



City of Grand Island

Tuesday, March 07, 2006

Special/Council Session

Item G17

**#2006-77 - Approving Interlocal Agreement with Kearney,
Nebraska for Cable Consultant Services**

Staff Contact: Doug Walker

Council Agenda Memo

From: Dale M. Shotkoski, Assistant City Attorney
David Springer, Finance Director

Meeting: March 7, 2006

Subject: Interlocal Agreement with the City of Kearney;
Contract Award for Consulting Services for Cable
Television Franchise Review

Item #'s: G-17 & G-18

Presenter(s): David Springer, Finance Director

Background

The City of Grand Island currently has in place a franchise agreement for cable television services. The franchise is set to expire in 2007. Federal regulations allow for the review and renewal process of a cable television franchise agreement.

The City of Kearney, Nebraska, also has a cable television franchise, which is also set to expire within the near future. Officials from the City of Grand Island and the City of Kearney have discussed and found that it would be beneficial to both communities to jointly agree to contract with a consultant to assist with the cable television franchise review and have proposed an interlocal agreement for the two cities to jointly work on a cable franchise review process.

Proposals were sought from consultants to assist with the cable franchise review process. A Mayor's Advisory Committee was appointed to assist with the cable franchise review process.

Discussion

A Request for Proposal was prepared and proposals were sought. Three proposals were received and all three proposals were researched and found to be from credible consultants. The Mayor's Advisory Committee reviewed the proposals with staff assistance and it is the recommendation of the Mayor's Advisory Committee and staff that Moss & Barnett of Minneapolis, Minnesota, be awarded the contract for services.

The City of Kearney, wishes to enter into an interlocal agreement to assist in the cost share of the consultant services. The consultant services proposed total is \$87,500. Based upon the level of services to be provided, the fees will be billed at the hourly rates set out in the proposal and costs specific to the City of Grand Island will be invoiced to the City of Grand Island and costs specific to the City of Kearney will be invoiced to the City of Kearney. Joint costs will be split between the City of Kearney and the City of Grand Island so that the City of Grand Island will pay for 60% of joint costs and the City of Kearney will pay 40%. The percentages were arrived at by taking the current subscriber numbers for each community and assigning the appropriate percentages to each. Funds are available for the services in the 2005/2006 budget.

Alternatives

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

1. The Council may move to approve the Interlocal Agreement and the consulting services contract.
2. Refer the issue to a committee.
3. Postpone the issue to a future date.
4. Take no action at this time on the issue.

Recommendation

City administration recommends that the council approve the interlocal agreement with the City of Kearney to share the cost of services of the cable franchise review consultant and that council approve the contract with the Moss & Barnett to provide their consultant services in the amount of \$87,500, which amount may be increased or decreased based upon the hourly billing rates for services provided as outlined in the scope of work/fees and costs submitted by Brian Grogan of Moss & Barnett.

Sample Motion

Motion to approve the interlocal agreement with the City of Kearney to share the cost and services of the cable franchise review consultant. Motion to approve the contract of Moss & Barnett for cable consulting services which contains the hourly rate to be charged for said services.

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF GRAND ISLAND, NEBRASKA
AND
THE CITY OF KEARNEY, NEBRASKA

FOR
JOINT SERVICES OF CONSULTANT
FOR CABLE FRANCHISE RENEWAL**

This agreement is made and entered into this _____ day of _____, 2006, by and between the CITY OF GRAND ISLAND, NEBRASKA, and the CITY OF KEARNEY, NEBRASKA, being bodies politic and corporate and political subdivisions of the State of Nebraska, hereinafter referred to as “parties” and individually as a “party”.

WITNESSETH:

WHEREAS, local television cable services are a regulated service provided by local governments to the residents of each of the parties; and,

WHEREAS, the cable service franchisee for each of the parties is currently Charter Communications; and,

WHEREAS, the franchises of each of the respective parties is set to renew in 2007, thus necessitating the need for each party to review and evaluate its cable needs and franchise agreements; and,

WHEREAS, Neb. Rev. Stat., §13-801 provides that any one or more public agency may contract with any one or more public agencies to perform in a governmental service, activity or other undertaking which each public agency entering into the contract is authorized by law to perform; and,

WHEREAS, the cities of Grand Island and Kearney are public agencies as defined in Neb. Rev. Stat., §13-801; and,

WHEREAS, both parties, being municipalities, are authorized and empowered to have cable franchise agreements to provide for cable television services for its citizens; and,

WHEREAS, the parties agree to continue to provide for regulated cable television services for its citizens and to work together to provide for expert consultant services for the technical review of each of the respective parties cable franchises.

NOW, THEREFORE, the parties mutually covenant and agree as follows:

1. **PURPOSE.** The purpose of this agreement shall be to establish a joint agreement with Brian T. Grogan , attorney at law, of the firm of Moss & Barnett, of Minneapolis, Minnesota to share his expertise and knowledge, to assist each of the respective parties in the review and assessment of needs and negotiations for the renewal of each of the parties' respective cable franchises.

2. **EXERCISE OF GOVERNMENTAL FUNCTIONS.** It is understood and agreed by the parties that this agreement provides for the joint use of the services of Brian T. Grogan to assist each in the cable franchise renewal process, but, does not establish a separate legal entity to do so, nor does this agreement establish an employee of any party as an agent of any other party for any purpose whatsoever. This agreement shall provide only for the sharing of the consultant services and costs by the parties towards the renewal of the respective parties' cable television franchises.

3. **TERM.** This agreement shall remain in effect until each of the respective parties' cable television franchises have been renewed, with the renewal of each set to be in the year 2007, however, if negotiations extend, said agreement shall continue until each of the respective parties' franchise renewals have been completed.

4. **TERMINATION.** This agreement may be terminated at any time, with or without cause, upon thirty (30) days prior written notice given to the non-terminating party by the terminating party.

5. **GOVERNMENT.** The activities of this cooperative undertaking shall be governed by the City Administrator for the City of Grand Island and the City Manager for the City of Kearney.

6. **COOPERATIVE POWERS AND AUTHORITY.** The parties agree, subject to the limitations herein set forth, to aid and assist the other, by cooperatively working with Brian T. Grogan and any people working under his direction to assist in the steps necessary for the successful cable television franchise renewals. The anticipated services to be provided by the consultant may include, but are not limited to, a consultant meeting with city staff to develop a work plan and negotiation strategy. The review of each of the city's existing cable franchise documents and analysis of the degree to which Charter Communication complies with the franchise requirements for each shall be performed. The consultant shall also develop and implement a survey to obtain input from all demographic and geographic stake holders within each of their respective cities to this agreement. The consultant shall further complete a community needs assessment. The consultant shall conduct a review of the financial history and financial qualifications of Charter Communications, including a review of the company's financial projections, and a review of the past franchise fees paid by the company to each of the respective cities. The consultant shall consult with city staff to prioritize items for inclusion in a new franchise agreement and assist in drafting new versions of each of the cities' franchise documents as required. Assistance shall be provided by the consultant to counsel each of the cities during informal and/or formal franchise renewal negotiations with Charter Communications. It is anticipated that the total consultant fees for the services to be performed for the cities shall not exceed \$87,500. It is furthermore anticipated that for specialized services

to be performed for one or the other respective parties, that can be clearly identified as being specific to one or the other parties, said fees shall be identified in the billing and paid by such party. All other fees for joint services shall be divided between the parties to this agreement based upon the same ratio as cable customers that are currently subscribing for each of their respective cities. The current number of cable subscribers for the City of Grand Island is 10,000 and the current number of cable subscribers for the City of Kearney is 7,000. Joint costs shall thus be shared by the parties with the City of Grand Island responsible for 60% and the City of Kearney responsible for 40%.

7. **MODIFICATION.** This agreement may be modified by written agreement of the parties.

8. **NO SEPARATE ENTITY.** This agreement provides for the joint use of consultant services by the parties as provided herein, but does not establish a separate legal entity to do so, nor does this agreement establish any employee of either party as an agent or employee of the other party for any purpose whatsoever. This agreement shall provide only for the sharing of consultant services and costs by the parties toward the establishment of cable franchises for each of the said parties.

9. **PROPERTY.** It is not anticipated that any property shall be acquired by either party by entering into this agreement.

10. **FINANCES.** This agreement shall be financed by funds made available by the parties hereto.

11. **PROVISION OF ASSISTANCE.** Pursuant to the Interlocal Cooperation Act, any party to this agreement, and at the parties' sole discretion, may appropriate funds and/or provide assistance, including personnel and services, as may be within the parties legal power to furnish.

12. **ADDITIONAL AGREEMENTS.** It is understood and agreed by the parties that if any party, term or provision of this agreement is held by a court of competent jurisdiction to be illegal or in conflict with any laws of the State of Nebraska, the validity of the remaining portions or provisions shall not be effected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain a particular part, term or provision held to be invalid. It is further agreed that:

- a. It is expressly understood and agreed that the enforcement of the terms and conditions of this agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the named parties hereto, and nothing contained in this agreement shall give or allow any such claim or right of action by any third person not expressly a party to this agreement. It is the intention of the parties that any person other than the named parties receiving services or benefits under this agreement shall be deemed to be an incidental beneficiary only;

- b. This agreement shall become effective for each party when that party by ordinance, motion or resolution adopts and approves this agreement and authorizes the proper official to execute this agreement; and,
- c. Each party agrees not to allow any other person or entity to join in this agreement except with approval by the other party.

EXECUTED this _____ day of _____, 2006.

Attest:

CITY OF GRAND ISLAND, NEBRASKA,
A Municipal Corporation,

RaNae Edwards, City Clerk

By: _____
Jay Vavricek, Mayor

Approved as to Form:

City Attorney

EXECUTED this _____ day of _____, 2006.

Attest:

CITY OF KEARNEY, NEBRASKA,
A Municipal Corporation,

City Clerk

By: _____
Mayor

Approved as to Form:

City Attorney

RESOLUTION 2006-77

WHEREAS, the City of Grand Island has a franchise agreement for cable television services which is set to expire in 2007; and

WHEREAS, federal regulations allow for the review and renewal process of a cable television franchise agreement; and

WHEREAS, the City of Kearney also has a cable franchise agreement which is set to expire in the near future; and

WHEREAS, it is suggested that both communities work together to contract with a consultant to assist with the cable television franchise review process for their respective communities; and

WHEREAS, an Interlocal Agreement has been prepared setting out the cost to each community for such cable franchise review consultant; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Interlocal Agreement between the City of Grand Island and the City of Kearney for joint services of consultant for cable franchise renewal 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, March 7, 2006.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

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| Approved as to Form | ☐ _____ |
| March 2, 2006 | ☐ City Attorney |