MWh	64,698 MWh	66,152 MWh
FEB	45,314 MWh	46,888 MWh	49,764 MWh	48,203 MWh	51,135 MWh	54,963 MWh	56,800 MWh	54,233 MWh	57,771 MWh	58,583 MWh
MAR	49,645 MWh	49,907 MWh	49,963 MWh	52,496 MWh	54,150 MWh	53,850 MWh	56,122 MWh	56,971 MWh	57,833 MWh	59,794 MWh
APR	46,644 MWh	47,968 MWh	47,691 MWh	48,937 MWh	48,489 MWh	50,590 MWh	53,050 MWh	52,619 MWh	51,802 MWh	52,903 MWh
MAY	49,186 MWh	49,796 MWh	52,884 MWh	55,069 MWh	56,630 MWh	55,558 MWh	54,035 MWh	55,339 MWh	56,306 MWh	56,229 MWh
JUN	64,599 MWh	56,668 MWh	57,708 MWh	65,632 MWh	66,784 MWh	63,787 MWh	64,623 MWh	62,748 MWh	67,445 MWh	65,163 MWh
JUL	75,713 MWh	75,814 MWh	65,292 MWh	76,314 MWh	77,657 MWh	75,861 MWh	76,582 MWh	70,688 MWh	76,550 MWh	81,118 MWh
AUG	67,373 MWh	72,814 MWh	63,496 MWh	71,712 MWh	71,163 MWh	77,454 MWh	71,321 MWh	69,103 MWh	78,272 MWh	76,384 MWh
SEP	54,314 MWh	52,581 MWh	56,377 MWh	60,114 MWh	52,524 MWh	57,710 MWh	57,637 MWh	55,976 MWh	59,488 MWh	57,864 MWh
OCT	49,274 MWh	50,359 MWh	49,266 MWh	52,738 MWh	53,737 MWh	55,100 MWh	53,983 MWh	55,847 MWh	54,336 MWh	56,189 MWh
NOV	47,409 MWh	48,159 MWh	49,734 MWh	50,969 MWh	52,799 MWh	53,171 MWh	55,128 MWh	53,902 MWh	55,989 MWh	56,462 MWh
DEC	50,692 MWh	52,326 MWh	54,843 MWh	57,647 MWh	56,079 MWh	60,935 MWh	63,430 MWh	64,841 MWh	64,182 MWh	62,575 MWh
TOTAL	650,851 MWh	655,470 MWh	650,950 MWh	697,007 MWh	694,593 MWh	718,974 MWh	724,922 MWh	714,788 MWh	744,672 MWh	749,417 MWh
ANNUAL LF	49%	49%	49%	50%	48%	51%	54%	53%	51%	51%



## JANUARY DEMAND PROJECTION 3.06% Annual Growth

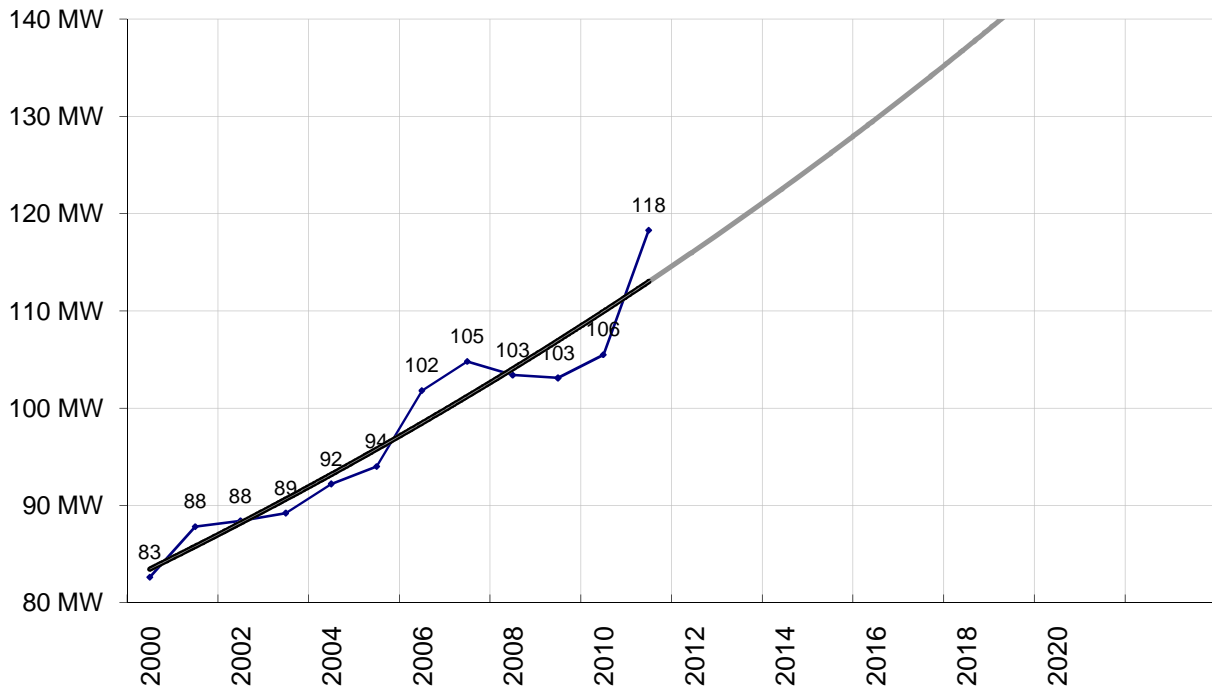


## JANUARY ENERGY PROJECTION 2.89% Annual Growth

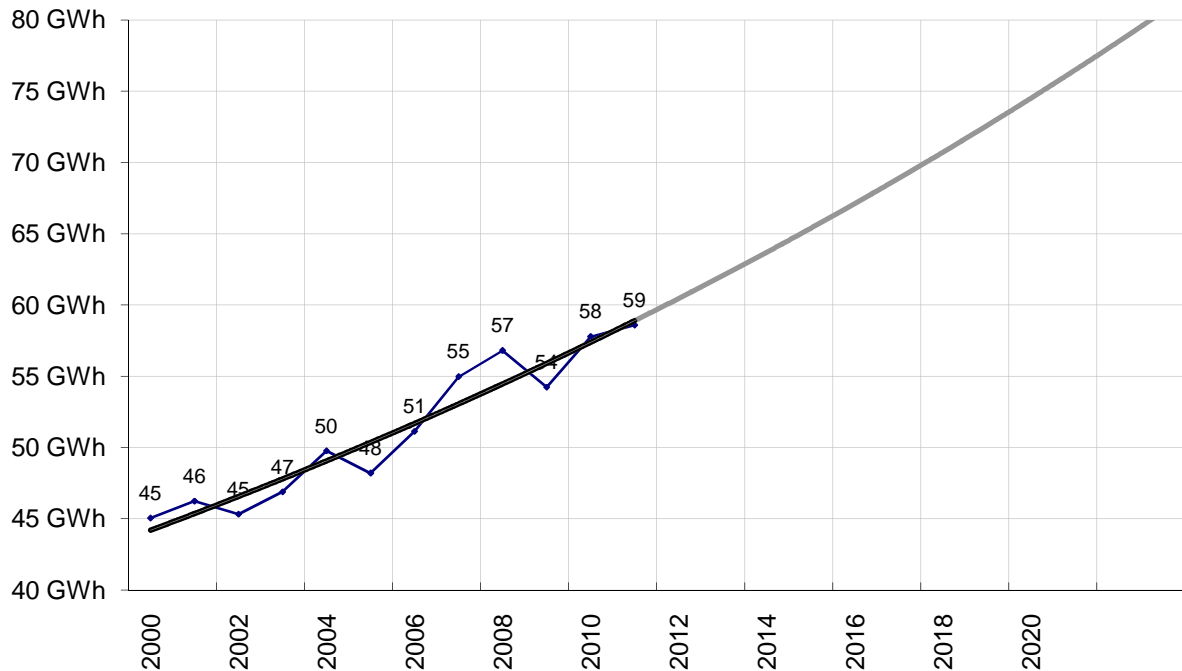


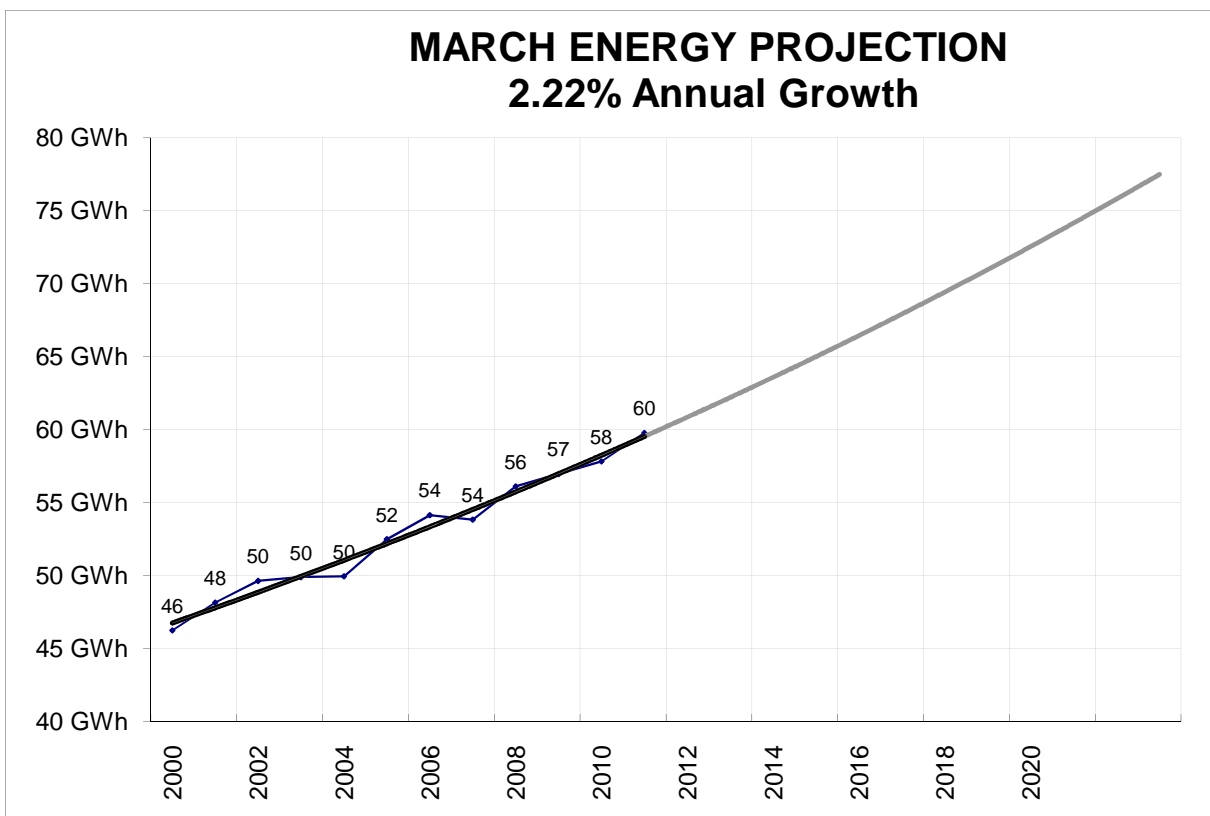
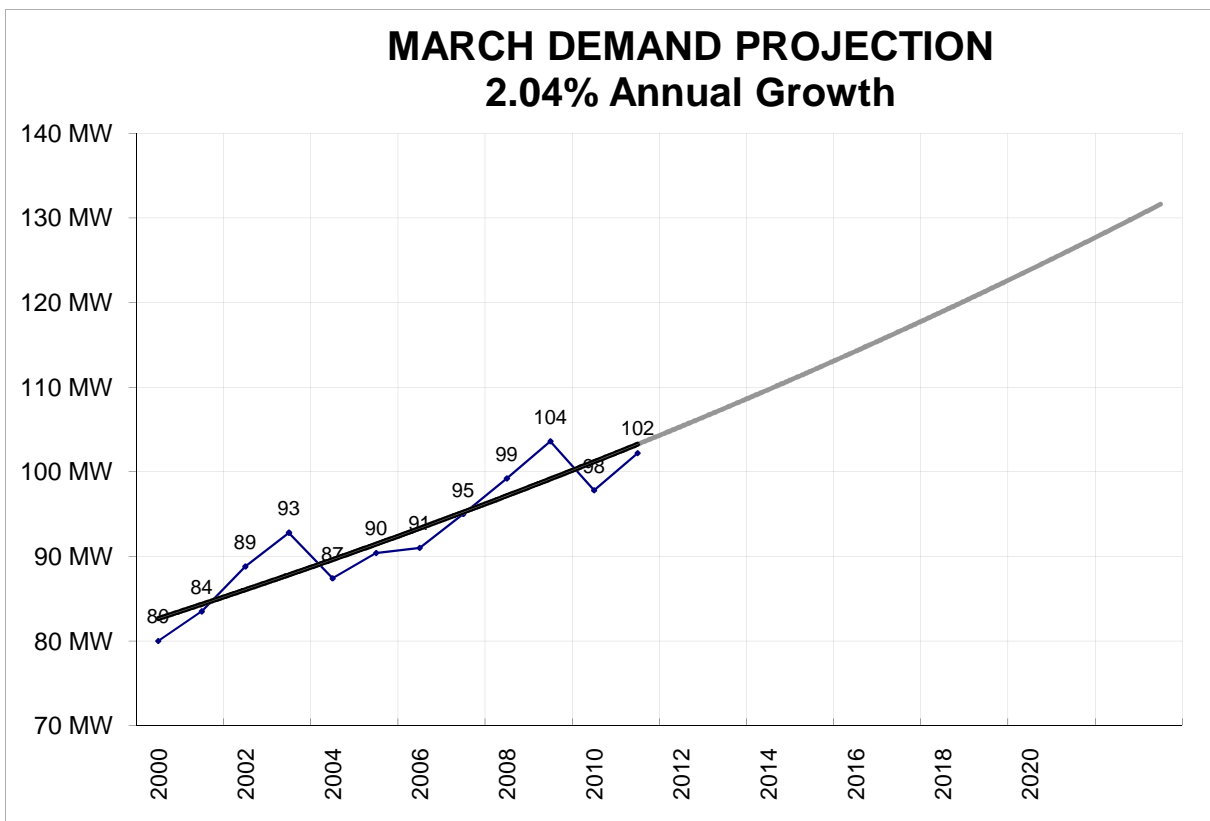


## FEBRUARY DEMAND PROJECTION 2.79% Annual Growth

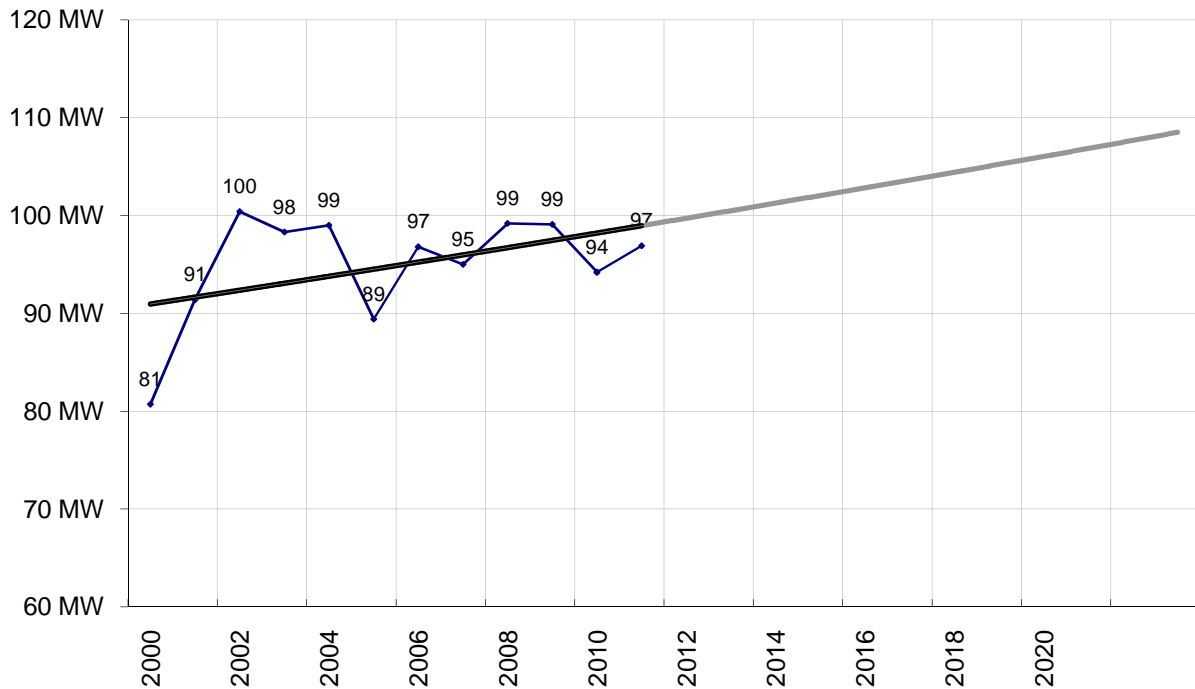


## FEBRUARY ENERGY PROJECTION 2.65% Annual Growth

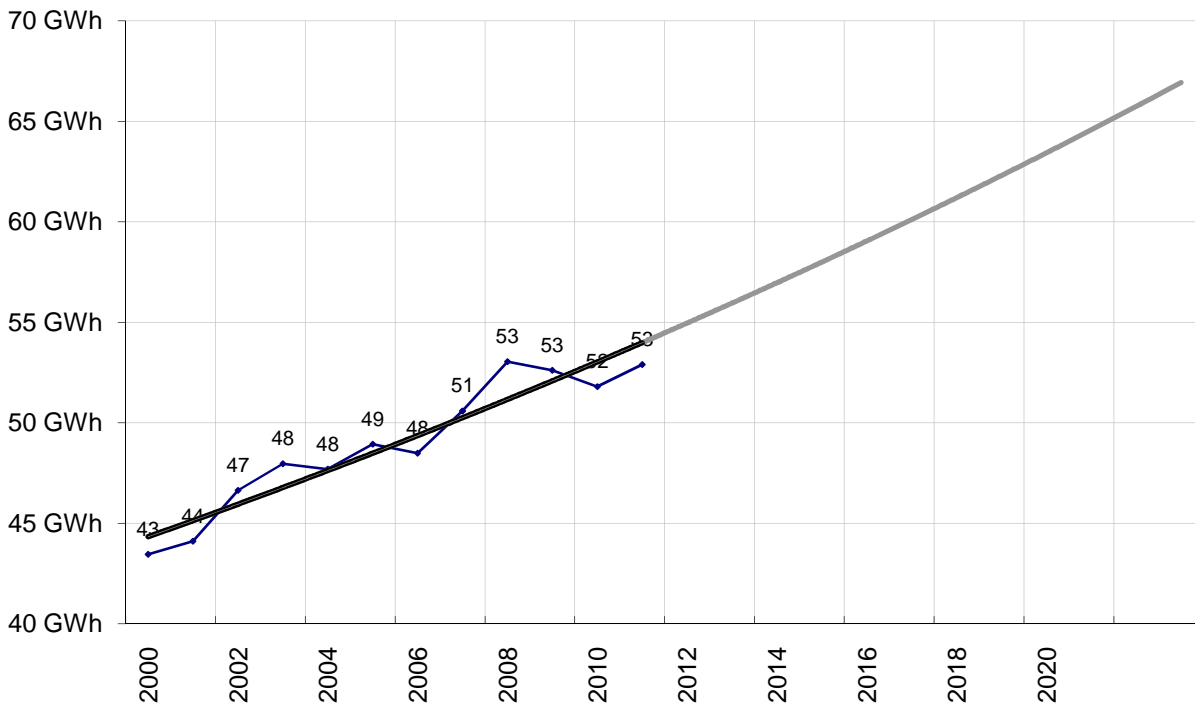




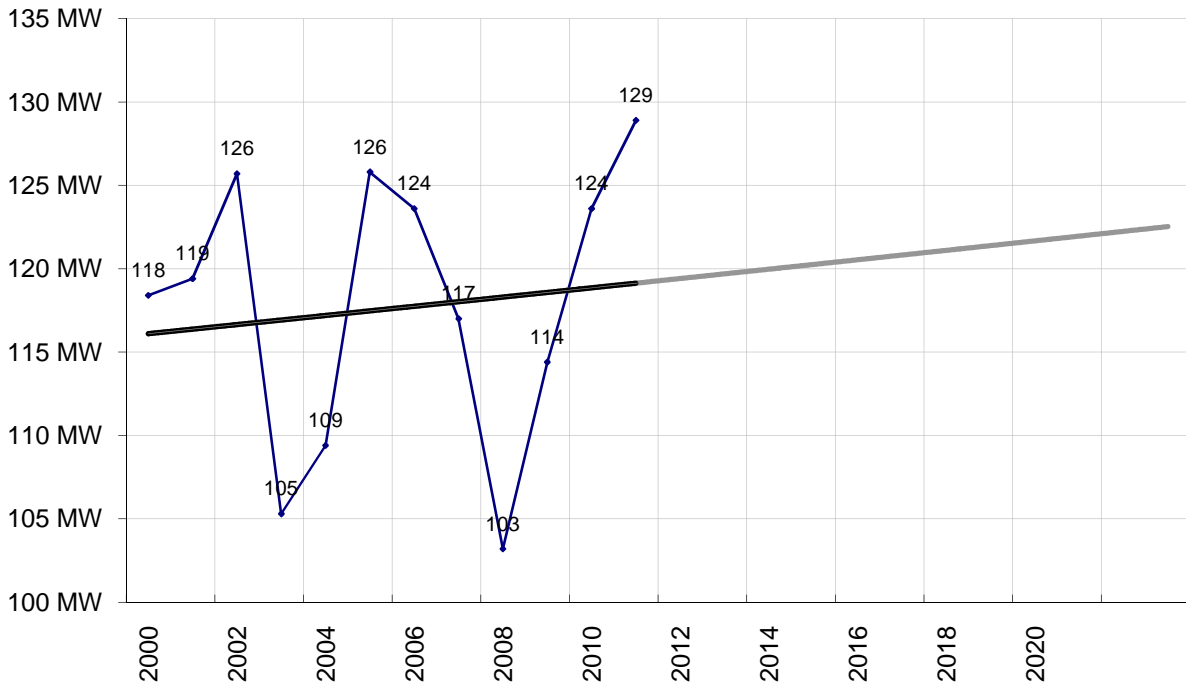
### APRIL DEMAND PROJECTION 0.77% Annual Growth



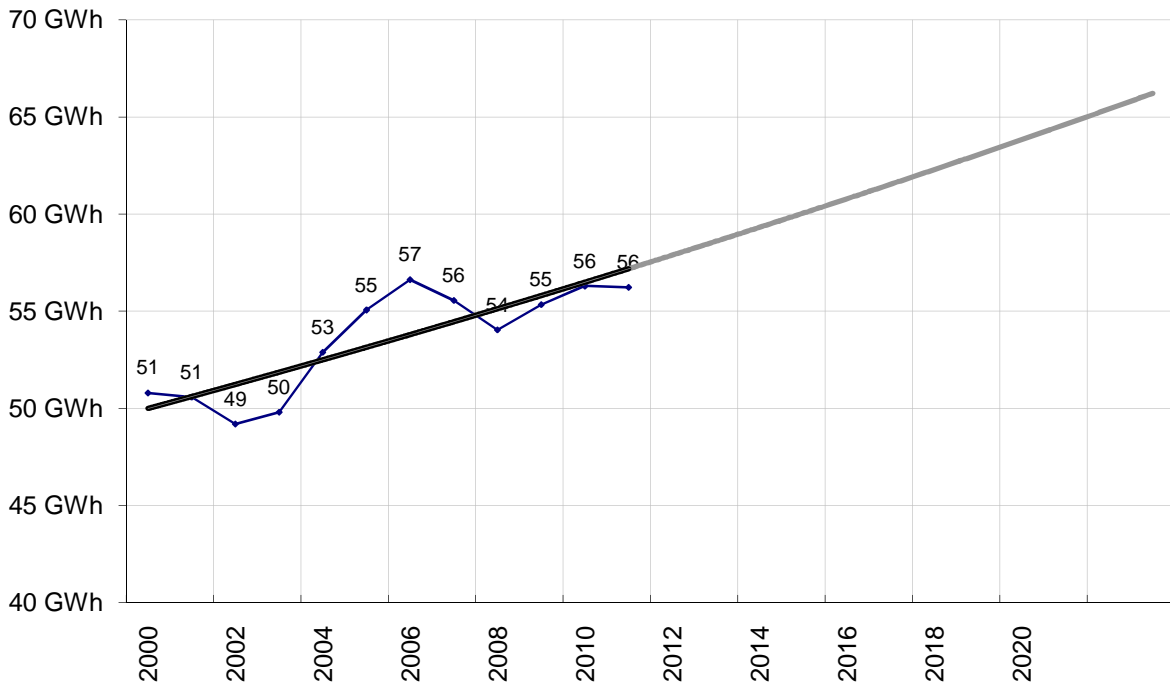
### APRIL ENERGY PROJECTION 1.81% Annual Growth



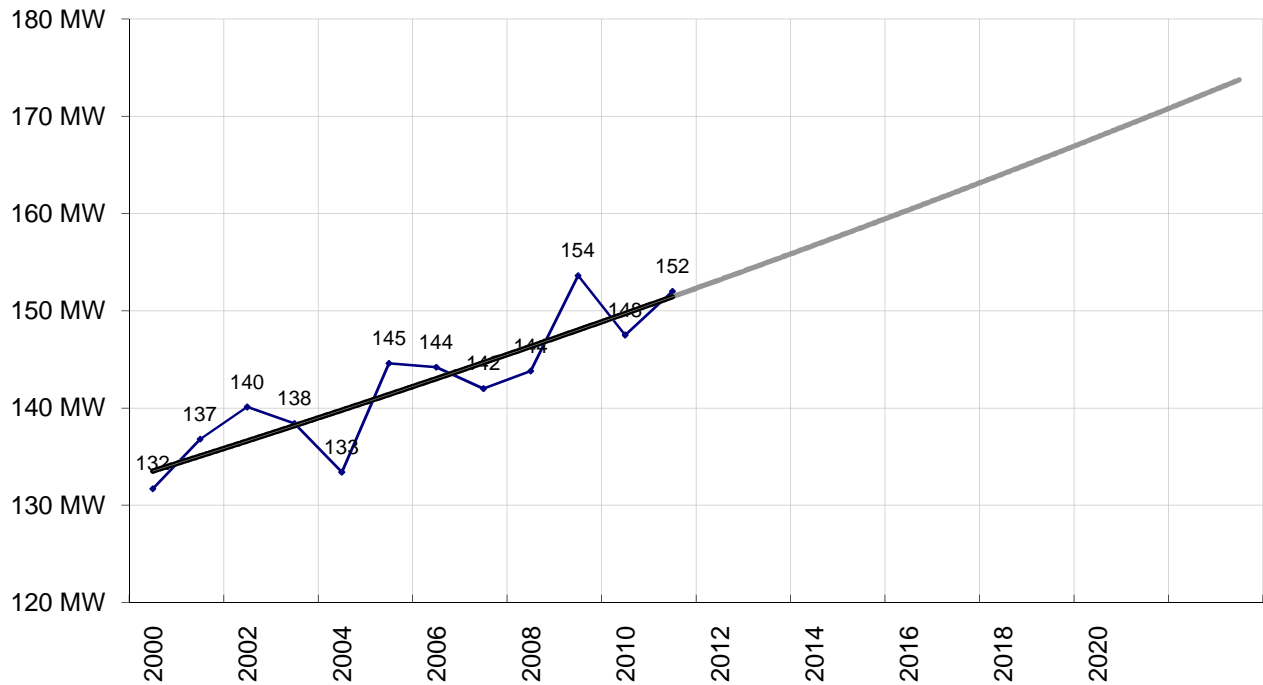
### MAY DEMAND PROJECTION 0.23% Annual Growth



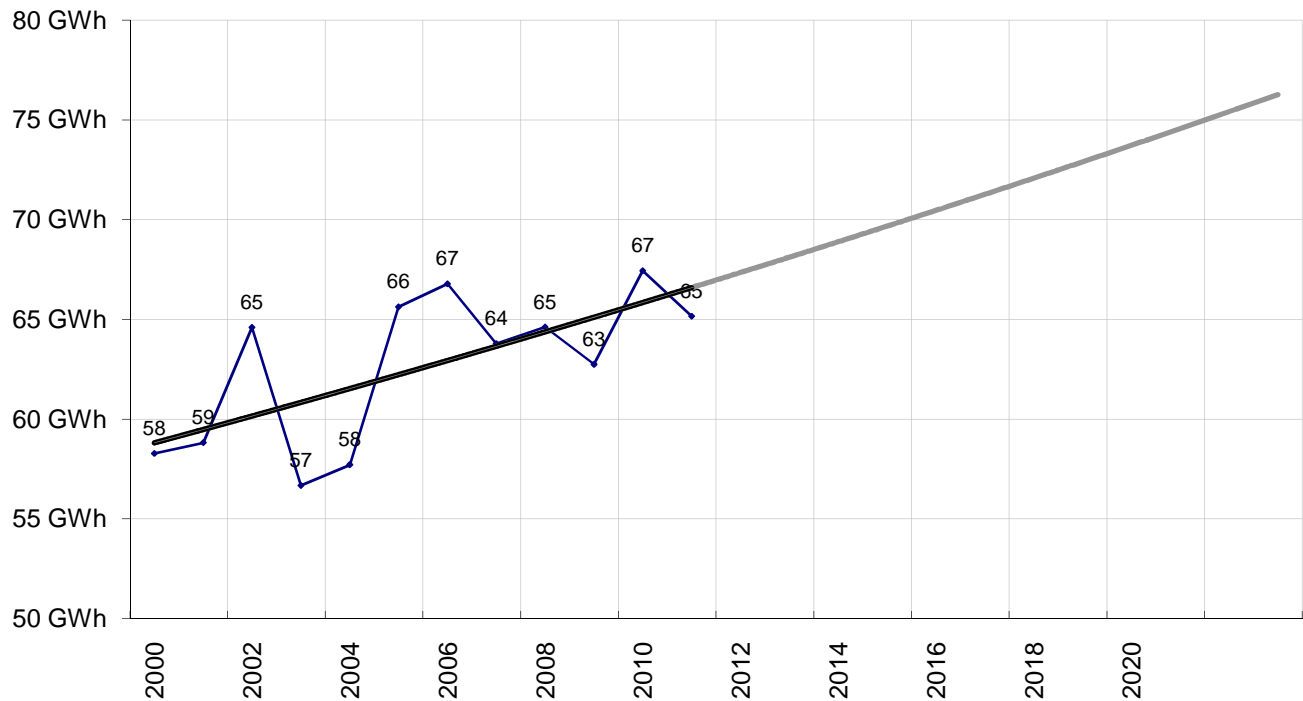
### MAY ENERGY PROJECTION 1.23% Annual Growth

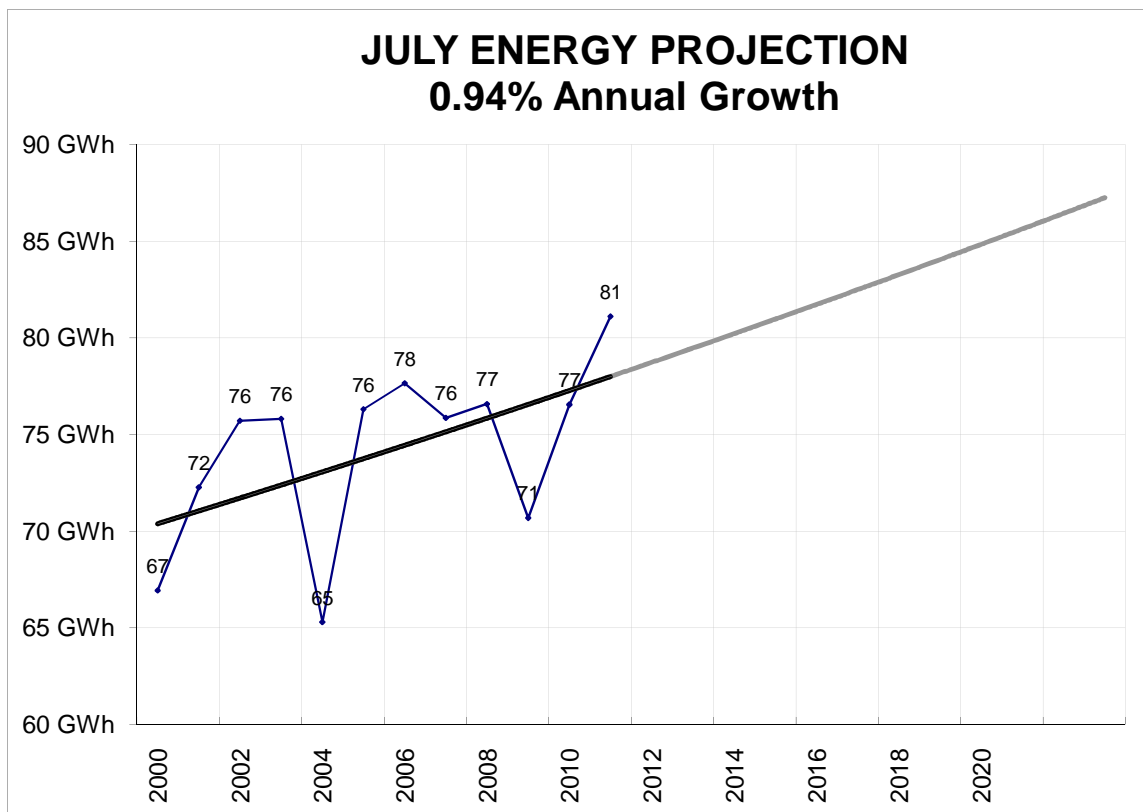
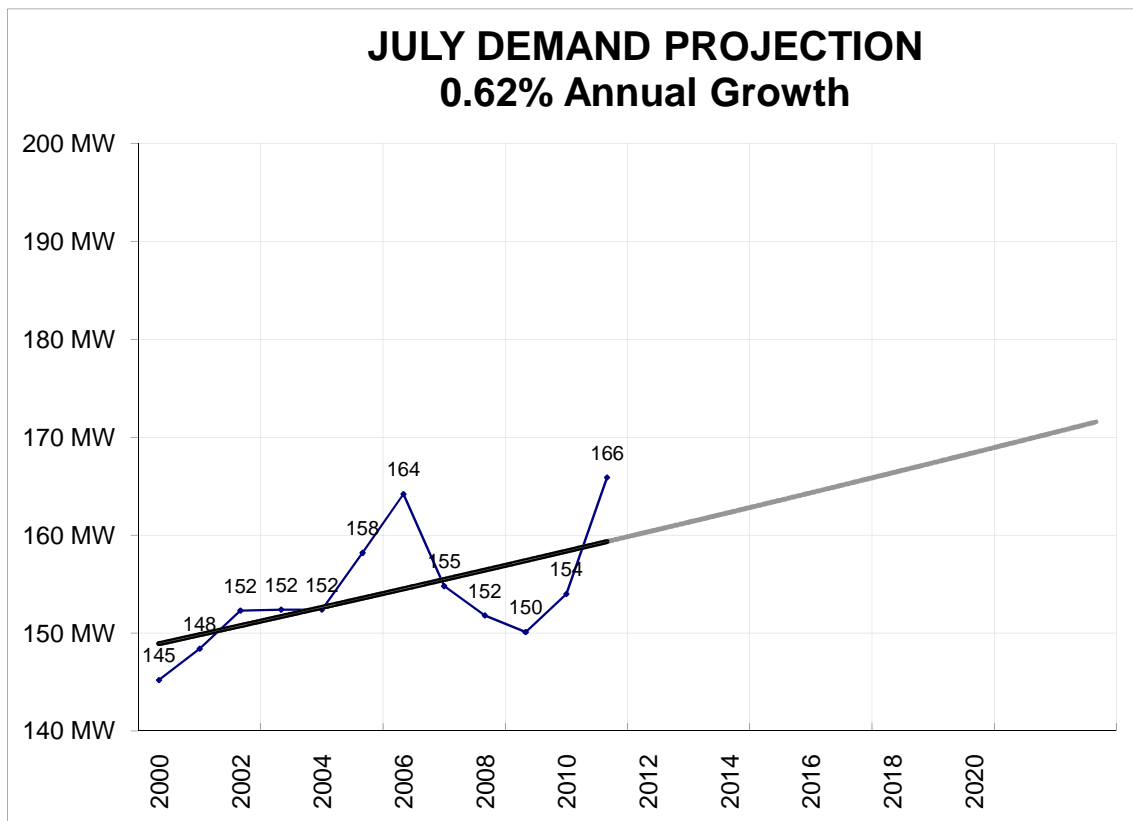


## JUNE DEMAND PROJECTION 1.15% Annual Growth

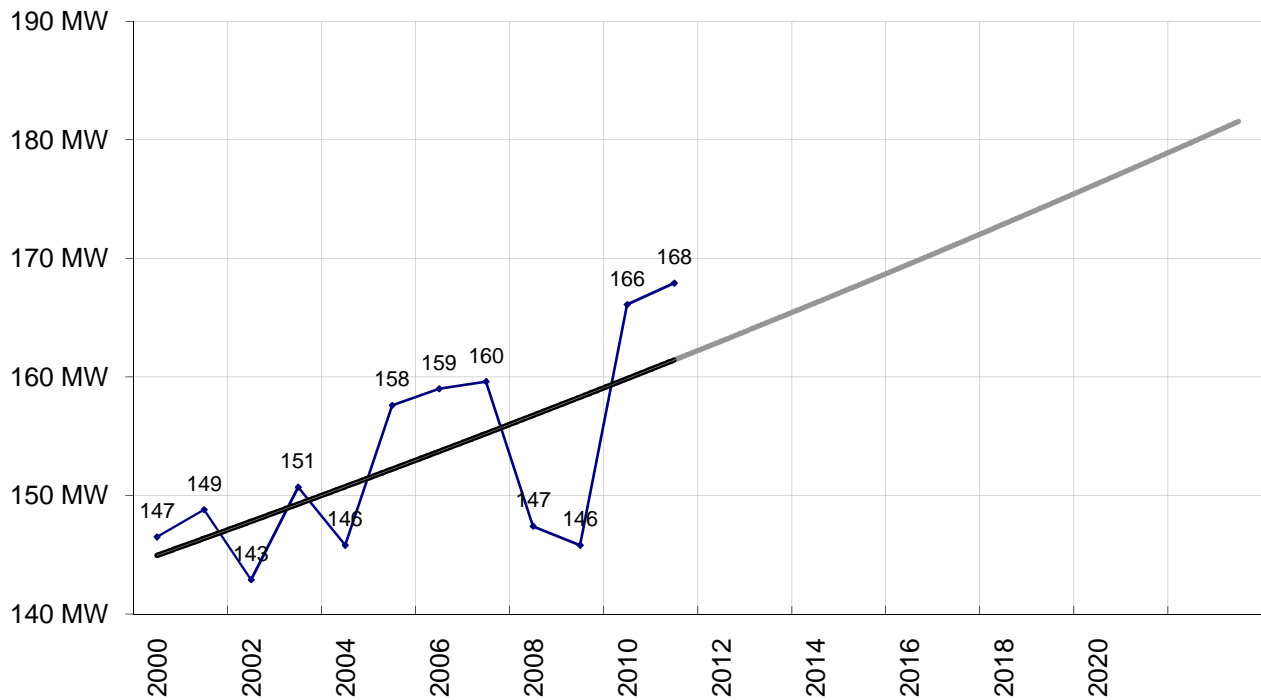


## JUNE ENERGY PROJECTION 1.14% Annual Growth

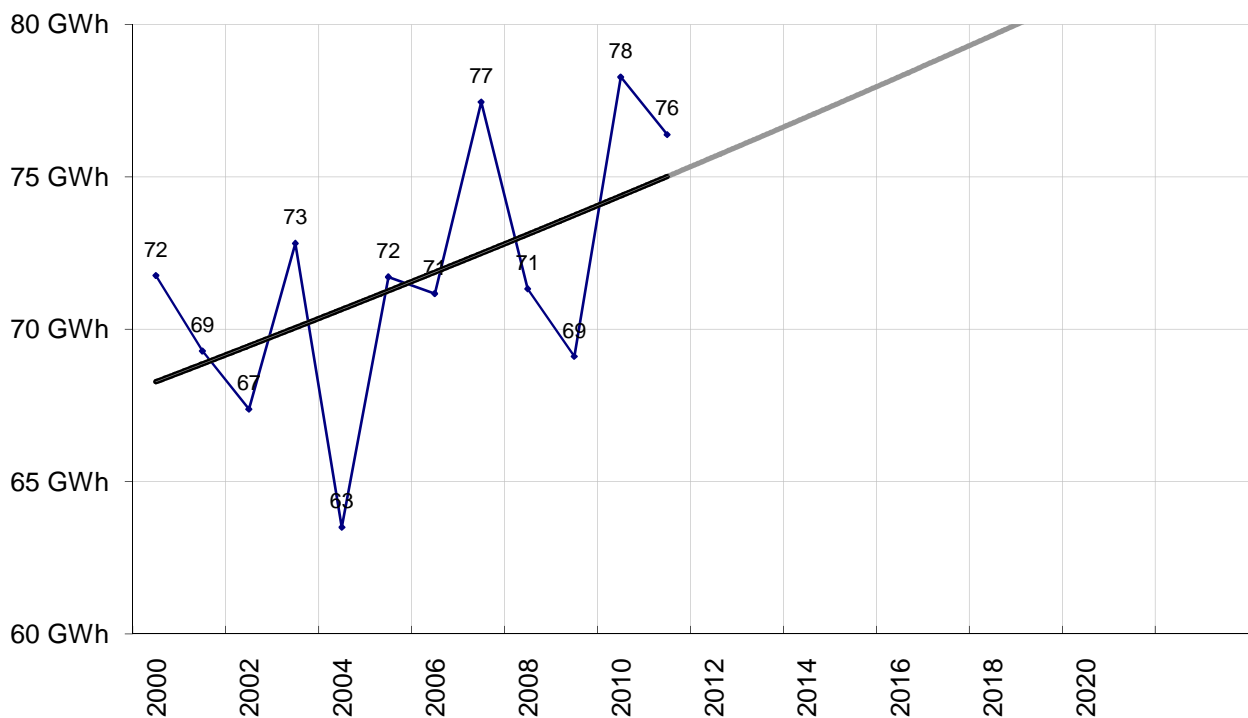




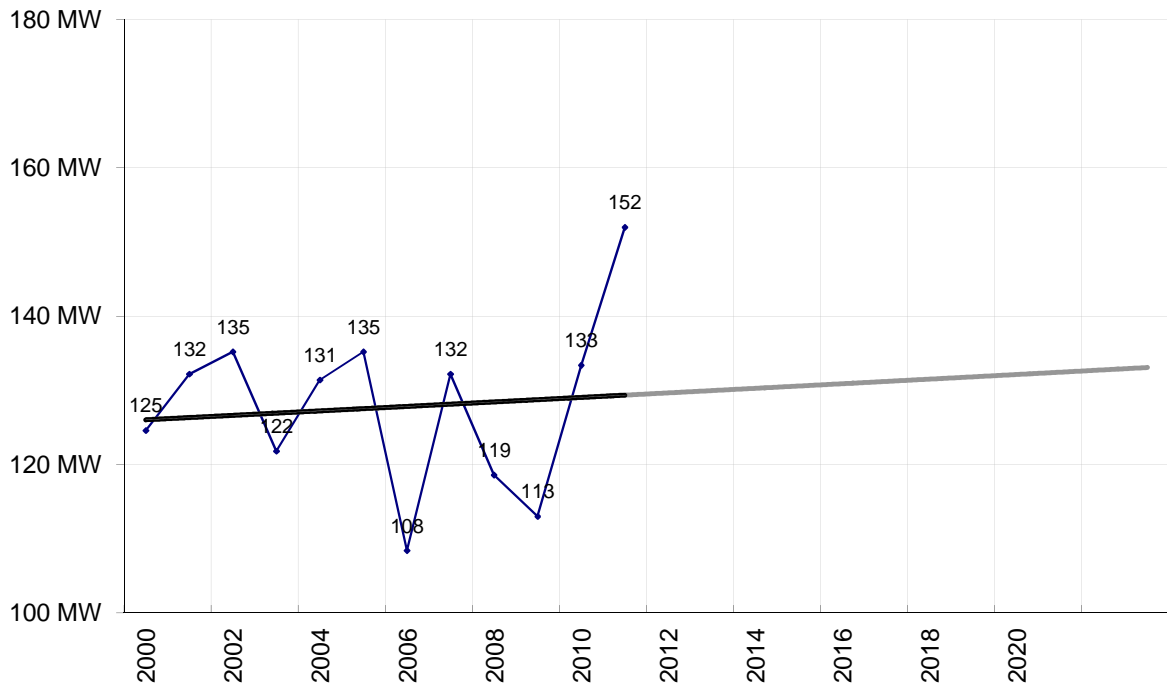
## AUGUST DEMAND PROJECTION 0.98% Annual Growth



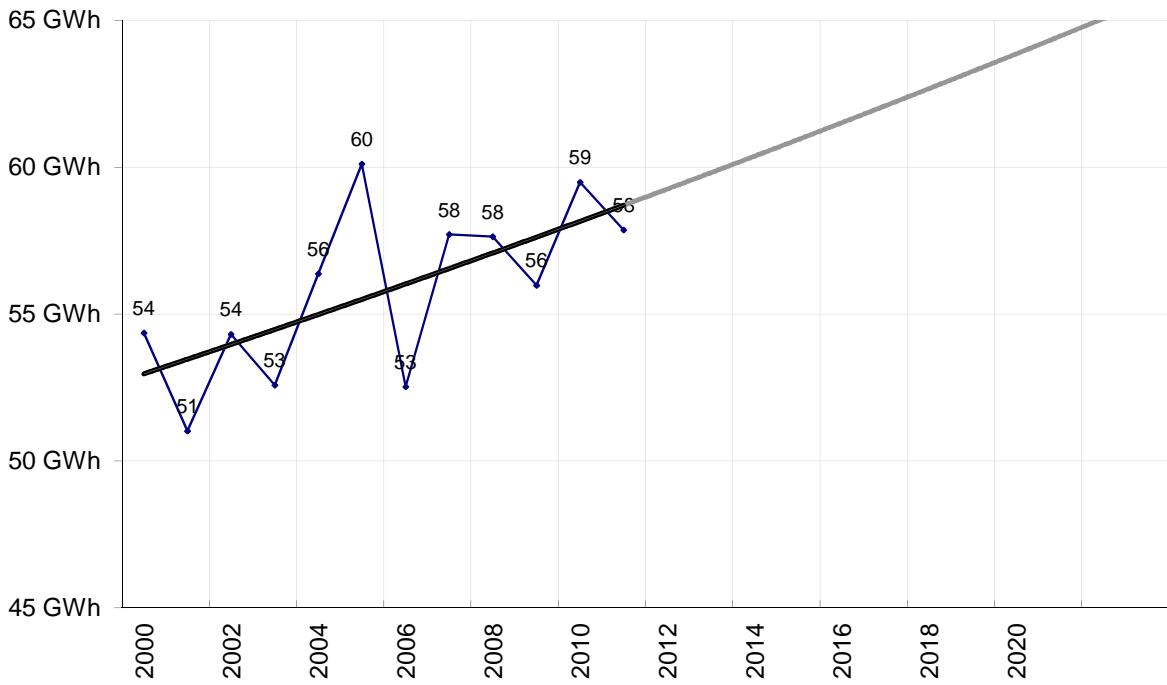
## AUGUST ENERGY PROJECTION 0.86% Annual Growth



### SEPTEMBER DEMAND PROJECTION 0.24% Annual Growth

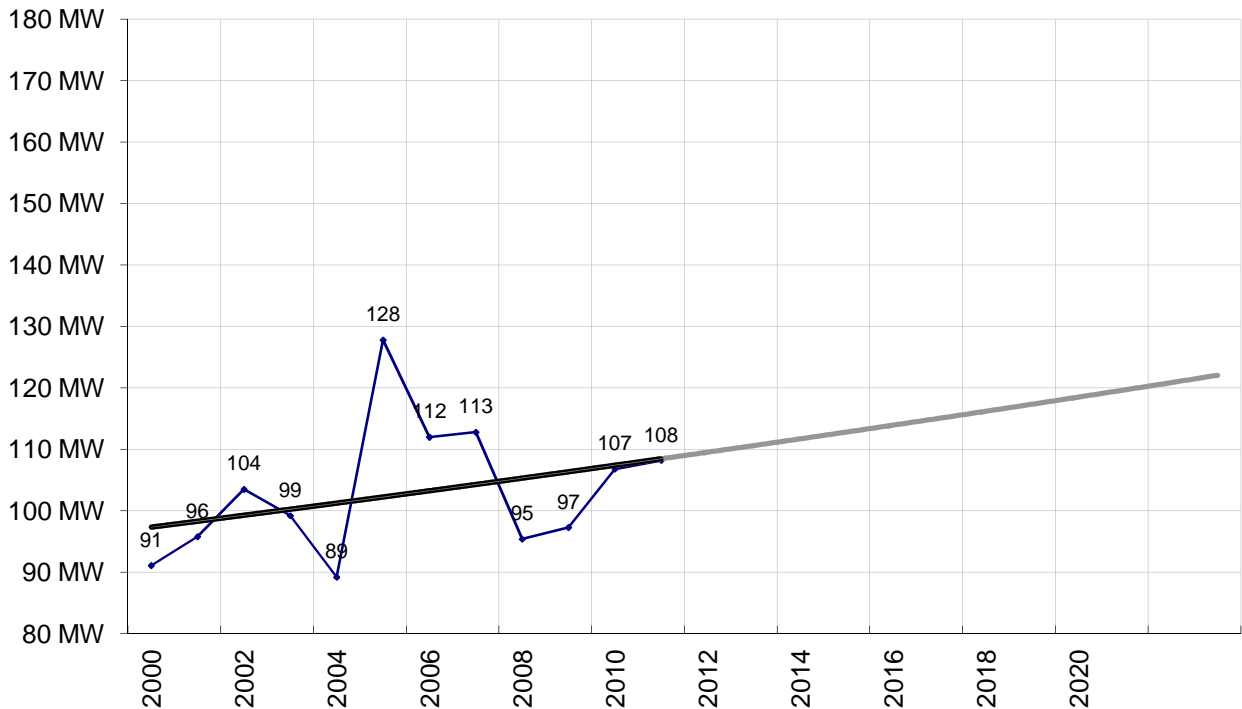


### SEPTEMBER ENERGY PROJECTION 0.94% Annual Growth

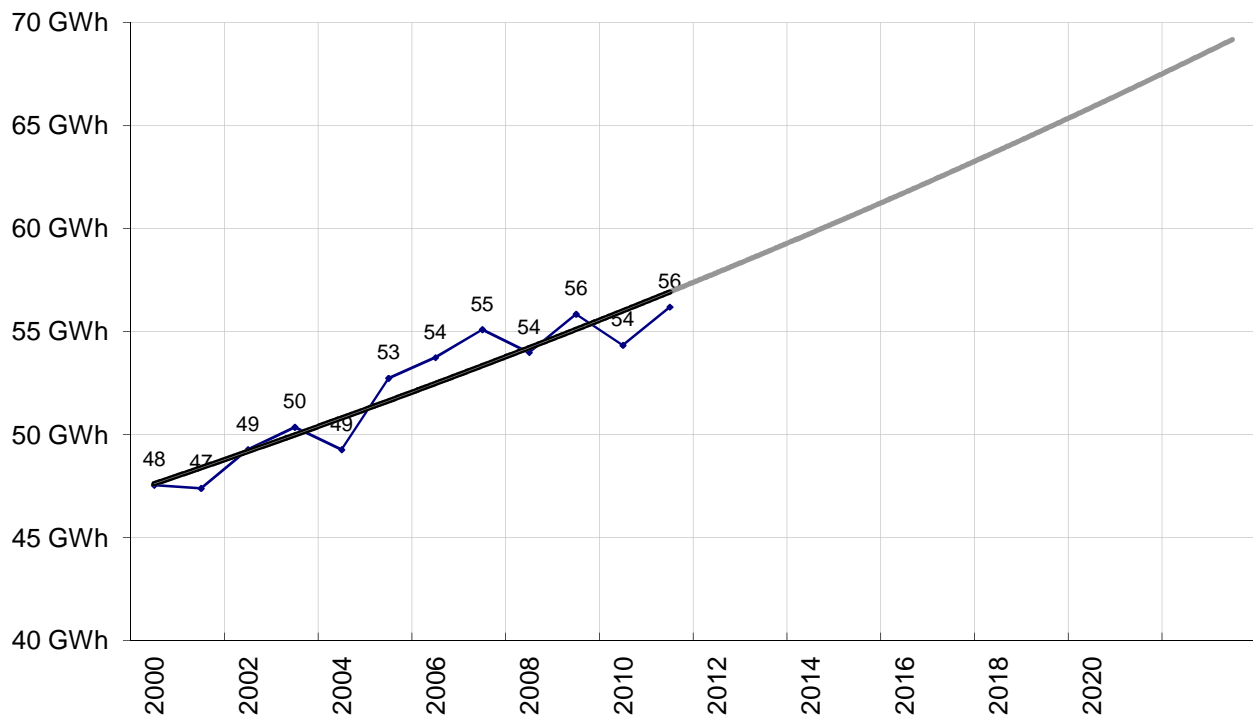




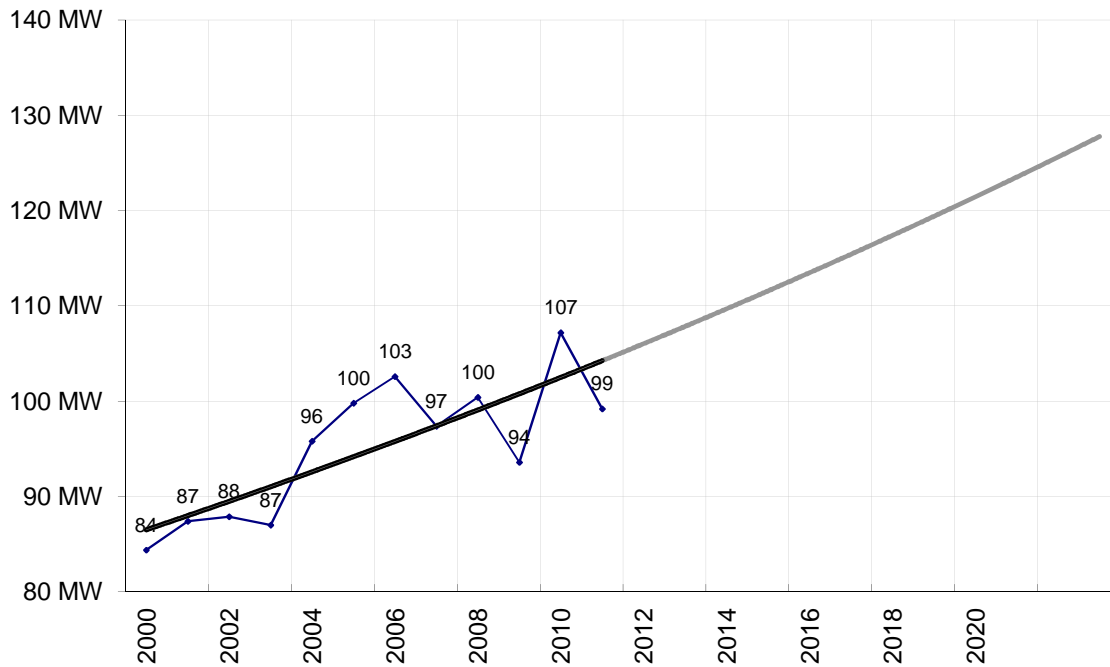
## OCTOBER DEMAND PROJECTION 0.99% Annual Growth



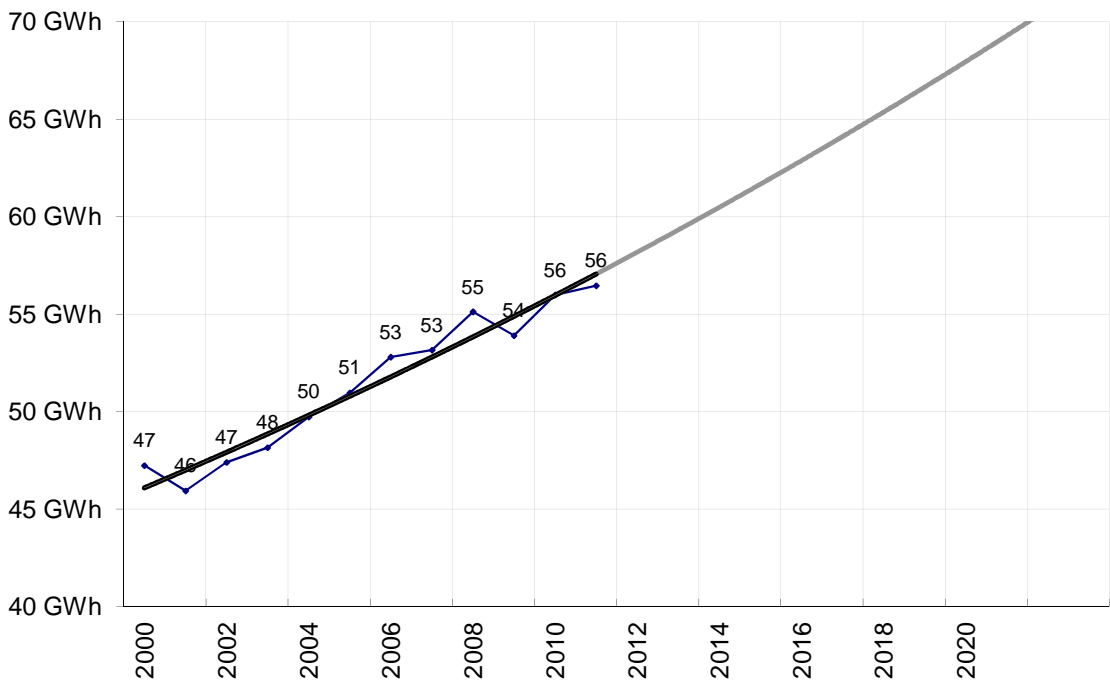
## OCTOBER ENERGY PROJECTION 1.64% Annual Growth

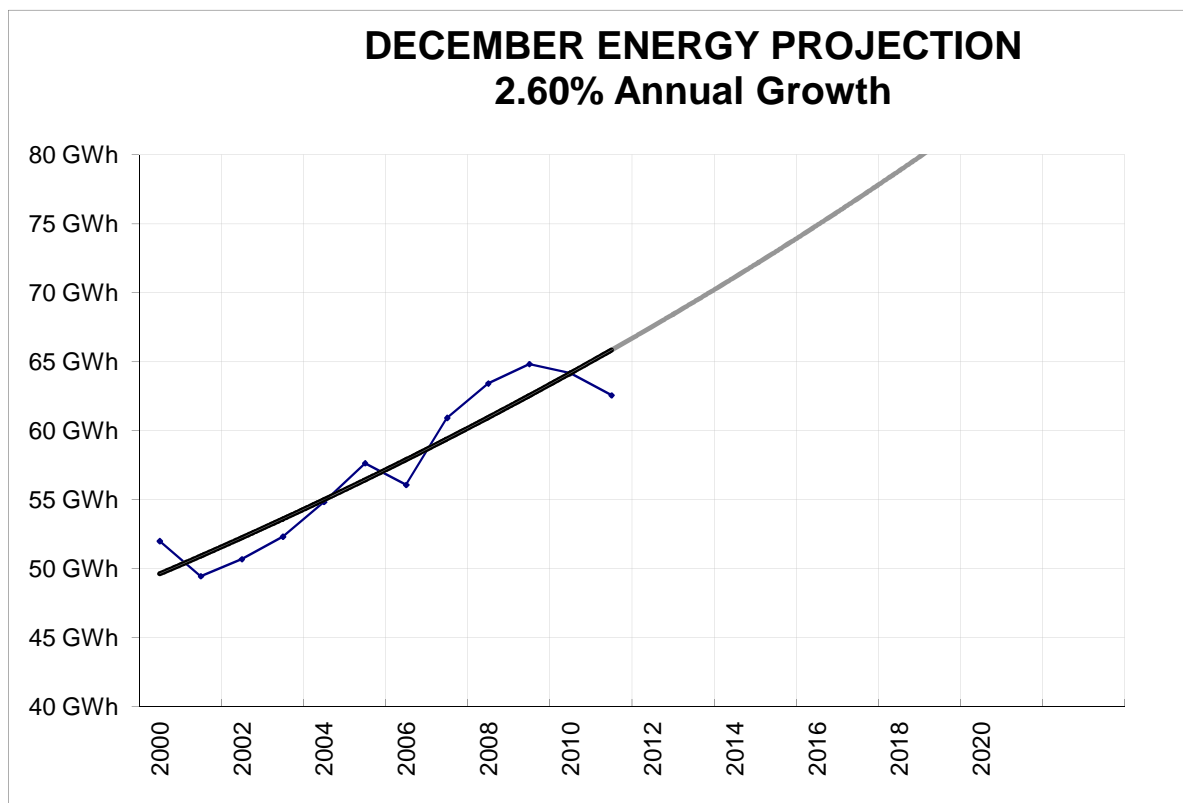
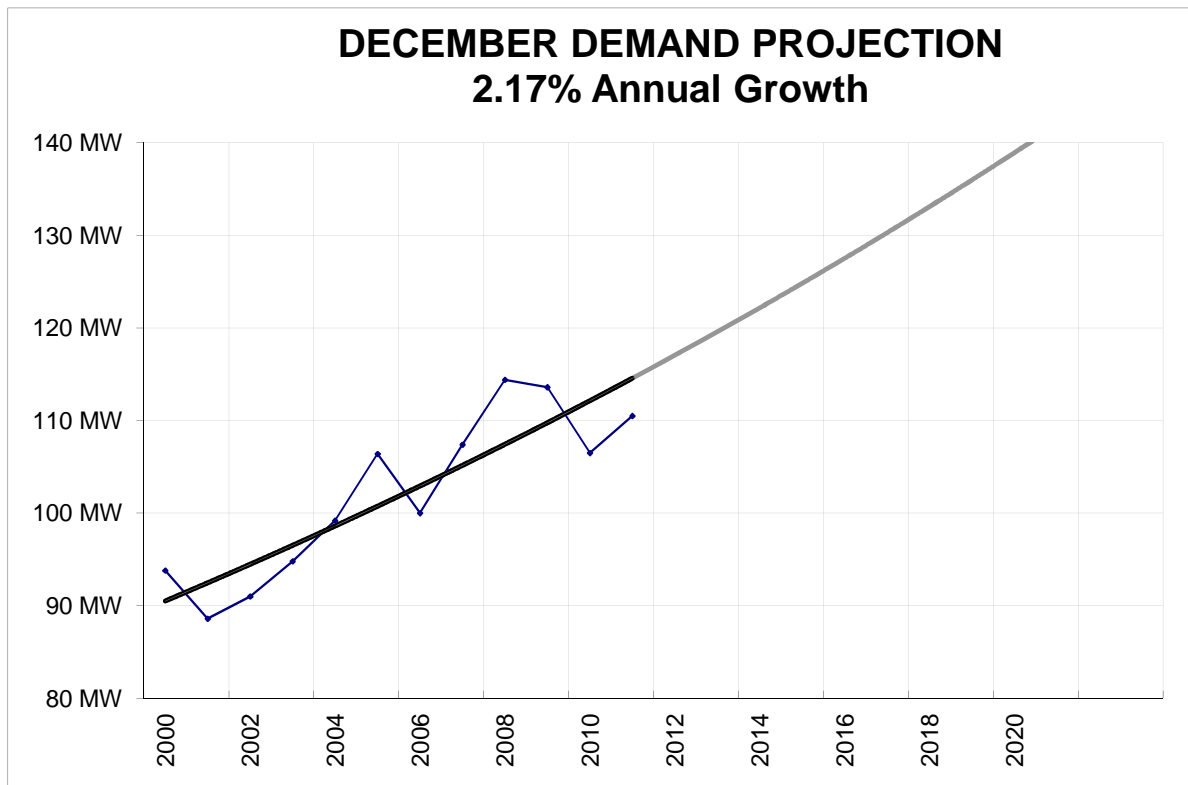


### NOVEMBER DEMAND PROJECTION 1.71% Annual Growth

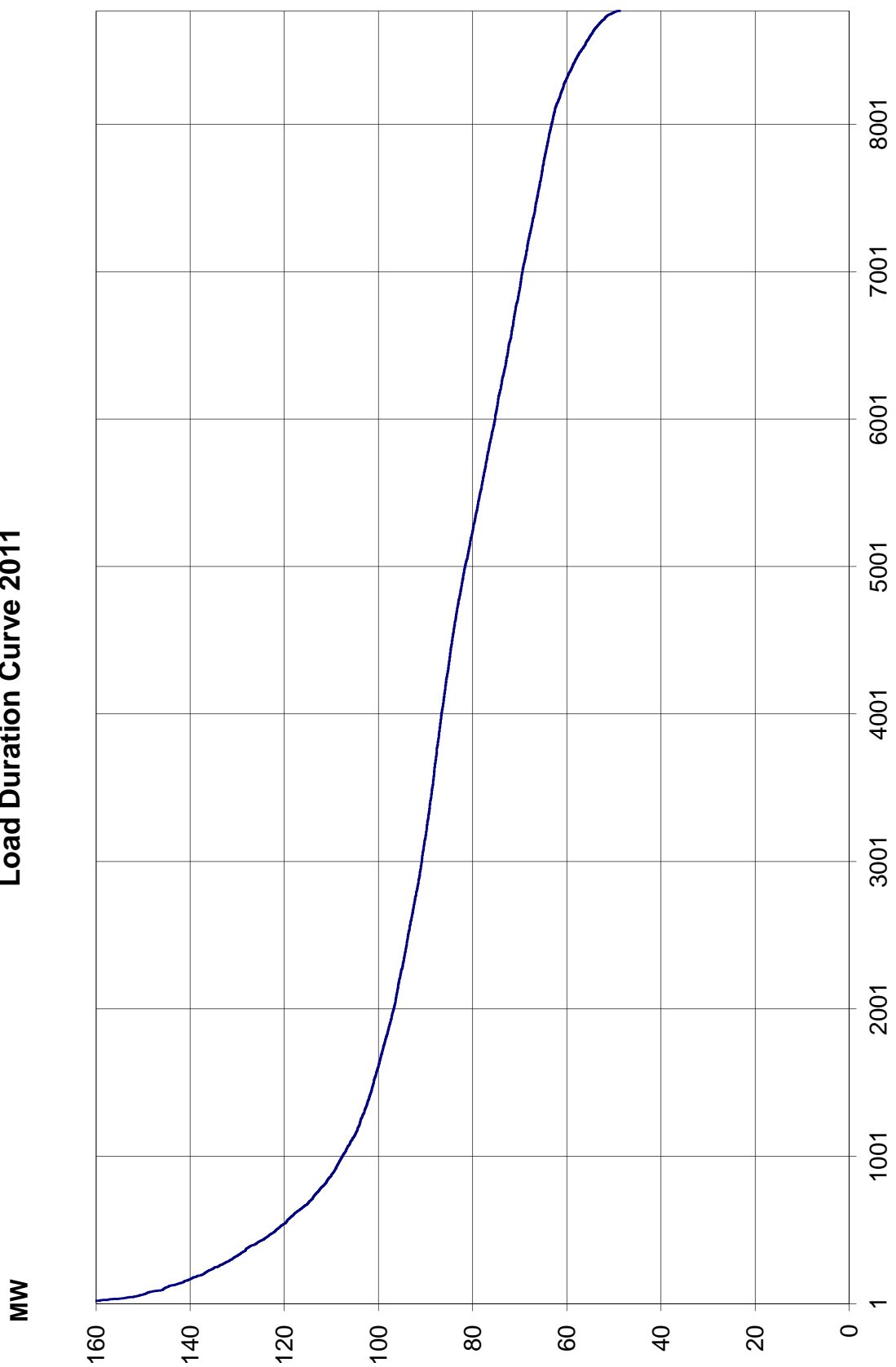


### NOVEMBER ENERGY PROJECTION 1.96% Annual Growth





Load Duration Curve 2011



## **APPENDIX “B”**

## SAIDI

The **System Average Interruption Duration Index (SAIDI)** is commonly used as a reliability indicator by electric power utilities. SAIDI is the average unscheduled outage duration for each customer served, and is calculated as:

$$\text{SAIDI} = \frac{\text{Sum of all customer interruption durations}}{\text{Total number of customers served}}$$

SAIDI is measured in units of time per customer. It is usually measured over the course of a year. According to 2003 EPRI report entitled "Distribution Reliability Indices Tracking Within the United States", the national ten year average between 1992 and 2001 was 107 minutes per customer per year, **excluding** major events.

**The City of Grand Island has a SAIDI value of approximately 18.44 minutes per year per customer, including all events.**

---

## SAIFI

The **System Average Interruption Frequency Index (SAIFI)** is commonly used as a reliability indicator by electric power utilities. SAIFI is the average number of unscheduled interruptions that customers experience, and is calculated as:

$$\text{SAIFI} = \frac{\text{Total number of customer interruptions}}{\text{Total number of customers served}}$$

SAIFI is measured in units of interruptions per customer. It is usually measured over the course of a year. According to the 2003 EPRI report entitled "Distribution Reliability Indices Tracking Within the United States", the national ten year average between 1992 and 2001 was 1.1 interruptions per customer per year, **excluding** major events.

**The City of Grand Island has a year to date SAIFI value of approximately 0.56 interruptions per customer per year, with no major event exclusions.**

---

## CAIDI

The **Customer Average Interruption Duration Index (CAIDI)** is commonly used as a reliability indicator by electric power utilities. CAIDI represents the average time required to restore service to the average customer per sustained interruption, and is calculated as:

$$\text{CAIDI} = \frac{\text{Sum of customer interruption durations}}{\text{Total number of customer interruptions}}$$

CAIDI is measured in units of time per customer. It is usually measured over the course of a year. According to the 2003 EPRI report entitled "Distribution Reliability Indices Tracking Within the United States", the national ten year average between 1992 and 2001 was 97.27 minutes per customer per year, **excluding** major events.

**The City of Grand Island has a year to date CAIDI value of approximately 32.8 minutes per customer per year, with no major event exclusions.**

RESOLUTION 2012-131

WHEREAS, Grand Island Utilities Department receives an allocation of electric power from the federal hydro-power projects on the Missouri River; and

WHEREAS, this power allocation is administered by the federal Western Area Power Administration (WAPA); and

WHEREAS, by implementation of the Federal Energy Policy Act of 1992, the federal government prescribed methods and procedures which utilities must use for future power supply analysis; and

WHEREAS, such process is termed the “Integrated Resource Planning” process; and

WHEREAS, since 1996 the City of Grand Island has periodically prepared and submitted the required Integrated Resource Plans to the Western Area Power Administration in accordance with federal requirements; and

WHEREAS, the Utilities Department continues to be required to periodically submit an Integrated Resources Plan to the Western Area Power Administration; and

WHEREAS, the Integrated Resource Plan 2012 reviews the effects of past load growth and power supply analyses and looks to the future as the City of Grand Island’s electrical demand continues to grow.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Integrated Resource Plan is accepted and approved; and the Utilities Department is authorized to submit such plan to the Western Area Power Administration (WAPA) in accordance with federal requirements.

BE IT FURTHER RESOLVED that the Utilities Department is hereby authorized to proceed with the implementation of the Integrated Resource Plan.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, May 22, 2012.

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

Attest:

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

Approved as to Form	▣ _____
May 21, 2012	▣ City Attorney



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item G12

**#2012-132 - Approving Supplemental Agreements with Burlington Northern Santa Fe Railroad for the Double Track Project - Mile Post 94.62**

Staff Contact: Tim Luchsinger, Robert Sivick



# **Council Agenda Memo**

**From:** Timothy Luchsinger, Utilities Director  
Robert Sivick, City Attorney

**Meeting:** May 22, 2012

**Subject:** Burlington North Santa Fe Supplemental Agreements –  
Double Track Project

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

**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 next agreements to come before City Council for approval are as follows:

1. Mile Post (MP) 94.62 electric supply line crossing the tracks between Bismark and Stuhr Roads.
2. Mile Post (MP) 94.89 overhead electric supply line crossing the tracks between Bismark and Stuhr Roads.
3. Mile Post (MP) 94.98 underground conduits with electric supply line crossing the tracks between Bismark and Stuhr Roads.

## **Discussion**

The crossings will 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 supplemental agreements with BNSF for the electrical crossing at Mile Post 94.62, Mile Post 94.89 and Mile Post 94.98.

### **Sample Motion**

Move to approve the supplemental agreements with BNSF for the Double Track Project.

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

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

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

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

**GENERAL**

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties including, without limitation, any leases, use rights, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to construct, maintain, and use in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process ("the Drawings and Specifications") an electric supply line containing a maximum of four (4) conduits, together with its supporting or containing structures ("Electric Supply Line") across or along the premises of Licensor at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 94.62, shown by bold line upon the print No. 1-54656, dated April 19, 2012 marked "Exhibit A", attached hereto and made a part hereof ("Premises").
2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, Licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. Licensee shall use the Premises solely for construction, maintenance, and use of an Electric Supply Line in accordance with the Drawings and Specifications. Licensee shall not use the Premises for any other purpose. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.
4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Licensor shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.
5. Any contractors or subcontractors performing work on the Electric Supply Line or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

**TERM**

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

**COMPENSATION**

7. (a) Intentionally omitted as this is due to a track expansion project.
- (b) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction, maintenance, and use of the Electric Supply Line, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$800.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- (c) All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

**COMPLIANCE WITH LAWS**

8. (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance and use of the Electric Supply Line and the use of the Premises.
- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to

commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-training program at the following Internet Website "<http://contractororientation.com>". This training must be completed no more than one year in advance of Licensee's entry on the Premises.

#### **DEFINITION OF COST AND EXPENSE**

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

#### **RIGHT OF LICENSOR TO USE**

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

#### **LICENSEE'S OPERATIONS**

11. (a) Licensee shall notify Licensor's Roadmaster at telephone (402) 362-5501 or cell (402) 429-4055, at least ten (10) business days prior to construction of the Electric Supply Line and prior to entering the Premises for any subsequent maintenance thereon.
- (b) In performing the work described in Section 3, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
12. (a) Licensee shall, at its sole cost and expense, construct and at all times maintain the Electric Supply Line in accordance with the National Electric Code.
- (b) If the operation or maintenance of said Electric Supply Line shall at any time cause interference, including but not limited to physical interference from electromagnetic induction, electrostatic induction, or from stray or other currents, with the facilities of the Licensor or of any lessee or Licensee of the Licensor, or

in any manner interfere with the operation, maintenance, or use by the Licensor of its right-of-way, tracks, structures, pole lines, signal and communication lines, radio, or other equipment, devices, other property or appurtenances thereto, Licensee agrees immediately to make such changes in its Electric Supply Line and furnish such protective devices and/or replacement equipment to Licensor and its lessees or Licensees as shall be necessary, in the judgement of the Licensor's representative, to eliminate such interference. The cost of such protective devices and their installations shall be borne solely by Licensee. If any of the interference covered by this paragraph shall be, in the judgement of the Licensor, of such importance to the safety of the Licensor's operations as to require immediate corrective action, Licensee, upon notice from the Licensor, shall either, at the Licensor's election, cease using said Electric Supply Line for any purpose whatsoever and remove same, or reduce the voltage or load on said Electric Supply Line, or take such other interim protective measures as the Licensor may deem advisable, until the protective devices and/or replacement equipment required by this paragraph have been installed, put in operation, tested, and found to be satisfactory to correct the interference.

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

at any time to halt construction or maintenance of the Electric Supply Line by Licensor's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Electric Supply Line, it being solely Licensee's responsibility to ensure that the Electric Supply Line is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by Licensor to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, upon receipt of an invoice for the same. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

14. Licensee shall, at its sole cost and expense, remove all combustible material from around wooden poles and will at all times keep the space around such poles free of such material, and if removal of such combustible material shall not be attended to within fifteen (15) days after having been requested by Licensor to do so, Licensor shall have the right itself to perform the work and Licensee hereby agrees to reimburse Licensor for the expense so incurred.
15. During the construction and any subsequent maintenance performed on Electric Supply Line, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. The construction of the Electric Supply Line shall be completed within one (1) year of the Effective Date. Upon completion of the construction of the Electric Supply Line and after performing any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore Licensor's premises to their former state as of the Effective Date of this License.
16. If at any time during the term of this License, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Electric Supply Line, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Electric Supply Line as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the existing or the construction of new a Electric Supply Line.
17. (a) Prior to Licensee conducting any boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided,

however, that in lieu of the foregoing, the Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested construction of the Electric Supply Line, Licensor will provide Licensee any information that Licensor's Engineering Department has in its possession concerning the existence and approximate location of Licensor's underground utilities and pipelines at or near the vicinity of the proposed Electric Supply Line. Prior to conducting any such boring work, the Licensee will review all such material. Licensor does not warrant the accuracy of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.

- (b) For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by the Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
18. Any open hole, boring or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- (a) filled in to surrounding ground level with compacted bentonite grout; or
  - (b) otherwise secured or retired in accordance with any applicable Legal Requirement. All excavated materials shall not remain on Licensor's property for more than ten (10) days and shall be properly disposed of by Licensee in accordance with applicable Legal Requirements.
19. Upon termination of this License, Licensee shall, at its sole cost and expense:
- (a) remove all of its equipment from the Premises;
  - (b) remove the Electric Supply Line at Licensor's sole discretion;



- (c) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
  - (d) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
  - (e) leave the Premises in the condition which existed as of the Effective Date of this License.
20. Licensee's on-site supervision shall retain/maintain a fully-executed copy of this License at all times while on the Premises.

### **LIABILITY**

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**
- (i) THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
  - (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
  - (iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
  - (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR**

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

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

- (b) FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 21(a), LICENSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON THE STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE ELECTRIC SUPPLY LINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- (c) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON**

**ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any 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**

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

**INSURANCE**

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

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

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

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

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

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

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

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

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

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

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

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

Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **ENVIRONMENTAL**

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

- (c) In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Electric supply Line which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- (d) Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

#### **ALTERATIONS**

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

#### **NO WARRANTIES**

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

#### **QUIET ENJOYMENT**

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

#### **DEFAULT**

- 28. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this License by operation of law, Licensor may, at its option, terminate this License by serving five (5) days' notice in

writing upon Licensee. Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 28 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

### **LIENS AND CHARGES**

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

### **TERMINATION**

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

### **ASSIGNMENT**

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

### **NOTICES**

33. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address



as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

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

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

If to Licensee: City of Grand Island  
P.O. Box 1968  
Grand Island, NE 68802

### **SURVIVAL**

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

### **RECORDATION**

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

### **APPLICABLE LAW**

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

### **SEVERABILITY**

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

**INTEGRATION**

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

**MISCELLANEOUS**

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

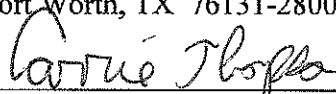
Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

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

**BNSF RAILWAY COMPANY**

Jones Lang LaSalle Brokerage, Inc.  
It's Attorney In Fact  
3017 Lou Menk Drive, Suite 100  
Fort Worth, TX 76131-2800

By:



Manager - Land Revenue Management

**CITY OF GRAND ISLAND**

P.O. Box 1968  
Grand Island, NE 68802

By:

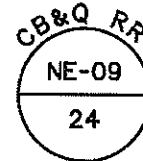
Title:

# EXHIBIT "A"

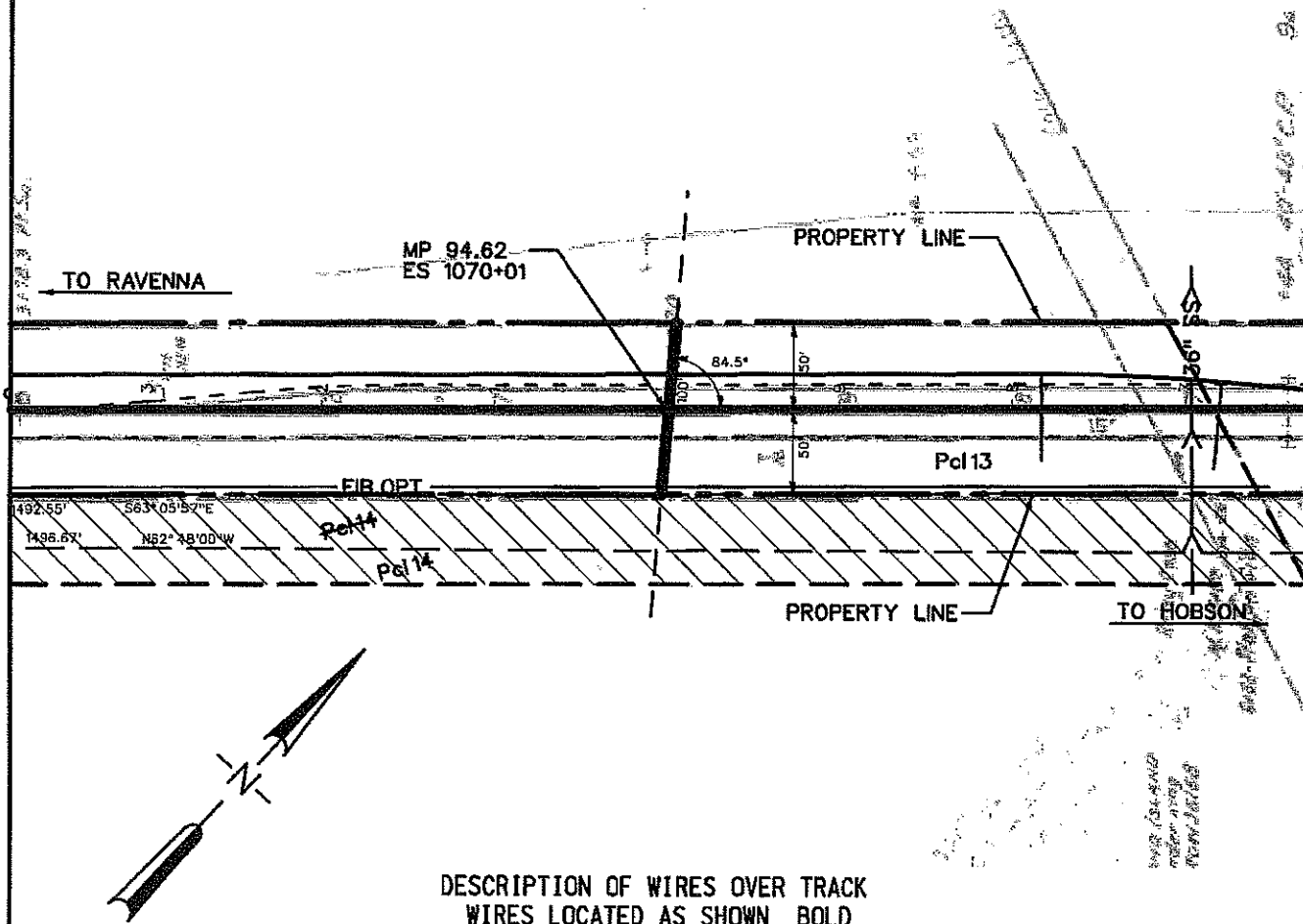
ATTACHED TO CONTRACT BETWEEN  
BNSF RAILWAY COMPANY  
AND  
CITY OF GRAND ISLAND

SCALE: 1 IN. = 100 FT.  
NEBRASKA DIV.  
RAVENNA SUBDIV. L.S. 0004  
DATE 04/19/2012

SECTION: 14  
TOWNSHIP: 11N  
RANGE: 9W  
MERIDIAN: 6PM



MAP REF. S63982



DESCRIPTION OF WIRES OVER TRACK  
WIRES LOCATED AS SHOWN BOLD

TYPE	NUMBER	VOLTAGE	DISTANCE ABOVE TOP OF RAIL	CLEARANCE RAILWAY COMPANY'S WIRES
ELECTRIC	4	13.8 KV	30'	-

AT GRAND ISLAND  
COUNTY OF HALL

STATE OF NE

DES

DRAWING NO. 1-54656

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

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

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

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

**GENERAL**

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties including, without limitation, any leases, use rights, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to construct, maintain, and use in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process ("the Drawings and Specifications") an electric supply line containing a maximum of four (4) conductors, together with its supporting or containing structures ("Electric Supply Line") across or along the premises of Licensor at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 94.89, shown by bold line upon the print No. 1-54655, dated April 19, 2012 marked "Exhibit A", attached hereto and made a part hereof ("Premises").
2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, Licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. Licensee shall use the Premises solely for construction, maintenance, and use of an Electric Supply Line in accordance with the Drawings and Specifications. Licensee shall not use the Premises for any other purpose. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.
4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Licensor shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.
5. Any contractors or subcontractors performing work on the Electric Supply Line or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

**TERM**

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

**COMPENSATION**

7. (a) Intentionally omitted as this is due to a track expansion project.
- (b) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction, maintenance, and use of the Electric Supply Line, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$800.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- (c) All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

**COMPLIANCE WITH LAWS**

8. (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance and use of the Electric Supply Line and the use of the Premises.
- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to

commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-training program at the following Internet Website "<http://contractororientation.com>". This training must be completed no more than one year in advance of Licensee's entry on the Premises.

#### **DEFINITION OF COST AND EXPENSE**

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

#### **RIGHT OF LICENSOR TO USE**

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

#### **LICENSEE'S OPERATIONS**

11. (a) Licensee shall notify Licensor's Roadmaster at telephone (402) 362-5501 or cell (402) 429-4055, at least ten (10) business days prior to construction of the Electric Supply Line and prior to entering the Premises for any subsequent maintenance thereon.
- (b) In performing the work described in Section 3, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
12. (a) Licensee shall, at its sole cost and expense, construct and at all times maintain the Electric Supply Line in accordance with the National Electric Code.
- (b) If the operation or maintenance of said Electric Supply Line shall at any time cause interference, including but not limited to physical interference from electromagnetic induction, electrostatic induction, or from stray or other currents, with the facilities of the Licensor or of any lessee or Licensee of the Licensor, or

in any manner interfere with the operation, maintenance, or use by the Licensor of its right-of-way, tracks, structures, pole lines, signal and communication lines, radio, or other equipment, devices, other property or appurtenances thereto, Licensee agrees immediately to make such changes in its Electric Supply Line and furnish such protective devices and/or replacement equipment to Licensor and its lessees or Licensees as shall be necessary, in the judgement of the Licensor's representative, to eliminate such interference. The cost of such protective devices and their installations shall be borne solely by Licensee. If any of the interference covered by this paragraph shall be, in the judgement of the Licensor, of such importance to the safety of the Licensor's operations as to require immediate corrective action, Licensee, upon notice from the Licensor, shall either, at the Licensor's election, cease using said Electric Supply Line for any purpose whatsoever and remove same, or reduce the voltage or load on said Electric Supply Line, or take such other interim protective measures as the Licensor may deem advisable, until the protective devices and/or replacement equipment required by this paragraph have been installed, put in operation, tested, and found to be satisfactory to correct the interference.

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

at any time to halt construction or maintenance of the Electric Supply Line by Licensor's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Electric Supply Line, it being solely Licensee's responsibility to ensure that the Electric Supply Line is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by Licensor to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, upon receipt of an invoice for the same. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

14. Licensee shall, at its sole cost and expense, remove all combustible material from around wooden poles and will at all times keep the space around such poles free of such material, and if removal of such combustible material shall not be attended to within fifteen (15) days after having been requested by Licensor to do so, Licensor shall have the right itself to perform the work and Licensee hereby agrees to reimburse Licensor for the expense so incurred.
15. During the construction and any subsequent maintenance performed on Electric Supply Line, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. The construction of the Electric Supply Line shall be completed within one (1) year of the Effective Date. Upon completion of the construction of the Electric Supply Line and after performing any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore Licensor's premises to their former state as of the Effective Date of this License.
16. If at any time during the term of this License, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Electric Supply Line, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Electric Supply Line as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the existing or the construction of new a Electric Supply Line.
17. (a) Prior to Licensee conducting any boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided,



however, that in lieu of the foregoing, the Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested construction of the Electric Supply Line, Licensor will provide Licensee any information that Licensor's Engineering Department has in its possession concerning the existence and approximate location of Licensor's underground utilities and pipelines at or near the vicinity of the proposed Electric Supply Line. Prior to conducting any such boring work, the Licensee will review all such material. Licensor does not warrant the accuracy of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.

- (b) For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by the Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
18. Any open hole, boring or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- (a) filled in to surrounding ground level with compacted bentonite grout; or
  - (b) otherwise secured or retired in accordance with any applicable Legal Requirement. All excavated materials shall not remain on Licensor's property for more than ten (10) days and shall be properly disposed of by Licensee in accordance with applicable Legal Requirements.
19. Upon termination of this License, Licensee shall, at its sole cost and expense:
- (a) remove all of its equipment from the Premises;
  - (b) remove the Electric Supply Line at Licensor's sole discretion;

- (c) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
  - (d) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
  - (e) leave the Premises in the condition which existed as of the Effective Date of this License.
20. Licensee's on-site supervision shall retain/maintain a fully-executed copy of this License at all times while on the Premises.

### **LIABILITY**

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**
- (i) **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
  - (ii) **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
  - (iii) **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
  - (iv) **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR**

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

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

- (b) FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 21(a), LICENSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON THE STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE ELECTRIC SUPPLY LINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- (c) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON**

**ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

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

#### **PERSONAL PROPERTY WAIVER**

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

#### **INSURANCE**

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

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

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

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

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

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

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

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

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

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

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

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

Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **ENVIRONMENTAL**

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

- (c) In the event that Licenser has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Electric supply Line which occurred or may occur during the term of this License, Licenser may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licenser's right-of-way.
- (d) Licensee shall promptly report to Licenser in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licenser shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licenser's request for information regarding said conditions or activities.

### **ALTERATIONS**

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

### **NO WARRANTIES**

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

### **QUIET ENJOYMENT**

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

### **DEFAULT**

28. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this License by operation of law, Licenser may, at its option, terminate this License by serving five (5) days' notice in



writing upon Licensee. Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 28 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

### **LIENS AND CHARGES**

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

### **TERMINATION**

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

### **ASSIGNMENT**

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

### **NOTICES**

33. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address

as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

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

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

If to Licensee: City of Grand Island  
P.O. Box 1968  
Grand Island, NE 68802

### **SURVIVAL**

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

### **RECORDATION**

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

### **APPLICABLE LAW**

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

### **SEVERABILITY**

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

**INTEGRATION**

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

**MISCELLANEOUS**

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

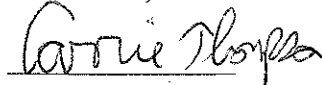
Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

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

**BNSF RAILWAY COMPANY**

Jones Lang LaSalle Brokerage, Inc.  
It's Attorney In Fact  
3017 Lou Menk Drive, Suite 100  
Fort Worth, TX 76131-2800

By:



**Manager - Land Revenue Management**

**CITY OF GRAND ISLAND**

P.O. Box 1968  
Grand Island, NE 68802

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

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

**EXHIBIT "A"**  
 ATTACHED TO CONTRACT BETWEEN  
**BNSF RAILWAY COMPANY**  
 AND

**CITY OF GRAND ISLAND**

SCALE: 1 IN. = 100 FT.

NEBRASKA DIV.

RAVENNA SUBDIV. L.S. 0004

DATE 04/19/2012 REV: 05/04/2012

SECTION: 14

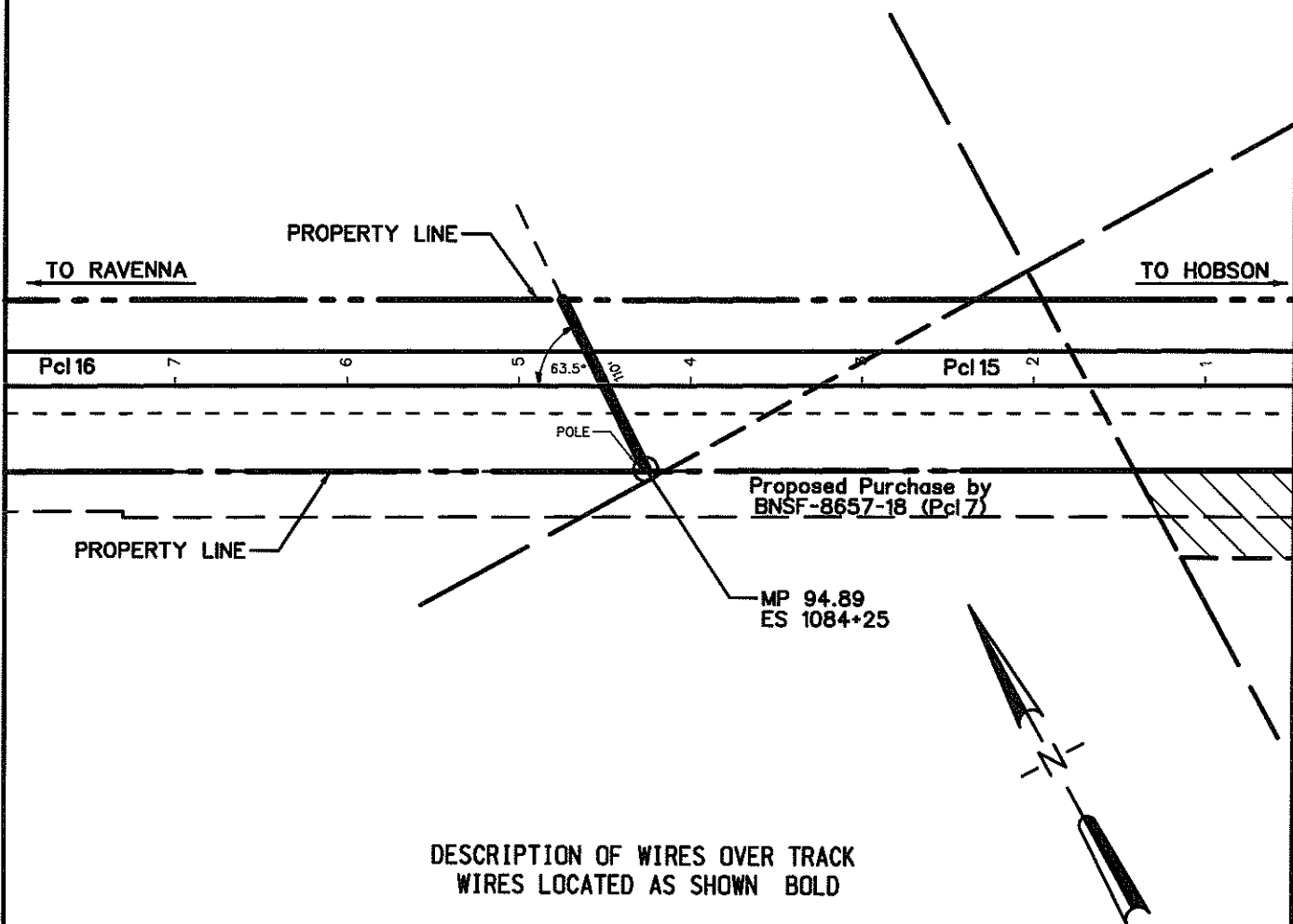
TOWNSHIP: 11N

RANGE: 09W

MERIDIAN: 6PM



MAP REF. S63982



TYPE	NUMBER	VOLTAGE	DISTANCE ABOVE TOP OF RAIL	CLEARANCE RAILWAY COMPANY'S WIRES
ELECTRIC	4	13.8KV	-	-

NEAR GRAND ISLAND  
 COUNTY OF HALL

STATE OF NE

DES

REVISION 1

DRAWING NO. 1-54655

**LICENSE FOR ELECTRIC SUPPLY LINE  
ACROSS OR ALONG RAILWAY PROPERTY**  
(Electric Light, Power Supply, Irrespective of Voltage, Overhead or Underground)

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

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

**GENERAL**

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties including, without limitation, any leases, use rights, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to construct, maintain, and use in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process ("the Drawings and Specifications") an electric supply line containing a maximum of four (4) conduits, together with its supporting or containing structures ("Electric Supply Line") across or along the premises of Licensor at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 94.98, shown by bold line upon the print No. 1-54657, dated April 19, 2012 marked "Exhibit A", attached hereto and made a part hereof ("Premises").
2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, Licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. Licensee shall use the Premises solely for construction, maintenance, and use of an Electric Supply Line in accordance with the Drawings and Specifications. Licensee shall not use the Premises for any other purpose. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.
4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Licensor shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.
5. Any contractors or subcontractors performing work on the Electric Supply Line or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

**TERM**

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

**COMPENSATION**

7. (a) Intentionally omitted as this is due to a track expansion project.
- (b) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction, maintenance, and use of the Electric Supply Line, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$800.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- (c) All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

**COMPLIANCE WITH LAWS**

8. (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance and use of the Electric Supply Line and the use of the Premises.
- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to

commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-training program at the following Internet Website "<http://contractororientation.com>". This training must be completed no more than one year in advance of Licensee's entry on the Premises.

#### **DEFINITION OF COST AND EXPENSE**

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

#### **RIGHT OF LICENSOR TO USE**

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

#### **LICENSEE'S OPERATIONS**

11. (a) Licensee shall notify Licensor's Roadmaster at telephone (402) 362-5501 or cell (402) 429-4055, at least ten (10) business days prior to construction of the Electric Supply Line and prior to entering the Premises for any subsequent maintenance thereon.
- (b) In performing the work described in Section 3, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
12. (a) Licensee shall, at its sole cost and expense, construct and at all times maintain the Electric Supply Line in accordance with the National Electric Code.
- (b) If the operation or maintenance of said Electric Supply Line shall at any time cause interference, including but not limited to physical interference from electromagnetic induction, electrostatic induction, or from stray or other currents, with the facilities of the Licensor or of any lessee or Licensee of the Licensor, or

in any manner interfere with the operation, maintenance, or use by the Licensor of its right-of-way, tracks, structures, pole lines, signal and communication lines, radio, or other equipment, devices, other property or appurtenances thereto, Licensee agrees immediately to make such changes in its Electric Supply Line and furnish such protective devices and/or replacement equipment to Licensor and its lessees or Licensees as shall be necessary, in the judgement of the Licensor's representative, to eliminate such interference. The cost of such protective devices and their installations shall be borne solely by Licensee. If any of the interference covered by this paragraph shall be, in the judgement of the Licensor, of such importance to the safety of the Licensor's operations as to require immediate corrective action, Licensee, upon notice from the Licensor, shall either, at the Licensor's election, cease using said Electric Supply Line for any purpose whatsoever and remove same, or reduce the voltage or load on said Electric Supply Line, or take such other interim protective measures as the Licensor may deem advisable, until the protective devices and/or replacement equipment required by this paragraph have been installed, put in operation, tested, and found to be satisfactory to correct the interference.

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



at any time to halt construction or maintenance of the Electric Supply Line by Licensor's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Electric Supply Line, it being solely Licensee's responsibility to ensure that the Electric Supply Line is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by Licensor to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, upon receipt of an invoice for the same. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

14. Licensee shall, at its sole cost and expense, remove all combustible material from around wooden poles and will at all times keep the space around such poles free of such material, and if removal of such combustible material shall not be attended to within fifteen (15) days after having been requested by Licensor to do so, Licensor shall have the right itself to perform the work and Licensee hereby agrees to reimburse Licensor for the expense so incurred.
15. During the construction and any subsequent maintenance performed on Electric Supply Line, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. The construction of the Electric Supply Line shall be completed within one (1) year of the Effective Date. Upon completion of the construction of the Electric Supply Line and after performing any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore Licensor's premises to their former state as of the Effective Date of this License.
16. If at any time during the term of this License, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Electric Supply Line, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Electric Supply Line as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the existing or the construction of new a Electric Supply Line.
17. (a) Prior to Licensee conducting any boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided,

however, that in lieu of the foregoing, the Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested construction of the Electric Supply Line, Licensor will provide Licensee any information that Licensor's Engineering Department has in its possession concerning the existence and approximate location of Licensor's underground utilities and pipelines at or near the vicinity of the proposed Electric Supply Line. Prior to conducting any such boring work, the Licensee will review all such material. Licensor does not warrant the accuracy of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.

- (b) For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by the Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
18. Any open hole, boring or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- (a) filled in to surrounding ground level with compacted bentonite grout; or
  - (b) otherwise secured or retired in accordance with any applicable Legal Requirement. All excavated materials shall not remain on Licensor's property for more than ten (10) days and shall be properly disposed of by Licensee in accordance with applicable Legal Requirements.
19. Upon termination of this License, Licensee shall, at its sole cost and expense:
- (a) remove all of its equipment from the Premises;
  - (b) remove the Electric Supply Line at Licensor's sole discretion;

- (c) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
  - (d) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
  - (e) leave the Premises in the condition which existed as of the Effective Date of this License.
20. Licensee's on-site supervision shall retain/maintain a fully-executed copy of this License at all times while on the Premises.

**LIABILITY**

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**
- (i) **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
  - (ii) **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
  - (iii) **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
  - (iv) **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR**

(v) ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

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

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

(c) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON

**ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any 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**

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

#### **INSURANCE**

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

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

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

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

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

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

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

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

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

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

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

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

#### Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **ENVIRONMENTAL**

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



- (c) In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Electric supply Line which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- (d) Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

#### **ALTERATIONS**

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

#### **NO WARRANTIES**

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

#### **QUIET ENJOYMENT**

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

#### **DEFAULT**

28. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this License by operation of law, Licensor may, at its option, terminate this License by serving five (5) days' notice in

writing upon Licensee. Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 28 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

### **LIENS AND CHARGES**

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

### **TERMINATION**

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

### **ASSIGNMENT**

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

### **NOTICES**

33. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address

as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

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

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

If to Licensee: City of Grand Island  
P.O. Box 1968  
Grand Island, NE 68802

#### **SURVIVAL**

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

#### **RECORDATION**

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

#### **APPLICABLE LAW**

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

#### **SEVERABILITY**

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

**INTEGRATION**

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

**MISCELLANEOUS**

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

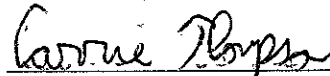
Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

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

**BNSF RAILWAY COMPANY**

Jones Lang LaSalle Brokerage, Inc.  
It's Attorney In Fact  
3017 Lou Menk Drive, Suite 100  
Fort Worth, TX 76131-2800

By:



Manager - Land Revenue Management

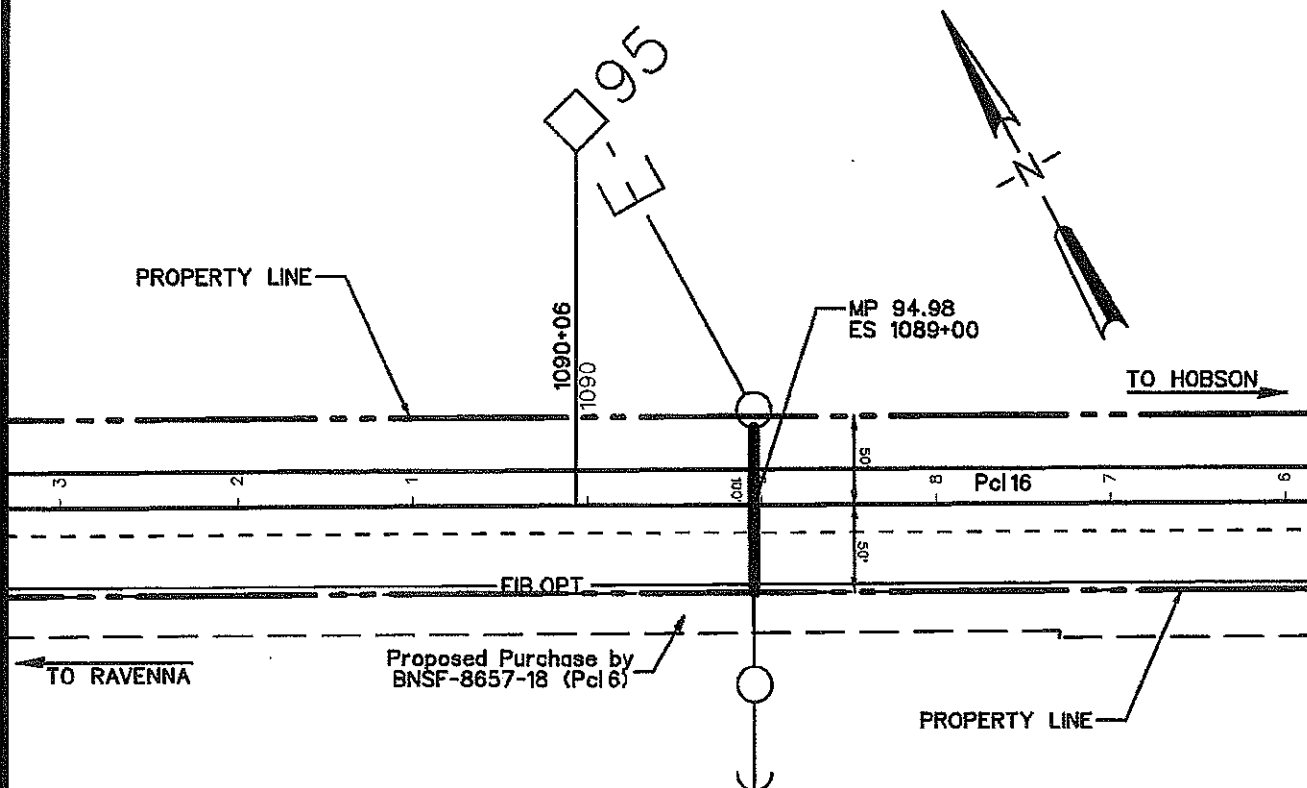
**CITY OF GRAND ISLAND**

P.O. Box 1968  
Grand Island, NE 68802

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

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

ATTACHED TO CONTRACT BETWEEN  
BNSF RAILWAY COMPANY  
AND  
CITY OF GRAND ISLAND



AJO

RESOLUTION 2012-132

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 at Mile Post 94.62, Mile Post 94.89 and Mile Post 94.98; 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 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, May 22, 2012.

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

Attest:

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

Approved as to Form	☐ _____
May 21, 2012	☐ City Attorney



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item G13

**#2012-133 - Approving Change Order #1 - Pipe Painting and Insulation at Platte Generating Station**

Staff Contact: Tim Luchsinger; Jason Eley

# **Council Agenda Memo**

**From:** Timothy G. Luchsinger, Utilities Director  
Jason Eley, Assistant City Attorney

**Meeting:** May 22, 2012

**Subject:** Pipe Painting and Insulation - Change Order #1

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

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

## **Background**

The project at the Platte Generating Station involves maintenance on several cold water lines ranging in size from one inch to twelve inches in diameter. These pipes are used to provide cooling water for equipment throughout the plant. Due to the temperature differential between the cold water in the pipes and the outside warm air during the summer months, humidity in the air condenses on the surface of the pipes causing a thin film of water, or 'sweat', to accumulate, and in some cases, drip to the floor below.

Over the years this moisture has caused the outside of the pipes to rust. To prevent a replacement of these water lines in the future, and to assist in avoiding a slipping condition and possible injury, plant engineering staff reviewed corrective methods. After consulting with paint and insulating contractors, it was determined the best method for fixing all aforementioned problems is to clean, paint, insulate, and install metal jacketing on these pipes project.

Plant engineering staff developed plans and specifications for this painting and insulating procedure and bids were solicited and awarded in accordance with the City Procurement Code. The contract for the work was awarded to O'Neill Transportation and Equipment, LLC, of Grand Island, at the September 27, 2011 City Council meeting in the amount of \$50,655.00.

## **Discussion**

Included in the bid submittal for the project were pipe diameter based unit prices for additional work. During the course of the work, piping not in the original scope was determined to need this repair procedure and the Contractor was directed to proceed based on these prices. The net amount of the changes made during the course of the



contract work is an addition of \$4,419.09 to the original contract amount of \$50,655.00 for a final contract amount of \$55,074.09.

### **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 approval of Change Order #1 to the Pipe Painting and Insulation contract at the Platte Generating Station in the amount of a \$4,419.09 addition, for a final contract amount of \$55,074.09.

### **Sample Motion**

Move to approve contract Change Order #1 to the Pipe Painting and Insulation contract with O'Neill Transportation and Equipment, LLC, in the amount of a \$4,419.09 addition to the contract amount, for a final contract amount of \$55,074.09.



Working Together for a  
Better Tomorrow. Today.

**TO:** O'Neill Transportation and Equipment, LLC  
PO Box 2202  
Grand Island, NE 68801  
(308) 384-1690

**PROJECT:** Contract for Pipe Painting and Insulation

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

1 Additional payment per the attached spreadsheet.

ADD: \$4,419.09

The original Contract Sum	<u>\$50,655.00</u>
Previous Change Order Amounts	<u>\$ -</u>
The Contract Sum is increased by this Change Order	<u>\$ 4,419.09</u>
The Contract Sum is decreased by this Change Order	<u>\$</u>
The total modified Contract Sum to date	<u>\$ 55,074.09</u>

Approval and acceptance of this Change Order acknowledges understanding and agreement that the cost and time adjustments included represent the complete values arising out of and/or incidental to the work described therein.

**APPROVED: CITY OF GRAND ISLAND**

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

Date \_\_\_\_\_

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

Approved as to Form, City Attorney

**ACCEPTED: O'NEILL TRANSPORTATION AND EQUIPMENT, LLC.**

By: 

Date 5/4/12

### Pipe Painting and Insulation

Comments: Changes necessitated by Contractor on site.

**Contract:**

**\$50,655.00**

<u>Change Order Request</u>	<u>Description</u>	<u>Amount</u>
001	Additional work based on Unit pricing in original bid spec.	\$ 4,419.09
002		
003		
004		
005		
006		
007		
008		
009		
010		
011		
012		
013		
014		
015		
017		
018		
019		
020		
021		
023		
024		
028		
029		
030		
	Total	\$ 4,419.09

RESOLUTION 2012-133

WHEREAS, O'Neill Transportation and Equipment, LLC, of Grand Island, Nebraska, was awarded the contract for Pipe Painting and Insulation at the Platte Station, at the September 27, 2011 City Council meeting; and

WHEREAS, included in the bid submittal for the project were pipe diameter based unit prices for additional work; and

WHEREAS, whereas it was determined, that piping not in the original scope of work required corrective action and the Contractor was directed to proceed based on these unit prices; and

WHEREAS, Change Order #1 was prepared for a contract adjustment of an additional \$4,419.09, resulting in a final contract amount of \$55,074.09.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that Change Order #1 with O'Neill Transportation and Equipment, LLC of Grand Island, Nebraska resulting in an additional cost of \$4,419.09, for a final contract price of \$55,074.09, is hereby approved.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, May 22, 2012.

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

Attest:

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

Approved as to Form	☐ _____
May 21, 2012	☐ City Attorney



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item G14

**#2012-134 - Approving Statement of Intent for Financial Assurance for Radio Active Material License**

Staff Contact: Tim Luchsinger, Utilities Director

# **Council Agenda Memo**

**From:** Timothy Luchsinger, Utilities Director

**Meeting:** May 22, 2012

**Subject:** Statement of Intent for Financial Assurance for Radio  
Active Material License

**Item #'s:** G-14

**Presenter(s):** Timothy 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.

## **Discussion**

As a condition of issuing WRT a radioactive material license for the operation of the uranium removal system, the Nebraska Department of Health and Human Services is requiring the City to provide financial assurance for decommissioning activities of the system in the event that WRT should default in its contractual obligations. This will require submitting a Statement of Intent for Financial Assurance to NDHHS indicating that the City will make these funds available if required.

The Department proposes to place \$225,000 into a restricted cash account in the Water Enterprise Fund to meet this requirement, similar to an account for an ash storage site closure account in the Electric Enterprise Fund. The Department recommends that the Statement of Financial Assurance for Water Remediation Technology LLC Radioactive Material License be executed and submitted to NDHHS.

## **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 execution of the Statement of Financial Assurance for Water Remediation Technology, LLC Radioactive Material License.

## **Sample Motion**

Move to approve execution of the Statement of Financial Assurance for Water Remediation Technology, LLC Radioactive Material License.

To: Nebraska Department of Health and Human Services  
Radiation Control Program  
P.O. Box 95007  
301 Centennial Mall South  
Lincoln NE 68509

**STATEMENT OF INTENT FOR FINANCIAL ASSURANCE FOR  
WATER REMEDIATION TECHNOLOGY LLC  
RADIOACTIVE MATERIAL LICENSE NO. 99-66-01**

As Utilities Director of the City of Grand Island, Nebraska ("City"), I exercise express authority and responsibility to request from Water Department Enterprise Fund 525 funds for decommissioning activities associated with activities and operations authorized by the State of Nebraska Radioactive Material License No. 99-66-01 ("License"), issued by the Nebraska Department of Health and Human Services/Radiation Control Program, to be performed by Water Remediation Technology LLC ("WRT"), the non-governmental licensee. This License applies to WRT's radionuclide water treatment activities at the City's water treatment facility at the following location.

Platte River Well Field Treatment Facility  
Water Wells 6, 7, and 8 (PWS ID No. NE3107902)  
2700 Well Field Road  
Grand Island NE 68801

This authority for providing these funds is established by Resolution 2012-134 dated May 22, 2012. Within this authority, and in accordance with the statement-of-intent method of providing financial assurance presented in 180 NAC 3-018.06.4., and with the "*Table of required amounts of financial assurance for decommissioning by quantity of material.*" presented in 180 NAC 3-018.04, I intend to request that funds be made available, if and when necessary, in the amount of \$225,000 (TWO HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS) to decommission the water treatment facility identified above. I intend to request and obtain these funds sufficiently in advance of decommissioning to prevent delay of required activities. At this time, the City conceptually intends to make these funds available by way of a restricted account for financial assurance of uranium removal system decommissioning activities.

Further, I intend to revise this Statement of Intent to reflect any changes in funds required for decommissioning as required by the License. Moreover, I agree that such funds will be requested and made available in accordance with the provisions of the commercial water-treatment contract dated August 11, 2011, by and between WRT and the City of Grand Island, Nebraska and pursuant to WRT's License.



A copy of Resolution #2012-134 is attached as evidence that I am authorized to represent the City of Grand Island Nebraska in this transaction.

[  
FOR THE CITY OF GRAND ISLAND, NEBRASKA

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

RESOLUTION 2012-134

WHEREAS, on June 28, 2011, Council awarded the contract for the Uranium Removal System – Equipment Procurement to Water Remediation Technology (WRT); and

WHEREAS, as a condition of issuing WRT a radioactive material license for the operation of the uranium removal system, the Nebraska Department of Health and Human Services (NDHHS) is requiring the City to provide financial assurance for decommissioning activities of the system in the event that WRT should default in its contractual obligations; and

WHEREAS, a Statement of Intent for Financial Assurance will need to be submitted to NDHHS indicating that the City will make these funds available if required; and

WHEREAS, the Utilities Department proposes to place \$225,000 into a restricted cash account in the Water Enterprise Fund to meet this requirement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Statement of Financial Assurance for Water Remediation Technology, LLC, Radioactive Material License be executed and submitted to the Nebraska Department of Health and Human Services.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, May 22, 2012.

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

Attest:

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

Approved as to Form	☐ _____
May 21, 2012	☐ City Attorney



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item G15

**#2012-135 - Approving Renewal of Small Government Enterprise License Agreement with Environmental Systems Research Institute (ESRI)**

Staff Contact: Jaye Monter

# **Council Agenda Memo**

**From:** Jaye Monter, Finance Director

**Meeting:** May 22, 2012

**Subject:** Renewing Small Government Enterprise License Agreement from Environmental Systems Research Institute (ESRI)

**Item #'s:** G-15

**Presenter(s):** Jaye Monter, Finance Director

## **Background**

The City of Grand Island has a comprehensive computerized Geographic Information System (GIS). The GIS consists of hardware, software and methods designed to support the data capture, processing, analysis, modeling and display of geospatial data. The data includes property boundaries, utility features, sanitary/storm sewer features, U.S census blocks, street centerlines, discrete addresses, zoning, fire districts, political boundaries, several years of aerial photography, optical remote sensing technology known as Light Detection And Ranging (LiDAR), and several more. Nearly all city departments have benefited from this data. The software required to edit, manipulate, analyze and present this data is provided by Environmental Systems Research Institute (ESRI). During the last three years, we have installed and updated ArcInfo on approximately 30 PCs. In addition to the desktop software, we have also installed and updated server based software such as ArcGIS Server and ArcIMS to distribute maps and data on the internet either through MapSifter or other online applications. This license agreement greatly simplifies the licensing and procurement for ESRI software and allows unlimited installs for the three year contract period.

## **Discussion**

The current three year Small Government Enterprise License Agreement with ESRI, which was signed June 22, 2009 in resolution 2009-128, will expire June 29, 2012. This agreement will renew for an additional three years at the same cost to the City as it was three years ago. The agreement will be paid in three annual installments of \$35,000 each for a total of \$105,000.

The new agreement for the City of Grand Island from ESRI, Inc., a General Services Administration (GSA) Contract reseller with special pricing available to government agencies, will be effective from June 30, 2012 through June 29, 2015. This purchase is budgeted for \$35,000 annually in the Information Technology Division Fund.

### **Alternatives**

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

1. Approve the three year renewal of ESRI licenses.
2. Disapprove or deny the agreement.
3. Modify the Resolution to meet the wishes of the Council
4. Table the issue

### **Recommendation**

City Administration recommends that the Council approve the new three year ESRI license agreement.

### **Sample Motion**

Move to approve the Small Government Enterprise License Agreement with ESRI, for \$105,000, payable in three annual installments.



Esri Inc  
380 New York Street  
Redlands CA 92373

## **SUBJECT: MAINTENANCE QUOTE**

**DATE:** 03/07/2012  
**TO:** Pat Larson  
**ORGANIZATION:** CITY OF GRAND ISLAND  
INFORMATION TECHNOLOGY DEPT  
**FAX #:** **PHONE #:** 308-385-5444

**FROM:** Patrick Whalen  
**FAX #:** 909-307-3083 **PHONE #:** 888-377-4575 Ext. 2470  
**EMAIL:** pwhalen@esri.com

Number of pages transmitted  
(including this cover sheet): 3

QUOTATION #25518701  
DOCUMENT DATE: 03/07/2012

Please find the attached quotation for your forthcoming software maintenance term. Keeping your maintenance current entitles you to exclusive benefits, and if you choose to discontinue your coverage, you will become ineligible for these valuable benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your coverage at a later date. For details regarding the maintenance program benefits for your licensing, please visit <http://www.esri.com/maintenancebenefits>.

Customers who have multiple copies of some Esri products may have the option of supporting some of their licenses with secondary maintenance. Please contact Customer Service to find out more about the availability of secondary maintenance.

For information about Esri Desktop, Developer software, or Web services terms of use, as well as purchase order terms and conditions, please visit <http://www.esri.com/legal/licensing/software-license.html>.

Do you need training? You can get affordable Esri software training for your entire organization with a subscription to Esri Virtual Campus. To find out how, visit the campus: <http://campus.esri.com/campus/catalog/subscriptions>

For details about ECP discounts and waivers for non-profit users please visit <http://www.conservaiongis.org/grant>

If you have any questions or need additional information, please contact Customer Service at 888-377-4575 Option 5.



**esri**<sup>®</sup>

380 New York Street  
Redlands, CA 92373  
Phone: 888-377-45752470  
Fax #: 909-307-3083

## Quotation

**Date:** 03/07/2012

**Quotation Number:** 25518701

CITY OF GRAND ISLAND  
INFORMATION TECHNOLOGY DEPT  
PO Box 1968  
GRAND ISLAND NE 68802-1968  
**Attn:** Pat Larson

**Send Purchase Orders To:**

Esri, Inc.  
380 New York Street  
Redlands, CA 92373-8100  
Attn: Patrick Whalen

**Please include the following remittance address on your Purchase Order:**

Esri, Inc.  
File #54630  
Los Angeles, CA 90074-4630

**Customer Number:** 363161

For questions regarding this document, please contact Customer Service at 888-377-4575.

Item	Qty	Material#	Unit Price	Extended Price
<p>Per the terms and conditions in your Esri Enterprise License Agreement, your organization is required to provide an annual usage report. This report should detail all deployments made under this agreement for your previous term, and should be provided to Esri as an Excel spreadsheet.</p> <p>The annual usage report must include actual license counts by product, licensee, and location.</p> <p>Please return your report via email to <a href="mailto:ela_usage_reports@esri.com">ela_usage_reports@esri.com</a>.</p> <p>Thank you in advance for your prompt attention to this matter.</p>				
10	1	110036 Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement Start Date: 06/30/2012 End Date: 06/29/2013	35,000.00	35,000.00
<b>Subtotal</b>				35,000.00
<b>Estimated Tax</b>				0.00
<b>Total</b>				<b>\$ 35,000.00</b>

**DUNS/CEC: 06-313-4175 CAGE: 0AMS3**

This quotation is valid for 90 days and is subject to your Esri License Agreement. The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (Esri).

Any estimated sales and/or use tax has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. Esri reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state taxes directly, then prior to invoicing, your organization must provide Esri with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

**Issued By:** Patrick Whalen

**Ext:** 2470

[WHALENP]

To expedite your order, please reference your customer number and this quotation number on your purchase order.



**esri**<sup>®</sup>

380 New York Street  
Redlands, CA 92373  
Phone: 888-377-45752470  
Fax #: 909-307-3083

## Quotation

Page 2

Date: 03/07/2012      Quotation No: 25518701      Customer No: 363161

Item	Qty	Material#	Unit Price	Extended Price
------	-----	-----------	------------	----------------

BY SIGNING BELOW, YOU ARE INDICATING THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION. DO NOT USE THIS FORM FOR ORDER ACTIVATION IF YOUR ORGANIZATION WILL NOT HONOR AND PAY AN INVOICE THAT HAS BEEN ISSUED AT YOUR DIRECTION WITHOUT ADDITIONAL AUTHORIZING PAPERWORK.

If you have made ANY alterations to the line items included in this quote and have chosen to sign the quote to indicate your acceptance, you must fax Esri the signed quote in its entirety in order for the quote to be accepted.

If your organization is a US Federal, state, or local government agency; an educational facility; or a company that will not pay an invoice without having issued a formal purchase order, a signed quotation will not be accepted unless it is accompanied by your purchase order.

If you choose to discontinue your support, you will become ineligible for support benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your support coverage at a later date.

This transaction is governed exclusively by the terms of the above-referenced contract, if any, or Esri's standard terms and conditions at [www.esri.com/legal](http://www.esri.com/legal).

In order to expedite processing, please reference the quotation number and any/all applicable Esri contract number(s) (e.g. MPA, ELA, SmartBuy, GSA, BPA) on your ordering document.

By signing below, you are authorizing Esri to issue a software support invoice in the amount of \$\_\_\_\_\_ plus sales tax, if applicable.

Please check one of the following:

\_\_\_\_\_ I agree to pay any applicable sales tax.

\_\_\_\_\_ I am tax exempt. Please contact me if Esri does not have my current exempt information on file.

Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Title

[WHALENP]





April 2, 2012

Mr. Pat Larson  
CITY OF GRAND ISLAND  
100 E 1ST ST  
GRAND ISLAND, NE 68802

Dear Pat,

The Esri Small Municipal and County Government Enterprise License Agreement (ELA) is a three-year agreement that will grant your organization access to Esri® term license software on an unlimited basis including maintenance on all software offered through the ELA for the term of the agreement. The ELA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply geographic information system (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an enterprise license agreement.

An ELA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Maintenance on all Esri software deployed under this agreement
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the ELA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the ELA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the ELA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.

- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
- The organization will act as an Esri reference site and will permit Esri to publicize its use of Esri software and services.
- The fee and benefits offered in this ELA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government ELA terms and conditions.
- Licenses are valid for the term of the ELA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have. To expedite your acceptance of this ELA offer:

1. Sign and return the signature page of the ELA with a Purchase Order or issue a Purchase Order that references this ELA Quotation and includes the following statement on the face of the Purchase Order: **"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."** Have it signed by an authorized representative of the organization.
2. On the first page of the ELA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address, email or fax noted below:

Esri  
Attn: Customer Service SG-ELA  
380 New York Street  
Redlands, CA 92373-8100

e-mail: service@esri.com  
fax documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Jessica Spain



ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.  
7775 Walton Parkway Suite 270  
New Albany, OH 43054  
Phone: (614) 933-8698 Fax: (614) 933-9258  
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

*To expedite your order, please attach a copy of  
this quotation to your purchase order.  
Quote is valid from: 04/02/2012 To: 07/01/2012*

## Quotation # 20403140

Date: April 2, 2012

Customer # 363161 Contract #

CITY OF GRAND ISLAND  
INFORMATION TECHNOLOGY DEPT  
100 E 1ST ST  
GRAND ISLAND, NE 68802

ATTENTION: Pat Larson  
PHONE: (308) 385-5444  
FAX:

Material	Qty	Description	Unit Price	Total
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement. Year 1.	35,000.00	35,000.00
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement. Year 2.	35,000.00	35,000.00
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement. Year 3.	35,000.00	35,000.00
			Item Total:	105,000.00
			Subtotal:	105,000.00
			Sales Tax:	0.00
			Estimated Shipping & Handling(2 Day Delivery) :	0.00
			Contract Pricing Adjust:	0.00
			Total:	\$105,000.00

Please reference attached cover letter for terms and payment information

\* Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

For questions contact: Jessica Spain Email: [jspain@esri.com](mailto:jspain@esri.com) Phone: (614) 933-8698 x5514

Acceptance of this quotation is limited to the Esri License Agreement and the Quotation Terms and Conditions  
This Quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law.

***If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630***

SPAINJ

This offer is limited to the terms and conditions incorporated and attached herein.



## SMALL MUNICIPAL AND COUNTY ENTERPRISE LICENSE AGREEMENT

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

This Small Municipal and County Enterprise License Agreement ("ELA") is by and between the organization identified in the ELA Quotation ("Licensee") and **Environmental Systems Research Institute, Inc. ("Esri")**, with offices at 380 New York Street, Redlands, California 92373-8100. Unless otherwise agreed to by the parties, the Effective Date of this ELA is the date of the signature below or, if no date is provided with the signature, the date of Esri's receipt of Licensee's Order citing this ELA. This ELA grants Licensee certain rights to use specific Esri Software, Data, Web Services, and Documentation for a limited, fixed period beginning from the Effective Date and provides tailored maintenance subject to payment of fees and the terms of this ELA.

This ELA incorporates the ELA Quotation by reference and comprises (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207SET), and (v) the ELA Quotation, which together constitute the sole and entire agreement of the parties as to the subject matter set forth herein. Should there be any conflict between the terms and conditions of the documents that comprise this ELA, the order of precedence for the documents shall be as follows: (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207SET), and (v) the ELA Quotation. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of this ELA with respect to the training courses. Licensee agrees that additional terms and conditions in any Licensee Order or addendum will not apply, and the terms of this ELA will govern.

### ENTERPRISE SOFTWARE SCHEDULE

#### Unlimited Quantities

##### **Desktop Software and Extensions**

ArcInfo

ArcEditor

ArcView

ArcGIS Desktop Extensions: 3D Analyst, Spatial Analyst, ArcGIS Network Analyst, Geostatistical Analyst, ArcGIS ArcScan, ArcGIS Data Reviewer, ArcGIS Publisher, Maplex for ArcGIS, ArcGIS Schematics, and ArcGIS Workflow Manager

##### **Server Software and Extensions**

ArcGIS Server Workgroup and Enterprise (Advanced, Standard, and Basic)

ArcIMS

ArcGIS Server Extensions: 3D, Schematics, Geostatistical, ArcGIS Workflow Manager, Network, Image, and Spatial

#### Developer

ArcGIS Engine Runtime

ArcGIS Engine Runtime Extensions: 3D, Spatial, Geodatabase Update, Network, Schematics, and Maplex

#### Limited Quantities

One (1) Annual Subscription to Esri Developer Network (EDN)

One (1) Esri CityEngine Advanced Single Use License

### OTHER BENEFITS

Number of Esri International User Conference Registrations provided annually	<b>3</b>
Number of Tier 1 Help Desk Individuals authorized to call Esri	<b>3</b>
Maximum number of sets of backup media, if requested*	<b>2</b>
Virtual Campus Annual User License allowance	<b>7,500</b>
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside of this Agreement (Discount does not apply to Small Enterprise Training Package.)	

\* Additional sets of backup media may be purchased.

This ELA supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to such subject matter, which is the licensing of the Enterprise Software. Except as provided in Section 9.1 Future Versions/Updates, any modifications or amendments to this ELA must be in writing and signed by an authorized representative of each party.

Licensee may accept this ELA by signing and returning it to Attn.: Esri Customer Service, 380 New York Street, Redlands, CA 92373-8100; e-mailing it to [service@esri.com](mailto:service@esri.com) or faxing it to 909-307-3083. **ADDITIONAL OR CONFLICTING TERMS IN LICENSEE'S ORDER WILL NOT APPLY, AND THE TERMS OF THIS ELA WILL GOVERN.**

ACCEPTED AND AGREED:

\_\_\_\_\_  
(Licensee)

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

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

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

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

Esri EIN Number: **95-2775732**

#### **Licensee Contact Information**

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

ELA Quotation Number: \_\_\_\_\_

Esri Contract Number: \_\_\_\_\_

## ELA TERMS AND CONDITIONS

### ARTICLE 1—DEFINITIONS

**Definitions.** The terms used are defined as follows:

- "Data" means any Esri or third-party digital dataset(s) including, but not limited to, geographic vector data coordinates, raster, reports, or associated tabular attributes licensed under this ELA.
- "Deploy," "Deployed," or "Deployment" means to redistribute and install or the redistribution and installation of the Enterprise Software (and related registration/authorization numbers or access codes) or its having been redistributed and installed by Licensee on Licensee's hardware.
- "Documentation" means all printed and digital materials including help files and user reference documentation that are delivered with the Software or, if delivered via download, that are delivered from the Software setup or installation program.
- "ELA Fee" means the fee set forth in the ELA Quotation.
- "ELA Maintenance" means Tier 2 Support, updates, and patches provided by Esri to Licensee for the Enterprise Software.
- "ELA Quotation" means the Esri quote form provided to Licensee for the Small Municipal and County ELA containing the ELA Fee and annual payment schedule.
- "Enterprise Software" means the items identified in the Enterprise Software Schedule on page 1 of this ELA.
- "Incident" means a failure of the Software to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" and "ELA" are used interchangeably and mean the ELA Terms and Conditions, including Exhibit 1—Scope of Use (E300), that apply to Enterprise Software provided to Licensee by Esri under this ELA.
- "Samples" means sample code, sample applications, add-ons, or sample extensions of Software, Data, Documentation, or Web Services.
- "Software" means the actual copy of all or any portion of Esri's proprietary software technology accessed or downloaded from an authorized Esri website or delivered on any media, in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies as identified in Exhibit 1.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction; patches; hot fixes; workarounds; replacement deliveries; or any other type of Software, Data, or Documentation corrections or modifications.
- "Term License(s)" means license(s) provided for use during a fixed or limited time period concurrent with the term of this ELA.
- "Tier 1 Help Desk" means Licensee point of contact from which all Tier 1 Support will be given to Licensee.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by Esri to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1 Support.
- "Web Services" means software services or Esri or third-party data provided by Esri that perform geographic information system (GIS) functions, tasks, or data services and are accessed over the Internet, excluding Virtual Campus, as identified in Exhibit 1.

### ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

The Enterprise Software is licensed and not sold. Esri and its licensors own the Enterprise Software and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. Licensee agrees to use reasonable means to protect the Enterprise Software from unauthorized use, reproduction, distribution, or publication. Esri and its third-party licensors reserve all rights not specifically granted in this ELA including the right to change and improve Web Services.

### ARTICLE 3—GRANT OF LICENSE

**3.1 Grant of License.** Subject to the terms and conditions of this ELA, Esri grants to Licensee a personal, nonexclusive, nontransferable Term License solely to

- a. Use, copy, and Deploy quantities of Enterprise Software as defined in the Enterprise Software Schedule of this ELA for Licensee's own internal use for a term concurrent with this ELA.
- b. Access and use any secure Esri website resources made available to Licensee for Licensee's internal use, provided that Licensee follows Esri's terms of use policy specified therein. All password or controlled access information provided by Esri shall be treated as Esri confidential information.
- c. Use Enterprise Software in accordance with Exhibit 1—Scope of Use, provided that all licenses are Term Licenses.

**3.2 Consultant Access.** Subject to Section 3.1, Licensee may provide access to and use of the Enterprise Software to any consultant or contractor of Licensee, provided consultants' and contractors' access to and use of the Enterprise Software is for the sole benefit of Licensee while (i) working on-site at Licensee's facilities, (ii) remotely accessing or using Enterprise Software from Licensee's on-site computers or machines, or (iii) remotely accessing or using Enterprise Software from a third party's computers or machines under contract to Licensee. Licensee shall be responsible for compliance by consultants or contractors with the terms and conditions of this ELA. Licensee shall require consultants and contractors to discontinue access to and use of Enterprise Software upon completion of work for Licensee.

### ARTICLE 4—SCOPE OF USE

#### 4.1 Permitted Uses

- a. Licensee may install and store the Software, Data, and Documentation on electronic storage device(s).
- b. Licensee may make one (1) copy of the Software, Data, and Documentation for archival purposes. Licensee may make routine computer backups.
- c. Licensee may customize the Software using any (i) macro or scripting language, (ii) published application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in the Documentation.
- d. Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portion(s) of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this ELA. Licensee shall include the following copyright attribution notice

acknowledging the proprietary rights of Esri and its licensor(s): "Portions of this document include intellectual property of Esri and its licensor(s) and are used herein under license. Copyright © [Insert the actual copyright date(s) from the source materials] Esri and its licensor(s). All rights reserved."

#### 4.2 Uses Not Permitted

- a. Except as provided herein, Licensee shall not sell, rent, lease, sublicense, lend, assign, or time-share the Enterprise Software. Licensee shall not act as a service bureau or commercial application service provider (ASP) that allows third-party access to the Enterprise Software. Licensee shall not use Enterprise Software for a site or service and operate the site or the service for a profit or generate revenue through direct or indirect methods (e.g., advertising or charging for access to the site or service).
- b. Except as provided herein, Licensee shall not redistribute the Software to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs.
- c. Licensee shall not reverse engineer, decompile, or disassemble the Enterprise Software, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.
- d. Except to the extent that applicable law prohibits this restriction, Licensee shall not make any attempt to circumvent the technological measure(s) that controls access to, or use of, the Enterprise Software.
- e. Except as provided herein, Licensee shall not redistribute the Software activation number(s), registration number/license authorization file(s), developer license file(s), or Web Services access codes to third parties.
- f. Licensee shall not use the Software or Web Services to transfer or exchange any material where such transfer or exchange is prohibited by intellectual property laws or any other applicable laws.
- g. Licensee shall not remove or obscure any Esri or its licensor(s) patent, copyright, trademark, or proprietary rights notices contained in or affixed to the Enterprise Software.
- h. Licensee shall not unbundle individual or component parts of the Software or Data for independent use.
- i. Hard-copy Documentation may not be copied.
- j. Licensee shall not use, transfer, redistribute, or Deploy Enterprise Software outside the United States.

#### ARTICLE 5—TERM AND TERMINATION AND EXPIRATION

**5.1 Term.** The term of this ELA shall be three (3) years from the Effective Date, unless this ELA is terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software Deployed shall be concurrent with the term of this ELA. No indefinite term or perpetual license grants are provided with this ELA.

**5.2 Termination for Lack of Funds.** Either party may terminate this ELA for Lack of Funds. Lack of Funds is the inability of Licensee to secure appropriation of funds through the legislative or governing body's approval process for annual payments due.

**5.3 Termination for a Material Breach.** Either party may terminate this ELA for a material breach by the other party. The breaching party shall be given a period of ten (10) days from date of written notice to cure any material breach.

**5.4 No Use upon Expiration or Termination.** Upon expiration or termination of this ELA, all Enterprise Software Deployed shall terminate. Licensee shall cease access and use of Web Services and clear Web Services client-side data cache and cease use, uninstall, remove, and destroy all Deployed Software, Data, and

Documentation and any whole or partial copies, modifications, media, or merged portions in any form and execute and deliver evidence of such actions to Esri. ELA Maintenance, Virtual Campus access, and User Conference Registrations shall also terminate.

#### ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS

**6.1 Limited Warranties.** Except as otherwise provided in this Article 6, Esri warrants that (i) the unmodified Software will substantially conform to the published Documentation and (ii) the media upon which the Software is provided, if any, will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt.

**6.2 Data and Web Services Disclaimer.** The Data and Web Services may contain some nonconformities, defects, errors, or omissions. THE DATA AND WEB SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, Esri and its licensor(s) do not warrant that the Data and Web Services will meet Licensee's needs or expectations, that the use of the Data and Web Services will be uninterrupted, or that all nonconformities can or will be corrected. Esri and its licensor(s) are not inviting reliance on this Data or Web Services, and Licensee should always verify actual Data or Web Services.

**6.3 Special Disclaimer.** SAMPLES, PATCHES, AND HOT FIXES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. LICENSEE ASSUMES ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE SAMPLES, PATCHES, AND HOT FIXES.

**6.4 Internet Disclaimer.** THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE WEB SERVICE.

**6.5 General Disclaimer.** EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT AND DISCLAIMS THAT THE ENTERPRISE SOFTWARE WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. SOFTWARE, DATA, WEB SERVICES, AND DOCUMENTATION ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

**6.6 Exclusive Remedy.** Licensee's exclusive remedy and Esri's entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at Esri's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a

workaround for the Software subject to the Esri Maintenance Program found at [www.esri.com/legal/maintenance.html](http://www.esri.com/legal/maintenance.html); or (iii) return of the license fees paid by Licensee for the Software or Documentation that does not meet Esri's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of the Software or Documentation and executes and delivers evidence of such actions to Esri.

#### ARTICLE 7—LIMITATION OF LIABILITY

**7.1 Disclaimer of Certain Types of Liability.** ESRI AND ITS LICENSOR(S) SHALL NOT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; OR LOSS OF ANY GOODWILL OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS ELA OR USE OF THE ENTERPRISE SOFTWARE, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI OR ITS LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**7.2 General Limitation of Liability.** EXCEPT AS PROVIDED IN ARTICLE 8—INFRINGEMENT INDEMNITY, ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY LICENSEE FOR ENTERPRISE SOFTWARE PURSUANT TO THIS ELA.

**7.3 Applicability of Disclaimers and Limitations.** The parties agree that Esri has set its fees and entered into this ELA in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

#### ARTICLE 8—INFRINGEMENT INDEMNITY

**8.1** Esri shall defend, indemnify, and hold harmless Licensee from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, which may be incurred by Licensee against any claims, actions, or demands by a third party alleging that the Software infringes a US patent, copyright, or trademark provided

- a. Licensee promptly notifies Esri in writing of the claim;
- b. Licensee provides documents clearly describing the allegations of infringement;
- c. Esri has sole control of the defense of any actions and negotiations related to the defense or settlement of any claim; and
- d. Licensee cooperates fully in the defense of the claim.

**8.2** If the Software is found to infringe a US patent, copyright, or trademark, Esri, at its own expense, may either (i) obtain rights for Licensee to continue using the Software or (ii) modify the allegedly infringing elements of the Software while maintaining substantially similar software functionality or data/informational content. If neither alternative is commercially reasonable, the infringing items shall be returned to Esri, the license shall terminate, and Licensee shall uninstall the infringing items. Esri's entire liability shall then be to indemnify Licensee pursuant to

Section 8.1 and to refund a portion of the fees paid by Licensee in the current fee payment period. The refund will be calculated for the time remaining for the fee payment period, starting from the notice date of infringement to the end of the fee payment period.

**8.3** Esri shall have no obligation to defend Licensee or to pay any resulting costs, damages, or attorneys' fees for any claims or demands alleging direct or contributory infringement of the Software by (i) the combination of or integration with a product, process, or system not supplied by Esri; (ii) material alteration by anyone other than Esri or contractors acting on behalf of Esri; (iii) use after Licensee has been notified of possible infringement; or (iv) use after modifications are provided or a return is ordered by Esri under Section 8.2.

**8.4** In no event shall the indemnification set forth in this Article 8 apply to any Samples provided hereunder.

THE FOREGOING STATES THE ENTIRE OBLIGATION OF ESRI WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

#### ARTICLE 9—GENERAL PROVISIONS

**9.1 Future Versions/Updates.** Esri reserves the right to update the Small Municipal and County Enterprise Software program suite. Licensee may continue to use all Enterprise Software that has been Deployed, but support and upgrades for deleted items may not be available. As new Enterprise Software is incorporated into the standard program, it will be offered to Licensee via written notice for incorporation into the Enterprise Software Schedule at no additional charge. New or updated Enterprise Software may require additional or revised terms and conditions. The terms and conditions subject to revision are limited to Article 1—Definitions, Article 4—Scope of Use, and Exhibit 1—Scope of Use (E300) or any term as required by law. Esri may provide notice of the additional terms or revisions to Licensee in writing or by posting them on Esri's website at [www.esri.com/legal](http://www.esri.com/legal). The additional terms or revisions shall be incorporated into this ELA upon use of the updated or new Enterprise Software. Should Licensee reject the additional terms or revisions, then Licensee shall not install or use the revised, updated, or new Enterprise Software.

**9.2 Export Control Regulations.** Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release the Enterprise Software, in whole or in part, to (i) any US embargoed country (or to a national or resident of any US embargoed country); (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity to which such export or reexport violates any US export control laws or regulations including, but not limited to, the terms of any export license or license exemption and any amendments and supplemental additions to US export laws as they may occur from time to time.

**9.3 Taxes and Fees.** Sales or use taxes for the fees quoted are as required by law. The tax amount may change depending on the time elapsed between this quote and date of the invoice. Esri will include applicable sales or use taxes on your invoice unless you provide proof with your order that your organization or use of the product is tax exempt.

**9.4 No Implied Waivers.** The failure of either party to enforce any provision of this ELA shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

**9.5 Severability.** The parties agree that if any provision of this ELA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

**9.6 Successor and Assigns.** Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this ELA without Esri's prior written consent, and any attempt to do so without consent shall be void. This ELA shall be binding upon the respective successors and assigns of the parties to this ELA.

**9.7 Survival of Terms.** The provisions of Articles 2, 5, 6, 7, 8, and 9 of this ELA shall survive the expiration or termination of this ELA.

**9.8 Equitable Relief.** The parties agree that any breach of this ELA may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, Esri shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction.

**9.9 Governing Law.** This ELA shall be governed by and construed in accordance with the laws of the state in which Licensee is located without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property.

#### ARTICLE 10—ELA MAINTENANCE

ELA Maintenance for Enterprise Software provided under this ELA is included with the ELA Fee. ELA Maintenance includes standard maintenance benefits specified in the most current applicable Esri US Software Maintenance Program document (found at [www.esri.com/legal](http://www.esri.com/legal)) as modified by this Article 10—ELA Maintenance. ELA Maintenance does not include Technical Support for Web Services.

a. Tier 1 Support Provided by Licensee

- (1) Licensee shall provide Tier 1 Support through the Tier 1 Help Desk to all Licensee's authorized users.
- (2) The Tier 1 Help Desk will use analysts fully trained in the Software they are supporting.
- (3) At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
- (4) Tier 1 Support analysts will be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Incident. The analyst may also use any other information and databases that may be developed to satisfactorily resolve Incidents.
- (5) If the Tier 1 Help Desk cannot resolve the Incident, an authorized Tier 1 Help Desk individual may contact Esri Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensee.
- (6) Tier 1 Help Desk individuals identified by Licensee are the only individuals (callers) authorized to contact Esri directly for Tier 2 Support. Licensee may revise named individuals by written notice.

b. Tier 2 Support Provided by Esri

- (1) Esri shall log the calls received from Tier 1 Help Desk individuals.
- (2) Esri shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by Tier 1 Help Desk when Tier 2 Support is required.
- (3) Esri may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
- (4) Esri shall attempt to resolve the Incidents submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals.
- (5) When the Incident is resolved, Esri shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the user.

Esri may, at Esri's sole discretion, make patches, hot fixes, or updates available for downloading from Esri's website.

- c. No Software other than the defined Enterprise Software will receive maintenance under this ELA. Licensee may acquire maintenance for other Software (non-Enterprise Software) outside this ELA.

#### ARTICLE 11—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

##### 11.1 Orders, Delivery, and Deployment

- a. Licensee shall issue an Order upon execution of this ELA and annually thereafter in accordance with the ELA Quotation. Payment shall be due and payable within thirty (30) days of the anniversary date of the Effective Date, with the initial payment due within thirty (30) days of execution of this ELA. Esri's Federal ID Number is 95-2775-732.
- b. Upon receipt of the initial Order from Licensee, Esri shall authorize download of the Enterprise Software to Licensee for its Deployment activities. If requested, Esri will ship backup media to the ship-to address identified on the Order, FOB Destination, with shipping charges prepaid. For those entities that avoid sales tax by downloading deliverables, request for delivery or receipt of tangible media may cause license fees to be subject to taxes. Licensee acknowledges that should such taxes become due, Esri has a right to invoice and Licensee agrees to pay any such sales or use tax associated with its receipt of tangible media.
- c. Esri shall provide registration numbers or keycodes, as applicable, to activate the nondestructive copy protection program that enables the Enterprise Software to operate.
- d. Licensee shall Deploy, install, configure, and track the Deployment status of the Enterprise Software.

##### 11.2 Order Requirements

- a. All orders pertaining to this ELA shall be processed through Licensee's centralized point of contact.
- b. The following information shall be included in each Order (or ordering document):
  - (1) Licensee name; Esri customer number, if known; and bill-to and ship-to addresses
  - (2) Order number
  - (3) Applicable annual payment due



- (4) On the face page of its Order (or ordering document), Licensee shall insert a reference to this ELA and the following statement: "THIS ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE ORDER WILL NOT APPLY."

#### **ARTICLE 12—ENDORSEMENT AND PUBLICITY**

This ELA shall not be construed or interpreted as an exclusive dealings agreement or an endorsement of Esri by Licensee. Licensee agrees that upon execution of this ELA, Esri may publicize the existence of this ELA.

#### **ARTICLE 13—ADMINISTRATIVE REQUIREMENTS**

**13.1 OEM Licenses.** Certain Esri partners are authorized to either embed limited portions of Esri technology or bundle Esri products or services with their application or service under Esri's OEM or Solution OEM programs. Partner pricing and product bundling are independent of this ELA, and each partner markets under its own business model and pricing. Licensee shall not be entitled to or seek any discount from the OEM partner or Esri, directly or indirectly, as a result of or based on the availability of such Software, Data, or Web Services as Enterprise Software under this ELA. Licensee shall not be entitled to or seek to decouple Esri's technology or products/services from the partner's bundle or solution. In addition, such Software, Data, Web Services, or any component thereof included in the OEM software program or product will be licensed through the license agreement provided by the OEM partner and not through this ELA.

**13.2 Product Obsolescence.** During the term of this ELA, some Enterprise Software items may become obsolete, may no longer be commercially offered, or may no longer be available for unlimited quantity Deployment. Licensee may continue to use such Enterprise Software that has been Deployed for the term of this ELA, but updates for such obsolete Enterprise Software may not be available. Esri's Product Life Cycle Support Policy, available at [help.arcgis.com/en/shared/Product-life-cycle/ProductLifeCycle.pdf](http://help.arcgis.com/en/shared/Product-life-cycle/ProductLifeCycle.pdf), defines the support phases and overall support plans. ELA Maintenance shall be subject to the individual Product Life Cycle Support Status, which can be found at <http://resources.arcgis.com/content/product-life-cycles>.

**13.3 Renewal.** Upon expiration of this ELA, the parties will evaluate Licensee's requirements. Any follow-on ELA will be offered in accordance with license terms and condition and pricing then in effect and based on Licensee's then current population count.

**13.4 Annual Report of Deployments.** At each anniversary date and ninety (90) days prior to the expiration date of this ELA, Licensee shall provide a written report to Esri detailing all Deployments made. The report will be subject to audit by an authorized representative of Esri.

#### **ARTICLE 14—OPTIONAL ITEMS**

If training courses identified in the ELA Quotation are acquired, they will be subject to the terms found in Exhibit 2—Training Addendum. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of this ELA with respect to the training courses.



**EXHIBIT 1  
SCOPE OF USE  
(E300 02/27/2012)**

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

The scope of use for the Software, Data, and Web Services identified below is described in the applicable footnotes identified in parentheses.

**Software**

- ArcExplorer—Java and Windows Editions (20 and 25)
- ArcGIS API for iOS, Windows Phone, or Android (1, 16, 25, and 33)
- ArcGIS Desktop
  - ArcInfo (either 1 or 2 and 25, 26, 33, 44, and 45)
  - ArcEditor (either 1 or 2 and 25, 26, 33, 44, and 45)
  - ArcView (either 1 or 2 and 25, 33, 44, and 45)
- ArcGIS Desktop Extensions (7)
- ArcGIS Engine Developer Kit and Extensions (1, 14, 15, 22, 25, 26, and 43)
- ArcGIS Engine Runtime and Extensions (either 1 or 2 and 15, 22, 25, 26, and 33)
- ArcGIS Explorer (20, 25, and 33)
- ArcGIS for AutoCAD (1, 20, and 25)
- ArcGIS for iOS (1, 25, and 33)
- ArcGIS Mobile Deployments (1, 15, 16, 25, 33, and 54)
- ArcGIS Runtime (1, 15, 18, 33, 35, and 59)
- ArcGIS Runtime SDK (1, 15, 18, 33, 35, and 60)
- ArcGIS Server
  - Workgroup (either 3 or 5 and 8, 9, 25, 28, 29, 30, 32, 33, 38, 39, 40, and 45; if licensed as a Term License, 6 will also apply)
  - Enterprise (either 3, 4, or 5 and 8, 9, 25, 27, 31, 33, 38, 39, 40, and 45; if licensed as a Term License, 6 will also apply)
    - > Cloud Bundle (6 and 33)
- ArcGIS Server Extensions
  - ArcGIS for INSPIRE (7, 8, 33, and 35)
  - ArcGIS Server Geoportal Extension (either 3, 4, or 5 and 7 and 52)
  - ArcGIS Server Image Extension (7, 8, and 42)
  - ArcGIS Server Image Extension Service Editor (1)
  - Other Extensions (7)
- ArcGIS Web Mapping (including SharePoint, JavaScript, Adobe Flex, Microsoft Silverlight/WPF, SOAP, and REST) (6, 33, and 35)
- ArcIMS
  - ArcIMS and Extensions (either 3, 4, or 5 and 8, 10, 31, and 45)
- ArcLogistics
  - Desktop (1 and 25)
  - Using ArcGIS Online (6, 20, 25, 34, 35, and 46)
  - Using ArcGIS Server (6, 20, 25, 34, 35, and 46)
  - Navigator (1 and 46)
- ArcPad (1, 12, 13, 25, and 33)
- ArcReader (20, 25, 33, and 45)
- ArcView 3.x and Extensions (1, 7, and 17)
- Esri Aeronautical Solution (either 1 or 2)
- Esri Business Analyst (Canadian Edition) (either 1 or 2 and 6, 25, 33, 36, and 45)
- Esri Business Analyst (either 1 or 2 and 25, 33, 45, and 48)
- Esri Business Analyst Online API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (6, 16, 25, 33, 35, 55, and 56)

- Esri Business Analyst Server
  - Workgroup (either 3, 4, or 5 and 8, 9, 21, 25, 28, 29, 31, 33, 39, 40, 45, and 48)
  - Enterprise (either 3, 4, or 5 and 8, 9, 21, 25, 27, 31, 33, 39, 40, 45, and 48)
- Esri Business Analyst Server (Canadian Edition) (either 3, 4, or 5 and 8, 9, 21, 25, 27, 31, 33, 36, 39, 40, and 45)
- Esri Business Analyst Server Developer (3, 6, 25, 33, 35, and 51)
- Esri Business Analyst Server Developer (Canadian Edition) (3, 6, 25, 33, 35, 36, and 51)
- Esri CityEngine (either 1 or 2 and 44)
- Esri Defense Mapping (either 1 or 2)
- Esri Developer Network (EDN) Software, Web Services, and Data (6, 7, 24, 25, 26, 33, 34, and 35)
- Esri File Geodatabase API (47)
- Esri Maps for IBM Cognos (5 and either 49 or 53)
- Esri Nautical Solution (either 1 or 2)
- Esri Production Mapping (either 1 or 2)
- Geoportal Clients for ArcGIS (7, 20, and 52)
- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
- MapObjects LT (1, 14, and 16)
- MapObjects—Windows Edition (1, 14, 15, 16, and 18)
- MOLE (1)
- NetEngine Internet (5)
- Portal for ArcGIS (5, 6, 31, 33, 61, 62, and 63)
- Tracking Server (either 4 or 5 and 31)

**Web Services**

- ArcGIS Online Services (6, 25, 33, 34, and 35)
- Esri Business Analyst Online (6, 25, 33, 48, 56, 57, and 58)
- Esri Business Analyst Online Mobile (1, 6, 25, 33, 48, 56, 57, and 58)
- Esri Community Analyst (6, 25, 33, 48, 56, 57, and 58)
- Esri MapStudio (6, 25, 33, 34, 35, and 56)
- Esri Redistricting Online (6, 25, 33, 34, and 35)

**Data**

- Data with ArcGIS Data Appliance (6, 23, 25, and 41)
- Esri Address Coder (either 1, 2, or 5 and 21, 22, 25, and 48)
- Esri Business Analyst (Canadian Edition) Data (either 1 or 2 and 6, 21, 25, 33, 36, and 45)
- Esri Business Analyst Data (either 1 or 2 and 21, 25, 33, 45, and 48)
- Esri Business Analyst Server (Canadian Edition) Data (either 3, 4, or 5 and 21, 25, 33, 36, and 45)
- Esri Business Analyst Server Data (either 3, 4, or 5 and 21, 25, 33, 45, and 48)
- Esri Data & Maps (either 1, 2, 3, 4, or 5 and 23 and 37)
- Esri Data (either 1, 2, or 5 and 25 and 48)
  - Demographic, Consumer Spending, Market Potential, Retail MarketPlace, Business, Traffic, Shopping Center, Cable Boundaries, Banking, and Crime
- Sourcebook•America (1 and 21)
- StreetMap Premium (either 1, 2, 4, or 5 and 6 and 25)
- Tapestry Segmentation (either 1, 2, or 5 and 21 and 48)

1. "Single Use License." Licensee may permit a single authorized end user to install and use the Software, Data, and Documentation on a single computer for use by that end user on the computer on which the Software is installed. Remote access is not permitted. Licensee may permit the single authorized end user to make a second copy for end user's exclusive use on a portable computer as long as only one (1) copy of the Software, Data, and Documentation is in use at any one (1) time. No other end user may use the Software, Data, or Documentation under the same license at the same time for any other purpose.
2. "Concurrent Use License." Licensee may install and use the Software, Data, and Documentation on computer(s) on a network, but the number of simultaneous users may not exceed the number of licenses acquired. No other end user may use the Software, Data, or Documentation under the same license at the same time for any other purpose.
3. "Development Server License." Licensee may install and use the Software on a single computer to design and build applications that interface with or utilize server Software as described in the Documentation.
4. "Staging Server License." In addition to the Development Server License rights, Licensee may use and install the Software for the following purposes: user acceptance testing, performance testing, load testing of other third-party software, staging new commercial data updates, and training activities.
5. "Deployment Server License." In addition to the Staging Server License rights, Licensee may install and use the Software or Data to provide services to multiple users on the same or other computer(s).
6. "Term License." License is provided for use for a limited time period or on a subscription or transaction basis.
7. Extensions to Software programs follow the same scope of use as that granted for the corresponding Software programs.
8. The administration tools for the Software may be copied and redistributed throughout Licensee's organization.
9. User-developed ArcGIS Server administration tools may be copied throughout Licensee's organization, but the ArcCatalog application (found in ArcGIS Desktop) may not be copied.
10. The ArcIMS license includes the right to deploy MapObjects—Windows Edition applications on the Internet or intranet. Licensee shall not develop client/server solutions with the ArcIMS—Java Archive (JAR) files without a license for the MapObjects—Java Edition developer kit.
11. Reserved
12. Software is only licensed for navigational use when used in conjunction with ArcLogistics.
13. "Dual Use License" means the Software may be installed on a desktop computer and used simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any one (1) time.
14. Developers must include the following attribution with any deployed MapObjects application: "Portions of this computer program are owned by LizardTech, Inc., and are Copyright © 1995–2002 LizardTech, Inc., and/or the University of California. All rights reserved. US Patent No. 5,710,835."
15. Deployment licenses for desktop or Internet application(s) may be subject to payment of additional license fees.
16. Licensee may deliver applications to its sublicensee(s) provided Licensee uses a written sublicense agreement that protects Esri's rights in its Software, Data, Web Services, and Documentation to the same extent as the Esri License Agreement including, but not limited to, the following terms:
  - a. Sublicensee may not reverse engineer, decompile, or disassemble the Esri Software, Data, Web Services, or Documentation, except to the extent permitted by applicable law; copy for commercial use; transfer; or assign its rights under the license grant;
  - b. Sublicensee may not use any Esri Software, Data, Web Services, or Documentation, in whole or in part, separate from Licensee's executable application; and
  - c. Third-party dependent or required components are redistributable subject to permission from the owner or author.
  - d. Applications may be subject to deployment fees owed to Esri. Licensee shall contact its distributor for details.
17. Licensee may use Business Objects Crystal Reports software only with the ArcView 3.x Software with which it was acquired and subject to the Crystal Reports License Agreement available on the media. Licensee may not use a software program or system to cache or queue report requests.
18. The deployment license is per application per computer.
19. MapObjects—Java Edition contains Java Archive files, which indicate they are authentic Esri-certificated files when used over the Internet. Licensee shall not use Esri certification or reference Esri as a source of trusted content in any modified MapObjects—Java Archive files. Licensee may deploy the unmodified Java class Esri-certified libraries as an integral part of the Licensee's application(s).
20. Licensee may reproduce and deploy the Software provided all the following occur: (a) the Software is reproduced and deployed in its entirety; (b) a license agreement accompanies each copy of the Software that protects the Software to the same extent as the Esri License Agreement, and the recipient agrees to be bound by the terms and conditions of the license agreement; (c) all copyright and trademark attributions/notices are reproduced; and (d) there is no charge or fee attributable to the use of the Software.
21. Licensee shall not withhold any substantial right (e.g., extension of credit) from any individual based solely on the individual's place of residence, as profiled in the Tapestry Segmentation system.

22. (a) ArcGIS Engine Runtime licenses shall not be used for Internet and server development and deployment; (b) an end user must license either ArcGIS Engine Runtime Software or other ArcGIS Desktop Software (ArcView, ArcEditor, or ArcInfo) to obtain the right to run an ArcGIS Engine application on one (1) computer; and (c) the ArcGIS Engine Runtime extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine applications. A single user can have multiple applications installed on one (1) computer for use only by that end user.
23. Licensee may redistribute the Data as described in the Redistribution Rights Matrix available at <http://www.esri.com/legal/>, in the Help system, or in supporting metadata files, subject to the specific attribution descriptions and requirements for the dataset accessed.
24. EDN Software, Web Services, and Data may only be used by one (1) named developer per subscription solely for the purposes of research, development, testing, and demonstration of a prototype application. EDN server Software and Data may be installed on multiple computers for use by any named EDN developer.
25. Use of included third-party owned Data shall be subject to the Use of Data Restrictions found at <http://www.esri.com/legal/> for the specific Data accessed. The Use of Data Restrictions may be modified by Esri from time to time. If a modification is unacceptable to Licensee, Licensee may cancel a subscription upon written notice to Esri, or discontinue use of the Data or Web Services, as applicable. If Licensee continues to use the Data or Web Services, Licensee will be deemed to have accepted the modification.
26. An ArcSDE Personal Edition geodatabase is restricted to ten (10) gigabytes of Licensee data.
27. ArcGIS Server Web ADF Runtime Software may not be deployed independent of Licensee's ArcGIS Server Enterprise configuration.
28. Use is limited to ten (10) concurrent end users of applications other than ArcGIS Server applications. This restriction includes use of ArcGIS Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS Server geodatabase. There are no limitations on the number of connections from web applications.
29. Software can only be used with SQL Server 2005/2008 Express.
30. Use is restricted to a maximum of ten (10) gigabytes of Licensee data.
31. Redundant Software installation(s) for failover operations is allowed but can only be operational during the period the primary site is nonoperational. The redundant Software installation(s) shall remain dormant, except for system maintenance and updating of databases, while the primary site or any other redundant site is operational.
32. No redundant Software installation is permitted.
33. Licensee's access to and use of Cloud Bundle, ArcGIS Web Mapping, ArcGIS Online Services, Business Analyst Online, Business Analyst Online API, or Microsoft Bing Maps is conditioned upon Licensee's acceptance of the [Esri Web Services and API Terms of Use](#), the [Business Analyst Online Web Subscription Terms and Conditions](#), the [Terms of Use for Bing Maps Services](#), and any other terms and conditions applicable thereto or to any third-party data being accessed through them, found at <http://www.esri.com/legal>.
34. Licensee's organization is limited to the number of specified credits, transactions, geography, or number of users as described in the online product description.
35. Licensed end users shall not share the client-side data cache derived from ArcGIS Online Services with other licensed end users or third parties.
36. Licensee's use of Esri Business Analyst (Canadian Edition) Data is subject to the Use of Data Restrictions specific to [Esri Business Analyst \(Canadian Edition\) Data](#).
37. Data provided with StreetMap USA may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.
38. The ArcGIS Server 3D extension included with ArcGIS Server Standard (Workgroup or Enterprise) may only be used for generating globe data cache(s) or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS Server 3D extension Software is permitted with ArcGIS Server Standard.
39. Any editing functionality included with ArcGIS Server is not permitted for use with ArcGIS Server Basic (Workgroup or Enterprise).
40. Geospatial Enterprise JavaBeans (EJB) provided with ArcGIS Server (Workgroup or Enterprise) is permitted for use only with ArcGIS Server Advanced.
41. Licensee may only use Data from a single state with the Single State version of ArcGIS Data Appliance. This restriction applies to a large-scale (i.e., scale levels below 1:100,000) street map, transportation layer, boundaries and places layer, and one (1)-meter or better resolution imagery included in the USA Collection. This restriction does not apply to the small-scale (i.e., scale levels above 1:100,000) maps provided in the World Collection, which are intended for display at global and regional scales.
42. Licensee has the right to one (1) desktop deployment of the ArcGIS Server Image extension Service Definition Editor for every four (4) cores of ArcGIS Server Image extension that are licensed.
43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Engine Runtime Software.

44. For any operating system environment in which Licensee runs instances of the Concurrent Use License management software, Licensee may run up to the same number of passive failover instances of the Concurrent Use License management software in a separate operating system environment for temporary failover support.
45. Data licensed with Esri Business Analyst and Esri Business Analyst Server is restricted for use only in conjunction with the respective Business Analyst extension. If Licensee orders a license for Esri Business Analyst or Business Analyst (Canadian Edition) with a subset of the national dataset (i.e., Region, State, Local), Licensee may use only the licensed subset, not any other portion of the national dataset.
46. Licensee should not follow any route suggestions that appear to be hazardous, unsafe, or illegal. Licensee assumes all risk of using this navigation Software.
47. Licensee may develop and distribute software or web applications that use the Esri File Geodatabase API to Licensee's end users.
48. Licensee may include reports and maps created from the Software or Data in hard-copy or read-only format for presentation packages or marketing studies for subsidiaries and customers. The total content of the Esri reports and maps must be less than twenty percent (20%) of Licensee's total content of the presentation package or marketing study. Full, complete, stand-alone reports or maps created from the Software or Data and not part of a presentation package or marketing study cannot be resold, sublicensed, or otherwise transferred without prior written permission of Esri. Licensee's third-party customer may only receive reports and maps generated by Licensee and may only use the maps and reports received from Licensee for internal purposes. In no case shall Licensee redistribute the Data in digital formats.
49. A user quantity restriction applies. This authorizes installation and use of a sufficient quantity of instances of ArcGIS Server Enterprise Standard solely for the purposes of integrated communication between Esri ArcGIS Server Map Services and IBM Cognos data packages and is subject to the per user restriction.
50. Reserved
51. Esri Business Analyst Server Developer and Data may only be installed on one (1) server per license solely for the purposes of research, development, testing, and demonstration of a prototype application.
52. Source code is the intellectual property of Esri. Licensee shall treat any source code file identified as "Software" in a README file or at <http://www.esri.com/legal/> as a trade secret for Licensee's own internal use only and not for further redistribution or access by unlicensed third parties. Licensee shall not modify the Software, Documentation, Data, or source code to incorporate, embed, link, or otherwise include any code, libraries, or data licensed or distributed under an open source licensing or distribution models similar to Free Software Foundation's GNU General Public License (GPL) or GPL-compliant licenses, including, without limitation, the Artistic License (e.g., Perl), the Mozilla Public License, the Netscape Public License, and the Sun Community or Industry Standards License, that could require a user to make its proprietary source code available to a requesting third party.
53. This authorizes installation and use of a sufficient quantity of instances of ArcGIS Server Enterprise Standard solely for the purposes of integrated communication between Esri ArcGIS Server Map Services and IBM Cognos data packages.
54. ArcGIS Mobile is licensed for use with ArcGIS Server Advanced (Enterprise or Workgroup) and ArcGIS Desktop (ArcInfo, ArcEditor, ArcView, and ArcGIS Engine applications).
55. Licensee may develop software or web applications that use the Business Analyst Online API to access, query, create, display, and redistribute Reports and resulting static, electronic maps to end user(s) of Licensee's software or web applications. End user(s) of Licensee's software or web applications may use the Reports and maps for internal purposes only and not for further redistribution. "Report" means any formatted output created by the Business Analyst Online API, which includes PDF, CSV, Excel, HTML, and XML formats. Licensee shall not redistribute any Data in vector formats.
56. For Reports or maps displayed or posted to an external website, or Reports or maps created for Licensee's end user(s), Licensee shall affix an attribution notice to Licensee's online and/or hard-copy output that acknowledges Esri's and its third-party data supplier's intellectual property. These notices are found in the PDF or export image format of each individual Report or image, or as follows: "Source [Esri, Supplier]" or Copyright © [year(s)] [Esri, Supplier]. All rights reserved."
57. Licensee may only display or post any combination of 100 Business Analyst Online or Community Analyst Reports and maps on its external websites.
58. Licensee shall order a separate Business Analyst Online or Community Analyst subscription for each person who uses Business Analyst Online or Community Analyst and shall provide output from the Business Analyst Online or Community Analyst subscription only to the e-mail of the individual subscriber. Licensee shall not unbundle or use independently of Licensee's Subscription any software components used to access the Deliverables, including, but not limited to, Business Analyst Online API or Community Analyst API.
59. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Runtime Software up to the number of deployment licenses that have been purchased.
60. (a) ArcGIS Runtime licenses shall not be used for Internet and server development and deployment; (b) an end user must purchase a software application that includes an ArcGIS Runtime license to obtain the right to run an ArcGIS Runtime application on one (1) computer. A single user may have multiple ArcGIS Runtime licensed applications installed on one (1) computer that utilize a single ArcGIS Runtime.

61. Oracle is a third-party beneficiary of Esri's rights under the Esri License Agreement with respect to the Software but is not a party hereto and assumes no obligations hereunder.
62. Esri and its Licensors reserve the right to conduct an audit of Licensee's use of the Software. Licensee will provide reasonable assistance and access to information regarding Licensee's use of the Software. Audit results may be reported to Esri's Licensors. Fees for over-deployment or excess usage are payable within thirty (30) days of the invoice date.
63. Licensee may not publish the results of benchmark tests run on the Software without the prior written permission of Esri and its Licensors.



**EXHIBIT 2  
TRAINING ADDENDUM  
(E207SET 3/11)**

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

---

---

**ARTICLE 1—TRAINING DESCRIPTION**

Esri offers instructor-led training related to the use of its proprietary GIS software. Esri will provide to Licensee a fixed number of training days to use for Instructor-Led Training, as defined in this Small Enterprise Training Package, if purchased. Instructor-Led Training events occur at an Esri Learning Center or via the web in a cloud environment. The Esri software training course(s) to be conducted, location, schedule dates, and registration requirements are set forth in the *Esri Training* catalog located on Esri's Training website (<http://training.esri.com>). All courses are conducted in substantial conformity with course descriptions outlined on the Esri Training website. Esri reserves the right to modify course content when necessary due to software technical capabilities or limitations.

**ARTICLE 2—ESRI'S RESPONSIBILITIES**

- Esri will provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Student(s)") on the scheduled dates. Esri will provide each Student with a course manual where applicable.
- Esri will confirm Learning Center training class scheduled dates approximately ten (10) business days prior to the class start date.

**ARTICLE 3—LICENSEE'S RESPONSIBILITIES**

- Licensee must ensure the protection of Esri's copyrights. Licensee shall neither copy or distribute nor permit a third party to copy or distribute any of Esri's training material(s) unless otherwise required by law.
- Licensee must not resell seat(s) to an Esri training class unless explicitly authorized in writing by Esri.
- Licensee must confirm that all registered Students meet the minimum prerequisites for the applicable class set forth on Esri's Training website.
- Licensee must ensure that all Students have received confirmation from Esri to participate in an Esri training event. Unregistered Students are not permitted to view or participate in a Virtual Classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered Students.
- Licensee must submit registrations with a confirmed payment commitment at least seven (7) business days before the class start date. If Licensee submits a registration without a confirmed payment, Esri will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- US government export control laws and regulations prohibit US persons from engaging in transactions with certain denied persons found on various US Government Denied Persons lists (e.g., US Department of the Treasury's Specially Designated Nationals List, US Commerce Department's Denied Persons/Entity List, etc.). To meet these export requirements, Licensee must submit to Esri Customer Service a list of the names of Students that are to attend any training class. Any Student that is found on any of the various US Government Denied Persons lists will not be permitted to attend training.
- Licensee is responsible for all Student travel arrangements. Esri assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to US government export regulation requirements, course scheduling changes, or cancellations.
- Licensee must provide written notice to Esri's Customer Service at [service@esri.com](mailto:service@esri.com) of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the class start date.
- Licensee is responsible to ensure that it adheres to the course, facility, and equipment requirements for Esri training as found at <http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway>.
- Students may not use audio and/or video recording equipment within the classroom without prior written approval from Esri. **Esri reserves the right to record a classroom training event for future rebroadcast.**

**ARTICLE 4—CANCELLATION AND RESCHEDULING POLICY**

- When a Student's place in class is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service department is notified three (3) business days in advance of the class start date. Should a Student substitution occur without three (3) business days' notification, an additional nonrefundable transfer and data processing fee may be assessed.
- A Student may transfer from one (1) scheduled Esri Learning Center class to another one (1) time at no additional charge provided Esri's Customer Service department is notified three (3) business days in advance of the class start date. Subsequent transfers or transfers that occur without three (3) business days' notification may incur a transfer fee.
- Students may cancel their enrollment in a class provided Esri's Customer Service department is notified three (3) business days in advance. If three (3) business days' notification is not provided, Students may be charged the full Student Seat fee.

If Esri is unable to conduct the training on the scheduled date, Esri will notify Licensee at least three (3) business days before the scheduled date.

If cancellation of a training event is necessary due to Force Majeure, the affected party is released in full from the three (3)-business-day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

#### **ARTICLE 5—UNIQUE TERMS FOR THE SMALL ENTERPRISE TRAINING PACKAGE**

- To order training, Licensee must include training in the Purchase Order for the ELA or provide a Purchase Order as required and specified within the ELA that matches the Esri quotation.
- Where Licensee submits additional Purchase Orders to purchase training days for additional year(s), any unused training days will automatically roll over.
- A Purchase Order is required annually for each three (3)-year term. Failure to submit annual Purchase Orders will result in the forfeit of unused training days.
- Licensee must assign an individual within its organization to the role of Training Administrator to serve as liaison between Licensee's organization and Esri as well as internally manage and authorize allocated training days.
- The training days are available for a period of twelve (12) months, commencing on the purchase Effective Date, and ending when all training days are consumed, whichever is sooner.
- Esri will invoice for outstanding training expenses where applicable.
- Training days are not transferable and not refundable for any other Esri products or services.

#### **ARTICLE 6—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE**

Except as specifically granted in this Agreement, Esri and/or its licensors own and retain all right, title, and interest in software, data, documentation, and training materials.

#### **ARTICLE 7—WARRANTY**

**7.1** Esri will provide training in a manner consistent with the technical and professional standards of the industry.

**7.2 Disclaimer of Warranties.** WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, AND NONINFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE TRAINING IS ERROR FREE.

#### **ARTICLE 8—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY**

EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR TRAINING; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

#### **ARTICLE 9—UCC INAPPLICABILITY**

Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.



RESOLUTION 2012-135

WHEREAS, the Information Technology Division of the Finance Department works continually on maintaining the city's computer network, both hardware and software, etc, and

WHEREAS, due to the growing number of Geographic Information System (GIS) users, the variety of GIS software programs utilized and the constant need for software upgrades, it is imperative to consistently maintain the entire city software licenses; and

WHEREAS, the City of Grand Island can utilize the Environmental Systems Research Institute (ESRI) Small Government Enterprise License Agreement to install an unlimited amount of licenses with the City until June, 2015; and

WHEREAS, the cost for such an agreement is \$105,000, which can be paid in three annual installments of \$35,000; and

WHEREAS, this is the most cost effective approach to upgrading GIS software, and

WHEREAS, the proposed agreement has been reviewed and approved by the City Attorney's office;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Information Technology Department is hereby authorized to utilize the ESRI Small Government Enterprise License Agreement by entering into a three-year agreement to license any City computer for ESRI software at a cost of \$105,000, which can be paid in three annual installments.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, May 22, 2012.

---

Jay Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk

Approved as to Form	☐
May 21, 2012	☐ City Attorney



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item I1

**#2012-136 - Consideration of Request from Casey's Retail Company dba Casey's General Store #2882, 1404 West 2nd Street for an Addition to Class "B-86850" Liquor License**

*This item relates to the aforementioned Public Hearing item E-1.*

Staff Contact: RaNae Edwards

RESOLUTION 2012-136

WHEREAS, an application was filed by Casey's Retail Company doing business as Casey's General Store #2882, 1404 West 2<sup>nd</sup> Street for an addition to their Class "B-86850" Liquor License; and

WHEREAS, a public hearing notice was published in the *Grand Island Independent* as required by state law on May 12, 2012; such publication cost being \$17.76; and

WHEREAS, a public hearing was held on May 22, 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 above-identified liquor license application contingent upon final inspections.

\_\_\_\_\_ The City of Grand Island hereby makes no recommendation as to the above-identified liquor license application.

\_\_\_\_\_ The City of Grand Island hereby makes no recommendation as to the above-identified liquor license application with the following stipulations:

\_\_\_\_\_

\_\_\_\_\_ The City of Grand Island hereby recommends denial of the above-identified liquor license application for the following reasons: \_\_\_\_\_

\_\_\_\_\_

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, May 22, 2012.

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

Attest:

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

Approved as to Form	☐ _____
May 21, 2012	☐ City Attorney



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item I2

### **#2012-137 - Consideration of Redemption of Series 1999 Water Revenue Bonds**

*This item relates to the aforementioned Ordinance item F-4.*

Staff Contact: Tim Luchsinger, Utilities Director

## RESOLUTION 2012-137

BE IT RESOLVED by the Mayor and City Council of the City of Grand Island, Nebraska:

Section 1. The following bonds, in accordance with their option provisions are hereby called for payment on June 26, 2012, after which date interest on the bonds will cease:

Water Revenue Refunding Bonds, Series 1999, of the City of Grand Island, Nebraska, date of original issue – March 3, 1999, in the principal amount of One Million Ninety-five Thousand Dollars (\$1,095,000), numbered as shown on the books of the Paying Agent and Registrar, in denomination of \$5,000 each or integral multiples thereof, becoming due and bearing interest as follows:

<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
\$ 350,000	July 1, 2012	4.65%	385694 FR0
365,000	July 1, 2013	4.75	385694 FS8
380,000	July 1, 2014	4.85	385694 FT6

Said bonds are hereinafter referred to as the “Refunded Bonds.”

Said bonds are subject to redemption at any time on or after March 3, 2004, at par and accrued interest, and said interest is payable semiannually. Said bonds were authorized by Ordinance No. 8439 and were issued for the purpose of refunding \$4,505,000 Water Revenue Refunding Bonds, Series 1993, Date of Original Issue – April 1, 1993.

Section 2. The Refunded Bonds are to be paid off at the office of Wells Fargo Bank, National Association in Minneapolis, Minnesota (formerly National Bank of Commerce Trust and Savings Association, Lincoln, Nebraska), as paying agent and registrar for the Refunded Bonds (the “Paying Agent”).

Section 3. A true copy of this resolution shall be filed immediately with the Paying Agent, and said Paying Agent is hereby instructed to mail notice to each registered owner of the Refunded Bonds not less than thirty days prior to the date fixed for redemption, all in accordance with the ordinance authorizing the Refunded Bonds.

Adopted by the City Council of the City of Grand Island, Nebraska, May 22, 2012.

---

Jay Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk

Approved as to Form	<input type="checkbox"/>
May 21, 2012	<input type="checkbox"/> City Attorney



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item I3

### **#2012-138 - Consideration of Approving Election for Consideration of an Economic Development Program**

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

Staff Contact: Mary Lou Brown, City Administrator

## RESOLUTION 2012-138

WHEREAS, the City of Grand Island is proposing a ten (10) year renewal of its Economic Development Program to continue the success of its present Program in seeking new employers and assisting existing employers to increase the number of quality jobs for the people of Grand Island; and

WHEREAS, a proposed Economic Development Program has been prepared in accordance with the Local Option Municipal Economic Development Act, codified at Chapter 18, Article 27 of the Nebraska Revised Statutes; and

WHEREAS, the proposed Economic Development Program has been written to foster and maximize future economic development while at the same time improving accountability, transparency, and safeguarding taxpayer dollars; and

WHEREAS, the Mayor and City Council propose to present this Economic Development Program to the voters of the City of Grand Island for their approval at the general election to be held on Tuesday, November 6, 2012.

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

That the Mayor and City Council do hereby approve and adopt the Economic Development Program attached hereto and made a part of this Resolution by reference.

That the following language shall be submitted to the Hall County Election Commissioner for inclusion on the Grand Island City ballot for the general election to be held on Tuesday, November 6, 2012:

### **ECONOMIC DEVELOPMENT PROGRAM**

**Shall the City of Grand Island renew its economic development program by appropriating Seven Hundred and Fifty Thousand Dollars (\$750,000.00) annually from local sources of revenue for a period of ten (10) years?**

**A vote for this measure will renew the Economic Development program for a period of ten (10) years.**

**A vote against this program will not renew the Economic Development program and allow it to expire in 2013.**

### **ECONOMIC DEVELOPMENT PROGRAM SUMMARY**

**The City of Grand Island is proposing to renew its Economic Development Plan for a period of ten years in order to attract new employers and assist existing employers to increase the number of quality jobs for the people of Grand Island. The annual cost of the program will be Seven Hundred and Fifty Thousand Dollars (\$750,000.00). This program**

Approved as to Form	☐
May 21, 2012	☐ City Attorney

**will be funded with local sources of revenue. Revenue from publicly owned utilities may be used to fund utility related projects needed for economic development. This program will be in existence for a period of ten years commencing October 1, 2013.**

That the City Clerk is directed to certify the above ballot language with the Hall County Election Commissioner for inclusion on the Grand Island City ballot for the general election to be held on Tuesday, November 6, 2012.

That the City Clerk is directed to prepare a copy of this Resolution and the proposed Economic Development Plan and make such available for public review at City Hall, the Edith Abbott Memorial Library, and the offices of the Grand Island Area Economic Development Corporation during regular business hours.

Adopted by the City Council of the City of Grand Island, Nebraska, on May 22, 2012.

---

Jay Vavricek, Mayor

Attest:

---

RaNae Edwards, City Clerk





# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item J1

### **Approving Payment of Claims for the Period of May 9, 2012 through May 22, 2012**

*The Claims for the period of May 9, 2012 through May 22, 2012 for a total amount of \$3,880,740.82. A MOTION is in order.*

Staff Contact: Jaye Monter