

# **AGENDA**

## **SEWARD CITY COUNCIL MEETING**

### **Tuesday, May 5, 2015 @ 7:00 PM**

**NOTICE IS HEREBY GIVEN** that a meeting of the City Council of the City of Seward, Nebraska will be held at 7:00 PM on Tuesday, May 5, 2015, in the Municipal Building Council Chambers, 142 North 7th Street, Seward, Nebraska, which meeting will be open to the public. The Mayor and City Council reserve the right to adjourn into Closed Session as per Section 84-1410 of the Nebraska Revised Statutes. An Agenda for such meeting, kept continually current, is available at the Office of the City Clerk, 537 Main Street, Seward, Nebraska, during normal business hours. Individuals requiring physical or sensory accommodations, who desire to attend or participate, please contact the City Clerk's Office at 402.643.2928 no later than 3:30p.m. on the Friday preceding the Council Meeting.

City financial claims and related invoices will be available for Councilmember review, audit and voluntary signatures at Council Chambers beginning 30 minutes prior to the scheduled meeting time.

## **AGENDA ITEMS**

**CALL TO ORDER** – Mayor Eickmeier

**PLEDGE OF ALLEGIANCE-MOMENT OF SILENCE** - Mayor Eickmeier

**DISCLOSURE OF OPEN MEETINGS ACT & OTHER NOTIFICATIONS** - Mayor Eickmeier

This is an Open Meeting of the Seward Nebraska Governing Body. The City of Seward abides by the Nebraska Open Meetings Act in conducting business. A copy of the Nebraska Open Meetings Act is displayed on the north wall of this meeting room facility as required. Disclosure of meeting recording processes is posted in the Meeting Room. A participant sign-in sheet is available for use by any Citizen addressing the Council. Presenters shall approach the podium, state their name & address for the Clerk's record and are asked to limit remarks to five minutes. All remarks shall be directed to the Mayor who shall determine by whom any appropriate response shall be made. The City of Seward reserves the right to adjust the order of items on this Agenda if necessary and may elect to take action on any of the items listed.

**ROLL CALL** - Mayor Eickmeier

**1. CONSIDERATION OF APPROVAL OF DRAFT MINUTES OF APRIL 21, 2015 -  
Bonnie Otte**

**2. CONSIDERATION OF CONSENT AGENDA**

- A. Claims & Payables Reports
- B. Infrastructure Cost Items Reimbursable Back to the City

**3. CONSIDERATION OF AN INTERLOCAL COOPERATION AGREEMENT WITH  
SEWARD COUNTY FOR NATURAL DISASTER EMERGENCY MUTUAL AID  
ASSISTANCE - Seward County Representative**

- A. Consideration of a Resolution approving the Interlocal Agreement

**4. CONSIDERATION OF LIMITING PARKING TO ONE SIDE ON EASTRIDGE DRIVE**

**NORTH FROM HILLCREST DRIVE- Jonathan Lobmeyer**

- 5. PRESENTATION BY BLUESTEM ENERGY SOLUTIONS ON RENEWAL ENERGY OPTIONS - Adam Herink**
- 6. UPDATE ON EFFORTS OF CITY OF SEWARD AND/OR SEWARD SCHOOL DISTRICT TO ADDRESS WATER RUNOFF/DRAINAGE ISSUES ON STAR ST PROPERTIES THAT BORDERS THE SEWARD ELEMENTARY SCHOOL AND SEWARD MIDDLE SCHOOL - Councilmember Beck**
- 7. CONSIDERATION OF A RESOLUTION AUTHORIZING AN EQUIPMENT LEASE AGREEMENT WITH UNION BANK & TRUST - John Hughes**
- 8. CONSIDERATION OF A CHANGE OF WORK ORDER ADDING THE WETLAND MITIGATION REPORT AND DESIGN SERVICES TO THE KAROL KAY BLVD AGREEMENT - John Hughes**
- 9. CONSIDERATION OF AN ORDINANCE ESTABLISHING A DEADLINE FOR REQUESTING ITEMS BE PLACED ON THE CITY COUNCIL AGENDA - Councilmember Singleton**
- 10. CAPITAL PROJECTS UPDATE - John Hughes**
- 11. FUTURE REQUESTS FOR COUNCIL AGENDA ITEMS OR ADMINISTRATIVE ACTION - Mayor Eickmeier**
- 12. ANNOUNCEMENT OF UPCOMING EVENTS - Mayor Eickmeier**
  - A. May 15 - Annie Adamek Retirement Celebration - 1:00-3:00 p.m. - Civic Center, West Fireplace Room
  - B. July 4th Celebration
- 13. MOTION TO ADJOURN**

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I, Bonnie Otte, the duly appointed, qualified and acting Assistant Administrator/Clerk-Treasurer/Budget & Human Resource Director of the City of Seward, Nebraska, hereby certify:

That the foregoing Notice of Meeting and Agenda for such meeting has been posted in the following places: Seward City Hall, Seward County Courthouse, Seward Memorial Library and CityofSewardNE.com

IN WITNESS WHEREOF, I have hereunto set my hand officially and affixed the seal of the City this 1st day of May, 2015.

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Bonnie Otte  
Assistant Administrator/Clerk-Treasurer/Budget & Human Resource Director

# **City of Seward, NE**

**Tuesday, May 5, 2015**

**Regular Session**

## **Item G1**

### **CONSIDERATION OF APPROVAL OF DRAFT MINUTES OF APRIL 21, 2015 - Bonnie Otte**

**Administrative Report: A motion to approve the minutes as written or with modifications would be in order.**

**Staff Contact:**

April 21, 2015

The Seward City Council met at 7:00 p.m. on Tuesday, April 21, 2015, with Mayor Joshua Eickmeier presiding and Assistant Administrator/Clerk-Treasurer/Budget & Human Resources Director Bonnie Otte recording the proceedings. Upon roll call, the following Councilmembers were present: Charles Lieske, Ellen Beck, Sid Kamprath, Dean Fritz, Barbara Pike, Chris Schmit, Dick Hans. Other officials present: City Attorney Kelly Hoffschneider and Interim City Administrator Jack Vavra. Absent: John Singleton.

Notice of the meeting was given in advance thereof by the method of communicating advance notice of the regular and special meetings of the City Council of the City of Seward, Nebraska, as stated in Ordinance No. 16-11, which was adopted on the 16th day of August, 2011; said method stating that the notice of such meeting, with the agenda thereon, be posted in the following places: City Hall, Seward County Courthouse, Municipal Building, and Seward Public Library. The certificate of posting notice is attached to these minutes. Notice of this meeting was simultaneously given to the Mayor and all members of the City Council and a copy of their acknowledgment of receipt of notice and the agenda are attached to these minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and Council of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public.

#### THE PLEDGE OF ALLEGIANCE

Mayor Eickmeier announced that a copy of the Agenda for this meeting is posted in the front window of the Municipal Building and copies are available on the north wall where a copy of the Open Meetings Act is also posted for public inspection. He also noted that any citizen wishing to address the Council should come to the podium, state their name and address and limit their comments to five minutes. All remarks should be directed to the Mayor/Chairperson, who will then determine who will make any appropriate response. The City of Seward reserves the right to adjust the order of items on this agenda if necessary and may elect to take action on any of the items listed.

#### 1. APPROVAL OF MINUTES OF APRIL 7, 2015 COUNCIL MEETING

Councilmember Pike moved, seconded by Councilmember Fritz, that the minutes of the April 7, 2015 City Council meeting be approved.

Aye: Hans, Lieske, Kamprath, Beck, Schmit, Pike, Fritz

Nay: None

Absent: Singleton. Motion carried.

#### 2. CONSENT AGENDA CONSIDERATION ITEMS

Councilmember Pike moved, seconded by Councilmember Fritz, that the following Consent Agenda items be approved in one single motion:

- A. Claims & Payables Reports
- B. City Clerk-Treasurer Report
- C. City Code Director Report
- D. Police Department Report
- E. Infrastructure Cost Items Reimbursable Back to the City.

CLAIMS LIST  
4-21-15  
COUNCIL MEETING

April 21, 2015

Abbreviations: Bu, Building Upkeep; Eq, Equipment; Ex, Expense; Ma, Maintenance; Mi, Mileage; Misc, Miscellaneous; Re, Repairs; Sa, Salaries, Se, Services; Su, Supplies; Ut, Utilities, CI, Capital Improvements.

|   |            |
|---|------------|
| Payroll                                   | 329,687.44 |
| Seward County Treasurer, Title Exp        | 1,826.53   |
| A-J Roofing & Waterproofing, Re           | 38,287.00  |
| Alliance Technologies, Se                 | 690.87     |
| Black Hills Energy, Se                    | 744.75     |
| Advanced Floor Care, Ma                   | 250.00     |
| Melvin Aldrich, Ex                        | 90.00      |
| Amazon.Com, Su                            | 1,009.75   |
| American Fence Co, Su                     | 9.92       |
| Advantage Companies, Eq, Se               | 835.00     |
| Nickalas Bloebaum, Ex                     | 90.00      |
| Beaver Hardware, Eq                       | 459.90     |
| Kent Brunckhorst, Ex                      | 90.00      |
| Baker & Taylor, Su                        | 1,277.32   |
| Charlotte Baldinger, Mi                   | 25.88      |
| Becky Baker, Mi                           | 29.90      |
| Blue Valley Contracting, Se               | 412.80     |
| Burlington Northern Santa Fe, Ex          | 321.54     |
| Alan Cihal, Ex                            | 90.00      |
| Capital Business Systems, Ma              | 79.00      |
| Seward Area Chamber of Commerce, Training | 140.00     |
| Cash-Wa Distributing, Su                  | 96.70      |
| City of Seward Petty Cash, Su, Ex, Se     | 261.74     |
| Library Petty Cash, Su                    | 94.87      |
| Continental Fire/Alarm/Detect, Bu         | 190.00     |
| Demco, Su                                 | 573.21     |
| Environmental Resource Assoc, Se          | 437.24     |
| D&D Communication, Re                     | 332.00     |
| Commonwealth Electric, Bu                 | 2,458.67   |
| Danko Emergency Equipment, Misc           | 765.95     |
| Nebraska Environmental Quality, Ex        | 150.00     |
| Diamond Vogel Paint Center, Su            | 3,176.40   |
| Clayton Dredge, Ex                        | 90.00      |
| Dutton-Lainson, Bu                        | 87.25      |
| EMC Insurance Co, Ins                     | 165.02     |
| Bryan Duer, Ex                            | 90.00      |
| Merchant Services, Fees                   | 1,132.45   |
| Emergency Medical Products, Su            | 180.00     |
| Steven Ferguson, Ex                       | 90.00      |
| Fastenal Co, Su, RE                       | 249.89     |
| One Call Concepts, Se                     | 87.25      |
| General Fire & Safety Equip, Bu           | 186.20     |
| G & P Development Landfill, Se            | 15.41      |
| Gongol D J & Assoc, Re                    | 307.31     |
| Glass Doctor, Bu                          | 235.00     |
| Gale/Cengage Learning, Su                 | 482.10     |
| Garden Gate Gard Ideas Mag, Su            | 39.00      |
| Ryan Hurst, Ex                            | 90.00      |
| Hemphill Electric, Re                     | 22.58      |
| John Hughes, Ex                           | 90.00      |
| Dan Hansen, Ex                            | 90.00      |
| Jared Hochstein, Ex                       | 90.00      |
| Hydraulic Equipment Service, Re           | 129.92     |
| Husker Electric Supply, Re                | 2,774.81   |
| Interstate All Battery Center, Bu         | 48.60      |

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|---|------------|
| JC Industrial Supplies, Re              | 133.95     |
| International Paper, Ex                 | 125.00     |
| Randy Johner, Ex                        | 90.00      |
| Lincoln Journal-Star, Ex                | 368.75     |
| Jackson Services, Se                    | 246.24     |
| JEO Consulting Group, Se                | 140.00     |
| Lincoln Winwater Works, Re, Ma          | 2,078.75   |
| Kriz-Davis, Re                          | 1,771.77   |
| Latsch's, Su                            | 149.89     |
| Inland Truck Parts & Service, Re        | 156.73     |
| Midwest Auto Parts, Su, Re              | 379.18     |
| Liquivision Technology, Se              | 2,660.00   |
| John Deere Landscapes, Su               | 540.29     |
| Windstream Nebraska, Se                 | 2,425.82   |
| Last Mile Network, Se                   | 90.00      |
| Matheson Tri-Gas, Su                    | 102.92     |
| Capital Business Systems, Ma            | 225.00     |
| Midwest Laboratories, Se                | 782.87     |
| Midwest Automotive, Re                  | 1,862.15   |
| Robert Miers, Ex                        | 90.00      |
| Hemmings Muscle Machines Mag, Su        | 47.95      |
| Menards, Su                             | 41.86      |
| Mid-American Benefits, Ins              | 1,852.70   |
| Verizon Wireless, Se                    | 50.08      |
| Nebraska Pub Power, Ut                  | 481,503.12 |
| Nebraska Municipal Power Pool, Dues     | 2,470.10   |
| Niemann's Port-A-Pot, Bu                | 80.00      |
| Orscheln Farm & Home, Su                | 631.84     |
| Nebraska Roads Dept, Su, Hwy 34 Overlay | 14,363.83  |
| Omaha World Herald, Ex                  | 235.06     |
| O'Reilly Auto Parts, Re                 | 229.81     |
| John O'Kief, Ex                         | 90.00      |
| Donna Otte, Mi, Su                      | 111.09     |
| Cody Pollak, Ex                         | 90.00      |
| Fast Mart, Su                           | 57.26      |
| OCLC, Se                                | 174.61     |
| Douglas Pollak, Ex                      | 90.00      |
| Pac N Save, Su                          | 83.53      |
| Brandon Policky, Ex                     | 90.00      |
| Quill Corp, Su                          | 530.03     |
| Visa                                    | 1,006.05   |
| Menards, Su                             | 201.16     |
| Nebraska Library Assoc, Ex              | 70.00      |
| Oriental Trading, Su                    | 143.71     |
| Wal-Mart, Su                            | 22.56      |
| Cubify, Eq                              | 78.00      |
| Apl Itunes.com, Misc                    | 1.06       |
| Grey House Publishing, Su               | 420.00     |
| Pac N Save, Su                          | 9.56       |
| Cornhusker Council, Ex                  | 60.00      |
| Tim Richtig, Ex                         | 90.00      |
| Sam's Club, Su, Bu                      | 107.82     |
| Sam's Club, Su, Eq                      | 1,307.52   |
| Patricia Sanley, Ex                     | 90.00      |
| Olsson Associates, Se                   | 16,857.87  |
| Troy Schaefer, Ex                       | 90.00      |
| R & H Body Shop                         | 2,218.25   |
| Larry Ruether, Ex                       | 90.00      |
| Seward Lumber & Home Center, Su, Bu, Re | 1,682.06   |

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|--------------------------------------|------------|
| Farmers Coop, Su, Re                 | 2,095.30   |
| Plains Equipment Group, Re, Su       | 403.11     |
| Seward Volunteer Fire, Transfer      | 7,500.00   |
| Seward School District, Misc         | 20.00      |
| Memorial Health, Se                  | 60.00      |
| Gerhold Concrete, Su, Re             | 873.30     |
| Seward County Independent, Ex        | 189.40     |
| Seward County Public Power, Ut       | 1,437.75   |
| Seward County Treasurer, Se          | 14,959.33  |
| Nebraska Equipment, Re               | 1.15       |
| Michelle St. Louis, Ex               | 90.00      |
| Suhr & Lichty, Ins                   | 1,289.00   |
| Radar Road, Ex                       | 140.00     |
| US Postal Service, Su                | 151.00     |
| Michael Smith, Ex                    | 90.00      |
| Von Corporation, Re                  | 159.07     |
| Rose Equipment, Re                   | 2,097.96   |
| Mark Wattier, Ex                     | 90.00      |
| Woods & Aitken, Se                   | 302.50     |
| Wesco Distribution, Su               | 750.61     |
| Marcia Karel, Misc                   | 705.39     |
| Shauna Winn, Mi, Trng                | 153.78     |
| Plunkett's Pest Control, Bu          | 110.24     |
| Anderson Construction, Ci            | 8,938.97   |
| Jack Vavra, Se                       | 7,809.70   |
| Brandon Wood, Ex                     | 60.00      |
| York County Emergency Management, Se | 1.60       |
| Fastenal, Misc                       | 3.12       |
| Joseph Frei, Mi                      | 71.30      |
| G E Capital, Lease                   | 11,312.20  |
| Kathy Nelson, Su                     | 15.00      |
| Nebraska Bounce, Misc                | 160.00     |
| Edward Gonzalez, Ex                  | 90.00      |
| Henry Pankoke, Se                    | 220.00     |
| Gary Wolter, Ex                      | 171.88     |
| Robert Core, Ex                      | 90.00      |
| Total                                | 995,151.58 |

Councilmember Lieske stated he would abstain from discussion or voting on the consent agenda due to a claim payable to his employer, Seward Area Chamber of Commerce.

Aye: Hans, Schmit, Beck, Fritz, Kamprath, Pike

Nay: None

Abstain: Lieske

Absent: Singleton. Motion carried.

3. PUBLIC HEARING - 7:00 p.m. - CONSIDERATION OF 2015 NEBRASKA AFFORDABLE HOUSING PROGRAM (NAHP) DOWNTOWN ASSISTANCE FUNDING

Jennifer Olds, Southeast Nebraska Development District presented the 2015 Nebraska Affordable Housing Program application to be submitted to the Department of Economic Development. Ms. Olds stated that this application is a joint application with the Seward County Housing Authority for a Down Payment Assistance grant with minor rehabilitation. The grant request is for a total of \$343,140. In 2014, the awarded grant assisted 17 families with down payment assistance and totaled one million dollars in mortgages.

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Mayor Eickmeier opened the public hearing. Hearing no comments, Mayor Eickmeier closed the public hearing.

Councilmember Lieske introduced the following resolution:

RESOLUTION NO. 2015-08

Whereas, the City of Seward, Nebraska, is an eligible unit of a general government authorized to file an application under the Housing and Community Development Act of 1974 as Amended for Small Cities Community Development Block Grant (CDBG) Program, and, Cranston-Gonzalez National Affordable Housing Act of 1990 (HOME Program) funds distributed by the Department of Economic Development through the Nebraska Affordable Housing Program (NAHP).

Whereas, the City of Seward, Nebraska has obtained its citizens' comments on community development and housing needs; and has conducted a public hearing upon the proposed application and received favorable public comment respecting the application which is for an amount of \$322,140 in NAHP funds to implement (with the Seward County Housing Corporation, Inc.) a down-payment assistance program for homebuyers in the incorporated communities within Seward County; and,

NOW, THEREFORE, BE IT RESOLVED BY

THE City Council of Seward, Nebraska that the Mayor be authorized and directed to proceed with the formulation of any and all contracts, documents or other memoranda between the City of Seward, Nebraska and the Nebraska Department of Economic Development so as to effect acceptance of the grant application.

Councilmember Pike moved, seconded by Councilmember Kamprath, that the resolution be adopted. Upon vote, the following Councilmembers voted Aye: Lieske, Beck, Kamprath, Fritz, Pike, Schmit, Hans. Nay: None. Absent: Singleton.

The Mayor declared the resolution adopted.

Dated: April 21, 2015

THE CITY OF SEWARD, NEBRASKA

ATTEST:

\_\_\_\_\_  
Joshua Eickmeier, Mayor

\_\_\_\_\_  
Bonnie Otte  
Assistant Administrator/  
Clerk-Treasurer/  
Budget & HR Director

(SEAL)

4. PUBLIC HEARING - 7:00 P.M. - CONSIDERATION OF FINAL PLAT FOR WEB 4<sup>TH</sup> ADDITION

Public Facilities/Capital Improvements & GIS Director John Hughes presented the ordinance representing the final plat for the Web 4<sup>th</sup> Addition. This is a 24-lot addition located between N Columbia Ave. and Star St., and Waverly Road and Maple St. He stated conversations continue with the Seward School District regarding the drainage concerns in this area. He stated the Developer is in negotiations with the adjacent property owners to acquire additional land to extend Star Street to connect to the new Briarwood St and



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easement for a turnaround at the dead end of the new Knotty Pine Lane. He reiterated that the Developer is adding increased storm water management design to slow down times of concentration prior to reaching City facilities. The Subdivision conforms to the City's Comprehensive Plan and Future Land Use map with the single family use type.

Mayor Eickmeier opened the public hearing. Hearing no comments, Mayor Eickmeier closed the public hearing.

Ordinance No. 2015-07 approving the Final Plat for Web 4<sup>th</sup> Addition was adopted.

5. CONSIDERATION OF A VOLUNTARY ANNEXATION OF WEB 4<sup>TH</sup> ADDITION

Mayor Eickmeier read Ordinance No. 2015-05 on the third and final reading. Ordinance No. 2015-05 annexing the Web 4<sup>th</sup> Addition to the City was adopted.

6. CONSIDERATION OF A REQUEST TO UPGRADE THE CROSSWALK SIGNAGE AND RELOCATION OF CROSSWALK ON COLUMBIA AVENUE

Roger Reamer of Seward Memorial Health Care Systems addressed the Council and presented a request to move the crosswalk on Columbia Ave to the middle of the block to serve as a designated cross between the hospital's parking lot to the West of the health care facility and the health care facilities. He stated the request is based on a safety concern related to the number of vehicles and pedestrians crossing to and from the parking lot every day. He added that if the City approves the proposed design/plan, the hospital will be fencing the parking lot along Columbia, leaving a designated opening in line with the crosswalk. Mr. Reamer presented a study over a period of seven days of cars and pedestrians crossing from this parking lot to the medical facilities. He stated 35,000 cars traveled this street and 1,416 persons crossed the street in the same timeframe. Mr. Reamer also asked for upgraded signage indicating a crosswalk is ahead and signage that more specifically designates the crosswalk area. Mr. Reamer stated they would also like a flashing light indicating the upcoming crosswalk; however, he did not know the protocol for getting one installed.

There was some discussion that the flashing lights are typically used for school crossings and the potential for setting precedent for other non-school related requests. Other discussion suggested installing additional lighting along the street or increasing the wattage of the lights in this area, to which Mr. Reamer stated the hospital may be interested in sharing the costs related to installing the flashing lights or additional street lighting. Another suggestion was to remove the short section of sidewalk at the north intersection (current placement of crosswalk), which would force pedestrians to the newly-placed crosswalk area.

Councilmember Fritz moved, seconded by Councilmember Beck, that City staff meet with the Mr. Reamer and hospital staff to develop a proposal for City Council review to address the best location of the crosswalk, signage, lighting, fencing, sidewalk changes and other possible safety enhancements for this area.

Aye: Hans, Lieske, Kamprath, Beck, Schmit, Pike, Fritz  
Nay: None  
Absent: Singleton. Motion carried.

7. CONSIDERATION FOR APPROVAL OF 14<sup>TH</sup> STREET SUBSTATION CONSTRUCTION PROJECT

Garret Klein, Olsson Associates presented the 14<sup>th</sup> Street Substation

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Construction project. The project includes: installation of steel structures, aluminum buswork, and switches; installation of foundations, fencing, ground grid, rock surfacing, and two drive entrances; installation of four 15 kV circuit reclosers, one pad-mounted 35 kV switch cabinet, one pad-mounted metering cabinet, one vault and one junction cabinet; installation of underground circuits including two 35 kV sources and four 12 kV feeders; pole line modifications as needed for source and feeder exit risers; and removals and other miscellaneous work. He stated the estimated cost is \$555,000 and will take approximately 20-26 weeks to complete.

Councilmember Lieske moved, seconded by Councilmember Hans, that the bid documents for the 14<sup>th</sup> Street Substation construction project be approved.

Aye: Hans, Schmit, Kamprath, Lieske, Beck, Pike, Fritz

Nay: None

Absent: Singleton. Motion carried.

Councilmember Beck moved, seconded by Councilmember Kamprath, that the proposed advertisement date beginning April 23, 2015 for the 14<sup>th</sup> Street Substation Construction project be approved.

Aye: Hans, Schmit, Kamprath, Lieske, Beck, Pike, Fritz

Nay: None

Absent: Singleton. Motion carried.

Councilmember Fritz moved, seconded by Councilmember Beck, that the proposed bid open date of May 19, 2015 at 2:00 p.m. at the City of Seward City Hall, 537 Main Street, Seward, NE for the 14<sup>th</sup> Street Substation Construction project be approved.

Aye: Hans, Schmit, Kamprath, Lieske, Beck, Pike, Fritz

Nay: None

Absent: Singleton. Motion carried.

Councilmember Schmit moved, seconded by Councilmember Pike, that the proposed publication of advertisement dates of April 29, May 6, and May 13, 2015 in the Seward Independent for the 14<sup>th</sup> Street Substation Construction project be approved.

Aye: Hans, Schmit, Kamprath, Lieske, Beck, Pike, Fritz

Nay: None

Absent: Singleton. Motion carried.

8. UPDATE ON GREAT PLAINS COMMUNICATIONS FIBER OPTIC RING INSTALLATION IN THE DOWNTOWN AREA AND DISCUSSION OF EXTENDING FIBER OPTIC INTO THE COMMUNITY

Casey Garrigan and other representatives of Great Plains Communications presented information on the current downtown fiber ring installation project and history on the company. They stated they are currently focusing on commercial installations with the downtown area being the priority. If there were businesses outside of the initial fiber ring interested in their service, Great Plains would have to look at the return on investment to determine if they could service the businesses. They made the investment in the community and look forward to providing the fiber optic service. Construction would begin within the next two weeks.

Trevor Pierce, 1688 Karol Kay Blvd, addressed the Council stating he works from his home as a web developer and relies on high speed internet. He encouraged the City to consider the potential for the community in expanding the fiber optic option of internet service into the residential areas of the

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community, as he sees technology as important a community service as water, electricity, gas and sewer services.

No action was required or taken on this item.

9. CONSIDERATION OF AWARD OF VENDOR FOR MUNICIPAL CODE CODIFICATION PROJECT

Assistant Administrator/Clerk-Treasurer/Budget & Human Resources Director Bonnie Otte and Public Facilities/Capital Improvements & GIS Director John Hughes presented information on the proposals received for updating the City's municipal code.

They stated four proposals were received. Telephone interviews were conducted and they participated in on-line demonstrations. They stated all four companies provided similar services of updating the municipal code. They recommended awarding a contract to General Code for the base cost of \$8,500, with the option of adding the Zoning Code for an additional \$4,352 and an internet accessible version for \$1,195 (first year free).

Moved by Councilmember Kamprath, seconded by Councilmember Hans, that a contract with General Code for updating the Municipal Code, including the internet service and option of adding the Zoning Code at a later date, be approved and the Mayor be authorized to execute all related documents.

Aye: Hans, Schmit, Kamprath, Lieske, Beck, Pike, Fritz

Nay: None

Absent: Singleton. Motion carried.

10. CONSIDERATION OF AN ORDINANCE ESTABLISHING A DEADLINE FOR REQUESTING ITEMS BE PLACED ON THE CITY COUNCIL AGENDA

Mayor Eickmeier asked that this agenda item be tabled to the next meeting in order for Councilmember Singleton to present this requested agenda item.

Councilmember Schmit moved, seconded by Councilmember Hans, that an ordinance establishing a deadline for requesting items be placed on the City Council agenda be tabled to a future meeting.

Aye: Hans, Schmit, Kamprath, Lieske, Beck, Pike, Fritz

Nay: None

Absent: Singleton. Motion carried.

Councilmember Pike moved, seconded by Councilmember Fritz, that the minutes of the proceedings of the Mayor and Council of the City of Seward, Seward County, Nebraska in the matter of passing and approving Ordinance No. 2015-05, "AN ORDINANCE DECLARING THE ANNEXATION OF CERTAIN CONTIGUOUS AND ADJACENT TRACTS OF LAND, URBAN AND SUBURBAN IN CHARACTER, MORE SPECIFICALLY THE LAND INCLUDED IN WEB 4<sup>TH</sup> ADDITION TO THE CITY OF SEWARD, TO THE CORPORATE LIMITS OF THE CITY OF SEWARD, NEBRASKA, AND EXTENDING THE LIMITS THEREOF ACCORDINGLY; TO DESCRIBE THE REAL ESTATE TO BE ANNEXED AND ITS BOUNDARIES; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; TO PROVIDE FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT"; Ordinance No. 2015-07, "AN ORDINANCE TO APPROVE THE PLAT ENTITLED "WEB 4<sup>TH</sup> ADDITION TO THE CITY OF SEWARD, SEWARD COUNTY, NEBRASKA," AS HEREINAFTER SET FORTH, LOCATED WEST OF COLUMBIA AVENUE, SOUTH OF WAVERLY ROAD, NORTH OF MAPLE STREET; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; TO PROVIDE FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT" be preserved and kept in a separate and distinct volume known as "Ordinance Record, City of Seward, Nebraska" and that said separate and distinct volume be incorporated in and made a part of these proceedings the same as though it were spread at large herein.

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Aye: Hans, Schmit, Kamprath, Lieske, Beck, Pike, Fritz  
Nay: None  
Absent: Singleton. Motion carried.

\*\*\* Mayor Eickmeier rearranged the order of the agenda at this time.

At 8:16 p.m., Councilmember Kamprath left the meeting.

12. CAPITAL PROJECTS REPORT

Public Facilities/Capital Improvement & GIS Director John Hughes provided an update and Capital Projects Report dated 4/21/15.

Councilmember Fritz moved, seconded by Councilmember Pike, that the Capital Projects Report dated April 21, 2015 be accepted.

Aye: Hans, Lieske, Beck, Schmit, Fritz, Pike  
Nay: None.  
Absent: Singleton, Kamprath. Motion carried.

At 8:20 p.m., Councilmember Kamprath returned to the meeting.

13. FUTURE REQUESTS FOR COUNCIL AGENDA ITEMS OR ADMINISTRATIVE ACTION

None

14. ANNOUNCEMENT OF UPCOMING EVENTS

- A. Arbor Day Celebration - Independence Landing-April 23, 2015 @ 1:00 p.m.
- B. July 4<sup>th</sup> Celebration
- C. Councilmember Lieske stated the Chamber Marketing Workshop is rescheduled for May 7, 2015 @ 6:00 p.m. at the Civic Center.

11. COUNCIL TO RECEIVE UPDATE ON PENDING AND THREATENED LEGAL PROCEEDINGS

Councilmember Beck moved, seconded by Councilmember Fritz, that the City Council enter into closed session with the City Attorney and Mayor Eickmeier, for the protection of the public interest and pursuant to Neb. Rev. Stat. Section 84-1410(1) to discuss pending litigation or litigation which is imminent as evidenced by communication of a claim or threat of litigation against the City of Seward for a period of 30 minutes.

Aye: Schmit, Hans, Lieske, Beck, Kamprath, Fritz, Pike  
Nay: None.  
Absent: Singleton. Motion carried.

Mayor Eickmeier restated the purpose of the closed session was for the protection of the public interest and pursuant to Neb. Rev. Stat. Section 84-1410(1) to discuss pending litigation or litigation which is imminent as evidenced by communication of a claim or threat of litigation against the City of Seward, with the closed session lasting for a period of 30 minutes and will include the City Council, City Attorney and Mayor Eickmeier.

The closed session began at 8:21p.m. At 8:51p.m., Councilmember Pike moved, seconded by Councilmember Fritz, that the City Council return to open session, and stated that no action was taken while in closed session.

Aye: Schmit, Hans, Lieske, Beck, Kamprath, Fritz, Pike

April 21, 2015

Nay: None.

Absent: Singleton. Motion carried.

15. MOTION TO ADJOURN

Councilmember Schmit moved, seconded by Councilmember Lieske, that the April 21, 2015 City Council Meeting be adjourned.

Aye: Hans, Schmit, Pike, Beck, Fritz, Kamprath, Lieske

Nay: None

Absent: Singleton. Motion carried.

THE CITY OF SEWARD, NEBRASKA

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Joshua Eickmeier, Mayor

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Bonnie Otte  
Assistant Administrator  
Clerk-Treasurer  
Budget & Human Resources Director

# **City of Seward, NE**

**Tuesday, May 5, 2015**

**Regular Session**

## **Item G2**

### **CONSIDERATION OF CONSENT AGENDA**

*Claims & Payables Reports*

*Infrastructure Cost Items Reimbursable Back to the City*

**Administrative Report:** After review of listed Consent Agenda items and supporting documents/reports, one motion to approve the consent agenda would be in order. Council may choose to pull any item from the Consent Agenda and consider/act on it separately.

**Staff Contact:**

CLAIMS LIST  
5-5-15  
COUNCIL MEETING

Abbreviations: Bu, Building Upkeep; Eq, Equipment; Ex, Expense; Ma, Maintenance; Mi, Mileage; Misc, Miscellaneous; Re, Repairs; Sa, Salaries, Se, Services; Su, Supplies; Ut, Utilities, CI, Capital Improvements.

|  |            |
|--|------------|
| Payroll                                      | 126,662.37 |
| Burlington Northern Santa Fe Railway, Permit | 3,960.00   |
| Alliance Technologies, Se                    | 9,186.70   |
| American Fence Co, Su                        | 23.60      |
| Nickalas Bloebaum, Refnd                     | 30.00      |
| American Water Works, Ex                     | 74.00      |
| Carroll Dist, Su                             | 566.28     |
| Calibre Press, Trng                          | 249.00     |
| Bolte Oil & Supply, Su                       | 1,138.37   |
| Time Warner Cable, Se                        | 79.38      |
| Chase Card, Su                               | 2,013.99   |
| Amazon, Su                                   | 39.39      |
| Wal-Mart, Su                                 | 485.59     |
| Linas Restaurant, Meals                      | 28.68      |
| Red Lobster, Meals                           | 49.76      |
| Cheddars, Meals                              | 25.00      |
| Sq Retail Nebraska, Su                       | 142.47     |
| Ptouchdirect, Su                             | 47.64      |
| Paypal, Re                                   | 520.00     |
| UNL Agron & Hort, Trng                       | 60.00      |
| Nebraska Arborists Assn, Ex                  | 65.00      |
| Kearney Parks & Rec, Trng                    | 160.00     |
| GoDaddy, Se                                  | 216.31     |
| New China Express, Meal                      | 9.71       |
| Jimmy Johns, Meal                            | 10.00      |
| Whiskey Creek, Meal                          | 17.36      |
| Super 8 Motel, Trng                          | 137.08     |
| Capital Business Systems, Re                 | 799.00     |
| Constellation NewEnergy, Ut                  | 1,261.58   |
| Library Petty Cash                           | 160.86     |
| Danko Emergency Equipment, Su                | 122.71     |
| Dutton-Lainson, Su                           | 8,926.79   |
| Endress & Hauser, Ci                         | 5,676.09   |
| Electric Fund, Op                            | 33,497.40  |
| Buildings & Grounds, Op                      | 2,000.00   |
| Emergency Medical Products, Su               | 494.65     |
| Fastenal Co, Re, Su                          | 177.60     |
| Hach Company, Se                             | 522.31     |
| Hydraulic Equipment Service, Re              | 1,437.12   |
| Husker Electric Supply, Re, Ci               | 1,943.67   |
| Jackson Services, Se                         | 123.12     |
| Lincoln Winwater Works, Re, Su               | 972.76     |
| Kriha Fluid Power, Re                        | 5.11       |
| Kriz-Davis, Re                               | 3,988.53   |
| Windstream Nebraska, Se                      | 48.77      |
| Matheson Tri-Gas, Su                         | 15.45      |
| Capital Business Systems, Ma                 | 306.81     |
| Midwest Service & Sales, Su                  | 2,962.50   |
| Mid-American Benefits, Ins                   | 1,462.47   |

|                                     |            |
|-------------------------------------|------------|
| Nebraska Planning & Zoning, Conf    | 360.00     |
| Supplyworks, Su                     | 1,453.60   |
| Orscheln Farm & Home, Su, Bu        | 52.24      |
| O'Reilly Auto Parts, Re             | 127.48     |
| Norhtern Safety Co, Su              | 273.11     |
| Nebraska Wastewater Operators, Ex   | 30.00      |
| Pitney Bowes, Se                    | 105.00     |
| Campbell Cleaning & Restoration, Se | 19.98      |
| Brandon Policky, Refnd              | 30.00      |
| Quill Corp, Su                      | 229.41     |
| Memorial Health-Meals, Su           | 2,884.62   |
| Rumery Lawn & Landscape, Gu         | 210.00     |
| Sam's Club, Bu, Su                  | 349.28     |
| Sam's Club, Su, Bu                  | 244.99     |
| Schmader Electric, Ma               | 480.00     |
| Nebraska Public Health, Se          | 588.00     |
| Farmers Coop, Su, Re                | 13,279.86  |
| Hireright Solutions, Se             | 68.30      |
| Seward Electronics, Su              | 39.00      |
| Gerhold Concrete, Su, Ma            | 5,847.81   |
| Allison Sommerfeld, Meals           | 241.65     |
| Nebraska Workforce Development, Se  | 54.00      |
| St P J Supply, Su                   | 16.50      |
| Salt Creek Software, Ex             | 1,358.29   |
| Sports Express, Misc                | 200.00     |
| Nebraska Equipment, Eq              | 12,500.00  |
| Ultramax, Su                        | 470.00     |
| US Cellular, Se                     | 183.68     |
| Wesco Distribution, Ci, Se          | 12,347.80  |
| Andrea Baack, Refnd                 | 30.00      |
| Chasee/Lacey Koch, Refnd            | 30.00      |
| Jerod/Sara Olson, Refnd             | 30.00      |
| Daniel Hicks, Su                    | 310.45     |
| Chris/Lori Read, Refnd              | 30.00      |
| Doug Theobald, Renfd                | 30.00      |
| Todd Lance, Refnd                   | 35.00      |
| Sam Schluckebier, Refnd             | 30.00      |
| Jodi Hibbert, Refnd                 | 35.00      |
| Joe Halhoff, Refnd                  | 30.00      |
| Charles Cook, Refnd                 | 30.00      |
| Jacob/Stacey Parr, Refnd            | 30.00      |
| Rich Eber, Refnd                    | 30.00      |
| Josh Fields, Refnd                  | 30.00      |
| Adam/Kimberly Hanson, Refnd         | 8.85       |
| Taylor Baumeister, Trng             | 100.00     |
| Union Equipment Finance, Eq         | 31,074.44  |
| Darrin Goracke, Refnd               | 30.00      |
| Vance Winter, Refnd                 | 30.00      |
| Tabitha Phillips, Refnd             | 30.00      |
| Michael Langner, Refnd              | 30.00      |
| Eugene Hasbrouck, Refnd             | 30.00      |
| Trent/April Bartels, Refnd          | 30.00      |
| Kyle Royuk, Refnd                   | 30.00      |
| Michael Moore, Refnd                | 35.00      |
| Tuning Guy, Se                      | 100.00     |
| Greg/Mindy Miller, Refnd            | 30.00      |
| Total                               | 297,202.33 |



# **City of Seward, NE**

**Tuesday, May 5, 2015**

**Regular Session**

## **Item G3**

### **CONSIDERATION OF AN INTERLOCAL COOPERATION AGREEMENT WITH SEWARD COUNTY FOR NATURAL DISASTER EMERGENCY MUTUAL AID ASSISTANCE - Seward County Representative**

#### ***Consideration of a Resolution approving the Interlocal Agreement***

**Administrative Report:** Seward County is requesting the City consider an interlocal agreement pertaining to a natural disaster emergency in Seward County where the County would provide services that will accord with the needs of the City.

**Following discussion, a motion to approve the resolution and authorizing the Mayor to execute said agreement would be in order.**

**Staff Contact:**

# Seward County Commissioners

P.O. Box 190  
Seward, NE 68434  
402-643-2883  
402-643-2228 Fax  
Email: [sschweitzer@co.seward.ne.us](mailto:sschweitzer@co.seward.ne.us)

April 28, 2015

City of Seward  
PO Box 247  
Seward, NE 68434

RE: Interlocal Cooperation Agreement pertaining to a Natural Disaster Emergency

Ladies and Gentleman:

Enclosed please find 2 duplicate originals of a proposed Interlocal Cooperation Agreement between Seward County and the City of Seward. A signing resolution is also enclosed.

This Interlocal Cooperation Agreement pertains to a Natural Disaster Emergency in Seward County, Nebraska, where Seward County would provide services that will accord with the needs of local communities.

Please have your Board review and/or approve the Interlocal Cooperation Agreement along with the signing resolution. If the Board chooses to approve the agreement, please return both duplicate originals for final approval and processing as well as a copy of the signing resolution.

Sincerely,



Roger Glawatz  
Seward County Board Chair

**received**  
4.30.15 BJS

## **SEWARD County/Municipality Maintenance Agreement**

This agreement pertains to Natural Disaster Emergency to a municipality where it may be beneficial for one entity to help clean up debris even though it may be the municipality's streets.

### **Interlocal Cooperation Agreement Between City/Village of \_\_\_\_\_ and Seward County**

WHEREAS, this Interlocal Cooperation Agreement is entered into by and between the City/Village of \_\_\_\_\_, NE and Seward County

WHEREAS, both Parties recognize the vulnerability of the people and communities located within the Parties' territorial limits to damage, injury, and loss of life and property resulting from disasters and/or civil emergencies and recognize that disasters and/or civil emergencies may present equipment and manpower requirements beyond the capacity of each individual Party.

WHEREAS, the Parties recognize that, in the past, mutual aid has been provided between or among the Parties in the form of personnel, supplies, and equipment during disasters and/or civil emergencies as well as during cleanup periods.

WHEREAS, the governing officials of the Parties desire to secure for each Party the benefits of the mutual aid and protection of life and property in the event of a disaster and/or civil emergency.

WHEREAS, the Parties recognize that a formal agreement for mutual aid would allow for better coordination of effort, would provide that adequate equipment and manpower is available, and would help ensure that mutual aid is accomplished in the minimum time possible, and thus desire to enter into an agreement to provide mutual aid.

NOW, THEREFORE, the Parties agree as follows:

1. **DEFINITIONS.** For the purposes of this Agreement, the terms listed below will have the following meanings:
  - (a) "Civil emergency" means an unforeseen combination of circumstances or the resulting consequences thereof within the geographic limits of a given jurisdiction that calls for immediate action or for which there is an urgent need for assistance or relief to protect the general citizenry.
  - (b) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, energy emergency, act of terrorism, and other public calamity requiring emergency action.
  - (c) "FEMA" means the Federal Emergency Management Agency or its successor agency.

- (d) "Local government" means a county, municipality, special district, or any corporate/political entity organized under state law of Nebraska.
- (e) "Mutual Aid" includes, but is not limited to, provision of resources such as equipment, supplies, and personnel.
- (f) "Political subdivision" means county or incorporated city.
2. Party's Emergency Management Plan. Each Party shall prepare and keep current an emergency management plan for its jurisdiction to provide for emergency/disaster. Mitigation, preparedness, response and recovery. The emergency plan shall incorporate the use of available resources, including personnel, equipment and supplies, necessary to provide mutual aid. The emergency action plan shall be submitted to the Emergency Management Director.
3. Emergency Management Director. Each Emergency Management Director shall take all steps necessary for the implementation of this Agreement. Each Emergency Management Director may designate an Emergency Management Coordinator who shall serve as an assistant to the presiding officer of the political subdivision for emergency management purposes.
4. Activation of Agreement. This Agreement shall be activated in the event of:  
(a) a declaration of a local state of disaster; (b) the finding of a state of civil emergency by the presiding officer of the governing body; or (c) a request by the governing body made in anticipation of a local state of disaster. The declaration or state of civil emergency is still active until the services of the Party rendering aid are no longer required or when the officer in charge of the forces of the Party rendering determines, in his sole discretion, that further assistance should not be provided.
5. Request for Mutual Aid.
- (A) Local Disaster. In anticipation the declaration of a local state of disaster, the Emergency Management Director seeking mutual aid from the other shall request such aid from the counterpart. Such requests shall be made in writing. If, due to urgency, a request must be made orally, said oral request will be documented in writing as soon as practicable.
- (B) Civil Emergency. If the presiding officer of the governing body is of the opinion that a state of civil emergency exists, or is imminent, that requires the assistance from the other, the presiding officer requesting mutual aid shall make the request directly to the Entity from which assistance is sought. Before the emergency assistance is provided, the governing body whose assistance has been requested shall authorize such assistance by resolution or other official action.
6. Conditions. Any furnishing of resources under this Agreements is subject to the following conditions:

(A) A request for aid shall specify amount and type of resources being requested, the location to which the resources are to be dispatched, and the specific time by which such resources are needed.

7. Validity and Enforceability. If any current or future legal limitations or requirements from a federal or State governmental entity with jurisdiction over the local entity affect the validity or enforceability of a provision of this Agreement, then this agreement shall be deemed amended to the minimum extent necessary to bring this Agreement into conformity with requirements or limitations, and so modified, this Agreement shall continue in full force and effect.
8. State or Federal Reimbursement: The Government Entities acknowledge that the requesting Government Entities will seek reimbursement of any costs incurred under this Agreement from any applicable state or federal agency and each Government Entity agrees to cooperate fully with the other Government Entity in taking all actions and executing all documents necessary to secure reimbursement.

WHEREAS, both of the parties hereto are political subdivisions of the State of Nebraska, and

WHEREAS, the Interlocal Cooperative Act, Neb. Rev. Stat. §13-801 to §13-827, permits local governmental units to make the most efficient use of their powers to enable them to cooperate with other governmental units in an effort to provide services and facilities in a manner that will accord with the needs of their local communities; and

WHEREAS, it would be in the best interest of the City/Village of \_\_\_\_\_ and Seward County, that \_\_\_\_\_ streets, see attached map, be cleared of debris between the two entities in such a manner as to facilitate such street debris removal, and

WHEREAS, it would be beneficial to the City/Village for the County to remove debris from said portion of city/village roads during the county's normal debris removal practices, and

WHEREAS, any debris removal work performed by the County pertaining to the Natural Disaster Emergency will be paid for by the City/Village on said City/Village portion of streets, and

WHEREAS, it is agreed that any and all other activities on streets within the \_\_\_\_\_ City/Village limits, including but not limited to road signing, debris removal, will be paid for by the City/Village on said City/Village portion of streets; and

WHEREAS, City/Village of \_\_\_\_\_ agrees to indemnify and hold harmless, protect and defend Seward County and its elected and appointed officials, employees, agents, and representatives against any and all claims, demands, suits, actions, payments and judgments, including any and all costs and expenses connected therewith, legal cost or otherwise, for any damages which may be asserted, claimed, or recovered against or from Seward County or its insurers, because of personal injury, including bodily injury or death, or on account of property damage, including loss of use thereof, sustained by any person or persons which arises out of, is in any way connected with, or results from any and all work or activity associated with the services provided under this agreement unless such damages are the direct and sole result of Seward County's negligence, and

WHEREAS, either entity may withdraw from said agreement upon written notification from either party.

NOW THEREFORE BE IT RESOLVED that the City/Village of \_\_\_\_\_ and Seward County will be responsible for the street debris removal as so stipulated above.

Witness our hand and seal as set forth in duplicate original agreements.

**CITY/VILLAGE OF \_\_\_\_\_, NEBRASKA**  
**City/Village Council**

Resolution Number \_\_\_\_\_ Dated \_\_\_\_\_

\_\_\_\_\_ moved and \_\_\_\_\_ seconded the motion to approve and adopt said interlocal agreement and resolution.

Motion: \_\_\_\_\_  
\_\_\_\_\_  
Mayor, City/Village of \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City/Village of \_\_\_\_\_ Clerk

-----  
**SEWARD COUNTY, NEBRASKA**  
**Seward County Commissioners**

Resolution Number \_\_\_\_\_ Dated \_\_\_\_\_

\_\_\_\_\_ moved and \_\_\_\_\_ seconded the motion to approve and adopt said interlocal agreement and resolution.

Motion: \_\_\_\_\_  
\_\_\_\_\_  
Chairman, Seward County  
Board of Commissioners/Supervisors

ATTEST: \_\_\_\_\_  
Seward County Clerk

RESOLUTION NO.

WHEREAS, both of the parties hereto are political subdivisions of the State of Nebraska, and

WHEREAS, the Interlocal Cooperative Act, Neb. Rev. Stat. §13-801 to §13-827, permits local governmental units to make the most efficient use of their powers to enable them to cooperate with other governmental units in an effort to provide services and facilities in a manner that will accord with the needs of their local communities; and

WHEREAS, the Parties desire to enter into an Interlocal Cooperation Agreement to secure for each party the benefit of mutual aid and protection of life in the event of a disaster and/or civil emergency.

WHEREAS, the Interlocal Cooperation Agreement pertains to a Natural Disaster Emergency in Seward County, Nebraska where mutual aid for purposes of cleanup between the County and City of Seward is beneficial to both parties.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SEWARD, NEBRASKA THAT the aforementioned agreement be approved.

The Mayor declared the resolution adopted.

Dated: May 5, 2015

THE CITY OF SEWARD, NEBRASKA

ATTEST:

\_\_\_\_\_  
Joshua Eickmeier  
Mayor

\_\_\_\_\_  
Bonnie Otte  
Assistant Administrator/  
Clerk-Treasurer  
Budget & HR Director

(SEAL)

# **City of Seward, NE**

**Tuesday, May 5, 2015**

**Regular Session**

## **Item G4**

### **CONSIDERATION OF LIMITING PARKING TO ONE SIDE ON EASTRIDGE DRIVE NORTH FROM HILLCREST DRIVE- Jonathan Lobmeyer**

**Administrative Report:** The City received a request from Jonathan Lobmeyer to limit parking on Eastridge Dr North of Hillcrest Drive for 100-300 feet on one side of the street to allow for traffic turning onto and off of Eastridge. Vehicles parked too close to the corner of Hillcrest and Eastridge creates a one-way street in that area. It is difficult to see oncoming traffic when trying to turn either on to or off of Eastridge. When cars are parked on both sides of the street, it leaves no room to maneuver to allow vehicles to pass.

**Following discussion, direction from the City Council would be in order.**

**Staff Contact:**





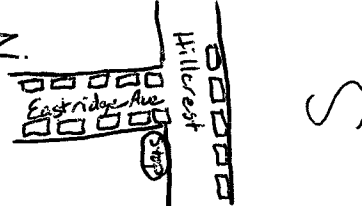
P.O. Box 38 • 537 Main Street  
Seward, Nebraska 68434  
Phone 402-643-2928  
Fax 402-643-2087

PUBLIC REQUEST FOR COUNCIL AGENDA ITEM OR ADMINISTRATIVE ACTION

DATE: 4-16-15  
NAME: Jonathan Lobmeyer  
ADDRESS: 1668 Eastridge Ave Seward NE 68434  
EMAIL ADDRESS: jonathan.lobmeyer@gmail.com TELEPHONE NO. 402-643-9867

EXPLANATION OF REQUEST:

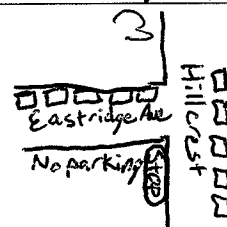
See attached. Z.  
(Diagram)



ACTION REQUESTED:

See attached

(Example  
Diagram)



Will this agenda item require the expenditure of funds? Yes ☒ No ☐  
Unknown

Jonathan Lobmeyer  
(Signature of requester)

Jonathan Lobmeyer  
(Print Name)

Council meetings are held on the 1<sup>st</sup> & 3<sup>rd</sup> Tuesdays of every month. All requests for the Agenda must be submitted by noon on the Wednesday preceding the Council meeting, any item received after this time would have to be of an emergency nature. Once a request is received, Administration will review it and determine whether or not it requires Mayor/Council action, or whether it is an item that needs to be handled by staff.

Received by: Bonnie Otte Date: 4/21/2015  
(City employee)



Jonathan Lobmeyer &lt;jonathan.lobmeyer@gmail.com&gt;

## Corner of Hillcrest and Eastridge Ave in Seward

4 messages

Jonathan Lobmeyer &lt;jonathan.lobmeyer@gmail.com&gt;

Thu, Mar 5, 2015 at 10:32 AM

To: Josh.Eickmeier@cityofsewardne.com, brian.friedrich@cune.edu

Mr. Mayor and Mr. President,

Good morning. I would like to bring to your attention a problem I've noticed in the community and hope to have addressed for the good of all.

I do enjoy the new athletic building Concordia has constructed, as an alumni of the University, I know the added value it gives my Alma Mater in recruiting and the benefit not only to the University, but to the community, as it graciously hosts many activities and events.

I have noticed and experienced difficulty during some of these events, which is the reason for my letter today. When activities occur on the campus, parking overflows to nearby streets. I cannot speak for other streets in the neighborhood, but I do know that the corner of Hillcrest and Eastridge Ave becomes a one way in that area. People park on both sides of the street and too close to the corner making it difficult to see oncoming traffic when trying to turn either on to or off of Eastridge. I have almost had an accident with two different vehicles on two separate occasions due to this situation. When vehicles are parked in this manner it also leaves little to no room to maneuver in order to allow vehicles to pass each other. I am concerned not only for my family's safety, but of all people who are affected by this situation.

I would like to propose that one side of the street of Eastridge be designated a no parking zone just as it is on one side of Hillcrest. It would not need to run the whole block, but a good 100-300 feet prior to the intersection should be sufficient. This would allow some parking near the complex and yet allow traffic to flow smoothly and safely for all.

If you have better solutions I welcome them. Thank you for your attention and both of your common traits of leadership and service for our community. If this is not the correct route to solve this issue, I apologize, but ask that you would direct me as to how it can be effectively addressed. Thank you for your time.

In the community spirit,

Jonathan Lobmeyer

Friedrich, Brian &lt;Brian.Friedrich@cune.edu&gt;

Sat, Mar 7, 2015 at 1:25 PM

To: Jonathan Lobmeyer <jonathan.lobmeyer@gmail.com>, "Josh.Eickmeier@cityofsewardne.com"  
<Josh.Eickmeier@cityofsewardne.com>

Jonathan,

Thanks for the note and for the suggestion. Your idea seems reasonable and prudent. Since the space you mention is not part of our campus, I believe the Mayor and/or city council would have to make the decision to eliminate parking on Eastridge.

Thank you for your partnership!

# **City of Seward, NE**

**Tuesday, May 5, 2015**

**Regular Session**

## **Item G5**

### **PRESENTATION BY BLUESTEM ENERGY SOLUTIONS ON RENEWAL ENERGY OPTIONS - Adam Herink**

**Administrative Report:** Bluestem would like to discuss with the City of Seward their renewable energy options and the benefits. Bluestem Energy Solutions is a Nebraska Based Renewable Energy Development company. One of the focuses is renewable projects for rural coops and municipalities.

**Following the presentation, Council direction would be in order.**

**Staff Contact:**

# **City of Seward, NE**

**Tuesday, May 5, 2015**

**Regular Session**

## **Item G6**

### **UPDATE ON EFFORTS OF CITY OF SEWARD AND/OR SEWARD SCHOOL DISTRICT TO ADDRESS WATER RUNOFF/DRAINAGE ISSUES ON STAR ST PROPERTIES THAT BORDERS THE SEWARD ELEMENTARY SCHOOL AND SEWARD MIDDLE SCHOOL - Councilmember Beck**

**Administrative Report: Staff to provide update. Following discussion, Council direction would be in order.**

**Staff Contact:**

City of  
**SEWARD**

P.O. Box 38 • 537 Main Street  
Seward, Nebraska 68434  
Phone 402-643-2928  
Fax 402-643-6491

PUBLIC REQUEST FOR COUNCIL AGENDA ITEM OR ADMINISTRATIVE ACTION

DATE: April 27, 2015

NAME: Ellen Beck (City Council)

ADDRESS: 2300 Star St., Seward NE 68434

EMAIL ADDRESS: Ellen.Beck@cityofsewardne.com TELEPHONE NO. 402-646-9112

EXPLANATION OF REQUEST:

Update on efforts of City of Seward and/or with the Seward School District to solve water runoff/drainage problems on Star St. property owners' land that borders the Seward Elementary School and Seward Middle School.

ACTION REQUESTED:

Update by City staff and permission for Star Street homeowners to be heard at the Council Meeting

Will this agenda item require the expenditure of funds? Yes ☐ No ☐  
Unknown ☒

Ellen Beck  
(Signature of requester)

Ellen Beck  
(Print Name)

Council meetings are held on the 1<sup>st</sup> & 3<sup>rd</sup> Tuesdays of every month. All requests for the Agenda must be submitted by noon on the Wednesday preceding the Council meeting, any item received after this time would have to be of an emergency nature. Once a request is received, Administration will review it and determine whether or not it requires Mayor/Council action, or whether it is an item that needs to be handled by staff.

Received by: Bonnette  
(City employee)

Date: 4/28/15

e-mail opened 8:30 a.m.

## John Hughes

---

**From:** Jeff Wagner <JWagner@mwaeng.com>  
**Sent:** Friday, May 01, 2015 11:37 AM  
**To:** John Hughes  
**Subject:** drainage ditch design and construction

John – estimate of our fees:

Survey, perform hydraulic analysis to size the channel needed to handle the runoff and prepare grading plan (no concrete liner at this time). We anticipate that some of the excavated material can be used to increase the detention cell berm elevation. This does not include any bidding documents or permits (none anticipated).

Engineering fees – lump sum \$ 5,300.

Construction estimate – based on a 4' wide ditch with 3:1 side slopes.

Excavation = 1270 CY @ \$13.00 = \$16,510.00

Mobilization, remove and reset fence, site prep, seeding, erosion control etc. = \$6,400.00

Total = \$20,910.00

There will most likely be trees that have to be removed to get the ditch constructed with 3:1 slopes. If we go steeper than that to try to avoid trees, then may have safety issues with kids and need to put fence along the ditch.

This should give you something to start from.

Let me know if you need anything else.

Thanks

Jeff Wagner, P.E.  
Vice President | Mainelli Wagner & Associates, Inc.  
6920 Van Dorn Street, Suite A | Lincoln, NE 68506

Cell: (402) 326-0844  
Office: (402) 421-1717  
Fax: (402) 421-6061



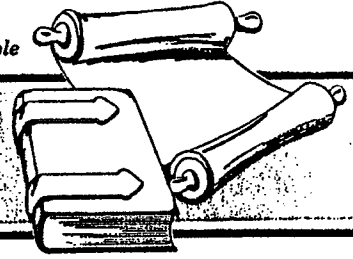
[www.mwaeng.com](http://www.mwaeng.com)

DAW

City of

Government of, by, and for the people

SEWARD



Phone 402-643-2928 • P.O. Box 38 • 537 Main Street • Seward NE 68434

To:

Enclosed please find a copy of: SCHC Phase I  
Preliminary Plat  
for review.

Please submit written comments on any concerns or requirements you may have with regards to this proposal by March 12th to the City Building Inspector at 537 Main Street, Seward, Nebraska or call 643-4869 for additional information.

Hearing scheduled for: March 22, 1993 -

Roger Van Ooyen  
Building Inspector

Comments: SCHC will be asking the city to  
create improvement districts for all utilities.  
Please check for any easements you may need  
to see established

*SCHC will need to negotiate a storm water drainage agreement with the school district*

# **City of Seward, NE**

**Tuesday, May 5, 2015**

**Regular Session**

## **Item G7**

### **CONSIDERATION OF A RESOLUTION AUTHORIZING AN EQUIPMENT LEASE AGREEMENT WITH UNION BANK & TRUST - John Hughes**

**Administrative Report:** The lease agreement is for a period of 4 years and covers two Groundmaster 5900 D. Mowers; one to be used by the Street Department and one to be used by the Recreation Department. The annual payment is \$30,824.44. There was a total of \$33,000 budgeted in the current year for the two departments to replace the equipment.

**Staff Contact:**



RESOLUTION NO.

Schedule of Equipment No. 01, dated 5/5/2015, to Master Equipment Lease Purchase Agreement, dated as of 5/5/2015, between Union Bank & Trust Company, as Lessor, and City of Seward, as Lessee.

I, the undersigned, the duly appointed, qualified and acting City Clerk of the City of Seward do hereby certify this 5<sup>th</sup> day of May, 2015, as follows:

- (1) Lessee did, at a meeting of the governing body of the Lessee held on May 5, 2015, by motion duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution and delivery of the above referenced Schedule of Equipment No. 01 on its behalf by the following named representative of the Lessee, to witness:

---

Joshua Eickmeier, Mayor

- (2) The above named representative of the Lessee held at the time of such authorization and holds at the present time the office set forth above.
- (3) The meeting of the governing body of the Lessee at which the Schedule of Equipment No. 1 was approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite majority of the members thereof or by other appropriate official approval and that the action approving the Schedule of Equipment No. 01 and authorizing the execution thereof has not been altered or rescinded.
- (4) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default (as such term is defined in the above referenced Master Equipment Lease Purchase Agreement) exists at the date hereof.
- (5) All insurance required in accordance with the above referenced Master Equipment Lease Purchase Agreement is currently maintained by the Lessee.
- (6) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Rental Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term (as such terms are defined in the above referenced Master Equipment Lease Purchase Agreement) and such funds have not been expended for other purposes.
- (7) The fiscal year of Lessee is from October 1, 2015 to September 30, 2015.

The signatures below from the designated individuals from the Governing Body of the Lessee evidence the adoption by the Governing Body of this resolution.

The resolution is hereby adopted.

Dated this 5<sup>th</sup> day of May, 2015.

CITY OF SEWARD

---

Joshua Eickmeier, Mayor

ATTEST:

---

Bonnie Otte  
Assistant Administrator  
City Clerk-Treasurer  
Budget & Human Resources Director

# MASTER EQUIPMENT LEASE PURCHASE AGREEMENT

**LESSEE:** City of Seward

This Master Equipment Lease Purchase Agreement, including all exhibits and schedules hereto whether currently in existence or hereafter executed (the "Agreement"), dated as of 5/5/2015, and entered into between Union Bank & Trust Company 4732 Calvert Street, Lincoln, NE 68506 ("Lessor"), and City of Seward, PO BOX 38, Seward, NE 68434 a body corporate and politic duly organized and existing under the laws of the State of Nebraska ("Lessee");

## RECITALS

WHEREAS, Lessee desires to lease from Lessor certain equipment described in the schedules to this Agreement, substantially in the form of Exhibit A hereto, that are executed from time to time by the parties hereto (such schedules are hereby incorporated herein and are hereinafter collectively referred to as the "Schedules", and the items of equipment leased to Lessee hereunder, together with all substitutions, proceeds, replacement parts, repairs, additions, attachments, accessories and replacements thereto, thereof or therefore, are hereinafter collectively referred to as the "Equipment") subject to the terms and conditions of and for the purposes set forth in this Agreement.

WHEREAS, the relationship between the parties shall be a continuing one and items of equipment may be added to or deleted from the Equipment from time to time by execution of additional Schedules by the parties hereto and as otherwise provided herein.

WHEREAS, Lessee is authorized under the constitution and laws of the State to enter into this Agreement for the purposes set forth herein.

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

## ARTICLE I. REPRESENTATIONS, WARRANTIES AND COVENANTS OF LESSEE

Section 1.01. Lessee represents, covenants and warrants, for the benefit of Lessor and its assignees, as follows:

- (a) Lessee is a public body, corporate and politic, duly organized and existing under the Constitution and laws of the State.
- (b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and affect its existence as a body corporate and politic. Lessee is a political subdivision of the State within the meaning of Section 103(a) of the Code or a constituted authority authorized to issue obligations on behalf of a state or local governmental unit within the meaning of the regulations promulgated pursuant to said Section of the Code.
- (c) Lessee has full power and authority under the Constitution and laws of the State to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations hereunder.
- (d) Lessee has duly authorized the execution and delivery of this Agreement by proper action by its governing body at a meeting duly called, regularly convened and attended throughout by the requisite majority of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement.
- (e) Lessee has complied or will comply with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment.
- (f) During the Lease Term, the Equipment will be used by Lessee only for the purpose of performing one or more essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than Lessee.
- (g) During the Lease Term, Lessee will annually provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be reasonably requested by Lessor.
- (h) The Equipment will have a useful life in the hands of Lessee that is substantially in excess of the Original Term and all Renewal Terms.
- (i) The Equipment is, and during the Lease Term will remain personal property and when subjected to use by the Lessee, will not be or become fixtures.
- (j) The Equipment is essential to the function of the Lessee and the services provided to its citizens, and will be used throughout the period that this Agreement is in force for the purpose of performing one or more governmental or proprietary functions consistent with the permissible scope of its authority.
- (k) During the term of this Agreement, Lessee will not dispose of or sell any part of the Equipment.
- (l) Lessee has not terminated a lease, rental agreement, installment purchase contract, or any other such agreement in the past five (5) years as a result of insufficient funds being appropriated for payments due under such an agreement.
- (m) This Agreement constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.
- (n) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.
- (o) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Rental Payments scheduled to come due during the current fiscal year and to meet its other obligations under this Agreement for the current fiscal year, and such funds have not been expended for other purposes.
- (p) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefore, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or materially adversely affect the financial condition or properties of Lessee.
- (q) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement or in connection with the carrying out by Lessee of its obligations hereunder have been obtained.
- (r) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of Lessee or the Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.

## ARTICLE II. DEFINITIONS

Section 2.01. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Master Equipment Lease Purchase Agreement, including the Schedules and any other schedule, exhibit or escrow agreement made a part hereof by the parties hereto, whether currently in existence or hereafter executed, as the same may be supplemented or amended from time to time in accordance with the terms hereof.

"Code" means the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations in effect thereunder.

"Commencement Date" means, with respect to any Schedule, the date when the Lease Term of this Agreement with respect to that Schedule and Lessee's obligation to pay rent under that Schedule commence, which date will be the earlier of (i) the date of the Agreement, or (ii) the date on which sufficient moneys to purchase the Equipment are deposited for that purpose with an Escrow Agent.

"Equipment" means the property described in the Schedules and all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto. Whenever reference is made in this Agreement to Equipment listed in a Schedule, that reference shall be deemed to include all replacements, repairs, restorations, modifications and improvements of or to that Equipment.

"Event of Default" means, with respect to any Lease, an Event of Default described in Section 10.01.

"Escrow Agreement" means, with respect to a given Schedule, an escrow agreement in form and substance satisfactory to Lessor, between Lessee, Lessor and an escrow agent relating to the acquisition fund created thereunder.

"Lease" means, at any time, (i) if none of Lessor's interest in, to and under any Schedule has been assigned pursuant to Section 9.01, or if all of Lessor's interest in, to and under this Agreement and all Schedules have been assigned to the same assignee without any reassignment, this Agreement, or (ii) if Lessor's interest in, to and under any Schedule or Schedules has been assigned or reassigned pursuant to Section 9.01, all Schedules that have the same Lessor and this Agreement as it relates to those Schedules and the Equipment listed therein, which shall constitute a separate single lease relating to that Equipment.

"Lease Term" means, with respect to any Lease, the Original Term and all Renewal Terms of that Lease.

"Lessee" means the entity which is described in the first paragraph of this Agreement, its successors and assigns.

"Lessor" means, with respect to each Schedule and the Lease of which that Schedule is a part, (i) if Lessor's interest in, to and under that Schedule has not been assigned pursuant to Section 9.01, the entity described as such in the first paragraph of this Agreement or its successor, or (ii) if Lessor's interest in, to and under that Schedule has been assigned pursuant to Section 9.01, the assignee thereof or its successor.

"Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

"Original Term" means, with respect to any Lease, the period from the first Commencement Date for any Schedule under that Lease until the end of the fiscal year of Lessee in effect at that Commencement Date.

"Purchase Option Price" means, with respect to the Equipment listed on any Schedule, the amount set forth in that Schedule as the Purchase Option Price for that Equipment.

"Renewal Terms" means, with respect to any Lease, the automatic renewal terms of that Lease, as provided for in Article III of this Agreement, each having a duration of one year and a term co-extensive with the Lessee's fiscal year except the last of such automatic renewal terms which shall end on the due date of the last Rental Payment set forth in the Schedule.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to Section 4.02.

"State" means the state in which Lessee is located.

"Vendor" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom Lessor purchased or is purchasing the Equipment.

### ARTICLE III. LEASE TERM

**Section 3.01. Lease of Equipment.** Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment listed in each Schedule in accordance with this Agreement and that Schedule for the Lease of which that Schedule is a part. The Lease Term for each Lease may be continued at the end of the Original Term or any Renewal Term for an additional Renewal Term; provided, however, that at the end of the Original Term and at the end of each Renewal Term, Lessee shall be deemed to have continued that Lease for the next Renewal Term unless Lessee shall have terminated that Lease pursuant to Section 4.05 or Section 5.04. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the Schedules. Lessor hereby covenants to provide Lessee during the Lease Term with quiet use and enjoyment of the Equipment, and Lessee shall during the Lease Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement.

**Section 3.02. Continuation of Lease Term.** Lessee currently intends, subject to Section 4.05, to continue the Lease Term for each Lease through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Lease Term for each Lease can be obtained. The responsible financial officer of Lessee shall do all things lawfully within his or her power to obtain and maintain funds from which the Rental Payments may be made, including making provision for the Rental Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend a Lease for any Renewal Term is solely within the discretion of the then current governing body of Lessee.

**Section 3.03. Return of Equipment on Termination.** Upon expiration or earlier termination of any Schedule under any provision of this Agreement at a time when Lessee does not exercise its option to purchase the Equipment described in that Schedule under the provisions of this Agreement, Lessee shall deliver, at Lessee's expense, the Equipment described in that Schedule to Lessor in the same condition as existed at the Commencement Date, ordinary wear and tear expected, packaged or otherwise prepared in a manner suitable by shipment by truck or rail common carrier at a location specified by Lessor.

**Section 3.04. Conditions to Lessor's Performance under Schedules.** As a prerequisite to the performance by Lessor of any of its obligations pursuant to the execution and delivery of any Schedule, Lessee shall deliver to Lessor the following:

- (a) A Lessee Resolution executed by the Clerk or Secretary or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit B, completed to the satisfaction of Lessor;
- (b) An Opinion of Counsel to Lessee in substantially the form attached hereto as Exhibit C respecting such Schedule and otherwise satisfactory to Lessor;
- (c) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time;
- (d) Such other items, if any, as are set forth in such Schedule or are reasonably required by Lessor.

This Agreement is not a commitment by Lessor to enter into any Schedule not currently in existence, and nothing in this Agreement shall be construed to impose any obligation upon Lessor to enter into any proposed Schedule, it being understood that whether Lessor enters into any proposed Schedule shall be a decision solely within Lessor's discretion.

Lessee will cooperate with Lessor in Lessor's review of any proposed Schedule. Without limiting the foregoing, Lessee will provide Lessor with any documentation or information Lessor may request in connection with Lessor's review of any proposed Schedule. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use and location and documentation or information concerning the financial status of Lessee and other matters related to Lessee.

### ARTICLE IV. RENTAL PAYMENTS

**Section 4.01. Rental Payments to Constitute a Current Expense of Lessee.** Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee.

**Section 4.02. Payment of Rental Payments.** Lessee shall pay Rental Payments, from any and all legally available funds, in lawful money of the United States of America, exclusively to Lessor or, in the event of assignment by Lessor, to its assignee, in the amounts and on the dates set forth in each Schedule. Rental Payments shall be in consideration for Lessee's use of the Equipment during the applicable year in which such payments are due. The Rental Payments will be payable without notice or demand at the office of Lessor (or such other place as Lessor may from time to time designate in writing). If any Rental Payment or other sum payable under any Schedule is not paid when due, Lessee shall pay to Lessor accrued interest on such delinquent amount from the date due thereof until paid at the lesser of 18% or the maximum rate allowed by law. In the event that it is determined that any of the interest components of Rental Payments may not be excluded from gross income for purposes of federal income taxation, Lessee agrees to pay to Lessor promptly after any such determination and on the date of each Rental Payment thereafter an additional amount determined by Lessor to compensate Lessor for the loss of such excludability (including without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive absent manifest error.

**Section 4.03. Interest and Principal Components.** A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal. Each Schedule will set forth the interest component and the principal component of each Rental Payment during the Lease Term.

**Section 4.04. Rental Payments to be Unconditional.** The obligations of Lessee to make payment of the Rental Payments required under this Article IV and other sections hereof, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Lessee and Lessor, any Vendor or any other dispute between Lessee and Lessor, any Vendor or any other person, Lessee shall make all payments of Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute, nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such payments required under this Agreement. Lessee's obligation to make Rental Payments during the Original Term or the then-current Renewal Term for each Schedule shall not be abated through accident or unforeseen circumstances.

**Section 4.05. Non appropriation.** Lessee is obligated only to pay such Rental Payments under this Agreement (and any additional amounts due hereunder, if applicable) as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments under a Lease following the then current Original Term or Renewal Term, that Lease shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver written notice to Lessor of such termination at least 60 days prior to the end of the then current Original Term or Renewal Term, but failure to give such written notice shall not extend the term beyond such Original Term or Renewal Term.

## **ARTICLE V. TITLE TO EQUIPMENT; SECURITY INTEREST; OPTION TO PURCHASE**

**Section 5.01. Title to the Equipment.** Upon acceptance of the Equipment by Lessee, title to the Equipment and any and all additions, repairs, replacements or modifications shall vest in Lessee, subject to the rights of Lessor under this Agreement; provided that title to the Equipment that is subject to any Lease shall thereafter immediately and without any action by Lessee vest in Lessor, and Lessee shall immediately surrender possession of that Equipment to Lessor, upon (a) any termination of that Lease other than termination pursuant to Section 5.04, or (b) the occurrence of an Event of Default with respect to that Lease. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee shall, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer.

**Section 5.02. Security Interest.** To secure the payment of all Lessee's obligations under this Agreement, Lessee grants to Lessor a security interest constituting a first lien on (i) the Equipment and on all additions, attachments, accessions, that are considered to be an integral part of the equipment, and substitutions thereto, and on any proceeds there from, and (ii) the acquisition fund established under any Escrow Agreement entered into in connection therewith. Lessee agrees to execute such additional documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment. Lessee hereby authorizes the filing of financing statements under the Uniform Commercial Code in connection with the security interest granted hereunder.

**Section 5.03. Personal Property.** Lessor and Lessee agree that the Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

**Section 5.04. Option to Purchase.** Lessee shall have the option to purchase Lessor's interest in all (but not less than all) of the Equipment described in any Schedule, upon giving written notice to Lessor at least 60 (but not more than 180) days before the date of purchase, at the following times and upon the following terms:

- (a) On the date of the last Rental Payment set forth in that Schedule (assuming this Agreement is renewed at the end of the Original Term and each Renewal Term), if the Agreement is still in effect on such day, upon payment in full to Lessor of the Rental Payments and all other amounts then due under that Schedule plus One Dollar;
- (b) On the last day of the Original Term or any Renewal Term then in effect, upon payment in full to Lessor of the Rental Payments and all other amounts then due under that Schedule plus the then applicable Purchase Option Price set forth in that Schedule; or
- (c) In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment listed in that Schedule on the day specified in Lessee's written notice to Lessor of its exercise of the purchase option upon payment in full to Lessor of the Rental Payments and all other amounts then due under that Schedule, including, without limitation, interest accrued to the date of payment, plus the then applicable Purchase Option Price set forth in that Schedule.

## **ARTICLE VI. DELIVERY, MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES**

**Section 6.01. Delivery, Installation and Acceptance of Equipment.** Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the locations specified in the Schedules and pay any and all delivery and installation costs in connection therewith. When the Equipment listed in any Schedule has been delivered and installed, Lessee shall immediately accept such Equipment and evidence said acceptance by executing and delivering to Lessor an Acceptance Certificate in the form attached hereto as Exhibit D.

**Section 6.02. Location; Inspection.** Once installed, no item of the Equipment will be moved from the location specified for it in the Schedule on which that item is listed without Lessor's consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

**Section 6.03. Maintenance of Equipment by Lessee.** Lessee agrees that at all times during the Lease Term Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and that Lessee will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. Lessor shall have no responsibility in any of these matters, or for the making of improvements or additions to the Equipment. Lessee shall not make material modifications to the Equipment without the prior consent of Lessor.

**Section 6.04. Liens, Taxes, Other Governmental Charges and Utility Charges.** Lessee shall keep the Equipment free of all liens, charges and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), Lessee will pay, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment and any equipment or other property acquired by Lessee in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment; provided that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as have accrued during the Lease Term. Lessee will take no action that will cause the interest portion of any Rental payment to become includable in gross income of the

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recipient for purposes of federal income taxation under the Code, and Lessee will take, and will cause its officers, employees and agents to take, all affirmative action legally within its power to prevent such interest from being includable in gross income for purposes of federal income taxation under the Code. Lessee acknowledges that Lessor's yield with respect to this Agreement is dependent upon the interest component of each Rental Payment being excluded from Lessor's income pursuant to the Code.

**Section 6.05. Provisions Regarding Insurance.** At its own expense, Lessee shall maintain (a) casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the replacement cost of the Equipment, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b); provided further that, if Lessor provides such consent Lessee shall provide to Lessor information with respect to such self-insurance program as Lessor may request from time to time. All insurance proceeds from casualty losses shall be payable as hereinafter provided. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term. All such casualty and liability insurance shall be with insurers that are acceptable to Lessor, shall name Lessor as a loss payee and an additional insured, respectively, and shall contain a provision to the effect that such insurance shall not be canceled or modified materially without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification. All such casualty insurance shall contain a provision making any losses payable to Lessee and Lessor as their respective interests may appear.

**Section 6.06. Advances.** In the event Lessee shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Equipment in good repair and operating condition, Lessor may (but shall be under no obligation to) purchase the required insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefore by Lessor shall constitute additional rent for the then-current Original Term or Renewal Term, and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at the rate of 18% per annum or the maximum interest rate permitted by law, whichever is less.

#### **ARTICLE VII. DAMAGE, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS**

**Section 7.01. Risk of Loss.** Lessee is responsible for the entire risk of loss of or damage or destruction to the Equipment. No such loss, damage or destruction shall relieve Lessee of any obligation under this Agreement or any Lease.

**Section 7.02. Damage, Destruction and Condemnation.** If (a) the Equipment listed on any Schedule or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of that Equipment, unless Lessee shall have exercised its option to purchase that Equipment pursuant to Section 5.04. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

**Section 7.03. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement referred to in Section 7.02, Lessee shall either complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, unless Lessee, pursuant to Section 5.04, purchases Lessor's interest in the Equipment destroyed, damaged or taken and any other Equipment listed in the same Schedule. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing Lessor's interest in the Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefore from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

#### **ARTICLE VIII. DISCLAIMER OF WARRANTIES: VENDOR'S WARRANTIES: USE OF THE EQUIPMENT**

**Section 8.01. Disclaimer of Warranties.** LESSEE HAS SELECTED THE EQUIPMENT AND THE VENDORS. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY OR REPRESENTATION WITH RESPECT THERETO. In no event shall Lessor be liable for an incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any item or products or service provided for in this Agreement.

**Section 8.02. Vendor's Warranties.** Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Equipment, which Lessor may have against the Vendor of the Equipment. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against Lessor, nor shall such matter have any effect, whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made no representation or warranties whatsoever as to the existence or availability of such warranties of the Vendor of the Equipment.

**Section 8.03. Use of the Equipment.** Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all laws of the jurisdictions in which its operations involving any item of Equipment may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Equipment; provided, however, that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the title of Lessor in and to any of the items of the Equipment or its interest or rights under this Agreement.

**Section 8.04. Essential Nature of the Equipment.** Lessee confirms and affirms that the Equipment is essential to the function of Lessee and the services provided to its citizens, that there is an immediate need for the Equipment which is not temporary or expected to diminish in the foreseeable future, and that Lessee will use substantially all the Equipment for the purpose of performing one or more governmental or proprietary functions consistent with the permissible scope of its authority.

#### **ARTICLE IX. ASSIGNMENT, SUBLEASING, INDEMNIFICATION, MORTGAGING AND SELLING**

**Section 9.01. Assignment by Lessor.** Lessor's interest in, to, and under this Agreement; any Lease and the Equipment may be assigned and reassigned in whole or in part to one or more assignees by Lessor at any time subsequent to its execution. Lessee hereby agrees to maintain a written record of each such assignment in form necessary to comply with Section 149(a) of the Code. No such assignment shall be binding on Lessee until it has received written notice from Lessor of the assignment disclosing the name and address of the assignee. Lessee agrees to execute all documents, including chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interests in the Equipment and in this Agreement. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim, defense, set-off or other right Lessee may from time to time have against Lessor.

**Section 9.02. Assignment and Subleasing by Lessee.** None of Lessee's interest in, to and under this Agreement and in the Equipment may be sold, assigned, subleased, pledged or otherwise encumbered by Lessee without the prior written consent of Lessor.

**Section 9.03. Release and Indemnification Covenants.** To the extent permitted by law, Lessee shall indemnify, protect, hold harmless, save and keep harmless Lessor from and against any and all liabilities, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and all expenses in connection therewith (including, without limitation, counsel fees and expenses, penalties connected therewith imposed on interest received) arising out of or as (a) result of the entering into of this Agreement, (b) the ownership of any item of the Equipment, (c) the manufacture, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment, (d) or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (e) the breach of any covenant herein or any material misrepresentation contained herein. The indemnification arising under this paragraph

~ 4 ~MuniStd

shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

#### **ARTICLE X. EVENTS OF DEFAULT AND REMEDIES**

**Section 10.01. Events of Default Defined.** Subject to the provisions of Section 4.05, any of the following events shall constitute an "Event of Default" under any Lease:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid under that Lease at the time specified in that Lease;
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed under that Lease, other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;
- (c) Any statement, representation or warranty made by Lessee in or pursuant to that Lease or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- (d) Any provision of that Lease shall at any time for any reason cease to be valid and binding on Lessee, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee shall deny that it has any further liability or obligation under that Lease.
- (e) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or
- (f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days.

**Section 10.02. Remedies on Default.** Whenever any Event of Default under any Lease exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) By written notice to Lessee, declare all Rental Payments and other amounts payable by Lessee under that Lease to the end of the then current Original Term or Renewal Term to be due;
- (b) With or without terminating that Lease, Lessor may, upon 5 days written notice to Lessee, enter the premises where any Equipment that is subject to that Lease is located and retake possession of that Equipment or require Lessee at Lessee's expense to promptly return any or all of the Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease the Equipment or, for the account of Lessee, sublease the Equipment, continuing to hold Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee under that Lease plus the then-applicable Purchase Option Price for that Equipment and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing the Equipment and all brokerage, auctioneers' and attorneys' fees) provided that the amount of Lessee's liability under this subparagraph (b) shall not exceed the Rental Payments and other amounts otherwise due under that Lease plus the remaining Rental Payments and other amounts payable by Lessee under that Lease to the end of the then current Original Term or Renewal Term; and
- (c) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under that Lease or as the owner of any or all of the Equipment that is subject to that Lease.  
In addition, whenever an Event of Default exists with respect to any Rental Payment required by a particular Schedule or with respect to any other payment, covenant, condition, agreement, statement, representation or warranty set forth in that Schedule or applicable to that Schedule or the Equipment listed therein, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:
- (d) By written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee pursuant to that Schedule and other amounts payable by Lessee under this Agreement to the end of the then current Original Term or Renewal Term to be due;
- (e) With or without terminating that Schedule, Lessor may, upon 5 days written notice to Lessee, enter the premises where the Equipment listed in that Schedule is located and retake possession of that Equipment or require Lessee at Lessee's expense to promptly return any or all of that Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease that Equipment or, for the account of Lessee, sublease that Equipment, continuing to hold Lessee liable for the difference between (i) the Rental Payments payable by Lessee pursuant to that Schedule and other amounts related to that Schedule or the Equipment listed therein that are payable by Lessee hereunder plus the then applicable Purchase Option Price for that Equipment, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneers' and attorneys' fees) provided that the amount of Lessee's liability under this subparagraph (b) shall not exceed the Rental Payments and other amounts otherwise due under that Schedule plus the remaining Rental Payments and other amounts payable by Lessee under that Schedule to the end of the then current Original Term or Renewal Term; and
- (f) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under that Schedule, this Agreement with respect to that Schedule and the Equipment listed therein.

In addition to the remedies specified above, Lessor may charge interest on all amounts due to it at the rate of 10% per annum or the maximum amount permitted by law, whichever is less. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities under any other Schedules, this Agreement related to any other Schedule or the Equipment listed therein.

**Section 10.03. No Remedy Exclusive.** No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

**Section 10.04. Agreement to Pay Attorneys' Fees and Expenses.** If Lessee should default under any of the provisions hereof and Lessor should employ attorneys or incur other expenses for the collection of moneys or for the enforcement of performance or observance of any obligation or agreement on the part of Lessee contained in this Agreement, Lessee agrees, to the extent it is permitted by law to do so, that it will, if assessed by a court of competent jurisdiction, pay to Lessor the reasonable fees of those attorneys and other reasonable expenses so incurred by Lessor.

**Section 10.05. Application of Moneys.** Any net proceeds from the exercise of any remedy hereunder (after deducting all expenses of Lessor in exercising such remedies including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing Equipment and all brokerage, auctioneer's or attorney's fees) shall be applied as follows:

- (a) If such remedy is exercised solely with respect to a single Schedule, Equipment listed in that Schedule or rights under the Agreement related to that Schedule, then to amounts due pursuant to that Schedule and other amounts related to that Schedule or that Equipment.
- (b) If such remedy is exercised with respect to more than one Schedule, Equipment listed in more than one Schedule or rights under the Agreement related to more than one Schedule, then to amounts due pursuant to those Schedules pro rata.

~ 5 ~MuniStd



**ARTICLE XI. MISCELLANEOUS**

Section 11.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business.

Section 11.02. Binding Effect; Entire Agreement; Amendments and Modifications. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the Lessor and the Lessee; nor shall any such amendment that affects the rights of Lessor's assignee be effective without such assignee's consent. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.03. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.04. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.05. Amendments, Changes and Modifications. This Agreement may be amended, added to, changed or modified by written agreement duly executed by Lessor and Lessee.

Section 11.06. Execution in Counterparts; Chattel Paper. This Agreement, including in writing each Schedule, may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; except (1) to the extent that various Schedules and this Agreement as it relates thereto constitutes separate Leases as provided in this Agreement and (2) that Lessor's interest in, to and under any Schedule and the Agreement as it relates to that Schedule, and the Equipment listed in that Schedule may be sold or pledged only by delivering possession of the original counterpart of that Schedule marked "Counterpart No. 1," which Counterpart No. 1 shall constitute chattel paper for purposes of the Uniform Commercial Code.

Section 11.07. Usury. The parties hereto agree that the charges in this Agreement and any Lease shall not be a violation of usury or other law. Any such excess charge shall be applied in such order as to conform this Agreement and such Lease to such applicable law.

Section 11.08. Jury Trial Waiver. To the extent permitted by law, lessee agrees to waive its right to a trial by jury.

Section 11.09. Facsimile Documentation. Lessee agrees that a facsimile copy of this Agreement or any Lease with facsimile signatures may be treated as an original and will be admissible as evidence of this Agreement or such Lease.

Section 11.10. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives listed below.

**Lease No. 1976511**

**LESSEE:**

City of Seward

**LESSOR:**

Union Bank & Trust Company

\_\_\_\_\_  
Joshua Eickmeier, Mayor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title



## EXHIBIT A

### SCHEDULE OF EQUIPMENT NO. 01, Dated 5/5/2015

Counterpart No. 1.

LESSOR'S INTEREST IN, TO AND UNDER THIS SCHEDULE AND THE AGREEMENT AS IT RELATES TO THIS SCHEDULE MAY BE SOLD OR PLEDGED ONLY BY DELIVERING POSSESSION OF COUNTERPART NO. 1 OF THIS SCHEDULE, WHICH COUNTERPART NO. 1 SHALL CONSTITUTE CHATTEL PAPER FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE.

Re: Master Equipment Lease Purchase Agreement, dated as of 5/5/2015, between Union Bank & Trust Company, as Lessor, and City of Seward, as Lessee.

1. **Defined Terms.** All terms used herein have the meanings ascribed to them in the above referenced Master Equipment Lease Purchase Agreement (the "Master Equipment Lease").
2. **Equipment.** The Equipment included under this Schedule of Equipment is comprised of the items described in the Equipment Description attached hereto as **Attachment 1**, together with all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto.
3. **Payment Schedule.** The Rental Payments and Purchase Option Prices under this Schedule of Equipment are set forth in the Payment Schedule attached as **Attachment 2** hereto.
4. **Representations, Warranties and Covenants.** Lessee hereby represents, warrants, and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the date of commencement of Rental Payments on this Schedule.
5. **The Master Equipment Lease.** This Schedule is hereby made as part of the Master Equipment Lease and Lessor and Lessee hereby ratify and confirm the Master Equipment Lease. The terms and provisions of the Master Equipment Lease (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated by reference and made a part hereof.

Lease Number: 1976511

**LESSEE:**  
City of Seward

**LESSOR:**  
Union Bank & Trust Company

\_\_\_\_\_  
Joshua Eickmeier, Mayor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

~ 7 ~MuniStd

**ATTACHMENT 1  
EQUIPMENT DESCRIPTION**

---

**RE: Schedule of Equipment No. 01, dated 5/5/2015, to Master Equipment Lease Purchase Agreement, dated as of 5/5/2015, between Union Bank & Trust Company, as Lessor, and City of Seward, as Lessee.**

**Lease Number: 1976511**

2 Groundmaster 5900 D Mowers

Year \_\_\_\_\_ Serial # 315000236

Year \_\_\_\_\_ Serial # 315000239

With a total acquisition cost of \$145,952.00; together with all additions, accessions and replacements thereto. Lessee hereby certifies the description of the personal property set forth above constitutes an accurate description of the "Equipment", as defined in the attached Master Equipment Lease Purchase Agreement and the Equipment is located on the premise of the Lessee unless otherwise noted by the Lessee.

Physical location of equipment after delivery: \_\_\_\_\_

**LESSEE:**  
City of Seward

\_\_\_\_\_  
Joshua Eickmeier, Mayor

~ 8 ~MuniStd

## ATTACHMENT 2 PAYMENT SCHEDULE

RE: Schedule of Equipment No. 01, dated 5/5/2015, to Master Equipment Lease Purchase Agreement, dated as of 5/5/2015, between Union Bank & Trust Company, as Lessor, and City of Seward, as Lessee.

Lease Number: 1976511

Amount Financed: \$145,952.00

### AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

| Payment Number | Payment Date | Payment Amount | Interest Portion | Principal Portion | Purchase Option Price |
|----------------|--------------|----------------|------------------|-------------------|-----------------------|
| 1              | 5/5/2015     | \$30,824.44    | \$0.00           | \$30,824.44       | Not Available         |
| 2              | 5/5/2016     | \$30,824.44    | \$3,223.58       | \$27,600.86       | \$87,695.70           |
| 3              | 5/5/2017     | \$30,824.44    | \$2,450.75       | \$28,373.69       | \$59,239.04           |
| 4              | 5/5/2018     | \$30,824.44    | \$1,656.29       | \$29,168.15       | \$30,014.05           |
| 5              | 5/5/2019     | \$30,824.44    | \$839.58         | \$29,984.86       | \$0.00                |
| Grand Totals   |              | \$154,122.20   | \$8,170.20       | \$145,952.00      |                       |

LESSEE:  
City of Seward

\_\_\_\_\_  
Joshua Eickmeier, Mayor

~ 9 ~MuniStd

## EXHIBIT B

### LESSEE RESOLUTION

**Re: Schedule of Equipment No. 01, dated 5/5/2015, to Master Equipment Lease Purchase Agreement, dated as of 5/5/2015, between Union Bank & Trust Company, as Lessor, and City of Seward, as Lessee.**

I, the undersigned, the duly appointed, qualified and acting **Board Secretary or City Clerk** of the above captioned Lessee do hereby certify this date \_\_\_\_\_, as follows:

- (1) Lessee did, at a meeting of the governing body of the Lessee held on \_\_\_\_\_, by motion duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution and delivery of the above referenced Schedule of Equipment No. (the "Schedule") on its behalf by the following named representative of the Lessee, to witness:

\_\_\_\_\_  
**Authorized Signer:** Joshua Eickmeier, Mayor

- (2) The above named representative of the Lessee held at the time of such authorization and holds at the present time the office set forth above.
- (3) The meeting of the governing body of the Lessee at which the Schedule was approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite majority of the members thereof or by other appropriate official approval and that the action approving the Schedule and authorizing the execution thereof has not been altered or rescinded.
- (4) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default (as such term is defined in the above referenced Master Equipment Lease Purchase Agreement) exists at the date hereof.
- (5) All insurance required in accordance with the above referenced Master Equipment Lease Purchase Agreement is currently maintained by the Lessee.
- (6) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Rental Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term (as such terms are defined in the above referenced Master Equipment Lease Purchase Agreement) and such funds have not been expended for other purposes.
- (7) The fiscal year of Lessee is from \_\_\_\_\_ to \_\_\_\_\_.

The signatures below from the designated individuals from the Governing Body of the Lessee evidence the adoption by the Governing Body of this resolution.

**City of Seward**

**Attested By:** \_\_\_\_\_  
\_\_\_\_\_(name), Council/Board Member

**Certified By:** \_\_\_\_\_  
\_\_\_\_\_(name), Board Secretary or City Clerk

~ 10 ~MuniStd

## EXHIBIT C

### OPINION OF LESSEE'S COUNSEL

*(Must be re-Printed onto attorney's letterhead)*

(Date)

Union Bank & Trust Company  
4732 Calvert Street  
Lincoln, NE 68506

Re: Lessee: City of Seward

Ladies and Gentlemen:

As legal counsel to City of Seward (the "Lessee"), I have examined (a) an executed counterpart of a certain Master Equipment Lease Purchase Agreement, dated as of 5/5/2015, and Exhibits thereto by and between Union Bank & Trust Company (the "Lessor") and Lessee, Schedule of Equipment No. 01, dated 5/5/2015, (collectively, the "Agreement") by and between Lessor and Lessee, which, among other things, provides for the lease with option to purchase by the Lessee of certain property listed in the Schedule (the "Equipment"); (b) an executed counterpart of the ordinances or resolutions of Lessee which, among other things, authorizes Lessee to execute the Agreement and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions.

Based on the foregoing, I am of the following opinions:

- (1) Lessee's true and correct name is City of Seward.
- (2) Lessee is a public body corporate and politic, duly organized and existing under the laws of the State, and has a substantial amount of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power;
- (3) Lessee has the requisite power and authority to lease the Equipment with an option to purchase and to execute and deliver the Agreement and to perform its obligations under the Agreement;
- (4) The Agreement and the other documents either attached thereto or required therein have been duly authorized, approved and executed by and on behalf of Lessee and the Agreement and other documents either attached thereto or required therein are the valid and binding obligations of Lessee enforceable in accordance with their terms;
- (5) The authorization, approval and execution of the Agreement and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws; and
- (6) There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Agreement or the security interest of Lessor or its assigns, as the case may be, in the Equipment.
- (7) The signatures of the officers which appear on the Agreement are true and genuine; I know said officers and know them to hold the offices set forth below their names.
- (8) No further approval, consent or withholding of objection is required from any federal, state or local governmental authority with respect to the entering into or performance by the Lessee of the Lease and the transaction contemplated thereby.
- (9) The Equipment leased pursuant to the Agreement constitutes personal property and when subjected to use by Lessee will not be or become fixtures under applicable law.
- (10) The Lessee is a political subdivision within the meaning of Section 103 of the Internal Revenue Code of 1986 as amended and the related regulations and rulings.
- (11) The leasing of the Equipment pursuant to the Agreement is exempt from all sales and use taxes against either the Lessor or the Lessee during the term of the Lease pursuant to the Agreement and the Equipment will be exempt from all state and local personal property or other ad valorem taxes.

All capitalized terms herein shall have the same meanings as in the foregoing Agreement unless otherwise provided herein. Lessor, its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments are entitled to rely on this opinion.

Signature of Legal Counsel

~ 11 ~MuniStd

## EXHIBIT D

### ACCEPTANCE CERTIFICATE

Union Bank & Trust Company  
4732 Calvert Street  
Lincoln, NE 68506

Ladies and Gentlemen,

**RE: Schedule of Equipment No. 01, dated 5/5/2015, to Master Equipment Lease Purchase Agreement, dated as of 5/5/2015, between Union Bank & Trust Company, as Lessor, and City of Seward, as Lessee.**

In accordance with the Master Equipment Lease Purchase Agreement (the "Agreement"), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

- (1) All of the Equipment (as such term is defined in the Agreement) listed in the above referenced Schedule of Equipment (the "Schedule") has been delivered, installed and accepted on the date hereof.
- (2) Lessee has conducted such inspection and/or testing of the Equipment listed in the Schedule as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
- (3) Lessee is currently maintaining the insurance coverage required by **Section 6.05** of the Agreement.
- (4) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.
- (5) Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Agreement during the current Budget Year of Lessee, and such moneys will be applied in payment of all Rental Payments due and payable during such current Budget Year.
- (6) The governing body of Lessee has approved the authorization, execution and delivery of this Agreement on its behalf by the authorized representative of Lessee who signed the Agreement.

**LESSEE:**  
City of Seward

\_\_\_\_\_  
Joshua Eickmeier, Mayor

\_\_\_\_\_  
Date

*\*If delivery is not immediate, keep until final delivery.*

~ 12 ~MuniStd

## **BANK QUALIFIED CERTIFICATE**

---

**RE: Schedule of Equipment No. 01, dated 5/5/2015 , to Master Equipment Lease Purchase Agreement, dated as of 5/5/2015, between Union Bank & Trust Company, as Lessor, and City of Seward, as Lessee.**

Whereas, Lessee hereby represents it is a "Bank Qualified" Issuer for the calendar year in which this Agreement is executed by making the following designations with respect to Section 265 of the Internal Revenue Code. (A "Bank Qualified Issuer" is an issuer that issues less than \$10,000,000 dollars of tax-exempt obligations during the calendar year).

Now, therefor, Lessee hereby designates this Agreement as follows:

1. **Designation as Qualified Tax-Exempt Obligation.** Pursuant to Section 265(b)(3)(B)(i) of the Internal Revenue Code of 1986 as amended (the "Code"), the Lessee hereby specifically designates the Agreement as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code. In compliance with Section 265(b)(3)(D) of the Code, the Lessee hereby represents that the Lessee will not designate more than \$10,000,000 of obligations issued by the Lessee in the calendar year during which the Agreement is executed and delivered as such "qualified tax-exempt obligations".
2. **Issuance Limitation.** In compliance with the requirements of Section 265(b)(3)(C) of the Code, the Lessee hereby represents that the Lessee (including all subordinate entities of the Lessee within the meaning of Section 265(b)(3)(E) of the Code) reasonably anticipates not to issue in the calendar year during which the Agreement is executed and delivered, obligations bearing interest exempt from federal income taxation under Section 103 of the Code (other than "private activity bonds" as defined in Section 141 of the Code) in an amount greater than \$10,000,000.

**LESSEE:**  
City of Seward

---

Joshua Eickmeier, Mayor

## INSURANCE COVERAGE REQUIREMENTS

**Lessee: City of Seward**

**Please mark one of the following:**

( ) Pursuant to Section 6.05 of the Agreement, you have agreed to provide us evidence of insurance covering the property in the Agreement. A Certificate of Insurance naming all insured parties and coverage must be provided to us as soon as possible, but no later than the date on which delivery of equipment occurs.

( ) Pursuant to Section 6.05 of the Agreement, we are self-insured for all risk, physical damage, and public liability and will provide proof of such self-insurance in letter form, together with a copy of the statute authorizing this form of insurance. Coverage must be provided to us as soon as possible, but no later than the date on which delivery of equipment occurs.

Equipment to be insured at full replacement value: **2 Groundmaster 5900 D Mowers**

Policy should be issued and mailed to: Union Bank & Trust Company and/or Its Assigns  
4732 Calvert Street  
Lincoln, NE 68506

### INSURANCE REQUIREMENTS:

#### 1. LIABILITY

- ✓ \$1,000,000.00 Aggregate Bodily Injury
- ✓ \$1,000,000.00 Combined Single Limit per Occurrence
- ✓ Union Bank & Trust Company and/or Its Assigns MUST be listed as additional insured and loss payee.

#### 2. PHYSICAL DAMAGE

- ✓ All risk coverage to guarantee proceeds sufficient to cover the replacement cost of the equipment.
- ✓ Union Bank & Trust Company and/or Its Assigns MUST be listed as additional insured and loss payee.

#### 3. ENDORSEMENT

- ✓ Lessor will receive at least thirty (30) days written notice from Insurer prior to alteration, cancellation or reduction of insurance coverage.
- ✓ Deductibles should be listed on the Certificate of Coverage

|                         |        |        |
|-------------------------|--------|--------|
| Insurance Company Name: |        |        |
| Agents Name:            |        |        |
| Address:                |        |        |
| City:                   | State: | Zip:   |
| Phone:                  | Fax:   | Email: |

**LESSEE:**

City of Seward

\_\_\_\_\_  
Joshua Eickmeier, Mayor

~ 14 ~MuniStd



## INVOICE INSTRUCTIONS

---

**RE: Schedule of Equipment No. 01, dated 5/5/2015, to Master Equipment Lease Purchase Agreement, dated as of 5/5/2015, between Union Bank & Trust Company, as Lessor, and City of Seward, as Lessee.**

**Lease Number: 1976511**

**Equipment Description: 2 Groundmaster 5900 D Mowers**

Please provide contact information for billing and invoicing purposes.

Person/Department: \_\_\_\_\_  
P.O. Box/Street: \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

~ 15 ~MuniStd

# **City of Seward, NE**

**Tuesday, May 5, 2015**

**Regular Session**

## **Item G8**

### **CONSIDERATION OF A CHANGE OF WORK ORDER ADDING THE WETLAND MITIGATION REPORT AND DESIGN SERVICES TO THE KAROL KAY BLVD AGREEMENT - John Hughes**

**Administrative Report:** This change of work order adds the wetland mitigation report and design services to the Karol Kay Agreement. Since the NEPA process has resulted in the selection of Alternative #1 as the preferred alignment, wetlands must be mitigated. Following discussion, a motion to approve the change order would be in order

**Staff Contact:**

# Consultant Work Order

## *(Local Projects)*


|   |         |   |                     |
|---|---------|---|---------------------|
| Project No.:<br>URB-6763(1)   |         | Control No.:<br>13161                           |                     |
| Consultant: (Name and Representative)<br>JEO Consulting Group, Inc. Julie Ogden   |         | Agreement No.:<br>BK1329                        |                     |
| LPA: (Name and Representative)<br>City of Seward, Melvin Aldrich  |         | Work Order No.:<br>1                            |                     |
|   |         | Constr. Change Order No.: (If applicable)<br>NA |                     |
| <p>All parties agree the following described work needs to be performed by the consultant as part of the referenced project. All parties concur and hereby give notice to proceed based on the following: justification to modify contract, scope of services, deliverables, schedule, and estimated total fee. All other terms of existing agreements between the parties are still in effect. It is understood by all parties that the work described herein will become part of a future supplement to the agreement indicated above.</p> <p>Justification to modify agreement: (Include scope of services, deliverables, and schedule)</p> <p>Wetland mitigation will be required as part of the project, the attached scope of work will provide for the mitigation plan and design of the on-site wetland mitigation for the project.</p> |         |   |                     |
| <b>Work Title</b>   |         | <b>Summary of Fee</b>                           |                     |
| Preliminary Engineering   |         | A. Total Direct Labor Cost                      | = 2,736.66          |
|   |         | B. Overhead (Factor * x A)                      | = 5,437.47          |
|   |         | C. A + B  | = 8,174.13          |
|   |         | D. Profit/Fee (Factor ** x C)                   | = 1,078.99          |
| *Overhead Factor:   | 198.69% | E. Direct Non-Labor Cost                        | = 10.40             |
| **Profit/Fee Factor:  | 13.20%  | F. Subconsultant Services                       | = 0.00              |
| Total Fee Notes: Direct Non-Labor cost includes the facility capital cost (which is 0.38% of direct labor)  |         | <b>TOTAL FEE: C + D + E + F</b>                 | = <b>\$9,263.52</b> |
|   |         | <input type="checkbox"/> ESTIMATED TOTAL FEE:   |                     |
|   |         | <input type="checkbox"/> FINAL TOTAL FEE:       |                     |

**Work Order Authorization – May be granted by email and attached to this document.**

**Consultant:**

Julie Ogden  
Name

Name \_\_\_\_\_

  
Signature

Signature

4/13/15  
Date

Date \_\_\_\_\_

**LPA:**

\_\_\_\_\_  
Name Signature Date

**LPS PC (for Preliminary Engineering) and State Rep. (for Construction Engineering):**

-----  
Name

Signature

Date \_\_\_\_\_

**LPS PC (for Preliminary Engineering) and State Rep. (for Construction Engineering):**

Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_

Signature

Date \_\_\_\_\_

**LPS Unit Head Review (for PE Phase):**

\_\_\_\_\_  
*Name* *Signature* *Date*  
**LPS Engineer or Construction Engineer (*Construction Phase*):** \_\_\_\_\_

Name \_\_\_\_\_

-----  
Signature

Date \_\_\_\_\_

**LPS Engineer or Construction Engineer (Construction Phase):**

Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_

Signature

Date \_\_\_\_\_

**FHWA: (FHWA Approval on Full Oversight Projects Only)**

Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_

Signature

Date \_\_\_\_\_

Notice to Proceed Date:

**Distribution:** Consultant, LPA – RC, State Rep., FHWA, LPS PC, NDOR Agreements Engineer, Highway Funds Manager, CD PC

DR Form 250, March 2014

**Exhibit A**  
**SCOPE OF SERVICES**

**Amendment #1 (wetland mitigation)**

**Project Name: Karol Kay Boulevard, Bader-Hillcrest in Seward**

**Project Number: URB-6763(1)**

**Control Number: 13161**

**A. DESCRIPTION OF WORK**

The proposed project will impact wetlands and will require mitigation. A mitigation plan and construction details will need to be prepared in order to obtain a US Army Corps of Engineers Permit. Wetland mitigation was not part of the original scope of work but now is required due to the selection of the preferred alternate.

**B. SCOPE OF WORK:**

- 1 12 Point Mitigation Plan. The Consultant will prepare a mitigation plan for the wetland impacts. This document will be included as part of the Army Corps of Engineers 404 permit submittal. One meeting with NDOR, FHWA and /or Corps of Engineers is included in this scope of work.
  - 1.1 Site selection. Describe the factors considered during the site selection process including onsite alternatives and watershed needs. Provide baseline information of the proposed mitigation project site.
  - 1.2 Determination of credits. Determination of the number of credits to be provided.
  - 1.3 Mitigation plan. Provide work descriptions for the mitigation project, including: construction methods, timing, source of water, plans to control invasive plant species, and erosion control measures.
  - 1.4 Maintenance plan. Description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.
  - 1.5 Monitoring requirements. Develop parameters to be monitored and a schedule for monitoring and reporting monitoring results.
  - 1.6 Long-term management plan. Provide a description of how the mitigation project will be managed after performance standards have been met, including long-term financing mechanisms and the party responsible for long-term management.
  - 1.7 Adaptive management plan. Provide a plan to address unforeseen changes in site conditions and identify the party responsible for implementing adaptive management measures.
  - 1.8 Financial assurances. Provide financial assurances and how they are sufficient to ensure a high level of confidence that the mitigation project will be successfully completed.
- 2 Design of mitigation site: layout site to be used for mitigation and provide construction details so it can be built concurrent with project. Items of work would include: Excavation of mitigation area, Seeding and erosion control for mitigation area

**C. DELIVERABLES:**

1. 12 Point Mitigation Plan
2. Meeting Minutes

**D. SCHEDULE**

1. Notice to Proceed: May 1, 2015
2. 12 Point Mitigation Plan: June 1, 2015
3. Mitigation Site Design: June 19, 2015

Project Number: URB-6763(1)  
Control Number: 13161  
Project Name: Karol Kay Boulevard, Bader-Hillcrest in Seward

Exhibit A  
Sheet 1 of 1

Amendment #1 (wetland mitigation)
Consultant Estimate of Hours

Project Name: Karol Kay Boulevard, Bader-Hillcrest in Seward
Project Number: URB-6763(1)
Control Number: 13161
Location (City, County): Seward, Seward County
Firm Name: JEO Consulting Group Inc.
Consultant Project Manager: Julie Ogden, PE
Phone/Email: 402.443.7483 jogden@jeo.com
LPA Responsible Charge: John Hughes
Phone/Email: 402.643.4000 x4 / John.Hughes@cityofsewardne.com
NDOR Project Coordinator: Raitis Tigeris
Phone/Email: 402.479.3843 / raitis.tigeris@nebraska.gov
Date: April 8, 2015



Table with 14 columns: TASKS, PM, SENV, ENV, SENG, ENG, SDES, EE/UC, ADM, QC, SCC, SCM, Total. Rows include tasks like '1. 12 Point Mitigation Plan' and '2. Design of Mitigation Site' with associated personnel counts and a final 'Total Hours' row showing 101 hours.

- CLASSIFICATIONS\*:
PM = Project Manager
SENV = Senior Environmental Scientist
ENV = Environmental Scientist
ADM = Administrative
SENG = Associate/ Senior Engineer
ENG = Engineer
SDES = Senior Designer/Technician
EE/UC = Electrical Engineer/Utility Coordinator
QC = Quality Control Reviewer
SCC = Survey Crew Chief
SCM = Survey Crew Member

\* For Project Manager, use one of the technical classifications
\*\* For User-Defined Classifications, you will need to edit the Classifications Legend located above. To enter a new classification, replace "UD1" with its abbreviation (ex. GRA) and replace "User Defined 1" with the corresponding title (ex. Graphic Artist).

Amendment #1 (wetland mitigation)

Labor Rates

Project Name: Karol Kay Boulevard, Bader-Hillcrest in Se

Project Number: URB-6763(1)

Control Number: 13161

Location (City, County): Seward, Seward County

Firm Name: JEO Consulting Group Inc.

Consultant Project Manager: Julie Ogden, PE

Phone/Email: 402.443.7483 jogden@jeo.com

LPA Responsible Charge: John Hughes

Phone/Email: 402.643.4000 x4 / John.Hughes@cityofsewardne.com

NDOR Project Coordinator: Raitis Tigeris

Phone/Email: 402.479.3843 / raitis.tigeris@nebraska.gov

Date: April 8, 2015



| Labor Costs: |   | Hours | Blended Rate | Amount     |
|--------------|---|-------|--------------|------------|
| Code         | Classification Title                    |       |              |            |
| PM           | Project Manager                         | 10    | \$39.68      | \$396.80   |
| SENV         | Senior Environmental Scientist          | 12    | \$24.41      | \$292.92   |
| ENV          | Environmental Scientist                 | 29    | \$22.62      | \$655.98   |
| SENG         | Associate/ Senior Engineer              |       | \$39.68      |            |
| ENG          | Engineer                                | 12    | \$26.35      | \$316.20   |
| SDES         | Senior Designer/Technician              | 30    | \$23.62      | \$708.60   |
| EE/UC        | Electrical Engineer/Utility Coordinator |       |              |            |
| ADM          | Administrative                          | 2     | \$20.96      | \$41.92    |
| QC           | Quality Control Reviewer                | 6     | \$54.04      | \$324.24   |
| SCC          | Survey Crew Chief                       |       |              |            |
| SCM          | Survey Crew Member                      |       |              |            |
| TOTALS       |   | 101   |              | \$2,736.66 |

Overhead Rate: 198.69%

Fixed Fee: 13.20%

CLASSIFICATIONS:

PM = Project Manager

SENV = Senior Environmental Scientist

ENV = Environmental Scientist

ADM = Administrative

SENG = Associate/ Senior Engineer

ENG = Engineer

SDES = Senior Designer/Technician

EE/UC = Electrical Engineer/Utility Coordinator

QC = Quality Control Reviewer

SCC = Survey Crew Chief

SCM = Survey Crew Member

Blended Rates Worksheet

| STAFFING PLAN                           |                             |               |                         |
|---|-----------------------------|---------------|-------------------------|
| EMPLOYEE NAME                           | CLASSIFICATION <sup>1</sup> | SALARY RATE   | % ASSIGNED <sup>2</sup> |
| Project Manager                         |                             |               |                         |
| Julie Ogden                             | Project Manager             | \$39.68       | 100.0%                  |
|   |                             | Blended Rate: | \$39.68                 |
| Senior Environmental Scientist          |                             |               |                         |
| Shelly McPherson                        | Environmental Biologist     | \$24.41       | 100.0%                  |
|   |                             |               |                         |
|   |                             |               |                         |
|   |                             | Blended Rate: | \$24.41                 |
| Environmental Scientist                 |                             |               |                         |
| Robert Hibbits                          | Environmental Biologist     | \$22.62       | 100.0%                  |
|   |                             |               |                         |
|   |                             |               |                         |
|   |                             | Blended Rate: | \$22.62                 |
| Associate/ Senior Engineer              |                             |               |                         |
| Julie Ogden                             | Project Engineer            | \$39.68       | 100.0%                  |
|   |                             |               |                         |
|   |                             |               |                         |
|   |                             | Blended Rate: | \$39.68                 |
| Engineer                                |                             |               |                         |
| Jake Vasa                               | Project Engineer            | \$26.35       | 100.0%                  |
|   |                             |               |                         |
|   |                             |               |                         |
|   |                             | Blended Rate: | \$26.35                 |
| Senior Designer/Technician              |                             |               |                         |
| Jim O'Gorman                            | Engineering Tech            | \$23.62       | 100.0%                  |
|   |                             |               |                         |
|   |                             | Blended Rate: | \$23.62                 |
| Electrical Engineer/Utility Coordinator |                             |               |                         |
|   |                             |               |                         |
|   |                             |               |                         |
|   |                             | Blended Rate: |                         |
| Administrative                          |                             |               |                         |
| Evelyn Jansa                            | Administrative Assistant    | \$20.96       | 100.0%                  |
|   |                             |               |                         |
|   |                             | Blended Rate: | \$20.96                 |
| Quality Control Reviewer                |                             |               |                         |
| Eric Dixon                              | QC Manager                  | \$54.04       | 100.0%                  |
|   |                             |               |                         |
|   |                             | Blended Rate: | \$54.04                 |
| Survey Crew Chief                       |                             |               |                         |
|   |                             |               |                         |
|   |                             |               |                         |
|   |                             | Blended Rate: |                         |
| Survey Crew Member                      |                             |               |                         |
|   |                             |               |                         |
|   |                             |               |                         |
|   |                             | Blended Rate: |                         |

<sup>1</sup> Input actual employee classification as designated by firm.

<sup>2</sup> Total of "% Assigned" must equal 100% for each personnel classification category. If one person in classification, list them as 100% for "% Assigned".

Amendment #1 (wetland mitigation)  
Direct Expenses

Project Name: Karol Kay Boulevard, Bader-Hillcrest in Seward

Project Number: URB-6763(1)

Control Number: 13161

Location (City, County): Seward, Seward County

Firm Name: JEO Consulting Group Inc.

Consultant Project Manager: Julie Ogden, PE

Phone/Email: 402.443.7483 jogden@jeo.com

LPA Responsible Charge: John Hughes

Phone/Email: 402.643.4000 x4 / John.Hughes@cityofsewardne.com

NDOR Project Coordinator: Raitis Tigeris

Phone/Email: 402.479.3843 / raitis.tigeris@nebraska.gov

Date: April 8, 2015



| Subconsultants: | Quantity | Unit Cost | Amount |
|-----------------|----------|-----------|--------|
|                 |          |           |        |
|                 |          |           |        |
| Subtotal        |          |           |        |

| Printing and Reproduction: | Quantity | Unit Cost | Amount |
|----------------------------|----------|-----------|--------|
|                            |          |           |        |
|                            |          |           |        |
|                            |          |           |        |
|                            |          |           |        |
|                            |          |           |        |
| Subtotal                   |          |           |        |

| Mileage/Travel: | Quantity | Unit Cost | Amount |
|-----------------|----------|-----------|--------|
|                 |          |           |        |
|                 |          |           |        |
|                 |          |           |        |
|                 |          |           |        |
| Subtotal        |          |           |        |

| Lodging/Meals: | Quantity | Unit Cost | Amount |
|----------------|----------|-----------|--------|
|                |          |           |        |
|                |          |           |        |
|                |          |           |        |
| Subtotal       |          |           |        |

| Other Miscellaneous Costs:                 | Quantity | Unit Cost | Amount  |
|--|----------|-----------|---------|
| Facilities Capital (0.38% of Direct Labor) | 1        | \$10.40   | \$10.40 |
|  |          |           |         |
| Subtotal                                   |          |           | \$10.40 |
| TOTAL DIRECT EXPENSES                      |          |           | \$10.40 |

| 2011 Standard Rates*                            |  |                      |  |
|---|--|----------------------|--|
| Type  | Rate   |                      |  |
| Company Automobile                              | Prevailing standard rate as established by the IRS, currently \$0.51 /mi   |                      |  |
| Survey Vehicle                                  | Prevailing standard rate as established by the IRS, currently \$0.535 /mi  |                      |  |
| Black and White Copies                          | Actual reasonable cost   |                      |  |
| Color Copies                                    | Actual reasonable cost   |                      |  |
| Miscellaneous Postage, Mailing, Deliveries Etc. | Actual reasonable cost   |                      |  |
| Equipment                                       | Actual reasonable cost   |                      |  |
| Privately Owned Vehicle                         | Actual reimbursement amount to employee, not to exceed rates for company vehicles outlined above   |                      |  |
| Automobile Rental                               | Actual reasonable cost   |                      |  |
| Air fare  | Actual reasonable cost, giving the State all discounts   |                      |  |
| Lodging   | Actual cost, (excluding taxes & fees), not to exceed federal GSA reimbursement guidelines, not to exceed \$77 per person daily statewide; not to exceed \$104 in Omaha/Douglas County. |                      |  |
| Meals   | Actual cost, not to exceed federal GSA reimbursement guidelines, currently:  |                      |  |
|   | Statewide  | Omaha/Douglas County |  |
| Breakfast                                       | \$7.00   | \$10.00              |  |
| Lunch   | \$11.00  | \$15.00              |  |
| Dinner  | \$23.00  | \$31.00              |  |
| Incidentals                                     | \$5.00   | \$5.00               |  |
| Totals  | \$46.00  | \$61.00              |  |

\* A full list of rates can be found at the following website: [www.gsa.gov/perdiem](http://www.gsa.gov/perdiem)

Amendment #1 (wetland mitigation)  
Project Cost

Project Name: Karol Kay Boulevard, Bader-Hillcrest in Seward

Project Number: URB-6763(1)

Control Number: 13161

Location (City, County): Seward, Seward County

Firm Name: JEO Consulting Group Inc.

Consultant Project Manager: Julie Ogden, PE

Phone/Email: 402.443.7483 jogden@jeo.com

LPA Responsible Charge: John Hughes

Phone/Email: 402.643.4000 x4 / John.Hughes@cityofsewardne.com

NDOR Project Coordinator: Raitis Tigeris

Phone/Email: 402.479.3843 / raitis.tigeris@nebraska.gov

Date: April 8, 2015



| Direct Labor Costs:                     | Hours | Rate    | Amount     |
|---|-------|---------|------------|
| Personnel Classification                |       |         |            |
| Project Manager                         | 10    | \$39.68 | \$396.80   |
| Senior Environmental Scientist          | 12    | \$24.41 | \$292.92   |
| Environmental Scientist                 | 29    | \$22.62 | \$655.98   |
| Associate/ Senior Engineer              |       | \$39.68 |            |
| Engineer                                | 12    | \$26.35 | \$316.20   |
| Senior Designer/Technician              | 30    | \$23.62 | \$708.60   |
| Electrical Engineer/Utility Coordinator |       |         |            |
| Administrative                          | 2     | \$20.96 | \$41.92    |
| Quality Control Reviewer                | 6     | \$54.04 | \$324.24   |
| Survey Crew Chief                       |       |         |            |
| Survey Crew Member                      |       |         |            |
| TOTALS                                  | 101   |         | \$2,736.66 |

| Direct Expenses:                | Amount  |
|---------------------------------|---------|
| Subconsultants                  |         |
| Printing and Reproduction Costs |         |
| Mileage/Travel                  |         |
| Lodging/ Meals                  |         |
| Other Miscellaneous Costs       | \$10.40 |
| TOTALS                          | \$10.40 |

| Total Project Costs: | Amount     |
|----------------------|------------|
| Direct Labor Costs   | \$2,736.66 |
| Overhead @ 198.69%   | \$5,437.47 |
| Total Labor Costs    | \$8,174.13 |
| Fixed Fee @ 13.20%   | \$1,078.99 |
| Direct Expenses      | \$10.40    |
| PROJECT COST         | \$9,263.52 |



Amendment #1 (wetland mitigation)  
Cost by Task

Project Name: **Karol Kay Boulevard, Bader-Hillcrest in Seward**

Project Number: **URB-6763(1)**

Control Number: **13161**

Location (City, County): **Seward, Seward County**

Firm Name: **JEO Consulting Group Inc.**

Consultant Project Manager: **Julie Ogden, PE**

Phone/Email: **402.443.7483 jogden@jeo.com**

LPA Responsible Charge: **John Hughes**

Phone/Email: **402.643.4000 x4 / John.Hughes@cityofsewardne.com**

NDOR Project Coordinator: **Raitis Tigeris**

Phone/Email: **402.479.3843 / raitis.tigeris@nebraska.gov**

Date: **April 8, 2015**



| Tasks                        | Total Hours | Direct Labor Cost | Overhead 198.69% | Fixed Fee 13.20% | Total Project Cost |
|------------------------------|-------------|-------------------|------------------|------------------|--------------------|
| For Engineering Services:    |             |                   |                  |                  |                    |
| 1. 12 Point Mitigation Plan  | 50          | \$1,316.02        | \$2,614.80       | \$518.87         | \$4,449.69         |
|                              |             |                   |                  |                  |                    |
| 2. Design of Mitigation Site | 51          | \$1,420.64        | \$2,822.67       | \$560.12         | \$4,803.43         |
|                              |             |                   |                  |                  |                    |
|                              |             |                   |                  |                  |                    |
| Direct Expenses              |             |                   |                  |                  | \$10.40            |
| TOTAL                        | 101         | \$2,736.66        | \$5,437.47       | \$1,078.99       | \$9,263.52         |

# **City of Seward, NE**

**Tuesday, May 5, 2015**

**Regular Session**

## **Item G9**

### **CONSIDERATION OF AN ORDINANCE ESTABLISHING A DEADLINE FOR REQUESTING ITEMS BE PLACED ON THE CITY COUNCIL AGENDA - Councilmember Singleton**

**Administrative Report:** This is a request from Councilmember Singleton. The intent is to have a consistent policy regarding when the council and public may place items on the agenda and allow the Mayor the flexibility to add items up to the 24 hour statutory deadline. This will allow the Mayor and his/her staff, especially the City Attorney, adequate time to ensure that the agenda items are clearly and accurately described in compliance with the Open Meetings Act. It will also provide the Mayor and his/her staff time to gather information for the council's discussion.

Allowing the mayor to adjust the agenda up to the statutory deadline of 24 hours prior to the meeting would give the mayor the necessary flexibility to adjust the agenda based on the requests that come in after Wednesday.

For example, let's say we were holding an agenda item because we were waiting for information that then arrived after Wednesday. This ordinance would give us the flexibility to place it on the agenda.

Another example may be if someone brought in an application for a special designated liquor license after the Wednesday deadline. Since these applications don't usually take much time on the agenda, we would be able to add it to the agenda for the upcoming meeting.

**Staff Contact:**



ORDINANCE NO.

AN ORDINANCE TO AMEND AND REVISE SEWARD MUNICIPAL CODE SECTION 1-600, CITY COUNCIL AGENDAS, POSTING NOTICES & ITEMS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SEWARD AS FOLLOWS:

SECTION 1. That Section 1-600 CITY COUNCIL AGENDAS, POSTING NOTICES & ITEMS is hereby amended and revised as follows:

1-600 CITY COUNCIL AGENDAS, POSTING NOTICE & ITEMS: All requests for City Council Agenda items shall be presented in writing to the Mayor, City Administrator or City Clerk. In addition to requesting agenda items at the designated time during Council meetings, Council members may request items to be placed on the agenda at the next regularly scheduled meeting, if feasible, by written request. Any member of the public may request an item for the Council Agenda or Administrative Action by filling out a request form entitled "Request for Council Agenda Item or Administration Action". This form is available at City Hall, or can be downloaded from the City's website at [cityofsewardne.com](http://cityofsewardne.com). The deadline for the Council and the public for adding items to the Council agenda shall be 12:00 p.m. on the Wednesday preceding each regular meeting, unless the item is determined to be of an emergency nature. The item requested will either be placed on the next regularly scheduled Council meeting agenda, if feasible, or handled Administratively if a policy is already in place. The Mayor and Council will be provided copies of all requests submitted. The ~~Governing Body~~ Council shall have the right to modify an agenda only for items of an emergency nature. The deadline for the Mayor to add items to the Council agenda shall be twenty four hours before the commencement of the meeting, unless the item is determined to be of an emergency nature.

The method of communicating advance notice of the regular and special meetings of the City Council shall be made by posting notice of such meeting with the Agenda thereon, in the following public places of the City of Seward, Nebraska:

The front entrance of City Hall;

The front entrance of the City Library;

The bulletin board in the Seward County Courthouse; and

The front entrance of the City Municipal Building

Such notice shall contain the time and specific place for each meeting and either an enumeration of the agenda subjects known at the

time of the notice, or a statement that such an agenda kept continually current shall be readily available for public inspection at the office of the Municipal Clerk. Except for items of an emergency nature, the agenda shall not be altered later than twenty-four hours before the scheduled commencement of the meeting. The Mayor will present any request for an emergency item at the beginning of the next regularly scheduled meeting, and the item will be subject to the final determination and approval of the City Council.

Section 2. Pamphlet form; publication, when operative. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage, approval, and publication as required by law and city ordinance.

Dated this 5th day of May, 2015.

CITY OF SEWARD, NEBRASKA

\_\_\_\_\_  
Joshua Eickmeier, Mayor

ATTEST:

\_\_\_\_\_  
Bonnie Otte  
Assistant Administrator/  
Clerk-Treasurer/  
Budget & Human Resource Director

# **City of Seward, NE**

**Tuesday, May 5, 2015**

**Regular Session**

## **Item G10**

### **CAPITAL PROJECTS UPDATE - John Hughes**

**Administrative Report:** The City Council will receive an update on capital and other on-going projects.

**Staff Contact:**

## **City Project Report 05/05/2015**

1. CIP Projects –
  - a) Installing fiber into Muni Building & City Hall
2. Building & Planning Department –
  - a) Plan Review County Justice Center
  - b) CIP Info for 205/2016
  - c) City GIS presentation to Concordia University GIS class
3. Street Department –
  - a) Assist on Cedar & Jackson Street projects
  - b) Ordered new road grader for lease
  - c) Painting crosswalks at school crossings
4. Electric Department –
  - a) Working on 3 phase projects scheduled for replacement
  - b) New transformer bank at Hughes Brothers
5. Water & Waste Water Department –
  - a) Pool repairs
  - b) Digester refurbishment
6. Park & Rec Department –
  - a) Repair picnic shelter Memorial Field

# **City of Seward, NE**

**Tuesday, May 5, 2015**

**Regular Session**

## **Item G11**

### **FUTURE REQUESTS FOR COUNCIL AGENDA ITEMS OR ADMINISTRATIVE ACTION - Mayor Eickmeier**

**Administrative Report:** This item is to allow Council members an opportunity to request future agenda items. To remain in compliance with the open meetings law, no discussion of an item will be allowed beyond what is necessary to clarify the request.

**Staff Contact:**



# **City of Seward, NE**

**Tuesday, May 5, 2015**

**Regular Session**

## **Item G12**

### **ANNOUNCEMENT OF UPCOMING EVENTS - Mayor Eickmeier**

*May 15 - Annie Adamek Retirement Celebration - 1:00-3:00 p.m. - Civic Center, West Fireplace Room*

*July 4th Celebration*

**Staff Contact:**

**City of Seward, NE**  
**Tuesday, May 5, 2015**  
**Regular Session**

**Item G13**

**MOTION TO ADJOURN**

**Staff Contact:**