

## **Committee-of-the-Whole Agenda**

**6:30 p.m.**

Tuesday, June 12, 2012

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### **Mayor's Board Appointments**

Mayor's appointment of the following to the Human Rights Commission:

- Joe Terronez to fill the unexpired term of Rick Meredith to expire August 31, 2014
- Anthony Peoples to fill the unexpired term of Debi Murphy to expire August 31, 2014
- Andrew Craig to fill the expired term of Vicki Koker to expire August 31, 2016
- Larry Westbrook to fill the expired term of Mindy Loveless to expire August 31, 2016

### **Informational**

Video Gaming Act of 2009 (Maureen Riggs, City Attorney)

### **Questions on the Agenda**

### **Agenda Items**

1. **Approval of an Agreement with Missman, Inc. to Provide Engineering Services Related to Repairs at the Riverside Cemetery Retaining Wall** (Scott Hinton, City Engineer)
2. **Other**

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## **Explanation**

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1. **Approval of an Agreement with Missman, Inc. to Provide Engineering Services Related to Repairs at the Riverside Cemetery Retaining Wall** (Scott Hinton, City Engineer)

**Explanation:** Missman, Inc. proposes to investigate the causes of the retaining wall and slope failures at the Riverside Cemetery and make recommendations for repairs. The proposed work includes a topographic survey of the area, soil borings/geotechnical investigation, a review of various retaining wall types to determine the most economical, appropriate repair, and a stormwater control study to determine appropriate erosion control measures to minimize future slope erosion. Estimated costs will be provided for the recommended repairs. Missman proposes to provide these services at standard hourly rates with a not to exceed price of \$27,750.

**Staff Recommendation:** Staff recommends approval of the Agreement with Missman, Inc.  
**Fiscal Impact:** General Fund Contingency funds are available for this work.  
**Public Notice/Recording:** N/A  
**Goals Impacted:** Quality Neighborhoods, Desirable Place to Live,  
Improved City Infrastructure

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May 31, 2012

Mr. Scott Hinton, P.E.  
City of Moline  
3635 4<sup>th</sup> Avenue  
Moline, Illinois 61265

Re: Engineering and Surveying Services  
Riverside Cemetery Retaining Wall  
Feasibility Study

Dear Mr. Hinton:

Missman, Inc. (Missman) is pleased to respond to your request for engineering and surveying services for conducting a feasibility study to determine the City's best options for replacing an existing masonry retaining wall and remediation of erosion issues at Riverside Cemetery.

This project involves a steep terraced hill with an existing stone retaining wall that is deteriorating or failing in localized locations. Per our site visit on May 24th, there are two specific erosion issues on the downslope side of the access roadway. The first location shows the remnants of a localized slope failure that damaged the pool facility at the base of the hill. The second location shows evidence of the roadway washing out and being repaired by the City, along with rock and debris littering the hillside with visible erosion channels.

There is a concern that the hill is becoming unstable and a major slope failure could occur. Add in the fact that there are graves on the upper terraces; this project takes on a more serious dynamic than your typical retaining wall replacement. It is the City's goal to replace this wall and remediate the erosion issues, before additional slope failures occur and the project turns into a major slope stability remediation project.

Based on our understanding of the project and the Structural & Civil Engineering services anticipated, we have developed the following scope and fee proposal.

**SCOPE OF SERVICES:**

1. General Topographic Survey: Make such detailed surveys as are necessary for the planning and design of the project. Missman will obtain topography shots of the existing headstones in the immediate vicinity of the wall to help determine excavation limitations.
2. Geotechnical Investigation: This will involve drilling soil borings at two cross sections on the hillside, one at the base of the hill, one at the access roadway, and one near the crest, for a total of six borings. Coordination will be required with the sextant of the cemetery to gain access near the crest to avoid any conflicts with existing graves. A geotechnical report will be completed with recommendations and design variables for retaining walls, and the results of a global slope stability analysis at two cross sections.

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3. Retaining Wall Feasibility Study: This will involve investigating different wall types based on the geotechnical report to determine the City's best option(s). We anticipate that a segmental block wall or a precast modular big block system will be the most economical for a replacement option at this time. A less aesthetically pleasing option could be a gabion retaining wall. If it is determined that existing subsurface conditions or slope stability issues eliminate these three wall types, Missman will investigate more expensive wall options (i.e. sheetpile, Cast-in-Place, soldier pile, tie backs, etc.). Missman will provide a report with the feasible wall types listed, and preliminary budget estimates for each option(s).
4. If none of these wall types turn out to be feasible, the project would turn into a slope stability study and be beyond the scope of this proposal.
5. Erosion Control Feasibility Study: This will involve investigating the drainage patterns of the hillside and access roadway, and determine the City's best option(s) for correcting the erosion issues. In general, reducing erosion involves redistributing the flow pattern to multiple release points and/or installing erosion control measures (i.e. riprap, ditch checks, etc.) to reduce the velocity. Other issues with this site involve the steeply wooded slopes that don't allow a lot of ground cover vegetation to grow. Tree clearing and installing slope vegetation at specific locations will be investigated as well.

**DESIGN FEE PROPOSAL:**

1. Field Surveys	\$ 5,500
2. Geotechnical Investigation	\$10,750
3. Retaining Wall Feasibility Study	\$ 6,500
4. Erosion Control Feasibility Study	<u>\$ 5,000</u>

**\*TOTAL HOURLY FEE NOT TO EXCEED: \$27,750**

\*Actual hours will be charged, at the attached hourly rates, to actual time spent on project.

**ADDITIONAL SERVICES**

Missman considers the following items of work to be Additional Services to this agreement. We have the expertise in-house to complete each of these items; however, they would be charged as Additional Services.

1. Coordination regarding Archaeological, Environmental or Historic issues.
2. Preparing permit applications for the U.S. Army Corps of Engineers, IDNR, IDOT, and IEPA.
3. Major changes in the scope of the project.
4. Meetings and public hearings beyond those listed herein.
5. Preparation of zoning, permitting, vacation, easement, or right-of-way plats or descriptions.
6. Title research or expert testimony.
7. Environmental surveys.
8. Extensive coordination with the sextant on grave locations.
9. Slope Stability Study.
10. Final Plans & Specifications for the Option(s) selected by the City, if the project moves forward.

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Additional Services will be charged at the following hourly rates. Work on items considered Additional Services would not be undertaken until the Client/Owner provides written authorization.

<b>Project Hourly Rate Schedule</b>	
<b>Classification</b>	<b>Rate</b>
Principal	\$165.00
Senior Project Manager	\$135.00
Project Manager	\$125.00
Project Engineer	\$110.00
Design Engineer	\$75.00
Land Survey Manager	\$125.00
Land Surveyor	\$115.00
Survey Party Chief	\$75.00
Survey Technician	\$50.00
Senior Engineering Technician	\$95.00
Engineering Technician	\$60.00
CAD Operator	\$50.00
Construction Services Manager	\$125.00
Construction Services Senior Technician	\$85.00
Construction Services Technician	\$70.00
Project Coordinator	\$70.00
Environmental Scientist	\$70.00
Network Manager	\$100.00
Clerical & Administration	\$45.00
Engineering Intern	\$30.00
Survey – Robotic	\$95.00
Survey – RTK	\$110.00

January 1, 2012  
**Missman, Inc.**

*The above standard hourly rates include overhead, profit, insurance, and normal costs for readiness to serve. Reasonable travel costs are also included. Lodging, per diem, and travel costs in excess of 50 miles from the office servicing the project will result in additional charges.*

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Missman will consider the following as reimbursable expenses to this agreement:

1. Fees, recording or otherwise, associated with the statutory requirements of the project.
2. Fees associated with permit applications and connection fees.
3. Automobile travel at \$0.555 per mile in excess of 50 miles from Rock Island, IL.

Please call if there are any questions about the information in this proposal. If you wish for us to proceed on this project, please sign both copies of this proposal and return one to our office

Thank you for considering Missman, Inc.

Respectfully,

MISSMAN, INC.

By John Fellman  
John B. Fellman, P.E., S.E.

By J Robert Strombeck  
J. Robert Strombeck, CFO

encl: General Conditions

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF MOLINE, IL

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

Title: \_\_\_\_\_

### GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS:** The term Client shall be herein interpreted as the person(s), partnership, corporation or other entity, public or private, to which this contract is made. The term "Missman" represents Missman, Inc., an Iowa Corporation, providing the professional services.
2. **SCOPE OF SERVICES:** Services are limited to those specifically listed; they do not include others not set forth or not listed which are expressly excluded from the scope of Missman's services unless separately provided in writing, as agreed upon by both Missman and Client. Missman assumes no responsibility to perform or provide any services not specifically listed.
3. **CHANGED CONDITIONS:** This agreement is based on conditions actually known by or disclosed to Missman. If other conditions not originally known or disclosed become known or disclosed, Missman may require a renegotiation of appropriate portions of this Agreement (illustratively, scope of service or compensation).
4. **HAZARDOUS ENVIRONMENTAL CONDITIONS:** Unless expressly stated in writing, Missman does not provide assessments of the existence or presence of any hazardous or other environmental conditions or environmental contaminants or materials ("Hazardous Environmental Conditions"). Client shall inform Missman of any and all known Hazardous Environmental Conditions before services are provided involving or affecting them. If unknown Hazardous Environmental Conditions are encountered, Missman will notify the Client and, as appropriate, government officials of such conditions. Missman may, without liability or reduction or delay of compensation due, proceed to suspend services on the affected portion of the project until Client takes appropriate action to abate, remediate, or remove the Hazardous Environmental Condition. Missman shall not be considered an "arranger", "operator", "generator", "transporter", "owner", or "responsible party" of or with respect to contaminants, materials or substances. Missman shall assume no liability whatsoever for correction of any Hazardous Environmental Conditions; and shall be entitled to payment or reimbursement of expenses, costs or damages occasioned by undisclosed Hazardous Environmental Conditions.
5. **BURIED UTILITIES:** Client shall be responsible for designating the location of all utility lines and subterranean structures within the property lines of the Project. Client agrees to waive any claim against Missman and to defend, indemnify and hold Missman harmless for any claim or liability for injury or loss arising from Missman or other persons encountering utilities or other manmade objects that were not brought to Missman's attention or which were not properly located on the plans furnished to Missman. Client further agrees to compensate Missman for any and all time, costs and expenses incurred by Missman in defense of any such claim, in accordance with Missman's then effective standard hourly fee schedule and expense reimbursement policy.
6. **OPINIONS OF PROBABLE COST:** In providing opinions of probable cost, the Client understands that Missman has no control over contractor's costs or the price of contractor's labor, equipment or materials, or over the Contractor's method of pricing, all of which can be extremely volatile, and that the opinions of probable cost provided herein are to be made on the basis of Missman's qualifications and past experience. Missman makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.
7. **ACCEPTANCE PERIOD:** CADD files shall have an acceptance period of 90 days. During this time, the Client can examine the electronic files and verify their correctness. Missman will remedy any errors discovered in the files during this period. Once the acceptance period ends, the Client has accepted the files and takes responsibility for their ongoing maintenance.
8. **CONSTRUCTION SERVICES:** Should the Client provide construction observation or review with either the Client's representatives or a third party, Missman's services under this Agreement will be considered to be completed upon either (1) completion and submittal of the Final Design; or (2) the services outlined in the Scope of Work. It is understood and agreed that if Missman's services under this Agreement do not include project observation or review of the Contractor's performance or other construction services and that such services will be provided by the Client, then the Client assumes all responsibility for interpretation of the Contract Documents and for construction observation or review. The Client specifically waives any and all claims of whatever kind or nature against Missman that may in any way be connected thereto.
9. **AUTHORITY AND RESPONSIBILITY:** Missman (1) does not in any manner guarantee the actual bids the Client will receive or the work of any contractor or subcontractor, (2) has no authority to stop work by any contractor or subcontractor, (3) has no supervision or control as to the work or persons doing the work, (4) does not have charge of the work, (5) is not responsible for safety in, on or about the job site and (6) does not have any control of the safety or adequacy of any equipment, building component, scaffolding, supports, forms or other work aids. Missman neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to finish and perform its work in accordance with the Contract Documents.
10. **FAST TRACK/DESIGN-BUILD AND CONSTRUCTION:** "Fast track" refers to Missman's design services which overlap the construction work and/or are out of sequence with the traditional project performance or delivery method. In consideration of the benefits to the Client of employing the "fast track" process and in recognition of the inherent risks of fast tracking to Missman which Client accepts, the Client waives any and all claims against Missman for design changes and modification of portions of the services already constructed due to the Client's decision to employ the fast track process. The Client further agrees to compensate Missman for all Additional Services required to modify, correct or adjust the Construction Documents and coordinate them in order to meet the Client's Project requirements because of the Client's knowing decision to construct the Project in a fast track manner.
11. **RIGHT OF ENTRY:** Client shall provide for Missman's right to enter property owned by Client and/or others in order for Missman to fulfill the scope of service for this Project. Client understands that use of exploration equipment such as soil testing may unavoidably cause damage, the costs associated therewith and correction of which is the responsibility of the Client and shall not be the responsibility of Missman.
12. **STANDARD OF PRACTICE:** Services performed by Missman under this agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this agreement or in any report, opinion, document or otherwise.

13. **INFORMATION PROVIDED BY OTHERS:** The Client shall furnish and grant permission to use, at the Client's expense, all information, requirements, reports, data, surveys and instructions as defined in the Scope of Services of this Agreement. Missman may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof without independent verifications or investigation. If the Client desires verification by Missman, the Client and Missman shall enter into a separate written agreement for providing such services.
14. **OWNERSHIP OF DRAWINGS AND ELECTRONIC INFORMATION:** Drawings, tracings, plats, specifications, CADD files, electronic information and other products produced by Missman may be used in connection with the Client's presently proposed project, but shall otherwise be Missman's property and their use for any other project is not authorized. The Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify Missman from and against all claims, liabilities, losses, damages, and costs, including, but not limited to, attorney's fees arising out of or in any way connected with modification, translation, misinterpretation, misuse or reuse by the Client or others of the machine readable information and data or other electronic data which may be provided by Missman under this Agreement. Contract Documents include both the sealed drawings and the electronic files. If there is a conflict between the two, the sealed drawings will control and govern.
15. **UNAUTHORIZED CHANGES:** In the event the Client, the Client's contractors, subcontractors, agents or anyone for whom the Client is responsible, either directly or indirectly, makes or permits to be made any changes to any reports, plans, specifications or other construction documents prepared by Missman without obtaining Missman's prior written consent, the Client shall assume full responsibility for the results or consequences of such changes. Therefore, the Client waives any claim against Missman and releases Missman from any and all liability whatsoever or indirectly from such unapproved changes whether or not known by Missman.
16. **LIMITATION OF LIABILITY:** Any damage on account of professional errors, omissions or negligence will be limited to \$10,000.00 or the fee, whichever is less. In no event shall Missman be liable for incidental or consequential damages. This provision is separable from the remainder of this agreement to the extent consistent with law.
17. **AGREEMENT BY CLIENT NOT TO PURSUE COST OF CERTAIN CHANGE ORDERS:** Client recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the drawings, specifications and other design documentation furnished by Missman or in the other professional services performed or furnished by Missman under this Agreement ("Covered Change Orders"). Accordingly, Client agrees to budget a minimum of five percent (5%) of the total client's construction contractor's bid amount(s) for contingencies. Further, the Client agrees not to sue or to make any claims directly or indirectly against Missman on the basis of professional negligence breach of contract, or otherwise with respect to the costs of approved Covered Change Orders, unless the costs of such approved Covered Change Orders exceed fifteen percent (15%) of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of Missman for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that Client would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity or inconsistency in the Contract Documents and without any other error or omission of Missman related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Missman is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Missman includes Missman's officers, directors, members, partners, agents, employees and subconsultants. Client further agrees not to sue or to make any claim directly or indirectly against Missman with respect to any Covered Change Order not in excess of such percentage stated above, and Client agrees to hold Missman harmless from and against any suit or claim made by the Contractor relating to any such Covered Change Order.
18. **RISK ALLOCATION:** Missman's liability to the Client for injury or damage to persons or property arising out of work performed for the Client and for which liability may be found to rest upon Missman, other than for professional errors, omissions or negligence, will be limited to Missman's general liability insurance coverage of \$2,000,000.00.
19. **PURPORTED DEFECTS OR ERRORS IN SERVICE:** The Client shall immediately report to Missman any defects or suspected defects in Missman's services of which the Client becomes or should have become aware and allow Missman to take measures to minimize the consequences of such a defect or error. Failure by the Client to notify Missman shall relieve Missman of the costs of remedying the defects claimed above the sum such remedy would have cost had prompt notification been given when such defects were or should have been first discovered.
20. **INDEMNIFICATION:** The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Missman, its officers, directors, employees, agents and subconsultants from and against said damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with Missman's providing emergency services under this Agreement, excepting only those damages, liabilities or costs arising directly from the willful negligence or gross misconduct of Missman.
21. **TIME OF COMPLETION:** Missman will use its best efforts to complete the work by the date indicated in the schedule, but Missman shall incur no liability due to any delay for any reason and the Client's obligation to pay fees and expenses shall not be affected by any delay. In addition, if any delay increases the cost or time required by Missman to perform its services in an orderly, professional and efficient manner, Missman shall be entitled to a reasonable and equitable adjustment in schedule and/or compensation.

22. **COMPENSATION METHODS:** The "Lump Sum" method includes compensation for Missman's services and services of other's product and service provides outside Missman's employ, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead and profit and may or may not include Reimbursable Expenses. The "Standard Hourly Rate" method is an amount equal to the cumulative hours charged per each classification of employee, times a current Standard Hourly Rate, which shall be revised periodically, for each applicable billing classification for all services performed on a Specific Project, plus Reimbursable Expenses and outside Missman charges, if any. The "Payroll Cost Times Multiplier" method is an amount equal to the cumulative hours charged per each classification of employee, times a specified multiplier of the employee's payroll cost. The "Payroll Cost" is defined as the salary and wage of an employee, plus the cost of customary and statutory benefits including, but not necessarily limited to, social security contributions, unemployment, health, sick leave, vacation, workers' compensation, incentive and holiday pay applicable thereto. "Reimbursable Expenses" means the actual expenses incurred directly or indirectly in connection with the work including, but not limited to, the following: transportation and subsistence, telephone and media expenses, reproduction or printing, computer time and services of others outside Missman's employ.
23. **TERMINATION:** This agreement may be terminated by either party on written notice to the other party. If terminated by either party, with or without cause, the Client agrees to pay for all services and reimburse all expenses performed or incurred due to the termination.
24. **PAYMENT:** Missman may bill for its services and expenses monthly, based on costs of services and expenses incurred or the proportion of the actual work completed at the time of billing. Payment of bills is due within fifteen (15) calendar days from the date billed. If not paid within 30 calendar days from the billing date, the Client agrees to additionally pay interest at the rate of one percent (1%) per month on the unpaid balance, or the maximum rate of interest permitted by law, whichever is less. Further, if not paid within 30 calendar days from the billing date, Missman reserves the right to suspend work on the project and bill for any cost of services and expenses incurred up to that date. The jurisdiction and venue for any and all claims for payment shall be the Circuit Court of Rock Island County, brought in Rock Island, Illinois.
25. **COLLECTION COSTS:** If the Client fails to make payments when due and Missman incurs any costs in order to collect overdue sums from the Client, the Client agrees that all such collection costs incurred shall immediately become due and payable to Missman. Collection costs shall include, without limitation, legal fees, collection agency fees and expenses, court costs, collection bonds and reasonable Missman staff costs at standard billing rates for Missman's collection costs shall survive the term of this Agreement or any earlier termination by either party.
26. **SET-OFFS, BACK-CHARGES, DISCOUNTS:** Payment of invoices shall not be subject to any discount or set-offs by the Client, unless agreed to in writing by Missman. As further noted in Paragraph 23, payment to Missman for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.
27. **DISPUTED INVOICE:** If the Client objects to any portion of an invoice, the Client shall so notify Missman writing within fifteen (15) calendar days of the invoice. The Client shall identify in writing the specific cause of the disagreement and the amount in dispute, and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. Any dispute over invoiced amounts due that cannot be resolved within ten (10) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within thirty (30) days in accordance with Dispute Resolution provision of this Agreement. Interest as stated above shall be paid by the Client on all disputed invoice amounts that are subsequently resolved in favor of Missman and shall be calculated on the unpaid balance from the due date of the invoice.
28. **SUSPENSION AND/OR TERMINATION OF SERVICES:** If the Client fails to make payments when due, as further noted in Paragraph 24, or otherwise is in breach of this Agreement, Missman may suspend performance of services upon five (5) calendar day's written notice to the Client. Missman shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by a breach of the Agreement by the Client. Upon payment in full by the Client, Missman shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for Missman to resume performance. If the Client fails to make payment to Missman in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by Missman.
29. **DISPUTE RESOLUTION:** Any claims or disputes made during design, construction or post-construction between the Client and Missman shall be submitted to non-binding mediation. The Client and Missman agree, to the best of their ability, to include a similar mediation agreement with all Contractors, subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties.
30. **BINDING EFFECT:** This is the entire agreement. It may not be amended except in writing executed by both the Client and Missman. It shall be binding on both the Client and Missman and their legal representatives, executors, administrators, successors and assigns.
31. **BOUNDARY CONFLICT:** Boundary determinations occasionally disclose unseen or unknown conflicts between the record documents and the location of physical improvements. Upon discovery of any latent or patent ambiguity, uncertainty, or dispute disclosed by the records or by placement of the boundaries on the ground, work on the boundary survey will be suspended and you will be immediately notified. Missman will present alternatives for possible resolution and any additional work required to achieve resolution will be negotiated. If you should choose to forego resolution, all work completed to date will be invoiced for payment and the project file will be archived by Missman for future resolution. If you choose resolution, Missman will act as your mediator, consultant and expert until satisfactory resolution is achieved. Upon resolution, this initial agreement will be reinstated and completed in accordance with its initial terms subject to potential interim rate increases.