

AGENDA
NEWMAN CITY COUNCIL/REDEVELOPMENT AGENCY
REGULAR MEETING NOVEMBER 9, 2010
CITY COUNCIL CHAMBERS, 7:00 P.M., 1200 MAIN STREET

1. Call To Order.
2. Pledge Of Allegiance.
3. Invocation.
4. Roll Call.
5. Declaration Of Conflicts Of Interest.
6. Ceremonial Matters
7. Items from the Public - Non-Agenda Items.
8. Consent Calendar
 - a. Waive All Readings Of Ordinances And Resolutions Except By Title.
 - b. Approval Of Warrants.
 - c. Approval Of Minutes Of The October 26, 2010 Regular Meeting.
 - d. Approve Increased Bid Award For The Per Capita Park Improvement Project.
9. Public Hearings.
10. Regular Business
 - a. Approve Change Order To The Contract For The Newman Downtown Plaza Project To Add Bathrooms.
 - b. Property Receivership Update.
 - c. Report On Site Lease Agreement With Open Range Communications, Inc.
11. Items From District Five Stanislaus County Supervisor.
12. Items From The City Manager And Staff.
13. Items From City Council Members.
14. Adjournment.

Calendar of Events

November 8 - NCLUSD Board Meeting - 6:00 P.M.

November 9 - City Council - 7:00 P.M.

November 11 - Recreation Commission - 7:00 P.M.

November 11 - Veteran's Day - City Offices Closed.

November 12 - City Furlough Day - City Offices Closed.

November 16 - Two-On-Two Meeting With The School Board - 4:00 P.M.

November 18 - Planning Commission - 7:00 P.M.

November 23 - City Council - Canceled.

November 24 - City Furlough Day - City Offices Closed.

November 25-26 - Thanksgiving Holiday- City Offices Closed.

December 2 - West Side Healthcare Taskforce - 7:00 p.m. - Newman

December 9 - Recreation Commission - 7:00 P.M.

December 13 - NCLUSD Board Meeting - 6:00 P.M.

December 14 - City Council - 7:00 P.M.

December 16 - Planning Commission - 7:00 P.M.

December 21 - Two-On-Two Meeting With The School Board - 4:00 P.M.

December 24 - Christmas Holiday- City Offices Closed.

December 27-30 - City Furlough Days - City Offices Closed.

December 28 - City Council - Canceled.

December 31 - New Year's Day Holiday - City Offices Closed.

Date.: Nov 4, 2010
Time.: 4:36 pm
Run by: EMILY M. FARIA

CITY OF NEWMAN
CASH DISBURSEMENTS REPORT

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Ck #	Check Date	CK Amount	Vendor Name	Description
038317	11/05/10	65.00	ABBOTT & KINDERMANN, LLP	COURTCALL/SCM HEARTHSTONE
038318	11/05/10	71857.73	AECOM USA, INC	DOWNTOWN PLAZA CONSTRUCTION MANAGE SERV/8/28TO10/8
038319	11/05/10	240.00	SANDRA ALCANTAR	SOCCER REFEREE/2010 SEASON/ALCANTAR
038320	11/05/10	50.00	AMERICAN MOBILE SHREDDING, INC	2 BIN SHRED SERVICE/PD
038321	11/05/10	405.94	AT&T MOBILITY	WIRELESS ACCESS/9/03/10 TO 10/02/10 @ PD
038322	11/05/10	467.09	AT&T	MONTHLY TELEPHONE SERVICE/9-13-10 TO 10-12-10
038322	11/05/10	334.35	AT&T	T1 LINE @ PD 9/20/10 TO 10/19/10
038322	11/05/10	146.51	AT&T	EMERGENCY DISPATCH LINE @ PD/9/20/10 TO 10/19/10
038323	11/05/10	562.00	JAMES J. BELL	CONTRACT SERVICES-EVIDENCE CLERK 10/18 TO 10/28/10
038324	11/05/10	53384.05	BERTOLOTTI DISPOSAL	GARBAGE SERVICE/OCT 2010
038325	11/05/10	6.03	B G AUTO	STARTER FLUID/PYROIL CARB & CHOKE
038325	11/05/10	6.05	B G AUTO	2 10W30 OIL
038325	11/05/10	432.42	B G AUTO	53 GALLON PAINT THINNER
038325	11/05/10	14.52	B G AUTO	22 KWIK CONNECT BLAD
038325	11/05/10	22.88	B G AUTO	BRAKE FLUID/STREET SWEEPER
038326	11/05/10	440.00	BJ'S CONSUMER'S CHOICE IN	PEST CONTROL SERVICES 9/28/10
038327	11/05/10	146.57	W.H. BRESHEARS, INC.	10 GALLONS OIL FOR WELLS
038328	11/05/10	1590.00	CRA	ANNUAL MEMBERSHIP DUES/12-1-10 TO 11-30-10/HOLLAND
038329	11/05/10	3035.00	CALIFORNIA CONSULTING, LLC	MONTHLY RETAINER/GRANT & LOBBYING SERV/NOV 2010
038330	11/05/10	100.00	JEFF CARTER	PARKING LOT RENT/NOV 2010
038331	11/05/10	234.00	CBA (ADMIN FEES)	DENTAL-VISION ADMIN FEES/NOV 2010
038332	11/05/10	263.26	C B MERCHANT SERVICES, INC	REIMBURSE BAD DEBT
038333	11/05/10	1079.79	CDW GOVERNMENT, INC	3 MICROSOFT OFFICE PRO PLUS 2010
038334	11/05/10	632.34	CENTRAL SANITARY SUPPLY	GLOVES/PAPER TOWELS/TOILET PAPER/DISINFECTANT

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Ck #	Check Date	CK Amount	Vendor Name	Description
038335	11/05/10	162.87	CIT TECHNOLOGY FIN SERV, INC	MS GSA PRO PLUS/NOV 2010/PD
038336	11/05/10	50.00	CARL J. COELHO (CHUCK)	Veh Operation FIRE/NOV 2010
038337	11/05/10	94.90	COMCAST CABLE	HIGH SPEED INTERNET 10/22/10 TO 11/21/10
038338	11/05/10	778.38	CORBIN WILLITS SYS, INC.	SERVICE & ENHANCEMENT FEES/NOV 2010
038339	11/05/10	80.00	ROXANNE CORELLA	SOCCER REFEREE/2010 SEASPM/CORELLA
038340	11/05/10	200.00	MIGUEL DELGADO	REFUND MEMORIAL BLDG DEPOSIT/DELGADO
038341	11/05/10	121.19	E&M ELECTRIC, INC.	RAN TEST TO STREET LIGHT FROM PATCHETT CIRCLE
038341	11/05/10	186.98	E&M ELECTRIC, INC.	REPLACED BROKEN FIXTURE @ PIONEER PARK
038341	11/05/10	222.78	E&M ELECTRIC, INC.	REPAIRS TO STREET LIGHT @ PATCHETT CIRCLE
038341	11/05/10	36.25	E&M ELECTRIC, INC.	DISCONNECT WATER COOLER
038341	11/05/10	1646.81	E&M ELECTRIC, INC.	INSTALLED PHOTO EYES AT SEVERAL LOCATIONS
038342	11/05/10	15.00	ECONOMIC TIRE SHOP	1 TIRE REPAIR
038342	11/05/10	16.25	ECONOMIC TIRE SHOP	1 TIRE REPAIRED
038342	11/05/10	16.21	ECONOMIC TIRE SHOP	1 TIRE REPAIR
038343	11/05/10	3881.00	ENERPOWER	ELECTRIC ENERGY SERVICES 6/17/10 TO 9/16/10
038344	11/05/10	34.95	FIREtoWIRE, INC	WEB HOSTING 11/17/10 TO 12/17/10
038345	11/05/10	148.08	GARTON TRACTOR	4 TIRES FOR LAWN MOWERS
038346	11/05/10	346.67	SUSANA H. GARCIA	REFUND MEMORIAL BLDG DEPOSIT/CANCELLED USE/GARCIA
038347	11/05/10	650.00	GOLDEN BY-PRODUCTS SCRAP TIRE	RENTAL OF 28FT TRAILER FOR TIRE AMNESTY
038348	11/05/10	200.00	ERICK GONZALEZ	REFUND MEMORIAL BLDG DEPOSIT/ERICK GONZALEZ
038349	11/05/10	54348.24	HASKELL & HASKELL ENGINEERING/	PROGRESS PAYMENT #2/PER CAPITAL PROJECT
038350	11/05/10	590.86	HEWLETT-PACKARD FINANCIAL SERV	HARDWARE LEASE 11/18/10 TO 12/17/10/PD
038351	11/05/10	150.55	STEPHANIE HOUSE	REIMBURSE TEEN CENTER SNACK BAR SUPPLIES/HOUSE
038352	11/05/10	293.34	HUB INTERNATIONAL OF CA INS SE	LIABILITY INSPREMIUM/OCT 2010

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Ck #	Check Date	CK Amount	Vendor Name	Description
038353	11/05/10	321.87	IKON OFFICE SOLUTIONS	COPIER LEASE 10-10-10 TO 11-09-10/CITY HALL
038354	11/05/10	36.87	IRRIGATION DESIGN & CONSTRUCTI	PVC PRIMER/PVC GLUE/PVC MOLDED UNION
038354	11/05/10	20.57	IRRIGATION DESIGN & CONSTRUCTI	PVC MOLDED COUPLING/SLIP-FIX 2"
038354	11/05/10	14.27	IRRIGATION DESIGN & CONSTRUCTI	PVC MOLDED MALE ADAPTER/COMPRESSION COUPLING 2"
038354	11/05/10	2.43	IRRIGATION DESIGN & CONSTRUCTI	RUBBER COATED GLOVES
038354	11/05/10	5.69	IRRIGATION DESIGN & CONSTRUCTI	1" POLY ELBOW BANJO
038354	11/05/10	125.23	IRRIGATION DESIGN & CONSTRUCTI	COVERALL/PIPE/PVC MOLDED TEE/PVC CAP
038355	11/05/10	1800.00	IWORQ SYSTEMS	INTERNET WORK MANAGEMENT NOV 10 TO OCT 2011
038356	11/05/10	391.50	JOE'S LANDSCAPING & CONCRETE,	CLEAN-UP OF 2036 T STREET
038356	11/05/10	588.24	JOE'S LANDSCAPING & CONCRETE,	CLEAN UP OF 1188 WALNUT CREEK DR
038357	11/05/10	115.00	TONI LEMUS	SOCCER REFEREE/2010 SEASON/LEMUS
038358	11/05/10	320.00	MICHAEL MAGANA	SOCCER REFEREE/2010 SEASON/MAGANA
038359	11/05/10	382.68	MALLARD EXPRESS AUTO	TURNUED FRONT BRAKE ROTORS/REPLACE SHOCKS/ROTATION
038360	11/05/10	25.00	SANTIAGO MENDOZA	SOCCER REFEREE/2010 SEASON/S. MENDOZA
038361	11/05/10	200.00	MARIBEL MENDOZA	SOCCER REFEREE/2010 SEASON/MENDOZA
038362	11/05/10	35.00	NELSON MENDOZA	SOCCER REFEREE/2010 SEASON/MENDOZA
038363	11/05/10	240.00	KRISTEN MOORE	SOCCER REFEREE/SET-UP/KRISTIN MOORE/2010 SEASON
038364	11/05/10	240.00	KAHUA MOORE	SOCCER REFEREE/SET-UP/2010 SEASON/KAHUA MOORE
038365	11/05/10	320.00	JONATHAN J. MORENO	SOCCER REFEREE/SET-UP/2010 SEASON/MORENO
038366	11/05/10	13791.93	NBS	PROP 218 & ASSESSMENT CONSULTING SERV/BALLOT TABS
038367	11/05/10	285.07	CITY OF NEWMAN-PETTY CASH	PARKING/SUPPLIES/CAMERA/CAR WASHES/POSTAGE
038368	11/05/10	513.21	NEWMAN ACE HARDWARE/JACT, INC	DUSTER/TRASH CAN/STRING TRMR/PIPE/FERTILIZER/
038369	11/05/10	280.00	CARLOS OCHOA	SOCCER REFEREE/SET-UP/2010 SEASON/OCHOA
038370	11/05/10	160.00	MARIANA OCHOA	SOCCER REFEREE/SET-UP/2010 SEASON/OCHOA

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038371	11/05/10	2681.00	OPERATING ENGINEERS/	HEALTH INSURANCE PREMIUM/DECEMBER 2010
038372	11/05/10	764.00	BIANCA PARDO	ZUMBA INSTRUCTOR/OCT 2010/PARDO
038373	11/05/10	195.49	P G & E	NATURAL GAS PURCHASES/9/7/10 TO 10/08/10
038374	11/05/10	285.00	PRECISION INSPECTION, INC	HOURLY BLDG INSPECTIONS/DOWNTOWN PLAZA/SEPT 2010
038375	11/05/10	237.28	PROFORCE LAW ENFORCEMENT	10 TASER CARTRIDGES/PD
038376	11/05/10	40.98	RALEY'S IN STORE CHARGE	SUPPLIES FOR PLANNING MEETING
038376	11/05/10	3.99	RALEY'S IN STORE CHARGE	SUGAR/CITY HALL
038376	11/05/10	5.59	RALEY'S IN STORE CHARGE	FORKS/FOAM CUPS/WATER DEPT
038376	11/05/10	26.18	RALEY'S IN STORE CHARGE	SUGAR/COFFEEMATE/COFFEE/SPOONS/CUPS
038377	11/05/10	55.00	MARTY REIS	BACKFLOW TESTING/NOB HILL
038378	11/05/10	357.64	SAFE-T-LITE	BARRICADE RENTAL FOR FALL FESTIVAL
038379	11/05/10	34.00	SAN JOAQUIN VALLEY AIR	ANNUAL PERMIT FEE 10/11-GAS TANKS AT WWTP
038380	11/05/10	106.00	SAN JOAQUIN VALLEY AIR POLLUTI	ANNUAL RENEWAL FEE/GAS-FIRED SEWER MACHINE ENGINE
038381	11/05/10	32.47	BRETT SHORT (NT)	REIMBURSEMENT FOR 2 LIGHT FIXTURES
038382	11/05/10	657.59	SIERRA DISPLAY, INC.	28 70-LIGHT LED LIGHT STRING/DOWNTOWN
038382	11/05/10	304.45	SIERRA DISPLAY, INC.	1000 C-7 LAMPS
038383	11/05/10	420.02	SOLECON, INC	CHECKED FILTERS/CLEANED COILS/PD
038384	11/05/10	1167.22	STANISLAUS DRUG ENFORCEMENT AG	CHARGES FOR METH LAB DISPOSAL
038385	11/05/10	42.30	STAPLES ADVANTAGE	PUSH PINS/FOLDERS/COLORED PAPER
038385	11/05/10	43.34	STAPLES ADVANTAGE	REMOTE FOR PROJECTOR @ COUNCIL CHAMBER
038385	11/05/10	139.37	STAPLES ADVANTAGE	COPY PAPER/POST-ITS/HI-LITERS/STAPLES/FLASH DRIVE
038385	11/05/10	30.88	STAPLES ADVANTAGE	3 REMANUFACTURED INK CARTRIDGES
038385	11/05/10	5.04	STAPLES ADVANTAGE	3 CALCULATOR RIBBONS
038386	11/05/10	43.35	T&R ENTERPRISES	WELDING PART ON STREET SWEEPER

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038387	11/05/10	165.00	BARBARA J. TOSTA	YOUNG AT HEART INSTRUCTOR/OCT 2010
038388	11/05/10	50.32	USA BLUEBOOK	3 HOSE BIB LOCK SHACKLES
038389	11/05/10	561.10	VALLEY PARTS SERVICE	FREON/NOZZLE/MASTER CYLINDER/STARTER/HOSE KIT
038390	11/05/10	50.00	GEORGE VARGAS	MONTHLY GAS ALLOWANCE/NOV 2010
038391	11/05/10	40.00	NICOLE VILLARREAL	REFUND YOUTH BASKETBALL REGISTRATION/VILLARREAL
038392	11/05/10	95.14	WECO INDUSTRIES	WASHDOWN GUN HOSE/SEWER MACHINE
038392	11/05/10	186.77	WECO INDUSTRIES	HEAVY DUTY WASHDOWN GUN/SEWER MACHINE
038393	11/05/10	859.96	WILLIE ELECTRIC	4-WAY VALVE/3-WAY VALVE FOR WELL REPAIRS
038394	11/05/10	101.86	YANCEY LUMBER COMPANY	2 BAGS DOOG FOOD
038395	11/05/10	77.91	ASHBAUGH, BRUCE	MQ CUSTOMER REFUND FOR ASH0011
038396	11/05/10	85.49	RAMIREZ, MARGARITA	MQ CUSTOMER REFUND FOR RAM0071
038397	11/05/10	39387.00	SAPUTO CHEESE	PO #11-20
Sub-Total:		----- 269340.13		
Grn-Total:		----- 269340.13		
Count:	108			

MINUTES
NEWMAN CITY COUNCIL/REDEVELOPMENT AGENCY
REGULAR MEETING OCTOBER 26, 2010
CITY COUNCIL CHAMBERS, 7:00 P.M., 1200 MAIN STREET

1. **Call To Order** - Mayor Katen 7:02 P.M.
2. **Pledge Of Allegiance.**
3. **Invocation** - Council Member Davis.
4. **Roll Call PRESENT:** Davis, Candea, Martina And Mayor Katen.
ABSENT: None.
5. **Declaration Of Conflicts Of Interest** - None
6. **Ceremonial Matters**
 - a. Proclamation Supporting The Choose Civility Initiative.
7. **Items from the Public - Non-Agenda Items** - None.
8. **Consent Calendar**
 - a. Waive All Readings Of Ordinances And Resolutions Except By Title.
 - b. Approval Of Warrants.
 - c. Approval Of Minutes Of The October 12, 2010 Regular Meeting.
 - d. Authorize The City Manager And Chief Of Police To Enter Into An Agreement For The Establishment And Participation In The Stanislaus Operational Area Organization.
 - e. Adopt Resolution No. 2010-77, A Resolution Authorizing Ed Katen As Mayor, And Michael Holland As City Clerk To Record A Notice Of Completion For The Safe Routes To School, PQRST/Fresno/Merced/West Avenue Infrastructure And Street Reconstruction Project Phase 1.

Mayor Katen Requested Warrant No. 038260 Payable To W.H. Breshears, Inc. In The Amount Of \$1,198.67 Be Pulled For Discussion.

ACTION: On A Motion By Martina Seconded By Candea And Unanimously Carried, The Consent Calendar Minus Warrant No. 038260 Was Approved.

City Manger Holland Explained The Warrant No. 038260 Was For Fuel That Must Be Delivered To Specific Locations. He Stated That City Would Look For Other Companies To Provide Those Services In Light Of W.H. Breshears' Tax Sharing Agreement With The City Of Modesto. Holland Noted That This Was An Oversight By Staff And Assured The Council That Every Effort Would Be Made To Utilize Another Company.

ACTION: On A Motion By Martina Seconded By Candea And Unanimously Carried, Warrant No. 038260 Was Approved.

9. Public Hearings

- a. Second Reading And Adoption Of Ordinance No. 2010-8, An Ordinance Authorizing An Amendment To The Contract Between The City Of Newman And Board Of Administration Of The California Public Employees' Retirement System And Authorize Staff To Prepare And Publish A Summary Of Said Ordinance.

Mayor Katen Opened The Public Hearing At 7:11 P.M.

Don Hutchins, 708 Hardin Road, Noted That The City Would Not Realize A Cost Savings Until Some One New Is Hired And Asked If Existing Employees Were Willing To Roll Back Current Retirement Plans.

City Manger Holland Noted That CalPERS Does Not Allow A Reduction In Benefits.

There Being No Public Comment, Mayor Katen Closed The Public Hearing At 7:13 P.M.

ACTION: Ordinance No. 2010-8, An Ordinance Authorizing An Amendment To The Contract Between The City Of Newman And Board Of Administration Of The California Public Employees' Retirement System And Had Its Second Reading By Title Only. On A Motion By Martina Seconded By Candea Said Ordinance Was Unanimously Adopted And Staff Was Authorized To Prepare And Publish A Summary Of Said Ordinance.

10. Regular Business

- a. Adopt Resolution No. 2010-78, A Resolution Awarding The Nested Piezometer Well Project To Vannucci Technologies For \$48,346.00 And Authorize The City Manager To Execute The Agreement.

ACTION: On A Motion By Martina Seconded By Candea And Unanimously Carried, Resolution No. 2010-78, Awarding The Nested Piezometer Well Project To Vannucci Technologies For \$48,346.00 And Authorize The City Manager To Execute The Agreement, Was Approved.

- b. Report On Newman Tree Lighting Event.

ACTION: On Motion By Martina Seconded By Candea And Unanimously Carried, The Council Approved The Newman Tree Lighting Event As Submitted By The Chamber Of Commerce.

11. Items From District Five Stanislaus County Supervisor.

Supervisor DeMartini Noted That The West Side Healthcare Taskforce Had Met During The Previous Week In Patterson To Discuss The Upcoming Calendar Project. DeMartini Mentioned That The Next West Side Healthcare Taskforce Meeting Would Be In Newman On December 2, 2010.

12. Items From The City Manager And Staff.

City Manager Holland Reported That He And The Mayor Had Recently Attended An Alliance Meeting Regarding Infrastructure Funding And Noted That The Meeting Was Very Productive. Holland Informed Everyone That The First City-Wide Rezoning Meeting Has Taken Place And That A Second Meeting Was Scheduled For The Following Day. He Notified The Council That The Park Per Capita Project Is Scheduled To Be Completed In Mid November. Holland Explained That The City Had Some Additional Per Capita Funds And Asked For Their Concurrence To Proceed With Additional Park Renovations; He Indicated That He Would Bring This Item Back To The Council For A Formal Approval At Their Next Meeting.

Chief Richardson Introduced Community Service Officer Jessica Tobin Who Presented A Slide Show Detailing Information About Her Duties And Responsibilities As Well As Recent Statistics From Her Department.

Public Works Director Reynolds Presented Pictures Of The Plaza Project And Noted That His Staff Was Already Preparing For The Winter And Holiday Seasons.

13. Items From City Council Members.

Mayor Katen Mentioned That The Salvation Army Is Recruiting Volunteers To Ring The Bell For The Salvation Army During The Holiday Season. Katen Reported That Both He And Council Member Martina Had Attended A Hero Event At Von Renner Over The Weekend And That Was Designed To Talk About The Importance Of Reading; Katen Stated The It Was A Good Event And That It Really Encouraged Reading. He Reminded Everyone That Upcoming Chamber Mixer. Katen Praised Staff For Being Well Prepared At The Alliance Meeting Regarding Infrastructure Funding.

14. Adjournment.

ACTION: On Motion By Katen Seconded By Martina And Unanimously Carried, The Meeting Was Adjourned At 7:58 P.M.

Honorable Mayor and Members
of the Newman City Council

Agenda Item: **8.d.**
City Council Meeting
of November 9, 2010

INCREASE BID AWARD FOR THE PER CAPITA PARK IMPROVEMENT PROJECT

RECOMMENDATIONS:

Increase the Bid Award amount for the Per Capita Park Improvement Project

BACKGROUND:

The California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 is intended to acquire and develop neighborhood, community and regional parks and recreational areas. The Per Capita Grant Program (funded by the Act) is intended to maintain a high quality of life for California's growing population by providing a continuing investment in parks and recreational facilities. Specifically, it is for the acquisition and development of neighborhood, community, and regional parks and recreation lands and facilities in urban and rural areas. Sixty percent (60%) of the funds were allocated to entities based on population; the City of Newman's allocation is \$220,000.00.

A Notice to Contractors (bid) was released online and to local Building Exchanges on July 21, 2010 and advertised in both the West Side Index and Modesto Bee on July 29, 2010. A total of two bids were received and read on Monday August 16, 2010 at 2:00pm

On August 24, 2010, the City Council awarded Haskell and Haskell Engineering and Construction Services, Inc. the Per Capita Project bid for a not-to-exceed amount of \$185,000.00; a contract was subsequently awarded in the amount of \$169,626.04.

ANALYSIS:

As the project progressed, staff found opportunities to make additional improvements to Barrington and Pioneer Parks that were grant eligible. In an effort to make said improvements at a cost savings, staff requested quotations from the contractor. Quotations were received and reviewed by Public Works staff and found to be reasonable and in order.

At the City Council meeting of October, 26, 2010, City Manager Holland verbally requested and received Council's concurrence with awarding the change orders that would exceed the awarded not-to-exceed amount of \$185,000.00. For record-keeping purposes, staff has returned the item to the Council for formal approval.

FISCAL IMPACT:

Previously Contracted:	\$169,626.04
Additional Change Orders:	\$ 21,038.25
Total:	\$190,664.29 (an overage of \$5,664.29 over the not-to-exceed amount)

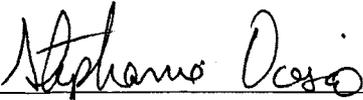
CONCLUSION:

Staff recommends that the Council increase the bid award amount to Haskell and Haskell Engineering and Construction Services, Inc. to include the change orders for Barrington and Pioneer Parks.

ATTACHMENTS:

1. Exhibit A – Contractor Change Order Log

Respectfully Submitted,


Stephanie Ocasio
Assistant Planner

REVIEWED/CONCUR:


Michael E. Holland
City Manager

**HHECS
PCO LOG**

Per Capita Project					STATUS AS OF:		11/1/10	
PROPOSED CHANGE ORDER LOG								
Job #2146								
PCO	ITEM	DATE	DESCRIPTION	CONTRACTOR	AMOUNT	Negotiated	STATUS	CO#
1	Future Conduits	9/28/10	Furnish & Install 2 -3" Conduits for Future Score Boards - Barrington Park	HHEC	\$ 2,897.45	\$ 2,897.45	Approved	
2	New Roof Barrington Park Snack Bar	9/28/10	Strip Existing Roof, Cut Back Damage PW @ Overhang, Install Flashing, New Roof, New Facia Boards Paint to Match	HHEC	\$ 6,474.34	\$ 6,474.34	Approved	
3	Gazebo Roof	10/13/10	Strip Existing Roof, Cut Back Damage PW @ Overhang, Install Flashing, New Roof, New Facia Boards Paint to Match	HHEC	\$ 7,609.78	\$ 6,824.78	Approved	
4	Rotary Roof	10/13/10	Strip Existing Roof, Cut Back Damage PW @ Overhang, Install Flashing, New Roof, New Facia Boards Paint to Match	HHEC	\$ 4,148.33	\$ -	Deleted	
5	Storage Roof	10/13/10	Strip Existing Roof, Cut Back Damage PW @ Overhang, Install Flashing, New Roof, New Facia Boards Paint to Match	HHEC	\$ 4,662.68	\$ 4,212.68	Approved	
6	New Photo Cell Light	10/13/10	Remove & Replace Existing Exterior Lights Barrington Snack Bar	HHEC	\$ 1,868.18	\$ 629.00	Approved	
					TOTAL PCO TO DATE	\$ 27,660.76	\$ 21,038.25	
					TOTAL CHANGE ORDER	\$ -	\$ -	
					TOTAL PENDING CO	\$ 27,660.76	\$ 21,038.25	
					ORIGINAL CONTRACT	\$ 169,626.04	\$ 169,626.04	
					EXECUTED CO'S			
					PENDING CO'S	\$ 27,660.76	\$ 21,038.25	Approved Negotiate
					REVISED CONTRACT	\$ 197,286.80	\$ 190,664.29	

**APPROVE A CHANGE ORDER TO THE CONTRACT FOR THE
NEWMAN DOWNTOWN PLAZA PROJECT TO ADD BATHROOMS**

RECOMMENDATION:

It is recommended that the Newman City Council approve a change order to the Plaza Project to add bathrooms for a not to exceed cost of \$150,000.00 and authorize the City Manger to execute said change order.

BACKGROUND:

The City of Newman Downtown Plaza Project (Plaza) has been envisioned, planned, and designed for the last ten years and is a highly visible aesthetic improvement to the core of downtown Newman with a substantial investment of public funds. The project includes converting an existing parking lot into a new pedestrian friendly plaza with decorative paving, new seat walls, decorative area lighting, new decorative pergola, new entry archway, and removal and replacement of the existing curb, gutter and sidewalk along State Route 33.

During the design phase the bathrooms were originally considered as part of the project. However, in order to bring the estimated cost of the project in line with potential funding, the bathrooms were eliminated. The project is currently under construction and is approximately 70% complete. City staff, the Project Manager (AECOM) and the Contractor analyzed the Project considering expenses to date and estimated the remaining costs to finish the Project. According to this analysis it has been determined that there is sufficient funding to add the bathrooms back into the Plaza Project as originally planned.

ANALYSIS:

On May 25, 2010 City Council awarded the project to the low bidder, Perma Green Hydroseeding, Inc. for \$1,947,114.00. Working cooperatively with the contractor, City staff has been able to keep the overall construction and project management costs under budget. Original total estimated costs (including construction and project management costs) were approximately \$2.6 Million and total funding was \$2.6 Million. However, due to favorable economical bidding conditions and construction cost savings there is sufficient funding to install the bathrooms. The current projected total estimated costs including Project Management and contingency are approximately \$2,425,000.00. Total funding for the project is \$2,646,596.00.

FISCAL IMPACT:

<u>Estimated Costs to Finish Project</u>		<u>Available Funding</u>	
Estimated Construction Costs	\$1,930,000.00	Federal ARRA STP	\$308,109.00
Project Management	\$295,000.00	Federal ARRA RSTP	\$302,661.00
<u>Contingency (2.5%)</u>	<u>\$50,000.00</u>	Federal ARRA TE	\$1,210,998.00
Total Estimated Project Cost	\$2,275,000.00	Federal CMAQ	\$300,000.00
<u>Bathrooms (estimate)</u>	<u>\$150,000.00</u>	Federal RSTP (09/10)	\$80,217.00
Total Costs With Bathrooms	\$2,425,000.00	Local Match (CMAQ/RSTP)	\$43,611.00
		<u>Stanislaus County Loan</u>	<u>\$400,000.00</u>
		Total Funding Amount	\$2,645,596.00
Total Available Funding	\$2,645,596.00	Stanislaus County Loan	\$400,000.00
<u>Total Cost With Bathrooms</u>	<u>- \$2,425,000.00</u>	<u>Remaining Funds</u>	<u>- \$220,596.00</u>
Remaining Funds	+\$220,596.00		\$179,404.00

Therefore, the City will utilize an estimated \$179,404.00 of the \$400,000.00 from the Stanislaus County Loan for the Project (including the required \$43,611.00 Local Match).

CONCLUSION:

Due to favorable economical bidding conditions and construction cost savings there is sufficient funding to install the bathrooms as originally planned. The current estimated cost to complete the project including the bathrooms is \$2,475,000.00, and the total funding available is \$2,645,596.00. The City will need an estimated \$179,404.00 of the \$400,000.00 of the Stanislaus County Loan. Therefore, staff recommends that the City Council approve a change order to the Plaza Project to add bathrooms for a not to exceed cost of \$150,000.00 and authorize the City Manger to execute said change order.

ATTACHMENTS:

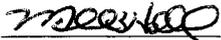
None.

Respectfully Submitted,

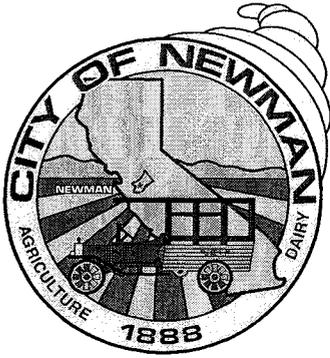


Garner Reynolds
Director of Public Works

REVIEWED/CONCUR:



Michael E. Holland
City Manager



**City of Newman
City Manager's Office
Memorandum**

Date: November 4, 2010

To: City Council

From: Michael E. Holland, City Manager *M.E.H.*

Subject: Agenda Item No. 10.b. - Property Receivership Update

Attached are copies of memos from our Building Official and Legal Counsel for the Redevelopment Agency. Staff has spoken with each party regarding 1147 "N" Street, the old Patchett's Building. This item has been placed on the agenda for further conversation and possible direction.

Memorandum

TO: Michael Holland
FROM: Iris P. Yang
DATE: November 3, 2010
RE: Redevelopment Agency Assistance

You have asked for information on what type of assistance a redevelopment agency may provide to the owners of a building that needs to be rehabilitated and is in a very visible portion of the Agency's redevelopment project area. The building has been gutted and has no windows (it was a former car dealership). The owners have estimated the cost of installing windows in the building alone at approximately \$150,000, but are unable to obtain financing from private lenders.

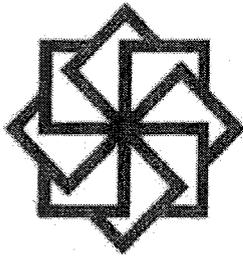
The Agency does not have the legal authority to provide grants to private property owners for the rehabilitation of private improvements. It does, however, have specific authority to provide commercial rehabilitation loans to owners or tenants for structures within a redevelopment project area. (Health & Safety Code section 33444.5) The agency could enter into an owner participation agreement with the property owners to provide the loan, in exchange for which the owners would agree to perform specified rehabilitation work within a stated period of time and to repay the loan upon specified terms. Often these Agency loans are secured by a deed of trust against the property.

However, in determining whether such a loan should be made, the Agency would also want some assurance, as a condition to making the loan, that the owners would have tenants in the building. The owner would need to provide some evidence showing that it had tenant commitments for all or some portion of the rehabilitated structure.

Finally, if the Agency were in a position to make such a loan for this rehabilitation work, the owners should be advised that, depending on the terms of the loan, the use of Agency funds for such work might trigger a requirement that prevailing wages be paid. Prevailing wages are less likely to be required if the terms of the loan are substantially similar to the terms that a commercial lender would offer.

In contrast to a city, a redevelopment agency does not have the authority to require a private property owner to make improvements to a structure. A city, for example, may require property owners to make certain improvements to a building so that it meets building code standards, for example. The one primary area where a redevelopment agency has certain enforcement authority is in the area of hazardous material contamination, under the Polanco Act. (Health & Safety Code section 33459 *et seq.*)

I hope this is helpful to you. Please let me know if you have any other questions.



**Precision
Inspection
Company, Inc.**

Building Inspection and Plan Check Services

"Ensuring a Safe Community through Leadership and Guidance"

To whom it may concern,

I recently walked the property located at 1147 "N" Street with City Manager Michael Holland to evaluate and identify any hazardous conditions resulting from the work stoppage on the reconstruction of the structure. Permits were pulled in 2006 for the rebuilding of the roof system as well as the installation of a steel skeleton to support the new roof and existing concrete walls.

The building is structurally sound with the recent improvements however the exterior walls are open with only a plastic fence installed to keep people from trespassing. There are exposed concrete anchors that should be removed or covered to prevent impalement, as well as miscellaneous metal exposed in the concrete. There are open trenches with exposed rebar along side the south sidewalk that should be covered and graded to prevent someone from falling into the trenches. Also the gas meters should have a more permanent support brace, the existing wood brace was fine during construction however with the work stoppage a more secure brace should be installed.

I would recommend a more secure fence or barrier across each opening and remove the plastic fencing, something that is more visually appealing.

If you have any questions please don't hesitate to call,

Mike Brinkman
Building Official
City of Newman

Honorable Mayor and Members
of the Newman City Council

REPORT ON SITE LEASE AGREEMENT WITH OPEN RANGE COMMUNICATIONS, INC.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to enter into a site lease agreement with Open Range Communications, Inc.

BACKGROUND:

The City has been approached by a representative of Black Dot Wireless regarding leasing space on the water tower and a 8' by 8' space within the site for equipment. Black Dot Wireless represents Open Range Communications, Inc., in partnership with the Dept of Agriculture, to provide 4G Wireless internet service to underserved rural communities. Earlier this week, our staff with meet Black Dot representatives to evaluate the site and determine the best location for ground-level equipment.

ANALYSIS:

After some negotiations, staff is recommending the City Council approve the attached (red lined) lease agreement. The following include changes recommended by staff:

- Modification of the terms. After the second five (5) year term, the City can elect to not renew the lease agreement.
- The rent shall start at \$1,500 per month and increase by 3% annually. After each five year term, the rent shall increase by ten (10%) percent.
- Section 5 'Assignments/Subletting' shall be eliminated.

FISCAL IMPACT:

Based upon these terms, the City would realize over \$210,000 in rent after two five (5) year terms.

CONCLUSION:

City staff has meet with architects and engineers for the lessee and believes that the request can be accommodate with minimal impact to City operations. As a result, staff is recommends the City Council approve the modified version of the Site Agreement with Open Range Communications, Inc. and authorize the City Manager to execute said agreement.

ATTACHMENTS:

1. Modified Site Lease Agreement

Respectfully Submitted:



Michael E. Holland
City Manager

SITE AGREEMENT

Site Name: _____

Site ID #: _____

This Site Agreement ("Agreement") is entered into as of _____ by Open Range Communications, Inc., a Delaware corporation ("Tenant") and _____, a _____ ("Owner"). Owner acknowledges receiving good and valuable consideration for entering into this Agreement.

1. Premises and Use. Owner owns the property described on Exhibit A attached ("Owner's Property"). Subject to the provisions of Section 2 below regarding the Due Diligence Period, Owner leases to Tenant the site (consisting of a portion of Owner's Property) described below [Check all appropriate boxes]:

- Land consisting of approximately _____ square feet for construction of:
shelters and/or base station equipment and
antenna support structure;
Building interior space consisting of approximately _____ square feet for placement of shelters and/or base station equipment;
Building exterior space consisting of approximately _____ square feet for placement of shelters and/or base station equipment;
Building exterior space for attachment of antennas;
Tower space between the _____ foot and _____ foot level on the tower for attachment of antennas;

generally in the location(s) shown on Exhibit B attached, as well as riser, conduit and other space required for cable runs to connect its equipment and antennas, and together with all necessary non-exclusive easements for vehicular and pedestrian access thereto, for placement of an underground grounding system, and for access to the appropriate source of electric, telephone and other utilities, in the discretion of Tenant (the "Site"). The Site may be used by Tenant (and/or any of its affiliated entities) for the purpose of installing, removing, replacing, modifying, maintaining and operating, at its expense, communications service facilities, including, without limitation, antennas and microwave dishes, air conditioned base station equipment cabinets, cable, wiring, power sources (including permanent generators and fuel storage tanks), related equipment and structures and, if applicable to the Site, an antenna support structure (the "Facilities"). All of the Facilities will remain Tenant's personal property and are not fixtures. Any visual or textual representation of the Facilities on Exhibit B is illustrative only, and does not limit the rights of Tenant as provided for in this Agreement. Tenant will use the Site in a manner which will not unreasonably disturb the occupancy of Owner's other tenants, if any. Tenant will have unrestricted access to the Site and the Facilities 24 hours per day, 7 days per week.

2. Term. This Agreement becomes effective on the date that both Owner and Tenant have executed this Agreement ("Effective Date"). Tenant's lease term shall commence, if at all, at the end of the Due Diligence Period on the Term Commencement Date. The term of Tenant's lease and tenancy, if any, (the "Term") is 5 years, commencing on the "Term Commencement Date" which is defined as the earlier to occur of: (a) the date that Tenant commences construction of the Facilities; or (b) 18 months after the Effective Date. The Term will be automatically renewed for _____ additional term of 5 year, (each a "Renewal Term"), unless Tenant provides Owner with notice of its intention not to renew prior to the expiration of the initial Term or any Renewal Term. The Due Diligence Period is defined as the time between the Effective Date and the Term Commencement Date. This Agreement may be extended for three (3) additional terms of 5 years subject to mutual consent of both Owner and Tenant. During the Due Diligence Period, Tenant will be permitted to enter Owner's Property to perform surveys, inspections, investigations and tests, including, without limitation, signal, topographical, geotechnical, structural and environmental tests, in Tenant's discretion to determine the physical condition, suitability and feasibility of the Site. If Tenant determines, in its discretion, that the Site is not appropriate for Tenant's intended use (or if Tenant otherwise decides, for any reason or no reason, not to commence the lease Term), then Tenant may terminate this Agreement upon notice to Owner at any time prior to the end of the Due Diligence Period. Owner acknowledges that, prior to the Term Commencement Date, Tenant has limited access to, but no ownership or control of, any portion of Owner's Property and that Tenant's access during the Due Diligence Period shall not cause Tenant to be considered an owner or operator of Owner's Property or the Site for purposes of environmental laws or otherwise.

3. Rent. Starting on the date that is 30 days after the Term Commencement Date and on the first day of every month thereafter, Tenant will pay rent in advance in equal monthly installments of \$1500.00. Rent shall be increased by three (3%) percent every year after completion of the first year. Rent for any partial months will be prorated based upon a 30-day month. Notwithstanding anything contained in this Section, Tenant's obligation to pay rent is contingent upon Tenant's receipt of an IRS approved W-9 form setting forth the tax identification number of Owner or of the person or entity to whom rent checks are to be made payable as directed in writing by Owner. The Rent for each

Renewal Term shall be increased by ten percent (10%) of the monthly or annual installment of rent payable during the previous Term or Renewal Term. If the Renewal Term commences on any day other than the first day of a calendar month, then the rent will not be increased until the first day of the first calendar month following the commencement of each Renewal Term. The Rent will be sent to the address shown underneath Owner's signature.

4. Title and Quiet Possession. Owner represents and warrants to Tenant and further agrees that: (a) it is the owner of Owner's Property; (b) it has rights of pedestrian and vehicular access from the nearest public roadway to the Site, which Tenant is permitted to use; (c) it has the right to enter into this Agreement; (d) the person signing this Agreement has the authority to sign; (e) Tenant is entitled to access the Site at all times and to quiet possession of the Site throughout the initial Term and each Renewal Term, so long as Tenant is not in default beyond the expiration of any notice or cure period; and (f) Owner will not have unsupervised access to the Site or to the Facilities.

5. This Section intentionally left blank.

6. Notices. All notices must be in writing and are effective only when deposited in the U.S. mail, certified mail, return receipt requested and postage prepaid or when sent via overnight delivery service. Notices to Tenant are to be sent to:

Open Range Communications, inc.
8100 E. Maplewood Ave.
Suite 200
Greenwood Village, CO 80111

or to such other address as Tenant may notify Owner pursuant to this section.

Notices to Owner must be sent to the address shown underneath Owner's signature.

7. Improvements. Tenant may, at its expense, make improvements on and to the Site as it deems necessary or desirable from time to time for the operation of the Facilities. Owner agrees to cooperate with Tenant with respect to obtaining any required zoning or other governmental approvals for the Site, the Facilities and contemplated use thereof. Upon termination or expiration of this Agreement, Tenant will remove the above-ground Facilities.

8. Compliance with Laws. Owner represents and warrants to Tenant that Owner's Property (including the Site) and all improvements located thereon, are in substantial compliance with building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities. Tenant will substantially comply with all applicable laws relating to its possession and use of the Site.

9. Interference. Tenant will resolve technical interference problems that the Facilities might cause (i) with other equipment located at the Site on the Effective Date, or (ii) when Tenant desires to add additional Facilities to the Site, any equipment that became attached to the Site between the Effective Date and such future date. Likewise, Owner will not permit or suffer the installation of any equipment on Owner's Property after the Effective Date that: (a) results in technical interference problems with the Facilities, or (b) encroaches onto the Site.

10. Utilities. Owner represents and warrants to Tenant that all utilities adequate for Tenant's intended use of the Site are available at or near the Site. Tenant will pay for all utilities used by it at the Site. Owner grants to Tenant and the local utility companies (as appropriate) any easement(s) reasonably required by Tenant or the utility companies in order to provide utility service required by Tenant for its intended use of the Site throughout the initial Term and each Renewal Term, and Owner will execute, at no cost to Tenant or the utility companies, any instrument(s) reasonably necessary to evidence such rights. If there is a loss of electrical service at the Site, Tenant may, at its expense, install and maintain a temporary generator and fuel storage tank at the Site or on Owner's Property adjacent to the Site.

11. Sub-metering. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from the Landlord. When submetering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within thirty days of receipt of the usage data and required forms. Failure by Landlord to perform this function will limit utility fee recovery by Landlord to a 12-month period. If Tenant submeters electricity

Deleted: Assignment/Subletting. Tenant has the right to sublease (or otherwise transfer or allow the use of) all or any portion of the Site or assign its rights under this Agreement without notice to or consent of Owner

Deleted: s
Deleted: s
Deleted: s each

Deleted: _____

Owner Initials: _____
Tenant Initials: _____

Site Name: _____

Site ID #: _____

from Landlord, Landlord agrees to give Tenant at least 24 hours advanced notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hour per day, seven (7) day per week.

12. Termination. Notwithstanding any provision contained in this Agreement to the contrary, Tenant may, in Tenant's sole and absolute discretion and at any time and for any or no reason, terminate this Agreement without further liability by delivering thirty (30) days prior written notice to Owner.

13. Default. If either party is in default under this Agreement for a period of 30 days following receipt of written notice from the non-defaulting party, the non-defaulting party may pursue any remedies available to it against the defaulting party at law and in equity, including, but not limited to, the right to terminate this Agreement. If a non-monetary default cannot reasonably be cured within a 30-day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within the 30-day period and proceeds with due diligence to fully cure the default.

14. Indemnity. Except with respect to Hazardous Substances, which are defined and provided for in Section 14 below, Owner and Tenant each indemnifies and agrees to defend the other against and holds the other harmless from any and all costs (including reasonable attorneys' fees), damages, claims of liability and losses (collectively, "Claims") which arise out of the negligence or intentional misconduct of the indemnifying party, its agents or contractors. This indemnity is subject to the waiver of recovery in Section 17 below, and does not apply to any claims arising from the negligence or intentional misconduct of the indemnified party, its agents or contractors. The indemnity obligations under this Section will survive termination of this Agreement.

15. Hazardous Substances. Owner represents and warrants to Tenant that it has no knowledge of any substance, chemical or waste on or affecting Owner's Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (collectively, "Hazardous Substance"). Notwithstanding any provision contained in this Agreement to the contrary, Owner will have sole responsibility for the identification, investigation, monitoring and remediation and cleanup of any Hazardous Substance discovered on Owner's Property. Owner agrees to indemnify, defend and hold harmless Tenant from any and all Claims relating to any Hazardous Substance present on or affecting Owner's Property prior to or on the Term Commencement Date, unless the presence or release of the Hazardous Substance is caused by the activities of Tenant. Tenant will not introduce or use any Hazardous Substance on the Site in violation of any applicable law, and Tenant will indemnify, defend and hold harmless Owner from and against all Claims arising out of Tenant's breach of this sentence. Owner will not introduce or use any Hazardous Substance on Owner's Property in violation of any applicable law, and Owner will indemnify, defend and hold harmless Tenant from and against all Claims arising out of Owner's breach of this sentence. The provisions of this Section will apply as of the Effective Date. The indemnity obligations under this Section will survive termination of this Agreement.

16. Subordination and Non-Disturbance. This Agreement is subordinate to any mortgage or deed of trust of record against the Site as of the Effective Date. Promptly after this Agreement is fully executed, however, Owner will obtain a non-disturbance agreement in a form reasonably acceptable to Tenant from the holder of any mortgage or deed of trust.

17. Property Taxes. Tenant will pay Owner any increase in Owner's real property taxes that is directly and solely attributable to improvements to the Site made by Tenant. Owner must pay prior to delinquency, all property taxes and assessments attributable to Owner's Property. Within 60 days after receipt of evidence of Owner's payment and documentation detailing any tax increase, Tenant will pay to Owner any increase in Owner's real property taxes which Owner demonstrates, to Tenant's satisfaction, is directly and solely attributable to any improvements to the Site made by Tenant. Tenant shall pay when due any personal property taxes assessed directly against the Facilities.

18. Insurance. During the initial Term and all Renewal Terms, each party will procure and maintain commercial general liability insurance, with limits of not less than \$1,000,000 combined single limit per occurrence, and \$2,000,000 aggregate, and will make the other party an additional insured on such policy. Within 30 days after receipt of a written request from the other party, each party will provide the requesting party with a Certificate of Insurance evidencing the required coverage. Alternatively, each party will have the option of providing the requesting party with evidence of such coverage electronically, by providing the requesting party with a Uniform Resource Locator ("URL") link to access such party's Memorandum of Insurance website. Each party will cause each

insurance policy obtained by it to provide that the insurance company waives all rights of recovery by subrogation against the other party in connection with any damage covered by the policy. Each party waives its right of recovery against the other for any loss or damage covered by any property insurance policies maintained by the waiving party.

19. Maintenance. Tenant will be responsible for repairing and maintaining the Facilities and any other improvements installed by Tenant at the Site in a proper operating and reasonably safe condition; provided, however, if any repair or maintenance is required due to the acts or omissions of Owner, its agents, contractors or employees, Owner will promptly reimburse Tenant for the reasonable costs incurred by Tenant to restore the damaged areas to the condition which existed immediately prior thereto. Owner will maintain and repair all other portions of Owner's Property in a proper operating and reasonably safe condition.

20. Miscellaneous. (a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement; (b) this Agreement is governed by the laws of the state in which the Site is located; (c) Owner agrees to promptly execute and deliver to Tenant a recordable Memorandum of Agreement in the form of Exhibit C, attached; (d) each party will execute, within 20 days after written request, an estoppel certificate or statement certifying that this Agreement is unmodified and in full force and effect or, if modified, describing such modification(s), and that the other party is not in default (beyond applicable cure periods), except as specified in the statement. The estoppel certificate may also certify the current rent amount and whether any rent has been paid in advance; (e) this Agreement (including the Exhibits and Riders) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Agreement must be in writing and executed by both parties; (f) if any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of the provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (g) the prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.

21. Non-Binding Until Fully Executed. This Agreement is not and will not be binding on either party until and unless it is fully executed by both parties.

The following Exhibits and Riders are attached to and made a part of this Agreement: Exhibits A, B, and C.

OWNER:

[Insert complete Owner name(s)],

a(n) _____

By: _____

Name: _____

Title: _____

Date: _____

Taxpayer ID: _____

Address: _____

Contact Phone Number: _____

Email address: _____

See Addendum to Site Agreement for continuation of Owner signatures

TENANT:

Open Range Communications, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Attach Exhibit A - Legal Description of Owner's Property

Attach Exhibit B - Site Plan

Attach Exhibit C - Memorandum of Agreement Form

Site Name: _____

Site ID #: _____

**EXHIBIT A
TO SITE AGREEMENT**

Legal Description of Owner's Property

The Owner's Property is located at _____, situated in the City of _____, County of _____, State of _____ commonly described as follows:

Insert Legal Description:

Site Name: _____

Site ID #: _____

**EXHIBIT B
TO SITE AGREEMENT**

Site Plan

The Site is described as follows:

Insert Site Plan:

Note: Owner and Tenant may, at Tenant's option, replace this Exhibit with an exhibit setting forth the legal description of the Site, or an as-built drawing depicting the Site. Any visual or textual representation of the Facilities is illustrative only, and does not limit the rights of Tenant as provided for in the Agreement. Without limiting the generality of the foregoing:

1. The Site may be setback from the boundaries of Owner's Property as required by the applicable governmental authorities.
2. The access road's width may be modified as required by governmental authorities, including police and fire departments.
3. The locations of any access and utility easements are illustrative only. Actual locations may be determined by Tenant and/or the servicing utility company in compliance with local laws and regulations.

Site Name: _____

Site ID #: _____

**EXHIBIT C
TO SITE AGREEMENT**

Memorandum of Agreement

This Memorandum of Agreement ("Memorandum") dated _____, 20____, evidences that a Site Agreement (the "Agreement") dated _____, 20____ (the "Effective Date"), was made and entered into between _____ ("Owner") and Open Range Communications, Inc. ("Tenant").

The Agreement provides in part that Tenant has the right to enter upon certain real property owned by Owner and located at _____, City of _____, County of _____, State of _____, as further described in the Agreement (the "Site") for the purpose of performing investigations and tests and, upon finding the Site appropriate, to lease the Site for the purpose of installing, operating and maintaining a communications facility and other improvements. The Site is further described in Exhibit A attached hereto.

The term of Tenant's lease and tenancy under the Agreement is 5 years commencing on the earlier to occur of start of construction of the Facilities (as defined in the Agreement) or eighteen (18) months following the Effective Date, whichever first occurs ("Term Commencement Date"), and is subject to 1 renewal term of 5 years that may be exercised by Tenant. Three additional renewals may be exercise with the consent of both the Owner and Tenant.

Deleted: 5
Deleted: s
Deleted: each

The parties have executed this Memorandum as of the day and year first above written.

OWNER

[INSERT TENANT ENTITY'S NAME]

a(n) _____

By: _____

Name: _____

Title: _____

Address: _____

Contact Phone Number: _____

TENANT

Open Range Communications, Inc.

a Delaware corporation

By: _____

Name: _____

Title: _____

Email Address: _____

Attach Exhibit A - Site Description

Site Name: _____

Site ID #: _____

OWNER NOTARY BLOCK:

STATE OF _____

COUNTY OF _____

The foregoing instrument was *(choose one)* attested or acknowledged before me this _____ day of _____, 20____, by *(choose one)* _____ as an individual, _____, as _____ of _____, a _____ corporation, on behalf of the corporation, or _____, partner or agent on behalf of _____, a _____ partnership.

(AFFIX NOTARIAL SEAL)

(OFFICIAL NOTARY SIGNATURE)
NOTARY PUBLIC STATE OF _____

My commission expires: _____

(PRINTED, TYPED OR STAMPED NAME OF NOTARY)
COMMISSION NUMBER: _____

TENANT NOTARY BLOCK:

STATE OF _____

COUNTY OF _____

The foregoing instrument was *(choose one)* attested or acknowledged before me this _____ day of _____, 20____, by *(choose one)* _____ as an individual, _____, as _____ of _____, a _____ corporation, on behalf of the corporation, or _____, partner or agent on behalf of _____, a _____ partnership.

(AFFIX NOTARIAL SEAL)

(OFFICIAL NOTARY SIGNATURE)
NOTARY PUBLIC STATE OF _____

My commission expires: _____

(PRINTED, TYPED OR STAMPED NAME OF NOTARY)
COMMISSION NUMBER: _____

Site Name: _____

Site ID #: _____

**ADDENDUM TO
SITE AGREEMENT**

Continuation of Owner Signatures

By: _____
Name: _____
Title: _____
Date: _____
Taxpayer ID: _____
Address: _____

Contact Phone Number: _____
Email Address: _____

By: _____
Name: _____
Title: _____
Date: _____
Taxpayer ID: _____
Address: _____

Contact Phone Number: _____
Email Address: _____

By: _____
Name: _____
Title: _____
Date: _____
Taxpayer ID: _____
Address: _____

Contact Phone Number: _____
Email Address: _____

By: _____
Name: _____
Title: _____
Date: _____
Taxpayer ID: _____
Address: _____

Contact Phone Number: _____
Email Address: _____

By: _____
Name: _____
Title: _____
Date: _____
Taxpayer ID: _____
Address: _____

Contact Phone Number: _____
Email Address: _____

By: _____
Name: _____
Title: _____
Date: _____
Taxpayer ID: _____
Address: _____

Contact Phone Number: _____
Email Address: _____

Site Name: _____

Site ID #: _____

**ADDENDUM TO
Memorandum of Agreement
Continuation of Owner Signatures**

By: _____
Name: _____
Title: _____
Date: _____
Taxpayer ID: _____
Address: _____

Contact Phone Number: _____
Email Address: _____

By: _____
Name: _____
Title: _____
Date: _____
Taxpayer ID: _____
Address: _____

Contact Phone Number: _____
Email Address: _____

By: _____
Name: _____
Title: _____
Date: _____
Taxpayer ID: _____
Address: _____

Contact Phone Number: _____
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