

## Bellevue City Council Meeting

Tuesday, February 15, 2022 6:00 PM

Bellevue City Hall

1500 Wall Street

Bellevue, NE 68005

1. PLEDGE OF ALLEGIANCE
2. INVOCATION - Rev. Darryl Keeney, Lighthouse Baptist Church, 3919 Greene Avenue.
3. CALL TO ORDER AND ROLL CALL
4. OPEN MEETINGS ACT - Posted in the Entry to the Council Chambers
5. APPROVAL OF AGENDA, CONSENT AGENDA, CLAIMS, AND ADVISORY COMMITTEE REPORTS:
  - a. Approval of the Agenda
  - b. Approval of the Consent Agenda (*Items marked with an (\*) are approved where this item is, unless otherwise removed*)
    1. (\*) Acknowledge Receipt of January 27, 2022 Planning Commission Minutes.
    2. (\*) Approval of the February 1, 2022 City Council Minutes.
    3. (\*) Acknowledge Receipt of January 11, 2022 Tree Board Minutes.
6. (\*) APPROVAL OF CLAIMS.
7. SPECIAL PRESENTATIONS: NONE
8. ORGANIZATIONAL MATTERS: NONE
9. APPROVED CITIZEN COMMUNICATION: NONE RECEIVED
10. LIQUOR LICENSES:
  - a. Recommendation to the NE Liquor Control Commission the approval of application for Kelsey Grant, as the new Manger for Yaway LLC dba "Holiday Inn Express and Suites" at 10804 S. 15th Street, Bellevue. (City Clerk)
11. ORDINANCES FOR ADOPTION (3rd reading):
  - a. Ordinance No. 4072: Request to rezone Lot 3, LGB Properties Replat One, from RE to RS-120 for the purpose of existing residential development. Applicant: AMZ Investments, LLC. General Location: 13510 South 36th Street. (Planning Manager)
  - b. Ordinance No. 4073: Request to rezone Lots 1 and 2, Heer and Theer Addition, being a replat of Tax Lot 6b, and that part of Tax Lot 6A2, being the north 50' of the west 175' of the east 260' of Tax Lot 6A, together with the south 15' of the east 110' of Lot 1, and the south 22' of the east 85' of the east 260' of Tax Lot 6A, together with the south 15' of the east 65' of Lot 34, Svodboda's Addition to the City of Bellevue, all located in the Southwest 1/4 of Section 36, T14N, R13E of the 6th P.M., Sarpy County, Nebraska, from RG-8-M and BGM, to BGM, for the purpose of residential and commercial development. Applicant: 1st City Development, LLC. General Location: 2304 Lincoln Road. (Planning Manager)
    1. Request for Small subdivision plat Lots 1 and 2, Heer and Theer Addition.
  - c. Ordinance No. 4074: Request to rezone Tax Lot 6A6, located in the Northwest 1/4 of Section 26, T14N, R13E of the 6th P.M., Sarpy County, Nebraska, from BG to RG-20 for the purpose of an adolescent care facility. Applicant: i3, LLC. General Location: 105 Fort Crook Road South. (Planning Manager)
  - d. Ordinance No. 4075: Repealing Section 20-2 of City Code regarding sale of cigarettes, tobacco, etc. products to minors. (Legal/Administration)
12. ORDINANCES FOR PUBLIC HEARING (2nd reading): NONE
13. ORDINANCES FOR INTRODUCTION (1st reading):
  - a. Ordinance No. 4076: Authorizing and providing for the issuance of General Obligation Various Purpose Refunding Bonds, Series 2022, in an amount not to exceed \$2,020,000. (Finance Director) (**Requesting to waive the rule requiring three readings, hold a public**

**hearing, and vote after the public hearing at tonight's meeting.)**

b. Ordinance No. 4077: Approving issuance of Certificate of Participation of up to \$4,000,000 and authorizing and approving a lease-purchase transaction and related matters, for the acquisition of a facility to be used as a new location for the city library. (Finance Director)

**(Requesting to waive the rule requiring three readings, hold a public hearing, and vote after the public hearing at tonight's meeting.)**

c. Ordinance No. 4078: Request to rezone Lot 1, F.J. Fitzgerald's Subdivision Replat 2, from RS-84 and ML to BN for the purpose of a childcare center. Applicant: Maria M. Hernandez. General Location: 2516 Chandler Rd. E. (Planning Manager)

d. Ordinance No. 4079: Request to rezone Lots 154 through 196, and Outlots "F" through "J," Spring Ridge, being a platting of Tax Lot 12, Tax Lot 13A, Lot 2 Bohac Addition, and Outlot B, Green Meadows, all located in the Southwest 1/4 of Section 22, T14N, R13E of the 6th P.M., Sarpy County, NE, from AG and BG to RA, BG, and RG-8-PS for the purpose of single-family and multi-family residential development. Applicant: Orchard Valley, Inc. General Location: South 21st Street and Gilmore Lake Road. (Planning Manager)

e. Ordinance No. 4080: Request to rezone Lots 1 through 38, and Outlot A, Chandler Creek, being a platting of Tax Lot H2, located in the Southwest 1/4 of Section 16, T14N, R13E of the 6th P.M., Sarpy County, NE, from RS-72 to RD-60 for the purpose of single family residential development. Applicant: TKC Chandler, LLC. General Location: W. Chandler Rd. and S. 35th Street. (Planning Manager)

f. Ordinance No. 4081: Request to rezone Lots 1 through 191, and Outlots A through H, Lakewood West, being a platting of the East 1/2 of the Southwest 1/4, together with the Northwest 1/4 of the Southeast 1/4; all located in Section 31, T14N, R13E of the 6th P.M., Sarpy County, NE, from AG to RA, BG, RG-20-PS, RG-50, and RS-72 for the purpose of commercial, multi-family, and single-family residential development; and preliminary plat Lots 1 through 191, and Outlots A through H, Lakewood West. Applicant: Woodsonia Real Estate Inc. General Location: S 54th Street and Hwy 370. . (Planning Manager)

**14. PUBLIC HEARING ON MATTERS OTHER THAN ORDINANCES:**

a. Request for Conditional Use Permit (CUP) for Lot 3, LGB Properties Replat One, for the purpose of an Alzheimer's/Dementia Care Home. Applicant: AMZ Investments, LLC. General Location: 13510 South 36th Street. (Planning Manager)

**15. RESOLUTIONS:**

a. Resolution No. 2022-05: A resolution approving and authorizing the Mayor to sign the CRRSSA Fund Purchase Agreement with NE Dept. of Transportation (NDOT) in exchange for receiving a share of the cash payment, in the amount of \$360,233. (Public Works Director/Engineering Manager)

**16. CURRENT BUSINESS:**

a. Request to approve a 30-day filing extension for the Redwood 25 final plat, as per Section 4-11, Subdivision Regulations. (Planning Manager)

b. Approve and authorize the Mayor to sign the Twelfth Extension to the contract with Justin Thoms for custom farming approximately 61 acres at 36th and Capehart Road, in an amount not to exceed \$13,833.00 and the Twelfth Extension to the contract with Justin Thoms for custom farming approximately 62 acres near the Bellevue Sports Complex, in an amount not to exceed \$31,997.00 and to waive Council Policy 4 requiring solicitation of bids and goods and services costing more than \$30,000. (Finance Director)

c. Approve and authorize the Council President to sign the amendment extending the Community Development Block Grant Subrecipient Agreement with All-Brite Glass and Screen, in the amount of \$7,358. (Finance Director/CDBG Program Specialist)

d. Approve and authorize the Council President to sign the amendment extending the Community Development Block Grant (CDBG) Subrecipient Agreement with Marathon Ventures, LLC, in the amount of \$37,525.50. (Finance Director/ CDBG Program Specialist)

e. Approve and authorize the Council President to sign the amendment extending the

Community Development Block Grant (CDBG) Subrecipient Agreement with Bellevue Junior Sport Association, in the amount of \$5,030. (Finance Director, CDBG Program Specialist)

f. Approve and authorize the Council President to sign the amendment extending the Community Development Block Grant (CDBG) Subrecipient Agreement with Habitat for Humanity of Sarpy County, in the amount of \$38,000. (Finance Director/ CDBG Program Specialist)

g. Approve and authorize the Council President to sign the amendment extending the Community Development Block Grant (CDBG) Subrecipient Agreement with Eastern Nebraska Community Action Plan (ENCAP), in the amount of \$19,067.34. (Finance Director/CDBG Program Specialist)

h. Approve and authorize the Mayor to sign a 5-year maintenance contract with KFT Fire Trainer for annual preventive maintenance service to keep burn props operational, in an annual amount not to exceed \$8,576. (Chief Guido)

i. Approve and authorize the Mayor to sign a 5-year Service Agreement with Stryker for annual preventive maintenance, in an annual amount not to exceed \$15,917.10. (Chief Guido)

j. Approve and authorize the Mayor to sign the Supplemental Agreement to the Professional Services Agreement with Alfred Benesch & Co. for the Municipal Separate Storm Sewer System (MS4) annual reporting, in an amount not to exceed \$16,920. (Public Works Director/Engineering Manager)

17. ADMINISTRATION REPORTS: Comments must be limited to items on the current Reports. **(Monthly reports are given at the first Council meeting of each month - February report will be attached to the March 1st Council packet.)**

18. CLOSED SESSION:

19. ADJOURNMENT

## MINUTE RECORD

Bellevue Planning Commission Meeting January 27, 2022, Page 1

The Bellevue Planning Commission held a regular meeting on Thursday, January 27, 2022 at 6:00 p.m. in the Bellevue City Council Chambers. Upon roll call, present were Commissioners, Casey, Hankins, Aerni, Ackley, Perrin, Compton, and Jacobson. Absent were Commissioners, Cutsforth, and Ritz. Also present were Tammi Palm, Planning Department Manager, and Angela Curry, Assistant Planning Manager.

Notice of this meeting was given in advance thereof by publication in the Gretna Guide and News and posting in two public places and was also given to the Chairperson and members prior to the meeting. These minutes were written and available for public inspection within ten days of the meeting.

Aerni announced a copy of the Open Meetings Act was posted in the entry to the City Council Chambers.

Motion was made by Ackley, seconded by Compton, to approve the minutes of the December 16, 2021, regular meeting as presented. Upon roll call, all present voted yes. Motion carried unanimously.

Aerni asked if there were any updates or additions to staff reports. Palm advised twenty additional emails were received on Agenda Item 3.b., and stated all items were forwarded to the Commission members ahead of tonight's meeting. Additionally, hard copies had been provided as well.

Motion was made by Jacobson, seconded by Casey, to accept into the record all staff reports, attachments, memos, and handouts regarding each application including the two additional handouts. Upon roll call, Casey, Hankins, Aerni, Ackley, Perrin, and Jacobson voted yes. Compton voted no. Motion carried.

Aerni explained the public hearing procedures

PUBLIC HEARING was held on a request to rezone Lot 1, F.J. Fitzgerald's Subdivision, Replat 2, located in the Northeast ¼ of Section 15, T14N, R13E of the 6th P.M., Sarpy County, NE, from RS-84 and ML to BN for the purpose of a childcare center. Applicant: Maria M. Hernandez. General Location: 2516 Chandler Road East. Case #: Z-2112-25.

Aerni asked staff for updates. Palm stated the applicant is requesting the rezoning of an existing platted parcel currently zoned RS-84 (Single-family Residential) and ML (Light Manufacturing). She stated the light industrial and residential are not compatible on the same lot. She said the applicant is requesting BN (Neighborhood Business) zoning which is the most restrictive commercial zoning. Palm stated the applicant plans to open a commercial childcare facility. She said it would fit well as a buffer between the existing light industrial uses adjacent to the property, convenience store to the south, and the single-family residences to the east. Palm said staff is in favor of this request.

There was no one present to speak in favor of, or in opposition to this request. Subsequently, Aerni closed the public hearing.

MOTION was made by Ackley, seconded by Hankins to recommend APPROVAL of a request to rezone Lot 1, F.J. Fitzgerald's Subdivision, Replat 2, located in the Northeast ¼ of Section 15, T14N, R13E of the 6th P.M., Sarpy County, NE, from RS-84 and ML to BN for the purpose of a childcare center. Applicant: Maria M. Hernandez. General Location: 2516 Chandler Road East. Case #: Z-2112-25. APPROVAL based upon a lack of perceived negative impact to the surrounding area. Upon roll call, all present voted yes. Motion carried unanimously.

**This item will proceed to City Council for PUBLIC HEARING ON March 1, 2022.**

PUBLIC HEARING was held on a request for site plan approval for Lots 1 through 63, and Outlots A through C, Belle Lago Replat 2, being a replat of Lots 1 through 72, and Outlots A and B, Belle Lago Replat 1, for the purpose of multi-family development; preliminary plat Lots 1 through 63, and Outlots A through C, Belle Lago Replat 2; and final plat Lots 1 through 63, and Outlots A through C, Belle Lago Replat 2. Applicant: HRC Belle Lago Brownstones, LLC. General Location: 48th Street and Capehart Road. Case #'s: S-2112-31, S-2112-32, Z-2112-26.

Aerni asked staff for updates. Palm stated the Planning Department received 20 emails from residents regarding this case. She said the emails express traffic concerns at the intersection of 48<sup>th</sup> Street and Capehart Road with the construction of this development. Palm gave a summary of the project stating Belle Lago was originally platted and approved for site plan and rezoning in 2017 for a 120-unit multi-family residential development. She said a few years later the applicant submitted a request for site plan approval for 72 Brownstone units. Palm stated the applicant's current request would be for replatting and site plan approval for 63 residential units; nearly a 50% reduction from the original (2017) proposed development. She said the development will consist of duplexes and brownstones (row house type development). Palm stated the applicant

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is not requesting a change of zone at this time. Palm then addressed a few concerns stated on the emails received prior to the meeting. She stated the project would consist of attached single family homes and not apartment buildings. Palm said a traffic study was done on the intersection of 48<sup>th</sup> Street and Capehart Road when the development was originally approved. She said the intersection of 48<sup>th</sup>/Capehart is under Sarpy County's jurisdiction. Palm stated she spoke with Sarpy County Public Works Senior Engineer Zach Hergenrader who indicated the County will update the traffic study for that area. Palm stated Sarpy County is aware of the neighbors' request for an updated traffic study. Palm stated if the traffic study warrants signalization the Sanitary Improvement Districts (SID's) would cost share as written in their Subdivision Agreements.

Larry Jobeun, 11440 West Center Road, Omaha, NE, was present to speak on behalf of the applicant. Jobeun stated the original site plan was for 120 lots, later plated for 72 lots, and the current site plan was for 63 lots. Using the site plan provided, Jobeun provided a brief description of the lots. He stated there would be twelve ranch style duplex units, nine 4-plex buildings, and fifteen 5-plex units with Outlot C being green space. He stated all units would have basements and garages. Jobeun said internal roads would be privately maintained. Jobeun stated the approximate value of the duplex lots would be \$300,000 each, 4-plex ranch units \$300,000 each, the two story 4-plex units \$270,000 each, and the midtown 5-plex attached row houses would be approximately \$225,000 each. Jobeun said he is in line with neighbors' belief that there should be a traffic signal at the 48<sup>th</sup> Street and Capehart Road intersection.

Palm stated there was a technical deficiency listed in the staff report, which has been satisfied by the applicant.

Shanda Clark, 4607 Lawnwood Drive, Papillion, NE, was present. Clark stated she would like to clarify for the record, the form letter she had did not state apartments but referred to a multi-family development. Clark stated her main concern was traffic at both 45<sup>th</sup> Street and Capehart Road and 48<sup>th</sup> Street and Capehart Road intersections. She said merging onto Capehart Road from 45<sup>th</sup> Street would become even more difficult and dangerous with the future increase in residents to this area and current terrain. Clark stated she would like to see some type of access improvement at 48<sup>th</sup> Street and Capehart Road.

Mark Westergard, E&A Consulting Group, 10909 Mill Valley Rd #100, Omaha, NE, was present to speak on behalf of the applicant. Westergard stated the traffic study performed by Sarpy County might include 45<sup>th</sup> Street as well as the intersection at 48<sup>th</sup> Street/Leawood Drive. He said their Subdivision Agreement stated they would be a participant in the signaling or road improvements. Westergard stated other subdivisions might participate in taking on a portion of the cost to signal both intersections. He gave a brief explanation on traffic studies. He stated when a traffic study is done, they look at volume and warrants. Westergard said warrants look at how many accidents have occurred, traffic volume at peak times and ques before placing a signal. He stated only one criterion must be met to install a signal.

There was no one else present to speak in favor of, or in opposition to this request. Subsequently, Aerni closed the public hearing.

Casey commented several of the letters received mentioned the development of an elementary school. He stated for the record there were no existing plans for the development of a school and hoped a signal would be in place first.

Ackley stated although it brings no comfort to residents, the current number of proposed units were less than the original plan, but several new subdivisions were built since the previous plan was discussed. Ackley stated everyone must wait to see if any warrants were met with the County to justify traffic calming measures. He stated development often gets ahead of street infrastructure. He offered South 36<sup>th</sup> Street as an example with only two lanes and continuous additions, and 20 years later improvements were being made by putting in a 3<sup>rd</sup> lane. Ackley stated the goal of good planning for the future includes having rights-of-way wide enough to widen roads as time goes on. He said the 48<sup>th</sup> Street and Capehart area is well designed and ready for future improvements.

Aerni asked staff if they knew how many single-family villas currently exist near Schilling Drive. Palm stated the current zoning of RG-8 supports 800 square feet of lot area per dwelling unit and allows the densest multi-family development. She said what the developer presented was significantly less than what could be done under the current zoning. Aerni said if all the units were single-family housing like the rest of the neighborhood, it would appear there would be an increase in housing from 20 single-family homes to 63 single-family homes. Discussion ensued regarding traffic at the intersection of South 48<sup>th</sup> Street and Capehart Road. Palm stated the city has open communication with Sarpy County and would track the progress of the traffic study.

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Casey asked the applicant when they expected to begin construction. Jobeun stated they have started grading, and streets would be added next. He said vertical construction would begin next year. Casey said that should give the County some time to complete the traffic study.

Jacobson asked staff if the lots discussed would follow normal zoning requirements including sidewalks along Lawnwood. Palm said yes. Jacobson asked if the Capehart Road traffic study would only look at traffic and not pedestrian build outs like sidewalks. Palm said they typically look at vehicular traffic and not pedestrian movement. Jacobson stated the zoning change was also within the ETJ (Extraterritorial Jurisdiction) and his concern was integration of the various developments. Aerni stated the trail exists on the west side of South 48th street from Capehart Road to the south for pedestrian movement.

MOTION was made by Ackley, seconded by Jacobson to recommend APPROVAL of a request for site plan approval for Lots 1 through 63, and Outlots A through C, Belle Lago Replat 2, being a replat of Lots 1 through 72, and Outlots A and B, Belle Lago Replat 1, for the purpose of multi-family development; preliminary plat Lots 1 through 63, and Outlots A through C, Belle Lago Replat 2; and final plat Lots 1 through 63, and Outlots A through C, Belle Lago Replat 2. Applicant: HRC Belle Lago Brownstones, LLC. General Location: 48th Street and Capehart Road. Case #'s: S-2112-31, S-2112-32, Z-2112-26. APPROVAL based upon conformance with the Zoning Ordinance, Subdivision Regulations, and a lack of perceived negative impact to the surrounding area and completion of the technical deficiency. Upon roll call, all present voted yes. Motion carried unanimously.

**This item will proceed to City Council for PUBLIC HEARING ON March 1, 2022.**

PUBLIC HEARING was held on a request to rezone Lots 154 through 196, and Outlots "F" through "J," Spring Ridge, being a platting of Tax Lot 12, Tax Lot 13A, Lot 2 Bohac Addition, and Outlot B, Green Meadows, all located in the Southwest ¼ of Section 22, T14N, R13E of the 6th P.M., Sarpy County, NE, from AG and BG to RA, BG, and RG-8-PS for the purpose of single family and multi-family residential development; and preliminary plat Lots 154 through 196, and Outlots "F" through "J," Spring Ridge. Applicant: Orchard Valley, Inc. General Location: South 21st Street and Gilmore Lake Road. Case #'s: Z-2103-02 and S-2103-05

Aerni asked staff for updates. Palm stated this request was to rezone and replat an area known as Phases 4 and 5, Spring Ridge. She stated the first three phases were currently under construction. Palm stated in 2014 the area was approved for multi-family zoning and the applicant was now requesting a denser multi-family zoning for multi-family, row house, and single-family development. Palm stated a traffic study was done in 2014 and updated with this request. She said because of the most recent traffic study recommendations were made for improvements along South 25<sup>th</sup> Street in the form of turn lanes. Palm stated the improvement of Gilmore Lake Road was a condition of approval and the city was working with the developer and his attorney on a Memorandum of Understand (MOU) and Subdivision Agreement that would be presented with the final plat.

Joe Foley, FoleyShald Engineering, 14503 Grover Street, Omaha, NE, was present on behalf of the applicant. Foley stated they submitted a revised preliminary plat showing a multi-family development with 20 single-family lots, 74 townhome units, and 408 multi-family units. The multi-family would have lower-level parking. He stated the rowhomes are to the south between Marlee Court and Morrie Drive, traditional multi-family between Lola Circle and Marlee Court, and single-family residential to the north between Lola Avenue and Lola Circle and a club house just south of Gilmore Lake Plaza. Foley said the projected valuation would be approximately \$62,000,000. He said Patricia Kyle submitted a letter of concern regarding drainage across Gilmore Lake Road. Foley stated the existing culvert is undersized but would be corrected with the proposed improvements. He said Gilmore Lake Road and South 25<sup>th</sup> Street improvements would happen within the first phase of the project.

There was no one else present to speak in favor of, or opposition to this request. Subsequently, Aerni closed the public hearing.

Ackley stated the townhome concept, having the apartments about the interstate is in compliance, and he is in support of the project.

Aerni asked Foley to briefly explain plans to correct property lines and agreements with the Veterans of Foreign Wars (VFW). He stated the existing VFW, lake, and parking lot will remain as is. He said part of the plat would be dedicated to the VFW and where the current lot line splits the lake will become VFW property. He said a new entrance is projected off Gilmore Lake Road to enter the VFW parking lot.

MOTION was made by Casey, seconded by Compton to recommend APPROVAL of a request to rezone Lots 154 through 196, and Outlots "F" through "J," Spring Ridge, being a platting of Tax Lot 12, Tax Lot 13A, Lot 2 Bohac Addition, and Outlot B, Green Meadows, all located in the Southwest ¼ of Section 22, T14N, R13E of

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the 6th P.M., Sarpy County, NE, from AG and BG to RA, BG, and RG-8-PS for the purpose of single family and multi-family residential development; and preliminary plat Lots 154 through 196, and Outlots "F" through "J," Spring Ridge. Applicant: Orchard Valley, Inc. General Location: South 21st Street and Gilmore Lake Road. Case #'s: Z-2103-02 and S-2103-05. APPROVAL based upon conformance with the Zoning Ordinance, Comprehensive Plan, and Subdivision Regulations. Upon roll call, all present voted yes. Motion carried unanimously.

**This item will proceed to City Council for PUBLIC HEARING ON March 1, 2022.**

PUBLIC HEARING was held on a request to approve the redevelopment plan for Lot 5, Edward Warren Addition, and Tax Lot H2, Located in the Southwest ¼ of Section 16, T14N, R13E, of the 6th P.M., Sarpy County, Nebraska. Applicant: TKC Chandler, LLC. General Location: W Chandler Rd and S 35th Street. Case #: ECD #54.

Aerni asked staff for updates. Palm stated applicant is requesting approximately \$1,800,000 in Tax Increment Financing (TIF) for an infill development project located near South 35th Street and West Chandler Road. She said the applicant's request was to develop approximately 10 acres of vacant land and rehabilitate an existing single-family residence located to the east. Palm stated the applicant planned to develop 38 single family residential homes of 1,600 to 1,700 square feet. She said the estimated assessed valuation on completion would be just under \$11,000,000. Palm said the Planning Department is in support of this application. She stated it is a good example of infill development and would serve the need for additional housing in this area.

Elizabeth Sevcik 5011 Clearwater Drive, Fort Calhoun, NE, was present on behalf of the applicant. Sevcik stated they were previously approved for a blighted and substandard request for this area and approval of the Redevelopment Plan is the next step in this process. She said the project would not be economically feasible without the use of TIF. Sevcik stated they would rehabilitate the home to the west of the project as well. She stated a rezoning from RS-72 to RD-60 would be required as well. She stated the Future Land Use Map shows this parcel of land as low density however, the surrounding parcels were medium density and consistent with the use requested.

Casey asked the applicant to clarify the home to be remodeled, who owns the home and why they would not consider tearing it down. Sevcik pointed out the house adjacent and east of the property to be the home in question. She said the house was missing shingles and would need rehabilitation. She stated the applicant currently owned the house and considered options to tear it down or significantly rehabilitate. She stated they could not incorporate the house into the proposed development due to road infrastructure.

Ackley commented TIF was once only available for commercial property but over time had become available for multi-family and single-family development if requirements were met. He stated he was not in complete agreement with this for single family development, but it does comply with current statutes. He said the plan submitted would blend in well with the community to the east and would be a great infill project. Ackley stated the applicant provided a clear example of "but for TIF" even with profit built in there wasn't much margin. He applauded the applicant on the calculations provided for return on investments.

MOTION was made by Jacobson, seconded by Ackley to recommend APPROVAL of a request to approve the redevelopment plan for Lot 5, Edward Warren Addition, and Tax Lot H2, Located in the Southwest ¼ of Section 16, T14N, R13E, of the 6th P.M., Sarpy County, Nebraska. Applicant: TKC Chandler, LLC. General Location: W Chandler Rd and S 35th Street. Case #: ECD #54. APPROVAL based upon conformance with the Comprehensive Plan, elimination of a blighted and substandard area, conformance with the requirements of the State Statutes, and the opportunity for redevelopment along West Chandler Road. Upon roll call, all present voted yes. Motion carried unanimously.

**This item will proceed to City Council for PUBLIC HEARING ON March 1, 2022**

PUBLIC HEARING was held on a request to rezone Lots 1 through 38, and Outlot A, Chandler Creek, being a platting of Tax Lot H2, located in the Southwest ¼ of Section 16, T14N, R13E of the 6th P.M., Sarpy County, NE, from RS-72 to RD-60 for the purpose of single-family residential development; and preliminary plat Lots 1 through 38, and Outlot A, Chandler Creek. Applicant: TKC Chandler, LLC. General location: W Chandler Rd. and S 35th Street. Case #'s: Z-2110-20 and S-2110-25.

Aerni asked staff for updates. Palm stated the property was very difficult to develop being a smaller tract of land with topography and the natural drainage making it unique. She stated the proposal was for 38 units and the applicant's request was to rezone from RS-72 (Single Family Residential - 7,200 Square Foot Zone) to RD-60 (Duplex Residential - 6,000 Square Foot Zone) and staff was supportive of that request. Palm stated although the lots were smaller, they were consistent with what was currently developed in that area, especially the lots on

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the north side of West Chandler Road. She said lots on the north side were zoned RS-72 but they were platted while still in the County's jurisdiction and would conform to RD-60 zoning. Palm stated the Planning Department and Public Works Department looked at possible future street connections and concluded the layout provided would be best for this project when considering topography and drainage. She said the property to the south had single family and acreage lots and the family was not interested in developing at this time. Palm stated a small portion of land belonging to the property owner to the south was platted up to West Chandler Road. She stated the applicant incorporated a five-foot easement on the eastern portion of several lots that would allow the width needed for a private street to the north if there were interest in development to the south. Palm said staff believed this was an appropriate example of good infill development. She stated the land is within city limits which allowed for the designation of blighted and substandard. Palm said the developer would be financing the project with TIF, if approved.

Doug Kellner, TD2, 10836 Old Mill Road, Omaha, NE 68154 was present on behalf of the applicant and available to answer questions.

Ackley commented the rezoning and preliminary plat were the next step in completion of the redevelopment plan for this site.

There was no one present to speak in favor of, or opposition to this request. Subsequently, Aerni closed the public hearing.

MOTION was made by Ackley, seconded by Perrin to recommend APPROVAL of a request to rezone Lots 1 through 38, and Outlot A, Chandler Creek, being a platting of Tax Lot H2, located in the Southwest ¼ of Section 16, T14N, R13E of the 6th P.M., Sarpy County, NE, from RS-72 to RD-60 for the purpose of single family residential development; and preliminary plat Lots 1 through 38, and Outlot A, Chandler Creek. Applicant: TKC Chandler, LLC. General location: W Chandler Rd. and S 35th Street. Case #'s: Z-2110-20 and S-2110-25. APPROVAL based upon conformance with the Zoning Ordinance, Subdivision Regulations, and compatibility with adjacent residential developments. Upon roll call, all present voted yes. Motion carried unanimously.

**This item will proceed to City Council for PUBLIC HEARING ON March 1, 2022.**

PUBLIC HEARING was held on a request to rezone Lots 1 through 191, and Outlots A through H, Lakewood West, being a platting of the East ½ of the Southwest ¼, together with the Northwest ¼ of the Southeast ¼; all located in Section 31, T14N, R13E of the 6th P.M., Sarpy County, NE, from AG to RA, BG, RG-20-PS, RG-50, and RS-72 for the purpose of commercial, multi-family, and single-family residential development; and preliminary plat Lots 1 through 191, and Outlots A through H, Lakewood West. Applicant: Woodsonia Real Estate Inc. General Location: S 54th Street and Hwy 370. Case #'s: Z-2110-19 and S-2110-24.

Aerni asked staff for updates. Palm said the application was for a platting and rezoning request for property at South 54<sup>th</sup> Street and Highway (Hwy) 370. She said the applicant was requesting commercial frontage along Highway 370 and would be zoned General Business District (BG). She stated south of the commercial would be multi-family residential and would be zoned General Residential, 2,000 Square Foot, Planned Subdivision (RG-20-PS), with townhome villa type lots to be zoned General Residential, 5,000 Square Foot Zone (RG-50), and larger single-family homes farthest south to be zoned RS-72 (Single Family Residential – 7,200 Square Foot Zone). Palm stated site plan approval would be requested at a later date and would be for the multi-family residential portion of the development. She stated to the east of South 54<sup>th</sup> Street and South of Hwy 370 was Greenlife Gardens Nursery and offices. She said Greenlife would remain at this location and has requested a Residential Agriculture (RA) zoning. Palm stated the RA zoning would allow Greenlife to continue their current business. Palm stated the plat mirrored Lakewood Villages to the east. She stated there would be a connection to Hwy 370 through South 54<sup>th</sup> Street and Shannon Drive and Timberridge Drive would continue into the new development. Palm said the applicant completed a traffic study and recommendations were made for future traffic signaling at South 54<sup>th</sup> Street and Hwy 370 and turn lanes onto Hwy 370. She stated signalization was recommendation upon full buildout or by the year 2024. Palm stated the applicant had communicated with the Nebraska Department of Transportation (NDOT). Palm said when doing the final plat the subdivision agreement would include the requested improvements, and the development would cost share those improvements.

Larry Jobeun, 11440 West Center Road, Omaha, NE, was present to speak on behalf of the applicant. Jobeun said the project was for a 115-unit subdivision which was consistent with the comprehensive plan. He said there were 115 single family lots. He stated they would submit a site plan later for the two multi-family lots. Jobeun said the 63 RG-50 zoned homes would be approximately \$325,000 – 400,000, while the single family to the south would be \$400,00 – 550,000.

# MINUTE RECORD

Bellevue Planning Commission Meeting, January 27, 2022, Page 6

Mary Lou Gallo, 5308 Timberridge Drive, Bellevue, NE, asked about the developer's plans for Outlot C and Outlot D to include plans for removal of trees along the north and west of her property. She asked who would be responsible for sewer and their plans for connection. Gallo asked if Lots 11 and 12 could ever be rezoned to commercial properties. She asked how construction trucks would be controlled throughout the project.

Jobeun stated Lots 11 and 12 are multi family residential and were a good transition between the commercial lots along Hwy 370 and the single family residential to the south. He stated RG-20-PS zoning calls for multi-family use and those lots would be used as such. He said the current plan was to keep all boundary trees if possible, but the interior trees would be removed. Jobeun stated all construction vehicles would be instructed to enter the development from Hwy 370.

Brad Hike, 10836 Old Mill Road, Omaha, NE, from TD2, was present. Brad stated there was a natural low spot that leads to a large storm sewer structure at the northwest corner of Lot 67 and Timberridge Drive. He said Outlot E would be a detention basin and would capture the runoff from most of the single-family residential area. He stated Lots 11 and 12 would have their own detention basins; Outlot C and Outlot D. Hike stated there was a sanitary sewer stub at the end of South 53<sup>rd</sup> Street.

Casey asked staff if there were plans to pave Maass Road. Palm stated that would not happen with this application. She said the city looked at what the future streets and corridors would look like in this area. She said they reviewed the City of Papillion Comprehensive Plan to see the proposed street layout to the west. Palm said once the parcel south of the Timmerman Farm develops Schram Road would come in from the west and would be one of the major corridors. She stated there had been discussion on improvements and realigning Maass Road.

Aerni stated if a developer wanted to rezone Lots 11 and 12, they would have to go through the same process. Palm said that is correct, they would go through the same public hearing process. Aerni asked the applicant to explain to Ms. Gallo what they would be doing in her yard regarding the storm sewer easement. Jobeun said they would connect to the existing public storm sewer. Jobeun stated all work would be underground and unintrusive to the property owner.

Jacobson asked if Shannon Drive would become an access road and if most of the traffic from Lakewood Villages would use Shannon Drive. Jobeun said yes. Jobeun stated there is a connection to Shannon Drive at South 48<sup>th</sup> Street in Lakewood villages. Jacobson asked if that would include South 54<sup>th</sup> Street. Jobeun said yes. Jacobson asked if the proposed commercial lots would remain the same in size. Palm stated once the commercial zoning is in place it is not unusual for the commercial lots to be replatted to match buyer interest at that time. She stated someone could ask to purchase and combine an adjoining lot or perhaps half of a lot. Palm stated if the zoning is in place the owner could request an administrative replat if there were minimal impact to the neighborhood, no change to traffic, or major infrastructure concerns.

There was no one present to speak in favor of, or opposition to this request. Subsequently, Aerni closed the public hearing.

MOTION was made by Aerni, seconded by Ackley to recommend APPROVAL of a request to Lots 1 through 191, and Outlots A through H, Lakewood West, being a platting of the East ½ of the Southwest ¼, together with the Northwest ¼ of the Southeast ¼; all located in Section 31, T14N, R13E of the 6th P.M., Sarpy County, NE, from AG to RA, BG, RG-20-PS, RG-50, and RS-72 for the purpose of commercial, multi-family, and single-family residential development; and preliminary plat Lots 1 through 191, and Outlots A through H, Lakewood West. Applicant: Woodsonia Real Estate Inc. General Location: S 54th Street and Hwy 370. Case #'s: Z-2110-19 and S-2110-24. APPROVAL based upon conformance with the Zoning Ordinance, Comprehensive Plan, Subdivision Regulations, and compatibility with the adjacent development. Upon roll call, all present voted yes. Motion carried unanimously.

**This item will proceed to City Council for PUBLIC HEARING ON March 1, 2021.**

Meeting adjourned at 7:25 p.m.

  
Angela Curry  
Assistant Planning Manager

# MINUTE RECORD

Bellevue City Council Meeting, February 1, 2022, Page 1

A regular meeting of the Mayor and Council of the City of Bellevue was called to order by Mayor Rusty Hike at the Bellevue City Hall on the 1<sup>st</sup> of February 2022, at 6:00 p.m. Present were Council Members Bob Stinson, Paul Cook, Don Preister, Thomas Burns, and Kathy Welch. Absent: Jerry McCaw.

Notice of this meeting was given in advance thereof by publication in the Gretna/Sarpy Guide and News and posted in two public places, the designated method for giving notice and was also given to the Mayor and all members of the City Council. A copy of the affidavit of publication, the certificate of posting, and the council's acknowledgment of receipt of notice are hereby attached to these minutes. All proceedings shown hereafter were taken while the convened meeting was open to the public.

## **PLEDGE OF ALLEGIANCE AND INVOCATION**

Mayor Hike led the Pledge of Allegiance. Father Tom Jones, Church of the Holy Spirit, 1305 Thomas Drive, gave the invocation.

## **OPEN MEETINGS ACT**

Mayor Hike announced a copy of the Open Meetings Act is posted by the entry in the City Council Chambers.

## **APPROVAL OF THE AGENDA:**

**Motion** was made by Cook, seconded by Stinson, to approve the agenda. Roll call vote to approve the agenda was as follows: Stinson, Cook, Preister, Burns, and Welch voted yes; voting no: none; absent: McCaw. Motion carried.

## **APPROVAL OF THE CONSENT AGENDA:**

**Motion** was made by Stinson, seconded by Preister, to approve the consent agenda consisting of the following items: Approval of the January 18, 2022 Board of Equalization Meeting Minutes; Approval of the January 18, 2022 City Council Minutes; Approval of Claims, and Approval to recommend following reappointments to the Bellevue Board of Adjustment: Maria Conte, Brad Anderson, Karl Crompton, and Nick Peterson, for three-year terms, ending February, 2025.

Roll call to approve the consent agenda was as follows: Stinson, Cook, Preister, Burns, and Welch voted yes; voting no: none; absent: McCaw. Motion carried.

## **SPECIAL PRESENTATIONS: NONE**

## **ORGANIZATIONAL MATTERS: NONE**

## **APPROVED CITIZEN COMMUNICATION: NONE RECEIVED**

## **LIQUOR LICENSES:**

### **Recommend approval of application for Tightcuts Barber & Beauty LLC dba "Tightcuts Barber & Beauty" for a Class "C" Liquor License to sell beer, wine, and distilled spirits, On and Off Sale at 1308 Fort Crook Road, Bellevue and for John James as Manager**

Mayor Hike opened the public hearing to give opportunity for individuals to speak in favor of or in opposition to this application.

Mr. John James, 1308 Fort Crook Road S., Suite 13, is the applicant and was present to answer any questions. Mr. James read a letter of support from Mr. Howard Banks, made part of the record.

Mr. Buzz Stephens, 13601 S. 26<sup>th</sup> Street, asked how it would work to serve alcohol in a barber shop and if there would be an issue with underage clients coming in. Mr. James explained how his idea of getting a liquor license came about and what he was planning. He stated he visited a place in Omaha who has a liquor license at their hair place. They showed him their set up for serving alcohol and how it works for them, as well as visiting the NE Liquor Control Commission several times.

Discussion ensued on his business and his plans.

With no one else in the audience coming forth to speak in support of or in opposition to the application. Mayor Hike declared the public hearing closed.

**Motion** was made by Stinson, seconded by Welch, to recommend to the Nebraska Liquor Control Commission to approval of the application for Tightcuts Barber & Beauty LLC dba "Tightcuts Barber and Beauty" for a Class "C" Liquor License to sell beer, wine, and distilled spirits, On and Off Sale, at 1308 Fort Crook Road S., Suite 13, and for John James as Manager.

Roll call to approve the motion was as follows: Stinson, Cook, Preister, Burns, and Welch voted yes; voting no: none; absent: McCaw. Motion carried.

# MINUTE RECORD

Bellevue City Council Meeting, February 1, 2022, Page 2

## ORDINANCES FOR ADOPTION (Third Reading):

**Ordinance No. 4069: An ordinance amending and adding a section to Article VII, Chapter 12, Bellevue Municipal Code, regarding outdoor fireplace permitting requirements. (Councilwoman Welch)**

Ordinance No. 4069: An ordinance to amend Article VII, Chapter 12, of the Bellevue Municipal Code by amending section 12-172 and adding new Section 12-176 regarding outdoor fireplace permitting requirements and to provide an effective date was read for the third and final time.

**Motion** was made by Cook, seconded by Welch, to approve Ordinance No. 4069, as per the new revised, red-lined attachment posted and presented tonight. Roll call vote on motion to approve was as follows: Stinson, Cook, Preister, Burns, and Welch voted yes; voting no: none; Absent: McCaw. Motion carried.

**Ordinance No. 4071: An ordinance to amend agenda Section 2-29 of City Code to allow for amending of the agenda as allowed by Nebraska Law outlined in Nebraska Revised Statute 84-1411. (Legal)**

Ordinance No. 4071: An ordinance to amend Section 2-29 of the Bellevue Municipal Code pertaining to agenda; submission of materials; formulation; public availability, etc., to repeal all previous versions of the same; and to provide an effective date of this ordinance was read for the third and final time.

**Motion** was made by Stinson, seconded by Welch, to approve Ordinance No. 4071. Roll call vote on motion to approve was as follows: Stinson, Cook, Preister, Burns, and Welch voted yes; voting no: none; Absent: McCaw. Motion carried.

## ORDINANCES FOR PUBLIC HEARING (Second Reading):

**Ordinance No. 4072: Request to rezone Lot 3, LGB Properties Replat One, from RE to RS-120 for the purpose of existing residential development. Applicant: AMZ Investments, LLC. General Location: 13510 South 36th Street. (Planning Manager)**

Ordinance No. 4072: An ordinance to amend the official zoning map of the City of Bellevue, Nebraska, as provided for by Article 3 of Ordinance No. 3619 by changing the zone classification of land located at or about 13510 South 36<sup>th</sup> Street, more particularly described in Section 1 of the ordinance and to provide an effective date was read for the second time and public hearing was held.

Mayor Hike opened the public hearing to give opportunity for individuals to speak in favor of or in opposition.

Ms. Alicia Zuger, with AMZ Investments, 1230 S. 110<sup>th</sup> Street, Omaha, was present to answer any questions. She stated she understood there will be a continuance of this item which she would be fine with. Ms. Bree Robbins, City Attorney, confirmed an email had been received from daughters of the neighbor but the city will hold the public hearing tonight and possibly reopen for public hearing at the next Council meeting for daughters of the recently deceased property owner to speak. Councilman Cook asked for Ms. Zuger to explain her plan is for this. Ms. Zuger explained the plans for renovations as well as how the facility would be staffed. Further discussion ensued.

Mr. Buzz Stephens, 13601 S. 26<sup>th</sup> Street, had a question on what type of security and safety measures will be in place. Ms. Zuger stated there will be codes for all the doors so without the code no one would be able to get in or out.

With no one else in the audience coming forth to speak in support of or in opposition to the ordinance. Mayor Hike declared the public hearing closed. Mayor Hike stated the third and final reading of the ordinance will be heard at the Council meeting on February 15, 2022.

**Ordinance No. 4073: Request to rezone Lots 1 and 2, Heer and Theer Addition, being a replat of Tax Lot 6b, and that part of Tax Lot 6A2, being the north 50' of the west 175' of the east 260' of Tax Lot 6A, together with the south 15' of the east 110' of Lot 1, and the south 22' of the east 85' of the east 260' of Tax Lot 6A, together with the south 15' of the east 65' of Lot 34, Svodboda's Addition to the City of Bellevue, all located in the Southwest 1/4 of Section 36, T14N, R13E of the 6th P.M., Sarpy County, Nebraska, from RG-8-M and BGM, to BGM, for the purpose of residential and commercial development. Applicant: 1st City Development, LLC. General Location: 2304 Lincoln Road. (Planning Manager)**

Ordinance No. 4073: An ordinance to amend the official zoning map of the City of Bellevue, Nebraska, as provided for by Article 3 of Ordinance No. 3619 by changing the zone classification of located at or about 2304 Lincoln Road, more particularly described in Section 1 of the ordinance and to provide an effective date was read for the second time and public hearing was held.

Mayor Hike stated he was going to recuse himself due to his company having the listing of this property which would be a conflict of interest, turning the meeting over to Council President Cook.

Council President Cook stated Mayor Hike has left the chambers at 6:44 p.m. and opened the public hearing to give individuals an opportunity to speak in favor of or in opposition.

# MINUTE RECORD

Bellevue City Council Meeting, February 1, 2022, Page 3

Mr. John Jungers, 112 Combs Road, stated he was the applicant and the property is currently owned by Mr. Heer. He stated the objective is to cleanup the zoning and the lots, then the property would be utilized for the relocation of an existing business. Councilman Burns asked if could explain the plan to the Council. Mr. Jungers stated he could not speak to that because there are no contracts in place.

Mr. Buzz Stephens, 13601 S. 26<sup>th</sup> Street, asked about where this property is located. Ms. Tammi Palm, Planning Manager, brought up a map to show the location of the property being discussed.

With no one else in the audience coming forth to speak in support of or in opposition to the ordinance. Council President Cook declared the public hearing closed.

Councilman President read into record Item #12b.1 – Request for small subdivision plat Lots 1 and 2, Heer and Theer Addition, and stated no action is required at tonight's meeting.

Council President Cook stated the third and final reading of the ordinance will be heard at the Council meeting on February 15, 2022.

Mayor Hike returned to the Council Chambers at 6:50 p.m.

**Ordinance No. 4074: Request to rezone Tax Lot 6A6, located in the Northwest 1/4 of Section 26, T14N, R13E of the 6th P.M., Sarpy County, Nebraska, from BG to RG-20 for the purpose of an adolescent care facility. Applicant: i3, LLC. General location: 105 Fort Crook Road South. (Planning Manager)**

Ordinance No. 4074: An ordinance to amend the official zoning map of the City of Bellevue, Nebraska, as provided for by Article 3 of Ordinance No. 3619 by changing the zone classification of land located at or about 105 Fort Crook Road South, more particularly described in Section 1 of the ordinance and to provide an effective date was read for the second time and public hearing was held.

Mayor Hike opened the public hearing to give opportunity for individuals to speak in favor of or in opposition.

Ms. Isa Paredes, 5820 Elkcrest Drive, Lincoln, NE and Ms. Stephanie Bates, 701 W. Lamm, Freeport, IL stated they are with Broadstep Behavioral Health who is the provider agency who is associated with the applicant i3, LLC which is a real estate firm. They stated Broadstep Behavioral Health is national care provider for both adolescents and adults. The site in Bellevue they are looking at would be an adolescent residential group home facility for those with behavioral health challenges and therapeutic needs.

There was a lengthy discussion with City Council members on the plans to renovate the building at the site 105 Fort Crook Road South, which is being considered for rezoning. Matters of concern that were discussed were how the building would be renovated to work for this type of facility, security of the facility, contracts, or relationships Broadstep has with the State of NE, needs for staffing this type of facility, and how properties are identified when looking for a facility for Broadstep.

Councilman Burns asked about getting a conceptual design to help understand what Broadstep is imagining. Ms. Tammi Palm, Planning Manager, gave some details of what i3 have stated through her discussions with them. Ms. Bates stated she could visit with her team to see if they could provide a basic conceptional design before the next meeting.

Councilman Cook stated he believes the concept is good, but this is not the right location. He feels i3 needed to do a better job on locating a property from the beginning and should have been present tonight to answer questions.

Mayor Hike stated the city is very limited on commercial space and the city would like to protect it the best we can, therefore he has some real reservations. He stated he knows the need is there but thinks there is a better place to put the facility. Mayor Hike and Mr. Ristow stated the city would be willing to work with i3 to find a suitable area that meets the city's zoning and planning.

Mr. Melvin Melindez, 12714 S, 77<sup>th</sup> Street, Papillion, stated he was the real estate agent representing the owner of this property. When i3 was there looking at property, he said they stated they liked that there was 16 rooms and the size of the land. He also said that when they were looking at the bowling alley, this property was not on the market.

Mr. Marty Giff, 2211 Thurston Circle, is representing GCC Fort Crook Unlimited Partnership, which is an entity that owns a roughly 30,000 sq. foot office-warehouse to the north of the property being discussed. He stated he has some concerns on how a change in zoning of this property could impact his property. He doesn't like the idea of changing this property to residential. Mr. Giff stated a residential area isn't conducive or safe next to a warehouse facility. He also stated this use isn't the intent the Fort Crook Redevelopment Plan was set up for and feels the city should focus what the plan was and what the Future Land Use Plan suggests.

With no one else in the audience coming forth to speak in support of or in opposition to the ordinance. Mayor Hike declared the public hearing closed.

Mayor Hike stated the third and final reading will be heard at the Council meeting on February 15, 2022.

# MINUTE RECORD

Bellevue City Council Meeting, February 1, 2022, Page 4

## Ordinance No. 4075: Repealing Section 20-2 of City Code regarding sale of cigarettes, tobacco, etc. products to minors. (Legal/Administration)

Ordinance No. 4075: An ordinance to repeal Section 20-2 of Article 1, Chapter 20, of the Bellevue Municipal Code regarding furnishing cigarettes, tobacco, etc. to minors and to provide an effective date was read for the second time and public hearing was held.

Mayor Hike opened the public hearing to give opportunity for individuals to speak in favor of or in opposition.

With no one in the audience coming forth to speak in support of or in opposition to the ordinance. Mayor Hike declared the public hearing closed.

Councilman Preister asked Ms. Robbins, City Attorney, if she would explain of what is being repealed. Ms. Robbins stated that the city code was outdated because the legislature changed the age from 18 to 21. Looking at it, there is a State Statute 28-1419 that already talks about the sale of these items to minors. She stated typically if youth are cited for this it would be under a State Statute which already outlines everything that is prohibited. Therefore, there is really no use for a City Code that would possibly need to be amended every time there is a change in State Statute. It will still be enforced but it would be cited under State Statute.

Mayor Hike stated the third and final reading of the ordinance will be heard at the Council meeting on February 15, 2022.

## ORDINANCES FOR INTRODUCTION: (First Reading): NONE

## PUBLIC HEARING ON MATTERS OTHER THAN ORDINANCES:

### Request for Conditional Use Permit (CUP) for Lot 3, LGB Properties Replat One, for the purpose of an Alzheimer's/Dementia Care Home. Applicant: AMZ Investments, LLC. General Location: 13510 South 36th Street. (Planning Manager)

Mayor Hike opened the public hearing to give opportunity for individuals to speak in favor of or in opposition.

Ms. Robbins, City Attorney, stated the applicant was here and spoke on 12a and maybe got confused about public hearing because it is all going to come back at next meeting. She stated she would hold public hearing tonight but would request Council open for public hearing at the next meeting so applicant can speak at that time.

With no one in the audience coming forth to speak in support of or in opposition to the ordinance. Mayor Hike declared the public hearing closed.

**Motion** was made by Cook, seconded by Welch, to table the vote until the February 15, 2022 meeting.

Ms. Tammi Palm, Planning Manager, added this item goes hand in hand with the rezoning request and doesn't feel it was intent to vote on this tonight. She stated the CUP can't happen without the change of zone and its intent was to have both public hearings at the same time.

Roll call vote on motion to approve was as follows: Stinson, Cook, Preister, Burns, and Welch voted yes; voting no: none; Absent: McCaw. Motion carried.

## RESOLUTIONS:

### Resolution 2022-03: A resolution approving the use of ARPA funding for the design costs for a water main extension, in the estimated amount of \$1,100,000. (Administration)

**Motion** was made by Welch, seconded by Burns, to approve Resolution No. 2022-03: A resolution approving the use of ARPA funding for the design costs for a water main extension, in the estimated amount of \$1,100,000.

Councilman Preister asked for an explanation of what this cost covers. Mr. Doug Clark, Public Works Director, explained whenever a water main is built by MUD extended it is called a pioneer main, which is paid for by the individual promoting the development, including the design. When the ARPA funding became available it made this project doable. In his communication with the Mr. Ristow, City Administrator and Mr. Mark Elbert, Community Development Director, there is significant interest in this area developing so this will roll into future development. This would take place at the same time as other lines are being built so they can most efficiently use their resources to get this area developed rapidly. As development, occurs every development will have to pay the City to tap into the water lines. These funds will help develop an area of Bellevue that has been waiting to be developed for many years.

Roll call vote on the motion was as follows: Stinson, Cook, Preister, Burns, and Welch voted yes; voting no: none; Absent: McCaw. Motion carried.

# MINUTE RECORD

Bellevue City Council Meeting, February 1, 2022, Page 5

**Resolution No. 2022-04: A resolution ordering an election to determine the continuation of the Economic Development Program, which places the continuation of the Plan on the May 10, 2022 ballot. (Administration/Legal)**

Motion was made by Cook, seconded by Welch, to Resolution No. 2022-04: A resolution ordering an election to determine the continuation of the Economic Development Program, which places the continuation of the Plan on the May 10, 2022 ballot. Roll call vote on motion to approve was as follows: Stinson, Cook, Preister, Burns, and Welch voted yes; voting no: none; Absent: McCaw. Motion carried.

**Resolution No. 2022-05: A resolution approving and authorizing the Mayor to sign the CRRSSA Fund Purchase Agreement with NE Dept. of Transportation (NDOT) for the 2022 Major Street Resurfacing Project, in an amount of \$360,233. (Public Works Director/Engineering Manager)**

**Motion** was made by Cook, seconded by Welch, to table until the February 15, 2022 meeting. Roll call vote on motion to approve was as follows: Stinson, Cook, Preister, Burns, and Welch voted yes; voting no: none; Absent: McCaw. Motion carried.

**CURRENT BUSINESS:**

**Approve and authorize the Mayor to sign a Memorandum of Understanding (MOU) with MUD for Water Main Extension Design Services project, in an amount not to exceed \$1,100,000 (funded with ARPA funds). (Community Development Director/Administration)**

**Motion** was made by Stinson, seconded by Burns, to approve and authorize the Mayor to sign a Memorandum of Understanding (MOU) with MUD for Water Main Extension Design Services project, in an amount not to exceed \$1,100,000 (funded with ARPA funds). Roll call vote on motion to approve was as follows: Stinson, Cook, Preister, Burns, and Welch voted yes; voting no: none; Absent: McCaw. Motion carried.

**Approve and authorize Mayor to sign a Service Agreement with GRP and Associates, Inc. for medical waste disposal, in an amount not to exceed \$180. (Capt. Melvin/Chief Clary)**

**Motion** was made by Welch, seconded by Stinson, to approve and authorize Mayor to sign a Service Agreement with GRP and Associates, Inc. for medical waste disposal, in an amount not to exceed \$180. Roll call vote on motion to approve was as follows: Stinson, Cook, Preister, Burns, and Welch voted yes; voting no: none; Absent: McCaw. Motion carried.

**Approve and authorize the Mayor to sign an agreement with Omaha Public Power District for OPPD's facilities relocation with the 36th Street widening project, Bline to Sheridan (MAPA-5061(5), C.N. 22276), in an amount not to exceed \$599,029.07. (Public Works Director/Engineering Manager)**

**Motion** was made by Welch, seconded by Stinson, to approve and authorize the Mayor to sign an agreement with Omaha Public Power District for OPPD's facilities relocation with the 36th Street widening project, Bline to Sheridan (MAPA-5061(5), C.N. 22276), in an amount not to exceed \$599,029.07. Roll call vote on motion to approve was as follows: Stinson, Cook, Preister, Burns, and Welch voted yes; voting no: none; Absent: McCaw. Motion carried.

**ADMINISTRATION REPORTS: Comments must be limited to items on the current reports. (Monthly Reports are given at the first Council Meeting of each month – December and January reports is attached to the February 1<sup>st</sup> Council packet).**

Councilman Priester asked for an update on the Food Pantry and on affordable housing. Mr. Ristow and Mr. Elbert gave updates on these items.

**CLOSED SESSION: NONE**

**ADJOURNMENT:**

There being no further business to come before the Council at this time, on motion by Preister, seconded by Burns, the meeting was adjourned at 8:32 p.m. Roll call vote on motion to approve was as follows: Stinson, Cook, Preister, Burns, and Welch voted yes; voting no: none; Absent: McCaw. Motion carried.

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Susan Kluthe, City Clerk

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Rusty Hike, Mayor

# MINUTE RECORD

Bellevue City Council Meeting, February 1, 2022, Page 6

I, the undersigned, City Clerk of the City of Bellevue, Nebraska, hereby certify that the foregoing is a true and correct copy of proceedings had and done by the Mayor and Council on February 1, 2022; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and readily available for public inspection at the office of the City Clerk; that such subjects were contained in said agendas for at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

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Susan Kluthe, City Clerk

## January 11,2022 meeting minutes FINAL (2)

Attendance: Joanne Langabee, Don Preister, Nancy Scott attended in person. Scott Evans, Deborah Woracek, and Tom Mruz joined via Zoom. Jim Shada came for a short while to give his report. Craig Kimball was absent and one position is open

Jo reminded all to turn in their time and mileage to Deborah.

Deborah made a motion to approve the December meeting minutes (she was absent in Dec.) and Don seconded the motion. It was approved and Deborah will send in the FINAL minutes to the City of Bellevue for filing.

Jim Shada – Park Report: Jim reported that due to the warmer than usual weather they have had time to do needed tree trimming and that they took out a huge Maple in Goldenrod Park. They have also trimmed trees along the creek in Stonecroft and have taken out dead trees. They have finished cleaning up Danielle Trail and Twin Ridge II Parks. Nancy asked Jim about limbs down along Tammy St. and Jim said he will check on them.

Doug Clark – was not present at this meeting.

Old Business:

Report on projects: logo, flyer, and business cards - Don reported he received the final version of our new logo, and he has sent it to the printing department. He will meet with them after today's meeting to answer any questions they may have for our business cards. After they approve them for printing, Don will send us all a sample to view.

Jo added the web site phone numbers and changed Morton Arboretum to ArborA Day and added that the species of White Poplar and Black Locust are native species but are also invasive and aggressive. Joanne now has all the Earth Day/booth materials that Holly had stored for us.

New Tree Board Member – No one has any candidates. After discussion, it was decided that Scott would go over the Master Gardener list for a possible candidate. Jo pointed out that the person does not have to live in Bellevue but should be interested in our trees. This person would replace Holly Hoffeiter who resigned for health reasons.

Tree City USA application – Jo said she has turned in this year's report but voiced concern about us always meeting financial requirements and getting the required Growth Points, even though they are easier to get now. She would like us to set up a 5-year maintenance plan for the parks where we have planted trees. This would include things such as pruning, mulch, and trimming suckers, weeding and anything else we have done in those parks, etc. Tom, Nancy, and others are qualified to do the trimming. Jo feels we could go back 5 years and do the parks that had trees planted in them. Don will check Gilder Park, Nancy will check Danielle Trail, Jo will check McCann, Stonecroft, and Hero's Park. This is to be done in the spring of this year. Jo plans to meet with Jim about the number of hires to qualify for the fees on the application. Don

said if Jim doesn't know the numbers needed for Jo to ask Karen at the Parks office. Joanne went to McCann Park on the way to this meeting and feels the hill there is too steep to do any further planting of trees there. Jim agrees that it is too steep for more trees.

#### New Business:

Tom talked to BWHS about pruning the row of evergreens behind the school that we planted. He is planning on bringing his telescoping loppers to use. Don, Tom, and Nancy will meet on January 12 to walk and trim the Spruce trees at BWHS.

Jo applied for the NRD grant after talking to Doug. It would be applied to Willow Springs. We could receive all \$2500 and could end up with trees for Lakewood as well. However, watering new trees always presents problems. Jim wondered if we get the grant, do we have to take 12 trees or can we take a smaller number. Jo replied, yes, that that would work with the NRD grant but not with all the grants the Tree Board applies for.

Don asked about the City-wide Ash tree numbers. Are any coming down that we know of? Or any trees coming down? He asked about the Ash by the Library. All concurred that it is not in bad shape. Jim does feel that the Ash in Washington Park southeast of the gazebo needs checking. Don agreed.

Don reported that it is up to the Board to contact schools for the Arbor Day plantings. This needs to be done very soon. He also reported that Bellevue is combining with Omaha and Sarpy County for the large Earth Day Celebration that will be held in Elmwood Park in Omaha. We will publish QR codes and have activities available to people to do that are similar to what was done last year. Don and Scott will check to see if other Tree Boards in Sarpy County are interested in assisting us with this. Don will also contact St. Bernadette School and Lewis & Clark school for possible Arbor Day plantings. He will also submit the application to have the Arbor Day proclamation read at the City Council meeting in April.

Jo will send out the links to the Tree Board videos so we can watch them at our convenience.

Our next meeting will be February 8<sup>th</sup>. Scott made a motion that the meeting be adjourned. Tom seconded the motion. All voted and it was carried.

Respectfully submitted,

Deborah L. Woracek, Secretary

Bellevue Tree Board

Tentative agenda for Feb. 8, 2022

Attendance

Volunteer Hours

Approve Minutes of January meeting

Park Report – Jim

City report - Doug

Old Business

Washington Park carvings

Bellevue 411 – articles

NRD Tree grant

Arbor and Earth Day plans:

Winter Projects

Bellevue West pruning – Tom

Monthly timeline with duties

New Business

# MINUTE RECORD

\*6a.  
2/15/2022

## CLAIMS FOR FEBRUARY 15, 2022

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### MAYOR

CANTH AWARDS	CPS-LIFE SAVING AWARD	69.00
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	15.79
GROW SARPY	CPS-ANNUAL MEETING	35.00
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	57.15
		<hr/>
		\$ 176.94

### CITY ADMINISTRATOR

CAPITAL BUSINESS SYSTEMS, INC	COPIER EXPENSE	44.10
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	30.55
GROW SARPY	CPS-ANNUAL MEETING	70.00
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	91.43
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	244.91
		<hr/>
		\$ 480.99

### LEGAL

CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	31.06
DROP BOX	CPS-CASE STORAGE	19.99
NEBRASKA STATE BAR ASSOCIATION	CPS-RENEW LICENSE	290.00
NEBRASKA SUPREME COURT ATTORNEY	CPS-RENEW LICENSE	98.00
NEBRASKA.GOV	CPS-CASE MANAGEMENT	53.00
SARPY COUNTY COURT	CR 21 2185	17.00
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	95.30
		<hr/>
		\$ 604.35

### CABLE ADVISORY

B & H PHOTO-VIDEO	CPS-CD'S, HEADPHONES	634.63
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	10.53
COX BUSINESS SERVICES	2022/01/19-2022/02/18 MONTHLY SERVICE	9.04
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	52.15
		<hr/>
		\$ 706.35

### CITY CLERK

AMERICAN LEGAL PUBLISHING CORP	INTERNET RENEWAL FOR CODES, SUPPLEMENTAL PAGES	615.90
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	15.79
GRETNA GUIDE & NEWS	LEGAL ADS	209.98
NEBRASKA SUPREME COURT	STATE STATUTES UPDATE	191.00
SARPY CO REGISTER OF DEEDS	RECORDING FEE	288.00
UNIVERSITY OF NEBRASKA-OMAHA	CPS-CLERKS SCHOOL	393.00
		<hr/>
		\$ 1,713.67

### FINANCE/RISK MANAGEMENT

CAPITAL BUSINESS SYSTEMS, INC	COPIER EXPENSE	81.93
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	76.50
COSGRAVE COMPANY	US AND NEB FLAGS	564.65
INFOSAFE SHREDDING	SHREDDING SERVICE	30.00
STANDARD PRINTING COMPANY	A/P LASER CHECKS	472.21
STELLA'S BAR & GRILL	CPS-MEETING LUNCHEON	90.00
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	84.43
		<hr/>
		\$ 1,399.72

# MINUTE RECORD

## CLAIMS FOR FEBRUARY 15, 2022

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### LIBRARY

ABE BOOKS	CPS-BOOKS	125.44
BELLEVUE PRINTING COMPANY	ENVELOPES	126.50
CENGAGE LEARNING, INC	BOOK	57.58
CENGAGE LEARNING, INC	CHILTON LIBRARY	2,241.70
CENGAGE LEARNING, INC	TEST PREPARATION	2,241.70
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	52.63
COBRA INK SYSTEMS	CPS-COBRA INK SYSTEMS	183.95
COREL/CLERVERBRIGE	CPS-COREL GRAPHICS SUITE	116.63
DELVIES PLASTICS, INC	CPS-DRAFT CUTTING TABLE	433.08
DEMCO	JACKET COVERS	604.27
DILLONS CUSTOMER CHARGES	CPS-SUPPLIES	17.34
INGRAM LIBRARY SERVICES	BOOKS	1,295.00
J P COOKE COMPANY	NOTARY STAMP	45.75
MATRIX BUSINESS SYSTEMS INC	COPIER EXPENSE	6.97
OCLC INC	CATALOGING SUBS TO 2022/06/30	1,384.67
OMAHA PUBLIC POWER DISTRICT	2021/12/10-2022/01/12 MONTHLY SERVICE	1,495.29
RUFF WATERS	AQUARIUM MAINTENANCE	65.00
SCOTT WELCH	MONTHLY WEB HOSTING-FEB 2022	125.00
STAPLES ADVANTAGE	OFFICE SUPPLIES	37.78
TARGET CORPORATION	CPS-PRINTER/SCANNERS	427.98
TEAM SOFTWARE SOLUTIONS	WEB BROWSER RENEWAL	125.00
VALUE LINE	RENEW SUBSCRIPTION	1,142.00
VERIZON WIRELESS	2021/12/17-2022/01/16 MONTHLY SERVICE	400.10
		<hr/>
		<b>\$ 12,751.36</b>

### ADMINISTRATIVE SERVICES/PERSONNEL

CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	73.55
INFOSAFE SHREDDING	SHREDDING SERVICE	30.00
INTEGRATED REHAB	RANDOM DRUG TESTS	850.00
MATRIX BUSINESS SYSTEMS INC	COPIER EXPENSE	82.53
OMAHA PUBLIC POWER DISTRICT	2021/12/21-2022/01/20 MONTHLY SERVICE	173.49
ONE SOURCE	BACKGROUND CHECKS	87.50
PATRICIA CATERING	CPS-EMPLOYEES CHRISTMAS LUNCHEON	4,977.50
PAULA HALL	REIMB FOR EXAM & MEMBERSHIP DUES	819.00
TRANSNET, LLC	TRANSCRIPTION SERVICE	378.84
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	120.23
UKG INC	YEAR END PRINT SERVICE	5.00
UPS	PAYROLL PROCESSING POSTAGE	51.45
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	2,581.11
		<hr/>
		<b>\$ 10,230.20</b>

### CODE ENFORCEMENT

BELLEVUE PRINTING COMPANY	NCR FORMS PADDED, TOW TAGS	1,740.12
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	30.93
GRAPHIC DESIGNS INTERNATIONAL, LLC	INSTALL DECALS ON TRUCK	603.25
OMAHA PUBLIC POWER DISTRICT	2021/12/10-2022/01/12 MONTHLY SERVICE	111.38
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	321.11
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	766.54
		<hr/>
		<b>\$ 3,573.33</b>

# MINUTE RECORD

## CLAIMS FOR FEBRUARY 15, 2022

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### PUBLIC WORKS

AVI SYSTEMS	BPW-211022 AUDIO VISUAL TRAINING ROOM	17,070.83
CARHARTT, INC	CPS-UNIFORMS	1,070.85
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	63.15
HDR ENGINEERING, INC	BPW-211123 WW COLLECTION SYST DEC 2021 TO JAN 2022	4,973.64
INDOFF	STORAGE CABINET FOR UNIFORMS-AT FLEET	773.88
KITCHEN SINK COMMUNICATIONS	COMM & PLANNING, FINANCING FUND-KIEWIT	830.00
MATRIX BUSINESS SYSTEMS INC	COPIER EXPENSE	173.29
NEBRASKA IOWA SUPPLY CO	DIESEL FUEL FOR CITY TANKS	4,280.13
OMAHA PUBLIC POWER DISTRICT	2021/12/10-2022/01/12 MONTHLY SERVICE	186.25
ONE CALL CONCEPTS	DIGGERS HOT LINE-JAN 2022	479.56
REFLECTIVE APPAREL FACTORY, INC	HI VIS UNIFORMS, SCREENPRINTING	193.87
SARPY CO REGISTER OF DEEDS	SIDEWALK WAIVER RECORDING	10.00
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	623.20
ULINE	FREIGHT TO RETURN UNIFORM	15.68
UPS STORE	SHIPPING CHARGE TO RETURN UNIFORMS	29.58
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	106.19
		<hr/>
		\$ 30,880.10

### PARKS

A-RELIEF SERVICES	PORTABLE RESTROOMS-CITY PARKS	850.00
CAPITAL BUSINESS SYSTEMS, INC	COPIER EXPENSE	22.43
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	47.36
CREATIVE SITES, LLC	PARK BENCHES	2,412.00
HDR ENGINEERING, INC	BPW-210920 MASTER PLAN 2021/12/26-2022/1/15	23,941.50
HGM ASSOCIATES INC	AHP AMPHITHEATER THRU 2022/01/15	1,920.00
J & J SMALL ENGINE SERVICE	POLE PRUNER	552.00
JEO CONSULTING GROUP, INC	BPW-211225 STONECROFT PARK TO 2022/1/7	8,130.00
LAMP RYNEARSON & ASSOCIATES	BPW-210516 PARKS MASTER PLAN TO 2021/12/25	73,550.00
LAMP RYNEARSON & ASSOCIATES	BPW-210516 AQUATIC PARK TO 2021/12/25	5,010.00
MW-INT'L SOCIETY OF ARBORICULTURE	CPS-ARBORICULTURE CONFERENCE-8 EMP	2,600.00
OMAHA PUBLIC POWER DISTRICT	2021/12/01-2022/01/03 MONTHLY SERVICE	2,647.43
PRECISE MRM LLC	DATA PLAN	200.00
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	131.58
UNIVERSITY OF NEBRASKA-OMAHA	CPS-PESTICIDE REGISTRATION-MARSHALL, HOUGHTALING	160.00
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	1,317.52
WALMART COMMUNITY	CPS-ICE MELT	922.88
WESTLAKE ACE HARDWARE	PAINT SUPPLIES, BAR OIL, DRILL	151.92
		<hr/>
		\$ 124,566.62

### RECREATION

CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	66.49
DICK'S CLOTHING AND SPORTING GOODS	CPS-BASEBALLS, BASKETBALL HOOPS	2,827.82
INTERNATIONAL EZ UP	CPS-STEEL SHELTER	690.24
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	496.81
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	232.90
		<hr/>
		\$ 4,314.26

# MINUTE RECORD

## CLAIMS FOR FEBRUARY 15, 2022

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### BUILDING MAINTENANCE

ANDERSON ELECTRIC SALES & SERVICE	BEARING MOTOR, FREON	110.40
APOLLO HEATING & A/C	ADD DAMPER TO SUPPLY LINES	377.18
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	5.26
CODY PEST MANAGEMENT	PEST CONTROL-CITY BUILDINGS	787.00
DAY ELECTRIC SERVICE, INC	ADD PLUG IN BAY 6 WITH DROP CORDS, INSTALL BREAKER, HOOKUP FOR FURNITURE WHIPS	3,286.32
GALVIN GLASS	RE-POSITION WINDOWS	150.00
HILLYARD DES MOINES	JANITORIAL SUPPLIES	632.40
HOSE & HANDLING, INC	BALL VALVE	163.99
IDEAL PURE WATER COMPANY	BOTTLED WATER	22.00
JACKSON SERVICES, INC	DOOR MAT SERVICE-LIBRARY	80.00
MENARDS	TAPE, GAS LEAK DETECTOR, GAS VALVE, LUMBER, BATTERIES, PAIL, TEMP GUN	527.23
NEBRASKA STATE FIRE MARSHAL	ELEVATOR ANNUAL INSPECTION	240.00
OMAHA PNEUMATIC EQUIPMENT CO	CARTRIDGE REPLACEMENT, STEEL MUFFLER	2,531.15
OMAHA PUBLIC POWER DISTRICT	2021/12/10-2022/01/12 MONTHLY SERVICE	1,318.41
O'REILLY AUTOMOTIVE PARTS	TRUFLEX BELT	6.18
OVERHEAD DOOR COMPANY	REPLACE BROKEN BELT-PARKS DEPT	141.00
ROTO-ROOTER SERVICES CO	RAN URINAL	391.00
SECURITY EQUIPMENT	SECURITY MONITORING-2022/2/1-2022/4/30	2,286.00
SHERWIN WILLIAMS CO	PAINT	127.25
THE HOME DEPOT PRO	JANITORIAL SUPPLIES	2,099.55
THYSSENKRUPP ELEVATOR CORPORATION	ELEVATOR MAINTENANCE	480.05
TRISTAR CLAIMS MANAGEMENT SERVICES INC	WORK COMP FUNDING-DEC 2021	1,076.10
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	123.61
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	601.28
VOSS LIGHTING	JANITORIAL SUPPLIES	162.90
WESTLAKE ACE HARDWARE	FAUCET HOSE EXT, BAR OIL, SUPPLIES	89.15
		<b>\$ 17,815.41</b>

### CEMETERY

CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	5.26
OMAHA PUBLIC POWER DISTRICT	2021/12/21-2022/01/20 MONTHLY SERVICE	909.79
TESSA COX-TURNER	SELL BACK CEMETERY PLOTS	800.00
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	43.16
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	186.15
		<b>\$ 1,944.36</b>

### STREETS

3M COMPANY	REFLECTIVE SHEETING	2,604.82
ALFRED BENESCH & COMPANY	BPW-220101 RESURFACING 2021/12/20-2022/1/16	6,117.87
ALFRED BENESCH & COMPANY	BPW-220101 RESURFACING 2021/12/20-2022/1/16	11,599.51
ALFRED BENESCH & COMPANY	BPW-210719 RIDGE REMOVAL 2021/10/25-2022/1/16	930.75
AVERY RENTS	PROPANE	18.20
BEST CARE EAP	SUBSTANCE ABUSE SERVICES	550.00
CAPITAL BUSINESS SYSTEMS, INC	COPIER EXPENSE	8.14
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	47.36
DAVID WEAVER	REIMB FOR CDL LICENSE	63.50

# MINUTE RECORD

## CLAIMS FOR FEBRUARY 15, 2022

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### STREETS (cont'd)

HGM ASSOCIATES INC	BPW-211224 BRIDGE REPAIRS 2021/11/23-2022/1/15	1,515.73
HGM ASSOCIATES INC	BPW-210312 BANK STABILIZATION 2021/3/10-2022/1/15	676.72
INDEPENDENT SALT CO	SALT/SAND	13,570.80
JIMMY L STEINBACH	REIMB FOR CLASS A ENDORSEMENT	11.50
LEE CONSTRUCTION INC	BPW-210312 BANK STABILIZATION TO 2022/01/31	69,733.80
MENARDS	LUMBER, ELEC SUPPLIES, TOOLS	120.19
MIDWEST RIGHT OF WAY SERVICES, INC	BPW-180105 BLINE TO SHERIDAN NOV 2021 TO JAN 2022	3,292.50
OMAHA PUBLIC POWER DISTRICT	2021/12/01-2022/01/03 MONTHLY SERVICE	15,770.15
READY MIXED CONCRETE COMPANY	CONCRETE	6,306.15
TRISTAR CLAIMS MANAGEMENT SERVICES INC	WORK COMP FUNDING-DEC 2021	1,560.42
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	199.59
UNIVERSITY OF NEBRASKA-OMAHA	CPS-PESTICIDE TRAINING	400.00
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	5,935.59
		<b>\$ 141,033.29</b>

### FLEET MAINTENANCE

A + UNITED RADIATOR REPAIR	BAKE AND BLAST DOC FILTERS	350.00
AA WHEEL & TRUCK SUPPLY, INC	SEALS	22.40
ALLIED OIL & SUPPLY COMPANY	BULK OIL	3,216.68
AUTO VALUE PARTS - SOUTH OMAHA	ALTERNATOR,SERVICE GAUGE, TIRE CHAINS	1,688.84
AUTOMOTIVE WAREHOUSE DIST, INC	AP EXHAUST, SEALANT, BACKUP ALARM, PARTS	2,021.76
BAUER BUILT	TIRES	2,842.71
BAXTER CHRYSLER DODGE JEEP	GASKETS, SEALS, THERMOSTAT, HARNESS, DAMPER, RAD HOSE, EXHAUST, CAMSHAFT GEAR	1,860.58
BAXTER FORD	OIL, SEPARATOR, ROTOR ASSY, SEALS, LATCH, SPACERS	2,168.72
BUMPER & AUTO OF OMAHA	HEADLAMP	495.00
CAPITAL BUSINESS SYSTEMS, INC	COPIER EXPENSE	54.03
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	36.84
CORNHUSKER INTERNATIONAL TRUCKS	HOUSING, SWITCH, SENSORS, BRACKETS	486.66
CORNHUSKER INTERNATIONAL TRUCKS	SENSOR	901.61
EDWARDS CHEVROLET-CADILLAC	BLADES	46.66
FACTORY MOTOR PARTS CO	FAN AND MOTOR ASSEMBLY	152.02
FARM PLAN	TIRE AND WHEEL, TWIST LOCK, BATTERY	225.04
GALVIN GLASS	REPLACE WINDSHIELDS	291.18
GRAINGER	SHELF BINS	246.24
HENDERSON PRODUCTS, INC	SPRINGS, CLEVIS, LATCH RELEASE, JAW LATCH	1,323.51
INTERSTATE ALL BATTERY CENTER	BATTERIES	394.60
ISNARDO SALGADO	REIMB FOR ASE CERTIFICATION EXAMS	84.00
J & J SMALL ENGINE SERVICE	GASKETS, TAPER WEDGES	98.40
KEYMASTERS OF OMAHA	KEYS	16.50
KRIHA FLUID POWER CO	FITTINGS	221.83
LIBRA SAFETY PRODUCTS	LENS CLEANING	36.60
MACQUEEN EQUIPMENT, LLC	RECESSED CUPS, GASKETS	35.85
MATHESON TRI-GAS INC	WELDING SUPPLIES	368.85
MENARDS	SHUT OFF VALVE, PLUGS	33.01
MIDLANDS AUTO REPAIR	FRONT END ALIGNMENT	1,686.13
NAPA AUTO PARTS	BLOWER MOTOR, FITTINGS, FILTERS, VOLTAGE REGULATOR, BELT, GROMMETS, SHOP VISE	2,278.19

# MINUTE RECORD

## CLAIMS FOR FEBRUARY 15, 2022

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### FLEET MAINTENANCE (cont'd)

NEBRASKA IOWA INDUSTRIAL FASTENERS	TERMINALS, NUTS, DRILL BIT, BOLTS, CONNECTORS	497.56
NOREGON SYSTEMS	CPS-SUBSCRIPTION	300.00
NORTHERN AUTO PARTS	LIFTER ASSEMBLY, CAMSHAFT	1,099.47
OMAHA PUBLIC POWER DISTRICT	2021/12/22-2022/01/24 MONTHLY SERVICE	1,252.43
OMAHA SLINGS	WELD-ON GRAB ON HOOKS	65.88
O'REILLY AUTOMOTIVE PARTS	ALTERNATOR, RAD CAP, BRAKE MASTER CYLINDER	300.61
POWERPLAN	BREATHER, WINDOWS, CLAMPS, UNIV JOINTS	2,183.96
PRECISE MRM LLC	ADHESIVE ANTENNAS, MAGNETIC ANTENNAS, DRIVER MODULE	6,150.19
QUALITY AUTO REPAIR & TOWING	WINCH OUT ENG31	300.00
QUALITY TIRES, INC	MULTITRAC TIRES	260.00
SWAN ENGINEERING	O-RINGS	11.04
TOMASEK MACHINE SHOP	MFG COLLARS FOR STREET SAWS	185.00
TOYNE, INC	SUPER AUTO EJECT, COVER	389.91
TRUCK CENTER COMPANIES	DAMPER, GASKETS, ADAPTERS, FRONT SHOCKS	745.62
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	25.69
UNITED AUTO RECYCLERS	FRONT SEAT BELT	135.00
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	630.09
WALKERS UNIFORM RENTAL	UNIFORM SERVICE	293.18
WILLARD AUTO MACHINE INC	VALVE JOB-UNIT 610	716.04
		<hr/>
		<b>\$ 39,226.11</b>

### PLANNING

CAPITAL BUSINESS SYSTEMS, INC	COPIER EXPENSE	54.79
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	15.79
GRETNA GUIDE & NEWS	LEGAL AD	10.52
MIDLANDS PRINTING	BUSINESS CARDS	159.19
OMAHA PUBLIC POWER DISTRICT	2021/12/10-2022/01/12 MONTHLY SERVICE	168.47
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	28.20
		<hr/>
		<b>\$ 436.96</b>

### PERMITS & INSPECTIONS

BK CONSTRUCTION	REFUND PRE-CONNECT DEPOSIT	500.00
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	26.31
CHRISTENSEN EXCAVATING CO, INC	DEMOLITION AT 3636 EDNA	11,750.00
INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICERS	CPS-MEMBERSHIP DUES-CHRISTENSEN	250.00
INTERNATIONAL CODE COUNCIL, INC	CPS-MEMBERSHIP DUES-CHRISTENSEN	145.00
OMAHA PUBLIC POWER DISTRICT	2021/12/10-2022/01/12 MONTHLY SERVICE	224.62
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	258.93
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	927.94
		<hr/>
		<b>\$ 14,082.80</b>

### POLICE

911 CUSTOM, LLC	STINGER FLASHLIGHTS	1,292.40
ABM INTEL, LLC	CPS-TRAINING-CROGHAN	375.00
ABM SUPPLY	SWAT BALLISTIC RIFLE THREAT PLATES	2,184.00
AVERY L LOSCHEN	RENT FOR K9 BUILDING-MAR 2022	1,248.00
BLAC-RAC MANUFACTURING, INC	RIFLE MOUNTS FOR MOTORCYCLES	3,690.00
BLUE 360 MEDIA, LLC	CPS-NEB CRIMINAL AND TRAFFIC MANUALS	1,309.43

# MINUTE RECORD

## CLAIMS FOR FEBRUARY 15, 2022

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### POLICE (cont'd)

CALIBRE PRESS	CPS-TRAINING-WRIGLEY	219.00
CAPITAL BUSINESS SYSTEMS, INC	COPIER EXPENSE	260.47
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	450.94
CITY OF LAVISTA	TUITION 2022-01 -SAUCEDO, SPARR	3,000.00
CITY OF OMAHA	FORENSIC SERVICES Q4/2021	2,350.00
COMPLETE TACTICAL CONSULTANTS	TACTICAL ATHLETE PROGRAM INSTRUCTOR	2,975.00
CONSOLIDATED MANAGEMENT CO	MEALS FOR TRAINING AT THE ACADEMY	140.31
CULLIGAN OF OMAHA	BOTTLED WATER	410.80
DOUGLAS COUNTY SHERIFF OFFICE	FORENSIC FEES	425.00
EARL JOHNSON	REIMB PER DIEM FOR TRAINING	178.50
EURO OPTIC, LTD	SNIPER OPTIC AND RANGE FINDER EQUIP	11,212.62
FBINAA - NEBRASKA CHAPTER	CPS-TRAINING-JANDA	325.00
FEDERAL EXPRESS CORPORATION	SHIPPING CHARGES	13.57
GOPHER PERFORMANCE	CPS-PUSH-UP TESTER	446.88
GREAT PLAINS UNIFORMS	BALLISTIC VEST, UNIFORMS	2,191.49
INFOSAFE SHREDDING	SHREDDING SERVICE	150.00
INTERNATIONAL ASSOCIATION FOR PROPERTY AND EVIDENCE	CPS-MEMBERSHIP DUES-ZALESKI, SPOCHER	765.00
J P COOKE COMPANY	POCKET XSTAMPER-HAVERTY	6.46
JACKSON SERVICES, INC	DOOR MAT SERVICE-POLICE	148.79
JAMES MURRAY	REIMB PER DIEM FOR TRAINING	127.50
LeadsOnLine, LLC	CPS-SOFTWARE FOR INVESTIGATIONS	6,883.49
LIFESAVERS REGISTRATION	CPS-TRAINING-ABBOTT, BROM, COX, GRUBB	1,400.00
LP POLICE	MONTHLY LOCATE PLAN-JAN 2022	129.95
MATRIX BUSINESS SYSTEMS INC	COPIER EXPENSE	351.94
MENARDS	BUILDER BOARD, TAPE, LP TANK, LUMBER, DRYWALL	273.03
METRO CHIEFS ASSOCIATION	DEPARTMENT MEMBERSHIP DUES-2022	75.00
MICROSOFT STORE	CPS-SUBSCRIPTION	106.99
NET DUTY SOFTWARE	ADDITIONAL USERS	210.00
OMAHA DOOR & WINDOW COMPANY	INSTALL DOORS FOR NEW OFFICES	2,744.42
OMAHA PUBLIC POWER DISTRICT	2021/12/10-2022/01/12 MONTHLY SERVICE	4,098.61
RDR CUSTOM KYDEX INC	GLOCK HOLSTERS	1,154.30
SECURITY EQUIPMENT	INSTALL GATE READER	1,144.00
SOUTHWEST AIRLINES	CPS-TRAVEL-JOHNSON	278.36
STREET COP TRAINING	CPS-TRAINING-JOHNSON, LARR, MILOS, MARKVE	1,046.00
SYMBOL ARTS	SWAT PATCHES	760.00
TRIPLE I SOLUTIONS	CPS-TRAINING-JOHNSON	350.00
TRISTAR CLAIMS MANAGEMENT SERVICES INC	WORK COMP FUNDING-DEC 2021	4,883.10
TRI-TECH FORENSICS, INC	CPS-TRAINING-NIELSEN	599.00
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	3,069.90
UAV TEACHABLE	CPS-TRAINING-ABBOTT, BROM, K MANNING, BEES	851.72
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	14,825.61
WESTLAKE ACE HARDWARE	BLACK TAPE	59.94
ZOMBIE TACTICAL	ENGRAVING RIFLES	200.00
		<hr/>
		\$ 81,391.52

# MINUTE RECORD

## CLAIMS FOR FEBRUARY 15, 2022

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### FIRE & RESCUE

AIRGAS USA, LLC	OXYGEN	59.61
BOUND TREE MEDICAL, LLC	MEDICAL SUPPLIES	3,556.33
BYRON OLSEN	REIMB FOR SERVICE	177.24
CENTURY LINK	2022/01/22-2022/02/21 MONTHLY SERVICE	134.13
EC DATA SYSTEMS, INC	CPS-SHARE OF FAX SERVER	7.95
ED M FELD EQUIPMENT CO	ANNUAL COMPRESSOR MAINTENANCE	900.00
INTERSTATE POWER SYSTEMS, INC	GENERATOR REPAIR-DIST 2	820.16
MARCO TECHNOLOGIES CORP	COPIER EXPENSE	209.89
MELISSA LUDWIG	REIMB FOR SERVICE	672.50
NEBRASKA HOME APPLIANCE	DRYER REPAIR-DIST 4	175.00
NELLIE BLACKWELDER	REIMB FOR SERVICE	78.00
OMAHA PUBLIC POWER DISTRICT	2021/12/01-2022/01/03 MONTHLY SERVICE	5,847.17
SPARTAN NASH STORES, LLC	CPS-SUPPLIES FOR RETIREMENT	19.99
SURVEY MONKEY.COM, LLC	CPS-SUBSCRIPTION	384.00
THE NEBRASKA MEDICAL CENTER	MEDICAL DIRECTOR OCT-DEC 2021	11,132.44
TRISTAR CLAIMS MANAGEMENT SERVICES INC	WORK COMP FUNDING-DEC 2021	84.32
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	1,211.28
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	8,954.79
ZOLL MEDICAL CORPORATION	MEDICAL SUPPLIES	1,130.20
		<hr/>
		\$ 35,555.00

### NON-DEPARTMENTAL/CONTRACTS

AATRIX EFILE CENTER	CPS-PROCESS 1000NEC FORMS	80.70
CENTURY LINK	2021/12/20-2022/01/19 MONTHLY SERVICE	381.44
METRO AREA TRANSIT	MAT 2021-11 2087 MILES	4,473.00
SARPY COUNTY COURT HOUSE	ANIMAL CONTROL-MAR 2022	13,452.93
SCOTT WELCH	CPS-MONTHLY WEB MAINTENANCE	125.00
TRISTAR RISK MANAGEMENT, INC	WORK COMP CLAIM RE-OPEN	758.00
		<hr/>
		\$ 19,271.07

### INFORMATION TECHNOLOGY

HOSTGATOR.COM	CPS-MONTHLY DOMAIN MAINTENANCE	69.95
CORE TECHNOLOGIES, INC	AGREEMENT BILLABLE TIME	246.38
MOTOROLA SOLUTIONS, INC	RADIO MAINTENANCE	203.40
SHI INTERNATIONAL CORP	ZIA BUSINESS EDITION	14,138.02
		<hr/>
		\$ 14,657.75

### WASTEWATER

CAPITAL BUSINESS SYSTEMS, INC	COPIER EXPENSE	44.27
CENTURY LINK	2022/01/13-2022/02/12 MONTHLY SERVICE	589.21
DAY ELECTRIC SERVICE, INC	REPAIR LIFT STATION POWER-WW	1,996.92
ELLIOTT EQUIPMENT CO	O-RINGS SUPER TUBE	35.42
GRAINGER	SPOTLIGHTS, MEASURING WHEEL	460.13
HDR ENGINEERING, INC	BPW-201109 SO LIFT STATION 2021/12/26-2022/01/29	11,899.73
HTM SALES, INC	ELECTRODE DOME, O-RINGS	411.38
MENARDS	FIRST AID KIT, BRUSH, GLOVES, DEGREASER	147.43
OMAHA PUBLIC POWER DISTRICT	2021/12/10-2022/01/12 MONTHLY SERVICE	3,162.47
U.S. CELLULAR	2022/01/04-2022/02/03 MONTHLY SERVICE	461.85
U.S. CELLULAR	2022/01/09-2022/02/08 MONTHLY SERVICE	383.76
US BANK VOYAGER FLEET SYSTEMS	FUEL FOR CITY VEHICLES-JAN 2022	2,562.02
WESTLAKE ACE HARDWARE	THREAD SEAL TAPE, COUPLERS, WASHER HOSE	67.25
		<hr/>
		\$ 22,221.84

# MINUTE RECORD

## CLAIMS FOR FEBRUARY 15, 2022

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### COMMUNITY BETTERMENT

OMAHA PUBLIC POWER DISTRICT	2022/01/26 MONTHLY SERVICE	100.16
		<u>100.16</u>
		\$ 100.16

### COMMUNITY DEVELOPMENT

MARATHON VENTURES, INC	MARATHON VENTURES BLDG IMPROVEMENTS	19,685.00
		<u>19,685.00</u>
		\$ 19,685.00

### G.O. BONDS

BOKF NA	2022 2017 COPS TRUSTEE FEES	1,250.00
		<u>1,250.00</u>
		\$ 1,250.00

<b>TOTAL CLAIMS FOR FEBRUARY 15, 2022</b>	<b>\$ 600,069.16</b>
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CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Susan Kluthe, City Clerk		
AGENDA ITEM:		CONSENT AGENDA <input type="checkbox"/>	SPECIAL PRESENTATION <input type="checkbox"/>	
LIQUOR LICENSE <input checked="" type="checkbox"/>		ORDINANCE <input type="checkbox"/>	PUBLIC HEARING <input checked="" type="checkbox"/>	
RESOLUTION <input type="checkbox"/>		CURRENT BUSINESS <input type="checkbox"/>	OTHER <input type="checkbox"/>	

SUBJECT:

Application for new Manager for Yaway LLC dba "Holiday Inn Express & Suites" at 10804 S. 15th Street, Bellevue.

SYNOPSIS/BACKGROUND:

Yaway LLC dba "Holiday Inn Express & Suites" would like recommendation to approve Kelsey Grant as a new Manager for the stores located at 10804 S. 15th Street, Bellevue. Applications are turned directly into the NE Liquor Control Commission by the applicant then forwarded on to the City Clerk's Office by the NE Liquor Control Commission. The Clerk sends application to be reviewed by the Police and then submitted to the City Council for review and recommendation, and then forwarded to the NE Liquor Control Commission for final approval (if there are no issues).

FISCAL IMPACT:  BUDGETED FUNDS?:  GRANT/MATCHING FUNDS?:

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?:  COUNTER-PARTY:  INTERLOCAL AGREEMENT:

CONTRACT DESCRIPTION:

CONTRACT EFFECTIVE DATE:  CONTRACT TERM:  CONTRACT END DATE:

PROJECT NAME:

START DATE:  END DATE:  PAYMENT DATE:  INSURANCE REQUIRED:

CIP PROJECT NAME:  CIP PROJECT NUMBER:

STREET DISTRICT NAME (S):  STREET DISTRICT NUMBER (S):

ACCOUNTING DISTRIBUTION CODE:  ACCOUNT NUMBER:

RECOMMENDATION:

Recommend approval of application for Kelsey Grant as the new Manager for Yaway LLC dba "Holiday Inn Express & Suites" at 10804 S. 15th Street, Bellevue.

ATTACHMENTS:

1. <input type="text" value="Application"/>	2. <input type="text" value="Police Report"/>	3. <input type="text"/>
4. <input type="text"/>	5. <input type="text"/>	6. <input type="text"/>

SIGNATURES:

LEGAL APPROVAL AS TO FORM:

FINANCE APPROVAL AS TO FORM:

ADMINISTRATOR APPROVAL AS TO FORM:

*A. Byrge Robles*  
*[Signature]*  
*[Signature]*

APPLICATION FOR LIQUOR LICENSE  
AND CORPORATE MANAGER

**POLICE REPORT**

Date of City Council Meeting: February 15, 2022 Due to City Clerk: February 9, 2022

Applicant: Yaway LLC. dba "Holiday Inn Express & Suites"

Location/Address: 10804 S. 15th Street, Bellevue

Requested Action:

Recommendation to approve application for Kelsey Grant as new Manager for Yaway LLC dba "Holiday Inn Express & Suites" 10804 S. 15th Street, Bellevue, NE.

Individuals to be Checked:

	<u>Name &amp; Address</u>	<u>DOB</u>
1.	<u>Kelsey Grant, 3422 Gregg Plz. Apt. #2105, Bellevue, NE 68123</u>	<u>10/10/1999</u>
2.	<u></u>	<u></u>

Comments:

Approved

Signature of Reviewer: 

Date: 2-8-22

080553

*Handwritten mark*

**MANAGER APPLICATION  
INSERT - FORM 3c**

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: www.lcc.nebraska.gov

Office Use
<b>RECEIVED</b>
FEB 03 2022
<b>NEBRASKA LIQUOR CONTROL COMMISSION</b>

**FORM MUST BE COMPLETELY FILLED OUT IN ORDER FOR APPLICATION TO BE PROCESSED**

**MANAGER MUST:**

- ✓ Complete all sections of the application. Be sure it is signed by a **member or corporate officer**. corporate officer or member must be an individual on file with the Liquor Control Commission
- ✓ Fingerprints are required. See form 147 for further information, read form carefully to avoid delays in processing, this form **MUST** be included with your application.
- ✓ Provide a copy of one of the following: US birth certificate, naturalization papers or current US passport (even if you have provided this before)
- ✓ Be a registered voter in the State of Nebraska, include a copy of voter card or print document from Secretary of State website with application

Spouse who **will not** participate in the business, **spouse must:**

- *N/A* Complete the Spousal Affidavit of Non Participation Insert (must be notarized). The non-participating spouse completes the top half; the manager completes the bottom half. **Be sure to complete both halves of this form.**
- Need not answer question #1 of the application

Spouse who **will** participate in the business, the **spouse must:**

- *N/A* Sign the application
- Fingerprints are required. See form 147 for further information, read form carefully to avoid delays in processing, this form **MUST** be included with your application.
- Provide a copy of one of the following: birth certificate, naturalization papers or current US passport (even if you have provided this before)
- Be a registered voter in the state of Nebraska, include a copy of voter card with application
- Spousal Affidavit of Non Participation Insert **not** required

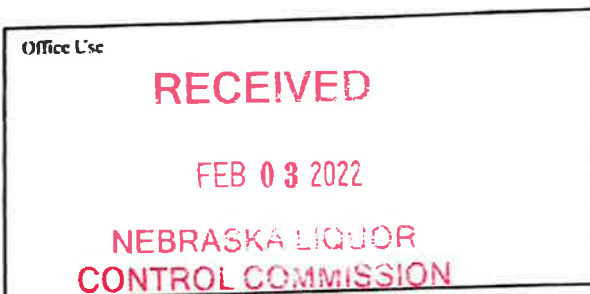


2200000835

*Handwritten mark*

**MANAGER APPLICATION  
INSERT - FORM 3c**

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: www.lcc.nebraska.gov



**MUST BE:**

- ✓ Include copy of US birth certificate, naturalization paper or current US passport
- ✓ Nebraska resident. Include copy of voter registration card or print out document from Secretary of State website
- ✓ Fingerprinted. See form 147 for further information, read form carefully to avoid delays in processing, this form **MUST** be included with your application
- ✓ 21 years of age or older

**Corporation/LLC information**

Name of Corporation/LLC: Yaway LLC

**Premise information**

Liquor License Number: 080553 Class Type I (if new application leave blank)

Premise Trade Name/DBA: Holiday Inn Express & suites

Premise Street Address: 10804 S 15th street

City: Bellevue County: Sarpy Zip Code: 68123

Premise Phone Number: 402-502-4500

Premise Email address: Gm.HIEBellevue@gmail.com

**The individual whose name is listed as a corporate officer or managing member as reported on insert form 3a or 3b or listed with the Commission. To see authorized officers or members search your license information here.**



**SIGNATURE REQUIRED BY CORPORATE OFFICER / MANAGING MEMBER**  
(Faxed signatures are acceptable)

**Manager's information must be completed below PLEASE PRINT CLEARLY**

Last Name: Grant First Name: Kelsey MI: L  
 Home Address: 3422 Gregg Plz Apt 2105  
 City: Bellevue County: Sarpy Zip Code: 68123-5017  
 Home Phone Number: 515-865-3978  
 Driver's License Number & State: [REDACTED]  
 Social Security Number: [REDACTED]  
 Date Of Birth: [REDACTED] Place Of Birth: Des Moines, Iowa  
 Email address: kelsey.grant1010@gmail.com

Are you married? If yes, complete spouse's information (Even if a spousal affidavit has been submitted)

YES  NO

**Spouse's information**

Spouses Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_  
 Social Security Number: \_\_\_\_\_  
 Driver's License Number & State: \_\_\_\_\_  
 Date Of Birth: \_\_\_\_\_ Place Of Birth: \_\_\_\_\_

**APPLICANT & SPOUSE MUST LIST RESIDENCE(S) FOR THE PAST TEN (10) YEARS**  
**APPLICANT SPOUSE**

CITY & STATE	YEAR FROM	YEAR TO	CITY & STATE	YEAR FROM	YEAR TO
Bellevue, NE	2020	→			
Ames, IA	2020	2020			
Ankeny, IA	2018	2020			
Pleasant Hill, IA	2000	2018			

**MANAGER'S LAST TWO EMPLOYERS**

YEAR FROM	YEAR TO	NAME OF EMPLOYER	NAME OF SUPERVISOR	TELEPHONE NUMBER
2019	2021	BiOLife Plasma	Derrick Lehman	941-360-1300
2016	2019	Des Moines Public Schools	Aby Keyt	515-242-8393

**1. READ CAREFULLY. ANSWER COMPLETELY AND ACCURATELY.**

**Must be completed by both applicant and spouse, unless spouse has filed an affidavit of non-participation.**

Has anyone who is a party to this application, or their spouse, **EVER** been convicted of or plead guilty to any charge. Charge means any charge alleging a felony, misdemeanor, violation of a federal or state law; a violation of a local law, ordinance or resolution. List the nature of the charge, where the charge occurred and the year and month of the conviction or plea. **include traffic violations**. Also list any charges pending at the time of this application. If more than one party, please list charges by each individual's name. Commission must be notified of any arrests and/or convictions that may occur after the date of signing this application.

YES       NO

If yes, please explain below or attach a separate page.

Name of Applicant	Date of Conviction (mm/yyyy)	Where Convicted (City & State)	Description of Charge	Disposition

**2. Have you or your spouse ever been approved or made application for a liquor license in Nebraska or any other state?**

YES       NO

**IF YES, list the name of the premise(s):**

---

**3. Do you, as a manager, qualify under Nebraska Liquor Control Act (§53-131.01) and do you intend to supervise, in person, the management of the business?**

YES       NO

4. List the alcohol related training and/or experience (when and where) of the person making application.

\*NLCC Training Certificate Issued: 01/21/2022 Name on Certificate: Kelsey Grant

Applicant Name	Date (mm/yyyy)	Name of program (attach copy of course completion certificate)
Kelsey Grant	01/2022	Nebraska Alcohol Server/Seller Certific.

\*For list of NLCC Certified Training Programs see training

Experience:

Applicant Name / Job Title	Date of Employment:	Name & Location of Business:

5. Have you enclosed form 147 regarding fingerprints?

YES       NO

**PERSONAL OATH AND CONSENT OF INVESTIGATION**

The above individual(s), being first duly sworn upon oath, deposes and states that the undersigned is the applicant and/or spouse of applicant who makes the above and foregoing application that said application has been read and that the contents thereof and all statements contained therein are true. If any false statement is made in any part of this application, the applicant(s) shall be deemed guilty of perjury and subject to penalties provided by law. (Sec §53-131.01) Nebraska Liquor Control Act.

The undersigned applicant hereby consents to an investigation of his/her background including all records of every kind and description including police records, tax records (State and Federal), and bank or lending institution records, and said applicant and spouse waive any rights or causes of action that said applicant or spouse may have against the Nebraska Liquor Control Commission and any other individual disclosing or releasing said information to the Nebraska Liquor Control Commission. If spouse has NO interest directly or indirectly, a spousal affidavit of non-participation may be attached.

The undersigned understand and acknowledge that any license issued, based on the information submitted in this application, is subject to cancellation if the information contained herein is incomplete, inaccurate, or fraudulent.

***Applicant Notification and Record Challenge:*** Your fingerprints will be used to check the criminal history records of the FBI. You have the opportunity to complete or challenge the accuracy of the information contained in FBI identification record. The procedures for obtaining a change, correction, or updating an FBI identification record are set forth in Title 28, CFR, 16.34.

Kelsey G. T.  
Signature of Manager Applicant

NA  
Signature of Spouse

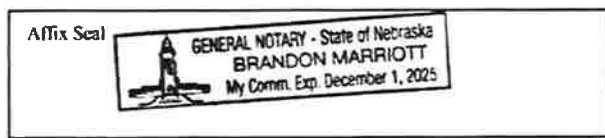
ACKNOWLEDGEMENT

State of Nebraska  
County of Sarpy The foregoing instrument was acknowledged before me this

11/12/21  
date

by Kelsey G. T.  
NAME OF PERSON BEING ACKNOWLEDGED

Brandon Marriott  
Notary Public signature



In compliance with the ADA, this application is available in other formats for persons with disabilities. A ten day advance period is required in writing to produce the alternate format.

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE:	SUBMITTED BY: <u>Tammi Palm</u>		<u>Planning Manager</u>
AGENDA ITEM:	CONSENT AGENDA <input type="checkbox"/>	SPECIAL PRESENTATION <input type="checkbox"/>	
LIQUOR LICENSE <input type="checkbox"/>	ORDINANCE <input checked="" type="checkbox"/>	PUBLIC HEARING <input type="checkbox"/>	
RESOLUTION <input type="checkbox"/>	CURRENT BUSINESS <input type="checkbox"/>	OTHER <input type="checkbox"/>	

SUBJECT:

Request to rezone Lot 3, LGB Properties Replat One, from RE to RS-120 for the purpose of existing residential development. Applicant: AMZ Investments, LLC. General Location: 13510 South 36th Street.

SYNOPSIS/BACKGROUND:

Alicia Zuger, on behalf of AMZ Investments, LLC is requesting to rezone Lot 3, LGB Properties Replat One, from RE to RS-120 for the purpose of existing single family residential development and also to facilitate a conditional use permit request for an Alzheimer's/dementia care home. This request is compatible with the surrounding neighborhoods. The lot meets the minimum requirements for the RS-120 zoning district.

FISCAL IMPACT: No BUDGETED FUNDS?: NO GRANT/MATCHING FUNDS?: NO

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: NO COUNTER-PARTY: \_\_\_\_\_ INTERLOCAL AGREEMENT: NO

CONTRACT DESCRIPTION: \_\_\_\_\_

CONTRACT EFFECTIVE DATE: \_\_\_\_\_ CONTRACT TERM: \_\_\_\_\_ CONTRACT END DATE: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

START DATE: \_\_\_\_\_ END DATE: \_\_\_\_\_ PAYMENT DATE: \_\_\_\_\_ INSURANCE REQUIRED: NO

CIP PROJECT NAME: \_\_\_\_\_ CIP PROJECT NUMBER: \_\_\_\_\_

STREET DISTRICT NAME (S): \_\_\_\_\_ STREET DISTRICT NUMBER (S): \_\_\_\_\_

ACCOUNTING DISTRIBUTION CODE: \_\_\_\_\_ ACCOUNT NUMBER: \_\_\_\_\_

RECOMMENDATION:

The Planning Department and Planning Commission are recommending approval of this request.

ATTACHMENTS:

- |                             |                        |                              |
|-----------------------------|------------------------|------------------------------|
| 1. <u>PC Recommendation</u> | 2. <u>Staff Report</u> | 3. <u>Ordinance No. 4072</u> |
| 4. _____                    | 5. _____               | 6. _____                     |

SIGNATURES:

LEGAL APPROVAL AS TO FORM: \_\_\_\_\_

FINANCE APPROVAL AS TO FORM: \_\_\_\_\_

ADMINISTRATOR APPROVAL AS TO FORM: \_\_\_\_\_

*A. Bruce Palm*  
*[Signature]*

# City of Bellevue

## PLANNING COMMISSION RECOMMENDATION

APPLICANT: AMZ Investments, LLC

CASE #: Z-2111-24

CITY COUNCIL HEARING DATE: February 1, 2022

REQUEST: to rezone Lot 3, LGB Properties Replat One, from RE (Residential Estates) to RS-120 (Single Family Residential – 12,000 Square Foot Zone) for the purpose of existing residential development.

On December 16, 2021, the City of Bellevue Planning Commission voted six yes, zero no, three absent and zero abstained:

**APPROVAL** based upon conformance with the Zoning Ordinance, as well as a lack of perceived negative impact upon the surrounding area

### VOTE:

Yes:	Six:	No:	Zero:	Abstain:	Zero:	Absent:	Three:
	Hankins						Casey
	Ritz						Perrin
	Aerni						Compton
	Cutsforth						
	Ackley						
	Jacobson						

Planning Commission Hearing (s) was held on: December 16, 2021

# CITY OF BELLEVUE PLANNING DEPARTMENT

## RECOMMENDATION REPORT # 2

CASE NUMBER: Z-2111-24

FOR HEARING OF:

REPORT #1: December 16, 2021

REPORT #2: February 1, 2022

### I. GENERAL INFORMATION

#### A. APPLICANT:

AMZ Investments, LLC  
Alicia Zuger  
1230 South 110<sup>th</sup> Street  
Omaha, NE 68144

#### B. PROPERTY OWNERS:

AMZ Investments, LLC  
Alicia Zuger  
1230 South 110<sup>th</sup> Street  
Omaha, NE 68144

#### C. GENERAL LOCATION:

13510 South 36th Street

#### D. LEGAL DESCRIPTION:

Lot 3, LGB Properties Replat One

#### E. REQUESTED ACTIONS:

1. Rezone Lot 3, LGB Properties Replat One from RE to RS-120.

#### F. EXISTING ZONING AND LAND USE:

RE, Single Family Residential

## **G. PURPOSE OF REQUEST:**

The applicant is requesting a change of zone to accommodate the existing single family residence, as well as to facilitate a conditional use permit request for an Alzheimer's/dementia care home.

## **H. SIZE OF SITE:**

The site is approximately 4.4 acres.

## **II. BACKGROUND INFORMATION**

### **A. EXISTING CONDITION OF SITE:**

The site is presently developed with a single family residence constructed in 1970, along with several detached structures and a barn.

### **B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**

1. **North:** Single Family Residential, RA and AG (non-conforming)
2. **East:** Single Family Residential (across S 36<sup>th</sup> St), RS-72
3. **South:** Single Family Residential, RS-120 and AG (non-conforming)
4. **West:** Single Family Residential, RS-72-PS

### **C. REVELANT CASE HISTORY:**

1. On November 19, 2015, the Planning Commission recommended approval of a request to rezone Lots 1 through 3, LGB Properties Replat One, being a replat of Lots 1 and 2, LGB Properties, and Tax Lot 1B1, all located in the Southeast ¼ of Section 8, T13N, R13E of the 6<sup>th</sup> P.M., Sarpy County, NE, from AG, RA, and RG-28 to RA, RE, and RG-28 for the purpose of existing residential use; and small subdivision plat Lots 1 through 3, LGB Properties Replat One. The City Council approved the aforementioned request on January 25, 2016.

2. On December 16, 2021, the Planning Commission recommended approval of a request to rezone Lot 3, LGB Properties Replat One, from RE to RS-120 for the purpose of accommodating an existing single family residence, as well as to facilitate a conditional use permit request for an Alzheimer's/dementia care home.

### **D. APPLICABLE REGULATIONS:**

1. Section 5.08, Zoning Ordinance, regarding RS-120 uses and requirements.

### **III. ANALYSIS**

#### **A. COMPREHENSIVE PLAN:**

The Future Land Use Map of the Comprehensive Plan designates this property as rural estates.

#### **B. OTHER PLANS:**

If the applicant's zoning is approved, she is requesting a conditional use permit for the purpose of an Alzheimer's/dementia care home.

#### **C. TRAFFIC AND ACCESS:**

1. MAPA Traffic Flow Data indicates 9,600 vehicles per day along southbound 36<sup>th</sup> Street south of Capehart Road and north of Schneekloth Road.
2. The property has access from South 36<sup>th</sup> Street.

#### **D. UTILITIES:**

All utilities are available to this property.

#### **E. ANALYSIS:**

1. Alicia Zuger on behalf of AMZ Investments, LLC has submitted a request to rezone Lot 3, LGB Properties Replat One from RE to RS-120. The applicant is requesting RS-120 zoning for the existing single family residential development.
2. Ms. Zuger wishes to pursue a conditional use permit for the existing residence for the purpose of an Alzheimer's/dementia care home under the RS-120 zoning designation.
3. The existing lot and structures are in conformance with the minimum requirements of the RS-120 zoning district. The intent of the RS-120 zoning district is to permit single family residential developments and other compatible uses on relatively ample sized lots.
4. This application was sent out for review by the following departments and individuals: Public Works, Permits and Inspections, Chief of Police, Offutt Air Force Base, Fire Inspector, and the Springfield Platteview Public School District. The cover letter indicated a deadline to send comments back to the Planning Department, and also stated if the requested department did not have comments pertaining to the application, no response was needed.

No comments were received in this case.

5. The Future Land Use Map of the Comprehensive Plan designates this area as rural estates based on its current zoning. A change of zoning will require an amendment to the Future Land Use Map of low density residential use. Staff believes a low density residential use is compatible with the surrounding development.

6. The Fox Ridge Estates subdivision to the south of this property is zoned RS-120. The adjacent Heartland Hills subdivision is zoned RS-72-PS.

7. Staff believes this request is compatible with the surrounding neighborhoods.

**F. TECHNICAL DEFICIENCIES:**

None

**IV. DEPARTMENT RECOMMENDATION**

APPROVAL based upon conformance with the Zoning Ordinance, as well as lack of perceived negative impact upon the surrounding area.

**V. PLANNING COMMISSION RECOMMENDATION**

APPROVAL based upon conformance with the Zoning Ordinance, as well as lack of perceived negative impact upon the surrounding area.

**VI. ATTACHMENTS TO REPORT**

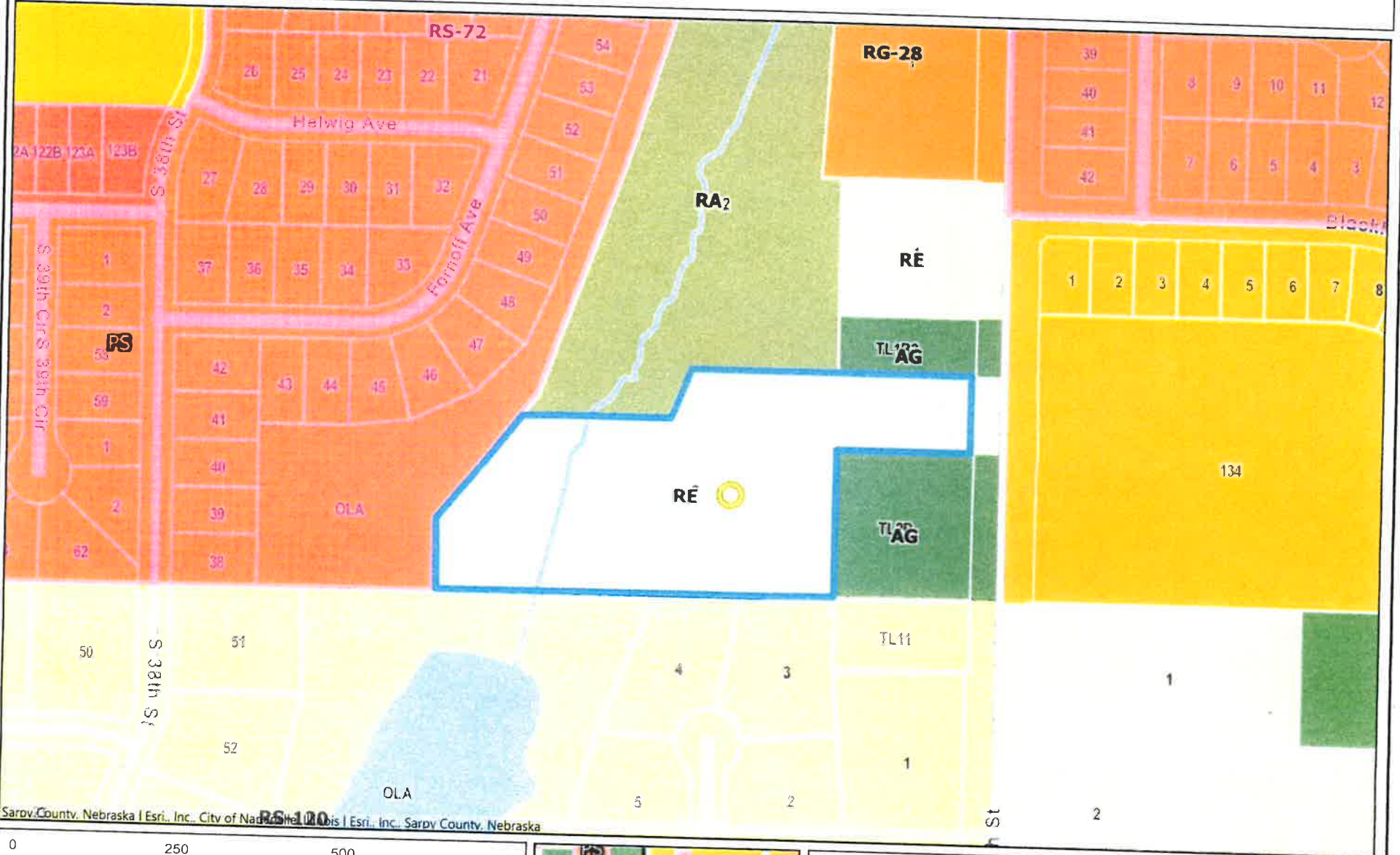
1. Zoning Map
2. 2020 GIS aerial photo of the property
3. Letter from the applicant received December 6, 2021

**VII. COPIES OF REPORT TO:**

1. Alicia Zuger, AMZ Investments, LLC
2. Public Upon Request

  
Assistant Planning Manager

  
Planning Manager: Date of Report



Sarpy County, Nebraska | Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska



Map Scale 1: 3185

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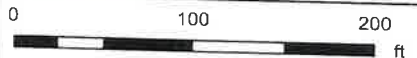


Notes





Esri, Inc. City of Naperville, Illinois | Esri, Inc. Sarpy County, Nebraska



Map Scale 1: 1592

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Notes



RECEIVED

DEC 06 2021

PLANNING DEPT.

**AMZ INVESTMENTS, LLC**

1230 S 110th Street  
Omaha, NE 68144  
(402)871-5248

City of Bellevue  
Planning Department  
1510 Wall Street  
Bellevue, NE 68005

RE: LOT 3 OF LGB PROPERTIES, SARPY COUNTY, NE

To Whom It May Concern:

AMZ Investments, LLC is requesting the Planning Commission's approval to rezone the property at 13510 S 36<sup>th</sup> Street in Bellevue, Nebraska for purposes consistent with approved conditional uses.

The property in question is currently zoned as RE and we would like to request the zoning be changed to RS-120 for the purpose of operating an Alzheimer's/Dementia Care home under the DBA Legato Living at Heartland Hills in the residence. This use is consistent with the conditional use referred to in Section 5.08.03 of the Zoning Ordinance as "Hospitals, sanitariums, rest homes, nursing homes, elderly or retirement housing, convalescent homes, other similar institutions, or philanthropic institutions".

The current residential property will be remodeled and expanded by approximately 500 square feet with the following being main points of focus:

- ◆ Our facility will accommodate 10-12 residents and will remain an ADA compliant residential style home.
- ◆ A fire-sprinkler system and proper means of egress will be installed for the safety of the residents and staff.
- ◆ Parking for up to one (1) vehicle for every two (2) residents for visitors and an additional two (2) to three (3) for staff will be provided on the premises.
- ◆ For the safety of our residents and the comfort of the surrounding neighbors and community, all doors leading in and out of the premises will be secured by an electronic lock which requires a code to be entered to gain access inside or out.
- ◆ Various caretakers, including a Registered Nurse, med aides and administrative staff, will be on site continuously and residents will be permitted to have visitors as this is a family centered environment.
- ◆ A minimum of two (2-3) staff members will be on site during daytime hours and one (1-2) staff member will be present during the overnight hours, with a Registered Nurse on call twenty-four (24) hours per day, seven (7) days per week to assist when necessary.

The included site plan lays out the proposed additional living space as well as additional parking and has a nice deck for residents to enjoy the outside. The lower level of the home will primarily be used for storage and for a staff office/meeting area as the residents are not encouraged to navigate the stairs. The main level will maintain much of the same layout with the garage being converted into three (3-4) bedrooms and two (2-3) bathrooms to accommodate more residents.

Legato Living has a solid reputation in the area of care for Alzheimer's/Dementia patients and is a family centered company who enjoys getting to know our residents and their families in a more intimate manner, which is why we have chosen the residential setting for our model.

We are looking to expand from Omaha into Sarpy county for the purposes of being accessible to more families in the Metro area and providing quality care for individuals in need in the City of Bellevue.

We hope you will consider our request and we look forward to working with you on this venture.

Sincerely,



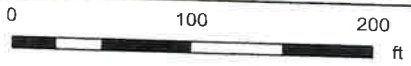
Alicia Zuger  
President  
AMZ Investments, LLC

Enclosure:

- 1) LHH Proposed Site Plan I
- 2) LHH Proposed Site Plan II
- 3) LHH Proposed Floorplan
- 4) As-Built Survey completed by TD2



Esri, Inc. City of Naperville, Illinois | Esri, Inc. Sarpy County, Nebraska



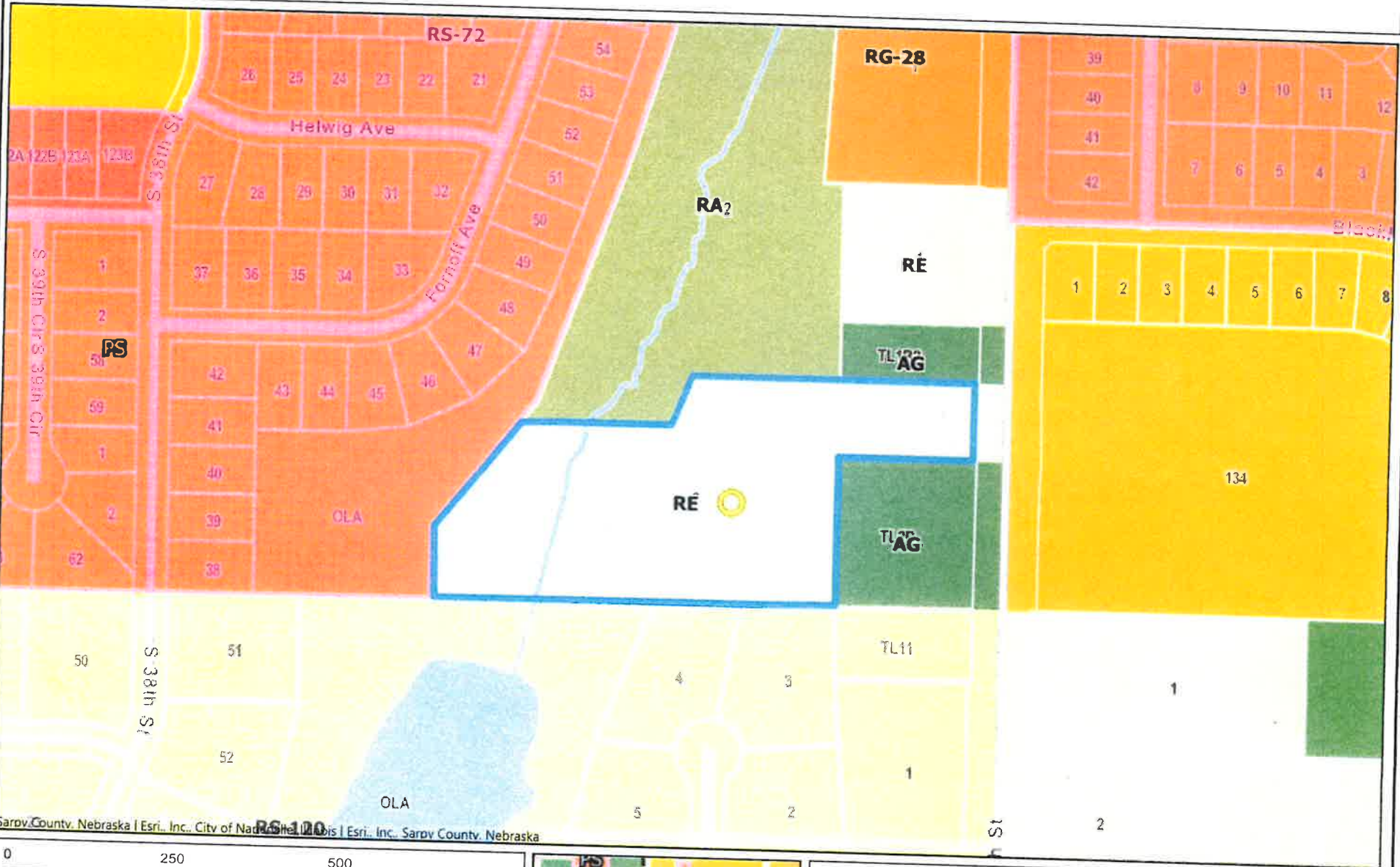
Map Scale 1: 1592

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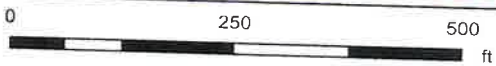


Notes





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Notes



ORDINANCE NO. 4072

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF BELLEVUE, NEBRASKA, AS PROVIDED FOR BY ARTICLE 3 OF ORDINANCE NO. 3619 BY CHANGING THE ZONE CLASSIFICATION OF LAND LOCATED AT OR ABOUT 13510 SOUTH 36<sup>TH</sup> STREET, MORE PARTICULARLY DESCRIBED IN SECTION 1 OF THE ORDINANCE AND TO PROVIDE AN EFFECTIVE DATE.

WHEREAS, having received a recommendation from the city of Bellevue Planning Commission and proper notice having been given and public hearing held as provided by law:

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BELLEVUE, NEBRASKA:

Section 1. That part of the official zoning map of the City of Bellevue, Nebraska, as provided in Article 3, of Ordinance No. 3619 is hereby amended to change the zone classification of the following described parcel of land:

Lot 3, LGB Properties Replat One, located in the Southeast 1/4 of Section 08, T13N, R13E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska

From RE (Residential Estates) to RS-120 (Single Family Residential – 12,000 Square Foot Zone)

(AMZ Investments, LLC)

Section 2. Except as amended herein, the official zoning map and the classification shown therein shall remain as heretofore existing.

Section 3. This ordinance shall take affect and be in force from and after its adoption and publication according to law.

ADOPTED by the Mayor and City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Third Reading: \_\_\_\_\_

**Susan Kluthe**

12a  
**RECEIVED**  
**JAN 25 2022**  
**CITY CLERK**

**From:** Amy Fredrickson <amy.fredrickson@live.com>  
**Sent:** Tuesday, January 25, 2022 9:39 PM  
**To:** Susan Kluthe  
**Cc:** Kim Kaye  
**Subject:** Rezone Lot 3, LGB Properties Replat 1 located at 13510 S 36th St Applicant: AMZ Investments LLC Case Z-211-24, CUP-2111-03

Susan,

We have received the letter address to Ray Fornoff (address 13602 S 36<sup>th</sup> St, Bellevue NE 68123). I am the daughter of Ray Fornoff. It is with great sadness that we inform you that Ray passed away 12/20/21. My sister Kimberly Kaye and I will be the beneficiaries of my dad's house and property, after we receive the official death certificate from Douglas County.

We understand that there is a hearing on 2/1/2022 regarding the property next to Ray's. We are still wrapping our heads around the situation, and we would like to request this hearing be postponed. Until we can get a plan together for the property and get some professional input and advise from a real estate agent, we **OPPOSE** the rezoning of the property of Lot 3.

Please let us know that you have received this message and consideration of postponing the hearing.

**Thank you!**  
**Amy Fredrickson and Kimberly Kaye**  
**Amy's Phone: 402-871-8085**  
**Kim's Phone: 402-218-9744**

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/01/2022		SUBMITTED BY: Tammi Palm,		Title: Planning Manager	
AGENDA ITEM:		CONSENT AGENDA <input type="checkbox"/>		SPECIAL PRESENTATION <input type="checkbox"/>	
LIQUOR LICENSE <input type="checkbox"/>		ORDINANCE <input checked="" type="checkbox"/>		PUBLIC HEARING <input type="checkbox"/>	
RESOLUTION <input type="checkbox"/>		CURRENT BUSINESS <input type="checkbox"/>		OTHER <input type="checkbox"/>	

**SUBJECT:**

Request to rezone Lots 1 and 2, Heer and Theer Addition, being a replat of Tax Lot 6B, and that Part of Tax Lot 6A2, being the north 50' of the west 175' of the east 260' and the south 22' of the east 85' of the east 260' of Tax Lot 6A, together with the south 15' of the west 110' of Lot 1, and the south 15' of the east 65' of Lot 34, Svoboda's Addition to the City of Bellevue, all located in the Southwest ¼ of Section 36, T14N, R13E of the 6th P.M., Sarpy County, Nebraska from RG-8-M and BGM to BGM, for the purpose of residential and commercial development, and small subdivision plat Lots 1 and 2, Heer and Theer Addition. Applicant 1st City Development, LLC. General Location: 2304 Lincoln Road.

**SYNOPSIS/BACKGROUND:**

1st City Development LLC is requesting a rezoning and a small subdivision plat of Lots 1 and 2, Heer and Theer Addition, from RG-8-M and BGM to BGM. The rezoning and replatting is being requested to accommodate the existing multi family residential/commercial development, as well as facilitate additional commercial development.

FISCAL IMPACT:  BUDGETED FUNDS?:  GRANT/MATCHING FUNDS?:

**TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:**

IS THIS A CONTRACT?:  COUNTER-PARTY:  INTERLOCAL AGREEMENT:

CONTRACT DESCRIPTION:

CONTRACT EFFECTIVE DATE:  CONTRACT TERM:  CONTRACT END DATE:

PROJECT NAME:

START DATE:  END DATE:  PAYMENT DATE:  INSURANCE REQUIRED:

CIP PROJECT NAME:  CIP PROJECT NUMBER:

STREET DISTRICT NAME (S):  STREET DISTRICT NUMBER (S):

ACCOUNTING DISTRUBUTION CODE:  ACCOUNT NUMBER:


**RECOMMENDATION:**


The Planning Department and Planning Commission are recommending approval.


**ATTACHMENTS:**

1. PC Recommendation	2. Staff Report	3. Ord. No. 4073
4. <input type="text"/>	5. <input type="text"/>	6. <input type="text"/>

**SIGNATURES:**

LEGAL APPROVAL AS TO FORM: 

FINANCE APPROVAL AS TO FORM: 

ADMINISTRATOR APPROVAL AS TO FORM: 

# City of Bellevue

## PLANNING COMMISSION RECOMMENDATION

APPLICANT: 1<sup>st</sup> City Development, LLC

CASE #'s: Z-2111-22, S-2111-27

CITY COUNCIL HEARING DATE: February 1, 2022

REQUEST: to rezone Lots 1 and 2, Heer and Theer Addition, being a replat of Tax Lot 6B, and that Part of Tax Lot 6A2, being the north 50' of the west 175' of the east 260' and the south 22' of the east 85' of the east 260' of Tax Lot 6A, together with the south 15' of the west 110' of Lot 1, and the south 15' of the east 65' of Lot 34, Svoboda's Addition to the City of Bellevue, all located in the Southwest ¼ of Section 36, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska from RG-8-M (General Residential – 800 Square Foot Zone – Modified Residential District) and BGM (Metropolitan General Business District) to BGM (Metropolitan General Business District), for the purpose of residential and commercial development; and small subdivision plat Lots 1 and 2, Heer and Theer Addition.

On December 16, 2021, the City of Bellevue Planning Commission voted six yes, zero no, three absent and zero abstained:

**APPROVAL** based upon conformance with the Zoning Ordinance and Subdivision Regulations, as well as a lack of perceived negative impact upon the surrounding area. APPROVAL of an amendment to the Future Land Use Map to show this property as commercial.

VOTE:

Yes:	Six:	No:	Zero:	Abstain:	Zero:	Absent:	Three:
	Hankins						Casey
	Ritz						Perrin
	Aerni						Compton
	Cutsforth						
	Ackley						
	Jacobson						

Planning Commission Hearing (s) was held on: December 16, 2021

# CITY OF BELLEVUE PLANNING DEPARTMENT

## RECOMMENDATION REPORT # 2

CASE NUMBERS: Z-2111-22  
S-2111-27

FOR HEARING OF:  
REPORT #1: December 16, 2021  
REPORT #2: February 1, 2022

### I. GENERAL INFORMATION

#### A. APPLICANT:

1<sup>st</sup> City Development, LLC  
Attn: John Jungers  
101 West Mission Avenue  
Bellevue, NE 68005

#### B. PROPERTY OWNERS:

David and Ruth Heer  
1154 South 97<sup>th</sup> Street  
Omaha, NE 68124

#### C. GENERAL LOCATION:

2304 Lincoln Road

#### D. LEGAL DESCRIPTION:

Lots 1 and 2, Heer and Theer Addition, being a replat of Tax Lot 6B, and that Part of Tax Lot 6A2, being the north 50' of the west 175' of the east 260' and the south 22' of the east 85' of the east 260' of Tax Lot 6A, together with the south 15' of the west 110' of Lot 1, and the south 15' of the east 65' of Lot 34, Svoboda's Addition to the City of Bellevue, all located in the Southwest ¼ of Section 36, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska

#### E. REQUESTED ACTIONS:

1. Rezone Lots 1 and 2, Heer and Theer Addition, from RG-8-M and BGM to BGM.
2. Small Subdivision plat Lots 1 and 2, Heer and Theer Addition.

**F. EXISTING ZONING AND LAND USE:**

RG-8-M and BGM, Apartments/Retail

**G. PURPOSE OF REQUEST:**

The applicant is requesting a change of zone and small subdivision plat to facilitate commercial development.

**H. SIZE OF SITE:**

The site is approximately 2.42 acres.

**II. BACKGROUND INFORMATION**

**A. EXISTING CONDITION OF SITE:**

Proposed Lot 1 is presently developed with three buildings: one to the northwest with 4 apartments and 7 attached garages, one southwest with 14 apartments, and one building southeast with 2 apartments in the rear and a beauty and barber shop in the front.

**B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**

- 1. **North:** Single Family Residential, RS-72, BGM
- 2. **East:** Commercial/Retail/Office, BGM-OTO and BGH-OTO
- 3. **South:** Offutt Air Force Base
- 4. **West:** Offutt Air Force Base

**C. REVELANT CASE HISTORY:**

1. On December 16, 2021, the Planning Commission recommended approval of a request to rezone Lots 1 and 2, Heer and Theer Addition, being a replat of Tax Lot 6B, and that Part of Tax Lot 6A2, being the north 50' of the west 175' of the east 260' and the south 22' of the east 85' of the east 260' of Tax Lot 6A, together with the south 15' of the west 110' of Lot 1, and the south 15' of the east 65' of Lot 34, Svoboda's Addition to the City of Bellevue, all located in the Southwest ¼ of Section 36, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, from RG-8-M and BGM to BGM, for the purpose of a commercial development; and small subdivision plat Lots 1 and 2, Heer and Theer Addition.

**D. APPLICABLE REGULATIONS:**

- 1. Section 5.23, Zoning Ordinance, regarding BGM uses and requirements.
- 2. Chapter 5, Subdivision Regulations, regarding small subdivisions.

### **III. ANALYSIS**

#### **A. COMPREHENSIVE PLAN:**

The Future Land Use Map of the Comprehensive Plan designates these properties as commercial and multi-family residential.

#### **B. OTHER PLANS:**

None

#### **C. TRAFFIC AND ACCESS:**

1. The MAPA Traffic Flow Data estimates 7,300 vehicles per day along the south leg of Lincoln Road, south of the intersection of Lincoln Road and West Mission Avenue.
2. The property has access from Lincoln Road.

#### **D. UTILITIES:**

All utilities are available to this property.

#### **E. ANALYSIS:**

1. John Jungers, on behalf of 1<sup>st</sup> city Development LLC, has submitted a request to small subdivision plat Lots 1 and 2, Heer and Theer Addition.
2. The applicant is also requesting to rezone Lots 1 and 2, Heer and Theer Addition, Replat One from RG-8-M and BGM to BGM.
3. The applicant wishes to facilitate commercial development along the Lincoln Road Corridor.
4. The requested BGM zoning for the plat accommodates the existing development on proposed Lot 1, as well as any future commercial development on proposed Lot 2.
5. The proposed plat is in conformance with the BGM requirements.
6. This application was sent out for review by the following departments and individuals: Public Works, Permits and Inspections, Chief of Police, Offutt Air Force Base, Fire Inspector, Sarpy County Planning Director, Sarpy County Public Works Department, Sarpy County Deputy County Administrator, and the Bellevue Public School District. The cover letter indicated a deadline to send comments back to the Planning Department, and also stated if the requested department did not have comments pertaining to the application, no response was needed.

Krista Hoffart, Offutt Air Force Base Community Planner, noted that with the proximity to the Air Force Base, there may be noise associated with the active runway.

Public Works Engineering Manager Dean Dunn requested minor technical revisions to the plat. These revisions have since been made by the applicant's surveyor.

No other comments were received in this case.

7. The Future Land Use Map of the Comprehensive Plan designates this area as commercial along the northern boundary of the property, and multi-family residential for the southern half of the property. An amendment to the Future Land Use Map should be included with a request to approve a change of zone and small subdivision plat. Staff recommends the entire property be reflected as commercial.

**F. TECHNICAL DEFICIENCIES:**

None

**IV. DEPARTMENT RECOMMENDATION**

APPROVAL based upon conformance with the Zoning Ordinance and Subdivision Regulations, as well as lack of perceived negative impact upon the surrounding area.

**V. PLANNING COMMISSION RECOMMENDATION**

APPROVAL based upon conformance with the Zoning Ordinance and Subdivision Regulations, as well as lack of perceived negative impact upon the surrounding area. APPROVAL of an amendment to the Future Land Use Map to show this property as being commercial.

**VI. ATTACHMENTS TO REPORT**

1. Zoning Map
2. 2020 GIS aerial photo of the property
3. Email from John Jungers received November 15, 2021
4. Small Subdivision plat received December 7, 2021
5. As Built Survey received November 29, 2021

**VII. COPIES OF REPORT TO:**

1. 1<sup>st</sup> City Development, LLC - John Jungers
2. Hill-Farrell Associatees, Inc. - Doug Hill
3. David and Ruth Heer
4. Public Upon Request

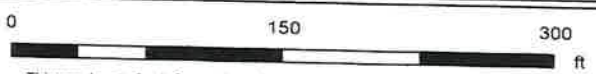
\_\_\_\_\_  
Assistant Planning Manager

*Sammi J. Palm* 01/10/2022  
\_\_\_\_\_  
Planning Manager:                      Date of Report



Sarpy County, Nebraska | Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska

Notes



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Notes



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**Dianna VanHorn**

---

**From:** John Jungers <johnjungers@gmail.com>  
**Sent:** Monday, November 15, 2021 2:43 PM  
**To:** Tammi Palm; Dianna VanHorn  
**Subject:** Rezoning

We are seeing rezoning on the Lincoln Rd property in hopes of facilitating commercial development along the Lincoln Rd corridor.

Respectfully,

John Jungers  
1st City Development LLC

Sent from my iPhone

# HEER AND THEIR ADDITION

WEST MISSION AVE

RECEIVED

DEC 07 2021

PLANNING DEPT.

SURVEY: 80400448H  
DRAWN: RDH  
DATE: 10/12/21  
10/26/21  
11/26/21

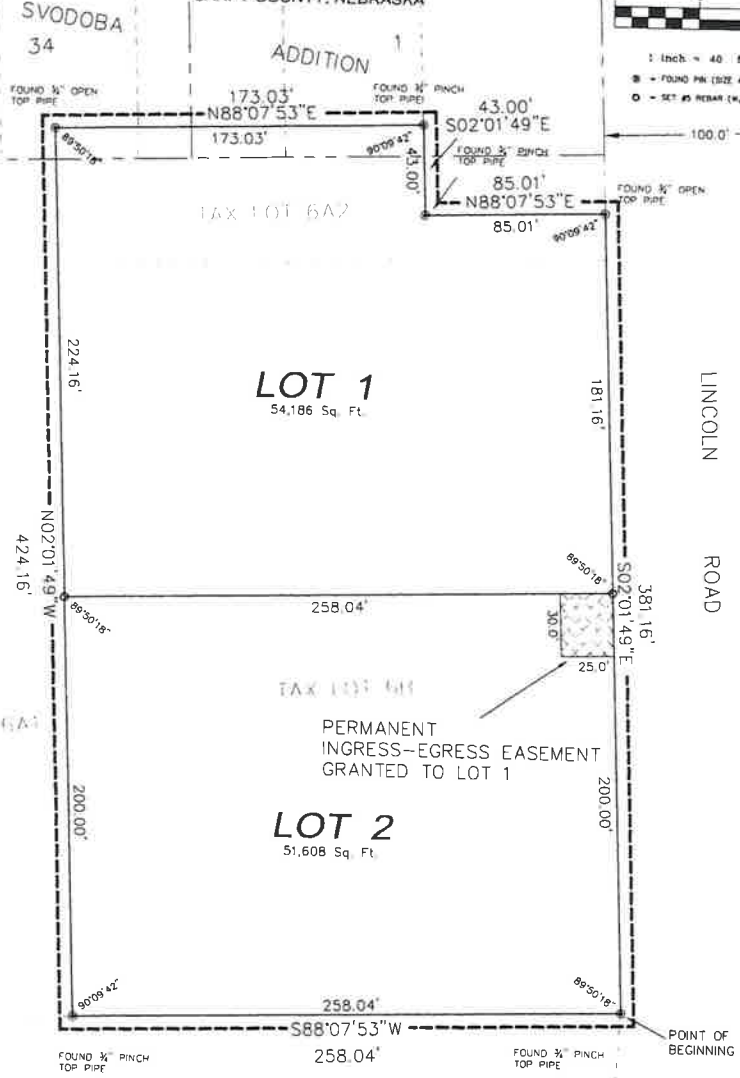
HEER AND THEIR ADDITION  
BELLEVUE, NEBRASKA  
SMALL SUBDIVISION PLAT

HILL-FARRELL ASSOCIATES, INC.  
Land Surveyors  
Bellevue, NE 68123 (402) 291-6100

PROJECT NO.  
JEFFERSON PLACE  
ADDITION PLAT 2

LOTS 1 and 2  
BEING A REPLAT OF TAX LOT 6B AND THAT PART OF TAX LOT 6A2 BEING THE NORTH 50 FEET OF THE WEST 175 FEET OF THE EAST 260 FEET AND THE SOUTH 22 FEET OF THE EAST 85 FEET OF THE EAST 260 FEET OF TAX LOT 6A, TOGETHER WITH THE SOUTH 15 FEET OF THE WEST 110 FEET OF LOT 1 AND THE SOUTH 15 FEET OF THE EAST 65 FEET OF LOT 34, SVOBODA'S ADDITION TO THE CITY OF BELLEVUE.

SEC. 36, T14N, R13E, 6th P.M.  
SARPY COUNTY, NEBRASKA



**SURVEYOR'S CERTIFICATE**

I, RONALD D. HILL, THE UNDERSIGNED REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT I HAVE ACCURATELY SURVEYED AND STAKED WITH IRON PINS THE CORNERS AS SHOWN IN "HEER AND THEIR ADDITION", BEING A REPLAT OF TAX LOT 6B AND THAT PART OF TAX LOT 6A2 BEING THE NORTH 50 FEET OF THE WEST 175 FEET OF THE EAST 260 FEET AND THE SOUTH 22 FEET OF THE EAST 85 FEET OF THE EAST 260 FEET OF TAX LOT 6A, TOGETHER WITH THE SOUTH 15 FEET OF THE WEST 110 FEET OF LOT 1 AND THE SOUTH 15 FEET OF THE EAST 65 FEET OF LOT 34, SVOBODA'S ADDITION, LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 36, TOWNSHIP 14 NORTH, RANGE 13 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID TAX LOT 6B, THENCE S88°07'53"W, 258.04 FEET TO THE SOUTHWEST CORNER OF TAX LOT 6B; THENCE N02°01'49"W, 424.16 FEET; THENCE N88°07'53"E, 173.03 FEET; THENCE S02°01'49"E, 43.00 FEET; THENCE N88°07'53"E, 85.01 FEET; THENCE S02°01'49"E, 381.16 FEET TO THE POINT OF BEGINNING. DESCRIBED TRACT CONTAINS 105,794 SQUARE FEET OR 2.429 ACRES MORE OR LESS.

DATE \_\_\_\_\_  
RONALD D. HILL NEBRASKA L.S. NO. 373

**DEDICATION**

KNOW ALL MEN BY THESE PRESENTS THAT WE, DAVID J. HEER AND RUTH M. HEER, CO-TRUSTEES OF THE DAVID AND RUTH HEER REVOCABLE TRUST, BEING THE OWNERS OF THE PROPERTY DESCRIBED WITHIN THE SURVEYOR'S CERTIFICATE AND EMBRACED WITHIN THIS PLAT, HAVE CAUSED SAID LAND TO BE REPLATED INTO LOTS TO BE NUMBERED AS SHOWN, SAID SUBDIVISION TO BE HEREAFTER KNOWN AS "HEER AND THEIR ADDITION". AND WE DO HEREBY RATIFY AND APPROVE OF THE DISPOSITION OF OUR PROPERTY AS SHOWN ON THIS PLAT. WE DO HEREBY GRANT PERPETUAL EASEMENTS TO OMAHA PUBLIC POWER DISTRICT (OPPD), COX COMMUNICATIONS, AND CENTURYLINK ACROSS A FIVE (5) FOOT WIDE STRIP OF LAND ABUTTING ALL FRONT AND SIDE BOUNDARY LINES; AN EIGHT (8) FOOT WIDE STRIP OF LAND ABUTTING THE REAR BOUNDARY LINES OF ALL EXTERIOR LOTS; THE TERM EXTERIOR LOTS IS HEREIN DEFINED AS THOSE LOTS FORMING THE OUTER PERIMETER OF THE ABOVE DESCRIBED ADDITION. THE SIXTEEN (16) FOOT WIDE SUBDIVIDER SHALL GRANT PERPETUAL EASEMENTS TO METROPOLITAN UTILITIES DISTRICT AND/OR BLACK HILLS ENERGY THEIR SUCCESSORS AND ASSIGNS TO ERECT, INSTALL, OPERATE, MAINTAIN, REPAIR AND RENEW PIPELINES, HYDRANTS AND OTHER RELATED FACILITIES AND TO EXTEND THEREON PIPES FOR THE TRANSMISSION OF GAS AND WATER ON, THROUGH, UNDER AND ACROSS A FIVE (5) FOOT WIDE STRIP OF LAND ABUTTING ALL CALDE-SAC STREETS. NO PERMANENT BUILDINGS OR RETAINING WALLS SHALL BE PLACED IN SAID EASEMENT WAYS, BUT THE SAME MAY BE USED FOR GARDENS, SHRUBS, LANDSCAPING AND OTHER PURPOSES THAT DO NOT THEN OR LATER INTERFERE WITH THE AFORESAID OR RIGHTS HEREIN GRANTED.

IN WITNESS WHEREOF WE DO HEREBY SET OUR HANDS THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022

DAVID J. HEER CO-TRUSTEE OF THE DAVID AND RUTH HEER REVOCABLE TRUST  
RUTH M. HEER CO-TRUSTEE OF THE DAVID AND RUTH HEER REVOCABLE TRUST

**ACKNOWLEDGMENT OF NOTARY**

STATE OF NEBRASKA }  
COUNTY OF SARPY } SS

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022, BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, DULY QUALIFIED AND COMMISSIONED IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED DAVID J. HEER AND RUTH M. HEER, PERSONALLY KNOWN BY ME TO BE THE IDENTICAL PERSONS WHOSE NAMES APPEAR ON THIS PLAT AND THEY DID ACKNOWLEDGE THE EXECUTION THEREOF TO BE THEIR VOLUNTARY ACT AND DEED.

DATE \_\_\_\_\_ NOTARY PUBLIC

**APPROVAL OF BELLEVUE PLANNING COMMISSION**  
THIS PLAT OF "HEER AND THEIR ADDITION" WAS APPROVED BY THE BELLEVUE PLANNING COMMISSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.

CHAIRPERSON  
BELLEVUE PLANNING COMMISSION

**APPROVAL OF BELLEVUE CITY COUNCIL**  
THIS PLAT OF "HEER AND THEIR ADDITION" WAS APPROVED BY THE BELLEVUE CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022. THIS PLAT BECOMES NULL AND VOID IF NOT RECORDED WITHIN NINETY (90) DAYS OF THE ABOVE DATE.

ATTEST: \_\_\_\_\_ MAYOR, CITY OF BELLEVUE, NEBRASKA

**REVIEW BY SARPY COUNTY PUBLIC WORKS**  
THIS PLAT OF "HEER AND THEIR ADDITION" WAS REVIEWED BY THE SARPY COUNTY SURVEYOR'S OFFICE ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022.

SARPY COUNTY SURVEYOR/ENGINEER

**COUNTY TREASURER'S CERTIFICATION**  
THIS IS TO CERTIFY THAT I FWD NO REGULAR OR SPECIAL TAXES DUE OR DELINQUENT AGAINST THE PROPERTY AS DESCRIBED WITHIN THIS PLAT AS SHOWN BY THE RECORDS OF THIS OFFICE.

DATE \_\_\_\_\_ SARPY COUNTY TREASURER

WEST  
23rd  
AVE

LINCOLN  
ROAD

RECEIVED

NOV 29 2021

PLANNING DEPT

# LINCOLN PLACE ADD. AS BUILT - EXISTING BUILDINGS 2302 and 2304 LINCOLN ROAD



BLOCK

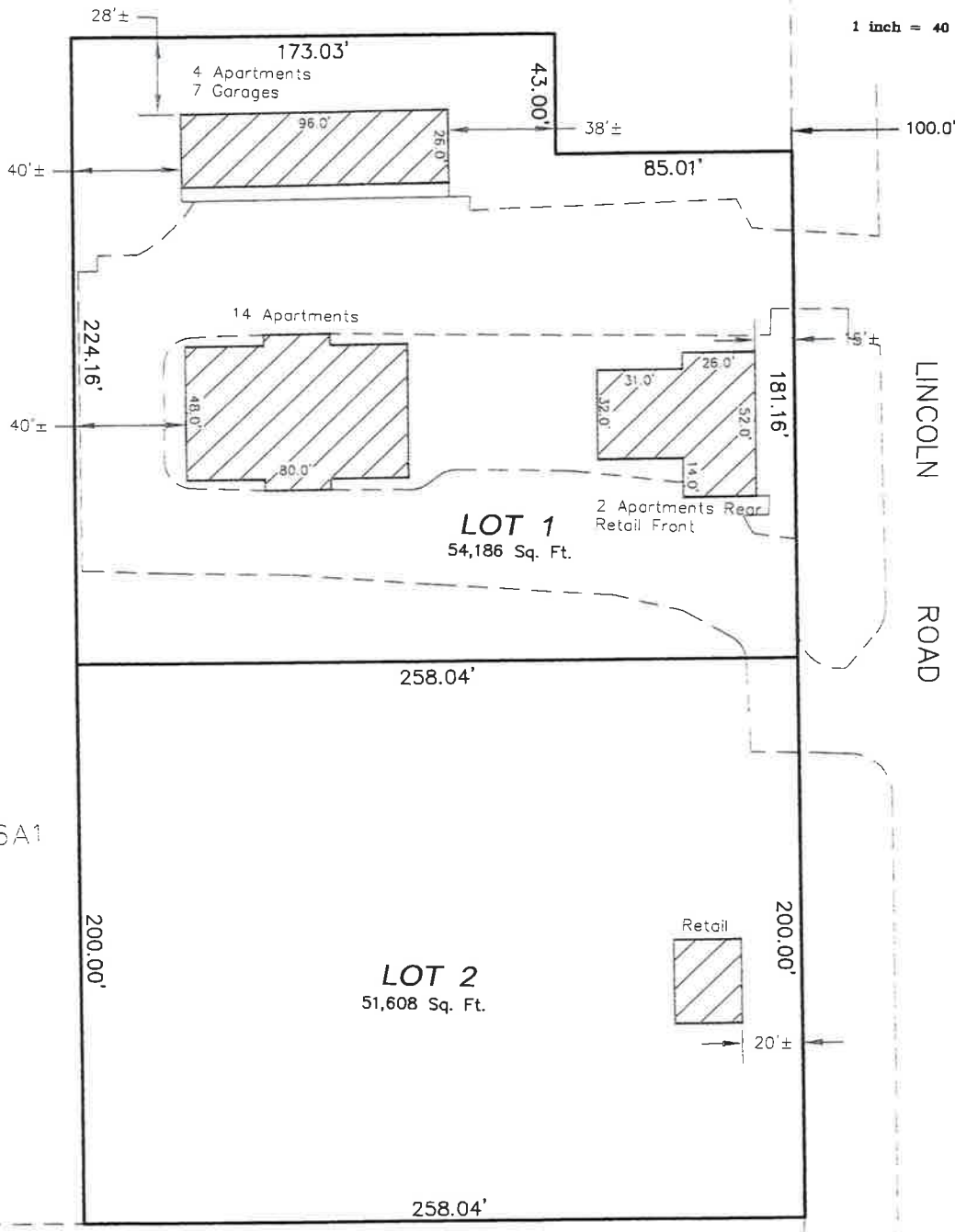
360

LINCOLN  
ROAD

WEST  
23rd  
AVE

BLOCK

361



LOT 6A1

DRAWN: RDH

DATE: 11/28/2021 PROJECT NO. LINCOLN PLACE ADD.

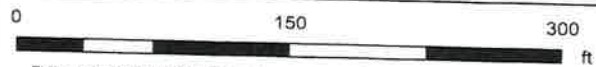


**HILL-FARRELL ASSOCIATES, INC.**  
**Land Surveyors**  
Bellevue, NE 68005 (402) 291-6100



Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska

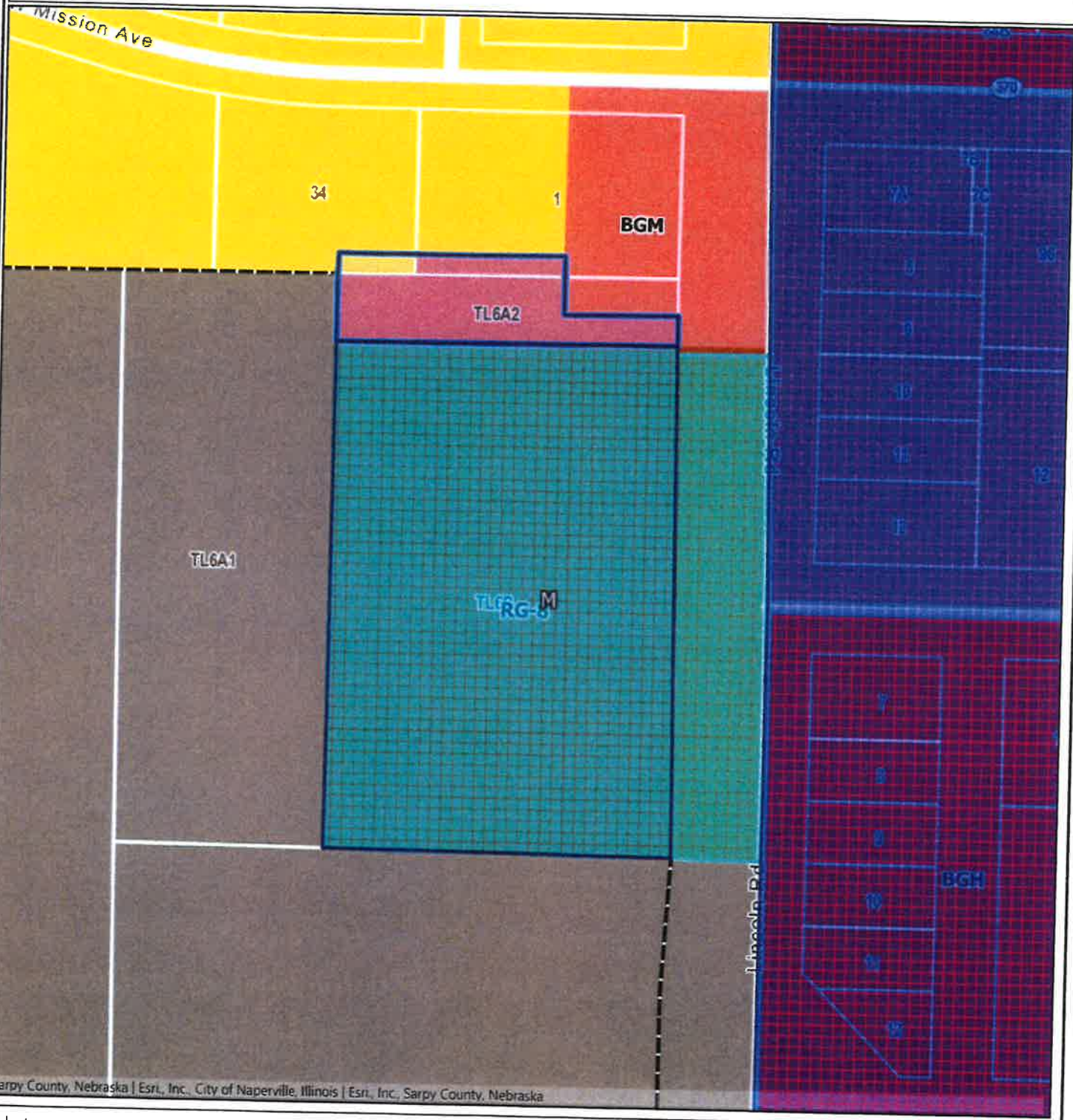
Notes



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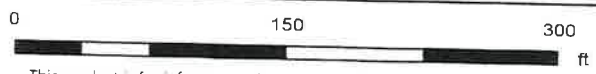
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Sarpy County, Nebraska | Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska

Notes



Map Scale 1: 1592

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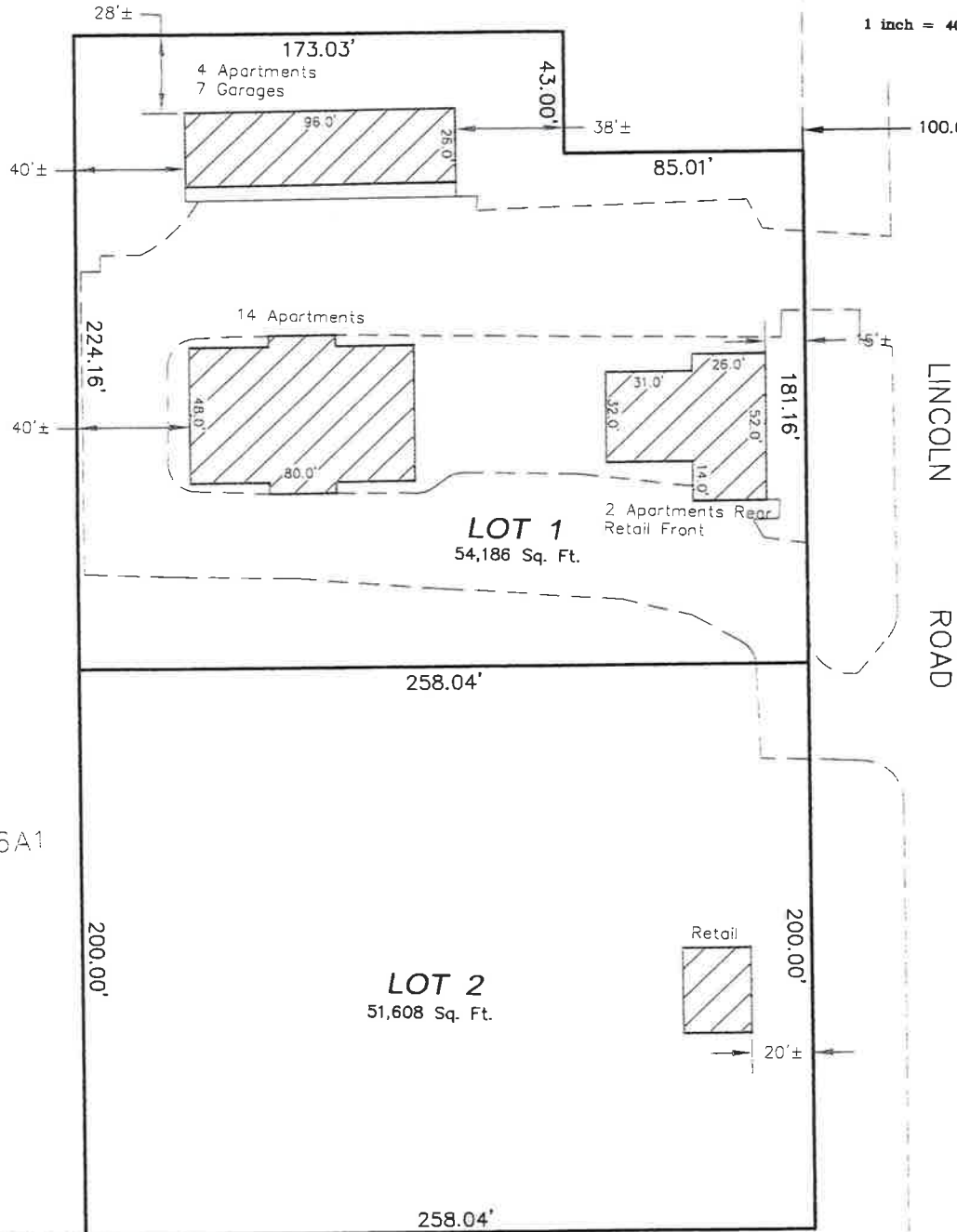


RECEIVED

NOV 29 2021

PLANNING DEPT.

# LINCOLN PLACE ADD. AS BUILT - EXISTING BUILDINGS 2302 and 2304 LINCOLN ROAD



DRAWN: RDH

DATE: 11/28/2021 PROJECT NO. LINCOLN PLACE ADD.



**HILL-FARRELL ASSOCIATES, INC.**

**Land Surveyors**

Bellevue, NE 68005 (402) 291-6100

ORDINANCE NO. 4073

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF BELLEVUE, NEBRASKA, AS PROVIDED FOR BY ARTICLE 3 OF ORDINANCE NO. 3619 BY CHANGING THE ZONE CLASSIFICATION OF LAND LOCATED AT OR ABOUT 2304 LINCOLN ROAD, MORE PARTICULARLY DESCRIBED IN SECTION 1 OF THE ORDINANCE AND TO PROVIDE AN EFFECTIVE DATE.

WHEREAS, having received a recommendation from the city of Bellevue Planning Commission and proper notice having been given and public hearing held as provided by law:

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BELLEVUE, NEBRASKA:

Section 1. That part of the official zoning map of the City of Bellevue, Nebraska, as provided in Article 3, of Ordinance No. 3619 is hereby amended to change the zone classification of the following described parcel of land:

Lots 1 and 2, Heer and Theer Addition, being a replat of Tax Lot 6B, and that Part of Tax Lot 6A2, being the north 50' of the west 175' of the east 260' and the south 22' of the east 85' of the east 260' of Tax Lot 6A, together with the south 15' of the west 110' of Lot 1, and the south 15' of the east 65' of Lot 34, Svoboda's Addition to the City of Bellevue, all located in the Southwest 1/4 of Section 36, T14N, R13E of the 6th P.M., Sarpy County, Nebraska

From RG-8-M (General Residential - 800 Square Foot Zone - Modified Residential District) and BGM (Metropolitan General Business District) to BGM (Metropolitan General Business District)

(1st City Development, LLC)

Section 2. This ordinance shall not take effect until such time as the small subdivision plat of Heer and Theer Addition is filed with the Sarpy County Register of Deeds in accordance with Section 5-10 of the City of Bellevue Subdivision Regulations.

Section 3. Except as amended herein, the official zoning map and the classification shown therein shall remain as heretofore existing.

Section 4. This ordinance shall take affect and be in force from and after its adoption and publication according to law.

ADOPTED by the Mayor and City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Third Reading: \_\_\_\_\_

# HEER AND THEIR ADDITION

WEST MISSION AVE

SURVEY: RD4080430  
 DRAWN: RDH  
 DATE: 10/22/21  
 10/28/2021  
 11/20/2021  
 12/07/2021

**RECEIVED**  
**DEC 07 2021**  
**PLANNING DEPT.**

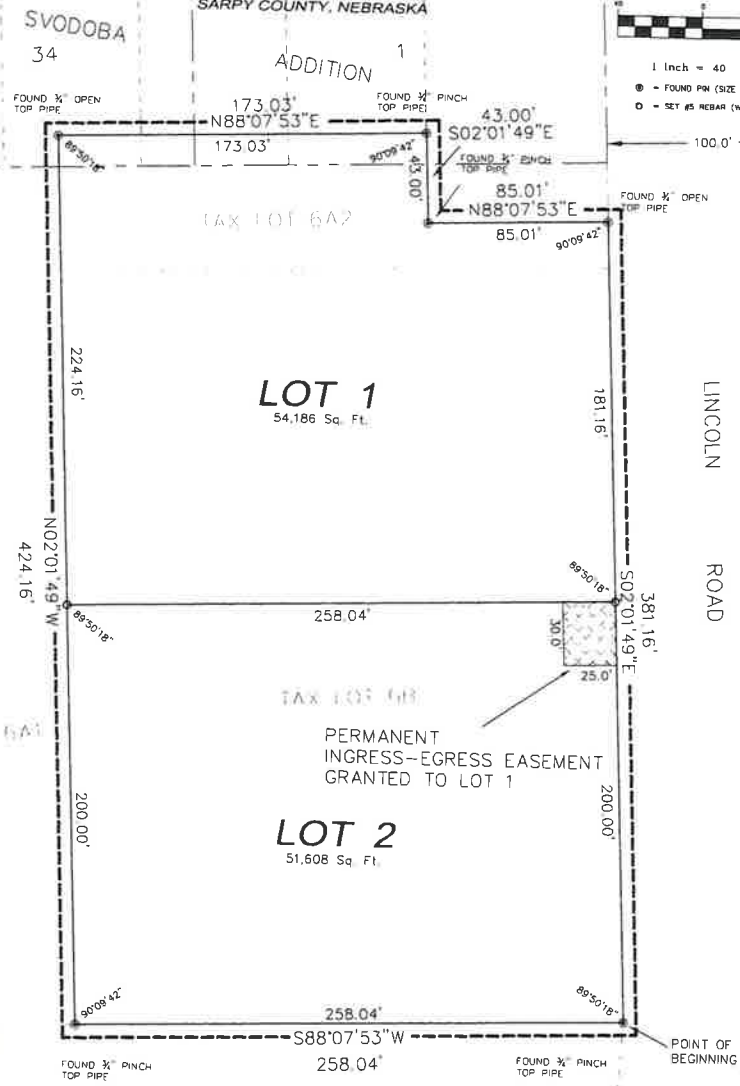
HEER AND THEIR ADDITION  
 BELLEVUE, NEBRASKA  
 SMALL SUBDIVISION PLAT

HILL-FARRELL ASSOCIATES, INC.  
 Land Surveyors  
 Bellevue, NE 68123 (402) 291-6100



PROJECT NO.  
 JEFFERSON PLACE  
 ADDITION PLAT 2

LOTS 1 and 2  
 BEING A REPLAT OF TAX LOT 6B AND THAT PART OF TAX LOT 6A2 BEING THE NORTH 50 FEET OF THE WEST 175 FEET OF THE EAST 260 FEET AND THE SOUTH 22 FEET OF THE EAST 85 FEET OF THE EAST 260 FEET OF TAX LOT 6A, TOGETHER WITH THE SOUTH 15 FEET OF THE WEST 110 FEET OF LOT 1 AND THE SOUTH 15 FEET OF THE EAST 65 FEET OF LOT 34. SVOBODA'S ADDITION TO THE CITY OF BELLEVUE.  
 SEC. 36, T14N, R13E, 6th P.M.  
 SARPY COUNTY, NEBRASKA



**SURVEYOR'S CERTIFICATE**

I, RONALD D. HILL, THE UNDERSIGNED REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT I HAVE ACCURATELY SURVEYED AND STAKED WITH IRON PINS THE CORNERS AS SHOWN IN "HEER AND THEIR ADDITION," BEING A REPLAT OF TAX LOT 6B AND THAT PART OF TAX LOT 6A2 BEING THE NORTH 50 FEET OF THE WEST 175 FEET OF THE EAST 260 FEET AND THE SOUTH 22 FEET OF THE EAST 85 FEET OF THE EAST 260 FEET OF TAX LOT 6A, TOGETHER WITH THE SOUTH 15 FEET OF THE WEST 110 FEET OF LOT 1 AND THE SOUTH 15 FEET OF THE EAST 65 FEET OF LOT 34, SVOBODA'S ADDITION, LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 36, TOWNSHIP 14 NORTH, RANGE 13 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID TAX LOT 6B, THENCE S88°07'53\"/>

DATE \_\_\_\_\_  
 RONALD D. HILL NEBRASKA L.S. NO. 373

**DEDICATION**

KNOW ALL MEN BY THESE PRESENTS THAT WE, DAVID J. HEER AND RUTH M. HEER, CO-TRUSTEES OF THE DAVID AND RUTH HEER REVOCABLE TRUST, BEING THE OWNERS OF THE PROPERTY DESCRIBED WITHIN THE SURVEYOR'S CERTIFICATE AND EMBRACED WITHIN THIS PLAT, HAVE CAUSED SAID LAND TO BE REPLATED INTO LOTS TO BE NUMBERED AS SHOWN, SAID SUBMISSION TO BE HEREAFTER KNOWN AS "HEER AND THEIR ADDITION," AND WE DO HEREBY RATIFY AND APPROVE OF THE DISPOSITION OF OUR PROPERTY AS SHOWN ON THIS PLAT. WE DO HEREBY GRANT PERPETUAL EASEMENTS TO OMAHA PUBLIC POWER DISTRICT (OPPD), COX COMMUNICATIONS, AND CENTURYLINK ACROSS A FIVE (5) FOOT WIDE STRIP OF LAND ABUTTING ALL FRONT AND SIDE BOUNDARY LOT LINES; AN EIGHT (8) FOOT WIDE STRIP OF LAND ABUTTING THE REAR BOUNDARY LINES OF ALL INTERIOR LOTS; AND A SIXTEEN (16) FOOT WIDE STRIP OF LAND ABUTTING THE REAR BOUNDARY LINES OF ALL EXTERIOR LOTS. THE TERM EXTERIOR LOTS IS HEREBIN DEFINED AS THOSE LOTS FORMING THE OUTER PERIMETER OF THE ABOVE DESCRIBED ADDITION. THE SIXTEEN (16) FOOT WIDE EASEMENT MAY BE REDUCED TO EIGHT (8) FEET WIDE WHEN THE ADJACENT LAND IS SURVEYED, PLATTED AND RECORDED. THE SUBDIVIDER SHALL GRANT PERPETUAL EASEMENTS TO METROPOLITAN UTILITIES DISTRICT AND/OR BLACK HILLS ENERGY, THEIR SUCCESSORS AND ASSIGNS TO ERECT, INSTALL, OPERATE, MAINTAIN, REPAIR AND RENEW PIPELINES, HYDRANTS AND OTHER RELATED FACILITIES AND TO EXTEND THEREON PIPES FOR THE TRANSMISSION OF GAS AND WATER ON, THROUGH, UNDER AND ACROSS A FIVE (5) FOOT WIDE STRIP OF LAND ABUTTING ALL CUL-DE-SAC STREETS. NO PERMANENT BUILDINGS OR RETAINING WALLS SHALL BE PLACED IN SAID EASEMENT WAYS, BUT THE SAME MAY BE USED FOR GARDENS, SHRUBS, LANDSCAPING AND OTHER PURPOSES THAT DO NOT THEN OR LATER INTERFERE WITH THE AFORESAID OR RIGHTS HEREBIN GRANTED.

IN WITNESS WHEREOF WE DO HEREBY SET OUR HANDS THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022

DAVID J. HEER CO-TRUSTEE OF THE DAVID AND RUTH HEER REVOCABLE TRUST  
 RUTH M. HEER CO-TRUSTEE OF THE DAVID AND RUTH HEER REVOCABLE TRUST

**ACKNOWLEDGMENT OF NOTARY**

STATE OF NEBRASKA )  
 COUNTY OF SARPY )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022, BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, DULY QUALIFIED AND COMMISSIONED IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED DAVID J. HEER AND RUTH M. HEER, PERSONALLY KNOWN BY ME TO BE THE IDENTICAL PERSONS WHOSE NAMES APPEAR ON THIS PLAT AND THEY DID ACKNOWLEDGE THE EXECUTION THEREOF TO BE THEIR VOLUNTARY ACT AND DEED.

DATE \_\_\_\_\_ NOTARY PUBLIC \_\_\_\_\_

**APPROVAL OF BELLEVUE PLANNING COMMISSION**  
 THIS PLAT OF "HEER AND THEIR ADDITION" WAS APPROVED BY THE BELLEVUE PLANNING COMMISSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.

CHAIRPERSON  
 BELLEVUE PLANNING COMMISSION

**APPROVAL OF BELLEVUE CITY COUNCIL**  
 THIS PLAT OF "HEER AND THEIR ADDITION" WAS APPROVED BY THE BELLEVUE CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022. THIS PLAT BECOMES NULL AND VOID IF NOT RECORDED WITHIN NINETY (90) DAYS OF THE ABOVE DATE.

ATTEST: \_\_\_\_\_ MAYOR, CITY OF BELLEVUE, NEBRASKA

**REVIEW BY SARPY COUNTY PUBLIC WORKS**  
 THIS PLAT OF "HEER AND THEIR ADDITION" WAS REVIEWED BY THE SARPY COUNTY SURVEYOR'S OFFICE ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022.

SARPY COUNTY SURVEYOR/ENGINEER \_\_\_\_\_

**COUNTY TREASURER'S CERTIFICATION**  
 THIS IS TO CERTIFY THAT I FIND NO REGULAR OR SPECIAL TAXES DUE OR DELINQUENT AGAINST THE PROPERTY AS DESCRIBED WITHIN THIS PLAT AS SHOWN BY THE RECORDS OF THIS OFFICE.

DATE \_\_\_\_\_ SARPY COUNTY TREASURER \_\_\_\_\_

WEST  
 23rd  
 AVE

LINCOLN  
 ROAD

SVODOBA  
 34

LOT 1  
 54,186 Sq. Ft.

LOT 2  
 51,608 Sq. Ft.

PERMANENT  
 INGRESS-EGRESS EASEMENT  
 GRANTED TO LOT 1

POINT OF  
 BEGINNING

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE:	SUBMITTED BY: Tammi Palm	Planning Manager
AGENDA ITEM:	CONSENT AGENDA <input type="checkbox"/>	SPECIAL PRESENTATION <input type="checkbox"/>
LIQUOR LICENSE <input type="checkbox"/>	ORDINANCE <input checked="" type="checkbox"/>	PUBLIC HEARING <input type="checkbox"/>
RESOLUTION <input type="checkbox"/>	CURRENT BUSINESS <input type="checkbox"/>	OTHER <input type="checkbox"/>

SUBJECT:  
Request to rezone Tax Lot 6A6, located in the Northwest ¼ of Section 26, T14N, R13E of the 6th P.M., Sarpy County, Nebraska, from BG to RG-20 for the purpose of an adolescent care facility. Applicant: i3, LLC. General location: 105 Fort Crook Road South.

SYNOPSIS/BACKGROUND:  
i3, LLC, on behalf of Broadstep, is requesting to rezone the property located at 105 Ft Crook Rd S from BG to RG-20 for the purpose of an adolescent care facility. The applicant desires to repurpose the current Royal Inn Motel to a 24/7 residential adolescent care facility for youth with behavioral and mental health needs.

FISCAL IMPACT:  BUDGETED FUNDS?:  GRANT/MATCHING FUNDS?:

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?:  COUNTER-PARTY:  INTERLOCAL AGREEMENT:

CONTRACT DESCRIPTION:

CONTRACT EFFECTIVE DATE:  CONTRACT TERM:  CONTRACT END DATE:

PROJECT NAME:

START DATE:  END DATE:  PAYMENT DATE:  INSURANCE REQUIRED:

CIP PROJECT NAME:  CIP PROJECT NUMBER:

STREET DISTRICT NAME (S):  STREET DISTRICT NUMBER (S):


ACCOUNTING DISTRIBUTION CODE:  ACCOUNT NUMBER:


RECOMMENDATION:  
The Planning Department and Planning Commission are recommending denial of this request.


ATTACHMENTS:

1. PC Recommendation	2. Staff Report	3. Ord No. 4074
4. <input type="text"/>	5. <input type="text"/>	6. <input type="text"/>

SIGNATURES:

LEGAL APPROVAL AS TO FORM: 

FINANCE APPROVAL AS TO FORM: 

ADMINISTRATOR APPROVAL AS TO FORM: 

# City of Bellevue

## PLANNING COMMISSION RECOMMENDATION

APPLICANT: i3, LLC

CASE #: Z-2111-23

CITY COUNCIL HEARING DATE: February 1, 2022

REQUEST: to rezone Tax Lot 6A6, located in the Northwest ¼ of Section 26, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, from BG (General Business District) to RG-20 (General Residential – 2,000 Square Foot Zone) for the purpose of an adolescent care facility.

On December 16, 2021, the City of Bellevue Planning Commission voted four yes, two no, three absent and zero abstained:

***DENIAL*** based upon the Future Land Use Map and Comprehensive Plan, as well as the perceived negative impact upon the surrounding area.

### VOTE:

Yes:	Four:	No:	Two:	Abstain:	Zero:	Absent:	Three:
	Aerni		Ritz				Casey
	Cutsforth		Hankins				Perrin
	Ackley						Compton
	Jacobson						

Planning Commission Hearing (s) was held on: December 16, 2021

# CITY OF BELLEVUE PLANNING DEPARTMENT

## RECOMMENDATION REPORT # 2

CASE NUMBER: Z-2111-23

FOR HEARING OF:

REPORT #1: December 16, 2021

REPORT #2: February 1, 2022

### I. GENERAL INFORMATION

#### A. APPLICANT:

i3, LLC  
Attn: Fisher Easterling  
955 East Main Street, Ste. E, Box 92  
Lexington, SC 2964

#### B. PROPERTY OWNER:

Radhe Krishna, LLC  
105 Fort Crook Road South  
Bellevue, NE 68005

#### C. GENERAL LOCATION:

105 Fort Crook Road South

#### D. LEGAL DESCRIPTION:

Tax Lot 6A6, located in the Northwest ¼ of Section 26, T14N, R13E of the 6<sup>th</sup> P.M.,  
Sarpy County, NE

#### E. REQUESTED ACTION:

1. Rezone Tax Lot 6A6, from BG to RG-20 for the purpose of an adolescent care facility.

#### F. EXISTING ZONING AND LAND USE:

BG, Commercial Building (Royal Inn Motel)

**G. PURPOSE OF REQUEST:**

The purpose of this request is to obtain approval of a rezoning to facilitate an adolescent care facility.

**H. SIZE OF SITE:**

The site is approximately 1.87 acres.

**II. BACKGROUND INFORMATION**

**A. EXISTING CONDITION OF SITE:**

This property is developed with the Royal Inn Motel, which was constructed in 1956.

**B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**

1. **North:** Strip Retail/Commercial, BGH
2. **East:** Single Family Residential, RD-60
3. **South:** Single Family Residential, RG-28 and RD-60
4. **West:** Vacant, BG (across Fort Crook Road South)

**C. REVELANT CASE HISTORY:**

1. On December 16, 2021, the Planning Commission recommended denial of a request to rezone Tax Lot 6A6, located in the Northwest ¼ of Section 26, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, from BG to RG-20 for the purpose of an adolescent care facility.

**D. APPLICABLE REGULATIONS:**

1. Section 5.14, Zoning Ordinance, regarding RG-20 uses and requirements.

**III. ANALYSIS**

**A. COMPREHENSIVE PLAN:**

The Future Land Use Map of the Comprehensive Plan designates this area as commercial.

**B. OTHER PLANS:**

If the rezoning is approved, the applicant intends to convert the existing building into an adolescent residential care facility.

**C. TRAFFIC AND ACCESS:**

1. The MAPA Traffic Flow Data estimates 4,300 vehicles per day along the northbound leg of Fort Crook Road, north of the intersection of Fort Crook Road and Cornhusker Road.
2. This property has access from two points along Fort Crook Road South.

**D. UTILITIES:**

All utilities are available to this location.

**E. ANALYSIS:**

1. i3, LLC has submitted a request to rezone Tax Lot 6A6, located in the Northwest ¼ of Section 26, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, NE from BG to RG-20.
2. The applicant is requesting a zoning change to RG-20 in order to facilitate an adolescent residential group home facility. No platting is being requested at this time.

The applicant states Broadstep Behavioral Health is a national care provider for both adolescents and adults. They have recently added Nebraska to its geography due to a statewide shortage of care in this category. The building located at 105 Fort Crook Road South, home of the Royal Inn Motel, would be converted into an adolescent residential group home facility for those with behavioral health challenges and therapeutic needs. The adolescents in this facility would eat, sleep, recreate, and be educated on premises.

A copy of the applicant's letter detailing their request is attached to this report.

3. This property is located along the Fort Crook Road South corridor. The corridor consists of commercial/heavy commercial uses north of the property, and a mix of residential and commercial uses to the south of the property.
4. The Avery Heights residential neighborhood is adjacent to the south and east of this property.
5. This application was sent out to the following departments/individuals for review: Public Works, Permits and Inspections, Chief of Police, Offutt Air Force Base, Fire Inspector, and the Bellevue Public School District. The cover letter indicated a deadline to send comments back to the Planning Department, and also stated if the requested department did not have comments pertaining to the application, no response was needed.

Mike Christensen, Chief Building Official, commented this type of use would be considered a complete change of occupancy from its current use and would require the entire structure to be brought up to current code for the new occupancy. He stated the number of individuals needing care and the number of staff proposed is needed to classify the exact type of use.

Donald Gifford, Battalion Chief, had comments regarding the need to update the building with the proposed change of occupancy to meet the health care life safety codes.

No other comments were received on this case.

6. The Future Land Use Map of the Comprehensive Plan designates this area as Commercial.

7. The RG-20 District allows hospitals, sanitariums, rest homes, nursing homes, elderly or retirement housing, convalescent homes, other similar institutions, or philanthropic institutions as a permitted use.

8. The Fort Crook Road Corridor Redevelopment Plan, describes this sub-area as The Galvin Corner Neighborhood and designates this section of Fort Crook Road South as a mixed-use district, with retail, office, and residential uses. The Galvin Corner Neighborhood shows this specific area as a traditional multi-family residential use district, with apartments and condos.

9. Staff does not believe this request is compatible with the existing development along the Fort Crook Road corridor and the adjoining residential neighborhoods, nor is it appropriate when considering the Future Land Use Map designation of this property and the Comprehensive Plan.

**F. TECHNICAL DEFICIENCIES:**

None

**IV. DEPARTMENT RECOMMENDATION**

DENIAL based upon the Future Land Use Map and Comprehensive Plan, as well as the perceived negative impact upon the surrounding area.

**V. PLANNING COMMISSION RECOMMENDATION**

DENIAL based upon the Future Land Use Map and Comprehensive Plan, as well as the perceived negative impact upon the surrounding area.

**VI. ATTACHMENTS TO REPORT**

1. Vicinity Map/Zoning Map
2. 2020 GIS aerial photo of the property
3. Letter from Fisher Easterling received November 12, 2021.
4. Information from Fisher Easterling received December 16, 2021
5. Letter from Marty Giff received December 15, 2021.

**VII. COPIES OF REPORT TO:**

1. i3, LLC
2. Radhe Krishna, LLC
3. Don Schleining
4. Public Upon Request

  
Assistant Planning Manager

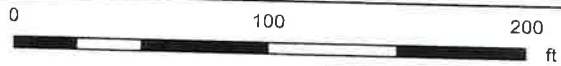
  
Planning Manager                      Date of Report



SARPY COUNTY  
NEBRASKA



Sarpy County, Nebraska | Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska



Map Scale 1: 1128

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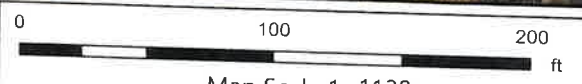


Notes





Esri, Inc. City of Naperville, Illinois | Esri, Inc. Sarpy County, Nebraska



Map Scale 1: 1128

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Notes





i3, LLC  
955 E. Main Street  
Suite E Box #92  
Lexington, SC 29072

Dear Ms. Palm:

Thank you for your time and consideration regarding the pending request to re-zone the property a 105 Fort Crook Road. As previously discussed, we are seeking a new zoning status, changing from the current "BG" designation to the appropriate "RG-20" designation. It is our understanding that this zoning change will allow for the Tenant's use as behavioral healthcare providers.

To be more specific "Broadstep Behavioral Health" is a national care provider for both adolescents and adults and has recently added Nebraska to its geography due to a stated statewide shortage of care in this category. This facility is planned for adolescent care for those with behavioral health challenges and therapeutic needs. The youth in this facility will eat, sleep, recreate, and be educated on these premises. Please let us know if there are any questions at all about this group, or the specific intentions for the property. We look forward to discussing with your group as necessary, and we look forward to being a part of the Bellevue community.

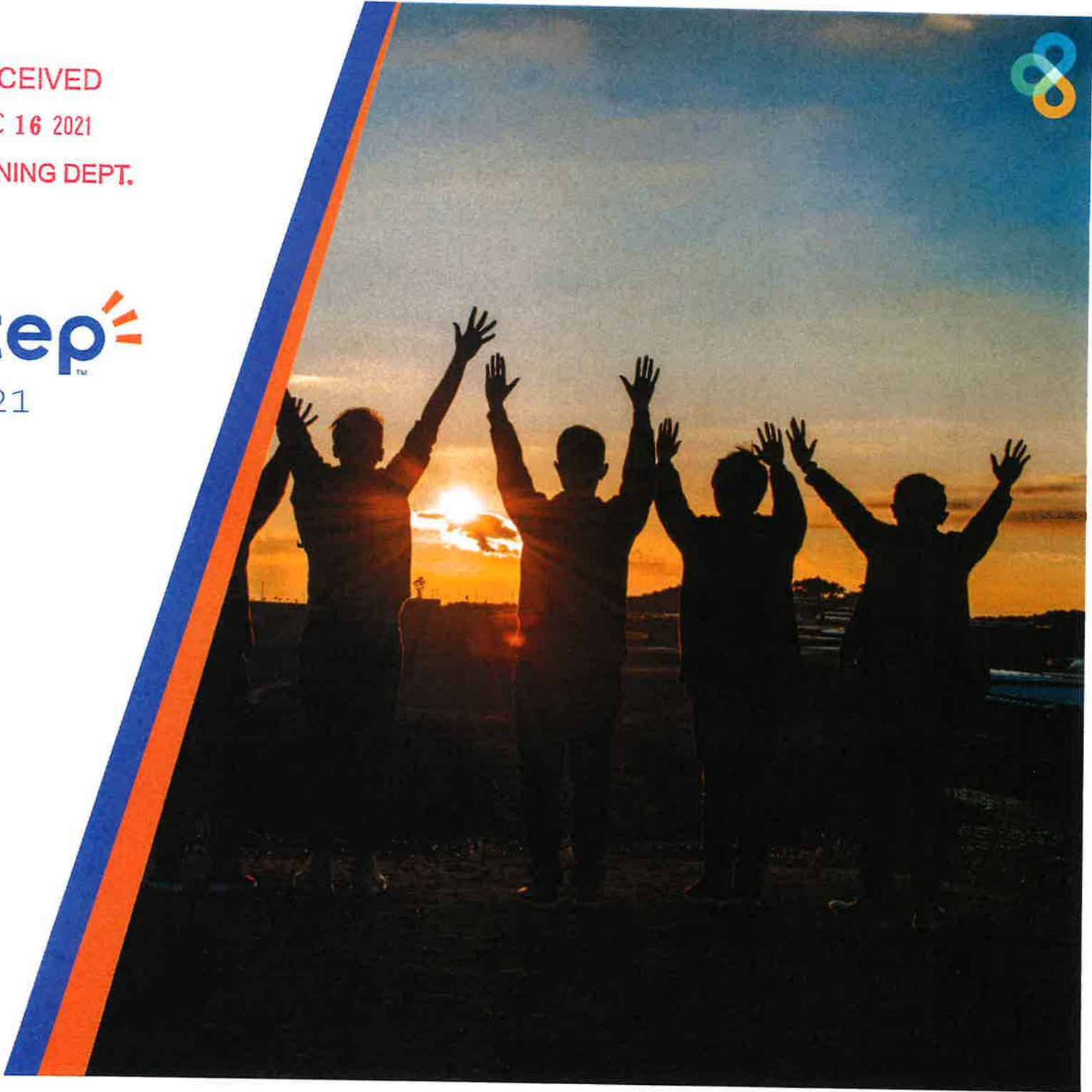
Best Regards,

Fisher Easterling

**RECEIVED**  
**NOV 12 2021**  
**PLANNING DEPT.**

RECEIVED  
DEC 16 2021  
PLANNING DEPT.

**broadstep**<sup>TM</sup>  
Bellevue, NE 2021





## Who is broadstep?



- Broadstep represents the new age efficiency of Group Homes for children and adults with intellectual and developmental disabilities (I/DD), mental illness & co-occurring disorders. When researching group homes, you find that most are “mom & pop” homes with one or two locations. Broadstep has stepped into an industry that is over-due for a corporate entrance. Group Homes are already a profitable venture but making costs more efficient is the up-side.
- Entering markets with favorable reimbursement rates, and friendlier legislation, are the leading contributors to the company's growth.
- Bain Capital, detailed on page 3, founded Broadstep as a part of their “Double Impact” strategy.
- With 94 locations across the United States, the projection for growth are strong.

It's easier to grow when you feel safe, comfortable, loved, and advocated for. So we care for the whole person, providing a continuum of physical, emotional, and mental support for children and adults with intellectual and developmental disabilities (I/DD), mental illness, and co-occurring disorders. With outcomes rooted in discovering and championing personal definitions of progress, our individuals, families, caregivers, and neighbors are building more and more communities people can call home.

**broadstep's Vision** – To be America's first choice in behavioral health and supportive living.

**broadstep's Mission** – To provide first-class behavioral health and supportive living services by being the nation's best employer, provider and community partner.

**broadstep's Values** – ACE IT with FUN: **Accountability, Compassion, Excellence, Integrity, Teamwork, Fun**



# Backed by Bain Capital

- Bain Capital is one of the world's leading private, multi-asset alternative investment firms with approximately **\$105b in assets under management**.
- As part of their public outreach, Bain Capital developed a **'double impact' investment strategy**. Double Impact allows them to invest in companies to provide both a financial as well as a societal impact.
- From Bain Capital's website:

"Impact investing has the power to build great companies that deliver both competitive financial returns and meaningful, measurable social and environmental good. Bain Capital Double Impact pursues investments where we can utilize our unique capabilities to help mission-driven companies scale and drive meaningful change.

Our goal is to scale financial and impact growth for our partner companies, which are solving critical social problems, and doing so with sustainable business models. We believe that our value-added approach, experienced team and broad platform expertise helps provide the resources and capabilities that these companies need to thrive."

## Double Impact Partners





# 105 Fort Crook Road Bellevue, NE

## Community Investment

Broadstep has chosen 105 Fort Crook Road as the next location for a campus in Nebraska.

This location will need to be re-developed with an estimated \$1,500,000 in improvements. This will be done by local contractors once due diligence and closing have been completed.

This opportunity is a **for profit entity**. Not only will Broadstep be participating in property taxes, but that assessed value will **increase significantly**.

Job creation is another large investment in the community. Broadstep projects upwards of 32 jobs to be created on this campus. These include:

- **Management Level Positions**
- **Nursing Positions**
- **Psychiatric Professionals**



# i3's Participation Strategy (Landlord)

As the future investor and landlord of the 601 Chateau Drive development i3, LLC is working towards the following:

- **Purchase the Assets for Broadstep:** i3 purchases the land and building, hires the local contractors, architects, engineers, and re-invests in the existing building.
- **Successfully Transform the Motel:** i3 is currently working with Don Schleining, and Broadstep, to renovate and re-design the Motel at 105 Fort Crook Road.
  - The project will not be a complete tear-down, but an improvement.
  - Changing the façade and landscape to an upgraded and approved design is a primary objective of our team.
- **Involvement in the Community:**
  - Broadstep's ability to change zoning in other municipalities has been successful through community involvement.



Current Motel (105 Fort Crook Road)

## Tammi Palm

---

**From:** Fisher Easterling <fisher.easterling@i3resources.com>  
**Sent:** Thursday, December 16, 2021 10:04 AM  
**To:** Tammi Palm  
**Subject:** Bellevue Broadstep "Deck"  
**Attachments:** Broadstep Deck 12.14.21\_.pdf

Tammi,

Please see the attached. Thank you!



### Fisher Easterling

Director of CRE Acquisitions & Development  
i3, LLC

c. 864.680.1170

e. [fisher.easterling@i3resources.com](mailto:fisher.easterling@i3resources.com)

w. [www.i3resources.com](http://www.i3resources.com) | [Read Family Matters](#)

[Connect on LinkedIn](#)

You worked hard for your legacy.

We'll work hard to protect it.

Because we believe that families are stronger, together.

RECEIVED  
DEC 16 2021  
PLANNING DEPT.



## Giff Property Services

2211 Thurston Circle, Bellevue, NE 68005 402-557-5999

December 15, 2016

Tammi Palm  
City of Bellevue Planning Department  
1510 Wall Street  
Bellevue, NE 68005  
tammi.palm@Bellevue.net

RE: Case #: Z-2111-23  
105 Fort Crook Road South  
PB Hearing 12-16-2021

I received notice of the proposed zoning change action for the above identified Case and property. I am an owner and the property manager of the adjacent property to the north at 2209-2229 Thurston Circle called Fort Crook Plaza. I am unable to attend the planning commission meeting, but would like to express my opinion to this matter.

My property is identified as being used for strip retail/commercial. I want to clarify that Fort Crook Plaza is a flex facility that consists of 10 bays that are used for office and warehousing purposes. There are nine overhead doors on the north elevation of my building that are used daily by full length 53' semi trucks transporting freight. There are also multiple smaller service vehicles that utilize the north overhead doors. I do not believe that adolescent occupancy of the structure immediately adjoining the parking lot of a warehousing facility like Fort Crook Plaza is safe nor appropriate.

Fort Crook Road is steadily travelled 6-lane arterial with a raised median. Ingress and egress to the 105 Fort Crook Road is only possible via northbound travel. A median break exists a block north at Thurston Circle, but U-turns are not permitted at this intersection as there is no deceleration lane. The current use of the 105 Fort Crook property as a motel already results in continual illegal U-turns at the intersection, and drivers using the my Fort Crook Plaza driveway as a circulation path causing increased risk of accidents and injury in my parking lot. I am concerned that the proposed use will have more daily patrons, resulting in more illegal traffic issues.

I therefore do not agree with the proposed rezoning for RG-20 multiple family use.

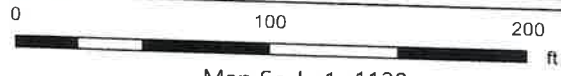
Please include this letter a part of the public record regarding the Case.

Marty Giff  
Owner/Manager  
Fort Crook Plaza

RECEIVED  
DEC 15 2021  
PLANNING DEPT.

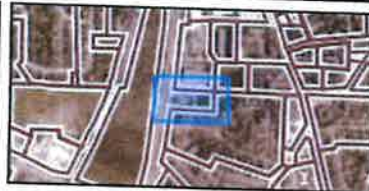


Esri, Inc. City of Naperville, Illinois | Esri, Inc. Sarpy County, Nebraska



Map Scale 1: 1128

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the source records and information sources to ascertain the usability of the information.

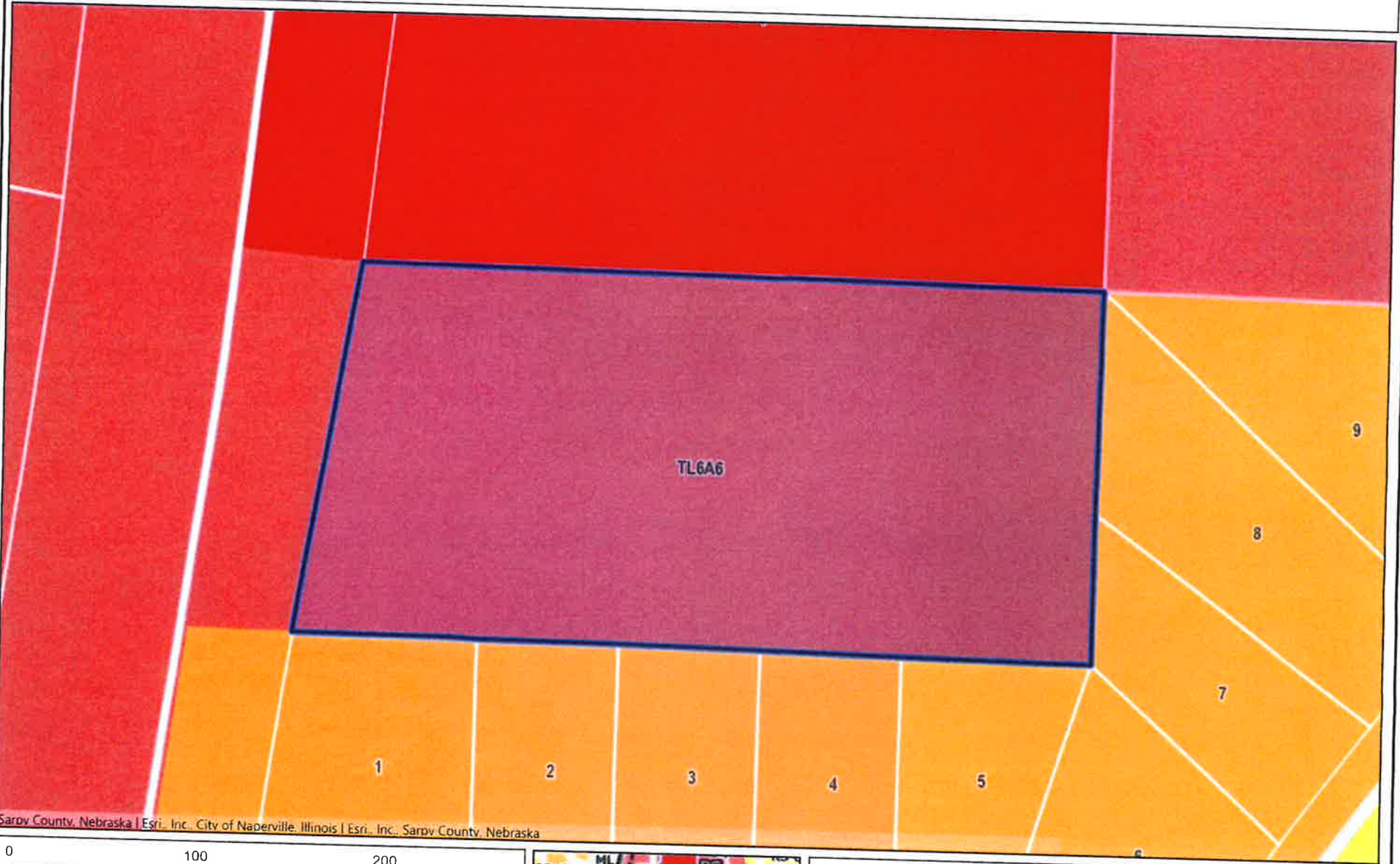


Notes

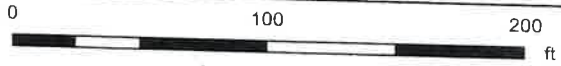




SARPY COUNTY  
NEBRASKA



Sarpy County, Nebraska | Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska



Map Scale 1: 1128

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the source records and information sources to ascertain the usability of the information.



Notes



ORDINANCE NO. 4074

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF BELLEVUE, NEBRASKA, AS PROVIDED FOR BY ARTICLE 3 OF ORDINANCE NO. 3619 BY CHANGING THE ZONE CLASSIFICATION OF LAND LOCATED AT OR ABOUT 105 FORT CROOK ROAD SOUTH, MORE PARTICULARLY DESCRIBED IN SECTION 1 OF THE ORDINANCE AND TO PROVIDE AN EFFECTIVE DATE.

WHEREAS, having received a recommendation from the city of Bellevue Planning Commission and proper notice having been given and public hearing held as provided by law:

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BELLEVUE, NEBRASKA:

Section 1. That part of the official zoning map of the City of Bellevue, Nebraska, as provided in Article 3, of Ordinance No. 3619 is hereby amended to change the zone classification of the following described parcel of land:

Tax Lot 6A6, located in the Northwest ¼ of Section 26, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska

From BG (General Business District) to RG-20 (General Residential – 2,000 Square Foot Zone)

(i3, LLC)

Section 2. Except as amended herein, the official zoning map and the classification shown therein shall remain as heretofore existing.

Section 3. This ordinance shall take affect and be in force from and after its adoption and publication according to law.

ADOPTED by the Mayor and City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Third Reading: \_\_\_\_\_

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

11d.  
2/15/2022

COUNCIL MEETING DATE: 01/18/2022	SUBMITTED BY: Legal/Administration		
AGENDA ITEM:	CONSENT AGENDA <input type="checkbox"/>	SPECIAL PRESENTATION <input type="checkbox"/>	
LIQUOR LICENSE <input type="checkbox"/>	ORDINANCE <input checked="" type="checkbox"/>	PUBLIC HEARING <input type="checkbox"/>	
RESOLUTION <input type="checkbox"/>	CURRENT BUSINESS <input type="checkbox"/>	OTHER <input type="checkbox"/>	

SUBJECT:

Ordinance No. 4075, an ordinance to repeal section 20-2 of the Bellevue Municipal Code regarding furnishing cigarettes, tobacco, etc. to minors and to provide for an effective date.

SYNOPSIS/BACKGROUND:

The legislature changed the age to sell tobacco products to 21 instead of 18. The BPD does not issue citations under city code for this violation since there is an exact state statute on point regarding this item and citations would be issued under the state statute violation. It has been suggested to repeal 20-2 in our city code and just defer to state statute for enforcement of this item (as may be amended by the legislature). See Neb. Rev. Stat. 28-1419.

FISCAL IMPACT:  BUDGETED FUNDS?:  GRANT/MATCHING FUNDS?:

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?:  COUNTER-PARTY:  INTERLOCAL AGREEMENT:

CONTRACT DESCRIPTION:

CONTRACT EFFECTIVE DATE:  CONTRACT TERM:  CONTRACT END DATE:

PROJECT NAME:

START DATE:  END DATE:  PAYMENT DATE:  INSURANCE REQUIRED:

CIP PROJECT NAME:  CIP PROJECT NUMBER:

STREET DISTRICT NAME (S):  STREET DISTRICT NUMBER (S):

ACCOUNTING DISTRIBUTION CODE:  ACCOUNT NUMBER:

RECOMMENDATION:

Approve Ordinance 4075.

ATTACHMENTS:

1. Ordinance - Repeal	2. <input type="text"/>	3. <input type="text"/>
4. <input type="text"/>	5. <input type="text"/>	6. <input type="text"/>

SIGNATURES:

LEGAL APPROVAL AS TO FORM: \_\_\_\_\_

FINANCE APPROVAL AS TO FORM: \_\_\_\_\_

ADMINISTRATOR APPROVAL AS TO FORM: \_\_\_\_\_

*A. Bredt*  
*[Signature]*  
*[Signature]*

ORDINANCE NO. 4075

AN ORDINANCE TO REPEAL SECTION 20-2 OF ARTICLE I, CHAPTER 20, OF THE BELLEVUE MUNICIPAL CODE REGARDING FURNISHING CIGARETTES, TOBACCO, ETC. TO MINORS AND TO PROVIDE AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF BELLEVUE, NEBRASKA.

**Section 1.** That Section 20-2 of Chapter 20, Article I of the Bellevue Municipal Code which reads as follows is hereby repealed and shall be “reserved” for future use.

§ 20-2 MINORS- FURNISHING CIGARETTES, TOBACCO, ETC.

No person shall give, sell or furnish any cigarettes, cigars, cigarette materials or tobacco in any form to any minor under 18 years of age.

**Section 2.** This Ordinance shall take effect and be in full force fifteen (15) days after passage of the same.

ADOPTED by the Mayor and City Council this \_\_\_\_ day of \_\_\_\_\_ 2022.

ATTEST:

\_\_\_\_\_  
Mayor, Rusty Hike

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Third Reading: \_\_\_\_\_

\_\_\_\_\_  
City Attorney

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Finance Director		Michael Rogers, GilmoreBell; Cody Wickham, D.A.Davidson	
AGENDA ITEM:		CONSENT AGENDA	<input type="checkbox"/>	SPECIAL PRESENTATION	<input type="checkbox"/>
LIQUOR LICENSE	<input type="checkbox"/>	ORDINANCE	<input checked="" type="checkbox"/>	PUBLIC HEARING	<input type="checkbox"/>
RESOLUTION	<input type="checkbox"/>	CURRENT BUSINESS	<input type="checkbox"/>	OTHER	<input type="checkbox"/>

SUBJECT:

Refinance debt - Issue General Obligation Refunding Bonds of up to \$2,020,000 to provide for redemption and payment of unpaid General Obligation Various Purpose Bonds, Series 2017.

SYNOPSIS/BACKGROUND:

The City of Bellevue will refund its Series 2017 General Obligation Various Purpose Bonds and issue new bonds in the amount necessary, up to \$2,020,000, to save interest costs and more effectively manage debt. We are projecting to lower our Average Interest Rate from 2.92% down to a Net Interest Cost of 1.75%, resulting in Net Present Value Saving of \$101,856.

FISCAL IMPACT: \$102k      BUDGETED FUNDS?: YES      GRANT/MATCHING FUNDS?: NO

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: NO      COUNTER-PARTY:      INTERLOCAL AGREEMENT: NO

CONTRACT DESCRIPTION: \_\_\_\_\_

CONTRACT EFFECTIVE DATE: \_\_\_\_\_ CONTRACT TERM: \_\_\_\_\_ CONTRACT END DATE: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

START DATE: \_\_\_\_\_ END DATE: \_\_\_\_\_ PAYMENT DATE: \_\_\_\_\_ INSURANCE REQUIRED: NO

CIP PROJECT NAME: \_\_\_\_\_ CIP PROJECT NUMBER: \_\_\_\_\_

STREET DISTRICT NAME (S): \_\_\_\_\_ STREET DISTRICT NUMBER (S): \_\_\_\_\_

ACCOUNTING DISTRIBUTION CODE: \_\_\_\_\_ ACCOUNT NUMBER: \_\_\_\_\_

RECOMMENDATION:

Suspend the statutory rule requiring reading on three different days and, after the public hearing is held at this meeting, approve Ordinance #4076, authorizing and providing for issuance of General Obligation Various Purpose Refunding Bonds, Series 2022 in an amount not to exceed \$2,020,000.00.

ATTACHMENTS:

1. Ordinance No. 4076      2. \_\_\_\_\_      3. \_\_\_\_\_  
4. \_\_\_\_\_      5. \_\_\_\_\_      6. \_\_\_\_\_

SIGNATURES:

LEGAL APPROVAL AS TO FORM: \_\_\_\_\_

FINANCE APPROVAL AS TO FORM: \_\_\_\_\_

ADMINISTRATOR APPROVAL AS TO FORM: \_\_\_\_\_

*[Handwritten signatures]*

**ORDINANCE NO. 4076**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS OF THE CITY OF BELLEVUE, NEBRASKA, IN ONE OR MORE SERIES, IN THE AGGREGATE STATED PRINCIPAL AMOUNT OF NOT TO EXCEED TWO MILLION TWENTY THOUSAND DOLLARS (\$2,020,000) FOR THE PURPOSE OF REFUNDING ALL OR A PORTION OF THE CITY'S OUTSTANDING VARIOUS PURPOSE BONDS, SERIES 2017, DATED APRIL 27, 2017; PRESCRIBING THE FORM OF SUCH BONDS TO BE ISSUED AND AUTHORIZING OFFICERS OF THE CITY TO APPROVE CERTAIN FINAL TERMS OF THE BONDS; PROVIDING FOR THE LEVY AND COLLECTION OF TAXES TO PAY THE SAME, IF NECESSARY; PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE DELIVERY OF THE BONDS TO THE PURCHASER; AND PROVIDING FOR THE DISPOSITION OF BOND PROCEEDS; AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET OR ELECTRONIC FORM.**

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BELLEVUE, NEBRASKA:**

**Section 1.** The Mayor and Council of the City of Bellevue, Nebraska (the "City") hereby find and determine as follows:

(a) The City has previously issued and there are now outstanding and unpaid General Obligation Various Purpose Bonds, Series 2017, in the outstanding principal amount of \$1,975,000, dated April 17, 2017 (the "Outstanding Bonds"), and bearing interest and maturing as follows:

<u>Principal Amount</u>	<u>Maturing December 15 Of Year</u>	<u>Interest Rate</u>
\$ 50,000	2022	1.95%
75,000	2023	2.15
100,000	2024	2.30
200,000	2025	2.45
250,000	2026	2.60
250,000	2027	2.70
250,000	2028	2.85
250,000	2029	3.00
275,000	2030	3.10
275,000	2031	3.25

such Outstanding Bonds being part of an issue of \$2,225,000 principal amount of General Obligation Various Purpose Bonds, Series 2017, issued by the City pursuant to an ordinance duly passed and approved by the Mayor and Council of the City. Such Outstanding Bonds are redeemable at the option of the City at any time on or after April 27, 2022, at a redemption price equal to the principal amount thereof plus accrued interest to the date fixed for redemption.

(c) (i) All of the Outstanding Bonds are valid, interest bearing obligations of the City; (ii) since the Outstanding Bonds were issued, the rates of interest available in the market have so declined that by issuing its refunding bonds to provide funds for the payment and redemption of a portion of the Outstanding

Bonds, all as set out above, a substantial savings in the amount of yearly running interest will be made to the City; (iii) all or a portion of the Outstanding Bonds (as called for redemption, collectively, the "Refunded Bonds") are herein authorized to be called for redemption on a date or dates (each a "Redemption Date") to be determined in the Designation (defined herein); (iv) for the purpose of providing for the payment and redemption of the Refunded Bonds as above set out and to pay costs of issuance thereof, it is in the best interest of the City to issue general obligation refunding bonds of the City, in one or more series, in the aggregate stated principal amount of not to exceed \$2,020,000 (the "Bonds"); and (v) except as set forth herein, the City has no bond sinking funds on hand for the retirement of the Refunded Bonds not required for the timely payment of principal and interest due on the Redemption Date.

**Section 2.** (a) The Mayor and Council further find and determine that (i) it is necessary, desirable, advisable and in the best interest of the City to provide for the payment and redemption of the Refunded Bonds; and, (ii) all conditions, acts and things required by law to exist or to be done precedent to the issuance of the Bonds, in one or more series, in the aggregate stated principal amount of not to exceed \$2,020,000 pursuant to Section 10-142, Reissue Revised Statutes of Nebraska, as amended, and other applicable statutes, do exist and have been done as required by law. To provide funds for the purpose of refunding the Refunded Bonds as set out in Sections 1 and 2 hereof, there shall be and there are hereby ordered issued the General Obligation Refunding Bonds of the City, in one or more series, in the aggregate stated principal amount of not to exceed \$2,020,000.

(b) The Bonds or any portion thereof are hereby authorized to be sold pursuant to a negotiated sale with D.A. Davidson & Co., as initial purchaser (the "Underwriter"). In connection with such sale, the Mayor, City Administrator or Finance Director (each, an "Authorized Officer") are hereby authorized to specify, determine, designate, establish and appoint, as the case may be, in one or more written designations which may be included in a bond purchase agreement (each, a "Designation"), (i) the aggregate purchase price of the Bonds, and the underwriting discount which shall not exceed 0.90% of the aggregate stated principal amount thereof, (ii) the form and contents of any bond purchase agreement in connection with such sale, (iii) the title (including series designation), dated date, aggregate stated principal amount (including the aggregate principal amounts of serial Bonds and term Bonds, if any), which aggregate stated principal amount shall not exceed \$2,020,000, and the final maturity date, which shall not be later than September 15, 2031, (iv) the principal amounts maturing in each year, (v) the rate or rates of interest to be borne by each principal maturity, provided that present value savings results from refunding the Refunded Bonds, (vi) the principal payment dates and interest payment dates, (vii) whether the Bonds will be subject to redemption prior to their stated maturity, and if subject to such optional redemption, the provisions governing such redemption, including a redemption price not to exceed 104% of the principal amount then being redeemed plus accrued interest to the date of redemption, (viii) the amount and due date of each sinking fund installment for any of the Bonds issued as term Bonds, (ix) the designation of the Paying Agent and Registrar and the form and content of any agreement between the City and such entity and (x) all other terms and provisions of the Bonds not otherwise specified or fixed by this Ordinance.

(c) The Authorized Officers, or each individually, are hereby authorized to irrevocably call any or all of the Outstanding Bonds for redemption on such date or dates he or she determines appropriate, which date or dates shall each be a Redemption Date hereunder. The Authorized Officers, or each individually, are hereby authorized to designate, approve, execute and deliver, as the case may be, the form, content, terms and provisions of any published and/or mailed notice of redemption with respect to the payment and redemption of the Refunded Bonds and to take any and all other actions and approve and execute any and all other documents as deemed by them necessary or appropriate in connection with the redemption of the Refunded Bonds on the Redemption Date.

**Section 3.** The Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The date of original issue for the Bonds shall be date of original delivery. Interest

on the Bonds, at the respective rates for each maturity, shall be payable semi-annually on such dates as shall be determined in a Designation (each an "Interest Payment Date"), and the Bonds shall bear such interest from the date of original issue or the most recent Interest Payment Date, whichever is later. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the close of business on the fifteenth day, whether or not a business day, immediately preceding the Interest Payment Date (the "Record Date"), subject to the provisions of Section 4 hereof. The Bonds shall be numbered from 1 upwards in the order of their issuance. No Bond shall be issued originally or upon transfer or partial redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the Bonds issued shall be as directed by the initial purchaser thereof. Payments of interest due on the Bonds prior to maturity or earlier redemption shall be made by the Paying Agent and Registrar, designated in Section 4 hereof, by mailing a check or draft in the amount due for such interest on each Interest Payment Date to the registered owner of each Bond, as of the Record Date for such Interest Payment Date, to such owner's registered address as shown on the books of registration as required to be maintained in Section 4 hereof. Payments of principal due at maturity or at any date fixed for redemption prior to maturity, together with unpaid accrued interest thereon, shall be made by the Paying Agent and Registrar to the registered owners upon presentation and surrender of the Bonds to the Paying Agent and Registrar. The City and the Paying Agent and Registrar may treat the registered owner of any Bond as the absolute owner of such Bond for the purpose of making payments thereon and for all other purposes and neither the City nor the Paying Agent and Registrar shall be affected by any notice or knowledge to the contrary, whether such Bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest or principal made to the registered owner of any Bond in accordance with the terms of this Ordinance shall be valid and effectual and shall be a discharge of the City and the Paying Agent and Registrar, in respect of the liability upon the Bonds or claims for interest to the extent of the sum or sums so paid.

**Section 4.** The Authorized Officers, or any one or more of them, are hereby authorized to appoint a Bond Registrar and Paying Agent (the "**Registrar**") for the Bonds, which Registrar may be a bank or trust company, or the City Treasurer. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the Bonds at its office. The names and registered addresses of the registered owner or owners of the Bonds shall at all times be recorded in such books. Any Bond may be transferred pursuant to its provisions at the office of the Paying Agent and Registrar by surrender of such Bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to the Paying Agent and Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Paying Agent and Registrar, on behalf of the City, will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of the transferee owner or owners, a new Bond or Bonds of the same series, interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the Bonds by this Ordinance, one Bond may be transferred for several such Bonds of the same series, interest rate and maturity, and for a like aggregate principal amount, and several such Bonds may be transferred for one or several such Bonds, respectively, of the same series, interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a Bond, the surrendered Bond shall be canceled and destroyed. All Bonds issued upon transfer of the bonds so surrendered shall be valid obligations of the City evidencing the same obligation as the Bonds surrendered and shall be entitled to all the benefits and protection of this Ordinance to the same extent as the Bonds upon transfer of which they were delivered. The City and the Paying Agent and Registrar shall not be required to transfer any Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

**Section 5.** In the event that payments of interest due on the Bonds on an Interest Payment Date are not timely made, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the Bonds as of a special date of

record for payment of such defaulted interest as shall be designated by the Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

**Section 6.** In addition to any mandatory sinking fund redemptions, the Bonds shall be subject to redemption at the option of the City, in whole or in part, prior to maturity at any time on or after five years after the date of original issue, at par plus accrued interest on the principal amount redeemed to the date fixed for redemption (or such other date or dates as may be determined in a Designation). The City may select the Bonds to be redeemed for optional redemption in its sole discretion. Bonds for mandatory redemption shall be selected by the Paying Agent and Registrar using any random method of selection determined appropriate by the Paying Agent and Registrar. Bonds redeemed pursuant to the requirements for mandatory redemption shall be redeemed at par plus accrued interest on the principal amount redeemed. The Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Bonds redeemed in part only shall be surrendered to the Paying Agent and Registrar in exchange for a new Bond evidencing the unredeemed principal thereof. Notice of redemption of any Bond called for redemption shall be given, at the direction of the City in the case of optional redemption and without further direction in the case of mandatory redemption, by the Paying Agent and Registrar by mail not less than 30 days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such Bond at said owner's registered address. Such notice shall designate the Bond or Bonds to be redeemed by maturity or otherwise, the date of original issue, series and the date fixed for redemption and shall state that such Bond or Bonds are to be presented for prepayment at the office of the Paying Agent and Registrar. In case of any Bond partially redeemed, such notice shall specify the portion of the principal amount of such Bond to be redeemed. No defect in the mailing of notice for any Bond shall affect the sufficiency of the proceedings of the City designating the Bonds called for redemption or the effectiveness of such call for Bonds for which notice by mail has been properly given and the City shall have the right to further direct notice of redemption for any such Bond for which defective notice has been given.

**Section 7.** If the date for payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the municipality where the Paying Agent and Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

**Section 8.** The Bonds shall be in substantially the following form:

*[Remainder of Page Intentionally Left Blank]*

UNITED STATES OF AMERICA  
STATE OF NEBRASKA  
COUNTY OF SARPY

CITY OF BELLEVUE, NEBRASKA  
GENERAL OBLIGATION REFUNDING BOND  
SERIES 2022

No. \_\_\_\_\_

\$

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
%	_____, 20__	_____, 2022	

**REGISTERED OWNER: CEDE & CO.**

**PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS**

The CITY OF BELLEVUE, NEBRASKA (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner specified above, or registered assigns, the Principal Amount specified above in lawful money of the United States of America on the Maturity Date specified above with interest thereon to maturity (or earlier redemption) computed on the basis of a 360-day year consisting of twelve 30-day months from the Date of Original Issue or most recent Interest Payment Date, whichever is later, at the Interest Rate per annum specified above, payable semiannually on \_\_\_\_\_ and \_\_\_\_\_ of each year, beginning \_\_\_\_\_, 20\_\_ (each of such dates an "Interest Payment Date"). The Principal Amount hereof, together with unpaid accrued interest due at maturity or upon earlier redemption, is payable upon presentation and surrender of this bond at the office of \_\_\_\_\_, as the Paying Agent and Registrar, in \_\_\_\_\_, Nebraska. Interest on this bond due prior to maturity or earlier redemption will be paid on each Interest Payment Date by a check or draft mailed by the Paying Agent and Registrar to the registered owner of this bond, as shown on the books of record maintained by the Paying Agent and Registrar, at the close of business on the fifteenth day immediately preceding such Interest Payment Date, to such owner's registered address as shown on such books and records. Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the record date such interest was payable, and shall be payable to the person who is the registered owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Paying Agent and Registrar whenever monies for such purposes become available.

This bond is one of an issue of fully registered bonds (the "Bonds") of the total principal amount of \_\_\_\_\_ (\$ \_\_\_\_\_), of even date and like tenor except as to date of maturity, rate of interest and denomination which were issued by the City in strict compliance with Section 10-142, Reissue Revised Statutes of Nebraska, as amended, and other applicable statutes for the purpose of refunding the City's \$ \_\_\_\_\_ outstanding principal amount of General Obligation Various Purpose Bonds, Series 2017, dated April 27, 2017. The issuance of such bonds has been authorized by proceedings duly had and an ordinance legally passed and approved by the Mayor and Council of the City (the "Ordinance").

The Bonds are subject to redemption at the option of the City, in whole or in part, at any time on or after five years after the date of delivery, at par plus interest accrued on the principal amount redeemed to the date fixed for redemption.

[In addition, the Bonds shall be subject to mandatory sinking fund redemption payments (with bonds being redeemed at par plus accrued interest) as follows:

\$ \_\_\_\_\_ Principal Maturing December 15, 20\_\_\_\_  
 \$ \_\_\_\_\_ to be called December 15, 20\_\_\_\_  
 \$ \_\_\_\_\_ to be called December 15, 20\_\_\_\_  
 \$ \_\_\_\_\_ Payable December 15, 20\_\_\_\_]

Notice of redemption shall be given by mail to the registered owner of any Bond to be redeemed at such registered owner's address in the manner specified in the Ordinance authorizing the Bonds. Individual Bonds may be redeemed in part but only in \$5,000 amounts or integral multiples thereof.

This Bond is transferable by the Registered Owner or such owner's attorney duly authorizing in writing at the office of the Paying Agent and Registrar upon surrender and cancellation of this Bond, and thereupon a new Bond or Bonds of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the Ordinance, subject to the limitations therein prescribed. The City, the Paying Agent and Registrar and any other person may treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment due hereunder and for all purposes and shall not be affected by any notice to the contrary, whether this Bond be overdue or not.

If the date for payment of the principal of or interest on this Bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

**IT IS HEREBY CERTIFIED AND WARRANTED** that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this Bond and in the issuance of the Bonds refunded hereby did exist, did happen and were done and performed in regular and due form and time as required by law and that the indebtedness of said City, including this Bond and the Bonds refunded hereby, does not exceed any limitation imposed by law. The City agrees that it will cause to be levied and collected annually a tax by valuation on all the taxable property in the City, in addition to all other taxes, sufficient in rate and amount to fully pay the principal and interest of this Bond and the other Bonds of this issue as the same become due.

AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE ORDINANCE, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE ORDINANCE.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR

VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.

This Bond shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar.

**IN WITNESS WHEREOF**, the Mayor and Council of the City have caused this Bond to be executed on behalf of the City with the manual or facsimile signatures of the Mayor and the Clerk and by causing the official seal of the City to be impressed or imprinted hereon, all as of the date of original issue specified above.

CITY OF BELLEVUE, NEBRASKA

\_\_\_\_\_  
(facsimile signature)  
Mayor

ATTEST:

\_\_\_\_\_  
(facsimile signature)  
Clerk  
(SEAL)

**BOND REGISTRAR AND PAYING AGENT'S  
CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds authorized by Ordinance of the Mayor and Council of the City of Bellevue, Nebraska, described in the foregoing Bond.

\_\_\_\_\_  
\_\_\_\_\_, Iowa, Paying Agent and Registrar  
\_\_\_\_\_

(Form of Assignment)

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

---

Print or Type Name, Address and Social Security Number  
or other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ agent to transfer the within Bond on the Bond Register kept by the Paying Agent for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

**NOTICE:** The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular.

Medallion Signature Guarantee:

**Section 9.** Each of the Bonds shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and Clerk of the City. The Bonds shall be issued initially as “book-entry-only” bonds using the services of The Depository Trust Company (the “Depository”), with one typewritten bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a letter of representations (the “Letter of Representations”) in the form required by the Depository, for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the Bonds. Upon the issuance of the Bonds as “book-entry-only” bonds, the following provisions shall apply:

(a) The City and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds Bonds as securities depository (each, a “Bond Participant”) or to any person who is an actual purchaser of a Bond from a Bond Participant while the Bonds are in book-entry form (each, a “Beneficial Owner”) with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the Bonds,

(ii) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any notice of redemption, or

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Bonds. The Paying Agent and Registrar shall make payments with respect to the Bonds only to or upon the order of the Depository or its nominee and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Bond, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the Bonds or (ii) to make available Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging such Bonds shall designate.

(c) If the City determines that it is desirable that certificates representing the Bonds be delivered to the Bond Participants and/or Beneficial Owners of the Bonds and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates representing the Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of the Depository or any nominee thereof, all payments with

respect to such Bond and all notices with respect to such Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee;

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section.

(f) In the event of any partial redemption of a Bond unless and until such partially redeemed Bond has been replaced in accordance with the provisions of this Ordinance, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such Bond as is then outstanding and all of the Bonds issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository resigns and is not replaced or upon termination by the City of book-entry-only form, the City shall immediately provide a supply of bond certificates for issuance upon subsequent transfers or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement bond certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of bond certificates and to direct their execution by manual or facsimile signature of its then duly qualified and acting officers. In case any officer whose signature or facsimile thereof shall appear on any Bond shall cease to be such officer before the delivery of such Bond (including any bond certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption) such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such Bond. The Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the Bonds, they shall be delivered to the City Treasurer, who is authorized to deliver them to the Underwriter, as initial purchaser thereof, upon receipt of the principal amount of the Bonds plus accrued interest thereon, to date of payment for the Bonds and less the Underwriter's discount, in accordance with Section 3 hereof. Such initial purchaser shall have the right to direct the registration of the Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. The Underwriter and its agents, representatives and counsel and the City's bond counsel are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and sale of the Bonds, including, without limitation, authorizing the release of the Bonds by the Depository at closing. The Authorized Officers of the City (or any one of them) are hereby authorized to execute a bond purchase agreement for the sale of the Bonds to the Underwriter. The officers of the City (including but not limited to the Authorized Officers), or any one or more of them are hereby further authorized to take any and all actions and enter into any and all agreements deemed necessary or appropriate in connection with the issuance and sale of the Bonds and the redemption and payment of the Refunded Bonds, and any such actions previously taken are hereby ratified and confirmed.

**Section 10.** The Clerk is directed to make and certify a transcript or transcripts of the proceedings of the Mayor and Council precedent to the issuance of the Bonds, a copy of which shall be delivered to the Underwriter, as initial purchaser of the Bonds.

**Section 11.** The proceeds of the Bonds shall be applied to the redemption of the Refunded Bonds as described in Sections 1 and 2 hereof, including payment of any issuance expenses for the Bonds.

**Section 12.** The City agrees that it will cause to be levied and collected annually a tax by valuation on all the taxable property in the City, except intangible property, in addition to all other taxes, which with other funds of the City available therefor, shall be sufficient in rate and amount to fully pay the principal of and interest on the Bonds as the same become due.

**Section 13.** The Authorized Officers or any one or more of them is authorized to approve, deem final and deliver a Preliminary Official Statement and a final Official Statement for and on behalf of the City, all in accordance with the requirements of Reg. Sec. 240.15c2-12 of the Securities and Exchange Commission.

**Section 14.** The City hereby covenants and agrees that it will make no use of the proceeds of the Bonds which would cause the Bonds to be arbitrage bonds within the meaning of Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and further covenants to comply with said Sections 103(b)(2) and 148 and all applicable regulations thereunder throughout the term of said issue, including all requirements with respect to payment and reporting of rebates, if applicable. The City hereby covenants to take all action necessary to preserve the tax-exempt status of the interest on the Bonds for federal income tax purposes under the Code with respect to taxpayers generally. The City further agrees that it will not take any actions which would cause the Bonds to constitute "private activity bonds" within the meaning of Section 141 of the Code. The City hereby authorizes the Authorized Officers to designate the bonds as its "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B)(i)(III) of the Code and, in such event, to covenant and warrant, on behalf of the City, that the City does not reasonably expect to issue bonds or other obligations aggregating in principal amount more than \$10,000,000 during the calendar year or years in which the Bonds are issued (taking into consideration the exception for current refunding issues). The Authorized Officers are hereby authorized to make, or cause to be made, any and all certifications deemed necessary in connection with the designation of the Bonds as "qualified tax-exempt obligations", including "deemed designating" the Bonds.

**Section 15.** The City's obligations under this Ordinance with respect to any or all of the Bonds herein authorized shall be fully discharged and satisfied as to any or all of such Bonds and any such Bond shall no longer be deemed to be outstanding hereunder if such Bond has been purchased by the City and canceled or when the payment of principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof, (b) shall have been provided for by depositing with a national or state bank having trust powers, or trust company, in trust, solely for such payment (i) sufficient money to make such payment and/or (ii) direct general obligations (including obligations issued or held in book entry form on the books of the Department of Treasury of the United States of America) of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America (herein referred to as "U.S. Government Obligations") in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal, at such time or times, as will ensure the availability of sufficient money to make such payments; provided, however, that with respect to any Bond to be paid prior to maturity, the City shall have duly called such Bond for redemption and given notice of such redemption as provided by law or made irrevocable provision for the giving of such notice. Any money so deposited with such bank or trust company in excess of the amount required to pay principal of and interest on the Bonds for which such monies or U.S. Government Obligations were deposited shall be paid over to the City as and when collected.

**Section 16.** The City hereby (a) authorizes and directs that an Authorized Officer execute and deliver, on the date of issue of the Bonds, a continuing disclosure undertaking (the "Continuing Disclosure Undertaking") in such form as shall be satisfactory to the City and in compliance with Rule 15c2-12 of the Securities and Exchange Commission, and (b) covenants and agrees that it will comply with and carry out all

of the provisions of the Continuing Disclosure Undertaking. Notwithstanding any other provision of this ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an event of default hereunder; however, any Participating Underwriter (as such term is defined in the Continuing Disclosure Undertaking) or any Beneficial Owner or any Registered Owner of a Bond (as such terms are defined in the Continuing Disclosure Undertaking) may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this section.

**Section 17.** This Ordinance shall be in force and take effect from and after its passage and publication in pamphlet or electronic form as provided by law.

PASSED AND APPROVED this \_\_\_\_ day of February, 2022.

**CITY OF BELLEVUE, NEBRASKA**

ATTEST:

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

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

[ S E A L ]

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Finance Director		Michael Rogers, GilmoreBell; Cody Wickham, D.A. Davidson	
AGENDA ITEM:		CONSENT AGENDA	<input type="checkbox"/>	SPECIAL PRESENTATION	<input type="checkbox"/>
LIQUOR LICENSE	<input type="checkbox"/>	ORDINANCE	<input checked="" type="checkbox"/>	PUBLIC HEARING	<input type="checkbox"/>
RESOLUTION	<input type="checkbox"/>	CURRENT BUSINESS	<input type="checkbox"/>	OTHER	<input type="checkbox"/>

SUBJECT:

Issue debt - Issue Tax-Exempt Certificates of Participation of up to \$2,000,000 and issue Taxable Certificates of Participation of up to \$2,000,000 to provide for the acquisition of a facility to be used as a new location for the city library.

SYNOPSIS/BACKGROUND:

The City of Bellevue will issue Tax-Exempt Certificates of Participation of up to \$2,000,000 and issue Taxable Certificates of Participation of up to \$2,000,000 to provide for the acquisition of a facility to be used as a new location for the city library. Average annual debt service on these two issues will be approximately \$317,000.

FISCAL IMPACT:  BUDGETED FUNDS?:  GRANT/MATCHING FUNDS?:

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?:  COUNTER-PARTY:  INTERLOCAL AGREEMENT:

CONTRACT DESCRIPTION:

CONTRACT EFFECTIVE DATE:  CONTRACT TERM:  CONTRACT END DATE:

PROJECT NAME:

START DATE:  END DATE:  PAYMENT DATE:  INSURANCE REQUIRED:

CIP PROJECT NAME:  CIP PROJECT NUMBER:

STREET DISTRICT NAME (S):  STREET DISTRICT NUMBER (S):

ACCOUNTING DISTRIBUTION CODE:  ACCOUNT NUMBER:

RECOMMENDATION:

Suspend the statutory rule requiring reading on three different days and, after the public hearing is held at this meeting, approve Ordinance #4077, approving issuance of Certificates of Participation of up to \$4,000,000 and authorizing and approving a lease-purchase transaction and related matters.

ATTACHMENTS:

- |  |  |  |
|--|--|--|
| 1. <input type="text" value="Ordinance No. 4077"/>   | 2. <input type="text" value="Lease Purchase Agreement"/> | 3. <input type="text" value="Declaration of Trust"/> |
| 4. <input type="text" value="License and Easement"/> | 5. <input type="text"/>                                  | 6. <input type="text"/>                              |

SIGNATURES:

LEGAL APPROVAL AS TO FORM:

FINANCE APPROVAL AS TO FORM:

ADMINISTRATOR APPROVAL AS TO FORM:



**ORDINANCE NO. 4077**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BELLEVUE, NEBRASKA AUTHORIZING AND APPROVING A LEASE-PURCHASE TRANSACTION WITH UMB BANK, N.A., (OR SUCH OTHER BANK OR TRUST COMPANY AS MAY BE DETERMINED) THE PROCEEDS OF WHICH WILL BE USED TO PAY THE COSTS TO ACQUIRE NEW LIBRARY FACILITIES FOR USE BY THE CITY; APPROVING THE ISSUANCE, SALE AND DELIVERY OF NOT TO EXCEED \$4,000,000 PRINCIPAL AMOUNT OF CERTIFICATES OF PARTICIPATION IN SUCH LEASE; FIXING IN PART AND PROVIDING FOR THE FIXING IN PART OF CERTAIN PROVISIONS OF THE LEASE AND RELATED DOCUMENTS; AND RELATED MATTERS.**

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BELLEVUE, NEBRASKA AS FOLLOWS:**

**Section 1.** The Mayor and City Council ("**Council**") of The City of Bellevue, Nebraska (the "**City**") hereby finds and determines as follows:

(a) It is necessary, desirable, advisable and in the best interests of the City that the City acquire a library facility for use by the City, which is comprised of existing building and additional improvements and equipment located at 2206 Longo Drive in the City (collectively, the "**Project**").

(b) The City has carefully considered the options available to it with respect to financing the acquisition of and additional improvements and equipment for the Project.

(d) In order to facilitate the foregoing and to pay the cost thereof, it is necessary and desirable for the City to take the following actions:

1. Enter into a License and Easement (the "**License and Easement**") between the City, as grantor, and UMB Bank, N.A., West Des Moines, Iowa (or such other bank or trust company as may be determined by an Authorized Officer, the "**Trustee**"), as grantee, pursuant to which the City grants a license and easement with respect to the Real Property (as defined in the Lease) to the Trustee on the terms and conditions set forth therein, the form of which is presented herewith;

2. Enter into a Lease-Purchase Agreement (the "**Lease**") with the Trustee, pursuant to which the City, as lessee, will lease the Project from the Trustee, as lessor, with an option to purchase the Trustee's interest in the Project and pursuant to which the parties shall agree that the Project shall remain the personal property of the Trustee, the form of which is presented herewith;

3. Execute and deliver a Tax Compliance Agreement (the "**Tax Agreement**") pursuant to which the City makes certain representations and covenants related to the exclusion of the interest portions of basic rent under the Lease from gross income for purposes of federal income taxation, in a form as approved by an Authorized Officer (defined herein);

4. Approve a Declaration of Trust (the "**Declaration of Trust**") by the Trustee, pursuant to which to Certificates of Participation, Series 2022 (the "**Certificates of Participation**"), in one or more series or subseries, evidencing proportionate interests of the

owners thereof in basic rent payments to be made by the City under the Lease, will be executed and delivered, the form of which is presented herewith; and

5. Approve an Official Statement respecting the Certificates of Participation, to be in substantially the same form as the Preliminary Official Statement respecting the Certificates of Participation, in a form as approved by an Authorized Officer (the “**Preliminary Official Statement**,” and together, the “**Official Statement**”).

The License and Easement, the Lease and the Tax Agreement are referred to together herein as the “**City Documents**.”

**Section 2.** The City Documents and the Declaration of Trust are hereby approved in substantially the forms presented herewith or in such forms as approved by an Authorized Officer, with such changes therein as are approved by the Mayor, City Administrator or the Finance Director of the City (each, an “**Authorized Officer**”).

The Authorized Officers, or each individually, are hereby authorized and directed to determine (a) the principal amount of the Lease, which shall not exceed \$4,000,000 (b) the principal installments to be due thereunder, (c) the final maturity of the Lease, which shall not be later than September 15, 2037, (d) the rate of interest to be carried by each principal installment such that the true interest cost shall not exceed 4.00% in the aggregate, and whether the interest component shall be exempt from Federal income tax or Federally taxable, and (e) the prepayment provisions. The Authorized Officers, or each individually, are hereby authorized to make such changes, additions or deletions with respect to the Lease as may be in the best interests of the City prior to the signing thereof. An Authorized Officer’s execution of the City Documents will be conclusive evidence of such approval.

Each Authorized Officer is hereby authorized and directed to execute and deliver, or cause to be executed and delivered, the City Documents and to approve changes to the Declaration of Trust on behalf of and as the act and deed of the City. The City Clerk is hereby authorized to affix the City’s seal to the City Documents and attest such seal.

**Section 3.** The Preliminary Official Statement is hereby authorized and approved in substantially the form presented herewith, with such changes therein and additions thereto as may be deemed approved by an Authorized Officer. An Authorized Officer is further authorized to approve and deem final the preliminary Official Statement and final Official Statement and to distribute such documents to investors and the public.

**Section 4.** The Certificates shall be sold with a maximum underwriting discount of 1.35% of the stated principal amount of the Certificates to D.A. Davidson & Co., the underwriter thereof (the “**Underwriter**”) pursuant to a Certificate Purchase Agreement between the City and the Underwriter with respect to the Certificates. The Certificate Purchase Agreement, in the form presented herewith is hereby approved, adopted, ratified and affirmed together with such changes, additions, deletions or modifications as the Authorized Officers shall approve as being in the best interests of the City.

**Section 5.** Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the City Council hereby (a) authorizes and directs the Authorized Officers (or each individually) and all other officers, officials, employees and agents of the City to carry out or cause to be carried out, and to perform such obligations of the City and such other actions as they, or any of them, in consultation with special tax counsel, the Lessor and its counsel and the Underwriter, shall consider necessary, advisable, desirable or appropriate in connection with this Ordinance, including, without limitation, the execution and delivery of all related documents, instruments, certifications and opinions,

and (b) delegates, authorizes and directs to the Authorized Officers, or each individually, the right, power and authority to exercise his or her independent judgment and absolute discretion in (1) determining and finalizing the terms and provisions of the Lease and the Certificates not specifically set forth in this Ordinance and (2) the taking of all actions and the making of all arrangements necessary, proper, appropriate, advisable or desirable in order to effectuate the execution and delivery of the City Documents and the issuance, sale and delivery of the Certificates. The execution and delivery by the Authorized Officers, or each individually, or by any such other officers, officials, employees or agents of the City of any such documents, instruments, certifications and opinions, or the doing by them of any act in connection with any of the matters that are the subject of this Ordinance, shall constitute conclusive evidence of both the City's and their approval of the terms, provisions and contents thereof and of all changes, modifications, amendments, revisions and alterations made therein and shall conclusively establish their absolute, unconditional and irrevocable authority with respect thereto from the City and the authorization, approval and ratification by the City of the documents, instruments, certifications and opinions so executed and the actions so taken.

All actions heretofore taken by the Authorized Officers and all other officers, officials, employees and agents of the City including, without limitation, the expenditure of funds and the selection, appointment and employment of special tax counsel, financial advisors, and other agents in connection with the execution and delivery of the City Documents and the issuance, sale and delivery of the Certificates, together with all other actions taken in connection with any of the matters that are the subject hereof, are in all respects hereby authorized, adopted, specified, accepted, ratified, approved and confirmed.

**Section 6.** The provisions of this Ordinance, of any supplemental ordinance, and of any resolutions or other proceedings providing for the execution and delivery of the City Documents and the sale of the Certificates and the terms and provisions thereof shall constitute a contract between the City, the Lessor and the registered owners of the Certificates, and the provisions thereof shall be enforceable by any owner of a Certificate for the equal benefit and protection of all such owners similarly situated, by mandamus, accounting, mandatory injunction or any other suit, action or proceeding at law or in equity that is presently or may hereafter be authorized under the laws of the State of Nebraska (the "State") in any court of competent jurisdiction. Such contract is made under and is to be construed in accordance with the laws of the State.

After the execution and delivery of the City Documents, and the issuance, sale and delivery of the Certificates, this Ordinance and any supplemental ordinance shall not be subject to repeal, but shall be subject to modification or amendment only to the extent and in the manner provided for in this Ordinance.

**Section 7.** With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance, the City Documents or the Certificates is intended or should be construed to confer upon or give to any person other than the City, the Trustee and the registered owners of the Certificates, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, lease or provision herein contained. The Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City, the Lessor and the registered owners from time to time of the Certificates as herein and therein provided.

**Section 8.** No officer or employee of the City shall be individually or personally liable for the performance of any duties or obligations under the City Documents or the payment of the principal or interest on any Certificate. Nothing herein contained shall, however, relieve any such officer or employee from the performance of any duty provided or required by law.

**Section 9.** Whenever this Ordinance or the City Documents requires any action to be taken on a Saturday, Sunday or legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in this Ordinance or the City Documents the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday, such time shall continue to run until midnight on the next succeeding business day.

**Section 10.** If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the City to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such lease or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the City Documents, but the Lessor and the registered owners of the Certificates shall retain all the rights and benefits afforded to them hereunder and under the City Documents or any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatsoever.

**Section 11.** The City Documents and all other documents, agreements, certificates, and instruments related to the City Documents shall be valid, binding, and enforceable against the City when executed and delivered by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by electronic signatures laws, including any relevant provisions of the Uniform Commercial Code, in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each of the City Documents and each other document, agreement, certificate, and instrument related to the City Documents may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same document, agreement, certificate, or instrument, as applicable.

**Section 12.** This Ordinance shall be construed and interpreted in accordance with the laws of the State. All suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in the State except to the extent necessary for enforcement, by any trustee or receiver appointed by or pursuant to the provisions of this Ordinance, or remedies under this Ordinance.

**Section 13.** Any ordinance of the City, and any part of any ordinance or resolution, inconsistent with this Ordinance is hereby repealed to the extent of such inconsistency.

**Section 14.** This ordinance shall take effect and be in force from and after its passage and publication in pamphlet form as provided by law.

**PASSED AND APPROVED:** February \_\_\_, 2022.

**CITY OF BELLEVUE, NEBRASKA**

ATTEST:

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

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

[ SEAL ]

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**LEASE-PURCHASE AGREEMENT**

**between**

**UMB BANK, N.A.,  
Trustee**

**and**

**THE CITY OF BELLEVUE, NEBRASKA**

**Dated as of \_\_\_\_\_, 2022**

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## LEASE-PURCHASE AGREEMENT

This **LEASE-PURCHASE AGREEMENT** (the “**Lease**”), dated as of \_\_\_\_\_, 2022, is entered into between **UMB BANK, N.A.**, a national banking corporation, as Trustee (the “**Trustee**”), and **THE CITY OF BELLEVUE, NEBRASKA**, a city of the first class and political subdivision organized and existing under the laws of the State of Nebraska (the “**City**”).

(a) It is necessary, desirable, advisable and in the best interests of the City that the City acquire library facilities and equipment for use by the City (collectively, the “**Project**”).

### WITNESSETH:

**WHEREAS**, the City and the Trustee have entered into a License and Easement, dated as of \_\_\_\_\_, 2022 (the “**License and Easement**”), pursuant to which the City has leased to the Trustee the real property described on **Exhibit A-2**, including any existing improvements thereon (the “**Real Property**”); and

**WHEREAS**, concurrently herewith the Trustee is entering into a Declaration of Trust (hereinafter defined) pursuant to which the Trustee will execute and deliver one or more series of Certificates (defined in the Declaration of Trust), the proceeds of which will be used to provide a portion of the funds to (a) pay the costs of (1) purchasing those items of personal property listed on **Exhibit A-1** attached hereto, together with all replacements, repairs and additions incorporated therein or affixed thereto (the “**Personal Property**”) pursuant to certain contracts, purchase orders or other written instruments and (2) acquiring library facilities and equipment for use by the City (the “**Improvements**”; the Personal Property, the Improvements and the Real Property are referred to collectively as the “**Project**”); and

**WHEREAS**, the Trustee desires to lease the Project to the City, all subject to the terms and conditions and for the purposes set forth in this Lease; and

**WHEREAS**, the City is authorized under the constitution and laws of the State of Nebraska to enter into this Lease 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

### DEFINITIONS

**Section 1.01. Definitions.** Unless the context otherwise specifically requires or indicates to the contrary, the following terms as used in this Lease will have the following meanings:

“**Additional Certificates**” means the Additional Certificates as defined in the Declaration of Trust.

**“Basic Rent”** means the Basic Rent Payments comprised of a Principal Portion and an Interest Portion as set forth on **Exhibit B**, as **Exhibit B** may be revised as provided in **Section 3.09** of the Declaration of Trust and in **Section 4.08**.

**“Basic Rent Payment”** means a payment of Basic Rent.

**“Basic Rent Payment Date”** means each June 15 and December 15 during the Lease Term, commencing on \_\_\_\_\_, 20\_\_.

**“Business Day”** means a day other than (a) a Saturday, Sunday or legal holiday, (b) a day on which banks located in any city in which the principal corporate trust office or designated payment office of the Trustee is located are required or authorized by law to remain closed, or (c) a day on which the Securities Depository or the New York Stock Exchange is closed.

**“Certificates”** means the Series 2022 Certificates and any Additional Certificates.

**“City”** means The City of Bellevue, Nebraska, a city of the first class duly created, organized and existing under and by virtue of the laws of the State of Nebraska, and its successors.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

**“Completion Certificate”** means the certificate of the City given in accordance with **Section 5.03**.

**“Completion Date”** means the date of completion of the Project as that date will be certified as provided in **Section 5.03**.

**“Construction Agreement”** means one of any agreements between the City and various parties, if any, providing for the acquisition, construction and installation of various portions of the Improvements.

**“Contract”** means one of any agreements between the City and various parties, if any, providing for the acquisition and installation of various portions of the Personal Property.

**“Costs of Issuance”** means all items of expense directly or indirectly payable by or reimbursable to the City and related to the authorization, execution, sale and delivery of the Certificates, including advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of the Trustee, legal fees of parties to the transaction and all other initial fees and disbursements contemplated by this Lease and the Declaration of Trust.

**“Costs of the Project”** means all reasonable or necessary expenses related or incidental to the acquisition, construction and installation of the Improvements and the Personal Property, including the expenses of studies, surveys, title policies, architectural and engineering services, legal and other special services and all other necessary and incidental expenses, including interest on the Certificates to the Completion Date. Costs of the Project include Costs of Issuance.

**“Dated Date”** means the date the Series 2022 Certificates are delivered to the Original Purchaser.

**“Declaration of Trust”** means the Declaration of Trust, dated as of \_\_\_\_\_, 2022, made by the Trustee, as the same may from time to time be amended or supplemented in accordance with its terms.

**“Disclosure Undertaking”** means the Continuing Disclosure Undertaking executed and delivered by the City in connection with the execution and delivery of a series of Certificates, as from time to time amended.

**“Engineer”** means the Director of Public Works of Bellevue, Nebraska, or any other engineer or architect hired by the City with respect to the Improvements.

**“Event of Default”** means an Event of Default as described in **Section 12.01**.

**“Fiscal Year”** means the fiscal year of the City, currently the twelve-month period beginning October 1 and ending on September 30.

**“Funds”** means the Funds as defined in the Declaration of Trust.

**“Improvements”** means the acquisition of library facilities and equipment for use by the City.

**“Government Obligations”** means (a) direct noncallable obligations of the United States of America and obligations the timely payment of principal and interest on which is fully and unconditionally guaranteed by the United States of America, and (b) trust receipts or certificates evidencing participation or other direct ownership interests in principal or interest payments to be made upon obligations described in clause (a) above that are held in a custody or trust account free and clear of all claims of persons other than the holders of such trust receipts or certificates, and (c) obligations that are noncallable or for which the call date has been irrevocably determined having an investment rating in the highest rating category of either Moody’s or S&P as a result of the advance refunding of such obligations by the deposit of direct noncallable obligations of the United States of America in a trust or escrow account segregated and exclusively set aside for the payment of such obligations and that mature as to principal and interest in such amounts and at such times as will insure the availability of sufficient moneys to timely pay such principal and interest.

**“Interest Portion”** means the portion of each Basic Rent Payment that represents the payment of interest as set forth on **Exhibit B**.

**“Lease”** means this Lease-Purchase Agreement, dated as of \_\_\_\_\_, 2022, between the Trustee, as lessor, and the City, as lessee, as amended and supplemented from time to time in accordance with its terms.

**“Lease Revenue Fund”** means the Lease Revenue Fund as defined in the Declaration of Trust.

**“Lease Term”** means the term of this Lease beginning date of the Dated Date and ending on \_\_\_\_\_, 20\_\_\_, unless earlier terminated in accordance with the provisions hereof.

**“License and Easement”** means the License and Easement, dated as of \_\_\_\_\_, 2022, between the City, as grantor, and the Trustee, as grantee.

**“Moody’s”** means Moody’s Investors Service, Inc., and its successors and assigns, and, if that firm will be dissolved or liquidated or no longer performs the functions of a securities rating service,

“Moody’s” will be deemed to refer to any other nationally recognized securities rating service designated by the City, with notice to the Trustee.

“**Net Proceeds**” means the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all reasonable expenses, including attorneys’ fees, incurred in the collection thereof.

“**Opinion of Counsel**” means a written opinion of counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the City.

“**Original Purchaser**” means D.A. Davidson & Co.

“**Outstanding**” means Outstanding as defined in the Declaration of Trust.

“**Personal Property**” means those items of personal property listed on **Exhibit A-1** attached hereto, together with all replacements, repairs and additions incorporated therein or affixed thereto pursuant to certain contracts, purchase orders or other written instruments.

“**Principal Portion**” means the principal portion of the Basic Rent Payments as set forth in **Exhibit B**.

“**Project**” means the Real Property, the Improvements and the Personal Property.

“**Project Fund**” means the Project Fund as defined in the Declaration of Trust.

“**Purchase Price**” means the amount designated as such in **Article X** that the City may pay to the Trustee to purchase the Trustee’s interest in the Project.

“**Real Property**” means the real property described on **Exhibit A-2**.

“**Rent**” means, collectively, Basic Rent and Supplemental Rent.

“**Rent Payment**” means a payment of Rent.

“**Series 2022 Certificates**” means the Series 2022 Certificates as defined in the Declaration of Trust.

“**Series 2022A Certificates**” means the Series 2022A Certificates as defined in the Declaration of Trust.

“**Series 2022B Certificates**” means the Series 2022B Certificates as defined in the Declaration of Trust.

“**Special Tax Counsel**” means Gilmore & Bell, P.C., or any other attorney or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds or other obligations issued by states and political subdivisions duly admitted to the practice of law before the highest court of any state of the United States of America.

“**State**” means the State of Nebraska.

**“Supplemental Declaration of Trust”** means any amendment or supplement to the Declaration of Trust entered pursuant to **Article VIII** of the Declaration of Trust.

**“Supplemental Lease”** means any amendment or supplement to this Lease entered pursuant to **Section 13.06**.

**“Supplemental Rent”** means all amounts due hereunder other than Basic Rent.

**“Supplemental Rent Payment”** means a payment of Supplemental Rent.

**“Tax Agreement”** means the Tax Compliance Agreement between the City and the Trustee in connection with the execution and delivery with each series of Certificates.

**“Trustee”** means the party acting as Trustee under the Declaration of Trust.

**Section 1.02. Rules of Construction.** Words of the masculine gender will be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context will otherwise indicate, the words importing the singular number will include the plural and vice versa, and words importing person will include firms, associations and corporations, including public bodies, as well as natural persons.

The words “herein,” “hereby,” “hereunder,” “hereof,” “hereto,” “hereinbefore,” “hereinafter” and other equivalent words refer to this Lease and not solely to the particular article, section, paragraph or subparagraph hereof in which such word is used.

Reference herein to a particular article, section, exhibit, schedule or appendix will be construed to be a reference to the specified article or section hereof or exhibit, schedule or appendix hereto unless the context or use clearly indicates another or different meaning or intent.

Whenever an item or items are listed after the words “including,” such listing is not intended to be a listing that excludes items not listed.

The section and article headings herein are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions hereof.

**Section 1.03. Execution of Counterparts.** This Lease may be executed simultaneously in two or more counterparts, each of which will be deemed to be an original, and all of which together will constitute but one and the same instrument.

**Section 1.04. Severability.** If any provision of this Lease is held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Lease contained will not affect the remaining portions of this Lease, or any part thereof.

**Section 1.05. Governing Law.** This Lease will be governed by and construed in accordance with the laws of the State.

**ARTICLE II**  
**REPRESENTATIONS**

**Section 2.01. Representations of the City.** The City represents and warrants, as of the date of delivery hereof, as follows:

(a) The City is a city of the first class duly created, organized and existing under and by virtue of the constitution and laws of the State with full power and authority to enter into the License and Easement and this Lease and the transaction contemplated thereby and hereby and to perform all of its obligations thereunder and hereunder.

(b) The City has full power and authority to enter into the transactions contemplated by the License and Easement and this Lease and has been duly authorized to execute and deliver the License and Easement and this Lease by proper action by its governing body. The License and Easement and this Lease are valid, legal and binding obligations of the City enforceable in accordance with their terms except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws and equitable principles affecting creditor's rights generally. The City is authorized by Section 19-2421, Reissue Revised Statutes of Nebraska, as amended, to enter into contracts for the purchase of real or personal property, which contracts need not be restricted to a single year and may provide for the purchase of such property in installment payments to be made over more than one fiscal year.

(c) The lease of the Project by the Trustee to the City, as provided in this Lease, is necessary, desirable, advisable, in the public interest and consistent with the permissible scope of the City's authority. The City hereby declares its current need for the Project and its current expectation that it will continue to need and use the Project throughout the Lease Term. The components of the Project are of such a nature that they may be treated as separate personal property as provided in Section 13.02 hereof, and to the extent any portion thereof is determined to not be of such nature the City represents, agrees and covenants that it shall substitute property of equal value to be part of the Project.

(d) The City's financial statements that have been used in connection with any offering of the Certificates present fairly, in accordance with generally accepted accounting principles and applicable regulations consistently applied throughout the periods involved, the financial position of the City as at their respective dates and the revenues and expenses and changes in fund balances for the periods covered thereby.

(e) Neither the execution and delivery of the License and Easement or this Lease, nor the fulfillment of or compliance with the terms and conditions thereof or hereof, nor the consummation of the transactions contemplated thereby or hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is a party or by which the City is bound.

(f) There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal challenging the validity of the proceedings of the governing body of the City authorizing the License and Easement and this Lease or the power or authority of the City to enter into this Lease or the License and Easement or the validity or enforceability of this Lease or the License and Easement or that, if adversely determined, would adversely affect the transactions

contemplated by this Lease or the License and Easement or the interest of the Trustee under this Lease or the License and Easement.

(g) The City has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby the City's interests in any property now or hereafter included in the Project will be or may be impaired, changed or encumbered in any manner whatsoever, except as contemplated by the License and Easement and this Lease.

(h) 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.

(i) Upon completion, the Project will be structurally sound and in compliance with all applicable building and design codes and the City's requirements.

(j) The City has complied or will comply with any public bidding requirements that may be applicable to this Lease and the acquisition, construction and installation of the Project.

(k) The Basic Rent Payments, together with any additional rent payable hereunder, do not exceed any limitation imposed by law, and the rental payments are not such as may reasonably be expected to require to City to levy taxes in excess of any levy or budget limitation. The City further covenants and agrees that throughout the term of the Lease that it will observe all budget and spending limitations now or hereafter imposed by law in such a manner that a sufficient portion of the City's tax levy or other money shall be lawfully available to make such Basic Rent Payments and any additional rent due hereunder.

### ARTICLE III

#### DEMISING OF THE PROPERTY; LEASE TERM

**Section 3.01. Lease of Project.** The Trustee hereby demises, leases, subleases and lets to the City, and the City rents, leases, subleases and hires from the Trustee, the Project in accordance with this Lease for the Lease Term.

**Section 3.02. Lease Term.** The term of this Lease begins on the Dated Date and ends on December 15, 2032, unless earlier terminated in accordance with the provisions hereof.

**Section 3.03. Enjoyment of Project.** The Trustee will provide the City during the Lease Term with quiet use and enjoyment of the Project, and the City will, during the Lease Term, peaceably and quietly have, hold and enjoy the Project, without suit, trouble or hindrance from the Trustee, except as expressly set forth in this Lease. The City will have the right to use the Project for any essential governmental or proprietary purpose of the City, subject to the limitations contained in this Lease.

Notwithstanding any other provision in this Lease, the Trustee will have no responsibility to cause the Project to be acquired, constructed or installed or to maintain, repair or insure the Project. The City will comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project, as to the manner and use or the condition of the Project. The City will also comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried by the provisions of **Article VII**. The City will pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure

of the City to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the City will have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer and during such contest or review, the City may refrain from complying therewith, if the City furnishes, on request, to the Trustee, at the City's expense, indemnity satisfactory to the Trustee.

**Section 3.04. Inspection.** The Trustee will have the right at all reasonable times and with reasonable notice during business hours to enter into and upon the Project for the purpose of inspecting the Project.

## ARTICLE IV

### RENT

**Section 4.01. Basic Rent.** The City will promptly pay all Basic Rent, subject to **Sections 3.04** and **4.03**, in lawful money of the United States of America on each Basic Rent Payment Date in such amounts as are described on **Exhibit B**. A portion of each Basic Rent Payment is paid as, and represents payment of, interest as set forth on **Exhibit B** (such interest to be attributable to the various principal components in accordance with the per annum rates set forth on **Exhibit B**).

To provide for the timely payment of Basic Rent, the City will pay to the Trustee for deposit in the Lease Revenue Fund not less than five Business Days before each Basic Rent Payment Date, the amount due on such Basic Rent Payment Date.

The City will, in accordance with the requirements of law and its normal budgeting procedures, fully budget and appropriate sufficient funds for the current Fiscal Year to make the Rent Payments scheduled to come due during the Lease Term, and to meet its other obligations for the Lease Term, and such funds will not be expended for other purposes.

**Section 4.02. Supplemental Rent.** The City will pay, subject to **Sections 3.04** and **4.03**, as Supplemental Rent (a) all Impositions (defined in **Article VI**); (b) all amounts required under **Sections 4.04** or **4.05** and all other payments of whatever nature that the City has agreed to pay or assume under this Lease; (c) all expenses, including attorneys' fees and expenses to the extent permitted by law, incurred in connection with the enforcement of any rights under this Lease or the License and Easement by the Trustee; (d) all fees, charges and expenses of the Trustee as further provided in **Section 4.06**; and (e) any payments required to be made pursuant to the Tax Agreement. Amounts required to be paid under this Section will be paid directly to the person or entity owed.

**Section 4.03. Advances.** In the event the City will fail to either maintain the insurance required by this Lease or keep the Project in good repair, the Trustee may, but will be under no obligation to, purchase the required insurance and pay the cost of the premiums therefor and maintain and repair the Project and pay the cost thereof. All amounts so advanced by the Trustee will constitute Supplemental Rent, and the City covenants and agrees to pay such amounts so advanced by the Trustee with interest thereon from the due date until paid at a rate per annum equal to the prime rate of the Trustee plus 2% or the maximum amount permitted by law, whichever is less.

**Section 4.04. Credit Against Basic Rent Payment Obligation.** The City will receive credit against its obligation to pay the Interest Portion or Principal Portion of Basic Rent to the extent moneys

are on deposit in the Lease Revenue Fund and are available to pay the Interest Portion or the Principal Portion of Basic Rent represented by the Certificates.

**Section 4.05. Net Lease.** This Lease is intended to be triple net to the Trustee, subject to Section 4.04, and the obligations of the City to make payment of the Rent Payments and to perform and observe the other covenants and agreements contained herein will be absolute and unconditional in all events without abatement, diminution, deduction, setoff or defense, for any reason, including any failure of the Project to be acquired, constructed or installed, any defects, malfunctions, breakdowns or infirmities in the Project or any accident, condemnation or unforeseen circumstances.

**Section 4.06. Obligations Unconditional.** The obligations of the City under this Lease to pay Rent during the Lease Term on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project shall have been started or completed, or whether the Trustee's title to the Project or to any part thereof is defective or non-existent, and notwithstanding any damage to, loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the City's use thereof, the eviction or constructive eviction of the City, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Trustee's legal organization or status, or any default of the Trustee hereunder, and regardless of the invalidity of any action of the Trustee, and regardless of the invalidity of any portion of this Lease, and the City hereby waives the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Lease or which releases or purports to release the City therefrom.

**Section 4.07. Compensation of the Trustee.** The City will, from time to time, upon the written request of the Trustee, (a) pay to the Trustee reasonable compensation for its services as agreed to by the City and the Trustee from time to time (which compensation will not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and (b) reimburse the Trustee for all reasonable advances and expenditures, including but not limited to, advances to and reasonable fees and expenses of independent appraisers, accountants, consultants, counsel, agents and attorneys or other experts employed by it in the exercise and performance of its powers and duties hereunder. Compensation under this Section (except the initial fee which is included in Costs of Issuance) is to be paid as Supplemental Rent as set forth in Section 4.02. The Trustee will have a first lien against the Trust Estate for its reasonable costs, fees, expenses and advancements hereunder.

**Section 4.08. Increased Basic Rent.** Notwithstanding any other provision of this Lease, the Trustee and the City may enter into a Supplemental Lease or Supplemental Leases that increase the amount of Basic Rent payable by the City on any Basic Rent Payment Date to provide funds to pay the costs of (a) repairing, replacing or restoring the Project, (b) improving, upgrading or modifying the Project, (c) additional improvements to the Project or the acquisition of additional real property to be included in the Project or the acquisition, purchase construction or installation of additions to or expansions or remodeling or modification of the Project, and (d) refunding any or all of the Certificates. Each such Supplemental Lease will include an amended Exhibit B reflecting separately the Principal Portion and the Interest Portion of Basic Rent allocable to the original Lease and to each Supplemental Lease due on each Basic Rent Payment Date as well as the total Basic Rent on each Basic Rent Payment Date.

**Section 4.09. Obligations Under the Declaration of Trust.** The City agrees that, whenever the Declaration of Trust by its terms imposes a duty or obligation upon the City, such duty or obligation shall be binding upon the City to the same extent as if the City were an express party to the Declaration of Trust, and the City shall perform or cause to be performed all covenants and agreements required on the part of the City under the Declaration of Trust, and shall deliver to the Trustee all reports, opinions and other documents required by the Declaration of Trust to be submitted to the Trustee at the times required by the Declaration of Trust.

## ARTICLE V

### ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE PROJECT

**Section 5.01. Acquisition, Construction and Installation.** The City represents, warrants, covenants and agrees as follows:

(a) It has entered into or will enter into (1) Construction Agreements providing for the acquisition, construction and installation of the Improvements and (2) Contracts providing for the acquisition and installation of the Personal Property in accordance with the plans and specifications or will construct and install the Improvements and the Personal Property with City employees in accordance with the plans and specifications;

(b) It will cause the acquisition, construction and installation of the Improvements and the Personal Property to be completed with all reasonable dispatch in accordance with the applicable provisions of this Lease;

(c) All contracts entered into or to be entered into by the City relating to such work will be in accordance with all applicable requirements of the laws of the State and will have the performance bonds required by **Section 7.01(e)**;

(d) It has obtained or will obtain all necessary or required permits, licenses, consents and approvals that are material for the purchase, construction, installation, operation and maintenance of the Project and will comply with all lawful requirements of any governmental body regarding the use or condition of the Project, whether existing or later enacted or foreseen or unforeseen or whether involving any change in governmental policy or requiring structural or other change to the Project and irrespective of the cost of so complying;

(e) It will pay all fees, costs and expenses incurred in completing the Improvements and the Personal Property or, to the extent there is money in the Project Fund available therefor, will request the Trustee to make such payments from the Project Fund in the manner hereinafter and in the Declaration of Trust provided, and hereby agrees to provide any and all additional amounts required to be paid into the Project Fund in order to effect the payment in full for all costs of construction and acquisition of the Project; and

(f) It will ask, demand, sue for and use its best efforts to recover and receive such sums of money, debts or other demand to which it may be entitled under any contract, order, receipt, guaranty, warranty, writing or instruction in connection with the purchase, construction and installation of the Improvements and the Personal Property, and it will use its best efforts, to the extent economically reasonable, to enforce the provisions of any contract, agreement, obligation, bond or other security in connection therewith, and any such amounts received in connection with the foregoing, after deduction of

expenses incurred in recovering such amounts, will be paid to the Trustee for deposit in the Project Fund if the Completion Date has not occurred or for deposit in the Lease Revenue Fund Account if the Completion Date has occurred.

If the purchase, construction and installation of the Improvements and the Personal Property or any portion thereof is delayed or fails to occur for any reason, there will be no diminution in or postponement of the payments to be made by the City hereunder.

The Trustee is not the agent or representative of the City, and the City is not the agent of the Trustee, and this Lease will not be construed to make the Trustee liable to materialmen, contractors, subcontractors, craftsmen, laborers or others for goods or services delivered by them in connection with the Project, or for debts or claims accruing to the specified parties against the City. This Lease will not create any contractual relation either expressed or implied between the Trustee and any materialmen, contractors, subcontractors, craftsmen, laborers or any other person supplying any work, labor or materials in connection with the Project. Notwithstanding anything herein or in the Declaration of Trust to the contrary, during the Lease Term, the Trustee will not be deemed to exercise control over or be an operator or owner of the Project and will not be responsible or liable for the operation, use and maintenance of the Project.

**Section 5.02. Payment for Construction of the Improvements and the Personal Property.** In compliance with **Section 6.04** of the Declaration of Trust, costs and expenses of every nature incurred in the acquisition, construction or installation of the Improvements and the Personal Property that qualify as Costs of Project will be paid by the Trustee from the Project Fund upon receipt by the Trustee of a completed request of the City signed by the Authorized Representative of the City and, except for requisitions for Costs of Issuance, the Architect and containing the statements, representations and certifications set forth in the form of such request attached to the Declaration of Trust as **Exhibit B**.

In making disbursements for Costs of Project, the Trustee will be entitled to conclusively rely upon each written requisition certificate executed by the Authorized Representative of the City without inquiry or investigation. It is understood that the Trustee will *not* make any inspections of the Project nor any improvements thereon, make any provision to obtain completion bonds, mechanic's or materialmen's lien releases or otherwise supervise any phase of the construction or installation of the Project. The approval of each requisition certificate by the Authorized Representative of the City will constitute unto the Trustee an irrevocable determination that all conditions precedent to the payment of the specified amounts from the Project Fund have been completed.

**Section 5.03. Completion Date; Excess Funds.** The Completion Date will be evidenced to Trustee upon receipt by the Trustee of a certificate signed by the Authorized Representative of the City (the "**Completion Certificate**") stating (a) the date on which the Improvements were substantially completed and the Personal Property acquired and installed, (b) that all other facilities necessary in connection with the Project have been purchased, constructed and installed, (c) that the Improvements, the Personal Property and such other facilities have been purchased, constructed, made and installed in accordance with the plans and specifications therefor and in conformance with all applicable zoning, planning, building, environmental and other similar governmental regulations, (d) that, except for Costs of the Project described in clause (e), all Costs of the Project have been paid, and (e) the amounts, if any, to be retained in the Project Fund for the payment of Costs of the Project, if any, not yet due or Costs of Improvements whose liability the City is contesting, and amounts that otherwise should be retained and the reasons they should be retained. The Completion Certificate may state that it is given without prejudice to any rights of the City that then exist or may subsequently come into being against third parties. Any amounts remaining in the Project Fund that are not needed to pay any remaining Costs of the Project will be transferred by the Trustee without further authorization to the Lease Revenue Fund.

**Section 5.04. Warranties.** The Trustee hereby assigns to the City for and during the Lease Term, all of its interest in all warranties, guarantees or other contract rights against any architect, contractor, subcontractor or supplier, expressed or implied, issued on or applicable to the Project, and the Trustee hereby authorizes the City to obtain the customary services furnished in connection with such warranties, guarantees or other contract rights at the City's expense. The City's sole remedy for the breach of such warranties, guarantees or other contract rights will be against any architect, contractor, subcontractor or supplier, and not against the Trustee, nor will such matter have any effect whatsoever on the rights of the Trustee with respect to this Lease, including the right to receive full and timely Basic Rent Payments and Supplemental Rent Payments. The City expressly acknowledges that the Trustee does not make nor has it made any representation or warranty whatsoever as to the existence or availability of such warranties, guarantees or other contract rights of the manufacturer or supplier of any portion of the Project.

**Section 5.05. DISCLAIMER OF WARRANTIES.** THE TRUSTEE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROJECT OR ANY PART THEREOF, OR WARRANTY WITH RESPECT THERETO. IN NO EVENT WILL THE TRUSTEE BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS LEASE OR THE EXISTENCE, FURNISHING, FUNCTIONING OR THE CITY'S USE OF THE PROJECT OR ANY PART THEREOF.

**Section 5.06. Deficiency of Project Fund.** If the Project Fund is insufficient to pay fully all Costs of the Project and to complete fully the Project lien free, the City will pay, in cash, the full amount of any such deficiency by making payments directly to the contractors and to the suppliers of materials and services as the same becomes due. The Trustee is not obligated to pay and will not be responsible for any such deficiency and the City will save the Trustee whole and harmless from any obligation to pay such deficiency. The City's obligation to pay any such deficiency will be limited to its current budgeted appropriations for the Project, and the City will have no obligation to appropriate additional funds therefor and may amend the Project to reduce or eliminate such deficiency.

## ARTICLE VI

### IMPOSITIONS

**Section 6.01. Impositions.** The City will bear, pay and discharge, before the delinquency thereof, as Supplemental Rent, all taxes and assessments, general and special, if any, that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, including any taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all water and sewer charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, that if not paid when due would impair the security of the Trustee or encumber the Project (all of the foregoing being herein referred to as "**Impositions**").

**Section 6.02. Contest of Impositions.** The City will have the right, in its own name or in the Trustee's name, to contest the validity or amount of any Imposition that the City is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least ten days before the contested Imposition becomes delinquent and may permit the Imposition so contested to

remain unpaid during the period of such contest and any appeal therefrom unless the Trustee notifies the City that, in the Opinion of Counsel, by nonpayment of any such items the interest of the Trustee in the Project will be endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event the City will promptly pay such taxes, assessments or charges or provide the Trustee with full security against any loss that may result from nonpayment in form satisfactory to the Trustee. The Trustee agrees to cooperate with the City in connection with any and all administrative or judicial proceedings related to Impositions. The City will hold the Trustee whole and harmless from any costs and expenses the Trustee may incur with respect to any Imposition.

## ARTICLE VII

### INSURANCE; INDEMNITY

**Section 7.01. Insurance Required.** The City will, during the Lease Term, cause the Project to be kept continuously insured against such risks customarily insured against for facilities such as the Project and will pay (except as otherwise provided herein), as the same become due, all premiums in respect thereof, such insurance to include the following policies of insurance:

(a) Insurance insuring the Improvements and the Personal Property against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State in an amount not less than the Principal Portion of the Certificates then Outstanding and issued by such insurance company or companies authorized to do business in the State as may be selected by the City. The policy or policies of such insurance will name the City and the Trustee as insureds, as their respective interests may appear. All proceeds from such policies of insurance will be applied as provided in **Article IX**. During acquisition, construction and installation of the Improvements and the Personal Property, the City will cause to be provided, insofar as the Improvements and Personal Property are concerned, the insurance required by subparagraph (b) below in lieu of the insurance required by this **Section 7.01(a)** to the extent appropriate.

(b) To the extent appropriate, during the acquisition, construction and installation of the Improvements and Personal Property and in lieu of the insurance required in **Section 7.01(a)**, builder's risk-completed value insurance insuring the Improvements and Personal Property against fire, lightning and all other risks covered by the extended coverage endorsement then in use in the State to the full insurable value of the Improvements and Personal Property (subject to reasonable loss deductible clauses) issued by such insurance company or companies authorized to do business in the State as may be selected by the City. Such policy or policies of insurance will name the City and the Trustee as insureds, as their respective interests may appear, and all payments received under such policy or policies by the City will be paid over to the Trustee.

(c) Comprehensive general accident and public liability insurance (including coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), under which the City and the Trustee are named as insureds, in an amount not less than \$500,000 combined single limit for bodily injuries and property damage.

(d) Workers' compensation and unemployment coverages to the extent, if any, required by the laws of the State.

(e) Performance and labor and material payment bonds with respect to the Construction Agreements and the Contracts in the full amount of the Construction Agreements and the Contracts from surety companies qualified to do business in the State.

Not less than 15 days prior to the expiration dates of the expiring policies, originals or copies of the policies required by this **Section 7.01** or certificates evidencing such insurance will be delivered by the City to the Trustee. All policies of such insurance, and all renewals thereof, will contain a provision that such insurance may not be cancelled by the issuer thereof without at least 60 days' written notice to the City and the Trustee. Not less than annually, the City will provide a current certificate evidencing that the City is in compliance with the requirements of this Section to the Trustee.

Nothing in this Lease will be construed as preventing the City from satisfying the insurance requirements herein set forth by using blanket policies of insurance or self-insurance provided each and all of the requirements and specifications of this Lease respecting insurance are complied with.

The City may elect to be self-insured for all or any part of the foregoing requirements of this **Section 7.01** if (1) the City annually obtains a written evaluation with respect to such self-insurance program from an individual or firm selected by the City and acceptable to the Trustee qualified to survey risks and to recommend insurance coverage for entities engaged in operations similar to those of the City and having a favorable reputation for skill and experience in making such surveys and recommendations (an "**Insurance Consultant**"), (2) the evaluation is to the effect that the self-insurance program is sound, (3) unless the evaluation states that such reserves are not necessary, the City maintains adequate reserves for the self-insurance program, and (4) in the case of workers' compensation, adequate reserves created by the City for such self-insurance program are maintained in such amount and manner as are acceptable to the State. The City will pay any fees and expenses of such Insurance Consultant in connection therewith.

**Section 7.02. Enforcement of Contract and Surety Bonds.** In the event of material default of any contractor or subcontractor under a Construction Agreement or a Contract or any other contract made in connection with the acquisition, construction and installation of the Improvements or the Personal Property, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the City will promptly proceed, either separately or in conjunction with others, to pursue diligently the remedies of the City against the contractor or subcontractor in default and against each surety on a bond securing the performance of such contract. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery and after reimbursement to the City of any amounts theretofore paid by the City not previously reimbursed to the City for correction or remedying of the default that gave rise to the proceedings against the contractor or subcontractor or surety, will be paid to the Trustee for deposit in the Project Fund if received before the Completion Date and, if such funds are received after the Completion Date, for deposit in the Lease Revenue Fund to be used solely for the purpose of paying Basic Rent under this Lease.

**Section 7.03. Release and Indemnification.** To the extent permitted by law, the City will indemnify, protect, hold harmless, save and keep the Trustee harmless from and against any and all liability, obligation, loss, claim, tax (other than income taxes or other taxes on or attributable to Rent Payments, if any, that are received by the Trustee in its individual capacity) and damage whatsoever and all expenses in connection therewith (including, without limitation, attorneys' fees and expenses) that are not caused by the gross negligence or willful misconduct of the Trustee, its agents, directors, attorneys or employees arising out of or as the result of (a) the entering into of the License and Easement, this Lease or the Declaration of Trust, (b) the acquisition, construction and installation of the Improvements and Personal Property, (c) injury, actual or claimed, of whatsoever kind or character, to property or persons, occurring or allegedly occurring in, on or about the Project during the Lease Term, and/or (d) the breach of any covenant by the City herein or any material misrepresentation by the City contained herein; provided that the City will have the right to conduct the Trustee's defense through counsel designated by

the City and approved by the Trustee, which approval will not be unreasonably withheld and, provided further, that Trustee will be entitled to retain separate counsel, at the expense of the City, should counsel selected by the City fail to actively and competently pursue a defense. The indemnification arising under this Section will continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease or the License and Easement and the Declaration of Trust for any reason.

## ARTICLE VIII

### COVENANTS OF THE CITY

**Section 8.01. Maintenance and Modification of Project by the City.** The City will at its own expense (a) keep the Project in a safe condition, (b) with respect to the Project, comply with all applicable health and safety standards and all other industrial requirements or restrictions enacted or promulgated by the State, or any political subdivision or agency thereof, or by the government of the United States of America or any agency thereof, and (c) keep the Project in good repair and in good operating condition and make from time to time all necessary repairs thereto and renewals and replacements thereof; provided, however, that the City will have no obligation to operate, maintain, preserve, repair, replace or renew any element or unit of the Project the maintenance, repair, replacement or renewal of which becomes uneconomical to the City because of damage, destruction or obsolescence, or change in economic or business conditions, or change in government standards and regulations. The City will not permit or suffer others to commit a nuisance in or about the Project or itself commit a nuisance in connection with its use or occupancy of the Project. The City will pay all costs and expenses of operation of the Project.

The City may, also at its own expense, make from time to time any additions, modifications or improvements to the Project that it may deem desirable for its business purposes and that do not materially impair the structural strength or effective use, or materially decrease the value, of the Project. All additions, modifications or improvements made by the City pursuant to the authority of this Section will (a) be made in a workmanlike manner and in strict compliance with all laws and ordinances applicable thereto, (b) when commenced, be pursued to completion with due diligence and (c) when completed, be deemed a part of the Project.

During the Lease Term, the Project will be used by the City only for the purpose of performing essential governmental or proprietary functions of the City consistent with the permissible scope of the City's authority.

**Section 8.02. Tax Covenants.** The City covenants and agrees that (a) it will comply with the provisions of the Tax Agreement and with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of the Interest Portion of the Basic Rent with respect to the Series 2022A Certificates and (b) it will not use or permit the use of any proceeds of Series 2022A Certificates or any other funds of the City nor take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income for federal income tax purposes of the Interest Portion of the Basic Rent attributable to the Series 2022A Certificates. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the Interest Portion of the Basic Rent attributable to the Series 2022A Certificates will remain excluded from gross income for federal income tax purposes, to the extent any such actions can be taken by the City.

**Section 8.03. The City's Continuing Existence.** The City will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.

**Section 8.04. Continuing Disclosure.** The City hereby covenants and agrees that it will comply and carry out all of the provisions of a Continuing Disclosure Undertaking, in a form satisfactory to the City. Notwithstanding any other provision of this Lease, failure of the City to comply with such Continuing Disclosure Undertaking will not be considered a default or an Event of Default under this Lease. The Trustee, however, pursuant to the Declaration of Trust, may (and, at the request of the Owners of Certificates of at least 25% aggregate principal amount of Outstanding Certificates and if indemnified to its satisfaction, will) or any Owners of Certificates may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under such Continuing Disclosure Undertaking.

## ARTICLE IX

### CASUALTY AND CONDEMNATION

**Section 9.01. Damage, Destruction and Condemnation.** (a) The City will bear the risk of loss with respect to the Project during the Lease Term. If (a) the Project 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 Project or any part thereof will be nonexistent or deficient or taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, the City will cause the Net Proceeds of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Project, unless the City has exercised its option to purchase the Trustee's interest in the Project by making payment of the Purchase Price as provided herein. Any balance of the Net Proceeds remaining after such work has been completed will be paid to the City and will be held and appropriated by the City for the exclusive purpose of paying Rent under this Lease.

If the City determines that the repair, restoration, modification or improvement of the Project is not economically feasible or in the best interest of the City, then, in lieu of making such repair, restoration, modification or improvement and if permitted by law, the City will promptly purchase the Trustee's interest in the Project pursuant to **Section 10.01** by paying the Purchase Price. The Net Proceeds will be applied by the City to payment of the Purchase Price. Any balance of the Net Proceeds remaining after paying the Purchase Price will belong to the City.

(b) In the event the whole or any part of the Project is taken by eminent domain proceedings, the interest of the Trustee will be recognized. The proceeds of said condemnation will be applied as provided in this **Article IX**. Under Nebraska statutes, the City has the power to condemn property for its purposes, and the City acknowledges that if the City condemned the Project, such action could adversely affect the continuation of the License and Easement. The City further acknowledges that condemnation of the Project would adversely affect the Trustee and that without the Trustee's interest in the Project, the Trustee might not lease the Project to the City pursuant to this Lease.

The City and the Trustee have reached agreement on the terms of the acquisition of the Project, at City's option, and to the use of the Project, all as set forth herein. Any acquisition of the Trustee's interest in the Project or rights to its use by the City (whether pursuant to the exercise of eminent domain powers or otherwise) will be pursuant to and in accordance with this Lease, including payment of Rent Payments and the applicable Purchase Price. If the City allows this Lease to expire without exercising its

option to purchase (whether by failure to exercise its option to extend this Lease for a Renewal Term, failure to exercise its option to purchase at the conclusion of the maximum Lease Term or failure to cure an Event of Default), that action will constitute an irrevocable determination by the City that the Project is not required by it for any public purpose for the term of the License and Easement.

The City hereby covenants and agrees, to the extent it may lawfully do so, that if for any reason it exercises the power of eminent domain with respect to the Project, the appraisement value of the Project will not be less than the Rent Payments then due plus the then applicable Purchase Price as defined and set forth herein.

(b) In the event that title to all or a portion of the Project is challenged or threatened by means of competent legal or equitable action, the City covenants that it will cooperate with the Trustee and will take all reasonable actions, including where appropriate the lawful exercise of the City's power of eminent domain, in order to quiet title to the Project in the City.

**Section 9.02. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in **Section 9.01** and the City has not elected to purchase the Trustee's interest in the Project pursuant to **Section 10.01**, the City will complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds and, if the City makes any payments pursuant to this Section, the City will not be entitled to any reimbursement therefor from the Trustee nor will the City be entitled to any diminution of Rent.

## ARTICLE X

### OPTION TO PURCHASE; PARTIAL PREPAYMENT

**Section 10.01. Purchase Option.** The City will have the option to purchase the Trustee's interest in the Project, upon giving written notice to the Trustee at least 60 days before the date of purchase, at the following times and on the following terms:

(a) On or after the fifth anniversary of the Dated Date, upon payment in full of Rent Payments then due hereunder plus a Purchase Price equal to 100% of the remaining Principal Portions of Basic Rent for the Lease Term, plus Interest Portions of Basic Rent accrued to the prepayment date.

(b) Upon deposit of moneys or Government Obligations or both with the Trustee in accordance with **Article X** of the Declaration of Trust in the amount necessary to provide for the Basic Rent Payments until and on, and the Purchase Price calculated as described in (a) above on the Certificates, to the prepayment date, which will be on or after the fifth anniversary of the Dated Date,

**Section 10.02. Partial Prepayment.** The City will have the option to prepay the Basic Rent Payments in part, upon giving written notice to the Trustee at least 45 days before the date of such prepayment, at any time on or after the fifth anniversary of the Dated Date, at the Prepayment Price equal to the Principal Portion of Basic Rent being so prepaid plus the Interest Portion of Basic Rent accrued thereon to such Basic Rent Payment Date.

The Principal Portion of Basic Rent prepaid pursuant to the provisions of this **Section 10.02** will be in integral multiples of \$5,000 and will be credited against such Basic Rent Payments as shall be determined by the City in its sole and absolute discretion. Upon any partial prepayment, the amount of each Interest Portion of Basic Rent coming due thereafter will be reduced by the amount of such Interest

Portion attributable to such prepaid Principal Portion determined by applying the annual interest rate corresponding to such prepaid Principal Portion as shown on **Exhibit B**.

**Section 10.03. Determination of Fair Rent and Purchase Price.** The City hereby agrees and determines that the Rent hereunder during the Lease Term represents the fair value of the use of the Project and that the Purchase Price required to exercise the City's option to purchase the Trustee's interest in the Project pursuant to **Section 10.01** represents, as of the end of the Lease Term, the fair Purchase Price of the Project. The City hereby determines that the Rent does not exceed a reasonable amount so as to place the City under an economic practical compulsion to renew this Lease or to exercise its option to purchase the Project hereunder. In making such determinations, the City has given consideration to the Costs of the Project, the uses and purposes for which the Project will be employed by the City, the benefit to the City by reason of the acquisition, construction, equipping, making and installation of the Improvements and Personal Property and the use and occupancy of the Project pursuant to the terms and provisions of this Lease and the City's option to purchase the Project. The City hereby determines and declares that the acquisition, construction and installation of the Improvements and Personal Property and the leasing of the Project pursuant to this Lease will result in a Project of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition, construction and installation of the Improvements and Personal Property were performed by the City other than pursuant to this Lease. The City hereby determines and declares that the Lease Term does not exceed the useful life of the Project.

**Section 10.04. Conveyance of Title.** The Trustee hereby agrees to convey title to the Project, or an appropriate portion thereof, in consideration of the purchase price as set forth in **Section 10.01**, at the expiration of the Lease Term following full payment of the Rent or provision for payment thereof having been made in accordance with the provisions of **Article X** of the Declaration of Trust and full payment of all Supplemental Rent.

## ARTICLE XI

### ASSIGNMENT

**Section 11.01. Assignment and Subleasing by the City.** Except as hereinafter expressly provided, none of the City's right, title and interest in, to and under the License and Easement, this Lease and in the Project may be assigned or encumbered by the City for any reason; except that the City may sublease any one or more parts of the Project if the City obtains an Opinion of Special Tax Counsel that such subleasing will not adversely affect the exclusion of the Interest Portion of the Basic Rent Payments from gross income for purposes of federal income taxation. Any such sublease of all or part of the Project will be subject to the License and Easement, this Lease and the rights of the Trustee in, to and under the License and Easement, this Lease and the Project.

## ARTICLE XII

### EVENTS OF DEFAULT

**Section 12.01. Events of Default Defined.** Any of the following will constitute an “Event of Default” under this Lease:

(a) Failure by the City to make any deposits required by **Section 4.01** to pay Basic Rent in the Lease Revenue Fund at the time specified herein;

(b) Failure by the City to make any Supplemental Rent Payment when due and the continuance of such failure for ten days after written notice specifying such failure and requesting that it be remedied is given to the City by the Trustee;

(c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in **Sections 12.01(a)** or **(b)** above, for a period of 90 days after written notice specifying such failure and requesting that it be remedied is given to the City by the Trustee, unless the Trustee will 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, the Trustee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected;

(d) Any statement, representation or warranty made by the City in or pursuant to the License and Easement or this Lease or the execution, delivery or performance of either of them proves to have been false, incorrect, misleading or breached in any material respect on the date when made;

(e) Any provision of this Lease or the License and Easement at any time for any reason ceases to be valid and binding on the City, or is declared null and void, or the validity or enforceability thereof is contested by the City or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of the Trustee; or

(f) The City becomes insolvent or admits in writing its inability to pay its debts as they mature or applies for, consents to, or acquiesces in the appointment of a trustee, receiver or custodian for the City or a substantial part of its property; or in the absence of such application, consent or acquiescence, a trustee, receiver or custodian for the City or a substantial part of its property; or in the absence of such application, consent or acquiescence, a trustee, receiver or custodian is appointed by the City or a substantial part of its property and is not discharged within 90 days; or any bankruptcy, reorganization, debt arrangement, moratorium or any proceeding under bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is instituted by or against the State and, if instituted against the City, is consented to or acquiesced in by the City or is not dismissed within 90 days.

Failure of the City fails to comply with the Continuing Disclosure Undertaking will not be an Event of Default under this Lease.

**Section 12.02. Remedies on Default.** Whenever any Event of Default exists, the Trustee will have the right, without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to the City, the Trustee may declare all Rent payable by the City hereunder to the end of the Lease Term to be due;

(b) With or without terminating this Lease, the Trustee may take possession of the Project (in which event the City will take all actions necessary to authorize, execute and deliver to the Trustee for the remainder of the Trustee's leasehold term under the License and Easement all documents necessary to vest in the Trustee for the remainder of the Trustee's leasehold term under the License and Easement all of the City's interest in the Project), and sell the Trustee's interest in the Project or lease the Project or, for the account of the City, sublease the Project continuing to hold the City liable for the difference between (1) the Rent payable by the City hereunder for the Lease Term, and (2) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of the Trustee in exercising its remedies under this Lease, including without limitation all expenses of taking possession, removing, storing, reconditioning, and selling or leasing or subleasing the Project and all brokerage, auctioneers and attorneys' fees and expenses);

(c) The Trustee may terminate any rights the City may have in any moneys held by the Trustee under the Declaration of Trust; and

(d) The Trustee may take whatever action at law or in equity necessary or desirable to enforce its rights in the Project and under this Lease.

**Section 12.03. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive and every such remedy will be cumulative and will be in addition to every other remedy given under this Lease now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Article it will not be necessary to give any notice, other than such notice as may be required in this Article.

## ARTICLE XIII

### MISCELLANEOUS

**Section 13.01. Notices.** All notices, certificates or other communications to be given or to be served upon any party in connection with this Lease will be given in accordance with **Section 12.03** of the Declaration of Trust.

**Section 13.02. Easement and Leasehold.** Until payment in full of all rental obligations hereunder, the Project shall remain the separate personal property of the Trustee and shall not become a part of the real estate described on Exhibit A-2 attached hereto. Upon the final payment of all rental obligations under this Lease the Project shall be conveyed to City at the option of the City in accordance with **Article X** of this Lease.

**Section 13.03. Title to Personal Property.** Title to any portion of the Project that constitutes personal property will vest in the City subject to Trustee's rights under this Lease and the License and Easement; provided that title thereto will thereafter immediately and without any action by the City vest in Trustee and the City will immediately surrender possession thereof to Trustee upon (a) any termination of this Lease without the City exercising its option to purchase pursuant to **Section 10.01** or (b) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Trustee pursuant to this Section will occur automatically without the necessity of any deed, bill of sale, certificate

of title or other instrument of conveyance. Nevertheless, the City will execute and deliver any such instruments as the Trustee may request to evidence such transfer.

**Section 13.04. Security Interest.** To secure the payment of all of the City's obligations under this Lease, to the extent permitted by law, the Trustee retains a security interest in that portion of the Project consisting of personal property or fixtures and on all additions, attachments, accessions thereto, substitutions therefor and on any proceeds therefrom. The City will execute all additional documents, including financing statements, affidavits, notices and similar instruments that are necessary or appropriate to establish and maintain such security interest. The City hereby authorizes the filing of financing statements under the Uniform Commercial Code in connection with any security interest granted hereunder.

**Section 13.05. Binding Effect.** This Lease will inure to the benefit of and will be binding upon the Trustee and the City and their respective successors and assigns.

**Section 13.06. Amendments, Changes and Modifications.** This Lease may not be effectively amended, changed, modified, altered or supplemented except with the written consent of the Trustee and the City and as provided in the Declaration of Trust.

**Section 13.07. Electronic Transactions.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents will be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

*[The remainder of this page intentionally left blank.]*

IN WITNESS WHEREOF, the Trustee and the City have caused this Lease to be executed in their names by their duly authorized representatives as of the date first above written.

UMB BANK, N.A., Trustee

(SEAL)

By: \_\_\_\_\_  
Vice President

ATTEST:

By: \_\_\_\_\_  
Authorized Officer

ACKNOWLEDGMENT

STATE OF IOWA )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2022, by \_\_\_\_\_, Vice President of UMB BANK, N.A., on behalf of such bank.

\_\_\_\_\_  
Notary Public

(SEAL)

**THE CITY OF BELLEVUE, NEBRASKA**

(SEAL)

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

ATTEST:

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

STATE OF NEBRASKA            )  
  ) SS.  
COUNTY OF SARPY            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Rusty Hike, Mayor of the City of Bellevue, Nebraska.

\_\_\_\_\_  
Notary Public

(SEAL)

**EXHIBIT A-1**

**TO LEASE-PURCHASE AGREEMENT DATED AS OF \_\_\_\_\_, 2022,  
BETWEEN UMB BANK, N.A., AND THE CITY OF BELLEVUE, NEBRASKA  
AND TO DECLARATION OF TRUST DATED AS OF \_\_\_\_\_, 2022 BY  
UMB BANK, N.A.**

**THE PERSONAL PROPERTY**

**EXHIBIT A-2**

**TO LEASE-PURCHASE AGREEMENT DATED AS OF \_\_\_\_\_, 2022,  
BETWEEN UMB BANK, N.A., AND THE CITY OF BELLEVUE, NEBRASKA  
AND TO DECLARATION OF TRUST DATED AS OF \_\_\_\_\_, 2022 BY  
UMB BANK, N.A.**

**THE SITE**

City Library, 2206 Longo Drive Bellevue, Nebraska:

LOTS 2, 3 & 7-9, HARVELL PLAZA 3rd ADDITION TO THE CITY OF  
BELLEVUE, AS SURVEYED, PLATTED AND RECORDED IN SARPY  
COUNTY, NEBRASKA

**EXHIBIT B**

**TO LEASE-PURCHASE AGREEMENT, DATED AS OF \_\_\_\_\_, 2022,  
BETWEEN UMB BANK, N.A., AND THE CITY OF BELLEVUE, NEBRASKA.**

**SCHEDULE OF BASIC RENT PAYMENTS**

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**DECLARATION OF TRUST**

**by**

**UMB Bank, N.A.  
West Des Moines, Iowa**

**Dated as of \_\_\_\_\_, 2022**

**\$ \_\_\_\_\_  
Certificates of Participation (Tax-Exempt Interest), Series 2022A**

**and**

**Certificates of Participation (Taxable Interest), Series 2022B**

**Evidencing a Proportionate Interest  
in Rent Payments to be made by  
The City of Bellevue, Nebraska  
Pursuant to a Lease-Purchase Agreement**

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## DECLARATION OF TRUST

This **DECLARATION OF TRUST** (the “**Declaration of Trust**”), dated as of \_\_\_\_\_, 2022, is made by **UMB Bank, N.A., West Des Moines, Iowa**, a national banking corporation, as settlor and trustee (the “**Trustee**”).

### WITNESSETH:

**WHEREAS**, The City of Bellevue, Nebraska (the “**City**”), and the Trustee have entered into a License and Easement, dated as of \_\_\_\_\_, 2022 (the “**License and Easement**”), pursuant to which the City has granted a license and easement to the Trustee for the real property described on **Exhibit D-2**, including any existing improvements thereon (the “**Real Property**”); and

**WHEREAS**, concurrently herewith the Trustee and the City have entered into a Lease-Purchase Agreement, dated as of \_\_\_\_\_, 2022, (as the same may be amended or supplemented in accordance with its terms from time to time, the “**Lease**”), pursuant to which the Trustee will lease to the City the Real Property and the hereinafter defined Improvements and Personal Property and will grant the City an option to purchase the Trustee’s interest in such Improvements and Personal Property; and

**WHEREAS**, Certificates of Participation substantially in the form of **Exhibit A** (the “**Series 2022 Certificates**”), each such Certificate evidencing a proportionate interest of the registered owner thereof in rights under the Lease, will be executed and delivered hereunder, and the proceeds from the sale of the Series 2022 Certificates will be used to provide the funds to (a) pay the costs of (1) purchasing those items of personal property listed on **Exhibit D-1** attached hereto, together with all replacements, repairs and additions incorporated therein or affixed thereto (the “**Personal Property**”) pursuant to certain contracts, purchase orders or other written instruments and (2) acquiring the City’s library facilities and equipment for use by the City (the “**Improvements**”; the Personal Property, the Improvements and the Real Property are referred to collectively as the “**Project**”) and (2) pay certain costs connected to the execution and delivery of the Certificates; and

**WHEREAS**, the Trustee is obligated to pay the costs of the Project only from funds available from the sale of the Series 2022 Certificates; and

**WHEREAS**, the Trustee is making this Declaration of Trust to set forth the terms of the Series 2022 Certificates and Additional Certificates as hereinafter defined and authorized (the Series 2022 Certificates and the Additional Certificates being hereinafter being referenced collectively as the “**Certificates**”), the security therefor and other provisions respecting the Certificates,

## DECLARATION CLAUSES

**NOW, THEREFORE**, in order to secure the payment of the Principal Portions of Basic Rent Payments, Prepayment Price, and Interest Portions of Basic Rent Payments represented by the Certificates, and to secure the performance and observance of all covenants and conditions therein and herein contained and to declare the terms and conditions upon, and subject to which, the Certificates are intended to be sold, held, secured and enforced, and in consideration of the premises set forth herein and of the purchase and acceptance of the Certificates by the Owners thereof, the Trustee has executed and

delivered this Declaration of Trust and does declare that it will hold all of the assets, property and interests received by it under the terms of this Declaration of Trust, the License and Easement and the Lease and all agreements and instruments contemplated hereby or thereby (except for the Rebate Fund and any compensation, indemnification or other amounts that are due directly to the Trustee hereunder or thereunder, collectively, the “**Trust Estate**”), as trustee, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all present and future Owners of the Certificates, without privilege, priority or distinction as to the lien or otherwise of any of the Certificates over any of the other Certificates;

**PROVIDED, HOWEVER,** that, if the Principal Portions of Basic Rent Payments, Prepayment Price and Interest Portions of Basic Rent Payments represented by the Certificates due or to become due with respect to the Certificates are paid or provision made therefor in accordance with **Article X**, at the times and in the manner mentioned in the Certificates according to the true intent and meaning thereof, and provision has also been made for paying all sums payable under the Lease by the City in accordance with **Article X**, then this Declaration of Trust and the rights hereby granted will cease, determine and be void except as provided in **Article X**;

**THIS DECLARATION OF TRUST FURTHER WITNESSETH,** and it is expressly declared, that all Certificates are to be sold, executed and delivered and all said rights and interests are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Trustee has agreed and covenanted, and does hereby agree and covenant, with the respective Owners of the Certificates as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01. Definitions.** In addition to words and terms defined in the Lease and elsewhere in this Declaration of Trust, the following words and terms used in this Declaration of Trust will have the following meanings, unless some other meaning is plainly intended:

“**Additional Certificates**” means any Certificates executed and delivered pursuant to **Section 3.09**.

“**Authorized Representative**” means the Mayor, City Administrator or the Finance Director of the City or any other person designated as an Authorized Representative by the Mayor, such designation being approved by the governing body of the City by an ordinance or a resolution that is filed with the Trustee.

“**Cede & Co.**” means Cede & Co., as nominee name of The Depository Trust Company, New York, New York, and any successor nominee of the Securities Depository with respect to the Certificates.

“**Certificate Payment**” means the payments to be made to the Owners of the Certificates, whether representing Interest Portion only or Principal Portion and Interest Portion of Basic Rent under the Lease.

“**Certificates**” means the Series 2022 Certificates and any Additional Certificates.

**“Directive”** means an instrument in writing executed in one or more counterparts by the Owners of Certificates, as determined from the records of the Registrar kept pursuant to **Section 3.06**, or their lawful attorneys-in-fact, representing not less than a majority of the aggregate unpaid Principal Portion represented by the then Outstanding Certificates.

**“Event of Default”** means an Event of Default as described in **Section 9.01**.

**“Event of Lease Default”** means an Event of Default under **Section 12.01** of the Lease.

**“Funds”** means, collectively, the funds created and held under this Declaration of Trust and all accounts therein.

**“Investment Securities”** means and includes any of the following securities, if and to the extent the same are permitted by law:

(a) Government Obligations;

(b) other obligations issued by or on behalf of agencies or instrumentalities of the United States of America except for the Federal Farm Credit Bank;

(c) negotiable certificates of deposit, demand deposits and other deposit arrangements, repurchase agreements, and investment agreements issued by banks or trust companies, including without limitation, the Trustee and its affiliates, continuously secured (to the extent not fully insured by the Federal Deposit Insurance Corporation), for the benefit of the Trustee by lodging with a bank or trust company (which may or may not be the bank or trust company issuing such negotiable certificates of deposit, repurchase agreement or investment agreement), as collateral security, securities described in (a) and (b) above having a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit, demand deposits and other deposit arrangements; and

(d) money market mutual funds rated in the highest rating category by a nationally recognized rating service consisting of Government Obligations or repurchase agreements for Government Obligations.

**“Lease Revenue Fund”** means the fund by that name established pursuant to **Section 6.01**.

**“Lease Revenues”** means the Basic Rent Payments, Supplemental Rent Payments and all other amounts due and owing pursuant to or with respect to the Lease, including prepayments, insurance proceeds, condemnation proceeds, and any and all interest, profits or other income derived from the investment thereof in any fund or account established pursuant to this Declaration of Trust.

**“Notice by Mail”** or **“Notice”** of any action or condition **“by Mail”** means a written notice meeting the requirements of this Declaration of Trust mailed by first-class mail to the Owners of specified Certificates, at the addresses shown on the registration books maintained by the Registrar pursuant to **Section 3.06**.

**“Outstanding”** means, as of the date of determination, all Certificates theretofore executed and delivered pursuant to this Declaration of Trust except (a) Certificates theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation, (b) Certificates for the transfer or exchange of or in lieu of or in substitution for which other Certificates have been executed and delivered by the Trustee pursuant to

this Declaration of Trust, (c) Certificates whose payment or prepayment has been provided for in accordance with **Article X**, and (d) Certificates paid or deemed to be paid pursuant to **Article X**.

**“Owner”** of a Certificate means the registered owner of such Certificate as shown on the register kept by the Registrar pursuant to **Section 3.06**.

**“Participants”** means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**“Prepayment Date”** means any date set for prepayment of the Principal Portion of Basic Rent represented by Certificates.

**“Prepayment Price”** means, with respect to any Certificate (or portion thereof) the amount specified in **Section 5.02**.

**“Proceeds”** means the aggregate moneys initially paid to the Trustee for each series of the Certificates.

**“Project Fund”** means the fund by that name established pursuant to **Section 6.01**.

**“Purchase Document”** means a certificate purchase agreement between the City and the Purchaser pursuant to which the Purchaser agrees to purchase the Certificates.

**“Purchaser”** means D.A. Davidson & Co., as underwriter, the original purchaser of the Series 2022 Certificates.

**“Rebate Fund”** means the fund by that name established pursuant to **Section 6.01**.

**“Record Date”** means as of the close of business on the last day of the month immediately preceding the month in which such Payment is due.

**“Registrar”** means the Trustee when acting in that capacity, or its successor as Registrar.

**“Representation Letter”** means the Representation Letter from the City to the Securities Depository.

**“Securities Depository”** means, initially, The Depository Trust Company, New York, New York, and its successors and assigns.

**“Series 2022 Certificates”** means, collectively, the Series 2022A Certificates and Series 2022B Certificates.

**“Series 2022A Certificates”** means the \$\_\_\_\_\_ aggregate principal amount Certificates of Participation (Tax-Exempt Interest), Series 2022, evidencing a proportionate interest in Rent Payments to be made by The City of Bellevue, Nebraska, pursuant to a Lease-Purchase Agreement, executed and delivered pursuant to this Declaration of Trust.

**“Series 2022B Certificates”** means the \$\_\_\_\_\_ aggregate principal amount Certificates of Participation (Taxable Interest), Series 2022, evidencing a proportionate interest in Rent

Payments to be made by The City of Bellevue, Nebraska, pursuant to a Lease-Purchase Agreement, executed and delivered pursuant to this Declaration of Trust.

**“State”** means the Nebraska.

**“Trust Estate”** means the assets, property and interests held by the Trustee pursuant to this Declaration of Trust and the Lease.

**“Trustee”** means UMB Bank, N.A., West Des Moines, Iowa, and its successor or successors and their respective assigns.

**Section 1.02. General Rules of Construction.** Words of the masculine gender will be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context will otherwise indicate, words importing the singular number will include the plural and vice versa, and words importing person will include individuals, corporations, limited liability companies, partnerships, joint ventures, associations, joint-stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

The words “herein,” “hereby,” “hereunder,” “hereof,” “hereto,” “hereinbefore,” “hereinafter” and other equivalent words refer to this Declaration of Trust and not solely to the particular article, section, paragraph or subparagraph hereof in which such word is used.

Reference herein to a particular article or a particular section, exhibit, schedule or appendix will be construed to be a reference to the specified article or section hereof or exhibit, schedule or appendix hereto unless the context or use clearly indicates another or different meaning or intent.

Whenever an item or items are listed after the word “including,” the listing is not intended to be a listing that excludes items not listed.

The table of contents, captions and headings in this Declaration of Trust are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Declaration of Trust.

**Section 1.03. Execution in Counterparts.** This Declaration of Trust shall be valid, binding, and enforceable against a party when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by electronic signatures laws, including any relevant provisions of the Uniform Commercial Code/UCC, in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same instrument.

**Section 1.04. Severability.** If any provision of this Declaration of Trust will be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, charter or statute or rule of public policy, or for any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or

unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Declaration of Trust contained will not affect the remaining portions of this Declaration of Trust, or any part thereof.

**Section 1.05. Governing Law.** This Declaration of Trust will be governed by and construed in accordance with the laws of the State.

## ARTICLE II

### COVENANT AS TO LICENSE AND EASEMENT AND LEASE

**Section 2.01. Covenant as to License and Easement and Lease.** The Trustee covenants and agrees that, except in accordance with the terms of this Declaration of Trust, the License and Easement and the Lease, it will not take any action that would result in the occurrence of an Event of Default and that it will not agree to any abatement, reduction, abrogation, waiver, diminution or other modification in any manner or to any extent whatsoever of the obligations of the City under the License and Easement and the Lease to pay Basic Rent and to meet its other obligations as provided in the Lease.

## ARTICLE III

### THE CERTIFICATES

**Section 3.01. Title and Amount of Certificates.** No Certificates may be executed and delivered under this Declaration of Trust except in accordance with this Article. The Certificates will be designated "Certificates of Participation ([Tax-Exempt][Taxable] Interest)], Series 2022[A][B], Evidencing Proportionate Interests in Rent Payments to be made by The City of Bellevue, Nebraska, pursuant to a Lease-Purchase Agreement," with such further appropriate particular designation added to or incorporated in such title for the Certificates of any particular series as the Trustee may determine.

**Section 3.02. General Provisions Concerning the Certificates.**

(a) The Certificates and the form of assignment to appear thereon will be in substantially the form set forth in **Exhibit A**, with necessary or appropriate variations, omissions and insertions as permitted or required hereby or by any Supplemental Declaration of Trust.

(b) The Certificates will be fully registered Certificates without coupons transferable to subsequent owners only on the books kept by the Registrar pursuant to **Section 3.06** as hereinafter provided. Each Certificate will be in the denomination of \$5,000 or any integral multiple thereof.

(c) Each of the Certificates will represent the Interest Portion and Principal Portion of Basic Rent payable with respect thereto and will be on a parity with the other Certificates as to the entire Trust Estate.

(d) The Certificates will be numbered from R-1 upward, will be dated and the Principal Portion will be payable, subject to prior prepayment upon the terms and conditions hereinafter set forth, and will represent Interest Portions of Basic Rent calculated at certain rates as set forth in this Declaration of Trust or any Supplemental Declaration of Trust authorizing such series of Certificates.

(e) The Interest Portion of the Basic Rent represented by each Certificate will be payable from the date thereof or the most recent date to which said Interest Portion has been paid. The Interest Portion of the Basic Rent represented by the Certificates will be paid on each June 15 and December 15, commencing on June 15, 20\_\_.

(f) Payment of the Interest Portion of the Basic Rent represented by any Certificates will be made to the person appearing on the registration books of the Registrar as the Owner thereof on the Record Date, such Interest Portion to be paid to such Owner by check or draft drawn on the Trustee and mailed to such Owner's address as it appears on the registration books of the Registrar on the Record Date or in the case of such Interest Portion to (1) the Securities Depository or (2) any Owner of \$5,000 or more in aggregate principal amount of Certificates, by electronic transfer to such Owner upon written notice given to the Trustee by such Owner not less than 15 days prior to the Record Date for such Interest Portion, containing the electronic transfer instructions including the bank (which will be in the continental United States), ABA routing number and account name and number to which such Owner wishes to have such transfer directed.

(g) The Interest Portion of the Basic Rent represented by any Certificates will be computed with respect to such Certificates on the basis of a 360-day year of twelve 30-day months.

(h) The Principal Portion of the Basic Rent or Prepayment Price represented by the Certificates will be payable (whether at maturity or upon prepayment or acceleration) by check or draft to the Owners of such Certificates upon presentation and surrender of such Certificates at the designated corporate trust office of the Trustee.

(i) Payment of Certificate Payments or the Prepayment Price of Certificates will be made in such coin or currency of the United States of America as, at the time of payment, will be legal tender for public and private debts.

**Section 3.03. Execution of Certificates.** The Certificates will be executed by and in the name of the Trustee by the manual signature of an authorized signatory of the Trustee.

**Section 3.04. Transfer of Certificates.** Any Certificate may be transferred upon the books required to be kept pursuant to the provisions of **Section 3.06**, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Certificate for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Trustee. The Trustee or the Securities Depository may also require the payment by the Owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer. In the event any Owner fails to provide a correct taxpayer identification number to the Trustee, the Trustee may impose a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Internal Revenue Code, such amount may be deducted by the Trustee from amounts otherwise payable to such Owner hereunder or under the Certificates.

**Section 3.05. Exchange of Certificates.** Certificates may be exchanged at the designated corporate trust office of the Trustee for a like aggregate principal amount of Certificates of the same maturity, interest rate and tenor. The Trustee will require the payment by the Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange. No exchange of any Certificate will be required of the Trustee after such Certificate has been called for prepayment.

**Section 3.06. Registration Books.** The Registrar will keep or cause to be kept at its designated corporate trust office, books for the registration and transfer of the Certificates, which will at all reasonable times be open to inspection by the City or the Owners (or a designated representative thereof) of 10% or more in principal amount of Bonds then Outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Registrar, and, upon presentation for such purpose, the Registrar will, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Certificates as hereinbefore provided.

The person in whose name any Certificate is registered on the registration books maintained by the Registrar on the Record Date will be deemed the Owner thereof for all purposes hereof, and payment of or on account of the Interest Portions and Principal Portions of Basic Rent, represented by such Certificate will be made only to or upon the order in writing of such registered owner, which payments will be valid and effectual to satisfy and discharge the liability under the Lease as represented by such Certificate to the extent of the sum or sums so paid.

**Section 3.07. Certificates Mutilated, Lost, Destroyed or Stolen.** If any Certificate has become mutilated, the Trustee, at the expense of the Owner of said Certificate, will execute and deliver a new Certificate of like tenor, maturity, interest rate and number in exchange and substitution for the Certificate so mutilated (except that such number may be preceded by a distinguishing prefix), but only upon surrender to the Trustee of the Certificate so mutilated. Every mutilated Certificate so surrendered to the Trustee will be canceled by it and periodically destroyed in accordance with then applicable record retention requirements. If any Certificate has been lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence is satisfactory to the Trustee and indemnity of the Trustee and the City satisfactory to the Trustee has been given, the Trustee, at the expense of the Owner of the Certificate, will execute and deliver a new Certificate of like tenor, maturity, interest rate, and number as the Trustee determines in lieu of and in substitution for the Certificate so lost, destroyed or stolen. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Certificate executed and delivered under this Section and of the expenses that may be incurred by the Trustee under this Section. Any Certificate executed and delivered under this Section in lieu of any Certificate alleged to be lost, destroyed or stolen will be equally and proportionately entitled to the benefits of this Declaration of Trust with all other Certificates secured by this Declaration of Trust. The Trustee will not be required to treat both the original Certificate and any replacement Certificate as being Outstanding for the purpose of determining the principal amount of Certificates that may be Outstanding hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and replacement Certificate will be treated as one and the same. Notwithstanding any other provision of this Section, in lieu of delivering a new Certificate for a Certificate that has been mutilated, lost, destroyed or stolen and that has matured, is about to mature or has been selected for prepayment, the Trustee may make payment of such Certificate.

**Section 3.08. Series 2022 Certificates.** There will be initially prepared, executed and delivered under this Declaration of Trust a series of Certificates in the aggregate principal amount of \$ \_\_\_\_\_, which series of Certificates will be designated "Certificates of Participation, Series 2022A, Evidencing a Proportionate Interest in Rent Payments to be Made by The City of Bellevue, Nebraska, pursuant to a Lease-Purchase Agreement" (the "**Series 2022A Certificates**"); and a series of Certificates in the aggregate principal amount of \$ \_\_\_\_\_, which series of Certificates will be designated "Certificates of Participation (Taxable Interest), Series 2022B, Evidencing a Proportionate Interest in Rent Payments to be Made by The City of Bellevue, Nebraska, pursuant to a Lease-Purchase Agreement" (the "**Series 2022B Certificates**"); and together with the Series 2022A Certificates, the "**Series 2022 Certificates**"). The Series 2022 Certificates will be dated as of date of original delivery,

and will be payable on the dates, in the principal amounts (subject to prepayment as described in **Section 5.02**), and with the Interest Portions accruing at the rates set forth on **Exhibit C**.

Prior to or simultaneously with the execution of and delivery of the Series 2022 Certificates by the Trustee the following documents will be filed with the Trustee:

(a) A copy, certified by the Clerk, of the resolution or ordinance adopted by the governing body of the City authorizing the execution of the License and Easement and the Lease and approving the execution and delivery of the Series 2022 Certificates to the Purchaser.

(b) Original executed counterparts of this Declaration of Trust, the License and Easement, the Lease and the Purchase Document.

(c) An Opinion of Special Tax Counsel as to the validity of the Series 2022 Certificates and the exemption from federal income taxation of the Interest Portion of Basic Rent Payments represented by the Series 2022 Certificates.

(d) Such other certificates, statements, receipts, opinions and documents required by this Declaration of Trust or the Lease, or as the Trustee may reasonably require for the delivery of the Series 2022 Certificates.

When the documents specified above have been filed with the Trustee, and when the Series 2022 Certificates have been executed as required by this Declaration of Trust, the Trustee will deliver the Series 2022 Certificates to or upon the order of the Purchaser, but only upon payment of the purchase price of the Series 2022 Certificates. The net proceeds of the sale of the Series 2022 Certificates, including accrued interest and premium, if any, paid over to the Trustee will be deposited and applied as provided in **Article VI**.

### **Section 3.09. Additional Certificates.**

(a) Upon the execution and delivery of a Supplemental Lease that provides for an increase in the amount of Basic Rent payable under the Lease and so long as no Event of Default exists, Additional Certificates evidencing the right of the Owners thereof to receive the Principal Portion and the Interest Portion of such additional Basic Rent may be executed and delivered under and equally and ratably secured by this Declaration of Trust on a parity with the Series 2022 Certificates and any other Additional Certificates, at any time and from time to time, upon compliance with the conditions provided in this Section, for the purpose of providing funds to pay all or any part of the cost of (1) repairing, replacing or restoring the Project, (2) improving, upgrading or modifying the Project, (3) additional improvements to the Project or the acquisition of additional real property to be included in the Project or the acquisition, purchase, construction or equipping of additions to or expansions of or remodeling or modification of the Project, and (4) refunding any or all of the Certificates.

(b) Before any Additional Certificates may be executed and delivered under the provisions of this Section, the City will (1) adopt an ordinance or resolution authorizing the execution and delivery of such Additional Certificates, fixing the amount and terms thereof and describing the Certificates to be refunded, if any, (2) consent in writing to the Trustee's execution of a Supplemental Declaration of Trust for the purpose of executing and delivering such Additional Certificates, and (3) authorize the Trustee to enter into an amendment to the Lease with the City to provide for Basic Rent Payments at least sufficient to pay the Principal Portion or Prepayment Price and Interest Portion of the Certificates then to be Outstanding (including the Additional Certificates to be executed and delivered) as the same become due,

and for such other matters as are appropriate because of the execution and delivery of the Additional Certificates proposed to be delivered.

(c) Such Additional Certificates will have the same designation as the Series 2022 Certificates, except for an identifying series letter or date. The Principal Portion and the Interest Portion of Basic Rent represented by such Additional Certificates will be payable on the dates, in the amounts and (with respect to such Interest Portion) at the rates as may be provided by the Supplemental Declaration of Trust authorizing such Additional Certificates. **Exhibit C** will be amended by such Supplemental Declaration of Trust to reflect separately the Principal Portion of Basic Rent allocable to each series of Certificates. Such Additional Certificates will be on a parity with and will be entitled to the same benefit and security of this Declaration of Trust as the Series 2022 Certificates and any other Additional Certificates.

(d) The Additional Certificates will be executed substantially in the form and manner as provided in this Article, but prior to or simultaneously with the delivery of such Certificates by the Trustee, the following items will be on file with the Trustee:

(1) A copy, certified by the Clerk of the City, of the ordinance or resolution passed by the governing body of the City authorizing such Supplemental Lease and authorizing the execution and delivery of the Additional Certificates, fixing the amount and terms thereof and describing the Certificates to be refunded, if any.

(2) An original executed counterpart of the Supplemental Declaration of Trust authorizing such Additional Certificates.

(3) An original executed counterpart of the Supplemental Lease.

(4) An original executed counterpart of a Purchase Document relating to the Additional Certificates.

(5) An Opinion of Special Tax Counsel to the effect that the execution and delivery of such Additional Certificates will not result in the Interest Portion of Basic Rent evidenced by any Series 2022A Certificates then Outstanding becoming includable in gross income of the Owners thereof for federal income tax purposes.

(6) Such other certificates, statements, receipts, opinions and documents required by this Declaration of Trust or the Lease or as the Trustee may reasonably require for the delivery of the Additional Certificates.

(e) When the documents mentioned in **Section 309(d)** have been filed with the Trustee, and when such Additional Certificates have been executed and registered as required by this Declaration of Trust, the Trustee will deliver such Additional Certificates to or upon the order of the purchaser named in the Purchase Document relating to such Additional Certificates, but only upon payment of the purchase price of such Additional Certificates as specified in the Purchase Document relating to such Additional Certificates. The Proceeds of Additional Certificates, including accrued interest, if any, paid to the Trustee will be deposited, as follows or as provided in the Supplemental Declaration of Trust:

(1) all accrued interest, if any, paid by the purchasers of the Additional Certificates into the Lease Revenue Fund;

(2) an amount equal to the amount required to fund any reserve requirement related to the Additional Certificates into the reserve fund, if any, for such Additional Certificates; and

(3) the remaining Proceeds from any Additional Certificates, as provided in the Supplemental Declaration of Trust relating to such Additional Certificates.

**Section 3.10. Book-Entry-Only System.** The Certificates will initially be registered on the Certificate register maintained by the Trustee in the name of Cede & Co., and Beneficial Owners will not receive certificates representing their respective interests in the Certificates, except in the event the Replacement Certificates as provided below. It is anticipated that during the term of the Certificates, the Securities Depository will make book-entry transfers among the Participants and receive and transmit notices with respect to and payments representing the Principal Portion of Basic Rent and the Interest Portion of Basic Rent with respect to the Certificates until and unless the Trustee executes and delivers Replacement Certificates to the Beneficial Owners as described below.

The Trustee agrees to give the various written notices to the Securities Depository in accordance with the Blanket Letter of Representations of the Securities Depository, delivered to the Securities Depository in connection with the original execution and delivery of the Certificates.

If the Securities Depository determines to discontinue providing its services with respect to the Certificates and the City cannot obtain a qualified successor Securities Depository, or if Participants holding a majority position in the Series 2022 Certificates determine not to use the book-entry system of the Securities Depository, the Trustee will execute and deliver one or more certificates (the “**Replacement Certificates**”) to the Participants in principal amounts and maturities corresponding to the identifiable Beneficial Owners’ interests in the Certificates, with such adjustments as the Trustee may find necessary or appropriate as to accrued interest and previous calls for prepayment. In such event, all references to the Securities Depository herein will relate to the period of time when at least one Certificate is registered in the name of the Securities Depository or its nominee. Upon the issuance of Replacement Certificates, all references herein to obligations imposed upon or to be performed by the Securities Depository will be deemed to be imposed upon and performed by the Trustee, to the extent applicable, with respect to such Replacement Certificates. The Trustee may rely on information from the Securities Depository and its Participants as to the names and addresses of and principal amounts held by the Beneficial Owners of the Series 2022 Certificates. The cost of printing Replacement Certificates will be paid by the City.

**Section 3.11. Successor Securities Depository.** In the event the Securities Depository resigns, is unable to properly discharge its responsibilities or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable state or federal statute or regulation, the Trustee, with the written consent of the City, may appoint a successor Securities Depository, provided the Trustee receives written evidence satisfactory to the Trustee with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository will be a securities depository that is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable state or federal statute or regulation. Upon the appointment of a successor Securities Depository, the former Securities Depository will surrender the Certificates, together with assignments duly executed in accordance with **Section 3.04**, to the Trustee for transfer to the successor Securities Depository, and the Trustee will cause the execution and delivery of the Certificates to the successor Securities Depository in appropriate denominations and form as provided herein.

**Section 3.12. Cancellation and Destruction of Certificates upon Payment.**

(a) All Certificates that have been paid or prepaid or that the Trustee has purchased or that have otherwise been surrendered to the Trustee under this Declaration of Trust, either at or before maturity, if not exchanged pursuant to **Section 3.05**, will be canceled by the Trustee immediately upon the payment, prepayment or purchase of such Certificates and the surrender thereof to the Trustee.

(b) All Certificates canceled under any of the provisions of this Declaration of Trust will be destroyed by the Trustee in accordance with then applicable record retention requirements.

**ARTICLE IV**

**PARTICULAR COVENANTS AND PROVISIONS**

**Section 4.01. Covenant of Trustee as to Performance of Obligations.** The Trustee covenants that it will promptly remit to the Owner of each Certificate its interest in each installment of Basic Rent to the extent received by the Trustee, at the places, on the dates and in the manner provided herein and in the Certificates.

**Section 4.02. Covenant to Perform Undertakings.** The Trustee covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Declaration of Trust, in any and every Certificate executed and delivered hereunder and in all proceedings of the Trustee pertaining thereto. The Trustee covenants that it is duly authorized to execute and deliver the Certificates and to enter into this Declaration of Trust and to perform its obligations hereunder.

**ARTICLE V**

**PREPAYMENT**

**Section 5.01. General.** The Certificates are subject to prepayment pursuant to this Article and any Supplemental Declaration of Trust to the extent that prepayments of Basic Rent are required, allowed or provided for under the Lease.

**Section 5.02. Prepayment Provisions with Respect to the Series 2022 Certificates.** The Series 2022 Certificates that evidence Principal Portions of Basic Rent payable to Certificate Owners on or after \_\_\_\_\_, 20\_\_\_\_, will be subject to optional prepayment, as a whole or in part, on or after the fifth anniversary of their date of original delivery, at a Prepayment Price equal to 100% of the Principal Portion of Basic Rent represented by the Series 2022 Certificates being prepaid, plus the Interest Portion of Basic Rent accrued to the Prepayment Date, from amounts paid by the City upon the exercise of its option to purchase the Trustee's interest in the Project or partially prepay Basic Rent Payments pursuant to the terms of the Lease.

**Section 5.03. Selection of Certificates for Prepayment; Notice to Trustee.** If less than all of the Outstanding Certificates are called for optional prepayment, Certificates will be prepaid in such order of stated payment dates as is determined by the City. Within a stated payment date the Trustee will select the Certificates or any given portion thereof to be prepaid in such equitable manner as the Trustee determines in principal amounts of \$5,000 or integral multiples thereof. In case of any optional prepayment, at the election of the City, the City will, at least 45 days prior to the Prepayment Date (unless a shorter notice will be satisfactory to the Trustee), give written notice to the Trustee directing the Trustee to call Certificates for prepayment and give notice of prepayment and specifying the Prepayment Date,

the series, the principal amount and maturities of Certificates to be called for prepayment, the applicable prepayment price and the provision or provisions of this Declaration of Trust pursuant to which such Certificates are to be called for prepayment.

**Section 5.04. Partial Prepayment of Certificate.** Upon surrender of any Certificate prepaid in part only, the Trustee will execute and deliver to the Owner thereof, at the expense of the City, a new Certificate or Certificates of the same series and maturity, equal in aggregate principal amount to the unprepaid portion of the Certificate surrendered.

**Section 5.05. Notice of Prepayment.** Unless otherwise provided herein, notice of prepayment will be given by the Trustee, not more than 60 days and not less than 30 days prior to the Prepayment Date, to the City and the Owner of each Certificate affected at the address shown on the registration books of the Registrar on the date such notice is mailed. Each notice of prepayment will state (a) the Prepayment Date, (b) the place of prepayment, (c) the Prepayment Price, (d) if less than all, the identification of the Certificates to be prepaid, and (e) if a Certificate is being prepaid in part, the portion thereof being prepaid. Such notice will also state that the Interest Portion of the Basic Rent represented by the Certificates designated for prepayment will cease to accrue from and after such Prepayment Date and that on said date the Prepayment Price will become due and payable on each of said Certificates. The failure of the Owner of any Certificate to be so prepaid to receive notice of prepayment mailed as herein provided or any defect therein will not affect or invalidate the validity of any proceedings for the prepayment of such Certificate.

The Trustee is also directed to comply with any mandatory standards then in effect for processing redemptions of municipal securities established by the Securities and Exchange Commission. Failure to comply with such standards will not affect or invalidate the prepayment of any Certificate to be prepaid.

The Trustee, as long as a book-entry system is used for the Certificates, will send notices of prepayment only to the Securities Depository, as the Owner of the Certificates. Any failure of the Securities Depository to advise any of the Participants, or of any participant or any nominee to notify any Beneficial Owner of the Certificates, of any such notice and its content or effect will not affect the validity or sufficiency of the proceedings relating to the prepayment of the Certificates called for prepayment.

**Section 5.06. Effect of Prepayment.** Notice of prepayment having been duly given as provided, and upon funds for payment of the Prepayment Price of such Certificates (or portions thereof) being held by the Trustee, on the Prepayment Date designated in such notice, the Certificates (or portions thereof) so called for prepayment will become due and payable at the Prepayment Price specified in such notice and the Interest Portion of Basic Rent represented by the Certificates so called for prepayment will cease to accrue, said Certificates (or portions thereof) will cease to be entitled to any benefit or security under this Declaration of Trust and the Owners of such Certificates will have no rights in respect thereof except to receive payment of the Prepayment Price.

All Certificates prepaid pursuant to the provisions of this Article will be cancelled upon surrender thereof and destroyed by the Trustee pursuant to **Section 3.12**.

## ARTICLE VI

### DELIVERY OF CERTIFICATES; FUNDS; APPLICATION OF PROCEEDS AND OTHER MONEYS

**Section 6.01. Establishment of Funds.** There are hereby established the following funds and accounts:

- (a) Project Fund.
- (b) Lease Revenue Fund.
- (c) Rebate Fund.

All funds and accounts established pursuant to this Article will be held by the Trustee in trust, except for the Rebate Fund, for the benefit of the Certificate Owners. The money in all of the funds and the accounts will be applied as hereinafter provided.

**Section 6.02. Application of Proceeds of Series 2022 Certificates and Other Moneys.** The Proceeds of the Series 2022 Certificates will be deposited as follows:

- (a) in the Lease Revenue Fund, any accrued interest with respect to the Series 2022 Certificates;
- (b) in the Project Fund, the remainder of the Proceeds of the Series 2022 Certificates.

**Section 6.03. Application of Lease Revenues.** Lease Revenues will be deposited, as received pursuant to the Lease, as follows:

- (a) Basic Rent will be deposited to the Lease Revenue Fund.
- (b) Optional prepayments of the Principal Portion of Basic Rent (in amounts equal to the applicable Prepayment Price) will be deposited to the Lease Revenue Fund.
- (c) Payments of Supplemental Rent pursuant to **Section 4.02** of the Lease will be applied as provided in **Section 4.02** of the Lease.

Undesignated payments of Rent that are insufficient to discharge the full amount then due will be applied first to the Interest Portion of Basic Rent, next to the Principal Portion of Basic Rent and finally to Supplemental Rent.

**Section 6.04. Disbursements from the Project Fund.**

(a) Money in the Project Fund will be used to pay for Costs of the Project, including Costs of Issuance. Payment will be made from moneys in the Project Fund upon receipt by the Trustee of a requisition certificate therefor signed by an Authorized Representative of the City which requisition certificate will contain the statements, representations and certificates set forth in the form thereof attached hereto as **Exhibit B** and will be otherwise substantially in such form.

In making disbursements for Costs of the Project, the Trustee will be entitled to conclusively rely upon each written requisition certificate executed by the Authorized Representative of the City and, if required, by an architect, engineer or contractor, without inquiry or investigation. It is understood that the

Trustee will *not* make any inspections of the Project, make any provision to obtain completion bonds, mechanic's or materialmen's lien releases or otherwise supervise any phase of the construction or furnishing of the Project. The approval of each requisition certificate by the Authorized Representative of the City will constitute unto the Trustee an irrevocable determination that all conditions precedent to the payment of the specified amounts from the Project Fund have been completed. The Trustee will make disbursements to pay Costs of the Project for which any such request is made within five Business Days of the receipt of a properly executed certificate with all necessary supporting information.

(b) The Completion Date of the Improvements and Personal Property and the payment of all Costs of the Project (other than Costs of the Project for which sufficient amounts are retained in the Project Fund) will be evidenced by the filing with the Trustee of the Completion Certificate pursuant to **Section 5.03** of the Lease. As soon as practicable following the receipt by the Trustee of the Completion Certificate, any balance remaining in the Project Fund will be transferred and deposited without further authorization as provided in **Section 5.03** of the Lease.

(c) In the event of the acceleration of all of the Certificates pursuant to **Section 9.02**, any moneys then remaining in the Project Fund will be transferred and deposited to the credit of the Lease Revenue Fund and will be used to pay Basic Rent.

**Section 6.05. Application of Moneys in the Lease Revenue Fund.** Except as otherwise provided herein, all amounts in the Lease Revenue Fund will be used and withdrawn by the Trustee solely to pay Basic Rent represented by the Certificates when due and payable or on a Prepayment Date.

**Section 6.06. Rebate Fund.** Moneys will be deposited in and disbursed from the Rebate Fund in accordance with written instructions from the City to the Trustee, prepared in accordance with the provisions of the Tax Compliance Agreement.

**Section 6.07. Repayment to the City.** After payment in full of all Rent Payments through the maximum Lease Term or the earlier purchase of the Trustee's interest in the Project pursuant to **Section 10.01** of the Lease, all amounts remaining in the Lease Revenue Fund will be paid to the City.

**Section 6.08. Payments Due on Days other than Business Days.** In any case where the date of maturity of Principal Portions of Basic Rent Payments, Prepayment Price or Interest Portions of Basic Rent Payments represented by the Certificates or the date fixed for prepayment of any Certificates is not a Business Day, then payment of Principal Portions of Basic Rent Payments, Prepayment Price or Interest Portions of Basic Rent Payments represented by the Certificates need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest will accrue for the period after such date.

**Section 6.09. Nonpresentment of Certificates.** If any Certificate will not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Certificate have been made available to the Trustee, all liability of the Trustee and the City to the Owner thereof for the payment of such Certificate will forthwith cease, determine and be completely discharged, and thereupon it will be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Certificate, who will thereafter be restricted exclusively to such fund or funds for any claim of whatever nature under this Declaration of Trust or on, or with respect to, said Certificate. If any Certificate will not be presented for payment within one year following the date when such Certificate becomes due, whether by maturity or otherwise, the Trustee will repay, without liability for interest thereon, to the City the funds theretofore held by the Trustee for payment of such Certificate, and such Certificate will, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the City, and the Owner thereof will be entitled to look only to the City for payment, and then only to the extent of the

amount so repaid, and the City will not be liable for any interest thereon and will not be regarded as a trustee of such money.

**Section 6.10. Separate Accounting of Funds Allocable to each Series of Certificates.** The Trustee will maintain separate accounts for funds and securities attributable to each series of Certificates in the Funds held by the Trustee hereunder so that the calculations for each series of Certificates can be made separately for such series. Any transfer of funds or securities or earnings thereon from one fund or account to another will be made to the appropriate account or subaccount of the same series of Certificates to which such funds or securities are attributed. If, at any time, a payment is made to any such fund that is less than the amount due and payable to such fund, the amount payable will be credited *pro rata* to each such separate account within such fund, based on the amount owed to each such account.

## ARTICLE VII

### DEPOSITARIES OF MONEYS, SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

**Section 7.01. Moneys to be Held in Trust.** All moneys deposited with or paid to the Trustee for account of the Funds under this Declaration of Trust will be held by the Trustee in trust and will be applied only in accordance with this Declaration of Trust and the Lease and (except for the Rebate Fund) until used or applied as herein provided, will constitute part of the Trust Estate and will not be subject to any lien other than the lien of this Declaration of Trust. The Trustee will not be under any liability for interest on any moneys received hereunder except as provided herein.

**Section 7.02. Investment of Moneys.** Money held in the Funds will, subject to the requirements of the Tax Compliance Agreement and as hereinafter provided, be invested and reinvested by the Trustee, pursuant to written direction of the City, signed by an Authorized Representative of the City, in Investment Securities that mature or are subject to redemption by the owner prior to the date such funds will be needed. In the absence of such instructions, the Trustee is authorized to invest money in Investment Securities described in subparagraph (d) of the definition of Investment Securities in **Section 1.01**. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees and cash sweep account fees, which may be deducted from income earned on investments, provided that any such fees will not exceed the interest income on the investment.

The Trustee will sell and reduce to cash a sufficient amount of such Investment Securities held by the Trustee in any fund hereunder whenever the cash balance in such Fund is insufficient for the purpose of such Fund. Any such Investment Securities will be held by or under the control of the Trustee and will be deemed at all times a part of the Fund or account in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Investment Securities will be credited to such Fund or account, and any loss resulting from such Investment Securities will be charged to such Fund or account.

For purposes of determining the amount in any Fund or account, the value of any investments will be computed at the market value thereof (excluding accrued interest), the purchase price thereof (excluding accrued interest) or principal amount, whichever is lower.

The Trustee may, in making or disposing of any investment permitted by this **Section 7.02**, deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Trustee or for any third person or dealing as principal for its own account.

## ARTICLE VIII

### AMENDMENT OF THE DECLARATION OF TRUST, THE LEASE OR THE LICENSE AND EASEMENT

#### Section 8.01. Amendments Permitted.

(a) This Declaration of Trust, the Lease and the License and Easement and the rights and obligations of the City and of the Owners of the Certificates and of the Trustee may be modified or amended from time to time and at any time by an amendment or supplement hereto or thereto that the parties hereto or thereto may enter into when the written consent of the Trustee and the City, if not a party hereto or thereto, and the Owners of a majority in aggregate Principal Portion of Basic Rent Payments represented by the Certificates then Outstanding has been filed with the Trustee. No such modification or amendment will (1) extend the stated maturity of any Certificate, or reduce the amount of principal represented thereby, or extend the time of payment or reduce the amount of any Prepayment Price provided in this Declaration of Trust for the payment of any Certificate, or reduce the rate of interest with respect thereto, or extend the time of payment of interest with respect thereto without the consent of the Owner of each Certificate so affected, (2) reduce the specified percentage of Certificates the consent of the Owners of which is required to effect any such modification or amendment or, except in connection with the delivery of any Additional Certificates, permit the creation of any lien on money in the Project Fund or the Lease Revenue Fund or deprive the Owners of the trust created by this Declaration of Trust with respect to the moneys in the Project Fund or the Lease Revenue Fund or (3) create a preference or priority of any Certificate or Certificates over any other Certificate or Certificates without the consent of the Owners of all of the Certificates then Outstanding. Promptly after the execution by the Trustee of any amendment pursuant to this **Section 8.01(a)**, the Trustee will give Notice by Mail, setting forth in general terms the substance of such amendment to the Owners at the addresses listed on the registration books kept by the Trustee pursuant to **Section 3.06**. Any failure to give such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amendment.

(b) Notwithstanding **Section 8.01(a)**, this Declaration of Trust, the Lease or the License and Easement and the rights and obligations of the City, of the Trustee and of the Owners of the Certificates may also be modified or amended from time to time and at any time by an agreement that the parties hereto or thereto may enter into without the consent of any Certificate Owners, only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the Trustee in this Declaration of Trust, other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Certificates (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the City; provided, however, that no such covenant, agreement, pledge, assignment or surrender will in the sole judgment of the Trustee materially adversely affect the interests of the Trustee or the Owners of the Certificates;

(2) to add to the covenants and agreements of the City in the License and Easement or the Lease, other covenants and agreements thereafter to be observed or to surrender any right or power therein reserved to or conferred upon the Trustee or the City; provided, however, that no such covenant, agreement or surrender will in the sole judgment of the Trustee materially adversely affect the interests of the Owners of the Certificates;

(3) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Declaration of

Trust, the License and Easement or the Lease, or in regard to matters or questions arising under this Declaration of Trust, the License and Easement or the Lease as the Trustee and the City may deem necessary or desirable and not inconsistent with said agreements, or as may be requested by the City or the Trustee and that will not, in any such case in the sole judgment of the Trustee materially adversely affect the interests of the Owners of the Certificates;

(4) to modify, amend or supplement this Declaration of Trust in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute, and that will not in the sole judgment of the Trustee materially adversely affect the interests of the Owners of the Certificates;

(5) to provide for any additional procedures, covenants or agreements necessary to maintain the exclusion of the Interest Portion of Basic Rent from gross income for purposes of federal income taxation;

(6) to provide for the execution and delivery of Additional Certificates; or

(7) to make any other change that in the sole judgment of the Trustee does not have a materially adverse effect on the rights of the Certificate Owners.

**Section 8.02. Effect of Amendments.** Upon the execution of any amendments hereto, pursuant to this **Article VIII**, this Declaration of Trust will be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Declaration of Trust of the Trustee and all Owners of Certificates Outstanding will thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such amendment will be deemed to be part of the terms and conditions of this Declaration of Trust for any and all purposes.

**Section 8.03. Endorsement of Certificates; Preparation of New Certificates.** Certificates delivered after the execution of any amendment pursuant to this **Article VIII** may, and if the Trustee so determines will, bear a notation by endorsement or otherwise in form determined by the Trustee as to any modification or amendment provided for in such amendment. In that case, upon presentation of a Certificate for such purpose at the designated corporate trust office of the Trustee, a suitable notation will be made on such Certificate. If the amendment so provides, new Certificates so modified as to conform, in the opinion of the Trustee, to any modification or amendment contained in such amendment, will be prepared and executed by the Trustee, and upon demand of the Owners of any Certificates then Outstanding will be exchanged at the designated corporate trust office of the Trustee, without cost to any Certificate Owner, for Certificates then Outstanding, upon surrender for cancellation of such Certificates in equal aggregate principal amounts of the same maturity, interest rate and tenor.

**Section 8.04. Amendment of Particular Certificates.** The provisions of this Article will not prevent any Certificate Owner from accepting any amendment as to the particular Certificates held by him, provided that due notation thereof is made on such Certificates.

**Section 8.05. Opinion of Counsel.** Anything to the contrary in this **Article VIII** notwithstanding, before the Trustee or the City consents to any modification or amendment of this Declaration of Trust, the License and Easement or the Lease, an Opinion of Special Tax Counsel to the effect that such amendment (a) is permitted by this Declaration of Trust and the instrument modified or amended (if other than this Declaration of Trust), (b) complies with their terms, (c) will, upon execution and delivery thereof, be valid and binding upon the City in accordance with the terms of the instrument modified

or amended, and (c) will not adversely affect the exclusion from gross income for purposes of federal income taxation of the Interest Portion of Basic Rent Payments represented by the Certificates will be delivered to the Trustee. In any instance in which the Trustee may be required to determine that a modification or amendment will not materially adversely affect the interest of the Owners of the Certificates, prior to consenting to such modification or amendment, the Trustee will be entitled to require that there be delivered to it an Opinion of Counsel to the effect that no such materially adverse affect would result from such modification or amendment. The Trustee will be fully protected and will incur no liability in relying upon such Opinion of Counsel in making such determination.

## ARTICLE IX

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND OWNERS OF CERTIFICATES

**Section 9.01. Defaults.** The occurrence of any of the following events, subject to the provisions of **Section 9.09**, is hereby defined as an “**Event of Default:**”

(a) Default in the due and punctual payment of any Interest Portion of Basic Rent represented by a Certificate which is not cured within 90 days; or

(b) Default in the due and punctual payment of the Principal Portion of Basic Rent represented by a Certificate, whether at the stated payment date thereof or the Prepayment Date set therefor in accordance with the terms hereof which is not cured within 90 days; or

(c) Any Event of Lease Default.

**Section 9.02. Acceleration.** Upon the occurrence of an Event of Default, the Trustee may, and upon receipt of a Directive will, by notice in writing delivered to the City, declare the Principal Portion and Interest Portion of Basic Rent represented by all Certificates Outstanding to the end of the then current Fiscal Year immediately due and payable.

**Section 9.03. Other Remedies.** Upon the occurrence of an Event of Lease Default, the Trustee may exercise any remedies available under the Lease and, to the extent consistent therewith, may sell, lease or manage any portion of the Project or Trustee’s interest in the Project and apply the net proceeds thereof in accordance with **Section 9.05** and, whether or not it has done so, may pursue any other remedy available to it under the Lease or at law or in equity.

No remedy by the terms of this Declaration of Trust conferred upon or reserved to the Trustee or to the Certificate Owners is intended to be exclusive of any other remedy, but each and every such remedy will be cumulative and will be in addition to any other remedy given to the Trustee or to the Certificate Owners hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default hereunder whether by the Trustee or by the Certificate Owners will extend to or will affect any subsequent default or will impair any rights or remedies consequent thereon.

**Section 9.04. Rights of Certificate Owners.** If an Event of Default has occurred and is continuing and if instructed to do so by a Directive and if indemnified as provided in **Sections 9.07** and **11.01(m)**, the Trustee will be obligated to exercise such one or more of the rights and the remedies conferred by this Article as the Trustee, upon the advice of counsel, deems to be in the interests of the Certificate Owners; provided that such Directive will not be otherwise than in accordance with the provisions of law and of this Declaration of Trust, and provided further that the Trustee will have the right to decline to follow any such Directive if the Trustee in good faith determines that the proceedings so directed would involve it in personal liability.

Any other provision herein to the contrary notwithstanding, the Owners of not less than a majority in aggregate principal amount of Certificates then Outstanding will have the right, at any time, by a Directive, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of this Declaration of Trust, or for the appointment of a receiver or any other proceedings hereunder; provided that such Directive will not be otherwise than in accordance with the provisions of law and of this Declaration of Trust, and provided, further, that the Trustee has been indemnified as provided in **Sections 9.07** and **11.01(m)** and will have the right to decline to follow any such direction if the Trustee in good faith determines that the proceeding so directed would involve it in personal liability.

**Section 9.05. Application of Moneys.** All money received by the Trustee pursuant to any right given or action taken under the provisions of this Article will, after payment of the costs and expenses of the proceedings resulting in the collection of such money and of the expenses, liabilities and advances (including, without limitation, attorneys' fees and expenses) incurred or made by the Trustee, be deposited into the Lease Revenue Fund and all money in the Lease Revenue Fund will be applied as follows:

(a) unless the Principal Portions of Basic Rent represented by all the Certificates have become or have been declared due and payable, all such moneys will be applied:

FIRST - To the payment to the persons entitled thereto of the Interest Portions of Basic Rent represented by the Certificates in the order of the maturity of the installments of such interest and, to the payment ratably, according to the amount due on such installments, to the persons entitled thereto, without any discrimination or privilege; and

SECOND - To the payment to the persons entitled thereto of the unpaid Principal Portions of Basic Rent represented by any Certificates that have become due (other than Principal Portions of Basic Rent represented by Certificates with respect to the payment of which moneys are held pursuant to the provisions of this Declaration of Trust) in the order of such due dates, with interest from the respective dates upon which they become due and, if the amount available will not be sufficient to pay in full the Principal Portions of Basic Rent represented by Certificates due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege except as to any difference in the respective rates of interest specified respecting the Certificates.

(b) If the Principal Portions of Basic Rent represented by all Certificates have become due or have been declared due and payable, all such moneys will be applied to the payment of the Principal Portions and the Interest Portions of the Basic Rent then due and unpaid upon the Certificates without preference or priority of principal over the interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Certificate over any other Certificate, ratably, according to the amounts due respectively for

principal and interest, to the persons entitled thereto without any discrimination or privilege except as to any difference in the respective rates of interest specified respecting the certificates.

(c) If the Principal Portions of the Basic Rent represented by all Certificates have been declared due and payable and if such declaration will thereafter have been rescinded and annulled under the provisions of this Article then subject to the provisions of **Section 9.05(b)** in the event that the Principal Portions of Basic Rent represented by all the Certificates will later become due or be declared due and payable, the moneys will be applied in accordance with the provisions of **Section 9.05(a)**.

Whenever money is to be applied pursuant to the provision of this **Section 9.05**, such money will be applied at such times, and from time to time, as the Trustee will determine, having due regard to the amount of such money available for the application and the likelihood of additional money becoming available for such application in the future. Whenever the Trustee will apply such funds, it will fix the date (which will be a Basic Rent Payment Date unless it deems another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal paid on such dates will cease to accrue. The Trustee will give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date and will not be required to make payment to the Owner of any Certificate until such Certificate is presented to the Trustee for appropriate endorsement or for cancellation if paid in full.

Whenever the Principal Portion and the Interest Portion of all Certificates have been paid under the provisions of this Section, all expenses and charges of the Trustee (including, without limitation, attorneys' fees and expenses) have been paid and any other obligations under the Lease have been paid in full, any balance remaining in the Funds will be paid to the City.

**Section 9.06. Remedies Vested in Trustee.** All remedies and rights of action (including the right to file proof of claims) under this Declaration of Trust or under any of the Certificates may be enforced by the Trustee without the possession of any of the Certificates or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee will be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Owners of the Certificates. Any recovery of judgment or other amounts will be for the equal benefit of the Owners of the Outstanding Certificates.

**Section 9.07. Rights and Remedies of Certificate Owners.** No Owner of any Certificates will have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the License and Easement, the Lease or this Declaration of Trust, for the execution of any trust thereof, for the appointment of a receiver or to enforce any other remedy thereunder or hereunder, unless (a) an Event of Default has occurred; (b) the Owners have given a Directive to the Trustee and have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) such Certificate Owners have provided to the Trustee indemnification satisfactory to the Trustee; and (d) the Trustee thereafter fails or refuses to exercise the powers hereinbefore granted or to institute such action suit or proceedings in its, his, her or their name or names. Such notification, request and indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and the trusts of this Declaration of Trust and to any action or cause of action for the enforcement of this Declaration of Trust or for the appointment of a receiver or for any other right or remedy hereunder. No one or more Owners of the Certificates will have any right in any manner whatsoever to affect, to disturb or to prejudice the lien of this Declaration of Trust by its, his, her or their action or to enforce any right or remedy hereunder except in the manner herein provided and all proceedings at law or in equity will be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Certificates then Outstanding.

Nothing in this Declaration of Trust contained will, however, affect or impair the right of any Certificate Owner to enforce the payment of the Principal Portion of and the Interest Portion of the Basic Rent represented by any Certificate at and after the maturity or earlier Mandatory Prepayment thereof.

**Section 9.08. Termination of Proceedings.** If the Trustee has proceeded to enforce any right or remedy under the License and Easement, the Lease or this Declaration of Trust by the appointment of a receiver, by entry or otherwise and such proceedings have been discontinued or abandoned for any reason or have been determined adversely, then and in every such case, the City, the Owners and the Trustee will be restored to their former respective positions and rights thereunder and hereunder and all rights remedies and powers of the Trustee will continue as if no such proceeding had been taken.

**Section 9.09. Waivers of Defaults.** The Trustee will waive any Event of Default and its consequences and rescind any declaration of maturity of principal upon the written request of the Owners of (a) a majority in aggregate principal amount of all Certificates then Outstanding with respect to which a default in the payment of Principal Portion of Basic Rent represented thereby exists; or (b) a majority in aggregate principal amount of all Certificates then Outstanding in the case of any other default; provided, however, that there will not be waived (1) any Event of Default respecting the payment of the Principal Portion of Basic Rent represented by any Certificate at its maturity date, or (2) any Event of Default respecting the payment of the Interest Portion of Basic Rent represented by any Certificate, unless prior to such waiver or rescission, all arrears of principal and interest when due, as the case may be, and all fees, charges and expenses of the Trustee in connection with such default, including, without limitation, attorneys' fees and expenses, have been paid or provided for and, in case any such waiver or rescission or in case any proceeding(s) taken by the Trustee on account of any such default have been discontinued or abandoned or determined adversely, then and in every such case the Trustee, the City and the Certificate Owners will be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission will extend to any subsequent or other default or impair any right consequent thereon.

**Section 9.10. Notices of Defaults.** Within 30 days after the occurrence of any default hereunder of which the Trustee is required to take notice or if notice of default has been given as provided in **Section 11.01(f)**, the Trustee will give written notice thereof to the City and Notice by Mail to the Owners of all Certificates then Outstanding (unless such default has been cured or waived; provided, however, that, except in the case of a default in the payment of the Principal Portion or Interest Portion of Basic Rent Payments represented thereby, the Trustee will be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the interests of such Owners). For the purpose of this Section, the term "**default**" means any event that is an "Event of Default" as defined in **Section 9.01**.

## ARTICLE X

### DEFEASANCE

#### **Section 10.01. Discharge of Declaration of Trust.**

(a) When (1) the obligations of the City under the Lease have been satisfied in connection with the exercise by the City of its option to purchase the Project in accordance with **Article X** of the Lease by the irrevocable deposit in escrow of money or Government Obligations (maturing as to principal and interest in such amounts and at such times as are necessary to make any required payments without reinvestment of any earnings thereon) or both moneys and Government Obligations, and (2) the City has delivered to the Trustee, (A) an Opinion of Counsel to the effect that the conditions for such discharge contained herein and in **Section 10.02** have been satisfied or irrevocably provided for and (B) an

accountant's certificate verifying the sufficiency of money or Government Obligations or both so deposited for the payment of the Principal Portion and Interest Portion of the Certificates and any applicable Prepayment Price to be paid with respect to the Certificates and (3) the City has deposited sufficient moneys to pay the fees, charges and expenses of the Trustee (or has made provision satisfactory to the Trustee for their payment), thereupon the obligations created by this Declaration of Trust will cease, determine and become void except for the right of the Certificate Owners and the obligation of the Trustee to apply such money and Government Obligations to the payment of the Certificates as herein set forth; provided, however, that all provisions hereof relating to the compensation or indemnification of the Trustee will survive the satisfaction and discharge of this Declaration of Trust.

(b) After all amounts owing to the Certificate Owners have been paid hereunder and under the Lease, the Trustee will turn over to the City any surplus in the Lease Revenue Fund and all balances remaining in any other funds or accounts other than moneys and Government Obligations held for the payment of the Certificates at maturity or on prepayment, which money and Government Obligations will continue to be held by the Trustee in trust for the benefit of the Certificate Owners and will be applied by the Trustee to the payment, when due, of the Principal Portions, Prepayment Price or Interest Portions of Basic Rent represented by the Certificates.

**Section 10.02. Deposit of Moneys or Securities.** If money or Government Obligations as hereinabove provided, are deposited with and held by the Trustee or other commercial bank or trust company, the Trustee or other commercial bank or trust company will within 30 days after such Government Obligations have been deposited with it give Notice by Mail, to the Owners at the addresses listed on the registration books kept by the Registrar pursuant to **Section 3.06**, setting forth (a) the maturity date or Prepayment Date, as the case may be, of the Certificates, (b) a description of the money and/or Government Obligations, if any, so held by it, and (c) that this Declaration of Trust has been released in accordance with the provisions of this **Section 10.02**. Whenever in this Declaration of Trust or the Lease it is provided or permitted that there be deposited with or held in trust by the Trustee or other commercial bank or trust company moneys or Government Obligations in the necessary amount to pay or prepay any Certificates, the money or Government Obligations so to be deposited or held may include money or Government Obligations held by the Trustee in the Funds established pursuant to this Declaration of Trust (exclusive of the Project Fund and the Rebate Fund) the principal of and interest on which when due together with any money held by the Trustee for such purpose will provide money sufficient to pay the Principal Portions and Interest Portions of the Basic Rent represented by the Certificates as same becomes due, except that, in the case of Certificates that are to be prepaid prior to maturity and in respect of which irrevocable notice of such prepayment have been given as in **Article V** provided or irrevocable provision satisfactory to the Trustee has been made for the giving of such notice, the amount to be deposited or held will be the Prepayment Price with respect to such Certificates and all unpaid interest to the Prepayment Date.

## ARTICLE XI

### THE TRUSTEE

#### **Section 11.01. Duties, Immunities and Liabilities of Trustee.**

(a) The Trustee will, prior to an Event of Default, and after the curing of all Events of Default that may have occurred, perform only such duties as are specifically set forth in this Declaration of Trust. The Trustee will have no implied duties. The permissive right or power to take any action may not be construed as a duty to take action under any circumstances, and the Trustee will not be liable except in the event of its gross negligence or willful misconduct. The Trustee will, during the existence of

any Event of Default, exercise such of the rights and powers vested in it by this Declaration of Trust, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Trustee will not be obligated to risk its own funds in the administration of the Trust Estate. Notwithstanding any provision herein to the contrary, the Trustee need not take any action under this Declaration of Trust that may involve it in any expense or liability until indemnified to its satisfaction for any expense or liability, including liability related to environmental contamination, it reasonably believes it may incur.

(c) The Trustee is not responsible for any recitals contained in this Declaration of Trust or in the Certificates, or for the recording, filing, rerecording or refileing of this Declaration of Trust or security agreements (excluding the continuation of Uniform Commercial Code financing statements) in connection therewith, or for insuring the Project or for collecting any insurance moneys or for the sufficiency of the security for the Certificates. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the validity or sufficiency of this Declaration of Trust or of the Certificates. The Trustee will not be accountable for the use or application by the City of any of the Certificates or the proceeds thereof or of any money paid to or upon the order of the City under any provision of this Declaration of Trust or the Lease.

(d) The Trustee will not be required to give any bond or surety or report to any court despite any statute, custom or rule to the contrary.

(e) The Trustee may execute any of the duties under this Declaration of Trust by or through agents, attorneys, trustees or receivers and the Trustee will not be responsible for any misconduct or negligence on the part of any agent, attorney, trustee or receiver appointed with due care by it hereunder.

(f) The Trustee will not be required to take notice or be deemed to have notice of any default, Event of Default or other fact or event under this Declaration of Trust other than the City's failure to pay Basic Rental Payments required by **Section 4.01** of the Lease, unless the Trustee is specifically notified in writing of the default or Event of Default, fact or event by the City or the Owners of not less than 25% of the unpaid Principal Portion of Basic Rental Payments represented by the Certificates then Outstanding.

(g) The Trustee may consult legal counsel, may conclusively rely on the opinion or advice of such legal counsel and will not be liable for any act or omission taken or suffered pursuant to the opinion or advice of such counsel. The fees and expenses of the counsel will be deemed to be a proper expense of the Trustee.

(h) Unless specifically required by the terms of this Declaration of Trust, the Trustee need not take notice of or enforce any other document or relationship, including any contract, settlement, arrangement, plan, assignment, pledge, release, decree or the like, other than the Lease, but its duties will be solely as set out in this Declaration of Trust.

(i) The Trustee may be removed at any time by a Directive. The Trustee will give written notice of any removal pursuant to this **Section 11.01(i)** to the City. The Trustee will resign at any time the Trustee ceases to be eligible in accordance with **Section 11.01(l)**, or becomes incapable of acting, or is adjudged as bankrupt or insolvent, or a receiver of the Trustee or its property is appointed, or any public officer takes control or charge of the property or affairs of the Trustee for the purpose of rehabilitation, conservation or liquidation, and thereupon a successor Trustee will be appointed by a Directive.

(j) The Trustee may at any time resign by giving written notice of such resignation to the City and by giving the Certificate Owners Notice by Mail of such resignation at the addresses listed on the registration books kept by the Registrar pursuant to **Section 3.06**. Upon receiving such notice of resignation, a successor Trustee will be appointed by a Directive.

(k) Any removal or resignation of the Trustee and appointment of a successor Trustee will become effective only upon acceptance of appointment by the successor Trustee. If no successor Trustee has been appointed and has accepted appointment within 45 days of giving notice of removal or notice of resignation as provided, the resigning Trustee or any Certificate Owner (on behalf of himself and all other Certificate Owners) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Declaration of Trust will signify its acceptance of such appointment by executing and delivering to the City and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, will become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee held by it as security for the Certificates, including its interest in the License and Easement and the Lease, with like effect as if originally named Trustee herein and the duties and obligations of the predecessor Trustee hereunder will thereafter cease and terminate; but, nevertheless at the request of the City or the request of the successor Trustee, such predecessor Trustee will execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be requested for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Declaration of Trust and will pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the predecessor or the successor Trustee, the City will execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such money, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this **Section 11.01(k)**, such successor Trustee will cause Notice by Mail to all Owners of such acceptance.

(l) Any Trustee appointed under the provisions of this **Section 11.01** in succession to the Trustee will be a state or national trust company or bank having the powers of a trust company and being duly authorized to execute trust powers having a designated corporate trust office in the State, in good standing in the State, having a combined capital and surplus of at least fifty million dollars (\$50,000,000), and subject to supervision and examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank or trust company will be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee will cease to be eligible in accordance with the provisions of this **Section 11.01(l)**, the Trustee will resign immediately in the manner and with the effect specified in this **Section 11.01**.

(m) Notwithstanding anything elsewhere in this Declaration of Trust, the Lease or the License and Easement contained, before taking any action under this Declaration of Trust (except with respect to acceleration of the Certificates and payment of the Certificates upon such acceleration or any payments of the Certificates when due), the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all reasonable fees, costs and expenses (including, without limitation, attorneys' fees and expenses) to which it may be put and to protect it against all liability that it may incur in or by reason of such action, including without limitation liability in connection with environmental contamination, and the cleanup thereof, except liability that is adjudicated to have resulted from its gross negligence or willful misconduct by reason of any action so taken.

(n) The Trustee may elect not to proceed in accordance with the directions of the Owners of the Certificates without incurring any liability to the Certificate Owners if in the opinion of the Trustee such direction may result in environmental or other liability to the Trustee, in its individual capacity, for which the Trustee has not received indemnity from the Certificate Owners, and the Trustee may rely upon an Opinion of Counsel addressed to the Trustee in determining whether any action directed by Certificate Owners may result in such liability.

(o) The Trustee may inform the Certificate Owners of environmental hazards that the Trustee has reason to believe exist, and the Trustee has the right to take no further action and, in such event no fiduciary duty exists that imposes any obligation for further action with respect to the Trust Estate or any portion thereof if the Trustee, in its individual capacity, determines that any such action would materially and adversely subject the Trustee to environmental or other liability for which the Trustee has not received indemnity pursuant to this Declaration of Trust.

(p) Notwithstanding any other provision of this Declaration of Trust to the contrary, any provision intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee will be interpreted to include any action of the Trustee whether it is deemed to be in its capacity as Trustee, Registrar or Paying Agent.

(q) The Trustee will not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Section 7.02**.

(r) The Trustee will not be responsible for the use of any Certificates executed and delivered hereunder.

(s) Any action taken by the Trustee pursuant to and in accordance with this Declaration of Trust upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent is the Owner of any Certificate will be conclusive and binding upon all future Owners of the same Certificate and upon Certificates delivered in exchange therefor or upon transfer or in place thereof.

(t) The Trustee will have the right, but will not be required, to demand, in respect of the execution of any Certificate, the withdrawal of any moneys, the release of any property, or any action whatsoever within the purview of this Declaration of Trust, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee as are deemed desirable for the purpose of establishing the right of the City to any such action.

(u) The Trustee may become the owner of Certificates with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Certificate Owners, whether or not such committee will represent the Owners of a majority in principal amount of the Certificates then Outstanding.

**Section 11.02. Merger or Consolidation.** Any entity into which the Trustee may be merged or converted or with which it may be consolidated or any entity resulting from any merger, conversion or consolidation to which it will be a party or any entity to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company will be eligible under **Section 11.01(I)** will be the successor to such Trustee, without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

**Section 11.03. Liability of Trustee; Indemnity.** The Trustee will not be liable in connection with the performance of its duties hereunder, except for its own gross negligence or willful misconduct.

Before taking any action under this Declaration of Trust (except with respect to acceleration of the Certificates and payment of the Certificates upon such acceleration or any payments of the Certificates when due), the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all reasonable fees, costs and expenses to which it may be put and to protect it against all liability, except liability that is adjudicated to have resulted from its gross negligence or willful misconduct by reason of any action so taken.

**Section 11.04. Right of Trustee to Rely on Documents.** The Trustee will be protected in acting upon any notice, resolution, ordinance, request, consent, order, certificate, report, opinion, Directive or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may be counsel of or to the City, with regard to legal questions, and the opinion or advice of such counsel will be full and complete authorization and protection in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of the trusts imposed upon it by this Declaration of Trust the Trustee deems it necessary or desirable that a matter be proved or established prior to taking or omitting or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a statement signed by the Authorized Representative, and such statement will be full warrant to the Trustee for any action taken, omitted or suffered in good faith under the provisions of this Declaration of Trust in reliance upon such statement, and, prior to the occurrence of a default of which the Trustee has been notified as provided in **Section 11.01(f)** or of which by said section it is deemed to have notice, the Trustee will also be at liberty to accept a similar statement to the effect that any particular dealing, transaction or action is necessary or expedient, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

**Section 11.05. Preservation and Inspection of Documents.** All documents received by the Trustee under the provisions of this Declaration of Trust will be retained in its possession until six months after payment in full of all Certificates and the discharge of this Declaration of Trust and will be subject at all reasonable times to the inspection of the City and any Certificate Owner, and their agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

## ARTICLE XII

### MISCELLANEOUS

**Section 12.01. Survival of Provisions.** The obligations of the Trustee with respect to matters arising before the termination of this Declaration of Trust (including any indemnification obligations and any obligation to pay additional interest) will survive the termination of this Declaration of Trust.

**Section 12.02. No Third Party Beneficiaries.** No persons other than the City, the Trustee, the Owners of Certificates and the successors and assigns of such persons, will have any rights whatsoever under this Declaration of Trust.

**Section 12.03. Notices.** It will be sufficient service of any notice, request, complaint, demand or other paper required by this Declaration of Trust or the Lease to be given or filed with the Trustee or the City if the same will be duly mailed by registered or certified mail with postage prepaid (except as indicated in (a) below) addressed as follows, provided that any of the foregoing given to the Trustee will be effective only upon receipt:

(a) To the Owners of the Certificates if the same will be duly mailed by first class mail, postage prepaid, addressed to each of the Owners of Certificates at the time Outstanding at their addresses as shown by the register maintained pursuant to **Section 3.06**.

(b) If to the City:                   The City of Bellevue, Nebraska  
210 W. Mission Avenue  
Bellevue, Nebraska 68005  
Attention: Finance Director

(c) If to the Trustee:               UMB BANK, N.A.,  
  
West Des Moines, Iowa \_\_\_\_\_  
Attention: Corporate Trust Department

A duplicate copy of each notice, certificate or other communication given hereunder, or pursuant to the Lease or the License and Easement to any of the parties mentioned in this **Section 12.03** will be given to all other parties mentioned herein (other than the Owners of the Certificates unless a copy is required to be furnished to them by other provisions of this Declaration of Trust). The Trustee or the City may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications will be sent to it.

**Section 12.04. Waiver of Personal Liability.**

(a) All obligations or liabilities under this Declaration of Trust on the part of the Trustee are solely obligations or liabilities of the Trustee in its capacity hereunder as a corporate trustee of the Trust Estate. To the extent permitted by law, the City hereby releases each and every director, officer, agent, attorney or employee of the Trustee from any personal or individual liability under this Declaration of Trust. No director, officer, agent, attorney or employee of the Trustee will at any time or under any circumstances be individually or personally liable under this Declaration of Trust for anything done or omitted to be done by the Trustee hereunder.

(b) All obligations or liabilities under this Declaration of Trust on the part of the City are solely obligations or liabilities of the City as a political subdivision. To the extent permitted by law, the Trustee hereby releases each and every official, member, employee or agent of the City from any personal or individual liability under this Declaration of Trust. No official, member, employee or agent of the City will at any time or under any circumstances be individually or personally liable under this Declaration of Trust for anything done or omitted to be done by the City hereunder.

**Section 12.05. Declaration of Trust Binding Upon Trustee and Successors.** This Declaration of Trust will inure to the benefit of and will be binding upon the Trustee and its successors and assigns, subject to the limitations contained herein.

**Section 12.06. Electronic Transactions.** The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents will be deemed to be authentic and valid counterparts of

such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

*[The remainder of this page intentionally left blank.]*

**IN WITNESS WHEREOF**, the Trustee, has caused this Declaration of Trust to be executed by its duly authorized corporate officers, all as of the day and year indicated above.

**UMB BANK, N.A., Trustee**

(SEAL)

By: \_\_\_\_\_  
Vice President

ATTEST:

By: \_\_\_\_\_  
Authorized Officer

EXHIBIT A

TO DECLARATION OF TRUST, DATED AS OF \_\_\_\_\_, 2022,  
EXECUTED BY UMB BANK, N.A., AS TRUSTEE

FORM OF CERTIFICATE OF PARTICIPATION

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the Trustee or its agent for registration of transfer, exchange or payment, and any certificate delivered is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co., or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

NUMBER R-\_\_\_\_ \$ \_\_\_\_\_

CERTIFICATES OF PARTICIPATION [(TAXABLE INTEREST)]  
SERIES 2022[A][B]  
Evidencing a Proportionate Interest  
in Rent Payments to be made by  
The City of Bellevue, Nebraska  
Pursuant to a Lease-Purchase Agreement

<u>Certificate</u> <u>Interest Rate</u>	<u>Payment Date</u>	<u>Date</u>	<u>CUSIP</u>
	December 15, 20____	_____, 2022	

Registered Owner: CEDE & CO.

Principal Amount:

THIS IS TO CERTIFY that the registered owner identified above of this Certificate of Participation (the “Certificate”) is the owner of the proportionate interest hereinafter stated in that certain Lease-Purchase Agreement, dated as of \_\_\_\_\_, 2022 (the “Lease”), between UMB Bank, N.A., a national banking corporation (the “Trustee”), and The City of Bellevue, Nebraska, a city of the first class (the “City”), including payments of Basic Rent to be made thereunder (the “Basic Rent Payments”). The City is authorized to enter into the Lease pursuant to applicable laws, including the constitution and statutes of the State of Nebraska and Ordinance No. \_\_\_\_ of the City. This Certificate is subject to the Declaration of Trust, dated as \_\_\_\_\_, 2022, by the Trustee, as amended or supplemented from time to time (the “Declaration of Trust”), which is on file at the designated corporate trust office of the Trustee located in Bellevue, Nebraska. Capitalized terms used herein and not otherwise defined have the meanings assigned to such terms in the Declaration of Trust.

**THE REGISTERED OWNER** of this Certificate is entitled to receive, subject to the terms of the Lease and the Declaration of Trust, on the payment date specified above (the “**Certificate Payment Date**”), or if selected for prepayment, on the Prepayment Date, the principal sum specified above, representing a portion of the Basic Rent Payment designated as principal coming due on the Certificate Payment Date, and to receive the registered Owner’s proportionate share of Basic Rent Payments designated as interest on June 15 and December 15 commencing on \_\_\_\_\_, 2022, to and including the Certificate Payment Date or the Prepayment Date, whichever is earlier. Such proportionate share of the Basic Rent Payments designated as interest is computed on the principal sum specified above from \_\_\_\_\_, 2022, or the most recent date to which such interest has been paid, at the interest rate specified above on the basis of a 360-day year of twelve 30-day months.

**SUCH AMOUNTS** are payable in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts. The amounts representing principal or prepayment price are payable by check or draft at the designated corporate trust office of the Registrar upon the presentation and surrender of this Certificate; the amounts representing interest are payable to the person in whose name this Certificate is registered in the register maintained by the Trustee as of the close of business on the fifteenth day immediately preceding the date on which each such Payment is due (a “**Record Date**”) by check or draft mailed to such registered Owner at his address as it appears in said register or in the case of an amount representing interest to be paid to any registered Owner of Certificates representing an aggregate amount of principal of \$5,000 or more, by electronic transfer to such registered Owner upon written notice give to the Trustee by such registered Owner not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank (which will be in the continental United States), ABA routing number and account number to which such registered Owner wishes to have such transfer directed.

This Certificate is one of a duly authorized series of certificates of participation designated “Certificates of Participation [(Taxable Interest)], Series 2022[A][B], Evidencing a Proportionate Interest in Basic Rent Payments to be Made by The City of Bellevue, Nebraska, Pursuant to a Lease-Purchase Agreement”, which are being issued contemporaneously and on a parity with “Certificates of Participation [(Taxable Interest)], Series 2022[A][B], Evidencing a Proportionate Interest in Basic Rent Payments to be Made by The City of Bellevue, Nebraska, Pursuant to a Lease-Purchase Agreement” (collectively, the “**Certificates**”) for the purpose of providing funds to pay the costs of (a) acquiring library facilities and equipment for use by the City (the “**Improvements**”), owned and operated by the City, (b) purchasing certain items of personal property in connection with the Improvements (the “**Personal Property**”) and (c) paying certain costs connected to the execution and delivery of the Certificates. This Certificate has been executed by the Trustee pursuant to and is governed by the terms of the Declaration of Trust. Copies of the Lease and the Declaration of Trust are on file at the office of the City and at the designated corporate trust office of the Trustee, and reference to the Lease and the Declaration of Trust and any and all amendments and supplements thereto is made for a description of the pledges and covenants of the City securing the Basic Rent Payments, the nature, extent and manner of enforcement of such pledges and covenants and the rights and the terms and conditions upon which the Certificates are delivered thereunder.

The Declaration of Trust permits certain amendments or supplements to the Declaration of Trust and the Lease not prejudicial to the Certificate Owners to be made without the consent of or notice to the Certificate Owners, certain other amendments or supplements thereto to be made with the consent of the Owners of not less than a majority in aggregate principal amount of the Certificates then Outstanding and other amendments or supplements thereto to be made only with the consent of all Certificate Owners.

If certain conditions are met, the Lease may be amended without the consent of or notice to the Certificate Owners to increase the amount of Basic Rent payable by the City, and additional certificates of

participation evidencing interests in such increased Basic Rent may be executed and delivered under the Declaration of Trust. Such certificates of participation would be on a parity with the Certificates.

The Series 2022 Certificates will be subject to optional prepayment, as a whole or in part, on or after \_\_\_\_\_, 20\_\_ at a Prepayment Price equal to 100% of the Principal Portion of Basic Rent represented by the Series 2022 Certificates being prepaid, plus the Interest Portion of Basic Rent accrued to the Prepayment Date, from amounts paid by the City upon the exercise of its option to purchase the Trustee's interest in the Project or partially prepay Basic Rent Payments pursuant to the terms of the Lease.

In the event any of the Certificates are to be prepaid, notice thereof identifying the Certificates to be prepaid will be given by first class mail, postage prepaid, mailed not more than 60 days and not less than 30 days prior to the Prepayment Date to each registered Owner of Certificates to be prepaid. The failure of the registered Owner of any Certificate to be so prepaid to receive notice of prepayment mailed as herein provided will not affect or invalidate the prepayment of such Certificate. All Certificates for which notice of prepayment is given will cease to bear interest on the specified Prepayment Date, provided moneys or certain securities for their prepayment are on deposit at the place of payment at that time, will cease to be entitled to any benefit or security under the Declaration of Trust and will no longer be deemed to be outstanding under the Declaration of Trust.

This Certificate will be transferable upon the Certificate register, which will be kept for that purpose at the designated corporate trust office of the Trustee, upon surrender and cancellation of this Certificate together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Owner of his, her or its duly authorized attorney and upon payment of the charges provided in the Declaration of Trust. Upon such transfer a new fully registered Certificate or Certificates of the same maturity and aggregate principal amount will be delivered to the transferee. The Trustee may treat the registered Owner hereof as the absolute Owner hereof for all purposes, and the Trustee will not be affected by any notice to the contrary.

The Certificates are being delivered by means of a book-entry system with no physical distribution of certificates to be made except as provided in the Declaration of Trust. One Certificate with respect to each Certificate Payment Date, registered in the nominee name of the Securities Depository, is being delivered. The book-entry system will evidence positions held in the Certificates by the Securities Depository's participants, beneficial Ownership of the Certificates in authorized denominations being evidenced in the records of such participants. Transfers of Ownership will be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The Trustee will recognize the Securities Depository nominee, while the registered Owner of this Certificate, as the Owner of this Certificate for all purposes, including (a) payments of the Principal Portions of Basic Rent and the Interest Portion of Basic Rent, (b) notices and (c) voting. Transfers of the Principal Portion and Interest Portion of Basic Rent to participants of the Securities Depository, and transfers of Principal Portion and Interest Portion of Basic Rent to beneficial Owners of the Certificates by participants of the Securities Depository will be the responsibility of such participants and other nominees of such beneficial Owners. The Trustee will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its participants or persons acting through such participants. While the Securities Depository nominee is the Owner of this Certificate, notwithstanding the provision hereinabove contained, payments on this Certificate will be made in accordance with existing arrangements among the City, the Trustee and the Securities Depository.

EXCEPT AS OTHERWISE PROVIDED IN THE DECLARATION OF TRUST, THIS GLOBAL CERTIFICATE MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER

**NOMINEE OF THE SECURITIES DEPOSITORY OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.**

The Certificates may be delivered in the form of fully registered Certificates in the denomination of \$5,000 or any integral multiple thereof, subject to certain limitations and as otherwise provided in the Declaration of Trust. The Certificates, upon surrender thereof at the designated corporate trust office of the Trustee with a written request for exchange satisfactory to the Trustee duly executed by the registered Owner of his, her or its duly authorized attorney in writing, may be exchanged for an equal aggregate principal amount of fully registered Certificates of any authorized denomination of the same maturity. No service charge will be made for any transfer or exchange of Certificates, but the Trustee may require payment of any tax or governmental charge in connection therewith.

**THE TRUSTEE** has no obligation or liability to the registered Owners of the Certificates to make payments of principal or interest with respect to the Certificates. The Trustee's sole obligations are to administer, for the benefit of the registered Owners thereof, the various funds and accounts established under the Declaration of Trust.

**THE CITY** has certified, recited and declared that all acts, conditions and things required by the constitution and statutes of the State of Nebraska and the Lease to exist, to have happened and to have been performed precedent to the delivery of the Lease, exist, have happened and have been performed in due time, form and manner as required by law.

**IN WITNESS WHEREOF**, the Trustee has caused this Certificate to be executed by an authorized signatory the date set forth above.

**UMB BANK, N.A., WEST DES MOINES, IOWA  
not in its individual capacity but solely as  
Trustee under the Declaration of Trust,  
dated as of \_\_\_\_\_, 2022**

By: \_\_\_\_\_  
Authorized Signatory

---

**ASSIGNMENT**

**FOR VALUE RECEIVED** the undersigned hereby sells, assigns and transfers unto

---

Please Print or Typewrite Name, Address and  
Employee Identification Number or Social Security Number of Transferee

the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ Attorney to transfer the within Certificate on the register kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

---

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

---

(Name of Eligible Guarantor Institution as defined by SEC Rule 17 Ad-15 (17 CFR 240.17 Ad-15) or such other similar rule as Trustee may deem applicable)

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

---

**EXHIBIT B**

**TO DECLARATION OF TRUST, DATED AS OF \_\_\_\_\_, 2022,  
EXECUTED BY UMB BANK, N.A., AS TRUSTEE**

**FORM OF REQUISITION CERTIFICATE**

***FOR COSTS OF THE PROJECT***

**Request No.** \_\_\_\_\_

**Date:** \_\_\_\_\_

**WRITTEN REQUEST FOR DISBURSEMENT FOR  
COSTS OF THE PROJECT**

To: UMB Bank, N.A.  
West Des Moines, Iowa  
Attention: Corporate Trust Department

Ladies and Gentlemen:

Pursuant to **Section 5.02** of the Lease-Purchase Agreement (the “**Lease**”) between UMB Bank, N.A., (the “**Trustee**”) and The City of Bellevue, Nebraska (the “**City**”), and **Section 6.04** of the Declaration of Trust (the “**Declaration of Trust**”), both dated as of \_\_\_\_\_, 2022, the City hereby requests payment in accordance with this request and said sections of the Lease and the Declaration of Trust, and the City hereby states and certifies that (a) all terms of this request are used with the meanings used in the Lease and the Declaration of Trust, (b) the names of the persons, firms or corporations, if any, to whom the payments requested hereby are due, the amounts to be paid are as set forth on **Attachment I** hereto, (c) the amount hereby requested has been paid or is justly due and is hereby requested to be paid to contractors, subcontractors, materialmen, engineers, architects or other persons (which may include the City) (whose names and addresses are stated on **Attachment I** hereto) who have performed necessary and appropriate work or furnished necessary and appropriate materials in the acquisition, construction and installation of the Improvements or Personal Property (a brief description of such work and materials and the several amounts so paid or due being set forth on **Attachment I** hereto), (d) no part of the several amounts paid or due, as stated in this certificate has been, is being or will be made the basis for the withdrawal of any moneys in any previous, pending or subsequently filed certificate, (e) the amount remaining to be paid from the Project Fund to pay the remaining Costs of the Project to be paid from the Series 2022 Certificates (as defined in the Declaration of Trust), together with other moneys set aside by the City to pay Costs of the Project, will, after payment of the amounts requested, be sufficient to pay the cost of completing the Improvements and Personal Property in accordance with an estimate of cost of work not yet completed, it being understood that no moneys in the Project Fund may be disbursed to pay Costs of the Project unless after such expenditure the remaining moneys remaining in the Project Fund, together with any other funds available and committed by the City, are sufficient to pay such remaining Costs of the Project to be paid from the Series 2022 Certificates (as defined in the Declaration of Trust), (f) this certificate contains no request for payment on account of any retained percentage that the City is at the date of such certificate entitled to retain, (g) there has not been filed with or served upon the City any notice of any lien, right to a lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the respective amounts stated in said certificate that has not been released or will not be released simultaneously with the payment of such obligation, and (h) for the purpose of assuring proper direction and credit of payment, invoices, statements, vouchers or bills for the amounts requested, except as to any retainage, related to amounts specified in this certificate are attached hereto.

**THE CITY OF BELLEVUE, NEBRASKA**

By: \_\_\_\_\_  
Authorized Representative

Pursuant to **Section 5.02** of the Lease and **Section 6.04** of the Declaration of Trust, the City hereby states and certifies that (a) each of the City's representations contained in the Lease or the License and Easement is true, correct and not misleading as though made as of the date hereof, and (b) no event exists that constitutes, or with the giving of notice of the passage of time or both would constitute, an Event of default.

**THE CITY OF BELLEVUE, NEBRASKA**

By: \_\_\_\_\_  
Authorized Representative

**ATTACHMENT I  
TO WRITTEN REQUEST FOR DISBURSEMENT FROM  
THE CITY OF BELLEVUE, NEBRASKA  
PROJECT FUND**

**SCHEDULE OF PAYMENTS REQUESTED**

<u>Payee and Address</u>	<u>Amount</u>	<u>Description</u>
--------------------------	---------------	--------------------

**EXHIBIT C**

**TO DECLARATION OF TRUST, DATED AS OF \_\_\_\_\_, 2022,  
EXECUTED BY UMB BANK, N.A., AS TRUSTEE**

**PAYMENT SCHEDULE FOR SERIES 2022A CERTIFICATES**

<b>Principal Portion Date <u>(December 15)</u></b>	<b>Principal <u>Amount</u></b>	<b>Rate of Interest on <u>Interest Portion</u></b>
--	------------------------------------	--

**PAYMENT SCHEDULE FOR SERIES 2022A CERTIFICATES (TAXABLE INTEREST)**

<b>Principal Portion Date <u>(December 15)</u></b>	<b>Principal <u>Amount</u></b>	<b>Rate of Interest on <u>Interest Portion</u></b>
--	------------------------------------	--

**EXHIBIT D-1**

**TO LEASE-PURCHASE AGREEMENT, DATED AS OF \_\_\_\_\_, BETWEEN UMB BANK, N.A. AND THE CITY OF BELLEVUE, NEBRASKA, AND TO DECLARATION OF TRUST, DATED AS OF \_\_\_\_\_, 2022, BY UMB BANK, N.A.**

**PERSONAL PROPERTY**

**EXHIBIT D-2**

**TO LEASE-PURCHASE AGREEMENT, DATED AS OF \_\_\_\_\_, 2022,  
BETWEEN UMB BANK, N.A., AND THE CITY OF BELLEVUE, NEBRASKA  
AND TO DECLARATION OF TRUST, DATED AS OF \_\_\_\_\_, 2022, BY  
UMB BANK, N.A.**

**THE SITE**

City Library, 2206 Longo Drive Bellevue, Nebraska:  
LOTS 2, 3 & 7-9, HARVELL PLAZA 3rd ADDITION TO THE CITY OF BELLEVUE,  
AS SURVEYED, PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA

## LICENSE AND EASEMENT

The City of Bellevue, in the State of Nebraska, (“**Grantor**”) hereby grants a license and easement to UMB Bank, N.A., West Des Moines, Iowa (“**Grantee**”) with respect to the following described tracts of real estate located in Sarpy County, Nebraska:

City Library, 2206 Longo Drive Bellevue, Nebraska:  
LOTS 2, 3 & 7-9, HARVELL PLAZA 3rd ADDITION TO THE CITY OF BELLEVUE,  
AS SURVEYED, PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA

for the acquisition of and renovation and associated furnishings and equipment for the Grantor’s City Library building (collectively, the “**Project**”). This license and easement shall include full access and use thereof by Grantee and its licensees and invitees and shall permit all actions necessary or incidental to the construction, operation and maintenance of the Project. The Grantor hereby grants an exclusive license and easement to the Project and all improvements and equipment upon said real estate financed from the proceeds of Grantee’s Certificates of Participation, Series 2022, and by one or more additional series of Grantee’s certificates of participation; provided, however, such exclusive license and easement shall be and is hereby subject to the terms and conditions of the Lease-Purchase Agreement dated \_\_\_\_\_, 2022, (the “**Lease-Purchase Agreement**”) whereby the Grantee, as trustee, leases to the Grantor and the Grantor leases from the Grantee the Project all in accordance therewith. The Lease-Purchase Agreement includes in Article X thereof the option of the Grantor, upon payment of the specified purchase price, to purchase the Grantee’s interest in the Project. This license and easement shall continue from \_\_\_\_\_, 2022 until December 15, 2042, or the date on which the Lease-Purchase Agreement terminates by satisfaction of all payments due thereunder by the Grantor. The Grantor acknowledges the provisions in Section 9.01(b) of the Lease-Purchase Agreement with respect to eminent domain and incorporates such provisions herein by this reference.

Grantor hereby covenants and warrants that it has full right, title and authority to grant the license and easement rights herein granted and further covenants and warrants that it will defend such rights in Grantee against the claims of all person whomsoever.

*[Remainder of Page Left Intentionally Blank]*

Executed as of this \_\_ day of \_\_\_\_\_, 2022.

THE CITY OF BELLEVUE,  
IN THE STATE OF NEBRASKA

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

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF NEBRASKA     )  
  )  
COUNTY OF SARPY     )

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 2022, by  
Rusty Hike, Mayor of the City of Bellevue, in the State of Nebraska.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Tammi Palm		Planning Manager	
AGENDA ITEM:		CONSENT AGENDA	<input type="checkbox"/>	SPECIAL PRESENTATION	<input type="checkbox"/>
LIQUOR LICENSE	<input type="checkbox"/>	ORDINANCE	<input checked="" type="checkbox"/>	PUBLIC HEARING	<input type="checkbox"/>
RESOLUTION	<input type="checkbox"/>	CURRENT BUSINESS	<input type="checkbox"/>	OTHER	<input type="checkbox"/>

SUBJECT:

Request to rezone Lot 1, F.J. Fitzgerald's Subdivision Replat 2, from RS-84 and ML to BN for the purpose of a childcare center. Applicant: Maria M. Hernandez. General Location: 2516 Chandler Rd. E.

SYNOPSIS/BACKGROUND:

The applicant is requesting to rezone a vacant piece of property from RS-84 and ML to BN. If approved, she plans to construct a commercial childcare center. The property abuts heavy commercial and light industrial uses to the north and west. Additionally, there is a convenience store to the south. Single family residences are to the east. The BN zoning district is the most restrictive commercial zoning the city has, and allows for limited commercial uses serving the common and frequent needs of the residents of the immediate vicinity.

FISCAL IMPACT: n/a BUDGETED FUNDS?: NO GRANT/MATCHING FUNDS?: NO

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: NO COUNTER-PARTY: INTERLOCAL AGREEMENT: NO

CONTRACT DESCRIPTION:

CONTRACT EFFECTIVE DATE: CONTRACT TERM: CONTRACT END DATE:

PROJECT NAME:

START DATE: END DATE: PAYMENT DATE: INSURANCE REQUIRED: NO

CIP PROJECT NAME: CIP PROJECT NUMBER:

STREET DISTRICT NAME (S): STREET DISTRICT NUMBER (S):

ACCOUNTING DISTRIBUTION CODE: ACCOUNT NUMBER:

RECOMMENDATION:

The Planning Department and Planning Commission are recommending approval of this request.

ATTACHMENTS:

- PC Recommendation
- Staff Report
- Ord. No. 4078
- 
- 
- 

SIGNATURES:

LEGAL APPROVAL AS TO FORM:

FINANCE APPROVAL AS TO FORM:

ADMINISTRATOR APPROVAL AS TO FORM:

*[Handwritten signatures in blue ink]*

# City of Bellevue

## PLANNING COMMISSION RECOMMENDATION

APPLICANT: Maria M. Hernandez

CASE #: Z-2112-25

CITY COUNCIL HEARING DATE: March 1, 2022

REQUEST: to rezone Lot 1, F.J. Fitzgerald's Subdivision Replat 2, from RS-84 and ML to BN for the purpose of a childcare center.

On January 27, 2022, the City of Bellevue Planning Commission voted, seven yes, zero no, two absent and zero abstained:

**APPROVAL** based upon lack of perceived negative impact to the surrounding area.

VOTE:

Yes:	Seven:	No:	Zero:	Abstain:	Zero:	Absent:	Two:
	Casey						Cutsforth
	Hankins						Ritz
	Aerni						
	Ackley						
	Compton						
	Perrin						
	Jacobson						

Planning Commission Hearing (s) was held on: January 27, 2022

# CITY OF BELLEVUE PLANNING DEPARTMENT

## RECOMMENDATION REPORT # 2

CASE NUMBER: Z-2112-25

FOR HEARING OF:

REPORT #1: January 27, 2022

REPORT #2: March 1, 2022

### I. GENERAL INFORMATION

#### A. APPLICANT:

Maria M Hernandez  
3437 W Street  
Omaha, NE 68107

#### B. PROPERTY OWNER:

George Rybar  
1106 Camp Gifford Road  
Bellevue, NE. 68005

#### C. GENERAL LOCATION:

2516 Chandler Road East

#### D. LEGAL DESCRIPTION:

Lot 1, F.J. Fitzgerald's Subdivision, Replat 2, located in the Northeast  $\frac{1}{4}$  of Section 15, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska.

#### E. REQUESTED ACTIONS:

Rezone Lot 1, F.J. Fitzgerald's Subdivision from RS-84 and ML to BN.

#### F. EXISTING ZONING AND LAND USE:

RS-84 and ML, Vacant

**G. PURPOSE OF REQUEST:**

The purpose of this request is to obtain approval of a rezoning to allow the development of a childcare center.

**H. SIZE OF SITE:**

The site is approximately 1.31 acres.

**II. BACKGROUND INFORMATION**

**A. EXISTING CONDITION OF SITE:**

The site is presently vacant and covered with vegetation. There is a partial concrete driveway on the west side of the property.

**B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**

- 1. **North:** Single Family Residential/Light Manufacturing, RS-72 and ML
- 2. **East:** Single Family Residential, RS-84
- 3. **South:** General Business (across Chandler Road), BG
- 4. **West:** Heavy General Business, BGH

**C. RELEVANT CASE HISTORY:**

On January 27, 2022, the Planning Commission recommended approval of a request to rezone Lot 1, F.J. Fitzgerald's Subdivision Replat 2, from RS-8 and ML to BN.

**D. APPLICABLE REGULATIONS:**

- 1. Section 5.20, Zoning Ordinance, regarding BN uses and requirements.

**III. ANALYSIS**

**A. COMPREHENSIVE PLAN:**

The Future Land Use Map of the Comprehensive Plan designates this area as being light manufacturing and single family residential.

**B. OTHER PLANS:**

If this rezoning request is approved, the applicant intends to construct a childcare facility.

**C. TRAFFIC AND ACCESS:**

1. The MAPA Traffic Flow Data estimates 1,300 vehicles along the east leg of East Chandler Road, near the intersection of East Chandler Road and Fort Crook Road North.
2. The property has access from East Chandler Road.

**D. UTILITIES:**

All utilities are available to this property.

**E. ANALYSIS:**

1. Maria Hernandez has submitted a request to rezone Lot 1, F.J. Fitzgerald's Subdivision Replat 2, from RS-84 and ML to BN for the purpose of a childcare center.

The zoning ordinance defines childcare center as "a facility licensed to provide childcare for 13 or more children."

2. Ms. Hernandez currently operates a childcare home in Omaha, Nebraska.
3. BN (Neighborhood Business District) is the most restrictive commercial zoning district. It is designed to provide for limited commercial uses serving the common and frequent needs of the residents of the immediate vicinity. Some of the permitted uses include: accounting, billing and tax preparations services, art gallery, bank, savings and loan association, childcare center, florist shop, grocery, supermarket, and medical clinics established to provide service to the inhabitants of the local neighborhood and limited to four full-time practitioners in any one building.
4. This application was sent out to the following departments/individuals for review: Public Works, Permits and Inspections, Chief of Police, Offutt Air Force Base, Fire Inspector, and the Omaha Public School District. The cover letter indicated a deadline to send comments back to the Planning Department, and also stated if the requested department did not have comments pertaining to the application, no response was needed.  
  
No comments were received on this case.
5. This immediate area is a mix of commercial, light industrial, and single family residential uses. This lot contains two different zonings: ML and RS-84. Staff believes the requested change of zone to BN is an appropriate land use buffer

between the heavier uses to the north, west, and south of the property and the adjacent single family residential neighborhood.

6. A 15' bufferyard is required by Article 9, Zoning Ordinance, between the adjacent existing RS-84 zoning district to the east, and the proposed BN zoning district. In addition, for a commercial childcare facility, all design guidelines of Section 8.12, Zoning Ordinance, and parking requirements of Section 8.01, Zoning Ordinance, would need to be met as part of the building permit process.

**F. TECHNICAL DEFICIENCIES:**

None

**IV. DEPARTMENT RECOMMENDATION**

APPROVAL based upon lack of perceived negative impact to the surrounding area.

**V. PLANNING COMMISSION RECOMMENDATION**

APPROVAL based upon lack of perceived negative impact to the surrounding area.

**VI. ATTACHMENTS TO REPORT**

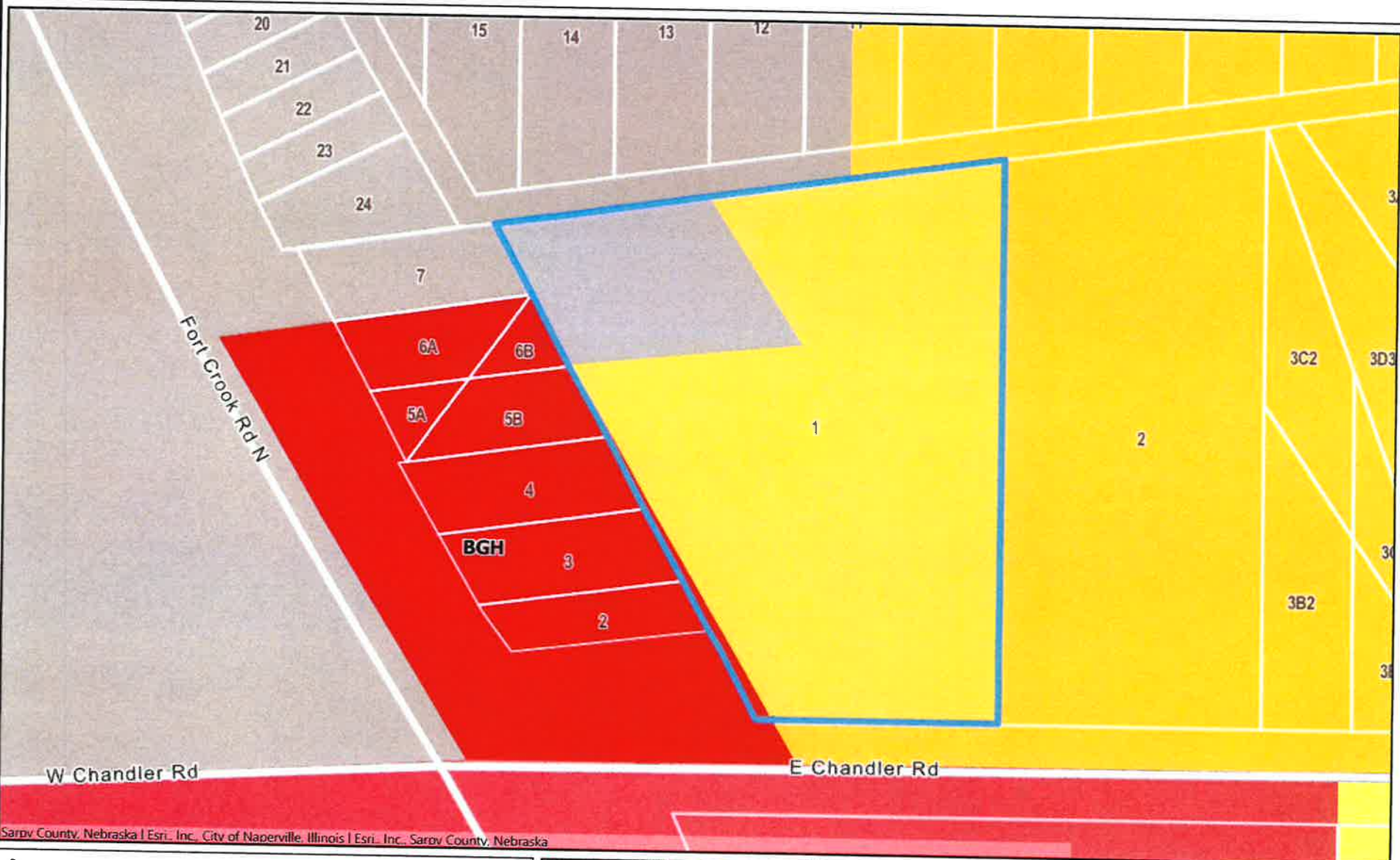
1. Vicinity map/Zoning Map
2. 2020 GIS aerial photo of the property
3. Letter from Maria Hernandez received December 22, 2021
4. Email from Ellen Stuva received January 27, 2022

**VII. COPIES OF REPORT TO:**

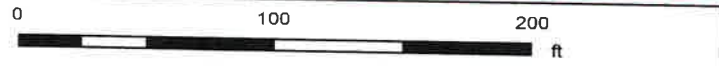
1. Maria Hernandez
2. George Rybar
3. Public Upon Request

 2/7/22  
Assistant Planning Manager

 02/07/22  
Planning Manager                      Date of Report



Sarpy County, Nebraska | Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska



Map Scale 1: 1128

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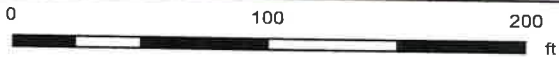


Notes





Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska



Map Scale 1: 1128

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Notes



12/21/21

Hello,

My name is Maria M. Hernandez, I want to rezone the lot I will buy into a commercial zone. Im planning on doing a childcare center in that property, there is a quick trip in the front of the lot a mechanic shop on the side. Once the zoning code has been changed, we will submit the paperwork to get a plan in motion to start building the childcare center. I currently have a childcare in home in Omaha Nebraska that is doing great. The childcare center will be a great new asset to Bellevue especially the location where the lot is. I'm hoping to be able to change the zoning code to start planning this new venture and let my current business grow.

If you have any further questions please feel free to call me at (402) 320-8694.

Thank you,

Maria M Hernandez

Maria M. Hernandez

RECEIVED  
DEC 22 2021  
PLANNING DEPT.

## Tammi Palm

---

**From:** Ellen Stuva <bstuva1@cox.net>  
**Sent:** Thursday, January 27, 2022 7:21 PM  
**To:** Tammi Palm  
**Subject:** Case # Z-2112-25 Maria Hernandez

Hello,

I am resident and owner of 2605 Sidney Street, my property is north of proposed project and backyard meets with northeast portion of 2516 Chandler property.

Questions/concerns that I have regarding the proposed child care center:

-Mrs Hernandez other day care center per website is a 24 hour operation. Will this be plan for this site and is this appropriate for a residential area?

-Will the structure be a residential or business structure?

-What is the proposed number of children and staff?

-There is much congestion currently with traffic entering and exiting QT off Chandler which sometimes backs up onto Fort Crook Road, this would be further complicated by traffic attempting to enter and exit this property.

-Will there be plans or expectations for a privacy fence or other type of closed? There are safety concerns with Chandler and Fort Crook being so close and very busy streets. As a homeowner, I have concerns for noise and loss of privacy as well as potential liability if children would enter my property.

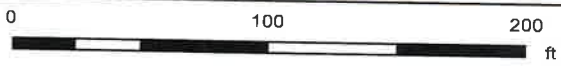
Thanks in advance for allowing me to share my concerns. If these questions should be addressed to someone else, please let me know.

Thanks,

Ellen Stuva



Esri, Inc. City of Naperville, Illinois | Esri, Inc. Sarpy County, Nebraska



Map Scale 1: 1128

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Notes





SARPY COUNTY  
NEBRASKA

2516 Chandler Rd E



Sarpy County, Nebraska | Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska



Map Scale 1: 1128

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Notes



ORDINANCE NO. 4078

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF BELLEVUE, NEBRASKA, AS PROVIDED FOR BY ARTICLE 3 OF ORDINANCE NO. 3619 BY CHANGING THE ZONE CLASSIFICATION OF LAND LOCATED AT OR ABOUT 2516 CHANDLER ROAD EAST, MORE PARTICULARLY DESCRIBED IN SECTION 1 OF THE ORDINANCE AND TO PROVIDE AN EFFECTIVE DATE.

WHEREAS, having received a recommendation from the city of Bellevue Planning Commission and proper notice having been given and public hearing held as provided by law:

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BELLEVUE, NEBRASKA:

Section 1. That part of the official zoning map of the City of Bellevue, Nebraska, as provided in Article 3, of Ordinance No. 3619 is hereby amended to change the zone classification of the following described parcel of land:

Lot 1, F.J. Fitzgerald’s Subdivision Replat 2, located in the Northeast ¼ of Section 15, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska

From RS-84 (Single-Family Residential – 8,400 Square Foot Zone) and ML (Light Manufacturing District) to BN (Neighborhood Business District)

(Maria M. Hernandez)

Section 2. Except as amended herein, the official zoning map and the classification shown therein shall remain as heretofore existing.

Section 3. This ordinance shall take affect and be in force from and after its adoption and publication according to law.

ADOPTED by the Mayor and City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Third Reading: \_\_\_\_\_

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Tammi Palm		Planning Manager	
AGENDA ITEM:		CONSENT AGENDA	<input type="checkbox"/>	SPECIAL PRESENTATION	<input type="checkbox"/>
LIQUOR LICENSE	<input type="checkbox"/>	ORDINANCE	<input checked="" type="checkbox"/>	PUBLIC HEARING	<input type="checkbox"/>
RESOLUTION	<input type="checkbox"/>	CURRENT BUSINESS	<input type="checkbox"/>	OTHER	<input type="checkbox"/>

SUBJECT:

Request to rezone Lots 154 through 196, and Outlots "F" through "J," Spring Ridge, being a platting of Tax Lot 12, Tax Lot 13A, Lot 2 Bohac Addition, and Outlot B, Green Meadows, all located in the Southwest 1/4 of Section 22, T14N, R13E of the 6th P.M., Sarpy County, NE, from AG and BG to RA, BG, and RG-8-PS for the purpose of single family and multi-family residential development. General Location: South 21st Street and Gilmore Lake Road. Applicant: Orchard Valley, Inc.

SYNOPSIS/BACKGROUND:

The applicant is requesting a change of zone and platting to facilitate phases 4 and 5 of the Spring Ridge development near South 21st Street and Gilmore Lake Road. The applicant is proposing a single and multi-family residential development consisting of a mix homes, apartment buildings, and rowhouses.

FISCAL IMPACT: n/a      BUDGETED FUNDS?: NO      GRANT/MATCHING FUNDS?: NO

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: NO      COUNTER-PARTY:      INTERLOCAL AGREEMENT: NO

CONTRACT DESCRIPTION: \_\_\_\_\_

CONTRACT EFFECTIVE DATE: \_\_\_\_\_ CONTRACT TERM: \_\_\_\_\_ CONTRACT END DATE: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

START DATE: \_\_\_\_\_ END DATE: \_\_\_\_\_ PAYMENT DATE: \_\_\_\_\_ INSURANCE REQUIRED: NO

CIP PROJECT NAME: \_\_\_\_\_ CIP PROJECT NUMBER: \_\_\_\_\_

STREET DISTRICT NAME (S): \_\_\_\_\_ STREET DISTRICT NUMBER (S): \_\_\_\_\_

ACCOUNTING DISTRIBUTION CODE: \_\_\_\_\_ ACCOUNT NUMBER: \_\_\_\_\_

RECOMMENDATION:

The Planning Department and Planning Commission are recommending approval of this request.

ATTACHMENTS:

- |                      |                 |                  |
|----------------------|-----------------|------------------|
| 1. PC Recommendation | 2. Staff Report | 3. Ord. No. 4079 |
| 4. _____             | 5. _____        | 6. _____         |

SIGNATURES:

LEGAL APPROVAL AS TO FORM: \_\_\_\_\_

FINANCE APPROVAL AS TO FORM: \_\_\_\_\_

ADMINISTRATOR APPROVAL AS TO FORM: \_\_\_\_\_

*A. Byler-Robin*  
*[Signature]*  
*[Signature]*

# City of Bellevue

## PLANNING COMMISSION RECOMMENDATION

APPLICANT: Orchard Valley, Inc.

CASE #'s: Z-2103-02, and S-2103-05

CITY COUNCIL HEARING DATE: March 1, 2022

REQUEST: to rezone Lots 154 through 196, and Outlots "F" through "J," Spring Ridge, being a platting of Tax Lot 12, Tax Lot 13A, Lot 2 Bohac Addition, and Outlot B, Green Meadows, all located in the Southwest ¼ of Section 22, T14N, R13E of the 6th P.M., Sarpy County, NE, from AG and BG to RA, BG, and RG-8-PS for the purpose of single family and multi-family residential development; and preliminary plat Lots 154 through 196, and Outlots "F" through "J," Spring Ridge.

On January 27, 2022, the City of Bellevue Planning Commission voted seven yes, zero no, two absent and zero abstained:

**APPROVAL** based upon conformance with the Zoning Ordinance, Comprehensive Plan, and Subdivision Regulations.

**VOTE:**

Yes:	Seven:	No:	Zero:	Abstain:	Zero:	Absent:	Two:
	Casey						Cutsforth
	Hankins						Ritz
	Aerni						
	Ackley						
	Compton						
	Perrin						
	Jacobson						

Planning Commission Hearing (s) was held on: January 27, 2022

# CITY OF BELLEVUE PLANNING DEPARTMENT

## RECOMMENDATION REPORT # 3

CASE NUMBERS: S-2103-05  
Z-2103-02

FOR HEARING OF:  
REPORT #1: August 26, 2021  
REPORT #2: January 27, 2022  
REPORT #3: March 1, 2022

### I. GENERAL INFORMATION

#### A. APPLICANT:

Orchard Valley, Inc.  
Melvin Sudbeck  
16255 Woodland Drive  
Omaha, NE 68154

#### B. PROPERTY OWNERS:

Orchard Valley, Inc.  
16255 Woodland Drive  
Omaha, NE 68154

Lionel and Martha Mora  
1902 Lola Avenue  
Bellevue, NE 68147

#### C. GENERAL LOCATION:

21<sup>st</sup> Street and Gilmore Lake Road

#### D. LEGAL DESCRIPTION:

Lots 154 through 196, and Outlots "F" through "J," Spring Ridge, being a platting of Tax Lot 12, Tax Lot 13A, Lot 2 Bohac Addition, and Outlot B, Green Meadows, all located in the Southwest ¼ of Section 22, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, NE.

#### E. REQUESTED ACTIONS:

1. Rezone Lots 154 through 196, and Outlots "F" through "J," Spring Ridge, from AG and BG to RA, BG, and RG-8-PS, with site plan approval, for the purpose of single family and multi-family residential development.

2. Preliminary plat Lots 154 through 196, and Outlots “F” through “J,” Spring Ridge.

**F. EXISTING ZONING AND LAND USE:**

AG and BG; Vacant/Agricultural, Single Family Residential, and VFW Post 10727

**G. PURPOSE OF REQUEST:**

The purpose of this request is to obtain a change in zone and preliminary plat approval to enable single family and multi-family residential development.

**H. SIZE OF SITE:**

The site is approximately 39 acres.

**II. BACKGROUND INFORMATION**

**A. EXISTING CONDITION OF SITE:**

Proposed Lot 154 is developed with a single family residence constructed in 2014. Most of the property is vacant and most recently used agriculturally. Additionally, the VFW Post 10727 is located on a portion of proposed Outlot H at the east end of Gilmore Lake Road.

**B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**

1. **North:** Single Family Residential/Vacant RS-72 and RD-60
2. **East:** Highway 75 Right-of-Way
3. **South:** Vacant, AG
4. **West:** Single Family Residential, RS-72, and RS-72-PS

**C. REVELANT CASE HISTORY:**

1. On January 24, 2013 the Planning Commission continued a request to rezone Lots 1 through 147, and Outlots A and B, Spring Ridge, being a platting of part of Tax Lot 13A, lying north of Tax Lot 6A2A; Part of Tax Lot 12 (irregular 809.99’ x 554.44’); and Lots 92A and 93A, Childs Estate Acres; all located in Section 22, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska from AG and RS-72 to RD-60 for the purpose of single family residential development; and preliminary plat Lots 1 through 147, and Outlots A and B, Spring Ridge. Action on this request was continued until the February 28, 2013 Planning Commission meeting.

2. On February 28, 2013, the Planning Commission recommended approval of a request to rezone Lots 1 through 147, and Outlots A and B, Spring Ridge, being a platting of part of Tax Lot 13A, lying north of Tax Lot 6A2A; Part of Tax Lot 12 (irregular 809.99’ x 554.44’); and Lots 92A and 93A, Childs Estate Acres; all

located in Section 22, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska from AG and RS-72 to RD-60 for the purpose of single family residential development; and preliminary plat Lots 1 through 147, and Outlots A and B, Spring Ridge. On April 8, 2014, the City Council approved the final plat of Lots 1 through 45 and Outlot A, Spring Ridge, contingent upon the improvement of Gilmore Lake Road.

3. On April 24, 2014, the Planning Commission recommended approval of a request to rezone Lots 1 through 203, and Outlots A through F, Spring Ridge, being a platting of Lots 91, 92A, 92B, 93A, 93B, 94 through 96, 109 through 111, and 114, Childs Estate Acres; Lots 1 and 2, Bohac Addition; part of Outlot B, Green Meadows; that part of Tax Lot 13A, lying north of Tax Lot 6A2A, except for 33'; Tax Lots 5A2 and 6A2; the irregular 809.99' x 554.44' tract being a part of Tax Lot 12; the irregular southeast 10.21 acres of Tax Lot 12; the approximate 139.82' x 780' tract being part of Tax Lot 12; together with the portions of vacated 23<sup>rd</sup> Street, Cary Street, and Concord Street; all located in Section 22, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska from AG, RS-72, RD-60, and BG to BG, RS-72, RD-60, and RG-20; and preliminary plat Lots 1 through 203, and Outlots A through F, Spring Ridge. The City Council approved this request on June 9, 2014.

4. On September 24, 2014, the Planning Commission recommended approval of a request to final plat Lots 1 through 153, and Outlots A through E, Spring Ridge, being a platting of Lots 91, 92A, 92B, 93A, 93B, 94 through 96, 109 through 111, and 114, Childs Estate Acres; together with the drainage alley adjacent to the west line of said Lot 110, together with part of vacated Cary Street, Concord Street, and 23<sup>rd</sup> Street lying within said Childs Estate Acres, part of Tax Lots 5A2 and 6A2, and part of Tax Lot 13 north of Tax Lot 6A2A except 33'; all located in the Northwest ¼ of Section 22, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, NE. The City Council approved this request on October 13, 2014.

5. On August 26, 2021, the Planning Commission continued a request to rezone Lots 154 through 196, and Outlots "F" through "J," Spring Ridge, being a platting of Tax Lot 12, Tax Lot 13A, Lot 2 Bohac Addition, and Outlot B, Green Meadows, all located in the Southwest ¼ of Section 22, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, NE from AG and BG to RA, BG, and RG-8-PS for the purpose of single family and multi-family residential development; and preliminary plat Lots 154 through 196, and Outlots "F" through "J," Spring Ridge.

6. On October 28, 2021, the Planning Commission continued a request to rezone Lots 154 through 196, and Outlots "F" through "J," Spring Ridge, being a platting of Tax Lot 12, Tax Lot 13A, Lot 2 Bohac Addition, and Outlot B, Green Meadows, all located in the Southwest ¼ of Section 22, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, NE from AG and BG to RA, BG, and RG-8-PS for the purpose of single family and multi-family residential development; and preliminary plat Lots 154 through 196, and Outlots "F" through "J," Spring Ridge.

7. On December 16, 2021, the Planning Commission continued a request to rezone Lots 154 through 196, and Outlots “F” through “J,” Spring Ridge, being a platting of Tax Lot 12, Tax Lot 13A, Lot 2 Bohac Addition, and Outlot B, Green Meadows, all located in the Southwest ¼ of Section 22, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, NE from AG and BG to RA, BG, and RG-8-PS for the purpose of single family and multi-family residential development; and preliminary plat Lots 154 through 196, and Outlots “F” through “J,” Spring Ridge.

8. On January 27, 2022, the Planning Commission recommended approval of a request to rezone Lots 154 through 196, and Outlots “F” through “J,” Spring Ridge, being a platting of Tax Lot 12, Tax Lot 13A, Lot 2 Bohac Addition, and Outlot B, Green Meadows, all located in the Southwest ¼ of Section 22, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, NE from AG and BG to RA, BG, and RG-8-PS for the purpose of single family and multi-family residential development; and preliminary plat Lots 154 through 196, and Outlots “F” through “J,” Spring Ridge.

#### **D. APPLICABLE REGULATIONS:**

1. Section 5.06, Zoning Ordinance, regarding RA uses and requirements.
2. Section 5.15, Zoning Ordinance, regarding RG-8 uses and requirements.
3. Section 5.17, Zoning Ordinance, regarding Planned Subdivision (-PS) uses and requirements.
4. Section 5.22, Zoning Ordinance, regarding BG uses and requirements.
5. Chapter 3, Subdivision Regulations, regarding Preliminary Plats.
6. Chapter 6, Subdivision Regulations, regarding Minimum Design Standards.
7. Chapter 7, Subdivision Regulations, regarding Capital Improvements.

### **III. ANALYSIS**

#### **A. COMPREHENSIVE PLAN:**

The Future Land Use Map of the Comprehensive Plan designates this area as being medium density and multi family residential.

#### **B. OTHER PLANS:**

None

**C. TRAFFIC AND ACCESS:**

1. There is no MAPA traffic data information available for this area.
2. Access is proposed from newly constructed extensions of Lola Avenue, Gilmore Lake Road, and Morrie Drive. The proposed multi-family development will have private streets.

**D. UTILITIES:**

All utilities are available or will be constructed to serve this development.

**E. ANALYSIS:**

1. Melvin Sudbeck, on behalf of Orchard Valley, Inc., has submitted a request to preliminary plat Lots 154 through 196, and Outlots F through J, Spring Ridge, for the purpose of single family and multi-family residential development.
2. The applicant is also requesting a change in zone from AG and BG to BG (General Business), RA (Residential Agriculture), and RG-8-PS (General Residence, 800 Square Foot Zone, Planned Subdivision) for Lots 154 through 196, and Outlots F through J, Spring Ridge.

Lots 155 through 196, along with Outlots F, G, I, and J will be zoned RS-8-PS for the purpose of multi-family residential development.

Lot 154 will be zoned RA to accommodate the existing single family residential development on this property.

Outlot H contains a portion of the VFW Post 10727. Their existing property is zoned BG. Outlot H will be zoned BG to stay consistent with the remainder of their property and use thereof.

3. In addition to the rezoning of Lots 154 through 196, site plan approval is also being requested.

Lots 155 through 174 will be developed as single family residences, with the following setbacks:

- Front yard – 25 feet
- Rear yard – 25 feet
- Side yard – 5 feet
- Street side yard – 15'

In comparison, the typical single family residence constructed in the RG-8 zoning district must have the following setbacks:

- Front yard – 25 feet
- Rear yard – 10’
- Side yard – 3’
- Street side yard – 5’

Lots 175 through 177, 180 through 181, and 184 through 185 will be constructed with multi-family residential buildings. Each building will house between 48 and 68 units, with a total of 408 units in seven buildings. Lot 183 will be constructed as a clubhouse for the development, with amenities to include a pool, workout room, and event space. The applicant has indicated other amenities may include benches, playground, and a dog park.

Lots 178 through 179, Lot 182, and Lots 186 through 196 will be constructed with three- to seven-unit row homes, with a total of 74 row homes.

Lot 154 is developed with a single family residence constructed in 2014. It is presently a non conforming agricultural tax lot. The applicant is purchasing a portion of the tax lot to include in this development; therefore, the entire parcel is being included in the preliminary plat.

4. The site plan shows 363 surface parking stalls, and 336 garage spaces in the apartment buildings, for a total of 699 parking stalls available. The row homes will also have 148 internal stalls, and 26 external stalls.
5. The proposed subdivision will develop in two different phases, working from north to south.
6. This application was sent out to the following departments/individuals for review: Public Works, Permits and Inspections, Chief of Police, Offutt Air Force Base, Fire Inspector, Sarpy County Planning Director, Sarpy County Public Works Department, Sarpy County Planning Director, Sarpy County IS/GIS/Public Safety, Metro Area Planning Agency, Metropolitan Utilities District, CenturyLink, Omaha Public Power District, Black Hills Energy, Cox Communications, Papio-Missouri NRD, and the Bellevue Public School District. The cover letter indicated a deadline to send comments back to the Planning Department, and also stated if the requested department did not have comments pertaining to the application, no response was needed.

Sarpy County IS/GIS/Public Safety returned comments in regards to proposed street names. The applicant has since satisfied their concerns.

Public Works Engineering Manager Dean Dunn had technical comments pertaining to the initial drainage, grading, street profiles, storm sewer, paving plans, and preliminary utility plan. The applicant has made the requested revisions.

The Public Works Department requested an updated traffic study for Phases IV and V of this development. The original traffic study was done with the preliminary platting in 2014. Based on the updated traffic impact analysis, some improvements will need to be made to South 25<sup>th</sup> Street in addition to improving Gilmore Lake Road. A southbound turn lane at the intersection of South 25<sup>th</sup> Street and Gilmore Lake Road is recommended by 2025. Additionally, a northbound turn lane is recommended by 2025 at the intersection of South 25<sup>th</sup> Street and Morrie Drive. These improvements will be part of the Gilmore Lake Road infrastructure and will be addressed in the amended Spring Ridge Subdivision Agreement, which will be finalized with the final plat process.

No other comments were received on this case.

7. A portion of the VFW Post 10727 sits on proposed Outlot H. The VFW structure was built in 1981. The applicant has worked with the VFW since the original Spring Ridge platting was approved in 2014. The developer has facilitated an easement agreement with the VFW which will be recorded prior to the filing of the final plat.

8. Construction of this development is contingent upon the improvement of Gilmore Lake Road. When the original Spring Ridge plat was approved in 2014, the applicant was to be responsible for 25% of these costs, along with the city, Sarpy County, and SID 279 (Spring Creek). Since that time, the city has annexed the Spring Creek subdivision, therefore assuming 75% of the improvement costs. The applicant and his development team have been in discussions with the city regarding the planned improvements for Gilmore Lake Road. These engineering conversations are ongoing. Finalized costs and timing will be part of the amended Spring Ridge Subdivision Agreement. A draft of this document has been submitted and is under review by the City Attorney.

9. The original Spring Ridge preliminary plat approved by City Council on June 9, 2014 included 45 single family residential lots in Phase IV, with 11.23 acres of RG-20 zoned property to be developed as multi-family residential, with future site plan approval. The current preliminary plat proposal has 20 single family residential lots abutting similarly developed property, with the remainder being developed as multi-family residential.

10. The landscape plan has been reviewed by staff and meets the minimum requirements of the zoning ordinance.

11. Per Section 8.12, Zoning Ordinance, the apartment buildings and row homes will need to meet the city's design standards. Compliance with these regulations will be reviewed as part of the building permit process.

12. Based upon the number of acres, this development will require a contribution to the Park Fund in the amount of \$32,589.

**F. TECHNICAL DEFICIENCIES:**

None

**IV. DEPARTMENT RECOMMENDATION**

APPROVAL based upon conformance with the Zoning Ordinance, Comprehensive Plan, and Subdivision Regulations.

**V. PLANNING COMMISSION RECOMMENDATION**

APPROVAL based upon conformance with the Zoning Ordinance, Comprehensive Plan, and Subdivision Regulations.

**VI. ATTACHMENTS TO REPORT**

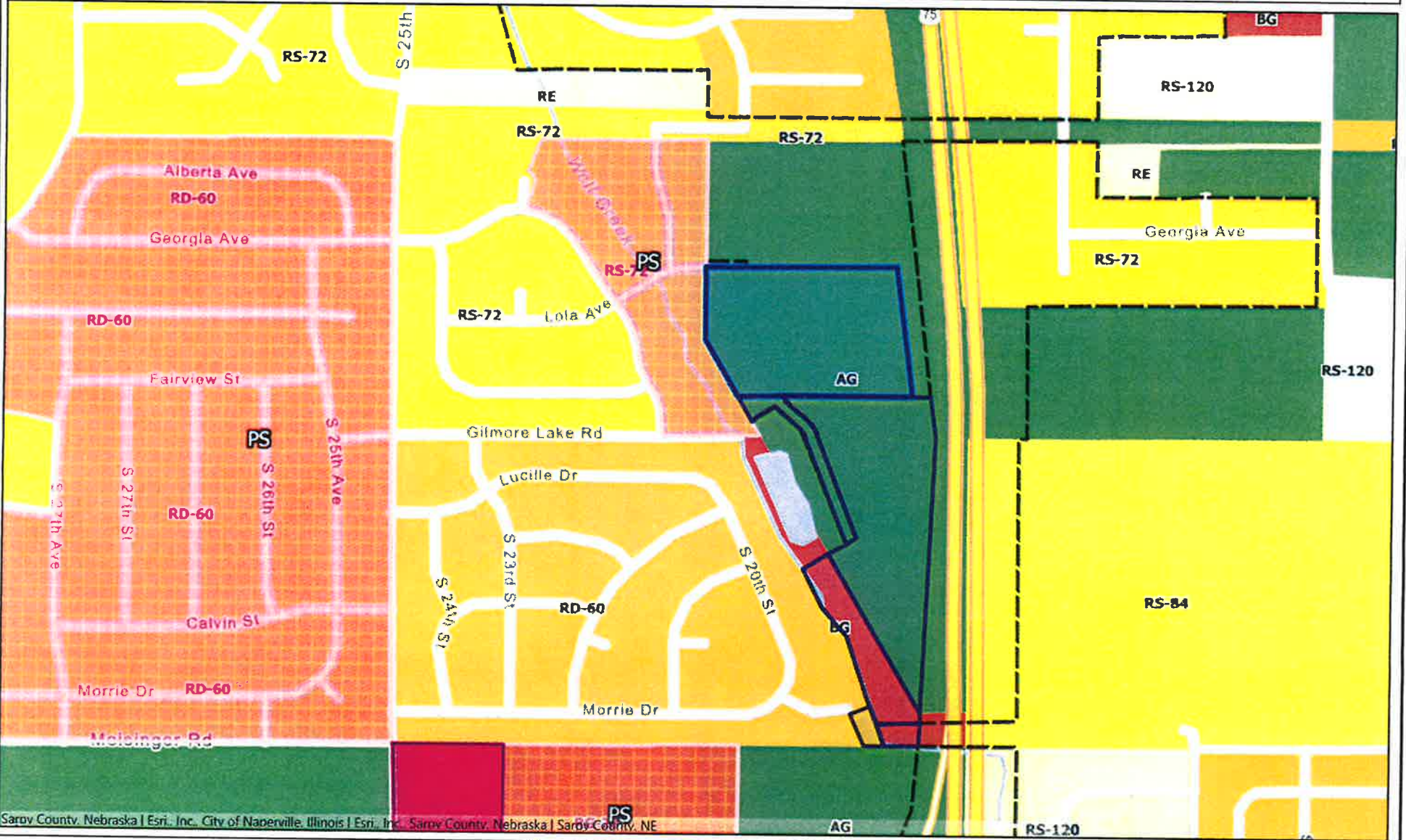
1. Vicinity map/Zoning Map
1. 2020 GIS aerial photo of the property
2. Preliminary plat received January 19, 2022
4. Site plan received January 19, 2022
5. Landscape plan received January 19, 2022
6. Recreational needs/zoning justification received August 5, 2021
7. Planned Subdivision zoning justification received August 19, 2021
8. Email from Patricia Kyle received December 9, 2021

**VII. COPIES OF REPORT TO:**

1. Orchard Valley, Inc.
2. Lionel and Martha Mora
3. FoleyShald Engineering
4. Robert Peterson
5. Public Upon Request

  
Assistant Planning Manager

  
Planning Manager                      Date of Report



Sarpy County, Nebraska | Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska | Sarpy County, NE



Map Scale 1: 9028

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the source records and information sources to ascertain the usability of the information.



Notes





Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska | Sarpy County, NE



Map Scale 1: 9028

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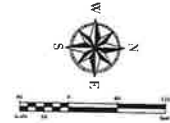


Notes





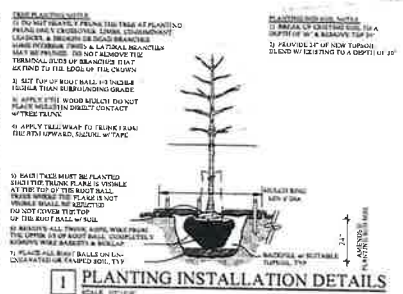




REVISIONS

NUMBER	DATE	DESCRIPTION
1-001	11/19/21	ISSUED
1-002	11/23/21	CITY REVIEW
1-003	11/23/21	REDESIGN
1-004	11/23/21	CHANGE CITY REVIEW
1-005	12/02/21	CITY REVIEW

PLANT SCHEDULE					
SYMBOL	QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE	TYPE
A	14	OLEA FRAXINOSA 'NANA'	SMALL LEAF OLEA	12"	PAB
B	8	ALNUS FRAXINOSA 'FRAXINOSA'	SMALL LEAF ALNUS	12"	PAB
C	4	QUERCUS PRINCEPS	SMALL LEAF QUERCUS	12"	PAB
D	4	FRAXINUS FRAXINOSA	SMALL LEAF FRAXINUS	12"	PAB
E	4	MAHONIA REPENS	MAHONIA	12"	PAB
F	11	MAHONIA REPENS	MAHONIA	12"	PAB
G	11	MAHONIA REPENS	MAHONIA	12"	PAB
H	1	MAHONIA REPENS	MAHONIA	12"	PAB
I	12	MAHONIA REPENS	MAHONIA	12"	PAB
J	12	MAHONIA REPENS	MAHONIA	12"	PAB
K	12	MAHONIA REPENS	MAHONIA	12"	PAB
L	12	MAHONIA REPENS	MAHONIA	12"	PAB
M	12	MAHONIA REPENS	MAHONIA	12"	PAB
N	12	MAHONIA REPENS	MAHONIA	12"	PAB
O	12	MAHONIA REPENS	MAHONIA	12"	PAB
P	12	MAHONIA REPENS	MAHONIA	12"	PAB
Q	12	MAHONIA REPENS	MAHONIA	12"	PAB
R	12	MAHONIA REPENS	MAHONIA	12"	PAB
S	12	MAHONIA REPENS	MAHONIA	12"	PAB
T	12	MAHONIA REPENS	MAHONIA	12"	PAB
U	12	MAHONIA REPENS	MAHONIA	12"	PAB
V	12	MAHONIA REPENS	MAHONIA	12"	PAB
W	12	MAHONIA REPENS	MAHONIA	12"	PAB
X	12	MAHONIA REPENS	MAHONIA	12"	PAB
Y	12	MAHONIA REPENS	MAHONIA	12"	PAB
Z	12	MAHONIA REPENS	MAHONIA	12"	PAB



**NOTES**

1. ALL PLANTING SHALL BE INSTALLED PER CITY OF LINCOLN REQUIREMENTS.
2. PLANTING SHALL BE INSTALLED PER CITY OF LINCOLN REQUIREMENTS.

Spring Ridge  
Bellevue, NE  
FSE #: 020 001  
January 18, 2022

RECEIVED  
JAN 19 2022  
PLANNING DEPT.



August 5, 2021

**SPRING RIDGE PHASES 4/5 – RECREATIONAL NEEDS**

The Phase 4/5 community site will have large areas of common space within proposed Outlots F and H which will include green space available to residents. This green space will include landscaping and a sidewalk network as shown in the Planned Subdivision and may also include other amenities including benches, gathering areas, playgrounds, and/or dog parks. Additionally, Lot 177 is proposed as a community clubhouse which could include amenities such as a pool, workout room, study area, and/or event room.

**SPRING RIDGE PHASES 4/5 – REZONING JUSTIFICATION**

We are requesting that the City of Bellevue accept the proposed rezoning as per the Preliminary Plat for Spring Ridge Phases 4/5. The existing zoning for the project area is Agricultural District (AG) and General Business District (BG). Proposed zoning is Residential Agricultural District (RA), General Residential (RG-8-PS), and General Business District (BG). The future land use for the site includes Multi Family Residential (MFR), Medium Density Residential (MDR), and Commercial (C). Through meetings with City Staff, we believe the proposed rezoning of the site meets the future land use, transitioning from medium density residential on the north to multifamily residential on the south.

Lot 196 is proposed as “RA” to help transition an existing “AG” acreage lot towards the proposed future land use of “MDR”. The proposed zoning better meets the current use of the property as a large residential lot. Outlot G is being created to possibly be incorporated into the existing VFW facility and thus is proposed as “BG” to provide an area that meets the future land use, “C”. This will match the existing zoning designation of the VFW building and Gilmore Lake to the west, making the entirety of Gilmore Lake and the VFW one cohesive zone. Most of the proposed site, including Lots 154-195 and Outlots F, H, & I, is proposed as “RG-8-PS”. This rezoning would replace an existing farm field with a mixture of residential units. The north and west side of this area (Lots 162-173) provides single-family detached lots meeting the future land use of “MDR”. The central and southern part of this area (Lots 174 – 195) provide apartments and rowhomes to meet the future land use of “MFR”.

**RECEIVED**

**AUG 05 2021**

**PLANNING DEPT.**

**SPRING RIDGE PHASES 4/5 – PLANNED SUBDIVISION JUSTIFICATION**

Based on the pre-application meeting held on December 8, 2020 and staff recommendation, this project is requesting a Planned Subdivision (PS) overlay district.

The proposed site layout has unique characteristics that require the utilization of a planned subdivision district. The future land use for the site includes Multi Family Residential (MFR), Medium Density Residential (MDR). The proposed site is transitioning from single family on the north to multi-family apartments central to townhomes/rowhomes on the south.

This overlay allows for the proposed site to have individual lots for each apartment and townhome building while still having public access, owned and maintained by the homeowners association, over all the parking and common space.

The townhomes are proposed 3 story buildings with 2 car attached garages, commonly used in redevelopment areas. These have patio access along street right of way with garage access in rear alley areas. This allows for the development to have no garage frontages along the townhome area right-of-way. To get the unique characteristic that is sought with these types of buildings, there is also a reduced yard setback to locate the buildings closer to the right-of-way.

We believe the unique nature of the development warrants the use of the planned subdivision overlay and will allow for an innovative development to be constructed to meet the needs of the city and future land use.

RECEIVED  
AUG 19 2021  
PLANNING DEPT.

December 9, 2021

VIA EMAIL: [tammi.palm@bellevue.net](mailto:tammi.palm@bellevue.net)  
PLANNING DEPARTMENT  
CITY OF BELLEVUE  
1500 WALL STREET  
BELLEVUE NE 68005

RECEIVED  
DEC 09 2021  
PLANNING DEPT.

Re: Planning Commission Meeting – December 16, 2021  
Location: South 21<sup>st</sup> Street and Gilmore Lake Road  
Applicant: Orchard Valley, Inc.

To Members of the Planning Commission:

As a concerned citizen whose property abuts Gilmore Lake Road, I wish to voice my concern regarding the rezoning which I assume is to allow continued housing growth by Orchard Valley, Inc. For many years there has been a serious water/drainage issue with the creek which is adjacent to said property with the continued housing development. When there is a heavy rain the water flows over Gilmore Lake Road and is washing away the adjacent property owner's land. On several occasions my 8 foot privacy fence has been washed away.

The continued development adjacent to the creek does not help the situation as the paved streets in the subdivision simply allows water to flow faster to the creek and in turn the creek cannot accommodate that much flow. The culverts need to be replaced underneath Gilmore Lake Road with larger ones and the drainage issue addressed so the creek flows smoothly through larger culverts. (The current culverts are not doing any good, the creek has made a new flow which is causing excess erosion.)

I strongly object to the rezoning for residential housing being constructed until the water/drainage issue along Gilmore Lake Road is corrected. I feel the developer needs to take some responsibility for this as well as the City of Bellevue.

I know this issue has previously been addressed when the first subdivision adjacent to Gilmore Road was constructed and at that time the condition of the road and the drainage was to be addressed by that developer, however, nothing ever happened.

I would strongly encourage the members of the Planning Commission to consider this letter and please move to take some action to fix the problem. It may be prudent to have the city engineer and/or water drainage district look at the problem. Thank you.

Sincerely,

Patricia Kyle  
9503 South 20<sup>th</sup> Street  
Bellevue, NE 68147  
402-598-6675



Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska | Sarpy County, NE



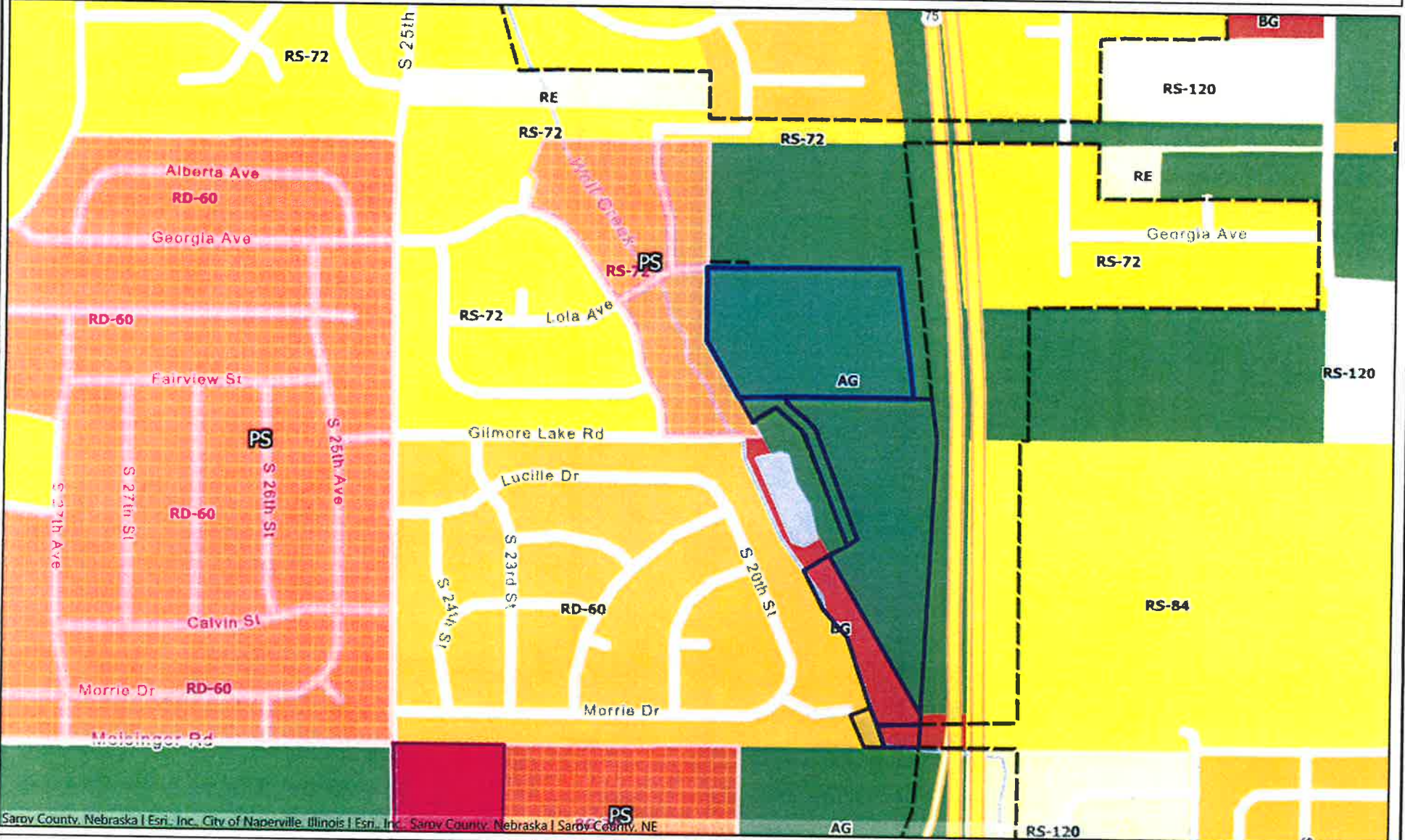
Map Scale 1: 9028

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the source records and information sources to ascertain the usability of the information.



Notes





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Map Scale 1: 9028

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the source records and information sources to ascertain the usability of the information.

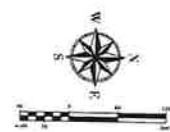


Notes





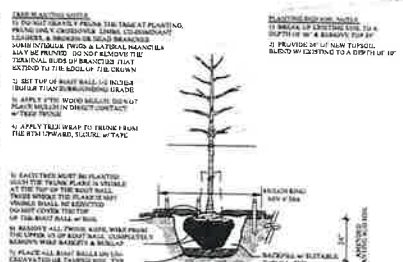




REVISIONS

NUMBER	DATE	DESCRIPTION
A-001	01/18/22	ISSUE FOR PERMITS
A-002	01/18/22	ISSUE FOR PERMITS
A-003	01/18/22	ISSUE FOR PERMITS
A-004	01/18/22	ISSUE FOR PERMITS

SYMBOL	QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE	TYPE
1	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
2	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
3	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
4	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
5	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
6	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
7	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
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9	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
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14	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
15	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
16	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
17	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
18	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
19	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
20	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
21	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
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97	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
98	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
99	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR
100	12	QUERCUS PRINCEPIS 'NINEKING'	WHITE OAK	12"	TR



1 PLANTING INSTALLATION DETAILS  
SCALE: 1/4" = 1'-0"

- NOTES
1. ALL TREES MUST BE PLANTED WITH THE TRUNK PLANE A MINIMUM OF 18" FROM THE TRUNK BALL.
  2. ALL TREES MUST BE PLANTED WITH THE TRUNK PLANE A MINIMUM OF 18" FROM THE TRUNK BALL.

RECEIVED  
JAN 19 2022  
PLANNING DEPT.

Spring Ridge  
Bellevue, NE  
FSE #: 020.001  
January 18, 2022

## ORDINANCE NO. 4079

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF BELLEVUE, NEBRASKA, AS PROVIDED FOR BY ARTICLE 3 OF ORDINANCE NO. 3619 BY CHANGING THE ZONE CLASSIFICATION OF LAND LOCATED AT OR ABOUT 21<sup>ST</sup> STREET AND GILMORE LAKE ROAD, MORE PARTICULARLY DESCRIBED IN SECTION 1 OF THE ORDINANCE AND TO PROVIDE AN EFFECTIVE DATE.

WHEREAS, having received a recommendation from the city of Bellevue Planning Commission and proper notice having been given and public hearing held as provided by law:

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BELLEVUE, NEBRASKA:

Section 1. That part of the official zoning map of the City of Bellevue, Nebraska, as provided in Article 3, of Ordinance No. 3619 is hereby amended to change the zone classification of the following described parcel of land:

BEGINNING AT THE NORTHEAST CORNER OF LOT 1 OF BOHAC ADDITION, A SUBDIVISION LOCATED IN THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 14 NORTH, RANGE 13 EAST, OF THE 6TH PRINCIPAL MERIDIAN, SARPY COUNTY, NEBRASKA; THENCE S33°05'42"E, ON THE NORTHEASTERLY LINE OF SAID LOT 1, A DISTANCE OF 579.79 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE N56°54'18"E A DISTANCE OF 88.88 FEET; THENCE N23°57'11"W A DISTANCE OF 480.36 FEET; THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 60.52 FEET, WITH A RADIUS OF 124.99 FEET, WITH A CHORD BEARING OF N37°49'28"W, WITH A CHORD LENGTH OF 59.93 FEET; THENCE N51°41'45"W A DISTANCE OF 91.47 FEET; THENCE WITH A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 41.62 FEET, WITH A RADIUS OF 174.99 FEET, WITH A CHORD BEARING OF N44°52'58"W, WITH A CHORD LENGTH OF 41.52 FEET; THENCE S58°01'19"W A DISTANCE OF 96.88 FEET; THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 24.08 FEET, WITH A RADIUS OF 267.00 FEET, WITH A CHORD BEARING OF S55°26'20"W, WITH A CHORD LENGTH OF 24.07 FEET TO THE EASTERLY LINE OF OUTLOT "B" OF SPRING CREEK, A SUBDIVISION LOCATED IN THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SECTION 22, TOWNSHIP 14 NORTH, RANGE 13 EAST OF THE 6TH PRINCIPAL MERIDIAN; THENCE S31°55'53"E, ON SAID SOUTHWESTERLY LINE, A DISTANCE OF 82.82 FEET BACK TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINING AN AREA OF 2.02 ACRES, MORE OR LESS.

From AG (Agricultural District) to BG (General Business); AND

COMMENCING AT THE NORTHEAST CORNER OF LOT 1 OF SAID BOHAC ADDITION; THENCE S33°05'42"E, ON THE NORTHEASTERLY LINE OF SAID LOT 1, A DISTANCE OF 579.79 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1, AND THE POINT OF BEGINNING; THENCE N56°54'18"E A DISTANCE OF 88.88 FEET; THENCE N23°57'11"W A DISTANCE OF 480.36 FEET; THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 60.52 FEET, WITH A RADIUS OF 124.99 FEET, WITH A CHORD BEARING OF N37°49'28"W, WITH A CHORD LENGTH OF 59.93 FEET; THENCE N51°41'45"W A DISTANCE OF 91.47 FEET; THENCE WITH A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 41.62 FEET, WITH A RADIUS OF 174.99 FEET, WITH A CHORD BEARING OF N44°52'58"W, WITH A CHORD LENGTH OF 41.52 FEET; THENCE S58°01'19"W A DISTANCE OF 96.88 FEET; THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 24.08 FEET, WITH A RADIUS OF 267.00 FEET, WITH A CHORD BEARING OF S55°26'20"W, WITH A CHORD LENGTH OF 24.07 FEET TO THE EASTERLY LINE OF OUTLOT "B" OF SPRING CREEK, A SUBDIVISION LOCATED IN THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SECTION 22, TOWNSHIP 14 NORTH, RANGE 13 EAST OF THE 6TH PRINCIPAL MERIDIAN; THENCE N31°55'53"W, ON SAID LINE, A DISTANCE OF 397.01 FEET; THENCE N03°02'27"W, ON THE EAST LINE OF SPRING CREEK, A DISTANCE OF 330.84 FEET TO THE NORTH RIGHT OF WAY LINE OF LOLA AVENUE; THENCE N86°57'34"E A DISTANCE OF 882.54 FEET TO THE WEST RIGHT OF WAY OF KENNEDY FREEWAY (STATE HIGHWAY 75); THENCE S09°37'34"E, ON SAID RIGHT OF WAY, A DISTANCE OF 579.55 FEET; THENCE S09°38'33"E, ON SAID RIGHT OF WAY, A DISTANCE OF 180.41 FEET; THENCE S00°30'29"E, ON SAID RIGHT OF WAY, A DISTANCE OF 1324.62 FEET TO THE SOUTHEAST CORNER OF SAID LOT 2 OF BOHAC ADDITION; THENCE S87°19'02"W, ON THE SOUTH LINE OF SAID LOT 2, AND THE SOUTH LINE OF SAID OUTLOT "B", DISTANCE OF 233.85 FEET TO THE WEST LINE OF SAID OUTLOT "B"; THENCE N26°01'09"W, ON SAID WEST LINE, A DISTANCE OF 150.09 FEET TO THE NORTH LINE OF SAID OUTLOT "B"; THENCE N63°58'34"E, ON SAID NORTH LINE, A DISTANCE OF 92.13 FEET TO THE WEST LINE OF SAID LOT 2; THENCE N21°42'09"W, ON SAID WEST LINE, A DISTANCE OF 312.05 FEET; THENCE N41°36'37"W, ON SAID WEST LINE, A DISTANCE OF 166.21 FEET; THENCE N30°00'03"W, ON SAID WEST LINE, A DISTANCE OF 183.40 FEET TO THE NORTH LINE OF SAID LOT 2; THENCE N56°56'28"E, ON THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 121.53 FEET BACK TO THE POINT OF BEGINNING. SAID TRACT OF LAND AREA CONTAINING AN AREA OF 26.05 ACRES, MORE OR LESS.

From AG (Agricultural District) to RG-8-PS (General Residential – 800 Square Foot Zone – Planned Subdivision); AND

BEGINNING AT THE NORTHEAST CORNER OF LOT 22 OF SPRING CREEK, A SUBDIVISION LOCATED IN THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SECTION 22, TOWNSHIP 14 NORTH, RANGE 13 EAST OF THE 6TH PRINCIPAL MERIDIAN; THENCE S03°02'27"E, ON THE EAST LINE OF LOTS 22 THROUGH 27, OF SAID SPRING CREEK, A DISTANCE OF 521.13 FEET TO THE SOUTHEAST CORNER OF SAID LOT 27, ALSO BEING A POINT ON THE NORTH RIGHT OF WAY OF LOLA AVENUE; THENCE N86°57'34"E A DISTANCE OF 882.54 FEET TO THE WEST RIGHT OF WAY OF KENNEDY FREEWAY (STATE HIGHWAY 75); THENCE N09°37'34"W, ON SAID WEST RIGHT OF WAY, A DISTANCE OF 522.61 FEET TO THE SOUTHEAST CORNER OF OUTLOT "C" OF SPRING RIDGE, A SUBDIVISION LOCATED IN THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 14 NORTH, RANGE 13 EAST OF THE 6TH PRINCIPAL MERIDIAN; THENCE S87°05'47"W, ON THE SOUTH LINE OF SAID OUTLOT "C", AND THE SOUTH RIGHT OF WAY OF CENTENNIAL ROAD, A DISTANCE OF 822.61 FEET BACK TO THE POINT OF BEGINNING. SAID TRACT OF LAND AREA CONTAINING AN AREA OF 10.18 ACRES, MORE OR LESS.

From AG (Agricultural District) to RA (Residential Agricultural District – 5 Acre Zone)

(Orchard Valley, Inc.)

**S**ection 2. This ordinance shall not take effect until such time as the final plat of Spring Ridge is filed with the Sarpy County Register of Deeds in accordance with Section 5-10 of the City of Bellevue Subdivision Regulations.

**S**ection 3. Except as amended herein, the official zoning map and the classification shown therein shall remain as heretofore existing.

**S**ection 4. This ordinance shall take affect and be in force from and after its adoption and publication according to law.

**A**DOPTEED by the Mayor and City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Third Reading: \_\_\_\_\_

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Tammi Palm		Planning Manager	
AGENDA ITEM:		CONSENT AGENDA <input type="checkbox"/>		SPECIAL PRESENTATION <input type="checkbox"/>	
LIQUOR LICENSE <input type="checkbox"/>		ORDINANCE <input checked="" type="checkbox"/>		PUBLIC HEARING <input type="checkbox"/>	
RESOLUTION <input type="checkbox"/>		CURRENT BUSINESS <input type="checkbox"/>		OTHER <input type="checkbox"/>	

SUBJECT:

Request to rezone Lots 1 through 38, and Outlot A, Chandler Creek, being a platting of Tax Lot H2, located in the Southwest ¼ of Section 16, T14N, R13E of the 6th P.M., Sarpy County, NE, from RS-72 to RD-60 for the purpose of single family residential development; and preliminary plat Lots 1 through 38, and Outlot A, Chandler Creek. Applicant: TKC Chandler, LLC. General location: W Chandler Rd. and S 35th Street.

SYNOPSIS/BACKGROUND:

Tim Tran, on behalf of TKC Chandler LLC, is requesting to rezone and preliminary plat approximately 10 acres of property near South 35th Street and West Chandler Road for the purpose of single family residential development. This property was recently designated blighted and substandard. The applicant is proposing 38 three-bedroom and two-bathroom homes approximately 1,600-1,700 square feet in size.

FISCAL IMPACT: n/a BUDGETED FUNDS?: NO GRANT/MATCHING FUNDS?: NO

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: NO COUNTER-PARTY: INTERLOCAL AGREEMENT: NO

CONTRACT DESCRIPTION:

CONTRACT EFFECTIVE DATE: CONTRACT TERM: CONTRACT END DATE:

PROJECT NAME:

START DATE: END DATE: PAYMENT DATE: INSURANCE REQUIRED: NO

CIP PROJECT NAME: CIP PROJECT NUMBER:

STREET DISTRICT NAME (S): STREET DISTRICT NUMBER (S):

ACCOUNTING DISTRIBUTION CODE: ACCOUNT NUMBER:

RECOMMENDATION:

The Planning Department and Planning Commission are recommending approval.

ATTACHMENTS:

1. PC Recommendation	2. Staff Report	3. Ord. No. 4080
4.	5.	6.

SIGNATURES:

LEGAL APPROVAL AS TO FORM:

*A. Breyer*

FINANCE APPROVAL AS TO FORM:

ADMINISTRATOR APPROVAL AS TO FORM:

*[Signature]*

# City of Bellevue

## PLANNING COMMISSION RECOMMENDATION

APPLICANT: TKC Chandler LLC

CASE #'s: Z-2110-20, and S-2110-25

CITY COUNCIL HEARING DATE: March 1, 2022

REQUEST: to rezone Lots 1 through 38, and Outlot A, Chandler Creek, being a platting of Tax Lot H2, located in the Southwest ¼ of Section 16, T14N, R13E of the 6th P.M., Sarpy County, NE, from RS-72 to RD-60 for the purpose of single family residential development; and preliminary plat Lots 1 through 38, and Outlot A, Chandler Creek.

On January 27, 2022, the City of Bellevue Planning Commission voted seven yes, zero no, two absent and zero abstained:

**APPROVAL** based upon conformance with the Zoning Ordinance, Subdivision Regulations, and compatibility with adjacent residential developments.

VOTE:

Yes:	Seven:	No:	Zero:	Abstain:	Zero:	Absent:	Two:
	Casey						Cutsforth
	Hankins						Ritz
	Aerni						
	Ackley						
	Compton						
	Perrin						
	Jacobson						

Planning Commission Hearing (s) was held on: January 27, 2022

# CITY OF BELLEVUE PLANNING DEPARTMENT

## RECOMMENDATION REPORT # 2

CASE NUMBERS: Z-2110-20  
S-2110-25

FOR HEARING OF:  
REPORT #1: January 27, 2022  
REPORT #2: March 1, 2022

### I. GENERAL INFORMATION

#### A. APPLICANT:

TKC Chandler LLC  
Thinh "Tim" Tran  
1310 Lambart Drive  
Papillion, NE 68046

#### B. PROPERTY OWNER:

TKC Chandler LLC  
Thinh "Tim" Tran  
1310 Lambart Drive  
Papillion, NE 68046

#### C. GENERAL LOCATION:

West Chandler Road and South 35<sup>th</sup> Street

#### D. LEGAL DESCRIPTION:

Lots 1 through 38, and Outlot A, Chandler Creek, being a platting of Tax Lot H2, located in the Southwest ¼ of Section 16, T14N, R13E of the 6th P.M., Sarpy County, NE

#### E. REQUESTED ACTIONS:

1. Rezone Lots 1 through 38, and Outlot A, Chandler Creek, from RS-72 to RD-60 for the purpose of single family residential development.
2. Preliminary Plat Lots 1 through 38, and Outlot A, Chandler Creek.

#### F. EXISTING ZONING AND LAND USE:

RS-72, Vacant

**G. PURPOSE OF REQUEST:**

The purpose of this request is to obtain a change of zone and preliminary plat to enable single family residential development.

**H. SIZE OF SITE:**

The site is approximately 10 acres.

**II. BACKGROUND INFORMATION**

**A. EXISTING CONDITION OF SITE:**

The site was most recently used agriculturally.

**B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**

- 1. **North:** Single Family Residential (across Chandler Road), RS-72
- 2. **East:** Single Family Residential, RS-72
- 2. **South:** Single Family Residential, RS-72
- 3. **West:** Vacant/Single Family Residential, RS-72

**C. REVELANT CASE HISTORY:**

- 1. On August 17, 2021, the City Council declared Tax Lot H2 as blighted and substandard.
- 2. On January 27, 2022, the Planning Commission recommended approval of a request to rezone Lots 1 through 38, and Outlot A, Chandler Creek, being a platting of Tax Lot H2, located in the Southwest ¼ of Section 16, T14N, R13E of the 6<sup>th</sup> P.M., Sarpy County, NE, from RS-72 to RD-60 for the purpose of single family residential development; and preliminary plat Lots 1 through 38, and Outlot A, Chandler Creek.

**D. APPLICABLE REGULATIONS:**

- 1. Section 5.11, Zoning Ordinance, regarding RD-60 uses and requirements.
- 2. Chapter 3, Subdivision Regulations, regarding preliminary plats.
- 3. Chapter 6, Subdivision Regulations, regarding Minimum Design Standards.
- 4. Chapter 7, Subdivision Regulations, regarding Capital Improvements.

### **III. ANALYSIS**

#### **A. COMPREHENSIVE PLAN:**

The Future Land Use Map of the Comprehensive Plan designates this area as low density residential.

#### **B. OTHER PLANS:**

None

#### **C. TRAFFIC AND ACCESS:**

1. The most recent traffic data from MAPA indicates approximately 8,200 vehicles per day along West Chandler Road near South 35<sup>th</sup> Street.
2. Access is proposed from two points along West Chandler Road.

#### **D. UTILITIES:**

All utilities are available or will be constructed to serve this development.

#### **E. ANALYSIS:**

1. Tim Tran, on behalf of TKC Chandler LLC, has submitted a request to preliminary plat Lots 1 through 38, and Outlot A, Chandler Creek, for the purpose of single family residential development.
2. The applicant is requesting a change in zone from RS-72 (Single-Family Residential, 7,200 Square Foot Zone) to RD-60 (Duplex Residential, 6,000 Square Feet), for Lots 1 through 38, and Outlot A, Chandler Creek.

All of the lots conform to the minimum requirements of the requested zoning district.

3. The applicant has indicated he plans to construct 38 single family residences and expects a price point of approximately \$260,000 - \$300,000. The average size home will be between 1,600-1,700 square feet and will consist of three bedrooms and two bathrooms. Each residence will have an attached two car garage.

4. This application was sent out to the following departments/individuals for review: Public Works (to include the Street Superintendent and Parks Superintendent), Permits and Inspections, Chief of Police, Offutt Air Force Base, Fire Inspector, Sarpy County Planning Director, Sarpy County Public Works Department, Sarpy County IS/GIS/Public Safety, Metro Area Planning Agency, Metropolitan Utilities District, CenturyLink, Omaha Public Power District, Black

Hills Energy, Cox Communications, Papio-Missouri NRD, and the Omaha Public School District. The cover letter indicated a deadline to send comments back to the Planning Department, and also stated if the requested department did not have comments pertaining to the application, no response was needed.

Sarpy County GIS/911 had comments pertaining to the proposed street names. The applicant's engineer has made all the suggested revisions.

Cox Communications commented they currently have facilities to the north, east, and west of this development. They indicated they would run this through their financial model to see if the infrastructure could be provided with no third-party contribution. If it does not meet their business model threshold to do this, then Cox would seek a cost share with the developer. The developer is aware of this and has acknowledged this possibility.

The Public Works Department requested technical revisions to the preliminary plat, paving plan, sanitary sewer plan, and storm sewer plan. The applicant's engineer has since satisfied these comments.

5. The Public Works Department has reviewed the grading and drainage plans for this proposed development and found them to be acceptable.

6. A U-shaped street configuration is being proposed for this development with two access points along West Chandler Road. Street connections to adjacent property would be extremely difficult due to topography and existing drainageways. Staff believes this is the most appropriate configuration to serve this area.

7. This subdivision will be developed privately by the applicant. Additionally, the developer is requesting Tax Increment Financing (TIF) through a separate request. A draft copy of the Development Agreement has been submitted by the applicant for staff's review.

8. No park ground is being proposed for this subdivision due to its size. The city does not desire smaller parks which only serve a limited population and finds these areas difficult to maintain over time; therefore, staff does not see the benefit of requiring a park for this development.

9. Based upon the number of acres, this development will require a contribution to the Park Fund in the amount of \$8,491.50.

10. The Future Land Use Map of the Comprehensive Plan shows this area as being low density residential due to the lack of infrastructure. Medium density residential is shown adjacent to this property. With the applicant's infrastructure plan, staff believes medium density residential development is appropriate for this property.

11. This property is approximately 10 acres. The applicant is requesting a change of zone from RS-72 to RD-60 to allow for smaller lots in order to maximize the development potential. Both zoning districts are categorized as medium density residential. These proposed lots are consistently sized with the adjacent Chandler Acres neighborhood.

12. Norton's First Addition, a three-lot subdivision to the south of the development has a unique sliver of property running along the east property line of Chandler Creek. The applicant's engineer has included a 5' easement adjacent to this sliver of land to facilitate enough width to allow for a private street in the future if/when Norton's First Addition further develops.

13. Staff believes this development is compatible with the existing single family residential development in the neighborhood.

**F. TECHNICAL DEFICIENCIES:**

None

**IV. DEPARTMENT RECOMMENDATION**

APPROVAL based upon conformance with the Zoning Ordinance, Subdivision Regulations, and compatibility with adjacent residential developments.

**V. PLANNING COMMISSION RECOMMENDATION**

APPROVAL based upon conformance with the Zoning Ordinance, Subdivision Regulations, and compatibility with adjacent residential developments.

**VI. ATTACHMENTS TO REPORT**

1. Zoning Map
2. 2020 GIS aerial photo of the property
3. Zoning justification letter from Doug Kellner received January 19, 2022
4. Letter from Doug Kellner received December 17, 2021
5. Preliminary plat received January 6, 2022

**VII. COPIES OF REPORT TO:**

1. TKC Chandler LLC
2. Thomson, Dreesen, & Dorner, Inc.
3. Elizabeth Sevcik
4. Public Upon Request

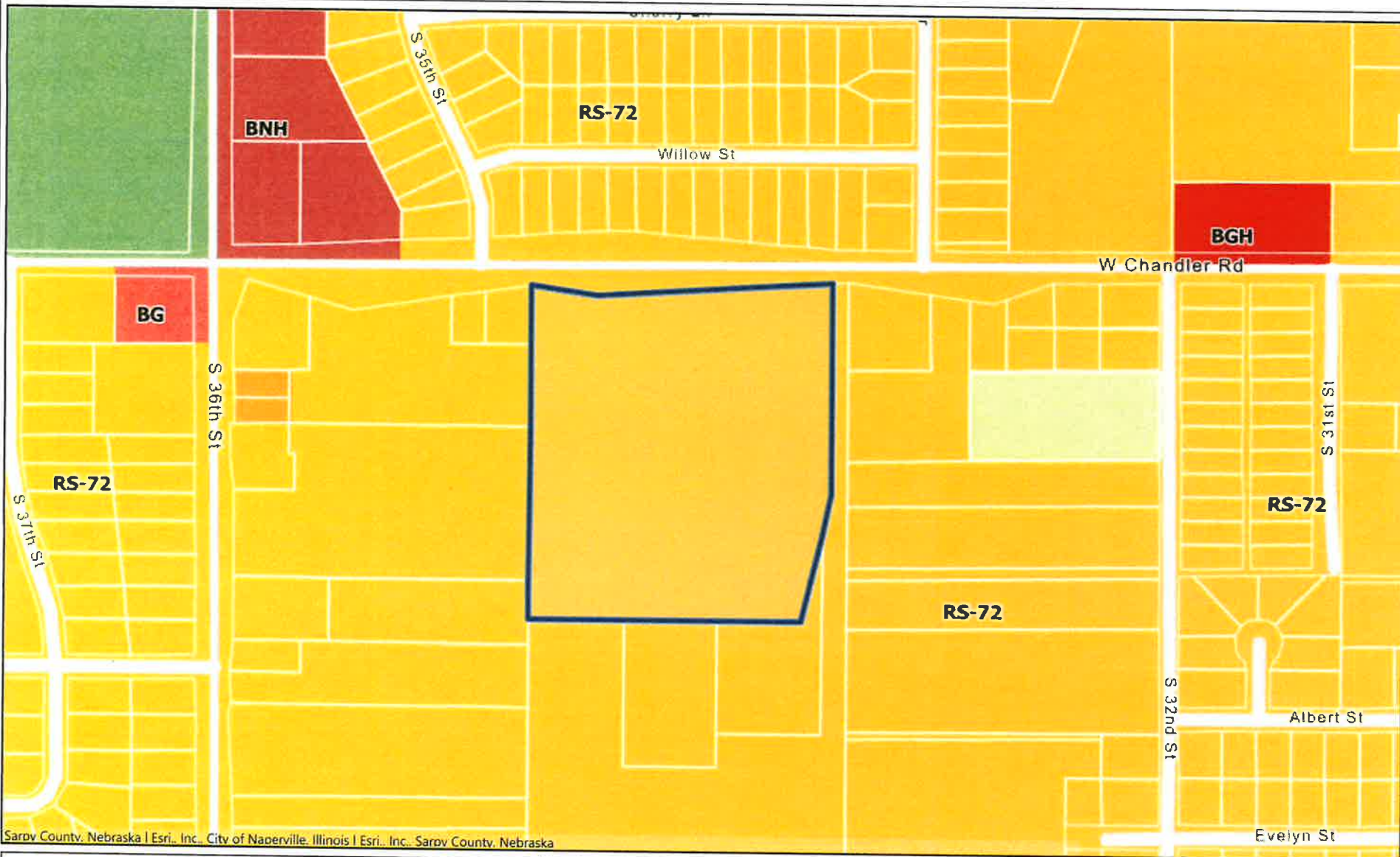
  
Assistant Planning Manager 2/7/22

  
Planning Manager 02/07/22 Date of Report

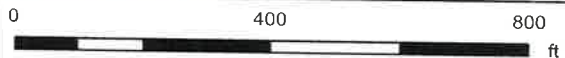


SARPY COUNTY  
NEBRASKA

# Mid Street and W Chandler Rd



Sarpy County, Nebraska | Esri, Inc. | City of Naperville, Illinois | Esri, Inc. | Sarpy County, Nebraska



Map Scale 1: 4514

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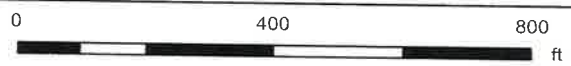
Notes



# 41th Street and W Chandler Rd



Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska



Map Scale 1: 4514

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Notes



January 19, 2022

**RECEIVED**

**JAN 19 2022**

**PLANNING DEPT.**

Ms. Tammi Palm  
Land Use Planner  
City of Bellevue Planning Department  
1510 Wall Street  
Bellevue, NE 68005

RE: Chandler Creek  
Rezoning Justification  
TD2 File No. 2263-101.3

Ms. Palm:

On behalf of our Client, TKC Chandler LLC, we believe the rezoning request from RS-72 to RD-60 is justified because this proposed development will be compatible with, and complementary to, existing developments that surround this project. The existing developments to the north and east are medium density residential, whereas the existing developments to the south and west are low density residential. The proposed plat meets the zoning requirements for the proposed RD-60 zoning.

Please contact us with further questions, comments or if additional information is required.

If you have any questions, please call our office at (402) 330-8860.

Respectfully submitted,

THOMPSON, DREESSEN & DORNER, INC.



Douglas E. Kellner, P.E.

DEK/bjf

December 17, 2021

**RECEIVED**  
**DEC 17 2021**  
**PLANNING DEPT.**

Ms. Tammi Palm  
Land Use Planner  
City of Bellevue Planning Department  
1510 Wall Street  
Bellevue, NE 68005

RE: Chandler Creek  
Recreational Needs of Subdivision  
TD2 File No. 2263-101.1

Ms. Palm:

On behalf of our client, TKC Chandler LLC, we are requesting to waive the park requirements for the proposed Chandler Creek Subdivision. Due to the size of the development, any parks associated within would be of undesirable size and could cause potential maintenance issues. There will be no opposition to The City of Bellevue Park contribution fee or other associated park fees.

Please contact us with further questions, comments or if additional information is required.

If you have any questions, please call our office at (402) 330-8860.

Sincerely,

THOMPSON, DREESSEN & DORNER, INC.



Douglas E. Kellner, P.E.

DEK/bjf

Enclosures



# 34th Street and W Chandler Rd



Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska



Map Scale 1: 4514

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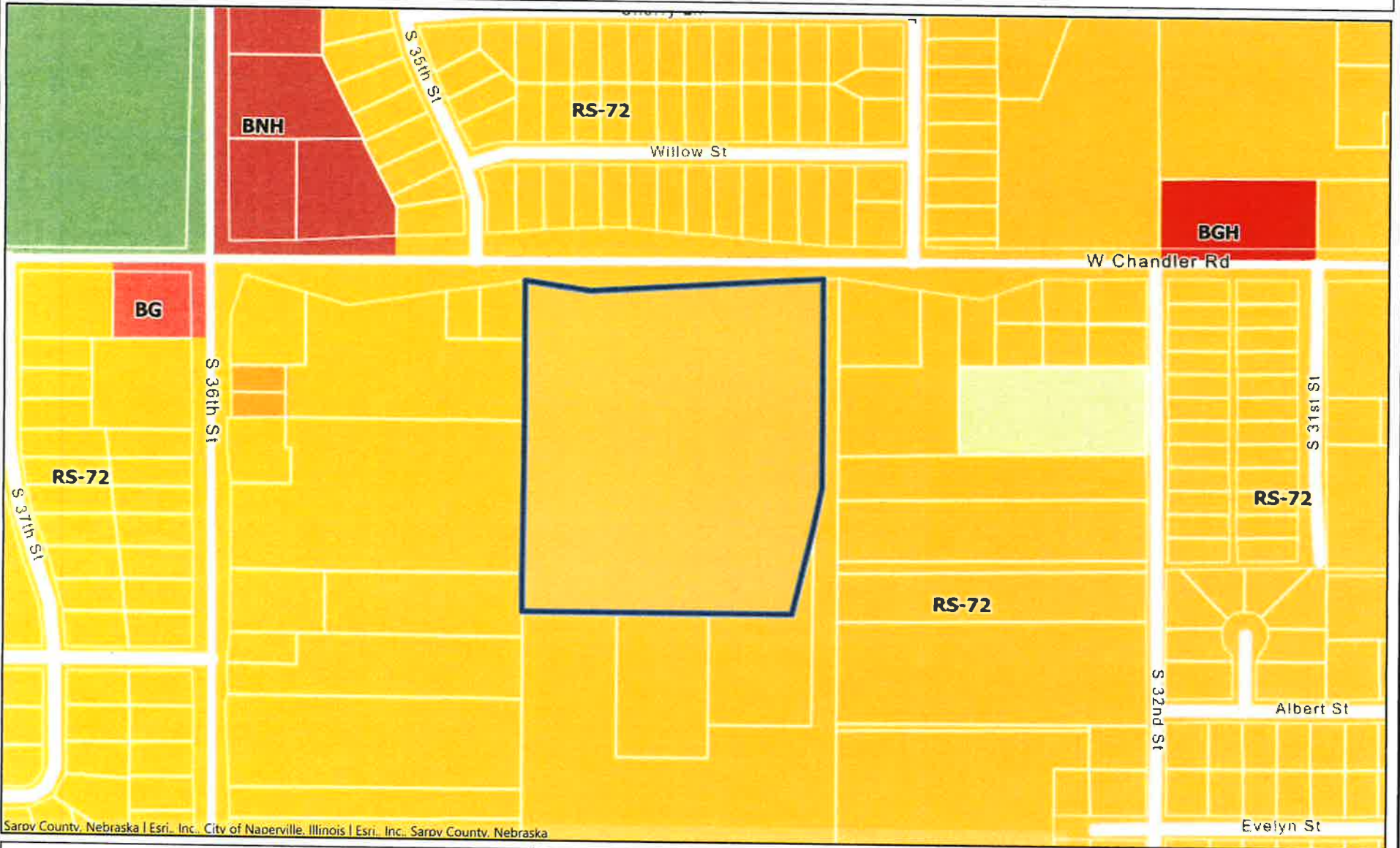
Notes





SARPY COUNTY  
NEBRASKA

# 31st Street and W Chandler Rd

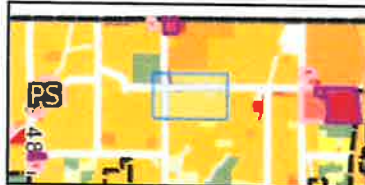


Sarpy County, Nebraska | Esri, Inc. | City of Naperville, Illinois | Esri, Inc. | Sarpy County, Nebraska



Map Scale 1: 4514

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Notes





ORDINANCE NO. 4080

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF BELLEVUE, NEBRASKA, AS PROVIDED FOR BY ARTICLE 3 OF ORDINANCE NO. 3619 BY CHANGING THE ZONE CLASSIFICATION OF LAND LOCATED AT OR ABOUT WEST CHANDLER ROAD AND SOUTH 35<sup>TH</sup> STREET, MORE PARTICULARLY DESCRIBED IN SECTION 1 OF THE ORDINANCE AND TO PROVIDE AN EFFECTIVE DATE.

WHEREAS, having received a recommendation from the city of Bellevue Planning Commission and proper notice having been given and public hearing held as provided by law:

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BELLEVUE, NEBRASKA:

Section 1. That part of the official zoning map of the City of Bellevue, Nebraska, as provided in Article 3, of Ordinance No. 3619 is hereby amended to change the zone classification of the following described parcel of land:

Lots 1 through 38, and Outlot A, Chandler Creek, being a platting of Tax Lot H2, located in the Southwest ¼ of Section 16, T14N, R13E of the 6th P.M., Sarpy County, Nebraska

From RS-72 (Single Family Residence - 7,200 Square Foot Zone) to RD-60 (Duplex Residential - 6,000 Square Foot Zone)

(TKC Chandler LLC)

Section 2. This ordinance shall not take effect until such time as the final plat of Chandler Creek is filed with the Sarpy County Register of Deeds in accordance with Section 5-10 of the City of Bellevue Subdivision Regulations.

Section 3. Except as amended herein, the official zoning map and the classification shown therein shall remain as heretofore existing.

Section 4. This ordinance shall take affect and be in force from and after its adoption and publication according to law.

ADOPTED by the Mayor and City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Third Reading: \_\_\_\_\_

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Tammi Palm		Planning Manager	
AGENDA ITEM:		CONSENT AGENDA <input type="checkbox"/>		SPECIAL PRESENTATION <input type="checkbox"/>	
LIQUOR LICENSE <input type="checkbox"/>		ORDINANCE <input checked="" type="checkbox"/>		PUBLIC HEARING <input type="checkbox"/>	
RESOLUTION <input type="checkbox"/>		CURRENT BUSINESS <input type="checkbox"/>		OTHER <input type="checkbox"/>	

SUBJECT:

Request to rezone Lots 1 through 191, and Outlots A through H, Lakewood West, being a platting of the East 1/2 of the Southwest 1/4, together with the Northwest 1/4 of the Southeast 1/4, all located in Section 31, T14N, R13E of the 6th P.M., Sarpy County, NE, from AG to RA, BG, RG-20-PS, RG-50, and RS-72 for the purpose of commercial, multi-family, and single-family residential development; and preliminary plat Lots 1 through 191, and Outlots A through H, Lakewood West. Applicant: Woodsonia Real Estate Inc. General Location: S 54th Street and Hwy 370.

SYNOPSIS/BACKGROUND:

Woodsonia Real Estate Inc. is requesting to rezone and plat approximately 109 acres of land near Highway 370 and South 54th Street for the purpose of commercial, multi-family and single family residential development. Commercial property would front Highway 370, with multi-family immediately to the south, and then transitioning to single family residential lots.

FISCAL IMPACT: n/a      BUDGETED FUNDS?: NO      GRANT/MATCHING FUNDS?: NO

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: NO      COUNTER-PARTY:      INTERLOCAL AGREEMENT: NO

CONTRACT DESCRIPTION: \_\_\_\_\_

CONTRACT EFFECTIVE DATE: \_\_\_\_\_ CONTRACT TERM: \_\_\_\_\_ CONTRACT END DATE: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

START DATE: \_\_\_\_\_ END DATE: \_\_\_\_\_ PAYMENT DATE: \_\_\_\_\_ INSURANCE REQUIRED: NO

CIP PROJECT NAME: \_\_\_\_\_ CIP PROJECT NUMBER: \_\_\_\_\_

STREET DISTRICT NAME (S): \_\_\_\_\_ STREET DISTRICT NUMBER (S): \_\_\_\_\_

ACCOUNTING DISTRIBUTION CODE: \_\_\_\_\_ ACCOUNT NUMBER: \_\_\_\_\_

RECOMMENDATION:

The Planning Department and Planning Commission are recommending approval.

ATTACHMENTS:

1. PC Recommendation	2. Staff Report	3. Ord. No. 4081
4. _____	5. _____	6. _____

SIGNATURES:

LEGAL APPROVAL AS TO FORM: \_\_\_\_\_

FINANCE APPROVAL AS TO FORM: \_\_\_\_\_

ADMINISTRATOR APPROVAL AS TO FORM: \_\_\_\_\_

*A. Bruce Rollins*  
*[Signature]*  
*[Signature]*

# City of Bellevue

## PLANNING COMMISSION RECOMMENDATION

APPLICANT: Woodsonia Real Estate Inc.

CASE #'s: Z-2110-19, and S-2110-24

CITY COUNCIL HEARING DATE: March 1, 2022

REQUEST: to rezone Lots 1 through 191, and Outlots A through H, Lakewood West, being a platting of the East ½ of the Southwest ¼, together with the Northwest ¼ of the Southeast ¼; all located in Section 31, T14N, R13E of the 6th P.M., Sarpy County, NE, from AG to RA, BG, RG-20-PS, RG-50, and RS-72 for the purpose of commercial, multi-family, and single-family residential development; and preliminary plat Lots 1 through 191, and Outlots A through H, Lakewood West.

On January 27, 2022, the City of Bellevue Planning Commission voted seven yes, zero no, two absent and zero abstained:

**APPROVAL** based upon conformance with the Zoning Ordinance, Comprehensive Plan, and Subdivision Regulations, and compatibility with the adjacent development.

**VOTE:**

Yes:	Seven:	No:	Zero:	Abstain:	Zero:	Absent:	Two:
	Casey						Cutsforth
	Hankins						Ritz
	Aerni						
	Ackley						
	Compton						
	Perrin						
	Jacobson						

Planning Commission Hearing (s) was held on: January 27, 2022

# CITY OF BELLEVUE PLANNING DEPARTMENT

## RECOMMENDATION REPORT # 2

CASE NUMBERS: S-2110-24  
Z-2110-19

FOR HEARING OF:  
REPORT #1: January 27, 2022  
REPORT #2: March 1, 2022

### I. GENERAL INFORMATION

#### A. APPLICANT:

Woodsonia Real Estate, Inc.  
20010 Manderson St., Ste. 101  
Elkhorn, NE 68022

#### B. PROPERTY OWNERS:

Timmerman Farms, Inc.  
5023 Shannon Drive  
Papillion, NE 68133

#### C. GENERAL LOCATION:

54<sup>th</sup> Street and Highway 370

#### D. LEGAL DESCRIPTION:

Lots 1 through 191, and Outlots A through H, Lakewood West, being a platting of the East ½ of the Southwest ¼, together with the Northwest ¼ of the Southeast ¼; all located in Section 31, T14N, R13E of the 6th P.M., Sarpy County, NE.

#### E. REQUESTED ACTIONS:

1. Request to rezone Lots 1 through 191, and Outlots A through H, Lakewood West, from AG to RA, BG, RG-20-PS, RG-50, and RS-72 for the purpose of commercial, multi-family, and single-family residential development.
2. Preliminary plat Lots 1 through 191, and Outlots A through H, Lakewood West.

#### F. EXISTING ZONING AND LAND USE:

AG; Vacant/Agricultural and Greenlife Gardens

**G. PURPOSE OF REQUEST:**

The purpose of this request is to obtain a change in zone and preliminary plat approval to enable commercial, single family and multi-family residential development.

**H. SIZE OF SITE:**

The site is approximately 109 acres.

**II. BACKGROUND INFORMATION**

**A. EXISTING CONDITION OF SITE:**

The property is presently developed with a single family residence constructed in 1876 and various outbuildings. Additionally, Greenlife Gardens uses a portion of the property for their nursery/office. The majority of the property is used agriculturally.

**B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**

- 1. **North:** Single Family Residential/Agricultural, AG
- East:** Vacant/Single Family Residential/Townhome Residential, RS-84-PS, RG-20-PS, and RD-60-PS
- South:** Vacant and Single Family Residential, AG, RS-84-PS, and RD-60-PS
- 2. **West:** Single Family Residential/Vacant/Commercial, AG

**C. REVELANT CASE HISTORY:**

On January 27, 2022, the Planning Commission recommended approval of a request to rezone Lots 1 through 191, and Outlots A through H, Lakewood West, being a platting of the East ½ of the Southwest ¼, together with the Northwest ¼ of the Southeast ¼; all located in Section 31, T14N, R13E of the 6th P.M., Sarpy County, NE, from AG to RA, BG, RG-20-PS, RG-50, and RS-72 for the purpose of commercial, multi-family, and single-family residential development; and preliminary plat Lots 1 through 191, and Outlots A through H, Lakewood West.

**D. APPLICABLE REGULATIONS:**

- 1. Section 5.06, Zoning Ordinance, regarding RA uses and requirements.
- 2. Section 5.10, Zoning Ordinance, regarding RS-72 uses and requirements.
- 3. Section 5.12, Zoning Ordinance, regarding RG-50 uses and requirements.
- 4. Section 5.14, Zoning Ordinance, regarding RG-20 uses and requirements.

5. Section 5.22, Zoning Ordinance, regarding BG uses and requirements.
6. Chapter 3, Subdivision Regulations, regarding Preliminary Plats.
7. Chapter 6, Subdivision Regulations, regarding Minimum Design Standards.
8. Chapter 7, Subdivision Regulations, regarding Capital Improvements.

### **III. ANALYSIS**

#### **A. COMPREHENSIVE PLAN:**

The Future Land Use Map of the Comprehensive Plan designates this area as being medium density residential, commercial, and mixed use.

#### **B. OTHER PLANS:**

None

#### **C. TRAFFIC AND ACCESS:**

1. The current MAPA traffic data information indicates there are 25,300 vehicles per day along both the east and west legs of Highway 370 near the intersection of 48<sup>th</sup> Street.
2. Access is proposed from South 54<sup>th</sup> Street, as well as newly constructed extensions of Shannon Drive and Timberridge Drive.

#### **D. UTILITIES:**

All utilities are available or will be constructed to serve this development.

#### **E. ANALYSIS:**

1. Drew Snyder, on behalf of Woodsonia Real Estate Inc., has submitted a request to preliminary plat Lots 1 through 191, and Outlots A through H, Lakewood West, for the purpose of commercial, single family and multi-family residential development.
2. The applicant is also requesting a change in zone from AG to BG (General Business), RA (Residential Agriculture), RS-72 (Single Family Residential, 7,200 Square Foot Zone), RG-50 (General Residence, 5,000 Square Foot Zone), and RG-20-PS (General Residence, 2,000 Square Foot Zone – Planned Subdivision) for Lots 1 through 194, and Outlots A through F, Lakewood West.

Lots 1 through 10 and Outlot B will be zoned BG for commercial use along the Highway 370 corridor.

Lots 11 and 12 and Outlots C and D will be zoned RG-20-PS for multi-family residential use. The -PS (Planned Subdivision) overlay requires site plan approval, which will be done separately at a later date once those lots are ready to be developed.

Proposed Lot 13 is developed with Greenlife Gardens. The applicant is requesting a change of zone to RA to allow for the continuation of the nursery/office.

Lots 14 through 76 will be zoned RG-50 to allow for smaller residential lots for single family residential/townhome construction. These smaller lots will serve as a transition from the multi-family zoning to the north and the larger single family residential lots to the south.

Lots 77 through 191 and Outlots E through H will be zoned RS-72 for single family residential development.

All of the lots conform to the minimum requirements of the requested zoning districts.

3. This development is designed to be similar to the existing Lakewood Villages subdivision as far as types of development and zoning designations: commercial frontage along Highway 370 which transitions to multi-family and smaller single family residential lots, with larger single family residential lots on the southern portion of the subdivision.

4. This application was sent out to the following departments/individuals for review: Public Works, Permits and Inspections, Chief of Police, Offutt Air Force Base, Fire Inspector, Sarpy County Planning Director, Sarpy County Public Works Department, Sarpy County Planning Director, Sarpy County IS/GIS/Public Safety, Metro Area Planning Agency, Metropolitan Utilities District, CenturyLink, Omaha Public Power District, Black Hills Energy, Cox Communications, Papio-Missouri NRD, and the Papillion LaVista Public School District. The cover letter indicated a deadline to send comments back to the Planning Department, and also stated if the requested department did not have comments pertaining to the application, no response was needed.

Sarpy County IS/GIS/Public Safety returned comments in regards to proposed street names. The applicant has since satisfied their concerns.

Cox Communications indicated they have facilities to the north and south of this proposed development. Cox stated "We will run this through our financial model and if it works for us we will fully fund and build this for a fiber to the home deployment. In the off chance that this does not meet our return threshold we would look to come to an agreement with the developer for a cost share."

Public Works Engineering Manager Dean Dunn had technical comments pertaining to the initial drainage, grading, street profiles, storm sewer, paving plans, and preliminary utility plan. The applicant has made the requested revisions.

No other comments were received on this case.

5. The Public Works Engineering Manager has reviewed the grading and drainage plans for this proposed development and found them to be acceptable.

6. A traffic study was submitted by the applicant and reviewed by city staff as well as the Nebraska Department of Transportation.

Based on this study, it is recommended the intersection of 54<sup>th</sup> Street and Highway 370 be signalized upon full buildout of this development, or by the year 2024. The applicant has included this cost in their Source and Use of Funds documentation. This cost would be 50% reimbursable when the property to the north of the intersection is developed.

Additionally, the study recommends a right-hand turn lane along eastbound Highway 370 at the 54<sup>th</sup> Street intersection upon full buildout or by the year 2024. It is also recommended an existing westbound left-turn lane be extended to provide 400' of vehicle storage. The developer has planned for these improvements in their Source and Use of Funds.

7. This subdivision will be developed as a Sanitary and Improvement District. A draft copy of the Subdivision Agreement has been submitted by the applicant for staff's review.

8. South 54<sup>th</sup> Street will be developed as a collector street with a roundabout at the intersection of Fenwick Street as a traffic calming measure.

9. A 10' wide trail will be provided along South 54<sup>th</sup> Street. This trail will provide connectivity to the existing Lakewood Villages Park as development occurs to the south of this subdivision.

Sidewalks will be provided throughout the subdivision as individual lots are developed. Additionally, sidewalks are shown across the proposed outlots, as well as along Lot 13, which is developed as Greenlife Gardens. This will provide connectivity throughout the development.

10. Based upon the number of acres, this development will require a contribution to the Park Fund in the amount of \$63,527.

11. Staff believes this development is compatible with the surrounding neighborhood.

**F. TECHNICAL DEFICIENCIES:**

None

**IV. DEPARTMENT RECOMMENDATION**

APPROVAL based upon conformance with the Zoning Ordinance, Comprehensive Plan, and Subdivision Regulations, and compatibility with adjacent development.

**V. PLANNING COMMISSION RECOMMENDATION**

APPROVAL based upon conformance with the Zoning Ordinance, Comprehensive Plan, and Subdivision Regulations, and compatibility with adjacent development.

**VI. ATTACHMENTS TO REPORT**

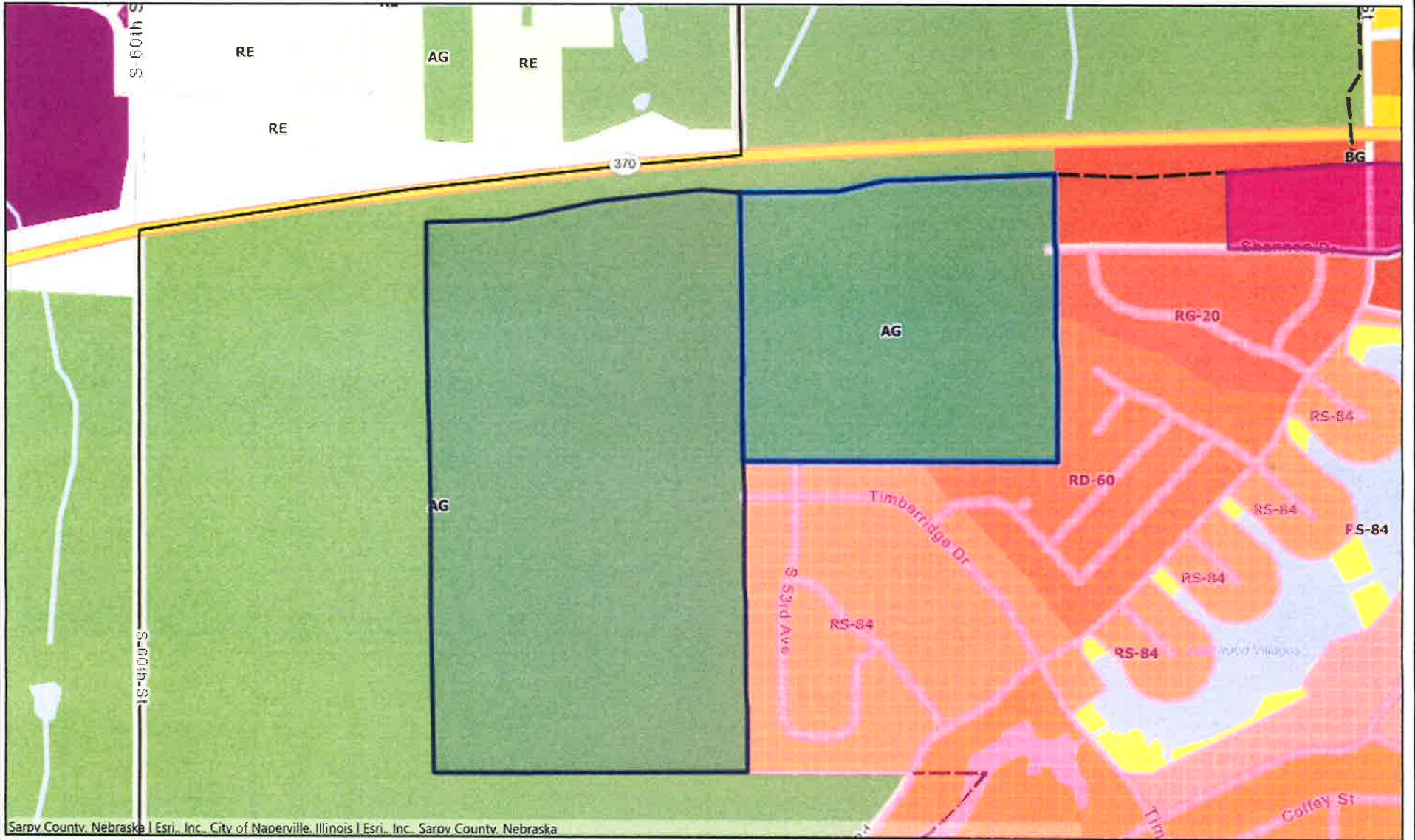
1. Vicinity map/Zoning Map
2. 2020 GIS aerial photo of the property
3. Letter from Drew Snyder dated January 3, 2022
4. Preliminary plat received January 12, 2022
5. Zoning map exhibit received January 12, 2022
6. Email from Stefan Vaida received January 21, 2022

**VII. COPIES OF REPORT TO:**

1. Woodsonia Real Estate Inc.
2. Timmerman Farms, Inc.
3. Thompson, Dreessen & Dorner, Inc.
4. Larry Jobeun
5. Public Upon Request

*Angela M. Curry 2/7/22*  
Assistant Planning Manager

*Jammi L. Palm 02/07/22*  
Planning Manager                      Date of Report

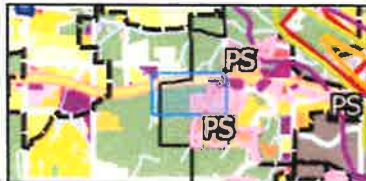


Sarpy County, Nebraska | Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska



Map Scale 1: 9028

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Notes





November 18, 2021

Ms. Tammi Palm  
Land Use Planner  
City of Bellevue Planning Department  
1510 Wall Street  
Bellevue, NE 68005

RE: Lakewood West  
Rezoning Justification  
TD2 File No. 2069-133

Ms. Palm:

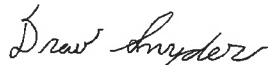
We believe the rezoning request from AG to RA, BG, RG-20-PS, RG-50 and RS-72 is justified because the proposed development will be compatible with, and complementary to, existing and planned developments that are to the east, west and south of this project. The existing and planned developments to the east, west and south are single-family, commercial and multifamily developments.

In addition, the planned development conforms to the City of Bellevue's future land use. Lastly, the proposed plat meets the zoning requirements for RA, BG, RG-20-PS, RG-50 and RS-72.

Please contact us with further questions, comments or if additional information is required.

Respectfully submitted,

Woodsonia Acquisitions, LLC



Drew Snyder

RECEIVED

JAN 03 2022

PLANNING DEPT.





## Tammi Palm

---

**From:** Stefan Vaida <svaida1946@gmail.com>  
**Sent:** Friday, January 21, 2022 12:20 PM  
**To:** Tammi Palm  
**Subject:** S 54th Street and Hwy 370

RECEIVED  
JAN 21 2022  
PLANNING DEPT.

Dear Ms. Palm,

Thank you very much for inviting us to the January 27, 2022, 6:00 pm meeting. Due to some health issues, unfortunately we need to miss that meeting. But my wife Julia and I, would like to express our support in favor of the Woodsonia Real Estate Inc. To Develop the so called "Lakewood West" new project. That would benefit the beautiful city of Bellevue, also it would be good for everybody close to it, as we are.

Thanks very much for approving such great plan for Development.

Sincerely,

Stefan and Julia Vaida, (Lot 3 Replat 4, Lakewood Villages)



Esri, Inc. City of Naperville, Illinois | Esri, Inc. Sarpy County, Nebraska



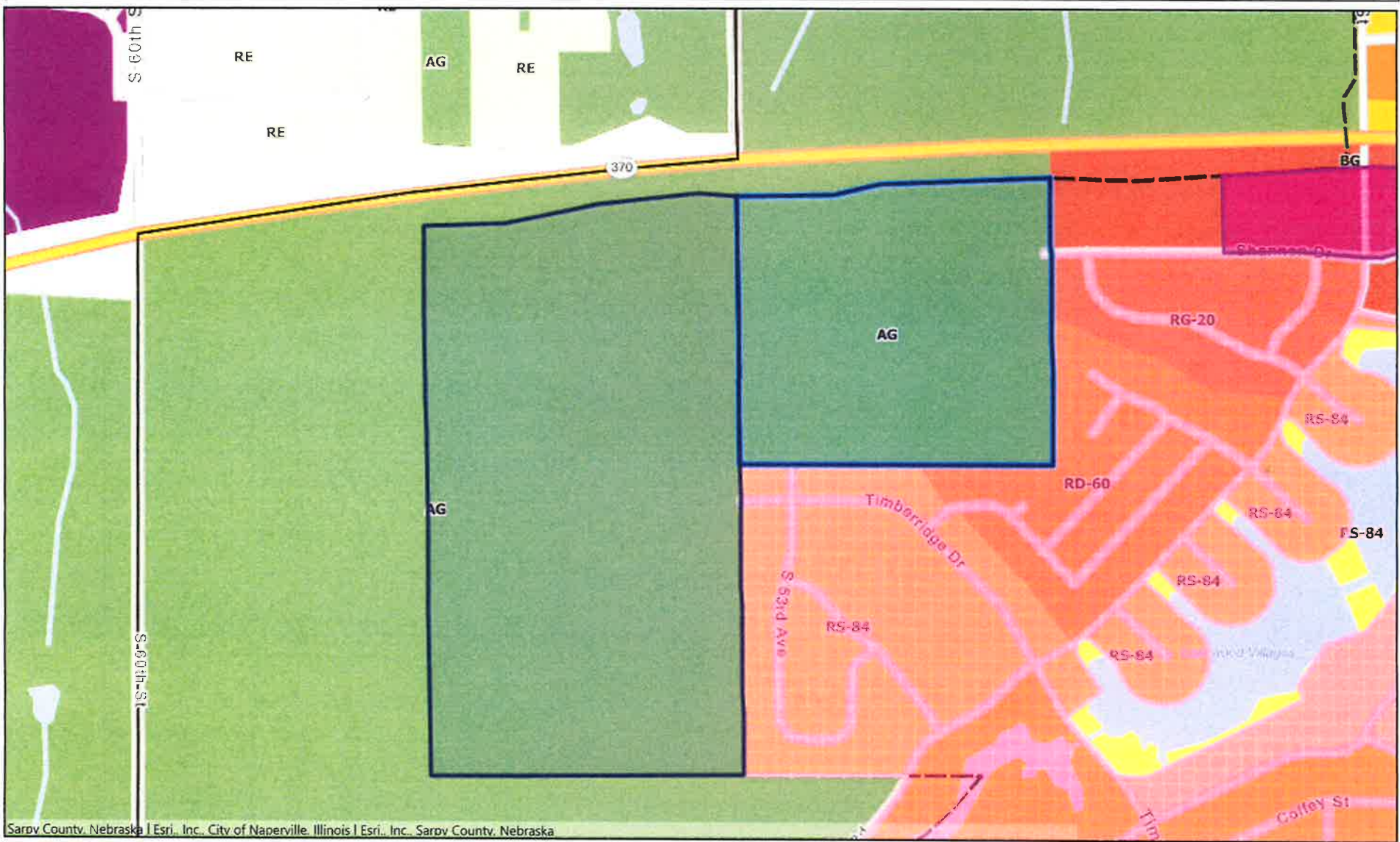
Map Scale 1: 9028

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the source records and information sources to ascertain the usability of the information.



Notes

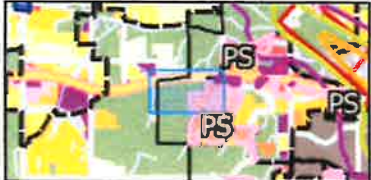




Sarpy County, Nebraska | Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska

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Map Scale 1: 9028

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Notes







## ORDINANCE NO. 4081

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF BELLEVUE, NEBRASKA, AS PROVIDED FOR BY ARTICLE 3 OF ORDINANCE NO. 3619 BY CHANGING THE ZONE CLASSIFICATION OF LAND LOCATED AT OR ABOUT 54<sup>TH</sup> STREET AND HIGHWAY 370, MORE PARTICULARLY DESCRIBED IN SECTION 1 OF THE ORDINANCE AND TO PROVIDE AN EFFECTIVE DATE.

WHEREAS, having received a recommendation from the city of Bellevue Planning Commission and proper notice having been given and public hearing held as provided by law:

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BELLEVUE, NEBRASKA:

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(Woodsonia Real Estate, Inc.)

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**S**ection 4. This ordinance shall take affect and be in force from and after its adoption and publication according to law.

**A**DOPTED by the Mayor and City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Third Reading: \_\_\_\_\_

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

14a.  
2/15/2022

COUNCIL MEETING DATE: 02/01/22		SUBMITTED BY: Tammi Palm		Planning Manager	
AGENDA ITEM:	CONSENT AGENDA <input type="checkbox"/>			SPECIAL PRESENTATION	<input type="checkbox"/>
LIQUOR LICENSE <input type="checkbox"/>	ORDINANCE <input type="checkbox"/>			PUBLIC HEARING	<input checked="" type="checkbox"/>
RESOLUTION <input type="checkbox"/>	CURRENT BUSINESS <input type="checkbox"/>			OTHER	<input type="checkbox"/>

SUBJECT:

Request for a conditional use permit for Lot 3, LGB Properties Replat One, for the purpose of an Alzheimer's/dementia care home.  
Applicant: AMZ Investments, LLC. General Location: 13510 South 36th Street.

SYNOPSIS/BACKGROUND:

Alicia Zuger, on behalf of AMZ Investments, LLC, is requesting a conditional use permit for the property located at 13510 S 36th St for the purpose of an Alzheimer's/dementia care home. The applicant desires to utilize the existing single family residence in order to care for up to 10-12 patients at one time. The home will comply with all building code/state licensing requirements, and be staffed 24/7. The property is approximately 4 1/2 acres in size. All parking will be located on the property. The property has direct access to South 36th Street; no access is taken through a residential neighborhood.

FISCAL IMPACT:  BUDGETED FUNDS?:  GRANT/MATCHING FUNDS?:

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?:  COUNTER-PARTY:  INTERLOCAL AGREEMENT:

CONTRACT DESCRIPTION:

CONTRACT EFFECTIVE DATE:  CONTRACT TERM:  CONTRACT END DATE:

PROJECT NAME:

START DATE:  END DATE:  PAYMENT DATE:  INSURANCE REQUIRED:

CIP PROJECT NAME:  CIP PROJECT NUMBER:

STREET DISTRICT NAME (S):  STREET DISTRICT NUMBER (S):

ACCOUNTING DISTRIBUTION CODE:  ACCOUNT NUMBER:

RECOMMENDATION:

The Planning Department and Planning Commission are recommending approval of this request.

ATTACHMENTS:

- |                         |                         |                         |
|-------------------------|-------------------------|-------------------------|
| 1. PC Recommendation    | 2. Staff Report         | 3. CUP Agreement        |
| 4. <input type="text"/> | 5. <input type="text"/> | 6. <input type="text"/> |

SIGNATURES:

LEGAL APPROVAL AS TO FORM:

FINANCE APPROVAL AS TO FORM:

ADMINISTRATOR APPROVAL AS TO FORM:

*A. Bree Robins*  
*[Signature]*  
*[Signature]*

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City Attorney

ATTEST

\_\_\_\_\_  
City Clerk

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Mayor

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Third Reading: \_\_\_\_\_

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

15a.  
2/15/2022

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Doug Clark, Public Works Director		Dean Dunn, Engineering Manager	
AGENDA ITEM:		CONSENT AGENDA	<input type="checkbox"/>	SPECIAL PRESENTATION	<input type="checkbox"/>
LIQUOR LICENSE	<input type="checkbox"/>	ORDINANCE	<input type="checkbox"/>	PUBLIC HEARING	<input type="checkbox"/>
RESOLUTION	<input checked="" type="checkbox"/>	CURRENT BUSINESS	<input type="checkbox"/>	OTHER	<input type="checkbox"/>

SUBJECT:

LPA Resolution - CRRSSA Fund Purchase Agreement

SYNOPSIS/BACKGROUND:

Nebraska Department of Transportation (NDOT) has previously entered into agreement with Metropolitan Area Planning Agency (MAPA) to purchase federal Coronavirus Response and Relief Supplemental Appropriations Act (CRRSSA) funds. The purpose of this agreement is for the City of Bellevue to agree to be bound by the terms of the State/MAPA agreement in exchange for receiving a share of the cash payment in the amount of \$360,233.00.

FISCAL IMPACT: + \$360,233.00 BUDGETED FUNDS?: NO GRANT/MATCHING FUNDS?: NO

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?:	YES	COUNTER-PARTY:	NDOT	INTERLOCAL AGREEMENT:	NO
CONTRACT DESCRIPTION: CRRSSA Fund Purchase Agreement					
CONTRACT EFFECTIVE DATE:		CONTRACT TERM:		CONTRACT END DATE:	
PROJECT NAME:					
START DATE:		END DATE:		PAYMENT DATE:	
				INSURANCE REQUIRED:	NO
CIP PROJECT NAME:		CIP PROJECT NUMBER:			
STREET DISTRICT NAME (S):		STREET DISTRICT NUMBER (S):			
ACCOUNTING DISTRIBUTION CODE:		ACCOUNT NUMBER: 10-15-4704-9222-922201-920-00000			

RECOMMENDATION:

City Council to approve and authorize the Mayor to sign the Resolution and CRRSSA Fund Purchase Agreement between the City of Bellevue and Nebraska Department of Transportation in exchange for receiving a share of the cash payment in the amount of \$360,233.00.

ATTACHMENTS:

- |               |                     |    |
|---------------|---------------------|----|
| 1. Resolution | 2. CRRSSA Agreement | 3. |
| 4.            | 5.                  | 6. |

SIGNATURES:

LEGAL APPROVAL AS TO FORM:

FINANCE APPROVAL AS TO FORM:

ADMINISTRATOR APPROVAL AS TO FORM:



**RESOLUTION**  
**SIGNING OF CRRSSA FUND PURCHASE AGREEMENT**

City of Bellevue

Resolution No. \_\_\_\_\_

**Whereas:** NDOT has previous entered into an agreement with the Metropolitan Area Planning Agency (MAPA) to purchase federal Coronavirus Response and Relief Supplemental Appropriations Act (CRRSSA) funds that were made available to entities within MAPA.

**Whereas:** The State's total cash payment will be equal to 90% of the CRRSSA federal funds purchased by the State from MAPA.

**Be It Resolved:** by the City Council of the City of Bellevue that:

The Mayor of the City of Bellevue is hereby authorized to sign the attached Project CRRSSA Fund Purchase Agreement between the City of Bellevue and the NDOT.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2022 at \_\_\_\_\_ Nebraska.  
(Month) (Year)

The City Council of the City of Bellevue

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Board/Council Member \_\_\_\_\_

Moved the adoption of said resolution

Member \_\_\_\_\_ Seconded the Motion

Roll Call: \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Abstained \_\_\_\_\_ Absent

Resolution adopted, signed and billed as adopted

Attest:

\_\_\_\_\_

Clerk

**FEDERAL-AID TRANSPORTATION FUND  
PURCHASE-SALE LETTER AGREEMENT  
CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATION ACT  
(CRRSAA)**

**Nebraska Department of Transportation**

**City of Bellevue**

THIS LETTER AGREEMENT made and entered into by and between the State of Nebraska, Department of Transportation, hereinafter referred to as the "State," and City of Bellevue, Nebraska, hereinafter referred to as Local Public Agency, or "LPA."

**RECITALS**

WHEREAS, the Metropolitan Area Planning Agency (MAPA) had the right to use certain Coronavirus Response and Relief Supplemental Appropriation Act (CRRSAA) funds for local federal-aid highway projects, and

WHEREAS, LPA, as an entity that is a part of MAPA, would have been entitled to use some of those CRRSAA funds, and

WHEREAS, MAPA has agreed to sell to State, in an Agreement dated July 28, 2021, attached hereto and made a part hereof, the right for State to purchase and use MAPA's CRRSAA funds, for State federal-aid Highway projects, in exchange for a cash payment from State that will be allocated among and paid directly to each of the local governmental entities that are a part of MAPA (See attached Agreement for anticipated allocation), and

WHEREAS, the State's total cash payment will be equal to 90% of the CRRSAA federal funds purchased by State from MAPA, and

WHEREAS, the Agreement between State and MAPA, (signed copy attached as Attachment A), contains limitations on the use that LPA can make of the cash payment received, and also includes a requirement for annual certifications from LPA to State concerning the LPA's use of the cash payment, and

WHEREAS, the purpose of this Agreement is for LPA to agree to be bound by the terms of the State/MAPA Agreement in exchange for LPA receiving a share of the cash payment.

NOW, THEREFORE, in consideration of these facts, the State and the LPA agree as follows:

**SECTION 1. Effective Date and Term of this Agreement.** This Agreement will be effective only upon the execution of this Agreement by the State. The agreement will terminate when State has received final certification from LPA that all funds received from State's purchase of the CRRSAA funds have been expended by LPA consistent with the requirements of this Agreement.

**SECTION 2. Obligations of LPA.** In exchange for the receipt of LPA's share of the cash payment from State, for State's purchase of the CRRSAA funds from MAPA, LPA agrees to be fully bound by all of the obligations of MAPA under the attached agreement, including but not limited to, the Limitations on LPA's Use of the Cash Payment set out in Section 4, and the obligation of LPA to make annual certifications to State as required in Section 5 of the attached agreement.

**SECTION 3. Obligations of State.** State agrees to make direct payment to LPA for the share of the cash payment, expected to be in the amount shown in the attached agreement in the amount of \$360,233.00, and to meet any other obligations of the attached Agreement applicable to LPA.

IN WITNESS WHEREOF, the LPA and State hereto have caused this Agreement to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the LPA this \_\_\_\_ day of \_\_\_\_\_, 2022.

WITNESS:

CITY OF BELLEVUE

\_\_\_\_\_

\_\_\_\_\_

By

\_\_\_\_\_

Title

EXECUTED by the State this \_\_\_\_ day of \_\_\_\_\_, 2022.

STATE OF NEBRASKA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_

By

\_\_\_\_\_

Title

**FEDERAL-AID TRANSPORTATION FUND  
PURCHASE-SALE AGREEMENT  
CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATIONS  
ACT (CRRSAA)**

**Nebraska Department of Transportation**

**Metropolitan Area Planning Agency**

THIS AGREEMENT made and entered into by and between the State of Nebraska, Department of Transportation, hereinafter referred to as the "State," and the Metropolitan Area Planning Agency, Nebraska, hereinafter referred to as Local Public Agency, or "LPA."

**RECITALS**

WHEREAS, the State and LPA have authority to enter into this Agreement and to expend funds pursuant to Neb. Rev. Stat. §§ 39-1307 and 66-4,100; and,

WHEREAS, under the Coronavirus Response and Relief Supplemental Appropriation Act (CRRSAA), the LPA was allocated \$6,377,523.00 apportionment from the Highway Infrastructure Program for LPA's use in response to the losses suffered by the LPA as the result of the Coronavirus pandemic, and

WHEREAS, the federal-aid funds made available to the LPA are of a type that would also be eligible for use by the State for federal-aid projects on certain State highway and bridge projects; and,

WHEREAS, LPA wishes to sell to State the right to use \$6,377,523.00 of LPA's CRRSAA funds for Title 23 transportation purposes in exchange for State making a cash payment to LPA.

WHEREAS, the cash payment to be made by the State to local governments within MAPA will be equal to ninety percent (90%) of the total dollar amount of federal-aid funds purchased by the State ( $\$6,377,523.00 \times .90\% = \$5,739,770.70$ ).

WHEREAS, the cash payment will be made to the local governments within MAPA no later than the end of federal fiscal year 2022, depending on State's sole determination of cash flow.

WHEREAS, State will use all of the \$6,377,523.00 received from the LPA to pay a portion of the expected construction costs for the upcoming State project identified as CN

22611, I-680 Bridges, and State will meet all standard federal-aid requirements for the use of those funds, and

WHEREAS, LPA will pass through to local governments within MAPA the cash received from State and such funds will be used by the local governments within MAPA only for the purposes set out in this agreement, and

WHEREAS, the LPA is interested in selling these federal-aid funds to the State on the terms and conditions set out in this Agreement, including certain limitations on the use of the cash received by LPA.

NOW, THEREFORE, in consideration of these facts, the State and the LPA agree as follows:

**SECTION 1. Effective Date and Term of this Agreement.** This Agreement will be effective only upon the execution of this Agreement by the State. This Agreement will terminate when State has received the last certification from the local governments within MAPA when all funds have been used constant with the terms of this agreement. The State may terminate this Agreement for any reason at any time by giving LPA advance notice 60 days prior to the date of termination.

**SECTION 2. Calculation of LPA's share of the Federal-Aid Funds Purchase.** The LPA is entitled to \$6,377,523.00 of CRRSSA funds and will be purchased by the State for use on a transportation project.

**SECTION 3. Cash Payment Calculation and Payment Date.** The cash payment to be made by the State to the local governments within MAPA will be equal to ninety percent (90%) of the total dollar amount of federal-aid funds sold by LPA to State. The total dollar amount of federal-aid funds purchased by the State is \$6,377,523.00 with a payout to the local governments within MAPA in the amount of \$5,739,770.70. Instead of paying MAPA the cash payment, State will make payment directly to the local governments within MAPA at the funding level listed in the following table:

Local Government	Funding
Douglas County	\$1,034,772
Sarpy County	\$750,265
Bellevue	\$360,233
Bennington	\$75,000
Gretna	\$75,000
La Vista	\$108,115
Omaha	\$2,804,680
Papillion	\$146,706
Ralston	\$75,000
Springfield	\$75,000
Valley	\$75,000
Waterloo	\$75,000
Boys Town	\$75,000
Cass County	\$10,000

**SECTION 4. Limitations on LPA's and local governments with MAPA Use of Cash Payment.** The portion of the cash payment received by the local government within MAPA from the State for the purchase of the funds shall be used solely for the transportation purposed eligible under CRRSAA or for the cost of construction, reconstruction, maintenance, or repair of public highways, streets, roads, or bridges and facilities, appurtenances, and roadway structures deemed necessary in connection therewith. LPA shall assist state in obtaining letter agreements from the local governments within MAPA to bind the local governments to the requirements of this section.

The phrase "facilities, appurtenances, and roadway structures deemed necessary in connection therewith," as used in the first sentence of this section, includes medians; accessory lanes; steps; handrails; sidewalks, adjoining trails, paths and related structures; drainage facilities such as storm sewers, curb or grate inlets, culverts, ditches, and other drainage structures; guardrails; lighting facilities; driveways; retaining walls and

other similar facilities that are necessary or desirable and directly related to the proper design of streets, roads and highways.

The local governments within MAPA shall segregate the cash payment and shall separately account for the cash payment received from the State within its accounting system. The cash payment funds may be used for any phase of an allowable project. The phases of an allowable project include but are not limited to: 1) preliminary engineering, 2) right-of-way acquisition, 3) utility relocations, 4) construction, and 5) construction engineering.

All roads and bridges shall be designed and constructed to meet the minimum standards of the Nebraska Board of Public Roads Classifications and Standards.

**SECTION 5. Annual Certification of Use of Cash Payment and Action Required for Improper Use of Funds.** Until all such funds have been used by the local governments within MAPA, each local government shall submit to State an annual certification in accordance with this agreement. The annual certification shall be filed with the Local Assistance Division of the State and the form shall be submitted by local government within 90 days after the end of sub entities fiscal year. Further, each local government within MAPA must immediately report to State any use of the cash payment for a nonconforming use under this Agreement. Within 60 days of discovery of any improperly diverted funds, the applicable local government within MAPA must provide the State with a repayment plan for that local government to replace the improperly diverted funds by depositing an equivalent amount of other local funds into the cash payment account. If the local government within MAPA fails to repay the funds or fails to provide a repayment plan that is acceptable to the State, the State will withhold local government's future annual payments until the applicable local government, repays all improperly diverted funds. If the local government within MAPA fails to meet the requirement of the prior sentence, the State may terminate this Agreement and apply any future funds of the local government within MAPA toward the repayment of the improperly diverted funds.

**SECTION 6. Fund Distribution.** Prior to the distribution of funds under his Agreement, LPA agrees to facilitate State obtaining a separate "Letter" Agreement from each of the local governments receiving a cash payment, with each entity agreeing to be

bound to the terms of this Agreement, including but not limited to the use of the cash distribution and the annual certification requirements.

**SECTION 7. Additional Terms and Conditions.** The parties agree to the following additional terms and conditions:

- A. Federal Legislation. The LPA authorizes the State to take such steps as are deemed by the State to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Surface Transportation Act for this Agreement. The terms of this Agreement are subject to changes in federal legislation. The State reserves the right to (1) terminate this Agreement, in the event such changes in federal law significantly impacts, nullifies or renders impractical the continuing purchase of LPA's federal-aid funds.
- B. Application of Purchased Funds. The LPA understands that the State, at its sole discretion, intends to use the federal-aid funds purchased from LPA for the I-680 Bridges project identified in the recitals above.
- C. Audits. The LPA agrees to make its records and books available at any time to representatives or designees of the State for audit.
- D. Applicable Law. The LPA agrees to follow all applicable laws governing the transaction set out in this Agreement and the use of the State payment for local street, road, or bridge projects.
- E. Local Ordinances and Resolutions. The LPA agrees to adopt all necessary ordinances and/or resolutions and to take such legal steps as may be required to give full effect to the terms of this Agreement.
- F. Maintenance of and Commitments for Projects Constructed with Federal Funds. This Agreement does not relieve the LPA of maintaining, at its own expense, all transportation projects under its jurisdiction which have used, or will use federal funds in the future (see, 23 U.S.C. § 116). The LPA agrees to make provisions each year for the maintenance costs involved in properly maintaining all of its federal-aid routes and facilities. The LPA shall also be solely responsible for any required environmental commitments, including monitoring, and any other commitments made, after the

construction of projects on its federal-aid routes which have used, or will use federal funds in the future. In the event that the federal government withholds funds from the State related to LPA's failure to meet its obligations under this section, LPA agrees that the State, in addition to all other remedies, may withhold its future cash payments under this agreement until all funds are repaid.

- J. Right-of-Way. The LPA is advised to use or cause any sub entity to use the "Uniform Act" and keep good records when purchasing right-of-way for a project. The "Uniform Act" is the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. § 24, entitled "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs."
- K. No Third-Party Benefits. No third-party beneficiaries are intended to be created by this Agreement, nor do the parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- L. Fair Employment Practices Act. The LPA agrees to abide by Nebraska Fair Employment Practices Act, as provided by Neb. Rev. Stat. §§ 48-1101 through 48-1126, which is hereby made a part of and included in this Agreement by reference.

IN WITNESS WHEREOF, the LPA and State hereto have caused this Agreement to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the LPA this 22 day of July, 2021.

WITNESS:

Pamela A. Smithe

METROPOLITAN AREA PLANNING AGENCY

By Douglas D. Hendry

MAPA Board Chair  
Title

EXECUTED by the State this 23<sup>rd</sup> day of July, 2021.

STATE OF NEBRASKA  
DEPARTMENT OF TRANSPORTATION

Khelifa

By Deputy Director - Engineering  
Title

**CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET**

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Tammi Palm		Planning Manager		
AGENDA ITEM:		CONSENT AGENDA	<input type="checkbox"/>	SPECIAL PRESENTATION		<input type="checkbox"/>
LIQUOR LICENSE	<input type="checkbox"/>	ORDINANCE	<input type="checkbox"/>	PUBLIC HEARING		<input type="checkbox"/>
RESOLUTION	<input type="checkbox"/>	CURRENT BUSINESS	<input checked="" type="checkbox"/>	OTHER		<input type="checkbox"/>

**SUBJECT:**

Request to approve a 30-day filing extension for the Redwood 25 final plat, as per Section 4-11, Subdivision Regulations.

**SYNOPSIS/BACKGROUND:**

Redwood USA, LLC is requesting a 30-day extension for their Redwood 25 final plat, as allowed per Section 4-11, Subdivision Regulations. Staff is recommending approval of this request so they may facilitate their closing.

FISCAL IMPACT:  BUDGETED FUNDS?:  GRANT/MATCHING FUNDS?:

**TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:**

IS THIS A CONTRACT?:  COUNTER-PARTY:  INTERLOCAL AGREEMENT:

CONTRACT DESCRIPTION:

CONTRACT EFFECTIVE DATE:  CONTRACT TERM:  CONTRACT END DATE:

PROJECT NAME:

START DATE:  END DATE:  PAYMENT DATE:  INSURANCE REQUIRED:

CIP PROJECT NAME:  CIP PROJECT NUMBER:

STREET DISTRICT NAME (S):  STREET DISTRICT NUMBER (S):

ACCOUNTING DISTRIBUTION CODE:  ACCOUNT NUMBER:

**RECOMMENDATION:**

The Planning Department recommends approval of this request.

**ATTACHMENTS:**

- |                               |                         |                         |
|-------------------------------|-------------------------|-------------------------|
| 1. Letter from Lamp Rynearson | 2. Email from Redwood   | 3. <input type="text"/> |
| 4. <input type="text"/>       | 5. <input type="text"/> | 6. <input type="text"/> |

**SIGNATURES:**

LEGAL APPROVAL AS TO FORM: \_\_\_\_\_

FINANCE APPROVAL AS TO FORM: \_\_\_\_\_

ADMINISTRATOR APPROVAL AS TO FORM: \_\_\_\_\_

*AB [Signature]*  
*[Signature]*  
*[Signature]*

VIA Email

October 13, 2021

14710 W. Dodge Rd., Ste. 100  
Omaha, NE 68154  
[P] 402.496.2498  
[F] 402.496.2730  
LampRynearson.com

Tammi Palm  
Planning Manager  
City of Bellevue  
1510 Wall Street  
Bellevue, NE 68005  
(402) 293-3038

REFERENCE: Redwood Homes – Bellevue 25  
Final Plat – Delay Request  
Job No.: 0121027.01-003

RECEIVED  
FEB 02 2022  
PLANNING DEPT.

Dear Ms. Palm:

Redwood 25 final plat was approved by Bellevue City Council on August 3, 2021, as per the 90 day filing requirement, the original deadline to file the plat was November 1, 2021.

We request a 30 day extension of the deadline to file the plat. The new deadline would be December 1, 2021. We request this extension for the following reasons:

1. The final plat cannot be recorded until the property transfer has occurred and Redwood Home is the owner.
2. Redwood Homes is coordinating with their lender to provide the necessary documentation to approve the loan for property transfer including
  - a. Verification of site plan approval
  - b. Additional coordination with seller regarding timing of property transfer
  - c. Documentation on the proposed ROW dedication for the new Bellevue Public Street, Wolf Creek Drive
3. Coordination of Signatures and other miscellaneous items.

We met with Bellevue Planning on October 13, 2021 to review the issues and believe we have a clear path forward.

Redwood Homes – Bellevue 25  
Final Plat – Delay Request  
October 13, 2021  
Job No.: 0121027.01-003  
Page 2

Please note we may need to ask for an additional 30 day extension(s) to coordinate the items noted above. The Developer, Redwood Homes, is committed to this project. Lamp Rynearson has been authorized, by Redwood Homes, to produce final construction plans and we are working towards an early December complete construction document submittal for Building Permit.

Please place this request for an extension on the next Bellevue City Council Agenda. We will submit a check in the amount of \$200 to the City of Bellevue for the extension fee.

Thank you for your attention to this matter and help with this process.

Sincerely,

LAMP RYNEARSON



John E. Coolidge, P.E.  
Vice President

c: Paul DeKruiff

RECEIVED

FEB 02 2022

**Tammi Palm**

---

**From:** Michael Kall <MKall@byRedwood.com>  
**Sent:** Wednesday, February 2, 2022 8:12 AM  
**To:** Tammi Palm  
**Cc:** Paul DeKruiff  
**Subject:** Bellevue Plat Extension for Redwood 25th and Cornhusker, Submission Date 02-02-2022  
**Attachments:** LTR PALM Final Plat Delay Request 211013.pdf

PLANNING DEPT.

Tammi,

Pursuant to our ongoing discussion regarding the Plat Extension for Redwood 25<sup>th</sup> and Cornhusker, this email will serve as our request for an additional 30-day extension per the letter from Lamp Rynearson on October 13, 2021, Copy Attached. As you know, we will need several extensions due in part to our local lender requiring the following to fund and close on our construction loan:

- Survey/Plat – If not part of Site Plan/Engineering Plans already
- Zoning – Approval of Prel Site Plan and/or Rezoning
- Utility Will Serve Letters (Gas/Electric/Telecom/Sanitary/Water). If Sanitary or Water PTI(Permit To Install) that would be ok to use and not need Will Serve Letter.
- Approved Civil Engineering Drawings/Letter of Approval
- Approved Architectural Plans – Could be a plan review letter without a building permit, however we will need addressing or Building Permit Issued

We will send you a check for the 30-day Plat Extension Fee today. Please confirm receipt of this email.

Thanks again for all your help. We look forward to moving this deal forward and being part of Bellevue.

Thank You,

**Michael Kall**  
Acquisitions Coordinator



---

**Mobile:** [216.299.4810](tel:216.299.4810) [byRedwood.com](http://byRedwood.com)

7007 East Pleasant Valley Road, Independence, OH 44131

2018-2021 Great Place to Work Certified | 2018-2021 Top Workplace

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CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Rich Severson		Finance Director	
AGENDA ITEM:		CONSENT AGENDA <input type="checkbox"/>		SPECIAL PRESENTATION <input type="checkbox"/>	
LIQUOR LICENSE <input type="checkbox"/>		ORDINANCE <input type="checkbox"/>		PUBLIC HEARING <input type="checkbox"/>	
RESOLUTION <input type="checkbox"/>		CURRENT BUSINESS <input checked="" type="checkbox"/>		OTHER <input type="checkbox"/>	

SUBJECT:

Extension of Custom Farming Contracts for 2022

SYNOPSIS/BACKGROUND:

The city owns land that is held for future economic development and amenities for residents such as parks and recreation. An income stream can be achieved during the incubation period by custom farming the land. The contractor that has been performing the custom work has been an excellent steward of the land and generated income for the city. This agenda item extends his contracts: (1) Twelfth Extension to the Contract with Justin Thoms for Custom Farming to plant and harvest corn on the approximately 61 acres at 36th and Capehart Road in an amount not to exceed \$13,833.00 (\$12,575.40 plus 10% contingency). The number of tillable acres is expected to decline as the city puts the land to its intended use. (2) Twelfth Extension to the Contract with Justin Thoms for Custom Farming to plant and harvest soybeans on the approximately 62 acres near the Bellevue Sports Complex at Cunningham Road, west of Harlan Lewis Road, in an amount not to exceed \$31,997.00 (\$29,087.92 plus 10% contingency).

FISCAL IMPACT: +20,000 BUDGETED FUNDS?: YES GRANT/MATCHING FUNDS?: NO

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: YES COUNTER-PARTY: Justin Thoms INTERLOCAL AGREEMENT: NO

CONTRACT DESCRIPTION: Group Insurance Plan

CONTRACT EFFECTIVE DATE: 01/01/2022 CONTRACT TERM: 1 Year CONTRACT END DATE: 12/31/2022

PROJECT NAME:

START DATE: END DATE: PAYMENT DATE: INSURANCE REQUIRED: NO

CIP PROJECT NAME: CIP PROJECT NAME:

STREET DISTRICT NAME (S): STREET DISTRICT NUMBER (S):

ACCOUNTING DISTRIBUTION CODE: ACCOUNT NUMBER:

RECOMMENDATION:

Approve the Twelfth Extension to the Contract with Justin Thoms for Custom Farming approximately 61 acres at 36th and Capehart Road in an amount not to exceed \$13,833.00 and the Twelfth Extension to the Contract with Justin Thoms for Custom Farming approximately 62 acres near the Bellevue Sports Complex in an amount not to exceed \$31,997.00 and waive Council Policy 4 requiring solicitation of bids and goods and services costing more than \$30,000.

ATTACHMENTS:

- Twelfth Extension-61 Acres
- Bid for Capehart Farm-61 Acres
- Twelfth Extension-62 Acres
- Bid for Cunningham Farm-62 Acres
- 
- 

SIGNATURES:

LEGAL APPROVAL AS TO FORM:

FINANCE APPROVAL AS TO FORM:

ADMINISTRATOR APPROVAL AS TO FORM:

*[Handwritten signatures]*



## Attachment B

The bids below are given with the rough estimate of 62 acres of Corn located at the Bellevue Sports Complex. 01/19/2022  
62 acres

Operation	Unit	Rate	Total Billed	Notes
Spring/Fall field prep/maintenance; Push back and trim fallen trees Repairing water erosion Field cultivating rough areas	Hr	\$100.00	\$0	None needed at this farm for 2022
Fertilizer & application. (\$230 +\$23 app)	Acre	\$253.00	\$15,686.00	150lbs Nitrogen, 135lbs 11-52, 10lbs sulfur, 5lbs zinc all injected into the ground to prevent any runoff or water contamination.
Corn Seed – (\$75 seed+\$17.5 app)	Acre	\$92.50	\$5,735.00	25k/acre Roundup Ready corn
Pre-emerge Corn herbicide application of 2.5 qt Harness Xtra, 7oz of 2-4-D/6 (\$26.27 + \$8.50 app)	Acre	\$34.77	\$2,155.74	
Post spraying of Corn, 3oz Explorer, 1pt Atrazine, 10 oz Roundup (\$8.89 + \$8.50 app)	Acre	\$17.39	\$1,078.18	
Combine crops	Acre	\$34	\$2,108.00	
Hauling to local elevators (estimated 150bu/acre for corn, 50bu/acre for soybeans)	Bu	\$0.25	\$2,325.00	
Mowing of waterways	Hr	\$100	\$0	None at this farm
		<b>Estimated TOTAL:</b>	<b>\$29,087.92</b>	

Any additional spraying for Aphids, Rust, etc will be the cost of the chemical plus \$8.50 application

Total with 10% contingency \$ **31,997.00**

Contact Justin Thoms at 402-658-1929 with any questions.

**Twelfth Extension to the Contract**

This Custom Farming Contract for the 62 acre parcel located at the Bellevue Sports Complex, Bellevue, Nebraska, originally dated February 12, 2010, and extended on February 14, 2011, and further extended on January 23, 2012, November 26, 2012, on February 10, 2014, on March 9, 2015, on March 14, 2016, on February 13, 2017, on March 26, 2018, on March 11, 2019, on January 21, 2020, and on December 1, 2020 shall be further extended from January 1, 2022 to December 31, 2022, at the rates and charges specified on the attached Attachment "B", which is hereby made a part of this contract.

Dated this \_\_\_\_ day of February, 2022.

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

CITY OF BELLEVUE, Nebraska

By: \_\_\_\_\_  
Mayor, Rusty Hike

CUSTOM OPERATOR

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
(if corporation, partnership or LLC)

## Attachment A

The bids below are given with the rough estimate of 61 acres of Soybeans for the Caphart farm. 01/18/2022  
61 acres

Operation	Unit	Rate	Total Billed	Notes
Spring/Fall field prep/maintenance; Push back and trim fallen trees Repairing water erosion Field cultivating rough areas	Hr	\$100.00	\$300	This is the amount not to exceed
Fertilizer & application. (\$0 +\$21 app)	Acre	\$0.00	\$0.00	Not needed for Soybeans, put on in the previous year for corn
Soybean Seed – (\$47 seed+\$17.5 app)	Acre	\$64.50	\$3,934.50	Enlist Soybeans 140k per acre
Pre-emerge Soybean herbicide application of 6 oz Zidua Pro, 7oz of 2-4-D/6 (\$31.53 + \$8.50 app)	Acre	\$40.03	\$2,441.83	
Post spraying of Soybeans; 1qt EnlistOne, 6oz Clethodim, 19 oz Roundup (\$31.87 + \$8.50 app)	Acre	\$40.37	\$2,462.57	
Combine crops	Acre	\$34	\$2,074.00	
Hauling to local elevators (estimated 150bu/acre for corn, 50bu/acre for soybeans)	Bu	\$0.25	\$762.50	
Mowing of waterways and the 9 acres along 40 <sup>th</sup> street once in the summer.	Hr	\$100	\$600	
		<b>Estimated TOTAL:</b>	<b>\$12,575.40</b>	

Any additional spraying for Aphids, Rust, etc will be the cost of the chemical plus \$7.50 application

Total with 10% contingency \$ **13,833.00**

Contact Justin Thoms at 402-658-1929 with any questions.

**Twelfth Extension to the Contract**

This Custom Farming Contract for the Capehart Farm property located at 36<sup>th</sup> and Capehart Road, Bellevue, Nebraska, originally dated April 8, 2009, and extended on February 12, 2010, and further extended on February 14, 2011, January 23, 2012, on November 26, 2012, on February 10, 2014, on March 9, 2015, on March 14, 2016, on March 13, 2017, on March 26, 2018, on March 11, 2019, on January 21, 2020, and on December 1, 2020 shall be further extended from January 1, 2022 to December 31, 2022, at the rates and charges specified on the attached Attachment "A", which is hereby made a part of this contract.

Dated this \_\_\_\_ day of February, 2022.

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

CITY OF BELLEVUE, Nebraska

By: \_\_\_\_\_  
Mayor, Rusty Hike

CUSTOM OPERATOR

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
(if corporation, partnership or LLC)

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Finance/CDBG	
AGENDA ITEM:	CONSENT AGENDA <input type="checkbox"/>	SPECIAL PRESENTATION <input type="checkbox"/>	
LIQUOR LICENSE <input type="checkbox"/>	ORDINANCE <input type="checkbox"/>	PUBLIC HEARING <input type="checkbox"/>	
RESOLUTION <input type="checkbox"/>	CURRENT BUSINESS <input checked="" type="checkbox"/>	OTHER <input type="checkbox"/>	

SUBJECT:

Amendment extending the 2020 CDBG Subrecipient Agreement with All-Brite Glass and Screen for the Sidewalk Improvement Project.

SYNOPSIS/BACKGROUND:

The City of Bellevue executed a CDBG subrecipient agreement with All-Brite Glass and Screen for the Sidewalk Improvement Project on March 2, 2021, as outlined in the 2020 Action Plan with the Time of Performance expiring one-year from the date of execution. The project was funded \$7,358.00 and has the full balance still available. All-Brite has requested an extension of the agreement to retain use of the funds for the approved activities. The subrecipient agreement allows for a one-year extension upon request by the subrecipient. Staff recommends approval of an extension for the use of funds and will assist All-Brite to complete the project in accordance with HUD regulations.

FISCAL IMPACT: \$7,358.00 BUDGETED FUNDS?: YES GRANT/MATCHING FUNDS?: NO Not Required

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: YES	COUNTER-PARTY: All-Brite Glass and Screen	INTERLOCAL AGREEMENT: NO
CONTRACT DESCRIPTION: Amendment to the 2020 CDBG Subrecipient Agreement		
CONTRACT EFFECTIVE DATE: 02/15/2022	CONTRACT TERM: 1 year	CONTRACT END DATE: 02/14/2023
PROJECT NAME: All-Brite Sidewalk Rehabilitation Project		
START DATE: 02/15/2022	END DATE: 02/14/2023	PAYMENT DATE: <input type="text"/> INSURANCE REQUIRED: YES
CIP PROJECT NAME: <input type="text"/>	CIP PROJECT NUMBER: <input type="text"/>	
STREET DISTRICT NAME (S): <input type="text"/>	STREET DISTRICT NUMBER (S): <input type="text"/>	
ACCOUNTING DISTRIBUTION CODE: CDBG-192104	ACCOUNT NUMBER: 60/1903/192104/450	

RECOMMENDATION:

Approve and authorize City Council President\* to sign the amendment extending the CDBG subrecipient agreement with All-Brite Glass and Screen.

\*The City Council President signed all 2020 CDBG program documents due to the Mayor's conflict of interest.

ATTACHMENTS:

- |                                  |                                     |                             |
|----------------------------------|-------------------------------------|-----------------------------|
| 1. Extension Request - All-Brite | 2. 2020 CDBG Subrecipient Agreement | 3. 2020 Agreement Amendment |
| 4. <input type="text"/>          | 5. <input type="text"/>             | 6. <input type="text"/>     |

SIGNATURES:

LEGAL APPROVAL AS TO FORM:

FINANCE APPROVAL AS TO FORM:

ADMINISTRATOR APPROVAL AS TO FORM:

## All-Brite Glass and Screen

Sharon <[REDACTED]>

Mon 1/31/2022 8:23 AM

To: abby.highland@outlook.com <abby.highland@outlook.com>

Hi Abby,

I am reaching out to you on behalf of All-Brite Glass and Screen on 601 West Mission Ave Bellevue, NE 68005. The owner Gary Lindahl has requested me to help him with getting you this information.

Gary is requesting an extension from the city for the sidewalk improvement project. Gary has expressed the fact that he has had about 15 different contractor's come and check it out and agreed to do it until they saw all the paperwork involved that the city was requesting. He would like to have this extended until September 1, 2022 if possible. Gary is also requesting a list of contractor's that the city has had success with in terms of providing and filling out all paperwork required from the city. Gary just has had no success in finding someone who is willing to do the paperwork.

An extension, any help and guidance from the city will be much appreciated.

Gary Lindahl—Owner of All-Brite Glass and Screen  
Sharon Maldonado—Friend of Gary

**FIRST AMENDMENT TO THE AGREEMENT  
BETWEEN THE CITY OF BELLEVUE AND  
ALL-BRITE GLASS AND SCREEN  
FOR EXPENDITURE OF  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS  
B-20-MC-31-0003**

THIS FIRST AMENDMENT TO THE SUBRECIPIENT AGREEMENT FOR CDBG FUNDING entered into this \_\_\_\_ day of \_\_\_\_, 2022, by and between ALL-BRITE GLASS AND SCREEN (“SUBRECIPIENT”) and the CITY OF BELLEVUE, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, a Grantee of the CDBG entitlement program, (“GRANTEE”) (Collectively referred to as the “Parties”).

WHEREAS, the GRANTEE has applied for and received funds, Catalog of Federal Domestic Assistance Number 14-218 (CDBG), from the United States Government under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, the GRANTEE wishes to engage the SUBRECIPIENT to assist in the utilization of Community Development Block Grant (CDBG) funds from the B-20-MC-31-0003 HUD contract in the amount of \$7,358.00 for sidewalk and parking improvement for a building located at 601 West Mission Ave, Bellevue, NE 680005; and

WHEREAS, the Parties entered into a Subrecipient Agreement for CDBG Funding on or about the 1st day of March, 2021 (the “Agreement”); and

WHEREAS, the Parties desire to amend the Agreement to extend the term thereof, update the Timeliness and Time of Performance by the SUBRECIPIENT to the GRANTEE, and to otherwise modify the Agreement as provided for herein; and

WHEREAS, the Parties therefore intend that the terms of the Agreement shall be so modified;

WHEREAS, that all other terms and conditions of the Agreement, except to the extent expressly amended herein, shall remain in full force and effect.

NOW, THEREFORE, it is agreed between the Parties hereto that:

**AGREEMENT AMENDMENT**

NOW, THEREFORE, in consideration of the premises and obligations as set forth in this Amendment, the receipt and adequacy of which is hereby agreed and acknowledged, the Parties agree that the Agreement shall be amended as follows:

**A. SCOPE OF SERVICE.**

1. **Time of Performance.** The time of performance of this Agreement is hereby extended and will remain in effect through February 14, 2023.
2. **Timeliness.** Funding allocated as part of this agreement must be expended by February 14, 2023. Any remaining balance following the expiration of this agreement shall be eligible for reallocation by the GRANTEE.

\_\_\_\_\_  
Paul Cook, City Council President  
City of Bellevue, Nebraska

*Gary Lindahl*  
\_\_\_\_\_  
Gary Lindahl  
All-Brite Glass and Screen

\_\_\_\_\_  
Rich Severson, Finance Director  
City of Bellevue, Nebraska

ATTEST:

\_\_\_\_\_  
Susan Kluthe, City Clerk  
City of Bellevue, NE

STATE OF NEBRASKA     )  
                                  ): SS.  
COUNTY OF SARPY     )

The undersigned, a notary public qualified in and for said county, does hereby certify that Paul Cook and Susan Kluthe, whose names as City Council President and City Clerk respectively, of the City of Bellevue, Nebraska, a municipality of the first class and political subdivision of the State of Nebraska, are signed to the foregoing instrument and who are each known to me and known to be such officers, acknowledged before me on this day and they, in their respective capacities as City Council President and City Clerk, executed and delivered said instrument as their voluntary act and deed and voluntary act and deed of such corporation.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

(Affix Notarial Seal)

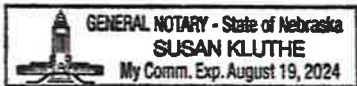
My Commission Expires: \_\_\_\_\_

STATE OF NEBRASKA     )  
                                  ): SS.  
COUNTY OF SARPY     )

The above and foregoing instrument was acknowledged before me this 15<sup>th</sup> day of February 2022, by Gary Lindahl, Owner, on behalf of the organization.

My Commission Expires:

8-19-2024



*Susan Kluthe*  
\_\_\_\_\_  
NOTARY PUBLIC

**AGREEMENT  
BETWEEN THE CITY OF BELLEVUE AND  
ALL-BRITE GLASS AND SCREEN  
FOR EXPENDITURE OF  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS  
B-20-MC-31-0003**

THIS SUBRECIPIENT AGREEMENT FOR CDBG FUNDING entered into this 2nd day of March 2021 by and between the subrecipient ALL-BRITE GLASS AND SCREEN hereinafter referred to as the SUBRECIPIENT and the CITY OF BELLEVUE, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, a Grantee of the CDBG entitlement program, hereinafter referred to as the GRANTEE.

WHEREAS, the GRANTEE has applied for and received funds, Catalog of Federal Domestic Assistance Number 14-218 (CDBG), from the United States Government under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, the GRANTEE wishes to engage the SUBRECIPIENT to assist in the utilization of Community Development Block Grant (CDBG) funds from the B-20-MC-31-0003 HUD contract in the amount of \$7,358.00 for sidewalk and parking improvement for a building located at 601 West Mission Ave, Bellevue, NE 68005; and

NOW, THEREFORE, it is agreed between the parties hereto that:

**A. SCOPE OF SERVICE.**

1. Activities. The GRANTEE will provide funding in the actual amount of expenditure, not to exceed \$7,358.00 from the B-20-MC-31-0003 funding allocation to the SUBRECIPIENT for the purpose of sidewalk and parking improvements for the commercial building at 601 West Mission Ave, Bellevue, NE 68005. The SUBRECIPIENT will be responsible for administering a Community Development Block Grant (CDBG) program in a manner satisfactory to the GRANTEE and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the CDBG program:
  - a. Program Delivery. To provide improvements including sidewalk and parking improvements to the building in a blight and substandard area at 601 Mission Ave as eligible under 24 CFR 570.202(a)(3). The major tasks the SUBRECIPIENT will perform include, but are not necessarily limited to the following:
    - i. Complete all approved work for sidewalk and parking improvements as outlined in the CDBG 2020 application and budget.
    - ii. Provide matching funds needed to complete the sidewalk improvement project.
    - iii. All construction work completed is subject to Federal Labor Standards Provisions as described in form HUD-4010 and in the agreement Section D. Other Program Requirements.
  - b. Income Benefit Goals. It is anticipated that one property owner of building in a blight and substandard area will benefit from building improvements
  - c. National Objective. All activities funded with CDBG funds must meet one of the CDBG program's National Objectives as defined in 24 CFR 570.208. The SUBRECIPIENT certifies that the activity carried out under this agreement will meet the National Objective Slum Blight as a

business located in an area determine by the City of Bellevue as Blight and Substandard in accordance with Section 18-2103 of the Nebraska State Statues and as per 24 CFR 570.208(b).

2. Performance Monitoring. The SUBRECIPIENT at such times and in such forms as the GRANTEE may require, shall furnish performance reports pertaining to the activities undertaken pursuant to this Agreement to meet the CDBG National Objective. Such reports shall include, but not be limited to:
  - a. Statistical information including the number of persons provided with new or improved access to services and/or facilities or businesses benefiting from improved location availability.
  - b. Update on the expenditure of funding as well as a timeline for expenditure update.
  - c. Documentation of match or funds leveraged with CDBG funding.
  - d. Procurement and contracting records for construction work for compliance with federal requirements and reports of the costs and obligations incurred in connection therewith,
  - e. Other reports as required by Section 570.507 or Title 24, OMB Circular A-110, and as otherwise required by HUD and the GRANTEE.
3. Site Visit. The GRANTEE CDBG staff will perform periodic site visits to ascertain that approved and contracted work is proceeding properly and satisfactorily, authorize (with the SUBRECIPIENT's written approval, including signature and date) any change orders, and mediate in the event of the owner dissatisfaction with the work completed by the contractor. The work will be in compliance with all applicable Federal, state and local rules and regulations governing these funds and, in a manner, satisfactory to the GRANTEE of Bellevue. Before the commencement of the project, the SUBRECIPIENT must have approval of expenditures by the GRANTEE of Bellevue CDBG Specialist.
4. Environmental Clearance. The SUBRECIPIENT shall carry out each activity in compliance with Federal laws and regulations described in 24 CFR 570 Subpart K, except that the SUBRECIPIENT does not assume the GRANTEE's environmental review responsibilities described in 24 CFR Part 570.604; and for initiating the review process under provisions of 24 CFR Part 52. All activities must have prior review to ensure environmental conformance through a site-specific review, i.e.: floodplain clearance, airport hazards Asbestos, Americans with Disabilities Act, etc. No grant funds may be disbursed for the project until environmental clearance has been received.
  - a. The SUBRECIPIENT must meet all mitigation requirements outlined in the environmental review record.
5. Time of Performance. This agreement will remain in effect for twelve (12) months from the date of this agreement, or for as long as funds are made available.
6. Ineligible Expenses. General maintenance costs are ineligible CDBG expenses, i.e. mowing, replacement of expended light bulbs, and similar expenses which are necessary for the operation of the facility.

**B. RECORDS, REPORTING AND PAYMENT SCHEDULES.**

1. The amount available to the SUBRECIPIENT for eligible activities under this agreement shall not exceed \$7,358.00. Payments may be contingent upon certification of the SUBRECIPIENT's financial management system in accordance with acceptable standards specified in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

2. Records and Reporting. The SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570 that are pertinent to the activities to be funded under this AGREEMENT. Such records shall include but are not limited to:
  - a. Records providing a full description of each activity undertaken, including compliance with standards for public services in 24 CFR 570.201(e);
  - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program per 24 CFR 570.208;
  - c. Records required to determine the eligibility of activities per 24 CFR 570 Subpart C;
  - d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
  - e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
  - f. Financial records as required by 24 CFR 570.502 and 24 CFR 570.84.21-58; and
  - g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
3. DUNS Number. The SUBRECIPIENT must maintain a Subrecipient Unique Entity Identifier, or DUNS number, through the completion of the agreement. The GRANTEE must be able to verify the SUBRECIPIENT's registered DUNS number with SAM.gov prior to any grant funding being disbursed.
4. Quarterly Reporting. The SUBRECIPIENT shall provide the GRANTEE with quarterly activity reports through the completion of the funded activity. All activity reports are due to the CDBG Office of the GRANTEE on or before the 15<sup>th</sup> day of the month following the end of a quarter. The CDBG Fiscal Year will be October 1<sup>st</sup> to September 30<sup>th</sup>. Quarters will be:
  - a. 1<sup>st</sup> Quarter: October – December,
  - b. 2<sup>nd</sup> Quarter: January – March,
  - c. 3<sup>rd</sup> Quarter: April – June, and
  - d. 4<sup>th</sup> Quarter: July – September.
5. Record Retention. The SUBRECIPIENT shall retain all books, documents, papers, records and other materials involving all activities and transactions related to this agreement for at least five (5) years from the date of submission of the final activity report or until all audit findings have been resolved, whichever is later. The SUBRECIPIENT shall, as often as deemed necessary by the GRANTEE, permit authorized representatives of the GRANTEE and HUD to have full access to and the right to fully examine all such material.
6. Beneficiary Data. The SUBRECIPIENT shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to GRANTEE monitors or their designee for review upon request.
7. Disclosure. The SUBRECIPIENT understands that client information collected under this agreement is private and the use or disclosure of such information, when not directly connected with the administration of the activity with respect to services provided under this agreement, is prohibited unless written consent is obtained from such person receiving the service and, in the case of a minor, that of a responsible parent/guardian.
8. Purchasing Procedures.
  - a. For the purchase of supplies or contractual services, the SUBRECIPIENT will adhere to the following procedures:

- i. \$0.00 to \$1,000.00 – Best Effort Pricing: Employee shall endeavor to obtain the best price for the item(s) through research or consultation with the Purchasing Agent.
  - ii. \$1,000.00-\$9,999.99 - Telephone Quotes: All purchases of supplies, equipment or contractual services in an amount of \$1,000 but under \$10,000.
  - iii. \$10,000.00-\$29,999.99 - Informal Bidding: Not published but competitive and documented for all purchases of supplies, equipment or contractual services in an amount \$10,000 but under \$30,000.
  - iv. \$30,000.00 or more - Formal Bidding (sealed bids): Published for all purchases of supplies, equipment or contractual services in an amount of \$30,000 or more.
- b. The SUBRECIPIENT will submit the bids/quotes to the GRANTEE CDBG Office. Upon approval by the GRANTEE CDBG Office, a Notice to Proceed will be issued.

9. Contracting.

- a. The SUBRECIPIENT shall not assign or transfer any interest in this agreement without the prior written consent of the GRANTEE; provided, however, that claims for money due or to become due to the SUBRECIPIENT from the GRANTEE under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the GRANTEE. All terms and conditions of this agreement shall apply to any approved subcontract or assignment related to the agreement.
- b. Subcontracts
- i. Approvals. The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the GRANTEE prior to the execution of such agreement.
  - ii. Monitoring. The SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written quarterly reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.
  - iii. Content. The SUBRECIPIENT shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
  - iv. Selection Process. The SUBRECIPIENT shall ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. All subcontracts must have a DUNS number indicating eligibility to work on federal projects and be registered in the System for Award Management ([www.sam.gov](http://www.sam.gov)). Executed copies of all subcontracts shall be forwarded to the GRANTEE along with documentation concerning the selection process.

10. Request for Payment

- a. Request for funds may be made by the SUBRECIPIENT upon satisfactory completion of project requirements as specified in the agreement. The SUBRECIPIENT must submit a cover sheet or invoice requesting reimbursement for allowable expenses signed by the Authorized Representative, a copy of the original invoice, and any additional requested documentation. The GRANTEE will reimburse the SUBRECIPIENT directly. The request will be reviewed for payment by the GRANTEE and submitted for approval by the City Council during meetings on

the 1<sup>st</sup> and 3<sup>rd</sup> Tuesday of each month. The GRANTEE will not be responsible for any late fees incurred and will not reimburse the agency for any late fees paid. There is no guarantee that funds will be reimbursed within a month's time. The payments are made only from monies available to the GRANTEE through the CDBG program and are subject to the availability of such funds.

- b. The SUBRECIPIENT's right to incur expenses under this Agreement shall cease upon expiration of Agreement. All requests for reimbursement on expenditures made prior to expiration of Agreement must be requested within thirty (30) days after expiration. Unless expressly authorized by the GRANTEE in writing, expenditures not requested within the thirty (30) day period after expiration of Agreement shall be disallowed and all funds shall be reclaimed by the GRANTEE.

11. Program Income. In accordance with 24 CFR 570.504(c), any program income as defined in 24 CFR 570.500, generated by activities carried out with CDBG funds made available under this agreement shall be reported quarterly to the GRANTEE by the SUBRECIPIENT. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR 570.504 and 2 CFR 200.307.

12. Timeliness. Funding allocated as part of this agreement must be expended within 12 months from the date of the agreement. The agreement may be eligible for one extension for one additional year.

- a. Agreement Extension Request. To be eligible for an agreement extension, the SUBRECIPIENT must provide a written request with narrative explaining the reason for the delay in project completion, an updated timeline for project completion, and any additional information as requested by the GRANTEE. The GRANTEE CDBG staff will review the request and prepare the request for City Council consideration. The GRANTEE CDBG staff reserves the right to reallocate any unexpended funds upon expiration of the agreement.

13. Close-outs.

- a. The SUBRECIPIENT's obligation to the GRANTEE shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advance, program income balances, an accounts receivable to the GRANTEE), and determining the custodianship of records. Notwithstanding the foregoing, the terms of the Agreement shall remain in effect during any period that the SUBRECIPIENT has control over CDBG funds, including program income.
- b. Upon expiration or termination of the Agreement, the SUBRECIPIENT will provide final versions of all financial performance, and other reports that were a condition of the funding agreement, including, but not limited to:
  - i. A final performance report,
  - ii. A final request for payment, and
  - iii. A final inventory of property in the SUBRECIPIENT's possession that was acquired or improved with CDBG funds.

### **C. GENERAL COMPLIANCE.**

1. The SUBRECIPIENT agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except the (1) the SUBRECIPIENT does not assume the GRANTEE's environmental responsibilities described in 2 CFR 570.604 and (2) the SUBRECIPIENT does not assume the GRANTEE's responsibility for initiating the review process under the provisions of 24 CFR Part 52. . The SUBRECIPIENT also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this agreement. The SUBRECIPIENT further agrees to utilize funds available under this Agreement to supplement rather than replace funds otherwise available.
2. Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The SUBRECIPIENT shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The GRANTEE shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the SUBRECIPIENT is an independent contractor.
3. Hold Harmless. The SUBRECIPIENT, to the extent permitted by law, shall hold harmless, defend and indemnify, the GRANTEE from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the SUBRECIPIENT's performance or nonperformance of the services or subject matter called for in this Agreement.
4. Workers' Compensation. The SUBRECIPIENT shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this agreement.
5. Insurance. The SUBRECIPIENT shall carry sufficient insurance coverage to protect agreement assets from loss due to theft, fraud and/or undue physical damage and comply with insurance requirement of 2 CFR 200.310. The SUBRECIPIENT is required to list the GRANTEE as additional insured with waiver of subrogation. The GRANTEE requires contracting insurance of \$1,000,00 limit for General Liability with a \$2,000,000.00 aggregate. The GRANTEE also requires the SUBRECIPIENT to carry workers compensation with a waiver of subrogation and a \$5,000,000.00 umbrella policy. The GRANTEE will review insurance requirements on a case by case basis if this a burden or not applicable under specific agreements.
6. Grantor Recognition. The SUBRECIPIENT shall insure recognition of the role of the GRANTEE in providing services through this agreement. All activities, facilities and items utilized pursuant to this agreement shall be prominently labeled as funded with CDBG funds from the GRANTEE. In addition, the SUBRECIPIENT will include reference to the support provided herein in all publications made possible with funds available under this agreement.
7. Amendments. The GRANTEE or SUBRECIPIENT may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this Agreement, nor relieve the GRANTEE or SUBRECIPIENT from its obligations under this Agreement.

The GRANTEE may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in funding, the scope of services, or schedule of activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendments signed by both the GRANTEE and SUBRECIPIENT.

8. Suspension or Termination. Either party may terminate this agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial termination of the Scope of Service in Section A above may only be undertaken with the prior approval of the GRANTEE. In the event of any termination for convenience and at any time, at the GRANTEE's option, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the SUBRECIPIENT under this Agreement shall, at the option of the GRANTEE, become the property of the GRANTEE, and the SUBRECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to termination.

The GRANTEE may also suspend or terminate this Agreement, in whole or in part without notice, if the SUBRECIPIENT materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein and all payments shall cease; and the GRANTEE may declare the SUBRECIPIENT ineligible for any further participation in the GRANTEE's contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe the SUBRECIPIENT is in noncompliance with any applicable rules or regulations, the GRANTEE may withhold up to fifteen (15) percent of said agreement funds due to be paid for past work until such time as the SUBRECIPIENT is found to be in compliance by the Grantee, or is otherwise adjudicated to be in compliance.

9. Eligibility Restrictions for Certain Resident Aliens. The SUBRECIPIENT agrees to abide by the provisions of 24 CFR 570.613 with respect to the eligibility restrictions for certain resident aliens. Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in this part of the regulation. The Grantee shall provide the City with any guidelines necessary for compliance with that portion of the regulation.
10. Architectural Barriers Act and Americans with Disabilities Act. The SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with the Architectural Barriers Act of 1968 which requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with the standards that insure accessibility to, and use by, physically handicapped people. The SUBRECIPIENT also agrees to comply with federal regulations issued pursuant to compliance with the Americans with Disabilities Act which provide comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

#### **D. OTHER PROGRAM REQUIREMENTS.**

##### **1. Civil Rights**

- a. Compliance. The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.
- b. Nondiscrimination. The SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The

SUBRECIPIENT will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

- c. Land Covenants. This agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and 24 CFR 570.601 and 602. In regard to sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this agreement, the SUBRECIPIENT shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, and providing that the GRANTEE and the United States are beneficiaries of the deed or lease entitled to enforce such covenants. The SUBRECIPIENT, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.
- d. Section 504. The SUBRECIPIENT agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1974, which prohibits discrimination against the handicapped in any federally assisted program. The GRANTEE shall provide the SUBRECIPIENT with any guidelines necessary for compliance with that portion of the regulations in force during the term of this agreement.

## 2. Affirmative Action

- a. Plan. The SUBRECIPIENT agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.
- b. Women and Minority Owned Business Enterprises (W/MBE). The SUBRECIPIENT will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this agreement. As used in this agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The SUBRECIPIENT may rely on written representation by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.
- c. Access to Records. The SUBRECIPIENT shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the GRANTEE, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
- d. Notifications. The SUBRECIPIENT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understandings, a notice, provided by the agency contracting officer, advising the labor union or worker's

representative of the SUBRECIPIENT's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- e. EEO/AA Statement. The SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
- f. Subcontracting Provisions. The SUBRECIPIENT will include the provisions of Section D Paragraph 1, Civil Rights, and 2, Affirmative Action, in every subcontract or purchase orders, specifically or by reference, so that such provisions will be binding upon each of its subrecipients or subcontracts.

### 3. Employment Restrictions.

- a. Prohibited Activity. The SUBRECIPIENT is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or religious activities; lobbying, political patronage, and nepotism activities.
- b. Labor Standards. The SUBRECIPIENT agrees to comply with the requirements of the Secretary of Labor in accordance with Davis-Bacon Act as amended, the provisions of Contract: Work Hours and Safety Standards Act, the Copeland "Anti- Kickback" Act and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this agreement. The SUBRECIPIENT shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the GRANTEE for review upon request.

The SUBRECIPIENT agrees that all contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this agreement, shall comply with Federal requirements adopted by the GRANTEE pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeymen; provide, that if wage rates higher than those required under the regulations are imposed by state or local laws, nothing hereunder is intended to relieve the SUBRECIPIENT of its obligation, if any, to require payment of the higher wage. The SUBRECIPIENT will cause or require to be inserted in full, in all contracts subject to such regulations, provisions meeting the requirements of this paragraph.

- c. "Section 3" Clause.
  - i. Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this agreement, shall be a condition of the Federal financial assistance provided under this agreement and binding upon the Grantee, the SUBRECIPIENT and any of the SUBRECIPIENT's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the SUBRECIPIENT and any of the SUBRECIPIENT's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The SUBRECIPIENT certifies and agrees that no contractual or other disability exist which would prevent compliance with these requirements.

The SUBRECIPIENT further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Community Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The SUBRECIPIENT further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation, housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection to housing rehabilitation, housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which CDBG-funded project is located; where feasible, priority should be given to business concerns which provide economic opportunities to low- and very low - income residents within the service area or neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The SUBRECIPIENT certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements.

- ii. Notifications. The SUBRECIPIENT agrees to send to each labor organization or representative of worker with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- iii. Subcontracts. The SUBRECIPIENT will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

#### 4. Conduct.

- a. Assignability. The SUBRECIPIENT shall not assign or transfer any interest in this contract without the prior written consent of the GRANTEE. Notice of any such assignments or transfer shall be furnished promptly to the GRANTEE.
- b. Subcontracts. The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this agreement without the written consent of the GRANTEE prior to the execution of such agreement.
  - i. Monitoring. The SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions to correct areas of noncompliance.
  - ii. Content. The SUBRECIPIENT shall cause all the provisions of this agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
  - iii. Selection Process. The SUBRECIPIENT shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.
- c. Hatch Act. The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of the Title V United States Code.
- d. Conflict of Interest. The SUBRECIPIENT agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The SUBRECIPIENT further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the SUBRECIPIENT hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Grantee, or any designated public agencies or Subrecipients which are receiving funds under the CDBG Entitlement program.
- e. Lobbying. The SUBRECIPIENT hereby certifies that:
  - i. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
  - ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
  - iii. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and

contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly; and

iv. **Lobby Certification.**

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

f. **Copyright.** If this agreement results in any copyrightable materials or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

g. **Religious Organization.** The SUBRECIPIENT agrees that funds provided under this agreement will not be utilized for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200(j).

5. **Relocation and One-For-One Housing Replacement.** The displacement of any person as a direct result of rehabilitation for a CDBG-assisted project must comply with 24 CFR 570.606 and 49 CFR Part 24. The SUBRECIPIENT will conduct the CDBG activities so as to minimize displacement, and if displacement occurs, the displaced persons or entities must be provided assistance consistent with the Uniform Relocation Act.

#### **E. UNIFORM ADMINISTRATIVE REQUIREMENTS.**

1. The SUBRECIPIENT shall comply with the administrative regulations, including, but not limited to, 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" Final Guidance applicable to HUD Federal Award Recipients. Requirements and standards under 2 CFR 200 which supersedes, consolidates, and streamlines requirements from eight OMB Circulars, including:

- a. A-21, Cost Principles for Educational Institutions,
- b. A-87, Cost Principles for State, Local, and Indian Tribal Governments,
- c. A-89, Catalog of Federal Domestic Assistance,
- d. A-102, Grants and Cooperative Agreements with State and Local Governments,
- e. A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,
- f. A-122, Cost Principles for Non-Profit Organizations,
- g. A-133, Audits of States, Local Governments, and Non-Profit Organizations, and
- h. The guidance in OMB Circular A-50, Audit Follow Up, on Single Audit Act follow-up.

2. **Cost Principles** – The SUBRECIPIENTS shall comply with the requirements under 2 CFR 200, Subpart E, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

3. **Audits** – The SUBRECIPIENT is required to comply with 2 CFR 200, Subpart F, as applicable, which supersedes OMB Circular A-133 "Audits of Institutions of State, Local Government, and Nonprofit Institutions". If the SUBRECIPIENT spends \$750,000 or more a fiscal year in Federal awards, the

SUBRECIPIENT hereby agrees to have an annual agency audit conducted in accordance with the OMB Super Circular.

**F. INSURANCE REQUIREMENTS.**

1. Insurance and Bonding. The SUBRECIPIENT shall carry sufficient insurance coverage to protect agreement assets from loss due to theft, fraud and/or undue physical damage, and at a minimum shall purchase a blanket fidelity bond covering all clients benefiting from the CDBG funded activity in an amount equal to cash advances from the GRANTEE.

**G. AGREEMENT MODIFICATIONS.**

1. In the event the parties fail to agree on changes or interpretations of this agreement, the decision of the GRANTEE shall prevail. In the event of any disagreement between the SUBRECIPIENT and the GRANTEE relating to the funded activity and materials purchased and its conformity to the requirements of this agreement, the decision of the GRANTEE shall prevail.
2. This agreement is subject to such modification as may be required by federal law or regulations. Any such modification may be done unilaterally by the GRANTEE.
3. Except as otherwise provided in this agreement, the rehabilitation activities to be completed and the total grant award may be modified only by written agreement of the authorized representatives of the parties to this agreement.

**H. REVERSION OF ASSETS.**

1. Any CDBG funds on hand at the time the agreement expires, including accounts receivable, shall be returned. The SUBRECIPIENT assures that any real property acquired or improved with CDBG funds in excess of \$25,000 meets the requirements specified in 24 CFR 570.503(b)(7). The SUBRECIPIENT will not have control of CDBG funds, nor will any property be purchased in excess of \$25,000.

**I. SUSPENSION OR TERMINATION OF AGREEMENT.**

1. In accordance with 24 CFR 85.43, the GRANTEE may suspend or terminate this agreement should the SUBRECIPIENT violate any terms or conditions thereof.
2. This agreement may be terminated or suspended in whole or in part at any time by the GRANTEE for cause. The GRANTEE may refuse to disburse additional funds or require return of all or part of funds already disbursed. The decision of the GRANTEE shall prevail. Grounds constituting cause include but are not limited to:
  - a. Failure by the SUBRECIPIENT to comply with the provisions of this agreement or with any applicable laws, regulations, guidelines or procedures, or is unduly dilatory in executing its commitments under this agreement.
  - b. Purposes for the funds have not been or will not be fulfilled, or would be illegal to carry out.
  - c. The SUBRECIPIENT has submitted incorrect or incomplete documentation pertaining to this agreement.

3. In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.
4. In the event of termination or suspension, all materials/equipment purchased through the agreement shall, at the option of the GRANTEE, become the property of the GRANTEE, and the SUBRECIPIENT shall be entitled to payment for otherwise valid and allowable obligations incurred in good faith prior to notice of such action. The option of the GRANTEE constitutes a security interest in any materials/equipment purchased or property improved by expenditure of the funds for as long as such materials/equipment or improvements have any value unless the GRANTEE declines its option or releases its security interest. Recording of this agreement shall be effective as a financing statement noticing the security interest of the GRANTEE as created herein. In addition, the GRANTEE shall have a lien against the improved real estate to the extent of expenditures of these funds and to secure repayment of such funds in the event of cessation of operations, sale, transfer of the property in any manner whatsoever, voluntary or involuntary receivership, or application for bankruptcy by the SUBRECIPIENT.

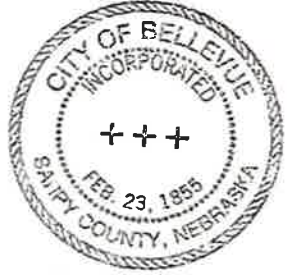
**J. NOTICES.**

1. All notices required or permitted to be given under this agreement may be personally delivered or mailed to the following addresses.
  - a. To GRANTEE: City Administrator  
City of Bellevue  
1500 Wall Street  
Bellevue, NE 68005
  - b. To SUBRECIPIENT: Owner  
All-Brite Glass and Screen  
601 West Mission Ave  
Bellevue, NE 68005
  - c. Copy to: Finance Director  
City of Bellevue  
1500 Wall Street  
Bellevue, NE 68005

Paul Cook  
Paul Cook, Council President  
City of Bellevue, Nebraska

Gary Lindahl  
Gary Lindahl  
All-Brite Glass and Screen

Rich Severson  
Rich Severson, Finance Director  
City of Bellevue, Nebraska



ATTEST:  
Susan Kluthe  
Susan Kluthe, City Clerk  
City of Bellevue, NE

STATE OF NEBRASKA )  
): SS.  
COUNTY OF SARPY )

The undersigned, a notary public qualified in and for said county, does hereby certify that Paul Cook and Susan Kluthe, whose names as Council President and City Clerk respectively, of the City of Bellevue, Nebraska, a municipality of the first class and political subdivision of the State of Nebraska, are signed to the foregoing instrument and who are each known to me and known to be such officers, acknowledged before me on this day and they, in their respective capacities as Council President and City Clerk, executed and delivered said instrument as their voluntary act and deed and voluntary act and deed of such corporation.

WITNESS my hand and official seal.

Signature: Shirley R Harbin  
(Affix Notarial Seal)

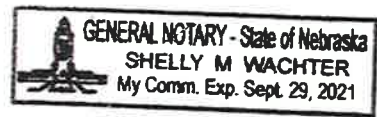
My Commission Expires: August 23, 2023

STATE OF NEBRASKA )  
): SS.  
COUNTY OF SARPY )

The above and foregoing instrument was acknowledged before me this 19 day of February 2021, by Gary Lindahl, Owner, on behalf of the organization.

My Commission Expires:  
9/29/2021

Shelly M Wachter  
NOTARY PUBLIC



CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Finance/CDBG	
AGENDA ITEM:		CONSENT AGENDA <input type="checkbox"/>	SPECIAL PRESENTATION <input type="checkbox"/>
LIQUOR LICENSE <input type="checkbox"/>	ORDINANCE <input type="checkbox"/>	PUBLIC HEARING <input type="checkbox"/>	
RESOLUTION <input type="checkbox"/>	CURRENT BUSINESS <input checked="" type="checkbox"/>	OTHER <input type="checkbox"/>	

SUBJECT:

Amendment extending the 2020 CDBG Subrecipient Agreement with Marathon Ventures LLC for the Building Improvement Project.

SYNOPSIS/BACKGROUND:

The City of Bellevue executed a CDBG subrecipient agreement with Marathon Ventures LLC for the Building Improvement Project on March 2, 2021, as outlined in the 2020 Action Plan with the Time of Performance expiring one-year from the date of execution. The project was funded \$100,000.00 and has a current balance of \$37,525.50. Marathon has requested an extension of the agreement to retain use of the funds for the approved activities. The subrecipient agreement allows for a one-year extension upon request by the subrecipient. Staff recommends approval of an extension for the use of funds and will assist Marathon to complete the project in accordance with HUD regulations.

FISCAL IMPACT: \$37,525.50 BUDGETED FUNDS?: YES GRANT/MATCHING FUNDS?: NO Not Required

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: YES	COUNTER-PARTY: Marathon Ventures LLC	INTERLOCAL AGREEMENT: NO
CONTRACT DESCRIPTION: Amendment to the 2020 CDBG Subrecipient Agreement		
CONTRACT EFFECTIVE DATE: 02/15/2022	CONTRACT TERM: 1 year	CONTRACT END DATE: 02/14/2023
PROJECT NAME: Marathon Building Improvement Project		
START DATE: 02/15/2022	END DATE: 02/14/2023	PAYMENT DATE: <input type="text"/>
INSURANCE REQUIRED: YES		
CIP PROJECT NAME: <input type="text"/>	CIP PROJECT NUMBER: <input type="text"/>	
STREET DISTRICT NAME (S): <input type="text"/>	STREET DISTRICT NUMBER (S): <input type="text"/>	
ACCOUNTING DISTRIBUTION CODE: CDBG-192108	ACCOUNT NUMBER: 60/1903/192108/450	

RECOMMENDATION:

Approve and authorize City Council President\* to sign the amendment extending the CDBG subrecipient agreement with Marathon Ventures, LLC.

\*The City Council President signed all 2020 CDBG program documents due to the Mayor's conflict of interest.

ATTACHMENTS:

1. Extension Request - Marathon
2. 2020 CDBG Subrecipient Agreement
3. 2020 Agreement Amendment
4.
5.
6.

SIGNATURES:

LEGAL APPROVAL AS TO FORM:

FINANCE APPROVAL AS TO FORM:

ADMINISTRATOR APPROVAL AS TO FORM:



January 31, 2022

Abby Highland  
CDBG Program Administrator  
City of Bellevue  
1500 Wall Street  
Bellevue, NE 68005

RE: Extension of CDBG Agreement

Ms. Highland:

Marathon Ventures, Inc. would like to formally request a one-year extension to work through the balance of awarded grand funds.

COVID related setbacks in 2021 drew attention away from expansion and growth projects as we worked to shore up our workforce to serve our existing customer base. Although we know some challenges on that front will persist, we've made significant progress by raising base wages and reducing turnover in our production team.

Recently, Marathon secured a large new contract with a national club store. In light of this new sale, it has become even more important that we continue with our original plans to open up new warehouse space at 909 Fort Crook. Our CDBG grant balance will be extremely helpful for us to continue this development. In total, Marathon has a project budget of over \$400,000 to add capacity. These investments will allow us to grow into a second shift of operations. The project is scheduled for completion within the next six months.

Thank you for your patience as we work towards the completion of this project. We greatly appreciate the support from the CDBG program and The City of Bellevue.

Please give me a call at 402-934-8251 or email [nick.heimer@marathonv.com](mailto:nick.heimer@marathonv.com) if there is anything else I can assist with.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Heimer", is written over a horizontal line.

Nick Heimer  
CFO  
Marathon Ventures, Inc.

**FIRST AMENDMENT TO THE AGREEMENT  
BETWEEN THE CITY OF BELLEVUE AND  
MARATHON VENTURES, INC.  
FOR EXPENDITURE OF  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS  
B-20-MC-31-0003**

THIS FIRST AMENDMENT TO THE SUBRECIPIENT AGREEMENT FOR CDBG FUNDING entered into this \_\_\_\_ day of \_\_\_\_, 2022, by and between MARATHON VENTURES, INC. ("SUBRECIPIENT") and the CITY OF BELLEVUE, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, a Grantee of the CDBG entitlement program, ("GRANTEE") (Collectively referred to as the "Parties").

WHEREAS, the GRANTEE has applied for and received funds, Catalog of Federal Domestic Assistance Number 14-218 (CDBG), from the United States Government under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, the GRANTEE wishes to engage the SUBRECIPIENT to assist in the utilization of Community Development Block Grant (CDBG) funds from the B-20-MC-31-0003 HUD contract in the amount of \$100,000.00 for building rehabilitation located at 909 Fort Crook Road N, Bellevue, NE 68005; and

WHEREAS, the Parties entered into a Subrecipient Agreement for CDBG Funding on or about the 2nd day of March, 2021 (the "Agreement"); and

WHEREAS, the Parties desire to amend the Agreement to extend the term thereof, update the Timeliness and Time of Performance by the SUBRECIPIENT to the GRANTEE, and to otherwise modify the Agreement as provided for herein; and

WHEREAS, the Parties therefore intend that the terms of the Agreement shall be so modified; and

WHEREAS, that all other terms and conditions of the Agreement, except to the extent expressly amended herein, shall remain in full force and effect.

NOW, THEREFORE, it is agreed between the Parties hereto that:

**AGREEMENT AMENDMENT**

NOW, THEREFORE, in consideration of the premises and obligations as set forth in this Amendment, the receipt and adequacy of which is hereby agreed and acknowledged, the Parties agree that the Agreement shall be amended as follows:

**A. SCOPE OF SERVICE.**

1. Time of Performance. The time of performance of this Agreement is hereby extended and will remain in effect through February 14, 2023.
2. Timeliness. Funding allocated as part of this agreement must be expended by February 14, 2023. Any remaining balance following the expiration of this agreement shall be eligible for reallocation by the GRANTEE.

\_\_\_\_\_  
Paul Cook, City Council President  
City of Bellevue, Nebraska

  
\_\_\_\_\_  
John Larsen, President  
Marathon Ventures, LLC

\_\_\_\_\_  
Rich Severson, Finance Director  
City of Bellevue, Nebraska

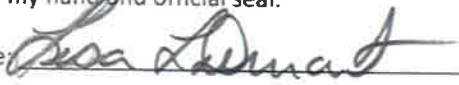
ATTEST:

\_\_\_\_\_  
Susan Kluthe, City Clerk  
City of Bellevue, NE

STATE OF NEBRASKA        )  
  ): SS.  
COUNTY OF SARPY        )

The undersigned, a notary public qualified in and for said county, does hereby certify that Paul Cook and Susan Kluthe, whose names as City Council President and City Clerk respectively, of the City of Bellevue, Nebraska, a municipality of the first class and political subdivision of the State of Nebraska, are signed to the foregoing instrument and who are each known to me and known to be such officers, acknowledged before me on this day and they, in their respective capacities as City Council President and City Clerk, executed and delivered said instrument as their voluntary act and deed and voluntary act and deed of such corporation.

WITNESS my hand and official seal.

Signature: 

(Affix Notarial Seal)




My Commission Expires: 4-2-2023

STATE OF NEBRASKA        )  
  ): SS.  
COUNTY OF ~~SARPY~~ )  
  LANCASTER

The above and foregoing instrument was acknowledged before me this 9 day of Feb, 2022, by John Larsen, President, on behalf of the organization.

My Commission Expires:  
4-2-2023

  
\_\_\_\_\_  
NOTARY PUBLIC

**AGREEMENT  
BETWEEN THE CITY OF BELLEVUE AND  
MARATHON VENTURES, INC.  
FOR EXPENDITURE OF  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS  
B-20-MC-31-0003**

THIS SUBRECIPIENT AGREEMENT FOR CDBG FUNDING entered into this 2nd day of March 2021 by and between the subrecipient MARATHON VENTURES, INC. hereinafter referred to as the SUBRECIPIENT and the CITY OF BELLEVUE, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, a Grantee of the CDBG entitlement program, hereinafter referred to as the GRANTEE.

WHEREAS, the GRANTEE has applied for and received funds, Catalog of Federal Domestic Assistance Number 14-218 (CDBG), from the United States Government under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, the GRANTEE wishes to engage the SUBRECIPIENT to assist in the utilization of Community Development Block Grant (CDBG) funds from the B-20-MC-31-0003 HUD contract in the amount of \$100,000.00 for building rehabilitation located at 909 Fort Crook Road N, Bellevue, NE 68005; and

NOW, THEREFORE, it is agreed between the parties hereto that:

**A. SCOPE OF SERVICE.**

1. **Activities.** The GRANTEE will provide funding in the actual amount of expenditure, not to exceed \$100,000.00 from the B-20-MC-31-0003 funding allocation to the SUBRECIPIENT for the purpose of building rehabilitation for the commercial building at 909 Fort Crook Road N, Bellevue, NE 68005. The SUBRECIPIENT will be responsible for administering a Community Development Block Grant (CDBG) program in a manner satisfactory to the GRANTEE and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the CDBG program:
  - a. **Program Delivery.** To provide building rehabilitation assistance to improve the existing structure to meet food safety requirements and position the company to protect the existing employment and providing a basis for growth and increased employment opportunities at 909 Fort Crook Road N as eligible under 24 CFR 570.203(b). The major tasks the SUBRECIPIENT will perform include, but are not necessarily limited to the following:
    - i. Complete all Grantee approved work for building improvements as outlined in the CDBG 2020 application and budget.
    - ii. Provide matching funds needed to complete the building improvement project.
    - iii. All construction work completed is subject to Federal Labor Standards Provisions as described in form HUD-4010 and in the agreement Section D. Other Program Requirements.
  - b. **Income Benefit Goals.** It is anticipated that 5 unduplicated low- to moderate-income individuals will be provided with new employment opportunities.
  - c. **National Objective.** All activities funded with CDBG funds must meet one of the CDBG program's National Objectives as defined in 24 CFR 570.208. The SUBRECIPIENT certifies that

the activity carried out under this agreement will meet the National Objective Job Benefit as a business providing employment opportunity to low- and moderate-income persons in excess of 51 percent as defined in 24 CFR 570.208.

- d. Collateral Requirements. To ensure program compliance, the GRANTEE will place a Deed of Trust on the property receiving CDBG assistance in the amount of the grant funds expended. The Deed of Trust will remain in place for a period of five years from the date of the completion of work and close out of contract.
2. Performance Monitoring. The SUBRECIPIENT at such times and in such forms as the GRANTEE may require, shall furnish performance reports pertaining to the activities undertaken pursuant to this Agreement to meet the CDBG National Objective. Such reports shall include, but not be limited to:
  - a. Statistical information including the number of persons provided with new employment.
  - b. Update on the expenditure of funding as well as a timeline for expenditure.
  - c. Documentation of match or funds leveraged with CDBG funding.
  - d. Procurement and contracting records for construction work for compliance with federal requirements and reports of the costs and obligations incurred in connection therewith,
  - e. Other reports as required by Section 570.507 or Title 24, OMB Circular A-110, and as otherwise required by HUD and the GRANTEE.
3. Public Benefit. The SUBRECIPIENT will ensure that a minimum level of public benefit is obtained from the expenditure of CDBG funds under the categories of eligibility governed by HUD regulations.
  - a. Standards for activities in the aggregate. The project outlined in this Agreement must in the aggregate create or retain at least one full-time equivalent, permanent job per \$35,000 of CDBG funds used.
  - b. The aggregate standard is applicable to the single program year under which the funds are first obligated.
4. Site Visit. The GRANTEE CDBG staff will perform periodic site visits to ascertain that approved and contracted work is proceeding properly and satisfactorily, authorize (with the SUBRECIPIENT's written approval, including signature and date) any change orders, and mediate in the event of the owner dissatisfaction with the work completed by the contractor. The work will be in compliance with all applicable Federal, state and local rules and regulations governing these funds and, in a manner, satisfactory to the GRANTEE of Bellevue. Before the commencement of the project, the SUBRECIPIENT must have approval of expenditures by the GRANTEE of Bellevue CDBG Specialist.
5. Environmental Clearance. The SUBRECIPIENT shall carry out each activity in compliance with Federal laws and regulations described in 24 CFR 570 Subpart K, except that the SUBRECIPIENT does not assume the GRANTEE's environmental review responsibilities described in 24 CFR Part 570.604; and for initiating the review process under provisions of 24 CFR Part 52. All activities must have prior review to ensure environmental conformance through a site-specific review, i.e.: floodplain clearance, airport hazards Asbestos, Americans with Disabilities Act, etc. No grant funds may be disbursed for the project until environmental clearance has been received.
  - a. The SUBRECIPIENT must meet all mitigation requirements outlined in the environmental review record.
6. Time of Performance. This agreement will remain in effect for twelve (12) months from the date of this agreement, or for as long as funds are made available.
7. Ineligible Expenses. General maintenance costs are ineligible CDBG expenses, i.e. mowing,

replacement of expended light bulbs, and similar expenses which are necessary for the operation of the facility.

8. National Objective Documentation.

- a. The SUBRECIPIENT must demonstrate a minimum of 51 percent of the jobs created *will be made* available to low and moderate-income (LMI) persons. In addition, the SUBRECIPIENT will provide training for any such jobs requiring special skills or education. Documentation includes:
  - i. A listing by job title of the permanent jobs to be created, indicating which will be made available to LMI persons, which are part-time, which require special skills and education.
  - ii. A description of actions to be taken to ensure LMI persons are given first consideration for those jobs.
  - iii. A listing by job title of those permanent jobs that were filled and which of those were made available to LMI persons.
  - iv. A description of how first consideration to such persons was given, including an explanation of the hiring process.
  - v. A listing of LMI persons were interviewed for each job, and which were hired.
- b. The Subrecipient must demonstrate a minimum of 51 percent of the jobs *will be held by* LMI persons on a full-time equivalent basis. Documentation includes:
  - i. A listing by job title of permanent jobs filled and which were initially taken by a LMI persons.
  - ii. For each LMI person hired, the family size and annual income of the person's family prior to being hired, or evidence that they may be presumed to be a LMI person under 24 CFR 570.208(a)(4)(iv).

**B. RECORDS, REPORTING AND PAYMENT SCHEDULES.**

1. The amount available to the SUBRECIPIENT for eligible activities under this agreement shall not exceed \$100,000.00. Payments may be contingent upon certification of the SUBRECIPIENT's financial management system in accordance with acceptable standards specified in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.
2. Records and Reporting. The SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570 that are pertinent to the activities to be funded under this AGREEMENT. Such records shall include but are not limited to:
  - a. Records providing a full description of each activity undertaken, including compliance with standards for public services in 24 CFR 570.201(e);
  - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program per 24 CFR 570.208;
  - c. Records required to determine the eligibility of activities per 24 CFR 570 Subpart C;
  - d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
  - e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
  - f. Financial records as required by 24 CFR 570.502 and 24 CFR 570.84.21-58; and
  - g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

3. DUNS Number. The SUBRECIPIENT must maintain a Subrecipient Unique Entity Identifier, or DUNS number, through the completion of the agreement. The GRANTEE must be able to verify the SUBRECIPIENT's registered DUNS number with SAM.gov prior to any grant funding being disbursed.
4. Quarterly Reporting. The SUBRECIPIENT shall provide the GRANTEE with quarterly activity reports through the completion of the funded activity. All activity reports are due to the CDBG Office of the GRANTEE on or before the 15<sup>th</sup> day of the month following the end of a quarter. The CDBG Fiscal Year will be October 1<sup>st</sup> to September 30<sup>th</sup>. Quarters will be:
  - a. 1<sup>st</sup> Quarter: October – December,
  - b. 2<sup>nd</sup> Quarter: January – March,
  - c. 3<sup>rd</sup> Quarter: April – June, and
  - d. 4<sup>th</sup> Quarter: July – September.
5. Record Retention. The SUBRECIPIENT shall retain all books, documents, papers, records and other materials involving all activities and transactions related to this agreement for at least five (5) years from the date of submission of the final activity report or until all audit findings have been resolved, whichever is later. The SUBRECIPIENT shall, as often as deemed necessary by the GRANTEE, permit authorized representatives of the GRANTEE and HUD to have full access to and the right to fully examine all such material.
6. Beneficiary Data. The SUBRECIPIENT shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to GRANTEE monitors or their designee for review upon request.
7. Disclosure. The SUBRECIPIENT understands that client information collected under this agreement is private and the use or disclosure of such information, when not directly connected with the administration of the activity with respect to services provided under this agreement, is prohibited unless written consent is obtained from such person receiving the service and, in the case of a minor, that of a responsible parent/guardian.
8. Purchasing Procedures.
  - a. For the purchase of supplies or contractual services, the SUBRECIPIENT will adhere to the following procedures:
    - i. \$0.00 to \$1,000.00 – Best Effort Pricing: Employee shall endeavor to obtain the best price for the item(s) through research or consultation with the Purchasing Agent.
    - ii. \$1,000.00-\$9,999.99 - Telephone Quotes: All purchases of supplies, equipment or contractual services in an amount of \$1,000 but under \$10,000.
    - iii. \$10,000.00-\$29,999.99 - Informal Bidding: Not published but competitive and documented for all purchases of supplies, equipment or contractual services in an amount \$10,000 but under \$30,000.
    - iv. \$30,000.00 or more - Formal Bidding (sealed bids): Published for all purchases of supplies, equipment or contractual services in an amount of \$30,000 or more.
  - b. The SUBRECIPIENT will submit the bids/quotes to the GRANTEE CDBG Office. Upon approval by the GRANTEE CDBG Office, a Notice to Proceed will be issued.

9. Contracting.

- a. The SUBRECIPIENT shall not assign or transfer any interest in this agreement without the prior written consent of the GRANTEE; provided, however, that claims for money due or to become due to the SUBRECIPIENT from the GRANTEE under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the GRANTEE. All terms and conditions of this agreement shall apply to any approved subcontract or assignment related to the agreement.
- b. Subcontracts
  - i. Approvals. The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the GRANTEE prior to the execution of such agreement.
  - ii. Monitoring. The SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written quarterly reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.
  - iii. Content. The SUBRECIPIENT shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
  - iv. Selection Process. The SUBRECIPIENT shall ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. All subcontracts must have a DUNS number indicating eligibility to work on federal projects and be registered in the System for Award Management ([www.sam.gov](http://www.sam.gov)). Executed copies of all subcontracts shall be forwarded to the GRANTEE along with documentation concerning the selection process.

10. Request for Payment.

- a. Request for funds may be made by the SUBRECIPIENT upon satisfactory completion of project requirements as specified in the agreement. The SUBRECIPIENT must submit a cover sheet or invoice requesting reimbursement for allowable expenses signed by the Authorized Representative, a copy of the original invoice, and any additional requested documentation. The GRANTEE will reimburse the SUBRECIPIENT directly. The request will be reviewed for payment by the GRANTEE and submitted for approval by the City Council during meetings on the 1<sup>st</sup> and 3<sup>rd</sup> Tuesdays of each month. The GRANTEE will not be responsible for any late fees incurred and will not reimburse the agency for any late fees paid. There is no guarantee that funds will be reimbursed within a month's time. The payments are made only from monies available to the GRANTEE through the CDBG program and are subject to the availability of such funds.
- b. The SUBRECIPIENT's right to incur expenses under this Agreement shall cease upon expiration of Agreement. All requests for reimbursement on expenditures made prior to expiration of Agreement must be requested within thirty (30) days after expiration. Unless expressly authorized by the GRANTEE in writing, expenditures not requested within the thirty (30) day period after expiration of Agreement shall be disallowed and all funds shall be reclaimed by the GRANTEE.

11. Program Income. In accordance with 24 CFR 570.504(c), any program income as defined in 24 CFR 570.500, generated by activities carried out with CDBG funds made available under this agreement shall be reported quarterly to the GRANTEE by the SUBRECIPIENT. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR 570.504 and 2 CFR 200.307.
12. Timeliness. Funding allocated as part of this agreement must be expended within 12 months from the date of the agreement. The agreement may be eligible for one extension for one additional year.
  - a. Agreement Extension Request. To be eligible for an agreement extension, the SUBRECIPIENT must provide a written request with narrative explaining the reason for the delay in project completion, an updated timeline for project completion, and any additional information as requested by the GRANTEE. The GRANTEE CDBG staff will review the request and prepare the request for City Council consideration. The GRANTEE CDBG staff reserves the right to reallocate any unexpended funds upon expiration of the agreement.
13. Close-outs.
  - a. The SUBRECIPIENT's obligation to the GRANTEE shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advance, program income balances, an accounts receivable to the GRANTEE), and determining the custodianship of records. Notwithstanding the foregoing, the terms of the Agreement shall remain in effect during any period that the SUBRECIPIENT has control over CDBG funds, including program income.
  - b. Upon expiration or termination of the Agreement, the SUBRECIPIENT will provide final versions of all financial performance, and other reports that were a condition of the funding agreement, including, but not limited to:
    - i. A final performance report,
    - ii. A final request for payment, and
    - iii. A final inventory of property in the SUBRECIPIENT's possession that was acquired or improved with CDBG funds.

### **C. GENERAL COMPLIANCE.**

1. The SUBRECIPIENT agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except the (1) the SUBRECIPIENT does not assume the GRANTEE's environmental responsibilities described in 2 CFR 570.604 and (2) the SUBRECIPIENT does not assume the GRANTEE's responsibility for initiating the review process under the provisions of 24 CFR Part 52. . The SUBRECIPIENT also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this agreement. The SUBRECIPIENT further agrees to utilize funds available under this Agreement to supplement rather than replace funds otherwise available.
2. Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The SUBRECIPIENT shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The GRANTEE shall be exempt from payment of all

Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the SUBRECIPIENT is an independent contractor.

3. Hold Harmless. The SUBRECIPIENT, to the extent permitted by law, shall hold harmless, defend and indemnify, the GRANTEE from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the SUBRECIPIENT's performance or nonperformance of the services or subject matter called for in this Agreement.
4. Workers' Compensation. The SUBRECIPIENT shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this agreement.
5. Insurance. The SUBRECIPIENT shall carry sufficient insurance coverage to protect agreement assets from loss due to theft, fraud and/or undue physical damage and comply with insurance requirement of 2 CFR 200.310. The SUBRECIPIENT is required to list the GRANTEE as additional insured with waiver of subrogation. The GRANTEE requires contracting insurance of \$1,000,000.00 limit for General Liability with a \$2,000,000.00 aggregate. The GRANTEE also requires the SUBRECIPIENT to carry workers compensation with a waiver of subrogation and a \$5,000,000.00 umbrella policy. The GRANTEE will review insurance requirements on a case by case basis if this a burden or not applicable under specific agreements.
6. Grantor Recognition. The SUBRECIPIENT shall insure recognition of the role of the GRANTEE in providing services through this agreement. All activities, facilities and items utilized pursuant to this agreement shall be prominently labeled as funded with CDBG funds from the GRANTEE. In addition, the SUBRECIPIENT will include reference to the support provided herein in all publications made possible with funds available under this agreement.
7. Amendments. The GRANTEE or SUBRECIPIENT may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this Agreement, nor relieve the GRANTEE or SUBRECIPIENT from its obligations under this Agreement.

The GRANTEE may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in funding, the scope of services, or schedule of activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendments signed by both the GRANTEE and SUBRECIPIENT.

8. Suspension or Termination. Either party may terminate this agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial termination of the Scope of Service in Section A above may only be undertaken with the prior approval of the GRANTEE. In the event of any termination for convenience and at any time, at the GRANTEE's option, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the SUBRECIPIENT under this Agreement shall, at the option of the GRANTEE, become the property of the GRANTEE, and the SUBRECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to termination.

The GRANTEE may also suspend or terminate this Agreement, in whole or in part without notice, if the SUBRECIPIENT materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein and all payments shall cease; and the GRANTEE may declare

the SUBRECIPIENT ineligible for any further participation in the GRANTEE's contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe the SUBRECIPIENT is in noncompliance with any applicable rules or regulations, the GRANTEE may withhold up to fifteen (15) percent of said agreement funds due to be paid for past work until such time as the SUBRECIPIENT is found to be in compliance by the Grantee, or is otherwise adjudicated to be in compliance.

9. Eligibility Restrictions for Certain Resident Aliens. The SUBRECIPIENT agrees to abide by the provisions of 24 CFR 570.613 with respect to the eligibility restrictions for certain resident aliens. Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in this part of the regulation. The Grantee shall provide the City with any guidelines necessary for compliance with that portion of the regulation.
10. Architectural Barriers Act and Americans with Disabilities Act. The SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with the Architectural Barriers Act of 1968 which requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with the standards that insure accessibility to, and use by, physically handicapped people. The SUBRECIPIENT also agrees to comply with federal regulations issued pursuant to compliance with the Americans with Disabilities Act which provide comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

#### D. Other Program Requirements.

##### 1. Civil Rights.

- a. Compliance. The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.
- b. Nondiscrimination. The SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The SUBRECIPIENT will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- c. Land Covenants. This agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and 24 CFR 570.601 and 602. In regard to sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this agreement, the SUBRECIPIENT shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, and

providing that the GRANTEE and the United States are beneficiaries of the deed or lease entitled to enforce such covenants. The SUBRECIPIENT, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

- d. Section 504. The SUBRECIPIENT agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1974, which prohibits discrimination against the handicapped in any federally assisted program. The GRANTEE shall provide the SUBRECIPIENT with any guidelines necessary for compliance with that portion of the regulations in force during the term of this agreement.

## 2. Affirmative Action.

- a. Plan. The SUBRECIPIENT agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.
- b. Women and Minority Owned Business Enterprises (W/MBE). The SUBRECIPIENT will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this agreement. As used in this agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish- speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The SUBRECIPIENT may rely on written representation by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.
- c. Access to Records. The SUBRECIPIENT shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the GRANTEE, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
- d. Notifications. The SUBRECIPIENT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understandings, a notice, provided by the agency contracting officer, advising the labor union or worker's representative of the SUBRECIPIENT's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. EEO/AA Statement. The SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
- f. Subcontracting Provisions. The SUBRECIPIENT will include the provisions of Section D Paragraph 1, Civil Rights, and 2, Affirmative Action, in every subcontract or purchase orders, specifically or by reference, so that such provisions will be binding upon each of its subrecipients or subcontracts.

3. Employment Restrictions.

- a. Prohibited Activity. The SUBRECIPIENT is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or religious activities; lobbying, political patronage, and nepotism activities.
- b. Labor Standards. The SUBRECIPIENT agrees to comply with the requirements of the Secretary of Labor in accordance with Davis-Bacon Act as amended, the provisions of Contract: Work Hours and Safety Standards Act, the Copeland "Anti- Kickback" Act and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this agreement. The SUBRECIPIENT shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the GRANTEE for review upon request.

The SUBRECIPIENT agrees that all contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this agreement, shall comply with Federal requirements adopted by the GRANTEE pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeyworkers; provide, that if wage rates higher than those required under the regulations are imposed by state or local laws, nothing hereunder is intended to relieve the SUBRECIPIENT of its obligation, if any, to require payment of the higher wage. The SUBRECIPIENT will cause or require to be inserted in full, in all contracts subject to such regulations, provisions meeting the requirements of this paragraph.

- c. "Section 3" Clause.
  - i. Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this agreement, shall be a condition of the Federal financial assistance provided under this agreement and binding upon the Grantee, the SUBRECIPIENT and any of the SUBRECIPIENT's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the SUBRECIPIENT and any of the SUBRECIPIENT's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The SUBRECIPIENT certifies and agrees that no contractual or other disability exist which would prevent compliance with these requirements.

The SUBRECIPIENT further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Community Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low-and very low-income residents of the project area and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low-and very low-income persons residing in the metropolitan area in which the project is located."

The SUBRECIPIENT further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation, housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection to housing rehabilitation, housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which CDBG-funded project is located; where feasible, priority should be given to business concerns which provide economic opportunities to low- and very low - income residents within the service area or neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The SUBRECIPIENT certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements.

- ii. **Notifications.** The SUBRECIPIENT agrees to send to each labor organization or representative of worker with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- iii. **Subcontracts.** The SUBRECIPIENT will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

#### 4. Conduct.

- a. **Assignability.** The SUBRECIPIENT shall not assign or transfer any interest in this contract without the prior written consent of the GRANTEE. Notice of any such assignments or transfer shall be furnished promptly to the GRANTEE.
- b. **Subcontracts.** The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this agreement without the written consent of the GRANTEE prior to the execution of such agreement.
  - i. **Monitoring.** The SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions to correct areas of noncompliance.
  - ii. **Content.** The SUBRECIPIENT shall cause all the provisions of this agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

- iii. Selection Process. The SUBRECIPIENT shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.
- c. Hatch Act. The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of the Title V United States Code.
- d. Conflict of Interest. The SUBRECIPIENT agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The SUBRECIPIENT further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the SUBRECIPIENT hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Grantee, or any designated public agencies or Subrecipients which are receiving funds under the CDBG Entitlement program.
- e. Lobbying. The SUBRECIPIENT hereby certifies that:
  - i. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
  - ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
  - iii. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly; and
  - iv. Lobby Certification.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- f. Copyright. If this agreement results in any copyrightable materials or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

- g. Religious Organization. The SUBRECIPIENT agrees that funds provided under this agreement will not be utilized for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200(j).
5. Relocation and One-For-One Housing Replacement. The displacement of any person as a direct result of rehabilitation for a CDBG-assisted project must comply with 24 CFR 570.606 and 49 CFR Part 24. The SUBRECIPIENT will conduct the CDBG activities so as to minimize displacement, and if displacement occurs, the displaced persons or entities must be provided assistance consistent with the Uniform Relocation Act.

**E. UNIFORM ADMINISTRATIVE REQUIREMENTS.**

1. The SUBRECIPIENT shall comply with the administrative regulations, including, but not limited to, 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" Final Guidance applicable to HUD Federal Award Recipients. Requirements and standards under 2 CFR 200 which supersedes, consolidates, and streamlines requirements from eight OMB Circulars, including:
- a. A-21, Cost Principles for Educational Institutions,
  - b. A-87, Cost Principles for State, Local, and Indian Tribal Governments,
  - c. A-89, Catalog of Federal Domestic Assistance,
  - d. A-102, Grants and Cooperative Agreements with State and Local Governments,
  - e. A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,
  - f. A-122, Cost Principles for Non-Profit Organizations,
  - g. A-133, Audits of States, Local Governments, and Non-Profit Organizations, and
  - h. The guidance in OMB Circular A-50, Audit Follow Up, on Single Audit Act follow-up.
2. Cost Principles. The SUBRECIPIENTS shall comply with the requirements under 2 CFR 200, Subpart E, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.
3. Audits. The SUBRECIPIENT is required to comply with 2 CFR 200, Subpart F, as applicable, which supersedes OMB Circular A-133 "Audits of Institutions of State, Local Government, and Nonprofit Institutions". If the SUBRECIPIENT spends \$750,000 or more a fiscal year in Federal awards, the SUBRECIPIENT hereby agrees to have an annual agency audit conducted in accordance with the OMB Super Circular.

**F. INSURANCE REQUIREMENTS.**

1. Insurance and Bonding. The SUBRECIPIENT shall carry sufficient insurance coverage to protect agreement assets from loss due to theft, fraud and/or undue physical damage, and at a minimum shall purchase a blanket fidelity bond covering all clients benefiting from the CDBG funded activity in an amount equal to cash advances from the GRANTEE.

**G. AGREEMENT MODIFICATION.**

1. In the event the parties fail to agree on changes or interpretations of this agreement, the decision of the GRANTEE shall prevail. In the event of any disagreement between the SUBRECIPIENT and the GRANTEE relating to the funded activity and materials purchased and its conformity to the requirements of this agreement, the decision of the GRANTEE shall prevail.
2. This agreement is subject to such modification as may be required by federal law or regulations. Any such modification may be done unilaterally by the GRANTEE.
3. Except as otherwise provided in this agreement, the rehabilitation activities to be completed and the total grant award may be modified only by written agreement of the authorized representatives of the parties to this agreement.

**H. REVERSION OF ASSETS.**

1. Any CDBG funds on hand at the time the agreement expires, including accounts receivable, shall be returned. The SUBRECIPIENT assures that any real property acquired or improved with CDBG funds in excess of \$25,000 meets the requirements specified in 24 CFR 570.503(b)(7). The SUBRECIPIENT will not have control of CDBG funds, nor will any property be purchased in excess of \$25,000.

**I. SUSPENSION OR TERMINATION OF AGREEMENT.**

1. In accordance with 24 CFR 85.43, the GRANTEE may suspend or terminate this agreement should the SUBRECIPIENT violate any terms or conditions thereof.
2. This agreement may be terminated or suspended in whole or in part at any time by the GRANTEE for cause. The GRANTEE may refuse to disburse additional funds or require return of all or part of funds already disbursed. The decision of the GRANTEE shall prevail. Grounds constituting cause include but are not limited to:
  - a. Failure by the SUBRECIPIENT to comply with the provisions of this agreement or with any applicable laws, regulations, guidelines or procedures, or is unduly dilatory in executing its commitments under this agreement.
  - b. Purposes for the funds have not been or will not be fulfilled, or would be illegal to carry out.
  - c. The SUBRECIPIENT has submitted incorrect or incomplete documentation pertaining to this agreement.
3. In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.
4. In the event of termination or suspension, all materials/equipment purchased through the agreement shall, at the option of the GRANTEE, become the property of the GRANTEE, and the SUBRECIPIENT shall be entitled to payment for otherwise valid and allowable obligations incurred in good faith prior to notice of such action. The option of the GRANTEE constitutes a security interest in any

materials/equipment purchased or property improved by expenditure of the funds for as long as such materials/equipment or improvements have any value unless the GRANTEE declines its option or releases its security interest. Recording of this agreement shall be effective as a financing statement noticing the security interest of the GRANTEE as created herein. In addition, the GRANTEE shall have a lien against the improved real estate to the extent of expenditures of these funds and to secure repayment of such funds in the event of cessation of operations, sale, transfer of the property in any manner whatsoever, voluntary or involuntary receivership, or application for bankruptcy by the SUBRECIPIENT.

**J. NOTICES.**

1. All notices required or permitted to be given under this agreement may be personally delivered or mailed to the following addresses.
  - a. To GRANTEE: City Administrator  
City of Bellevue  
1500 Wall Street  
Bellevue, NE 68005
  - b. To SUBRECIPIENT: President  
Marathon Ventures, LLC  
909 Fort Crook Road N  
Bellevue, NE 68005
  - c. Copy to: Finance Director  
City of Bellevue  
1500 Wall Street  
Bellevue, NE 68005

Paul Cook  
Paul Cook, Council President  
City of Bellevue, Nebraska

John Larson  
John Larson, President  
Marathon Ventures, LLC

Rich Severson  
Rich Severson, Finance Director  
City of Bellevue, Nebraska

ATTEST:  
Susan Kluthe  
Susan Kluthe, City Clerk  
City of Bellevue, NE

STATE OF NEBRASKA     )  
  ): SS.  
COUNTY OF SARPY     )

The undersigned, a notary public qualified in and for said county, does hereby certify that <sup>Paul Cook</sup>~~Resty Mike~~ and <sup>Council President</sup> Susan Kluthe, whose names as ~~Mayor~~ and City Clerk respectively, of the City of Bellevue, Nebraska, a municipality of the first class and political subdivision of the State of Nebraska, are signed to the foregoing instrument and who are each known to me and known to be such officers, acknowledged before me on this day and they, in their respective capacities as <sup>Council President</sup>~~Mayor~~ and City Clerk, executed and delivered said instrument as their voluntary act and deed and voluntary act and deed of such corporation.

WITNESS my hand and official seal.

Signature: Shirley R. Harbin  
(Affix Notarial Seal) 

My Commission Expires: August 23, 2023

STATE OF NEBRASKA     )  
  ): SS.  
COUNTY OF SARPY     )

The above and foregoing instrument was acknowledged before me this 19<sup>th</sup> day of February, 2021, by John Larson, President, on behalf of the organization.

My Commission Expires: May 6, 2023



Jessica L. Placek  
NOTARY PUBLIC

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Finance/CDBG	
AGENDA ITEM:	CONSENT AGENDA <input type="checkbox"/>	SPECIAL PRESENTATION <input type="checkbox"/>	
LIQUOR LICENSE <input type="checkbox"/>	ORDINANCE <input type="checkbox"/>	PUBLIC HEARING <input type="checkbox"/>	
RESOLUTION <input type="checkbox"/>	CURRENT BUSINESS <input checked="" type="checkbox"/>	OTHER <input type="checkbox"/>	

SUBJECT:

Amendment extending the 2020 CDBG Subrecipient Agreement with Bellevue Junior Sports Association (BJSA) for the Participation Assistance Program.

SYNOPSIS/BACKGROUND:

The City of Bellevue executed a CDBG subrecipient agreement with BJSA for the Participation Assistance program on March 2, 2021, as outlined in the 2020 Action Plan with the Time of Performance expiring one-year from the date of execution. The project has a grant balance of \$5,030.00 still available for the project. BJSA has requested an extension of the agreement to retain use of the funds for the approved activity. The subrecipient agreement allows for a one-year extension upon request by the subrecipient. Staff recommends approval of an extension for the use of funds and will assist BJSA to complete the project in accordance with HUD regulations.

FISCAL IMPACT: 5,030.00 BUDGETED FUNDS?: YES GRANT/MATCHING FUNDS?: NO Not Required

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: YES	COUNTER-PARTY: Bellevue Junior Sports Association	INTERLOCAL AGREEMENT: NO
CONTRACT DESCRIPTION: Amendment to the 2020 CDBG Subrecipient Agreement		
CONTRACT EFFECTIVE DATE: 02/15/2022	CONTRACT TERM: 1 year	CONTRACT END DATE: 02/14/2023
PROJECT NAME: BJSA Participation Assistance Program		
START DATE: 02/15/2022	END DATE: 02/14/2023	PAYMENT DATE: <input type="text"/> INSURANCE REQUIRED: YES
CIP PROJECT NAME: <input type="text"/>	CIP PROJECT NUMBER: <input type="text"/>	
STREET DISTRICT NAME (S): <input type="text"/>		STREET DISTRICT NUMBER (S): <input type="text"/>
ACCOUNTING DISTRIBUTION CODE: CDBG-192102	ACCOUNT NUMBER: 60/1903/192102/450	

RECOMMENDATION:

Approve and authorize City Council President\* to sign the amendment extending the CDBG subrecipient agreement with Bellevue Junior Sports Association.

\*The City Council President signed all 2020 CDBG program documents due to the Mayor's conflict of interest.

ATTACHMENTS:

- |                             |                                     |                             |
|-----------------------------|-------------------------------------|-----------------------------|
| 1. Extension Request - BJSA | 2. 2020 CDBG Subrecipient Agreement | 3. 2020 Agreement Amendment |
| 4. <input type="text"/>     | 5. <input type="text"/>             | 6. <input type="text"/>     |

SIGNATURES:

LEGAL APPROVAL AS TO FORM: \_\_\_\_\_

FINANCE APPROVAL AS TO FORM: \_\_\_\_\_

ADMINISTRATOR APPROVAL AS TO FORM: \_\_\_\_\_

*A. Blue*  
*[Signature]*  
*[Signature]*

# BELLEVUE JUNIOR SPORTS ASSOCIATION

1001 HIGH SCHOOL DRIVE  
BELLEVUE, NEBRASKA 68005-3200  
(402) 292-BJSA

January 19, 2022

Abby Highland  
CDBG Program Administrator  
City of Bellevue  
1500 Wall Street  
Bellevue Nebraska 68005

Dear Abby,

Please consider this letter official notification that Bellevue Junior Sports (BJSA) is requesting an extension for the current CDBG Grant Funding Cycle.

The reason for the request is that the last grant cycle ran into the current grant cycle forcing BJSA to request this extension. BJSA finalized the 2020 Grant Cycle this past year. The main reason for this situation was the COVID Pandemic.

Participation numbers are getting back to pre-COVID levels so BJSA is confident that the remainder of the funds will be used by the end of the calendar year unless the pandemic slows or halts programs.

To date BJSA has awarded \$2,970.00 in scholarships to 23 families. The balance of \$5,030.00 remain which again should be used by December 31, 2022.

I would ask that you consider an extension to the BJSA Scholarship Program.

Regards,



Matt P Goetz  
BJSA Program Director

**FIRST AMENDMENT TO THE AGREEMENT  
BETWEEN THE CITY OF BELLEVUE AND  
BELLEVUE JUNIOR SPORTS ASSOCIATION  
FOR EXPENDITURE OF  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS  
B-20-MC-31-0003**

THIS FIRST AMENDMENT TO THE SUBRECIPIENT AGREEMENT FOR CDBG FUNDING entered into this \_\_\_\_ day of \_\_\_\_, 2022, by and between the subrecipient BELLEVUE JUNIOR SPORTS ASSOCIATION hereinafter referred to as the SUBRECIPIENT and the CITY OF BELLEVUE, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, a Grantee of the CDBG entitlement program, hereinafter referred to as the GRANTEE.

WHEREAS, the GRANTEE has applied for and received funds, Catalog of Federal Domestic Assistance Number 14-218 (CDBG), from the United States Government under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, the GRANTEE wishes to engage the SUBRECIPIENT to assist in the utilization of Community Development Block Grant (CDBG) funds from the B-20-MC-31-0003 HUD contract in the amount of \$8,000.00 for a sports participation assistance program; and

WHEREAS, the parties desire to amend the Agreement to extend the term thereof, update the Timeliness and Time of Performance by the SUBRECIPIENT to the GRANTEE, and to otherwise modify the Agreement as provided for herein; and

WHEREAS, the parties therefor intend that the terms of the Agreement shall be so modified.

NOW, THEREFORE, it is agreed between the parties hereto that:

**AGREEMENT AMENDMENT**

NOW, THEREFORE, in consideration of the premises and obligations as set forth in this Amendment, the receipt and adequacy of which is hereby agreed and acknowledged, the parties agree as follow:

**A. SCOPE OF SERVICE.**

1. Time of Performance. The time of performance of this Agreement is hereby extended and will remain in effect through February 14, 2023.
2. Timeliness. Funding allocated as part of this agreement must be expended by February 14, 2023. Any remaining balance following the expiration of this agreement shall be eligible for reallocation by the GRANTEE.

*(Remainder of page intentionally left blank)*

\_\_\_\_\_  
Paul Cook, City Council President  
City of Bellevue, Nebraska

Phyllis Thrower  
Phyllis Thrower, President  
Bellevue Junior Sports Association

\_\_\_\_\_  
Rich Severson, Finance Director  
City of Bellevue, Nebraska

Matt Goetz  
Matt Goetz, Program Director  
Bellevue Junior Sports Association

ATTEST:

\_\_\_\_\_  
Susan Kluthe, City Clerk  
City of Bellevue, NE

STATE OF NEBRASKA     )  
  ): SS.  
COUNTY OF SARPY     )

The undersigned, a notary public qualified in and for said county, does hereby certify that Paul Cook and Susan Kluthe, whose names as City Council President and City Clerk respectively, of the City of Bellevue, Nebraska, a municipality of the first class and political subdivision of the State of Nebraska, are signed to the foregoing instrument and who are each known to me and known to be such officers, acknowledged before me on this day and they, in their respective capacities as City Council President and City Clerk, executed and delivered said instrument as their voluntary act and deed and voluntary act and deed of such corporation.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

(Affix Notarial Seal)

My Commission Expires: \_\_\_\_\_

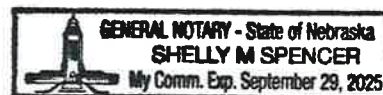
STATE OF NEBRASKA     )  
  ): SS.  
COUNTY OF SARPY     )

The above and foregoing instrument was acknowledged before me this 3 day of February, 2022, by Phyllis Thrower, President, Bellevue Junior Sports Association, on behalf of the organization.

My Commission Expires:

9/29/2025

Shelly M Spencer  
NOTARY PUBLIC



**AGREEMENT  
BETWEEN THE CITY OF BELLEVUE AND  
BELLEVUE JUNIOR SPORTS ASSOCIATION  
FOR EXPENDITURE OF  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS  
B-20-MC-31-0003**

THIS SUBRECIPIENT AGREEMENT FOR CDBG FUNDING entered into this 2nd day of March, 2021, by and between the subrecipient BELLEVUE JUNIOR SPORTS ASSOCIATION hereinafter referred to as the SUBRECIPIENT and the CITY OF BELLEVUE, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, a Grantee of the CDBG entitlement program, hereinafter referred to as the GRANTEE.

WHEREAS, the GRANTEE has applied for and received funds, Catalog of Federal Domestic Assistance Number 14-218 (CDBG), from the United States Government under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, the GRANTEE wishes to engage the SUBRECIPIENT to assist in the utilization of Community Development Block Grant (CDBG) funds from the B-20-MC-31-0003 HUD contract in the amount of \$8,000.00 for a sports participation assistance program; and

NOW, THEREFORE, it is agreed between the parties hereto that:

**A. SCOPE OF SERVICE.**

1. **Activities.** The SUBRECIPIENT agrees to provide the GRANTEE eligible services, activities, and/or programs in accordance with the Community Development Block Grant regulations set forth in 24 CFR Part 570 as amended and the GRANTEE's CDBG program as described in the City of Bellevue's 2019-2023 Consolidated Plan. The GRANTEE will provide funding in the actual amount of expenditure, not to exceed \$8,000.00 from the B-20-MC-31-0003 funding allocation to the SUBRECIPIENT for the purpose of providing sports participation assistance program by offering scholarships to low- and moderate-income youth and children which is eligible under 24 CFR 570.201(e) Public Service. Such program will include the following activities eligible under the CDBG program:
  - a. **Program Delivery.** To provide a participation assistance program including, but not limited to, the registration and participation fees required by specific sports clinics and programs. The major tasks the SUBRECIPIENT will perform include, but are not necessarily limited to the following:
    - i. Develop program guidelines, eligibility requirements, application forms, and review procedures for the assistance program.
    - ii. Develop program metrics to document program performance in meeting CDBG National Objective goals and income benefit goals outlined in A.1.b-c.
    - iii. Maintain program records documenting participation eligibility including race and ethnic data, household income and other characteristics, and access to services for household benefiting from service provided to meet National Objective requirements and income benefit goals.
  - b. **Income Benefit Goals.** It is anticipated that the program will provide participation assistance for 60 children and youth from low- and moderate-income households residing within Bellevue city limits.

- c. National Objective. All activities funded with CDBG funds must meet one of the CDBG program's National Objectives as defined in 24 CFR 570.208. The SUBRECIPIENT certifies that the activity carried out under this agreement will meet the National Objective benefit low- and moderate-income limited clientele benefit by benefiting low- and moderate-income persons.
          - i. Income Definition. For the purposes of determining whether a person or household is low- and moderate-income, the SUBRECIPIENT will utilize the income definition under 24 CFR 570.3 Income (1)(iii) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.
2. Performance Monitoring. The SUBRECIPIENT at such times and in such forms as the GRANTEE may require, shall furnish performance reports pertaining to the activities undertaken pursuant to this Agreement to meet the CDBG National Objective. Such reports shall include, but not be limited to:
  - a. Statistical information including the number of persons, race, income, and head of household of the persons benefiting; and the number of persons that will be provided with new or improved access to services and/or facilities.
  - b. Update on the expenditure of funding as well as a timeline for expenditure update.
  - c. Any additional funds leveraged with CDBG funding.
  - d. Other reports as required by Section 570.507 of Title 24, 2 CFR Part 200, and as otherwise required by HUD and/or the GRANTEE.
3. Site Visit. The GRANTEE's CDBG staff will perform periodic site visits to ascertain that approved program is proceeding properly. Site visits will include, but are not limited to, a semi-annual monitoring visit and close out visit at the conclusion of the project.
4. Environmental Clearance. The SUBRECIPIENT shall carry out each activity in compliance with Federal laws and regulations described in 24 CFR 570 Subpart K, except that the SUBRECIPIENT does not assume the GRANTEE's environmental review responsibilities described in 24 CFR Part 570.604; and for initiating the review process under provisions of 24 CFR Part 52. All activities must have prior review to ensure environmental conformance through a site-specific review, i.e.: floodplain clearance, airport hazards Asbestos, Americans with Disabilities Act, etc. No grant funds may be disbursed for the project until environmental clearance has been received.
5. Time of Performance. The agreement will remain in effect for twelve (12) months from the date of execution.
6. Ineligible Expenses. General maintenance costs are ineligible CDBG expenses, i.e. mowing, replacement of expended light bulbs, and similar expenses which are necessary for the operation of the facility.

**B. RECORDS, REPORTING AND PAYMENT SCHEDULES.**

1. The amount available to the SUBRECIPIENT for eligible activities under this agreement shall not exceed \$8,000.00. Payments may be contingent upon certification of the SUBRECIPIENT's financial management system in accordance with acceptable standards specified in 2 CFR Part 200.302.

2. Records and Reporting. The SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570 that are pertinent to the activities to be funded under this AGREEMENT. Such records shall include but are not limited to:
  - a. Records providing a full description of each activity undertaken, including compliance with standards for public services in 24 CFR 570.201(e);
  - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program per 24 CFR 570.208;
  - c. Records required to determine the eligibility of activities per 24 CFR 570 Subpart C;
  - d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
  - e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
  - f. Financial records as required by 24 CFR 570.502 and 24 CFR 570.84.21-58; and
  - g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
3. DUNS Number. The SUBRECIPIENT must maintain a Subrecipient Unique Entity Identifier, or DUNS number, through the completion of the agreement. The GRANTEE must be able to verify the SUBRECIPIENT's registered DUNS number with SAM.gov prior to any grant funding being disbursed.
4. Quarterly Reporting. The SUBRECIPIENT shall provide the GRANTEE with quarterly activity reports through the completion of the funded activity. All activity reports are due to the CDBG Office of the GRANTEE on or before the 15th day of the month following the end of a quarter. The CDBG Fiscal Year will be October 1<sup>st</sup> to September 30<sup>th</sup>. Quarters will be:
  - a. 1<sup>st</sup> Quarter: October – December,
  - b. 2<sup>nd</sup> Quarter: January – March,
  - c. 3<sup>rd</sup> Quarter: April – June, and
  - d. 4<sup>th</sup> Quarter: July – September.
5. Record Retention. The SUBRECIPIENT shall retain all books, documents, papers, records and other materials involving all activities and transactions related to this agreement for at least five (5) years from the date of submission of the final activity report or until all audit findings have been resolved, whichever is later. The SUBRECIPIENT shall, as often as deemed necessary by the GRANTEE, permit authorized representatives of the GRANTEE and HUD to have full access to and the right to fully examine all such material.
6. Beneficiary Data. The SUBRECIPIENT shall maintain client data demonstrating client eligibility for services provided under the National Objective per 24 CFR 570.208. Such data shall include, but not be limited to client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to GRANTEE monitors or their designee for review upon request.
7. Disclosure. The SUBRECIPIENT understands that client information collected under this agreement is private and the use or disclosure of such information, when not directly connected with the administration of the activity with respect to services provided under this agreement, is prohibited unless written consent is obtained from such person receiving the service and, in the case of a minor, that of a responsible parent/guardian.
8. Purchasing Procedures.

- a. For the purchase of supplies or contractual services, the SUBRECIPIENT will adhere to the following procedures:
  - i. \$0.00 to \$1,000.00 – Best Effort Pricing: Employee shall endeavor to obtain the best price for the item(s) through research or consultation with the Purchasing Agent.
  - ii. \$1,000.00-\$9,999.99 - Telephone Quotes: All purchases of supplies, equipment or contractual services in an amount of \$1,000 but under \$10,000.
  - iii. \$10,000.00-\$29,999.99 - Informal Bidding: Not published but competitive and documented for all purchases of supplies, equipment or contractual services in an amount \$10,000 but under \$30,000.
  - iv. \$30,000.00 or more - Formal Bidding (sealed bids): Published for all purchases of supplies, equipment or contractual services in an amount of \$30,000 or more.
- b. The SUBRECIPIENT will submit the bids/quotes to the GRANTEE CDBG Office. Upon approval by the GRANTEE CDBG Office, a Notice to Proceed will be issued.

9. Contracting.

- a. The SUBRECIPIENT shall not assign or transfer any interest in this agreement without the prior written consent of the GRANTEE; provided, however, that claims for money due or to become due to the SUBRECIPIENT from the GRANTEE under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the GRANTEE. All terms and conditions of this agreement shall apply to any approved subcontract or assignment related to the agreement.
- b. Subcontracts
  - i. Approvals. The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the GRANTEE prior to the execution of such agreement.
  - ii. Monitoring. The SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written quarterly reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.
  - iii. Content. The SUBRECIPIENT shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
  - iv. Selection Process. The SUBRECIPIENT shall ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. All subcontracts must have a DUNS number indicating eligibility to work on federal projects and be registered in the System for Award Management ([www.sam.gov](http://www.sam.gov)). Executed copies of all subcontracts shall be forwarded to the GRANTEE along with documentation concerning the selection process.

10. Request for Payment.

- a. Request for funds may be made by the SUBRECIPIENT upon satisfactory completion of project requirements as specified in the agreement. The SUBRECIPIENT must submit a cover sheet or invoice requesting reimbursement for allowable expenses signed by the Authorized Representative, a copy of the original invoice, and any additional requested documentation.

The GRANTEE will reimburse the SUBRECIPIENT directly. The request will be reviewed for payment by the GRANTEE and submitted for approval by the City Council during meetings on the 1<sup>st</sup> and 3<sup>rd</sup> Tuesday of each month. The GRANTEE will not be responsible for any late fees incurred and will not reimburse the agency for any late fees paid. There is no guarantee that funds will be reimbursed within a month's time. The payments are made only from monies available to the GRANTEE through the CDBG program and are subject to the availability of such funds.

- b. The SUBRECIPIENT's right to incur expenses under this Agreement shall cease upon expiration of Agreement. All requests for reimbursement on expenditures made prior to expiration of Agreement must be requested within thirty (30) days after expiration. Unless expressly authorized by the GRANTEE in writing, expenditures not requested within the thirty (30) day period after expiration of Agreement shall be disallowed and all funds shall be reclaimed by the GRANTEE.

11. Program Income. In accordance with 24 CFR 570.504(c), any program income as defined in 24 CFR 570.500, generated by activities carried out with CDBG funds made available under this agreement shall be reported quarterly to the GRANTEE by the SUBRECIPIENT. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR 570.504 and 2 CFR 200.307.

12. Timeliness. Funding allocated as part of this agreement must be expended within 12 months from the date of the agreement. The agreement may be eligible for one extension for one additional year.

- a. Agreement Extension Request. To be eligible for an agreement extension, the SUBRECIPIENT must provide a written request with narrative explaining the reason for the delay in project completion, an updated timeline for project completion, and any additional information as requested by the GRANTEE. The GRANTEE CDBG staff will review the request and prepare the request for City Council consideration. The GRANTEE CDBG staff reserves the right to reallocate any unexpended funds upon expiration of the agreement.

13. Close-outs.

- a. The SUBRECIPIENT's obligation to the GRANTEE shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advance, program income balances, an accounts receivable to the GRANTEE), and determining the custodianship of records. Notwithstanding the foregoing, the terms of the Agreement shall remain in effect during any period that the SUBRECIPIENT has control over CDBG funds, including program income.
- b. Upon expiration or termination of the Agreement, the SUBRECIPIENT will provide final versions of all financial performance, and other reports that were a condition of the funding agreement, including, but not limited to:
  - i. A final performance report,
  - ii. A final request for payment, and
  - iii. A final inventory of property in the SUBRECIPIENT's possession that was acquired or improved with CDBG funds.

### **C. GENERAL COMPLIANCE.**

1. The SUBRECIPIENT agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except the (1) the SUBRECIPIENT does not assume the GRANTEE's environmental responsibilities described in 2 CFR 570.604 and (2) the SUBRECIPIENT does not assume the GRANTEE's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The SUBRECIPIENT also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this agreement. The SUBRECIPIENT further agrees to utilize funds available under this Agreement to supplement rather than replace funds otherwise available.
2. Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The SUBRECIPIENT shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The GRANTEE shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the SUBRECIPIENT is an independent contractor.
3. Hold Harmless. The SUBRECIPIENT, to the extent permitted by law, shall hold harmless, defend and indemnify, the GRANTEE from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the SUBRECIPIENT's performance or nonperformance of the services or subject matter called for in this Agreement.
4. Workers' Compensation. The SUBRECIPIENT shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this agreement.
5. Insurance. The SUBRECIPIENT shall carry sufficient insurance coverage to protect agreement assets from loss due to theft, fraud and/or undue physical damage and comply with insurance requirement of 2 CFR 200.310. The SUBRECIPIENT is required to list the GRANTEE as additional insured with waiver of subrogation. The GRANTEE requires contracting insurance of \$1,000,000.00 limit for General Liability with a \$2,000,000.00 aggregate. The GRANTEE also requires the SUBRECIPIENT to carry workers compensation with a waiver of subrogation and a \$5,000,000.00 umbrella policy. The GRANTEE will review insurance requirements on a case by case basis if this a burden or not applicable under specific agreements.
6. Grantor Recognition. The SUBRECIPIENT shall insure recognition of the role of the GRANTEE in providing services through this agreement. All activities, facilities and items utilized pursuant to this agreement shall be prominently labeled as funded with CDBG funds from the GRANTEE. In addition, the SUBRECIPIENT will include reference to the support provided herein in all publications made possible with funds available under this agreement.
7. Amendments. The GRANTEE or SUBRECIPIENT may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this Agreement, nor relieve the GRANTEE or SUBRECIPIENT from its obligations under this Agreement.

The GRANTEE may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in funding, the scope of services, or schedule of activities to be

undertaken as part of this Agreement, such modifications will be incorporated only by written amendments signed by both the GRANTEE and SUBRECIPIENT.

8. Suspension or Termination. Either party may terminate this agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial termination of the Scope of Service in Section A above may only be undertaken with the prior approval of the GRANTEE. In the event of any termination for convenience and at any time, at the GRANTEE's option, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the SUBRECIPIENT under this Agreement shall, at the option of the GRANTEE, become the property of the GRANTEE, and the SUBRECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to termination.

The GRANTEE may also suspend or terminate this Agreement, in whole or in part without notice, if the SUBRECIPIENT materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein and all payments shall cease; and the GRANTEE may declare the SUBRECIPIENT ineligible for any further participation in the GRANTEE's contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe the SUBRECIPIENT is in noncompliance with any applicable rules or regulations, the GRANTEE may withhold up to fifteen (15) percent of said agreement funds due to be paid for past work until such time as the SUBRECIPIENT is found to be in compliance by the Grantee, or is otherwise adjudicated to be in compliance.

9. Eligibility Restrictions for Certain Resident Aliens. The SUBRECIPIENT agrees to abide by the provisions of 24 CFR 570.613 with respect to the eligibility restrictions for certain resident aliens. Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in this part of the regulation. The Grantee shall provide the City with any guidelines necessary for compliance with that portion of the regulation.
10. Architectural Barriers Act and Americans with Disabilities Act. The SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with the Architectural Barriers Act of 1968 which requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with the standards that ensure accessibility to, and use by, physically handicapped people. The SUBRECIPIENT also agrees to comply with federal regulations issued pursuant to compliance with the Americans with Disabilities Act which provide comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

**D. OTHER PROGRAM REQUIREMENTS.**

1. Civil Rights.
  - a. Compliance. The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.

- b. Nondiscrimination. The SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The SUBRECIPIENT will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- c. Land Covenants. This agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and 24 CFR 570.601 and 602. In regard to sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this agreement, the SUBRECIPIENT shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, and providing that the GRANTEE and the United States are beneficiaries of the deed or lease entitled to enforce such covenants. The SUBRECIPIENT, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.
- d. Section 504. The SUBRECIPIENT agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1974, which prohibits discrimination against the handicapped in any federally assisted program. The GRANTEE shall provide the SUBRECIPIENT with any guidelines necessary for compliance with that portion of the regulations in force during the term of this agreement.

## 2. Affirmative Action.

- a. Plan. The SUBRECIPIENT agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.
- b. Women and Minority Owned Business Enterprises (W/MBE). The SUBRECIPIENT will use its best efforts to afford minority- and women-owned business enterprises Title 49 Code of Federal Regulations Part 23, the maximum practicable opportunity to participate in the performance of this agreement. As used in this agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish- speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The SUBRECIPIENT may rely on written representation by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.
- c. Access to Records. The SUBRECIPIENT shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the GRANTEE, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

- d. Notifications. The SUBRECIPIENT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understandings, a notice, provided by the agency contracting officer, advising the labor union or worker's representative of the SUBRECIPIENT's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. EEO/AA Statement. The SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
- f. Subcontracting Provisions. The SUBRECIPIENT will include the provisions of Section D Paragraph 1, Civil Rights, and 2, Affirmative Action, in every subcontract or purchase orders, specifically or by reference, so that such provisions will be binding upon each of its subrecipients or subcontracts.

3. Employment Restrictions.

- a. Prohibited Activity. The SUBRECIPIENT is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or religious activities; lobbying, political patronage, and nepotism activities.
- b. Labor Standards. The SUBRECIPIENT agrees to comply with the requirements of the Secretary of Labor in accordance with Davis-Bacon Act as amended, the provisions of Contract: Work Hours and Safety Standards Act, the Copeland "Anti- Kickback" Act and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this agreement. The SUBRECIPIENT shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the GRANTEE for review upon request.

The SUBRECIPIENT agrees that all contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this agreement, shall comply with Federal requirements adopted by the GRANTEE pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeyworkers; provide, that if wage rates higher than those required under the regulations are imposed by state or local laws, nothing hereunder is intended to relieve the SUBRECIPIENT of its obligation, if any, to require payment of the higher wage. The SUBRECIPIENT will cause or require to be inserted in full, in all contracts subject to such regulations, provisions meeting the requirements of this paragraph.

- c. "Section 3" Clause.
  - i. Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this agreement, shall be a condition of the Federal financial assistance provided under this agreement and binding upon the Grantee, the SUBRECIPIENT and any of the SUBRECIPIENT's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the SUBRECIPIENT and any of the SUBRECIPIENT's subrecipients and subcontractors, their successors and assigns, to those sanctions

specified by the Agreement through which Federal assistance is provided. The SUBRECIPIENT certifies and agrees that no contractual or other disability exist which would prevent compliance with these requirements.

The SUBRECIPIENT further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Community Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low-and very low-income residents of the project area and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low-and very low-income persons residing in the metropolitan area in which the project is located."

The SUBRECIPIENT further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation, housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible , priority should be given to low- and very low-income persons within the service area of the project or neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection to housing rehabilitation, housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which CDBG-funded project is located; where feasible, priority should be given to business concerns which provide economic opportunities to low- and very low - income residents within the service area or neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The SUBRECIPIENT certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements.

- ii. Notifications. The SUBRECIPIENT agrees to send to each labor organization or representative of worker with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- iii. Subcontracts. The SUBRECIPIENT will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

#### 4. Conduct.

- a. Assignability. The SUBRECIPIENT shall not assign or transfer any interest in this contract without the prior written consent of the GRANTEE. Notice of any such assignments or transfer shall be furnished promptly to the GRANTEE.
- b. Subcontracts. The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this agreement without the written consent of the GRANTEE prior to the execution of such agreement.
  - i. Monitoring. The SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions to correct areas of noncompliance.
  - ii. Content. The SUBRECIPIENT shall cause all the provisions of this agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
  - iii. Selection Process. The SUBRECIPIENT shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.
- c. Hatch Act. The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of the Title V United States Code.
- d. Conflict of Interest. The SUBRECIPIENT agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The SUBRECIPIENT further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the SUBRECIPIENT hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Grantee, or any designated public agencies or Subrecipients which are receiving funds under the CDBG Entitlement program.
- e. Lobbying. The SUBRECIPIENT hereby certifies that:
  - i. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
  - ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

- iii. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly; and
  - iv. Lobby Certification. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- f. Copyright. If this agreement results in any copyrightable materials or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.
- g. Religious Organization. The SUBRECIPIENT agrees that funds provided under this agreement will not be utilized for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200(j).
5. Relocation and One-For-One Housing Replacement. The displacement of any person as a direct result of rehabilitation for a CDBG-assisted project must comply with 24 CFR 570.606 and 49 CFR Part 24. The SUBRECIPIENT will conduct the CDBG activities so as to minimize displacement, and if displacement occurs, the displaced persons or entities must be provided assistance consistent with the Uniform Relocation Act.

**E. UNIFORM ADMINISTRATIVE REQUIREMENTS.**

1. The SUBRECIPIENT shall comply with the administrative regulations, including, but not limited to, 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" Final Guidance applicable to HUD Federal Award Recipients. Requirements and standards under 2 CFR 200 which supersedes, consolidates, and streamlines requirements from eight OMB Circulars, including:
- a. A-21, Cost Principles for Educational Institutions,
  - b. A-87, Cost Principles for State, Local, and Indian Tribal Governments,
  - c. A-89, Catalog of Federal Domestic Assistance,
  - d. A-102, Grants and Cooperative Agreements with State and Local Governments,
  - e. A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,
  - f. A-122, Cost Principles for Non-Profit Organizations,
  - g. A-133, Audits of States, Local Governments, and Non-Profit Organizations, and
  - h. The guidance in OMB Circular A-50, Audit Follow Up, on Single Audit Act follow-up.
2. Cost Principles. The SUBRECIPIENTS shall comply with the requirements under 2 CFR 200, Subpart E, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

3. Audits. The SUBRECIPIENT is required to comply with 2 CFR 200, Subpart F, as applicable, which supersedes OMB Circular A-133 "Audits of Institutions of State, Local Government, and Nonprofit Institutions". If the SUBRECIPIENT spends \$750,000 or more a fiscal year in Federal awards, the SUBRECIPIENT hereby agrees to have an annual agency audit conducted in accordance with the OMB Super Circular.

**F. INSURANCE REQUIREMENTS.**

1. Insurance and Bonding. The SUBRECIPIENT shall carry sufficient insurance coverage to protect agreement assets from loss due to theft, fraud and/or undue physical damage, and at a minimum shall purchase a blanket fidelity bond covering all clients benefiting from the CDBG funded activity in an amount equal to cash advances from the GRANTEE.

**G. AGREEMENT MOTIFICATIONS.**

1. In the event the parties fail to agree on changes or interpretations of this agreement, the decision of the GRANTEE shall prevail. In the event of any disagreement between the SUBRECIPIENT and the GRANTEE relating to the funded activity and materials purchased and its conformity to the requirements of this agreement, the decision of the GRANTEE shall prevail.
2. This agreement is subject to such modification as may be required by federal law or regulations. Any such modification may be done unilaterally by the GRANTEE.
3. Except as otherwise provided in this agreement, the rehabilitation activities to be completed and the total grant award may be modified only by written agreement of the authorized representatives of the parties to this agreement.

**H. REVERSION OF ASSETS.**

1. Any CDBG funds on hand at the time the agreement expires, including accounts receivable, shall be returned. The SUBRECIPIENT assures that any real property acquired or improved with CDBG funds in excess of \$25,000 meets the requirements specified in 24 CFR 570.503(b)(7). The SUBRECIPIENT will not have control of CDBG funds, nor will any property be purchased in excess of \$25,000.

**I. SUSPENSION OR TERMINATION OF AGREEMENT.**

1. In accordance with 24 CFR 85.43, the GRANTEE may suspend or terminate this agreement should the SUBRECIPIENT violate any terms or conditions thereof.
2. This agreement may be terminated or suspended in whole or in part at any time by the GRANTEE for cause. The GRANTEE may refuse to disburse additional funds or require return of all or part of funds already disbursed. The decision of the GRANTEE shall prevail. Grounds constituting cause include but are not limited to:
  - a. Failure by the SUBRECIPIENT to comply with the provisions of this agreement or with any applicable laws, regulations, guidelines or procedures, or is unduly dilatory in executing its commitments under this agreement.

- b. Purposes for the funds have not been or will not be fulfilled, or would be illegal to carry out.
  - c. The SUBRECIPIENT has submitted incorrect or incomplete documentation pertaining to this agreement.
3. In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.
4. In the event of termination or suspension, all materials/equipment purchased through the agreement shall, at the option of the GRANTEE, become the property of the GRANTEE, and the SUBRECIPIENT shall be entitled to payment for otherwise valid and allowable obligations incurred in good faith prior to notice of such action. The option of the GRANTEE constitutes a security interest in any materials/equipment purchased or property improved by expenditure of the funds for as long as such materials/equipment or improvements have any value unless the GRANTEE declines its option or releases its security interest. Recording of this agreement shall be effective as a financing statement noticing the security interest of the GRANTEE as created herein. In addition, the GRANTEE shall have a lien against the improved real estate to the extent of expenditures of these funds and to secure repayment of such funds in the event of cessation of operations, sale, transfer of the property in any manner whatsoever, voluntary or involuntary receivership, or application for bankruptcy by the SUBRECIPIENT.

**J. NOTICES.**

1. All notices required or permitted to be given under this agreement may be personally delivered or mailed to the following addresses.
  - a. To GRANTEE: City Administrator  
City of Bellevue  
1500 Wall Street  
Bellevue, NE 68005
  - b. To SUBRECIPIENT: President, Board of Directors  
Bellevue Junior Sports Association  
1001 High School Drive  
Bellevue, NE 68005
  - c. Copy to: Finance Director  
City of Bellevue  
1500 Wall Street  
Bellevue, NE 68005

*Paul Cook*

Paul Cook, Council President  
City of Bellevue, Nebraska

*Phyllis Thrower*

Phyllis Thrower, President  
Bellevue Junior Sports Association

*Rich Severson*

Rich Severson, Finance Director  
City of Bellevue, Nebraska

*Matt Goetz*

Matt Goetz, Program Director  
Bellevue Junior Sports Association

ATTEST:

*Susan Kluthe*

Susan Kluthe, City Clerk  
City of Bellevue, NE

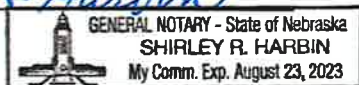
STATE OF NEBRASKA     )  
  ): SS.  
COUNTY OF SARPY     )

The undersigned, a notary public qualified in and for said county, does hereby certify that <sup>Paul Cook</sup>~~Paul Cook~~ and <sup>Susan Kluthe</sup>~~Susan Kluthe~~ and Susan Kluthe, whose names as <sup>Council President</sup>~~Mayor~~ and City Clerk respectively, of the City of Bellevue, Nebraska, a municipality of the first class and political subdivision of the State of Nebraska, are signed to the foregoing instrument and who are each known to me and known to be such officers, acknowledged before me on this day and they, in their respective capacities as <sup>Council President</sup>~~Mayor~~ and City Clerk, executed and delivered said instrument as their voluntary act and deed and voluntary act and deed of such corporation.

WITNESS my hand and official seal.

Signature: *Shirley R. Harbin*

(Affix Notarial Seal)



My Commission Expires: August 23, 2023

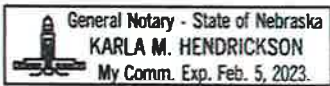
STATE OF NEBRASKA     )  
  ): SS.  
COUNTY OF SARPY     )

The above and foregoing instrument was acknowledged before me this 17<sup>th</sup> day of February 2021, by Phyllis Thrower, President, Bellevue Junior Sports Association, on behalf of the organization.

My Commission Expires:

2/05/2023

*Karla M. Hendrickson*  
NOTARY PUBLIC



CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Finance/CDBG	
AGENDA ITEM:	CONSENT AGENDA <input type="checkbox"/>	SPECIAL PRESENTATION <input type="checkbox"/>	
LIQUOR LICENSE <input type="checkbox"/>	ORDINANCE <input type="checkbox"/>	PUBLIC HEARING <input type="checkbox"/>	
RESOLUTION <input type="checkbox"/>	CURRENT BUSINESS <input checked="" type="checkbox"/>	OTHER <input type="checkbox"/>	

SUBJECT:

Amendment extending the 2020 CDBG Subrecipient Agreement with Habitat for Humanity for Sarpy County for the Single Family Rehab project.

SYNOPSIS/BACKGROUND:

The City of Bellevue executed a CDBG subrecipient agreement with Habitat for Humanity for Sarpy County for the single family rehabilitation project on March 2, 2021, as outlined in the 2020 Action Plan with the Time of Performance expiring one-year from the date of execution. The project has a grant balance of \$38,000.00 still available for the project. Habitat has requested an extension of the agreement to retain use of the funds for the approved activity. The subrecipient agreement allows for a one-year extension upon request by the subrecipient. Staff recommends approval of an extension for the use of funds and will assist Habitat to complete the project in accordance with HUD regulations.

FISCAL IMPACT: 38,000.00 BUDGETED FUNDS?: YES GRANT/MATCHING FUNDS?: NO Not Required

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: YES	COUNTER-PARTY: Habitat for Humanity for Sarpy Co	INTERLOCAL AGREEMENT: NO
CONTRACT DESCRIPTION: Amendment to the 2020 CDBG Subrecipient Agreement		
CONTRACT EFFECTIVE DATE: 02/15/2022	CONTRACT TERM: 1 year	CONTRACT END DATE: 02/14/2023
PROJECT NAME: Habitat 2020 Land Purchase project		
START DATE: 02/15/2022	END DATE: 02/14/2023	PAYMENT DATE: <input type="text"/>
INSURANCE REQUIRED: YES		
CIP PROJECT NAME: <input type="text"/>	CIP PROJECT NUMBER: <input type="text"/>	
STREET DISTRICT NAME (S): <input type="text"/>	STREET DISTRICT NUMBER (S): <input type="text"/>	
ACCOUNTING DISTRIBUTION CODE: CDBG-192101	ACCOUNT NUMBER: 60/1903/192101/450	

RECOMMENDATION:

Approve and authorize City Council President to sign the amendment extending the CDBG subrecipient agreement with Habitat for Humanity of Sarpy County

ATTACHMENTS:

- |                                |                                     |                             |
|--------------------------------|-------------------------------------|-----------------------------|
| 1. Extension Request - Habitat | 2. 2020 CDBG Subrecipient Agreement | 3. 2020 Agreement Amendment |
| 4. <input type="text"/>        | 5. <input type="text"/>             | 6. <input type="text"/>     |

SIGNATURES:

LEGAL APPROVAL AS TO FORM:

FINANCE APPROVAL AS TO FORM:

ADMINISTRATOR APPROVAL AS TO FORM:

*[Handwritten signatures]*



Building opportunity throughout Burt, Cass, Douglas, Sarpy and Washington Counties.

January 19, 2022

Abby Highland  
CDBG Program Administrator  
City of Bellevue Finance Office  
1500 Wall Street  
Bellevue, Nebraska 68005

RE: Extension Request CDBG B-20-MC-31-003

Dear Abby:

Habitat for Humanity of Sarpy County (HFHSC) would like to formally request an (8) eight-month extension of its CDBG 2020 rehabilitation grant. Over the past year, HFHSC has struggled to complete the purchase of a group of properties from the Bellevue Housing Authority (BHA). Due to some issues BHA was encountering with HUD, this process was delayed until very recently. HFHSC is now set to purchase three properties from BHA in February of 2022 and will begin rehabilitation of the properties immediately upon acquisition. One of these properties, 7302 S. 30<sup>th</sup> Street, has been earmarked for rehabilitation under the 2020 CDBG grant. We believe all rehabilitation work on this property will be completed by the fall of 2022.

Please let me know if you need any further information regarding this extension request. HFHSC appreciates the continued partnership with the City of Bellevue in providing affordable housing opportunities for low-income families.

Best;

Janneane Gerot  
Senior Project Manager

**Board of Directors**

- Levi Schappers  
*Chair*
- George Achola  
*Past Chair*
- Caren Woodruff  
*Vice-Chair*
- Javier Fernandez  
*Secretary*
- Rollie Johns  
*Treasurer*
- Jon Costello
- Bob Dalrymple
- Dr. Cynthia Gooch-Grayson
- Jeff Gordman
- Marcos Hernandez
- Dan Houghton
- Ryan Iwansky
- Keith Jankuski
- Teri Mercer
- Brian Miles
- Laura Nelson
- Gustavo Oberto
- Dan Patterson
- Mark Rodgers
- Connie Ryan
- Angel Starks
- Lucas Weatherly
- Jaison Samuel
- Julian Young
- Ranul Jalali

**Advisory Council**

- Maranda Adams
- Lynne Boyer
- Nate Dodge
- W. Gary Gates
- Fred Hunzeker
- Steve Martin
- Mike Moylan
- Tyler Owan
- Sandy Parker
- Rick Russell
- Connie Ryan
- Carmen Taplo
- Jim Timmerman
- Lyn Ziegenbein
- Amanda Brewer  
*CEO*

**FIRST AMENDMENT TO THE AGREEMENT  
BETWEEN THE CITY OF BELLEVUE AND  
HABITAT FOR HUMANITY OF SARPY COUNTY  
FOR EXPENDITURE OF  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS  
B-20-MC-31-0003**

THIS FIRST AMENDMENT TO THE SUBRECIPIENT AGREEMENT FOR CDBG FUNDING entered into this \_\_\_\_ day of \_\_\_\_, 2022, by and between HABITAT FOR HUMANITY OF SARPY COUNTY ("SUBRECIPIENT") and the CITY OF BELLEVUE, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, a Grantee of the CDBG entitlement program, ("GRANTEE") (Collectively referred to as the "Parties").

WHEREAS, the GRANTEE has applied for and received funds, Catalog of Federal Domestic Assistance Number 14-218 (CDBG), from the United States Government under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, the GRANTEE wishes to engage the SUBRECIPIENT to assist in the utilization of Community Development Block Grant (CDBG) funds from the B-20-MC-31-0003 HUD contract in the amount of \$38,000.00 for rehabilitation of a single-family housing unit project located within the city limits; and

WHEREAS, the Parties entered into a Subrecipient Agreement for CDBG Funding on or about the 2<sup>nd</sup> day of March, 2021 (the "Agreement"); and

WHEREAS, the Parties desire to amend the Agreement to extend the term thereof, update the Timeliness and Time of Performance by the SUBRECIPIENT to the GRANTEE, and to otherwise modify the Agreement as provided for herein; and

WHEREAS, the Parties therefore intend that the terms of the Agreement shall be so modified; and

WHEREAS, that all other terms and conditions of the Agreement, except to the extent expressly amended herein, shall remain in full force and effect.

NOW, THEREFORE, it is agreed between the Parties hereto that:

**AGREEMENT AMENDMENT**

NOW, THEREFORE, in consideration of the premises and obligations as set forth in this Amendment, the receipt and adequacy of which is hereby agreed and acknowledged, the Parties agree that the Agreement shall be amended as follows:

**A. SCOPE OF SERVICE.**

1. Time of Performance. The time of performance of this Agreement is hereby extended and will remain in effect through February 14, 2023.
2. Timeliness. Funding allocated as part of this agreement must be expended by February 14, 2023. Any remaining balance following the expiration of this agreement shall be eligible for reallocation by the GRANTEE.

\_\_\_\_\_  
Paul Cook, City Council President  
City of Bellevue, Nebraska

Amanda Brewer  
\_\_\_\_\_  
Amanda Brewer, President  
Habitat for Humanity of Sarpy County

\_\_\_\_\_  
Rich Severson, Finance Director  
City of Bellevue, Nebraska

J. Daniel Brewer  
\_\_\_\_\_  
J. Daniel Brewer, Grant Specialist  
Habitat for Humanity of Sarpy County

ATTEST:

\_\_\_\_\_  
Susan Kluthe, City Clerk  
City of Bellevue, NE

STATE OF NEBRASKA     )  
  ): SS.  
COUNTY OF SARPY     )

The undersigned, a notary public qualified in and for said county, does hereby certify that Paul Cook and Susan Kluthe, whose names as City Council President and City Clerk respectively, of the City of Bellevue, Nebraska, a municipality of the first class and political subdivision of the State of Nebraska, are signed to the foregoing instrument and who are each known to me and known to be such officers, acknowledged before me on this day and they, in their respective capacities as City Council President and City Clerk, executed and delivered said instrument as their voluntary act and deed and voluntary act and deed of such corporation.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

(Affix Notarial Seal)

My Commission Expires: \_\_\_\_\_

STATE OF NEBRASKA     )  
  ): SS.  
COUNTY OF DOUGLAS    )

The above and foregoing instrument was acknowledged before me this 1<sup>st</sup> day of February, 2022, by Amanda Brewer, President, on behalf of the organization.

My Commission Expires:  
November 4, 2023



Chyla Dyer  
\_\_\_\_\_  
NOTARY PUBLIC

**AGREEMENT  
BETWEEN THE CITY OF BELLEVUE AND  
HABITAT FOR HUMANITY OF SARPY COUNTY  
FOR EXPENDITURE OF  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS  
B-20-MC-31-0003**

THIS SUBRECIPIENT AGREEMENT FOR CDBG FUNDING entered into this 2nd day of March 2021, by and between the subrecipient HABITAT FOR HUMANITY OF SARPY COUNTY hereinafter referred to as the SUBRECIPIENT and the CITY OF BELLEVUE, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, a Grantee of the CDBG entitlement program, hereinafter referred to as the GRANTEE.

WHEREAS, the GRANTEE has applied for and received funds, Catalog of Federal Domestic Assistance Number 14-218 (CDBG), from the United States Government under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, the GRANTEE wishes to engage the SUBRECIPIENT to assist in the utilization of Community Development Block Grant (CDBG) funds from the B-20-MC-31-0003 HUD contract in the amount of \$38,000.00 for rehabilitation of a single-family housing unit project located within the city limits; and

NOW, THEREFORE, it is agreed between the parties hereto that:

**A. SCOPE OF SERVICE.**

1. **Activities.** The SUBRECIPIENT agrees to provide the GRANTEE eligible services, activities, and/or programs in accordance with the Community Development Block Grant regulations set forth in 24 CFR Part 570 as amended and the GRANTEE's CDBG program as described in the City of Bellevue's 2019-2023 Consolidated Plan. The GRANTEE will provide funding in the actual amount of expenditure, not to exceed \$38,000.00 from the B-20-MC-31-0003 funding allocation to the SUBRECIPIENT for the purpose of providing assistance for rehabilitation of a single-family housing unit which will then be made available for a low- and moderate-income household which is eligible under 24 CFR 570.202(a)(1) Rehabilitation: Single-Unit Residential. Such program will include the following activities eligible under the CDBG program:
  - a. **Program Delivery.** Funding will be provided for rehabilitation of a single family residential housing unit for household who meet program participation requirements, including living within Bellevue city limits and with an income at or below 80% of the Area Median Income (AMI) for the Omaha-Council Bluffs NE-IA HUD Metro FMR Area as determined by HUD. The major tasks performed by the SUBRECIPIENT will include, but are not limited to, the following:
    - i. Develop program metrics to document program performance in meeting CDBG National Objective goals and income benefit goals outlined in A.1.b-c.
    - ii. Maintain real property acquired or improved with CDBG funds in excess of \$25,000 with the approved use of the property for a minimum of five (5) years following expiration of this Agreement as outlined under 24 CFR 570.201.
    - iii. Maintain program records documenting household eligibility including race/ethnic data, income, and other characteristics to meet National Objective requirements and income benefit goals.

- b. Income Benefit Goals. It is anticipated that the program will benefit one (1) low- and moderate-income household with the rehabilitation of a single-family residential unit.
  - c. National Objective. All activities funded with CDBG funds must meet one of the CDBG program's National Objectives as defined in 24 CFR 570.208. The SUBRECIPIENT certifies that the activity carried out under this agreement will meet the National Objective benefit low- and moderate-income housing by benefiting low- and moderate-income households.
    - i. Income Definition. For the purposes of determining whether a person or household is low- and moderate-income, the SUBRECIPIENT will utilize the income definition under 24 CFR 570.3 Income (1)(iii) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.
    - ii. If a National Objectives is not met during this time period, the SUBRECIPIENT must reimburse the GRANTEE for the current fair market value, less any portion of the value attributable to non-CDBG funds.
2. Performance Monitoring. The SUBRECIPIENT at such times and in such forms as the GRANTEE may require, shall furnish performance reports pertaining to the activities undertaken pursuant to this Agreement to meet the CDBG National Objective. Such reports shall include, but not be limited to:
    - a. Statistical information including the number of persons, race, income, and head of household of the persons benefiting; and the number of persons that will be provided with new or improved access to services and/or facilities.
    - b. Update on the expenditure of funding as well as a timeline for expenditure update.
    - c. Any additional funds leveraged with CDBG funding.
    - d. Other reports as required by Section 570.507 of Title 24, 2 CFR Part 200, and as otherwise required by HUD and/or the GRANTEE.
  3. Site Visit. The GRANTEE's CDBG staff will perform periodic site visits to ascertain that approved program is proceeding properly. Site visits will include, but are not limited to, a semi-annual monitoring visit and close out visit at the conclusion of the project.
  4. Environmental Clearance. The SUBRECIPIENT shall carry out each activity in compliance with Federal laws and regulations described in 24 CFR 570 Subpart K, except that the SUBRECIPIENT does not assume the GRANTEE's environmental review responsibilities described in 24 CFR Part 570.604; and for initiating the review process under provisions of 24 CFR Part 52. All activities must have prior review to ensure environmental conformance through a site-specific review, i.e.: floodplain clearance, airport hazards Asbestos, Americans with Disabilities Act, etc. No grant funds may be disbursed for the project until environmental clearance has been received.
  5. Construction Work. The SURECIPIENT or its designee will be responsible for the construction work as specified herein and will procure the services and negotiate prices with subcontractors. As the require of the SUBRECIPIENT, the GRANTEE CDBG staff will provide technical assistance, i.e. prepare or review of the work write-up, etc. The construction work will be in compliance with all applicable Federal, state, and local rules and regulations governing these funds, and in a manner satisfactory to the GRANTEE.
  6. Time of Performance. The agreement will remain in effect for twelve (12) months from the date of execution.
  7. Ineligible Expenses. General maintenance costs are ineligible CDBG expenses, i.e. mowing,

replacement of expended light bulbs, and similar expenses which are necessary for the operation of the facility.

**B. RECORDS, REPORTING AND PAYMENT SCHEDULES.**

1. The amount available to the SUBRECIPIENT for eligible activities under this agreement shall not exceed \$38,000.00. Payments may be contingent upon certification of the SUBRECIPIENT's financial management system in accordance with acceptable standards specified in 2 CFR Part 200.302.
2. Records and Reporting. The SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570 that are pertinent to the activities to be funded under this AGREEMENT. Such records shall include but are not limited to:
  - a. Records providing a full description of each activity undertaken, including compliance with standards for public services in 24 CFR 570.201(e);
  - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program per 24 CFR 570.208;
  - c. Records required to determine the eligibility of activities per 24 CFR 570 Subpart C;
  - d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
  - e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
  - f. Financial records as required by 24 CFR 570.502 and 24 CFR 570.84.21-58; and
  - g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
3. DUNS Number. The SUBRECIPIENT must maintain a Subrecipient Unique Entity Identifier, or DUNS number, through the completion of the agreement. The GRANTEE must be able to verify the SUBRECIPIENT's registered DUNS number with SAM.gov prior to any grant funding being disbursed.
4. Quarterly Reporting. The SUBRECIPIENT shall provide the GRANTEE with quarterly activity reports through the completion of the funded activity. All activity reports are due to the CDBG Office of the GRANTEE on or before the 15th day of the month following the end of a quarter. The CDBG Fiscal Year will be October 1<sup>st</sup> to September 30<sup>th</sup>. Quarters will be:
  - a. 1<sup>st</sup> Quarter: October – December,
  - b. 2<sup>nd</sup> Quarter: January – March,
  - c. 3<sup>rd</sup> Quarter: April – June, and
  - d. 4<sup>th</sup> Quarter: July – September.
5. Record Retention. The SUBRECIPIENT shall retain all books, documents, papers, records and other materials involving all activities and transactions related to this agreement for at least five (5) years from the date of submission of the final activity report or until all audit findings have been resolved, whichever is later. The SUBRECIPIENT shall, as often as deemed necessary by the GRANTEE, permit authorized representatives of the GRANTEE and HUD to have full access to and the right to fully examine all such material.
6. Beneficiary Data. The SUBRECIPIENT shall maintain client data demonstrating client eligibility for services provided under the National Objective per 24 CFR 570.208. Such data shall include, but not be limited to client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to GRANTEE monitors or their designee for review upon request.

7. Disclosure. The SUBRECIPIENT understands that client information collected under this agreement is private and the use or disclosure of such information, when not directly connected with the administration of the activity with respect to services provided under this agreement, is prohibited unless written consent is obtained from such person receiving the service and, in the case of a minor, that of a responsible parent/guardian.
  
8. Purchasing Procedures.
  - a. For the purchase of supplies or contractual services, the SUBRECIPIENT will adhere to the following procedures:
    - i. \$0.00 to \$1,000.00 – Best Effort Pricing: Employee shall endeavor to obtain the best price for the item(s) through research or consultation with the Purchasing Agent.
    - ii. \$1,000.00-\$9,999.99 - Telephone Quotes: All purchases of supplies, equipment or contractual services in an amount of \$1,000 but under \$10,000.
    - iii. \$10,000.00-\$29,999.99 - Informal Bidding: Not published but competitive and documented for all purchases of supplies, equipment or contractual services in an amount \$10,000 but under \$30,000.
    - iv. \$30,000.00 or more - Formal Bidding (sealed bids): Published for all purchases of supplies, equipment or contractual services in an amount of \$30,000 or more.
  
  - b. The SUBRECIPIENT will submit the bids/quotes to the GRANTEE CDBG Office. Upon approval by the GRANTEE CDBG Office, a Notice to Proceed will be issued.
  
9. Contracting.
  - a. The SUBRECIPIENT shall not assign or transfer any interest in this agreement without the prior written consent of the GRANTEE; provided, however, that claims for money due or to become due to the SUBRECIPIENT from the GRANTEE under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the GRANTEE. All terms and conditions of this agreement shall apply to any approved subcontract or assignment related to the agreement.
  
  - b. Subcontracts.
    - i. Approvals. The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the GRANTEE prior to the execution of such agreement.
    - ii. Monitoring. The SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written quarterly reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.
    - iii. Content. The SUBRECIPIENT shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
    - iv. Selection Process. The SUBRECIPIENT shall ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. All subcontracts must have a DUNS number indicating eligibility to work on federal projects and be registered in the System for Award Management (www.sam.gov). Executed copies of all subcontracts

shall be forwarded to the GRANTEE along with documentation concerning the selection process.

10. Request for Payment.

- a. Request for funds may be made by the SUBRECIPIENT upon satisfactory completion of project requirements as specified in the agreement. The SUBRECIPIENT must submit a cover sheet or invoice requesting reimbursement for allowable expenses signed by the Authorized Representative, a copy of the original invoice, and any additional requested documentation. The GRANTEE will reimburse the SUBRECIPIENT directly. The request will be reviewed for payment by the GRANTEE and submitted for approval by the City Council during meetings on the 1<sup>st</sup> and 3<sup>rd</sup> Tuesday of each month. The GRANTEE will not be responsible for any late fees incurred and will not reimburse the agency for any late fees paid. There is no guarantee that funds will be reimbursed within a month's time. The payments are made only from monies available to the GRANTEE through the CDBG program and are subject to the availability of such funds.
- b. The SUBRECIPIENT's right to incur expenses under this Agreement shall cease upon expiration of Agreement. All requests for reimbursement on expenditures made prior to expiration of Agreement must be requested within thirty (30) days after expiration. Unless expressly authorized by the GRANTEE in writing, expenditures not requested within the thirty (30) day period after expiration of Agreement shall be disallowed and all funds shall be reclaimed by the GRANTEE.

11. Program Income. In accordance with 24 CFR 570.504(c), any program income as defined in 24 CFR 570.500, generated by activities carried out with CDBG funds made available under this agreement shall be reported quarterly to the GRANTEE by the SUBRECIPIENT. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR 570.504 and 2 CFR 200.307.

12. Timeliness. Funding allocated as part of this agreement must be expended within 12 months from the date of the agreement. The agreement may be eligible for one extension for one additional year.

- a. Agreement Extension Request. To be eligible for an agreement extension, the SUBRECIPIENT must provide a written request with narrative explaining the reason for the delay in project completion, an updated timeline for project completion, and any additional information as requested by the GRANTEE. The GRANTEE CDBG staff will review the request and prepare the request for City Council consideration. The GRANTEE CDBG staff reserves the right to reallocate any unexpended funds upon expiration of the agreement.

13. Close-outs.

- a. The SUBRECIPIENT's obligation to the GRANTEE shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advance, program income balances, an accounts receivable to the GRANTEE), and determining the custodianship of records. Notwithstanding the foregoing, the terms of the Agreement shall remain in effect during any period that the SUBRECIPIENT has control over CDBG funds, including program income.
- b. Upon expiration or termination of the Agreement, the SUBRECIPIENT will provide final versions

of all financial performance, and other reports that were a condition of the funding agreement, including, but not limited to:

- i. A final performance report,
- ii. A final request for payment, and
- iii. A final inventory of property in the SUBRECIPIENT's possession that was acquired or improved with CDBG funds.

### **C. GENERAL COMPLIANCE.**

1. The SUBRECIPIENT agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except the (1) the SUBRECIPIENT does not assume the GRANTEE's environmental responsibilities described in 2 CFR 570.604 and (2) the SUBRECIPIENT does not assume the GRANTEE's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The SUBRECIPIENT also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this agreement. The SUBRECIPIENT further agrees to utilize funds available under this Agreement to supplement rather than replace funds otherwise available.
2. Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The SUBRECIPIENT shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The GRANTEE shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the SUBRECIPIENT is an independent contractor.
3. Hold Harmless. The SUBRECIPIENT, to the extent permitted by law, shall hold harmless, defend and indemnify, the GRANTEE from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the SUBRECIPIENT's performance or nonperformance of the services or subject matter called for in this Agreement.
4. Workers' Compensation. The SUBRECIPIENT shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this agreement.
5. Insurance. The SUBRECIPIENT shall carry sufficient insurance coverage to protect agreement assets from loss due to theft, fraud and/or undue physical damage and comply with insurance requirement of 2 CFR 200.310. The SUBRECIPIENT is required to list the GRANTEE as additional insured with waiver of subrogation. The GRANTEE requires contracting insurance of \$1,000,000.00 limit for General Liability with a \$2,000,000.00 aggregate. The GRANTEE also requires the SUBRECIPIENT to carry workers compensation with a waiver of subrogation and a \$5,000,000.00 umbrella policy. The GRANTEE will review insurance requirements on a case by case basis if this a burden or not applicable under specific agreements.
6. Grantor Recognition. The SUBRECIPIENT shall insure recognition of the role of the GRANTEE in providing services through this agreement. All activities, facilities and items utilized pursuant to this agreement shall be prominently labeled as funded with CDBG funds from the GRANTEE. In addition, the SUBRECIPIENT will include reference to the support provided herein in all publications made possible with funds available under this agreement.

7. Amendments. The GRANTEE or SUBRECIPIENT may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this Agreement, nor relieve the GRANTEE or SUBRECIPIENT from its obligations under this Agreement.

The GRANTEE may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in funding, the scope of services, or schedule of activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendments signed by both the GRANTEE and SUBRECIPIENT.

8. Suspension or Termination. Either party may terminate this agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial termination of the Scope of Service in Section A above may only be undertaken with the prior approval of the GRANTEE. In the event of any termination for convenience and at any time, at the GRANTEE's option, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the SUBRECIPIENT under this Agreement shall, at the option of the GRANTEE, become the property of the GRANTEE, and the SUBRECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to termination.

The GRANTEE may also suspend or terminate this Agreement, in whole or in part without notice, if the SUBRECIPIENT materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein and all payments shall cease; and the GRANTEE may declare the SUBRECIPIENT ineligible for any further participation in the GRANTEE's contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe the SUBRECIPIENT is in noncompliance with any applicable rules or regulations, the GRANTEE may withhold up to fifteen (15) percent of said agreement funds due to be paid for past work until such time as the SUBRECIPIENT is found to be in compliance by the Grantee, or is otherwise adjudicated to be in compliance.

9. Eligibility Restrictions for Certain Resident Aliens. The SUBRECIPIENT agrees to abide by the provisions of 24 CFR 570.613 with respect to the eligibility restrictions for certain resident aliens. Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in this part of the regulation. The Grantee shall provide the City with any guidelines necessary for compliance with that portion of the regulation.
10. Architectural Barriers Act and Americans with Disabilities Act. The SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with the Architectural Barriers Act of 1968 which requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with the standards that ensure accessibility to, and use by, physically handicapped people. The SUBRECIPIENT also agrees to comply with federal regulations issued pursuant to compliance with the Americans with Disabilities Act which provide comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

#### **D. OTHER PROGRAM REQUIREMENTS.**

1. Civil Rights.

- a. Compliance. The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.
- b. Nondiscrimination. The SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The SUBRECIPIENT will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- c. Land Covenants. This agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and 24 CFR 570.601 and 602. In regard to sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this agreement, the SUBRECIPIENT shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, and providing that the GRANTEE and the United States are beneficiaries of the deed or lease entitled to enforce such covenants. The SUBRECIPIENT, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.
- d. Section 504. The SUBRECIPIENT agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1974, which prohibits discrimination against the handicapped in any federally assisted program. The GRANTEE shall provide the SUBRECIPIENT with any guidelines necessary for compliance with that portion of the regulations in force during the term of this agreement.

2. Affirmative Action.

- a. Plan. The SUBRECIPIENT agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.
- b. Women and Minority Owned Business Enterprises (W/MBE). The SUBRECIPIENT will use its best efforts to afford minority- and women-owned business enterprises Title 49 Code of Federal Regulations Part 23, the maximum practicable opportunity to participate in the performance of this agreement. As used in this agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish- speaking, Spanish surnamed or Spanish-heritage

Americans, Asian-Americans, and American Indians. The SUBRECIPIENT may rely on written representation by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

- c. Access to Records. The SUBRECIPIENT shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the GRANTEE, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
- d. Notifications. The SUBRECIPIENT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understandings, a notice, provided by the agency contracting officer, advising the labor union or worker's representative of the SUBRECIPIENT's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. EEO/AA Statement. The SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
- f. Subcontracting Provisions. The SUBRECIPIENT will include the provisions of Section D Paragraph 1, Civil Rights, and 2, Affirmative Action, in every subcontract or purchase orders, specifically or by reference, so that such provisions will be binding upon each of its subrecipients or subcontracts.

3. Employment Restrictions.

- a. Prohibited Activity. The SUBRECIPIENT is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or religious activities; lobbying, political patronage, and nepotism activities.
- b. Labor Standards. The SUBRECIPIENT agrees to comply with the requirements of the Secretary of Labor in accordance with Davis-Bacon Act as amended, the provisions of Contract: Work Hours and Safety Standards Act, the Copeland "Anti- Kickback" Act and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this agreement. The SUBRECIPIENT shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the GRANTEE for review upon request.

The SUBRECIPIENT agrees that all contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this agreement, shall comply with Federal requirements adopted by the GRANTEE pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeyworkers; provide, that if wage rates higher than those required under the regulations are imposed by state or local laws, nothing hereunder is intended to relieve the SUBRECIPIENT of its obligation, if any, to require payment of the higher wage. The SUBRECIPIENT will cause or require to be inserted in full, in all contracts subject to such regulations, provisions meeting the requirements of this paragraph.

c. "Section 3" Clause.

- i. Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this agreement, shall be a condition of the Federal financial assistance provided under this agreement and binding upon the Grantee, the SUBRECIPIENT and any of the SUBRECIPIENT's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the SUBRECIPIENT and any of the SUBRECIPIENT's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The SUBRECIPIENT certifies and agrees that no contractual or other disability exist which would prevent compliance with these requirements.

The SUBRECIPIENT further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Community Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The SUBRECIPIENT further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation, housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection to housing rehabilitation, housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which CDBG-funded project is located; where feasible, priority should be given to business concerns which provide economic opportunities to low- and very low - income residents within the service area or neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The SUBRECIPIENT certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements.

- ii. Notifications. The SUBRECIPIENT agrees to send to each labor organization or representative of worker with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

- iii. **Subcontracts.** The SUBRECIPIENT will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

4. **Conduct.**

- a. **Assignability.** The SUBRECIPIENT shall not assign or transfer any interest in this contract without the prior written consent of the GRANTEE. Notice of any such assignments or transfer shall be furnished promptly to the GRANTEE.
- b. **Subcontracts.** The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this agreement without the written consent of the GRANTEE prior to the execution of such agreement.
  - i. **Monitoring.** The SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions to correct areas of noncompliance.
  - ii. **Content.** The SUBRECIPIENT shall cause all the provisions of this agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
  - iii. **Selection Process.** The SUBRECIPIENT shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.
- c. **Hatch Act.** The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of the Title V United States Code.
- d. **Conflict of Interest.** The SUBRECIPIENT agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The SUBRECIPIENT further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the SUBRECIPIENT hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Grantee, or any designated public agencies or Subrecipients which are receiving funds under the CDBG Entitlement program.
- e. **Lobbying.** The SUBRECIPIENT hereby certifies that:
  - i. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any

- cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
  - ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
  - iii. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly; and
  - iv. Lobby Certification.  
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- f. **Copyright.** If this agreement results in any copyrightable materials or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.
- g. **Religious Organization.** The SUBRECIPIENT agrees that funds provided under this agreement will not be utilized for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200(j).
5. **Relocation and One-For-One Housing Replacement.** The displacement of any person as a direct result of rehabilitation for a CDBG-assisted project must comply with 24 CFR 570.606 and 49 CFR Part 24. The SUBRECIPIENT will conduct the CDBG activities so as to minimize displacement, and if displacement occurs, the displaced persons or entities must be provided assistance consistent with the Uniform Relocation Act.

**E. UNIFORM ADMINISTRATIVE REQUIREMENTS.**

1. The SUBRECIPIENT shall comply with the administrative regulations, including, but not limited to, 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" Final Guidance applicable to HUD Federal Award Recipients. Requirements and standards under 2 CFR 200 which supersedes, consolidates, and streamlines requirements from eight OMB Circulars, including:
- a. A-21, Cost Principles for Educational Institutions,
  - b. A-87, Cost Principles for State, Local, and Indian Tribal Governments,
  - c. A-89, Catalog of Federal Domestic Assistance,
  - d. A-102, Grants and Cooperative Agreements with State and Local Governments,
  - e. A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,
  - f. A-122, Cost Principles for Non-Profit Organizations,

- g. A-133, Audits of States, Local Governments, and Non-Profit Organizations, and
- h. The guidance in OMB Circular A-50, Audit Follow Up, on Single Audit Act follow-up.

- 2. Cost Principles. The SUBRECIPIENTS shall comply with the requirements under 2 CFR 200, Subpart E, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.
- 3. Audits. The SUBRECIPIENT is required to comply with 2 CFR 200, Subpart F, as applicable, which supersedes OMB Circular A-133 "Audits of Institutions of State, Local Government, and Nonprofit Institutions". If the SUBRECIPIENT spends \$750,000 or more a fiscal year in Federal awards, the SUBRECIPIENT hereby agrees to have an annual agency audit conducted in accordance with the OMB Super Circular.

**F. INSURANCE REQUIREMENTS.**

- 1. Insurance and Bonding. The SUBRECIPIENT shall carry sufficient insurance coverage to protect agreement assets from loss due to theft, fraud and/or undue physical damage, and at a minimum shall purchase a blanket fidelity bond covering all clients benefiting from the CDBG funded activity in an amount equal to cash advances from the GRANTEE.

**G. AGREEMENT MOTIFICATIONS.**

- 1. In the event the parties fail to agree on changes or interpretations of this agreement, the decision of the GRANTEE shall prevail. In the event of any disagreement between the SUBRECIPIENT and the GRANTEE relating to the funded activity and materials purchased and its conformity to the requirements of this agreement, the decision of the GRANTEE shall prevail.
- 2. This agreement is subject to such modification as may be required by federal law or regulations. Any such modification may be done unilaterally by the GRANTEE.
- 3. Except as otherwise provided in this agreement, the rehabilitation activities to be completed and the total grant award may be modified only by written agreement of the authorized representatives of the parties to this agreement.

**H. REVERSION OF ASSETS.**

- 1. Any CDBG funds on hand at the time the agreement expires, including accounts receivable, shall be returned. The SUBRECIPIENT assures that any real property acquired or improved with CDBG funds in excess of \$25,000 meets the requirements specified in 24 CFR 570.503(b)(7). The SUBRECIPIENT will not have control of CDBG funds, nor will any property be purchased in excess of \$25,000.

**I. SUSPENSION OR TERMINATION OF AGREEMENT.**

- 1. In accordance with 24 CFR 85.43, the GRANTEE may suspend or terminate this agreement should the SUBRECIPIENT violate any terms or conditions thereof.

2. This agreement may be terminated or suspended in whole or in part at any time by the GRANTEE for cause. The GRANTEE may refuse to disburse additional funds or require return of all or part of funds already disbursed. The decision of the GRANTEE shall prevail. Grounds constituting cause include but are not limited to:
  - a. Failure by the SUBRECIPIENT to comply with the provisions of this agreement or with any applicable laws, regulations, guidelines or procedures, or is unduly dilatory in executing its commitments under this agreement.
  - b. Purposes for the funds have not been or will not be fulfilled, or would be illegal to carry out.
  - c. The SUBRECIPIENT has submitted incorrect or incomplete documentation pertaining to this agreement.
  
4. In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.
  
5. In the event of termination or suspension, all materials/equipment purchased through the agreement shall, at the option of the GRANTEE, become the property of the GRANTEE, and the SUBRECIPIENT shall be entitled to payment for otherwise valid and allowable obligations incurred in good faith prior to notice of such action. The option of the GRANTEE constitutes a security interest in any materials/equipment purchased or property improved by expenditure of the funds for as long as such materials/equipment or improvements have any value unless the GRANTEE declines its option or releases its security interest. Recording of this agreement shall be effective as a financing statement noticing the security interest of the GRANTEE as created herein. In addition, the GRANTEE shall have a lien against the improved real estate to the extent of expenditures of these funds and to secure repayment of such funds in the event of cessation of operations, sale, transfer of the property in any manner whatsoever, voluntary or involuntary receivership, or application for bankruptcy by the SUBRECIPIENT.

**J. NOTICES.**

1. All notices required or permitted to be given under this agreement may be personally delivered or mailed to the following addresses.
  - a. To GRANTEE: City Administrator  
City of Bellevue  
1500 Wall Street  
Bellevue, NE 68005
  
  - b. To SUBRECIPIENT: President and/or Grant Specialist  
Habitat for Humanity of Sarpy County  
812 Bruin Boulevard  
Bellevue, NE 68005
  
  - c. Copy to: Finance Director  
City of Bellevue

1500 Wall Street  
Bellevue, NE 68005

Paul Cook  
Paul Cook, City Council President  
City of Bellevue, Nebraska

Amanda Brewer  
Amanda Brewer, President  
Habitat for Humanity of Sarpy County

Rich Severson  
Rich Severson, Finance Director  
City of Bellevue, Nebraska

J. Daniel Brewer  
J. Daniel Brewer, Grant Specialist  
Habitat for Humanity of Sarpy County

ATTEST:

Susan Kluthe  
Susan Kluthe, City Clerk  
City of Bellevue, NE



STATE OF NEBRASKA )  
 ) : SS.  
COUNTY OF SARPY )

The undersigned, a notary public qualified in and for said county, does hereby certify that Paul Cook <sup>Council President</sup> and Susan Kluthe, whose names as Mayor and City Clerk respectively, of the City of Bellevue, Nebraska, a municipality of the first class and political subdivision of the State of Nebraska, are signed to the foregoing instrument and who are each known to me and known to be such officers, acknowledged before me on this day and they, in their respective capacities as Mayor and City Clerk, executed and delivered said instrument as their voluntary act and deed and voluntary act and deed of such corporation.

WITNESS my hand and official seal.

Signature: Shirley R. Harbin  
(Affix Notarial Seal)

My Commission Expires: August 23, 2023

STATE OF NEBRASKA )  
 ) : SS.  
COUNTY OF DOUGLAS )

The above and foregoing instrument was acknowledged before me this 1 day of March, 2021, by Amanda Brewer, President, on behalf of the organization.

My Commission Expires: 2-14-2024

[Signature]  
NOTARY PUBLIC

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Finance/CDBG	
AGENDA ITEM:	CONSENT AGENDA <input type="checkbox"/>	SPECIAL PRESENTATION <input type="checkbox"/>	
LIQUOR LICENSE <input type="checkbox"/>	ORDINANCE <input type="checkbox"/>	PUBLIC HEARING <input type="checkbox"/>	
RESOLUTION <input type="checkbox"/>	CURRENT BUSINESS <input checked="" type="checkbox"/>	OTHER <input type="checkbox"/>	

SUBJECT:

Amendment extending the 2020 CDBG Subrecipient Agreement with Eastern Nebraska Community Action Partnership (ENCAP) for the Bellevue Food Pantry Delivery Assistance Program.

SYNOPSIS/BACKGROUND:

The City of Bellevue executed a CDBG subrecipient agreement with ENCAP for the Food Pantry Delivery Assistance Program on March 2, 2021, as outlined in the 2020 Action Plan with the Time of Performance expiring one-year from the date of execution. The project was funded \$56,298.00 and has a current balance of \$19,067.34. ENCAP has requested an extension of the agreement to retain use of the funds for the approved activities. The subrecipient agreement allows for a one-year extension upon request by the subrecipient. Staff recommends approval of an extension for the use of funds and will assist ENCAP to complete the project in accordance with HUD regulations.

FISCAL IMPACT: 19,067.34 BUDGETED FUNDS?: YES GRANT/MATCHING FUNDS?: NO Not Required

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: YES	COUNTER-PARTY: ENCAP	INTERLOCAL AGREEMENT: NO
CONTRACT DESCRIPTION: Amendment to the 2020 CDBG Subrecipient Agreement		
CONTRACT EFFECTIVE DATE: 02/15/2022	CONTRACT TERM: 1 year	CONTRACT END DATE: 02/14/2023
PROJECT NAME: ENCAP Food Delivery Program		
START DATE: 02/15/2022	END DATE: 02/14/2023	PAYMENT DATE: <input type="text"/>
		INSURANCE REQUIRED: YES
CIP PROJECT NAME: <input type="text"/>	CIP PROJECT NUMBER: <input type="text"/>	
STREET DISTRICT NAME (S): <input type="text"/>	STREET DISTRICT NUMBER (S): <input type="text"/>	
ACCOUNTING DISTRIBUTION CODE: CDBG-192103	ACCOUNT NUMBER: 60/1903/192103/450	

RECOMMENDATION:

Approve and authorize City Council President\* to sign the amendment extending the CDBG subrecipient agreement with Eastern Nebraska Community Action Partnership

\*The City Council President signed all 2020 CDBG program documents due to the Mayor's conflict of interest.

ATTACHMENTS:

- |                              |                                     |                             |
|------------------------------|-------------------------------------|-----------------------------|
| 1. Extension Request - ENCAP | 2. 2020 CDBG Subrecipient Agreement | 3. 2020 Agreement Amendment |
| 4. <input type="text"/>      | 5. <input type="text"/>             | 6. <input type="text"/>     |

SIGNATURES:

LEGAL APPROVAL AS TO FORM: \_\_\_\_\_

FINANCE APPROVAL AS TO FORM: \_\_\_\_\_

ADMINISTRATOR APPROVAL AS TO FORM: \_\_\_\_\_

*A. Breyer*  
*[Signature]*  
*[Signature]*



Abby Highland  
CDBG Program Coordinator  
1500 Wall Street  
Bellevue, NE 68005

February 1, 2022

Ms. Highland,

This letter is to request an extension related to the Community Development Block Grant (CDBG) funds awarded to Eastern Nebraska Community Action Partnership (ENCAP) for the Food Delivery Program during the 2020 funding cycle in the amount of \$56,298.00.

**1. Narrative explaining the reason for the delay in project completion:**

- a. The impact of the COVID-19 pandemic has, and continues to affect all aspects of our work. Our original project timeline for purchasing a vehicle within 60 days of the award was pushed back approximately 30 days (from June 2, to June 29) due to COVID related supply chain issues, and the low availability of the type vehicle we were seeking (2021 Ford Transit Connect). Due to its location in another state, it took longer than anticipated to purchase, receive and license, insure and register the vehicle.
- b. We projected that we would hire a part-time driver within the first 90-days of the project (May 31, 2021). Finding the right candidate for our delivery position took approximately 24 days longer than expected. The part-time driver position was filled by June 24, 2021.
- c. We underestimated the time it would take to advertise, and get clients on a regular food delivery schedule which resulted in a delay getting the program off the ground. Since that time we have distributed thousands of flyers out in the community and have been working with community partners to spread the word through local social service networks.
- d. With a brand new vehicle, the cost of repairs and maintenance has been minimal compared to what was originally budgeted.

**2. Updated Timeline for Project Completion:**

- a. We are currently incurring approximately \$2,500 per month in program expenses. At this rate of expenditure, we anticipate that funds will be fully exhausted by the close of our fiscal year, September 30, 2022.

Thank you for your consideration of this request. The food delivery program has proved to be a lifeline to households experiencing food insecurity in Bellevue. It makes a significant difference when we are able to meet families where they are and provide emergency hunger relief services to their doorstep. The people ENCAP serves face challenging situations every day – and show such resilience – and CDBG support ensures that their basic needs are met, so that they can move forward with their lives as they work hard toward longer-term stability.

Sincerely,

A handwritten signature in blue ink, appearing to read "Aaron Bowen".

Aaron Bowen, ENCAP Executive Director

**FIRST AMENDMENT TO THE AGREEMENT  
BETWEEN THE CITY OF BELLEVUE AND  
EASTERN NEBRASKA COMMUNITY ACTION PARTNERSHIP  
FOR EXPENDITURE OF  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS  
B-20-MC-31-0003**

THIS FIRST AMENDMENT TO THE SUBRECIPIENT AGREEMENT FOR CDBG FUNDING entered into this \_\_\_\_ day of \_\_\_\_, 2022, by and between the subrecipient EASTERN NEBRASKA COMMUNITY ACTION PARTNERSHIP ("SUBRECIPIENT") and the CITY OF BELLEVUE, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, a Grantee of the CDBG entitlement program, ("GRANTEE") (Collectively referred to as the "Parties).

WHEREAS, the GRANTEE has applied for and received funds, Catalog of Federal Domestic Assistance Number 14-218 (CDBG), from the United States Government under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, the GRANTEE wishes to engage the SUBRECIPIENT to assist in the utilization of Community Development Block Grant (CDBG) funds from the B-20-MC-31-0003 HUD contract in the amount of \$56,298.00 for a Bellevue Food Pantry Food Delivery Program program; and

WHEREAS, the Parties entered into a Subrecipient Agreement for CDBG Funding on or about the 2nd day of March, 2021 (the "Agreement").

WHEREAS, the Parties desire to amend the Agreement to extend the term thereof, update the Timeliness and Time of Performance by the SUBRECIPIENT to the GRANTEE, and to otherwise modify the Agreement as provided for herein; and

WHEREAS, the Parties therefore intend that the terms of the Agreement shall be so modified; and

WHEREAS, that all other terms and conditions of the Agreement, except to the extent expressly amended herein, shall remain in full force and effect.

NOW, THEREFORE, it is agreed between the Parties hereto that:

**AGREEMENT AMENDMENT**

NOW, THEREFORE, in consideration of the premises and obligations as set forth in this Amendment, the receipt and adequacy of which is hereby agreed and acknowledged, the Parties agree that the Agreement shall be amended as follows:

**A. SCOPE OF SERVICE.**

1. Time of Performance. The time of performance of this Agreement is hereby extended and will remain in effect through February 14, 2023.
2. Timeliness. Funding allocated as part of this agreement must be expended by February 14, 2023. Any remaining balance following the expiration of this agreement shall be eligible for reallocation by the GRANTEE.

\_\_\_\_\_  
Paul Cook, City Council President  
City of Bellevue, Nebraska

*Daniel A. Esch*

\_\_\_\_\_  
Daniel A. Esch, President  
Eastern Nebraska Community Action Partnership

\_\_\_\_\_  
Rich Severson, Finance Director  
City of Bellevue, Nebraska

*[Signature]*

\_\_\_\_\_  
Aaron Bowen, Executive Director  
Eastern Nebraska Community Action Partnership

ATTEST:

\_\_\_\_\_  
Susan Kluthe, City Clerk  
City of Bellevue, NE

STATE OF NEBRASKA     )  
  ): SS.  
COUNTY OF SARPY     )

The undersigned, a notary public qualified in and for said county, does hereby certify that Paul Cook and Susan Kluthe, whose names as City Council President and City Clerk respectively, of the City of Bellevue, Nebraska, a municipality of the first class and political subdivision of the State of Nebraska, are signed to the foregoing instrument and who are each known to me and known to be such officers, acknowledged before me on this day and they, in their respective capacities as City Council President and City Clerk, executed and delivered said instrument as their voluntary act and deed and voluntary act and deed of such corporation.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

(Affix Notarial Seal)

My Commission Expires: \_\_\_\_\_

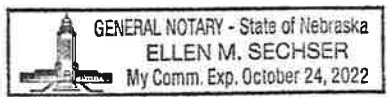
STATE OF NEBRASKA     )  
  )  
COUNTY OF ~~SARPY~~ DOUGLAS     ): SS.  
  )

The above and foregoing instrument was acknowledged before me this 3rd day of February, 2022, by Daniel A. Esch, President, Eastern Nebraska Community Action Partnership, on behalf of the organization.

My Commission Expires:  
10/24/2022

*[Signature]*

NOTARY PUBLIC



**AGREEMENT  
BETWEEN THE CITY OF BELLEVUE AND  
EASTERN NEBRASKA COMMUNITY ACTION PARTNERSHIP  
FOR EXPENDITURE OF  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS  
B-20-MC-31-0003**

THIS SUBRECIPIENT AGREEMENT FOR CDBG FUNDING entered into this 2nd day of March 2021, by and between the subrecipient EASTERN NEBRASKA COMMUNITY ACTION PARTNERSHIP hereinafter referred to as the SUBRECIPIENT and the CITY OF BELLEVUE, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, a Grantee of the CDBG entitlement program, hereinafter referred to as the GRANTEE.

WHEREAS, the GRANTEE has applied for and received funds, Catalog of Federal Domestic Assistance Number 14-218 (CDBG), from the United States Government under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, the GRANTEE wishes to engage the SUBRECIPIENT to assist in the utilization of Community Development Block Grant (CDBG) funds from the B-20-MC-31-0003 HUD contract in the amount of \$56,298.00 for a Bellevue Food Pantry Food Delivery Program program; and

NOW, THEREFORE, it is agreed between the parties hereto that:

**A. SCOPE OF SERVICE.**

1. **Activities.** The SUBRECIPIENT agrees to provide the GRANTEE eligible services, activities, and/or programs in accordance with the Community Development Block Grant regulations set forth in 24 CFR Part 570 as amended and the GRANTEE's CDBG program as described in the City of Bellevue's 2019-2023 Consolidated Plan. The GRANTEE will provide funding in the actual amount of expenditure, not to exceed \$56,298.00 from the B-20-MC-31-0003 funding allocation to the SUBRECIPIENT for the purpose of providing food delivery service to low- and moderate-income households who are unable to travel to and utilize the food pantry in its locations which is eligible under 24 CFR 570.201(e) Public Service. Such program will include the following activities eligible under the CDBG program:
  - a. **Program Delivery.** To provide a food delivery program including, but not limited to, vehicle purchase for the door drop delivery of emergency food packages to eligible households. The major tasks the SUBRECIPIENT will perform include, but are not necessarily limited to the following:
    - i. Develop program guidelines, eligibility requirements, and review procedures for the assistance program.
    - ii. Maintain control and use of purchased property for the CDBG activity, maintain accurate records, and take care of vehicle in accordance with 24 CFR 84.34 and 2 CFR 200.313.
    - iii. Develop program metrics to document program performance in meeting CDBG National Objective goals and income benefit goals outlined in A.1.b-c.
    - iv. Maintain program records documenting participation eligibility including race and ethnic data, household income and other characteristics, and access to services for household benefiting from service provided to meet National Objective requirements and income benefit goals.



retained or sold and the GRANTEE shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by GRANTEE's share of the equipment.

- c. In cases where a GRANTEE or SUBRECIPIENT fails to take appropriate disposition actions, HUD may direct the GRANTEE or SUBRECIPIENT to take excess and disposition actions.

**B. RECORDS, REPORTING AND PAYMENT SCHEDULES.**

1. The amount available to the SUBRECIPIENT for eligible activities under this agreement shall not exceed \$56,298.00. Payments may be contingent upon certification of the SUBRECIPIENT's financial management system in accordance with acceptable standards specified in 2 CFR Part 200.302.
2. Records and Reporting. The SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570 that are pertinent to the activities to be funded under this AGREEMENT. Such records shall include but are not limited to:
  - a. Records providing a full description of each activity undertaken, including compliance with standards for public services in 24 CFR 570.201(e);
  - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program per 24 CFR 570.208;
  - c. Records required to determine the eligibility of activities per 24 CFR 570 Subpart C;
  - d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
  - e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
  - f. Financial records as required by 24 CFR 570.502 and 24 CFR 570.84.21-58; and
  - g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
3. DUNS Number. The SUBRECIPIENT must maintain a Subrecipient Unique Entity Identifier, or DUNS number, through the completion of the agreement. The GRANTEE must be able to verify the SUBRECIPIENT's registered DUNS number with SAM.gov prior to any grant funding being disbursed.
4. Quarterly Reporting. The SUBRECIPIENT shall provide the GRANTEE with quarterly activity reports through the completion of the funded activity. All activity reports are due to the CDBG Office of the GRANTEE on or before the 15th day of the month following the end of a quarter. The CDBG Fiscal Year will be October 1<sup>st</sup> to September 30<sup>th</sup>. Quarters will be:
  - a. 1<sup>st</sup> Quarter: October – December,
  - b. 2<sup>nd</sup> Quarter: January – March,
  - c. 3<sup>rd</sup> Quarter: April – June, and
  - d. 4<sup>th</sup> Quarter: July – September.
5. Record Retention. The SUBRECIPIENT shall retain all books, documents, papers, records and other materials involving all activities and transactions related to this agreement for at least five (5) years from the date of submission of the final activity report or until all audit findings have been resolved, whichever is later. The SUBRECIPIENT shall, as often as deemed necessary by the GRANTEE, permit authorized representatives of the GRANTEE and HUD to have full access to and the right to fully examine all such material.
6. Beneficiary Data. The SUBRECIPIENT shall maintain client data demonstrating client eligibility for services provided under the National Objective per 24 CFR 570.208. Such data shall include, but not be limited to client name, address, income level or other basis for determining eligibility, and description

of service provided. Such information shall be made available to GRANTEE monitors or their designee for review upon request.

7. Disclosure. The SUBRECIPIENT understands that client information collected under this agreement is private and the use or disclosure of such information, when not directly connected with the administration of the activity with respect to services provided under this agreement, is prohibited unless written consent is obtained from such person receiving the service and, in the case of a minor, that of a responsible parent/guardian.

8. Purchasing Procedures.

- a. For the purchase of supplies or contractual services, the SUBRECIPIENT will adhere to the following procedures:
  - i. \$0.00 to \$1,000.00 – Best Effort Pricing: Employee shall endeavor to obtain the best price for the item(s) through research or consultation with the Purchasing Agent.
  - ii. \$1,000.00-\$9,999.99 - Telephone Quotes: All purchases of supplies, equipment or contractual services in an amount of \$1,000 but under \$10,000.
  - iii. \$10,000.00-\$29,999.99 - Informal Bidding: Not published but competitive and documented for all purchases of supplies, equipment or contractual services in an amount \$10,000 but under \$30,000.
  - iv. \$30,000.00 or more - Formal Bidding (sealed bids): Published for all purchases of supplies, equipment or contractual services in an amount of \$30,000 or more.
- b. The SUBRECIPIENT will submit the bids/quotes to the GRANTEE CDBG Office. Upon approval by the GRANTEE CDBG Office, a Notice to Proceed will be issued.

9. Contracting.

- a. The SUBRECIPIENT shall not assign or transfer any interest in this agreement without the prior written consent of the GRANTEE; provided, however, that claims for money due or to become due to the SUBRECIPIENT from the GRANTEE under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the GRANTEE. All terms and conditions of this agreement shall apply to any approved subcontract or assignment related to the agreement.
- b. Subcontracts.
  - i. Approvals. The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the GRANTEE prior to the execution of such agreement.
  - ii. Monitoring. The SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written quarterly reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.
  - iii. Content. The SUBRECIPIENT shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
  - iv. Selection Process. The SUBRECIPIENT shall ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. All subcontracts must have a

DUNS number indicating eligibility to work on federal projects and be registered in the System for Award Management (www.sam.gov). Executed copies of all subcontracts shall be forwarded to the GRANTEE along with documentation concerning the selection process.

10. Request for Payment.

- a. Request for funds may be made by the SUBRECIPIENT upon satisfactory completion of project requirements as specified in the agreement. The SUBRECIPIENT must submit a cover sheet or invoice requesting reimbursement for allowable expenses signed by the Authorized Representative, a copy of the original invoice, and any additional requested documentation. The GRANTEE will reimburse the SUBRECIPIENT directly. The request will be reviewed for payment by the GRANTEE and submitted for approval by the City Council during meetings on the 1<sup>st</sup> and 3<sup>rd</sup> Tuesdays of each month. The GRANTEE will not be responsible for any late fees incurred and will not reimburse the agency for any late fees paid. There is no guarantee that funds will be reimbursed within a month's time. The payments are made only from monies available to the GRANTEE through the CDBG program and are subject to the availability of such funds.
- b. The SUBRECIPIENT's right to incur expenses under this Agreement shall cease upon expiration of Agreement. All requests for reimbursement on expenditures made prior to expiration of Agreement must be requested within thirty (30) days after expiration. Unless expressly authorized by the GRANTEE in writing, expenditures not requested within the thirty (30) day period after expiration of Agreement shall be disallowed and all funds shall be reclaimed by the GRANTEE.

11. Program Income. In accordance with 24 CFR 570.504(c), any program income as defined in 24 CFR 570.500, generated by activities carried out with CDBG funds made available under this agreement shall be reported quarterly to the GRANTEE by the SUBRECIPIENT. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR 570.504 and 2 CFR 200.307.

12. Timeliness. Funding allocated as part of this agreement must be expended within 12 months from the date of the agreement. The agreement may be eligible for one extension for one additional year.

- a. Agreement Extension Request. To be eligible for an agreement extension, the SUBRECIPIENT must provide a written request with narrative explaining the reason for the delay in project completion, an updated timeline for project completion, and any additional information as requested by the GRANTEE. The GRANTEE CDBG staff will review the request and prepare the request for City Council consideration. The GRANTEE CDBG staff reserves the right to reallocate any unexpended funds upon expiration of the agreement.

13. Close-outs.

- a. The SUBRECIPIENT's obligation to the GRANTEE shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advance, program income balances, an accounts receivable to the GRANTEE), and determining the custodianship of records. Notwithstanding the foregoing, the terms of the Agreement shall remain in effect during any period that the SUBRECIPIENT has control over CDBG funds, including program income.

- b. Upon expiration or termination of the Agreement, the SUBRECIPIENT will provide final versions of all financial performance, and other reports that were a condition of the funding agreement, including, but not limited to:
  - i. A final performance report,
  - ii. A final request for payment, and
  - iii. A final inventory of property in the SUBRECIPIENT's possession that was acquired or improved with CDBG funds.

### **C. GENERAL COMPLIANCE.**

1. The SUBRECIPIENT agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except the (1) the SUBRECIPIENT does not assume the GRANTEE's environmental responsibilities described in 2 CFR 570.604 and (2) the SUBRECIPIENT does not assume the GRANTEE's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The SUBRECIPIENT also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this agreement. The SUBRECIPIENT further agrees to utilize funds available under this Agreement to supplement rather than replace funds otherwise available.
2. Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The SUBRECIPIENT shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The GRANTEE shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the SUBRECIPIENT is an independent contractor.
3. Hold Harmless. The SUBRECIPIENT, to the extent permitted by law, shall hold harmless, defend and indemnify, the GRANTEE from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the SUBRECIPIENT's performance or nonperformance of the services or subject matter called for in this Agreement.
4. Workers' Compensation. The SUBRECIPIENT shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this agreement.
5. Insurance. The SUBRECIPIENT shall carry sufficient insurance coverage to protect agreement assets from loss due to theft, fraud and/or undue physical damage and comply with insurance requirement of 2 CFR 200.310. The SUBRECIPIENT is required to list the GRANTEE as additional insured with waiver of subrogation. The GRANTEE requires contracting insurance of \$1,000,00 limit for General Liability with a \$2,000,000.00 aggregate. The GRANTEE also requires the SUBRECIPIENT to carry workers compensation with a waiver of subrogation and a \$5,000,000.00 umbrella policy. The GRANTEE will review insurance requirements on a case by case basis if this a burden or not applicable under specific agreements.
6. Grantor Recognition. The SUBRECIPIENT shall insure recognition of the role of the GRANTEE in providing services through this agreement. All activities, facilities and items utilized pursuant to this agreement shall be prominently labeled as funded with CDBG funds from the GRANTEE. In addition, the SUBRECIPIENT will include reference to the support provided herein in all publications made possible with funds available under this agreement.

7. Amendments. The GRANTEE or SUBRECIPIENT may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this Agreement, nor relieve the GRANTEE or SUBRECIPIENT from its obligations under this Agreement.

The GRANTEE may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in funding, the scope of services, or schedule of activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendments signed by both the GRANTEE and SUBRECIPIENT.

8. Suspension or Termination. Either party may terminate this agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial termination of the Scope of Service in Section A above may only be undertaken with the prior approval of the GRANTEE. In the event of any termination for convenience and at any time, at the GRANTEE's option, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the SUBRECIPIENT under this Agreement shall, at the option of the GRANTEE, become the property of the GRANTEE, and the SUBRECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to termination.

The GRANTEE may also suspend or terminate this Agreement, in whole or in part without notice, if the SUBRECIPIENT materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein and all payments shall cease; and the GRANTEE may declare the SUBRECIPIENT ineligible for any further participation in the GRANTEE's contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe the SUBRECIPIENT is in noncompliance with any applicable rules or regulations, the GRANTEE may withhold up to fifteen (15) percent of said agreement funds due to be paid for past work until such time as the SUBRECIPIENT is found to be in compliance by the Grantee, or is otherwise adjudicated to be in compliance.

9. Eligibility Restrictions for Certain Resident Aliens. The SUBRECIPIENT agrees to abide by the provisions of 24 CFR 570.613 with respect to the eligibility restrictions for certain resident aliens. Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in this part of the regulation. The Grantee shall provide the City with any guidelines necessary for compliance with that portion of the regulation.
10. Architectural Barriers Act and Americans with Disabilities Act. The SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with the Architectural Barriers Act of 1968 which requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with the standards that ensure accessibility to, and use by, physically handicapped people. The SUBRECIPIENT also agrees to comply with federal regulations issued pursuant to compliance with the Americans with Disabilities Act which provide comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

#### **D. OTHER PROGRAM REQUIREMENTS.**

1. Civil Rights.

- a. Compliance. The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.
- b. Nondiscrimination. The SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The SUBRECIPIENT will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- c. Land Covenants. This agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and 24 CFR 570.601 and 602. In regard to sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this agreement, the SUBRECIPIENT shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, and providing that the GRANTEE and the United States are beneficiaries of the deed or lease entitled to enforce such covenants. The SUBRECIPIENT, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.
- d. Section 504. The SUBRECIPIENT agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1974, which prohibits discrimination against the handicapped in any federally assisted program. The GRANTEE shall provide the SUBRECIPIENT with any guidelines necessary for compliance with that portion of the regulations in force during the term of this agreement.

## 2. Affirmative Action.

- a. Plan. The SUBRECIPIENT agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.
- b. Women and Minority Owned Business Enterprises (W/MBE). The SUBRECIPIENT will use its best efforts to afford minority- and women-owned business enterprises Title 49 Code of Federal Regulations Part 23, the maximum practicable opportunity to participate in the performance of this agreement. As used in this agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish- speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The SUBRECIPIENT may rely on written

representation by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

- c. Access to Records. The SUBRECIPIENT shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the GRANTEE, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
- d. Notifications. The SUBRECIPIENT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understandings, a notice, provided by the agency contracting officer, advising the labor union or worker's representative of the SUBRECIPIENT's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. EEO/AA Statement. The SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
- f. Subcontracting Provisions. The SUBRECIPIENT will include the provisions of Section D Paragraph 1, Civil Rights, and 2, Affirmative Action, in every subcontract or purchase orders, specifically or by reference, so that such provisions will be binding upon each of its subrecipients or subcontracts.

3. Employment Restrictions.

- a. Prohibited Activity. The SUBRECIPIENT is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or religious activities; lobbying, political patronage, and nepotism activities.
- b. Labor Standards. The SUBRECIPIENT agrees to comply with the requirements of the Secretary of Labor in accordance with Davis-Bacon Act as amended, the provisions of Contract: Work Hours and Safety Standards Act, the Copeland "Anti- Kickback" Act and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this agreement. The SUBRECIPIENT shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the GRANTEE for review upon request.

The SUBRECIPIENT agrees that all contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this agreement, shall comply with Federal requirements adopted by the GRANTEE pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeyworkers; provide, that if wage rates higher than those required under the regulations are imposed by state or local laws, nothing hereunder is intended to relieve the SUBRECIPIENT of its obligation, if any, to require payment of the higher wage. The SUBRECIPIENT will cause or require to be inserted in full, in all contracts subject to such regulations, provisions meeting the requirements of this paragraph.

- c. "Section 3" Clause.

- i. **Compliance.** Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this agreement, shall be a condition of the Federal financial assistance provided under this agreement and binding upon the Grantee, the SUBRECIPIENT and any of the SUBRECIPIENT's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the SUBRECIPIENT and any of the SUBRECIPIENT's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The SUBRECIPIENT certifies and agrees that no contractual or other disability exist which would prevent compliance with these requirements.

The SUBRECIPIENT further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Community Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The SUBRECIPIENT further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation, housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection to housing rehabilitation, housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which CDBG-funded project is located; where feasible, priority should be given to business concerns which provide economic opportunities to low- and very low-income residents within the service area or neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The SUBRECIPIENT certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements.

- ii. **Notifications.** The SUBRECIPIENT agrees to send to each labor organization or representative of worker with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

- iii. **Subcontracts.** The SUBRECIPIENT will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

#### 4. Conduct.

- a. **Assignability.** The SUBRECIPIENT shall not assign or transfer any interest in this contract without the prior written consent of the GRANTEE. Notice of any such assignments or transfer shall be furnished promptly to the GRANTEE.
- b. **Subcontracts.** The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this agreement without the written consent of the GRANTEE prior to the execution of such agreement.
  - i. **Monitoring.** The SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions to correct areas of noncompliance.
  - ii. **Content.** The SUBRECIPIENT shall cause all the provisions of this agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
  - iii. **Selection Process.** The SUBRECIPIENT shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.
- c. **Hatch Act.** The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of the Title V United States Code.
- d. **Conflict of Interest.** The SUBRECIPIENT agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The SUBRECIPIENT further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the SUBRECIPIENT hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Grantee, or any designated public agencies or Subrecipients which are receiving funds under the CDBG Entitlement program.
- e. **Lobbying.** The SUBRECIPIENT hereby certifies that:
  - i. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any

cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- iii. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly; and
- iv. Lobby Certification.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- f. Copyright. If this agreement results in any copyrightable materials or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.
- g. Religious Organization. The SUBRECIPIENT agrees that funds provided under this agreement will not be utilized for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200(j).

5. Relocation and One-For-One Housing Replacement. The displacement of any person as a direct result of rehabilitation for a CDBG-assisted project must comply with 24 CFR 570.606 and 49 CFR Part 24. The SUBRECIPIENT will conduct the CDBG activities so as to minimize displacement, and if displacement occurs, the displaced persons or entities must be provided assistance consistent with the Uniform Relocation Act.

#### **E. UNIFORM ADMINISTRATIVE REQUIREMENTS.**

1. The SUBRECIPIENT shall comply with the administrative regulations, including, but not limited to, 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" Final Guidance applicable to HUD Federal Award Recipients. Requirements and standards under 2 CFR 200 which supersedes, consolidates, and streamlines requirements from eight OMB Circulars, including:
  - a. A-21, Cost Principles for Educational Institutions,
  - b. A-87, Cost Principles for State, Local, and Indian Tribal Governments,
  - c. A-89, Catalog of Federal Domestic Assistance,
  - d. A-102, Grants and Cooperative Agreements with State and Local Governments,
  - e. A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,
  - f. A-122, Cost Principles for Non-Profit Organizations,

- g. A-133, Audits of States, Local Governments, and Non-Profit Organizations, and
- h. The guidance in OMB Circular A-50, Audit Follow Up, on Single Audit Act follow-up.

2. **Cost Principles.** The SUBRECIPIENTS shall comply with the requirements under 2 CFR 200, Subpart E, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.
3. **Audits.** The SUBRECIPIENT is required to comply with 2 CFR 200, Subpart F, as applicable, which supersedes OMB Circular A-133 "Audits of Institutions of State, Local Government, and Nonprofit Institutions". If the SUBRECIPIENT spends \$750,000 or more a fiscal year in Federal awards, the SUBRECIPIENT hereby agrees to have an annual agency audit conducted in accordance with the OMB Super Circular.

**F. INSURANCE REQUIREMENTS.**

1. **Insurance and Bonding.** The SUBRECIPIENT shall carry sufficient insurance coverage to protect agreement assets from loss due to theft, fraud and/or undue physical damage, and at a minimum shall purchase a blanket fidelity bond covering all clients benefiting from the CDBG funded activity in an amount equal to cash advances from the GRANTEE.

**G. AGREEMENT MODIFICATIONS.**

1. In the event the parties fail to agree on changes or interpretations of this agreement, the decision of the GRANTEE shall prevail. In the event of any disagreement between the SUBRECIPIENT and the GRANTEE relating to the funded activity and materials purchased and its conformity to the requirements of this agreement, the decision of the GRANTEE shall prevail.
2. This agreement is subject to such modification as may be required by federal law or regulations. Any such modification may be done unilaterally by the GRANTEE.
3. Except as otherwise provided in this agreement, the rehabilitation activities to be completed and the total grant award may be modified only by written agreement of the authorized representatives of the parties to this agreement.

**H. REVERSION OF ASSETS.**

1. Any CDBG funds on hand at the time the agreement expires, including accounts receivable, shall be returned. The SUBRECIPIENT assures that any real property acquired or improved with CDBG funds in excess of \$25,000 meets the requirements specified in 24 CFR 570.503(b)(7). The SUBRECIPIENT will not have control of CDBG funds, nor will any property be purchased in excess of \$25,000.

**I. SUSPENSION OR TERMINATION OF AGREEMENT.**

1. In accordance with 24 CFR 85.43, the GRANTEE may suspend or terminate this agreement should the SUBRECIPIENT violate any terms or conditions thereof.

2. This agreement may be terminated or suspended in whole or in part at any time by the GRANTEE for cause. The GRANTEE may refuse to disburse additional funds or require return of all or part of funds already disbursed. The decision of the GRANTEE shall prevail. Grounds constituting cause include but are not limited to:
  - a. Failure by the SUBRECIPIENT to comply with the provisions of this agreement or with any applicable laws, regulations, guidelines or procedures, or is unduly dilatory in executing its commitments under this agreement.
  - b. Purposes for the funds have not been or will not be fulfilled, or would be illegal to carry out.
  - c. The SUBRECIPIENT has submitted incorrect or incomplete documentation pertaining to this agreement.
  
4. In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.
  
5. In the event of termination or suspension, all materials/equipment purchased through the agreement shall, at the option of the GRANTEE, become the property of the GRANTEE, and the SUBRECIPIENT shall be entitled to payment for otherwise valid and allowable obligations incurred in good faith prior to notice of such action. The option of the GRANTEE constitutes a security interest in any materials/equipment purchased or property improved by expenditure of the funds for as long as such materials/equipment or improvements have any value unless the GRANTEE declines its option or releases its security interest. Recording of this agreement shall be effective as a financing statement noticing the security interest of the GRANTEE as created herein. In addition, the GRANTEE shall have a lien against the improved real estate to the extent of expenditures of these funds and to secure repayment of such funds in the event of cessation of operations, sale, transfer of the property in any manner whatsoever, voluntary or involuntary receivership, or application for bankruptcy by the SUBRECIPIENT.

**J. NOTICES.**

1. All notices required or permitted to be given under this agreement may be personally delivered or mailed to the following addresses.
  - a. To GRANTEE: City Administrator  
City of Bellevue  
1500 Wall Street  
Bellevue, NE 68005
  
  - b. To SUBRECIPIENT: President, Board of Directors  
Eastern Nebraska Community Action Partnership  
2406 Fowler Avenue  
Omaha, NE 68111

c. Copy to: Finance Director  
City of Bellevue  
1500 Wall Street  
Bellevue, NE 68005

Paul Cook  
Paul Cook, Council President  
City of Bellevue, Nebraska

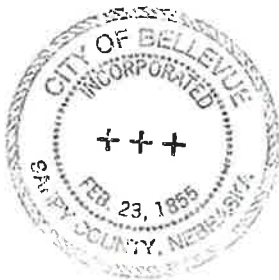
Daniel A. Esch  
Daniel A. Esch, President  
Eastern Nebraska Community Action Partnership

Rich Severson  
Rich Severson, Finance Director  
City of Bellevue, Nebraska

Aaron Bowen  
Aaron Bowen, Executive Director  
Eastern Nebraska Community Action Partnership

ATTEST:

Susan Kluthe  
Susan Kluthe, City Clerk  
City of Bellevue, NE



STATE OF NEBRASKA     )  
  ): SS.  
COUNTY OF SARPY     )

The undersigned, a notary public qualified in and for said county, does hereby certify that Rusty Hike and Susan Kluthe, whose names as Mayor and City Clerk respectively, of the City of Bellevue, Nebraska, a municipality of the first class and political subdivision of the State of Nebraska, are signed to the foregoing instrument and who are each known to me and known to be such officers, acknowledged before me on this day and they, in their respective capacities as Mayor and City Clerk, executed and delivered said instrument as their voluntary act and deed and voluntary act and deed of such corporation.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

(Affix Notarial Seal)

My Commission Expires: \_\_\_\_\_

STATE OF NEBRASKA     )  
  ): SS.  
COUNTY OF DOUGLAS    )

The above and foregoing instrument was acknowledged before me this 19 day of February, 2021, by Daniel A. Esch, President, Eastern Nebraska Community Action Partnership, on behalf of the organization.

My Commission Expires:

February 28, 2021



Christine S Stungis  
NOTARY PUBLIC

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

16h.  
2/15/2022

COUNCIL MEETING DATE: 02/15/2022	SUBMITTED BY: Chief Perry Guido		
AGENDA ITEM:	CONSENT AGENDA <input type="checkbox"/>	SPECIAL PRESENTATION <input type="checkbox"/>	
LIQUOR LICENSE <input type="checkbox"/>	ORDINANCE <input type="checkbox"/>	PUBLIC HEARING <input type="checkbox"/>	
RESOLUTION <input type="checkbox"/>	CURRENT BUSINESS <input checked="" type="checkbox"/>	OTHER <input type="checkbox"/>	

SUBJECT:

Annual maintenance contract for the Fire Training Burn props from KFT Firetrainer

SYNOPSIS/BACKGROUND:

By entering into a 5-year contract agreement, KFT will keep the price for the annual preventive maintenance service the same, which would be \$8,576.00 per year.

KFT will make sure all of the safety and emergency props for the system are functioning properly.

FISCAL IMPACT: \$8576.00 BUDGETED FUNDS?: YES GRANT/MATCHING FUNDS?: NO

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: YES  COUNTER-PARTY: INTERLOCAL AGREEMENT: NO

CONTRACT DESCRIPTION: 5-year maintenance contract

CONTRACT EFFECTIVE DATE: 03/01/2022 CONTRACT TERM: 5 years CONTRACT END DATE: 03/01/2027

PROJECT NAME: KFT Firetrainer

START DATE: 03/01/2022 END DATE: 03/01/2027 PAYMENT DATE: INSURANCE REQUIRED: NO

CIP PROJECT NAME: CIP PROJECT NUMBER:

STREET DISTRICT NAME (S): STREET DISTRICT NUMBER (S):

ACCOUNTING DISTRUBUTION CODE: ACCOUNT NUMBER:

RECOMMENDATION:

Approval : This maintenance is a necessary annual expence in order to keep our burn props operational.

ATTACHMENTS:

1. KFT contract 2. 3. 4. 5. 6.

SIGNATURES:

LEGAL APPROVAL AS TO FORM:

FINANCE APPROVAL AS TO FORM:

ADMINISTRATOR APPROVAL AS TO FORM:

*A. Byrd*  
*[Signature]*  
*[Signature]*



**KFT Fire Trainer, LLC**  
17 Philips Parkway, Montvale, NJ 07645-1810 USA  
Tel. +1 201+300+8100  
Fax. 1+201+300+8101  
[info-us@kft.firetrainer.com](mailto:info-us@kft.firetrainer.com)

7 February 2022

Bellevue Fire Department  
211 West 22nd Ave.  
Bellevue, NE 68147

Provider:

KFT Fire Trainer, LLC.  
17 Phillips Parkway  
Montvale, NJ 09745

KFT is pleased to provide this contract proposal which includes costing options for both preventative maintenance (PM) and preventative/corrective maintenance. KFT's maintenance focus is to augment the operator maintenance currently being performed by your team. Subject to all terms and conditions, the following services are provided:

1. Preventative Maintenance Only. This plan includes up to two (2) scheduled visits per year by a factory certified technician. Work will be performed on items as described in the Operations and Maintenance manual provided at time of equipment delivery. This does not include unplanned corrective maintenance required due to inoperable or damaged equipment. Corrective maintenance is quoted separately.
2. Preventative/Corrective Maintenance Service. This plan includes up to two (2) preventative maintenance visits per year including unplanned corrective maintenance work to KFT supplied and installed equipment. Work will be performed by a factory certified technician on items as described in the Operations and Maintenance manual provided at time of equipment delivery. At time of PM, training is available either for new instructors or to refresh the current training team. This plan does not include system upgrades due to obsolete or unsupported hardware and/or software components.



Service	PM Only	PM and Corrective Maintenance
On-site support - KFT employs a first available tech strategy to arrive, troubleshoot and correct any issues with the trainer subject to parts availability. If parts are required but not available, the tech will return at such time when the parts have arrived on site for installation.	NA	X
Replacement parts, and labor for all repairs (upgrades are not considered repairs)	NA	X
Remote monitoring device installed during first PM (rental or purchase)	NA	Available
Check the operating performance, flame heights and agent detection responses of all fireplaces and adjust as required.	X	X
Clean and/or replace all filter elements	X	X
Inspect all fans and blowers and lubricate all bearings (Repairs only for KFT installed equipment)	X	X
Inspect all pilot spark igniters and replace as required	X	X
Inspect and clean all pilot spark flame rods, replace as necessary	X	X
Inspect the fuel control station and adjust as required. Confirm sensor settings and adjust as required	X	X
Clean the fuel control station inlet strainer	X	X
Inspect and calibrate all gas detection assemblies	X	X
Inspect and adjust all smoke generators	X	X
Inspect the Programmable Logic Controller battery and replace as required	X	X
Check and Confirm latest PLC Ladder Logic is installed (updates performed as required)	X	X
Clean all equipment cabinets	X	X
Service report provided	X	X
On Call Phone Support	X	X
Discounted parts from KFT	X (10% on corrective parts)	corrective parts included
Remote <input type="checkbox"/> support (must have Ewon)	X	X



3. Equipment included in contract proposal:

T1000 Live Fire Training System
<ul style="list-style-type: none"> <li>• Bedroom Fire with Flashover</li> <li>• Kitchen Fire with Flashover</li> <li>• Living Room Fire</li> </ul>

4. Pricing structure: Pricing per contract period noted in yellow highlights

	Annual/One year Contract		Three year contract		Five year contract	
	PM Only	PM/Corrective	PM Only	PM/Corrective	PM Only	PM/ Corrective
One	15,360.00	25,728.00	15,360.00	25,728.00	15,360.00	25,728.00
Two	15,820.80	26,499.84	15,360.00	25,728.00	15,360.00	25,728.00
Three	16,295.42	27,294.84	15,360.00	25,728.00	15,360.00	25,728.00
Four	16,784.29	28,113.68			15,360.00	25,728.00
Five	17,287.82	28,957.09			15,360.00	25,728.00
Total	81,548.33	136,593.45	46,080.00	77,184.00	76,800.00	128,640.00
		Cost savings	\$1,396	\$2,339	\$4,748	\$7,953

5. Customer must provide agent to trainer equipment during preventative maintenance visits.

6. Additional items that are optional: Smoke Fluid, Span Gas, Annual 1402 inspection.

7. KFT is not responsible for the following areas:

- Tank Farms, Supply Lines and all components not supplied and installed by KFT.
- System hardware that has been abused or damaged.
- System hardware that has been repaired, modified, or replaced by third parties.
- Loss of owner's ability to train because of conditions beyond KFT's control.
- System hardware/software where parts, programs and material not supplied by KFT have disrupted the operation of the equipment.



KFT Fire Trainer, LLC  
 17 Philips Parkway, Montvale, NJ 07645-1810 USA  
 Tel. +1 201+300+8100  
 Fax. 1+201+300+8101  
[info-us@kft.firetrainer.com](mailto:info-us@kft.firetrainer.com)

8. Time and Material pricing structure. Unplanned (Corrective) Support (without coverage) Cost are billed at the following rates:

Labor	\$190.00 per hour
Travel time	\$140.00 per hour
Parts and materials	List minus 10%
Airfare	Actual cost

9. Please refer all questions to Mike Collins 862-444-1423 [mike.collins@kft.firetrainer.com](mailto:mike.collins@kft.firetrainer.com) or Valerie Arsen [Valerie.arsen@kft.firetrainer.com](mailto:Valerie.arsen@kft.firetrainer.com).

Accepted by:

_____	_____
<b>Customer Signature</b>	<b>Print Name &amp; Title</b>
<b>Plan Choice:</b> _____	<b>Number of years:</b> _____
<b>PO #:</b> _____	<b>Date:</b> _____
<b>PO Amount \$</b> _____	

<b>Billing Address:</b>	<b>Shipping Address:</b>
<b>Contact:</b>	
<b>Phone:</b>	<b>Fax:</b>



## KFT Terms and Conditions-Maintenance Contracts

**ARTICLE 1: WORK** KFT Fire Trainer shall provide the equipment data, services and/or training listed in accordance with KFT Fire Trainer formal quotation, statement of work and specifications.

**ARTICLE 2: FACILITIES FURNISHED BY BUYER** Without cost

to KFT Fire Trainer, Buyer shall furnish the necessary site, easements, facility, utilities, access and other to allow for the proper maintenance services to be provided, and water, air, light, and power at the locations of the work sufficient for KFT Fire Trainer to fulfill its responsibility requirements, identified in the aforesaid Statement of Work (Attachment 1). Buyer shall also identify and provide such permits, priorities or other order of public authorities as may be necessary for KFT Fire Trainer to perform the maintenance work described in of the aforesaid Statement of Work (Attachment 1) on a non-interference basis. Buyer agrees to provide a safe and secure workplace for KFT Fire Trainer personnel including but not limited to:

- (a) Buyer will provide us with an overview of the site hazards prior to work beginning.
- (b) Buyer will provide utility and other system connections in a condition that is safe and properly locked/tagged out in accordance with appropriate OSHA regulations in order to ensure the safety of KFT Fire Trainer personnel.
- (c) Buyer will provide appropriate work area controls so as to prevent unauthorized access to the area where work being performed by KFT Fire Trainer personnel is occurring; and
- (d) Buyer will remove and remediate any waste or hazardous materials in accordance with applicable laws and regulations.
- (e) Buyer agrees to complete all required maintenance of KFT equipment as specified in the Operation and Maintenance Manual or other documentation provided at time of delivery. Buyer shall maintain accessible records documenting all maintenance performed. Any improper handling of the equipment provided requiring KFT corrective maintenance may result in KFT invoicing said work.

**ARTICLE 3: BUYER'S REPRESENTATIVE** Buyer shall provide a representative authorized to act for Buyer under this contract. The representative shall be available during normal working hours as often as may be necessary to implement Buyer's responsibilities under this contract.

All formal correspondence under this contract shall be addressed to and forwarded from the parties' representatives as identified and to the addresses specified below:

**BUYER:**

Buyer To Provide Name and Address In Writing

**SELLER:**

Contracts Program Manager  
KFT Fire Trainer, LLC  
17-Philips Parkway  
Montvale, NJ 07645-1810 USA

**ARTICLE 4: TIME OF COMPLETION** KFT Fire Trainer will deliver the equipment data and/or services to the Buyer's designated site in accordance with schedule set forth in its quotation.

## ARTICLE 5: DELAYS AND EXTENSION OF TIME

Notwithstanding any contract provisions to the contrary, Contractor's acceptance is conditioned on being allowed additional time for the performance of the Work due to delays beyond its reasonable control including, but not limited to, the Force Majeure events set forth in Article 13, and/or the act, omission, neglect fault or default of others not under the control of KFT Fire Trainer. The additional time allowed shall be, at a minimum, a period equivalent to the delay.

## ARTICLE 6: CONTRACT PRICE AND PAYMENTS

The price to be paid by Buyer to KFT Fire Trainer for the performance of the work specified in Article 1 hereof shall be as set forth in KFT Fire Trainer quotation, which price includes all taxes or contributions at the present rate imposed by the Federal or State governments on KFT Fire Trainer payrolls and compensation to its employees. The contract price is based on one mobilization to unload the material and another when KFT Fire Trainer begins installation. Buyer shall be responsible for the cost of any additional mobilizations to the extent they are caused by the delay of Buyer or its subcontractors. The cost of additional mobilizations shall be set forth in KFT Fire Trainer' quotation.

Unless otherwise specified, the prices shown do not include any other taxes. Unless prohibited by statute, Buyer agrees to pay to KFT Fire Trainer the amount of any Federal, State, City or other tax that KFT Fire Trainer may be required to pay on account of the ownership at the place of delivery, or the manufacture, transportation, sale or use of the product which is the subject of this order.

Payments shall be made to KFT Fire Trainer at a frequency as set forth in KFT Fire Trainer quotation pursuant to buyer procurement policies and requirements. Payment with respect to goods ordered is due 30 days following invoice by the KFT Fire Trainer. Buyer shall reimburse KFT Fire Trainer for its reasonable costs and expenses, including without limitation attorney's fees, incurred in connection with the institution of legal proceedings to collect any past due indebtedness hereunder.

## ARTICLE 7: ENTIRE CONTRACT

- (a) These terms and conditions along with KFT Fire Trainer quotation shall constitute the entire agreement between the parties with respect to the subject matter hereof.
- (b) This contract shall supersede all prior oral and written agreements, communications and documents between the parties with respect to the subject matter hereof.
- (c) No agreement or understanding in any way modifying these terms and conditions will be binding upon KFT Fire Trainer unless made in writing and signed by an authorized employee of Buyer and KFT Fire Trainer.
- (d) The invalidity, in whole or in part, of any of the foregoing articles or paragraphs of these Terms shall not affect the remainder of such articles or paragraphs or any other article or paragraph of these Terms, which shall continue in full force and effect.
- (e) This contract will not auto renew. At the conclusion of the term agreed upon by the buyer and seller, the buyer must sign a new contract. This process shall begin no less than 60 days prior date of expiration of the current contract.



**ARTICLE 8: INCREASE IN COST** If the contract delivery schedule is greater than twelve (12) months, the Contract Price may be adjusted annually on the anniversary of the execution date to reflect increases in material and labor costs. If the "Producer Commodity Prices for Metals and Metal Products Index" increases by 30% or more, the KFT Fire Trainer reserves the right to increase the contract price by 3%.

**ARTICLE 9: INSPECTION AND ACCEPTANCE**

- a) **INSPECTION** - During the progress of the work and up to the date of equipment acceptance, KFT Fire Trainer shall at all times afford the Buyer every reasonable, safe and proper opportunity for inspecting all work done.
- b) **ACCEPTANCE** - Within five (5) days of completion of the maintenance services, KFT Fire Trainer shall notify Buyer in writing of the date completion. The Certificate of Acceptance, included as Attachment 1, shall be signed by Buyer at successful completion of each maintenance service.

**ARTICLE 10: WARRANTY**

- (a) KFT Fire Trainer warrants to Buyer that any part will be free from defects in materials or workmanship for a period of twelve (12) months (but not longer than its useful life) from the date of part shipment.
- (b) **Warranty adjustment**
1. If any defect appears within the warranty period, Buyer shall immediately provide KFT Fire Trainer written notice.
  2. Buyer's sole and exclusive remedy shall be for KFT Fire Trainer to repair or furnish a replacement part for any part, which, upon test and examination by KFT Fire Trainer, proves defective within the above warranty.
- (c) **Exclusions from Warranty**
1. THE FOREGOING WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY KFT FIRE TRAINER IN CONNECTION WITH THE SERVICES PERFORMED AND PRODUCTS PROVIDED HEREUNDER AND ARE IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY KFT FIRE TRAINER, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.
  2. KFT Fire Trainer will not be liable for any special or consequential damages or for loss, damages or expense directly or indirectly arising from the use and maintenance of the Equipment or any inability to use such equipment either separately or in combination with any other equipment or material or from any other cause, nor shall KFT Fire Trainer be liable for personal injury, death, or property damage arising from or connected with the use or maintenance of the Equipment made the basis of this agreement.
  3. The warranty does not extend or apply to any part of which the part or equipment has been subjected to misuse, neglect, accident, or improper use in violation of any KFT Fire Trainer operator's manual.
  4. The warranty does not extend or apply to any part of which the part or equipment has been repaired, altered, or disconnected by any party other than KFT Fire Trainer unless under the direction of KFT Fire Trainer.

**ARTICLE 11: INSURANCE** KFT Fire Trainer shall carry Contractor's Comprehensive Bodily Injury and Property Damage Liability Insurance and shall comply with Worker's Compensation Laws relating to the compensation of its injured workmen and will provide Buyer with a Certificate of Insurance upon request. Buyer shall be responsible for and, at Buyer's option and expense shall insure against theft, vandalism or all other damage to, destruction of and loss of use of Buyer's existing property and all deliverable Article 1 equipment as well as KFT Fire Trainer property located on the Buyer's property or in the Buyer's facility, due to fire or other perils, prior to, during or after acceptance, however caused.

**ARTICLE 12: LIMITATION OF LIABILITY** To the extent permitted by law, the aggregate liability of KFT Fire Trainer hereunder whether in contract, tort (including negligence) or otherwise, will be limited to one time the contract value, provided however the foregoing limitation does not limit the liability of KFT Fire Trainer for any injury to, or death of a person, caused by the gross negligence of KFT Fire Trainer. Under no circumstances shall either party be liable for special, indirect, or consequential damages of any kind including, but not limited to, loss of profits, loss of good will, loss of business opportunity, additional financing costs or loss of use of any equipment or property, whether in contract, tort (including negligence), warranty or otherwise. KFT Fire Trainer will not be liable for any breach of this Contract unless written notice of the claim is given to Contractor within one (1) year of the date of the occurrence of the breach.

**ARTICLE 13: FORCE MAJEURE:** Under no circumstances shall either party be liable for any loss, damage or delay due to any cause beyond either party's reasonable control, including but not limited to acts of government, acts of terrorism, strikes, lockouts, other labor disputes, fire, explosion, theft, weather damage, flood, earthquake, riot, civil commotion, war, mischief or act of God. In the event of a force majeure claim by either party, KFT Fire Trainer does not waive Buyer's duty to comply with the terms of Article 6 or any other payment schedule agreed upon by the parties.

**ARTICLE 14: PROPRIETARY INFORMATION** "Proprietary Information" shall mean all information, data, manuals, drawings, designs, or software disclosed by, authorized to be disclosed by, or otherwise obtained from KFT Fire Trainer, LLC, its affiliates or subsidiaries, in connection with this contract (including the Statement of Work)

Unless the Buyer has received KFT Fire Trainer's express written consent to the contrary, Buyer shall: (a) use the Proprietary Information solely for the purposes of this contract, and not for any other purpose (including, without limitation, designing, manufacturing or selling similar equipment), (b) safeguard the Proprietary Information to prevent its disclosure to or use by third parties, (c) not disclose the Proprietary Information to any third party; and (d) not reverse engineer, disassemble, or decompile the Proprietary Information. Except that with respect to (c), Buyer may disclose Proprietary Information to a third party contracted by Buyer to perform emergency repair work for the Buyer, where the item or process concerned is not otherwise reasonably within Buyer's capabilities to enable timely performance of the work, provided that the disclosure of information shall be made solely for the purpose of repair work for



Buyer and shall be provided together with the legend below.  
The attached legend (Attachment A) shall be completed and included on any reproduction which includes any Proprietary Information.

notice of either to the other party, both Buyer and KFT Fire Trainer will attempt settle such dispute or disagreement.

If both parties agree that a dispute or disagreement is of such nature that it cannot be settled as provided for above, then by mutual agreement of the parties such dispute or disagreement may be submitted to arbitration in accordance with the Rules of the American Arbitration Association in which event, the decision of the arbitrators shall be final and binding upon both parties.

**ARTICLE 16: GOVERNING LAWS** The laws of the state of **Nebraska**, USA excluding its conflict of laws provisions, shall govern the terms of this Agreement and all rights and obligations hereunder. No conflict of laws provisions will be applicable. Provided that the dispute is not submitted to arbitration pursuant to Article 15, any disputes arising from this agreement shall venue in the Courts of **Nebraska**.

**ARTICLE 17: ASSIGNMENT** Notwithstanding anything in this agreement KFT Fire Trainer reserves their right to assign the duties under this agreement to an affiliate or subsidiary.

**ARTICLE 18: EXPORT CONTROL** Buyer agrees to conduct its operations under this Contract and perform all its responsibilities in full compliance with export and other foreign trade controls under any applicable United States (U.S.) laws restricting sales or transfers to other countries or parties of commodities, software, technology, or technical data. Any other provision of this Contract to the contrary notwithstanding, Buyer agrees that no commodities, software, technology, or technical data of U.S. origin or with U.S. origin content will be sold, exported, re-exported or transmitted except in full compliance with all applicable laws, including all relevant U.S. government requirements. In addition, Buyer shall comply with all applicable laws, including U.S. government requirements, governing the transfer of information and items to U.S. embargoed and sanctioned countries and denied and restricted parties. Any violation of this section, as determined solely by KFT Fire Trainer, shall be deemed a material breach of this Contract.

**ARTICLE 19: COMPLIANCE WITH LAWS** Buyer represents, warrants, certifies and covenants (collectively "Covenants") that it will comply with all laws applicable to the goods, services and/or the activities contemplated or provided under these Terms, including, but not limited to, any national, international, federal, state, provincial or local law, treaty, convention, protocol, common law, regulation, directive or ordinance and all lawful orders, including judicial orders, rules and regulations issued thereunder.

**ARTICLE 20: FEDERAL ACQUISITION REGULATIONS** The components, equipment and services proposed by Seller are commercial items as defined by the Federal Acquisition Regulations ("FAR") and the prices in any resulting contract and in any change proposal are based on Seller's standard commercial accounting policies and practices which do not consider any special requirements of U.S. Government cost principles and do not meet the requirements of Part 31 of the

**ARTICLE 15: SETTLEMENT OF DISPUTES OR**

**DISAGREEMENTS** In the event of any dispute or disagreement arising under this contract, it is mutually agreed, that upon written

FAR or any similar procurement regulations. Seller agrees only to perform a contract for the sale of a commercial item on a fixed-price basis. In addition, Seller will not agree to submit or certify to any cost or pricing data nor will Seller agree to any requirements to establish price reasonableness under FAR Part 15 or such similar regulations. In stating its position, Seller refers to FAR Part 12 - "Acquisition of Commercial Items." All Sales under \$3,000 are made pursuant to FAR Part 13, Simplified Acquisitions.

**ARTICLE 21: EARLY TERMINATION**

For each Service Contract terminated by Customer after the Service Commencement Date, but before the end of the then-current Service Term, or if KFT discontinues the Service as a result of a default by Customer, Customer will be assessed an early termination fee ("ETF").

The ETF for the contract terminated by Customer before the end of its then-current Service Term will be an amount equal to the equivalent of one (1) month's fee plus 50% of the fee for the contract being terminated multiplied by the number of months remaining in the Service Term, plus any previously provided promotional credits and any expenses incurred by KFT.

**ARTICLE 22: PERIOD OF PERFORMANCE** KFT Fire Trainer will initiate Technical Support at the buyer/owner's facility following the receipt and subsequent acceptance of a formal maintenance contract or purchase order. All equipment to be included in this agreement shall be listed on this agreement and is subject to inspection by KFT Fire Trainer, prior to commencement date. Any defects, damage, obsolete and inoperable conditions discovered during inspection will be the responsibility of the customer. Labor and parts to correct these noted deficiencies are estimated separate of the contract.

**Attachment A: Limited Rights Legend**

Contract  
No Buyer:  
Contractor: KFT Fire Trainer, LLC

Acceptance of the attached or enclosed proprietary information shall indicate your agreement to the following:  
Unless the recipient of this Proprietary Information has received KFT Fire Trainer's express written consent to the contrary, the recipient shall: (a) use the Proprietary Information solely for the purposes of the above identified contract, and not for any other purpose (including, without limitation, designing manufacturing or selling similar equipment), (b) safeguard the Proprietary Information to prevent its disclosure to or use by third parties, (c) not disclose the Proprietary Information to any third party; and (d) not reverse engineer, disassemble, or decompile the Proprietary Information.

All Proprietary Information property of KFT Fire Trainer, LLC

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: Chief Perry Guido	
AGENDA ITEM:	CONSENT AGENDA <input type="checkbox"/>	SPECIAL PRESENTATION <input type="checkbox"/>	
LIQUOR LICENSE <input type="checkbox"/>	ORDINANCE <input type="checkbox"/>	PUBLIC HEARING <input type="checkbox"/>	
RESOLUTION <input type="checkbox"/>	CURRENT BUSINESS <input checked="" type="checkbox"/>	OTHER <input type="checkbox"/>	

SUBJECT:

Service agreement for Stryker power load and power cots.

SYNOPSIS/BACKGROUND:

This is for annual preventive maintenance and service if the power cot or power load should fail. All parts and labor are covered.

FISCAL IMPACT: \$15,917.10 annually    BUDGETED FUNDS?: YES    GRANT/MATCHING FUNDS?: NO

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: YES     COUNTER-PARTY:    INTERLOCAL AGREEMENT: NO

CONTRACT DESCRIPTION: 5-year maintenance contract

CONTRACT EFFECTIVE DATE: 01/21/2022    CONTRACT TERM: 5 years    CONTRACT END DATE: 01/20/2027

PROJECT NAME: Stryker service

START DATE: 01/21/2022    END DATE: 01/20/2027    PAYMENT DATE:    INSURANCE REQUIRED: NO

CIP PROJECT NAME:    CIP PROJECT NUMBER:    STREET DISTRICT NAME (S):    STREET DISTRICT NUMBER (S):

ACCOUNTING DISTRIBUTION CODE:    ACCOUNT NUMBER:

RECOMMENDATION:

Approval : We are requesting to enter into a five year agreement to be paid on a yearly basis to take advantage of the 15% discount.

ATTACHMENTS:

1. Stryker service agreement	2.	3.
4.	5.	6.

SIGNATURES:

LEGAL APPROVAL AS TO FORM:

FINANCE APPROVAL AS TO FORM:

ADMINISTRATOR APPROVAL AS TO FORM:

*[Handwritten signatures]*

Sales Rep Name: Scott Pufahl  
 ProCare Service Rep: Steve Lutjemeier

3800 E. Centre Ave  
 Portage, MI 49009

Date: 1/21/2022  
 ID #: 220121151955

**PROCARE PROPOSAL SUBMITTED TO:**

Billing Acc Num:		Name:	Shari Lentsch
Shipping Acct Num:	1071427	Title:	EMS Supervisor
Account Name:	Bellevue Fire Dept	Phone:	
Account Address:	211 W. 22nd Ave	Email:	shari.lentsch@bellevue.net
City, State Zip:	Bellevue, NE 68005		

**PROCARE COVERAGE**

Item No.	Model Number	Model Description	Serial Number	ProCare Program	Qty	Yrs				Total
1	6390	Power-LOAD	2009012400030	EMS Prevent	1	5				\$9,260.00
2	6390	Power-LOAD	2009012400031	EMS Prevent	1	5				\$9,260.00
3	6390	Power-LOAD	2009012400035	EMS Prevent	1	5				\$9,260.00
4	6390	Power-LOAD	2009012400036	EMS Prevent	1	5				\$9,260.00
5	6390	Power-LOAD	2009012400116	EMS Prevent	1	5				\$9,260.00
6	6390	Power-LOAD	2009012400115	EMS Prevent	1	5				\$9,260.00
7	6506	Power Cots	1907003500690	EMS Prevent	1	5				\$7,050.00
8	6506	Power Cots	2008003500144	EMS Prevent	1	5	8/24/22-1/20/27			\$6,227.50
9	6506	Power Cots	2003003500342	EMS Prevent	1	5	4/6/22-1/20/27			\$6,815.00
10	6506	Power Cots	2009003500246	EMS Prevent	1	5	10/21/22-1/20/27			\$5,992.50
11	6506	Power Cots	2009003500247	EMS Prevent	1	5	10/21/22-1/20/27			\$5,992.50
12	6506	Power Cots	2009003500248	EMS Prevent	1	5	10/21/22-1/20/27			\$5,992.50

**PROGRAM INCLUDES:**

**EMS Prevent:**  
 \*Includes parts, labor, travel  
 \*Includes 1 annual PM inspection  
 \*Includes unscheduled service

Unless otherwise stated on contract, payment is expected upfront.	ProCare Total	\$93,630.00
<b>Annual Payments \$15,917.10</b>	Discount	15%
See below for complete payment schedule	<b>FINAL TOTAL</b>	<b>\$79,585.50</b>

Start Date: 1/21/2022  
 End Date: 1/20/2027

\_\_\_\_\_  
 Stryker Signature Date

\_\_\_\_\_  
 Customer Signature Date

The Terms and Conditions of this quote and any subsequent purchase order of the Customer are governed by the Terms and Conditions located at <https://techweb.stryker.com>

The terms and conditions referenced in the immediately preceding sentence do not apply where Customer and Stryker are parties to a Master Service Agreement.

\_\_\_\_\_  
 Purchase Order Number

**This is not an invoice. A physical invoice will be mailed.**  
**Remit payment to: P.O. Box 93308 Chicago, IL 60673-3308**

**COMMENTS:**

Please email signed Proposal and Purchase Order to [procarecoordinators@stryker.com](mailto:procarecoordinators@stryker.com).  
 All information contained within this quotation is considered confidential and proprietary and is not subject to public disclosure.  
 \*\*Quote pricing valid for 30 days.

**PAYMENT SCHEDULE**

<u>Date</u>	<u>Payment</u>	<u>Int Paid</u>	<u>Prin. Remaining</u>	<u>Balance</u>
<b>Starting Balance</b>				<b>\$ 79,585.50</b>
1/1/2022	\$ 15,917.10	\$ -	\$ 63,668.40	\$ 63,668.40
1/1/2023	\$ 15,917.10	\$ -	\$ 47,751.30	\$ 47,751.30
1/1/2024	\$ 15,917.10	\$ -	\$ 31,834.20	\$ 31,834.20
1/1/2025	\$ 15,917.10	\$ -	\$ 15,917.10	\$ 15,917.10
1/1/2026	\$ 15,917.10	\$ -	\$ -	\$ -

**SERIAL NUMBER SHEET**

Item No.	Model	Serial Number	Program
1	6390	2009012400030	EMS Prevent
2	6390	2009012400031	EMS Prevent
3	6390	2009012400035	EMS Prevent
4	6390	2009012400036	EMS Prevent
5	6390	2009012400116	EMS Prevent
6	6390	2009012400115	EMS Prevent
7	6506	1907003500690	EMS Prevent
8	6506	2008003500144	EMS Prevent
9	6506	2003003500342	EMS Prevent
10	6506	2009003500246	EMS Prevent
11	6506	2009003500247	EMS Prevent
12	6506	2009003500248	EMS Prevent

**Purchase Order Form**



Account Manager \_\_\_\_\_  
 Cell Phone \_\_\_\_\_

Purchase Order Date \_\_\_\_\_  
 Expected Delivery Date \_\_\_\_\_  
 Stryker Quote Number 220121151955

Check box if Billing same as Shipping

BILL TO		CUSTOMER #
Billing Account Num	0	
Company Name		
Contact or Department		
Street Address		
Add'l Address Line		
City, ST ZIP		
Phone		

SHIP TO		CUSTOMER #
Shipping Account Num	1071427	
Company Name	Bellevue Fire Dept	
Contact or Department	Shari Lentsch	
Street Address	211 W. 22nd Ave	
Add'l Address Line		
City, ST ZIP	Bellevue, NE 68005	
Phone	-	

Authorized Customer Initials \_\_\_\_\_

Authorized Customer Initials \_\_\_\_\_

DESCRIPTION	QTY	TOTAL
REFERENCE QUOTE <input type="text"/>	<input type="text"/>	<input type="text"/>

**Accounts Payable Contact Information**

Name \_\_\_\_\_  
 Email \_\_\_\_\_  
 Phone \_\_\_\_\_

Stryker Terms and Conditions  
[www.strykeremergencycare.com/terms](http://www.strykeremergencycare.com/terms)

**Authorized Customer Signature**

Printed Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Date \_\_\_\_\_

Attachment                      Stryker Quote Number      **220121151955**

\*Sales or use taxes on domestic (USA) deliveries will be invoiced in addition to the price of the goods and services on the Stryker Quote.

CITY OF BELLEVUE, NEBRASKA  
AGENDA ITEM COVER SHEET

COUNCIL MEETING DATE: 02/15/2022		SUBMITTED BY: <u>Doug Clark, Public Works Director</u>		<u>Dean Dunn, Engineering Manager</u>	
AGENDA ITEM:		CONSENT AGENDA	<input type="checkbox"/>	SPECIAL PRESENTATION	<input type="checkbox"/>
LIQUOR LICENSE	<input type="checkbox"/>	ORDINANCE	<input type="checkbox"/>	PUBLIC HEARING	<input type="checkbox"/>
RESOLUTION	<input type="checkbox"/>	CURRENT BUSINESS	<input checked="" type="checkbox"/>	OTHER	<input type="checkbox"/>

SUBJECT:

Municipal Separate Storm Sewer System (MS4) Annual Reporting - Supplemental Agreement

SYNOPSIS/BACKGROUND:

The City of Bellevue, as co-permittee of the Papillion Creek Watershed Partnership (PCWP), is required to submit annual Municipal Separate Storm Sewer System (MS4) reports for the National Pollutant Discharge Elimination System (NPDES) permit issued to the PCWP by the United States Environmental Protection Agency. Alfred Benesch & Co. was contracted by the City to provide NPDES MS4 annual reporting for 2019 and 2020. With the current supplemental agreement, for an amount not to exceed \$16,920.00, Alfred Benesch & Company will provide similar professional services to assist the City in maintaining compliance with the required annual MS4 reporting.

FISCAL IMPACT: \$16,920.00 BUDGETED FUNDS?: YES GRANT/MATCHING FUNDS?: NO

TRACKING INFORMATION FOR CONTRACTS AND PROJECTS:

IS THIS A CONTRACT?: NO COUNTER-PARTY: \_\_\_\_\_ INTERLOCAL AGREEMENT: NO

CONTRACT DESCRIPTION: \_\_\_\_\_

CONTRACT EFFECTIVE DATE: \_\_\_\_\_ CONTRACT TERM: \_\_\_\_\_ CONTRACT END DATE: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

START DATE: \_\_\_\_\_ END DATE: \_\_\_\_\_ PAYMENT DATE: \_\_\_\_\_ INSURANCE REQUIRED: NO

CIP PROJECT NAME: \_\_\_\_\_ CIP PROJECT NUMBER: \_\_\_\_\_

STREET DISTRICT NAME (S): \_\_\_\_\_ STREET DISTRICT NUMBER (S): \_\_\_\_\_

ACCOUNTING DISTRUBUTION CODE: 6453 ACCOUNT NUMBER: 10-10

RECOMMENDATION:

City Council approve and authorize the Mayor to sign the supplemental agreement to the professional services agreement between the City of Bellevue and Alfred Benesch & Company in an amount not to exceed \$16,920.00 for the Municipal Separate Storm Sewer System (MS4) annual reporting.

ATTACHMENTS:

1. <u>Agreement</u>	2. _____	3. _____
4. _____	5. _____	6. _____

SIGNATURES:

LEGAL APPROVAL AS TO FORM: \_\_\_\_\_

FINANCE APPROVAL AS TO FORM: \_\_\_\_\_

ADMINISTRATOR APPROVAL AS TO FORM: \_\_\_\_\_

*Alfred Benesch & Co.*  
*Dean Dunn*  
*Doug Clark*



Alfred Benesch & Company  
14748 W. Center Road, Suite 200  
Omaha, NE 68144-2029  
www.benesch.com  
P 402-333-5792  
F 402-333-2248

February 4, 2022

Mr. Dean Dunn, PE  
Manager of Engineer Services  
City of Bellevue  
1510 Wall Street  
Bellevue, NE 68005

RE: Supplemental Agreement – 2021 NPDES MS4 Permitting Services

Dear Mr. Dunn:

As you are aware, Alfred Benesch & Co. (Benesch) was contracted by the City to provide National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) annual reporting for 2019 and 2020. The City has requested to add similar services for the 2021 reporting period to this scope of work. This requested scope of work includes project management and coordination, information gathering, and report writing as requested by the City. Preparation of the 2021 Annual Report will include following the Nebraska Department of Environment and Energy (NDEE) Title 119 Chapter 10 – NPDES Regulations Applicable to Storm Water Discharges, the Environmental Protection Agency (EPA) rules for Phase II of the NPDES program, and guidance from the Papillion Creek Watershed Partnership (PCWP). Other specific services requested as part of this supplemental agreement shall include:

- Recording changes in the MS4 Area as identified by the City,
- Coordinating with the City to create a total expenditures breakdown for operation and maintenance and other SWMP efforts for 2021,
- Updating the City's Facility Runoff Control Plans (FRCP) as needed,
- Identifying new, removed, or significantly updated municipal facilities,
- Capturing records of maintenance measures and practices utilized in 2021 to maintain the storm sewer system (street sweeping, open channel and catch basin cleaning, and structural stormwater controls),
- Assisting with the initial training of select staff who will be performing the regular inspections and overseeing the program and facilities for the FRCP Program and IDEE maintenance and inspections. The training can be separated into two trainings, one for RFCP staff and one for IDEE staff. In the training(s), Benesch would explain the process, forms, what to look for in the field, and suggested BMPs.
- Visiting Bellevue's 10 facilities and complete the Hotspot Checklist Form to determine the facilities that will require a Facility Runoff Control Plan in place; therefore, regular inspections and documentation.
- Creating Facility Runoff Control Plan binders for each hot spot facility which will include completing the Facility Profile & Questionnaire and creating a responsibility chart, reporting procedures, a site map, inspection checklist and instructions, schedule of implementation, and corrective action logs.

All services provided will be determined and performed solely at the discretion and direction of the City.



Based on the anticipated services being added to the scope of work, we estimate these services will require up to 120 additional hours to complete. We propose to increase the current agreement Not-to-Exceed fee by \$16,920.00. Our services will be performed using our established fee schedule that provides hourly rates for such services. We will monitor requested services relative to the estimated fee limits and notify the City in advance of any requests that may result in exceeding the fee limit identified herein.

The Consultant agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If this proposed supplemental agreement is acceptable, or if there are questions or concerns about this proposal, please contact us at your convenience. We look forward to the opportunity to continue to provide assistance and value to the City on its projects.

Sincerely,

Jeffery A. Sockel, PE  
Senior Vice President/Omaha Division Manager

Accepted:

_____	_____
	Date
_____	_____
Name	Title