



City of Grand Island

Tuesday, October 23, 2012

Council Session

Item G7

**#2012-310- Approving Renewal of Website Hosting Agreement
with Vision Internet**

Staff Contact: Wendy Meyer-Jerke, Public Information Officer

Council Agenda Memo

From: Wendy Meyer-Jerke, Public Information Officer

Meeting: October 23, 2012

Subject: Website Hosting Agreement with Vision Internet

Item #'s: G-7

Presenter(s): Wendy Meyer-Jerke, Public Information Officer

Background

The current City of Grand Island website, www.grand-island.com, was rebuilt in 2009 by Vision Internet, of Santa Monica, California, and is currently hosted by Vision Internet. Vision Internet was founded in 1995 and specializes in city and county government website builds and redevelopments. The website is currently maintained and updated by over 50 City of Grand Island employees.

Some of the interactive features of the City's website includes: e-notifications of news and calendar items, central document tool, online forms, live video streaming, social media tools, sign-up for activities, and online bill pay.

Discussion

The proposed web hosting agreement has been reviewed and approved by the City's Legal Department. This agreement is a renewal of the previous three year agreement with Vision Internet to provide the web hosting services for the City of Grand Island website, www.grand-island.com.

The agreement would start on November 3, 2012 and remain in effect for a period of one year and continue to be in effect on a year-to-year basis thereafter for up to three years. The agreement will include a \$231.52 monthly hosting fee, with a five percent annual increase. This agreement is similar to the original three year agreement approved by city council in 2009 which included a monthly hosting fee of \$200, with a five percent increase each year thereafter.

Under this agreement additional services including but not limited to website maintenance, custom data updates, and new components will be billed separately at Vision Internet's prevailing hourly rates.

Alternatives

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

1. Move to approve the renewal of the website hosting agreement with Vision Internet.
2. Deny the renewal of the website hosting agreement with Vision Internet.
3. Take no action on the contract renewal.

Recommendation

City Administration recommends city council approve the renewal of the website hosting agreement for a term of three years with Vision Internet which includes a monthly hosting fee of \$231.52, along with a five percent annual increase.

Sample Motion

Motion to approve the website hosting renewal agreement beginning on November 3, 2012 for a term of three years between the City of Grand Island and Vision Internet.

RESOLUTION 2012-310

WHEREAS, the City of Grand Island continually works on maintaining and updating the City of Grand Island's website, www.grand-island.com, with accurate and current information to be utilized by citizens; and

WHEREAS, the City of Grand Island entered into an agreement with Vision Internet of Santa Monica, California, to rebuild the City's website and for hosting services on February 10, 2009; and

WHEREAS, the current agreement is soon to expire, and

WEHREAS, a new agreement has been negotiated with Vision Internet to continue to provide web hosting services for the City of Grand Island website for a term of three years beginning on November 3, 2012; and

WEHREAS, the negotiated agreement will include a \$231.52 monthly hosting fee, with an annual five percent increase; and

WHEREAS, the City Attorney's office has reviewed and approved the proposed agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the three-year contract with Vision Internet to provide web hosting services for the City of Grand Island's website, www.grand-island.com, is hereby approved, and the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, October 23, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
October 19, 2012	☐ City Attorney

**Website Hosting Agreement
Vision Internet Providers Incorporated
Account Terms and Conditions**

This Terms and Conditions, and any addendum signed by the parties and attached hereto, represents the complete agreement and understanding ("Agreement") between Vision Internet Providers Inc. ("Vision Internet"), a California corporation, and CITY OF GRAND ISLAND, the "Client", and supersedes any other written or oral agreement with regard to the Web Hosting Services provided for herein. Any modification of this Agreement is valid only if the modification is in writing and signed by both parties.

Service Provisions

Pursuant to the terms herein, Vision Internet agrees to provide World Wide Web, Web Hosting Services for the Client's Website ("Hosting Services"). Vision Internet will provide Hosting Services to the Client in exchange for payment of fees and compliance with the terms and conditions of this Agreement. Hosting Services are defined as the storage of Client files on a Vision Internet Web server.

Unless otherwise provided in a separate contract or an addendum to this Agreement signed by the parties, the Client is solely and exclusively responsible for creating, supporting, configuring, altering, maintaining and monitoring any and all materials on the Website. Any changes, alterations or modification requested by the Client to their Website may be subject to a fee to be quoted by a Vision Internet representative at the time of the request.

Monthly Hosting

Vision Internet will provide shared website hosting on a Microsoft Windows 2008 Server and shared database hosting on a Microsoft SQL Server 2005 for one (1) unique domain using the Vision Content Management System developed under a previous agreement.

Rate: \$231.52 per month for standard, shared hosting.

Start-up Fee: \$0 based on one year term

Additional services including but not limited to website maintenance, custom data updates, application hosting will be billed at Vision Internet's prevailing hourly rates.

Term

This Agreement will begin on November 3, 2012 and remain in effect for a period of one year (the "Initial Term"). With respect to the Initial Term, unless one party has given written notice to the other party of its intent not to renew this agreement at least thirty (30) days prior to expiration of the Initial Term, this Agreement will continue in effect on a year-to-year basis thereafter for up to three years after the beginning of the Initial Term until one party gives written notice to the other of its intent not to renew this Agreement at least thirty (30) days prior to the expiration of any renewal term. If the Term of this Agreement is extended or renewed in accordance with the foregoing, all of the terms and conditions of this Agreement shall continue, unmodified, in full force and effect, until the end of the last applicable renewal or extension Term, except that all rates, fees, charges, and compensation payable to Vision Internet hereunder shall be increased by five percent (5%) per year, for each annual renewal period extending the term hereof.

Website Usage

The Client agrees to use the Hosting Services in strict accordance with, but not limited to, all local, state,

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and federal laws. The Client hereby agrees that any text, data, graphics, or any other material published by the Client on their Website is free from violation of or infringement upon copyright, trademark, service mark, patent, trade secret, statutory, common law or proprietary or intellectual property rights of others, and is free from obscenity or libel. The display or publication of pornographic material is strictly prohibited.

The Client warrants that it has or has obtained all rights necessary to display all the images, data, information or other items being displayed at the Client's Website. The Client expressly authorizes Vision Internet to display those images, data, information or other items.

If Vision Internet discovers that the Client is displaying content that is in violation of any of the foregoing provisions, Vision Internet reserves the right to discontinue access to the Client's Website without prior notice. However, the Client shall remain liable for all payments due under this agreement as if access had not been interrupted.

The Client is assigned a password to gain access to Hosting Services. The Client agrees to be responsible for keeping the password secure and will immediately notify Vision Internet if the password is lost or stolen. The Client shall be responsible for all use of Hosting Services accessed through the Client's password. The Client's password is not transferable and is subject to any limits established by Vision Internet.

Responsibility for payment

The Client is responsible for all charges for the account.

Vision Internet will invoice in advance via e-mail or U.S. Mail. Payment of amounts invoiced are due upon receipt. Payments by check not received by Vision Internet within 45 days of the billing date will be considered delinquent. A finance charge of 1.5% per month will apply if full payment is not received by due date. Returned checks are subject to a charge of \$25.00.

Accounts that are delinquent by 15 days are put on suspension and Website access is denied. Accounts that are unpaid for 30 days automatically have their files archived. Accounts that are unpaid for 45 days will have their files purged. Vision Internet accounts continue to accrue charges while they are on suspension. Vision Internet reserves the right to charge a reactivation fee of \$200 for any account that is suspended and subsequently reactivated.

The Client agrees to be liable for all costs of collection of any delinquent invoices including, but not limited to, collection agency fees, reasonable attorney's fees, and court costs.

Warranties

Vision Internet does not warrant any connection to, transmission over, nor results of use of, any network connection or facilities provided under this agreement. **Vision Internet MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS OF THIS SERVICE FOR A PARTICULAR PURPOSE WHATSOEVER.** In no event, at any time, shall the aggregate liability of Vision Internet exceed the amount of fees paid by Client to Vision Internet and Vision Internet shall not be responsible for any lost profits or other damages, including direct, indirect, incidental, special, consequential or any other damages, however caused.

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Vision Internet assumes no responsibility for any damages suffered by the Client, including, but not limited to, server down time, loss of data, loss of business, mis-deliveries, delays, non-deliveries, access speed, or service interruptions of any kind.

The Client acknowledges that the information available through the interconnecting networks may not be accurate. Vision Internet has no ability or authority over the material. In addition, Vision Internet has no liability for the quality, accuracy, or validity of the data/information gathered from the Internet. Use of information gathered through the use of Vision Internet services is at the risk of the Client.

The Internet

The Client acknowledges that, when using the Internet, the Client is using a completely different physical network than the Vision Internet communications network and different content than available on Vision Internet. The reliability, availability and performance of resources accessed through the Internet are beyond Vision Internet's control and are not in any way warranted or supported by Vision Internet. The Client acknowledges that safeguards relative to copyright, ownership, decency, reliability and integrity of content may be entirely lacking with respect to the Internet and content accessible through it. Vision Internet makes no warranty that any systems accessed will be free of computer viruses. The Client is responsible for making backup copies of their files. The Client assumes all risk and liability of its use of the Internet.

The Client specifically acknowledges that Vision Internet provides access to other systems not controlled by Vision Internet including, but not limited to, discussion groups, Websites and databases, that may contain pictures and language intended for adult audiences. The Client further understands that Vision Internet is not responsible for any damages that may result from exposure to such material and the Client agrees to hold Vision Internet harmless from any damages that may result.

Domain Name and Secure Digital Certificate

If agreed to under this Agreement, Vision Internet will apply for a custom domain name of the Client's choosing. Vision Internet cannot guarantee the availability of any particular name. Client is responsible for all fees charged by the registrar (i.e. Verisign or Dotster) including setup and renewal fees. Client shall be responsible for all licensing fees, if any, including but not limited to secure digital certificate renewal fees.

Indemnification

Vision Internet will defend, hold harmless and indemnify Client from and against all liability costs and expenses including reasonable attorney fees resulting from claims of injury to person, damages to property, or monetary damages arising out of Vision Internet's negligence or intentional misconduct.

The Client will defend, hold harmless and indemnify Vision Internet, its officers, directors, shareholders, employees and agents from and against all liability costs and expenses including reasonable attorney fees resulting from claims of injury to person, damages to property, or monetary damages arising out of the Client's negligence or intentional misconduct.

Abuse of Services

Any misuse of Vision Internet resources that disrupts Vision Internet's business is considered abuse and will not be tolerated. Examples of misuse include but are not limited to the display of pornography, the sending of chain letters, advertisements, solicitations, or mass mailings to individuals who have not

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agreed to be contacted in this manner ("Spam"). Such conduct will result in immediate termination of Hosting Services.

The Client agrees not to use any process, program or tool via Vision Internet for gaining unauthorized access to the accounts of other Vision Internet clients, customers or account holders or other Vision Internet systems. The Client agrees not to use Hosting Services to make unauthorized attempts to access the systems and networks of others. Any attempt to do so will result in immediate termination of Hosting Services.

The Client agrees not to use Hosting Services in a manner in which system or network resources are denied to other Vision Internet clients, customers or account holders. This includes, but is not limited, to excessive memory usage and programs that consume excessive CPU resources.

If the Client breaches any term of this Agreement, Vision Internet reserves the right to suspend access to the Client's Website without prior notice and may terminate this Agreement. However, if access is only suspended, the Client shall remain liable for all payments due under this agreement as if access had not been interrupted.

The Client may not use the Hosting Services for any unlawful or destructive purpose including, but not limited to, copyright and/or trademark infringement. Client files and web pages stored on Vision Internet systems are expressly forbidden from containing, directing or linking to pornographic material. Content of such files will result in immediate suspension. Vision Internet does not allow use of its services as a door or signpost to another server.

Other

The headings in this Agreement are intended solely for convenience and shall be given no effect in the construction or interpretation of this agreement.

The Client agrees that a failure to exercise or delay in exercising any right, power or privilege on the part of Vision Internet will not operate as a waiver or estoppel thereof.

Neither the course of conduct between parties nor any trade practice shall act to modify the provisions of this Agreement except as expressly stated herein.

This Agreement shall be governed by and construed in accordance with the laws of the United States of America, and the State of California. Any cause of action of the Client with respect to the services provided hereunder must be instituted within one year after the claim or cause of action has arisen or be forever barred. Further, jurisdiction and venue for any cause of action or claim with respect to the services provided hereunder shall be exclusively in the County of Los Angeles.

Except for any injunctive relief or similar remedy, which may be sought in any court of competent jurisdiction subject to the immediately preceding paragraph, any controversy, dispute, claim or counterclaim, whether it involves a disagreement about this Agreement or its meaning, interpretation, or application; the performance of the Agreement; questions of arbitrability as to subject matter of the dispute; whether an agreement to arbitrate exists and, if so, whether it covers the dispute[s] in question; or any other question of arbitrability or form of disagreement or conflict among the parties to the Agreement, shall be submitted to final and binding arbitration at the request of either party, in accordance

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with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place in the County of Los Angeles. The arbitrators shall apply California substantive law and the California Evidence Code to the proceeding. The arbitrators shall have the power to grant all legal and equitable remedies and award compensatory damages provided by California law. The arbitrators shall prepare in writing and provide to the parties an award including factual findings and the reasons on which the decision is based. The arbitrators shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected pursuant to California Code of Civil Procedure sections 1286.2 or 1286.6 for any such error. In the event the parties are unable to agree as to the arbitrator, each shall select an arbitrator who shall, in turn, select the third and sole arbitrator. Each party shall be responsible for one-half of the costs for the arbitrator(s) and arbitration.

Should a dispute, including but not limited to any litigation or arbitration be commenced (including any proceedings in a bankruptcy court) between the parties hereto or their representatives concerning any provision of this Agreement, or the rights and duties of any person or entity hereunder, the party or parties prevailing shall be entitled to attorneys' fees, expenses of counsel and court costs incurred by reason of such action.

With the intent to be legally bound, each of the undersigned hereby covenants and acknowledges that he, she or it (a) has read each of the terms set forth herein, (b) has the authority to execute this Agreement for such person or entity, and (c) expressly consents and agrees that the person or entity upon behalf of which the undersigned is acting shall be bound by all terms and conditions contained herein.

The parties have each been advised to seek independent legal counsel in entering into this Agreement and the transactions described herein. In the event a party chooses not to seek independent legal counsel, that party does so freely and knowingly and waives any such rights to counsel. As a result, the parties do not believe that the presumptions of California Civil Code section 1654 relating to the interpretation of contracts against the drafter of any particular clause should be applied in this case and therefore the parties knowingly and freely waive its effects.

Force Majeure: Any delay in the performance by either Party hereto of its obligations hereunder shall be excused when such delay in performance is due to any cause or event of any nature whatsoever beyond the reasonable control of such Party, including, without limitation, any act of God; any fire, flood, or weather condition; any computer virus, worm, denial of service attack; any earthquake; any act of a public enemy, war, insurrection, riot, explosion or strike; provided, that written notice thereof must be given by such Party to the other Party within ten (10) days after occurrence of such cause or event.

It is understood and agreed that if any interpretation is to be made of this Agreement, the same shall not be construed for or against any of the Parties. If any provision of this Agreement is determined to be invalid, all other provisions shall remain in full force and effect.

This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute one and the same Agreement. This Agreement becomes effective upon Vision Internet's receipt of an executed copy of this agreement and receipt of any sums of money that are provided for herein.

All notices under this Agreement shall be in writing and effective on the date of delivery if delivered by personal service, Federal Express, or facsimile; or effective three (3) days after deposit in first class U.S.

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mail, postage prepaid, to each party as follows:

(a) Client: City of Grand Island

Address: _____

Attn: _____

Fax: _____

(b) Vision Internet:

2530 Wilshire Boulevard, 2nd Floor

Santa Monica, California 90403

Attn: Steven Chapin

Fax: (310) 656-3103

CITY OF GRAND ISLAND

DATE: _____ By: _____

Print Name _____ Print Title _____

VISION INTERNET PROVIDERS, INC.

DATE: 10/12/12 By: _____

STEVEN CHAPIN Title: President

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