

# Agenda Packet

## NORFOLK CITY COUNCIL MEETING

Monday, March 4, 2024  
5:30 p.m.

Created 2/29/2024 1:45 PM


**NOTICE OF MEETING  
CITY OF NORFOLK, NEBRASKA**

NOTICE IS HEREBY GIVEN that a meeting of the City Council of the City of Norfolk, Nebraska, will be held at 5:30 p.m. on Monday, March 4, 2024, in the Council Chambers, 309 N. 5th St., Norfolk, Nebraska, which meeting will be open to the public.

The Mayor and City Council reserve the right to adjourn into closed session as per Section 84-1410 of the Nebraska Revised Statutes.

An agenda for such meeting, kept continually current, is available at the office of the City Clerk, 309 N 5th St, Norfolk Nebraska, during normal business hours.

Individuals requiring physical or sensory accommodations, who desire to attend or participate, please contact the City Clerk's office at (402) 844-2000 no later than 4:30 p.m. on the Friday preceding the meeting.



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Brianna Duerst  
City Clerk

Publish (February 28, 2024)  
1 P.O.P.



AGENDA  
NORFOLK CITY COUNCIL MEETING  
March 04, 2024

In accordance with Section 84-1412 sub-section eight (8) of the Reissue Revised Statutes of the State of Nebraska 1943, as amended, one copy of all reproducible written material to be discussed is available to the public at this meeting for examination and copying. The Mayor and City Council reserve the right to adjourn into closed session as per Section 84-1410 of the Nebraska Revised Statutes.

CALL TO ORDER

1. 5:30 p.m. - call meeting to order
2. Inform the public about the location of the Open Meetings Act posted in the Council Chambers and accessible to members of the public
3. Moment of silence/Pledge of Allegiance to the flag of the United States of America
4. Roll call

RECOMMENDED ACTIONS

- |  |               |
|--|---------------|
| 5. Approval of consent agenda.<br>All items in the consent agenda are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member or a citizen so requests, in which event the item will be removed from the consent agenda and considered separately. | <b>Motion</b> |
| 6. Approval of full agenda.  | <b>Motion</b> |

CONSENT AGENDA

- |   |               |
|---|---------------|
| 7. Consideration of approval of the minutes of the February 20, 2024 City Council meeting.  | <b>Motion</b> |
| 8. February sales tax report (December sales)   | <b>Motion</b> |
| 9. Consideration of approval of a request from Brittany Melby to hold a fireworks display on Sunday, April 28, 2024, at Midtown Event Center, 1102 Riverside Boulevard, for a special event.  | <b>Motion</b> |
| 10. Consideration of approval of an agreement with Our Savior Lutheran Church, a Nebraska Nonprofit Corporation, allowing the use of a portion of South 25th Street for the purpose of holding a "Rise N Run" 5K run on Saturday, March 30, 2024. | <b>Motion</b> |

11. Consideration of approval of an agreement with Luis Cortez, doing business as Norfolk Adult Soccer League, allowing the use of multi-purpose fields located on North Pine Park and a soccer field in Veterans Memorial Park for the League's practices, games, and tournaments during their 2024 summer/fall season from April 21, 2024 through December 31, 2024. **Motion**
12. Consideration of approval of an agreement with Norfolk Lions Club, Inc., a Nebraska Nonprofit Corporation, allowing the use of Norfolk Pedal Park for a Big Wheel race on Saturday, May 18, 2024. **Motion**
13. Consideration of acceptance of the Parks and Recreation Board report from February 22, 2024. **Motion**
14. Consideration of approval of a Special Designated Liquor License for District Event Center, to serve beer, wine and distilled spirits outside of District Event Center, 218 W Norfolk Avenue, on May 5, 2024, from 9:00 a.m. to 10:00 p.m. for a Cinco De Mayo Celebration. **Motion**
15. Consideration of Resolution No. 2024-10 approving RAR Enterprises, LLC, dba Founders, 501 Norfolk Ave, Suite #110, as a satellite location of Endgame Lottery Services, dba Big Red Keno, for the Norfolk Keno Lottery. **Resolution 2024-10**
16. Consideration of approval of all bills on file. **Motion**

**PUBLIC HEARINGS AND RELATED ACTION**

17. Public hearing to consider a Class C (beer, wine, distilled spirits, on and off sale) liquor license application for RAR Enterprises, LLC, dba Founders, 501 W Norfolk Avenue Suite 110, and the manager application of Miranda L. Bright.
18. Consideration of approval Resolution No. 2024-11 of the Class C (beer, wine, distilled spirits, on and off sale) liquor license application for RAR Enterprises, LLC, dba Founders, 501 West Norfolk Avenue, Suite 110, and the manager application of Miranda L. Bright. **Resolution 2024-11**
19. Public hearing at the request of Par.Lor & Libations LLC., to consider a zoning change from I-1 (Light Industrial District) to C-2 (Central Business District) on property addressed as 714 W. Norfolk Ave.
20. Consideration of Ordinance No. 5869 approving a zoning change from I-1 (Light Industrial District) to C-2 (Central Business District) on property addressed as 714 W. Norfolk Ave. **Ordinance No. 5869**
21. Public hearing to consider a request from BAS Holding, LLC, to consider a zoning change from A (Agricultural District) to I-1 (Light Industrial District) on property addressed as 2200 S. Victory Road.
22. Consideration of Ordinance No. 5870 approving a zoning change from A (Agricultural District) to I-1 (Light Industrial District) on property addressed as 2200 S. Victory Road. **Ordinance No. 5870**



- 23. Public hearing to consider the adoption of a Workforce Housing Incentive Plan to allow for the use of Tax Increment Financing (TIF) for new construction activities for workforce housing as defined by thresholds set forth by the Nebraska Department of Economic Development and the Nebraska Community Development Law.
- 24. Consideration of Resolution 2024-12 for the adoption of a Workforce Housing Incentive Plan to allow for the use of Tax Increment Financing (TIF) for new construction activities for workforce housing as defined by thresholds set forth by the Nebraska Department of Economic Development and the Nebraska Community Development Law. **Resolution 2024-12**

**REGULAR AGENDA**

- 25. Consideration of approval to advertise for bids for the Fire Station and Police Station Roof Replacement projects. **Motion**
- 26. Consideration of approval to advertise for bids for the Paving District No. 521 (Norfolk 140 Subdivision) project. **Motion**
- 27. Consideration of approval to advertise for bids for the Sanitary Sewer Extension District No. 255 (Norfolk 140 Subdivision) project. **Motion**
- 28. Consideration of approval to advertise for bids for the Water Main Extension District No. 128 (Norfolk 140 Subdivision) project. **Motion**
- 29. Consideration of approval to submit a grant application to the Recreation Area Development Program of the Lower Elkhorn Natural Resources District (LENRD) in the amount of \$30,000 to go towards a picnic shelter and restroom at Liberty Bell Park and for the Mayor to sign all contracts and documents related to the grant. **Motion**
- 30. Consideration to approve a Standard AIA Design Build Contract with Huff Construction for the Team Lockers at Ta-Ha-Zouka. **Motion**
- 31. Consideration of approval of the Façade Improvement Program guidelines for the City of Norfolk, Nebraska Downtown Revitalization grant. **Motion**
- 32. Consideration of approval to award a contract to Rutjens Construction, Inc. of Tilden, NE for the Water Extension District No. 129, North Highway 81 project for an amount of \$320,035.00. **Motion**
- 33. Consideration of Resolution No. 2024-13 authorizing submittal of an Extremely Blighted Determination Study for a site located at approximately 105 East Norfolk or the northeast corner of North 1st Street & East Norfolk Avenue. **Resolution 2024-13**

STAFF MEMORANDUM  
NORFOLK CITY COUNCIL MEETING  
March 04, 2024

CALL TO ORDER

1. 5:30 p.m. - call meeting to order
2. Inform the public about the location of the Open Meetings Act posted in the Council Chambers and accessible to members of the public
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4. Roll call

RECOMMENDED ACTIONS

- |  |               |
|--|---------------|
| 5. Approval of consent agenda.<br>All items in the consent agenda are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member or a citizen so requests, in which event the item will be removed from the consent agenda and considered separately. | <b>Motion</b> |
| 6. Approval of full agenda.  | <b>Motion</b> |

CONSENT AGENDA

- |  |               |
|--|---------------|
| 7. Consideration of approval of the minutes of the February 20, 2024 City Council meeting.<br><br>See Enclosure 7.   | <b>Motion</b> |
| 8. February sales tax report (December sales)<br><br>February sales tax receipts (December sales) are \$1,130,809.70. The City's sales tax receipts are down \$5,148.22 or 0.45% from last February. Motor vehicle sale tax was up \$5,675.09, and consumers use tax was up \$5,144.38. The decrease was in other sales tax. Fiscal year to date sales tax receipts are \$591,585.69 or 11.67% more than budgeted. Included in the agenda packet is a sales tax comparison by month.<br><br>See Enclosure 8. | <b>Motion</b> |

9. Consideration of approval of a request from Brittany Melby to hold a fireworks display on Sunday, April 28, 2024, at Midtown Event Center, 1102 Riverside Boulevard, for a special event. **Motion**

See Enclosure 9.

10. Consideration of approval of an agreement with Our Savior Lutheran Church, a Nebraska Nonprofit Corporation, allowing the use of a portion of South 25th Street for the purpose of holding a "Rise N Run" 5K run on Saturday, March 30, 2024. **Motion**

See Enclosure 10.

11. Consideration of approval of an agreement with Luis Cortez, doing business as Norfolk Adult Soccer League, allowing the use of multi-purpose fields located on North Pine Park and a soccer field in Veterans Memorial Park for the League's practices, games, and tournaments during their 2024 summer/fall season from April 21, 2024 through December 31, 2024. **Motion**

See Enclosure 11.

12. Consideration of approval of an agreement with Norfolk Lions Club, Inc., a Nebraska Nonprofit Corporation, allowing the use of Norfolk Pedal Park for a Big Wheel race on Saturday, May 18, 2024. **Motion**

See Enclosure 12.

13. Consideration of acceptance of the Parks and Recreation Board report from February 22, 2024. **Motion**

The items approved for recommendation include the minutes, full agenda, a concept for a historical trail from Winter Park to Johnson Park, a letter of support for the Raise Grant, and placement of sculptures provided by the Nucor Ken Iverson project. There are no future items needed from council as a result of this meeting.

See Enclosure 13.

14. Consideration of approval of a Special Designated Liquor License for District Event Center, to serve beer, wine and distilled spirits outside of District Event Center, 218 W Norfolk Avenue, on May 5, 2024, from 9:00 a.m. to 10:00 p.m. for a Cinco De Mayo Celebration. **Motion**

See Enclosure 14.

15. Consideration of Resolution No. 2024-10 approving RAR Enterprises, LLC, dba Founders, 501 Norfolk Ave, Suite #110, as a satellite location of Endgame Lottery Services, dba Big Red Keno, for the Norfolk Keno Lottery. **Resolution 2024-10**

See Enclosure 15.

16. Consideration of approval of all bills on file. **Motion**

#### PUBLIC HEARINGS AND RELATED ACTION

17. Public hearing to consider a Class C (beer, wine, distilled spirits, on and off sale) liquor license application for RAR Enterprises, LLC, dba Founders, 501 W Norfolk Avenue Suite 110, and the manager application of Miranda L. Bright.

RAR Enterprises, LLC, dba Founders, 501 W Norfolk Avenue, Suite 110 has submitted an application for a Class C Liquor License. A background check was completed by the Norfolk Police Department and is attached to the agenda packet.

Following the public hearing, Council will need to make a recommendation, by resolution, to the Nebraska Liquor Control Commission, who ultimately decides on issuance of the license.

See Enclosure 17.

18. Consideration of approval Resolution No. 2024-11 of the Class C (beer, wine, distilled spirits, on and off sale) liquor license application for RAR Enterprises, LLC, dba Founders, 501 West Norfolk Avenue, Suite 110, and the manager application of Miranda L. Bright. **Resolution 2024-11**

See Enclosure 18.

19. Public hearing at the request of Par.Lor & Libations LLC., to consider a zoning change from I-1 (Light Industrial District) to C-2 (Central Business District) on property addressed as 714 W. Norfolk Ave.

See Enclosure 19.

20. Consideration of Ordinance No. 5869 approving a zoning change from I-1 (Light Industrial District) to C-2 (Central Business District) on property addressed as 714 W. Norfolk Ave. **Ordinance No. 5869**

See Enclosure 20.

21. Public hearing to consider a request from BAS Holding, LLC, to consider a zoning change from A (Agricultural District) to I-1 (Light Industrial District) on property addressed as 2200 S. Victory Road.

See Enclosure 21.

22. Consideration of Ordinance No. 5870 approving a zoning change from A (Agricultural District) to I-1 (Light Industrial District) on property addressed as 2200 S. Victory Road.

**Ordinance No. 5870**

See Enclosure 22.

23. Public hearing to consider the adoption of a Workforce Housing Incentive Plan to allow for the use of Tax Increment Financing (TIF) for new construction activities for workforce housing as defined by thresholds set forth by the Nebraska Department of Economic Development and the Nebraska Community Development Law.

Community Development Law allows for the use of Tax Increment Financing (TIF) for new construction in owner-occupied homes and rental units if a community adopts a Workforce Housing Incentive Plan and the cost of construction stays within the thresholds defined by the Nebraska Department of Economic Development. The most recent guidelines indicate a maximum construction cost of \$300,000 for owner -occupied units and no more than \$235,000 per unit for rental housing units.

As with all TIF projects, developers seeking to use TIF must present a redevelopment plan or submit a micro-TIF application as well as disclose a detailed project budget and provide the CDA with actual costs for the completed project.

Discussion on this agenda item was held at the November 6 and 20, 2023 Community and Economic Development Subcommittee meetings.

24. Consideration of Resolution 2024-12 for the adoption of a Workforce Housing Incentive Plan to allow for the use of Tax Increment Financing (TIF) for new construction activities for workforce housing as defined by thresholds set forth by the Nebraska Department of Economic Development and the Nebraska Community Development Law.

**Resolution 2024-12**

See Enclosure 24.

#### REGULAR AGENDA

25. Consideration of approval to advertise for bids for the Fire Station and Police Station Roof Replacement projects. **Motion**

26. Consideration of approval to advertise for bids for the Paving District No. 521 (Norfolk 140 Subdivision) project. **Motion**

The plans, specifications, and engineer's estimate for this project are filed in the City offices. This paving district includes paving South 43rd Street from existing approach on West Norfolk Avenue (Highway 275) south approximately 750 feet, Madison Avenue from South 43rd Street east 1400 feet to South 40th Street, 40th Street from Madison Avenue in Fountain Point Addition south 225 feet to the easterly extension of Madison Avenue in Norfolk 140 Subdivision, right turn lane to 43rd Street on the east bound lanes of Highway 275, and the realignment of 320 feet of a private drive to meet Nebraska Department of Transportation access restriction requirements.

A bid letting is tentatively scheduled for this spring with Council approval of the lowest responsive and responsible bidder following.

27. Consideration of approval to advertise for bids for the Sanitary Sewer Extension District No. 255 (Norfolk 140 Subdivision) project. **Motion**

The plans, specifications, and engineer's estimate for this project are filed in the City offices. This sanitary sewer district includes construction of a 12-inch PVC sanitary sewer main along with necessary appurtenances extending south along 40th Street approximately 255 feet, west at the intersection of 40th Street and Madison Avenue approximately 1400 feet to 43rd Street, and north on 43rd Street approximately 375 feet.

A bid letting is tentatively scheduled for this spring with Council approval of the lowest responsive and responsible bidder following.

28. Consideration of approval to advertise for bids for the Water Main Extension District No. 128 (Norfolk 140 Subdivision) project. **Motion**

The plans, specifications, and engineer's estimate for this project are filed in the City offices. This water district includes construction of a 10-inch DIP water main together with necessary appurtenances extending west along Madison Avenue approximately 1400 feet from 40th Street to 43rd Street, and north along 43rd Street approximately 840 feet to Highway 275.

A bid letting is tentatively scheduled for this spring with Council approval of the lowest responsive and responsible bidder following.

29. Consideration of approval to submit a grant application to the Recreation Area Development Program of the Lower Elkhorn Natural Resources District (LENRD) in the amount of \$30,000 to go towards a picnic shelter and restroom at Liberty Bell Park and for the Mayor to sign all contracts and documents related to the grant. **Motion**

Matching funds will come from existing project funds to install a restroom at Liberty Bell Park. The current budget is \$200,000, we would like to increase that to \$230,000 to install a restroom and a shelter.

See Enclosure 29.

30. Consideration to approve a Standard AIA Design Build Contract with Huff Construction for the Team Lockers at Ta-Ha-Zouka. **Motion**

Attached is an agreement for the design-build process with Huff Construction to install team lockers at Ta Ha Zouka Park in the amount of \$1,350,000. The selection committee met September 12th, 2023, and selected Huff Construction to design and build Team Lockers at Ta Ha Zouka Park. This is funded through contributions from NPS, NECC and the Mahlon B. Kohler donation. The expected team locker design will include lockers for the home and away team and one set of restrooms and ADA sidewalks. The locker rooms will have retractable walls to allow us to open the room into a two-lane batting cage in the winter and used for youth programs as requested by the Kohler Estate. The entire facility will be available year-round. This process allows us to conduct our preliminary design before returning to council with an amendment to complete the full project of \$1.35 million. The preliminary design phase is not to exceed \$30,000.

See Enclosure 30.

31. Consideration of approval of the Façade Improvement Program guidelines for the City of Norfolk, Nebraska Downtown Revitalization grant. **Motion**

In November 2023, the City was awarded \$435,000 in CDBG Downtown Revitalization (DTR) funds from the Nebraska Department of Economic Development. Of the \$435,000 in funds, \$310,000 are allocated to the downtown façade improvement program.

The proposed Façade Improvement Program will operate very similar to the 2017 grant where applicants can apply for funds to improve façade features such as awnings, windows, doors, signage, or restoration activities such as tuck pointing. The program requires a 1:1 match from the property owner or business that is applying. Applications will be reviewed by a Design Advisory Board appointed by the Vehicle Parking District. The program is designed to forgive the loan over a five-year period. The maximum request is \$25,000 per application.

Staff worked with the Northeast Nebraska Economic Development District to ensure updated guidelines follow specifications outlined in the CDBG DTR program. The proposed guidelines were discussed at the January 8, 2024



Downtown Norfolk Association meeting as well as the February 15, 2024 Vehicle Parking District Advisory Board meeting. The guidelines have been posted on the City's website under a projects page that was created specifically for this grant award.

See Enclosure 31.

32. Consideration of approval to award a contract to Rutjens Construction, Inc. of Tilden, NE for the Water Extension District No. 129, North Highway 81 project for an amount of \$320,035.00. **Motion**

This project consists of approximately 1700' of 8" water main and approximately 250' of 6" water main with all needed appurtenances. On February 26, 2024 two bids were received. The other bidder was Penro Construction Co., Inc. of Pender, NE for \$437,672.60.

The low bid is within the engineer's estimate. The Engineer, McLaury Engineering Inc., and City staff recommend approval of a contract with Rutjens Construction Inc. for the Water Extension District No. 129, North Highway 81 project for an amount of \$320,035.00.

See Enclosure 32.

33. Consideration of Resolution No. 2024-13 authorizing submittal of an Extremely Blighted Determination Study for a site located at approximately 105 East Norfolk or the northeast corner of North 1st Street & East Norfolk Avenue. **Resolution 2024-13**

This study is to determine if area already declared Blighted and Substandard located at approximately 105 East Norfolk (NE corner of N 1st & East Norfolk Ave) meets the Legislative requirements to be declared Extremely Blighted.

In the 2020 Nebraska general election Proposed Amendment No. 2 was offered to the voters. It was a constitutional amendment to authorize the Legislature to allow cities and villages to pledge property taxes as part of a redevelopment project for a period not to exceed twenty years if, due to a high rate of unemployment combined with a high poverty rate as determined by law, more than one-half of the property in the project area is extremely blighted. As a state voters approved the measure 530,236 FOR (61.6%) and 330,445 AGAINST. In Madison County voters approved the measure 7,957 FOR (56.8%) and 6,047 AGAINST.

Discussion relating to this agenda item was held at the Monday, December 4, 2023 Community and Economic Development Subcommittee meeting.

See Enclosure 33.



**CITY OF NORFOLK, NEBRASKA**

The Mayor and City Council of the City of Norfolk, Nebraska met in regular session in the Council Chambers, 309 North 5th Street, Norfolk, Nebraska on the 20th day of February, 2024, beginning at 5:30 p.m.

Following a moment of silence and the Pledge of Allegiance to the flag of the United States of America, Mayor Josh Moenning called the meeting to order. Roll call found the following Councilmembers present: Corey Granquist, Frank Arens, Justin Webb, Andrew McCarthy, Thad Murren, Justin Snorton, Shane Clausen and Kory Hildebrand. Absent: None.

Staff members present were: City Administrator Andy Colvin, City Attorney Danielle Myers-Noelle, City Clerk Brianna Duerst, Administrative Secretary Bethene Hoff, Assistant City Engineer Anna Allen, Risk Manager Lyle Lutt, Human Resources Director Jessica Dvorak, Streets Manager Will Elwell, Street Shop Supervisor Matt Ernesti, Parks and Recreation Director Nathan Powell, Assistant Parks and Recreation Director PJ Evans, Economic Development Director Candice Alder and City Planner Val Grimes.

The Mayor presided and the City Clerk recorded the proceedings.

The Mayor informed the public about the location of the current copy of the Open Meetings Act posted in the City Council Chambers and accessible to members of the public.

Notice of the meeting was given in advance thereof by publication in the Norfolk Daily News, Norfolk, Nebraska, the designated method of giving notice, as shown by affidavit of publication.

Notice was given to the Mayor and all members of the Council and a copy of their acknowledgement of receipt of notice and agenda is attached to the minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and Council of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the public.

**Agenda Motions**

Councilmember Murren moved, seconded by Councilmember Snorton to approve the consent agenda with Item #15, *consideration of approval to advertise for request for proposals for a highway and street right of way mowing contract for the Street Division*, and Item #16, *consideration of approval to advertise for a request for proposals for a street striping/painting contract for the Street Division*, removed from the consent agenda and added to the regular agenda. Roll call: Ayes: Granquist, Arens, Webb, McCarthy, Murren, Snorton, Clausen and Hildebrand. Nays: None. Absent: None.

Councilmember Granquist moved, seconded by Councilmember Arens to adopt the full agenda with Item #15 and 16 removed from the consent agenda and added to the regular agenda.. Roll call: Ayes: Granquist, Arens, Webb, McCarthy, Murren, Snorton, Clausen and Hildebrand. Nays: None. Absent: None.

**Consent Agenda Items Approved**

Minutes of the February 5, 2024, City Council meeting

Keno Comparison report for January 2024

Acceptance of the January 22, 2024 board report of the Northeast Nebraska Regional Land Bank

American Cancer Society, Inc., a New York Nonprofit Corporation, d/b/a Norfolk Area Relay for Life, agreement allowing the use of Ta-Ha-Zouka Park to hold a Norfolk Area Relay for Life event including but not limited to live music performances, ceremonies, luminarias, walking, and a silent auction on Friday, May 31, 2024

Northeast Nebraska All-Star Football Classic, a Nebraska Nonprofit Corporation, agreement to use the football field in Veterans Memorial Park for an all-star classic football game for area graduating seniors on Saturday, June 8, 2024

Special Designated Liquor License for Sacred Heart Church of Norfolk to serve beer, wine and distilled spirits at Norfolk Catholic Activities Center, 2301 West Madison Avenue, on April 13, 2024, from 5 p.m. to 12 a.m. for a Hall of Fame banquet

Special Designated Liquor License for Jim's Fine Wine and More, to serve wine and distilled spirits at Magnolias, 432 W Norfolk Ave, on March 9, 2024, from 12:00 p.m. to 5:00 p.m. for a wine and cordial tasting event

Resolution No. 2024-7 approving the final plat and subdivision agreement for Abler Light Industrial Site Replat

Mayor's reappointment of Erin Kucera to the Tree Advisory Board for a three (3) year term expiring September 2026

Resolution 2024-8 supplementing the original legal descriptions contained within Resolution 2024-5 with ones set forth by the Madison County Clerk

Mayor's reappointment of Jill Sock, Dirk Waite and Brandon Franklin to the Norfolk Planning Commission for a three-year term, ending February 2027

Mayor's reappointment of Ignacio Machuca and Dan Hofmann (alternate) to the Building & Property Maintenance Code Appeals Board for a five-year term, ending February 2029

Mayor's reappointment of John Grimes to the Fire Code Appeals Board for a five-year term, ending February 2029

Mayor's appointment of Roy Swoboda to the Plumbing Board for a three-year term, ending August 2026

Bills in the amount of \$1,860,659.90

### **Special Presentation**

Will and Leon Younger with PROS Consulting, presented the Norfolk Parks and Recreation Master Plan findings and preliminary recommendations, reviewing the comprehensive master plan process, facility and amenity priorities, program priorities, proposed capital improvement plan, key issues and themes, Norfolk Parks vision and mission, parkland and trails, facility programming, and financial strategies.

### **Regular Agenda**

#### Advertise for highway and street of way mowing

Councilmember Granquist moved, seconded by Councilmember McCarthy, for approval to advertise for a request for proposals for a highway and street right of way mowing contract for the Street Division.

Streets Manager Will Elwell provided information to elected officials. Elwell explained that contracting this out would allow Street crews to focus on street maintenance instead of getting pulled away to do this mowing. These areas would be mowed up to six times per year, from around Memorial Day to the end of October.

Councilmember Hildebrand declared a conflict of interest and abstained from the vote.

Roll call: Ayes: Granquist, Arens, Webb, McCarthy, Murren, Snorton and Clausen. Nays: None. Absent: None. Abstaining: Hildebrand. Motion approved.

#### Advertise for street striping/painting

Councilmember Granquist moved, seconded by Councilmember Hildebrand, for approval to advertise for a request for proposals for a street striping/painting contract for the Street Division.

Streets Manager Will Elwell provided information to elected officials. Elwell explained that most roads get painted every year, but it is a very lengthy process. By contracting this out, the contractor can get the striping/painting done in much less time, and it will free up Street's resources to focus on other street maintenance.

Roll call: Ayes: Granquist, Arens, Webb, McCarthy, Murren, Snorton, Clausen and Hildebrand. Nays: None. Absent: None. Motion approved.

Resolution No. 2024-9  
(RAISE planning grant application)

Councilmember Granquist moved, seconded by Councilmember Murren, for adoption of Resolution No. 2024-9 approving to support Madison County in their RAISE planning grant application.

Assistant City Engineer Anna Allen provided information to elected officials. Madison County is applying for a RAISE (Rebuilding American Infrastructure with Sustainability and Equity) planning grant to request funding for the planning, preliminary design, and initial environmental review for the Northwest Industrial Loop project. The proposed project is for the extension of Industrial Highway from Highway 81 west approximately 6 miles, then south to Highway 275 while also looking at alternatives to improve the roadway from this point north toward Pierce. This project would allow for heavy truck traffic to circumvent Norfolk, promote economic growth, and increase safety along the highway corridors in town. Applications are due February 28, and the grant is expected to be awarded in June.

Roll call: Ayes: Granquist, Arens, Webb, McCarthy, Murren, Snorton, Clausen and Hildebrand.  
Nays: None. Absent: None. Resolution No. 2024-9 was adopted.

A & R Construction Change Order No. 2  
(West Michigan Avenue & 8th Street Reconstruction project)

Councilmember Arens moved, seconded by Councilmember Snorton, for approval of Change Order No.2 with A & R Construction for the West Michigan Avenue and 8th Street Reconstruction project resulting in a net increase of \$103,628.84.

Assistant City Engineer Anna Allen provided information to elected officials. Change Order No. 2 provides for full reconstruction of the intersection of 7th and Michigan, increases in water and sewer service connections, and balancing most bid items to as built quantities resulting in a new contract amount of \$3,086,833.45.

Roll call: Ayes: Granquist, Arens, Webb, McCarthy, Murren, Snorton, Clausen and Hildebrand.  
Nays: None. Absent: None.

AccuDock fishing dock purchase

Councilmember Arens moved, seconded by Councilmember Snorton, for approval to purchase a fishing dock from AccuDock in the amount of \$184,166.00.

On January 10, 2024, two proposals were received. One from AccuDock and three options from EZ Dock. Parks and Recreation Director Nathan Powell provided information to elected officials. Working with Nebraska Game and Parks, engineering and lake users, city staff determined AccuDock to be a better-quality product with the highest perceived value, and a more suitable style for our location. This dock is part of the \$250,000 Mahlon B. Kohler donation. This leaves \$68,326 for the installation, site modifications, a bench and a picnic table

to recognize the gift from Mahlon B. Kohler. The process of accepting quotes for the dock installation has begun. The remaining funds will be used to provide ADA access from the parking lot area. The dock will be located on the south side of the lake near the jetties.

John Sehi, 1621 Koenigstein Ave, said the dock placement will be a great location.

Councilmember Hildebrand declared a conflict of interest and abstained from the vote.

Roll call: Ayes: Granquist, Arens, Webb, McCarthy, Murren, Snorton, Clausen. Nays: None. Absent: None. Abstaining: Hildebrand. Motion approved.

There being no further business, the Mayor declared the meeting adjourned at 6:47 p.m.

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Josh Moenning  
Mayor

ATTEST:

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Brianna Duerst  
City Clerk

( S E A L )

I, the undersigned Clerk, hereby certify that the foregoing is the full, true and correct original document of proceedings of Tuesday, February 20, 2024, had and done by the Mayor and City Council; that all of the subjects included in the proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to the 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.

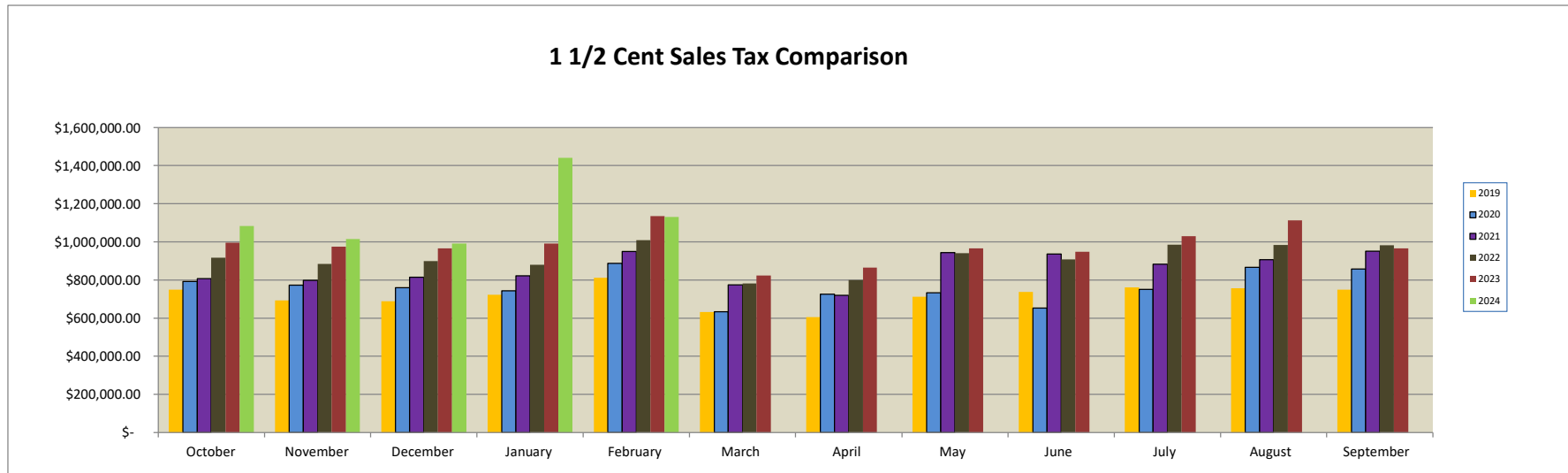
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Brianna Duerst  
City Clerk

( S E A L )

**CITY OF NORFOLK**  
**1 1/2 CENT SALES TAX COMPARISON**  
**2019 - 2024**

PAYMENT DATE	FISCAL YEARS ENDED SEPTEMBER 30,						2024		CHANGE 2023 TO 2024		BUDGET VARIANCE	
	2019	2020	2021	2022	2023	2024	BUDGET					
October	\$ 749,907.08	\$ 791,667.22	\$ 807,699.88	\$ 916,869.52	\$ 995,864.82	\$ 1,083,160.19	\$ 996,910.16	\$ 87,295.37	8.77%	\$ 86,250.03	8.65%	
November	\$ 693,592.86	\$ 773,622.59	\$ 798,022.46	\$ 884,430.97	\$ 974,723.28	\$ 1,013,893.31	\$ 975,768.62	\$ 39,170.03	4.02%	\$ 38,124.69	3.91%	
December	\$ 688,673.25	\$ 760,004.07	\$ 815,440.55	\$ 899,492.96	\$ 965,286.05	\$ 990,850.41	\$ 966,331.39	\$ 25,564.36	2.65%	\$ 24,519.02	2.54%	
January	\$ 722,650.88	\$ 743,508.54	\$ 821,520.19	\$ 881,000.94	\$ 991,455.26	\$ 1,441,386.11	\$ 992,500.60	\$ 449,930.85	45.38%	\$ 448,885.51	45.23%	
February	\$ 812,345.69	\$ 887,425.53	\$ 950,153.16	\$ 1,009,091.07	\$ 1,135,957.92	\$ 1,130,809.70	\$ 1,137,003.26	\$ (5,148.22)	-0.45%	\$ (6,193.56)	-0.54%	
March	\$ 632,492.20	\$ 633,342.26	\$ 774,090.95	\$ 781,268.81	\$ 823,190.27	\$ -	\$ 824,235.61	\$ -	0.00%	\$ -	0.00%	
April	\$ 606,371.26	\$ 725,373.93	\$ 719,690.10	\$ 800,199.17	\$ 864,336.75	\$ -	\$ 865,382.09	\$ -	0.00%	\$ -	0.00%	
May	\$ 712,360.98	\$ 733,041.40	\$ 943,475.10	\$ 941,437.19	\$ 965,402.83	\$ -	\$ 965,402.83	\$ -	0.00%	\$ -	0.00%	
June	\$ 738,010.16	\$ 653,114.23	\$ 935,611.73	\$ 907,696.57	\$ 948,479.55	\$ -	\$ 908,741.91	\$ -	0.00%	\$ -	0.00%	
July	\$ 761,157.69	\$ 750,322.72	\$ 883,844.67	\$ 985,039.55	\$ 1,029,422.05	\$ -	\$ 986,084.89	\$ -	0.00%	\$ -	0.00%	
August	\$ 756,686.77	\$ 866,997.21	\$ 907,083.35	\$ 984,190.94	\$ 1,112,393.81	\$ -	\$ 985,236.28	\$ -	0.00%	\$ -	0.00%	
September	\$ 748,664.90	\$ 857,175.30	\$ 951,421.42	\$ 981,225.96	\$ 965,491.99	\$ -	\$ 982,271.30	\$ -	0.00%	\$ -	0.00%	
<b>TOTALS</b>	<b>\$8,622,913.72</b>	<b>\$9,175,595.00</b>	<b>\$ 10,308,053.56</b>	<b>\$ 10,971,943.65</b>	<b>\$ 11,772,004.58</b>	<b>\$ 5,660,099.72</b>	<b>\$ 11,585,868.94</b>	<b>\$ 596,812.39</b>	<b>11.79%</b>	<b>\$ 591,585.69</b>	<b>11.67%</b>	



## Brianna Duerst

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**From:** Brittany Melby <brittany.dawn.melby@gmail.com>

**Sent:** Tuesday, February 13, 2024 11:49 AM

**To:** Katelyn Palmer <KPalmer@norfolkne.gov>

**Subject:** Private Firework Show

We are requesting permission to a private firework show, this is for personal use, not professional fireworks. We are planning to light them off on April 28th in the evening when it gets dark at the Midtown Event Center in Norfolk NE. This is for the Exchange Student Programs going away party. The exchange students are unable to stay for the Fourth of July Festivities due to their visas expiring so we would like to simulate a small Fourth of July gathering with fireworks. If there is rain we will NOT reschedule, we would just not light off fireworks. Show should last less than 15 minutes. We have permission from the Event Center already for this. The fireworks would be something you can purchase during the season, not large fireworks (Big bang boom).

## AGREEMENT

This Agreement is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Norfolk, Nebraska, a Municipal Corporation, hereinafter referred to as "CITY", and Our Savior Lutheran Church, a Nebraska Nonprofit Corporation, hereinafter referred to as "CHURCH", WITNESSETH:

WHEREAS, CHURCH is desirous of holding a "Rise N Run" 5K Run on Saturday, March 30, 2024; and

WHEREAS, CHURCH is desirous of closing a portion of South 25<sup>th</sup> Street from the southernmost exit on the west side of CHURCH's property at 2420 W. Omaha Avenue to the south side of Omaha Avenue (south city limits) for a portion of its Rise N Run event; and

WHEREAS, the parties desire to enter into an Agreement to allow CHURCH to hold the 5K Run utilizing a portion of South 25<sup>th</sup> Street at the location named herein.

NOW THEREFORE, in consideration of the foregoing recitals, the parties hereto agree as follows:

1. ROUTE. CITY shall allow CHURCH to utilize the following portion of South 25 Street for the purpose of holding the 5K Run on Saturday, March 30, 2024, for the route depicted on the attached Exhibit "A":

Begin at the southernmost exit on the west side of CHURCH's property located at 2420 W. Omaha Avenue;

Proceed running south on South 25<sup>th</sup> Street to the south side of W. Omaha Avenue (south city limits);

Proceed south outside of city limits for major portion of the run;

Re-enter city limits on South 25<sup>th</sup> Street from the south side of W. Omaha Ave and proceed north on South 25<sup>th</sup> Street;

Conclude run at CHURCH's parking lot at 2420 W. Omaha Avenue.

2. STREET CLOSURE. CITY will endeavor to close the portion of South 25<sup>th</sup> Street being utilized by runners at the beginning and end of the 5K Run while runners are present. This provision will depend upon the availability of CITY's Police Division staff.

3. ROUTE MARKING. CHURCH shall be allowed to begin marking the route for the 5K Run on Saturday, March 30, 2024, at 8:30 a.m. CHURCH shall remove all route markings immediately following completion of the event. The event is scheduled to begin at approximately 8:30 a.m. and last approximately 1½ hours.



4. PAINTING OF STREET PROHIBITED. CHURCH shall not paint any CITY streets for this event.

5. RELEASES. In the event that CHURCH obtains Releases for participation in CHURCH's event while utilizing CITY's streets under the terms of this Agreement, said Releases shall include a provision releasing CITY from the same liability and in the same manner that is afforded to other entities being released.

6. LIABILITY. CHURCH shall provide CITY with a certificate of general liability insurance in the following minimum amounts:

General Aggregate	\$1,000,000
a. Bodily Injury/Property Damage	\$1,000,000 each occurrence
b. Personal Injury Damage	\$1,000,000 each occurrence
c. Contractual Liability	\$1,000,000 each occurrence
d. Products Liability & Completed Operations	\$1,000,000 each occurrence
e. Fire Damage	\$ 100,000 any one fire
f. Medical Expense	\$ 5,000 any one person

In addition, CHURCH shall name CITY as an additional insured. The policy issued shall cover all activities sponsored by CHURCH while using CITY's street with no exclusions. CHURCH's insurance shall be the primary insurance coverage for CHURCH's event. CHURCH agrees to be responsible for any damages or claim of loss not covered by CHURCH's insurance. A certificate of insurance shall be filed with the Norfolk City Clerk upon execution of this Agreement. In the event the certificate of insurance is not filed by March 20, 2024, then (1) CHURCH shall pay a late fee to CITY in the amount of \$75.00, and (2) this Agreement shall be voidable at the option of CITY's risk manager.

7. HOLD HARMLESS/INDEMNIFICATION. CHURCH agrees to save, hold harmless, indemnify and defend CITY, its representatives, agents and employees from any loss or damage or claim of loss by CHURCH or any third party from damage or claim of damage that arises from any of the activities authorized or undertaken as provided in this Agreement and for any loss to CITY that results from CHURCH failing to perform its obligations under this Agreement or engaging in any activity not authorized by this Agreement.

8. NO SIGNS ALONG STATE HIGHWAY. Pursuant to Nebraska Administrative Code Title 410, Chapter 3, CHURCH shall not place signs advertising CHURCH's event on property adjacent to any state highway.

9. CANCELLATIONS. Notwithstanding any other provision of this Agreement, CITY retains the right at any time to cancel any activities scheduled on CITY property due to inclement weather or for any other reason. CITY shall not be responsible for any loss to CHURCH resulting from CITY's cancellation of CHURCH's activities.

10. NO USAGE FEE. CHURCH shall pay no fee to CITY for the use of CITY's street for CHURCH's event.

11. NEBRASKA LAW GOVERNS. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Nebraska. Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the State of Nebraska only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

12. AUTHORITY TO SIGN AGREEMENT. The individuals signing this Agreement represent that they are authorized to sign on behalf of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed the foregoing Agreement in duplicate the day and year first above written. This Agreement may be executed in counterparts. Each such counterpart, executed in duplicate, shall be deemed an original hereof and all such executed counterparts shall together be one and the same instrument.

CITY OF NORFOLK, NEBRASKA,  
A Municipal Corporation

ATTEST:

\_\_\_\_\_  
Brianna Duerst, City Clerk

By \_\_\_\_\_  
Josh Moenning, Mayor

Approved as to Form: \_\_\_\_\_  
Danielle Myers-Noelle, City Attorney

OUR SAVIOR LUTHERAN CHURCH,  
A Nebraska Nonprofit Corporation

By \_\_\_\_\_  
Title: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

By \_\_\_\_\_  
Title: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

EHXIBIT "A"



## AGREEMENT

This Agreement is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Norfolk, Nebraska, a Municipal Corporation, hereinafter referred to as “CITY”, and Luis Cortez, doing business as Norfolk Adult Soccer League, hereinafter referred to as “SOCCER LEAGUE”, WITNESSETH:

In consideration of the mutual covenants contained herein, and for other good and valuable consideration, CITY agrees to allow SOCCER LEAGUE to use the CITY facilities for soccer practice, games, and tournaments subject to the following:

1. FACILITY. CITY, being the owner of multi-purpose fields located in North Pine Park and a soccer field in Veterans Memorial Park in Norfolk, Nebraska, is willing to allow the multi-purpose fields and/or soccer field to be used by SOCCER LEAGUE for soccer practice, games, and tournaments for their 2024 summer/fall soccer season.
2. TERM. This Agreement shall be effective April 21, 2024 through December 31, 2024.
3. USAGE FEES. SOCCER LEAGUE shall pay usage fees to CITY as follows:
  - a. \$10.00 per athlete in program (practice other than Veterans Memorial Park).
  - b. \$15.00 per athlete in program (practice at Veterans Memorial Park).
  - c. \$20.00 per field per day for games (not at Veterans Memorial Park).
  - d. \$50.00 per day for games (at Veterans Memorial Park).
  - e. \$15.00 per CITY staff member per hour for extra field preparation when requested to be on duty during tournaments and games. (This charge only applies to field preparation over and above standard field preparation which is provided at no charge prior to the start of play each day.)

SOCCER LEAGUE shall complete and submit a Roster Form listing all teams in SOCCER LEAGUE’s program. CITY will bill SOCCER LEAGUE at the end of the soccer season in accordance with the fees set forth herein. SOCCER LEAGUE shall be responsible for collecting all funds and shall pay the same to CITY at the Norfolk City Clerk’s Office, 309 North 5th Street, Norfolk, Nebraska, no later than December 1, 2024.

4. NONEXCLUSIVE USE/TIMES. The parties understand that SOCCER LEAGUE’s use of CITY’s fields shall be nonexclusive and is subject to such times as may be designated or assigned by CITY’s parks and recreation director.

5. FIELD MARKING. CITY shall mark CITY’s fields for games prior to the start of play each day.

6. INSURANCE. SOCCER LEAGUE shall provide CITY with a certificate of general liability insurance in the following minimum amounts:

General Aggregate	\$2,000,000
a. Bodily Injury/Property Damage	\$1,000,000 each occurrence
b. Personal Injury Damage	\$1,000,000 each occurrence
c. Contractual Liability	\$1,000,000 each occurrence
d. Products Liability & Completed Operations	\$1,000,000 each occurrence
e. Fire Damage	\$ 100,000 any one fire
f. Medical Expense	\$ 5,000 any one person

SOCCER LEAGUE shall name CITY as an additional insured. The policy issued shall cover all activities sponsored by SOCCER LEAGUE while using CITY's multi-purpose fields with no exclusions. A certificate of insurance shall be filed with the City Clerk's office upon execution of this Agreement. Said insurance shall be the primary insurance coverage for SOCCER LEAGUE's events. SOCCER LEAGUE agrees to be responsible for any damages or claim of loss not covered by SOCCER LEAGUE's insurance. In the event the certificate of insurance is not filed by April 11, 2024, then (1) SOCCER LEAGUE shall pay a late fee to CITY in the amount of \$75.00, and (2) this Agreement shall be voidable at the option of CITY's risk manager.

7. HOLD HARMLESS/INDEMNIFICATION. SOCCER LEAGUE agrees to save, hold harmless, indemnify and defend CITY, its representatives, agents and employees from any loss or damage or claim of loss by SOCCER LEAGUE or any third party from damage or claim of damage that arises from any of the activities authorized or undertaken as provided in this Agreement and for any loss to CITY that results from SOCCER LEAGUE failing to perform its obligations under this Agreement or engaging in any activity not authorized by this Agreement.

8. RELEASES. In the event that SOCCER LEAGUE obtains Releases for participation in SOCCER LEAGUE's events while utilizing CITY's facilities under the terms of this Agreement, said Releases shall include a provision releasing CITY from the same liability and in the same manner that is afforded to other entities being released.

9. VOLUNTEERS. Any volunteers that access CITY's fields as part of this Agreement are SOCCER LEAGUE's volunteers and SOCCER LEAGUE shall be responsible for any insurance coverage or liability related to or stemming from SOCCER LEAGUE's volunteers.

10. VEHICLE PARKING. Parking of vehicles shall be restricted to the main parking lot.

11. NO PARKING AREA. SOCCER LEAGUE understands the importance of CITY's ability to access the equipment/vehicle(s) stored in the brown storage building located immediately west of the paved parking lot at North Pine Park. SOCCER LEAGUE shall be responsible for ensuring that participants and spectators are notified that no parking is allowed in front of the brown storage building where indicated by "NO PARKING" signs.

12. FIELD DAMAGE. SOCCER LEAGUE shall be responsible for any damage to any part of CITY's fields above normal use and wear for all times during which SOCCER LEAGUE has control of the fields.

13. CLEANUP. SOCCER LEAGUE shall perform all trash cleanup of the area at North Pine Park.

14. CONCESSIONS. SOCCER LEAGUE is prohibited from selling or participating in the sale of any concessions while utilizing CITY's facilities under the terms of this Agreement.

15. TENTS. CITY shall allow the placement of pop-up tents in North Pine Park during the term of this Agreement, however, SOCCER LEAGUE shall not allow any tent stakes to be placed in the ground at North Pine Park.

16. NO SIGNS ALONG STATE HIGHWAY. Pursuant to Nebraska Administrative Code Title 410, Chapter 3, SOCCER LEAGUE shall not place signs advertising SOCCER LEAGUE's events on property adjacent to any state highway.

17. CANCELLATION BY SOCCER LEAGUE. SOCCER LEAGUE shall be responsible for providing notice of cancellation of any games to CITY's parks and recreation athletic supervisor at 844-2254.

18. CANCELLATION BY CITY. Notwithstanding any other provision of this Agreement, CITY retains the right to cancel any activities scheduled on CITY property due to inclement weather or for any other reason. CITY shall not be responsible for any loss to SOCCER LEAGUE resulting from CITY's cancellation of SOCCER LEAGUE's activities.

IN WITNESS WHEREOF, the parties hereto have executed the foregoing Agreement in duplicate the day and year first above written. This Agreement may be executed in counterparts. Each such counterpart, executed in duplicate, shall be deemed an original hereof and all such executed counterparts shall together be one and the same instrument.

CITY OF NORFOLK, NEBRASKA,  
A Municipal Corporation

ATTEST:

\_\_\_\_\_  
Brianna Duerst, City Clerk

By \_\_\_\_\_  
Josh Moenning, Mayor

Approved as to Form: \_\_\_\_\_  
Danielle Myers-Noelle, City Attorney

\_\_\_\_\_  
Luis Cortez d/b/a  
Norfolk Adult Soccer League



AGREEMENT

This Agreement is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Norfolk, Nebraska, a Municipal Corporation, hereinafter referred to as "CITY"; and Norfolk Lions Club, Inc., a Nebraska Nonprofit Corporation, hereinafter referred to as "LIONS", WITNESSETH:

In consideration of the mutual covenants contained herein, and for other good and valuable consideration, CITY agrees to allow LIONS to use CITY's facility for a Big Wheel Race event, subject to the following:

1. FACILITY. CITY, being the owner of the park facility commonly known as Norfolk Pedal Park is willing to allow the park to be used in conjunction with LIONS's purpose of hosting a Big Wheel Race event to include but not be limited to kids racing for prizes on the bicycle track.

2. DATE. This Agreement shall be for the day of Saturday, May 18, 2024. LIONS may begin setting up for their event at 8:00 a.m. on May 18, 2024. LIONS shall be responsible for cleanup from the event and shall complete said cleanup by 12:00 noon on May 18, 2024.

3. VEHICLE PARKING. LIONS shall encourage attendees of their event to park vehicles in the CITY-owned parking lot located on the north end of the green space adjacent to Norfolk Pedal Park (near Benjamin Avenue).

4. VENDING. There shall be no vending of any goods, services, products, or commodities in the park.

5. INSURANCE. LIONS shall provide CITY with a certificate of general liability insurance in the following minimum amounts:

General Aggregate	\$1,000,000
a. Bodily Injury/Property Damage	\$1,000,000 each occurrence
b. Personal Injury Damage	\$1,000,000 each occurrence
c. Contractual Liability	\$1,000,000 each occurrence
d. Products Liability & Completed Operations	\$1,000,000 each occurrence
e. Fire Damage	\$ 100,000 any one fire
f. Medical Expense	\$ 5,000 any one person

LIONS shall name CITY as an additional insured. The policy issued shall cover all activities sponsored by LIONS while using CITY's park facility with no exclusions. A certificate of insurance shall be filed with the City Clerk's office upon execution of this Agreement. Said insurance shall be the primary insurance coverage for LIONS' event. LIONS agrees to be responsible for any damages or claim of loss not covered by LIONS' insurance. In the event the certificate of insurance is not filed by May 8, 2024, then (1) LIONS shall pay a late fee to CITY in the amount of \$75.00, and (2) this Agreement shall be voidable at the option of CITY.

6. HOLD HARMLESS/INDEMNIFICATION. LIONS agrees to save, hold harmless, indemnify and defend CITY, its agents and employees from any loss or damage or claim of loss by LIONS or any third party from damage or claim of damage that arises from any of the activities authorized or undertaken as provided in this Agreement and for any loss to CITY that results from LIONS failing to perform its obligations under this Agreement or engaging in any activity not authorized by this Agreement.

7. VOLUNTEERS. Any volunteers that access CITY's park as part of this Agreement are LIONS' volunteers and LIONS shall be responsible for any insurance coverage or liability related to or stemming from LIONS' volunteers.

8. TENT. CITY shall allow LIONS to erect a tent in the park at a location approved by CITY's parks and recreation director. If the tent is to be held in place by stakes in the ground, then at least forty-eight (48) hours prior to Saturday, May 18, 2024, LIONS shall contact Nebraska 811 (formerly Diggers Hotline of Nebraska) to ascertain the location of underground utility lines in the areas where the tent is to be placed. After utility lines have been determined by Nebraska 811 and prior to setting any tent stakes, LIONS shall coordinate with CITY's parks and recreation director as to the contemplated location of the tent. CITY will attempt to locate any private underground lines it owns. LIONS shall not set any stakes until receiving approval from CITY's parks and recreation director as to the exact location where the tent is to be placed. LIONS shall be responsible for any damage to any underground utility lines or to any unlocated lines.

9. TEMPORARY SIGNAGE. All informational signage in conjunction with this event may be placed in the park on the day of the event and must be removed at the end of the event.

10. NO SIGNS ALONG STATE HIGHWAY. Pursuant to Nebraska Administrative Code Title 410, Chapter 3, LIONS shall not place signs advertising LIONS' event on property adjacent to any state highway.

11. NO PAINT ON CONCRETE. LIONS shall not paint or permanently mark any concrete in Norfolk Pedal Park for LIONS' event. In the event that LIONS does paint or permanently mark the concrete, then CITY shall have the paint or marking removed and the cost thereof shall be paid by LIONS.

12. MANAGEMENT. The parties acknowledge and agree that LIONS shall be solely responsible for the operation and management of the park during the term of this Agreement when the park is being utilized by LIONS for LIONS' event and related activities. LIONS shall be responsible for operating and managing the park in accordance with all applicable rules and regulations of any governmental entity with jurisdiction over the park including, but not limited to, the most current and updated Directed Health Measures of all local, state, and federal health agencies, and all resolutions and ordinances of CITY (collectively the "Rules"). LIONS represents and covenants to CITY that LIONS is familiar with the Rules and that LIONS shall operate and manage the park in accordance with the Rules. LIONS shall ensure that all



individuals utilizing the park for LIONS' event shall conduct themselves in accordance with the Rules.

13. MAINTENANCE. LIONS shall be responsible for maintaining the park in accordance with the Rules so that the park may be utilized for permitted activities hereunder. Such obligation shall include, but not be limited to, all sanitation guidelines and maintenance obligations that are set forth in the Rules. LIONS shall ensure that any guests, invitees, or visitors are those permitted to be in attendance at the park in accordance with the Rules.

14. NO USAGE FEE. LIONS shall pay no usage fee to CITY to access Norfolk Pedal Park for LIONS' event.

15. POSTPONEMENT. In the event it is necessary to postpone this event, LIONS may coordinate with CITY's parks and recreation director to reschedule the date of the event.

16. CANCELLATIONS. Notwithstanding any other provision of this Agreement, CITY retains the right at any time to cancel any activities scheduled on CITY property due to inclement weather or for any other reason. CITY shall not be responsible for any loss to LIONS resulting from CITY's cancellation of LIONS' activities.

17. UNADDRESSED ISSUES. Issues related to Norfolk Pedal Park not addressed in this Agreement may be approved by CITY at the discretion of CITY's parks and recreation director upon request of LIONS.

18. AUTHORITY TO SIGN AGREEMENT. The individuals signing this Agreement represent that they are authorized to sign on behalf of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed the foregoing Agreement in duplicate the day and year first above written. This Agreement may be executed in counterparts. Each such counterpart, executed in duplicate, shall be deemed an original hereof and all such executed counterparts shall together be one and the same instrument.

CITY OF NORFOLK, NEBRASKA,  
A Municipal Corporation

ATTEST:

\_\_\_\_\_  
Brianna Duerst, City Clerk

By \_\_\_\_\_  
Josh Moenning, Mayor

Approved as to Form: \_\_\_\_\_  
Danielle Myers-Noelle, City Attorney

NORFOLK LIONS CLUB, INC.,  
A Nebraska Nonprofit Corporation

By \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

By \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

# Agenda Packet

## NORFOLK PARKS BOARD MEETING

Thursday, February 22, 2024  
5:00 p.m.

Created 2/17/2024 7:57 AM

**NOTICE OF MEETING  
CITY OF NORFOLK, NEBRASKA**

NOTICE IS HEREBY GIVEN that a meeting of the Norfolk Parks Board of the City of Norfolk, Nebraska, will be held at 5:00 p.m. on Thursday, February 22, 2024, in the Council Chambers, 309 N. 5th Street, which meeting will be open to the public.

An agenda for such meeting, kept continually current, is available at the City of Norfolk Administration Building, located at 309 N 5<sup>th</sup> Street, Norfolk, Nebraska during normal business hours.

AGENDA  
NORFOLK PARKS BOARD MEETING

February 22, 2024

CALL TO ORDER

1. 5:00 p.m. Call meeting to order.
2. Inform the public about the location of the Open Meetings Act posted in the Council Chambers and accessible to members of the public
3. Roll call.

CURRENT BUSINESS

4. Approval of full agenda. **Motion**
5. Approval of the minutes of the January 18, 2024 Parks Board meeting. **Motion**
6. Approval to recommend a letter of support for a plan for a multi-modal trail running from Skyview to the Cowboy Trailhead at Ta-Ha-Zouka Park. **Motion**
7. Approval to recommend a historical trail from Winter Park to Johnson Park and signage concept. **Motion**
8. Approval to recommend the location of artwork from Nucor's Ken Iverson Project. **Motion**

OTHER BUSINESS

9. Master Plan Priorities and Strategies presentation.
10. Presentation by Nick Stevenson, Communications Manager, on the City of Norfolk's social media platforms and website.
11. Monthly Supervisor Reports.
12. Open topics on any concerns the Board has towards current and future planning for the City Parks.
13. No action can be taken on matters discussed.



## Parks and Rec Board Meeting Minutes

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**Thursday, January 18, 2023**

**5:00 p.m.**

**City Council Chambers**

Jerrett Mills called the meeting to order at 5:00 p.m.

Mills informed the public of the Open Meetings Act posted in the Council Chambers.

Roll Call found the following members present: Terry Rasmussen, Angie Bailey, Austin Truex, Jerret Mills, Patrick Gerhart, Melissa Temple and Jason Tollefson. Absent: Ann Dover and Becki Wulf.

City staff present: Parks & Recreation Direction Nathan Powell, Assistant Director of Recreation PJ Evans, Sports Supervisor Ron LaMie, Parks Supervisor Ryan Beed, Administrative Assistant Kylee Soderberg, Communication Manager Nick Stevenson, and Administrative Assistant Jen Olson.

Rasmussen moved, seconded by Temple to approve the January 18, 2024 agenda. Roll call: All ayes. Nays: None. Absent: Dover and Wulf.

Rasmussen moved, seconded by Bailey to approve the December 21, 2023 minutes. Roll call: All ayes. Nays: None. Absent: Dover and Wulf.

Powell presented concept of Liberty Bell Park with proposed new amenities: restroom, covered picnic shelter, and pickleball court. Temple made a motion to recommend for approval the locations of the new amenities at Liberty Bell Park seconded by Truex. Roll call: All ayes. Nays: None. Absent: Dover and Wulf.

Supervisor reports were given by LaMie, Evans and Powell.

With no further business, the meeting was adjourned at 5:23 p.m.

The next meeting will be on February 22, 2024 at 5:00 p.m. in the City Council Chambers at 309 N 5<sup>th</sup> Street, Norfolk, NE.

Minutes recorded and taken by Jen Olson, Parks and Rec Admin Assistant.

February 22, 2024

Dear Honorable Secretary Buttigieg,

I am writing on behalf of the City of Norfolk Parks and Recreation Board to offer our full support for the planning grant application to the Department of Transportation's National Infrastructure Investments (i.e., Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant Program under the Bipartisan Structure Law. If the City of Norfolk is successful in its grant application, the funding would propel forward the design, permitting, and public outreach efforts to achieve the goal of the Local Intermodal Network Connection Norfolk (LINC) Norfolk. As stewards of our local parks and recreational areas, we recognize the invaluable impact that our trail system has on our community.

The City of Norfolk has consistently demonstrated a commitment to enhancing our parks, trails, and green spaces through various projects, including the east Benjamin Connector Trail project. This project enhanced the connectivity of the existing City of Norfolk trail system of approximately 6,000 linear feet of 10-foot-wide trail along the north side of Benjamin Avenue. Along with approximately 700 linear feet of 10-foot-wide trail along the west side of Victory Road.

These efforts align closely with the objectives outlined in the grant and would contribute significantly to the needed improvements and trail connections.

The proposed project outlined in the City of Norfolk's grant application will undoubtedly enrich our community by its plan to construct a multimodal path connecting park facilities and areas of recreation, provide drainage improvements in areas prone to street flooding. With this plan, the city will also be providing an efficient and safe connection between underserved and disadvantaged areas of town to schools, business districts, City and social resources hubs, and recreational assets. The 4 ½ mile multimodal path through Norfolk would make a great addition to the community. This aligns perfectly with our mission to promote healthy living, community engagement, and the provision of accessible recreational opportunities for all.

On behalf of the Parks and Recreation board, I respectfully request your favorable consideration of the City's planning grant funding request being submitted for LINC Norfolk through the 2024 RAISE grant program.

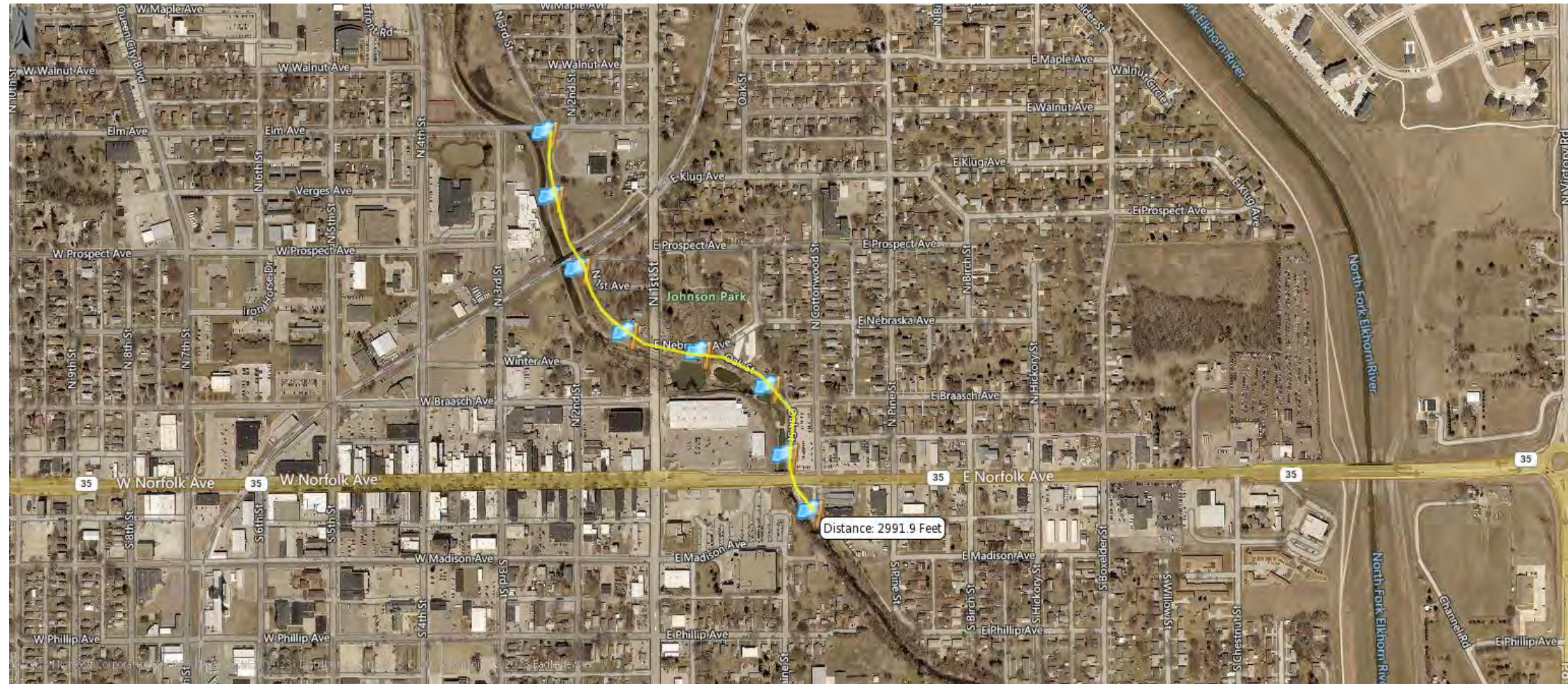
Thank you for considering this letter of support, and please do not hesitate to contact us if you require any further information.

Sincerely,

Jerrett Mills  
President  
Parks and Recreation Board President



# Norfolk Historical Trail







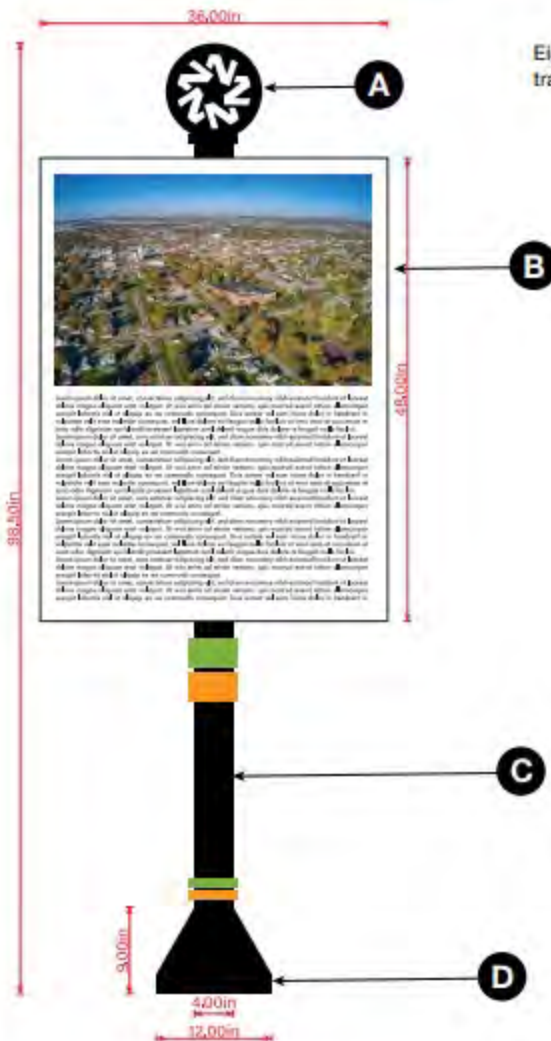
# Battleground to Community

## BRIGHTWOOD HERITAGE TRAIL



Text describing the history of the Brightwood Heritage Trail, including its significance and the role of the community in its development.

Logos of the University of North Carolina at Chapel Hill and other participating organizations.



Eight (8) double sided informational trail signs

- A** City of Norfolk icon routed 6mm dibond.
- B** Informational sign on each side. 6mm dibond with digital prints.
- C** 4" pole with decorative bands
- D** Decorative base

**NOTICE:** BEFORE APPROVING THIS WORK PLEASE CHECK ALL SIZES AND WORDS FOR PROPER SPELLING, AS WELL AS ALL COLORS AND SIGNAGE PLACEMENT IF NECESSARY. QUESTIONS AND/OR CHANGES MUST BE APPROVED BEFORE FINAL APPROVAL. ONCE THE SIGNAGE IS PRODUCED AFTER APPROVAL, SIZE AND ALL DIMENSIONS OR COLOR ISSUES ARE THE RESPONSIBILITY OF THE CLIENT AND WILL BE CORRECTED AT THE EXPENSE OF THE PURCHASER.

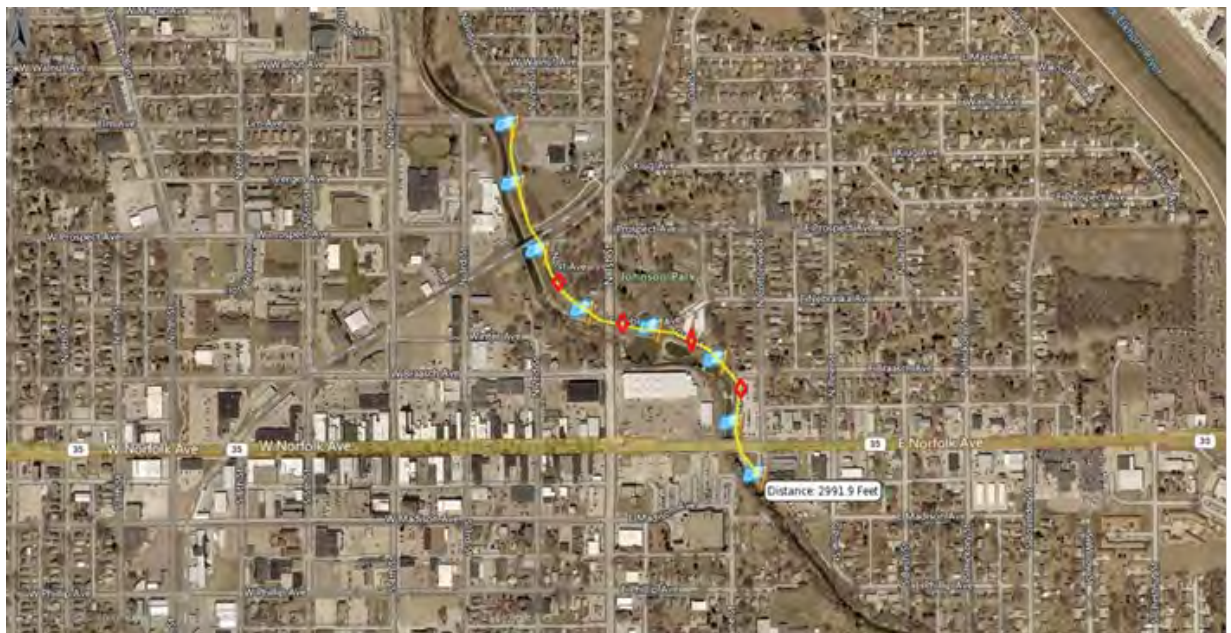
**CLIENT:** City of Norfolk  
**LOCATION:** Norfolk, NE  
 3/22/2024  
**SALES PERSON:** Brittany Wesch

ALL RIGHTS RESERVED, NO PART OF THIS DRAWING  
 MAY BE REPRODUCED IN ANY FORM WITHOUT  
 WRITTEN PERMISSION FROM LOVE SIGN COMPANY.



Envelope 3  
 Page 8 of 240









2911 E Nucor Rd, Norfolk, NE 68701

**April 19, 2023**

Dear Art, History, Shop/FFA teachers:

Nucor Steel Nebraska, Nucor Cold Finish Nebraska, Nucor Detailing Center, and Vulcraft Nebraska invite you and your classes to participate in the revitalized Ken Iverson Project for the 2023/2024 school year.

**What is The Ken Iverson Project?**

The Ken Iverson Project (KIP) is a steel sculpture-making contest amongst area schools. Approximately 650 lbs. of steel from Nucor will be donated to participating schools. KIP is an initiative of Nucor to encourage participation in the community, the arts, and to encourage teamwork and collaboration across departments. By participating in this project, students will work as a team to show their creativity and to leave their mark in their community.

We highly encourage the collaboration of the art, history, and shop classes to create a sculpture centered around the "History of Nebraska." Please see the attached flyer for project details.

**Who is Ken Iverson?**

Ken Iverson is a former President of Nucor. He is credited with transforming Nucor Steel from a nearly bankrupt company in the 1960s into the largest and most successful steelmaker in the United States. Iverson vigorously advocated a lean management staff, decentralized decision-making structure, egalitarian work environment, and promoted a strong safety culture.

**Mentorship Opportunity**

Mike Fluent, a local steel sculpture artist, has been so kind to volunteer and provide mentorship opportunities to area schools, if needed. If you would like guidance around sculpture making, please reach out to Mike via his email at [mfsteelart@gmail.com](mailto:mfsteelart@gmail.com) or via his cell phone at 402-369-0863.

If you and your school are interested in participating, please **RSVP TO CHANDA BARRY BY MAY 5, 2023.**

We look forward to hearing from you. Please email me if you have any questions. Thanks!

**Chanda Barry**

Ken Iverson Project Coordinator

Email: [chanda.barry@nucor.com](mailto:chanda.barry@nucor.com)

Phone: 402-844-2517

*Attachment*

# Ken Iverson Project

Nucor Nebraska, Vulcraft Nebraska, Nucor Cold Finish Nebraska, and Nucor Detailing Center would like to invite you and your students to participate in the revitalized Ken Iverson Project beginning in the fall of 2023!

This is a sculpture project open to Art, History, Industrial Arts, and FFA classes. There is a limit of one sculpture per school.

## 2023/2024 THEME: "History of Nebraska" Sculptures

### Information, Rules, and Restrictions

1) No material other than what is shown below will be provided. Sheet, welding rods, paint, as well as one other material of choice may be used at the expense of the team. No fasteners of any kind can be used other than welds.

2) Sculpture design should be themed around the "History of Nebraska".

3) The final sculpture must be built to fit upon a 4' x 4' x 4' stand provided by Nucor.

4) All sculptures will be displayed on the Nucor Nebraska Facebook page, where community members will vote the top finalists through to the next round.

5) The finalists' sculptures will be displayed at the Norfolk Home Show in Norfolk, NE. Attendees at the Home Show will vote on their favorite sculpture.

*\*Transportation of sculptures to and from the Home Show is the responsibility of each team.*

6) The winning sculptures from the Home Show will be displayed in Johnson Park in Norfolk, NE, for one year.

7) All schools get to keep their sculptures and are free to do with it as they please. The four sculptures will be released back to their respective schools after being displayed for the year.

### Dates to Remember

**September 2023:**

Pick up steel from Nucor  
2911 E. Nucor Road, Norfolk, NE.

**December 2023:**

Sculpture design check-in.

**February 2024:**

Projects completed.  
Projects posted to Facebook for voting.

**March 2024:**

Top sculptures delivered to  
Home Show for voting.

**April 2024:**

Winners announced  
via Facebook.

The four winning sculptures will be displayed at Johnson Park for one year.  
**The four winning teams will be rewarded \$400 and a pizza party.**

### Material Supplied

All bars will be 10-11 feet in length, totaling approximately 650 lbs.

*\*Picking up steel material from Nucor and transporting sculptures to the Home Show is the responsibility of entering schools.*

(7) 3/4" round bar



(5) 3-3.5" channel



(4) 1.5" x 1.5" x .125 angle



(3) 3/8" x 6" flat bar



**RSVP by May 5, 2023 to Chanda Barry**

Email: [chanda.barry@nucor.com](mailto:chanda.barry@nucor.com)

Office: 402-844-2517



**Athletic Supervisor Report  
February 2024**

**Major Incidents/Significant Events/Meetings**

- Weekly supervisor meetings
- Athletic staff meeting

**Project Outcomes**

- Completed the dugout padding installation, and fixed workout pad at Memorial field.
- Downtown Christmas decorations taken down, stored away, and organized.
- Install nets on the Elm and 14<sup>th</sup> tennis courts.

**Current Project**

- Routine maintenance on all field equipment.
- Finalizing quotes for new turf at Memorial Field.
- Finalizing quotes on Elkhorn ADA bathroom
- Line items for the 2025 budget
- Looking to hire seasonal and summer help.
- Cleaning out storage at the Memorial Shop building
- Updating all the fields on the calendar for the upcoming spring and summer season.
- Ordered the new temporary fence for the Ta-Ha fields.
- Ordered the new Ta-Ha field signs.
- Ta-Ha padding for the backstop will be available to complete next week.
- New locks and padlocks are being installed for athletic buildings.

**Upcoming Significant Events & Meetings**

**Change in Park/Facility Status**

**Public Requests**



**Department Report  
February 2024**

**Major Incidents/Significant Events/Meetings**

- City council meetings on 1<sup>st</sup> and 3<sup>rd</sup> Mondays
- Arts Council meeting
- Tree board meeting
- Johnson Park Coordination meetings started for 2024

**Project Outcomes**

- Nature Playground agreement approved by council
- RFP process for refurbishing slides at Aquaventure complete
- Call for artists for 1<sup>st</sup> and Braasch roundabout approved by council
- Purchase of the CXT concession stand approved by council
- Master Plan priorities and strategies presented to council February 20<sup>th</sup>
- Fishing dock purchase request is heading to council on February 20<sup>th</sup>

**Current Project**

- Paving the area around the Skyview Shop
- Liberty Bell Design
  - Pickleball Courts
  - Restrooms
  - ADA sidewalk
  - Phase 2 playground
- Master Plan process continues
- Johnson Park projects
  - BP1 Fountain and Ice
  - BP2 Grading and Trails
  - BP3 Structures
  - BP4 Electrical
  - BP5 Landscaping and Irrigation
    - Nature Playground firm selected
- Johnson Park Concession Stand
- Warren Cook Playground
- Parks Signage installations
- Skyview Fishing Dock purchase
- Ta Ha Team Lockers Contract Review
- Pool heater replacement
- Paint Slides at AV
- Pump Track Irrigation and sod
- AV waterslide refurbishment
- Winter Park Memorial Garden
- Central Park Projects
  - Electrical – bury lines
  - Stage refurbishment
  - Irrigation
  - Fall protection under playground
  - Replace walkway bricks
- North Fork Whitewater Park Construction
  - May 2024 completion date

**Upcoming Significant Events & Meetings**

- Sports Council Meeting

**Change in Park/Facility Status**

- 

**Public Requests**

-



**Parks Report  
February 2024**

**Current Projects**

- Finished 4 main features at Warren Cook Park
- Preventative maintenance of equipment
- RFP for AquaVenture water slide repaint and repair released and published – proposals due March 5
- Conditional offer made to volunteer campground host (pending background check)
- Installed new signage at Ta-Ha-Zouka and Skyview (ice fishing warning)
- Snow removal
- Filled Maintenance Worker I position – new Parks employee Tanner Dickey
- Cleaned and organized pumphouse area at Ta-Ha-Zouka
- Cleaned and organized shop area at Parks main shop
- Cleaned and organized Skyview shop area in preparation for the concrete and new fence project
- Worked on pricing for fence at Skyview shop area
- Worked on bidding out concrete border for Warren Cook Park

**On Going Projects**

- Installation of new heaters at AquaVenture (Johnson's Plumbing)
- Warren Cook playground
- Replacement of pool grates at AquaVenture

**Recreation Report  
February 2024**

**Major Incidents/Significant Events/Meetings**

- City council meetings on 1<sup>st</sup> and 3<sup>rd</sup> Mondays
- Weekly Recreation/Athletics meetings
- Johnson Park
- Restroom quotes
- Food distributors

**Project Outcomes**

**Current Project**

- NOH garden
- NOH garden Memorial stakes
- Hiring of seasonal/summer staff
- Pickleball courts at Liberty
- Partnership agreements and structure
- Field reservations
- Wayfinding for athletic fields at Ta-Ha-Zouka Park
- Concessions preparation
- Spring/Summer brochure
- Advertisements
- Adult Basketball
- Nature Playground at Johnson's Park
- February Activities Camp

**Upcoming Significant Events & Meetings**

- Master Plan
- Recreation interviews

**Change in Park/Facility Status**

- 

**Public Requests**

-



## Parks and Rec Board Meeting Minutes

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**Thursday, February 22, 2024**

**5:00 p.m.**

**City Council Chambers**

Melissa Temple called the meeting to order at 5:00 p.m.

Temple informed the public of the Open Meetings Act posted in the Council Chambers.

Roll call found the following members present: Angie Bailey, Austin Truex, Patrick Gerhart, Melissa Temple, Ann Dover, Becki Wulf, and Jason Tollefson. Absent: Jerret Mills and Terry Rasmussen.

City staff present: Parks & Recreation Direction Nathan Powell, Assistant Director of Recreation PJ Evans, Sports Supervisor Ron LaMie, Parks Supervisor Ryan Beed, Administrative Assistant Kylee Soderberg, Communication Manager Nick Stevenson, Administrative Assistant Jen Olson, Assistant City Engineer Anna Allen, and Business Resource Specialist Melissa Figueroa.

Others present: Ken Iverson Project Committee Members Shane Graham and Latrise Hoffman from Nucor.

Truex moved, seconded by Wulf to amend the February 22, 2024 agenda and add an item for discussion: AccuDock color selection. Roll call: All ayes. Nays: None. Absent: Mills and Rasmussen.

Truex moved, seconded by Bailey to approve the January 18, 2024 minutes. Roll call: All ayes. Nays: None. Absent: Mills and Rasmussen.

Anna Allen asked the Parks Board for their support to apply for a grant that would help with the cost to extend the trail system and tie it in to existing trail. Bailey moved, seconded by Gerhart, to recommend a letter of support for a plan for a multi-modal trail from Skyview to the Cowboy Trailhead at Ta-Ha-Zouka Park. Roll call: All ayes. Nays: None. Absent: Mills and Rasmussen.

Powell presented information about the proposed signage for a historical trail. Truex moved, seconded by Tollefson, to recommend for consideration a historical trail from Winter Park to Johnson Park and signage concept. Roll call: All ayes. Nays: None. Absent: Mills and Rasmussen.

Parks Board discussed dock colors for the future dock being installed at Skyview Lake. Board agreed with staff that driftwood gray was a good color.

Powell presented the Master Plan Priorities and Strategies to the Board.

Stevenson presented the City's platforms to provide information to the public.

City Engineer, Steven Rames, arrived at 6:07 p.m.

Supervisor reports were given by LaMie, Evans and Powell.

With no further business, the meeting was adjourned at 6:26 p.m.

The next meeting will be on March 21, 2024 at 5:00 p.m. in the City Council Chambers at 309 N 5<sup>th</sup> Street, Norfolk, NE.

Minutes recorded and taken by Jen Olson, Parks and Rec Admin Assistant.

**Special Designated License  
Local Recommendation (Form 200)**

Applications must be entered on the portal after local approval – no exceptions  
Late applications are non-refundable and will be rejected

District Event Center  
Retail Liquor License Name or \*Non-Profit Organization (\*Must include Form #201 as Page 2)

218 W Norfolk Ave Norfolk, NE 68701  
Retail Liquor License Address or Non-Profit Business Address

125451  
Retail License Number or Non-Profit Federal ID #

Consecutive Dates only  
Event Date(s): 5-5-21

Event Start Time(s): 9am

Event End Time(s): 10pm

Alternate Date: none

Alternate Location Building & Address: none

Event Building Name: District Event Center

Event Street Address/City: 218 W Norfolk Ave

Indoor area to be licensed in length & width:      X     

Outdoor area to be licensed in length & width: 84ft X 50ft (Diagram Form #109 must be attached)

Type of Event: Cinco De Mayo Celebration Estimate # of attendees: 250

Type of alcohol to be served: Beer  Wine  Distilled Spirits   
(If not marked, you will not be able to serve this type of alcohol)

Event Contact Name: Andrew McCarthy Event Contact Phone Number: 402-992-0978

Event Contact Email: andrew@districttableandtap.com

\*Signature Authorized Representative:  Printed Name Andrew McCarthy

I declare that I am the authorized representative of the above named license applicant and that the statements made on this application are true to the best of my knowledge and belief. I also consent to an investigation of my background including all records of every kind including police records. I agree to waive any rights or causes of action against the Nebraska Liquor Control Commission, the Nebraska State Patrol or any other individual releasing said information to the Liquor Control Commission or the Nebraska State Patrol. I further declare that the license applied for will not be used by any other person, group, organization or corporation for profit or not for profit and that the event will be supervised by persons directly responsible to the holder of this Special Designated License.

\*Retail licensee – Must be signed by a member listed on permanent license

\*Non-Profit Organization – Must be signed by a Corporate Officer

**Local Governing Body completes below:**

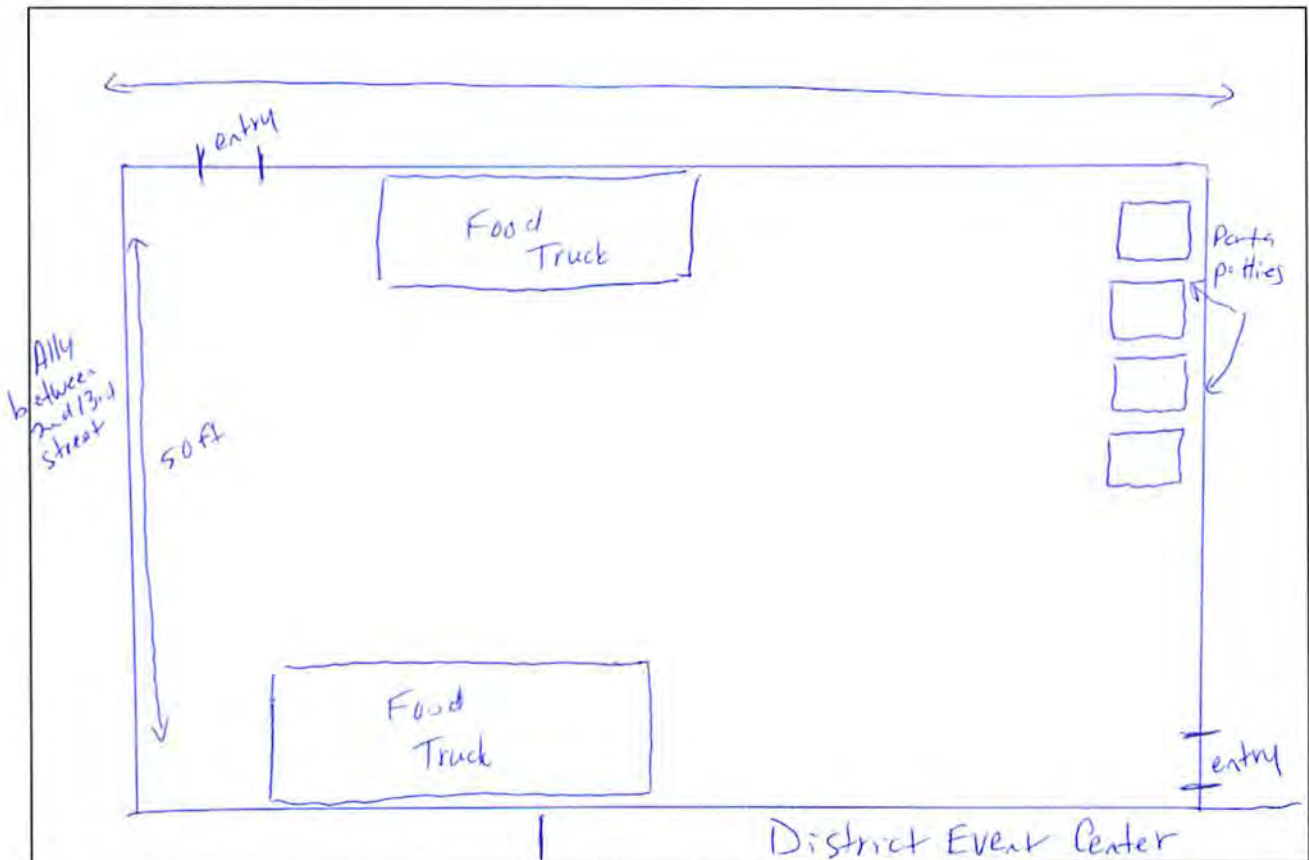
The local governing body for the City/Village of \_\_\_\_\_ OR County of \_\_\_\_\_ approves  
the issuance of a Special Designated License as requested above. (Only one should be written above)

# OUTDOOR AREA DIAGRAM

HOW AREA WILL BE PATROLLED Event Staff / 3rd Party Security

- IF APPLICABLE, OUTDOOR AREA MUST BE CONNECTED TO INDOOR AREA IF INDOOR AREA IS TO LICENSED
- MEASUREMENT OF OUTER WALLS OF AREA TO BE LICENSED MUST INCLUDED LENGTH & WIDTH IN FEET
- DOUBLE FENCING IS REQUIRED FOR ALL NON-PROFIT ORGANIZATIONS UNLESS FORM #140 IS FILED WITH THIS FORM AND IS APPROVED BY THE COMMISSION
- RETAILER LIQUOR LICENSE HOLDERS ARE NOT REQUIRED TO DOUBLE FENCE, ALTHOUGH MEASURES NEED TO BE TAKEN TO SECURE THE AREA

DIAGRAM OF PROPOSED AREA:







February 22, 2024

Brianna Duerst  
City Clerk  
City of Norfolk  
309 N 5<sup>th</sup> St  
Norfolk, NE 68701-4092

RE: Founders

Dear Brianna Duerst,

I am attaching the Keno license application for your consideration.

RAR Enterprises LLC  
dba: Founders  
501 W Norfolk Ave  
Norfolk, NE 68701


Enclosed:

- A copy of the Satellite Lease & Operating Agreement
- Form 50G Schedule II for your signature after approval

Please place the keno sales satellite on the City Council agenda for approval at your earliest convenience. After approval, please return the signed Schedule II 50G and a copy of the resolutions.

If you have any questions, you can reach me at 402-677-3443.

Thank you,

  
Melodi Szymczak  
Director of Sales and Marketing



**BIG RED KENO****NORFOLK SATELLITE LEASE AND OPERATING AGREEMENT**

This Satellite Lease and Operating Agreement is between Endgame Lottery Services LLC dba Big Red Keno, 11248 John Galt Boulevard, Omaha, NE 68137 and the undersigned "Satellite". In this Agreement: (i) "we", "us" and "our" means and refers to Endgame Lottery Services LLC; (ii) "you" and "your" means and refers to the undersigned Satellite and any successor-in-interest to the business of the undersigned Satellite; (iii) "Premises" means the location specified below and any new location to which your business is moved or expanded; (iv) "Game" means the legal gambling activities contemplated by this Agreement; (v) "Equipment" means any computer(s), input terminal(s), display device(s), communication device(s), and other equipment that we place at the Premises; (vi) "Supplies" means ticket stock, bet slips and other items of personal property necessary to play the Game; (vii) "Handle" means the amount wagered on the Game at the Premises; (viii) "Game Rules" means rules as stated in the current paybook and rules we develop or implement from time to time for conduct of the Game, all of which are made a part of this Agreement; (ix) "Game Funds" means all proceeds of wagers, whether or not accepted in violation of this Agreement and any other funds we provide; (x) "Scheduled Expiration Date" means the last day that this Agreement may be effective, taking into account all possible Renewal Terms; (xi) "Community" means the City of Norfolk and any political subdivisions with which it has an interlocal agreement under the Nebraska County and City Lottery Act as their interests may appear.

1. **Lease.** You hereby lease to us space within the Premises specified below. That space will be as mutually agreed and will in any event be sufficient to allow play of the Game and placement of the Equipment in a manner that is convenient for your customers. You agree that we may enter the Premises at any time during your normal business hours for purposes of inspecting or repairing the Equipment, viewing the manner in which the Game is offered, reviewing Game records, conducting Game audits, or exercising our rights under Section 7.
2. **Compliance with Law.** You agree to: (a) obtain and maintain in effect during the term of this Agreement all necessary and applicable licenses, permits, and approvals (including, but not limited to, a federal wagering stamp, a sales outlet location license, and any necessary licenses for your staff); and (b) comply with all "Regulatory Requirements" which include, but are not limited to, all applicable laws, regulations, ordinances, resolutions, rules and rulings promulgated by any federal, state or local government or any court, agency, instrumentally or official, and specifically including, but not limited to, the lottery operator agreement or similar agreement between us and the Community, and related rules, agreements, memoranda of understanding, resolutions and actions, and the Nebraska County and City Lottery Act and regulations promulgated pursuant thereto, all as now existing or hereafter amended, adopted or replaced, and whether applicable to conducting the Game at the Premises, the operation of your business or otherwise.
3. **Rent.** We will pay you rent equal to 5% of Handle. We will pay rent at least twice each month on settlement dates we choose. We may withhold or offset rent against any amounts you owe us or our affiliates under this Agreement or otherwise. If there is a change in Regulatory Requirements or other change in circumstances that we consider to be adverse, we may decrease the amount of rent due hereunder upon 45 days' prior written notice to you.
4. **Staffing.** You agree to supervise and be responsible for the staffing necessary at the Premises for customers to play the Game, and to require your staff to comply with all Game Rules and Regulatory Requirements. Staff members who have not been trained or approved by us or who have not been appropriately licensed are not permitted to have any duties with respect to the Game.
5. **Your Obligations.** You agree to comply with and perform all of your obligations under the Game Rules and this Agreement. You agree to: (a) maintain (or reimburse us for) electrical power and communications services designated by us; (b) operate your business and the Premises in a clean, safe, orderly, lawful and respectable manner and condition, with no adverse changes as compared to when you became a sales outlet location for the Game; (c) maintain current, complete and accurate records pertaining to your business and transactions related to the Game and give us and relevant government officials access thereto promptly on request; (d) maintain commercially reasonable public liability insurance naming us as an additional insured and provide us with certificates evidencing the same on request; (e) pay all applicable taxes pertaining to conduct of the Game at the Premises (including, but not limited to, federal, state and local excise and occupational taxes); (f) use your best efforts to detect and prevent cheating with respect to the Game and tampering with the Equipment and Supplies and immediately report the same or your reasonable suspicions related thereto to us; and (g) maintain the confidentiality of all materials and information that we provide to you and return the same to us upon termination of this Agreement. You represent and agree that you have and will maintain all third party approvals necessary for you to perform under this Agreement. You are to meet all of your obligations under this Agreement at your expense, except as expressly provided in this Agreement.
6. **Our Obligations.** So long as you comply with this Agreement, we agree that you may be a sales outlet location for the Game. We will, at our own expense: (a) maintain any necessary central computer for the Game; (b) provide you with Equipment and Supplies and such construction as we determine to be necessary for the installation of the Game at the Premises; (c) repair (and, if necessary, replace) defective Equipment and insure (or self-insure) the same; (d) train your staff in the operation of the Equipment; and (e) market the Game as we deem appropriate (e.g., through on-Premises signs). We do not guarantee that operation of the Game or the Equipment will be uninterrupted or error-free. We will not be considered in default if our performance is prevented due to a cause beyond our control, including, but not limited to, computer and communications failures.
7. **Equipment.** All Equipment remains our property, is not considered fixtures and must be returned to us immediately upon any termination or discontinuation pursuant to Sections 14 or 15. We may add to, remove, or alter all or any of the Equipment at any time. You agree to use due care to safeguard the Equipment and agree to notify us immediately if any of it is lost, stolen, damaged, or destroyed or appears to be malfunctioning. You agree to reimburse us for any losses sustained as a result of your failure to comply with the foregoing or the negligence or intentional misconduct of you or your staff or customers.
8. **Marketing and Protection of Marks.** You agree to prominently display the promotional and informational material we provide regarding the Game. You acknowledge that the name "Big Red Keno", the "Big Red" ball, and any other names, marks, slogans and similar materials that we may publish or distribute (the "Marks") are our property, whether or not registered, and you agree not to take any action to impair our ownership or the value thereof, or to bring the same into disrepute. You agree to obtain our prior written approval before you advertise or promote the Game or use the Marks.
9. **Conduct of the Game.** You agree to make the Game available to your customers during your normal business hours. You agree to use reasonable efforts to ensure that persons playing the Game on the Premises are limited to customers physically present on the Premises. Except in the case of tickets written for 21 or more consecutive games, you should require customers to redeem all winning tickets immediately after the last game to which they relate and before the calling of the next game. You should redeem all winning tickets in the presence of all customers having purchased tickets at the Premises for the games to which such tickets relate, and you should not permit customers to purchase tickets, leave the Premises and return later for redemption. In the case of tickets written for 21 or more consecutive games, you may permit delayed redemption in accordance with the Game Rules.
10. **Game Funds.** You will require all wagers on the Game to be paid in valid U.S. currency (or by any means allowed under law) at the time they are made. All Game Funds are our sole and exclusive property. If you cash checks for customers, you will do so separately and at your own risk and will not accept checks in our name. You agree to: (a) hold Game Funds in trust for us; (b) keep Game Funds separate from your funds while in your possession; and (c) prevent any of your creditors or other third parties from seizing or otherwise enforcing any lien, claim or other interest in Game Funds. All Game Funds, less prizes paid by you in accordance with the Game Rules, will be deposited no later than noon of the first banking day after receipt into a separate bank account that we have approved. If the bank account is other than our account, we may transfer the balance of that account to our account as often as daily and you agree to sign a funds transfer agreement to permit the same. We are entitled to immediate payment of any deposit of Game Funds not made when due or for any non-cash wager proceeds that you accept. Interest will accrue thereon at the lesser of 24% per annum or the highest lawful rate until paid.
11. **Term.** This Agreement is effective through the end of the current term of the lottery operator agreement between us and the Community and is thereafter automatically renewed for up to three additional consecutive renewal terms of five years each (each a "Renewal Term") unless we have given you written notice of non-renewal of this Agreement any time before the commencement of the next Renewal Term. Sections 5(c), 5(e), 5(g), 12, 13, and 16 will survive any termination of this Agreement.

**SUBJECT TO TERMS ON REVERSE**



12. Expanded Gambling. If additional gambling activities are legalized in the future and you wish to offer those activities at the Premises, we agree to use our best efforts to make those activities available to you on mutually agreed terms. If we are unable to do so for any reason within six months after your written request for such legal gambling activities, you may discontinue your obligation to staff the Game in accordance with Section 14. In return for the foregoing and our other obligations herein, and in view of our significant capital investment in reliance hereon, you agree not to permit anyone other than us to offer, supply or install gambling activities (other than paper pickle cards as allowed by the Nebraska Pickle Card Lottery Act on the date this Agreement is signed by us) at the Premises under any circumstances before the Scheduled Expiration Date of this Agreement.

13. Indemnity. You agree to indemnify, defend and hold us, the Community, and our and their respective employees, agents, and affiliates, harmless from and against any and all losses, costs, claims, expenses (including reasonable attorneys' fees) and damages arising out of or related to in whole or in part: (a) your breach of this Agreement; or (b) any actual or alleged acts or omissions by you, your staff, or your customers; or (c) any actual or alleged conduct of your business or the condition of the Premises or any adjoining areas (including parking areas). We will not, however, be entitled to such indemnity if the proven sole proximate cause of damages was our own negligence or willful misconduct.

14. Your Right to Terminate or Discontinue. You may terminate this Agreement early if we materially default hereunder, and fail to cure our default within 30 days after receipt of written notice from you, specifying our default to be corrected. You may discontinue your responsibility to staff the Game: (a) if we propose a rent reduction pursuant to Section 3 and you give us written notice that you reject the same within 15 days after your receipt thereof; (b) if you determine, reasonably and in good faith, that continued staffing would be unprofitable; or (c) if we are unable to provide you, under Section 12, with additional gambling activities that you desire. Discontinuation of staffing does not terminate this Agreement. We may, but are not required to, staff the Game at the Premises if you discontinue staffing. In such event, we may deduct the cost thereof from the rent due. If you discontinue staffing, any recommencement thereof by you is subject to approval by us and applicable government authorities. Your right to terminate this Agreement or discontinue staffing under this Section is your exclusive remedy for our breach of this Agreement, and is in lieu of any other rights and remedies which you may have at law or equity.

15. Our Right to Terminate or Discontinue. We may terminate this Agreement early or discontinue our responsibilities under Section 6 without causing a termination hereof if: (a) you or your staff fail to comply with Section 2 or Section 10 in any respect, or your license to act as a sales outlet location is denied or revoked; (b) you otherwise materially default hereunder, and fail to cure the same within 30 days after receipt of written notice from us; (c) you discontinue staffing for any reason; (d) a material adverse change occurs in your business, financial or other condition, in our good faith determination; (e) there is a change in ownership of your business or you transfer your interest in, or discontinue business at, the Premises; (f) you have less than \$700 in Handle per week on average during any calendar quarter; or (g) we determine in good faith that a change in Regulatory Requirements will make continuation of our responsibilities hereunder impractical, impossible, or unprofitable.

16. Our Remedies. If we terminate this Agreement early or exercise our right to discontinue our obligations in accordance with Section 15, we will be entitled to recover our damages, in addition to our other rights and remedies at law and in equity. Our damages are deemed to be no less than the product of: (i) the number of weeks remaining until the Scheduled Expiration Date; multiplied by (ii) eight percent (8%) of your average Handle per week (averaged for the period beginning 36 months and ending 12 months before the event giving rise to such termination or discontinuance; if the Game at the Premises continued for less than 15 months, we will use the average for the first half of such period). We are not, however, entitled to damages if our termination or discontinuance was based solely on: (A) Section 15(f); or (B) Section 15(c) or 15(e) provided that you otherwise continue to comply with the terms of this Agreement until the Scheduled Expiration Date (including, but not limited to, your obligation not to permit additional gambling activities under Section 12, even in circumstances where we are unable to provide you with the additional gambling activities that you desire). You further agree that we are entitled to specific performance and/or injunctive relief to enforce the terms hereof, including, but not limited to, injunctive relief against third parties with respect to violations pertaining to Section 12. As security for your performance of Section 12 and payment of our damages, you hereby grant us a security interest in and assign to us any rents or other payments due under any lease or other agreement and any other revenues to which you may be entitled with respect to other gambling activities on the Premises and you also hereby grant us a power of attorney to sign and file on your behalf any financing statement or other document related to such security interest.

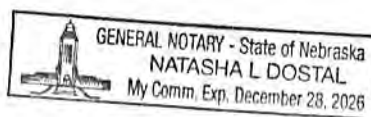
17. Miscellaneous. This Agreement: (a) is a continuation of any prior existing lease we may have with regard to the Premises; (b) supersedes the terms of any and all such leases and is the exclusive statement of the agreement of the parties with respect to the subject matter hereof; (c) may not be amended except in writing executed by the parties; and (d) is interpreted and enforced in accordance with the laws of Nebraska. This Agreement binds the undersigned Satellite, the individual signing this Agreement, the Premises, any successor-in-interest to the business of the undersigned Satellite, and any new location to which your business is moved or expanded, through the Scheduled Expiration Date, unless terminated earlier as provided herein, and the provisions of this Agreement which survive termination continue to bind such persons and locations after termination. If any provision of this Agreement is unenforceable, the remaining provisions remain in effect. No waiver hereunder (whether by course of conduct or otherwise) is effective unless in writing and no waiver is considered a waiver of any other or further default. Our nonenforcement or waiver of any provision under any similar agreement(s) is not deemed a waiver of any provision under this Agreement. The parties intend their relationship under this Agreement to be that of independent contractors and not employees, agents, joint venturers, or partners; neither party has the power or authority to bind the other. Notices hereunder are given in writing by personal delivery or certified mail, addressed to the parties at the addresses set forth herein and are deemed given upon receipt.

Satellite Name: <u>RAR Enterprises LLC</u> <u>Disc: Founders</u>	I have read and understand this Agreement (Front and Back) and am signing on behalf of myself and the Satellite named herein.
Premises Address: <u>501 W Norfolk Ave</u> <u>Norfolk NE 68701</u> <small>(Premises legal description will be attached as Attachment A)</small>	
	By: <u>[Signature]</u>
	Print Name: <u>Andrew McCarthy</u>
	Title: <u>President</u>

State of Nebraska, Co. of <u>Madison</u> ss: This instrument was acknowledged before me on <u>2/21/24</u> by <u>Andrew McCarthy</u> the <u>President</u> of <u>RAR Enterprises LLC Disc: Founders</u> a <u>Nebraska LLC</u> on behalf of the <u>LLC</u>	Accepted: Endgame Lottery Services LLC By: <u>[Signature]</u> Print Name: <u>Jim F. Haney</u> Dated: <u>21 Feb 2024</u>
<u>[Signature]</u> Notary	

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SUBJECT TO TERMS ON REVERSE







# Nebraska Schedule II – County/City Lottery Sales Outlet Location Application

Form 50G  
Schedule II

- No license fee required.
- Incomplete schedules will be returned.

1 Nebraska ID Number of County, City, or Village 317810 Please Do Not Write In This Space

2 County, City, or Village Name on Form 50G Norfolk / Madison

### Sales Outlet Location Information (Attach additional sheet if necessary)

3 Nebraska ID Number 15635929 4 Federal ID or Social Security Number 87-3014859 5 Type of Application:  New  Renewal  Report Changes  Cancel

Business Name and Location Address		Business Name and Mailing Address		
Name <u>P A R Enterprises LLC</u>		Business Name		
Trade Name of Business (If Different Than Above) <u>Founders</u>		Street or Other Mailing Address		
Street Address <u>501 W Norfolk Ave</u>		City	State	Zip Code
City <u>Norfolk</u>	State <u>NE</u>	Zip Code <u>68701</u>	County <u>Madison</u>	Nebraska Liquor License Number <u>126273</u>

6 Type of Ownership:  Sole Proprietorship  Domestic Corporation  Limited Liability Company  Nonprofit Corporation or Organization  Partnership  Foreign Corporation  Domesticated Corporation  Other \_\_\_\_\_

7 Location Type:  Keno Satellite  Keno Independent Game

Your Social Security number and date of birth are required under the Nebraska County and City Lottery Act and will be used to request criminal history information from law enforcement agencies to determine if the legal requirements for a lottery sales outlet location's license are met.

- 8 List the Social Security number, full name, home address, date of birth, type of involvement, and percentage of ownership for each of the following persons involved with the applicant.
- If a sole proprietorship, list the individual owner.
  - If a partnership, list each partner and spouse.
  - If a corporation, list each officer and spouse and each person holding 10% or more of the debt or equity of the applicant corporation. If any person holding 10% or more of the debt or equity of the applicant corporation is a partnership, limited liability company, or corporation, list each partner of such partnership, each member of such limited liability company, or each officer of such corporation and every person holding 10% or more of the debt or equity of any such partnership, limited liability company or corporation.
  - If a limited liability company, list each member and spouse.
  - If a nonprofit organization or nonprofit corporation, list each officer and the individual designated as manager.
- (Attach additional sheet if necessary)

Social Security Number	Name, Address, City, State, Zip Code (See instructions)	Date of Birth	Type of Involvement and Percentage of Ownership
	<u>Andrew McCarthy 325 W Norfolk Ave, Suite 200 Norfolk NE 68701</u>		
	<u>Richelle Matto 504 E Prospect Norfolk NE 68701</u>		
	<u>Ryan Matto 504 E Prospect Norfolk NE 68701</u>		

- 9 Does any person other than those listed in line 8 above have any ownership interest in the license applicant? (See instructions)
- Yes  No
- If Yes, in the case of an individual, identify the Social Security number, full name, home address, date of birth, type of ownership interest of each such individual. In the case of a business, identify the federal employer ID number, business name, address, and type of ownership interest of each such business. (Attach additional sheet if necessary)

- 10a Has anyone listed in line 8 ever been convicted of, forfeited bond upon a charge of, or pled guilty or nolo contendere to any felony or misdemeanor at any time involving any gambling activity, fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level? This includes shoplifting or issuing bad checks.
- Yes  No If Yes, see instructions.
- 10b Has anyone listed in line 8 ever been convicted of, forfeited bond upon a charge of, or pled guilty or nolo contendere to any felony other than that described in line 10a within 10 years preceding the date of this application?
- Yes  No If Yes, see instructions.

- 11 Has each of the individuals listed in line 8 above complied with the Instructions for Completing Fingerprint Application, or when applicable, filed a signed Affidavit by Spouse for Waiver form?
- Yes  No (See What Must Be Filed instructions)
- 12 Do any of the individuals listed in line 8 above have a financial interest, directly or indirectly, in any company licensed as a manufacturer or distributor pursuant to the Nebraska Bingo Act or the Nebraska Pickle Card Lottery Act or in any company licensed as a manufacturer-distributor pursuant to the Nebraska County and City Lottery Act?
- Yes  No If Yes, attach a detailed explanation of such interests.
- 13 Does any member of the governing board or any governing official of the county, city, or village named in this application have any financial interest, directly or indirectly, in the business named in this application?
- Yes  No If Yes, attach a detailed explanation of such interests.

- 14 Do any of the individuals listed in line 8 above currently hold or have they previously held any other licenses issued under the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska County and City Lottery Act?
- Yes  No If Yes, indicate the types of licenses, and their current status (active, suspended, cancelled, revoked, or expired).

Under penalties of law, I declare that I have examined this application, and to the best of my knowledge and belief, it is correct. I will comply with the provisions of the Nebraska County and City Lottery Act and the regulations adopted under such Act.

**sign here** Signature of Sales Outlet Location Owner, Member, Partner, Officer, or Person Authorized by Attached Power of Attorney Andrew McCarthy Title President Date 2/21/24 Daytime Phone Number 402-992-0978

Name of Person to Contact Regarding This Application: Name Andrew McCarthy Title President Daytime Phone Number 402-992-0978

**Attach documentation indicating approval of location by governing board of the county, city, or village and a copy of the site agreement.**

**sign here** I declare that I have examined this application, and authorize the applicant to conduct a lottery on behalf of the county, city, or village named in this application.

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_ Daytime Phone Number \_\_\_\_\_

RESOLUTION NO. 2024-10

A RESOLUTION APPROVING RAR ENTERPRISES, LLC, dba FOUNDERS AS A SATELLITE LOCATION OF ENDGAME LOTTERY SERVICES, LLC, DBA BIG RED KENO, FOR THE NORFOLK KENO LOTTERY.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORFOLK, NEBRASKA:

SECTION 1. The following location is hereby approved as a satellite location of Endgame Lottery Services, LLC, dba Big Red Keno, for the City in accordance with the City's satellite location criteria and the City Administrator, City Clerk and such other City officials as may be necessary or appropriate are authorized and directed to sign the necessary application and to take such other actions as may be necessary or appropriate in order to establish the following location as a satellite location for the City's Keno lottery:

RAR Enterprises, LLC, dba Founders, 501 W Norfolk Avenue #110, Norfolk, NE 68701

SECTION 2. This resolution shall be in full force and effect from and following the passage and publication hereof as required by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Josh Moenning, Mayor

ATTEST:

\_\_\_\_\_  
Brianna Duerst, City Clerk

S E A L

Approved as to form: \_\_\_\_\_  
Danielle Myers-Noelle, City Attorney

RECOMMENDATION OF THE NEBRASKA LIQUOR CONTROL COMMISSION

Date Mailed from Commission Office: 2-9-2024

I, \_\_\_\_\_ Clerk of \_\_\_\_\_  
(City, Village or County)

Nebraska, hereby report to the Nebraska Liquor Control Commission in accordance with Revised Statutes of Nebraska, Chapter 53, Sec. 134 (7) the recommendation of said city, village or county, as the case may be relative to the application for a license under the provisions of the Nebraska Liquor Control Act as applied for by:

RAR ENTERPRISES, LLC dba FOUNDERS  
501 W NORFOLK AVE § NORFOLK / MADISON County, 68701  
Application for Class C 126273  
45 days – 3-25-2024

1. Notice of local hearing was published in a legal newspaper in or of general circulation in city, village or county, one time not less than 7 nor more than 14 days before time of hearing.

Check one Yes  No

The Statutes require that such hearing shall be held not more than 45 days after the date of receipt of this notice from the Commission.

2. Local hearing was held not more that 45 days after receipt of notice from the Nebraska Liquor Control Commission.

Check one Yes  No

3. Date of hearing of Governing Body: \_\_\_\_\_

4. Type or write the Motion as voted upon by the Governing Body. If additional Motions are made by the Governing Body, then use an additional page and follow same format.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Motion was made by: \_\_\_\_\_ Seconded by: \_\_\_\_\_

6. Roll Call Vote: \_\_\_\_\_

7. Check one: The motion passed: \_\_\_\_\_ The motion failed: \_\_\_\_\_

8. If the motion is for recommendation of denial of the applicant, then list the reasons of the governing body upon which the motion was made.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Attached additional page if necessary)

\_\_\_\_\_  
Clerk's name DATE \_\_\_\_\_

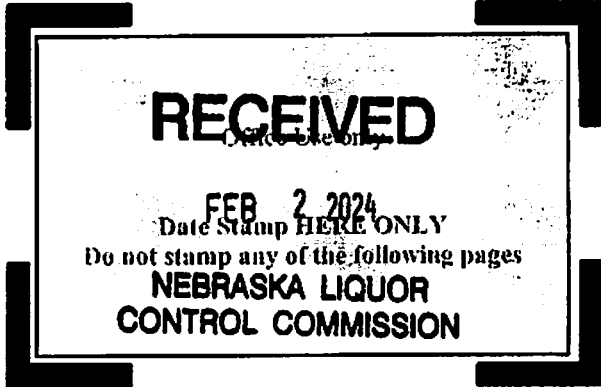


# APPLICATION FOR LIQUOR LICENSE CHECKLIST RETAIL

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
EMAIL: [lcc.frontdesk@nebraska.gov](mailto:lcc.frontdesk@nebraska.gov)  
WEBSITE: [www.lcc.nebraska.gov](http://www.lcc.nebraska.gov)

License Class: CA

License Number:  
**126273**



Office Use Only

NEW/REPLACING 124467 TOP  Yes  No

Hot List Yes/No  Yes  No

Initial: KF

## PLEASE READ CAREFULLY

See directions on the next page. Provide all the items requested. Failure to provide any item will cause this application to be returned or placed on hold. All documents must be legible. Any false statement or omission may result in the denial, suspension, cancellation or revocation of your license. If your operation depends on receiving a liquor license, the Nebraska Liquor Control Commission cautions you that if you purchase, remodel, start construction, spend or commit money that you do so at your own risk. Prior to submitting your application review the application carefully to ensure that all sections are complete, and that any omissions or errors have not been made. You may want to check with the city/village or county clerk, where you are making application, to see if any additional requirements must be met before submitting application to the Nebraska Liquor Control Commission.

APPLICANT NAME RAR Enterprises LLC

TRADE (DBA) NAME Founders

PREVIOUS TRADE (DBA) NAME Boathouse As Throwing

CONTACT NAME AND PHONE NUMBER Andrew McCarthy - 402-992-0978

CONTACT EMAIL ADDRESS Andrew@districttableandtap.com  
Crum hx 4-30-2027 Ryan SS#  
CTG base  
Be Howard

Office use only	
PAYMENT TYPE <u>Payport</u>	
AMOUNT <u>\$400</u> - RCPT	
RECEIVED: <u>2/2/2024</u>	
DATE DEPOSITED _____	

# DIRECTIONS

Each item must be included with your application

- ✓ 1. Application fee of \$400 (nonrefundable), please pay online thru our PAYPORT system or enclose payment made payable to the Nebraska Liquor Control Commission
- ✓ 2. Enclose the appropriate application forms
  - Individual License (Form 104)
  - Partnership License (Form 105)
  - ✓ Corporate License (Form 101 & Form 103)
  - ✓ Limited Liability Company (LLC) (Form 102 & Form 103)  
Corporation or Limited Liability Company (LLC) must be active with the Nebraska Secretary of State
- ✓ 3. For citizenship enclose U.S. birth certificate; U.S. passport or naturalization paper
  - a. For residency enclose proof of registered voter in Nebraska
  - b. If permanent resident include Employment Authorization Card or Permanent Resident Card
  - c. See Applicant Guidelines for further assistance
- ✓ 4. Form 147 - Fingerprints are required for each person as defined in new application guide, found on our website under "Licensing Tab" in "Guidelines/Brochures".
- ✓ 5. If purchasing an already licensed business: include Form 125—Temporary Operating Permit (TOP)
  - ✓ a. Form 125 must be signed by the seller (current licensee) and the buyer (applicant)
  - ✓ b. Provide a copy of the business purchase agreement from the seller (current licensee sells "the business currently licensed" to applicant)
  - ✓ c. Provide a copy of alcohol inventory being purchased (must include quantity, brand name and container size)
  - d. Enclose a list of the assets being purchased (furniture, fixtures and equipment)
- ~~✓~~ 6. If building is owned or being purchased send a copy of the deed or purchase agreement in the name of the applicant.
- ✓ 7. If building is being leased, send a copy of signed lease in the name of the applicant. Lease term must run through the license year being applied for.
8. Submit a copy of your business plan.

FORM 100  
REV 12/7/2022  
PAGE 2



RETAIL LICENSE(S) Application Fee \$400 (nonrefundable)  
CLASS C LICENSE TERM IS FROM NOVEMBER 1 - OCTOBER 31  
ALL OTHER CLASSES TERM IS MAY 1 - APRIL 30

- A BEER, ON SALE ONLY
- B BEER, OFF SALE ONLY\*\*
- C BEER, WINE, DISTILLED SPIRITS, ON AND OFF SALE\*\*  
Do you intend to sale cocktails to go as allowed under Neb Rev. Statute 53-123.04(4) YES  NO
- D BEER, WINE, DISTILLED SPIRITS, OFF SALE ONLY\*\*
- F BOTTLE CLUB.
- I BEER, WINE, DISTILLED SPIRITS, ON SALE ONLY  
Do you intend to sale cocktails to go as allowed under Neb Rev. Statute 53-123.04(5) YES  NO
- J LIMITED ALCOHOLIC LIQUOR, OFF SALE - MUST INCLUDE SUPPLEMENTAL FORM 120
- AB BEER, ON AND OFF SALE
- AD BEER ON SALE ONLY, BEER, WINE, DISTILLED SPIRITS OFF SALE
- IB BEER, WINE, DISTILLED SPIRITS ON SALE, BEER OFF SALE ONLY
- Class K Catering endorsement (Submit Form 106) - Catering license (K) expires same as underlying retail license
- Class G Growler endorsement (Submit Form 165) - Class C licenses only

\*\*Class B, Class C, Class D license do you intend to allow drive through services under Neb Rev. Statute 53-178.01(2) YES  NO

**ADDITIONAL FEES WILL BE ASSESSED AT THE CITY/VILLAGE OR COUNTY LEVEL WHEN THE LICENSE IS ISSUED**

**TYPE OF LICENSE OR HOW IT WILL BE OBTAINED**

- Individual License (requires insert FORM 104)
- Partnership License (requires insert FORM 105)
- Corporate License (requires FORM 101 & FORM 103)
- Limited Liability Company (LLC) (requires FORM 102 & FORM 103)

Name Loann L. Locke & Beauvillotte Law Office Phone Number 402-371-2278  
Firm Name Shawn Beauvillotte  
Email address shawn@llbnewdell.com  
Should we contact you with any questions on the application? YES  NO

Trade Name (doing business as) Founders

Street Address 501 W. Norfolk Ave Suite 110

City Norfolk County Madison Zip Code 68701

Premises Telephone number 402-532-1222

Business e-mail address officebar21@gmail.com

Is this location inside the city/village corporate limits YES X NO

**MAILING ADDRESS (where you want to receive mail from the Commission)**

Check if same as premises

Name ✓

Street Address ✓

City ✓ State ✓ Zip Code ✓

**IN THE SPACE PROVIDED BELOW DRAW OR ATTACH A DIAGRAM OF THE AREA TO BE LICENSED  
DO NOT SEND BLUEPRINTS, ARCHITECT OR CONSTRUCTION DRAWINGS  
PROVIDE LENGTH X WIDTH IN FEET (NOT SQUARE FOOTAGE)  
INDICATE THE DIRECTION OF NORTH**

Building length 87.7 x width 50 in feet

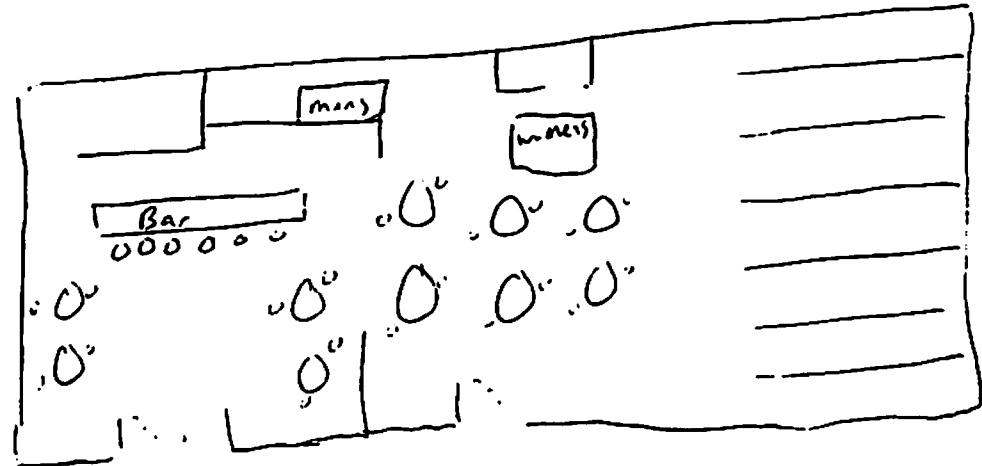
Is there a basement? Yes X No        If yes, length 87.7 x width 50 in feet

Is there an outdoor area? Yes        No X If yes, length        x width        in feet+

\*If including an outdoor area permanent fencing is required. Please contact the local governing body for other requirements regarding fencing

Number of floors of the building 2

**PROVIDE DIAGRAM OF AREA TO BE LICENSED BELOW OR ATTACH SEPARATE SHEET**



1<sup>st</sup> floor of 2 story bldg.

**1. READ CAREFULLY. ANSWER COMPLETELY AND ACCURATELY §53-125(5)**

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. Also list any charges pending at the time of this application. If more than one party, please list charges by each individual's name.

Include traffic violations. 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. Was this premise licensed as liquor licensed business within the last two (2) years?

YES  NO

If yes, provide business name and license number Bonhouse - 124467

3. Are you buying the business of a current retail liquor license?

YES  NO

If yes, give name of business and liquor license number Bonhouse 124467

4. Are you filing a temporary operating permit (TOP) to operate during the application process?

YES  NO

If yes

a) Attach temporary operating permit (TOP) (Form 125)

a) Submit a copy of the business purchase agreement

b) Include a list of alcohol being purchased, list the name brand, container size and how many \_\_\_\_\_

c) Submit a list of the furniture, fixtures and equipment

5. Are you borrowing any money from any source, include family or friends, to establish and/or operate the business?

YES  NO

If yes, list the lender(s) Bank 1st Norfolk NE

6. Will any person or entity, other than applicant, be entitled to a share of the profits of this business?

YES  NO

If yes, explain. (all involved persons must be disclosed on application)

**No silent partners** 019.01E Silent Partners: Profit Sharing: No licensee or partner, principal, agent or employee of any Retail Liquor License shall permit any other person not licensed or included as a partner, principal, or stockholder of any Retail Liquor License to participate in the sharing of profits or liabilities arising from any Retail Liquor License. (53-1,100)

7. Will any of the furniture, fixtures and equipment to be used in this business be owned by others?

YES  NO

If yes, list such item(s) and the owner. \_\_\_\_\_

8. Is premises to be licensed within 150 feet of a church, school, hospital, home for indigent persons or for veterans, their wives, and children; or within 300 feet of a college or university campus?

YES  NO

If yes, provide name and address of such institution and where it is located in relation to the premises (Nebraska Revised Statute 53-177(1) AND PROVIDE FORM 134 - CHURCH OR FORM 135 - CAMPUS AND LETTER OF SUPPORT FROM CHURCH OR CAMPUS

9. Is anyone listed on this application a law enforcement officer? If yes, list the person, the law enforcement agency involved and the person's exact duties. (Nebraska Revised Statute 53-125(15))

YES  NO

10. List the primary bank and/or financial institution (branch if applicable) to be utilized by the business.

a) List the individual(s) who are authorized to write checks and/or withdrawals on accounts at this institution.

Bank First (Norfolk Ave) Andrew McCarthy / Michelle Matheo / Ryan Matheo

11. List all past and present liquor licenses held in Nebraska or any other state by any person named in this application. Include license holder name, location of license and license number. Also list reason for termination of any license(s) previously held.

Andrew McCarthy - Norfolk 125450 / 125451 / 124584 / 125874 / 125456 / 125457  
Ryan / Michelle Matheo - Norfolk 124584

12. List the alcohol related training and/or experience (when and where) of the person(s) making application. Those persons required are listed as followed:

- Individual: Applicant and spouse; spouse is exempt if they filed Form 116 – Affidavit of Non-Participation.
- Partnership: All partners and spouses, spouses are exempt if they filed Form 116 – Affidavit of Non-Participation.
- Limited Liability Company: All member of LLC, Manager and all spouses; spouses are exempt if they filed Form 116 – Affidavit of Non-Participation.
- Corporation: President, Stockholders holding 25% or more of shares, Manager and all spouses; spouses are exempt if they filed Form 116 – Affidavit of Non-Participation.

**NLCC certified training program completed**

Applicant Name	Date (mm/yyyy)	Name of program (attach copy of course completion certificate)
Andrew McCarthy	08/2023	FBST - Responsible Beverage Service Training

**Experience**

Applicant Name/Job Title	Date of Employment	Name & Location of Business
Andrew McCarthy - LM	2010-2019	Big Red - Norfolk, NE
Andrew McCarthy - owner	2019 - <del>2021</del> <sup>current</sup>	District T&T (District Event Center / Long River Dist. 116.15)
Andrew McCarthy P. Chelle Matheo / Ryan Matheo owners	2021 - current	OFFICE BAR - Norfolk, NE

13. If the property is owned, submit a copy of the deed or proof of ownership. If leased, submit a copy of the lease covering the entire license year.

Documents must be in the name of applicant as owner or lessee

- Lease expiration date \_\_\_\_\_  
 Deed  
 Purchase Agreement

14. When do you intend to open for business? February 2024

15. What will be the main nature of business? AX Throwing with bar and food service

16. What are the anticipated hours of operation? Tues - Sunday 4-10pm

17. List the principal residence(s) for the past 10 years for ALL persons required to sign, including spouses.

APPLICANT CITY & STATE	YEAR		SPOUSE CITY & STATE	YEAR	
	FROM	TO		FROM	TO

If necessary, attach a separate sheet

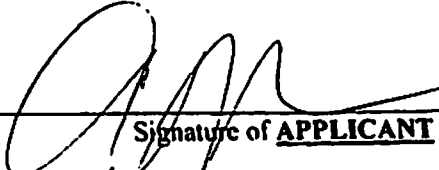
**SIGNATURE PAGE - PLEASE READ CAREFULLY**

The undersigned applicant(s) hereby consent(s) to an investigation of his/her background and release present and future records of every kind and description including police records, tax records (State and Federal), and bank or lending institution records, and said applicant(s) and spouse(s) waive(s) any right or causes of action that said applicant(s) or spouse(s) may have against the Nebraska Liquor Control Commission, the Nebraska State Patrol, and any other individual disclosing or releasing said information. Any documents or records for the proposed business or for any partner or stockholder that are needed in furtherance of the application investigation of any other investigation shall be supplied immediately upon demand to the Nebraska Liquor Control Commission or the Nebraska State Patrol. 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.

Individual applicants agree to supervise in person the management and operation of the business and that they will operate the business authorized by the license for themselves and not as an agent for any other person or entity. Corporate applicants agree the approved manager will superintend in person the management and operation of the business. Partnership applicants agree one partner shall superintend the management and operation of the business. All applicants agree to operate the licensed business within all applicable laws, rules, regulations, and ordinances and to cooperate fully with any authorized agent of the Nebraska Liquor Control Commission.


*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, C.F.R. 16.34.*

**Must be signed by all applicant(s) and spouse(s) owning more than 25%  
(YOU MAY NEED TO PRINT MULTIPLE SIGNATURE PAGES)**

  
\_\_\_\_\_  
Signature of APPLICANT  
  
Andrew McCarthy  
\_\_\_\_\_  
Printed Name of APPLICANT

\_\_\_\_\_  
Signature of SPOUSE  
  
\_\_\_\_\_  
Printed Name of SPOUSE

  
\_\_\_\_\_  
Signature of APPLICANT  
  
Rachelle Maltz  
\_\_\_\_\_  
Printed Name of APPLICANT

\*   
\_\_\_\_\_  
Signature of SPOUSE  
  
\* Ryan Maltz  
\_\_\_\_\_  
Printed Name of SPOUSE

# Nebraska Secretary of State

## RAR ENTERPRISES, LLC

Fri Feb 9 08:04:56 2024

**SOS Account Number**

2109283001

**Status**

Active

**Principal Office Address**

504 E PROSPECT AVE  
NORFOLK, NE 68701

**Registered Agent and Office Address**

RICHELLE A MATTEO  
504 E PROSPECT AVE  
NORFOLK, NE 68701

**Designated Office Address**

504 E PROSPECT AVENUE  
NORFOLK, NE 68701

**Nature of Business**

Not Available

**Entity Type**

Domestic LLC

Qualifying State: NE

**Date Filed**

Sep 30 2021

**Next Report Due Date**

Jan 01 2025

### Filed Documents

Filed documents for RAR ENTERPRISES, LLC may be available for purchase and downloading by selecting the Purchase Now button. Your Nebraska.gov account will be charged the indicated amount for each item you view. If no Purchase Now button appears, please contact Secretary of State's office to request document(s).

Document	Date Filed	Price	
Certificate of Organization	Sep 30 2021	\$0.45 = 1 page(s) @ \$0.45 per page	<input type="button" value="Purchase Now"/>
Proof of Publication	Nov 01 2021	\$0.45 = 1 page(s) @ \$0.45 per page	<input type="button" value="Purchase Now"/>
Record of Determination	Apr 06 2023	\$0.45 = 1 page(s) @ \$0.45 per page	<input type="button" value="Purchase Now"/>
Administrative Dissolution	Jun 21 2023	\$0.45 = 1 page(s) @ \$0.45 per page	<input type="button" value="Purchase Now"/>
Reinstatement	Jul 12 2023	\$0.90 = 2 page(s) @ \$0.45 per page	<input type="button" value="Purchase Now"/>

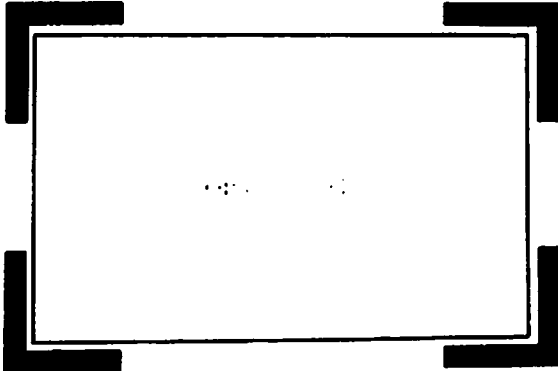


# LIMITED LIABILITY COMPANY (LLC)

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
EMAIL: [lcc.frontdesk@nebraska.gov](mailto:lcc.frontdesk@nebraska.gov)  
WEBSITE: [www.lcc.nebraska.gov](http://www.lcc.nebraska.gov)

License  
Class: \_\_\_\_\_

License Number: \_\_\_\_\_



### INSTRUCTIONS

1. All members and spouses must be listed
2. Managing/Contact member and all members holding over 25 % shares of stock and their spouse (if applicable) must sign the signature page of the application
3. Managing/Contact member and all members holding over 25% interest and their spouses must submit fingerprints. See Form 147 for further information
4. Attach copy of Articles of Organization

**Name of Limited Liability Company that will hold license as listed on the Articles of Organization**

RAR Enterprises LLC

Name of Registered Agent: Shawn Beaudella

LLC Address: 504 E. Prospect Ave

City: Norfolk State: NE Zip Code: 68701 - 4390

LLC Phone Number: 402-992-0978 LLC Fax Number: N/A

**Name of Managing/Contact Member**

Name and information of contact member must be listed on following page

Last Name: McCarthy First Name: Andrew MI: L

Home Address: \_\_\_\_\_ City: Norfolk

State: NE Zip Code: \_\_\_\_\_ Home Phone Number: \_\_\_\_\_

Signature of Managing/Contact Member

**CERTIFICATE OF ORGANIZATION  
OF  
RAR ENTERPRISES, L.L.C.  
A Nebraska Limited Liability Company**

**First:** The name of the limited liability company is: RAR ENTERPRISES, L.L.C.

**Second:** The street and mailing address of the Company's initial designated office in the State of Nebraska is: 504 E. Prospect Avenue; Norfolk, NE 68701.

**Third:** The name of the initial agent for service of process of the Company is Richelle A. Matteo and her street, mailing address and post office box number, if any, is: 504 E. Prospect Avenue; Norfolk, NE 68701.

**Fourth:** The Company shall be managed by its members.


By:   
Richelle A. Matteo, Organizer

STATE OF NEBRASKA    )  
COUNTY OF MADISON    ) ss.

Before me, an officer duly authorized by the laws of the State of Nebraska to take acknowledgments of deeds, personally appeared RICHELLE A. MATTEO known to me to be the Organizer referred to in the foregoing Certificate of Organization, and acknowledged the execution thereof.

Witness my hand and seal this 23<sup>rd</sup> day of September, 2021.



  
Notary Public

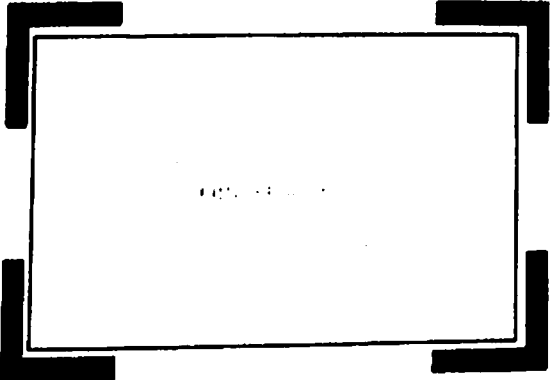
CertificateOrganization/MatteoRyan/RAREnterprisesLLC

# MANAGER APPLICATION FORM 103

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
EMAIL: [lec.frontdesk@nebraska.gov](mailto:lec.frontdesk@nebraska.gov)  
WEBSITE: [www.lec.nebraska.gov](http://www.lec.nebraska.gov)

License  
Class: \_\_\_\_\_

License Number: \_\_\_\_\_



### MANAGER MUST:

- Be at least 21-years of age
- Complete all sections of the application.
- Form must be signed by a **member or corporate officer**
- Include Form 147 –Fingerprints are required
- Provide a copy of one of the following: US birth certificate, US Passport, naturalization papers OR legal resident documentation
- Be a resident of the state of Nebraska and if an US citizen be a registered voter in the State of Nebraska
- Spouse who **will** participate in the business, the **spouse must meet the same requirements as the manager applicant:**

Spouse who **will not** participate in the business

- Complete the Spousal Affidavit of Non Participation (Form 116). **Be sure to complete both halves of this form.**



Name of Corporation/LLC: RAK Enterprises, LLC



Premises Trade Name/DBA: Founders

Premises Street Address: 501 W. Norfolk Ave Suite 110

City: Norfolk County: Madison Zip Code: 68701

Premises Phone Number: 402-532-1222

Premises Email address: alceba-21@gmail.com

  
**SIGNATURE REQUIRED BY CORPORATE OFFICER / MANAGING MEMBER**

The individual whose name is listed as a corporate officer or managing member as reported or listed with the Commission.

BARCODE

Last Name: Bright First Name: Misaela MI: L  
 Home Address: \_\_\_\_\_  
 City: \_\_\_\_\_ County: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Home Phone Number: \_\_\_\_\_  
 Driver's License Number: \_\_\_\_\_  
 Social Security Number: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_ Place of Birth: \_\_\_\_\_  
 Email address: \_\_\_\_\_

YES  NO

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

CITY & STATE	YEAR FROM	YEAR TO	CITY & STATE	YEAR FROM	YEAR TO

BAR TO	NAME OF EMPLOYER	NAME OF SUPERVISOR	TELEPHONE NUMBER
Present	RHA Enterprise	Rhennelle Matteo	402-750-7228
10/22	oral Surgery Center	Londice ShineMAN	402-644-4452

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

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

Anyone who is a party to this application, or their spouse, **EVER** been convicted of or plead guilty to any crime. **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
Miranda Bright	03/2014	Norfolk, VA	DUI	1yr Probation 1yr loss of license

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



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

Applicant Name	Date (mm/yyyy)	Name of program (attach copy of course completion certificate)

\*For list of NLCC Certified Training Programs see [training](#)

Experience:

Applicant Name / Job Title	Date of Employment:	Name & Location of Business:
Miranda Bright/manager	1-23 to Present	Office Bar 120 S. 4 <sup>th</sup> St. Norfolk Va.
<del>Arona Circuit / Bartender</del>		
Miranda Bright/Bartender	9/21 to 10/22	Arona Circuit 120 S. 13 <sup>th</sup> St. Norfolk Va.

5. Have you enclosed Form 147 regarding fingerprints?

YES       NO

**ATTENTION: IMPORTANT INFORMATION**  
**ATTENTION PAGE - PLEASE READ CAREFULLY**

The undersigned applicant(s) hereby consent(s) to an investigation of his/her background and release present and future records of every kind and description including police records, tax records (State and Federal), and bank or lending institution records, and said applicant(s) and spouse(s) waive(s) any right or causes of action that said applicant(s) or spouse(s) may have against the Nebraska Liquor Control Commission, the Nebraska State Patrol, and any other individual disclosing or releasing said information. Any documents or records for the proposed business or for any partner or stockholder that are needed in furtherance of the application investigation of any other investigation shall be supplied immediately upon demand to the Nebraska Liquor Control Commission or the Nebraska State Patrol. 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.*

**Must be signed by applicant and spouse.**

Mianda Bright  
Signature of **APPLICANT**

\_\_\_\_\_  
Signature of **SPOUSE**

Mianda Bright  
Printed Name of **APPLICANT**

\_\_\_\_\_  
Printed Name of **SPOUSE**



202 N. 7<sup>th</sup> Street  
Norfolk, NE 68701  
24 hrs. 402-644-8700  
Office 402-844-2150  
www.norfolkne.gov

Don Miller  
Chief of Police

dmiller@norfolkne.gov

To: Brianna Duerst  
City Clerk

From: Don Miller  
Chief of Police

RE: Liquor License background for RAR Enterprises, LLC, d.b.a. Founders Bar

Date: February 28, 2024

On February 14, 2024, the Norfolk Police Division was assigned a liquor license investigation for the business located at 501 W. Norfolk Ave, Suite #110 in Norfolk, Madison County, Nebraska, 68701. This business is newly named Founders and used to be Boathouse Ax Throwing. The application is for **Andrew McCarthy born in 1985, Ryan Matteo born in 1985, and Richelle Matteo born in 1987** of RAR Enterprises, LLC. In addition, the manager is listed as **Miranda Bright DOB 1977**. There was no spouse listed for Bright on the application.

The business is seeking a new liquor license #C-124467. In checking with the Nebraska Liquor Control Commission there is no history for the license other than the initial application. It appears that the appropriate paperwork has been filed with the Nebraska Liquor Control Commission.

This establishment held a liquor license under the previous owners which was #C-124467. This application is for a replacement of retail liquor license #C-124467 that was terminated on February 9, 2024.

**Andrew McCarthy** currently resides at 226 W. Norfolk Avenue; #200 in Norfolk and the application states he is unmarried.

McCarthy currently holds three liquor licenses in Norfolk including:

#C125450 which is for District Table and Tab, located at 226 W. Norfolk Ave., STE 120, Norfolk, Madison County Nebraska, owned by Seven County Spirits, LLC.

#C125451 for District Event Center, located at 218 W. Norfolk Ave, Norfolk, Madison County Nebraska, owned by Seven County Spirits, LLC.

#C124584 for The Office Bar, located at 120 S. 4<sup>th</sup> Street, Norfolk, Madison County Nebraska. owned by RAR Enterprises.

Additionally, McCarthy holds three other liquor licenses, two in St. Paul, Nebraska and one in West Point, Nebraska. These are:

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#C125894 for District Table and Tab, located at 135 S. Main Street in West Point, Cuming County Nebraska, owned by Seven County Spirits.

#C125456 and #ZK125457 both for Loup River Distilling, located at 503 Howard Ave, St. Paul, Howard County, Nebraska, owned by Seven County Spirits, LLC.

McCarthy previously held two previous liquor licenses which were:

#C088342 for Big Red Restaurant located at 2101 W. Pasewalk Ave, Norfolk, Madison County, Nebraska, owned by Endgame Operating Group.

#Q124306 for Pedal Therapy LLC, located at 109 S. 5<sup>th</sup> Street, Norfolk, Madison County, Nebraska.

We reviewed the Norfolk Police Files for McCarthy, and found he was the victim of a 3<sup>rd</sup> Degree Assault by his girlfriend in October 2020. This was the only contact where McCarthy was an involved party and not a reporting party. McCarthy has had multiple other contacts with the Norfolk Police Division since 2002 when he was cited for leaving the scene of an accident. He was cited three times from 2003 to 2005 for minor in possession of alcohol, and in 2006 he was cited for theft of services and third-degree assault. McCarthy has also received multiple tickets for parking violations in the 200 block of Norfolk Ave. where his home and his establishments the District Table and Tab and the District Event Center are located. This area has time restricted parking.

We also checked the NCJIS website for civil and criminal history for McCarthy. He only has a 2007 conviction for a DUI on his criminal history and I found no civil court entries.

**Ryan Matteo** currently lives at 504 E. Prospect Ave. in Norfolk and is married to Richelle Matteo who is also on this application.

Matteo currently holds one liquor license which is #C124584 which is for the Office Bar, located at 120 S. 4<sup>th</sup> Street, Norfolk, Madison County Nebraska, owned by RAR Enterprises.

We checked the Norfolk Police Files for Ryan Matteo and found numerous entries, many of which were traffic violations. He has had two DUI arrests in December of 2003 and October of 2008. Matteo also had an open container violation in 2015, disturbing the peace violations in 2006 and 2012, and a minor in possession of alcohol in 2005.

We also checked the NCJIS website for criminal and civil history for Ryan Matteo. In the Criminal history we found nothing that has not already been mentioned except for a 2009 violation for a warrant for failure to obtain a dog or cat license. The civil side had three cases from 2009 and 2010 in which Ryan Matteo was listed as a defendant which were regarding medical payments.

**Richelle Matteo** also currently lives at 504 E. Prospect Ave in Norfolk and has the same liquor license of C124584 as her husband Ryan.

We reviewed the Norfolk Police Files for Richelle Matteo under both her married name and her maiden name of Richelle Wachter. The files show several contacts under the Wachter name, many traffic related or as a reporting party or witness. In 2006, Richelle Matteo was arrested after taking a co-worker's checks and passing them at local businesses.

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We also checked the NCJIS website for criminal and civil history for Richelle Matteo and found no entries under the last name of Matteo. Under the last name Wachter I observed the arrest from the theft of checks on her criminal history which was the only arrest listed. Under the civil court history, I found eight entries from 2007 to 2013, seven of which she was listed as a defendant and one time as a plaintiff.

**Miranda Bright** is listed as residing at 900 W Prospect Ave #14 in Norfolk.

The Nebraska Liquor Control Commission site shows the only entry for Bright is the current application.

A check of the Nebraska Criminal Justice Information System (NCJIS) criminal, civil, and traffic files was done for Miranda Bright. Bright was arrested for DUI by the Nebraska State Patrol in Madison County in 2013 and convicted in 2014. Bright satisfactorily completed probation.

Bright was also stopped in 2022 for speeding by the Nebraska State Patrol, resulting in a warning.

We located a civil case in Madison County in 2013 in which Miranda Bright divorced Chad Bright DOB 1974. Bright was also listed as a parent in a Madison County child support case in 1999.

Bright's criminal history only lists the prior mentioned DUI arrest.

We did a check of the Norfolk Police Division local files for Miranda Bright and found six traffic contacts between 2003 and 2013. There was also 2013 contact for a pawn ticket, and as a reporting party of a criminal mischief report (NPD case 2013-1774.) In that case, Bright, an employee of Windshield Doctors, located at 307 E Omaha Ave, reported damage to a window of the business. The suspects were unidentified.

Bright's Nebraska operator's license listed a previous name as Miranda Glassmeyer. We located 12 contacts in NPD files, 7 of which were traffic. In 2000, Bright was listed as a witness in a non-medical hospitalization involving a family member. In 1998, Bright reported that two tires on her vehicle had been slashed. There were no identified suspects. In 1992 Bright was cited for a curfew violation.

On NCJIS, we found an additional speeding warning issued by the Nebraska State Patrol in 2008 under the name Miranda Glassmeyer.

We also did locations searches for the address of the Norfolk businesses that are currently owned by the applicants for this alcohol license and reviewed the police calls. They are as follows:

**District Event Center-218 W. Norfolk Ave**-This is a newer business opening in 2023 under Seven County Spirits and found no concerning calls at this location in the short time it has existed under this business name.

**District Table and Tap-218 W. Norfolk Ave**-This location has been operating under Seven County Spirits, LLC since October 2019. There have been various police calls at this location ranging from suspicious persons, trespassing, fire alarms, and various disturbances. We found no calls involving concerns with the business for alcohol violations.

**Office Bar-120 S. 4<sup>th</sup> Street**-RAR Enterprises took control of this business in October 2021, and we reviewed the police calls to this establishment from that time until the present. We found only one call there that listed concern with alcohol service and it was on June 4, 2022. Officers had contact with McCarthy regarding an outdoor event and concerns about patrons leaving the area with alcohol and the

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need for more security in the future. McCarthy agreed to review the issues moving forward. There were no other calls that were unusual or concerning.

There is nothing further at this time.

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## Public Hearing

The Mayor and City Council of the City of Norfolk, Nebraska will hold a public hearing on Monday, March 4, 2024 at 5:30 p.m. in the City Council Chambers, 309 N 5th Street, Norfolk, Nebraska, to consider the Class C (beer, wine, distilled spirits, on and off sale) liquor license application for RAR Enterprises, LLC, dba Founders, 501 W Norfolk Avenue, Suite 110, and the manager application of Miranda Bright.

All persons desiring to give evidence before the city council in support of or in protest against the issuance of said license may do so at the time set for the hearing either orally or if by written affidavit, the affidavit is filed with the city clerk at least three (3) business days prior to the date and time set for said hearing.

Brianna Duerst  
City Clerk

Publish (February 23, 2024)  
1 P.O.P.

## **Sec. 3-29. Procedure for handling liquor license applications.**

(a) Upon receipt of notification by the Nebraska Liquor Control Commission that an application for a liquor license within the City of Norfolk has been applied for, the city clerk shall give notice of hearing as provided for in section 53-134 N.R.S. 1943, as amended, which shall fix the date, time and place of said hearing, and also which shall be sent to applicant by first-class mail along with a copy of this section. Said notice shall be published in a legal newspaper in or of general circulation in the city, one time not less than seven (7) nor more than fourteen (14) days before the time of the hearing. Said notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the city council in support of or in protest against the issuance of said license may do so at the time set for the hearing either orally or if by written affidavit, the affidavit is filed with the city clerk at least three (3) business days prior to the date and time set for said hearing. Said hearing shall be conducted within forty-five (45) days after receipt of the notice from the Nebraska Liquor Control Commission.

(b) The applicant for a liquor license or his, her, their or its representative shall be required to attend the public hearing on the liquor license application. At the hearing on the application, the mayor, or in his or her absence the president of the city council, shall act as hearing officer. The hearing officer may limit testimony where it appears incompetent, irrelevant, immaterial or unduly repetitious.

(c) The hearing on the application shall be conducted informally. The intent of the hearing is to inquire into the factual basis for the application and qualifications of the applicant to meet the criteria set forth in section 3-28 of the Official City Code, not to be an adversary action. Two (2) or more proceedings which are legally or factually related may be heard and considered together unless any party thereto makes a sufficient showing to the mayor and city council that prejudice would result therefrom. The hearing may be reported by a certified court reporter, at the request of the city council or applicant, whose cost shall be borne by the applicant. If the hearing is reported by a certified court reporter, a copy of the transcript of the hearing shall be filed with the city clerk by the court reporter as soon as the same is transcribed, and if said hearing is conducted in conjunction with a regular city council meeting, said copy shall become part of the official minutes of said meeting. Each witness may present his or her testimony in narrative fashion or by question and answer, and shall state his or her name and address prior to commencing his or her testimony for the record. The mayor and city council shall not be bound by the strict rules of evidence in the conduct of the hearing and may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons. The burden of proof and persuasion with regard to the application shall be on the applicant. The mayor or any member of the city council may question any witness, call witnesses or request information. For purposes of obtaining desired information, the hearing officer may authorize the city administrator, city attorney, and/or other agent to act on his or her behalf.

(d) The order of proceedings for the conduct of the hearing is as follows:

- (1) Exhibits, if possible, will be marked in advance of the hearing by the city clerk and presented to the hearing officer during the hearing.
- (2) Presentation of evidence, witnesses and argument by the applicant.
- (3) Testimony of any other citizens in favor of the application.
- (4) Questioning of applicant, witnesses or citizens by city attorney, city administrator, governing body, or duly appointed agent.
- (5) Questioning of the applicant, witnesses or citizens in favor of the application by anyone in opposition to the license, if any.
- (6) Presentation of evidence, witnesses and argument by citizens in opposition to the application, if any.
- (7) Presentation of evidence by the city and law enforcement personnel.
- (8) Questioning of citizens in opposition, city personnel or law enforcement personnel by the applicant.
- (9) Rebuttal evidence by applicant and opposition, if desired.
- (10) Summation by applicant and opposition, if desired.

(11) Close of hearing and consideration by mayor and city council.

(e) After the hearing, the mayor and city council shall cause to be spread at large in the minute record of its proceedings a resolution approving or denying the issuance of such license. Said approval or denial shall be made within forty-five (45) days of the city clerk's receiving a copy of the license application from the Nebraska Liquor Control Commission. If the mayor and city council denies the retail or bottle club license within said forty-five-day period, such denial shall be final and shall be subject to review as provided in Sections 25-1901 to 25-1908 N.R.S. 1943, as amended. The mayor and city council shall by resolution issue the final order of denial to the applicant or licensee in writing and deliver or mail a copy by first-class mail postage prepaid to the Nebraska Liquor Control Commission within ten (10) days of the date the application was denied. If the mayor and city council approve an application by resolution within said forty-five-day period, the mayor and city council shall within ten (10) days of the date the application was approved notify the Nebraska Liquor Control Commission by first-class mail postage prepaid or delivery of the resolution of the action taken.

(f) No license shall be denied by the mayor and city council except after a hearing with reasonable notice to the applicant and an opportunity to appear and present evidence. Any resolution denying or failing to renew an application or license rendered by the mayor and city council shall be in writing or stated in the record and shall be accompanied by findings. The findings shall consist of concise statements of the conclusions upon each contested issue. The applicant or licensee shall be notified of the decision in person or by mail. A copy of the decision and order and accompanying findings shall be delivered or mailed upon request to the applicant or licensee.

Source: Ord. No. 3399, §§ 2-6, 5-5-86; Ord. No. 3469, § 1, 4-20-87; Ord. No. 3513, § 1, 11-2-87; Ord. No. 3598, § 3, 11-7-88; Ord. No. 3654, §§ 5, 7, 6-19-89; Ord. No. 5038, § 1, 10-20-08; Ord. No. 5820, § 1, 2-6-23; Subsequently, Ord. No. 3654, § 5, adopted June 19, 1989, renumbered § 3-28 as § 3-29, and § 7 of the same ordinance amended the same to read as herein set out.

RESOLUTION NO. 2024-11

WHEREAS, an application was filed by RAR, LLC, dba Founders, 501 West Norfolk Avenue, Suite 110, for a Class “C” Liquor License and the manager application of Miranda L. Bright; and

WHEREAS, a public hearing notice was published in the Norfolk Daily News as required by state law on February 23, 2024; and

WHEREAS, a public hearing was held on March 4, 2024, for the purpose of discussing such liquor license application.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Norfolk that:

The City of Norfolk hereby recommends approval of the above-identified liquor license application and the manager application of Miranda L. Bright.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Josh Moenning, Mayor

ATTEST:

\_\_\_\_\_  
Brianna Duerst, City Clerk

( S E A L )

Approved as to form: \_\_\_\_\_  
D. Myers-Noelle, City Attorney



<b>For Office Use Only</b>	Date Rec'd _____
	Fee \$ _____
	Rec'd by _____

**ZONING CHANGE APPLICATION**

**Applicant:** Par.Lor & Libations LLC 714 W Norfolk Ave, Norfolk, NE 68701

Name	Address
<u>(319)541-4183</u>	<u>dorwa21@gmail.com</u>
Phone	Email

\*If applicant is an LLC, a copy of the operating agreement must be submitted with the application.

**Contact:** Daniel Orwa

(other than applicant)	Name	Address
	<u>(319)541-4183</u>	<u>dorwa21@gmail.com</u>
	Phone	Email

**Current Zoning:** I1      **Proposed Zoning:** C2

\*If applying for M-U (Mixed Use) District, a copy of the plan must be submitted with the application.


**Location of Property:** 714 W Norfolk Ave, Norfolk, NE 68701

**Legal Description:** Koenigsteins Second Addition Lot 11, Blk 8

**Property Area, Square feet and/or Acres:** 3,048 SF/ 0.07 Acres

**Use of Adjoining Properties:**

North: \_\_\_\_\_ East: \_\_\_\_\_ South: \_\_\_\_\_ West: \_\_\_\_\_

  
\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Authorized Agent

Daniel Orwa  
\_\_\_\_\_  
Printed Name of Owner

OR

\_\_\_\_\_  
Printed Name of Authorized Agent

Return Completed forms to: Norfolk Planning Department; 309 N 5<sup>th</sup> Street; Norfolk, NE 68701

## ZONING CHANGE JUSTIFICATION FORM

1. What type of development does the Norfolk Comprehensive Plan recommend for this area?

Mixed Use

---

2. Does the zone change request conform to the Comprehensive Plan?

Yes

---

3. Is the proposed property in the Floodplain hazard area as delineated under the Federal Flood Insurance program?

No: Flood Zone: 31119C Subtype: Area of Minimal Hazard

---

4. What is the justification for the zone change as it relates to the overall Land Use?

Improvement upon current inaccurate zoning to accurately reflect future land use

---

5. How would this zoning district conform with adjacent properties' zoning?

Current zoning is inaccurate

---

6. What is the general character of the area?

Downtown (walkable, mixed use environment)

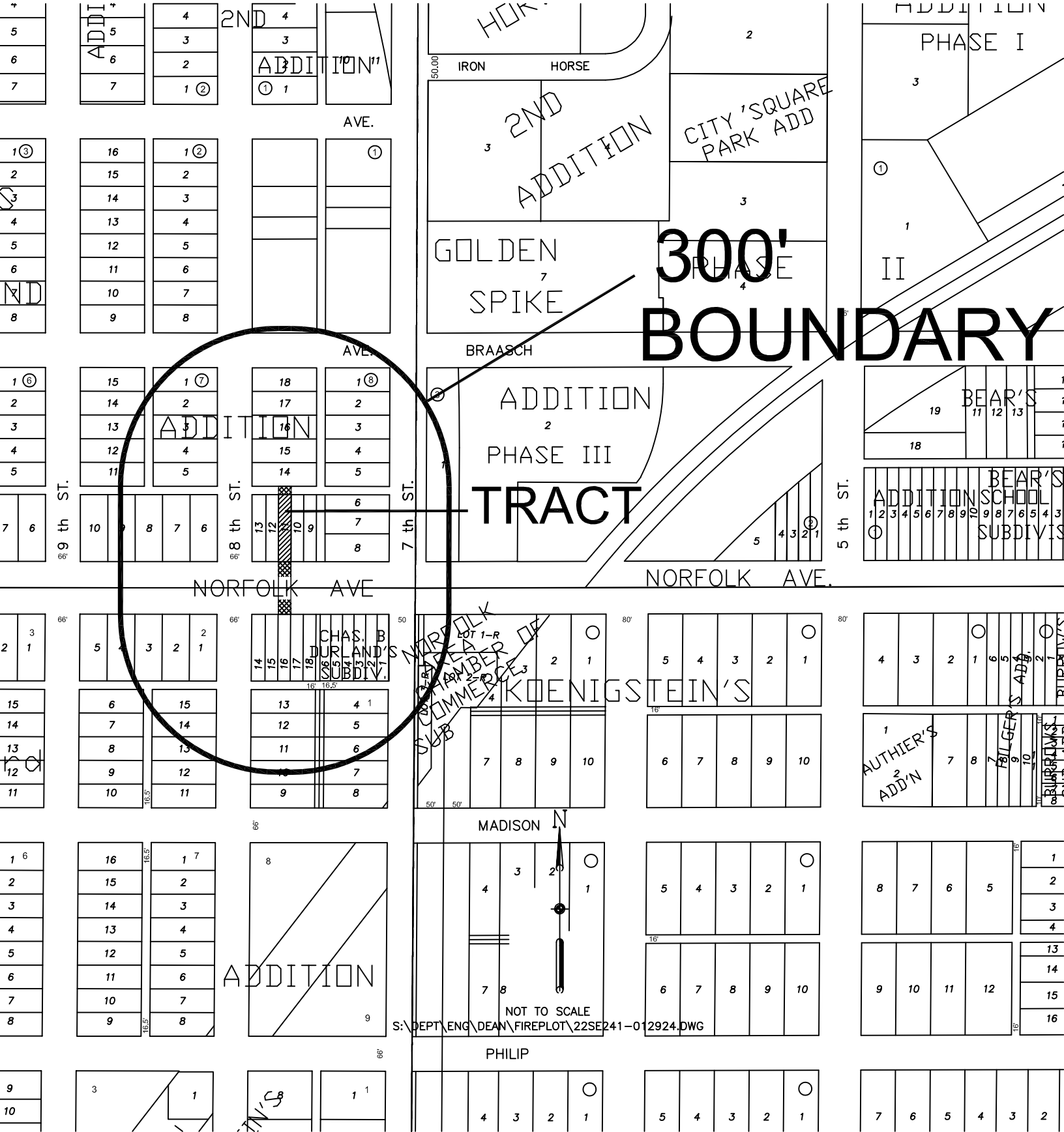
---

7. Is adequate sewer and water available? How do you propose to provide adequate public utilities?

Sewer/water service are both available but will be updated with all new piping to the west and south

---

Return Completed forms to: Norfolk Planning Department; 309 N 5<sup>th</sup> Street; Norfolk, NE 68701



**300'  
BOUNDARY**

**TRACT**

NOT TO SCALE  
S:\DEPT\ENG\DEAN\FIREPLOT\22SE241-012924.DWG

February 22, 2024

Honorable Mayor  
and  
City Council

Dear Mayor and Council:

The Norfolk Planning Commission held a public hearing on February 21, 2024 at the request of Par.Lor & Libations LLC., to consider a zoning change from I-1 (Light Industrial District) to C-2 (Central Business District) on property addressed as 714 W. Norfolk Ave.

The Planning Commission recommends approval of the request with a 7-0 vote.

Sincerely,



Dirk Waite, Chair  
Norfolk Planning Commission

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF NORFOLK, MADISON COUNTY, NEBRASKA;  
AMENDING THE ZONING DISTRICT MAP OF THE CITY OF NORFOLK, NEBRASKA;  
PROVIDING WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND  
PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM.

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

Section 1. That the I-1 (Light Industrial District) zoning on the following described real estate:

Lot 11, Blk 8, Koenigsteins Second Addition, City of Norfolk, Madison County,  
Nebraska

is hereby changed to C-2 (Central Business District)

Section 2. That this ordinance shall be in full force and effect from and after its passage,  
approval, and publication in pamphlet form according to law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Josh Moenning, Mayor

ATTEST:

\_\_\_\_\_  
Brianna Duerst, City Clerk

(SEAL)

Approved as to form: \_\_\_\_\_  
Danielle Myers-Noelle, City Attorney



<b>For Office Use Only</b>	Date Rec'd _____
	Fee \$ _____
	Rec'd by _____

**ZONING CHANGE APPLICATION**

**Applicant:** BAS Holding, LLC

Name	Address
(402) 510-5281	1423 280th Street, Modale, IA 51556
Phone	Email

\*If applicant is an LLC, a copy of the operating agreement must be submitted with the application.

**Contact:** Tracy Thompson

Name	Address
Phone	Email

**Current Zoning:** A      **Proposed Zoning:** I-1

\*If applying for M-U (Mixed Use) District, a copy of the plan must be submitted with the application.

**Location of Property:** 2200 South Victory Road, Norfolk, NE 68701

**Legal Description:** Lot 2, Chaffin's Addition, Madison County, Nebraska 23-24-1

**Property Area, Square feet and/or Acres:** 5.56 acres

**Use of Adjoining Properties:**

North: \_\_\_\_\_ East: \_\_\_\_\_ South: \_\_\_\_\_ West: \_\_\_\_\_


  
 \_\_\_\_\_  
 Signature of Owner

Tracy Thompson  
 \_\_\_\_\_  
 Printed Name of Owner

OR

\_\_\_\_\_  
 Authorized Agent

\_\_\_\_\_  
 Printed Name of Authorized Agent

Return Completed forms to: Norfolk Planning Department; 309 N 5<sup>th</sup> Street; Norfolk, NE 68701

**ZONING CHANGE  
JUSTIFICATION FORM**

1. What type of development does the Norfolk Comprehensive Plan recommend for this area?

Agricultural

2. Does the zone change request conform to the Comprehensive Plan?

Yes, industrial property adjacent to this property

3. Is the proposed property in the Floodplain hazard area as delineated under the Federal Flood Insurance program?

no

4. What is the justification for the zone change as it relates to the overall Land Use?

We want to be able to operate our asphalt paving company from this location

5. How would this zoning district conform with adjacent properties' zoning?

Adjacent properties to the south are zoned light industrial and a CUP to the west

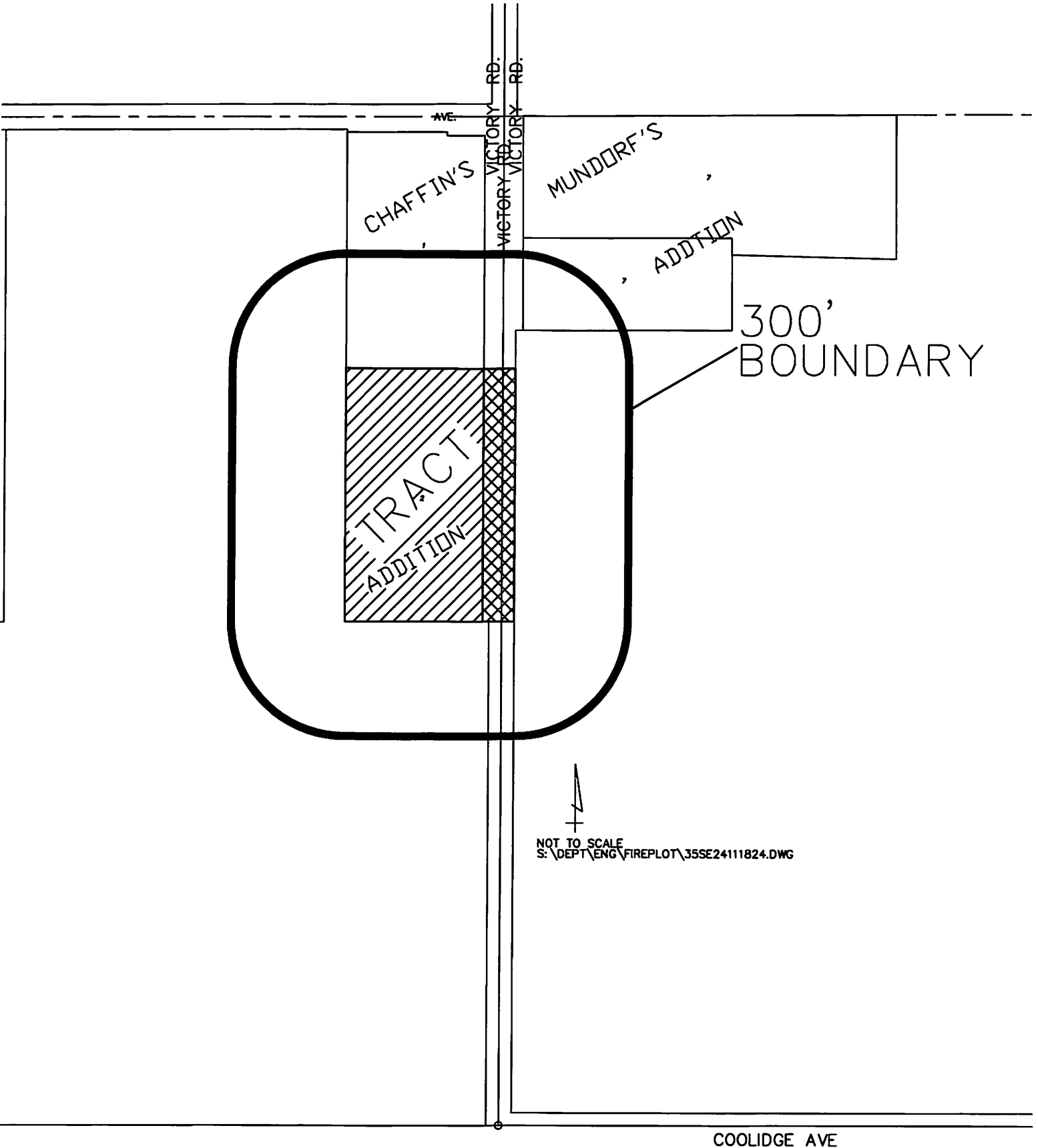
6. What is the general character of the area?

Industrial

7. Is adequate sewer and water available? How do you propose to provide adequate public utilities?

no

Return Completed forms to: Norfolk Planning Department; 309 N 5<sup>th</sup> Street; Norfolk, NE 68701



February 21, 2024

Honorable Mayor  
and  
City Council

Dear Mayor and Council:

The Norfolk Planning Commission held a public hearing on February 21, 2024 at the request of BAS Holding, LLC., to consider a zoning change from A (Agricultural District) to I-1 (Light Industrial District) on property addressed as 2200 S. Victory Road.

The Planning Commission recommends approval of the request with a 7-0 vote.

Sincerely,



Dirk Waite, Chairman  
Norfolk Planning Commission

ORDINANCE NO. 5870

AN ORDINANCE OF THE CITY OF NORFOLK, MADISON COUNTY, NEBRASKA;  
AMENDING THE ZONING DISTRICT MAP OF THE CITY OF NORFOLK, NEBRASKA;  
PROVIDING WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND  
PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM.

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

Section 1. That the A (Agricultural District) zoning on the following described real estate:

Lot 2, Chaffin's Addition, Madison County, Nebraska

is hereby changed to I-1 (Light Industrial District)

Section 2. That this ordinance shall be in full force and effect from and after its passage,  
approval, and publication in pamphlet form according to law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Josh Moenning, Mayor

ATTEST:

\_\_\_\_\_  
Brianna Duerst, City Clerk

(SEAL)

Approved as to form: \_\_\_\_\_  
Danielle Myers-Noelle, City Attorney

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING THE  
WORKFORCE HOUSING INCENTIVE PLAN.**

The City of Norfolk, Nebraska, a Municipal Corporation (the “City”), has determined it to be desirable to undertake and carry out urban redevelopment projects in certain areas of the City that are determined to be blighted and substandard and in need of redevelopment; and

The Community Development Law, Chapter 18 Article 21, Reissue Revised Statutes of Nebraska, as amended (the “Act”) prescribes the requirements and procedures for the planning and implementation of redevelopment projects, including redevelopment projects involving construction of workforce housing; and

The City has prepared an Incentive Plan for construction of housing in the municipality targeted to house existing or new workers in the City of Norfolk, Nebraska, a copy of which is attached hereto as Exhibit “A;” and

The City published and mailed notices of a public hearing on such Incentive Plan pursuant to the section 2115.01 of the Act, and has on the date of this Resolution held a public hearing on the proposal to approve the Incentive Plan; and

The City has reviewed the Incentive Plan and determined that such incentive plan is necessary to prevent the spread of blight and substandard conditions within the Municipality, will promote additional safe and suitable housing for individuals and families employed in the municipality, and will not result in the unjust enrichment of any individual or company.

**BE IT RESOLVED** by the Mayor and the City Council of the City of Norfolk, Nebraska, that:

1. The Incentive Plan is necessary to prevent the spread of blight and substandard conditions within the municipality, will promote additional safe and suitable housing for individuals and families employed in the municipality, and will not result in the unjust enrichment of any individual or company.
2. The Incentive Plan is approved in the form attached as Exhibit “A.”



3. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

THE CITY OF NORFOLK, NEBRASKA

By \_\_\_\_\_  
Josh Moenning, Mayor

ATTEST:

\_\_\_\_\_  
Brianna Duerst, City Clerk

Approved as to form: \_\_\_\_\_  
Danielle Myers-Noelle, City Attorney

## Exhibit A

### **WORKFORCE HOUSING INCENTIVE PLAN FOR THE MUNICIPALITY OF NORFOLK, NEBRASKA PURSUANT TO THE NEBRASKA COMMUNITY DEVELOPMENT LAW**

#### Introduction:

The 2018 Nebraska Legislature passed Legislative Bill 496 (the “Bill”) which amended the Nebraska Community Development Law (the “Act”). The Bill was signed by the Governor in May of 2019. Before the Bill was passed, tax increment financing (TIF) was generally limited to pay costs of site purchase, utility extension, public infrastructure, sidewalks, planning and certain rehabilitation expenditures. The Bill, among other items, provided that TIF may be used for the actual construction of new workforce housing.

Prior to utilizing TIF for workforce housing, the City must (a) receive a housing study within the last 60 months and (b) hold a hearing on an incentive plan for the use of TIF for workforce housing.

#### Workforce housing means:

(a) Housing that meets the needs of today's working families; (b) Housing that is attractive to new residents considering relocation to a rural community; (c) Owner-occupied housing units that cost no more than three hundred thousand dollars (\$300,000) to construct or rental housing units that cost not more than two hundred thirty-five thousand dollars (\$235,000) per unit to construct. For purposes of this subdivision (d), housing unit costs shall be updated annually by the Department of Economic Development based upon the most recent increase or decrease in the Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics; (e) Owner-occupied and rental housing units for which the cost to substantially rehabilitate exceeds fifty percent (50%) of a unit's assessed value or as permitted by City Code when rehabilitation exceeds 50% of assessed value; and (f) Upper-story housing. §18-2103 (32) R.R.S.

Rural community means any municipality in a county with a population of fewer than one hundred thousand (100,000) inhabitants as determined by the most recent Federal Decennial Census. The Madison County 2020 Census indicates a population of 35,585. §18- 2103 (30) R.R.S.

In 2021, the City of Norfolk (the “City”) received a housing study entitled “Norfolk, Nebraska Community Housing Study” (the “Study”). The Study noted that the greatest

challenge for the City of Norfolk, during the next five years, will be to develop housing units for workforce persons and families, elderly households, and special populations.

The law requires that a Workforce Housing Incentive Plan be necessary to prevent the spread of blight and substandard conditions within the municipality, promote additional safe and suitable housing for individuals and families employed in the municipality, and will not result in the unjust enrichment of any individual or company.

This Workforce Housing Incentive Plan shall be effective for the City of Norfolk, Nebraska, until modified pursuant to the Act.

TIF for workforce housing for each project is to be implemented pursuant to a redevelopment plan recommended by the Norfolk Community Development Agency (CDA) and approved after hearings by the Planning Commission and Norfolk City Council pursuant to the Act. This Workforce Housing Incentive Plan is intended to incent development of workforce housing that supports current and prospective employees of local and area employers. IT IS NOT INTENDED AND WILL NOT BE USED TO CONSTRUCT HIGHER END HOMES.

All redevelopment contracts between the CDA and a redeveloper providing TIF benefits for workforce housing will be negotiated on a case-by-case basis with TIF incentives to be determined by the CDA in amounts required to accomplish the goal of incenting the development of safe and decent workforce housing in the City of Norfolk. The CDA shall document that each project utilizing TIF for workforce housing shall not unduly enrich the redeveloper. This shall be accomplished by examining the proposed return on investment with and without TIF that is required to be submitted as part of the TIF application. Each redevelopment plan is unique, and the capacity of each redeveloper is different.

In each redevelopment contract for workforce housing, the CDA shall set standards appropriate for each workforce housing development project related to residence or apartment size, construction standards, costs and rental rates. Workforce housing TIF incentives will be provided subject to the following requirements.

All redevelopment contracts between the CDA and a redeveloper providing TIF benefits for workforce housing will be negotiated on a case-by-case basis with TIF incentives to be determined by the CDA, in amounts required to accomplish the goal of incenting the development of safe and decent workforce housing in the City of Norfolk. The CDA shall document and shall only agree to provide TIF benefits to a redeveloper seeking TIF for workforce housing after a determination is made by the CDA that the project is consistent with the requirement of Community Development Law, as amended from time to time, the applicable redevelopment plan and this Workforce Housing Incentive Plan, as well, after a

determination is made, that the project will not result in unjust enrichment of any individual or company. In each redevelopment contract for workforce housing, the CDA shall set standards appropriate for each workforce housing development project related to residence or apartment size, construction standards, costs, and rental rates.

It is the intent of the City that the housing which qualifies hereunder is utilized as primary residences, purchased at a price that conforms with the criteria hereunder, and occupied by members of the community; and shall remain as such for a reasonable time period. In accordance therewith, as deemed necessary or desirable by the City and/or Agency, the Agency may include certain terms or provisions within a redevelopment contract for a redevelopment project utilizing workforce housing TIF which ensures, or seek to ensure, conformance with the foregoing.

The redeveloper must disclose a detailed project budget, including a construction budget and sale price that is reasonable and consistent with construction costs in the City of Norfolk. The redeveloper shall provide the CDA with actual costs for the completed project.

On all redevelopment projects requesting workforce housing TIF, the CDA shall consider acceptable returns on investment for the type of housing proposed including cap rates.

**Approved by Norfolk City Council on \_\_\_\_\_.**

**LOWER ELKHORN  
NATURAL RESOURCES DISTRICT**

1508 Square Turn Blvd  
Phone: (402) 371-7313 NORFOLK, NE 68701

**RECREATION AREA DEVELOPMENT PROGRAM  
Application Form**

1. Date: 3/4/24 Tax ID Number 47-6006293
2. Project Name Liberty Bell Park Restroom and shelter
3. Project Sponsor: City of Norfolk  
Address 399 N. 5th St. Norfolk, NE, 68701  
E-Mail Address Npowell@NorfolkNE.Gov
4. Contact Person Nathan Powell Title Parks & Rec Director
5. Telephone: 702-844-2184 Cell Phone \_\_\_\_\_
6. Project Location\*\* Liberty Bell Park, 700 Georgia Ave  
Norfolk NE, 68701
7. Description of Project\*\* Install 2 restroom and shelter  
near the upcoming pickleball courts and new  
playground features.
8. Total Estimated Cost \$230,000
9. Cost Share Request \$30,000
10. Signature/Title \_\_\_\_\_
11. Approval by Lower Elkhorn NRD \_\_\_\_\_

\*\* Attach additional sheets, as necessary.

January 24, 2024

RE: Public Entity Funding

Dear City of Norfolk ,

In an effort to assist not only the rural constituents, but our communities as well, the Lower Elkhorn Natural Resources District Board of Directors wishes to cooperate with municipalities to solve natural resource problems and create recreational opportunities for citizens located within the boundaries of this NRD. Two programs have been developed for this purpose, and we invite you to make application for them. Applications must be received at the NRD office by March 14, 2024 to be considered for funding in Fiscal Year 2025 (July 1, 2024 – June 30, 2025).

1. Urban Conservation Assistance Program – Designed to assist municipalities in solving erosion and flooding problems. Enclosed storm sewers are not eligible. The cost share rate is up to 50% of local costs, not to exceed \$25,000 in NRD funds. Please see attached guidelines for more information or call me at 402-371-7313.
2. Recreation Area Development Program – Developed to assist municipalities with the acquisition of lands and development of recreation areas. The cost share rate is up to 50% of local costs, not to exceed \$30,000 in NRD funds. Please see attached guidelines for more information or call me at 402-371-7313.

The NRD has established a combined cap for the two programs at \$150,000 annually. A priority system has also been established that gives priority to Urban Conservation Assistance Program applications followed by Recreation Area Development Program applications from communities that have received the least amount of funding for these programs along with the Community Forestry Program over the last three fiscal years.

Please share this information with any local groups you feel can work with your public entity to promote and complete these types of projects. However, the applications and Special Operations and Maintenance forms must be from the governing boards of villages, cities, counties, and schools.



I hope these programs will be of interest to your community, and that we can cooperate with you in solving your local natural resources concerns.

We realize that public entities within the district may require our assistance for major projects that do not fit into the scope of these two existing programs. The following guidelines have been developed for such projects:

- ❖ Projects may be for flood control, storm-water management, wetland enhancement or other projects for the management of natural resources.
- ❖ Project must be part of a comprehensive plan.
- ❖ Pre- application to the NRD staff by October 1<sup>st</sup> for preliminary consideration by the NRD Board. The Board may then authorize the NRD staff to work with the applicant to prepare a formal cost share application or it may reject the pre-application
- ❖ The NRD Board will consider formal applications in March of the following year.

Sincerely,

*Curt Becker*

Curt Becker  
Assistant General Manager

## **LOWER ELKHORN NATURAL RESOURCES DISTRICT Recreation Area Development Program**

The Recreation Area Development Program is an authorized program of the District to provide financial assistance to units of government (cities, counties, villages, and schools) to acquire land rights, design, establish, develop, and improve public recreation areas within Lower Elkhorn NRD.

### **A. Criteria for Eligible Projects**

1. Each project must be sponsored by a city, village, county, or school with the statutory authority and capability to develop and manage public recreation areas and be located on publicly owned land.
2. The recreation area, or park, must conform with the comprehensive plan for the municipality.
3. Recreation that utilizes/develops natural resources are high priority.
4. Eligible projects components:
  - a. Development of a recreation area plan.
  - b. Land acquisition (eligible only if recreation area is developed at the same time).
  - c. Grading, seeding, and landscaping.
  - d. Buildings and facilities (picnic shelters and restrooms).
5. Ineligible practices are: athletic fields, concession stands, landscaping around new buildings, equipment and moveable facilities such as picnic tables.
6. Projects must conform with all local, state, and federal laws.
7. Project Sponsor's labor, equipment or materials are not eligible project costs (must be contracted).
8. First time applicants and low amounts of previous grants have priority over recent recipients.

### **B. District Responsibilities**

1. Administer the Recreation Area Development Program.
2. Review and prioritize, all applications for assistance.
3. Reimburse Sponsors up to 50% of the eligible local costs (i.e., excluding state and federal funds) of an approved and completed project, up to a maximum \$30,000 in District funds. Maximum payment for playground equipment is \$25,000.00. Maximum payment for the purchase of trees is \$100.00 per tree.
4. The District reserves the right to approve or reject plans, specifications, implementation schedules, and entire project applications.

### **C. Sponsor Requirements**

1. The sponsor shall complete application on District's form 112a.
2. The sponsor shall submit preliminary plans with the application. The following items should be included:
  - a. Option purchase agreement (if applicable).
  - b. Recreation area development plan.
  - c. Itemized estimated cost.
  - d. Implementation schedule.
  - e. Location map.

3. The sponsor shall execute the District's Special Project Operation and Maintenance Agreement, Form 112b, upon approval of funding and before starting work on the project.
4. The sponsor shall obtain all necessary local, state, and federal permits.
5. The sponsor shall agree to manage the area as a public recreation area for a minimum of 10 years.
6. Upon completion of the project, the sponsor shall prominently display the plaque acknowledging Lower Elkhorn NRD funding (provided by the District).
7. The sponsor shall administer all contracts for land acquisition, design, construction, and construction observation for the project.
8. The sponsor shall control all erosion and sediment on the site during and after construction.
9. The sponsor shall hold and save the District free from damages or claims due to the construction, or operation and maintenance of the recreation area.
10. The approved application becomes an agreement with the District, which includes these guidelines.
11. The sponsor is encouraged to utilize recycled or recyclable products whenever practical or feasible.

D. Requesting Reimbursement

1. Upon completion of the project, the Sponsor may request reimbursement from the District by providing a final report including:
  - a. A detailed letter reporting all components of work completed and explain any changes from the initial application.
  - b. Listing of all project expenditures.
  - c. Copies of all receipts, deeds, or easements
2. The use of participant's labor, equipment or materials will not be considered a part of the grant project.









# AIA® Document A141® – 2014

## Standard Form of Agreement Between Owner and Design-Builder

**AGREEMENT** made as of the Fourteenth day of February in the year Twenty Twenty Four  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name, legal status, address and other information)*

City of Norfolk, Nebraska, Corporation  
309 N 5th Street  
Norfolk, NE 68701  
Telephone Number: 402-844-2184

and the Design-Builder:  
*(Name, legal status, address and other information)*

Huff Construction Nebraska, LLC  
600 1/2 West Benjamin Ave  
Norfolk, NE 68701  
Telephone Number: 402-370-2274

for the following Project:  
*(Name, location and detailed description)*

Ta Ha Zouka Team Lockers  
Norfolk, NE

The Owner and Design-Builder agree as follows.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Init.

/

3/4/2024

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**User Notes:**

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3	GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
4	WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
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7	OWNER'S RESPONSIBILITIES
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16	SCOPE OF THE AGREEMENT

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A	DESIGN-BUILD AMENDMENT
B	INSURANCE AND BONDS
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### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)*

#### § 1.1.1 The Owner's program for the Project:

*(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)*

| See Exhibit C

#### § 1.1.2 The Owner's design requirements for the Project and related documentation:

Init.

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3/4/2024

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2

Enclosure 30  
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*(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)*

See Exhibit C

**§ 1.1.3** The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

See Exhibit C

**§ 1.1.4** The Owner's anticipated Sustainable Objective for the Project, if any:

*(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)*

N/A

**§ 1.1.5** Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

*(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)*

N/A

**§ 1.1.6** The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

*(Provide total for Owner's budget, and if known, a line item breakdown of costs.)*

One Million Three Hundred Fifty Thousand Daollars

**§ 1.1.7** The Owner's design and construction milestone dates:

**.1** Design phase milestone dates:

Design Complete by April 1, 2024

**.2** Submission of Design-Builder Proposal:

Exhibit A – GMP Ammendment complete May 1, 2024

**.3** Phased completion dates:

N/A

**.4** Substantial Completion date:

October 1, 2024

**.5** Other milestone dates:

N/A

**§ 1.1.8** The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

Init.

/

3/4/2024

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(List name, legal status, address and other information.)

**.1 Architect**

Davis Design

**.2 Consultants**

Olsson Engineering

**.3 Contractors**

Huff Construction Nebraska, LLC

**§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:**

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

N/A

**§ 1.1.10** The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

**§ 1.1.10.1** If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

**§ 1.1.11** If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

**§ 1.1.12** If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

**§ 1.2 Project Team**

**§ 1.2.1** The Owner identifies the following representative in accordance with Section 7.1.1:

(List name, address and other information.)

Josh Moenning  
309 N 5th Street  
Norfolk, NE 68701  
Telephone Number: 402-580-2471

Email Address: jmoenning@norfolkne.gov

**§ 1.2.2** The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

(List name, address and other information.)

Steven Rames  
309 N 5<sup>th</sup> Street  
Norfolk, NE 68701  
402-844-2000  
srames@norfolkne.gov

Nathan Powell

Init.

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309 N 5<sup>th</sup> Street  
Norfolk, NE 68701  
npowell@norfolkne.gov

§ 1.2.3 The Owner will retain the following consultants and separate contractors:  
(List discipline, scope of work, and, if known, identify by name and address.)

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:  
(List name, address and other information.)

Chris Daniels  
600 1/2 West Benjamin Ave  
Norfolk, NE 68701  
Telephone Number: 402-370-2274

Mobile Number: 402-860-6380  
Email Address: chrisd@huffconstructionllc.com

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

### § 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 14.4
- Litigation in a court of competent jurisdiction
- Other: (Specify)

### § 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 **The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

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§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 **Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 **Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 **Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 **Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 **Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment. Fees associated with this work will be calculated based on total project cost. These fees will be 8.5% for design fees and 6% for Construction Services.

## ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

### § 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

N/A

**§ 2.1.2** The hourly billing rates for services of the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Below

Individual or Position	Rate
Construction Vice President	\$90
Construction Project Manager	\$60
Construction Senior Superintendent	\$90
Construction Project Superintendent	\$70
Design Team	
Principal	\$230
Associate Principal	\$195
Senior Architect	\$165
Architect	\$150
Senior Architectural Designer	\$140
Architectural Designer	\$130
Senior Engineer	\$185
Engineer	\$155
Senior Engineering Designer	\$145
Engineering Designer	\$130
Senior Interior Designer	\$140
Interior Designer	\$105
Senior Construction Administrator	\$150
Administration	\$85
Intern	\$70

**§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment**

**§ 2.1.3.1** Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder’s Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

**§ 2.1.3.2** For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors incurred, plus an administrative fee of \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the expenses incurred.

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**§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment**

**§ 2.1.4.1** Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid Forty Five ( 45 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.  
(Insert rate of monthly or annual interest agreed upon.)

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**§ 2.1.4.2** Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

**§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment**

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

**ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT**

**§ 3.1 General**

**§ 3.1.1** The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

**§ 3.1.2** The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

**§ 3.1.3** The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

**§ 3.1.3.1** The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.1.3.2** Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

**§ 3.1.4** The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

**§ 3.1.5 General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.6** When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

**§ 3.1.7** The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

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### § 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

### § 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### § 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will

do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### § 3.1.13 **Royalties, Patents and Copyrights**

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

### § 3.1.14 **Indemnification**

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

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### § 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

## ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

### § 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

### § 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:

*(List additional information, if any, to be included in the Design-Builder's written report.)*



§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

### § 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

Cost for the Preliminary Design (Documents to Design Development) shall be an amount Not to Exceed \$30,000 based off of the hourly rates presented in section 2.1.2 of this agreement. This cost of \$30,000 will come out of the total Design Fees (8.5% of total project cost).

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

### § 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

## ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

### § 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

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§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

## § 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

## § 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

## § 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

## § 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an

equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

**§ 5.5.4** If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

## **§ 5.6 Allowances**

**§ 5.6.1** The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

**§ 5.6.2** Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

**§ 5.6.3** The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

## **§ 5.7 Key Personnel, Contractors and Suppliers**

**§ 5.7.1** The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

**§ 5.7.2** If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.3** Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.3.1** If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity

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was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

#### **§ 5.8 Documents and Submittals at the Site**

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

#### **§ 5.9 Use of Site**

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

#### **§ 5.10 Cutting and Patching**

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

#### **§ 5.11 Cleaning Up**

**§ 5.11.1** The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 5.11.2** If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

#### **§ 5.12 Access to Work**

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

#### **§ 5.13 Construction by Owner or by Separate Contractors**

##### **§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 5.13.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

**§ 5.13.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

**§ 5.13.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

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§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

#### § 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

#### § 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

### ARTICLE 6 CHANGES IN THE WORK

#### § 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

#### § 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

#### § 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the

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Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.



§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

## ARTICLE 7 OWNER'S RESPONSIBILITIES

### § 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing

a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

**§ 7.2.8** Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

**§ 7.2.9** Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

**§ 7.2.10** The Owner shall purchase and maintain insurance as set forth in Exhibit B.

### **§ 7.3 Submittals**

**§ 7.3.1** The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 7.3.2** Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

**§ 7.4** Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

**§ 7.5** The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

**§ 7.6** The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 7.7** The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

### § 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

### § 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

## ARTICLE 8 TIME

### § 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

## ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

### § 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

### § 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

### § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if

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required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

**§ 9.3.1.1** As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

**§ 9.3.2** Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 Certificates for Payment**

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.



§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

#### § 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

#### § 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.



## § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

## § 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

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## § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

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§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

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§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

### ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

#### § 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

#### § 11.2 Correction of Work

§ 11.2.1 **Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

#### § 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the



rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

### § 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's

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licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

### **§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment**

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

### **§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment**

#### **§ 13.2.1 Termination by the Design-Builder**

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or

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employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

#### § 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

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**§ 13.2.3 Suspension by the Owner for Convenience**

**§ 13.2.3.1** The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**§ 13.2.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

**§ 13.2.4 Termination by the Owner for Convenience**

**§ 13.2.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 13.2.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

**§ 13.2.4.3** In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

**ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION**

**§ 14.1 Claims**

**§ 14.1.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§ 14.1.2 Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

**§ 14.1.3 Notice of Claims**

**§ 14.1.3.1 Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 14.1.3.2 Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

**§ 14.1.4 Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

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**§ 14.1.5 Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 14.1.6 Claims for Additional Time**

**§ 14.1.6.1** If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 14.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

**§ 14.1.7 Claims for Consequential Damages**

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

**§ 14.2 Initial Decision**

**§ 14.2.1** An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

**§ 14.2.2 Procedure**

**§ 14.2.2.1 Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

**§ 14.2.2.2 Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

**§ 14.2.3** In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

**§ 14.2.4** If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.



§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

### § 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

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§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§ 14.4.4 Consolidation or Joinder**

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

**§ 15.1 Governing Law**

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

**§ 15.2 Successors and Assigns**

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

**§ 15.3 Written Notice**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

**§ 15.4 Rights and Remedies**

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### § 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

### § 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### § 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

**ARTICLE 16 SCOPE OF THE AGREEMENT**

§ 16.1 This Agreement is comprised of the following documents listed below:

.1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder  
(Paragraph deleted)

.3 AIA Document A141™–2014, Exhibit B, Insurance and Bonds

(Paragraphs deleted)

.6 Other:

Exhibit C – Owner Programs

Exhibit D – Minimum Insurance Requirements

This Agreement entered into as of the day and year first written above.

**Chris Daniels**

Digitally signed by Chris Daniels  
DN: C=US, E=chrisd@huffconstructionllc.com, O=Vice  
President, OU=Huff Construction - Nebraska,  
CN=Chris Daniels  
Date: 2024.02.14 08:41:29-06'00'

\_\_\_\_\_  
**OWNER (Signature)**

\_\_\_\_\_  
Josh Moenning, Mayor

(Printed name and title)

\_\_\_\_\_  
**DESIGN-BUILDER (Signature)**

\_\_\_\_\_  
Chris Daniels, Vice President

(Printed name and title)

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# Additions and Deletions Report for AIA® Document A141® – 2014

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## PAGE 1

**AGREEMENT** made as of the Fourteenth day of February in the year Twenty Twenty Four

...

City of Norfolk, Nebraska, Corporation  
309 N 5th Street  
Norfolk, NE 68701  
Telephone Number: 402-844-2184

...

Huff Construction Nebraska, LLC  
600 1/2 West Benjamin Ave  
Norfolk, NE 68701  
Telephone Number: 402-370-2274

...

Ta Ha Zouka Team Lockers  
Norfolk, NE

## PAGE 2

See Exhibit C

## PAGE 3

See Exhibit C

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See Exhibit C

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N/A

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N/A

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One Million Three Hundred Fifty Thousand Daollars

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Design Complete by April 1, 2024

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Exhibit A – GMP Ammendment complete May 1, 2024

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N/A

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October 1, 2024

...

N/A

**PAGE 4**

Davis Design

...

Olsson Engineering

...

Huff Construction Nebraska, LLC

...

N/A

...

Josh Moenning  
309 N 5th Street  
Norfolk, NE 68701  
Telephone Number: 402-580-2471

...

Email Address: [jmoenning@norfolkne.gov](mailto:jmoenning@norfolkne.gov)

...

Steven Rames  
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[srames@norfolkne.gov](mailto:srames@norfolkne.gov)

Nathan Powell  
309 N 5<sup>th</sup> Street



Norfolk, NE 68701  
npowell@norfolkne.gov

**PAGE 5**

Chris Daniels  
600 1/2 West Benjamin Ave  
Norfolk, NE 68701  
Telephone Number: 402-370-2274

...

Mobile Number: 402-860-6380  
Email Address: chrisd@huffconstructionllc.com

...

Litigation in a court of competent jurisdiction

**PAGE 6**

**§ 1.4.15 Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment. Fees associated with this work will be calculated based on total project cost. These fees will be 8.5% for design fees and 6% for Construction Services.

**PAGE 7**

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See Below

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<u>Construction Vice President</u>	<u>\$90</u>
<u>Construction Project Manager</u>	<u>\$60</u>
<u>Construction Senior Superintendent</u>	<u>\$90</u>
<u>Construction Project Superintendent</u>	<u>\$70</u>

<u>Design Team</u>	
<u>Principal</u>	<u>\$230</u>
<u>Associate Principal</u>	<u>\$195</u>
<u>Senior Architect</u>	<u>\$165</u>
<u>Architect</u>	<u>\$150</u>
<u>Senior Architectural Designer</u>	<u>\$140</u>
<u>Architectural Designer</u>	<u>\$130</u>
<u>Senior Engineer</u>	<u>\$185</u>
<u>Engineer</u>	<u>\$155</u>
<u>Senior Engineering Designer</u>	<u>\$145</u>
<u>Engineering Designer</u>	<u>\$130</u>
<u>Senior Interior Designer</u>	<u>\$140</u>
<u>Interior Designer</u>	<u>\$105</u>
<u>Senior Construction Administrator</u>	<u>\$150</u>
<u>Administration</u>	<u>\$85</u>
<u>Intern</u>	<u>\$70</u>

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§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid Forty Five ( 45 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

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PAGE 12

Cost for the Preliminary Design (Documents to Design Development) shall be an amount Not to Exceed \$30,000 based off of the hourly rates presented in section 2.1.2 of this agreement. This cost of \$30,000 will come out of the total Design Fees (8.5% of total project cost).

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~~.2~~ — AIA Document A141™ 2014, Exhibit A, Design-Build Amendment, if executed

~~.4~~ AIA Document A141™ 2014, Exhibit C, Sustainable Projects, if completed

~~.5~~ — AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

~~.6~~ — Other: 6 Other:

Exhibit C – Owner Programs

Exhibit D – Minimum Insurance Requirements

...

Josh Moenning, Mayor

Chris Daniels, Vice President

# Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:38:05 ET on 02/14/2024 under Order No. 4104247873 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)



**AIA**<sup>®</sup>

# Document A141<sup>®</sup> – 2014 Exhibit B

## Insurance and Bonds

**for the following PROJECT:**

*(Name and location or address)*

Ta Ha Zouka Team Lockers  
Norfolk, NE

**THE OWNER:**

*(Name, legal status and address)*

City of Norfolk, Nebraska, General Corporation  
309 N 5th Street  
Norfolk, NE 68701

**THE DESIGN-BUILDER:**

*(Name, legal status and address)*

Huff Construction Nebraska, LLC  
600 1/2 West Benjamin Ave  
Norfolk, NE 68701

**THE AGREEMENT**

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the Fourteenth day of February in the year 2024 .

*(In words, indicate day, month and year.)*

**TABLE OF ARTICLES**

- B.1 GENERAL**
- B.2 DESIGN BUILDER’S INSURANCE AND BONDS**
- B.3 OWNER’S INSURANCE**
- B.4 SPECIAL TERMS AND CONDITIONS**

**ARTICLE B.1 GENERAL**

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

**ARTICLE B.2 DESIGN BUILDER’S INSURANCE AND BONDS**

**§ B.2.1** The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

*(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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§ B.2.1.1 Commercial General Liability with policy limits of not less than One Million Dollars ( \$ 1,000,000 ) for each occurrence and Two Million Dollars ( \$ 2,000,000 ) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than One Million Dollars ( \$ 1,000,000 ) per claim and One Million Dollars ( \$ 1,000,000 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

See Exhibit D – Minimum Insurance Requirements

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars ( \$ 1,000,000 ) per claim and Two Million Dollars ( \$ 2,000,000 ) in the aggregate.

*(Paragraph deleted)*

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than One Million Dollars ( \$ 1,000,000 ) per claim and Two Million Dollars ( \$ 2,000,000 ) in the aggregate.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 **Additional Insured Obligations.** The Owner shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 **Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The

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certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

**§ B.2.2 Performance Bond and Payment Bond**

The Design-Builder shall provide surety bonds as follows:  
*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
N/A	N/A

**§ B.2.2.1** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**ARTICLE B.3 OWNER'S INSURANCE**

**§ B.3.1 Owner's Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

**§ B.3.2 Property Insurance**

**§ B.3.2.1** Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

**§ B.3.2.1.1** The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

**§ B.3.2.1.2** If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ B.3.2.1.3** The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ B.3.2.1.4** Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

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User Notes:

**§ B.3.2.2 Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

**§ B.3.2.3** If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

**§ B.3.2.4 Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

**§ B.3.2.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ B.3.2.6** Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**§ B.3.2.7 Waivers of Subrogation.** The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ B.3.2.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

**§ B.3.2.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds

received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

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**User Notes:**

(1246056238)  
**Enclosure 30**  
Page 145 of 210

# Additions and Deletions Report for AIA® Document A141® – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:30:12 ET on 02/14/2024.

## PAGE 1

Ta Ha Zouka Team Lockers  
Norfolk, NE

...

City of Norfolk, Nebraska, General Corporation  
309 N 5th Street  
Norfolk, NE 68701

...

Huff Construction Nebraska, LLC  
600 1/2 West Benjamin Ave  
Norfolk, NE 68701

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the Fourteenth day of February in the year 2024.

## PAGE 2

§ **B.2.1.1** Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000 ) for each occurrence and Two Million Dollars (\$ 2,000,000 ) in the aggregate providing coverage for claims including

...

§ **B.2.1.2** Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per claim and One Million Dollars (\$ 1,000,000 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

...

See Exhibit D – Minimum Insurance Requirements

§ **B.2.1.6** Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per claim and Two Million Dollars (\$ 2,000,000 ) in the aggregate.

~~§ **B.2.1.7** Pollution Liability covering performance of the Work, with policy limits of not less than —(\$ —) per claim and —(\$ —) in the aggregate.~~

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3/4/2024

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Enclosure 30  
Page 146 of 210

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than One Million Dollars (\$ 1,000,000 ) per claim and Two Million Dollars (\$ 2,000,000 ) in the aggregate.

...

§ B.2.1.9 **Additional Insured Obligations.** The Owner ~~and its consultants and contractors~~ shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

PAGE 3

N/A

N/A

...

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the ~~Owner Contractor~~ shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the ~~Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors~~ Owner in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.





## REQUEST FOR PROPOSALS FOR DESIGN-BUILD PROJECT USING THE CITY OF NORFOLK CONSTRUCTION ALTERNATIVES ACT PROCESS

The City of Norfolk is requesting Proposals from prequalified Design-Builders for Team Lockers at Ta Ha Zouka Park. The information provided in the proposal will be used by the City of Norfolk to select the Design-Builder utilizing criteria issued in the Act and defined herein. The City of Norfolk has completed the prequalification process and prequalified two firms. Proposals from other prospective design-Builders will not be accepted.

The Design-Builder selected by the City of Norfolk will enter into a Design-Build Contract with the City of Norfolk to furnish a) architectural, engineering and related design services for the Project, and b) labor, material, supplies, equipment, and construction services for the Project. This process is pursuant to the Act.

The scope of the Project is *The City of Norfolk, Nebraska Parks and Recreation Department intends to construct a locker room/restroom facility at the Ta-Ha-Zouka Softball Complex with a projected budget not to exceed \$1,350,000. The building should include two locker rooms with a retractable wall in between, one set of public restrooms and a family restroom. The locker rooms will double as a batting cage in the winter and will need a minimum ceiling design for batting cages. The minimum requirements of the facility will be around 4,000 sq ft, six ADA parking spots and an ADA sidewalk in the common area.*

### Design Recommendations (Minimum)

- Minimum 4,000 square feet
- 2 lane batting cage (2 softball lanes)
- One set of public restrooms to accommodate spectators at a three-field softball complex
- One set of lockers for two teams
- One set of restrooms for the locker room area
- ADA parking stalls
- Year-round facility
- Concrete ADA connection into the existing common areas
- Storage Room
- Family Restroom
- Not to exceed budget of \$1,350,000, including design and construction
- Looking for creativity, resourcefulness, and the size of the indoor lockers/winter recreation space from the design-build team



Location of supporting documents to this RFP are listed below:

- The performance criteria prepared by the Performance Criteria Developer, budget and schedule parameters and bond and insurance required by law or the City of Norfolk are found in Exhibit 3.1.
- The process for evaluation of proposals for the design-build contract are found in Exhibit 3.2.
- The criteria for evaluation of proposals and the relative weights of each criterion are found in Exhibit 3.3.
- The terms and conditions of the design-build contract are found in Exhibit 3.4.
- Policies adopted by the City of Norfolk relevant to the project and those promulgated by (§§13-2901 – 13-2914) are found in Exhibit 3.5.

Prequalified prospective Design-Builders shall respond to all items in this questionnaire. Failure to do so will deem the Proposal nonresponsive at the discretion of the City of Norfolk. If the prospective Design-Builder team is a prime contractor-subcontractor relationship or joint venture, both entities must complete their relevant information on the questionnaire.



## Submittal Requirements

1. **Cover Letter**
2. **Table of Contents**
3. **Financial Resources of the Design-Builder to Complete the Project** (Maximum Percentage of Total Points Available - 10%)
  - a. Surety - provide certification from surety that Design-Builder's bonding capacity is adequate to construct the proposed project
  - b. Insurance - provide certificates from your insurance carrier(s) for required coverage for both design and construction services
4. **Ability of the Proposed Personnel of the Design-Builder to Perform** (Maximum Percentage of Total Points Available - 30%)
  - a. For both the design and construction components of the Design-Builder team, provide an organization chart identifying the lead individual in each role classification. These include, but are not limited to, the following services (if applicable) for the project:
    - (i) Design-Builder Principal
    - (ii) Project Superintendent
    - (iii) Project Foreman
    - (iv) Project Architect
    - (v) Design Architect
    - (vi) Structural Engineer
    - (vii) Mechanical Engineer
    - (viii) Civil/Site Engineer
  - b. List any specialty subconsultants required for the project.
  - c. For each individual listed above, provide the following resume information:
    - (i) Name and role in the project
    - (ii) Relationship to Design-Builder (employee, subconsultant, subcontractor, etc.)
    - (iii) Company
    - (iv) Contact information (address, phone)
    - (v) Professional registrations/certifications
    - (vi) Years with current firm and with other firms
    - (vii) List of five (5) relevant or similar projects including:
      - a. Project name and brief scope of services provided
      - b. Year completed
      - c. Reference (name, title, phone and email address)



**5. Character, Integrity, Reputation, Judgment, Experience, and Efficiency of the Design Builder (Maximum Percentage of Total Points Available - 30%)**

- a. Design-Builder shall list a reference in the following categories (provide name, company, address, phone, and relationship to the reference):
  - (i) Financial (bank or surety)
  - (ii) Project of similar scope (contractual point of contact for City of Norfolk)
  - (iii) Facility user of project of similar scope (such as school principal, department manager or facility manager)

**6. Quality of Performance on Previous Projects (Maximum Percentage of Total Points Available - 30%)**

The Design-Builder shall list five (5) completed projects of similar scope or budget and provide the following information for each:

- a. Project name - brief description of relevance to the project of this RFP
- b. Address
- c. Owner, contact name, title, address and phone
- d. Design Professional – firm name, contact name, address and phone
- e. Type of project delivery (design-build, CM@Risk, design-bid-build)
- f. Project performance:
  - (i) Budget
  - (ii) Schedule (days/months)
  - (iii) List three specific problems and how they were resolved
  - (iv) Claims made by owner regarding budgets, schedule or performance

**7. Ability of the Design-Builder to Perform Within the Time Specified (Maximum Percentage of Total Points Available - 30%)**

- a. provide detailed information on the five (5) listed projects above with respect to:
  - (i) Design schedule - proposed and actual (number of calendar days total for programming, preliminary design and final design)
  - (ii) Construction schedule - proposed and actual
    - a. Date of Substantial Completion
    - b. Date of Final Completion
    - c. Post-construction warranty work required
    - d. Was the client inconvenienced by the delivery dates of any of the services provided by the Design-Builder?

**8. Previous and Existing Compliance of the Design-Builder Relating to the Contract (Percentage of Total Points Available - 10%)**

- a. Has the Design-Builder, or any proposed member of the design-build team been cited for failure to comply with local, state or federal law of any nature in the last five years? Yes No If yes, explain in detail.
- b. Are there any civil or criminal actions pending against the Design-Builder or any proposed member of the design-build team? Yes No If yes, Explain in detail.



**9. Such Other Information as May be Secured Having a Bearing on the Selection**  
(Percentage of Total Points Available - 20%)

- a. Subcontractors: List the work on this project you expect to subcontract
- b. Current capacity: provide a list of your firm's and your sub-consultant's current contracted projects and the scope of those projects.
- c. Design-Builder's Approach to Design and Construction of the Project
  - (i) Provide a written approach on how the design and construction team will take the information provided by the City of Norfolk and performance criteria developer and develop final design, construction documents, budget control, schedule, and construction processes. The approach may contain graphic materials illustrating the proposed approach to design and construction, but shall not include price proposals.





## **Design-Builder's Agreement to the Following Conditions:**

Design-Builder's submittal of a proposal implies agreement to the following conditions:

1. An architect or engineer licensed to practice in Nebraska will participate substantially in those aspects of the offering, which involve architectural or engineering services.
2. At the time of the design-build offering, the Design-Builder will furnish to the City of Norfolk a written statement identifying the architect or engineer who will perform the architectural or engineering work for the design-build project.
3. The architect or engineer engaged by the Design-Builder to perform the architectural or engineering work with respect to the design-build project will have direct supervision of such work and may not be removed by the Design-Builder prior to the completion of the project without the written consent of the governing body of the City of Norfolk.
4. A Design-Builder offering design-build services with its own employees who are design professionals licensed to practice in Nebraska will:
  - a. Comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering; and
  - b. Submit proof of sufficient professional liability insurance.
5. The rendering of architectural or engineering services by a licensed architect or engineer employed by the Design-Builder will conform to the Engineers and Architects Regulation Act and rules and regulations adopted under said act.
6. Other information which the City of Norfolk chooses to require.



## **EXHIBIT 3.1**

### **PERFORMANCE CRITERIA PREPARED BY THE PERFORMANCE CRITERIA DEVELOPER, BUDGET AND SCHEDULE PARAMETERS AND BOND AND INSURANCE REQUIRED BY LAW OR THE CITY OF NORFOLK**

The objective of our design-build project is a public restroom and team locker system for the Kohler Softball complex. We would like the restrooms to be made of block construction. We are looking for a unique locker room design that can double as indoor batting cages in the winter, and a facility that can also be used for youth programs. The attached concept shows the location of the facility (Exhibit 3.8). The facility will need an ADA concrete connection with existing common space.

Design and construct team lockers, restrooms, an indoor recreation area to accommodate indoor batting cages for two softball lanes, ADA common space access and ADA parking with a projected budget not to exceed \$1,350,000. Creativity, resourcefulness and facility size will be measured in this project.

#### **Design Recommendations (Minimum)**

- Minimum 4,000 square feet
- 2 lane batting cage (2 softball lanes that meet fast pitch requirements at the college level)
- One set of public restrooms to accommodate spectators at a three-field softball complex
  - 5 stalls and 2 sinks for the men's
  - 4 stalls and 3 sinks for the women's
  - 4 Season facility
  - 4 Season restrooms
- One set of lockers for two teams
- One set of restrooms for the locker room area
  - 2 stalls and 1 sink in each
  - 4 season restrooms
- Block and/or commercial grade metal stud walls
- 6 ADA parking stalls
- Year-round facility
- Concrete ADA connection into the existing common areas
- Storage Room
- Family Restroom
- Not to exceed budget of \$1,350,000, including design and construction
- Looking for creativity, resourcefulness, and the size of the indoor lockers/winter recreation space from the design-build team

Execution of Contracts and Bonds: Each contract must be executed in three (3) original counterparts and no more and there shall be executed original counterparts of the Contractor's performance bond in equal number to the executed original counterparts of the Contract, and there shall be executed original counterparts of the Contractor's certificate of Proof of



Insurance Carriage in equal number to the executed original counterparts of the Contract. One copy of such executed documents will be retained by the Owner, the second will be delivered to the Contractor and the third to the Engineer. The costs of executing the contract, bonds, and proof of insurance certificates, including all notarial fees and expense are to be paid by the Contractor to whom the contract is awarded.

Contractor's Insurance: Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work on the specific project covered by these specifications hereunder by the Contractor, the Contractor's agents, representatives, employees or subcontractors. The cost of such insurance shall be included in Contractor's bid.

- Commercial General Liability: \$1,000,000 combined single limit for bodily injury, personal injury and property damage.
- Automobile Liability: \$1,000,000 combined single limits and property damage.
- Workers' Compensation and Employers' Liability; Workers' Compensation and Employers' Liability Limits as required by the Labor Code of the State of Nebraska.
- The City, its officials, and employees are to be covered as additional insurers as respects to; liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, or employees.



**EXHIBIT 3.1A**

**ADVERTISEMENT FOR REQUEST FOR PROPOSALS**

CITY OF NORFOLK  
309 N. 5<sup>th</sup> STREET (City Hall)  
Norfolk, Nebraska 68701

Proposals from Design-Builder Teams/Firms for the construction of \_\_\_\_\_  
\_\_\_\_\_ will be received by the City of Norfolk, Nebraska at the Office of the  
City Clerk until 2:00 o'clock p.m. on \_\_\_\_\_, 20\_\_\_\_, and then reviewed by the  
Selection Committee.

The Details of the Project may be examined at the following location:

Office of the City Engineer  
309 N. 5th Street  
City Hall  
Norfolk, Nebraska, 68701

Copies of the proposal details may be obtained from the office of the City Engineer, City of  
Norfolk, 309 N. 5<sup>th</sup> Street, Norfolk, NE 687017, 402-844-2000.

\_\_\_\_\_  
Date \_\_\_\_\_ Mayor, City of Norfolk, Nebraska

Publish

Two Affidavits of Publication



## **EXHIBIT 3.2**

### **PROCESS FOR EVALUATION OF PROPOSALS FOR THE DESIGN-BUILD CONTRACT**

The City of Norfolk shall evaluate proposals for a design-build contract in accordance with the following:

1. The request for proposal is being sent only to the prequalified Design-Builders selected as part of the prior prequalification process Design-Builders shall submit proposals as required by the Request for Proposals. The City of Norfolk may only proceed to negotiate and enter into a design-build contract if there are at least two proposals from prequalified Design-Builders.
2. Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the request for proposals.
3. Proposals may be withdrawn at any time prior to acceptance. The City of Norfolk shall have the right to reject any and all proposals except for the purpose of evading the provisions and policies of the Act. The City of Norfolk may thereafter solicit new proposals using the same or different project performance criteria.
4. In evaluating proposals in accordance with criteria in Exhibit 3.3 of the request for proposals, the City of Norfolk shall refer the proposals for recommendation to a selection committee. The selection committee shall be a group of at least eight persons designated by the City of Norfolk. Members of the selection committee shall include:
  - a. Two members of the City Council
  - b. City Administrator
  - c. The Performance Criteria Developer
  - d. City Engineer
  - e. Department head responsible for the project after it is constructed
  - f. Any person having special expertise relevant to selection of a design-builder
  - g. A resident of the City of Norfolk other than individuals listed above

A member of the selection committee designated under subdivision (f) and (g) of this subsection shall not be employed by or have a financial or other interest in a design-builder or construction manager who has a proposal being evaluated and shall not be employed by the political subdivision or the performance-criteria developer.

5. The City of Norfolk shall rank in order of preference the Design-Builders pursuant to the criteria in the request for proposals and taking into consideration the recommendation of the selection committee pursuant to Neb. Rev. Stat. § 13-2911.
6. The City of Norfolk may attempt to negotiate a design-build contract with the highest ranked Design-Builder selected by the selection committee and may enter into a design-build contract after negotiations. The negotiations shall include a final determination of the manner by which the Design-Builder selects any subcontractor.





7. If the City of Norfolk is unable to negotiate a satisfactory design-build contract with the highest ranked Design-Builder, the City of Norfolk may then undertake negotiations with the second highest ranked Design-Builder and may enter into a design-build contract after negotiations. If the City of Norfolk is unable to negotiate a satisfactory contract with the second highest ranked Design-Builder, the City of Norfolk may undertake negotiations with the third highest ranked Design-Builder, if any, and may enter into a design-build contract after negotiations.
8. If the City of Norfolk is unable to negotiate a satisfactory contract with any of the ranked Design-Builders, the City of Norfolk,, may either revise the request for proposals and solicit new proposals or cancel the design-build process under the Act.



**EXHIBIT 3.3**

**CRITERIA FOR EVALUATION OF PROPOSALS AND THE MAXIMUM PERCENTAGES OF EACH CRITERION AND OTHER CRITERIA REQUIRED BY THE CITY OF NORFOLK**

The selection committee shall evaluate proposals taking into consideration the criteria enumerated below with the maximum percentage of total points for evaluation which may be assigned to each criterion.

<b>Item</b>	<b>Criterion</b>	<b>Maximum Percentage of Total Points*</b>
1	The financial resources of the Design-Builder to complete the project	10
2	The ability of the proposed personnel of the Design-Builder to perform	30
3	The character, integrity, reputation, judgment, experience and efficiency of the Design-Builder	30
4	The quality of performance on previous projects	30
5	The ability of the Design-Builder to perform within the time specified	30
6	The previous and existing compliance of the design-build with laws relating to the contract	10
7	Such other information as may be secured having a bearing on the selection	20

\*Committee shall determine Percentages for each category not to exceed the Maximum Percentages. Total of all Percentages shall equal 100%.

(See Exhibit 3.3A Score Sheet)



**EXHIBIT 3.3A**

**REQUEST FOR PROPOSALS EVALUATION SHEET**

1) \_\_\_\_\_  
*Project* *Design-Build Firm*

2) \_\_\_\_\_  
*Address*

Score each firm in the seven categories listed below. Score each category from 1 (lowest) to 10 (highest).

Item	Crित्रion	Percentage of Total Points*	Score (1 to 10)	Percentage X Score
Sample	<i>Builders Experience</i>	10	8	80
1	The financial resources of the Design-Builder to complete the project			
2	The ability of the proposed personnel of the Design-Builder to perform			
3	The character, integrity, reputation, judgment, experience and efficiency of the Design-builder			
4	The quality of performance on previous projects			
5	The ability of the Design-Builder to perform within the time specified.			
6	The previous and existing compliance of the Design-Builder with laws relating to the contract			
7	Such other information as may be secured having a bearing on the selection			
	Total	100		

\*Total of Percentages shall equal 100%.

Total Score \_\_\_\_\_

\_\_\_\_\_  
 Scorer's Name



## **EXHIBIT 3.4**

### **TERMS AND CONDITIONS OF THE DESIGN-BUILD CONTRACT**

Identify the document here. The proposed general terms and conditions shall be consistent with nationally recognized model general terms and conditions which are standard in the design and construction industry in Nebraska.

**A draft copy of AIA documents may be obtained from:**

American Institute of Architects – Nebraska, P. O. Box 8045  
Lincoln, Nebraska 68501, 402-472-1476, \_\_\_\_\_  
<http://www.aiane.org/>

**A draft copy of Consensus DOCS documents may be obtained from:**

Associated General Contractors-Nebraska Building Chapter  
1327 H Street #202, Lincoln, Nebraska 68508, 402-438-0400, <http://www.agcnebuilders.com>

**A draft copy of EJCDC documents may be obtained from:**

American Council of Engineering Companies-Nebraska 301 South 13<sup>th</sup> Street,  
#101, Lincoln, Nebraska 68508, 402-476-2572, <http://www.acecnebraska.org>



### **EXHIBIT 3.5**

#### **PROCEDURE FOR EVALUATION OF CONSTRUCTION, UNDER A DESIGN-BUILD CONTRACT BY THE PERFORMANCE CRITERIA DEVELOPER TO DETERMINE ADHERENCE TO THE PERFORMANCE CRITERIA**

The Performance Criteria Developer (PCD) will develop as part of the request for proposals performance or product criteria that will be used to evaluate the construction under a design-build contract.

The PCD may refer to standard specifications i.e. Nebraska Department of Roads, AWWA, Uniform Plumbing Code or other specifications depending upon the project.

To ensure adherence to the performance criteria the PCD will conduct site visits at critical times to measure, observe, or count the material being placed in the project. Project labels will be checked against performance criteria. Also shop drawings will be required for adherence to the performance criteria.

Concrete and soil testing will be conducted by a Nebraska Department of Roads Certified Inspector and laboratory.





### **EXHIBIT 3.6**

## **PROCEDURES FOR FILING AND ACTING ON FORMAL PROJECTS RELATING TO THE SOLICITATION OR EXECUTION OF DESIGN-BUILD OR CONSTRUCTION MANAGEMENT AT RISK CONTRACTS**

Disputes relating to the execution of solicitation of Design-Builder or construction management at risk contracts will be submitted to the Public Works Director in writing. The Public Works Director will, within ten (10) working days, meet with the protesting individuals or firms and attempt to resolve the issue. Within ten (10) working days, after the meeting the Public Works Director will issue a decision.

If the protesting parties are not satisfied with the decision, they can, in writing, ask for a hearing before the Public Services, Traffic, and Infrastructure Sub-Committee of the City Council. This meeting will be scheduled within sixty (60) days of the written protest. The Public Services, Traffic, and Infrastructure Sub-Committee will hear the protest and issue a recommendation on the protest within thirty (30) days of the hearing. The City Council shall then vote on the Public Services, Traffic, and Infrastructure Sub-Committee recommendation at the next scheduled Council meeting.

If the protesting parties are not satisfied with the City Council's decision they can file legal action in the County or District Court.



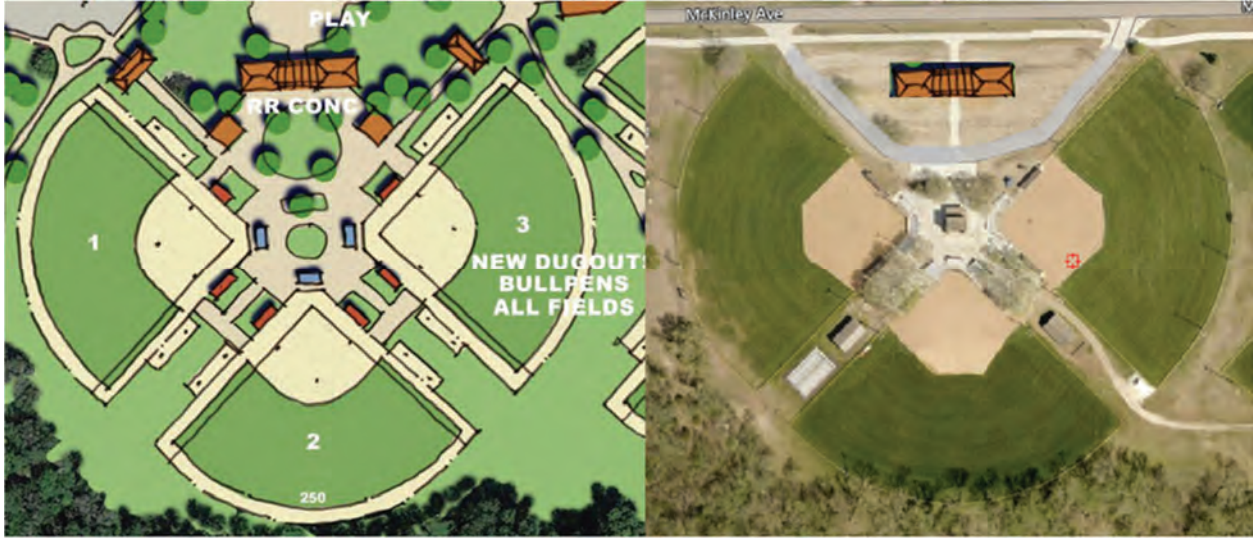
### **EXHIBIT 3.7**

## **POLICIES ADOPTED BY THE CITY OF NORFOLK RELEVANT TO THE PROJECT AND THOSE PROMULGATED BY THE ACT**

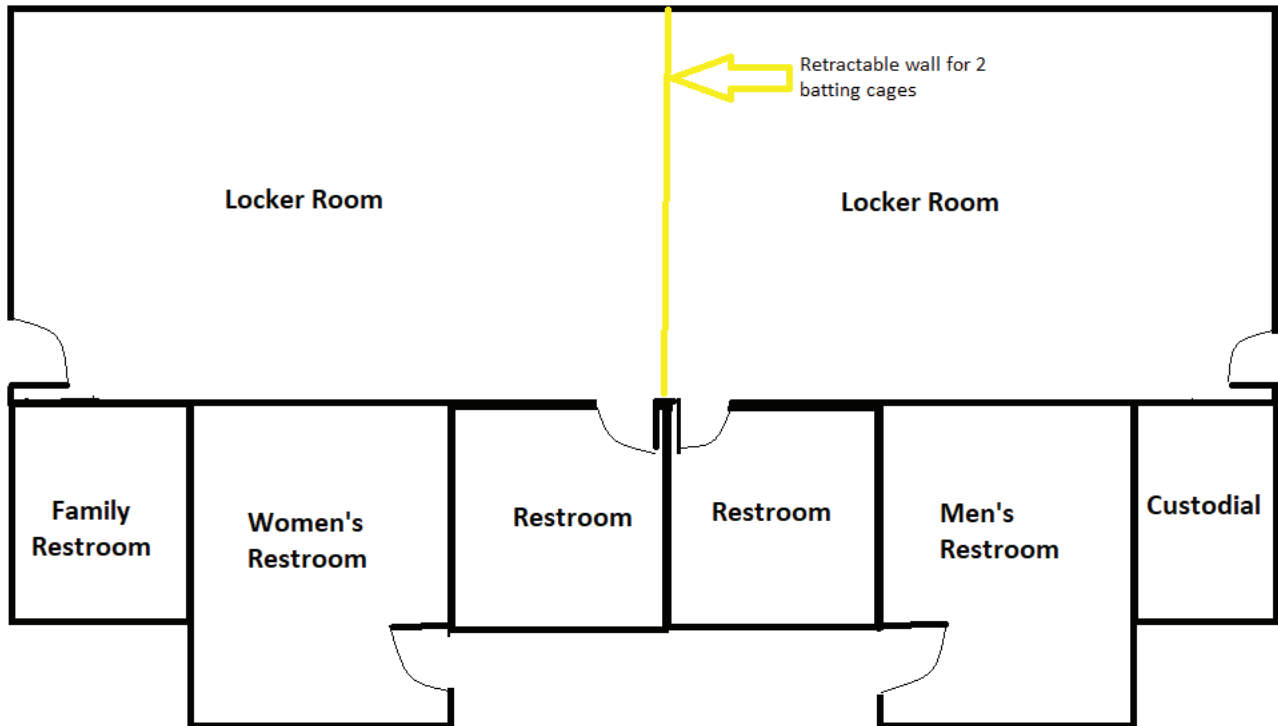
1. Procedures for selecting and hiring a Performance-Criteria Developer
2. Procedures for the preparation and content of requests for proposals
3. Procedures and standards to be used to prequalify Design-Builders and construction managers
4. Procedures for preparing and submitting proposals
5. Procedures for evaluating proposals in accordance with Neb. Rev. Stat. § 13-2908 to 13-2910
6. Procedures for negotiations between the City of Norfolk and the Design-Builders or construction managers submitting proposals prior to the acceptance of a proposal
7. Procedures for filing and acting on formal protests relating to the solicitation or execution of design-build contracts or construction manager at risk contracts; and
8. Procedures for evaluation of construction under a design-build contract by the performance-criteria developer to determine adherence to the performance criteria

**EXHIBIT 3.8**

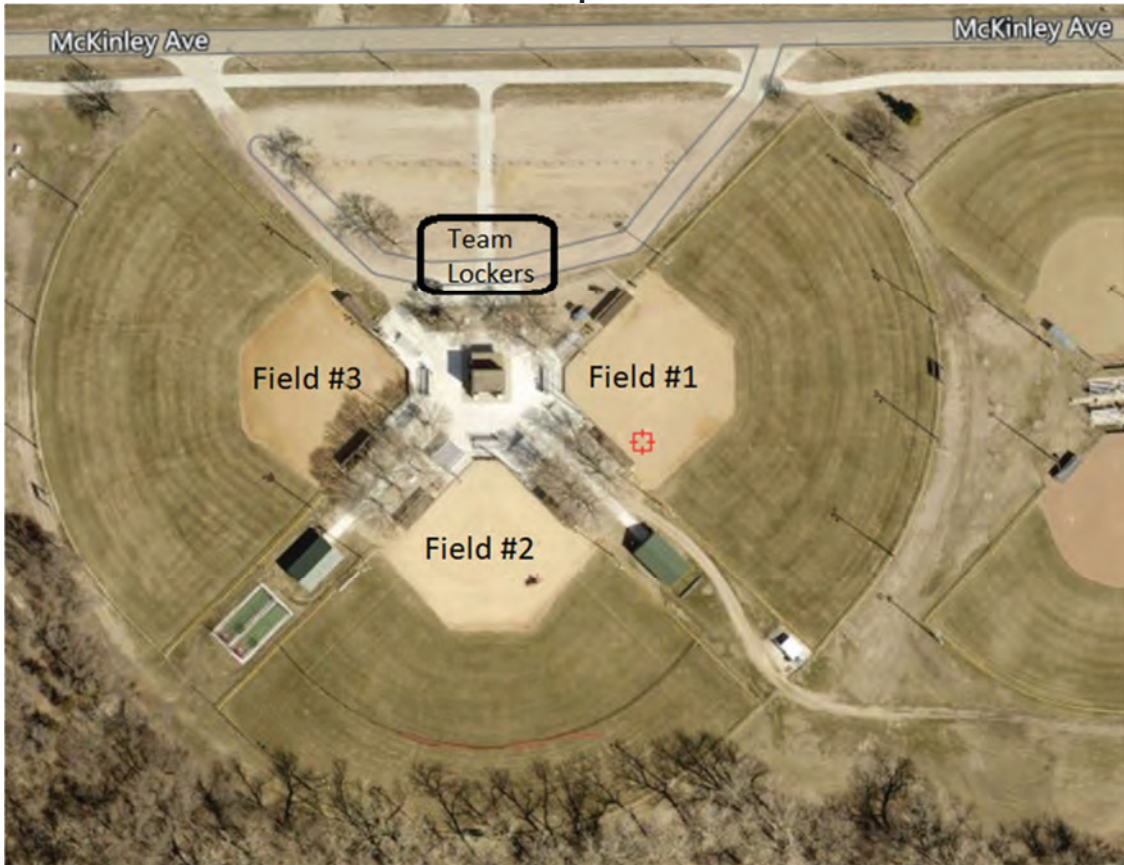
**Concept**



**Facility Concept**



### Map



### Footprint





Exhibit D

CITY OF NORFOLK, NEBRASKA
INSURANCE CHECKLIST

Items marked "X" are required to be provided if award is made to your firm.

Coverages Required

Limits (Figures Denote Minimums)

- 1. Workers' Compensation & Employers' Liability
2. USL&H Endorsement
3. General Liability
4. Premises/Operations
5. Independent Contractors
6. Products
7. Completed Operations
8. Contractual Liability
9. Personal Injury Liability
10. XCU Coverages
11. Broad Form P.D.
12. Automobile Liability
13. Owned, Hired, & Non-owned
14. Motor Carrier Act End.
15. Umbrella Liability
16. Garage Liability
17. Garagekeepers' Legal Liability
18. Professional Liability
19. City named as additional insured on other than W/C & Auto.
20. Other Insurance Required:
21. Forty-five (45) Days Cancellation, non-renewal, material change or coverage reduction notice required.
22. Best's Guide Rating: "B" VIII or better, or its Equivalent
23. The Certificate Must State Bid Number and Bid Title
24. Medical expense (any one person) \$5,000 minimum

BIDDER STATEMENT

I understand the Insurance Requirements of these specifications and will comply in full if awarded this contract for the life of the contract.

Bidder (Printed Name)

Signature/Date



CITY OF NORFOLK  
DOWNTOWN REVITALIZATION

# FAÇADE & SIGNAGE IMPROVEMENT PROGRAM



WWW.NORFOLKNE.GOV

INFORMATION  
AND  
APPLICATION

City of Norfolk  
Economic Development

(402) 844-2260  
economicdevelopment@norfolkne.gov



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The background image shows an outdoor courtyard under a large yellow canopy. String lights are strung across the space. In the foreground, there are several green bushes. In the middle ground, there is a concrete patio area with a small landscaped area containing several bushes. In the background, there is a building with a mural of people. A large sculpture of three figures stands on a cylindrical base in the lower right. The text 'PROGRAM OVERVIEW' is centered in large, bold, black letters.

# PROGRAM OVERVIEW



## Section 1: Statement of Purpose

To improve the blighted appearance of non-residential buildings in the downtown area by restoring, renovating, replacing, or reconstructing facades and signage.

## Section 2: Funding Mechanism

A forgivable loan program administered by the Vehicle Offstreet Parking District No.1 of the City of Norfolk, Nebraska (VPD) and the Northeast Nebraska Economic Development District (NENEDD) and funded by the City of Norfolk, Nebraska Downtown Revitalization (DTR) Community Development Block Grant, as available.

## Section 3: Loan Details

- ❖ Available to property owners and tenants within the designated Norfolk DTR Revitalization Area as identified in the 2023 Downtown Area Study consisting of approximately 217.74 acres. The study area encompasses north of Phillip Avenue, from Pine Street west to 8<sup>th</sup> Street, to Braasch Avenue. Additionally, the study area encompasses the area southeast from 4<sup>th</sup> Steet and Elm to 1<sup>st</sup>, then southeast from Klug Avenue and N. Cotton Street, to Braasch. See attached map.
- ❖ Property, for purposes of this program, is defined as a parcel identified by the Madison **County Assessor's office with a unique parcel** identification number.
- ❖ Eligible DTR improvements are rehabilitation of non-residential buildings such as facades, storefronts, awnings, and signage.
- ❖ Application must meet approval of Vehicle Offstreet Parking District No.1 of the City of Norfolk, Nebraska Design Advisory Board (DAB). Applications will be approved based on the following priorities, Building Preservation, Visual Impact in the Downtown District, Historic Restoration, and Project Readiness.
- ❖ This program is structured as a forgivable loan.
  - Forgivable loan for 50% of the total DTR project cost
  - Maximum of \$25,000, for each application.
  - The amount awarded will be determined by the DAB and will be based on the number of applications received and the availability of funding.
  - The forgivable loan will be forgiven over a 5-year period.
- ❖ Application deadline will be determined by the City of Norfolk. If funding is still available after the first application cycle, additional cycles and accompanying deadlines will be determined by the City of Norfolk.
- ❖ If approved by the City of Norfolk, the 5-year forgivable loan can be transferred by a property owner, at the time of a sale to a property purchaser. The loan will be prorated at 20% forgiven each year.



The background image shows an outdoor courtyard area. At the top, there is a large yellow canopy. Below it, several strings of small lights are strung across the space. In the middle ground, there is a concrete patio area with some greenery and a sculpture of a man in a suit standing on a pedestal. The overall scene is bright and open.

# PROGRAM PURPOSE





The purpose of this forgivable loan program is to restore, improve, and/or to create historic architectural features to façades of non-residential buildings within the designated Norfolk DTR Area as identified in the 2023 Downtown Area Study consisting of approximately 217.74 acres. The study area encompasses north of Phillip Avenue, from Pine Street west to 8<sup>th</sup> Street, to Braasch Avenue. Additionally, the study area encompasses the area southeast from 4<sup>th</sup> Steet and Elm to 1<sup>st</sup>, then southeast from Klug Avenue and N. Cotton Street, to Braasch. See attached map.

- A. Where practical, building façades planned for upgrading shall be restored to their original period design. If the Design Advisory Board determines that restoring the façade to the original period design is not practical, then a similar architectural design shall be used. All horizontal and vertical features (lintels and piers) shall be retained.
- B. If a building does not have a historically significant architectural design or feature, then another proposed design may be submitted to qualify for the program.
- C. All storefronts shall be designed, constructed, and maintained to complement and accent the architectural features of the building. Likewise, all accessories, signs, and awnings shall be harmonious with the overall character of the building.
- D. All color schemes shall accent the building and harmonize with adjacent buildings. Historical murals will be considered only on a case-by-case basis.
- E. The maximum forgivable loan is 50% of the total approved façade, storefront, awning, or signage improvement project cost, up to a \$25,000 forgivable loan, per property, per application cycle. Property, for purposes of this program, is defined as a parcel assigned a unique identification number by the Madison County **Assessor's office**.
- F. More than one forgivable loan is allowed on each property. Property that has not been approved a forgivable loan will be given priority over property that has received one or more forgivable loans either from this program or from earlier façade improvement programs. For example, a property with one forgivable loan will be given priority over a property with two or more forgivable loans, and so on.
- G. Any work for which a forgivable loan is sought, should not begin until the design is authorized by the Design Advisory Board and the applicant has received a signed and dated Notice to Proceed from Northeast Nebraska Economic Development District.
- H. Forgivable loan monies shall not be used to perform general repair, structural, or habitable work, or otherwise to meet code to occupy the building.



- I. To qualify for forgivable loan funds, a fully completed application, with all appropriate conceptual plans and other required documents must be submitted to the City of Norfolk. Applications with missing plans or documents will not be considered until all requirements are met.
- J. The project work proposed by the applicant requires at least two bids from outside sources to verify that the costs are within reasonable parameters.
- K. Contractors are required to comply with Davis-Bacon Wage Determinations, System for Award Management (SAM) registration, and E-Verify requirements (contact Northeast Nebraska Economic Development District for additional information).
- L. Contractors must secure all required building and construction related permits from the City and will be expected to complete the project in accordance with the approved plans, all applicable codes and ordinances, and standard building practices.
- M. If you are applying as an individual, an attestation of U.S. Citizenship form is required.
- N. Projects are subject to Tier II environmental review and approval from the State Historical Preservation Office.
- O. The Design Advisory Board is appointed by the Vehicle Offstreet Parking District No. 1 of the City of Norfolk, Nebraska.
- P. The loan forgiveness period is five (5) years. The improved façades and signage must remain intact on the building for a minimum period of five (5) years from date of completion. Any changes to improved facades and signage that occur prior to the five (5) years after the completion date may trigger repayment of loan.



# PROJECT DESIGN



## Section 1: Definitions

For the benefit of the entire City of Norfolk, Nebraska community, the Downtown Norfolk Façade and Signage Improvement Program encourages the improvement of façades and signage in the historic downtown district, to accentuate the historic elements of the downtown district through restoration, renovation, replacement, and/or reconstruction of facades, as defined below:

**Façade:** Shall mean the exterior wall of a building exposed to public view from the building's exterior. This will typically include a visual impact with items such as awnings, windows, doors, and signage.

**Restoration:** The preferred treatment for building façade improvement. Restoration is most applicable to buildings where there has been very little change to the building façade over time. Restoration results in the return of the façade to its original appearance through use of authentic materials and the replication of missing and/or deteriorated components.

**Renovation:** Façade improvements which do not attempt to return the building to its original appearance. The objective should be a return in appearance to the appropriate period architecture of the building. Historic features should be preserved and inappropriate more recent remodeling, such as stucco, aluminum siding and vinyl siding, should be removed. All improvements made should be sensitive to historic details and materials and should respect any original character that remains today.

**Replacement:** of façade is appropriate when most of the original facade is missing or has been significantly altered that restoration or renovation is now impractical. Façade designs should select materials, dimensions, and architectural details that are similar or compatible to surrounding buildings. Example: façade height, window size and spacing, materials, and colors.

**Reconstruction:** Occurs when the building and its features no longer exist. With reconstruction, façade designs are created through new construction to replicate, mimic, resemble, or accentuate historic period details.





## Section 2: Design Guidelines

This program encourages the following specific design guidelines for façades and signage in downtown Norfolk:

- ❖ Any contemporary design alterations should not destroy significant historical, architectural, or cultural material.
- ❖ Distinguishing original qualities and character should be retained.
- ❖ Historic material and distinctive architectural features should be retained.
- ❖ Skilled craftsmanship that characterizes the building should be retained.
- ❖ Deteriorated architectural features should be repaired rather than replaced. If replacement is necessary, new materials should match as closely as possible in design, color, texture, and other visual qualities.
- ❖ Building surface cleaning should be completed using the gentlest means possible. Exterior sandblasting or methods that will damage historic building materials should be avoided.
- ❖ Alterations to facades should be done in a manner that if the alterations were to be removed in the future, the integrity of the structure and subsurface would be unimpaired.
- ❖ Non-original building siding such as stucco, vinyl and aluminum should be removed whenever possible.
- ❖ Replacement glass should be similar in size color and reflectivity to the original.
- ❖ Dark-tinted glass should not be used.
- ❖ Original historically significant facades should be restored with as little physical alteration as possible.
- ❖ The use of incompatible materials for reconstruction should be discouraged, e.g. aluminum or steel siding, faux brick, asphalt or cedar shingles, plastic, fiberglass and stucco.
- ❖ Storefronts should incorporate the three design elements of a traditional storefront to retain the integrity of the streetscape: bulkhead, storefront windows, and transom windows.
- ❖ Signage should accentuate the period architecture and should comply with local signage code ordinances.





# **PROGRAM PROCESS**



## PROGRAM PROCESS

1. Application Submission: Completed application is submitted to the City of Norfolk, along with all items listed in the Supporting Data Checklist.
2. Application Review: The Design Advisory Board (DAB) reviews applications and communicates formal approvals and/or denials to the City. Applications will be approved based on the following priorities:
  - Building Preservation
  - Visual Impact in the Downtown District
  - Historic Restoration
  - Project Readiness
3. Conflicts of Interest: Members of the DAB, who are also property owners and/or tenants within the designated program area, are eligible to apply for the forgivable loan program. However, these property owners and/or tenants must abstain from voting on the award of such funds with respect to their own property to avoid any potential conflicts of interest.
4. Applicant Contact: The City of Norfolk contacts applicant regarding status of application.
5. Environmental Clearance: The City of Norfolk will contact the Northeast Nebraska Economic Development District for Tier II environmental review on approved applications. Please allow 60-90 days for approval & environmental clearance.
6. Preconstruction Conference: The Northeast Nebraska Economic Development District will meet with the applicant and contractors to review and complete paperwork and legal documents.
7. Notice to Proceed: After receiving a written, signed, and dated Notice to Proceed by the Northeast Nebraska Economic Development District, the project can proceed according to approved design. Any changes must be approved by both the DAB and Northeast Nebraska Economic Development District.
8. Project Completed: The Northeast Nebraska Economic Development District works with applicant and contractors to complete final paperwork and legal documents.
9. Proof of Payment: The applicant **will be responsible for the contractor's invoices** and should then submit proof of payment of all invoices to the City of Norfolk for reimbursement.



10. Disbursement: Upon receipt of an Acceptance of Project Completion from the Northeast Nebraska Economic Development District the City of Norfolk will then disburse forgivable loan proceeds to the applicant.
11. Loan Forgiveness: The DAB reviews façade and signage improvements annually for a period of five (5) years to ensure that approved designs remain intact during this period.



# **GRIEVANCES & AMENDMENTS**



## GRIEVANCES

If an applicant feels that he/she has been unfairly treated or discriminated against during the process of selection of projects to be funded, or during any other process of the Downtown Revitalization Façade Improvement Program, he/she may appeal the Design Advisory Board decision to the Vehicle Offstreet Parking District No. 1 of the City of Norfolk, Nebraska (VPD) for their consideration.

The written appeal must be received by the chairperson of the VPD within 14 calendar days of the Design Advisory Boards' decision. The VPD will then act to support or overturn the Design Advisory Board action within 14 calendar days of receipt of the written appeal. The applicant may appeal the decision of the VPD to the Mayor of Norfolk and the City Council within 14 days of the VPD decision. The Mayor and the City Council have final authority in the decision and will act to support or overturn the action of the VPD within 30 days of the receipt of the appeal by the City Clerk.

Nebraska Department of Economic Development (NEDED) will be notified of any **grievances that the grantee receives which are not resolved by the grantee's standard grievance procedures**. In some cases it may be necessary to use a neutral third party as mediator between the business owner, the grantee, the grant administrator, and the contractor. The third party mediator cannot be the grant administrator or a member of the grantees decision making council. Economic Development Districts throughout the State of Nebraska would be utilized as the third party mediator. It will be agreed, that the decision of the mediator will be final and binding on parties involved in the dispute. All parties in a dispute have the right to contact the NEDED.

## AMENDMENTS TO PROGRAM GUIDELINES

In an ongoing **effort to improve the quality of the City of Norfolk's Downtown Revitalization Façade Improvement Program**, the City of Norfolk will accept suggestions from the public, program participants, contractors, program staff, or members of the Vehicle Offstreet Parking District No. 1 of the City of Norfolk, Nebraska and City Council with regard to program guideline amendments. All suggestions received will be taken under consideration by the City Council. All amendments to the guidelines must be approved by NEDED and the Nebraska Department of Economic Development. If approved by NEDED and adopted by the City of Norfolk, the amendment will be included in the program guidelines.





# APPLICATION



## APPLICATION

**Applicant's Name:** \_\_\_\_\_

**Applicant's Phone #:** \_\_\_\_\_

**Applicant's Email:** \_\_\_\_\_

Business Name: \_\_\_\_\_

Business Owner: \_\_\_\_\_

Business Unique Entity ID: \_\_\_\_\_

Property Owner: \_\_\_\_\_

Property Address: \_\_\_\_\_

Parcel ID #: \_\_\_\_\_

Property Legal Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Type of Façade Improvement: *(See Design Guidelines Part III)*

Removal    New    Alteration    Repair

Type of Signage Improvement: *(See Design Guidelines Part III)*

Removal    New    Alteration    Repair

Structural Alterations: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Cosmetic Alterations: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

309 N. 5<sup>th</sup> Street, Norfolk, NE 68701 | 402-844-2000 | [www.norfolkne.gov](http://www.norfolkne.gov)  
Please return completed application, checklist, and all supporting documents to  
Candice Alder at [calder@norfolkne.gov](mailto:calder@norfolkne.gov) or [economicdevelopment@norfolkne.gov](mailto:economicdevelopment@norfolkne.gov)



Painting: (approximate sq. ft. area) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Other Eligible Work: Please specify \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Total Cost of the Project: \_\_\_\_\_

Amount Requesting: \_\_\_\_\_

50% of total approved façade improvement project cost up to \$25,000.

I hereby submit the attached plans, specifications, and color samples for the proposed project, and I understand that these must be approved by the Design Advisory Board of the Norfolk Vehicle Parking District #1. No work shall begin until I have received written approval from the Northeast Nebraska Economic Development District. I further understand that the project must be completed within six (6) months from date of project approval, and I understand that loan monies will not be paid until the project is completed. I agree to maintain the completed project, in its approved design and colors, for a period of five (5) years from the date of completion. I understand that a Deed of Trust, in the amount equal to the loan amount, will be placed upon the property at the time that the property owner signs the promissory note. This lien, in favor of the City of Norfolk, will take a subordinate position to all existing liens.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Printed Name & Title of Applicant

\_\_\_\_\_  
Printed Name & Title of Property Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

309 N. 5<sup>th</sup> Street, Norfolk, NE 68701 | 402-844-2000 | [www.norfolkne.gov](http://www.norfolkne.gov)  
Please return completed application, checklist, and all supporting documents to  
Candice Alder at [calder@norfolkne.gov](mailto:calder@norfolkne.gov) or [economicdevelopment@norfolkne.gov](mailto:economicdevelopment@norfolkne.gov)



# **SUPPORTING DOCUMENTS**



## SUPPORTING DATA CHECKLIST

Please submit this checklist as part of your final application

### Major façade alteration:

- Provide a rendering of major changes, including paint and awning colors where applicable
- Submit two (2) written estimates from contractor and subcontractors

### Signs:

- Provide a color rendering of the design chosen
- Include specifications as to the size and width of the sign
- Note how and where the sign will be hung on the building
- Submit two (2) written estimates from a sign company or qualified contractor
- Submit written verification that design and size comply with city codes

### Paint:

- Provide samples of the colors chosen
- Mark which color will be body color and which will be accent colors
- Note where each color will be used
- Submit two (2) written estimates from painter of your choice

11

### Awnings:

- Provide information about color and style of awning chosen
- Note where awning will be placed on building
- Submit two (2) written estimates from qualified contractor
- Submit written verification that design and size comply with city codes  
Note: Awning design must take into account the architectural style of the building

### Documents – All Applicants:

- Submit signed Hold Harmless Agreement (see attached)
- Signed United States Citizenship Attestation Form (see attached)  
*(If applying as an individual)*
- Submit copy of current Occupational License and Certificate of Use *(if applicable)*
- Provide Business's** Unique Entity ID  
*(Visit [www.sam.gov](http://www.sam.gov) or contact Northeast Nebraska Economic Development District for assistance)*





## HOLD HARMLESS AGREEMENT

Release executed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by  
(Applicant) \_\_\_\_\_ and  
(Property Owner, if different than applicant) \_\_\_\_\_  
of (Street Address) \_\_\_\_\_,  
City of Norfolk, County of Madison, State of Nebraska, referred to as Releasor(s).

In consideration of being granted monies intended for the restoration, modifications, signage, or other physical changes to the property located at the above address, the Releasor(s), understands that they are solely responsible for providing their own contractors, and to assure that those contractors are fully insured and registered and have obtained all necessary permits in accordance with City regulations. The Releasor(s) waives, releases, discharges, and covenants not to sue the Vehicle Offstreet Parking District No.1 of the City of Norfolk, Nebraska, the Northeast Nebraska Economic Development District, or the City of Norfolk, Nebraska for loss or damage, and claims or damages therefore, on account of any work that has been performed in accordance with City or State guidelines related to the façade and signage improvement program.

Releasor(s) agrees that this release, waiver, and indemnity agreement is intended to be as broad and inclusive as permitted by the laws of the State of Nebraska, and that if any portion of the agreement is held invalid, it is agreed that the balance shall; notwithstanding, continue in full legal force and effect.

12

Releasor(s) further states that it has carefully read the above release and knows the contents of the release and signs this release as its own free act.

Releasor's obligations and duties hereunder shall in no manner be limited or restricted by the maintaining of any insurance coverage related to the above referenced event.

This release contains the entire agreement between the parties to this agreement and the terms of this release are contractual and not a mere recital.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Printed Name & Title of Applicant

\_\_\_\_\_  
Printed Name & Title of Property Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## United States Citizenship Attestation Form

For the purpose of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

<p>_____ I am a citizen of the United States.</p> <p style="text-align: center;">— OR —</p> <p>_____ I am a qualified alien under the federal Immigration and Nationality Act, my immigration status and alien number are as follows:</p> <p>_____, and I agree to provide a copy of my USCIS documentation upon request.</p>
---

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete, and accurate, and I understand that this information may be used to verify my lawful presence in the United States.

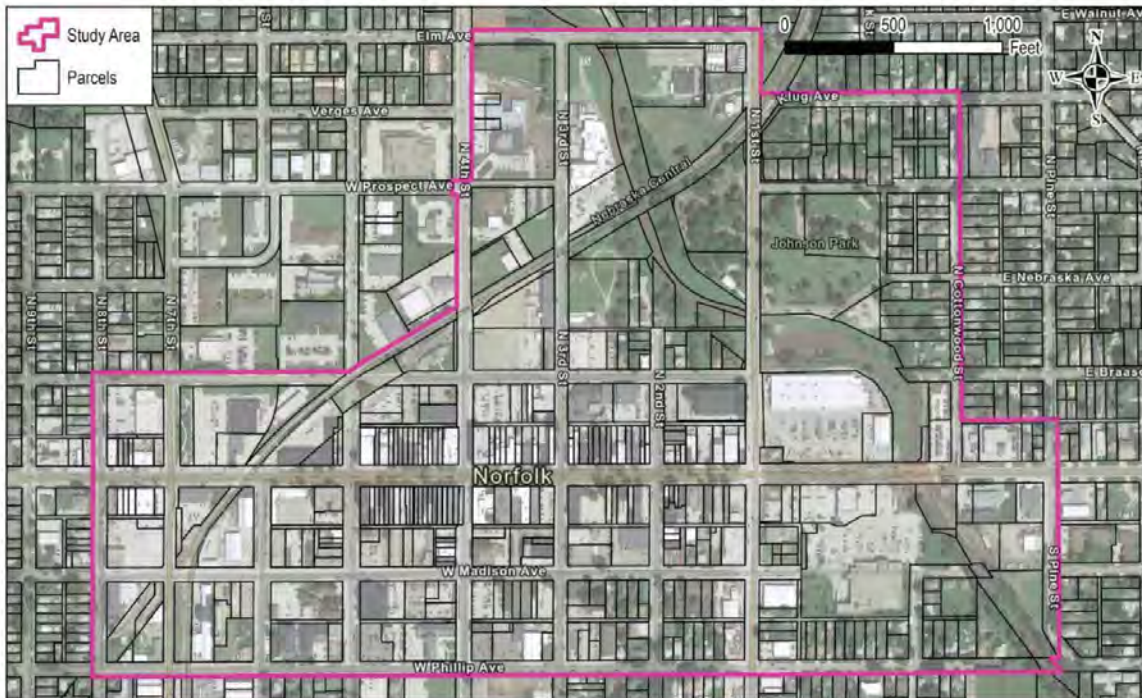
13

<p>PRINT NAME</p> <p>_____</p> <p style="text-align: center;">(first, middle, last)</p> <p>SIGNATURE</p> <p>_____</p> <p>DATE _____</p>
---

**Designated Study Area**

The study area as identified can be found in Figure 1. For this study, the study area will be known as the "Designated Study Area" which was reviewed for substandard and blight characteristics.


Figure 1: Designated Study Area



**City of Norfolk, NE**

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Norfolk Downtown Blight Study Area



Created By: J. Ray, N. Schroeder  
Date: June 2023  
Software: ArcGIS Pro 3.1.1  
File: R231059.00

This map was prepared using information from record drawings supplied by JEO and/or other applicable city, county, federal, or public or private entities. JEO does not guarantee the accuracy of this map or the information used to prepare this map. This is not a scaled plot.

February 26, 2024

Steve Rames  
Public Works/Engineering  
City of Norfolk  
309 N 5th St  
Norfolk, NE 68701

Re: Watermain Extension District No. 129 – N Hwy 129

Dear Mr. Rames:

McLaury Engineering recommends the acceptance of the bid from Rutjens Construction Inc. whose bid is as follows:

- Watermain Extension District No. 129 - total of \$320,035.00

If you have any questions, please contact me at (402) 316-2625 or email me at [nhoffman@mclauryengineering.com](mailto:nhoffman@mclauryengineering.com).

Sincerely,



Nick Hoffman  
Senior Project Engineer  
McLaury Engineering, Inc.



**SIoux FALLS**

5032 S. Bur Oak Place  
Suite 110  
Sioux Falls, SD 57108  
(605) 271-8998

**ELK POINT**

118 W. Main St.  
P.O. Box 1130  
Elk Point, SD 57025  
(605) 356-2308

**PARKSTON**

110 N. 1st Street  
P.O. Box 916  
Parkston, SD 57366  
(605) 928-7676

**NORFOLK**

502 W. Madison St.  
Norfolk, NE 68701  
(402) 316-2625



**WD - 129 N. HWY 81 Watermain Project**

**Rutjens Bid**

**Penro Bid**

	Unit	Estimated Quantity	BID Unit Price	Bid Price	BID Unit Price	Bid Price
<b>Schedule A - Utilities</b>						
1	Mobilization	Lump Sum	1	\$12,000.00	\$12,000.00	\$13,980.00 \$13,980.00
2	8" DIP Watermain	LF	1310	\$71.00	\$93,010.00	\$91.30 \$119,603.00
3	8" RJ DIP Watermain	LF	402	\$82.00	\$32,964.00	\$96.20 \$38,672.40
4	6" DIP Watermain	LF	108	\$62.00	\$6,696.00	\$81.40 \$8,791.20
5	6" RJ DIP Watermain	LF	167	\$85.00	\$14,195.00	\$97.50 \$16,282.50
6	1" Water Service	Each	4	\$1,955.00	\$7,820.00	\$3,450.00 \$13,800.00
7	2" Water Service	Each	2	\$3,235.00	\$6,470.00	\$3,725.00 \$7,450.00
8	6" Water Service	Each	1	\$3,255.00	\$3,255.00	\$3,710.00 \$3,710.00
9	8" DIP 11.25 Bends		3	\$775.00	\$2,325.00	\$726.00 \$2,178.00
10	8" DIP 45 Bends	Each	2	\$765.00	\$1,530.00	\$1,025.00 \$2,050.00
11	8" Gate Valve	Each	4	\$2,581.00	\$10,324.00	\$2,850.00 \$11,400.00
12	16" Gate Valve	Each	0	\$0.00	\$0.00	\$1,140.00 \$0.00
13	8"x6"x8" Tee	Each	6	\$906.00	\$5,436.00	\$1,125.00 \$6,750.00
14	8"x8"x8" Tee	Each	1	\$929.00	\$929.00	\$1,255.00 \$1,255.00
15	16"x8"x16" Tapping Tee	Each	1	\$5,927.00	\$5,927.00	\$6,235.00 \$6,235.00
16	Fire Hydrant & 6" Gate Valve	Each	5	\$5,915.00	\$29,575.00	\$6,770.00 \$33,850.00
17	Fire Hydrant & 8" Gate Valve	Each	1	\$6,645.00	\$6,645.00	\$7,495.00 \$7,495.00
17	6" Doweled Concrete Pavement	SY	100	\$75.00	\$7,500.00	\$160.00 \$16,000.00
18	Horizontal Watermain Boring w/ 10" Steel Casing	LF	129	\$230.00	\$29,670.00	\$625.00 \$80,625.00
19	8" Watermain Directional Boring	LF	402	\$52.00	\$20,904.00	\$73.70 \$29,627.40
20	1" Water Service Boring	LF	140	\$23.00	\$3,220.00	\$23.00 \$3,220.00
				<b>Total</b>	<b>\$300,395.00</b>	<b>Total</b> <b>\$422,974.50</b>

	Unit	Estimated Quantity	BID Unit Price	Bid Price	BID Unit Price	Bid Price
<b>Schedule B - Paving</b>						
21	Traffic Control	Lump Sum	1	\$11,500.00	\$11,500.00	\$7,605.00 \$7,605.00
				<b>Total</b>	<b>\$11,500.00</b>	<b>Total</b> <b>\$7,605.00</b>

	Unit	Estimated Quantity	BID Unit Price	Bid Price	BID Unit Price	Bid Price
<b>Schedule C - Erosion Control</b>						
24	Straw Wattles	LF	350	\$8.00	\$2,800.00	\$5.60 \$1,960.00
25	Seed, Mulching, Fertilizing	ACRE	0.54	\$8,500.00	\$4,590.00 *	\$7,015.00 \$3,788.10
26	SWPPP Log	Lump Sum	1	\$750.00	\$750.00	\$1,345.00 \$1,345.00
				<b>Total</b>	<b>\$8,140.00 *</b>	<b>Total</b> <b>\$7,093.10</b>
				<b>Total Project</b>	<b>\$320,035.00</b>	<b>Total Project</b> <b>\$437,672.60</b>

\* Bid irregularity. Unit Bid Prices prevail



RESOLUTION NO. 2024- 13

BE IT RESOLVED, by the Mayor and City Council of the City of Norfolk, Nebraska, as follows:

Section 1. The Mayor and City Council hereby find and determine that there has been placed on file with the City Clerk a study entitled Extremely Blighted Determination Study for Norfolk, Nebraska prepared by Information Art, Kurt Elder, AICP, GISP (the “Study”); and that, under Nebraska Revised Statutes Section 18-2109, it is necessary and appropriate to refer the Study to the Planning Commission of the City of Norfolk, Nebraska for its review and recommendation.

Section 2. The Study is hereby ordered submitted to the Planning Commission of the City of Norfolk for its review and recommendation.

Section 3. The City Clerk is hereby directed to set a public hearing upon the Study for the next practicable meeting of the Mayor and City Council for which notice can be given in accordance with Nebraska Revised Statutes, Sections 18-2109 and 18-2115.01, and which is to occur after the Planning Commission's recommendation is received. The City Clerk shall give notice of such hearing as required by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Josh Moenning, Mayor

\_\_\_\_\_  
Brianna Duerst, City Clerk

Approved as to form: \_\_\_\_\_  
Danielle Myers-Noelle, City Attorney

## Census Data & Geographies

- 📍 Geography
  - Nation >
  - State >
  - County >
  - County Subdivision >
  - Place >
  - ZIP Code Tabulation Area >
  - Metropolitan/Micropolitan Statistical Area >
  - Census Tract >
  - Block >
  - Block Group >
  - All Geographies >

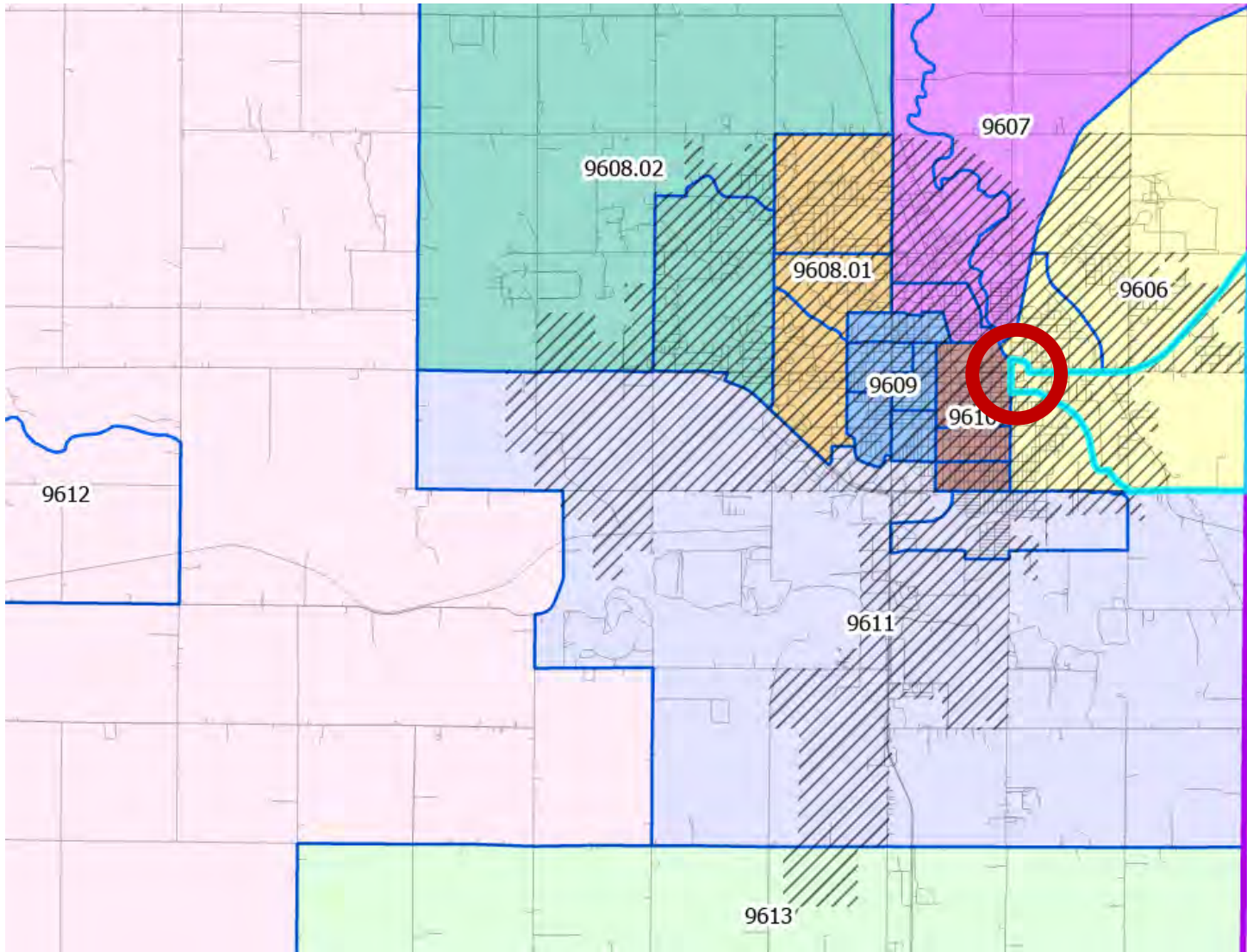
[50+ Other Geography Types](#)

## Study & Data

Area Declared Blighted  
Poverty Data  
Unemployment Data

## Error Rates by Geography

State ACS Data  
Place ACS Data  
Block Group ACS Data



Pop-up

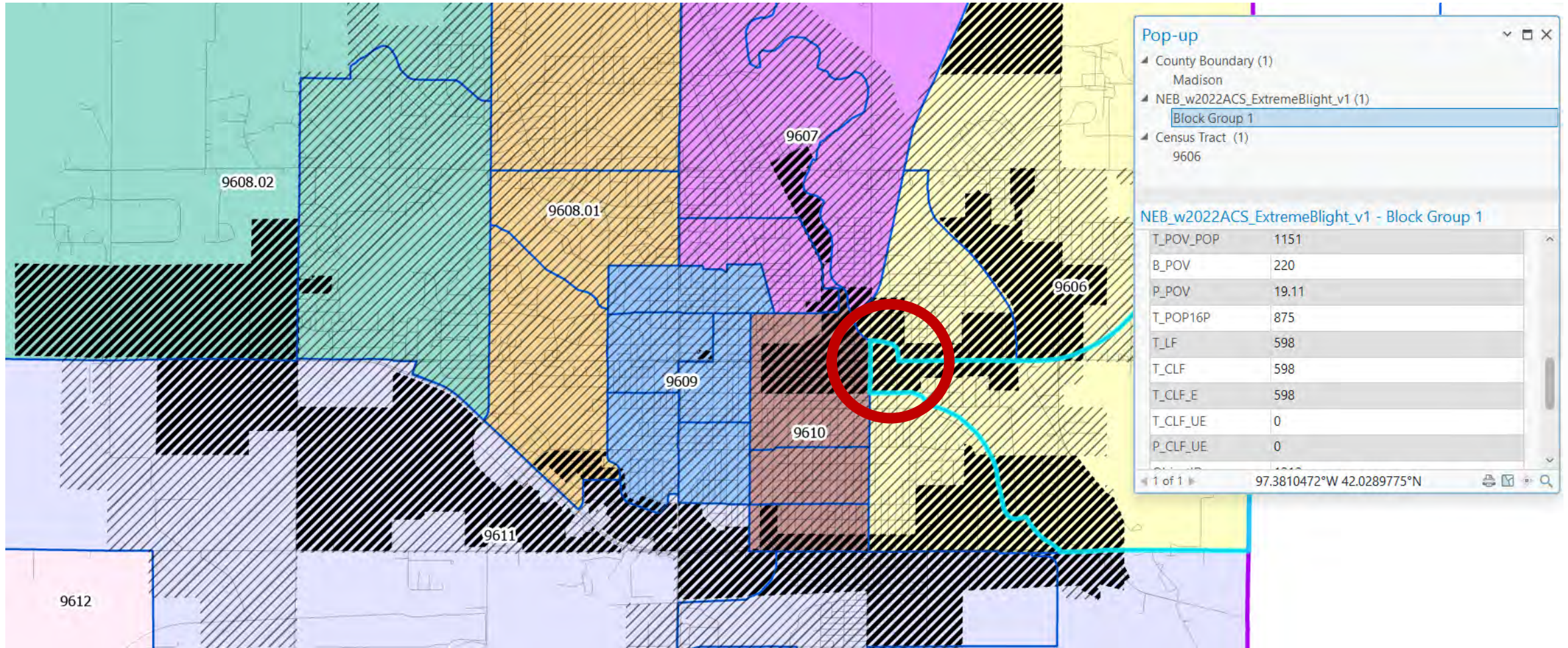
- County Boundary (1)
  - Madison
- NEB\_w2022ACS\_ExtremeBlight\_v1 (1)
  - Block Group 1
- Census Tract (1)
  - 9606

County Boundary - Madison

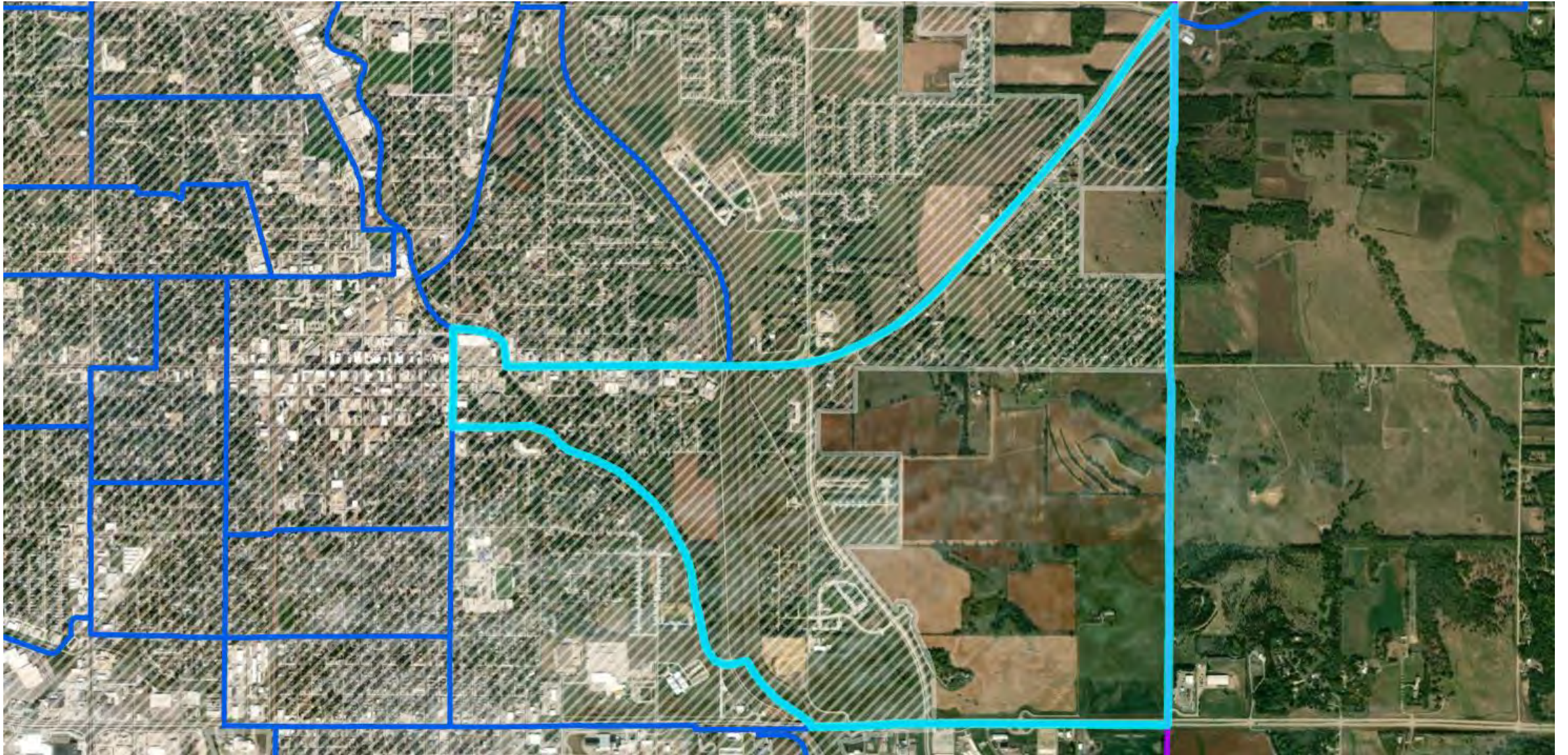
FID	1263
STATEFP	31
COUNTYFP	119
COUNTYNS	00835880
GEOID	31119
NAME	Madison
NAMELSAD	Madison County
LSAD	06
CLASSFP	H1

1 of 1 | 97.6007791°W 41.9166981°N












Nebraska	Estimate	MOE #	MOE %
Total Population	1,958,939	****	0%
Total Population for whom Poverty is determined	1,908,613	865	0.05%
Income in the past 12 months below poverty level:	198,466	4,850	2.4%

Lincoln	Estimate	MOE #	MOE %
Total Population	290,531	50	0.02%
Total Population for whom Poverty is determined	277,775	357	0.1%
Income in the past 12 months below poverty level:	35,450	1,950	5.5%

Norfolk	Estimate	MOE #	MOE %
Total Population	25,883	29	0.1%
Total Population for whom Poverty is determined	25,145	75	0.3%
Income in the past 12 months below poverty level:	3,245	610	18.8%

# VOTER RESULTS FLEXIBLE STATUTE OPERATIONALIZE STATUE



# EXTREMELY BLIGHTED DETERMINATION STUDY FOR NORFOLK, NEBRASKA FEBURARY 2024

A study to determine if area already declared Blighted and Substandard located at approximately 105 East Norfolk (NE corner of N 1st & East Norfolk Ave) meets the Legislative requirements to be declared Extremely Blighted

## **EXTREMELY BLIGHTED AREA STUDY**

Conducted by: Information Art - Kurt Elder

Member of the American Institute of Certified Planners

Member of the Certified Geographic Information System Professionals

Licensed Real Estate Sales Person Professional (IA)

### **I. Standard Review**

Implementation Background: In the 2020 Nebraska general election Proposed Amendment No. 2 was offered to the voters. It was a constitutional amendment to authorize the Legislature to allow cities and villages to pledge property taxes as part of a redevelopment project for a period not to exceed twenty years if, due to a high rate of unemployment combined with a high poverty rate as determined by law, more than one-half of the property in the project area is extremely blighted. As a state voters approved the measure 530,236 FOR (61.6%) and 330,445 AGAINST. In Madison County voters approved the measure 7,957 FOR (56.8%) and 6,047 AGAINST.

#### **A. Proposed Area Under Consideration for Extreme Blight**

The proposed site consists of three whole parcels, one partial parcel, and the adjoining right-of-way. See image 'Assessor Parcel Review' in the appendix.

Three whole parcels

(1) PID: 590303259, DOLLAR GENERAL ADDITION LOT 2 LESS PT TO CITY

(2) PID: 590303260, DOLLAR GENERAL ADDITION LOT 2 LESS PT TO CITY

(3) PID: 590303267, DOLLAR GENERAL ADDITION LOT 3, partial portion of PID 590038769

Partial portion of one parcel

(4) PID: 590038769, TAX LOTS SW1/4 SW1/4 23-24-1 PT TAX LOT 2 4.42 AC

*Portions of this parcel were included to maximize the reduction of blight and substandard area for determining the blight percentage for the City of Norfolk.*

#### **B. Reasons for completing an extremely blighted study**

REF: Statute 18-2101 to 18-2154 and section of the act, aka Community Development Law

Section 2: (1) For any city that (a) intends to carry out a redevelopment project which will involve the construction of workforce housing in an extremely blighted area as authorized under subdivision (28)(g) of section 18-2103, (b) intends to declare an area as an extremely blighted area for purposes of funding decisions under subdivision (1)(b) of section 58-708, or (c) intends to declare an area as an extremely blighted area in order for individuals purchasing residences in such area to qualify for the income tax credit authorized in subsection (7) of section 77-2715.07, the governing body of such city shall first declare, by resolution adopted after the public hearings required under this section, such area to be an extremely blighted area.

#### **C. Additional Consideration**

In Nebraska Statute 18-2103, Section #3 it states, "A redevelopment project involving a formerly used defense site as authorized under section 18-2123.01 and any area declared to be an extremely blighted area under section 18-2101.02 shall not count towards the percentage limitations contained in this subdivision;" If this area is approved your percent blighted, as a community, will decline.

#### D. Legislative Direction

Section 2: Prior to making such declaration, the governing body of the city shall conduct or cause to be conducted a study or an analysis on whether the area is extremely blighted and shall submit the question of whether such area is extremely blighted to the planning commission or board of the city for its review and recommendation. The planning commission or board shall hold a public hearing on the question after giving notice of the hearing as provided in section 18-2115.01. Such notice shall include a map of sufficient size to show the area to be declared extremely blighted or information on where to find such map and shall provide information on where to find copies of the study or analysis conducted pursuant to this subsection. The planning commission or board shall submit its written recommendations to the governing body of the city within thirty days after the public hearing.

#### E. Process

Brief: In order for an area to be designated as extremely blighted and substandard two findings, through three facets, need to be met. These facets are defined in Nebraska statute. However, for brevity they are **(a)** areas that have been found blighted and substandard through city council action, and **(b)** have been found to be extremely blighted.

This study primarily determines which areas meet the statutory definition through a reasonable operationalization of Nebraska statute.

An approved blighted and substandard area is also extremely blighted if **(i)** the *average rate* of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate is at least two hundred percent of the average rate of unemployment in the state during the same period; and **(ii)** the *average poverty rate* in the area exceeds twenty percent for the total federal census tract or tracts or federal census block group or block groups in the area

#### F. Methodology & Data Tables

##### *Methodology -*

City of Norfolk base data methodology utilizes implementation strategies approved in Lincoln, Omaha, Grand Island and North Platte studies. Other community agents are currently using these strategies as they develop their studies.

Furthermore, our averaging process/interpretation received support from UNO's David Drozd Research Coordinator at the UNO Center for Public Affairs (David has since moved on to another firm), and input from Sen. Justin Wayne's office. Senator Wayne was the Chair of the Urban Affairs Committee when this legislation was passed.

All data was 2022 US Census American Community 5-year Survey data. We utilize block group level information from the census to maximize potential data points for analysis, knowing that margins of error would likely be more significant at this geography area. Poverty data came from Census table: [B17021](#) Employment data came from Census table: [B23025](#)

##### *Council Approved Blight -*

The Community development law requires that an Extremely Blighted and Substandard area be an approved blighted area. The City of Norfolk has blighted areas; those studies/documents/approved areas are available for review through direct contact. ([Web link1](#)) ([Web link2](#)). See 'Approved Blighted & Substandard Areas' in the appendix.



*Extremely Blighted Components –*

Part (i) is a state comparison. The 2022 Nebraska Unemployment rate, according to the US Census American Community Survey (Five-year estimate) was 3.07%. Therefore, the average rate of our selected area would require an unemployment rate of at least 6.14. Unemployment is the total number of unemployed people, expressed as a percentage of the civilian labor force ([Source](#)). A five-year estimate is used because it is directed by state statute. Information Art uses familiar data sources when possible.

	Nebraska Estimate
Total:	1532351
In labor force:	1054285
Civilian labor force:	1047813
Employed	1015656
Unemployed	32157
Armed Forces	6472
Not in labor force	478066

Percent Unemployed	3.07
200% Rate	6.14

Information Art developed an area with an average unemployment of 6.9% within available (i.e., data points that were in the city limits or those that intersect Norfolk’s corporate limits) An area average is determined by using the sum of estimated factors and NOT the average of each piece. Furthermore, state statute does not state that all facets must be contiguous. See ‘Employment Study’ in the appendix. Below is a table that displays data for this study area.

Geography	Geographic Area Name	Total Labor Force	Total Civilian Labor Force	Total Civilian Labor Force, Unemployed	Percent Unemployed
S311199606001	Block Group 1; Census Tract 9606; Madison County; Nebraska	598	598	0	0
S311199607001	Block Group 1; Census Tract 9607; Madison County; Nebraska	344	344	22	6.4
S311199611002	Block Group 2; Census Tract 9611; Madison County; Nebraska	492	492	62	12.6
S311199609001	Block Group 1; Census Tract 9609; Madison County; Nebraska	554	509	57	11.2
S311199606004	Block Group 4; Census Tract 9606; Madison County; Nebraska	879	879	54	6.14
Study Area		2867	2822	195	6.91

Part (ii) is a local area finding. Norfolk’s 2022 poverty rate was 12.9%, but in line with state statute, Information Art worked to develop an area with at least 20% poverty. Information Art developed an area with a 21.4% poverty rate to meet this threshold within the available data points (i.e., data points in the city limits or those that intersect Norfolk’s corporate limits). An area average is determined by using the sum of estimated factors and NOT the average of each piece. See ‘Poverty Study’ in the appendix. Below is a table that displays data for this study area.

Geography	Geographic Area Name	Total Population, Poverty Universe	Persons Below the Poverty Level	Percent in Poverty
S311199611001	Block Group 1; Census Tract 9611; Madison County; Nebraska	963	161	16.72
S311199606001	Block Group 1; Census Tract 9606; Madison County; Nebraska	1151	220	19.11
S311199607001	Block Group 1; Census Tract 9607; Madison County; Nebraska	729	219	30.04
S311199607002	Block Group 2; Census Tract 9607; Madison County; Nebraska	1441	358	24.84
S311199610003	Block Group 3; Census Tract 9610; Madison County; Nebraska	791	328	41.47
S311199611002	Block Group 2; Census Tract 9611; Madison County; Nebraska	810	166	20.49
S311199606004	Block Group 4; Census Tract 9606; Madison County; Nebraska	1366	101	7.39
Study Area		7251	1553	21.42

## G. Process & Outcome

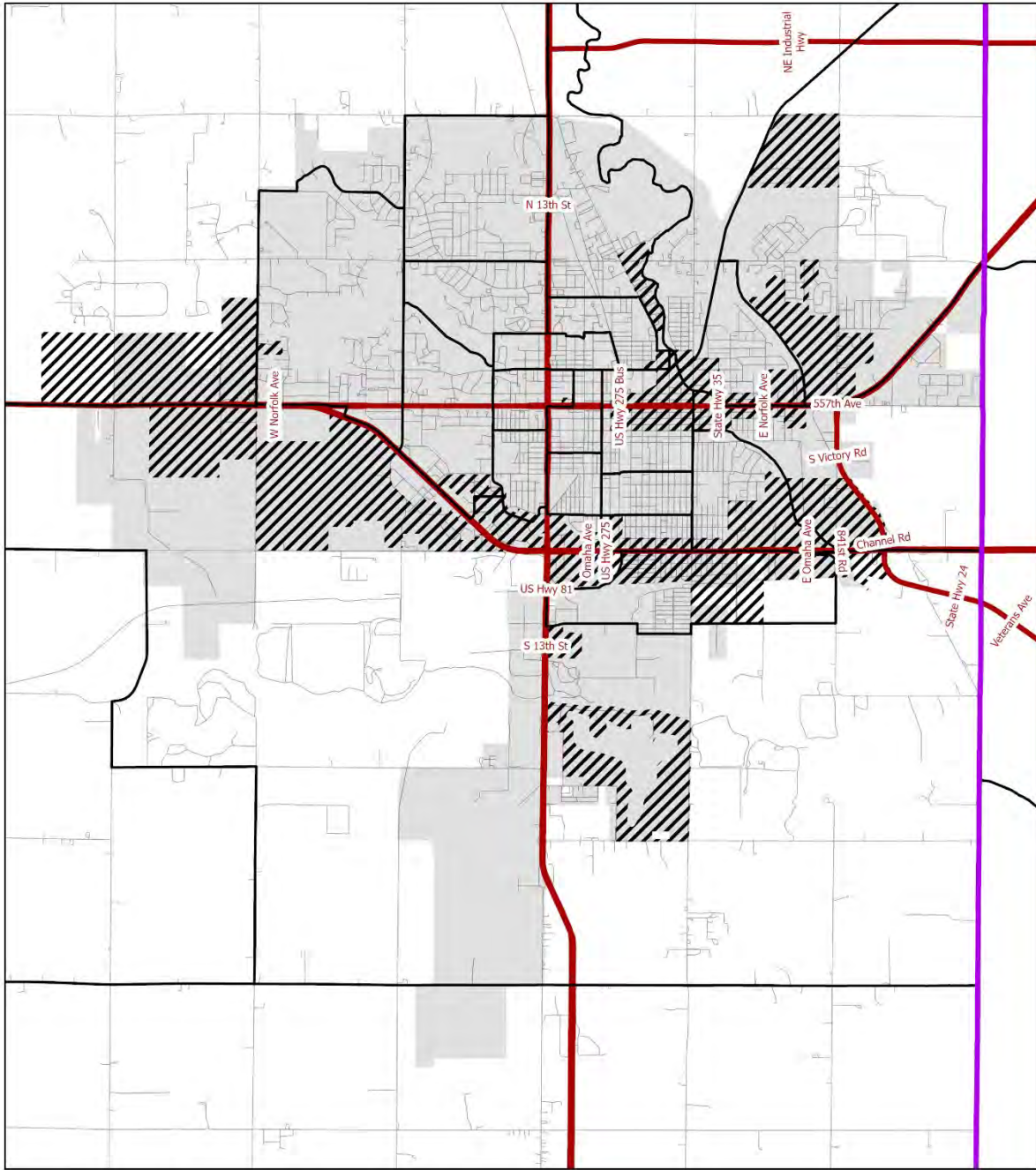
State statute does not direct how to operationalize census boundaries, margin of errors, and confidence intervals etc. that are often inconsistent with blight/project areas. Therefore, Information Art overlaid these three facets/areas (i.e., approved blight, 20%+ poverty, 200%+ of Nebraska's unemployment rate) and delineated areas where the three intersected as a reasonable implementation effort. Information Art presents for consideration a proposed extremely blighted area. See 'Qualifying Area Review: Focused Area' and 'Proposed Extremely Blighted Area' in the appendix.

The Proposed Extremely Blight Area is in Block Group 311199606001 (i.e., Tract 960600, Block 1)

### Appendix Images:

1. Approved Blighted & Substandard Areas
2. Employment Study Area
3. Poverty Study Area
4. Qualifying Area Review: Focused Area
5. Proposed Extremely Blighted Area
6. Assessor Parcel Review

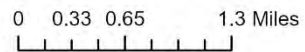
Approved Blighted & Substandard Areas



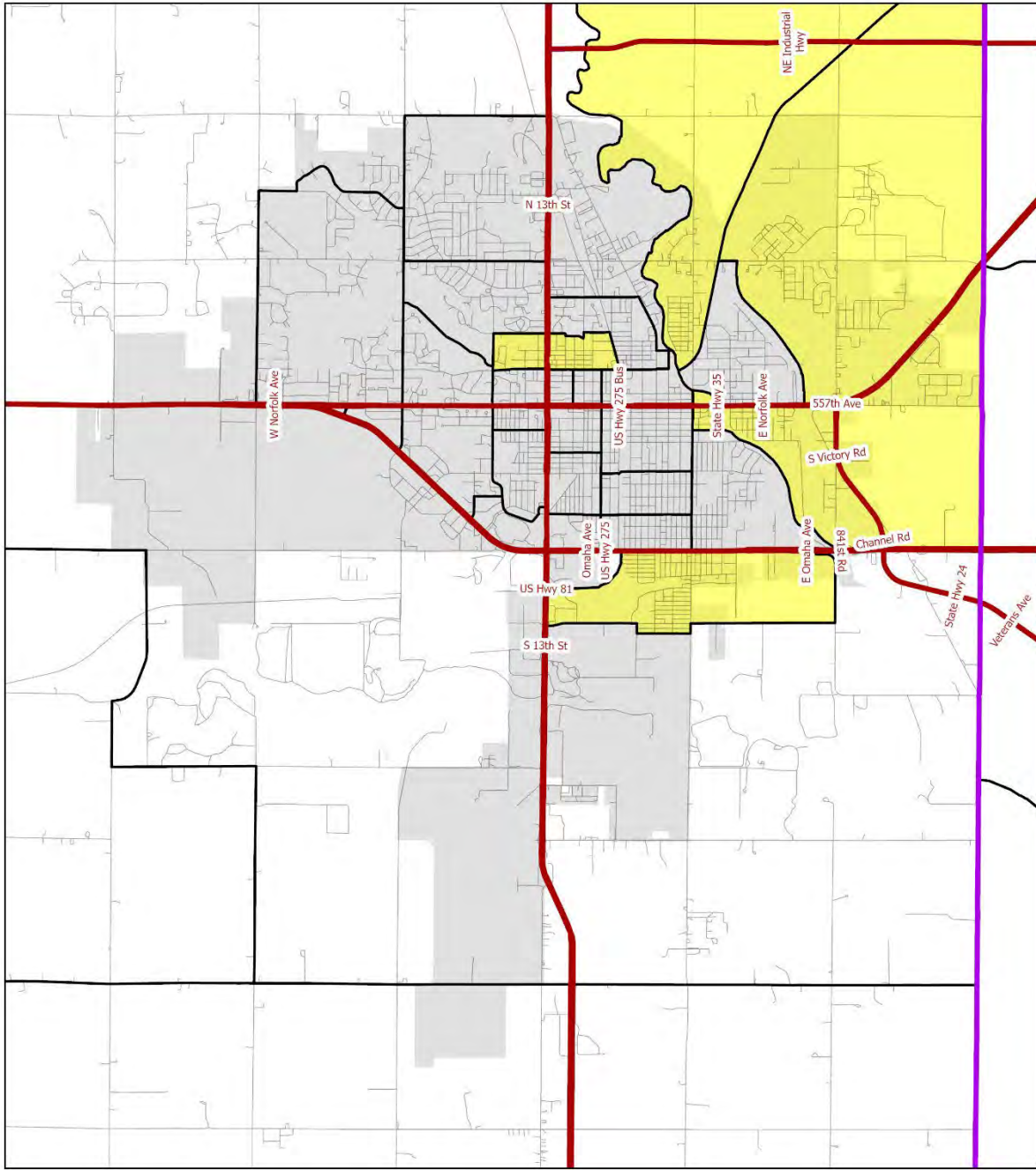
City of Norfolk: Blight and Substandard Area Review

County Boundary  
 Primary Roads





Blight and Substandard Areas  
 Norfolk City Limits

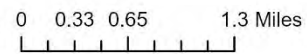


Employment Study Area



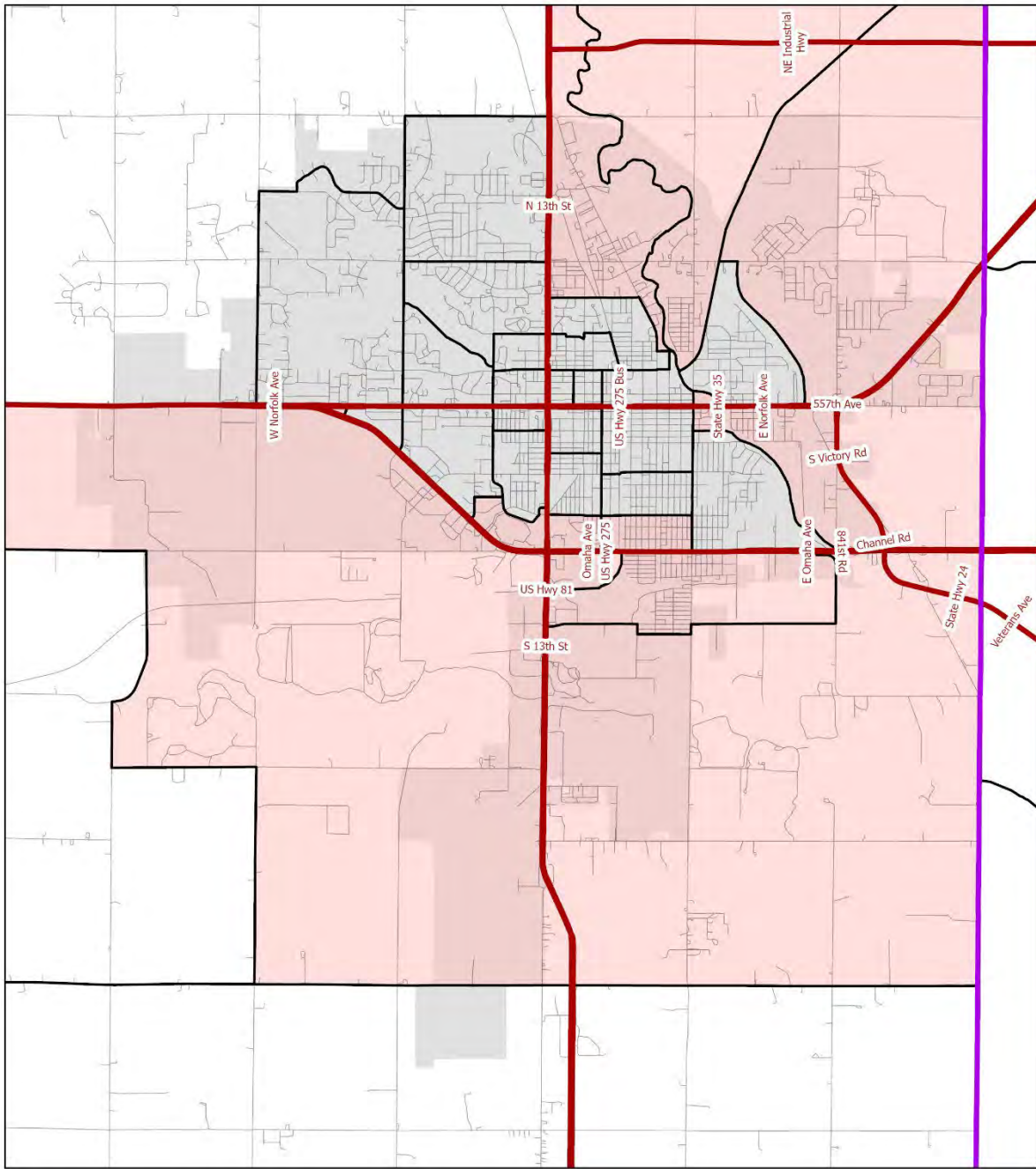
City of Norfolk: Unemployment Review

-  County Boundary
-  Primary Roads
-  Area Avg Unemployment (6.9%) > 200% NEBR Unemployment Rate (3.17%, 200% = 6.14%)
-  Norfolk City Limits



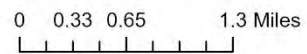


Poverty Study Area



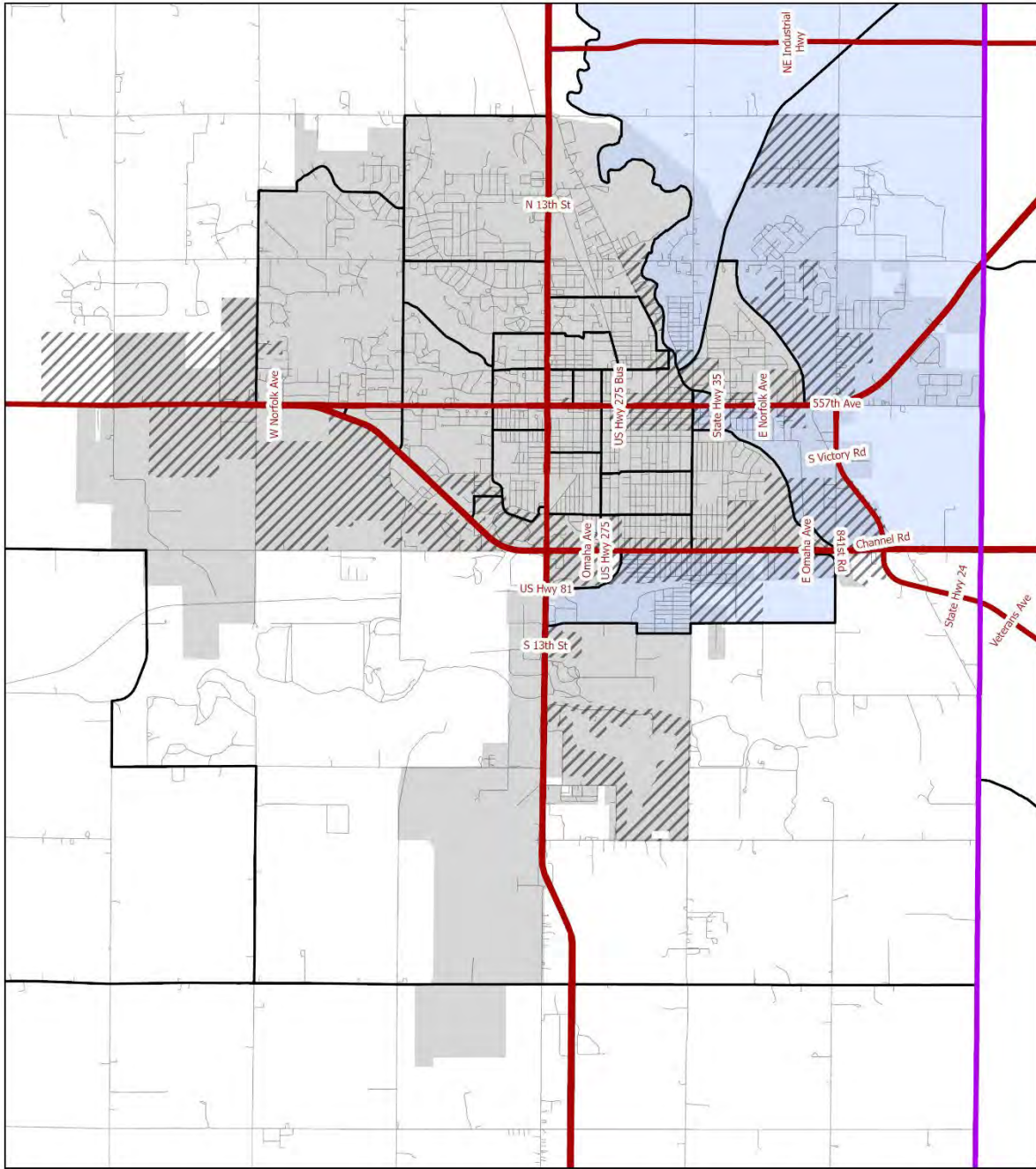
City of Norfolk: Poverty Review

-  County Boundary
-  Area Poverty > 20% (21.4%)
-  Primary Roads
-  Norfolk City Limits



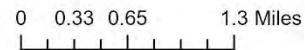


Qualifying Area Review: Focused Area



City of Norfolk: Existing Blighted Areas & Qualifying Area, 2022 US Census ACS Five-year data

- County Boundary
- Extreme Blight Qualifying Areas
- Primary Roads
- Norfolk City Limits
- Blight and Substandard Areas





Proposed Extremely Blighted Area



City of Norfolk: Proposed Extremely Blight Area

- Primary Roads
- Roads - Madison County
- Proposed Extreme Blight Area

0 50 100 200 Feet





Assessor Parcel Review

