

Nebraska City  
**A G E N D A**  
**City Council Meeting**  
April 18, 2016 - 6:00 p.m.  
**Call to Order**

"I am required by law to inform the public that a copy of the Open Meetings Act is posted on the bulletin board to your right. This meeting is being recorded. If you wish to speak, come to the podium, state your name and address and speak directly towards the microphone the entire time you are addressing the governing body. Thank you".

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL**

**CONSENT**

3. **Approve minutes from the April 4, 2016 City Council Meeting**
4. **Accepting the report of new claims against the City and approving disposition of claims set for the period of March 5, 2016 to March 18, 2016**
5. **Consider Policy on Public Records Requests and Copy Fee Schedule**
6. **Approve recommendation from BPW to approve Electric WO 102 for a line extension in Terra Oaks \$7745.04**

**PROCLAMATIONS AND PRESENTATIONS**

7. **Elks Youth Week Proclamation**

**PUBLIC HEARINGS**

8. **Public Hearing on Liquor License Class C Application for Justin Cunningham and Theodore G Cunningham DBA Little Ted's Pub & Grill, LLC at 416 Central Ave.**
9. **Public hearing to consider the use of \$60,000 of the LB840 Economic Development Loan Fund for the property at 416 Central Avenue.**
10. **Public Hearing concerning new application 16-TFHO-16017 for Homeownership Opportunity Program and Demolition Guideline.**
11. **Public Hearing mid-project on City's Owner Occupied Rehabilitation Program 14-HO-3S058 and Nuckolls Square Project #13-CIS-103.**

**REPORTS**

12. **Treasurer's Report**
13. **City Administrator Report**
14. **Acknowledge receipt of Utility Financial Report for period ending February 29, 2016**
15. **Acknowledge receipt of Utility Claims for period ending March 31, 2016**

**NEW BUSINESS**

16. **Resolution 2701-16 Utilizing Nebraska Affordable Housing Program funds.**
17. **Resolution 2702-16 Use of funds for demolition of blighted and substandard structures.**
18. **Resolution 2703-16 Authorize Mayor to apply for the Nebraska Affordable Housing Program Funds from NDED**
19. **Consider recommendation on Liquor License Class C Application for Justin Cunningham and Theodore G Cunningham DBA Little Ted's Pub & Grill, LLC.**
20. **Resolution 2704-16 Approving LB840 loan agreement for Justin Cunningham and Theodore G Cunningham DBA Little Ted's Pub & Grill, LLC at 416 Central Ave.**
21. **Authorize Mayor to sign agreement between City and Contractor for 11th Street Construction Contract**
22. **Discussion/action to appoint Grayson Path, City Administrator, as the City's Project Liaison to the Nebraska Department of Roads for the 4th Corso Viaduct project and to authorize Mayor to sign letter stating such.**
23. **Discussion/action to officially request that the Nebraska Department of Roads take over Responsible Charge (RC) duties for the 4th Corso Viaduct project and to authorize Mayor to sign letter stating such.**
24. **Discussion/Action regarding moving Memorial Way Tile Mural.**

**\*\*REMINDER\*\* ROBERTS RULES 1. PRESENTATION 2. MOTION 3. DEBATE 4. VOTE**

## Nebraska City

25. Discussion/Action to approve the Mayor to sign the consent to sublease and leaseback to American Tower Corporation for the Steinhart Communication Tower.
26. Steinhart Park Directional Sign to be refinished and repainted by Jim Kuhn.
27. Nebraska City Jaycees Independence Day Celebration Fundraiser on June 11, 2016 with a rain date of June 18, 2016 from 9:00 AM to 1:00 PM requesting annual road block on 10<sup>th</sup> Street and Central Ave to raise funds for the Independence Day Celebration on July 2, 2016 with a rain date of July 5, 2016
28. Discussion/action to authorize the Mayor to sign the Professional Agreement with JEO Consulting Group, Inc. for Final Design and Construction Oversight of the Kearney Hill CIS Project.

## **ADJOURNMENT**

Nebraska City  
 CITY OF NEBRASKA CITY, NEBRASKA  
 MINUTES OF CITY COUNCIL REGULAR MEETING  
 April 4, 2016

Pursuant to due call and notice thereof, a Regular Meeting of the City Council of the City of Nebraska City was conducted in the William F. Davis Room at City Hall, 1409 Central Avenue, on April 4, 2016. Notice of the meeting was given in advance thereof by posting in at least three public places, the designated method for giving notice, as shown by the Certificate of Posting Notice attached to these minutes. Availability of the agenda was communicated in advance to the media, Mayor and Commissioners of this proceeding and said meeting was open to the public.

Mayor Bequette called the meeting to order at 6:00 p.m. The Mayor publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy posted in the room where the meeting was being held. Mayor Bryan Bequette then led in the Pledge of Allegiance. Upon roll call the following answered present: Jim Stark, Vic Johns, Gloria Glover and Mayor Bequette. Absent: Jeff Crunk. The following City Officials were present: City Administrator Grayson Path, City Clerk-Treasurer Randy Dunster, City Attorney David Partsch, Chief of Police Dave Lacy and Public Properties Director/Zoning Director Dan Gittinger.

Mayor Bequette moved to approve the following consent items:  
 Approve minutes from the March 21, 2016 City Council Meeting  
 Accepting the report of new claims against the City and approving disposition of claims set for the period of March 19, 2016 to April 1, 2016.  
 Approve Application for Master Plumbers and Drain Layers License to 3 Aces Construction LLC  
 Approve Application of Manager for Casey Ahrendsen, Fareway Stores Inc. Liquor License  
 Approve flag poles to be installed at the softball complex by NC Ballfield Improvement Association and have City auger the holes

Motion seconded by Commissioner Johns. Upon roll call the following voted YES: Glover, Johns and Mayor Bequette. Voting NO: None. Abstain: Stark. Motion carried

CLAIMS LIST					
April 4, 2016					
Action Technology	Contr	439.99	Matheson Tri-Gas, Inc.	Sup	65.40
American Recycling	Contr	184.50	Mercer's Do-It-Best	Sup	91.61
AMG-SF, LLC	Mdse	251.75	Miller Monroe Farrell	Ins	64579.00
Arbor Mart, Inc	Fuel	1737.66	Mullenax Auto Supply	Sup	122.01
AVAC	Contr	79.78	Napa Auto Parts	Rep	181.72
Asphalt & Concrete Mat	Sup	230.58	Nationwide	Inv	12554.84
Beacon Athletics	Maint	330.60	NC Clerk - Treasurer	Misc	80.00
Benefiel Truck Repair	Sup	700.95	NC Museum Assoc.	Contr	2406.25
Richard D. Bennett, Jr.	Sup	15661.57	NC Police Fund	Trans	1000.00
Berry	Adv	22.80	NCTC	Contr	7083.33
Bishop Plumbing	Rep	215.00	NE Enviromental Prod	Rep	778.05
Blick Art Materials	Fine Arts	641.78	NE Salt & Grain	SUP	1645.50
Blue Tarp Financial	Rep	399.48	Nevco Inc	Equip	3625.04
Bound Tree	Sup	951.56	O'Reilly Auto Parts	Sup	84.32
BSN Sports	Rep	302.23	Odey's Inc.	Sup	1554.00
Callaway Golf	Mdse	104.19	Otoe County Clerk	Contr	2914.20
Card Services	Misc	571.09	Payroll	Payroll	178657.29

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Casey, J.	Mileage	50.85	PHYSICIAN NETWORK	Med	246.30
Danko Emergency Equip	Unif	451.68	Quill Corporation	Sup	174.03
Double Eagle	Bev	100.50	River View Pest Control	Contr	176.00
Douglas Tire Co.	Rep	242.07	Schmader Electric Co	Rep	4606.25
Eakes Office Solutions	Sup	183.42	Schroder, K.	Rfnd	200.00
Eggers Brothers, Inc.	Sup	279.75	SE Area Clerk Assoc	Dues	20.00
EMC National Life Co	Ins	1022.00	The Toolkit Group	Training	301.00
Fastenal Company	Sup	45.81	Tree City Tees	Unif	25.50
Gatehouse Media	Adv	82.07	Unifirst Corporation	Contr	278.56
Glittinger, D.	Mileage	240.13	United Seeds, Inc.	Sup	527.50
Hopkins Automotive Inc.	Rep	38.18	Van Wall Turf & Irr	Rep	1209.74
Hydraulic Equipment	Rep	2495.40	VERIZON WIRELESS	Tele	249.34
Inland Truck Parts	Rep	395.42	Westlake Ace Hardware	Sup	120.23
Landis Engine Company	Equip	12009.29	Windstream, Inc.	Tele	57.94
Larson Motors	Rep	665.93	Winn Incorporated	Sup	130.94
Loveland Grass Pad	Sup	1115.25	Yost, B.	Rfnd	25.00

Mayor Bequette made a proclamation recognizing April 11, 2016 as Electric Utility Linemen Day

Moved by Commissioner Stark and seconded by Commissioner Johns to approve the special request for the SDL for the Fox Center on May 1, 2016, from 10:30 AM to 3:00 PM. Amy Allgood spoke for the Fox Center to explain the request. Upon roll call, the following voted YES: Glover, Johns, Stark and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Mayor Bequette and seconded by Commissioner Stark to adopt Resolution 2700-16; accepting the 2016 Comprehensive Development Plan, Transportation Plan, & Traffic Demand Model Technical Report. Upon roll call, the following voted YES: Stark, Johns, Glover, and Mayor Bequette. Voting NO: None. Motion carried. . A true and correct copy of said resolution is as follows:

Nebraska City

RESOLUTION NO. 2700-16

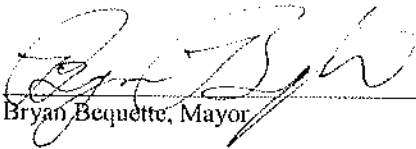
WHEREAS, the City Council of the City of Nebraska City has received and reviewed the Comprehensive Development Plan, Transportation Plan & Traffic Demand Model Technical Report which have previously been approved as drafts and have now been published in final bound format;

WHEREAS, these documents have been the subject of the required public hearings and presented previously for public input, with the drafts having been approved as submitted;

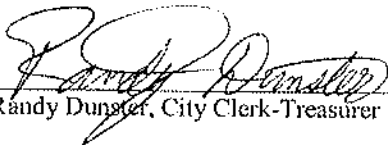
AND WHEREAS, the City finds it to be in the best interests of the citizens of Nebraska City for it to formally adopt the Comprehensive Development Plan, Transportation Plan & Traffic Demand Model Technical Report as printed;

THEREFORE, BE IT RESOLVED that the City Council directs the approval of these documents referenced above and directs the Clerk-Treasurer to maintain the same on file at City Hall as the official plans and reports on behalf of the City.

Passed and approved this 4<sup>th</sup> day of April, 2016.

  
Bryan Bequette, Mayor

ATTEST:

  
Randy Dunst, City Clerk-Treasurer

Moved by Commissioner Stark and seconded by Commissioner Johns to direct the City Attorney to send letters to the ten(ish) landowners, notifying them of their portion of the \$1000.00 fee for survey costs for vacating city street right-of-way at 5th Rue and 5th Terrace neighborhood. Harvey Varenhorst spoke in favor of vacating the right-of-way to represent the landowners. Upon roll call, the following voted YES: Johns, Stark and Mayor Bequette. Voting NO: None. Abstain: Glover. Motion carried.

Moved by Commissioner Stark and seconded by Commissioner Johns to approve request from Kent Schwartz to paint mural on West side wall of Memorial Way to honor the Veterans. Kent Schwartz spoke to explain the request. Upon roll call, the following voted YES: Glover, Johns, Stark and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Commissioner Johns and seconded by Commissioner Stark to approve the request from NCTC for Arbor Day 2016 event on April 29, 2016 – May 1, 2016 as per the application. Amy Allgood spoke to explain the request. Upon roll call, the following voted YES: Glover, Stark, Johns, and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Mayor Bequette and seconded by Commissioner Johns to approve request from John Hodges and Phil Wredt for street closure at 17th to 18th on 3rd Corso on July 2, 2016 for BBQ & fireworks. Upon roll call, the following voted YES: Stark, Glover, Johns, and Mayor Bequette. Voting NO: None. Motion carried.

Meeting Adjourned at 6:46 P.M.

**\*\*REMINDER\*\* ROBERTS RULES 1. PRESENTATION 2. MOTION 3. DEBATE 4. VOTE**

Nebraska City

AFFIDAVIT

I, the undersigned City Clerk for the City of Nebraska City, Nebraska, hereby certify that the foregoing is a true and correct copy of proceedings had and done by the Mayor and Board of Commissioners, that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes from which the foregoing proceedings have been extracted 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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Randy A. Dunster, City Clerk-Treasurer

# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



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## Agenda Information Support Sheet

To: Mayor and Commissioners

Council Meeting: 4/18/2016  
Agenda Item: # \_\_\_\_\_  
Submitted By: David J. Partsch, City Attorney

**A. Synopsis of Issue:**

- a. In order to ensure consistency in fulfilling public record requests and the charges being made by the City for expenses, we have drafted a Public Record Policy and Fee Schedule for Council's consideration.

**B. Options:**

- a. Adopt the proposed policy and fee schedule.
- b. Amend or delete provisions of the policy or schedule, so long as it follows the law.
- c. Do not charge for any copies.

**C. Fiscal Note:**

- a. Fiscally the policy and schedule will have little impact on the City's total budget. The City is limited as to how much it may charge to cover expenses and cannot use fees to generate revenue above expenses.

**D. Recommendation:**

- a. Adopt the proposed policy and fee schedule.
- b. *Recommended Motion:*
  - i. I move for adoption of the proposed policy on public record requests and fee schedule as submitted.

**E. Background:**

- a. Commissioner Glover is working with front office staff on implementing best practices and establishing systems to ensure efficiency and accuracy in their various tasks, while also working with the City Attorney to ensure that practices are in compliance with Nebraska law and City Code. Fulfilling public record requests and charging for copies is an area in which the City staff has not previously had written procedures.

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**Department Heads:** Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.

# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



April 18, 2016  
Supervisor Signature:  
Administrator Signature:

Public Records Requests  
Administrative Procedure

## Introduction

As a local government office, residents and others with interest in City business may request copies of records located within the office. In addition, standing orders for delivery of copies of records may exist such as mailing copies of fire investigation reports to insurance companies. Requests for copies of City records may be received in person or by mail and such requests may be small or large. Requests for copies may not be for paper copies but instead be a request to receive records in an electronic format or to only view records. Requests may be for records that are only maintained electronically such as e-mail messages and requests may be received as part of a lawsuit that is either against the City or not against the City. The fulfilling of public records requests must comply with Nebraska statutes on the processing of public records requests. Neb. Rev. Stat. §§ 84-712 through 84-712.09 address the receipt and processing of requests for viewing or copying of public records. A good summary of the statutes in plain English with historical information from the Nebraska Attorney General Office is at

<https://ago.nebraska.gov/publicrecords/statutes>

State statutes, generally, allow for the charging of the costs in both supplies and employee time to fill such requests. Per page charges include both types of costs and extensive requests may have additional employee time charged above the per page charge. The charge for fulfilling a request may be so small that it is not cost effective to bill for the amount when a request is only a page or two that is easily located and copied. Or the request may be so large or locating the records so time consuming that the amount of the estimated charge warrants a deposit be paid by the person requesting the records before the records request is processed.

Section 84-712(3)(b) specifies that the fee for copies must be based on the actual cost of supplies and employee time. The Attorney General's Office has determined that a per-page charge of twenty-five cents -(\$0.25) is reasonable and only charges of more than twenty-five cents (\$0.25) per page might be questionable as to basis. Because this charge includes an element of staff time additional charges for staff time are not allowed until fulfilling the request exceeds four hours of staff time. When the project exceeds four hours of cumulative staff time, a special service charge representing the time required in excess of four cumulative hours can be imposed. This is allowed to compensate for disruption in the operation of the office due to large records requests.

Section 84-712(3) also specifies that offices receiving requests estimated to result in a charge greater than fifty dollars (\$50.00) may require a deposit prior to filling the request. The statute also specifies that the custodian of a public record is not required to produce a public record in a new or different form or format from that of the original public record.

Other statutes that apply to copies of public records include § 81-505.01(3) which says the fee for providing a fire investigation report to an insurance company shall not exceed three dollars (\$3.00) and § 71-8404 which allows a provider of medical service to charge no more than twenty dollars (\$20.00) as a handling fee and no more than fifty cents (\$0.50) as a per page copying fee. The Nebraska City Emergency Services department is considered a provider under this statute language.

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## Nebraska City

### Process

When a request for copies is received it must first be evaluated to determine what public records might meet the request and how long it would take to find them and make the copies, if requested. This will determine if any charge will be made for the copies in a small request or whether a deposit will be required before work on the request starts. For a large request that could potentially require more than 4 hours of staff time, the staff must maintain a record of the time spent on each segment of the request such as locating records, preparing records for copying, copying records, and preparing copies for delivery.

If a request is due to legal proceedings the City Attorney must be notified of the request. Direction on how the request is to be processed will come from the City Attorney.

A public record is defined broadly. It includes a public body's component information, not just completed reports or documents. It is a record the public body is entitled to possess regardless of whether the public body takes possession. The public's right to access a record does not depend on where the records are physically located. The delegation of a public body's duties to a private party does not change the status of the records held by or produced by the private party as public documents. Drafts may be considered public records if they have been distributed to the public, but may not be public records if upper management has yet to adopt or approve the draft. Records that are confidential include, but are not limited to:

- records with personal information or personal medical information;
- attorney work product;
- records pertaining to investigations including citizen complaints;
- employee information other than salaries and routine directory information;
- utilities customer information;
- library patron information;
- job application materials submitted by applicants unless the applicant is a finalist; and,
- social security numbers, credit/debit card numbers, and financial account numbers.

In some circumstances, public records may contain confidential information. Confidential information would not exclude a record from being copied unless the confidential information is a significant part of the document. Confidential information that is not significant must be redacted from the documents by an effective means to make it unreadable. This might be done by blacking out the information or covering the information and copying it. Often redacted information would include personal information such as credit card numbers, bank account numbers, and social security numbers. **Any denial of a public record request or portion of a public record request due to confidentiality or otherwise must be reviewed by the City Attorney.**

**VIOLATIONS OF PUBLIC RECORDS STATUTES ARE SERIOUS AND CAN RESULT IN REMOVAL FROM OFFICE AS WELL AS BEING GUILTY OF A CLASS III MISDEMEANOR PUNISHABLE BY UP TO THREE MONTHS IN JAIL OR A \$500 FINE, OR BOTH.**

### Procedure

A records request must be in writing to be sure it is clear what the requestor wants and make sure it is filled correctly. A person making a records request will be asked to put the request in writing on the Public Records Request form or submit the request by letter or e-mail. The Public Records Request form is attached as Appendix B

When a request is received in writing the request must be forwarded to the Deputy City Clerk-Treasurer for consistency in processing. According to statute, information shall be made available to the requester as soon as it is practicable and without delay, but not more than four (4) business days after actual receipt of the request. Determination of the due date is determined after removing the first day of receipt and removing Saturday, Sunday and other holidays in which the office is closed. If the Deputy City Clerk-Treasurer is not available to complete the request, the request must go to the Accounting Clerk to complete within the required time frame.

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The person receiving the request will evaluate it and determine if the City Clerk-Treasurer and/or City Attorney should be notified because of the size of the request, because the request involves legal proceedings, or for any other assistance in filling the request. Within four (4) days one of the following must be provided by the City to the requesting party: (1) access to or copies of the records, (2) a written denial of the request with information specified in § 84-712.04 or (3) a written explanation with the earliest practicable date for filling the request, an estimated cost of copies, and an opportunity for the requester to modify or prioritize the request when the initial request cannot be filled within the four (4) days due to its difficulty or extensiveness. The four-day due date would be met by mailing of the response. If the requester does not reply to the correspondence within ten (10) business days, the request shall not be fulfilled.

If the request will result in a charge of more than fifty dollars (\$50.00), a deposit may be requested prior to completing the record request. A deposit amount should be determined after discussion with the City Clerk-Treasurer. The correspondence regarding the deposit must be sent within the four-day timeline described above.

The Deputy City Clerk-Treasurer will prepare the records for copying and perform the copying. Once the copies are ready to be delivered, the Deputy City Clerk-Treasurer will prepare an invoice for the cost of the request and any postage needed. Attached as Appendix A is the list of rates for filling records requests. The Deputy City Clerk-Treasurer shall maintain a copy of the request and the records provided to fill the request or if the copies are large in number, a notation must be made on the request describing the records provided and the location of the records so they may be located again if necessary. After the request is fulfilled, the documentation of the completed records requests will be kept in a file in date order for access in the future if questions should arise. All requests must be kept on file for a minimum of one (1) year. A records request may only be for access to records and the records may be copied by the requester using their own copying equipment such as scanners or photographed with a cell phone. The access to the records should be at City Hall or at the location of the City records during business hours. The Deputy City Clerk-Treasurer should process these requests in a similar manner to copy requests but with the addition of arranging for access to the records. The location where the records are made available for review should provide some security that records will not be lost or destroyed.

Requesters will be charged a fee for copies or other duplication of records. Appendix A shows the fee schedule. Requests which do not match any of the charges in Appendix A should be discussed with the City Clerk-Treasurer to determine an appropriate charge. If charges are billed to the requestor, the Deputy City Clerk-Treasurer will keep records on the billing statements and monitor payment.

Small records requests will not be charged because the cost of invoicing exceeds the funds received. A record request will be invoiced only when the total cost is \$2.00 or more.

If a request takes more than four (4) hours of staff time to process, the staff time can be charged as part of the cost of filling the request. In such cases, staff must document all time spent in locating, collecting, redacting, copying, organizing the records for delivery, and return of the records to their storage location. The staff time charged is for time after four (4) cumulative personnel hours multiplied by the hourly rate of each employee doing the work to fill the request. The time for the City Attorney to review the request or requested documents may not be charged.

There is no requirement that a request must be filled for a record in a new or different form or format from the original public record.

If a record will not be provided and the request denied, in whole or in part, the written communication to the requester must include: (1) a description of the contents of the records withheld and reason for denial citing statutes, (2) the name of the official who made the decision to deny the request, and (3) notification to the requester of any administrative or judicial right of review. The City Attorney must review this correspondence prior to sending it to the requester. The four-day time limit still applies. A file of all letters of denial must be maintained and that file must be made available to any person upon request.

If a deposit is received, the amount will be used to pay the records request charge. Any excess deposit will be refunded with an invoice showing the full charges and application of the deposit as payment. Any

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charges not covered by the deposit will be invoiced to the requester on an invoice that shows the full charge to complete the request and the application of the deposit leaving an amount due.

Appendix A

**Charges for Public Records Requests**

Paper copies: black print on paper of standard size	-	\$0.25 per page
Paper copies: color on paper of standard size	-	\$0.50 per page
Electronic delivery: e-mail requiring scanning	-	\$0.10 per page
Electronic delivery: e-mail not requiring scanning	-	No charge
Fax delivery: sent to local phone number	-	\$0.10 per page
Fax delivery: sent to long distance phone number	-	\$0.11 per page
CD or other media: No scanning	-	Cost of media
CD or other media: Requiring scanning	-	\$0.10 per page plus cost of media
Postage: USPS delivery or overnight/courier service	-	Actual cost of mailing charged by service
Delivery of Fire Investigation report to an insurance company	-	\$3.00
Records of Emergency Medical Services (EMS)	-	\$0.50 per page
Handling Fee for requests of EMS – Actual handling cost totaling no more than \$20.00 (Handling Fee would not be charged until reaching 4 hours of staff time for handling.)		

Appendix B

**CITY OF NEBRASKA CITY  
PUBLIC RECORDS REQUEST**

Date: \_\_\_\_\_  
 Requester Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_

\_\_\_\_\_A. Request to review the following records at City Hall during business hours.  
OR

\_\_\_\_\_B. Request for photocopies of the following records; Instructions for delivery  
 \_\_\_US mail \_\_\_Overnight delivery \_\_\_Pickup  
 \_\_\_Other: \_\_\_\_\_

Description of Requested Public Records: \_\_\_\_\_

I understand that if I want any copies, there will be a charge set by policy, plus postage, payable when billed, which may be in advance of my receipt of the copies. I understand I may be charged personnel costs if the time required to search or copy my request exceeds four person-hours.

\_\_\_\_\_  
Signature of Requester

Nebraska City

**W.O. 102 – Electric Work Order to extend electric primary circuit to south property line  
between Terra Oaks and Wyuka Cemetary properties to serve a new home.  
Extension costs were paid in the development of Terra Oaks. \$7745.04**

April 18, 2016

The Honorable Mayor and  
Members of the City Commission  
Nebraska City, Nebraska 68410

The Board of Public Works respectfully recommends the approval of Electric Work Order #102 in the amount of \$7,745.04 to provide for the extension of the Electric Primary circuit to the south property line between Terra Oaks and Wyuka Cemetery properties to provide for a new home to be built within Terra Oaks Subdivision.

This extension provides for the movement of the original Electric Circuit within Terra Oaks and a loop feed for the properties. Customer's share of the line extension fees were paid during the original development of Terra Oaks.

Respectfully submitted,

BOARD OF PUBLIC WORKS

\_\_\_\_\_  
John James, Secretary

\_\_\_\_\_  
I hereby certify that the approval of the City Commission of the City of Nebraska City, Nebraska, for the above recommendation was granted at their meeting on:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Randy Dunster, City Clerk/Treasurer

**\*\*REMINDER\*\* ROBERTS RULES 1. PRESENTATION 2. MOTION 3. DEBATE 4. VOTE**

***Youth Week 2016***

**Proclamation**

**WHEREAS**, the Benevolent and Protective Order of Elks has designated May 1-7, as Youth Week to honor America's Junior Citizens for their accomplishments, and to give fitting recognition of their services to Community, State and Nation; and,

**WHEREAS**, Nebraska City Lodge #1049 will sponsor an observance during that week in tribute to the Junior Citizens of this Community; and,

**WHEREAS**, no event could be more deserving of our support and participation than one dedicated to these young people who represent the nation's greatest resource, and who in the years ahead will assume the responsibility for the advancement of our free society; and

**WHEREAS**, our Youth need the guidance, inspiration and encouragement which we alone can give in order to help develop those qualities of character essential for future leadership; and go forth to serve America; and,

**WHEREAS**, to achieve this worthy objective we should demonstrate our partnership with Youth, our understanding of their hopes and aspirations and a sincere willingness to help prepare them in every way for the responsibilities and opportunities of citizenship:

**NOW, THEREFORE**, I, Bryan Bequette, Mayor of Nebraska City, do hereby proclaim the first week in May as Youth Week, and urge all departments of government, civic, fraternal and patriotic groups, and our citizens generally, to participate wholeheartedly in its observance.

Dated this 18<sup>th</sup> day of April, 2016.

---

Bryan Bequette, Mayor

Nebraska City  
NOTICE OF HEARING

Notice is hereby given that Justin Cunningham and Theodore G. Cunningham DBA Little Ted's Pub & Grill, LLC have applied for a Class "C": Beer, Wine & Distilled Spirits, ON AND OFF SALE, liquor license at 416 Central Avenue, Nebraska City, Nebraska, and issued under the provisions of the Statutes of Nebraska and the Municipal Code of the City of Nebraska City. Hearing on said application before the City Council of said City will be held in the Council Chambers at City Hall 1409 Central Avenue of said City on the 18th day of April 2016, at 6:00 p.m. All persons desiring to give evidence before the City Council in support or opposition to the issuance of such license may do so at the time of the hearing.

Randy Dunster  
City Clerk-Treasurer



Pete Ricketts  
Governor

STATE OF NEBRASKA

NEBRASKA LIQUOR CONTROL COMMISSION

**Robert B. Rupe**

Executive Director

301 Centennial Mall South, 5th Floor

P.O. Box 95046

Lincoln, Nebraska 68509-5046

Phone (402) 471-2571

Fax (402) 471-2814 or (402) 471-2374

TRS USER 800 833-7352 (TTY)

web address: <http://www.lcc.ne.gov/>

March 28, 2016

NEBRASKA CITY CLERK  
1409 CENTRAL AVE  
NEBRASKA CITY NE 68410 2299

**RE: LITTLE TED'S PUB & GRILL LLC / LITTLE TED'S PUB & GRILL C-116956**

Dear Local Governing Body:

Attached is the form to be used on all retail liquor license applications. Local clerks must collect proper license fees and occupation tax per ordinance, if any, before delivering the license at time of issuance.

TWO KEY TIME FRAMES TO KEEP IN MIND ARE:

- 1) Publicize one time not less than 7 days, not more than 14 days prior to date of hearing.
- 2) You have 45 days to conduct a hearing after the date of receipt of the notice from this Commission (§53-134). You may choose **NOT** to make a recommendation of approval or denial to our Commission.

PER §53-133, THE LIQUOR CONTROL COMMISSION SHALL SET FOR HEARING ANY APPLICATION WHEREIN:

- 1) There is a recommendation of denial from the local governing body.
- 2) A citizens protest; or
- 3) Statutory problems that the Commission discovers.

PLEASE NOTE...A LICENSEE MUST BE PROPERLY LICENSED IN ORDER TO PURCHASE FROM WHOLESALERS; AND, A LICENSE IS EFFECTIVE:

- 1) Upon payment of the license fees;
- 2) Physical possession of the license;
- 3) Effective date on the license.

Sincerely,

A handwritten signature in black ink that reads "Randy Seybert".

NEBRASKA LIQUOR CONTROL COMMISSION  
Randy Seybert  
Licensing Division

Enclosures

Nebraska City

RECOMMENDATION OF THE NEBRASKA LIQUOR CONTROL COMMISSION RS

Date Mailed from Commission Office: March 28, 2016

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) (reissue 1984) 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:

**LITTLE TED'S PUB & GRILL LLC / LITTLE TED'S PUB & GRILL C-116956  
416 CENTRAL AVE  
NEBRASKA CITY NE 68410  
DUE: 05/12/2016**

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.

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 than 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)

**SIGN HERE** \_\_\_\_\_ **DATE** \_\_\_\_\_  
clerk's signature



Nebraska City

**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  
Website: www.lcc.nebraska.gov

<b>RECEIVED</b>		
TOP Approved		
MAR 23 2016		
<b>NEBRASKA LIQUOR CONTROL COMMISSION</b>		
Hot List: YES <input type="radio"/> NO <input checked="" type="radio"/>	New/Replacing #	110652
Class Type	e	116956
		Initial RS


Applicant name LITTLE TEO'S PUB & GRILL, LLC

Trade name N/A

Previous trade name N/A

Contact email address j.dwight17@yahoo.com

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.

Office use only	
PAYMENT TYPE	CK 1253
AMOUNT:	\$400
Received:	mm
	 1600005559

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MAR 24 2016  
PAGE 1

Nebraska City

1.  Fingerprints are required for each person as defined in new application guide, found on our website under "Licensing Tab" in "Guidelines/Brochures". See Form 147 for further information, this form **MUST** be included with your application.
2.  Enclose application fee of \$400 (nonrefundable), check made payable to the Nebraska Liquor Control Commission or you may pay online at [www.ne.gov/go/NLCCpayport](http://www.ne.gov/go/NLCCpayport).
3.  Enclose the appropriate application forms;
  - Individual License (requires insert form 1)
  - Partnership License (requires insert form 2)
  - Corporate License (requires insert form 3a & 3c)
  - Limited Liability Company (LLC) (requires form 3b & 3c)
4. N/A  If building is being leased send a copy of signed lease. Be sure the lease reads in the name of individual(s), corporation or Limited Liability Company (LLC) making application. Lease term must run through the license year being applied for.
5.  If building is owned or being purchased send a copy of the deed or purchase agreement in the name of the applicant.
6.  If buying the business of a current liquor license holder:
  - a. Provide a copy of the purchase agreement from the seller (must read applicants name)
  - b. Provide a copy of alcohol inventory being purchased (must include brand names and container size)
  - c. Enclose a list of the assets being purchased (furniture, fixtures and equipment)
7.  If requesting to operate on current liquor license; enclose Temporary Operating Permit (TOP) (form 125).
8.  Enclose a list of any inventory or property owned by other parties that are on the premises.
9.  For citizenship enclose U.S. birth certificate; U.S. passport or naturalization paper
  - a. For residency enclose proof of registered voter in Nebraska
  - b. See guideline for further assistance <http://www.lcc.nebraska.gov/brochures.html>
10.  Corporation or Limited Liability Company (LLC) must enclose a copy of articles of incorporation; as filed with the Secretary of State's Office. This document must show barcode.
11.  Submit a copy of your business plan.

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NEBRASKA LIQUOR CONTROL COMMISSION

I acknowledge that this application is not a guarantee that a liquor license will be issued to me, and that the average processing period is 60 days. Furthermore, I understand that all the information is truthful and I accept all responsibility for any false documents.

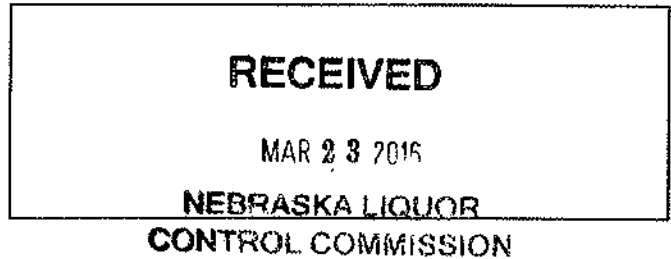
Signature

Date

3/17/16

**APPLICATION FOR LIQUOR LICENSE  
RETAIL**

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



**CLASS OF LICENSE FOR WHICH APPLICATION IS MADE AND FEES  
CHECK DESIRED CLASS**

- RETAIL LICENSE(S) Application Fee \$400 (nonrefundable)
- A BEER, ON SALE ONLY
  - B BEER, OFF SALE ONLY
  - C BEER, WINE, DISTILLED SPIRITS, ON AND OFF SALE
  - D BEER, WINE, DISTILLED SPIRITS, OFF SALE ONLY
  - I BEER, WINE, DISTILLED SPIRITS, ON SALE ONLY
  - 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 license (requires catering application form 106) \$100.00

Additional fees will be assessed at city/village or county level when license is issued

Class C license term runs from November 1 -- October 31  
All other licenses run from May 1 -- April 30  
Catering license (K) expires same as underlying retail license

**CHECK TYPE OF LICENSE FOR WHICH YOU ARE APPLYING**

- Individual License (requires insert form 1)
- Partnership License (requires insert form 2)
- Corporate License (requires insert form 3a & 3c)
- Limited Liability Company (LLC) (requires form 3b & 3c)

**NAME OF ATTORNEY OR FIRM ASSISTING WITH APPLICATION (if applicable)  
Commission will call this person with any questions we may have on this application**

Name KELLY WERTZ Phone number: (402) 873-3715

Firm Name FANKHAUSER NELSON + WERTZ

Nebraska City

**PREMISES INFORMATION**

Trade Name (doing business as) LITTLE TED'S PUB + Grill, LLC

Street Address #1 416 Central Ave

Street Address #2 PO Box 762

City NEBRASKA CITY County OTAWA Zip Code 68410

Premises Telephone number (402) 713-0333

Business e-mail address j\_dwight17@yahoo.com

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

Mailing address (where you want to receive mail from the Commission)

Name LITTLE TED'S PUB + Grill

Street Address #1 PO Box 762

Street Address #2 \_\_\_\_\_

City NEBRASKA CITY State NE Zip Code 68410

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**NEBRASKA LIQUOR CONTROL COMMISSION**

MAR 23 2016

**DESCRIPTION AND DIAGRAM OF THE STRUCTURE TO BE LICENSED**

**READ CAREFULLY**

In the space provided or on an attachment draw the area to be licensed. This should include storage areas, basement, outdoor area, sales areas and areas where consumption or sales of alcohol will take place. If only a portion of the building is to be covered by the license, you must still include dimensions (length x width) of the licensed area as well as the dimensions of the entire building. No blue prints please. Be sure to indicate the direction north and number of floors of the building.

\*\*For on premises consumption liquor licenses minimum standards must be met by providing at least two restrooms

Building: length 130' x width 29' in feet

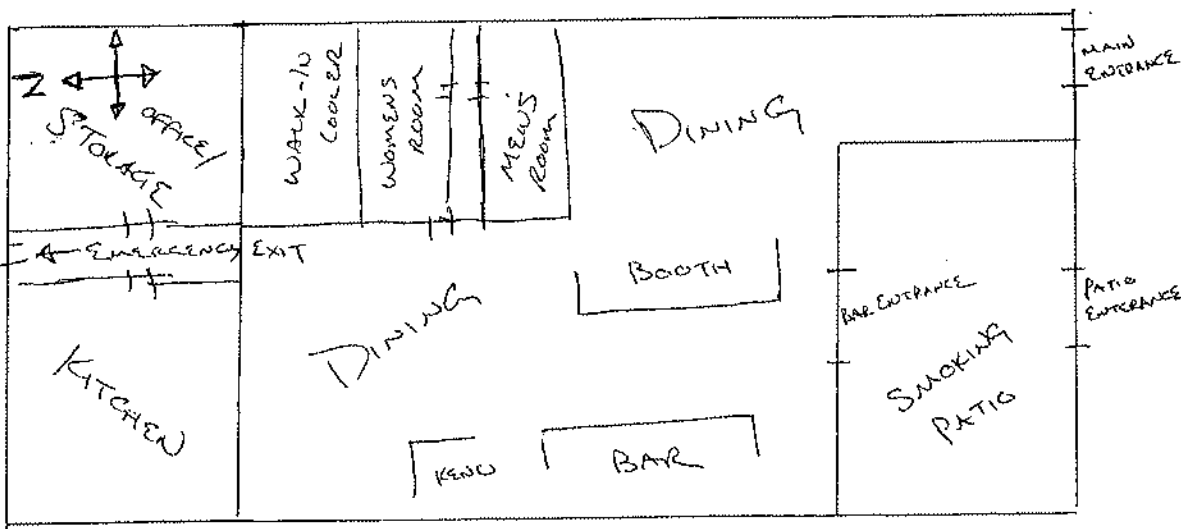
Is there a basement? Yes  No

If yes, length \_\_\_\_\_ x width \_\_\_\_\_ in feet

Is there an outdoor area? Yes  No

If yes, length 14' x width 24' in feet

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



FORM 100  
REV MAY 2015  
PAGE 4

Nebraska City

**APPLICANT INFORMATION**

**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

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MAR 23 2016  
**NEBRASKA LIQUOR CONTROL COMMISSION**

Name of Applicant	Date of Conviction (mm/yyyy)	Where Convicted (city & state)	Description of Charge	Disposition
JUSTIN CUNNINGHAM	03/2007	WAYNE, NE	D.U.I.	RECEIVED FULL COMM. HOME FROM PAIS DEC. 30, 2006 FOR BIRTHDAY 2107
JUSTIN CUNNINGHAM	09/2006	MURRAY, NE	SPEEDING	SPEEDING IN TOWN AS LIMIT 2107
JUSTIN CUNNINGHAM	11/2004	BENEVOLE, NE	FAILURE TO STOP/SLOW DOWN THROUGH STOP SIGN/SPEEDING	2107
THEODORE CUNNINGHAM	06/1981	DUNBAR, NE	SPEEDING	SPEEDING
THEODORE CUNNINGHAM	07/1983	NEBR. CITY, NE	FAILURE TO STOP	ROWLED THROUGH STOP SIGN
THEODORE CUNNINGHAM	08/1999	NEBR. CITY, NE	SPEEDING	SPEEDING

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

YES  NO

If yes, give name of business and liquor license number CASS COUNTY KENO, LLC dba KENOTEC 110652

- a) Submit a copy of the sales 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

**3. Was this premise licensed as liquor licensed business within the last two (2) years?**

YES  NO

If yes, give name and license number CASS COUNTY KENO, LLC dba KENOTEC 110652

**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)
  - b) TOP will only be accepted at a location that currently holds a valid liquor license.

Nebraska City

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NEBRASKA LIQUOR CONTROL COMMISSION

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) FIRST NEBRASKA BANK, NEBRASKA CITY, NEBRASKA

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)

THEODORE G. CUNNINGHAM 30% MEMBER OF LITTLE TEE'S FLIGHT GEAR, LLC

No silent partners

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. JOHN HASSITT / ADVANCED GAMING, KENO EQUIPMENT

8. Is premises to be licensed within 150 feet of a church, school, hospital, home for the aged or 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 (Neb. Rev. Stat. 53-177)(1)

9. Is anyone listed on this application a law enforcement officer?

YES  NO

If yes, list the person, the law enforcement agency involved and the person's exact duties.

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

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

FIRST NEBRASKA BANK, NEBRASKA CITY, NE 68410 a) THEODORE G. CUNNINGHAM

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.

NONE

Nebraska City

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)
JUSTIN CUNNINGHAM	10/2015	eTIPS on PREMISE 2.0
		<b>RECEIVED</b>
		MAR 23 2016
		<b>NEBRASKA LIQUOR CONTROL COMMISSION</b>

For list of NLCC certified training programs see: [www.lcc.ne.gov/traininginfo.htm](http://www.lcc.ne.gov/traininginfo.htm)

Experience:

Applicant Name/Job Title	Date of Employment	Name & Location of Business
JUSTIN CUNNINGHAM, MANAGER	8/06 → 11/13	THE MAX BAR + GRILL WAYNE, NE 68787
JUSTIN CUNNINGHAM, GEN. MGR	9/15 → CURRENT	KENOTES BAR + GRILL NEBRASKA CITY, NE 68410

13. If the property for which this license is sought 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 show title or lease held in name of applicant as owner or lessee in the individual(s) or corporate name for which the application is being filed.**

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

14. When do you intend to open for business? MARCH 17 2016 OR AS SOON AS POSSIBLE

15. What will be the main nature of business? RESTAURANT, BAR AND KENO

16. What are the anticipated hours of operation? SUNDAY → THURSDAY 11am - 11pm, FRIDAY + SATURDAY 11am - 1am

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

RESIDENCES FOR THE PAST 10 YEARS, APPLICANT AND SPOUSE MUST COMPLETE					
APPLICANT: CITY & STATE	YEAR		SPOUSE: CITY & STATE	YEAR	
	FROM	TO		FROM	TO
JUSTIN CUNNINGHAM: WAYNE, NE	2006	2013	MOLLY (KITSON) CUNNINGHAM	2006	2013
JUSTIN CUNNINGHAM: NEBR. CITY, NE	2013	CURRENT	MOLLY (KITSON) CUNNINGHAM	2013	CURRENT
THEODORE CUNNINGHAM: NEBR. CITY, NE	1982	CURRENT	DAVE (EDWIN) CUNNINGHAM	1958	CURRENT

If necessary attach a separate sheet.

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NEBRASKA LIQUOR CONTROL COMMISSION

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 request 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.

Must be signed in the presence of a notary public by applicant(s) and spouse(s). See guideline for required signatures <http://www.lcc.ne.gov/pdfs/New%20Application%20Guideline.pdf>

*[Handwritten Signature]*  
Signature of Applicant

*[Handwritten Signature]*  
Signature of Spouse

Justin Cunningham  
Print Name

Molly Cunningham  
Print Name

*[Handwritten Signature]*  
Signature of Applicant

*[Handwritten Signature]*  
Signature of Spouse

Theodore G. Cunningham  
Print Name

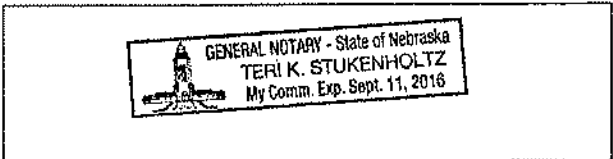
Diane K. Cunningham  
Print Name

ACKNOWLEDGEMENT

State of Nebraska  
County of Ohio  
3-17-16  
date

The foregoing instrument was acknowledged before me this  
by Justin, Molly, Diane, Theodore Cunningham  
name of person(s) acknowledged (individual(s) signing)

*[Handwritten Signature]*  
Notary Public signature



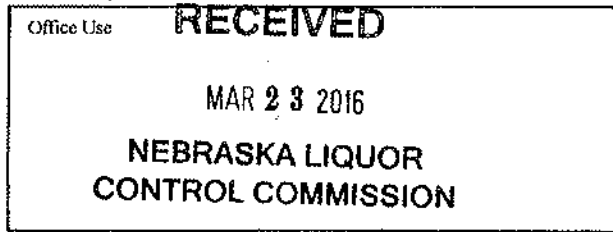
In compliance with the ADA, this application is available in other formats for persons with disabilities. A ten day advance period is required in writing to produce the alternate format.



Nebraska City

**APPLICATION FOR LIQUOR LICENSE  
LIMITED LIABILITY COMPANY (LLC)  
INSERT - FORM 3b**

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



All members including spouse(s), are required to adhere to the following requirements:

- 1) All members spouse(s) must be listed
- 2) Managing/Contact member and all members holding over 25% interest and their spouse(s) (if applicable) must submit fingerprints. See Form 147 for further information, this form MUST be included with your application.
- 3) 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 for License form 100 (even if a spousal affidavit has been submitted)

Attach copy of Articles of Organization (must show electronic stamp or barcode receipt by Secretary of States office)

Name of Registered Agent: JUSTIN CUNNINGHAM

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

LITTLE TED'S PUB + GRILL, LLC 010222233

LLC Address: 416 CENTRAL AVE

City: NEBRASKA CITY State: NE Zip Code: 68410

LLC Phone Number: (402) 209-3147 LLC Fax Number N/A

Name of Managing/Contact Member  
Name and information of contact member must be listed on following page

Last Name: CUNNINGHAM First Name: JUSTIN MI: D.

Home Address: 608 4TH AVE City: NEBRASKA CITY

State: NE Zip Code: 68410 Home Phone Number: (402) 209-3147

Signature of Managing/Contact Member

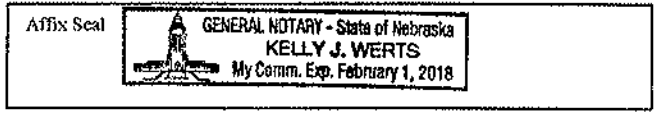
**ACKNOWLEDGEMENT**

State of Nebraska  
County of OTOE

The foregoing instrument was acknowledged before me this

Date 3/17/2016

by JUSTIN CUNNINGHAM  
name of person acknowledge



Nebraska City

List names of all members and their spouses (even if a spousal affidavit has been submitted)

Last Name: CUNNINGHAM First Name: JUSTIN MI: D

Social Security Number: [REDACTED] Date of Birth: 12/30/85 \*spouse affidavit

Spouse Full Name (indicate N/A if single): MOLLY (KITSON) CUNNINGHAM

Spouse Social Security Number: [REDACTED] Date of Birth: 3/15/88

Percentage of member ownership 70%

Last Name: CUNNINGHAM First Name: TRENDERS MI: G

Social Security Number: [REDACTED] Date of Birth: 11/25/1962

Spouse Full Name (indicate N/A if single): DANE (GENIE) CUNNINGHAM \*spouse affidavit

Spouse Social Security Number: [REDACTED] Date of Birth: 05/29/1958

Percentage of member ownership 30%

Last Name: \_\_\_\_\_ First Name: **RECEIVED**

Social Security Number: \_\_\_\_\_ Date of Birth: **MAR 23 2016**

Spouse Full Name (indicate N/A if single): \_\_\_\_\_ **NEBRASKA LIQUOR**

Spouse Social Security Number: \_\_\_\_\_ Date of Birth: **CONTROL COMMISSION**

Percentage of member ownership \_\_\_\_\_

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Spouse Full Name (indicate N/A if single): \_\_\_\_\_

Spouse Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Percentage of member ownership \_\_\_\_\_

Nebraska City

Is the applying Limited Liability Company controlled by another corporation/company?

YES

NO

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NEBRASKA LIQUOR  
CONTROL COMMISSION

If yes, provide the following:

- 1) Name of corporation \_\_\_\_\_
- 2) Supply an organizational chart of the controlling corporation named above
- 3) Controlling corporation **MUST** be registered with the Nebraska Secretary of State, copy of articles must be submitted with application §53-126

---

Indicate the company's tax year with the IRS (Example January through December)

Starting Date: ~~January 01~~ January 01 Ending Date: December 31

---

Is this a Non Profit Corporation?

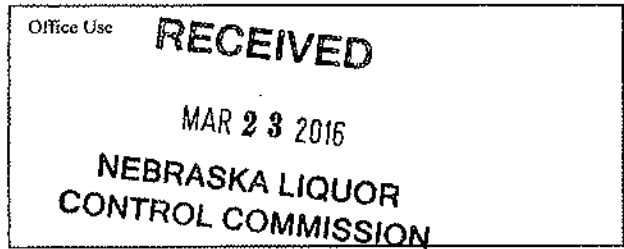
YES

NO

If yes, provide the Federal ID #. \_\_\_\_\_

**SPOUSAL AFFIDAVIT OF  
NON PARTICIPATION INSERT**

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



I acknowledge that I am the spouse of a liquor license holder. My signature below confirms that I will have not have any interest, directly or indirectly in the operation or profit of the business (§53-125(13)) of the Liquor Control Act. I will not tend bar, make sales, serve patrons, stock shelves, write checks, sign invoices or represent myself as the owner or in any way participate in the day to day operations of this business in any capacity. I understand my fingerprint will not be required; however, I am obligated to sign and disclose any information on all applications needed to process this application.

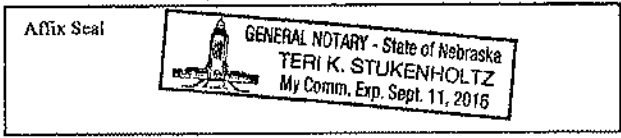
[Signature]  
Signature of spouse asking for waiver  
(Spouse of individual listed below)

Molly Cunningham  
Printed name of spouse asking for waiver

State of Nebraska  
County of Otoe  
3-15-16  
date

The foregoing instrument was acknowledged before me this  
by Molly Cunningham  
name of person acknowledged

[Signature]  
Notary Public signature



I acknowledge that I am the spouse of the above listed individual. I understand that my spouse and I are responsible for compliance with the conditions set out above. If it is determined that the above individual has violated (§53-125(13)) the Commission may cancel or revoke the liquor license.

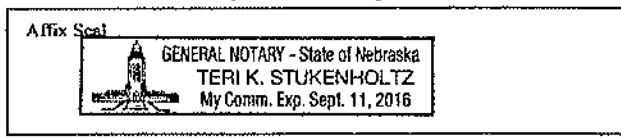
[Signature]  
Signature of individual involved with application  
(Spouse of individual listed above)

Justin Cunningham  
Printed name of applying individual

State of Nebraska  
County of Otoe  
3-15-16  
date

The foregoing instrument was acknowledged before me this  
by Justin Cunningham  
name of person acknowledged

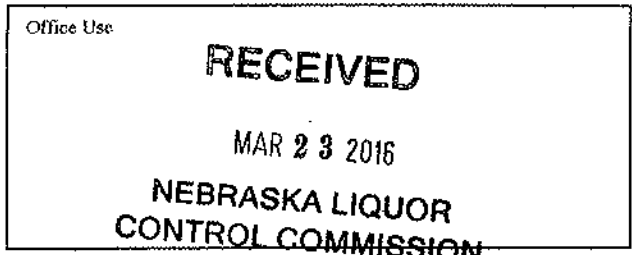
[Signature]  
Notary Public signature



In compliance with the ADA, this spousal affidavit of non participation is available in other formats for persons with disabilities. A ten day advance period is requested in writing to produce the alternate format.

**SPOUSAL AFFIDAVIT OF  
NON PARTICIPATION INSERT**

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



I acknowledge that I am the spouse of a liquor license holder. My signature below confirms that I will not have any interest, directly or indirectly in the operation or profit of the business (§53-125(13)) of the Liquor Control Act. I will not lend bar, make sales, serve patrons, stock shelves, write checks, sign invoices or represent myself as the owner or in any way participate in the day to day operations of this business in any capacity. I understand my fingerprint will not be required; however, I am obligated to sign and disclose any information on all applications needed to process this application.

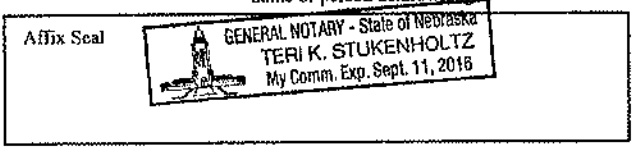
*Diane K Cunningham*  
Signature of spouse asking for waiver  
(Spouse of individual listed below)

DIANE CUNNINGHAM  
Printed name of spouse asking for waiver

State of Nebraska  
County of Otoe  
3-17-16  
date

The foregoing instrument was acknowledged before me this  
by Diane Cunningham  
name of person acknowledged

*Teri Stukenholtz*  
Notary Public signature



I acknowledge that I am the spouse of the above-listed individual. I understand that my spouse and I are responsible for compliance with the conditions set out above. If it is determined that the above individual has violated (§53-125(13)) the Commission may cancel or revoke the liquor license.

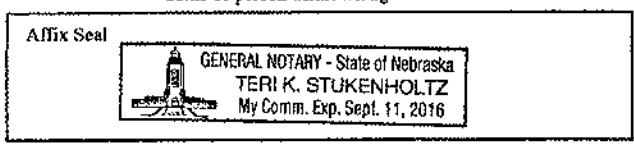
*Theodore G Cunningham*  
Signature of individual involved with application  
(Spouse of individual listed above)

THEODORE G CUNNINGHAM  
Printed name of applying individual

State of Nebraska  
County of Otoe  
3-15-16  
date

The foregoing instrument was acknowledged before me this  
by Theodore Cunningham  
name of person acknowledged

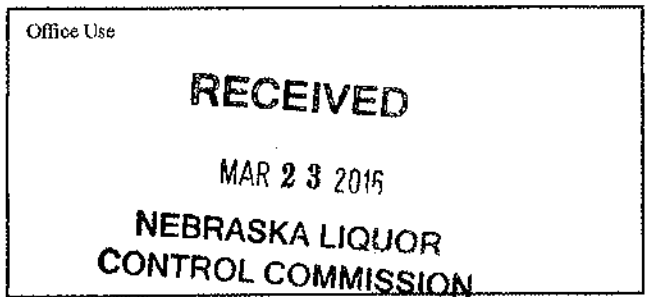
*Teri Stukenholtz*  
Notary Public signature



In compliance with the ADA, this spousal affidavit of non participation is available in other formats for persons with disabilities. A ten day advance period is requested in writing to produce the alternate format.

**MANAGER APPLICATION  
INSERT - FORM 3c**

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



**MUST BE:**

- ✓ **Citizen of the United States. Include copy of US birth certificate, naturalization paper or current US passport**
- ✓ **Nebraska resident. Include copy of voter registration in the State of Nebraska**
- ✓ **Fingerprinted. See Form 147 for further information, this form MUST be included with your application.**
- ✓ **21 years of age or older**

**Corporation/LLC information**

Name of Corporation/LLC: LITTLE TED'S PUB + GRILL, LLC

**Premise information**

Liquor License Number: \_\_\_\_\_ Class Type \_\_\_\_\_ (if new application leave blank)

Premise Trade Name/DBA: LITTLE TED'S PUB + GRILL

Premise Street Address: 416 CENTRAL AVE

City: NEBRASKA CITY County: OTTOE Zip Code: 68410

Premise Phone Number: (402) 713-0333

Email address: j\_dwight17@yahoo.com

The individual whose name is listed as a corporate officer or managing member as reported on insert form 3a or 3b or listed with the Commission. Click on this link to see authorized individuals. [http://www.lcc.ne.gov/license\\_search/licsearch.cgi](http://www.lcc.ne.gov/license_search/licsearch.cgi)

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

Nebraska City

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

\*Spouse

Last Name: CUNNINGHAM First Name: JUSTIN MI: D

Home Address (include PO Box if applicable): 608 4th Ave

City: NEBRASKA CITY County: OTOL Zip Code: 68410

Home Phone Number: (402) 209-3147 Business Phone Number: (402) 713-0333

Social Security Number: [REDACTED] Drivers License Number & State: H12830234 NE

Date Of Birth: 12/30/85 Place Of Birth: NEBRASKA CITY, NE

Email address: j\_dwight17@yahoo.com

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

MAR 23 2016

YES

NO

**NEBRASKA LIQUOR  
CONTROL COMMISSION**

Spouse's information

Spouses Last Name: CUNNINGHAM First Name: MARY MI: K

Social Security Number: [REDACTED] Drivers License Number & State: H12995546 NE

Date Of Birth: 3/15/1988 Place Of Birth: KANSAS CITY, MO

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

APPLICANT

SPOUSE

CITY & STATE	YEAR FROM	YEAR TO	CITY & STATE	YEAR FROM	YEAR TO
WAYNE, NE	2006	2013	WAYNE, NE	2006	2013
NEBRASKA CITY, NE	2013	Current	NEBRASKA CITY, NE	2013	Current

Nebraska City

**MANAGER'S LAST TWO EMPLOYERS**

YEAR FROM TO		NAME OF EMPLOYER	NAME OF SUPERVISOR	TELEPHONE NUMBER
2014	2015	LARSON MOTORS INC	LARS LARSON	(402) 873-8507
2015	CURRENT	KENOROE	JOHN HASSETT	(402) 618-0038

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

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

Has anyone who is a party to this application, or their spouse, EVER been convicted of or plead guilty to any charge. Charge means any charge alleging a felony, misdemeanor, violation of a federal or state law; a violation of a local law, ordinance or resolution. List the nature of the charge, where the charge occurred and the year and month of the conviction or plea. Also list any charges pending at the time of this application. If more than one party, please list charges by each individual's name.

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YES       NO

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

**NEBRASKA LIQUOR CONTROL COMMISSION**

Name of Applicant	Date of Conviction (mm/yyyy)	Where Convicted (City & State)	Description of Charge	Disposition
JUSTIN CUNNINGHAM	03/2007	WAYNE, NE	D. U. I.	RECEIVED DUI DEC 30, 2006 ON 21ST BIRTHDAY FAILURE TO
JUSTIN CUNNINGHAM	09/2006	MURRAY, NE	SPEEDING	LIMIT DROPPED FROM HIGHWAY TO CITY LIMITS
JUSTIN CUNNINGHAM	11/2004	BELLEVUE, NE	FAILURE TO STOP / SPEEDING	ROUNDED THROUGH STOP SIGN / SPEEDING
				SEVERAL TIMES SLOW FAST ENOUGH

**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



Nebraska City

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

\*NLCC Training Certificate Issued: 10/2015 Name on Certificate: JUSTIN CUNNINGHAM

Applicant Name	Date (mm/yyyy)	Name of program (attach copy of course completion certificate)
JUSTIN CUNNINGHAM	10/2015	<TIPS on PREMISE 2.0
		<b>RECEIVED</b>
		MAR 23 2016
		<b>NEBRASKA LIQUOR CONTROL COMMISSION</b>

\*For list of NLCC Certified Training Programs see [www.lcc.ne.gov/traininginfo.html](http://www.lcc.ne.gov/traininginfo.html)

Experience:

Applicant Name / Job Title	Date of Employment:	Name & Location of Business:
JUSTIN CUNNINGHAM / MANAGER	8/06 → 11/13	THE MAX BAR & GRILL, WAYNE, NE 68787
JUSTIN CUNNINGHAM / GEN MGR	9/15 → CURRENT	KENOTHE BAR & GRILL, NEBR. CITY, NE 68410

5. Have you enclosed Form 147 regarding fingerprints?

YES       NO

**PERSONAL OATH AND CONSENT OF INVESTIGATION**

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

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

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

[Signature] Signature of Manager Applicant      [Signature] Signature of Spouse

**RECEIVED**

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ACKNOWLEDGEMENT

State of Nebraska  
County of Otoe

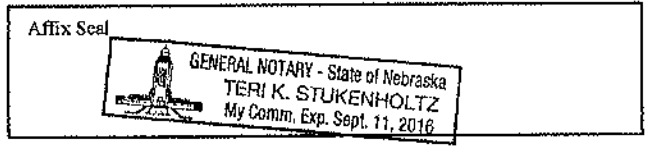
**NEBRASKA LIQUOR  
CONTROL COMMISSION**

The foregoing instrument was acknowledged before me this

3-15-16  
date

by Teri Stukenholtz  
name of person acknowledged

[Signature]  
Notary Public signature



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

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT ("Agreement") is entered into as of this day of March, 2016, by and between Cass County Keno, LLC, a Nebraska Corporation ("Seller") and Little Ted's Pub & Grill, LLC, a Nebraska Corporation ("Buyer").

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**RECITALS**

WHEREAS, Seller owns and operates a restaurant and bar in Nebraska City, Nebraska located at 416 Central Avenue, Nebraska City, Nebraska 68410 ("Business"). Seller is the sole owner of the Business.

WHEREAS, Buyer desires to purchase the Business from the Seller, and Seller desires to sell to the Buyer all of the assets used in connection with the operation of the Business, subject to the terms and conditions of this Agreement.

**AGREEMENT**

In consideration of the Recitals and the mutual agreements set forth herein, the Parties agree as follows:

**1. PURCHASE AND SALE OF ASSETS**

1. Purchased Assets. Subject to the terms and conditions of this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to sell, transfer and assign to Buyer the following assets ("Purchased Assets"):
  - a. All of Seller's equipment, machinery and other personal property listed on **Exhibit A** ("Equipment").
  - b. All of Seller's rights, title and interest in and to, to the extent directly related to and exclusively used in the Business, any and all goodwill relating thereto as of the date of Closing.
  - c. The perishable and nonperishable inventory, merchandise and store stock located on the Premises used exclusively in the Business as of the Closing Date and which Buyer and Seller agree to convey, ("Inventory").
  - d. All of Seller's other assets are excluded from the Purchased Assets, including Seller's cash on hand, near cash assets, and bank accounts.

2. Closing. The closing of the transaction contemplated by this

Nebraska City

Agreement (the 'Closing') shall take place on or before March 15, 2016, or on such other date, and at such time and place as the parties may agree. The term 'Closing Date' as used in this Agreement means the date on which the Closing occurs.

3. Deliveries at the Closing. At the Closing, Seller shall deliver to Buyer the Bill of Sale, duly executed by Seller, transferring to Buyer the Purchased Assets free and clear of all liens and encumbrances.

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2. CONSIDERATION FOR TRANSFER

1. Purchase Price. The Purchase Price is Twenty five thousand dollars and zero cents (\$25,000.00).
2. Payment of Purchase Price. The Buyer shall pay the purchase price to Seller at the time of closing.
3. Purchase Price Allocation. The Purchase Price shall be allocated among the Purchased Assets in the manner set forth on **Exhibit B** attached hereto unless applicable Internal Revenue Service rules and regulations (or any other applicable taxing authority) require a different allocation. Each party to this Agreement shall report and allocate the Purchase Price as so allocated and shall not take any position that is inconsistent with or contrary to such allocation, unless otherwise required by law.
4. Inventory Payment. In addition to the purchase price, Buyer shall pay to seller, at closing, the wholesale price of all portions of the Inventory which the parties agree will be conveyed. The parties shall conduct a review of the Inventory as near as is practical to Closing to determine the amount and value of the Inventory.

NEBRASKA LIQUOR  
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3. CLAIMS AND PROCEEDINGS

1. To the best of Seller's knowledge, there are no claims, complaints, proceedings, demands, liabilities, suits or actions against Seller or the Purchased Assets, domestic or foreign, before any court or by any governmental, administrative or regulatory agency or authority, or otherwise, and Seller has received no notice, inquiry or demand which could lead to litigation which would impose a lien upon the Purchased Assets.

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2. To the best of Seller's knowledge, there are no attachments, executions, assignments for the benefit of creditors or voluntary or involuntary proceedings in bankruptcy pending or threatened against the Seller which would impose a lien upon the Purchased Assets.

4. **CONDITIONS TO BUYER'S OBLIGATION TO CLOSE:** The obligation of Buyer to consummate the transaction contemplated by this Agreement shall be subject to the satisfaction and fulfillment, prior to and on the Closing Date, of the following express conditions precedent:

1. Buyer must purchase the building located at 416 Central Avenue, Nebraska City, Nebraska, 68410.
2. Representations and Warranties. The representations and warranties in this Agreement made by Seller shall be true and correct in all material respects as of the Closing Date.
3. Performance of Covenants and Obligations. Seller shall have materially performed and complied with all of Seller's covenants, conditions and obligations under this Agreement which are to be performed or complied with by Seller prior to or on the Closing Date. Seller shall have delivered to Buyer all documents referenced in this Agreement on or prior to the date of closing.
4. Due Diligence. Buyer shall have the right to conduct its due diligence prior to closing including, but not limited to examination of all business permits and licenses necessary for the Business, review of all obligations, contracts, and responsibilities of Seller, review of contracts, and the opportunity to discuss the transition and sale with key employees and suppliers.
5. Permits. Buyer's approval of all permits and licenses necessary to the business.
6. Employees. Buyer shall not have any responsibility or obligation of any kind or nature to any past or present employee of the Seller subsequent to the Closing Date. At Closing, Seller shall terminate all employees who may then be rehired by the Buyer at Buyer's discretion.

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NEBRASKA LIQUOR CONTROL COMMISSION

5. **CONDITIONS TO SELLER'S OBLIGATION TO CLOSE:** The obligation of Seller to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction and fulfillment, on the Closing Date, of the following express conditions precedent:

1. Representations and Warranties. The representations and warranties in this Agreement made by Buyer shall be true and correct in all material respects as of the Closing Date.
2. Performance of Covenants and Obligations. Buyer shall have materially performed and complied with all of its covenants, conditions and obligations under this Agreement which are to be performed or complied with by Buyer prior to or on the Closing Date.

6. **REPRESENTATIONS AND WARRANTIES OF SELLER:** In order to induce Buyer to enter into the transaction contemplated by this Agreement, Seller represents and warrants to Buyer as follows:

1. Title to the Purchased Assets. At Closing, Seller shall convey to Buyer marketable title to the Purchased Assets owned by Seller, free and clear of all liens, encumbrances and other security interests.
2. Conduct of Business Prior to Sale. The Seller will:
  - a. Continue to conduct the Business up to the date of Closing according to and conforming to all laws, rules and regulations of the respective City, State and Federal Governments;
  - b. Continue to manage and maintain the Business in the normal and regular manner; will not violate the terms of any lease, contract or agreement entered into in connection with the Business;
  - c. Not remove or cause to be removed any equipment or other items being sold to Buyer;
  - d. Not dispose of any part of the business;
  - e. Agree that all revenues and expenses of the business before Closing shall be that of the Seller;

- f. Cooperate with Buyer and his respective representatives before the Closing Date to ensure an orderly transition of the Business and the Purchased Assets from Seller to Buyer in an effort to minimize disruption of the business.

7. REPRESENTATIONS AND WARRANTIES OF BUYER:

1. Corporate Organization. Buyer is a corporation validly existing and in good standing under the laws of the State of Nebraska. Buyer is duly licensed and qualified to do business in and is in good standing under the laws of the state of Nebraska, where failing to do so would materially adversely affect the Business as now conducted.
2. Authorization. Buyer has all necessary corporate power and corporate authority to execute and deliver this Agreement and to enter into and perform the transactions contemplated by this Agreement in accordance with the terms and conditions set forth herein.

8. ADDITIONAL COVENANTS OF THE PARTIES:

1. Cooperation. Buyer and Seller shall cooperate with each other and shall cause their respective officers, employees, agents, advisors and representatives to cooperate with each other after the Closing Date to ensure an orderly transition of the Business and the Purchased Assets from Seller to Buyer and to minimize any disruption to the respective business of Seller and Buyer.
2. Post-Closing Cooperation. Seller shall comply with all reasonable requests of Buyer to assist with the transition of the Business to the Buyer for six months following the Closing Date.

9. SURVIVAL OF REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS; INDEMNIFICATION:

1. Sale As Is, Where Is. Buyer acknowledges and agrees that upon Closing, Seller shall sell and convey to Buyer and Buyer shall accept the Purchased Assets 'As is, Where is' except to the extent expressly provided otherwise in this Agreement or in any document executed by Seller and delivered to Buyer at Closing.

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NEBRASKA LIQUOR  
CONTROL COMMISSION

2. Survival. All representations and warranties, covenants and agreements made by the parties to this Agreement shall survive the Closing date for a period of one year.
3. Indemnification by Seller. Seller shall indemnify and hold harmless Buyer and its officers, directors, managers, employees, agents, affiliates, successors and assigns from and against any and all losses, claims, damages, liabilities, costs, expenses or deficiencies (including, but not limited to, reasonable attorneys' fees and other costs and expenses reasonably incident to proceedings or investigations or the defense or settlement of any claim or claims) (collectively, 'Losses'), incurred by or asserted against Buyer, or any of the Purchased Assets due to or resulting from any of the following: the inaccuracy or breach of any representation, warranty, covenant or agreement of Seller given in or pursuant to this Agreement, including any agreements executed at Closing.
4. Indemnification by Buyer. Notwithstanding the Closing, Buyer shall indemnify and hold harmless Seller from and against any and all Losses incurred by or asserted against Seller due to or resulting from any of the following: (a) the inaccuracy or breach of any representation, warranty, covenant or agreement of Buyer given in or pursuant to this Agreement, including any agreements executed at Closing; and (b) any incident, occurrence, condition or claim existing, arising or accruing on or after the Closing relating to the operation of the Business or use of the Purchased Assets on or after the Closing Date.

#### 10. MISCELLANEOUS.

1. Waiver. The failure of any party to insist, in any one or more instances, upon performance of any of the terms and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term, covenant or condition.
2. Benefit and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, assignees and beneficiaries in interest. This agreement may not be assigned by either party without the consent of the other party, such consent may not be reasonably



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NEBRASKA LIQUOR CONTROL COMMISSION

withheld.

3. Entire Agreement; Incorporation of Terms. This Agreement (together with the Exhibits attached hereto and the other documents delivered pursuant hereto), constitutes the entire agreement of the parties and supersedes all prior agreements and undertakings, both written and oral, between the parties, or any of them, with respect to the subject matter hereof. The introducing language and recitals set forth above are incorporated into this Agreement by reference.
4. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Nebraska and the venue for any dispute hereunder shall be proper only if brought in Sarpy County Nebraska.
5. Expenses. Each party shall pay its own expenses incurred in connection with the negotiation of this Agreement and the consummation of the transactions contemplated hereby.
6. Amendment and Severability. This Agreement may not be modified, amended or supplemented except by mutual written agreement of the parties hereto.
7. Counterparts. This Agreement may be executed by facsimile and in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument; provided, however, that all such counterparts shall contain the signatures of all the parties hereto.
8. Notices. Any and all notices, demands and communications provided for herein or made hereunder shall be given in writing and shall be deemed given to a party at the earlier of: (a) when actually delivered to such party, or (b) one day after being sent to such party by overnight courier and addressed to such party at the address designated below for such party (or to such other address for such party as such party may have substituted by notice pursuant to this section.

If to Seller

If to Buyer

Cass County Keno, LLC.  
John D. Hassett, Managing Member

Little Ted's Pub & Grill, LLC  
Justin Cunningham, Member

Nebraska City

10308 S. 23rd Street  
Bellevue, NE 68123

416 Central Avenue  
Nebraska City, NE 68410

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly  
executed and delivered as of the 4th day of March, 2016.

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BUYER: LITTLE TED'S PUB & GRILL

MAR 23 2016

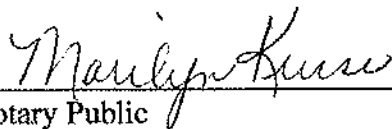
BY:

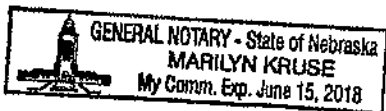
  
JUSTIN CUNNINGHAM, Member  
NEBRASKA LIQUOR CONTROL COMMISSION

STATE OF NEBRASKA )  
COUNTY OF Douglas ) ss.

NOW ON THIS 4 day of March, 2016, before me, a duly appointed and qualified  
Notary Public, personally appeared, Justin Cunningham, known to me to be the same and  
identical person who signed the above and foregoing Asset Purchase Agreement and  
acknowledged the execution to be his voluntary act and deed.

(SEAL)

  
Notary Public



Nebraska City

SELLER: CASS COUNTY KENO, LLC,

BY:

John Hassett  
JOHN D. HASSETT, Managing Member

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF Douglas )

NOW ON THIS 4 day of March, 2016, before me, a duly appointed and qualified Notary Public, personally appeared John D. Hassett, known to me to be the same and identical person who signed the above and foregoing Asset Purchase Agreement and acknowledged the execution to be his voluntary act and deed.

(SEAL)



Marilyn Kruse  
Notary Public

**EXHIBIT A  
EQUIPMENT LIST**

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**NEBRASKA LIQUOR  
CONTROL COMMISSION**

Kitchen	Bar/Server Station
Stove	3 Door Bottle Cooler
Hood	4 Well Sink
Fridge	Ice Bins (2)
Freezer 1	6' 4 Tap Keg Cooler
Freezer 2	48" 2 Tap Keg Cooler
Slicer	Small Fridge
Fryers (3)	Blender
Shelving	Speed Rails
5' Stainless Table	Hand Sink
Prep Table/Cooler	Small Wares
Dishwasher	Coffe Maker
6' Stainless Table	Hot Chocolate/Cappacino Machine
30" Stainless Table	Tea Machine
Heat Lamp	Ice Machine
Food Warmers (2)	
Hand Sink	
Microwaves (2)	
Toaster	
Smallwares	
	<b>Tables &amp; Chairs</b>
	3.5' Tables (12)
	3.5' Circle Tables (4)
<b>Electronics</b>	6' Tables (2)
Server iPads (4)	30" Hightop Tables (5)
Station Printers (3)	3.5' Hightop Tables (1)
Kitchen Printer	3.5' Custom High Tables (5)
Credit Card Terminals (4)	4' Booths (4)
ATM	40" Patio Tables (5)
55" TV (2)	Patio Chairs (20)
46" TV (18)	High Bar Chairs (50)
Projectors (3)	Table Chairs (80)
Projection Screens (3)	Stools (15)

Nebraska City

**EXHIBIT B**

**PURCHASE PRICE ALLOCATION**

<u>Purchased Asset</u>	<u>Amount</u>
Equipment	\$25,000.00
TOTAL	\$25,000.00

The above allocation shall be subject to any changes in the Purchase Price as a result of the application of Internal Revenue Service rules and regulations.

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**NEBRASKA LIQUOR  
CONTROL COMMISSION**

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**REAL ESTATE PURCHASE AGREEMENT**

NEBRASKA LIQUOR CONTROL COMMISSION

This Real Estate Purchase Agreement ("Agreement") is made on this 7 day of March 2016 by and between GJS Investments, LLC, a Nebraska Corporation ("Seller") and Little Ted's Pub & Grill, LLC, a Nebraska Corporation ("Buyer"). The Seller and Buyer may be referred to herein collectively as the Parties. The Parties agree as follows:

Buyer agrees to purchase the following property and Seller agrees to sell the following property:

Address: 416 Central Avenue, Nebraska City, Nebraska, 68410

Legal: E29 9 1/2 Lot 8 BLK 5 Nebraska City Proper; including all fixtures and equipment permanently attached to the Property provided Seller has marketable title in fee simple.

The Parties have entered into a separate Asset Purchase Agreement for the equipment in the bar operation.

The Parties shall use Nebraska Title Insurance Company located in Plattsmouth, Nebraska. The cost of title insurance issued for this sale shall be divided equally between the parties. The escrow agent's charges shall be divided equally between the parties.

Seller agrees to:

1. Furnish a title insurance policy insuring marketability and Buyer shall be furnished a current title insurance commitment by Seller at least 5 days before closing;
2. Convey to Buyer by warranty deed or only free and clear of all liens, encumbrances, special assessments levied or assessed, except none and subject to all easements and restrictions or covenants now of record;
3. Pay any assessments for items such as paving, curbing, sidewalk or utilities previously constructed, now under construction, or ordered to be constructed by public authority but not yet assessed.
4. Pay for the documentary stamp tax.

Buyer agrees to:

1. Pay the sum of One hundred fifty thousand dollars and zero / cents (\$150,000.00).
  1. An earnest money deposit of five hundred dollars and zero / cents (\$500.00) at this time as shown by the receipt herein. The check made payable to Nebraska Title. The earnest money deposit will be deposited in a trust account, to be held until the time of closing. The

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balance of One hundred forty nine thousand five hundred dollars and zero / cents (\$149,500.00) to be paid in cashier's check at time of delivery of deed, if financing required.

MAR 23 2016  
NEBRASKA LIQUOR CONTROL COMMISSION

2. The purchase agreement is contingent on the Buyer's ability to obtain financing.

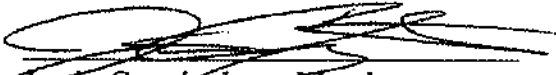
All consolidated real estate taxes for the year in which closing takes place shall be prorated, based on current assessment and tax rate, as of date of closing. Real estate taxes for prior years shall be paid by the Seller.

The closing of the sale shall be on or before March 15, 2016. Possession shall be on closing unless other arrangements are made.

Buyer requests a termite inspection of building at Buyer's expense. Should evidence of termites or wood destroying insects be found, the building shall be treated at Seller's expense. Buyer agrees to accept the treated property.

This offer is based upon Buyer's personal inspection or investigation of the Property. Buyer agrees to accept the Property in its present condition. Seller agrees to maintain the heating, air conditioning, water heater, sewer, plumbing, electrical system and any built in appliances in their present condition until deliver of possession. Seller represents that there are no latent defects in the Property of which the Seller is aware. This agreement shall in no manner be construed to convey the Property or to give any right of possession. Risk of loss or damage to the Property, prior to closing date, shall rescind this agreement, and the earnest money shall be refunded. If Buyer fails to consummate this purchase according to the terms of this Agreement, Seller may, at Seller's option, retain the earnest money as liquidated damages for such failure, or utilize such other legal remedies as are available to Seller by reason of such failure. Buyer and Seller acknowledge and understand that the closing of the sale will be handled by an escrow agent.

This offer is null and void if not accepted by the Seller on or before March 4, 2016 at 5:00 p.m. Buyer acknowledges receipt of a copy of this offer, which has not yet been signed by seller.

BUYER:   
Justin Cunningham, Member  
Little Ted's Pub & Grill, LLC  
608 4th Avenue  
Nebraska City, NE 68410  
402-209-3147

DATE: 3/4/16

NAMES FOR THE DEED: Little Ted's Pub & Grill, LLC

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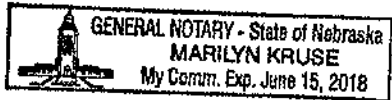
STATE OF NEBRASKA )  
 )ss.  
COUNTY OF Douglas )

MAR 23 2016

NEBRASKA LIQUOR  
CONTROL COMMISSION

NOW ON THIS 4 day of March, 2016, before me, a duly appointed and qualified Notary Public, personally appeared Justin Cunningham, Member of Little Ted's Pub & Grill, LLC, known to me to be the same and identical person who signed the above and foregoing Real Estate Purchase Agreement and acknowledged the execution to be his voluntary act and deed.

(SEAL)



Marilyn Kruse  
Notary Public

RECEIPT OF DEPOSIT AND ACCEPTANCE OF DEPOSIT

RECEIVED FROM Buyer the sum of five hundred dollars and zero / cents (\$500.00) by check to apply to the purchase price of the Property on terms and conditions as stated. In the event this offer is not accepted by the Seller of the Property within the time specified, or in the event there are any defects in the title which cannot be cured as specified above, the Deposit shall be refunded.

ACCEPTANCE by Seller on March 4, 2016 of the foregoing proposition on the terms stated and agrees to convey title to the Property, deliver possession and perform all the terms and conditions set forth.

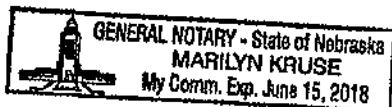
SELLER: John Hassett  
John D. Hassett, Member  
GJS Investments, LLC

DATE: 3/4/16

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF Douglas )

NOW ON THIS 4 day of March, 2016, before me, a duly appointed and qualified Notary Public, personally appeared John D. Hassett, Managing Member of GJS Investments, LLC, known to me to be the same and identical person who signed the above and foregoing Real Estate Purchase Agreement and acknowledged the execution to be his voluntary act and deed.

(SEAL)



Marilyn Kruse  
Notary Public



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AMENDMENT TO  
REAL ESTATE PURCHASE AGREEMENT MAR 23 2016

NEBRASKA LIQUOR  
CONTROL COMMISSION

This Amendment is made on this 15th day of March, 2016, by and between GJS Investments, LLC, a Nebraska Corporation ("Seller") and Little Ted's Pub & Grill, LLC, a Nebraska Corporation ("Buyer"). The Seller and Buyer may be referred to herein collectively as the Parties. The Parties agree as follows:

WHEREAS the Parties executed a Real Estate Purchase Agreement and Asset Purchase Agreement ("Agreement") on the 4th day of March, 2016.

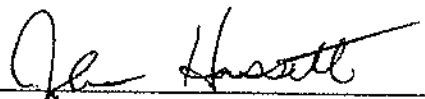
WHEREAS the Buyer requests an additional thirty (30) days to secure financing and the Seller agrees to accommodate the Buyer's request.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows;

1. Extension of time to secure financing. The Buyer shall be permitted an additional thirty (30) days to secure financing.
2. Except as set forth above, all terms and conditions of the Agreement shall remain in full force and effect.

The Buyer and Seller have executed this Amendment on the date set forth above.

BUYER:  DATE: 3/15/16  
Justin Cunningham, Member  
Little Ted's Pub & Grill, LLC

SELLER:  DATE: 3/15/16  
John D. Hassett, Member  
GJS Investments, LLC

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**CERTIFICATE OF ORGANIZATION OF**

**MAR 23 2016**

**LITTLE TED'S PUB & GRILL, LLC**

**NEBRASKA LIQUOR  
CONTROL COMMISSION**

The undersigned, acting as the organizer of a limited liability company under the Nebraska Uniform Limited Liability Company Act, adopts the following Certificate of Organization for such limited liability company.

1. NAME

The name of the organization is Little Ted's Pub & Grill, LLC

2. AGENT FOR SERVICE OF PROCESS

The name, street address and mailing address of the initial agent for service of process is: Justin D. Cunningham, 416 Central Ave, Nebraska City, NE 68410.

3. DESIGNATED OFFICE

The designated office of the organization shall be 416 Central Ave, Nebraska City, NE 68410.

4. PROFESSIONAL SERVICE

The limited liability company is not organized to provide professional services.

LITTLE TED'S PUB & GRILL, LLC



Justin D. Cunningham, Organizer

Kelly J. Werts  
FANKHAUSER, NELSEN, WERTS,  
ZISKEY & MERWIN, P.C., L.L.O.  
Attorneys at Law  
602 Central Ave  
Nebraska City, NE 68410

Nebraska City

**OPERATING AGREEMENT OF  
LITTLE TED'S PUB & GRILL, LLC  
A NEBRASKA LIMITED LIABILITY COMPANY**

THIS OPERATING AGREEMENT, dated as of March 3, 2016, by and among the undersigned parties, who by their execution of this Operating Agreement have become members of Little Ted's Pub & Grill, LLC, a Nebraska limited liability company (the "Company"), provides as follows:

**RECITALS:**

The undersigned parties have caused the Company to be organized as a limited liability company under the laws of the State of Nebraska effective as of the date hereof, and they wish to enter into this Operating Agreement to set forth the terms and conditions on which the management, business and financial affairs of the Company shall be conducted.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

**ARTICLE I**

**DEFINITIONS**

1.01 The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) "*Act*" shall mean the Nebraska Limited Liability Company Act, Neb. Rev. Stat. Section 21-2601 *et seq.*, as amended and in force from time to time.

(b) "*Articles*" shall mean the articles of organization of the Company, as amended and in force from time to time.

(c) "*Capital Account*" shall mean as of any given date the amount calculated and maintained by the Company for each Member as provided in Section 6.04 hereof.

(d) "*Capital Contribution*" shall mean any contribution to the capital of the Company by a Member in cash, property or services, or a binding obligation to contribute cash, property or services, whenever made. "*Initial Capital Contribution*" shall mean the initial contribution to the capital of the Company by a Member, as determined pursuant to Section 6.01 hereof.

(e) "*Code*" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

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NEBRASKA LIQUOR  
CONTROL COMMISSION

(f) "*Company*" shall refer to Little Ted's Pub & Grill, LLC

(g) "*Entity*" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or other association.

(h) "*Manager*" shall mean a manager of the Company, whose rights, powers and duties are specified in Article V hereof.

(i) "*Member*" shall mean each Person that is identified as an initial Member in Article III hereof or is admitted as a Member (either as a transferee of a Membership Interest or as an additional Member) as provided in Article VIII hereof. A Person shall cease to be a Member at such time as he no longer owns any Membership Interest.

(j) "*Membership Interest*" shall mean the ownership interest of a Member in the Company, which may be expressed as a percentage equal to such Member's Capital Account divided by the aggregate Capital Accounts of all Members. The Membership Interests may be recorded from time to time on a schedule attached to this Operating Agreement.

(k) "*Operating Agreement*" shall mean this Operating Agreement, as originally executed and as amended from time to time.

(l) "*Person*" shall mean any natural person or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so admits.

## ARTICLE II

### PURPOSES AND POWERS OF COMPANY

2.01 *Purposes.* The purposes of the Company shall be to:

(a) To engage in a business operation and to do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes hereinabove set forth;

(b) Acquire, own, buy, sell, invest in, trade, manage, finance, refinance, exchange, or otherwise dispose of stocks, securities, partnership interests, CDs, mutual funds, commodities, and any and all investments whatsoever, that the Manager may from time to time deem to be in the best interests of the Company;

(c) Own, acquire, manage, develop, operate, buy, sell, exchange, finance, refinance, and otherwise deal with real estate, personal property, and any type of business, as the Manager may from time to time deem to be in the best interests of the Company; and

(d) Engage in such other activities as are related or incidental to the foregoing purposes.

2.02 *Powers.* The Company shall have all powers and rights of a limited liability

Nebraska City

company organized under the Act, to the extent such powers and rights are not proscribed by the Articles.

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ARTICLE III

MAR 23 2016

NAMES OF INITIAL MEMBERS; PRINCIPAL OFFICE

NEBRASKA LIQUOR  
CONTROL COMMISSION

3.01 *Names of Members.* The names of the Members are as follows:

Justin D. Cunningham, 416 Central Avenue, Nebraska City, NE 68410  
Theodore G. Cunningham, PO Box 762, Nebraska City, NE 68410

3.02 *Principal Office.* The principal office of the Company shall initially be at 416 Central Avenue, Nebraska City, NE 68410. The principal office may be changed from time to time by the Managers.

ARTICLE IV

VOTING POWERS, MEETINGS, ETC. OF MEMBERS

4.01 *In General.* The Members shall not be entitled to participate in the day-to-day affairs and management of the Company, but instead, the Members' right to vote or otherwise participate with respect to matters relating to the Company shall be limited to those matters as to which the express terms of the Act, the Articles or this Operating Agreement vest in the Members the right to so vote or otherwise participate.

4.02 *Actions Requiring Approval of Members.*

(a) Notwithstanding any other provision of this Operating Agreement, the approval of the Members shall be required in order for any of the following actions to be taken on behalf of the Company:

(i) Amending the Articles in any manner that materially alters the preferences, privileges or relative rights of the Members.

(ii) Electing the Manager as provided in Article V hereof.

(iii) Taking any action that would make it impossible to carry on the ordinary business of the Company.

(iv) Confessing a judgment against the Company in excess of \$5,000.

(v) Filing or consenting to filing a petition for or against the Company under any federal or state bankruptcy, insolvency or reorganization act.

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(vi) Loaning Company funds in excess of \$25,000 or for a term in excess of 60 days to any Member.

(b) Unless the express terms of this Operating Agreement specifically provide otherwise, the affirmative vote of the Members holding a majority of the Membership Interests shall be necessary and sufficient in order to approve or consent to any of the matters set forth in Section 4.02(a) above or any other matters that require the approval or consent of the Members.

4.03 *Action by Members.* In exercising their rights as provided above, the Members shall act collectively through meetings and/or written consents as provided in this Article.

4.04 *Annual Meeting.* The annual meeting of the Members shall be held on the second Monday in July of each year at 7:00 p.m. or at such other time as shall be determined by the Manager for the purpose of the transaction of such business as may come properly before the meeting.

4.05 *Special Meetings.* Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Manager, and shall be called by the Manager at the request of any two Members, or such lesser number of Members as are Members of the Company.

4.06 *Place of Meeting.* The place of any meeting of the Members shall be the principal office of the Company, unless another place, either within or outside the State of Nebraska, is designated by the Manager.

4.07 *Notice of Meetings.* Written notice stating the place, day and hour of any meeting of the Members and, if a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 60 days before the date of the meeting, either personally or by mail, by or at the direction of the Manager, to each Member, unless the Act or the Articles require different notice.

4.08 *Conduct of Meetings.* All meetings of the Members shall be presided over by a chairperson of the meeting, who shall be a Manager, or a Member designated by the Manager. The chairperson of any meeting of the Members shall determine the order of business and the procedure at the meeting, including regulation of the manner of voting and the conduct of discussion, and shall appoint a secretary of such meeting to take minutes thereof.

4.09 *Participation by Telephone or Similar Communications.* Members may participate and hold a meeting by means of conference telephone or similar communications equipment by means of which all Members participating can hear and be heard, and such participation shall constitute attendance and presence in person at such meeting.

4.10 *Waiver of Notice.* When any notice of a meeting of the Members is required to be given, a waiver thereof in writing signed by a Member entitled to such notice, whether given before, at, or after the time of the meeting as stated in such notice, shall be equivalent to the proper giving of such notice.

4.11 *Action by Written Consent.* Any action required or permitted to be taken at a

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meeting of Members may be taken without a meeting if one or more written consents to such action are signed by the Members who are entitled to vote on the matter set forth in the consents and who constitute the requisite number or percentage of such Members necessary for adoption or approval of such matter on behalf of the Company. By way of example and not limitation, the Members holding a majority of the Membership Interests may take action as to any matter specified in Section 4.02 hereof by signing one or more written consents approving such action, without obtaining signed written consents from any other Members. Such consent or consents shall be filed with the minutes of the meetings of the Members. Action taken under this Section shall be effective when the requisite Members have signed the consent or consents, unless the consent or consents specify a different effective date.

ARTICLE V

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MANAGER

MAR 23 2016

5.01 *Powers of Manager*. Except as expressly provided otherwise in the Act, the Articles or this Operating Agreement, the powers of the Company shall be exercised by the authority of, and the business and affairs of the Company shall be managed by, one or more Managers. The powers so exercised shall include but not be limited to the following:

**NEBRASKA LIQUOR CONTROL COMMISSION**

(a) Entering into, making and performing contracts, agreements and other undertakings binding the Company that may be necessary, appropriate or advisable in furtherance of the purposes of the Company.

(b) Opening and maintaining bank accounts, investment accounts and other arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements. Company funds shall not be commingled with funds from other sources and shall be used solely for the business of the Company.

(c) Collecting funds due to the Company.

(d) Acquiring, utilizing for the Company's purposes, maintaining and disposing of any assets of the Company.

(e) To the extent that funds of the Company are available therefor, paying debts and obligations of the Company.

(f) Borrowing money or otherwise committing the credit of the Company for Company activities, and voluntarily prepaying or extending any such borrowings.

(g) Employing from time to time persons, firms or corporations for the operation and management of various aspects of the Company's business, including, without limitation, managing agents, contractors, subcontractors, architects, engineers, laborers, suppliers, accountants and attorneys on such terms and for such compensation as the Manager shall determine, notwithstanding the fact that the Manager or any Member may have a financial interest in such firms or corporations.

(h) Making elections available to the Company under the Code.

Nebraska City

(i) Registering the Company as a tax shelter with the Secretary of the Treasury and furnishing to such Secretary lists of investors in the Company, if required pursuant to applicable provisions of the Code.

(j) Obtaining general liability, property and other insurance for the Company, as the Manager deem proper.

(k) Taking such actions as may be directed by the Members in furtherance of their approval of any matter set forth in Section 4.02 hereof.

(l) Doing and performing all such things and executing, acknowledging and delivering any and all such instruments as may be in furtherance of the Company's purposes and necessary and appropriate to the conduct of its business.

*5.02 Election, Etc. of Manager.*

(a) The Members hereby unanimously elect Justin D. Cunningham as the Manager of the Company.

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NEBRASKA LIQUOR  
CONTROL COMMISSION

(b) [Subject to Section 5.03] the Members shall elect one or more Persons as Manager at each annual meeting of the Company to serve until the next annual meeting of the Company and until their respective successors are duly elected and qualified. In addition, if any Person resigns or otherwise vacates the office of Manager, the Members shall elect a replacement Manager to serve the remaining term of such office, unless one or more other Persons then serve as Manager and the Members determine not to fill such vacancy. A Person may be removed as a Manager by the Members with or without cause at any time. A Manager may, but shall not be required to, be elected from among the Members. A Manager may be a natural person or an Entity. Notwithstanding any of the foregoing provisions, the rights of the Members to elect and remove Manager shall be subject to the restrictions set forth in Section 5.03 hereof.

*5.03 Action by Two or More Manager.* Unless otherwise expressly provided by the Act, the Articles, or the terms of this Operating Agreement, the vote, approval or consent of any Manager shall be necessary and sufficient for the Managers to take any action on behalf of the Company that a Manager is authorized to take pursuant to the Act, the Articles or this Operating Agreement.

*5.04 Execution of Documents and Other Actions.* The Managers, if more than one, may delegate to one or more of their number the authority to execute any documents or take any other actions deemed necessary or desirable in furtherance of any action that they have authorized on behalf of the Company as provided in Section 5.04 hereof.

*5.05 Single Manager.* If at any time there is only one Person serving as a Manager, such Manager shall be entitled to exercise all powers of the Manager set forth in this Section, and all references in this Section and otherwise in this Operating Agreement to "Manager" shall be deemed to refer to such single Manager.

*5.06 Reliance by Other Persons.* Any Person dealing with the Company, other than a Member, may rely on the authority of a particular Manager or Managers in taking any action in the name of the Company, if such Manager or Managers provide to such Person a copy of the



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NEBRASKA LIQUOR CONTROL COMMISSION

applicable provision of this Operating Agreement and/or the resolution of Managers or Members granting such authority, certified in writing by such Manager or Managers to be genuine and correct and not to have been revoked, superseded or otherwise amended.

5.07 *Manager's Expenses and Fees.* A Manager shall be entitled, but not required, to receive a reasonable salary for services rendered on behalf of the Company or in his capacity as a Manager. The amount of such salary shall be determined by the Manager and consented to by the Members, which consent shall not be unreasonably withheld. The Company shall reimburse any Manager for reasonable out-of-pocket expenses that were or are incurred by the Manager on behalf of the Company with respect to the start-up or operation of the Company, the on-going conduct of the Company's business, or the dissolution and winding up of the Company and its business.

5.08 *Competition.* During the existence of the Company, the Manager shall devote such time to the business of the Company as may reasonably be required to conduct its business in an efficient and profitable manner. The Manager, for their own account and for the account of others, may engage in business ventures, including the acquisition of real estate properties or interests therein and the development, operation, management and/or syndication of real estate properties or interests therein, which may compete with the business of the Company. Each Member hereby expressly consents to the continued and future ownership and operation by the other Members or the Manager of such properties and waives any claim for damages or otherwise, or rights to participate therein or with respect to the operation and profits or losses thereof.

5.09 *Indemnification.* The Company shall indemnify each Manager, whether serving the Company or, at its request, any other Entity, to the full extent permitted by the Act. The foregoing rights of indemnification shall not be exclusive of any other rights to which the Manager may be entitled. The Manager may, upon the approval of the Members, take such action as is necessary to carry out these indemnification provisions and may adopt, approve and amend from time to time such resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law.

5.10 *Liability of Manager.* So long as the Manager act in good faith with respect to the conduct of the business and affairs of the Company, no Manager shall be liable or accountable to the Company or to any of the Members, in damages or otherwise, for any error of judgment, for any mistake of fact or of law, or for any other act or thing that he may do or refrain from doing in connection with the business and affairs of the Company, except for willful misconduct or gross negligence or breach of fiduciary duty, and further except for breaches of contractual obligations or agreements between the Manager and the Company.

ARTICLE VI

CONTRIBUTIONS TO THE COMPANY AND DISTRIBUTIONS

6.01 *Initial Capital Contributions.* Each Member, upon the execution of this Operating Agreement, shall make as an initial Capital Contribution the amount shown on Exhibit A, which is attached hereto. The initial Capital Contribution to be made by any Person who hereafter is admitted as a Member and acquires his Membership Interest from the Company shall be

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NEBRASKA LIQUOR  
CONTROL COMMISSION

determined by the Members.

6.02 *Additional Capital Contributions.* No Member shall be required to make any Capital Contribution in addition to his Initial Capital Contribution. Otherwise, the Members may make additional Capital Contributions to the Company only if such additional Capital Contributions are made pro rata by all the Members or all the Members consent in writing to any non-pro rata contribution. The fair market value of any property other than cash or widely traded securities to be contributed as an additional Capital Contribution shall be (a) agreed upon by the contributing Member and a majority in interest of the Members before contribution, or (b) determined by a disinterested appraiser selected by the Manager.

6.03 *Interests and Return of Capital Contribution.* No Member shall receive any interest on his Capital Contribution. Except as otherwise specifically provided for herein, the Members shall not be allowed to withdraw or have refunded any Capital Contribution.

6.04 *Capital Accounts.* Separate Capital Accounts shall be maintained for each Member in accordance with the following provisions:

(a) To each Member's Capital Account there shall be credited the fair market value of such Member's Initial Capital Contribution and any additional Capital Contributions, such Member's distributive share of profits, and the amount of any Company liabilities that are assumed by such Member or that are secured by any property distributed by the Company to such Member.

(b) To each Member's Capital Account there shall be debited the amount of cash and the fair market value of any Property distributed to such Member pursuant to any provision of this Operating Agreement, such Member's distributive share of losses, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

(c) The Capital Account shall also include a pro rata share of the fair market value of any property contributed by a person who is not a Member, such value to be the same value reported for federal gift tax purposes if a gift tax return is filed, and if not, the value in the case of real property shall be determined by an independent appraiser actively engaged in appraisal work in the area where such property is located and selected by the Manager, and otherwise by the certified public accountant or accountants then serving the Company.

(d) If any Member makes a non-pro rata Capital Contribution to the Company or the Company makes a non-pro rata distribution to any Member, the Capital Account of each Member shall be adjusted to reflect the then fair market value of the assets held by the Company immediately before the Capital Contribution or distribution.

6.05 *Loans to the Company.* If the Company has insufficient funds to meet its obligations as they come due and to carry out its routine, day-to-day affairs, then, in lieu of obtaining required funds from third parties or selling its assets to provide required funds, the Company may, but shall not be required to, borrow necessary funds from one or more of the Members as designated by the Manager; provided that the terms of such borrowing shall be commercially reasonable and the Company shall not pledge its assets to secure such borrowing.

Nebraska City

6.06 *Effect of Sale or Exchange.* In the event of a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee in proportion to the percentage of the transferor's interest transferred.

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6.07 *Distributions.* All distributions of cash or other property (except upon the Company's dissolution, which shall be governed by the applicable provisions of Article IX hereof) shall be made to the Members in proportion to their respective Membership Interests. All distributions of cash or property shall be made at such time and in such amounts as determined by the Manager. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section.

NEBRASKA LIQUOR  
CONTROL COMMISSION

6.08 *Allocations.* Except as otherwise provided in Section 6.09 hereof, all items of income, gain, loss, deduction and credit, whether resulting from the Company's operations or in connection with its dissolution, shall be allocated to the Members for federal, state and local income tax purposes in proportion to their respective Membership Interests.

6.09 *Allocation with Respect to Property.* If, at any time during the Company's existence, any Member contributes to the Company property with an adjusted basis to the contributing Member which is more or less than the agreed fair market value and such property is accepted by the Company at the time of its contribution, the taxable income, gain, loss, deductions and credits with respect to such contributed property for tax purposes only (but not for purposes of calculating the Members' respective Capital Accounts) shall be shared among the Members so as to take account of the variation between the basis of the property to the Company and its agreed fair market value at the time of contribution, pursuant to Section 704(c) of the Code.

ARTICLE VII

RECORDS, REPORTS, ETC.

7.01 *Records.* The Company shall maintain and make available to the Members its records to the extent provided in the Act.

7.02 *Financial and Operating Statements and Tax Returns.* Within seventy-five (75) days from the close of each fiscal year of the Company, the Manager shall cause to be delivered to each Member a statement setting forth such Member's allocable share of all tax items of the Company for such year, and all such other information as may be required to enable each Member to prepare his federal, state and local income tax returns in accordance with all then applicable laws, rules and regulations. The Manager also shall cause to be prepared and filed all federal, state and local income tax returns required of the Company for each fiscal year.

7.03 *Banking.* The funds of the Company shall be kept in one or more separate bank accounts in the name of the Company in such banks or other federally insured depositories as may be designated by the Manager, or shall otherwise be invested in the name of the Company in such manner and upon such terms and conditions as may be designated by the Manager. All withdrawals from any such bank accounts or investments established by the Manager hereunder shall be made on such signature or signatures as may be authorized from time to time by the

Nebraska City

Manager. Any account opened by the Manager for the Company shall not be commingled with other funds of the Manager or interested persons.

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7.04 *Power of Attorney.*

MAR 23 2016

(a) Each Member does hereby irrevocably constitute and appoint the Manager serving in office from time to time, and each of them, as such Member's true and lawful attorney, in his name, place and stead, to make, execute, consent to, swear to, acknowledge, record and file from time to time any and all of the following:

NEBRASKA LIQUOR  
CONTROL COMMISSION

(i) Any certificate or other instrument that may be required to be filed by the Company or the Members under the laws of the State of Nebraska or under the applicable laws of any other jurisdiction in order to conduct business in any such jurisdiction, to the extent the Manager deem any such filing to be necessary or desirable.

(ii) Any amendment to the Articles adopted as provided in this Operating Agreement.

(iii) Any certificates or other instruments that may be required to effectuate the dissolution and termination of the Company pursuant to the provisions of this Operating Agreement.

(b) It is expressly understood, intended and agreed by each Member for himself, his successors and assigns that the grant of the power of attorney to the Manager pursuant to subsection (a) is coupled with an interest, is irrevocable, and shall survive the death or legal incompetency of the Member or such assignment of his Membership Interest.

(c) One of the ways that the aforementioned power of attorney may be exercised is by listing the names of the Members and having the signature of the Manager or Manager, as attorney-in-fact, appear with the notation that the signatory is signing as attorney-in-fact of the listed Members.

ARTICLE VIII

ASSIGNMENT; RESIGNATION

8.01 *Assignment Generally.* Except as provided in Sections 8.02, 8.03, and 8.04 of this Operating Agreement, each Member hereby covenants and agrees that he will not sell, assign, transfer, mortgage, pledge, encumber, hypothecate or otherwise dispose of all or any part of his interest in the Company to any person, firm, corporation, trust or other entity without first offering in writing to sell such interest to the Company. The Company shall have the right to accept the offer at any time during the 30 days following the date on which the written offer is delivered to the Company. The consent of all the Manager shall be required to authorize the exercise of such option by the Company. If the Company shall fail to accept the offer within the 30 day period, such interest may during the following 60 days be disposed of free of the restrictions imposed by this Operating Agreement; provided, however, that the purchase price

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for such interest shall not be less and the terms of purchase for such interest shall not be more favorable than the purchase price and terms of purchase that would have been applicable to the Company had the Company purchased the interest. Any interest not so disposed of within the 60-day period shall thereafter remain subject to the terms of this Operating Agreement. Notwithstanding the preceding sentences, no assignee of a Membership Interest shall become a Member of the Company except upon the consent of a majority of the non-assigning Manager; or, if there are no non-assigning Manager, upon the consent of a majority of the non-assigning Members.

*8.02 Gift to Family Member.* Notwithstanding Section 8.01, a Member shall not be required to offer to sell his Membership Interest to the Company prior to transferring his Membership Interest to his spouse or any of his descendants, or to a trust the sole beneficiaries of which are one or more of his spouse and his descendants, provided that such transfer is by way of inter vivos gift or testamentary or intestate succession. Notwithstanding the preceding sentence, no assignee of a Membership Interest by way of inter vivos gift shall become a Member of the Company except upon the consent of a majority of the non-assigning Manager; or, if there are no non-assigning Manager, upon the consent of a majority of the non-assigning Members.

*8.03 Transfers from Custodianships.* Notwithstanding Section 8.01, any Membership Interest that is held by a custodian for a minor under the laws of the State of Nebraska or any other state shall be fully transferrable and assignable to the minor, without an offer being made to the Company, when the minor reaches the age of termination of such custodianship under the applicable statute.

*8.04 Purchase of Certain Membership Interests.*

(a) If an Option Event (as defined below) occurs with respect to any Member (an "Option Member"), the Company shall have the option to purchase the Option Member's Membership Interest upon the terms and conditions set forth in this Section 8.04. For purposes of the foregoing, an "Option Event" shall mean (i) the death of a Member, (ii) the inability of a Member to pay his debts generally as they become due, (iii) any assignment by a Member for the benefit of his creditors, (iv) the filing by a Member of a voluntary petition in bankruptcy or similar insolvency proceedings, or (v) the filing against a Member of an involuntary petition in bankruptcy or similar insolvency proceeding that is not dismissed within ninety (90) days thereafter. The term "Option Member" shall include an Option Member's personal representative or trustee in bankruptcy, to the extent applicable.

(b) Upon any Option Event occurring to an Option Member, the Option Member shall deliver written notice of the occurrence of such Option Event to the Company. The Company shall have the option, but not the obligation, to purchase the Option Member's Membership Interest at any time during the sixty (60) day period immediately following the date on which it receives notice of the occurrence of the Option Event. Such option shall entitle the Company to purchase such Membership Interest for the fair market value of such Membership Interest. The fair market value of the interest shall be set by the Members at each annual meeting or a special meeting called for that purpose. The consent of all the Managers shall be required to authorize the exercise of such option by the Company. Such option must be exercised by delivery of a written notice from the Company to the Option Member during the aforementioned period. Upon delivery of such notice the exercise of such option shall be final and binding on the Company

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and the Option Member.

(c) If the foregoing option is not exercised, the business of the Company shall continue, and the Option Member shall retain his Membership Interest.

(d) If the option to purchase the Option Member's Membership Interest is exercised by the Company, then not later than thirty (30) days after the date on which the appraisal described above is complete (the "Appraisal Date"), the Company shall make a distribution of property (which may be cash or other assets of the Company) to the Option Member with a value equal in amount to the fair market value of the Option Member's Membership Interest; provided, however, that at the election of the Company such distribution to the Option Member may be made in five (5) equal annual installments, the first of which shall be made on the thirtieth (30th) day after the Appraisal Date and one of which shall be made on the same date in each of the four years thereafter, provided, further, however, that notwithstanding an election by the Company to make the distribution to the Option Member in five equal annual installments, the Company may accelerate without penalty all of such installments at any time or any part of such installment at any time. If the Company elects to make distributions to the Option Member in five equal annual installments as provided herein, the Company, in addition to such annual installments, shall pay the Option Member additional amounts computed as if the Option Member were entitled to interest on the undistributed amount of the total distribution to which the Option Member is entitled hereunder at an annual rate equal to the annual Federal Mid-Term Rate in effect under Section 1274(d) of the Code, as determined on the 30th day after the Appraisal Date, which additional amounts, computed like interest, shall be due and payable on the same dates as the annual installments of the distribution payable to the Option Member hereunder. Any unpaid capital contributions of the Option Member and any damages occurring to the Company as a result of the Option Event shall be taken into account in determining the net amount due the Option Member at the closing, and any excess of such unpaid capital contributions or damages over the amount due at closing shall be netted against subsequent installment payments as they become due.

(e) If at a time when the Company has an option to purchase an Option Member's Membership Interest, it is prohibited from purchasing all or any portion of such Membership Interest pursuant to the Act or any loan agreement or similar restrictive agreement, the Option Member and the remaining Members shall, to the extent permitted by law, take appropriate action to adjust the value of the Company's assets from book value to a fair valuation based on accounting practices and principles that are reasonable under the circumstances in order to permit the Company to purchase such Membership Interest. If the Company becomes obligated to purchase an Option Member's Membership Interest under this Section and the above action cannot be taken or does not create sufficient value to permit the Company to do so, the Company shall be obligated to purchase the portion of the Membership Interest it is permitted to purchase.

(f) In order to fund any obligations under this Operating Agreement, the Company or the Members may maintain such life insurance policies on the lives of one or more Members as the Members determine from time to time to be desirable.

8.05 *Absolute Prohibition.* Notwithstanding any other provision in this Article VIII, the Membership Interest of a Member, in whole or in part, or any rights to distributions therefrom, shall not be sold, exchanged, conveyed, assigned, pledged, hypothecated, subjected to a security interest or otherwise transferred or encumbered, if, as a result thereof, the Company would be

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terminated for federal income tax purposes in the opinion of counsel for the Company or such action would result in a violation of federal or state securities laws in the opinion of counsel for the Company.

8.06 *Members Acquiring Membership Interest from Company.* No Person, other than the initial Members, who acquires a Membership Interest from the Company shall be admitted as a Member of the Company, except upon the unanimous consent of the Members.

8.07 *Resignation.* Any Member may elect to resign from the Company and to sell his entire interest in the Company to the Company at any time by serving written notice of such election upon the Company. Such notice shall set forth the date upon which such resignation shall become effective, which shall be not less than sixty (60) days and not more than ninety (90) days from the date of such notice. The purchase price for a Resigning Member's interest in the Company shall be One Dollar (\$1.00).

8.08 *Effect of Prohibited Action.* Any transfer or other action in violation of this Article shall be void ab initio and of no force or effect whatsoever.

8.09 *Rights of an Assignee.* If an assignee of a Membership Interest is not admitted as a Member because of the failure to satisfy the requirements of Section 8.01, 8.02 or 8.05 hereof, such assignee shall nevertheless be entitled to receive such distributions from the Company as the assigning Member would have been entitled to receive under Sections 6.07 and 9.04(c) of this Operating Agreement with respect to such Membership Interest had the assigning Member retained such Membership Interest.

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ARTICLE IX

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LLC CERTIFICATES

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9.01 *Issuance of LLC Certificates.* Each Member's LLC Interest shall be represented by a LLC Certificate. Upon the execution of this Agreement and the payment of the Capital Contributions by the Member, the Members shall have the LLC issue one or more LLC Certificates in the name of each Member certifying that the named Member is the record holder of the LLC Interests.

9.02 *Transfer of LLC Certificates.* An LLC Interest which is transferred in accordance with the terms of this Agreement shall be transferable on the books of the LLC. However, the transfer of an LLC Interest shall not be entered until the previously issued LLC Certificate representing such LLC Interest is surrendered to the LLC and canceled and a replacement LLC Certificate is issued to the assignee of such LLC Interest.

9.03 *Lost Stolen or Destroyed Certificates.* The LLC shall issue a new LLC Certificate in place of any LLC Certificate previously issued if the holder of the LLC Certificate satisfactorily proves that a previously issued LLC Certificate has been lost, destroyed, or stolen. If a Member fails to notify the LLC within a reasonable time after it has notice of the loss, destruction, or theft of an LLC Certificate, and a transfer of the LLC Interest represented by the LLC Certificate is registered before receiving such notification, the LLC shall have no liability with respect to any claim against the LLC for such transfer or for a new LLC Certificate.

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ARTICLE X

DISSOLUTION AND TERMINATION

10.01 *Events of Dissolution.* The Company shall be dissolved upon the first to occur of the following:

(a) Any event that under the Act or the Articles requires dissolution of the Company, provided that the death, resignation, retirement, expulsion, bankruptcy, or dissolution of a member or occurrence of any other event that terminates the continued membership of a member in the Company shall not cause the dissolution of the Company;

(b) The unanimous written consent of the Members to the dissolution of the Company;  
and

(c) The entry of a decree of judicial dissolution of the Company as provided in the Act.

10.02 *Liquidation.* Upon the dissolution of the Company, it shall wind up its affairs and distribute its assets in accordance with the Act by either or a combination of both of the following methods as the Members shall determine:

(a) Selling the Company's assets and, after the payment of Company liabilities, distributing the net proceeds therefrom to the Members in proportion to their Membership Interests and in satisfaction thereof; and/or

(b) Distributing the Company's assets to the Members in kind with each Member accepting an undivided interest in the Company's assets, subject to its liabilities, in satisfaction of his Membership Interest. The interest conveyed to each Member in such assets shall constitute a percentage of the entire interests in such assets equal to such Member's Membership Interest.

10.03 *Orderly Liquidation.* A reasonable time as determined by the Manager not to exceed eighteen (18) months shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to the creditors so as to minimize any losses attendant upon dissolution.

10.04 *Distributions.* Upon liquidation, the Company assets (including any cash on hand) shall be distributed in the following order and in accordance with the following priorities:

(a) First, to the payment of the debts and liabilities of the Company and the expenses of liquidation, including a sales commission to the selling agent, if any; then

(b) Second, to the setting up of any reserves that the Manager (or the person or persons carrying out the liquidation) deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. At the expiration of such period as the Manager (or the person or persons carrying out the liquidation) shall deem advisable, but in no event to exceed 18 months, the Company shall distribute the balance thereof in the manner provided in the following subsection; then

(c) Third, to the Members in proportion to their respective Membership Interests.



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(d) In the event of a distribution in liquidation of the Company's property in kind, the fair market value of such property shall be determined by a qualified and disinterested appraiser, selected by the Manager (or the person or persons carrying out the liquidation), and each Member shall receive an undivided interest in such property equal to the portion of the proceeds to which he would be entitled under the immediately preceding subsection if such property were sold at such fair market value.

10.05 *Taxable Gain or Loss.* Taxable income, gain and loss from the sale or distribution of Company property incurred upon or during liquidation and termination of the Company shall be allocated to the Members as provided in Section 6.08 above.

10.06 *No Recourse Against Members.* Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of his Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of each Member, such Member shall have no recourse against any other Member.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.01 *Notices.* Whenever, under the provisions of the Act or other law, the Articles or this Operating Agreement, notice is required to be given to any Person, it shall not be construed to mean exclusively personal notice unless otherwise specifically provided, but such notice may be given in writing, by mail, addressed to the Company at its principal office from time to time and to any other Person at his address as it appears on the records of the Company from time to time, with postage thereon prepaid. Any such notice shall be deemed to have been given at the time it is deposited in the United States mail. Notice to a Person may also be given personally or by telegram or telecopy sent to his address as it appears on the records of the Company. The addresses of the initial Members as shown on the records of the Company shall originally be those set forth in Article III hereof. Any Person may change his address as shown on the records of the Company by delivering written notice to the Company in accordance with this Section.

11.02 *Application of Nebraska Law.* This Operating Agreement, and the interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Nebraska, without reference to its choice of law provisions, and specifically the Act.

11.03 *Amendments.* No amendment or modification of this Operating Agreement shall be effective except upon the unanimous written consent of the Members.

11.04 *Construction.* Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa.

11.05 *Headings.* The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

11.06 *Waivers.* The failure of any party to seek redress for violation of or to insist upon

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the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

11.07 *Rights and Remedies Cumulative.* The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

11.08 *Severability.* If any provision of this Operating Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

11.09 *Heirs, Successors and Assigns.* Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

11.10 *Creditors.* None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditor of the Company.

11.11 *Counterparts.* This Operating Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

11.12 *Entire Agreement.* This Operating Agreement sets forth all of the promises, agreements, conditions and understandings between the parties respecting the subject matter hereof and supersedes all prior negotiations, conversations, discussions, correspondence, memoranda and agreements between the parties concerning such subject matter.

The undersigned, being all the Members of the Company, hereby agree, acknowledge and certify that the foregoing Operating Agreement constitutes the sole and entire Operating Agreement of the Company, unanimously adopted by the Members of the Company as of the date first written above.

\_\_\_\_\_  
Justin D. Cunningham, Member

\_\_\_\_\_  
Theodore G. Cunningham, Member

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EXHIBIT A

Justin D. Cunningham

\$7.00

Theodore G. Cunningham

\$3.00

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## Profit & Loss

2016 Monthly Projections

	Jan	Feb	Mar	Apr	May	Jun
<b>Income/Expense</b>						
<b>Income</b>						
Food Sales	21000	23000	24000	23000	23000	20000
Bar Sales	8000	7500	9000	8500	9000	7000
Beverage Sales	1300	1300	1300	1900	1900	1800
ATM Fees	200	200	200	200	200	200
Keno Commission	1800	1625	2200	1700	2150	2100
<b>Total Income</b>	<b>32300</b>	<b>33625</b>	<b>36700</b>	<b>35300</b>	<b>36250</b>	<b>31100</b>
<b>Cost of Goods Sold</b>						
Payroll	10000	10000	10000	10000	10000	10000
Payroll Taxes	1250	1250	1250	1250	1250	1250
Food Purchases	7805	8505	8855	8715	8715	7630
Alcohol Purchases	2400	2250	2700	2550	2700	2100
Beverage Purchases	300	300	300	300	300	300
* Kitchen Supplies	500	500	500	500	500	500
* Restaurant Supplies	500	500	500	500	500	500
Credit Card Fees	500	500	500	500	500	500
<b>Total COGS</b>	<b>-23255</b>	<b>-23805</b>	<b>-24605</b>	<b>-24315</b>	<b>-24465</b>	<b>-22780</b>
<b>Gross Profit</b>	<b>9045</b>	<b>9820</b>	<b>12095</b>	<b>10985</b>	<b>11785</b>	<b>8320</b>
<b>Expense</b>						
Advertising	200	200	200	200	200	200
Bar Equipment	0	0	0	0	0	0
Dues & Subscriptions	0	0	0	0	0	0
Insurance	450	450	450	450	450	450
Licenses & Permits	0	0	0	0	0	0
Office Supplies	20	20	20	20	20	20
Rent	2000	2000	2000	2000	2000	2000
Repairs & Maint.	150	150	150	150	150	150
Travel	0	0	0	0	0	0
Utilities	1500	1500	1500	1500	1500	1500
<b>Total Expenses</b>	<b>-4320</b>	<b>-4320</b>	<b>-4320</b>	<b>-4320</b>	<b>-4320</b>	<b>-4320</b>
<b>Net Income</b>	<b>4725</b>	<b>5500</b>	<b>7775</b>	<b>6665</b>	<b>7465</b>	<b>4000</b>

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**Profit & Loss**

2016 Monthly Projections

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Income/Expense	Jul	Aug	Sep	Oct	Nov	Dec
<b>Income:</b>						
Food Sales	19000	20000	22000	23000	23000	24000
Bar Sales	7000	7000	8000	8000	9000	10000
Beverage Sales	1400	1300	1300	1700	1700	1500
ATM Fees	200	200	200	200	200	200
Keno Commission	<u>1800</u>	<u>1850</u>	<u>1700</u>	<u>1800</u>	<u>1950</u>	<u>2350</u>
<b>Total Income</b>	<b>29400</b>	<b>30350</b>	<b>33200</b>	<b>34700</b>	<b>35850</b>	<b>38050</b>
<b>Cost of Goods Sold</b>						
Payroll	10000	10000	10000	10000	10000	10000
Payroll Taxes	1250	1250	1250	1250	1250	1250
Food Purchases	7140	7455	8155	8645	8645	8925
Liquor Purchases	2100	2100	2400	2400	2700	3000
Beverage Purchases	300	300	300	300	300	300
* Kitchen Supplies	500	500	500	500	500	500
* Restaurant Supplies	500	500	500	500	500	500
Credit Card Fees	<u>500</u>	<u>500</u>	<u>500</u>	<u>500</u>	<u>500</u>	<u>500</u>
<b>Total COGS</b>	<b>-22290</b>	<b>-22605</b>	<b>-23605</b>	<b>-24095</b>	<b>-24395</b>	<b>-24975</b>
<b>Gross Profit</b>	<b>7110</b>	<b>7745</b>	<b>9595</b>	<b>10605</b>	<b>11455</b>	<b>13075</b>
<b>Expense</b>						
Advertising	200	200	200	200	200	200
Bar Equipment	0	0	0	0	0	0
Dues & Subscriptions	0	0	0	0	0	0
Insurance	450	450	450	450	450	450
Licenses & Permits	0	0	0	0	0	0
Office Supplies	20	20	20	20	20	20
Rent	2000	2000	2000	2000	2000	2000
Repairs & Maint.	150	150	150	150	150	150
Travel	0	0	0	0	0	0
Utilities	<u>1500</u>	<u>1500</u>	<u>1500</u>	<u>1500</u>	<u>1500</u>	<u>1500</u>
<b>Total Expenses</b>	<b>-4320</b>	<b>-4320</b>	<b>-4320</b>	<b>-4320</b>	<b>-4320</b>	<b>-4320</b>
<b>Net Income</b>	<b>2790</b>	<b>3425</b>	<b>5275</b>	<b>6285</b>	<b>7135</b>	<b>8755</b>

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Spirits	PRICE /BOTTLE	SIZE (L)	Bar	Liquor Closet	Storage Closet	Total	Inventory Cost
Absolut Blue Vodka	\$27.52	1	0.5	1		1.5	\$41.28
Absolut Citron Vodka	\$27.52	1		1		1	\$27.52
Arrow Amaretto	\$11.60	1	1	5		6	\$69.60
Bacardi Superior	\$18.60	1		5		5	\$93.00
Bacardi Select	\$18.60	1	1	1		2	\$37.20
Balleys	\$23.38	0.75	0.25	2		2.25	\$52.61
Barton Canadian	\$7.44	1	0.5	11		11.5	\$85.56
Barton Gin	\$8.44	1	2	7		9	\$75.96
Barton Rum	\$9.43	1	2	3		5	\$47.15
Barton Vodka	\$6.48	1	0.5	6		6.5	\$42.12
Blackberry Brandy (Leroux)	\$13.60	1	1			1	\$13.60
Bol's Blue Curacao	\$12.27	1	1	1		2	\$24.54
Bol's Melon	\$13.60	1	1	1		2	\$27.20
Buttershots	\$12.93	1	0.25			0.25	\$3.23
Canadian Club	\$18.60	1	0.5	5		5.5	\$102.30
Captain Morgan	\$21.13	1		13		13	\$274.69
Captain Morgan White Rum	\$21.13	1	1	1		2	\$42.26
Chivas Regal	\$31.55	1				0	\$0.00
Clan McGregor Scotch	\$12.18	1	0.5	2		2.5	\$30.45
Crown Royal	\$33.30	1		6		6	\$199.80
Crown Royal Apple	\$33.30	1	1	1		2	\$66.60
Crown Royal Black	\$0.00	1	1	1		2	\$0.00
Cruzan Blueberry Rum	\$11.90	1	0.5	1		1.5	\$17.85
Dewars	\$28.60	1	0.5	1		1.5	\$42.90
Disaronno	\$29.60	1	1	1		2	\$59.20
DR McG Cherry	\$18.02	1	1	3		4	\$72.08
Dr McG Mentholmint	\$18.02	1	1			1	\$18.02
Dr McG Wild Grape	\$18.02	1	1			1	\$18.02
Drambuie	\$39.10	1	1	1		2	\$78.20
El Jimador	\$21.27	1	1	1		2	\$42.54
Ew Honey Reserve	\$17.97	1	1			1	\$17.97
Fire Ball	\$18.02	1	0.75	1		1.75	\$31.54
Galliano	\$24.05	1	1			1	\$24.05
Glenlivet 12YR	\$37.27	0.75	1			1	\$37.27
Grey Goose	\$39.10	1	1	2		3	\$117.30
Hot Damn	\$12.93	1	0.25	2		2.25	\$29.09
Jack	\$26.75	1	0.5	5		5.5	\$147.13
Jack Tenn Honey	\$28.35	1				0	\$0.00
Jack Fire Liguor	\$28.35	1				0	\$0.00
Jagermeister	\$27.43	1	1	2		3	\$82.29
Jameson Irish 80	\$31.58	1	1			1	\$31.58
Jlm Beam 80	\$22.43	1	0.5	11		11.5	\$257.95
Jlm Beam Honey	\$18.10	0.75	1			1	\$18.10
Jose Cuervo Golf	\$20.68	1	0.75	2		2.75	\$56.87
Kahlua	\$27.60	1		2		2	\$55.20
Kentucky Tavern 80	\$10.93	1		10		10	\$109.30
Kessler 80	\$11.93	1	0.25	2		2.25	\$26.84
Ketel One	\$30.13	1	0.5	2		2.5	\$75.33
Makers Mark 90	\$29.68	1	0.25	3		3.25	\$96.46
Malibu Coconut Rum	\$18.85	1	0.25	2		2.25	\$42.41

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Montezuma Wht Tequilla	\$11.31	1	3	7	10	\$113.10
Patron Silver	\$38.97	0.75	0.5	1	1.5	\$58.46
Peachtree Schnapps	\$12.93	1	1	3	4	\$51.72
Peppermint Schnapps	\$12.93	1	1		1	\$12.93
Pucker Sour Apple	\$12.93	1	1	2	3	\$38.79
Rum Chata Cream	\$24.47	1	0.5	1	1.5	\$36.71
Seagrams 7	\$18.30	1	0.25	2	2.25	\$41.18
Seagrams VO	\$19.05	1	2		2	\$38.10
Sloe Gin	\$12.93	1	0.5	1	1.5	\$19.40
Southern Comfort	\$20.52	1	0.25	3	3.25	\$66.69
Tanqueray Gin	\$25.13	1	1	1	2	\$50.26
Triple Sec	\$7.10	1	4	6	10	\$71.00
UV Vodka Cherry	\$13.10	1	0.25	3	3.25	\$42.58
UV Vodka Blue	\$13.10	1	1	1	2	\$26.20
UV Vodka Vanilla	\$0.00	0.75	0.5		0.5	\$0.00
Vermouth (Sweet)	\$10.31	1	1		1	\$10.31
Vermouth (Dry)	\$10.31	1	2		2	\$20.62
Wild Turkey 101	\$27.27	1	0.5	3	3.5	\$95.45
Windsor Canadian	\$12.60	1	0.5	5	5.5	\$69.30
Windsor Black Cherry	\$13.35	1	0.5		0.5	\$6.68

\$3,831.59 Spirits

WINE			Bar	Liquor Closet	Storage Closet	Total	Inventory Cost
Blue Bottle Rieslin	\$1.88	1 Bottle	5	24		29	\$54.52
SH Cab	\$1.22	1 Bottle	6	16		22	\$26.84
SH Chard	\$1.22	1 Bottle	2	16		18	\$21.96
SH Merlot	\$1.22	1 Bottle	3	16		19	\$23.18
SH Moscato	\$1.22	1 Bottle	3	16		19	\$23.18
SH White Zin	\$1.22	1 Bottle	3	4		7	\$8.54

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MIXERS			Bar	Liquor Closet	Storage Closet	Total	Inventory Cost
FC Bloody Mary Mix	\$5.02	1				0	\$0.00
FC Grenadine	\$5.02	1		16		16	\$80.32
FC Pina Colada Mix	\$5.02	1		12		12	\$60.24
FC Margarita Mix	\$5.02	1	0.5	8		8.5	\$42.67
FC Strawberry Puree	\$5.52	1	0.5	12		12.5	\$69.00
Chi Chi Mudslide	\$15.45	1.75	0.25			0.25	\$3.86
Rose's Lime	\$3.00	1	2	12		14	\$42.00
Mr & Mrs T's Bloody Mary		1	4.5			4.5	\$0.00

NEBRASKA LIQUOR CONTROL COMMISSION

\$298.09 Mixers

Total Inventory Cost: \$4,287.90

## Nebraska City

Kegs	Size	Ounces	Price	Keg Cooler	Walk-In	Total	Inventory Cost
Bud Light	Keg	1786	\$ 96.40	0.5	1	1.5	\$ 144.60
Busch Light	Keg	1786	\$ 84.40	1		1	\$ 84.40
Coors Light	1/4 BBL	893	\$ 53.45	0.5	1	1.5	\$ 80.18
Lucky Bucket	1/6 BBL	635	\$ 52.00	0.25	1	1.25	\$ 65.00
Goose Island IPA	1/6 BBL	635	\$ 49.00	0.5	1	1.5	\$ 73.50
NE Nut Brown Ale	1/6 BBL	635	\$ 60.00	1		1	\$ 60.00
Stella Artois	3 Gal	384	\$ 41.60			0	\$ -

\$ 507.68

Bottles	Price	Bottles/ Case	Price/ Bottle	Bar	Walk-in (Bottles)	Walk-in (Cases)	Total (Bottles)	Inventory Cost
Blue Moon	\$ 24.55	24	\$ 1.02	1			1	\$ 1.02
Bud Light	\$ 19.95	24	\$ 0.83	27		5	147	\$ 122.19
Bud Light Aluminum	\$ 19.70	20	\$ 0.99	12		5	112	\$ 110.32
Bud Light Chelada	\$ 26.30	24	\$ 1.10	3	10		13	\$ 14.25
Bud Light Lime	\$ 22.10	24	\$ 0.92			1	24	\$ 22.10
Bud Light Mixtall Long Island	\$ 31.40	24	\$ 1.31		7		7	\$ 9.16
Bud Select	\$ 19.95	24	\$ 0.83		18		18	\$ 14.96
Bud Select 55	\$ 19.95	24	\$ 0.83	4	12		16	\$ 13.30
Budweiser	\$ 19.95	24	\$ 0.83	13		2	61	\$ 50.71
Budweiser Aluminum	\$ 26.35	20	\$ 1.32	5		1	25	\$ 32.94
Busch Light	\$ 17.65	24	\$ 0.74	19		5	139	\$ 102.22
Busch N/A	\$ 16.05	24	\$ 0.67	4	16		20	\$ 13.38
Coors Banquet	\$ 19.95	24	\$ 0.83		22		22	\$ 18.29
Coors Light	\$ 19.95	24	\$ 0.83	30			30	\$ 24.94
Corona	\$ 26.20	24	\$ 1.09	5	18		23	\$ 25.11
Leinenkugel's Summer Shandy	\$ 22.95	24	\$ 0.96			1	24	\$ 22.95
Michelob Lager	\$ 23.05	24	\$ 0.96	2	16		18	\$ 17.29
Michelob Light	\$ 23.05	24	\$ 0.96	3	11		14	\$ 13.45
Michelob Ultra	\$ 23.05	24	\$ 0.96	18		3	90	\$ 86.44
Mike's Black Cherry	\$ 26.90	24	\$ 1.12	1	6		7	\$ 7.85
Mike's Mango Punch	\$ 26.90	24	\$ 1.12	5	3		8	\$ 8.97
Miller 64	\$ 19.00	24	\$ 0.79	1			1	\$ 0.79
Miller Lite	\$ 19.95	24	\$ 0.83	13		2	61	\$ 50.71
O'Doull's	\$ 19.35	24	\$ 0.81	2	13		15	\$ 12.09
Old Milwaukee	\$ 15.40	24	\$ 0.64		12		12	\$ 7.70
Red's Apple Ale	\$ 26.90	24	\$ 1.12			1	24	\$ 26.90
Sam Adams Boston Lager	\$ 27.70	24	\$ 1.15	1		1	25	\$ 28.85
Shock Top Belgian White	\$ 24.40	24	\$ 1.02			1	24	\$ 24.40
Shock Top Lemon Shandy	\$ 24.40	24	\$ 1.02			1	24	\$ 24.40
Stella Artois	\$ 28.50	24	\$ 1.19	2		1	26	\$ 30.88

\$ 938.53

1446.208



Nebraska City

Item	Package Size	Price	Inventory	Cost of Goods
1000 Island Dressing	1/1gal	\$ 11.79	1.5	\$ 17.69
4" Brioche Buns	6/8ct	\$ 20.55	1	\$ 20.55
6" Flour Tortillas	12/24ct	\$ 26.61	0	\$ -
6" White Corn Tortillas	12/60ct	\$ 31.89	0	\$ -
8oz Sirloin	per order	\$ 3.98	8	\$ 31.84
A-1	12/10oz bottles	\$ 45.00	1	\$ 45.00
American Cheese	5lbs/120ct	\$ 12.93	1	\$ 12.93
Bacon	1/15lbs	\$ 58.19	0	\$ -
Baked Potatoes	80ct	\$ 18.64	1	\$ 18.64
BBQ Sauce	1/1gal	\$ 13.00	0.5	\$ 6.50
Beef Philly	48/4oz Pucks	\$ 78.67	1.25	\$ 98.34
Breaded Cod	1/10lb bag	\$ 65.70	3	\$ 197.10
Brown Gravy Mix	18/box	\$ 64.80	1.25	\$ 81.00
Brownie Mix	6/7lbs boxes	\$ 76.76	3	\$ 230.28
Cauliflower	6/3lb boxes	\$ 53.94	1.5	\$ 80.91
Cheesecake	4/30oz cakes	\$ 51.41	0.25	\$ 12.85
Chicken Fried Chicken	30/5.33oz	\$ 56.40	1	\$ 56.40
Chicken Fried Steak	30/5.33oz	\$ 55.90	1	\$ 55.90
Chicken Gravy	18/box	\$ 64.80	0.5	\$ 32.40
Chicken Philly	48/4oz Pucks	\$ 56.85	1.25	\$ 71.06
Chicken Safad Sandwich	2/5lb	\$ 48.73	1.5	\$ 73.10
Chicken Strips	2/5lbs bags	\$ 25.81	1.5	\$ 38.72
Corn	6/#10 cans	\$ 25.53	6	\$ 153.18
Cottage Cheese	2/5lbs	\$ 22.27	2	\$ 44.54
Country Gravy Mix	18/box	\$ 64.80	0.5	\$ 32.40
Cucumber Salad	2/5lbs Tubs	\$ 27.82	2.5	\$ 69.55
Diced Tomatoes	6/#10 cans	\$ 24.89	4	\$ 99.56
Dorothy Lynch	4/1gal	\$ 34.46	1.5	\$ 51.69
Egg Noodles	12/1lbs bags	\$ 31.82	3	\$ 95.46
Frank's Red Hot	1/1gal	\$ 15.71	1.5	\$ 23.57
French Fries	6/5lbs Bags	\$ 38.75	3	\$ 116.25
Fried Pickles	4/2.5lbs	\$ 38.73	0.5	\$ 19.37
Green Beans	6 #10 cans	\$ 25.53	7	\$ 178.71
Green Pepper	6 ct	\$ 11.52		\$ -
Ground Beef	8/10lbs Tubes	\$ 79.90	13	\$ 1,038.70
Ham	13lbs average	\$ 31.13		\$ 62.26
Heavy Duty Mayonaise	4/1gal	\$ 31.18	5	\$ 155.90
Heinz 57	12/10oz bottles	\$ 48.84	0.5	\$ 24.42
Heinz Vol-Pak Ketchup	3 gal bags	\$ 24.64	2.5	\$ 61.60
Hoagie Buns	6/6ct	\$ 17.56	2	\$ 35.12
Honey Mustard	1/5gal	\$ 12.35	1.5	\$ 18.53
Hot Taco Sauce	200/9gram	\$ 9.79	1	\$ 9.79
Italian Bread	8/case	\$ 22.55	1	\$ 22.55
Jumbo Chicken Wings	8/5lbs bags	\$ 110.18	0.5	\$ 55.09
Lasagna Noodles	12/1lbs	\$ 22.42	0.5	\$ 11.21
Marble Rye	6/case	\$ 26.97	0.25	\$ 6.74

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 NEBRASKA LIQUOR  
 CONTROL COMMISSION

Nebraska City

Margarine Bricks	30/1lb bricks	\$ 17.58	0.25	\$ 4.40
Marinara	6/#10 cans	\$ 40.59	5	\$ 202.95
Mild Taco Sauce	200/9 gram	\$ 14.93	0.5	\$ 7.47
Mozzarella Sticks	6/4lbs Boxes	\$ 113.78	0.5	\$ 56.89
Mushrooms	6 #10 Cans	\$ 55.70	5	\$ 278.50
Nacho Cheese	6/#10 cans	\$ 39.31	7	\$ 275.17
Onion Rings	6/4lb	\$ 53.96	2	\$ 107.92
Onions - Red	25lbs bag	\$ 27.91	1	\$ 27.91
Onions - Yellow	10lbs bag	\$ 6.90	2	\$ 13.80
Par Boiled Rice	1/25lb	\$ 14.53	1	\$ 14.53
Parmesian Cheese	1/5lb	\$ 22.47	2	\$ 44.94
Pepper Jack Cheese	1/5lb	\$ 16.45	0.5	\$ 8.23
Peppercini	1 gal	\$ 7.87	1	\$ 7.87
Pickles - Dill Bar	2 gal	\$ 17.56	1	\$ 17.56
Pickles - Sliced Sandwich	5 Gal Bucket (appx 3000)	\$ 31.93	0.5	\$ 15.97
Pollock Fingers	4/2.5lbs	\$ 39.93	1	\$ 39.93
Pork Tenderloin	32/5oz	\$ 38.94	1	\$ 38.94
Ranch	4/1gal	\$ 57.63	6	\$ 345.78
Raw Shrimp	5/2lbs Bags	\$ 59.99	0.25	\$ 15.00
Red Beans	6/#10 cans	\$ 26.73	10	\$ 267.30
Ripe Black Olives	6/#10 cans	\$ 41.26	1	\$ 41.26
Salad Mix	4/5lbs bags	\$ 22.23	1	\$ 22.23
Salmon Fillets	40/4oz	\$ 64.89	1	\$ 64.89
Saltine Crackers	500/2ct pkgs	\$ 18.50	0.5	\$ 9.25
Sandwich Lettuce	10lbs	\$ 24.72	1	\$ 24.72
Shredded Cheddar Jack	4/5lbs bags	\$ 45.04	1	\$ 45.04
Shrimp Pouch	12/6oz	\$ 27.82	3	\$ 83.46
Skinless Chicken Breast	32/5oz fillets	\$ 25.81	1	\$ 25.81
Sliced Jalapenos	6/#10 cans	\$ 40.65	6	\$ 243.90
Sliced Pineapple	6/#10 cans	\$ 64.56	1	\$ 64.56
Sour Cream	2/5lbs Tubs	\$ 17.99	3	\$ 53.97
Swiss Cheese	5lbs	\$ 14.94	0.5	\$ 7.47
Tartar Sauce	1/1gal	\$ 13.23	0.5	\$ 6.62
Texas Toast	6/24oz loafs	\$ 20.71	0.25	\$ 5.18
Tilapia Fillets	40/4oz	\$ 59.88	1	\$ 59.88
Tomato	30ct/layer	\$ 21.72	1	\$ 21.72
Tomato Juice	12/46oz cans	\$ 19.91	3	\$ 59.73
Tomato Sauce	6/#10 cans	\$ 24.89	4	\$ 99.56
Turkey	7-8lbs	\$ 17.54	1	\$ 17.54
				\$ 6,315.19

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**NEBRASKA LIQUOR  
CONTROL COMMISSION**

Nebraska City  
Equipment List

Kitchen	
Stove	\$ 8,000.00
Hood	\$ 12,000.00
Fridge	\$ 150.00
Freezer 1	\$ 2,600.00
Freezer 2	\$ 2,600.00
Slicer	\$ 300.00
Fryers (3)	\$ 1,800.00
Shelving	\$ 500.00
5' Stainless Table	\$ 200.00
Prep Table/Cooler	\$ 1,800.00
Dishwasher	\$ 1,500.00
6' Stainless Table	\$ 450.00
30" Stainless Table	\$ 200.00
Heat Lamp	\$ 150.00
Food Warmers (2)	\$ 1,000.00
Hand Sink	\$ 200.00
Microwaves (2)	\$ 1,000.00
Toaster	\$ 200.00
Smallwares	\$ 5,000.00
	\$ 39,650.00

Bar/Server Station	
3 Door Bottle Cooler	\$ 1,700.00
4 Well Sink	\$ 600.00
Ice Bins (2)	\$ 1,900.00
6' 4 Tap Keg Cooler	\$ 1,500.00
48" 2 Tap Keg Cooler	\$ 1,000.00
Small Fridge	\$ 1,200.00
Blender	\$ 200.00
Speed Rails	\$ 200.00
Hand Sink	\$ 200.00
Small Wares	\$ 3,000.00
Coffe Maker	\$ 300.00
Hot Choco/Capp Machine	\$ 1,000.00
Tea Machine	\$ 500.00
Ice Machine	\$ 3,500.00
	\$ 16,800.00

Electronics	
Server iPads (4)	\$ 1,200.00
Station Printers (3)	\$ 600.00
Kitchen Printer	\$ 200.00
Credit Card Terminals (4)	\$ 1,000.00
ATM	\$ 1,900.00
55" TV (2)	\$ 2,900.00
46" TV (18)	\$ 8,000.00
Projectors (3)	\$ 5,700.00
Projection Screens (3)	\$ 1,000.00
Matrix	\$ 4,000.00
	\$ 26,500.00

Tables & Chairs	
3.5' Tables (12)	
3.5' Circle Tables (4)	
6' Tables (2)	\$ 4,000.00
30" Hightop Tables (5)	
3.5' Hightop Tables (1)	
3.5' Custom High Tables (5)	
4' Booths (4)	\$ 1,000.00
40" Patio Tables (5)	
Patio Chairs (20)	\$ 600.00
High Bar Chairs (50)	
Table Chairs (80)	\$ 3,000.00
Stools (15)	
	\$ 8,600.00

Total Equipment: \$ 91,550.00

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**NEBRASKA LIQUOR  
CONTROL COMMISSION**

Nebraska City  
STATE OF NEBRASKA  
DEPARTMENT OF HEALTH  
Bureau of Vital Statistics  
CERTIFICATE OF LIVE BIRTH

62 29123

PHS-796 (VS)  
REV. 12-64  
FEDERAL SECURITY AGENCY  
PUBLIC HEALTH SERVICE

BIRTH NO. 126.....

1. PLACE OF BIRTH a. COUNTY <b>Douglas</b>		2. USUAL RESIDENCE OF MOTHER (Where does mother live?) a. STATE <b>Nebraska</b> b. COUNTY <b>Douglas-Sepoy</b>	
b. CITY (If outside corporate limits, write RURAL) OR TOWN <b>Omaha</b>		c. CITY (If outside corporate limits, write RURAL) OR TOWN <b>Waterloo Rural</b>	
c. FULL NAME OF (If NOT in hospital or institution, give street address or location) HOSPITAL OR INSTITUTION <b>St. Catherine's Hospital</b>		d. STREET ADDRESS <b>Rt.-1</b> Inside City Limits? Yes <input type="checkbox"/> No <input type="checkbox"/>	
3. CHILD'S NAME (Type or print) a. (First) <b>Theodore</b> b. (Middle) <b>Theodore</b> c. (Last) <b>Glen Cunningham</b>			
4. SEX <b>Male</b>	5a. THIS BIRTH Single <input checked="" type="checkbox"/> Twin <input type="checkbox"/> Triplet <input type="checkbox"/>	5b. If TWIN OR TRIPLET (This child born) 1st <input type="checkbox"/> 2nd <input type="checkbox"/> 3rd <input type="checkbox"/>	5. DATE (Month) (Day) (Year) OF BIRTH <b>November 25, 1962</b>
FATHER OF CHILD <b>Q-552</b>			
7. FULL NAME a. (First) <b>Roy</b> b. (Middle) <b>Dwight</b> c. (Last) <b>Cunningham</b>		8. COLOR OR RACE <b>White</b>	
9. AGE (At time of this birth) <b>34</b> Yrs.	10. BIRTHPLACE (City, town, or county) (State or foreign country) <b>Omaha, Nebraska</b>	11a. USUAL OCCUPATION <b>Farm Hand</b>	11b. KIND OF BUSINESS OR INDUSTRY <b>Feed Co.</b>
MOTHER OF CHILD			
12. FULL MAIDEN NAME a. (First) <b>LaDonna</b> b. (Middle) <b>May</b> c. (Last) <b>Peterson</b>		13. COLOR OR RACE <b>White</b>	
14. AGE (At time of this birth) <b>22</b> Yrs.	15. BIRTHPLACE (City, town or county) (State or foreign country) <b>Omaha, Nebraska</b>	16. Children Previously Born to This Mother (Do NOT include this child) a. How many OTHER children are now living? <b>Five</b> b. How many OTHER children were born alive but are now dead? <b>None</b> c. How many children were stillborn (born dead after 20 weeks pregnancy)? <b>None</b>	
17. INFORMANT'S SIGNATURE OR NAME—Relationship <b>Roy D. Cunningham Father</b>			
I hereby certify that this child was born alive on the date stated above at <b>8:51 A.</b> m.	16a. SIGNATURE <i>[Signature]</i>	18. ATTENDANT AT BIRTH <input checked="" type="checkbox"/> M. D. <input type="checkbox"/> Midwife <input type="checkbox"/> Other (Specify)	
	18. ADDRESS <i>[Address]</i>	19. MOTHER'S MAILING ADDRESS <b>Same as # 2</b>	
20. DATE REC'D BY <b>NOV 30 1962</b>	21. REGISTRAR'S SIGNATURE <i>[Signature]</i>		

WHEN THIS COPY CARRIES THE RAISED SEAL OF THE NEBRASKA STATE DEPARTMENT OF HEALTH, IT CERTIFIES THE ABOVE TO BE A TRUE COPY OF AN ORIGINAL RECORD ON FILE WITH THE STATE DEPARTMENT OF HEALTH, BUREAU OF VITAL STATISTICS, WHICH IS THE LEGAL DEPOSITORY FOR VITAL RECORDS.

*Freda Theis*

DIRECTOR OF VITAL STATISTICS AND ASSISTANT STATE REGISTRAR  
LINCOLN, NEBRASKA

Issued August 13, 1982

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NEBRASKA LIQUOR  
CONTROL COMMISSION

Nebraska City

WHEN THIS COPY CARRIES THE RAISED SEAL OF THE NEBRASKA STATE DEPARTMENT OF HEALTH, IT CERTIFIES THE BELOW TO BE A TRUE COPY OF AN ORIGINAL RECORD ON FILE WITH THE STATE DEPARTMENT OF HEALTH BUREAU OF VITAL STATISTICS, WHICH IS THE LEGAL DEPOSITORY FOR VITAL RECORDS.

DATE OF ISSUANCE  
 JAN 17 1986  
 LINCOLN, NEBRASKA

*Stanley S. Cooper*  
 STANLEY S. COOPER, DIRECTOR  
 BUREAU OF VITAL STATISTICS

STATE OF NEBRASKA - DEPARTMENT OF HEALTH  
 BUREAU OF VITAL STATISTICS  
 CERTIFICATE OF LIVE BIRTH 128-

1. CHILD - NAME FIRST MIDDLE LAST Justin Dwight Cunningham			2. SEX Male	3. DATE OF BIRTH (Month, Day, Year) December 30, 1985		4. HOUR 3:53 a
5. HOSPITAL - NAME (If not in hospital, give street and number) St. Mary's Hospital, 1314 3rd Ave		6. INSIDE CITY LIMITS (Specify Yes or No) Yes	7. CITY, TOWN, OR LOCATION OF BIRTH Nebraska City		8. COUNTY OF BIRTH Otoe	
9. I certify that the stated information concerning this child is true to the best of my knowledge and belief. 10. (Signature) <i>A. H. Ronebrake</i>			11. DATE SIGNED (Month, Day, Year) 1/1/86		12. NAME AND TITLE OF ATTENDANT IF OTHER THAN CERTIFIER M.D.	
13. CERTIFIER - NAME AND TITLE (Type or print) A.H. Ronebrake, M.D.			14. MAILING ADDRESS (STREET OR R.F.D. NO., CITY OR TOWN, STATE, ZIP) 218 N. 14th, Nebraska City, Nebr. 68410			
15. REGISTRAR - SIGNATURE <i>Stanley S. Cooper</i>			16. RECEIVED MONTH DAY YEAR JAN 7 1986			
17. MOTHER - MAIDEN NAME FIRST MIDDLE LAST Diane Kae Ervin			18. AGE (At time of this birth) 27	19. CITY AND STATE OF BIRTH (If not in U.S.A., Name Country) Nebraska City, Nebraska		
20. RESIDENCE - STATE Nebraska	21. COUNTY Otoe	22. CITY, TOWN, OR LOCATION, (include zip code) Nebraska City 68410		23. INSIDE CITY LIMITS (Specify Yes or No) Yes	24. STREET AND NUMBER 106 1/2 North 12th Street Apt. #2	
25. MOTHER'S MAILING ADDRESS - Enter if not same as residence						
26. FATHER - NAME FIRST MIDDLE LAST Theodore Glen Cunningham			27. AGE (At time of this birth) 23	28. CITY AND STATE OF BIRTH (If not in U.S.A., Name Country) Omaha, Nebraska		
29. I certify that the personal information provided on this certificate is correct to the best of my knowledge and belief. (Signature of Parent) <i>Diane Cunningham</i>				30. RELATION TO CHILD Mother		

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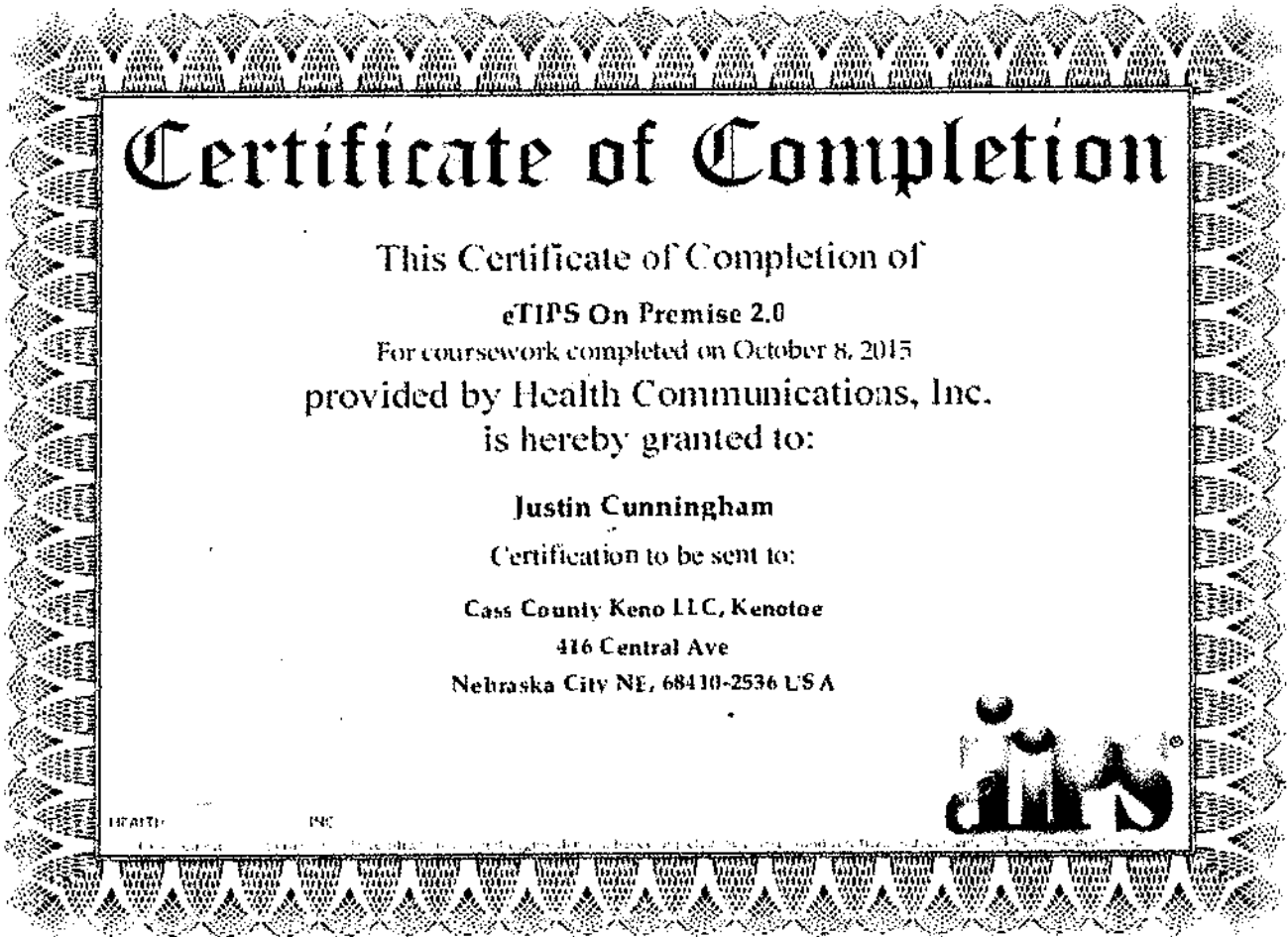
NEBRASKA LIQUOR  
 CONTROL COMMISSION

MAR 23 2015

NEBRASKA LIQUOR  
CONTROL COMMISSION

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**SUBMISSION OF FINGERPRINTS /  
PAYMENT OF FEES TO NSP-CID**

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

Office Use Only	
Class: _____	License #: _____

Applicant Name: Little Ted's Pub + Grill, LLC  
(Corporation, LLC, Partnership or Individual)

Trade Name: N/A  
(Doing Business As)

(402) 209-3147  
Phone Number

j.dwight17@yahoo.com  
Contact E-mail Address

**DIRECTIONS FOR SUBMITTING FINGERPRINTS AND FEE PAYMENTS:**

- See New Application Requirement Guide for listing of Fingerprint Requirements, found on our website under "Licensing" tab in "Brochures".
- Fingerprints taken at NSP locations will be forwarded to NSP -- CID;  
*Applicant(s) will not have cards to include with license application.*
- Fingerprints taken at local law enforcement offices will be released to the applicants;  
*Fingerprint cards should be submitted with the application.*
- Fee payment of **\$28.75 per person** must be made directly to the NSP;  
You may submit the payment through the NSP PayPort online system at [www.ne.gov/go/nsp](http://www.ne.gov/go/nsp) or checks made payable to NSP should be mailed directly to the following address:  
**The Nebraska State Patrol -- CID Division**  
**3800 NW 12<sup>th</sup> Street**  
**Lincoln, NE 68521**
- **DO NOT** send fee payments to the NLCC -- fees **MUST** be paid directly to NSP;  
*Include a list of names covered by your payment to insure proper application of payment.*
- This completed form **MUST** be included with your Liquor License Application and/or Manager Application or Changes to: Corporate Officers or Stockholders, LLC Members, Partners or Addition of Spouse where new fingerprint cards are required (see New Application Requirement Guide).
- Fingerprints are not required for spouses that have no involvement with business - Spousal Affidavit of Non Participation (Form 116) is required in lieu of fingerprints.

**Please complete information on the following pages for EACH person fingerprinted.**

Nebraska City

1. Name: JUSTIN CUNNINGHAM  
Date of Birth: 12/30/85 (Please print legibly) Last 4 SSN: 4465  
How was payment made to NSP?  NSP PAYPORT Or  CHECK SENT TO NSP Ck # \_\_\_\_\_

2. Name: THEODORE CUNNINGHAM  
Date of Birth: 11/25/62 (Please print legibly) Last 4 SSN: 6426  
How was payment made to NSP?  NSP PAYPORT Or  CHECK SENT TO NSP Ck # \_\_\_\_\_

3. Name: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ (Please print legibly) Last 4 SSN: \_\_\_\_\_  
How was payment made to NSP?  NSP PAYPORT Or  CHECK SENT TO NSP Ck # \_\_\_\_\_

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4. Name: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ (Please print legibly) Last 4 SSN: \_\_\_\_\_  
How was payment made to NSP?  NSP PAYPORT Or  CHECK SENT TO NSP Ck # \_\_\_\_\_

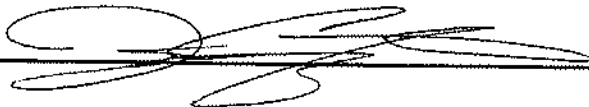
NEBRASKA LIQUOR CONTROL COMMISSION

5. Name: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ (Please print legibly) Last 4 SSN: \_\_\_\_\_  
How was payment made to NSP?  NSP PAYPORT Or  CHECK SENT TO NSP Ck # \_\_\_\_\_

6. Name: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ (Please print legibly) Last 4 SSN: \_\_\_\_\_  
How was payment made to NSP?  NSP PAYPORT Or  CHECK SENT TO NSP Ck # \_\_\_\_\_

I hereby certify that fees of \$28.75 per person have been submitted directly to the Nebraska State Patrol – CID office. The undersigned certifies on behalf of the Corporation, LLC, Partnership or Licensee that it is understood that a misrepresentation of fact is cause for rejection of this application or suspension, cancellation or revocation of any license issued.

Name (Print): JUSTIN CUNNINGHAM Title: MANAGING MEMBER

Signature:  Date: 3/15/16

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REV MAR 2015  
PAGE 2



Nebraska City

**NOTICE OF PUBLIC HEARING  
AND  
Notice of Intent to Use Program Income  
in the Nebraska City LB840 Economic Development Loan Fund**

**NOTICE IS HEREBY GIVEN THAT**, on Monday, April 18, at **6:00 P.M.**, at the Council Chambers in City Hall, 1409 Central Ave., Nebraska City, Nebraska, the City Council of Nebraska City, Nebraska, will hold a **Public Hearing** concerning the use of **\$60,000.00** of Program Funds accumulated from the collection of funds through the local municipal options sales tax (LB840).

The proposed use of Program funds is for a loan for the property at **416 Central Avenue** to assist in purchasing kitchen equipment and operating budget/taxes for business development. This project will have an anticipated project investment of over \$210,000. There will be no displacement of persons as a result of this activity.

All interested persons are invited to attend the public hearing to speak in favor or in opposition to the proposed use of Program Funds. If there are questions regarding the plan to utilize these funds, please contact: Dan Mauk, Economic Development Loan Fund Administrator at (402) 873-4293.

Individuals requiring physical or sensory accommodations, including interpreter service, braille, large print or recorded materials, please contact Randy Dunster, City Clerk, City Hall, 1409 Central Ave., Nebraska City, Nebraska, 68410, (402) 873-5515, no later than 12:00 noon, on Friday, April 15, 2016.

Randy Dunster, City Clerk

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**TO BE PUBLISHED March 25<sup>TH</sup> PAPER**

**\*\*REMINDER\*\* ROBERTS RULES 1. PRESENTATION 2. MOTION 3. DEBATE 4. VOTE**

Nebraska City

**NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN that on Monday, April 18, 2016, at 6:30 pm** in the Nebraska City City Hall, 1409 Central Ave., Nebraska City, Nebraska; the City Council will hold a Public Hearing concerning an application to the Department of Economic Development (DED) for an Affordable Housing Program (AHP) Grant. This grant is available for local affordable housing activities.

The County is requesting a total of \$250,000 in AHP funds to implement a Down-payment Assistance with Minor Rehabilitation Program for Homebuyers and will include demolition as a support activity. The Homeownership Opportunity Program (HOP) will be open to eligible applicants residing within Nebraska City. 100% of the AHP funds will benefit Low-to-moderate income persons. Of those AHP funds, \$130,000 will be available as deferred loans for down-payment assistance (Activity 0520), \$35,000 will be available as conditional grants for minor housing rehabilitation to meet HQS and NDED Minimum Standards for Rehabilitation (Activity 0530), \$20,000 for demolition activities, \$40,000 will be available for housing program management costs, including lead testing (Activity 0580) and \$25,000 will be available for project administrative costs (Activity 0181). There are no plans to displace people as a result of this AHP assisted project, but the City has adopted a plan for minimizing displacement and for assisting any persons actually displaced.

Affordable Housing Program Grant application materials will be available for public inspection at the City Clerk's office during regular working hours. All interested parties are invited to attend this public hearing at which time you will have an opportunity to be heard regarding the grant application. Written testimony will also be accepted at the public hearing scheduled for 6:30 p.m., Monday, April 18, 2016, at the City Hall in Nebraska City, Nebraska. Written comments addressed to City Clerk, City Hall, 1409 Central Ave., Nebraska City, Nebraska, 68410, will be accepted if postmarked on or before Thursday, April 14, 2016.

Individuals requiring physical or sensory accommodations including interpreter service, braille, large print, or recorded materials, please contact: City Clerk, (402) 873-5515, no later than 12:00 noon on Thursday, April 14, 2016.

Nebraska City

**NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN that on April 18, 2016, at 6:00 P.M.** in the Nebraska City City Hall, located at 1409 Central Ave., Nebraska City, Nebraska; the City Council will hold a Public Hearing to provide an opportunity for public comment concerning existing Community Development Block Grant (CDBG) projects awarded to the City.

**CDBG #14-HO-3S058 Citywide Housing Rehabilitation Program:** The City was awarded \$267,748 in 2014 CDBG funds to implement a Citywide "Owner-Occupied Housing Rehabilitation Program." Eight homes are to be rehabilitated for LMI owner-occupant families as a result of the program. 100% of the CDBG funds will benefit Low to Moderate Income Persons. Of the CDBG Funds awarded, \$219,748 was allocated for rehabilitation construction (activity 0530); \$32,000 for housing rehab management and lead based paint testing (0580); and \$16,000 for grant administration. As of January 2016 funding has been approved for two projects.

**CDBG #13-CIS-103 Nuckolls Park Improvements:** The project was awarded CDBG funds to make improvements to deteriorated curb and gutters, curb ramps and sidewalks in and around the Nuckolls Square Park located within the municipal city limits of Nebraska City between 2<sup>nd</sup> and 3<sup>rd</sup> avenue and between 10<sup>th</sup> and 11<sup>th</sup> streets. The project will include removal and replacement of existing curb, gutter and sidewalk, as well as construction of accessible curb ramps and ADA access ramps. Estimated total project costs are \$160,885.00 of which \$123,470 is CDBG grant and at least \$37,415 is matching funds. The project is anticipated to have final activities completed in Spring 2016.

All interested parties are invited to attend this public hearing, at which time you will have an opportunity to be heard regarding these projects. Written testimony will also be accepted at the public hearing scheduled for 6:00 p.m. on Monday, April 18, at the City Hall in Nebraska City, Nebraska. Written comments may be addressed to the City Clerk, City Hall, 1409 Central Ave., Nebraska City, Nebraska 68410 and will also be accepted by mail if postmarked on or before Thursday, April 14, 2016.

Individuals requiring physical or sensory accommodations including interpreter service, braille, large print, or recorded materials, please contact: City Clerk, (402) 873-5515 no later than 12:00 noon on Thursday, April 14, 2016.

Nebraska City

**29. Treasurer's Report**

**30. City Administrator Report**

**31. Acknowledge receipt of Utility Financial Report for period ending February 29, 2016**

**32. Acknowledge receipt of Utility Claims for period ending March 31, 2016**

# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



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## Agenda Information Support Sheet

To: Mayor and Commissioners

Council Meeting: April 18, 2016  
Agenda Item: # \_\_\_\_\_  
Submitted By: Grayson Path, City Administrator  
Dave Partsch, City Attorney  
Judi Meyer, SENDD

### A. Synopsis of Issue:

- a. On 3/21/16, the City Council approved City Staff and SENDD to submit an pre-application to NDED for up to \$250,000.00 in funding from the Affordable Housing Trust Fund.
- b. This funding is for various programs including owner-occupied rehabilitation assistance, homebuyer assistance, demolition, etc.
- c. On 3/21/16, the draft documents for the various guidelines were made available for the Council to review, but the City Administrator recommended that City Staff be given a chance to edit these prior to Council approval. These documents have therefore been edited and the final two products are attached: HOP Guidelines and Demolition Guidelines.
- d. The council needs to approve these documents to be submitted in the official application.
- e. Note: If NDED approves the City for the Program and authorizes the City to proceed, a CDBG Certified Administrator will need to be selected. We recommend an agreement with SENDD be selected as they are currently serving as the City's CDBG Certified Administrator for the existing OOR Rehab program with the Housing Advisory Committee and the City. That agreement will come at a later point.

### B. Options:

- a. Approve the guidelines as drafted. SENDD will submit to NDED for us.
- b. Edit the guidelines as drafted, provide guidance.
- c. Reject the guidelines and drop interest in the program.

### C. Fiscal Note:

- a. There is no known financial cost to the City other than some employee time in preparing documents, working with SENDD, and working with the subsequent committee that oversees and makes recommendations.
- b. SENDD's costs will be built in to the funding received from the Affordable Housing Trust Fund. The City has no cost or match.
- c. SENDD's agreement and cost will be worked out in a future council meeting, again, will be built in to the funding from CDBG.

Nebraska City

D. Recommendation:

- a. Approve the two resolutions drafted by Dave approving the Demolition guidelines and HOP guidelines. Authorize the Mayor and Staff to sign and proceed with application and working with NDED.

E. Background:

- a. Funding is available for individuals at or below 100% of the median income level.
- b. The City currently has a CDBG-funded housing rehabilitation (Owner Occupied Rehabilitation – OOR) program. The Housing Advisory Committee reviews and makes recommendations to the Council. This program is similar except it opens up the funding for other items such as down payment assistance, rehabilitation and demolition.
- c. The Nebraska City Affordable Housing Council, Inc. (a separate non-profit entity) was selected by a prior council to serve as the Housing Advisory Committee for the existing program. It is staff recommendation that this same group be select to act as the advisory committee for this program. As a sub-committee, they do not make official decisions; they only make recommendations, advise staff and the CDBG Administrator and Inspector, but ultimately send the final decision to the Council for who is to receive funding or not.
- d. The Housing Advisory Committee will serve as the committee overseeing and implementing this program for the Council as well. All final decisions are made by the City Council.
- e. The CDBG funding covers all the costs for the program (outside of some minimal staff time).
- f. In a future agreement (if approved), SENDD will serve as the Administrator of this program to make sure the City stays within and follows all the CDBG requirements and procedures.
- g. The City has a long and healthy history of providing to its citizens programs from the CDBG. These programs help LMI families with housing costs. It is strongly recommended that the City continue pursuing these free funding sources for its citizens.
- h. The agreement documents that will go with the formal application are attached. Judi Meyer is here tonight to answer questions.
- i. Not all communities have access to CDBG or related funding such as this. The City must have specific LMI levels to qualify. Once again, as the City qualifies it is strongly recommended that the City take full advantage of these programs.

.....  
 Department Heads:      Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.

Nebraska City

RESOLUTION NO. 2701-16

WHEREAS, the City Council of the City of Nebraska City has received and reviewed the Homeownership Opportunity Program guidelines attached hereto providing a mechanism for financial assistance, utilizing NEBRASKA AFFORDABLE HOUSING PROGRAM funds, for the purchase of existing single-family residential housing units which are safe, decent, sanitary and affordable to low and moderate income homebuyers.

AND WHEREAS, the City finds it to be in the best interests of the citizens of Nebraska City for it to enter into the attached Homeownership Opportunity Program;

THEREFORE, BE IT RESOLVED that the City Council directs the approval of these guidelines and authorizes the Mayor to sign the same on behalf of the City.

BE IT FURTHER RESOLVED that the City Council appoints the Board of Directors of the Nebraska City Affordable Housing Council, Inc. to serve as the Nebraska City Housing Advisory Committee to advise the Council on this program.

Passed and approved this 18<sup>th</sup> day of April, 2016.

\_\_\_\_\_  
Bryan Bequette, Mayor

ATTEST:

\_\_\_\_\_  
Randy Dunster, City Clerk-Treasurer

Nebraska City  
**NEBRASKA CITY, NEBRASKA**

**HOMEOWNERSHIP OPPORTUNITY PROGRAM (HOP)**  
**Adopted April 18, 2016**

**PURPOSE:**

The purpose of the Homeownership Opportunity Program (HOP) in Nebraska City is to provide financial assistance, utilizing **NEBRASKA AFFORDABLE HOUSING PROGRAM (NAHP) funds**, for the purchase of existing single-family residential housing units which are safe, decent, sanitary and affordable to low and moderate income homebuyers. This program will provide assistance to those persons/families of greatest need, improve availability of housing, promote Homeownership, increase attractiveness of underdeveloped neighborhoods and increase local employment. Nebraska City, a unit of government, will operate this Program. The City of Nebraska City is responsible for the establishment of the following guidelines.

**1.0 OFFICIAL CONTACT INFORMATION: POINTS OF CONTACT**

**1.1 Contact Information.**

Contact information regarding any and all inquiries to this program should be directed to the City of Nebraska City office at 1409 Central Ave. Nebraska City, NE 68410. Point of Contact is: City Clerk's Office: Office Phone 402-873-5515.

Point of Contact: Nebraska City City Hall – City Clerk's office, shall be the point of contact/ the place to access this program. Any grievances, suggestions, or requests for information should be directed to this office. This in no way shall be construed to limit other interested parties from distributing information about the program or receiving suggestions for amendments to the program. All grievances shall be directed to City of Nebraska City City Council in writing.

**1.2 Review Committee**

Pre-Application Review Committee: The Nebraska City Housing Advisory Committee shall serve as the Advisory Committee for this Demolition Program.

**1.3 Program Management**

Program Managers: The project shall use the services of a Certified CDBG Grant Administrator and a qualified Housing Inspector who will be responsible for day-to-day operations of the program.

The official contact person/office for the Program Manager is; Southeast Nebraska Development District, 2631 "O" Street, Lincoln, NE 68510, (402) 475-2560. This in no way shall be construed to limit other interested parties from distributing information about the Program or receiving suggestions for amendments to the Program.

**2.0 APPLICANT ELIGIBILITY**

**2.1 General (Conflict of Interest)**

No officer, employee or agent of the City of Nebraska City will participate in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent,



## Nebraska City

would be involved. Such a conflict would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements during office tenure or for one year after the closing of the program. Upon written request by the City, exceptions may be granted by the Nebraska Department of Economic Development upon a case-by-case basis when it is determined that such an exception will serve to further the purposes of the Act.

### 2.2 Income Eligibility

Limited to 100% of the median household income of Otoe County, Nebraska, adjusted for family size as established by the Department of Housing and Urban Development (HUD). Anticipated Annual Gross Income levels will be verified according to 24 CFR Part 5.609. The income limits may be revised based upon income level changes as approved by the Department of Housing and Urban Development (HUD).

### 2.3 Additional Requirements for eligible persons/families:

- a. Must occupy the property as a **principal residence**.
- b. Must complete Homeownership Training Program provided by HUD-approved housing counseling agencies, REACH affiliated organizations, or an NDED approved equivalent prior to obligation of project loan funds by the Nebraska City Council.
- c. The proposed housing unit must pass the Section 8-Housing Quality Standards (HQS) inspection. For projects with minor rehabilitation, property must comply with NDED Minimum Standards for Rehabilitation.
- d. Proposed homes for purchase constructed prior to 1978 must pass a "Lead Paint Hazard Screen" and/or a "Lead Paint Hazard Clearance." See Appendix of Technical Procedures: Lead Based Paint Policies and Procedures
- e. "Creditworthiness" is also a criterion for approval of assistance. A "credit report" may be required.
- f. Projects will be processed on a "first come, first served, first to close" basis.

## 3.0 PROPERTY ELIGIBILITY

### 3.1 Location

Housing units within Nebraska City, Nebraska are eligible.

### 3.2 Purchase Price

Total home acquisition cost not to exceed the most current HOME homeownership sales price limits as available on the Nebraska Department of Economic Development website. If rehabilitation is required, the value of the property after rehabilitation may not exceed the applicable pre-stimulus 203(b) limit or 95 percent limit. The after-rehabilitation value estimate must be completed prior to investment of NAHTF funds. The published limit identifies maximum amounts for 1-unit and the unadjusted median value. "HUD has used the greater of these two figures as their HOME homeownership value limit for existing housing in each area." This level of cost is applicable to the purchase of existing homes only. See Purchase Price or After-Rehab Value Limit for NAHTF, CDBG, and HOME at:  
<http://www.neded.org/community/grants/documentslibrary-a-forms#OtherDocs>

## Nebraska City

### 3.3 Eligible Property Types (Purchaser's Principal Residence)

- Single family property (one unit)
- Condominium unit
- Manufactured home (Mobile homes are not eligible)
- Cooperative unit

## 4.0 TYPES OF FINANCIAL ASSISTANCE

### 4.1 Maximum Subsidy

The maximum home loan subsidy will be \$17,000. The subsidy to any buyer shall not exceed the lesser of (1) \$17,000 or (2) 20% of the purchase price, or (3) the amount of money necessary to pay the purchase price after expending all liquid assets of the purchaser, which exceeds \$5,000, after the 2% downpayment requirement.

### 4.2 Downpayment

The Program requires a minimum 2% of the total purchase price, including closing costs, from the borrower as downpayment as part of the project.

All applicants will be encouraged to secure permanent financing from Nebraska City lenders. The proposed homebuyer may also seek other permanent financing sources. Because the Program is based upon developing affordable housing, it reserves the right to reject participating with any permanent financing that does not meet "affordable" criteria, as determined by the Program. Conditions could include "predatory financing," excessive fees, etc. Referrals with USDA-Rural Development and other identified Federal/State agencies, which may provide financing for affordable housing will be coordinated by program staff. Lenders will be encouraged to participate in Nebraska Investment Finance Authority (NIFA) programs and with the Federal Home Loan Bank (FHLB) programs.

A subordinated lien will be placed upon the property at the time of signing the promissory note in an amount equal to the Program subsidy. This Deed of Trust in favor of the City of Nebraska City will take a subordinate position to the permanent financing instrument.

No interest will accrue on the subsidy "deferred loan." The subordinate lien shall be in effect for a ten (10) year term. Payment of the note is required upon sale, transfer of ownership, non-occupancy or renting out the property if occurring during the ten-year term.

### 4.3 Minor Rehabilitation

The Program may provide funds to complete minor repair and/or rehabilitation work in the form of a "conditional grant" to meet Nebraska Department of Economic Development (NDED) Minimum Standards for Rehabilitation. The maximum amount of these grants will be \$15,000 per home. Any and all work to be completed must meet the NDED Standards. Additional rehabilitation funds may also be secured through the USDA RD Section 502 or 504 programs. The Program reserves the right to deny assistance in the event that the rehabilitation work required to bring the home up to Standards exceeds the maximum allowable grant amount of \$15,000 and/or the home cannot be brought up to the Standards. All approved rehabilitation work will be completed after the purchase of the property and must be completed within 6-months of the purchase closing date.

## Nebraska City

A subordinated lien will be placed upon the property at the time of completion and acceptance of the rehab work in an amount equal to the Program subsidy. This Deed of Trust in favor of the City of Nebraska City will take a subordinate position to other financing instruments.

No interest will accrue on the subsidy "conditional grant." The conditional grant lien shall be in effect for a five (5) year term. Payment of the note is required upon sale, transfer of ownership, non-occupancy or renting out the property if occurring during the five-year term.

### 4.4 Feasibility

The objective of the conditional grant for minor housing rehabilitation is to restore each housing unit receiving financial assistance to a physical condition, which will result in a life expectancy of at least twenty years. A limited number of occupied housing units in the Program Area may be deteriorated to such an extent that minor rehabilitation will not achieve this objective. If the Housing Inspector determines, and the Advisory Committee concurs, that a housing unit cannot have a twenty-year life expectancy after minor rehabilitation work is completed, then the Program will determine not to provide financial assistance to that homebuyer for that home.

### 5.0 SALE OF HOME (After assistance)

In the event the borrower or his/her heirs shall sell or transfer said property prior to the end date of the ten (10) year deed restriction; full repayment of the deferred loan shall become due and payable to the City of Nebraska City. In the event insufficient equity exists in the property at the time of the sale, the borrower may be allowed to repay an amount less than the full amount, subject to the approval of Nebraska City.

A deed restriction shall be recorded on the borrower's property, which incorporates the following provisions:

- The borrower's household must use the property as its principal residence.
- Full repayment of the Program subsidy will be required. In the event insufficient equity exists in the property at the time of sale, the borrower will be allowed to repay an amount less than the full amount, subject to the approval of the City of Nebraska City. This is defined as "Net Proceeds" and amounts to the sales price of the property minus any closing costs and minus any repayment of prior liens on the property.

Program participants must meet the loan standards established by their primary lender (including the requirements of the financing programs utilized). The Program funds will be offered to the borrower as a "deferred loan".

**THE RESALE PRICE OF THE HOME SHALL BE SUBJECT TO APPROVAL BY THE CITY OF NEBRASKA CITY TO ENSURE "FAIR MARKET VALUE."**

### 5.1 PROGRAM INCOME REUSE PLAN

In the event repayment of the Program funds occur, those funds will be used to continue the Program under the most current guidelines. Loans will be made to income-eligible persons/families to provide downpayment assistance for the purchase of single-family homes, under criteria of this Program or under criteria of any future Programs implemented by the City of Nebraska City and approved by NDED. Management costs will also be an eligible program expense, with General Administration costs at a maximum of 10% of the funds available.

## Nebraska City

Program Income funds recaptured under this program will be tracked by applicable Grant Program Number will be subject to requirements of the current Program Guidelines. All Program Income will be returned to NDED for reuse unless the Department offers the option to retain program income or the Department approves the Program Income Reuse Plan prior to receiving a "Release of Funds."

### 6.0 SUBORDINATION/REFINANCE

Future refinancing, home equity loans and all future liens will be handled on a case by case basis. Any subordination must fall within the guidelines outlined below before any subordination of the second, third, fourth, or fifth line will be considered:

#### 6.1 Refinancing with No Cash-Out

A refinance with no cash-out is the situation when a homeowner wishes to refinance their existing first mortgage which may include refinance fees only. This type of subordination may be approved by all secondary lien holders.

#### 6.2 Refinancing with Cash-Out

A refinance with cash-out is a situation where the homeowner refinances their existing mortgage and desires to consolidate other outstanding debt or obtain extra funds (cash) to spend on other items. This type of subordination may be approved by all secondary lien holders only if the combined Loan-to-Value of all items is at or below 90% of the value of the subject property.

#### 6.3 Obtain an Equity/Home Improvement Loan

This scenario is when a homeowner wants to obtain an Equity Loan or Home Improvement Loan and the lender desires to file their lien in second (2nd) position. The type of subordination may be approved by all secondary lien holders only if the combined Loan-to-Value of all liens is at or below 90% of the value of the subject property.

### 7.0 FORECLOSURE

The Deed of Trust will set the criteria for any foreclosure, based upon the default conditions outlined and detailed.

### 8.0 APPLICANT PROCESS

#### 8.1 Applicant Marketing Process

At a time and date established by the Program after approval of funding, official solicitation of applicants will begin. The Program will be advertised utilizing the most effective means possible of reaching the local public. This may include, but is not limited to, the use of local newspapers, public access via local media (radio, television, etc.), distribution of brochures or other marketing materials and the posting of notice at selected public and/or private facilities.

#### 8.2 Application/Financing Process

Program applicants will contact a Program Manager to review the Program Guidelines and the assistance available from the Program. A Program Manager will be responsible for pre-qualifying the applicant, verifying income ("Part 5" in accordance with 24 CFR 5.609), and determining eligibility for participation in the program. If the applicant is determined eligible for assistance from the program, a Program Manager will refer the applicant to primary lenders for long-term financing.

## Nebraska City

### 8.3 Procedure for Approval

Program applicants will be assisted on a first come, first served and first to close basis. The date and time the applicant submits and signs a completed application for permanent financing shall be documented and a list of applications shall be maintained by the Program Manager.

A waiting list of interested persons, indicating date and time of contact, shall be kept and once an applicant becomes ineligible, the next approved applicant shall be contacted.

Written notification of "selection" for participation in the program will be made to clients, including requirements to meet an "obligation" of funds and loan closing. Applicants who are not selected for participation will also receive written notification, including reasons for "non-selection."

Obligation of funds for eligible projects will be in a timely manner and can be anticipated within 60-days of selection. "Closing" for purchase of the property must be within 6-months of that obligation or reverification of eligibility must be completed.

## 9.0 LOAN CLOSING

### 9.1 Initial Closing

The primary lender and the Program will coordinate the "Loan Closing" process with the borrower and any appointed closing agent. The primary lender will facilitate and coordinate the closing process at which time the borrower will also execute the following documents for the Program:

- A. Promissory Note
- B. Deed of Trust
- C. Acknowledgement of receipt of copy of the approved Program Guidelines

The primary lender, or its closing agent, will be requested to file the security documents (at the County Register of Deeds office) on behalf of the Program in appropriate lien position.

### 9.2 Program Loan Close-Out

After loan closing, the primary lender will be requested to forward a copy of their executed promissory note and deed of trust documents to the Program. The Program shall maintain and keep all applications, as well as all other required documents, records and other evidence in conformance with Program regulations.

## 10.0 GRIEVANCE PROCEDURES

All grievances and/or complaints must be submitted in writing to the Housing Inspector or Project Administrator. A written response/determination must be provided to the aggrieved party within fifteen (15) calendar days of receipt of the grievance/complaint. If unsatisfied with the response/determination of the Housing Inspector or Project Administrator, the aggrieved party may appeal the decision to the Nebraska City Housing Advisory Committee in writing for their consideration. The appeal must be received by Housing Advisory Committee within 15 calendar days of the initial decision. Housing Advisory Committee will act on the appeal within thirty (30) calendar days of the receipt of the appeal. Final written decision of the Housing Advisory Committee will be provided to the aggrieved party within forty-five (45) calendar days of receipt of the written request for appeal.

## Nebraska City

Appeals regarding permanent financing shall be made to the proposed agency, financial institution, etc. in accordance with their procedures.

### 11.0 AMENDMENTS TO THE GUIDELINES

The Guidelines for the Homeownership Opportunity Program can be amended only after review by the Housing Advisory Committee and formal action by the City Council, with approval by NDED. Review/approval of proposed Amendments must be made by NDED.

### 12.0 REPORTING REQUIREMENTS

#### 12.1 Reports and Information

In accordance with the Nebraska Affordable Housing Program requirements, the Program at such times and in such forms as the City of Nebraska City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

#### 12.2 Findings Confidential

All of the reports, information, data, etc. prepared or assembled by the Program under this contract are confidential and the Program agrees that they shall not be made available to any individual or organization without prior written consent of the City of Nebraska City.

### 13.0 RECORDING REQUIREMENTS

The City of Nebraska City agrees to maintain records for ten years after a formal close-out of the program by DED. In general, such records will include information pertaining to the contract obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), fair housing and performance. The City, DED and duly authorized officials of the State and Federal Government shall have full access and the right to examine any pertinent documents, papers, records, and books of the Program involving transactions to the local program and contract.

### 14.0 UNIFORM RELOCATION AND ASSISTANCE ACT OF 1970 (URA)

The City of Nebraska City will not invoke the power of Imminent Domain in relationship to this program.

All transactions in the purchase of property by applicants or clients of the Program will be between a willing seller and a willing buyer (voluntary acquisition). If the negotiations between the buyer and seller do not end in a final agreement for sale, the Program will not attempt to force any purchase.

### 15.0 FAIR HOUSING

The Program will fulfill affirmative action requirements of federal fair housing laws. (P.L. 90-284, as amended by L.1988 P.L. 100-430; and E.O. 11063)

## Nebraska City

### 16.0 UNDERWRITING CRITERIA

A Program Manager will review the first mortgage-primary lenders' underwriting criteria to ensure that no more than 30% of the homebuyers' verified income will be used to pay for the cost of housing, including any payback for conditional grants associated with minor rehabilitation. Housing costs for purposes of this HOP program include: payments toward the homebuyer/homeowner's:

1. Mortgage;
2. Mortgage insurance; and
3. Any housing rehabilitation loan.

Underwriting review to ensure not more than 30% of income is paid toward housing costs as defined in these program guidelines will be conducted by the housing manager, approved by the HOP loan committee, and notated in the client file.

### 17.0 PRE-QUALIFYING CONTRACTORS (for projects that include minor rehabilitation)

The Program will maintain a pre-qualified list of contractors that are available to conduct Housing Rehabilitation for projects that are awarded minor rehabilitation conditional grants. The program will be promoted directly to local contractors who are eligible to be added to the pre-qualified list of contractors. Promotion to contractors may include but is not limited to contractor training, ads in the local newspapers, word of mouth, flyers and brochures requesting contractor assistance for the program. Pre-qualification requirements include submittal of the following documents to the Program Manager:

1. Proof of liability insurance;
2. Lead safe work practices training; and
3. Completion of the Contractor's Application (Proof of Responsibility)

### 18.0 LEAD PAINT HAZARDS AND TEMPORARY RELOCATION

Because of requirements to mitigate lead-based paint hazards, "temporary relocation" of homeowners may be necessary for "safe work practices." If temporary relocation is deemed necessary by the Program Manager, relocation activities will only be at the voluntary acceptance and expense of the homeowner.

Nebraska City  
NEBRASKA CITY, NEBRASKA

HOMEOWNERSHIP OPPORTUNITY PROGRAM  
(HOP)

Lead-Based Paint Policies and Procedures

Appendix of Technical Procedures

1. Lead-Based Paint Policies and Procedures

To address the potential hazards of lead-based paint in homes being assisted with down payment assistance funds, the City of Nebraska City will implement the following policies and procedures for homes built before 1978.

- Clients will receive a copy of the pamphlet entitled "Protect Your Family from Lead in Your Home". Clients will sign a form stating that they have received a copy of the pamphlet. In addition, clients will be notified of their right to request a paint inspection.
- The Program will determine if a Lead Hazard Screen and/or Paint Inspection/Risk Assessment has been performed in the twelve (12) months prior to the date of participation.
- If no reports exist, a home will receive a lead hazard screen and/or paint inspection/risk assessment performed by a certified Risk Assessor.
- The Program will obtain the permission of the Seller to perform a Lead Hazard Screen and/or Paint Inspection/Risk Assessment. If the Seller refuses a Lead Hazard Screen and/or Paint Inspection/Risk Assessment, down payment assistance will not be provided.
- A Lead Hazard Screen and/or Paint Inspection/Risk Assessment will be performed by a certified Risk Assessor. The Seller, client, and lender will receive a copy of the report(s).
- If lead hazards in excess of the de-minimus are identified:
  - The Risk Assessor will prepare a report identifying the interim controls that must be implemented to eliminate the lead hazards.
  - If the project involves only downpayment assistance, the Seller will be responsible for correcting lead-based paint hazards. Lead hazards must be eliminated prior to providing down payment assistance. All work should be performed by contractors certified in lead safe work practices.
  - If the project involves minor rehabilitation, the contractor for the Rehabilitation Contract will be responsible for meeting Lease Safe Work Practices and will be responsible for clean-up to pass a Final Clearance Test.
  - After work has been completed, a Clearance Test will be performed by a certified Risk Assessor. The Seller and/or client will be provided a copy of the clearance test report. Homes must pass the Clearance Test before the client receives down payment assistance, unless minor rehabilitation is included in the project.

*Lead Hazard Screen*

A Lead Hazard Screen may be performed on homes that were built after 1978 and that are in "good" condition as determined by the Building Condition Survey. The Lead Hazard Screen must be performed by a certified Risk Assessor.



## Nebraska City

### *Paint Inspection/Risk Assessment*

A Paint Inspection/Risk Assessment must be performed on homes built before 1978 and/or on homes that fail a Lead Hazard Screen. The Paint Inspection/Risk Assessment must be performed by a certified Risk Assessor.

### *Clearance Test*

A Clearance Test must be performed after all work has been completed. The Clearance Test must be performed by a certified Risk Assessor.

Nebraska City  
**Building Condition Survey**

Client Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/ZIP: \_\_\_\_\_

Date Inspected: \_\_\_\_\_ Inspected By: \_\_\_\_\_

Condition	Yes	No
Roof is missing shingles, tiles, shakes, etc.		
Roof and/or soffit and fascia has holes or large cracks		
Gutters or downspouts are broken or missing		
Chimney masonry cracked, bricks loose or missing, chimney out of plumb		
Exterior walls have obvious large cracks or holes requiring more than routine repair		
Interior walls have obvious large cracks or holes requiring more than routine repair		
Exterior siding is missing boards or shingles		
Water stains on interior walls or ceilings		
Plaster walls or ceilings are deteriorated		
Two or more windows or doors broken, missing or boarded up		
Porch or steps with major elements broken, missing or boarded up		
Foundation with major cracks, missing material, structure leans or visibly unsound		
Total Number*		
<input type="checkbox"/> Dwelling is in Good condition (perform Lead Hazard Screen) <input type="checkbox"/> Dwelling is in Poor condition (perform Risk Assessment)		
If the "Yes" column has less than two checks, the dwelling is in good condition. If the "Yes" column has two or more checks, the dwelling is in poor condition.		
Notes:		

**Lead Hazard Screen/Risk Assessment**

	Lead Hazard Screen	Risk Assessment
Paint	<ul style="list-style-type: none"> <li>• Full review of painted surfaces</li> <li>• 1 paint chip per "poor" surface</li> </ul>	<ul style="list-style-type: none"> <li>• Full review of painted surfaces</li> <li>• 1 paint chip per "poor" surface</li> </ul>
Dust	2 Composite Samples <ul style="list-style-type: none"> <li>• 1 floor (include entryway)</li> <li>• 1 window trough</li> </ul>	5 or 4 Composite Samples <ul style="list-style-type: none"> <li>• 1 uncarpeted floor (include entryway)</li> <li>• 1 window sill</li> <li>• 1 window trough</li> <li>• 1 carpeted floor</li> </ul> Or 6 to 8 Single Surface Samples
Soil	No	2 Composite <ul style="list-style-type: none"> <li>• 1 foundation</li> <li>• 1 play area</li> </ul>
Water	No	No
Air	No	No
Housing Condition	Yes	Yes
Use Pattern Assessment	No	Yes
Management & Maintenance	No	Optional depending on property type

Nebraska City

RESOLUTION NO. 2702-16

WHEREAS, the City Council of the City of Nebraska City has received and reviewed the City of Nebraska City Demolition Guidelines attached hereto providing a mechanism through the Nebraska Affordable Housing Program to assist the City to demolish blighted and substandard structures in conjunction with a larger owner occupied housing rehab program. The program will prevent the spread of blight and its influence, and improve the availability of future redevelopment, which will increase the attractiveness of the existing neighborhoods, and increase local employment opportunities.

AND WHEREAS, the City finds it to be in the best interests of the citizens of Nebraska City for it to adopt the attached City of Nebraska City Demolition Guidelines;

THEREFORE, BE IT RESOLVED that the City Council directs the approval of these guidelines and authorizes the Mayor to sign the same on behalf of the City.

BE IT FURTHER RESOLVED that the City Council appoints the Board of Directors of the Nebraska City Affordable Housing Council, Inc. to serve as the Nebraska City Housing Advisory Committee to advise the Council on these guidelines.

Passed and approved this 18<sup>th</sup> day of April, 2016.

\_\_\_\_\_  
Bryan Bequette, Mayor

ATTEST:

\_\_\_\_\_  
Randy Dunster, City Clerk-Treasurer



**CITY OF NEBRASKA CITY DEMOLITION GUIDELINES**  
**Adopted April 18, 2016**

**PURPOSE**

It is the primary goal of the Nebraska Affordable Housing Program (NAHP) Open Cycle Owner Occupied Housing Rehab Program with Demolition as a Support Activity to assist the City of Nebraska City to demolish blighted and substandard structures in conjunction with a larger City Wide Owner Occupied Housing Rehab Program. The program will prevent the spread of blight and its influence, and improve the availability of future redevelopment, which will increase the attractiveness of the existing neighborhoods, and increase local employment opportunities. This program will be conducted by the City of Nebraska City, with the Nebraska City Housing Advisory Committee providing over- sight and input. The City will be responsible for implementing the following guidelines.

**DEFINITION OF BLIGHTED STRUCTURE**

The term blighted structures will follow the Nebraska Department of Economic Development (DED) Community Development Block Grant (CDBG) definition. "This definition includes, but is not limited to, any structure, dwelling, garage, outbuilding, warehouse, commercial building, or any other part of a structure, which: because of effects of fire, wind, flood, or any other natural disaster; or, because of a physical deterioration; or, because of demolition; or, partial demolition, not carried out to completion within a reasonable period of time is deemed not to be inhabitable as a dwelling, or, in the case of a non-dwelling structure, is no longer useful for the purpose for which the non-dwelling structure was intended, and which has been designated by the City of Nebraska City, as detrimental to the public health or safety in its present condition and use." The City of Nebraska City's CDBG Certified Administrator and/or Housing Inspector will certify that structures being demolished meet the requirements of being determined blighted.

**1.0 OFFICIAL CONTACT INFORMATION: POINTS OF CONTACT**

**1.1 Contact Information**

Contact information regarding any and all inquiries to this program should be directed to the City of Nebraska City office at 1409 Central Ave. Nebraska City, NE 68410. Point of Contact is: City Clerk's Office: Office Phone 402-873-5515.

Point of Contact: Nebraska City City Hall – City Clerk's office, shall be the point of contact/ the place to access this program. Any grievances, suggestions, or requests for information should be directed to this office. This in no way shall be construed to limit other interested parties from distributing information about the program or receiving suggestions for amendments to the program. All grievances shall be directed to City of Nebraska City City Council in writing.

**1.2 Review Committee**

Pre-Application Review Committee: The Nebraska City Housing Advisory Committee shall serve as the Advisory Committee for this Demolition Program.

**1.3 Program Management**

Program Managers: The project shall use the services of a Certified CDBG Grant (Project) Administrator and a qualified Housing Inspector who will be responsible for day-to-day operations of the program.

# Nebraska City

## 2.0 APPLICANT ELIGIBILITY

### 2.1 General (Conflict of Interest)

No member of the governing body, official, employee, agent, or their immediate family, or anyone who exercises policy, decision-making functions or responsibilities in connection with the planning or implementation of the grant/program shall directly or indirectly benefit from this program, unless the Nebraska Department of Economic Development (NDED) has officially granted written exception of this rule to that member. Any other employee, officer, or any appointed board member of the City of Nebraska City, shall be eligible, but will be treated no differently in the determination of funding.

## 3.0 PROPERTY ELIGIBILITY

### 3.1 Location

The structures to be demolished will be located within the corporate city limits of Nebraska City, Nebraska. Only this area will be eligible for these NAHP Demolition funds as defined in the original grant Application.

### 3.2 Property Characteristics

NAHP demolition and clearance funding will be for vacant and blighted (see definition of blighted in *Definition of a Blighted Structure*), residential property (including outbuildings or other appurtenances). Vacant will be described as being unoccupied for a period of no less than 90 days.

### 3.3 Condition

Prior to demolition, the unit will need to be determined vacant and blighted by the City's CDBG Certified Administrator in conjunction with inspections by the Housing Inspector. Following this determination, the Housing Inspector will score the properties according to the CITY OF NEBRASKA CITY STRUCTURAL CONDITION SURVEY AND SCORING FORM criteria which are attached to this document.

### 3.4 Environmental Review

Any and all agencies requiring compliance with historic designations, floodplains, archeological significance, and hazardous material, will be consulted prior to any demolition.

### 3.5 Permission

The City of Nebraska City must receive written permission to proceed with the demolition from all lien holders and property owners.

## 4.0 TYPE OF FINANCIAL ASSISTANCE

### 4.1 Applications

The City of Nebraska City will solicit requests for Pre-Applications and for Applications for the demolition of structures, and clearance activities associated with these demolitions, through an advertisement/public notice. A second advertising/public notice period may be necessary if a sufficient number of Pre-Applications are not received via the initial round. During these periods, individuals will be required to fill out a funding proposal form to help in determining which properties will be eligible for funding. Once the properties have been inspected and scored by the Housing Inspector, Nebraska City Housing Advisory Committee will rank the prospective properties and Housing Advisory Committee will then recommend those properties to the Nebraska City City Council for approval. Following Nebraska City City Council action, Housing Advisory Committee via the City Clerk's office will then notify, in writing, the appropriate demolition project contact person(s) of their selection or non-selection status. Appropriate structure photographs and other project information will be submitted to the Nebraska State Historic Preservation Office for approval, prior to any notification of award, or any demolition activities.

### 4.2 Amount of Financial Assistance

NAHP demolition and clearance funds will provide for a maximum of \$10,000 toward the cost of each eligible project application chosen by the Nebraska City City Council. In the case of a project exceeding the maximum cost of

## Nebraska City

\$10,000 as provided by this program, the property owner will be required to incur 100% of the expenses that exceed \$10,000. If the property owner does not want to incur expenses in excess of \$10,000 the property owner can opt out of the program before any demolition and clearance costs are incurred.

**4.3 Owner Match = 10%:** The willing participant/property owner will be required to submit 10% of the total demolition project cost (said costs to include the cost of asbestos abatement contractor, and the cost of the demolition contractor). For example: if after seeking quotes it is determined that the asbestos abatement contractor will cost \$1,000 and the demolition contractor will cost \$9,000 for a grand total of \$10,000 "project costs" ... The NAHP Grant will provide 90% = \$9,000 and the property owner will provide 10% = \$1,000. The property owner's 10% participation will be required to be paid to the City of Nebraska City prior to the start of abatement or demolition. The City will hold said funds until the project work is complete and the City of Nebraska City will be responsible to pay the contractor(s) 100% of what is due them via the funds provided per the above formula. Any costs exceeding \$10,000 will be paid in full by the property owner.

### 4.4 Demolition Funds

The funds expended for abatement & demolition will be distributed by the City of Nebraska City. All funds paid by the City of Nebraska City will be paid directly to the appropriate contractor(s).

### 5.0 DEMOLITION PROCESS

Based on the score/ranking of a particular project, the following steps will be taken:

1. Inspection of property
2. Conduct Environmental Review
3. Conduct Title Search & Obtain proper permits.
4. Obtain and submit structure photographs, and any other appropriate information, for review and approval by the appropriate agencies prior to demolition
5. City to Prepare Bid packets and Advertise for bids from asbestos testing contractors, asbestos abatement contractors and demolition contractors.
6. Contractor(s) selected via bid award process
7. City Council acts on contract recommendations of Housing Advisory Committee and then asbestos testing, & if needed: asbestos abatement, and demolition & site clearance proceeds
8. Property is inspected, post demolition
9. Payment is approved via the regular City Council claims review & payment process.

### 6.0 GRIEVANCE PROCEDURE

All grievances and/or complaints must be submitted in writing to the Housing Inspector or Project Administrator. A written response/determination must be provided to the aggrieved party within fifteen (15) calendar days of receipt of the grievance/complaint. If unsatisfied with the response/determination of the Housing Inspector or Project Administrator, the aggrieved party may appeal the decision to the Nebraska City Housing Advisory Committee in writing for their consideration. The appeal must be received by Housing Advisory Committee within 15 calendar days of the initial decision. Housing Advisory Committee will act on the appeal within thirty (30) calendar days of the receipt of the appeal. Final written decision of the Housing Advisory Committee will be provided to the aggrieved party within forty-five (45) calendar days of receipt of the written request for appeal.

### 7.0 AMENDMENTS TO PROGRAM GUIDELINES

The above Guidelines for the Housing Rehabilitation Program can be amended only after review by the Housing Advisory Committee and formal action by the City Council, with approval by DED. All proposed amendments to the Guidelines must be reviewed and approved by NDED.

Nebraska City

**CITY OF NEBRASKA CITY STRUCTURAL CONDITION SURVEY**

App # \_\_\_\_\_ Address: \_\_\_\_\_ Approx. date last occupied: \_\_\_\_\_

Residential Construction Style: \_\_\_\_\_ Structure Type: \_\_\_\_\_

**NOTE: Frontage Improvements and Outstanding Assessments are not scoring criteria items.**

Frontage Improvements (Existing: Paving, Curbs, Sidewalks): \_\_\_\_\_

Outstanding Assessments: \_\_\_\_\_

**STRUCTURE CONDITION:** Circle One in each section and then tally total score. (Note these are a quick/ subjective evaluation. Detailed exploration or testing is not a requirement to arrive at a score.)

1. FOUNDATION: 0 – In good condition 10 – Repairs needed 15 – Needs a partial foundation 25 – Needs a total replacement foundation

2. WINDOWS: 0 – No repair needed  
1 – Broken windows and panes  
5 – In need of repair  
10 – In need of replacement

3. ROOFING: 0 – Does not need repair  
5 – Shingles missing  
10 – Needs to be reroofed  
25 – Needs roof structure replacement/new roof

4. Floor 0 – No repair  
5 – Needs minor repair to floor  
10 – Floor is unsafe to walk on

5. ELECTRICAL: 0 – No repair needed  
5 – Minor repair  
10 – Replace main panel and service entrance  
15 – Major repair/total replacement

6. SIDING/PAINT: 0 – No repair  
5 – Needs minor repair to siding/paint  
10 – Needs resided/painted

7. ENVIROMENTAL: 0 – No visible signs of hazards  
5 – Minor potential hazards  
10 – Very Likely hazards exist

8. Misc/Other/Special Conditions: 0 – No visible signs of other special conditions present.  
5 – Minor other/misc/ special condition: \_\_\_\_\_  
10 – Substantial other/misc/ special condition present: \_\_\_\_\_

Nebraska City

EXTRA COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Grand TOTAL SCORE: \_\_\_\_\_ Date Pre-Application Received By the City of Nebraska City :  
\_\_\_\_\_

**Tie Breaker:** In case of a tie, the City of Nebraska City will select the Pre-Application with the earliest date stamp.

Also note that there are limited funds available and a limited timeline. The City of Nebraska City (as done with the OORehab Program) will be operating on a: First Come/ First Processed/ First Awarded basis. Thus potential applicants are encouraged to complete and submit their Pre-Application material as soon as practical and to be prepared to follow through and complete information requirements that are needed to allow the Pre-Application to be processed and scored.

Additional Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Inspector/Surveyor(s): \_\_\_\_\_ Date \_\_\_\_\_



# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



## RESOLUTION \_\_\_\_\_ AUTHORIZING CHIEF ELECTED OFFICIAL TO SIGN AN APPLICATION FOR NEBRASKA AFFORDABLE HOUSING PROGRAM FUNDS

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

Whereas, the City of Nebraska City, Nebraska has obtained its citizens' comments on community development and housing needs; and has conducted a public hearing upon the proposed application and received favorable public comment respecting the application which is for an amount of \$250,000 in NAHP funds to implement an Homebuyer Downpayment Assistance Program with support activities of demolition within the City; and,

### **NOW, THEREFORE, BE IT RESOLVED BY**

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

Signed: \_\_\_\_\_  
Bryan Bequette, Mayor  
Nebraska City, Nebraska

Date: April 18, 2016

Nebraska City

**2016 APPLICATION FOR THE NEBRASKA AFFORDABLE HOUSING PROGRAM**  
Nebraska Department of Economic Development (DED)

DED USE ONLY	
Date Stamp Below	Application Number
	16-

**PART I. GENERAL INFORMATION**

Pre-application Number: 16-TFHP-16017

TYPE OR PRINT ALL INFORMATION

<p><b>1. APPLICANT IDENTIFICATION</b></p> <p>Name: <u>City of Nebraska City</u></p> <p>Contact person: <u>Grayson Path, City Administrator</u></p> <p>Address: <u>1409 Central Ave.</u></p> <p>City/State/Zip: <u>Nebraska City, NE 68410</u></p> <p>Phone: <u>402-873-5515</u></p> <p>Fax: <u>402-873-5685</u></p> <p>Email: <u>gpath@nebraskacity.com</u></p> <p>Tax ID: <u>47-6006287</u></p> <p>Duns #: <u>076983428</u></p>	<p><b>2. APPLICATION PREPARER INFORMATION</b></p> <p>Name: <u>SEND</u></p> <p>Contact person: <u>Judi Meyer</u></p> <p>Address: <u>2631 O St.</u></p> <p>City/State/Zip: <u>Lincoln, NE 68510</u></p> <p>Phone: <u>402-475-2560</u></p> <p>Fax: <u>402-475-2794</u></p> <p>Email: <u>jmeyer@sendd.org</u></p> <p>Application Preparer (check one)</p> <p><input type="checkbox"/> Local Staff    <input type="checkbox"/> Out-of-State Consultant</p> <p><input type="checkbox"/> In-State Consultant    <input type="checkbox"/> Non-Profit Organization</p> <p><input checked="" type="checkbox"/> Economic Development District</p> <p><input type="checkbox"/> Other</p>
<p><b>3. HOMEBUYER PROGRAM ACTIVITIES (check all that apply)</b></p> <p><input type="checkbox"/> Construction costs for newly constructed homes</p> <p><input type="checkbox"/> Development subsidy on newly constructed homes</p> <p><input type="checkbox"/> Direct Homebuyer Assistance for newly constructed homes (gap subsidy, down-payment assistance, closing costs)</p> <p><input type="checkbox"/> Infrastructure development</p> <p><input checked="" type="checkbox"/> Direct Homebuyer Assistance for previously existing homes (gap subsidy, down-payment assistance, closing costs)</p> <p><input checked="" type="checkbox"/> Rehabilitation following homebuyer purchase as a support activity to direct homebuyer assistance</p> <p><input type="checkbox"/> Developer purchase of existing homes for rehabilitation and resale</p> <p><input type="checkbox"/> Rehabilitation during developer ownership</p> <p><input type="checkbox"/> Development subsidy on developer purchased and rehabilitated homes</p> <p><input type="checkbox"/> Direct Homebuyer Assistance for developer purchased and rehabilitated homes (gap subsidy, down-payment assistance, closing costs)</p> <p><input checked="" type="checkbox"/> Demolition</p>	<p><b>4. DISTRICT INDICATOR (Select only ONE)</b></p> <p><input checked="" type="checkbox"/> Congressional District 1</p> <p><input type="checkbox"/> Congressional District 2</p> <p><input type="checkbox"/> Congressional District 3</p>
<p><b>6. TYPE OF APPLICANT</b></p> <p><input checked="" type="checkbox"/> Unit of Local Government    <input type="checkbox"/> Non-Profit 501(c)(3) CHDO</p> <p><input type="checkbox"/> Local Housing Authority    <input type="checkbox"/> Non-Profit 501(c)(4)</p> <p><input type="checkbox"/> Non-Profit 501(c)(3)    <input type="checkbox"/> Non-Profit 501(c)(4) CHDO</p>	<p><b>5. SERVICE AREA</b></p> <p>Area to be served [each municipality and each county]. Please list: Nebraska City in Otoe County, Nebraska</p> <p>Nebraska Legislative District(s) <u>2</u></p> <p>Nebraska Congressional District(s) <u>1</u></p> <p>Is the project in an enterprise zone? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>REGIONAL APPLICATIONS:</b></p> <p>Primary Communities for Regional Applications:</p>
<p><b>7. HOUSEHOLD BENEFICIARIES</b></p> <p># _____ at or below 80% of the Area Median Family Income</p> <p># <u>8</u> at or below 100% of the Area Median Family Income</p> <p># _____ at or below 120% of the Area Median Family Income</p> <p># _____ Total</p>	

**8. CERTIFYING OFFICIAL:**

*To the best of my knowledge and belief, data and information in this application is true and correct, including any commitment of local or other resources. The governing body of the applicant has duly authorized this application. This applicant will comply with all Federal and state requirements governing the use of NAHP funds.*

Signature in blue ink: \_\_\_\_\_

Typed Name and Title: Bryan Bequette, Mayor Date Signed: \_\_\_\_\_

Address/City/State/Zip: 1409 Central Ave., Nebraska City, NE 68410

**9. SUBMIT THE ORIGINAL FULL APPLICATION TO:      UPLOAD THE SCANNED COPY OF FULL APPLICATION TO:**

Nebraska Department of Economic Development  
Housing Application Coordinator  
Housing and Community Development  
301 Centennial Mall South - PO Box 94666  
Lincoln, NE 68509-4666

<https://neded.sharefile.com/r-r8670cbdbad74aa8b>

*Individuals, who are hearing and/or speech impaired and have a TTY, may contact the Department through the Statewide Relay System by calling (800) 833-7352 (TTY) or (800) 833-0920 (voice). The relay operator should be asked to call DED at (800) 426-6505 or (402) 471-3111.*

Nebraska City

**APPLICANT'S STATEMENT OF ASSURANCES AND CERTIFICATIONS**

The City of Nebraska City (Applicant) hereby assures and certifies to the Nebraska Department of Economic Development (the Department) regarding an application for Community Development Block Grant (CDBG), HOME and Trust funds, the following:

**LOCAL GOVERNMENT CERTIFICATIONS** -- Please contact a Department representative if items 1-6 have not been previously adopted.

1. It has previously adopted, on December 23 , 2010 , an **Excessive Force Policy** that remains in effect.
2. It has previously adopted, on December 19 , 2005 , a **Code of Conduct** that remains in effect.
3. It has previously adopted, on December 19 , 2005 , **Procurement Procedures** that remain in effect.

The procurement procedures were submitted to DEB on Dec. 29 , 2005 .

4. It has previously adopted, on August 6 , 2010 a **Residential Anti Displacement and Relocation Assistance Plan**, which remains in effect.
5. It has previously adopted, on April 21 , 2014 a **Citizen Participation Plan** that remains in effect. The adopted Citizen Participation Plan contains substantially similar language as the sample plan in these guidelines.
6. It has previously furnished to the Department a **Financial Management Certification** dated January 4 , 2016  
September 1993
7. It has previously adopted, on and updated , 2009 a **Section 504 Plan** that remains in effect.
8. There are no significant unresolved audit findings relating to any prior grant award from the federal and/or state government, which would adversely affect the administration of this grant.
9. No legal actions are underway or being contemplated that would significantly impact the Applicant's capacity to effectively administer the program, and to fulfill the CDBG, HOME and NAHTF program; and
10. No project costs have been incurred which the Department has not approved in writing.

**FEDERAL COMPLIANCE CERTIFICATIONS**

11. It will adopt and follow a residential anti-displacement and relocation assistance plan which will minimize displacement as a result of activities assisted with CDBG, HOME and NAHTF funds.
12. It will conduct and administer its programs in conformance with:
  - a. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), and the regulations issued pursuant thereto (24 CFR Part 1).
  - b. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and will take action to affirmatively further fair housing in the sale or rental of housing, the financing of housing and the provision of brokerage services.
  - c. The Fair Housing Act of 1988 (42 USC 3601-20) and will affirmatively further fair housing.
13. It will not attempt to recover any capital costs of public improvements assisted in whole or part by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (1) grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than grant funds, or (2) for purposes of assessing any amount against properties owned and occupied by persons of LMI who are not persons of very-low income, the recipient certifies to the State that it lacks sufficient grant funds to comply with the requirements of clause (1).
14. It will comply with all provisions of Title I of the Housing and Community Development Act of 1974, as amended, which have not been cited previously as well as with other applicable laws.

**EXHIBIT C-1**

## Nebraska City

### SPECIAL REQUIREMENTS AND ASSURANCES.

15. The Applicant will comply with the Administrative Requirements of the program, those applicable items in the current Consolidated Plan, Title I of the Housing and Community Development Act of 1974, Public Law 93-383, as amended, and 24 CFR Part 570 including parts not specifically cited below and the laws, regulations and requirements, both federal and state, as they pertain to the design, implementation and administration of the local project, including but not limited to the following:

#### CIVIL RIGHTS AND EQUAL OPPORTUNITY PROVISIONS.

- Public Law 88-352, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d), et. seq.) (24 CFR Part 1)
- Section 109 of the Housing and Community Development Act of 1974, As Amended
- Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101, et. seq.)
- Section 504 of the Rehabilitation Act of 1973, As Amended (29 U.S.C. 794) and the Americans with Disability Act
- Executive Order 11246, As Amended
- Executive Order 11063, As Amended by Executive Order 12259 (24 CFR Part 107)

#### ENVIRONMENTAL STANDARDS AND PROVISIONS.

- Section 104(f) of the Housing and Community Development Act of 1974, As Amended
- Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831) and the Implementing Regulations found at 24 CFR Part 35
- The National Environmental Policy Act of 1969 (42 U.S.C. Section 4321, et. seq., and 24 CFR Part 58)
- The Clean Air Act, As Amended (42 U.S.C. 7401, et. seq.)
- Farmland Protection Policy Act of 1981, (U.S.C. 4201, et. seq.)
- The Endangered Species Act of 1973, As Amended (16 U.S.C. 1531, et. seq.)
- The Reservoir Salvage Act of 1960 (16 U.S.C. 469, et. seq.), Section 3 (16 U.S.C. 469 a-1), As Amended by the Archaeological and Historic Preservation Act of 1974
- The Safe Drinking Water Act of 1974 [42 U.S.C. Section 201, 300(f), et. seq., and U.S.C. Section 349 as Amended, particularly Section 1424(e) (42 U.S.C. Section 300H-303(e))]
- The Federal Water Pollution Control Act of 1972, As Amended, including the Clean Water Act of 1977, Public Law 92-212 (33 U.S.C. Section 1251, et. seq.)
- The Solid Waste Disposal Act, As Amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et. seq.)
- The Fish and Wildlife Coordination Act of 1958, As Amended, (16 U.S.C. Section 661, et. seq.)
- EPA List of Violating Facilities
- HUD Environmental Standards (24 CFR, Part 51, Environmental Criteria and Standards and 44 F.R. 40860-40866, July 12, 1979)
- The Wild and Scenic Rivers Act of 1968, As Amended (16 U.S.C. 1271, et. seq.)
- Flood Insurance
- Executive Order 11988, May 24, 1978: Floodplain Management (42 F.R. 26951, et. seq.)
- Executive Order 11990, May 24, 1977: Protection of Wetlands (42 F.R. 26961, et. seq.)
- Environmental Protection Act, NEB. REV. STAT. 81-1501 to 81-1532 (R.R.S. 1943)
- Historic Preservation

#### LABOR STANDARDS AND PROVISIONS.

- Section 110 of the Housing and Community Development Act of 1974, As Amended
- Fair Labor Standards Act of 1938, As Amended, and (29 U.S.C. 102, et. seq.)
- Davis-Bacon Act, As Amended (40 U.S.C. 276-a - 276a-5); and Section 2; of the June 13, 1934 Act. As Amended (48 Stat. 948.40 U.S.C. 276(c), Popularly Known as The Copeland Act
- Contract Work Hours and Safety Standards Act (40 U.S.C. 327, et. seq.)
- Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701(u)]

#### FAIR HOUSING STANDARDS AND PROVISIONS.

- Section 104(a)(2) of the Housing and Community Development Act of 1974, As Amended
- Public Law 90-284, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601, et. seq.). As Amended by the Fair Housing Amendments Act of 1988
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, As Amended (42 U.S.C. 4630) and the Implementing Regulations Found at 49 CFR Part 24
- Relocation Assistance Act, NEB. REV. STAT. 76-1214 to 76-1242 (R.S. Supp. 1989)
- Nebraska Civil Rights Act of 1969 20-105 to 20-125, 48-1102 and 48-1116
- Uniform Procedures for Acquiring Private Property for Public Use, NEB. REV. STAT. 25-2501 to 25-2506 (R.R.S. 1943)

**EXHIBIT C-1**

Revised January 2016

## Nebraska City

### ADMINISTRATIVE AND FINANCIAL PROVISIONS.

- U.S. Office of Management and Budget Circular A-87 "Cost Principles for State and Local Governments"
- U.S. Office of Management and Budget Circular A-102 "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments"
- 24 CFR 570.503 - Grant Administration Requirements for Use of Escrow Accounts for Property Rehabilitation Loans and Grants
- 24 CFR 570.488 to 570.499a - States Program: State Administration of CDBG Non Entitlement Funds
- Community Development Law, NEB. REV. STAT. 18-2101 to 18-2144 (R.S. Supp. 1982)
- Public Meetings Law, NEB. REV. STAT. 18-1401 to 18-1407 (R.R.S. 1943)

### MISCELLANEOUS.

- Hatch Act of 1938, As Amended (5 U.S.C. 1501, et. seq.)

The Applicant hereby certifies that it will comply with the above stated assurances.

Signed \_\_\_\_\_  
Chief Elected Official's Signature

Title Mayor

Date April 18, 2016

## Nebraska City

### FFATA REPORTING FORM/CERTIFICATION -- CDBG & CDBG HOUSING

The Federal Funding Accountability and Transparency Act (FFATA) seeks to provide the public with greater access to Federal spending information. Due to FFATA requirements, you are required to provide the following information, which may be used by the Department of Economic Development ("Department") to comply with federal reporting requirements. Please fill out the following form accurately and completely, have it signed by an authorized official, and submit to the Department along with your application for funding.

Name of Applicant: City of Nebraska City, Nebraska			
Applicant Address: 1409 Central Ave.			
City: Nebraska City	State: NE	Zip: 68410-	Congressional District: 1
Applicant DUNS number: 076983428			
Principal Place of Performance of Proposed Project: Within the municipal boundaries of the City of Nebraska City, Nebraska			
City: Nebraska City	State: NE	Zip: 68410-	Congressional District: 1
Brief Project Description: Provide homebuyer downpayment assistance with minor rehabilitation and including demolition as a support activity for purchase of at least eight affordable units and demolition of at least two units that meet the definition of a blighted structure.			
If certain conditions are met, Applicant must provide names and total compensation of Applicant's top five highly compensated Executives to the Department. Please answer question number 1, and follow the instructions. If directed to answer question 2, please answer question 2 and follow instructions.			
<p>1. In Applicant's previous fiscal year, did Applicant receive (a) 80 percent or more of Applicant's annual gross revenues in U.S. federal contracts and subcontracts and other federal financial assistance subject to the Transparency Act, as defined in 2 C.F.R. 170.320; AND (b) \$25,000,000 or more in annual gross revenues from contracts and subcontracts and other federal financial assistance subject to the Transparency Act, as defined in 2 C.F.R. 170.320?</p> <p>Yes <input type="checkbox"/> If yes, answer question 2 below.                  No <input checked="" type="checkbox"/> If no, stop, you are not required to report names and compensation. Please sign and submit form to the Department.</p>			
<p>2. Does the public have access to information about the compensation of Applicant's senior executives through periodic reports filed under section 13(a) or 15(d) of the Security Exchange Act of 1934 (15 U.S.C. 78(n)(1), 78o(d)), or section 6104 of the Internal Revenue Code of 1986?</p> <p>Yes <input type="checkbox"/> If yes, stop, you are not required to report names and compensation. Please sign and submit form to the Department.                  No <input type="checkbox"/> If no, you are required to report names and compensation. Please fill out the remainder of this form.</p>			
Please provide the names and Total Compensation of the top five most highly compensated Executives in the space below.			
(NOTE: Executive means officers, managing partners, or any other employees in management positions. Total Compensation means the cash and noncash dollar value earned by the Executive during the Applicant's preceding fiscal year and includes salary and bonus, awards of stock, stock options, and stock appreciation rights; earnings for services under non-equity incentive plans, change in pension value, above market earnings on deferred compensation which is not tax-qualified; and other compensation exceeding \$10,000 as defined in Appendix A to 2 C.F.R. Part 170.)			
Name:		Total Compensation:	
Name:		Total Compensation:	
Name:		Total Compensation:	
Name:		Total Compensation:	
Name:		Total Compensation:	
The Applicant certifies that the information contained on this form is true and accurate.		<i>DED USE</i>	
Signed: _____			
Title: <u>Mayor</u>			
Date: <u>April 18, 2016</u>			

# DETERMINATION OF LEVEL OF REVIEW

**ERR GRANT# 16-TFHP-16017**

Project Name: Homebuyer Downpayment Assistance with demolition Program Year: 2016

Project Location: City of Nebraska City, Nebraska

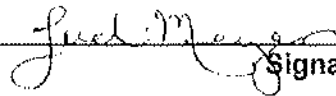
Project Description (Attach additional descriptive information, as appropriate to the project, including narrative, maps, photographs, site plans, budgets and other information.):

The project is for provision of downpayment assistance for purchase of at least eight affordable scattered site single-family housing units, including minor rehabilitation and for demolition of up to two scattered site housing units that are uninhabitable. The exact housing units and addresses are unknown at this time, therefore a Tier I environmental review will be conducted upon award of the project and a Tier II environmental review will be conducted for each site, once identified.

*The subject project has been reviewed pursuant to HUD regulations 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities," and the following determination with respect to the project is made:*

- Exempt** from NEPA review requirements per 24 CFR 58.34(a)(\_\_\_\_)
- Categorically Excluded NOT Subject** to §58.5 authorities per 24 CFR 58.35(b)(\_\_\_\_)
- Categorically Excluded SUBJECT** to §58.5 authorities per 24 CFR 58.35(a)(3\_\_\_\_)  
(A Statutory Checklist for the §58.5 authorities is attached.)
- An **Environmental Assessment (EA)** is required to be performed. (An Environmental Assessment performed in accordance with subpart E of 24 CFR Part 58 is attached.)
- An **Environmental Impact Statement (EIS)** is required to be performed.

The ERR (see §58.38) must contain all the environmental review documents, public notices and written determinations or environmental findings required by Part 58 as evidence of review, decision making and actions pertaining to a particular project. Include additional information including checklists, studies, analyses and documentation as appropriate.

<u>Judi Meyer</u> <b>Preparer Name</b>	 <b>Signature</b>
<u>SENDD Program Manager</u> <b>Title</b>	<u>April 8, 2016</u> <b>Date</b>

<u>Bryan Bequette</u> <b>Responsible Entity Certifying Officer</b>	 <b>Signature</b>
<u>Mayor</u> <b>Title</b>	<u>April 18, 2016</u> <b>Date</b>

Nebraska City  
**CITY OF NEBRASKA CITY ECONOMIC DEVELOPMENT PROGRAM**

**LOAN CONDITIONS**  
**For**  
**“Little Ted’s Bar and Grill, LLC”**

In consideration of financing for **“Little Ted’s Pub and Grill, LLC”** the following items describe the loan **“Little Ted’s Bar and Grill, LLC”** and the **City of Nebraska City, Nebraska** (representing the City of Nebraska City Economic Development Program or LB840):

- A. **City of Nebraska City** will have a second security position on the property legally described as: (property ID # 001302500) **Legal Description:** E 29' 9 1/2 LOT 8 BLK 5 NEBRASKA CITY PROPER, OTOE COUNTY, NEBRASKA (416 Central Avenue, Nebraska City).
- B. **First Nebraska Bank** will secure its loan of \$150,000 with first security position of property legally described as: (property ID # 001302500) **Legal Description:** E 29' 9 1/2 LOT 8 BLK 5 NEBRASKA CITY PROPER, OTOE COUNTY, NEBRASKA (416 Central Avenue, Nebraska City).

The City of Nebraska City’s Deed of Trust will be in a second position in the amount of \$60,000.00.

Included in the financing for **“Little Ted’s Bar and Grill, LLC”** will be a CITY OF NEBRASKA CITY ECONOMIC DEVELOPMENT PROGRAM (LB840) loan in the amount of \$60,000.00 with an interest rate of 2.75% fixed for a period of 5 years from the City of Nebraska City Economic Development Program Fund (**LB840**). A Promissory Note will describe payment obligations, which will include monthly payments of principal and interest.

Conditions of lending:

1. The funds will be used by the owners of **“Little Ted’s Pub and Grill, LLC”** to purchase the restaurant equipment and inventory currently owned by Cass County Keno. In addition to purchasing equipment and inventory, funds will be used as operating capital in order to assist Little Ted’s with the early stages of operation.
2. The City shall pay the total sum of \$60,000.00 in a low-interest loan secured by the property located at **416 Central Avenue**.
3. The low-interest loan (\$60,000.00) would be used for equipment, inventory and operating capital, payable at a rate of 2.75% for 5 years with the City of Nebraska City being in second security position as noted above.
4. Total investment in the property will be over \$210,000 with a combination of company/ personal equity, bank financing and LB 840 funding.
5. Personal guaranty signed by the owners of **“Little Ted’s Bar and Grill, LLC”**.
6. Submission of Financial Statements for **“Little Ted’s Bar and Grill, LLC”** (Profit and Loss & Balance Sheet) to the Application Review Board after six months of operation and annually thereafter for the life of the loan.
7. Payments of loan begin July 1<sup>st</sup>, 2016.
8. Loan is contingent upon a **signed** 5-year contact with Cass County Keno for Keno Operations in the business at 416 Central Avenue, Nebraska City.
9. In the event of business closure, rental or sale to another party, the unpaid balance of the note becomes due within 30 days.
10. Borrower agrees to adhere to City Ordinances in the operation of the business.

The total project investment is valued at \$210,000.

**\*\*REMINDER\*\* ROBERT’S RULES 1. PRESENTATION 2. MOTION 3. DEBATE 4. VOTE**



Nebraska City

All the terms and provision of this agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

- C. Costs for "Loan Closing" for the LB840 loan will be the responsibility of the borrower. These costs may *include, but will not be limited to* the following:
  - 1. Any closing & filing fees
- D. The principal also agrees to progress meetings and/or written reports as required in accordance with the conditions of the LB840 Citizens Advisory Review Committee. At a minimum an annual written report will be provided within 45 days of the end of the company's fiscal year until the City loan is paid in full.

**"Little Ted's Bar and Grill, LLC"**  
**416 Central Avenue**

\_\_\_\_\_  
Justin Cunningham, Member

\_\_\_\_\_  
Ted Cunningham, Member

THE CITY OF NEBRASKA CITY,  
STATE OF NEBRASKA,

BY \_\_\_\_\_  
Bryan Bequette, Mayor

ATTEST:

\_\_\_\_\_  
Randy Dunster, City Clerk

Nebraska City

**RESOLUTION NO. 2704-16**

**TO USE PROGRAM FUNDS FROM THE CITY OF NEBRASKA CITY ECONOMIC DEVELOPMENT PROGRAM (LB840)**

**WHEREAS**, the **City of Nebraska City** has received Program Funds through the City of Nebraska City Economic Development Plan and,

**WHEREAS**, Program funds for Economic Development are allowed to be used for making funding awards to eligible businesses in accordance with the City of Nebraska City Economic Development Plan, program and governing regulations, and,

**WHEREAS**, the City of Nebraska City Economic Development Plan has previously been adopted, and,

**WHEREAS**, the Citizens Advisory Review Committee and Program Director have recommended approval of a loan application by an eligible business on a project with a total estimated cost of \$210,000, with \$150,000 in private funding and \$60,000 sought through the Economic Development Program,

**WHEREAS**, the City Council of Nebraska City conducted a public hearing upon the proposed use of Economic Development Program funds,

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of Nebraska City, that the obligation of funds is approved as applied in the amount of \$60,000 in a low-interest loan, subject to conditions of the application and Loan Conditions Agreement, and the Mayor is hereby authorized to execute all necessary and appropriate documents on behalf of the City and the City of Nebraska City Economic Development Program to complete the project funding for "**Little Ted's Bar and Grill, LLC**", contingent upon approval of the City Attorney as to form.

Passed and adopted on the 18<sup>th</sup> day of April, 2016, by the City Council of Nebraska City.

\_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk-Treasurer

# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



## Agenda Information Support Sheet

To: Mayor and Commissioners

Council Meeting: April 18, 2016

Agenda Item: # \_\_\_\_\_

Submitted By: Grayson Path, City Administrator

**A. Synopsis of Issue:**

- a. Alfred Benesch & Company, ME Collins Contracting Co. and the City have completed the attached Contractor Agreement for the South 11<sup>th</sup> Street Project.
- b. At this point, all that is needed is the Council's approval for the Mayor to sign.

**B. Options:**

- a. Authorize the Mayor to sign – project continues.
- b. Reject the agreement – project is stopped. Guidance given to the City Staff.

**C. Fiscal Note:**

- a. Contractor's bid was for \$1,799,806.80. No additional costs in this agenda item.
- b. Note: BANS for the project arrived 4/12/16.

**D. Recommendation:**

- a. Authorize the Mayor to sign the agreement between the City of Nebraska City and ME Collins Contracting Co. for contractor duties of the South 11<sup>th</sup> Street Project.

**E. Background:**

- a. The agreements have been reviewed and approved by the City Administrator and City Attorney.
- b. These documents were a part of the bid package approved by the City Council on 2/1/16. The staff had heavily vetted these documents in the month prior to the meeting. No changes were made to that version that was approved other than filling in blanks.
- c. The appropriate Surety Bond and Certificate of Liability Insurance have been obtained.
- d. The various attachments in Article 9 are available upon request. Alfred Benesch & Co. is assisting the City Staff by tracking and verifying accuracy of these documents.

.....  
 Department Heads: Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.

Nebraska City  
AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Nebraska City, NE ("Owner") and  
M.E. Collins Contracting Co. ("Contractor").

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**ARTICLE 2 – THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: 11th St. Improvements [M-439(265) & M-439(295)]

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by Alfred Benesch & Co.

3.02 The Owner has retained Alfred Benesch & Co. ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Contract Times

A. The Work will be substantially completed on or before **125 calendar days from issuance of the Notice to Proceed**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **September 14, 2016**. A Notice to Proceed will be issued on or before May 2, 2016.

4.03 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

## Nebraska City

1. Substantial Completion: Contractor shall pay Owner **\$1,500.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
  2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,000.00** for each day that expires after such time until the Work is completed and ready for final payment.
  3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
- B. Bonus: No bonus will be paid if the Work is completed prior to the time specified for Substantial Completion.

### ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

### ARTICLE 6 – PAYMENT PROCEDURES

#### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

#### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. The City will process up to two (2) payments per month. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
    - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
    - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

## Nebraska City

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

## ARTICLE 7 – NOT USED

## ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

## Nebraska City

- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

### ARTICLE 9 – CONTRACT DOCUMENTS

#### 9.01 *Contents*

- A. The Contract Documents consist of the following:
  1. This Agreement (pages 1 to 7, inclusive).
  2. Performance bond (pages 1 to 3, inclusive).
  3. Payment bond (pages 1 to 3, inclusive).
  4. Other bonds.
    - a. \_\_\_\_\_ (pages **N/A** to \_\_\_\_\_, inclusive).
  5. General Conditions (pages i to 64, inclusive).
  6. Supplementary Conditions (pages i to 8, inclusive).
  7. Specifications as listed in the table of contents of the Project Manual.
  8. Drawings (not attached but incorporated by reference) consisting of 64 sheets with each sheet bearing the following general title: Project Number M-439(265) & M-439(295).
  9. Addenda (numbers 1 to 1, inclusive).
  10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages 1 to 13, inclusive).
  11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

### ARTICLE 10 – MISCELLANEOUS

#### 10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

**\*\*REMINDER\*\* ROBERTS RULES 1. PRESENTATION 2. MOTION 3. DEBATE 4. VOTE**

## Nebraska City

### 10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

### 10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

**\*\*REMINDER\*\* ROBERTS RULES 1. PRESENTATION 2. MOTION 3. DEBATE 4. VOTE**



## Nebraska City

### 10.07 *Guarantee*

- A. The Contractor shall guarantee all other work shall be guaranteed for one (1) full year from the date of substantial completion. All guarantee periods shall commence on the date that the Engineer accepts the work. The Contractor is responsible for all repairs or reconstruction necessary during such period due to any imperfection in the work. The Contractor agrees to commence any repairs or reconstruction within twenty (20) calendar days of receiving notice from the Owner. Should the Contractor refuse or neglect to commence such repairs or reconstruction, the Owner shall designate an individual or legal entity to perform such repairs or reconstruction. The Contractor is responsible for the cost of such work.
- B. The Contractor shall notify the Owner in writing a minimum of thirty (30) days before the expiration of the guarantee period. The Owner shall inspect the work and notify the Contractor of any areas requiring repair or reconstruction. Upon completion of such repair or reconstruction, the Owner shall certify that the project is in good and proper condition and the guarantee shall expire on the appropriate date. If any repair or reconstruction remains incomplete at the end of the guarantee, the Contractor shall extend the guarantee until such work is completed.

Nebraska City

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

City of Nebraska City, NE

M.E. Collins Contracting Co., Inc.

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

By: 

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

Title: Michael E. Collins, CEO

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_

Attest: 

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

Title: President

Address for giving notices:

Address for giving notices:

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

P.O. Box 83  
Wahoo, NE 68066  
\_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

Nebraska City  
**EXHIBIT - CONTRACTOR'S BID PAGES (13 PAGES TOTAL)**

**BID FORM**

11<sup>th</sup> St. Improvements  
M-439(265) & M-439(295)

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Nebraska City

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

City of Nebraska City, NE, 1409 Central Ave, Nebraska City, NE 68410

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum, Date</u>
<u>1</u>	<u>2/20/14</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2)

## Nebraska City

the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

### ARTICLE 4 – BIDDER'S CERTIFICATION

#### 4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

Nebraska City

ARTICLE 5 – BASIS OF BID

- 5.01 Bidder will complete the Work in accordance with the Contract Documents for the price(s) identified in the Schedule of Unit Prices contained in Article 8.
- 5.02 Bidder agrees that the Work will be substantially complete on or before 125 calendar days from issuance of the Notice to Proceed, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before September 14, 2016. A Notice to Proceed will be issued on or before May 2, 2016.
- 5.03 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 6 – ATTACHMENTS TO THIS BID

- 6.01 The following documents are submitted with and made a condition of this Bid:
  - A. Required Bid security; and
  - B. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;

ARTICLE 7 – DEFINED TERMS

- 7.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

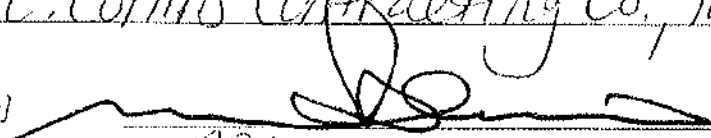
ARTICLE 8 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

M.E. Collins Contracting Co., Inc.

By:

*[Signature]*



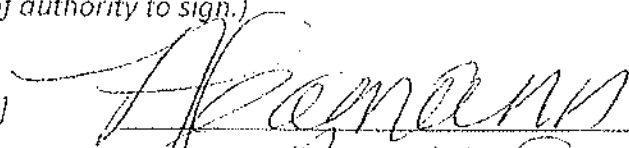
*[Printed name]*

Michael E. Collins, CEO

*(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest:

*[Signature]*



*[Printed name]*

April Seemann

Title:

Administrative Assistant

Submittal Date:

February 29, 2014

Nebraska City

Address for giving notices:

P.O. Box 83  
Wahoo, NE 68060

Telephone Number:

402-443-3663

Fax Number:

402-443-5013

Contact Name and e-mail address:

Jerry Kabzurek

jerry@mcollinscontracting.com

Bidder's License No.:

21303  
(where applicable)

Schedule of Unit Prices on following page(s).

Nebraska City

BASE BID - ROADWAY

ITEM NO.	ITEM DESCRIPTION	Quantity	Unit	Unit Price	Cost
1	Mobilization	1	LS	28,079 <sup>-</sup>	28,079 <sup>-</sup>
2	Traffic Control	1	LS	38,000 <sup>-</sup>	38,000 <sup>-</sup>
3	Clearing and Grubbing	1	LS	22,837 <sup>-</sup>	22,837 <sup>-</sup>
4	Silt Fence - Low Porosity	800	LF	4 <sup>-</sup>	3,200 <sup>-</sup>
5	Seeding with Erosion Blanket	1	ACRE	17,642 <sup>-</sup>	17,642 <sup>-</sup>
6	Curb Inlet Sediment Filter	20	EA	214 <sup>-</sup>	4,280 <sup>-</sup>
7	Earthwork Measured in Embankment	1310	CY	23 <sup>-</sup>	30,130 <sup>-</sup>
8	Water	7	Mgal	11 <sup>-</sup>	77 <sup>-</sup>
9	Remove Pavement	3052	SY	9 <sup>-</sup>	27,468 <sup>-</sup>
10	Remove Driveway	1874	SY	7 <sup>-</sup>	13,118 <sup>-</sup>
11	Remove Combination Curb and Gutter	87	LF	8 <sup>-</sup>	696 <sup>-</sup>
12	Remove Median Surfacing	39	SY	7 <sup>-</sup>	273 <sup>-</sup>
13	Remove and Reset Mailbox	25	Ea	210 <sup>-</sup>	5,250 <sup>-</sup>
14	Remove Driveway Culvert Pipe	192	LF	8 <sup>-</sup>	1,536 <sup>-</sup>
15	Remove Sewer Pipe	201	LF	11 <sup>-</sup>	2,211 <sup>-</sup>
16	Remove Flared End Section	3	EA	158 <sup>-</sup>	474 <sup>-</sup>
17	Remove Concrete Flume	4	EA	525 <sup>-</sup>	2,100 <sup>-</sup>
18	Remove Inlet	6	EA	735 <sup>-</sup>	4,410 <sup>-</sup>
19	Remove Retaining Wall	1	EA	3,151 <sup>-</sup>	3,151 <sup>-</sup>
20	Remove Manhole	1	EA	735 <sup>-</sup>	735 <sup>-</sup>



## Nebraska City

ITEM NO.	ITEM DESCRIPTION	Quantity	Unit	Unit Price	Cost
21	Remove Headwall	1	EA	315.-	315.-
22	Cold Milling, Class 2 (2" Nominal)	8053	SY	8.-	64,424.-
23	Cold Milling Transitional	208	SY	20.-	4,160.-
24	9" Concrete Pavement, Class 47B-4000	930	SY	67.-	62,310.-
25	6" Concrete Overlay, Class 47B-4000	8894	SY	53.-	471,382.-
26	8" Concrete Base Course, 47B-PR-4000	688	SY	80.-	55,040.-
27	8" Temporary Surfacing	447	SY	71.-	31,737.-
28	Gravel for Temporary Surfacing	500	CY	49.-	24,500.-
29	Concrete Class 47B-3500 Median Surface	27	SY	53.-	1,431.-
30	Comb. Concrete Class 47B-3500 Curb & Gutter	36	LF	35.-	1,260.-
31	6" Concrete Class 47B-3500 Sidewalk	1285	SY	64.-	82,240.-
32	Concrete Class 47B-3500 Driveway	1506	SY	74.-	111,444.-
33	Concrete Class 47B-PR-3500 Driveway	493	SY	71.-	35,003.-
34	Detectable Warning Panel	80	SF	30.-	2,400.-
35	Subgrade Preparation	3617	SY	3.-	10,851.-
36	Earth Shoulder Construction	20.8	Sta.	525.-	10,920.-
37	Water	16	Mgal	11.-	176.-
38	Curb Inlet	19	EA	4412.-	83,828.-
39	Cast Iron Cover, Frame, & Flange	1750	LBS	4.-	7,000.-
40	Cast Iron Ring & Cover	2775	LBS	4.-	11,100.-
41	Manhole	6	EA	4453.-	26,718.-

Nebraska City

ITEM NO.	ITEM DESCRIPTION	Quantity	Unit	Unit Price	Cost
42	12" Storm Sewer Pipe	20	LF	61.-	1,220.-
43	18" Storm Sewer Pipe	1413	LF	52.-	73,476.-
44	24" Storm Sewer Pipe	603	LF	67.-	40,401.-
45	30" Storm Sewer Pipe	271	LF	99.-	26,829.-
46	36" Storm Sewer Pipe	228	LF	129.-	29,412.-
47	48" Storm Sewer Pipe	64	LF	189.-	12,096.-
48	Area Inlet	3	EA	4,727.-	14,181.-
49	Reconstruct Curb Inlet	1	EA	2,713.-	2,713.-
50	Adjust Manhole to Grade	5	EA	589.-	2,945.-
51	Adjust Inlet to Grade	1	EA	1,585.-	1,585.-
52	12" Concrete Collar	1	EA	877.-	877.-
53	Tap Existing Structure	2	EA	891.-	1,782.-
54	Pull Box, Type PB-6	4	EA	985.-	3,940.-
55	3" PVC Conduit - trenched	173	LF	26.-	4,498.-
56	3" PVC Conduit - bored	49	LF	41.-	2,009.-
57	4" White Wet Reflective Thermoplastic Pavement Marking, Grooved	125	LF	6.-	750.-
58	4" Yellow Wet Reflective Thermoplastic Pavement Marking, Grooved	5720	LF	4. <sup>50</sup>	25,740.-
59	Arrow, Preformed Pavement Marking, Type 4 Grooved	21	EA	505.-	10,605.-
60	Pavement Marking Removal	1234	LF	4. <sup>20</sup>	5,182. <sup>80</sup>
61	Temporary Pavement Marking	7500	LF	0. <sup>40</sup>	3,000.-

SUBTOTAL BASE BID - ROADWAY

# 1,567,153.<sup>80</sup>

Nebraska City

OPTIONAL BID - WATER MAIN

ITEM NO.	ITEM DESCRIPTION	Quantity	Unit	Unit Price	Cost
62	Mobilization	1	LS	10,505 <sup>-</sup>	10,505 <sup>-</sup>
63	Reconstruct Water Service	16	EA	2823 <sup>-</sup>	45,168 <sup>-</sup>
64	1" Water Service	381	LF	19 <sup>-</sup>	7,239 <sup>-</sup>
65	2" Water Service	402	LF	27 <sup>-</sup>	10,854 <sup>-</sup>
66	6" Retainer Gland	9	EA	47 <sup>-</sup>	423 <sup>-</sup>
67	8" Retainer Gland	3	EA	69 <sup>-</sup>	207 <sup>-</sup>
68	10" Retainer Gland	1	EA	125 <sup>-</sup>	125 <sup>-</sup>
69	12" Retainer Gland	23	EA	130 <sup>-</sup>	2,990 <sup>-</sup>
70	Anchoring Elbow M.J. 6"	5	EA	274 <sup>-</sup>	1,370 <sup>-</sup>
71	Anchor Coupling M.J. 6"	5	LF	274 <sup>-</sup>	1,370 <sup>-</sup>
72	12" Water Main Pipe	1565	EA	48 <sup>-</sup>	75,120 <sup>-</sup>
73	6" Water Main Pipe	203	EA	33 <sup>-</sup>	6,699 <sup>-</sup>
74	6" Gate Valve	5	EA	1,280 <sup>-</sup>	6,400 <sup>-</sup>
75	8" Gate Valve	1	EA	1,751 <sup>-</sup>	1,751 <sup>-</sup>
76	12" Gate Valve	2	EA	3,177 <sup>-</sup>	6,354 <sup>-</sup>
77	Fire Hydrant 5.5	5	EA	6,197 <sup>-</sup>	30,985 <sup>-</sup>
78	12" x 6" Tee	5	EA	466 <sup>-</sup>	2,330 <sup>-</sup>
79	12" x 8" Tee	1	EA	562 <sup>-</sup>	562 <sup>-</sup>
80	12" x 8" Reducer	1	EA	256 <sup>-</sup>	256 <sup>-</sup>
81	12" - 11.25 Degree Bend	2	EA	351 <sup>-</sup>	702 <sup>-</sup>

Nebraska City

ITEM NO.	ITEM DESCRIPTION	Quantity	Unit	Unit Price	Cost
82	12" - 45 Degree Bend	2	EA	435 <sup>-</sup>	870 <sup>-</sup>
83	Abandon Water Main	1	EA	2263 <sup>-</sup>	2263 <sup>-</sup>
84	6" Plug	4	EA	78 <sup>-</sup>	312 <sup>-</sup>
85	8" Plug	1	EA	116 <sup>-</sup>	116 <sup>-</sup>
86	10" Plug	1	EA	194 <sup>-</sup>	194 <sup>-</sup>
87	Remove Fire Hydrant	3	EA	735 <sup>-</sup>	2,205 <sup>-</sup>
88	Remove Gate Valve	6	EA	158 <sup>-</sup>	948 <sup>-</sup>
89	8" Sleeve	1	EA	519 <sup>-</sup>	519 <sup>-</sup>
90	12" Sleeve	2	EA	1,017 <sup>-</sup>	2,034 <sup>-</sup>
91	Traffic Control	1	LS	11,782 <sup>-</sup>	11,782 <sup>-</sup>

SUBTOTAL OPTIONAL BID - WATER MAIN

\$ 232,653<sup>-</sup>

TOTAL PROJECT - BASE BID + OPTIONAL BID

\$ 1,791,806<sup>80</sup>



BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (Name and Address):

M.E. Collins Contracting Co., Inc.
P.O. Box 83
Wahoo, NE 68066

SURETY (Name, and Address of Principal Place of Business):

Universal Surety Company
P.O. Box 80468
Lincoln, NE 68501

OWNER (Name and Address):

City of Nebraska City, NE, 1409 Central Ave, Nebraska City, NE 68410

BID

Bid Due Date: Thursday, February 25, 2016 by 3:00pm

Description: 11th St. Improvements

M-439(265) & M-439(295)

BOND

Bond Number: N/A

Date: February 25, 2016

Penal sum five percent of the amount bid (\$-5%-)

(Words)

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

M. E. COLLINS CONTRACTING CO., INC. (Seal)

UNIVERSAL SURETY COMPANY (Seal)

Bidder's Name and Corporate Seal

Surety's Name and Corporate Seal

By: [Signature] Signature

By: [Signature] Signature (Attach Power of Attorney)

Michael E. Collins
Print Name

Robert T. Cirone
Print Name

CEO
Title

Attorney-in-Fact
Title

Attest: [Signature] Signature

Attest: [Signature] Signature

Title Witness

Title Witness

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

## Nebraska City



## PENAL SUM FORM

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

Nebraska City

# UNIVERSAL SURETY COMPANY

Lincoln, Nebraska

## POWER OF ATTORNEY

### KNOW ALL MEN BY THESE PRESENTS:

That the UNIVERSAL SURETY COMPANY, a corporation of the State of Nebraska having its principal office in the City of Lincoln, Nebraska, pursuant to the following Bylaw, which was adopted by the Board of Directors of the said Company on July 23, 1981, to wit:

"Article V-Section 6. RESIDENT OFFICERS AND ATTORNEYS-IN-FACT. The President or any Vice President, acting with any Secretary or Assistant Secretary, shall have the authority to appoint Resident Vice Presidents and Attorneys-In-Fact, with the power and authority to sign, execute, acknowledge and deliver on its behalf, as Surety. Any and all undertakings of suretyship and to affix thereto the corporate seal of the corporation. The President or any Vice President, acting with any Secretary or Assistant Secretary, shall also have the authority to remove and revoke the authority of any such appointee at any time." does hereby make, constitute and appoint

Robert T. Cirone or James M. King or Suzanne P. Westerholt  
or Jacob J. Buss or Thomas L. King, Lincoln, Nebraska

its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver for and on its behalf, as Surety:  
Any and all undertakings of suretyship

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its offices in Lincoln, Nebraska, in their own persons.

The following Resolution was adopted at the Regular Meeting of the Board of Directors of the UNIVERSAL SURETY COMPANY, held on July 23, 1981:

"RESOLVED, That the signatures of officers of the Company and the seal of the Company may be affixed by facsimile to any Power of Attorney executed in accordance with Article V-Section 6 of the Company Bylaws; and that any such Power of Attorney bearing such facsimile signatures, including the facsimile signature of a certifying Assistant Secretary and facsimile seal shall be valid and binding upon the Company with respect to any bond, undertaking or contract of suretyship to which it is attached."

All authority hereby conferred shall remain in full force and effect until terminated by the Company.

IN WITNESS WHEREOF, UNIVERSAL SURETY COMPANY has caused these presents to be signed by its President and its corporate seal to be hereunto affixed this 16th day of June, 2015.

UNIVERSAL SURETY COMPANY

*Carol J. Clark*

*Curtis L. Harter*

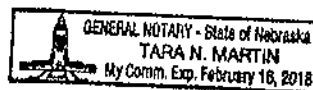


State of Nebraska }  
County of } ss. Secretary/Treasurer  
                  }   Lancaster

By President

On this 16th day of June, 2015, before me personally came Curtis L. Harter, to me known, who being by me duly sworn, did depose and say that (s)he resides in the County of Lancaster, State of Nebraska; that (s)he is the President of the UNIVERSAL SURETY COMPANY, the corporation described in and which executed the above instrument; that (s)he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; that (s)he signed (his) (her) name by like order; and that Bylaw, Article V-Section 6, adopted by the Board of Directors of said Company, referred to in the preceding instrument, is now in force.

*Tara N. Martin*



My Commission Expires February 16, 2018

Notary Public

I, Cheryl A. Brown, Assistant Secretary of UNIVERSAL SURETY COMPANY do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said UNIVERSAL SURETY COMPANY which is still in full force and effect.

Signed and sealed at the City of Lincoln, Nebraska this 16th day of June, 2015.

*Cheryl A. Brown*

Assistant Secretary



# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



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## Agenda Information Support Sheet

To: Mayor and Commissioners

Council Meeting: April 18, 2016

Agenda Item: # \_\_\_\_\_

Submitted By: Grayson Path, City Administrator

### A. Synopsis of Issue:

- a. With the retirement of Dan Gittinger, Public Properties Director, the City will be without a "Responsible Charge" (RC) employee required for all federal-aid projects.
- b. This support sheet is covering two action items which will be on the same letter to NDOR:
  - i. Requesting that the NDOR assume RC duties.
  - ii. Identifying Grayson Path as the City's project liaison.

### B. Options:

- a. Approve the Mayor to sign the letter for both RC duties and Project Liaison.
- b. Approve a letter for RC duties to the NDOR only, select a different Project Liaison.
- c. Reject the request for NDOR to serve as RC. Per the agreement BM1119 section 4.B.11, the City must identify an RC within 30 days of the departure of the current RC. Please provide City Staff with guidance if this option is chosen.

### C. Fiscal Note:

- a. No immediate cost. The NDOR will likely have some cost for RC duties, but this was actually assumed in the most recent estimates for the 4<sup>th</sup> Corso Viaduct by the NDOR.

### D. Recommendation:

- a. Authorize the Mayor to sign the letter naming Grayson Path as the Project Liaison.
- b. Authorize the Mayor to sign the letter requesting that the NDOR assume RC duties for the 4<sup>th</sup> Corso Viaduct.
- c. These will be on the same letter.

### E. Background:

- a. The RC is spelled out in great detail in BM1119, Section 4. This position has a lot of duties throughout the entire project, but in summary assumes oversight of the project.
- b. The State has been taking over the RC duties throughout the State (Steinhart Trail Project is an example) as they have the knowledge and skill necessary to successfully navigate the federal-aid requirements. But they have not taken over the RC duties of the 4<sup>th</sup> Corso Viaduct yet.



Nebraska City

- c. As Dan is retiring, a RC must be selected by our contract (BM1119). No other employees are trained and the State does not appear to be continuing the RC training. Therefore we are required to turn the RC duties over to the State (which is the City Administrator's recommendation). The City Administrator acknowledges that he has not searched for anyone else with an RC title, but realistically it should be an employee, an engineer (not the engineer over the project – RC is to observe them), or NDOR. Of these options, NDOR is the most feasible, timely, direct and likely cost effective.
- d. To do this though, the Council must approve the Mayor to sign the attached letter stating such.
- e. In addition, as the NDOR will be taking over the RC duties, the City will need a project liaison – a City Employee. At this time, it is recommended that the City Administrator assume this role. Selecting a Project Liaison goes hand-in-hand with selecting a non-City employee as RC.

.....  
Department Heads:      Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.

# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



April 18, 2016

Glen Steffensmeier  
Local Projects Division  
Nebraska Department of Roads  
1400 Highway 2  
Lincoln, NE 68509-4759

RE: Nebraska City, NE -- 4<sup>th</sup> Corso Viaduct, URB-6217(4), BL1673 (Draft)

Mr. Steffensmeier,

On behalf of the City Council of the City of Nebraska City, I would like to request the following changes be made to the above stated project known as the 4<sup>th</sup> Corso Viaduct:

1. Grayson Path, City Administrator, be listed as the City of Nebraska City Project Liaison to the Nebraska Department of Roads.
2. The Nebraska Department of Roads assumes all current and future Responsible Charge (RC) duties.

A copy of the meeting minutes containing the above two action items and their vote has been attached with this letter. As of April 19, 2016, the City's current RC, Dan Gilttinger, will be retiring from employment. The City will therefore be without an RC for the project. We request that the above two changes be added to the draft BL1673.

If you have further questions, please direct your communication to Grayson Path, City Administrator.

Sincerely,

Bryan Bequette  
Mayor  
Nebraska City, NE



City of Nebraska City

1409 Central Avenue  
Nebraska City, NE 68410-2223

HOME OF ARBOR DAY

Phone: 402-873-5515 Fax: 402-873-5685

REQUEST FOR COUNCIL AGENDA OR PUBLIC INFORMATION / RECORDS

Your request will be reviewed and possibly scheduled for a future meeting,  
or forwarded to City Staff for appropriate action\*

Name: KIMBERLY WARNER - REPRESENTING LNC  
Address: 1018 N. 9th St. Neb. City CLASS # 10  
Phone #: (702) 423-3765  
Email Address: ART4IMPACT@GMAIL.COM

CC: Police Dept.:      Street Dept.:      Park Dept.:      Other:     

Item Title: Memorial Way Tile Mural / Moving the Structure w/o consideration of materials

Explanation of Request: For upcoming painted murals in Memorial way be designed next to or around the tile mural created by LNC'S #10 class. To understand under no-mans hands can artwork of such material be moved without significant damage to the part. If it is moved when damage occurs, who will be responsible for cost of the project?

Action Requested of Council: To allow LNC'S community-made tile mural to remain in its current location; to ensure its longevity & respect the artwork made by the joint efforts of community leaders, teachers & students. To recognize the significance of the mural & fragility of its materials that makes its current location important

Will this item require the expenditure of funds? Yes:      No:      Estimate \$     

Council meetings are held on the 1<sup>st</sup> & 3<sup>rd</sup> Mondays of the month. All requests for inclusion on a Council Meeting Agenda must be submitted by 5 P.M. on the Wednesday preceding the Council meeting. Once a request is received, staff will review it and determine if it requires Mayor/Council action, or if the item can be handled by staff.  
\*You will be notified as to how your request will be handled as soon as possible.

For staff use only: Action Required.

Examination of Public Records are covered under Neb. Rev. State. §84-712 or other appropriate state statutes.  
Fees: \$0.25 per page

April 11, 2016

Dear Council Members,

My name is Kimberly Warner;  
I live in Nebraska City with my family of 3 kids and large dog who just loves the city dog park, and my husband who is grateful to be busy year round with our business, serving the area in residential construction. I hold my Bachelors of Science in Art Education with emphasis in Sculpture. I served as a teacher for Nebraska City Public Schools as Behavior Teacher for the IMPACT Program and now work as a contract Common Sense Parenting Trainer for Boys Town.

I am writing on behalf of Leadership Nebraska City class #6, of which I was a member. Each member of our class has granted me permission to speak on their behalf, as we are in agreeance with the following concerns.

It has come to my attention that our class community-made mural; which we designed and erected as part of our LNC class project, is going to be moved to accommodate a painted mural along the west side of Memorial Way Park. While we admire and fully support a mural being painted to honor our Veterans, to insist our tile mural must be moved to accommodate the painting is to do so without considering feedback from those skilled in ceramics and construction, and poses serious structural consequences moving art of such materials.

#### **Adequate Room for Each Artwork**

No doubt, the painted mural that will be painted on the west wall will be a beautiful addition to the park; as well as an honorable tribute to all Veterans. The plans to paint an additional mural honoring our Veterans is a wonderful tribute to those men and women who gave up their own freedom of leading a normal civilian life, to choose a life of extreme discipline, sacrifice and service to our country. However, Memorial Parks' west wall is a vast blank canvas, with plenty of room to share.

As an artist myself, I

Believe a mural of any subject matter and vision can easily be created left and center of our tile mural with the same presence, ensuring our community-made mural is respected and allowing the two pieces of art to complement one another.

If an attitude of "all wall or nothing" is present, I would love to help you envision the wall with our mural in its place and in the future another tile mural opposite ours of the same size, to make the west wall symmetrical, and the painted memorial mural in the center of the two. An artist can make the material work well together, not distract from it.

#### **Reliable Structural & Construction Knowledge**

The decision to move our community-made tile mural was done so; as I understood it from Mr. Path, based on an individual saying he had the ability to move it. As much as I admire the ambition, for anyone to claim they can move the mural without structural damage to the grout and tile does so without adequate knowledge of the structure and materials. Tile is rigid; stiff and unyielding. If the foundation it is adhered to (whether by glue, thinset or clay) is flexed, jolted, or subject to significant vibrations the tile will give with the movement and snap.

Those are just a few things that happen when a structure of its stature and weight and are moved, even by the most skilled craftsman. It is very likely one if not all of the aforementioned things will have significant impact on the tile and grout, causing it to crack and let loose tiles.

### **The Journey of a Tile**

These 200+ tiles were hand made under the instruction of Ceramicist and LNC class member Jenni Brant and myself; as we taught our fellow LNC classmates and groups of willing citizens and student to press the needed tiles the needed tiles, plus 100 extra in case of any breakage during the first firing. The journey of a tile is then to be laid out with room between tiles to evenly and slowly dry out, often being carefully flipped over to ensure each side dries at the same rate as not to crack. The tiles then are at their most brittle stage called "bone dry", which makes transporting them anywhere extremely tedious and nerve wracking. We then transported the tiles to the Middle School where Art Instructor Mike Little generously gave many full weekends to allow the use of his kiln, helping us fire the tiles which had to be done in very small batches between 15 and 22 tiles at a time, as each tile needs their own space on each "level" of the kiln to allow airflow to discourage breakage. Firing one batch takes 5 1/2 - 6 hours, then the kiln must cool for several hours before the tiles can be removed with gloves to protect from the heat. The process repeats and repeats.

Following firing the design was broken up into pieces called a grid, then each grid (like pieces of a puzzle) was then transferred by hand using carbon paper onto the tile so the drawing was visible on the tile. Glazing of each tile was then completed with very careful instruction by Jenni and myself, of the many students, families and individuals who voluntarily came with interest in the mural. Once each piece was glazed and numbered by its placement on the mural, the tiles were again transported carefully back to the Middle School where they would again be fired in small batches. The man hours separating clay, throwing the clay to rid it of air pockets, rolling out, pressing, smoothing and cutting took an enormous amount of community participation, patience, excitement and time. The glazing took equal amounts of time and precision. It's easy to say, we were all pretty pooped after the tiles were all finally fired and finished.

This is the journey of a handmade tile.

### **Memorial Way: The good & the "In hindsight, not so great"**

Memorial Parkway has seen its share of projects implemented with good intentions, but that didn't really work out as good as planned.

Example#1: Pea Gravel; a nice thought and from afar aesthetically pleasing. While my husband and I spent a long and very hot summer day tiling and grouting our enormous mural in Memorial Park, we had the privilege of walking back and forth, and back again, and forth again, through the irritating and often strenuous material that is pea gravel. My foot would sink in it to my ankles and my shoe would fill with the tiny rocks, and my other ankle would twist as I tried to pull my other foot out of the rocky-quick

sand. No, I do not have trouble walking normally and I am not one for complaining....but you try to accomplish a task in a bed of pea gravel. Frankly, it sucks.

Anyways, as we cursed under our breath at the rock and whomever decided to put it down, we occasionally noticed groups of elderly women and men with their downtown shopping bags in tow, trying to cross the vast of pea gravel in attempts to rest on one of the benches in the parkway. Each of them needed rescuing, which we were happy to help. As we helped support them back to solid ground they too were cursing under their breath as their orthopedic shoes filled with gravel and their hips swayed back and forth trying to remain upright. The night before we laid the tile while my husband was voluntarily; I volunteered him :) ; drilling the holes in the steel base, holes in the concrete, and setting the frame and backerboard there was a group of teenagers who found good sport in throwing the gravel into the sidewalk area and at each other.

Kids are very creative. Moral of the story: Nice idea, more consideration for material by someone in the know may have saved some money and an elders breath.

**\*\*REMINDER\*\* ROBERTS RULES 1. PRESENTATION 2. MOTION 3. DEBATE 4. VOTE**

## Nebraska City

Example #2: Another Leadership Nebraska City Class undoubtedly heard my cries for help as I waded through the gravel, and they decided to have their class project be to replace the gravel with brick pavers to beautify and solidify Memorial Park. Hooray! It was a huge and very particular project, as it took many, many man hours and community support to raise money to brick nearly the entire way.

Fast forward to the first painted mural on the east side of Memorial Way; this is where the "uuh ooh" happened.

The muralist must reach heights legs simply don't reach, so a man lift was suggested, authorized, what have you, to drive onto the pavers to lift the muralist up to paint the mural. The problem was someone with adequate experience in heavy equipment, building materials and such would have foretold what would happen to brick pavers when a multiple ton machine drives onto them. The pavers that were driven on all had to be replaced, who paid for their replacement and the man hours it took for them to be re-laid, I haven't a clue.

### **Mistakes Happen. We try to learn from them, not repeat them.**

If I was a muralist with a background in painting and no other disciplines like building, I might not think twice about driving a large piece of machinery onto any surface either (other than a lake of course). Then again, if checks and balances aren't made, someone would be footing the bill for my lack of knowledge or inability to perform a task up to par. As I very lengthily narrated the journey of a tile and countless hours spent by businessmen, citizens, students and teachers to make this enormous project cannot be matched by a monetary number. The tiles were made by kids and their families, members of our community. When one tile breaks, we can't track down who made it and make another one, nor can we chisel out its remains on a mural and make another tile and put it in its place. When the grout cracks and tiles pop in re-location, the whole piece is compromised. I ask with all respect; not in pointing blame or to coax, if this community-made artwork is moved who will be responsible for what it cost for the murals expenses? Not just the thousands of dollars granted by the Iowa Arts Council and the Nebraska Fine Arts Committee, but the hours of time licensed contractors & fabricators volunteered to fabricate, build, assemble, erect and finish the tile mural. Who will be responsible for the sum of the costs if the mural is moved and when it is damaged?

Damage done to an artwork of its materials, quality and size cannot be repaired, or replaced; whether damage inflicted by a random person vandalizing the mural or a cautioned against re-location that could have been prevented. We would like this mural; created with the combined efforts of our community and students, to be given the chance to inspire and stand where it was erected, for as long as its materials quality and nature's cooperation allows it to do so.

On behalf of LNC Class #6, I hope you appreciate my attempts to enlighten such a lengthy proposal in attempts to keep you from dozing off. Mostly, I hope you consider Memorial Way a place in town where all artwork can be respected, new and old.

Kimberly Warner  
LNC Class #6  
1018 North 9<sup>th</sup> Street  
Nebraska City, NE 68410  
[Art4impact@gmail.com](mailto:Art4impact@gmail.com)  
702.423.3765

Nebraska City

April 11, 2016

Dear Nebraska City Commissioner;

It has been called to my attention that the Veteran's Memorial Mural being proposed for Memorial Way may involve moving the 5' x 7' tile mural installed in Memorial Way in 2012.

I am writing to ask that this tile mural be left where it is. The city just cannot, in my opinion, risk damage to this mural. Any tiles broken could not be replaced. This is based on my conversations with people who know ceramics, know the art piece and know the dangers involved in moving such a piece.

The importance of any sort of memorial to our country's veterans in the community is undeniable. It is very important. The murals painted on the buildings in Nebraska City have been a wonderful addition to our downtown and have enhanced the quality of life in our special town.

There have been so many wonderful art projects in recent years, including the Enchanted Arboretum, the murals and the Leadership Nebraska City's tile mural. It is important to respect any art donations to the city. The city approved the placement of the Leadership Nebraska City's project in Memorial Way and I would hope that this donation of art would be respected.

Leadership Nebraska City's tile mural was a major project of time and talent and significant funding. The Nebraska Arts Council contributed to the funding as did the Nebraska City Fine Arts Committee and the city of Nebraska City. I do not know how to calculate the number of man hours of work that went into that project but I know there were many volunteer hours put into this project. Designs were submitted, committees discussed those designs, planning sessions were conducted, and tiles were prepared and glazed. I was not a member of this Leadership Nebraska City Class but I witnessed, first hand all of this hard work by volunteers and professionals. After all of the planning, members of the community were invited to come paint tiles and I estimate that there were over 150 people contributing to this art piece.

I want to emphasize that this is not a matter of being against the muralist, his wonderful art work or the memorial to the Veterans. It is a matter of the physical nature of the art piece and based on the professional opinions of people who are familiar with ceramics. There is such a high risk of damaging the tile mural. Anyone who is familiar with ceramics knows that any jarring of the frame could cause grout to crack and crumble and result in a tile or several tiles falling out. It would be impossible to repair this creation. It is just not a chance worth taking.

I have provided for you a copy of a grant proposal submitted to the Nebraska City Fine Arts Committee to help fund this project. I was chairman of the NCFCA committee at the time and found this in my files. It details all of the work this project required, involving many people in the community, including several artists. It also illustrates the pride the LNC class had as they created one of the first public art pieces in Nebraska City.

With sincere appreciation for your commitment to the betterment of our community,

Pat



Nebraska City

**LNC**  
**LEADERSHIP**  
**NEBRASKA CITY**

May 23, 2012

Dear Nebraska City Fine Arts Committee,

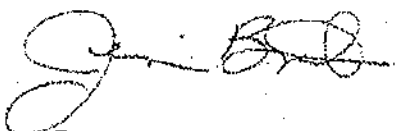
Leadership Nebraska City Class #6 has undertaken the creation of a 5'x7' ceramic tile mural to be installed in Memorial Way Park as their class project. The overall mural design follows. As the creative director for this project, I submit this request for financial support from the Nebraska City Fine Arts Committee.

The project costs are outlined in the attached project proposal that was submitted to the Leadership Nebraska City council for project approval. We ask that the Nebraska City Fine Arts Committee consider providing us with \$300 to supplement \$450 from Leadership Nebraska City and \$750 from the Nebraska Arts Council. Funds will be used to cover costs for necessary supplies including clay, glaze, steel, hardware, and grout. Labor costs for fabrication of the steel frame have also been incurred and funds will be used to cover this.

Many members of the community have already played a hand in the creation of the tiles through glazing sessions held at the Kimmel Harding Nelson Center for the Arts. A number of local businesses are contributing to this project with partial or full donations of labor or supplies. Cargill Meat Solutions, Mead Lumber, Midwest Machine Inc, and Warner Construction are all involved in this capacity with the project.

We look forward to the completion of the project in the next few weeks. The Nebraska City Fine Arts Committee along with all contributing businesses and organizations will be recognized on a plaque to be created and installed at the site.

Sincerely,



Jenni Brant



## **Project Proposal: Ceramic Tile Mural - Public Art Piece**

Leadership Nebraska City Class #6 proposes the creation of a 6' x 4' ceramic tile mural to be installed on one wall of the Memorial Parkway in Downtown Nebraska City.

While the concept of the proposed mural has been determined by LNC Class #6, the design, creation, and implementation of the artwork will incorporate the skills of several individuals and community groups.

### **Concept:**

Beautify a public space with public art, specifically implementing the guiding principles of the Leadership Nebraska City program -- trusteeship, stewardship, servant leadership, integrity and ethics, commitment, personal and social responsibility, and ongoing education – in mural form.

### **Design:**

**Lourdes High School** and **Nebraska City High School** students have been invited to submit their design ideas for the mural project, following the concept guidelines noted above. The winner will be selected by LNC Class #6 after submissions are collected on March 7 and recognized with a small plaque in the installation area of the finished piece.

### **Creation:**

Jenni Brant, an LNC class member, is a trained ceramicist and will oversee other LNC class members and high school student volunteers in the safe and creative production of the mural. **The Kimmel Harding Nelson Center for the Arts** has donated their workspace on specific evenings and weekends for mural creation. **Nebraska City Middle School** has permitted the use of its kilns for firing the tiles; LNC Class #6 will coordinate appropriate scheduling with the school. We are grateful to these partners for the use their facilities on this project.

### **Implementation:**

With the mural created and show-ready, **Nebraska City city workers** will work closely with tile and steel specialists to install the public art display. **Mead Lumber** has generously donated supplies to assist with installation of the piece. **City Administrator Pat Haverly** has indicated support for the project in general.

### **Leadership Nebraska City Class #6 is proud of this project idea, because:**

- It draws attention to a new community space with lasting public art.
- It recognizes the community-benefitting principles of Leadership Nebraska City and raises awareness of the program.
- It involves a number of civic and business partners and is a great outreach opportunity.
- It may inspire other organizations to create similar public art in the chosen space or in other areas of the community.

## Project Partners and Sponsors

- **City of Nebraska City**
  - Pat Haverly, Nebraska City Administrator, has been approached regarding the placement of the project and assistance from the city regarding installation. Pat has talked with several city council members already and notified all by email. None are in objection to the project. Formal approval for project will be sought at March 21 council meeting.
- **Nebraska Arts Council (NAC)**
  - Leadership Nebraska City can apply for an NAC mini-grant for up to \$2,500 if needed. Grant criteria is based on:
    - Community Engagement and Impact
    - Increased Community Access to the Arts
    - Variety of Partners
    - Matching Funds
- **Nebraska City Fine Arts Committee**
  - Leadership Nebraska City has been offered assistance from the Nebraska City Fine Arts Committee with \$300 to \$500 of additional project costs.
- **Nebraska City Public High School and Lourdes High School**
  - Students from both schools have been invited to submit designs for the mural (see attachment A). Winning submission will be recognized on plaque. All students will be invited to participate in painting the winning design on tiles.
- **Nebraska City Middle School**
  - Mike Little, arts instructor at Nebraska City Middle School, has been informally approached regarding the use of their kilns to fire the tiles. Mr. Little was agreeable to allowing us to use the facilities. Our firing crew will coordinate the timing of facilities use with him.
- **Kimmel Harding Nelson Center for the Arts**
  - The classroom space at the art center will be used as the creative space where tiles will be painted and stored. The facility will be made available on weekends and weeknights in addition to their normal hours. Materials and supplies will be shipped to KHN.
- **Mead Lumber**
  - Brian Lowe at Mead Lumber has been approached regarding the donation of materials such as duraroc, mortar, adhesives, and grout. He is willing to donate these materials to the project. If grout additives are required for exterior surface, LNC will be responsible for this cost.

Nebraska City

- **Midwest Mechanical Contractors**
  - Has agreed to provide a design, estimate and materials list for steel frame.
- **Jason Warner, Brandon Shebaum and Eric Petersen**
  - Skilled trade workers associated with LNC Class #6 class members who are willing to contribute their skills to the project in construction and installation of the steel frame and the installation of the ceramic tile.

## **Class Member Roles and Responsibilities**

Our class is currently working organically to research the specific needs and costs of the project. Jenni Brant is taking the lead on directing this research due to her background and expertise in ceramics and community art projects.

### **Other roles defined thus far:**

- Creative Director – Jenni Brant
  - oversee purchasing of supplies and materials
  - lead how-to-instruction in ceramic processes
- Publicity Coordinator – Amy Stouffer
  - develop publicity strategy for project
  - document project throughout process
  - coordinate all public relations regarding the progress on project
  - coordinate all public relations regarding the unveiling of the project
- Firing Crew – Kim Warner, and others to be determined
  - transport tiles to and from school for firing
  - oversee loading, firing and unloading of kilns
  - coordinate firing needs with Mike Little
- Tile Makers and Painters – All class members plus students from high schools
- Financial Coordinator – Aimee Harker
  - careful tracking of project budget, receipts, invoices
  - work with LNC treasurer on payment requests

### **Other roles to be filled by LNC Class #6:**

- Grant Writer –
  - write grant request and be responsible for grant report to Nebraska Arts Council
- Donations Liaison –
  - coordinate donation requests and ensure that thank you are sent to all
  - coordinate with publicity coordinator to ensure that donors are recognized as requested
- Unveiling Event Coordinator -
  - plan and implement (with the assistance of the rest of the class) a small unveiling of the mural to recognize partners, program and final project

Nebraska City

**Budget**

<b>Materials Needed</b>	<b>Est. Cost</b>	<b>Notes</b>	<b>Anticipated Cost</b>
Clay for Tiles	\$100		\$100
Tile Cutters	\$100		\$100
Brushes & Sponges	\$20		\$30
Commercial Glazes	\$200	Potential donation Duncan Enterprises	\$200
Clear Commercial Glaze	\$30	Potential donation Duncan Enterprises	\$30
Durock	\$40	Donation from Mead Lumber	\$0
Thin set Mortar	\$20	Donation from Mead Lumber	\$20
Grout and Additive	\$30	Donation from Mead Lumber	\$30
Silicon Adhesive	\$7	Donation from Mead Lumber	\$7
Steel Frame	\$950	Some labor donated	\$900
Bronze Plaque	\$100		\$100
Tile Installation Costs	\$250	Labor donated	\$0
<b>Total Project Cost</b>	<b>\$1847</b>		<b>\$1517</b>

Some costs are not included in the estimated or anticipated costs as donations have been secured and estimates were not gathered:

- Labor and hardware costs to install in Memorial Parkway. Costs to be incurred by city.
- Cost of general ceramic tools. To be loaned by Jenni Brant and KHN Center for duration of project.
- Cost of equipment and utilities to fire ceramic tiles. Costs to be incurred by NC Public Middle School.

## Time Line

- February 2011
  - Identify project
  - Research materials and costs
  - Talk with potential partners
  - Present to LNC Advisory Board
  
- March 2011
  - Gather mural designs ideas from High School students
  - Present project to Nebraska City City Council for approval
  - Secure materials donations
  
- April 2011
  - Purchase supplies
  - Make and fire tile blanks
  
- May 2011
  - Paint tiles with glaze at KHN
  - Fire painted tiles at Middle School
  
- June 2011
  - Fabrication and installation of steel frame
  
- July 2011
  - Adhere Durock in frame
  - Install tiles
  
- August 2011
  - Mural unveiling

# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



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## Memorandum

To: Governing Body  
From: Grayson Path, City Administrator  
Date: April 18, 2016

RE: Verizon Wireless request to Sublease and Leaseback of Tower in Steinhart Park to American Tower Corporation (ATC)

Governing Body,

On June 18, 2015, the City of Nebraska City received notification from American Tower Corporation (ATC) that the leased tower covered under the November 6, 2007 Agreement (#93431) has been involved in a transaction between Verizon Wireless and American Tower Corporation effective March 27, 2015. On August 27, 2015, I submitted to the Governing Body a report containing additional information regarding the agreement along with recommendations on how to proceed. Please refer to this report, which is attached, for additional information.

In the August 17, 2015 Council Meeting, the Governing Body directed that I request from ATC a copy of the Management Agreement between Verizon Wireless and ATC as well as collect back-pay for the \$200/month not collected since the October 18, 2013 amendment (would have began January 2014) prior to considering signing the sublease agreement. After working with ATC from August 2015 to April 2016, both items have been satisfied. ATC submitted the Management Agreement to the City early in the process and following a lengthy discourse, Landlord Relations contacted me via email on December 16, 2015 to state that they have confirmed the error. ATC paid their portion of the back rent in January while Verizon paid their portion in March.

### Further Background

To provide additional detail to this transaction, I have attached some articles discussing the agreement between Verizon Wireless and ATC. In summary, ATC is a global entity that owns and/or manages cell towers and then leases space to cell service providers such as Verizon Wireless. In February 2015, Verizon agreed to lease 11,324 towers and sell an additional 165 towers to ATC for a little over \$5 billion in cash. In turn, ATC will leaseback the towers to Verizon for an approximate \$1,900/month/tower for a period of 10 years. In some instances, this leaseback appears to last as long as 28 years. ATC will manage the towers, conduct repairs, pay rent, and work with landlords on behalf of Verizon Wireless. Verizon Wireless still owns the towers, but for all intents and purposes, ATC is conducting all ownership duties on behalf of Verizon Wireless.

According to Section 11 of the November 6, 2007 agreement, a sublease is to be honored under the same terms and conditions. Therefore as Verizon Wireless is requesting permission to sublease to ATC, this request 1) cannot be unreasonably denied and 2) is to be honored under the same terms including the October 18, 2013 amendment listing monthly rent at \$640.00/month until 2032 (end of the fourth renewal period). The agreements between Verizon Wireless and the City of Nebraska City do not appear to limit agreements between tenant and sub-leasees including leaseback options.

## Nebraska City

### Recommendation

Upon reviewing the articles found online, it would appear that ATC's intent is to not only lease portions of the towers to Verizon Wireless, but to at future points lease additional space to other cell providers. While this may or may not materialize in Nebraska City, if it does then it is my interpretation of Section 11 of the November 6, 2007 lease agreement that the tenant (ATC) would pay the City of Nebraska City \$100/month for each sub-leasee beyond Verizon Wireless.

Along with the back-pay that has been received, ATC has been reminded that, and is following through with, going forward the agreed monthly rent as per the October 18, 2013 amendment is \$640/month.

If Verizon Wireless were to proceed with selling the towers to ATC or to anyone else as indicated in the articles, then the City should consider that as a termination of the agreement and a new agreement should be negotiated with the purchasing party.

As ATC has met the Governing Body's two requests from the August 17, 2015 Council Meeting (Management Agreement and Back-pay), it is my recommendation that the Governing Body authorize either Mayor Bryan Bequette or myself to sign the consent to sublease and leaseback document prepared by ATC.

If the Governing Body has any further questions or instructions, please let me know.

Sincerely,  
Grayson Path  
City Administrator

Attachments:      City Council Report – August 17, 2015  
                         Letter to ATC – August 20, 2015  
                         ATC Email – December 16, 2015  
                         Notice of Consent to Sublease and Leaseback – ATC  
                         Three articles obtained from the internet describing transaction



# Nebraska City

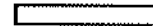
Grayson

I apologize for the delay in response. I have received notice that we will be issuing a back payment in the amount of \$4,800.00. I apologize that this process has taken so long. Please see the reconciliation below on site 419471.

Supplier Name: CITY OF NEBRASKA CITY RE  
 Supplier Number: 104314  
 SOL Start Date: 1/1/2011 SOL End Date: 12/31/2015

Invoice Date	Invoice Amount	Amount Should've Been	Difference	Description
1/1/2014	\$ 440.00	\$ 640.00	\$ 200.00	Back rent for AUD1 rent increase
2/1/2014	\$ 440.00	\$ 640.00	\$ 200.00	
3/1/2014	\$ 440.00	\$ 640.00	\$ 200.00	
4/1/2014	\$ 440.00	\$ 640.00	\$ 200.00	
5/1/2014	\$ 440.00	\$ 640.00	\$ 200.00	
6/1/2014	\$ 440.00	\$ 640.00	\$ 200.00	
7/1/2014	\$ 440.00	\$ 640.00	\$ 200.00	
8/1/2014	\$ 440.00	\$ 640.00	\$ 200.00	
9/1/2014	\$ 440.00	\$ 640.00	\$ 200.00	
10/1/2014	\$ 440.00	\$ 640.00	\$ 200.00	
11/1/2014	\$ 440.00	\$ 640.00	\$ 200.00	
12/1/2014	\$ 440.00	\$ 640.00	\$ 200.00	
1/1/2015	\$ 440.00	\$ 640.00	\$ 200.00	
2/1/2015	\$ 440.00	\$ 640.00	\$ 200.00	
3/1/2015	\$ 440.00	\$ 640.00	\$ 200.00	
4/1/2015	\$ 440.00	\$ 640.00	\$ 200.00	
5/1/2015	\$ 440.00	\$ 640.00	\$ 200.00	
6/1/2015	\$ 440.00	\$ 640.00	\$ 200.00	
7/1/2015	\$ 440.00	\$ 640.00	\$ 200.00	
8/1/2015	\$ 440.00	\$ 640.00	\$ 200.00	
9/1/2015	\$ 440.00	\$ 640.00	\$ 200.00	
10/1/2015	\$ 440.00	\$ 640.00	\$ 200.00	
11/1/2015	\$ 440.00	\$ 640.00	\$ 200.00	
12/1/2015	\$ 440.00	\$ 640.00	\$ 200.00	
<b>Totals:</b>	<b>\$ 10,560.00</b>	<b>\$ 15,360.00</b>	<b>\$ 4,800.00</b>	

VZW owes 1/1/2014 - 3/31/2015 \$ 3,000.00  
 ATC owes 4/1/2015 - 12/31/2015 \$ 1,800.00  
 \$ 4,800.00



Should you have additional questions please feel free to contact me.

Thank you,

Melissa Cyganiewicz  
 Landlord Relations Specialist  
 American Tower Corporation  
 10 Presidential Way  
 Woburn, MA 01801  
 P. 866.586.9377 Option 4  
 F. 781.926.4555  
[LandlordRelations@americantower.com](mailto:LandlordRelations@americantower.com)

Nebraska City

# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



---

August 17, 2015

Nebraska City Governing Body

RE: Communications Site Lease Agreement 93431, aka Steinhart Cell Tower

Governing Body,

On June 18, 2015, the City of Nebraska City received notification from American Tower Corporation that the leased tower covered under the November 6, 2007 Agreement (#93431) has been turned over from Verizon Wireless to American Tower by transaction effective March 27, 2015. A letter was sent to Verizon Wireless dated July 20, 2015 requesting confirmation of this agreement as well as clarification to whether this transaction was a sale, collocation, or sublease to American Tower.

## Background Information

November 6, 2007 – City of Nebraska and Alltel Wireless entered into an agreement to lease the site at Steinhart Park for construction of a cell tower. The terms of the agreement were one five year term from 2007 – 2012 followed by four separate five year renewals at the sole option of the tenant. It is noted that there was no language giving the Owner the option to terminate the agreement outside of using "commercially reasonable efforts to mitigate damages in the event of default" (section 8). The starting rent was \$400/month. Each renewal would see a 10% increase in monthly rent (section 5b). Section 11 states that the tenant may sublease the agreement under the same terms and conditions as the agreement with written consent of the Owner. If the sublessee is collocating (side-by-side tower), there would be an additional \$100/collocate charged to the tenant.

Sometime between November 6, 2007 and October 18, 2013, Alltel sold to Verizon, thus the lease was transferred to Verizon.

October 18, 2013 – City of Nebraska City and Alltel Communications d/b/a Verizon Wireless made an amendment to the November 6, 2007 agreement for the purpose of increasing the size of the premise site (by an additional 10'x15') to build a new cell tower. Section 5b of the original agreement was eliminated and replaced with "rent shall increase by \$200.00 per month" (section 5). The sum total should have been \$640.00/month. This was to take effect upon completion of the cell tower which occurred sometime shortly thereafter (no written office records of the completion date; a building permit was applied for but Building and Inspection was never called upon to inspect the premises upon completion).

**\*\*REMINDER\*\* ROBERTS RULES 1. PRESENTATION 2. MOTION 3. DEBATE 4. VOTE**

## Nebraska City

### To Date

The City of Nebraska City has only been receiving \$440.00/month. Verizon Wireless forwarded my letter to American Tower and asked that they respond to my questions of sublease, collocate, or sale of the tower. From the options available and from the City's perspective, a sublease would mean the same terms and conditions, a collocate would mean an additional \$100/month (in addition to the \$200/month not currently being received), and a sale would entail a completely new negotiated agreement.

American Tower responded on August 5, 2015 stating that they are not a communication service provider but rather they are subleasing the tower from Verizon for the purpose of "managing the Site on Verizon's behalf (paying rent, handling inquiries, etc.) under a Management Agreement with Verizon". Along with this letter, Verizon Wireless enclosed a letter officially requesting that the City of Nebraska City communicate solely with American Tower and that this arrangement was a sublease agreement.

According to section 11 of the 11/6/07 agreement, a sublease is to be honored under the same terms and conditions as the agreement. According to section 5 of the 10/18/13 amendment, the City of Nebraska City should be receiving \$640.00/month until 2032 (end of the fourth renewal period).

### Recommendations

Given the information provided, it is my recommendation that the City:

1. Sign the consent to sublease and leaseback.
2. Request that the City be compensated for the additional \$200/month not collected since the construction of the current tower.
3. Request that the existing agreement be honored and the rent be increased to \$640.00/month going forward.
4. Request that the notification section (section 17) of the 11/6/07 agreement be updated for future correspondence with American Tower.
5. For our records, request a copy of the "Management Agreement" between American Tower and Verizon Wireless.

Sincerely,

Grayson Path  
City Administrator  
City of Nebraska City, NE

Nebraska City

# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



August 20, 2015

ATC Sequoia LLC  
c/o American Tower  
10 Presidential Way  
Woburn, MA 01801

RE: Communications Site Lease Agreement 93431

Dear American Tower,

We have received your letter dated August 5, 2015 regarding the Management Agreement between American Tower Corporation ("American Tower") and Verizon Communications Inc. ("Verizon"). After reviewing this letter along with the Agreement dated November 6, 2007 and its amendment dated October 18, 2013, the City Commission has two requests prior to the consent to sublease being granted:

1. In the October 18, 2013 amendment, the parties agreed to increase monthly rent by \$200.00/month due to a new tower needing an increased size for the tower site. The monthly payments should therefore have been \$640.00/month, but the City has only been receiving the original \$440.00/month. We request that the back pay, since construction of the tower, from Verizon and American Tower be paid prior to the consent to sublease being signed. In addition, the \$640.00/month as agreed must be honored moving forward.
2. We also request a copy of the Management Agreement between Verizon and American Tower that occurred on February 5, 2015, so that the same may be reviewed prior to consenting to the sublease.

Once these items have been obtained, I have been instructed to report back to the City Commission for reconsideration of the sublease approval.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Grayson Path", written over a horizontal line.

Grayson Path  
City Administrator  
City of Nebraska City, NE

# Nebraska City

## American Tower Corporation Announces Verizon Tower Portfolio Transaction

BOSTON--(BUSINESS WIRE)--

American Tower Corporation (AMT) today announced that it has entered into a definitive agreement pursuant to which American Tower will acquire rights to approximately 11,324 wireless communications towers and purchase approximately 165 additional towers from Verizon Communications, Inc. for \$5.056 billion in cash at closing, subject to certain adjustments. Under the definitive agreement, American Tower will have the exclusive right to lease and operate the Verizon towers for a weighted average term of approximately 28 years. In addition, American Tower will have fixed price purchase options to acquire the towers based on their anticipated fair market values at the end of the lease terms.

American Tower intends to finance the transaction in a manner consistent with maintaining its investment grade credit rating and has obtained committed financing for the transaction from Goldman Sachs, who also acted as financial advisor. The transaction is subject to customary closing conditions and is expected to close during the first half of 2015.

Jim Tazlet, American Tower's Chief Executive Officer stated, "The Verizon tower portfolio is a unique asset. Due to outstanding design and management by the Verizon Wireless network operations team, the portfolio boasts a number of key attributes that we believe will facilitate robust leasing opportunities under our focused management. These attributes include average tower heights approaching 200 feet, ample structural capacity and ground space, very attractive transmission locations with relatively few competing sites, a solid ground lease profile, and excellent documentation and technical information. By acquiring access to this high quality asset base, American Tower will be well positioned to capture incremental leasing activity and extend our ability to drive strong annual organic core growth and solid AFFO per share growth, well into the future."

"Demand for mobile bandwidth by U.S. consumers is expanding dramatically as the proliferation of advanced devices and applications continues. As evidenced by the just-concluded AWS spectrum auction, the Big Four domestic carriers plan to address this growth with significant ongoing investment in both spectrum and their physical networks. We believe that by aggressively marketing these relatively under-utilized towers to additional tenants, we will enable faster deployment of this spectrum, accelerating the expansion of broadband coverage throughout the U.S."

Verizon's tower portfolio, in combination with American Tower's legacy footprint, will establish the largest wireless communications real estate portfolio in the United States with over 40,000 tower sites. This transaction expands and strengthens American Tower's relationships with major U.S. wireless operators, and 85% of pro forma domestic rental and management revenue will be generated by the Big Four U.S. carriers.

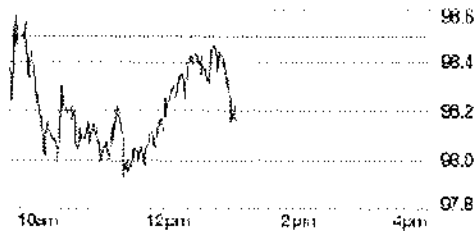
American Tower's global portfolio, which is expected to be nearly 100,000 towers after giving pro forma effect for this and other recently announced transactions, will be uniquely positioned to capitalize on the worldwide proliferation of advanced mobile communication and broadband services.

**Verizon Transaction Highlights**  
**Related Quotes**

## Nebraska City

- **AMT98.14-0.37%**

American Tower Corporation Watchlist  
98.14-0.36(0.37%)  
NYSEThu, Dec 24, 2015 1:04 PM EST



- American Tower Corp. breached its 50-day moving average in a Bullish Manner: December 24, 2015  
Capital Cube g 2 days 3 hrs ago
- 3 Stocks to Own for the Next Decade  
Motley Fool g 17 days ago  
[More](#)

Verizon has contracted to sublease space on the towers for a minimum of 10 years with monthly rent of \$1,900 per site and fixed annual rent escalators of 2%. Verizon will have customary renewal options that could potentially extend the full term of its sublease to 50 years. Verizon will also have access to certain additional space on the towers for its future use, subject to certain restrictions. American Tower will have the right to sublease other available capacity on the towers to additional tenants.

The portfolio of approximately 11,469 towers spans all 50 states with approximately 50% of the sites in the top 100 BTAs. The average height of the tower portfolio is approximately 180 feet, with capacity for incremental colocation. Nearly 55% of the revenue generated by the portfolio is from investment grade tenants.

American Tower estimates that the Verizon tower portfolio will generate approximately \$410 million in domestic rental and management revenue, approximately \$235 million in gross margin and will be break-even to AFFO per share in its full first year of operation, and accretive thereafter. American Tower expects the transaction will further support its ability to generate strong annual AFFO per share growth over the long-term.

### Conference Call Information

American Tower will host a conference call tomorrow morning at 8:30 a.m. ET to discuss the Verizon transaction. Supplemental materials for the call will be available on the Company's website, [www.americantower.com](http://www.americantower.com). The conference call dial-in numbers are as follows:

U.S./Canada dial-in: (877) 586-5042

International dial-in: (708) 645-6644

Passcode: 81148868

When available, a replay of the call can be accessed until 11:59 p.m. ET on February 20, 2015. The replay dial-in numbers are as follows:

# Nebraska City

U.S./Canada dial-in: (855) 858-2056

International dial-in: (404) 537-3408

Passcode: 81149868

American Tower will also sponsor a live simulcast and replay of the call on its website, [www.americantower.com](http://www.americantower.com).

## About American Tower

American Tower is a leading independent owner, operator and developer of wireless and broadcast communications real estate with a global portfolio of approximately 70,000 communications sites. American Tower values diversity and firmly believes that its philosophy of inclusion positively influences how it manages its business and serves its customers. For more information about American Tower and this transaction, please visit the "Company & Industry Resources" sections of our investor relations website at [www.americantower.com](http://www.americantower.com).

## Cautionary Language Regarding Forward-Looking Statements

This press release contains statements about future events and expectations, or "forward-looking statements," all of which are inherently uncertain. We have based those forward looking statements on management's current expectations and assumptions and not on historical facts. Examples of these statements include, but are not limited to, statements regarding the proposed closing of the transaction described above, expected financial projections for the portfolio and the impact on our consolidated results, the anticipated closing date, the expected cash consideration and the expected sources of funds to pay for the transaction described above and other previously announced transactions. These forward-looking statements involve a number of risks and uncertainties. For important factors that may cause actual results to differ materially from those indicated in our forward-looking statements, we refer you to the information contained in Item 1A of our Form 10-Q for the quarter ended September 30, 2014 under the caption "Risk Factors" and in other filings we make with the Securities and Exchange Commission. We undertake no obligation to update the information contained in this press release to reflect subsequently occurring events or circumstances.

AFFO is a non-GAAP financial measure. For more information, see our Form 10-Q for the quarter ended September 30, 2014 under the captions "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Non-GAAP Financial Measures" and "-- Results of Operations." Additionally, AFFO per share is a non-GAAP measure, and is defined as AFFO divided by the diluted weighted average common shares outstanding.

Contact:

American Tower Corporation

Leah Stearns, 817-375-7500

Senior Vice President, Treasurer and Investor Relations

[http://finance.yahoo.com/news/american-tower-corporation-announces-verizon-](http://finance.yahoo.com/news/american-tower-corporation-announces-verizon-210700712.html?_ylt=A8LEVz5XwH5Wz9BAvnrRXKyoA;_ylu=X3oDMTEybGNzYmY5BGNvbG8BDYmYxBH8vcwMlyBH20aWQDQjEzMjVfMQRzZWMDc3I-)

[210700712.html?\\_ylt=A8LEVz5XwH5Wz9BAvnrRXKyoA;\\_ylu=X3oDMTEybGNzYmY5BGNvbG8BDYmYxBH8vcwMlyBH20aWQDQjEzMjVfMQRzZWMDc3I-](http://finance.yahoo.com/news/american-tower-corporation-announces-verizon-210700712.html?_ylt=A8LEVz5XwH5Wz9BAvnrRXKyoA;_ylu=X3oDMTEybGNzYmY5BGNvbG8BDYmYxBH8vcwMlyBH20aWQDQjEzMjVfMQRzZWMDc3I-)

# Nebraska City

## AMERICAN TOWER VERIZON WIRELESS DEAL What Cell Tower Landlords Need To Know

By Steve Kazera, Lewiston, ID. 02/05/2015

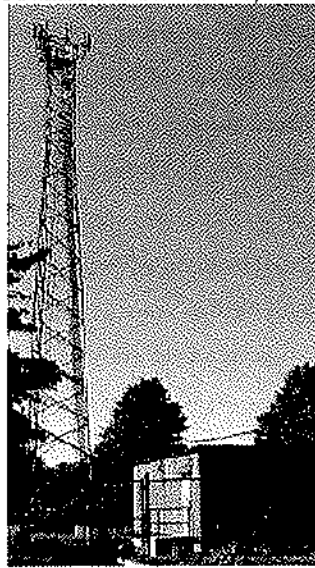
**American Tower Verizon Wireless Deal Has Been Announced Today.** After much speculation the big American Tower Verizon Wireless cell tower acquisition, operation and management deal was announced this afternoon. And not soon after that our phone started ringing and emails started to trickle in from cell tower landlords who either have a Verizon cell tower on their property or where Verizon Wireless is subleasing tower space on another tower.

American Tower has been closely eyeing last year's move by their nemesis, Crown Castle International as CCI pounced on thousands upon thousands of AT&T cell towers. From what we can tell here at Airwave Management LLC from being in the trenches of Crown lease amendments and negotiations, things seem to be working out extremely well for the folks at Crown, and for the Crown's new AT&T landlords who turned to us for assistance with their leases.

### What does the American Tower Verizon deal mean for your tower?

Once American Tower's acquisition of Verizon's cell towers is finalized in a few months, you can expect to receive an Assignment Letter from American Tower and your rental payment will eventually start coming from them and not from Verizon. You can expect American Tower to start evaluating their leases and look to extend and amend the Verizon lease they are now operating.

Our advice to you is don't panic about this. The American Tower Verizon Wireless cell tower acquisition deal will most likely be good for all parties, including you, the landlord, as long as you have a professional review any proposals put forth by American Tower. They will look to tie landlords into business and leasing terms favorable to ATC, and not necessarily catering to your needs as a landlord. There will likely be provisions in their cell tower lease amendments which can limit your ability to assign and sublease the tower to third parties as well as try to get you to accept otherwise onerous language.



### The Big Picture For Landlords

- Over 11,000 Verizon Cell Towers Acquired or Controlled, Operated or Managed By American Tower.
- Verizon has agreed to sublease tower space to American Tower at a rate of \$1,900/month escalating at 2% annually.
- American Tower will pay about \$460,000 cash for each Verizon cell tower location and lease to control for the next 28 years.

So do not stress out over this. American Tower is not going to decommission your cell tower. They are spending a boatload of money to be able to control it. You can be certain that they will aggressively be marketing these towers to other carriers to generate subleasing revenues. Airwave can help to level the playing field when you are approached to make changes to your current Verizon lease by American Tower.

If Verizon is a cell site tenant on your rooftop, don't worry about this. If Verizon is a cell tower subtenant (not the anchor tenant) on another carrier's cell tower then this tower acquisition deal should not have any affect on your site.

<http://www.cell-tower-leases.com/American-Tower-verizon.htm>



Published on FierceWireless (<http://www.fiercewireless.com>)

## Verizon offloads towers to American Tower for \$5B

February 5, 2015 | By Sue Marek

Verizon Wireless ([NYSE:VZ](#)) agreed to lease the rights to 11,324 of its communications towers and sell 165 additional towers to American Tower for \$5.056 billion in cash. The deal comes as no surprise as Verizon has said for months that it would be open to selling its tower assets. The sale of Verizon's towers will help fund the company's recent \$10.4 billion purchase of AWS-3 spectrum licenses during the FCC's auction.

Verizon's deal with American Tower, which is expected to close in the first half of the year, calls for American Tower to have exclusive right to lease and operate Verizon's towers for 28 years. In addition, American Tower will have the right to acquire the towers at the end of the lease term. American Tower estimates that the towers will generate about \$410 million in rental revenue and around \$235 million in gross margin.

Verizon, meanwhile, will sublease the tower space for a minimum of 10 years at a monthly rate of \$1,900 per site and fixed annual rent escalators of 2 percent. Verizon will also have access to additional space on the towers for future use.

American Tower said that by acquiring access to Verizon's towers it expects to get incremental leasing revenue from additional tenants and enable faster broadband growth throughout the U.S. The Verizon towers are in all 50 states. With the addition of Verizon's towers, American Tower's portfolio now tops more than 40,000 tower sites in the U.S.

American Tower execs praised Verizon's tower portfolio, noting that more than half of the towers have no competitive sites within a mile. In addition, most of the sites have extra capacity necessary for an additional tenant.

Verizon's towers aren't the only thing the company has offloaded. The company also has sold some of its wireline assets to Frontier Communications as part of a \$10 billion deal with that company. [Click here](#) for that story.

In a research note, New Street Research said that Verizon's selling of these non-strategic assets was sensible. However, the firm believes that Verizon could be at a disadvantage in wireless for the first time ever because it has less capacity than its competitors in a market where New Street believes capacity utilization is rising rapidly.

Nevertheless, Verizon isn't the only operator to offload its tower assets. Several wireless operators have sold their tower portfolios in recent years. In 2013, AT&T ([NYSE:T](#)) agreed to sell and lease

## Nebraska City

9,700 of its cell towers to Crown Castle in a \$4.85 billion deal.

For more:

- see [this FierceTelecom article](#)

- see [this release](#)

Related articles:

[Analyst: Verizon could sell as many as 12,500 cell towers](#)

[Analysts: AWS-3 auction helps AT&T catch up to Verizon in spectrum ownership in major markets](#)

[AWS-3 AUCTION RESULTS: AT&T leads with \\$18.2B, Verizon at \\$10.4B, Dish at \\$10B and T-](#)

[Mobile at \\$1.8B](#)

[IT'S OVER: FCC's AWS-3 spectrum auction ends at record \\$44.9B in bids](#)

*Article updated Feb. 6 with additional commentary.*

Source URL: <http://www.fiercewireless.com/story/verizon-offloads-towers-american-tower-5b/2015-02-05>

Nebraska City



December 17, 2015

City of Nebraska City  
1409 Central Avenue  
Nebraska City, NE 68410

Re: Notice of and consent to sublease of Ground Lease 93431 ("Ground Lease") and subsequent leaseback of a portion of Site 229444, located at 121 Steinhart Park Road, Nebraska City, NE 68410 (the "Site")

Dear City of Nebraska City:

On February 5, 2015, Verizon Communications Inc. ("Verizon") entered into an agreement ("Agreement") with American Tower Corporation ("American Tower") regarding a portion of Verizon's tower portfolio (the "Portfolio"), including the right for American Tower to manage and operate the Portfolio. Your Ground Lease and the Site associated with the Ground Lease are part of the Portfolio.

American Tower and Verizon closed the initial transactions contemplated under the Agreement ("Transaction") effective on March 27, 2015. As part of the Transaction, Verizon's affiliate party to the Ground Lease desires to: (i) sublease the Ground Lease to American Tower or one of its affiliates and (ii) leaseback a portion of the Site from American Tower or one of its affiliates and retain certain rights to continue using such portion of the Site (such sublease and leaseback hereinafter referred to as the "Ground Lease Sublease and Leaseback"). The Ground Lease Sublease and Leaseback has not yet occurred with respect to your Ground Lease, however, American Tower is operating as the manager of your Ground Lease and Site on behalf of Verizon.

The purpose of this letter is to provide notice of and request your consent to the Ground Lease Sublease and Leaseback. Please sign below and return this letter to us in the enclosed self-addressed pre-paid envelope. Thank you for your cooperation and prompt attention to this matter. If you have any questions, please call 877-362-1658 or send an email to [land@AmericanTower.com](mailto:land@AmericanTower.com).

Sincerely,

A handwritten signature in cursive script that reads "Justine D. Paul".

Justine D. Paul

Nebraska City



**AMERICAN TOWER™**  
CORPORATION

The undersigned consents to the Ground Lease Sublease and Leaseback as set forth above.

City of Nebraska City

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

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_



City of Nebraska City

1409 Central Avenue  
Nebraska City, NE 68410-2223

HOME OF ARBOR DAY

Phone: 402-873-5515 Fax: 402-873-5685

REQUEST FOR COUNCIL AGENDA OR PUBLIC INFORMATION / RECORDS

Your request will be reviewed and possibly scheduled for a future meeting,  
or forwarded to City Staff for appropriate action\*

Name: Jim Kuhn  
Address: 1721 1st Corso Ste 2 68410  
Phone #: 402-873-6421  
Email Address: \_\_\_\_\_

CC: Police Dept.: \_\_\_\_\_ Street Dept.: \_\_\_\_\_ Park Dept.: X Other: X

Item Title: Steinhart Park Directional Sign

Explanation of Request:  
Would like to refinish + repaint the sign at the entrance of Wildwood park and clean the debris out of the flower bed at the base of the sign. Jim Kuhn will provide the time, labor and cost of any materials needed.

Action Requested of Council:  
Approval/Permission

Will this item require the expenditure of funds? Yes: \_\_\_\_\_ No: X Estimate \$ \_\_\_\_\_

Council meetings are held on the 1<sup>st</sup> & 3<sup>rd</sup> Mondays of the month. All requests for inclusion on a Council Meeting Agenda must be submitted by 5 P.M. on the Tuesday preceding the Council meeting. Once a request is received, staff will review it and determine if it requires Mayor/Council action, or if the item can be handled by staff.  
**\*You will be notified as to how your request will be handled as soon as possible.**

For staff use only: Action Required.

Examination of Public Records are covered under Neb. Rev. State. §84-712 or other appropriate state statutes.  
Fees: \$0.25 per page



Nebraska City

NEBRASKA CITY JAYCEES

811 CENTRAL AVE

NEBRASKA CITY, NE 68410

402-873-5468

NEBRASKA CITY

1409 CENTRAL AVE

NEBRASKA CITY NE 68410

We are having the Independence Day Celebration again this year on July 2 with a rain date on the July 5. To help pay for this show; We are requesting to have our annual road block on the intersection of 10<sup>th</sup> St. and central Ave. from 9 am to 1 pm on Saturday June 11 with a rain date on Saturday June the 18. This is always a big fundraiser for us.

Any questions just call Duane. 873-7392

Thank you, for your help, without you, the show would not happen.

Nebraska City Jaycees

# CITY OF NEBRASKA CITY

1409 Central Avenue  
Nebraska City, NE 68410-2223  
Phone: 402-873-5515  
Fax: 402-873-5685



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## Agenda Information Support Sheet

To: Mayor and Commissioners

Council Meeting: April 18, 2016  
Agenda Item: # \_\_\_\_\_  
Submitted By: Grayson Path, City Administrator  
Judi Meyer, SENDD  
Evan Wickersham, JEO Consulting Group, Inc.

### A. Synopsis of Issue:

- a. The NDED has given the City the notice to proceed with negotiating the Final Design and Construction Oversight Agreement for the Kearney Hill Project. This NTP is also the notice that the funds are now available to be used on the project.
- b. The City Administrator, working with the City Attorney, Public Properties Director, and Judi Meyer with SENDD, has worked with Evan Wickersham of JEO Consulting Group, Inc. to develop the attached contract agreements that meet the needs of the project (Final Design and Construction Oversight) as well as meet the NDED CDBG requirements.

### B. Options:

- a. Approve the agreements, authorize the Mayor to sign.
- b. Suggest changes to the agreements, specify for the City Staff.
- c. Reject the agreements, provide City Staff with guidance.

### C. Fiscal Note:

- a. The attached agreement is divided in to two financial pieces: lump sum of \$34,500.00 and estimated hourly expenditures of \$14,480.00. Please see the attached cover letter for details.
  - i. Exhibit C provides the breakdown of the costs as well.
  - ii. The estimated hourly expenditures are estimates, thus could increase (or even decrease) if requested. The lump sum is a fixed amount.
  - iii. JEO's standard hourly rate is provided in Exhibit C.
- b. The CIS Project Application estimate had \$55,600.00 budgeted for Engineering. This agreement is worth \$48,980.00. Therefore this falls within the estimated budget for the project engineering.
- c. CDBG will be contributing \$200,000.00 towards the estimated \$338,420.00 in construction and engineering expenses. Anything beyond this is cost to the City. The cost for construction will not be fully known until after Final Design is complete, and will not be precisely known until contractor bids are turned in.
- d. The City budgeted \$100,000.00 in FY15/16, which will likely be more than enough as construction will not occur until possibly next Spring.



Nebraska City

e. The Project original estimates are as follows:

Uses	CDBG	City	Total
Acquisition/Easements	\$0	\$20,000	\$20,000
Streets/Bridges	\$200,000	\$138,420	\$338,420
Storm Sewers	\$0	\$37,000	\$37,000
General Administration	\$20,000	\$0	\$20,000
Total	\$220,000	\$195,420	\$415,420

D. Recommendation:

- a. Authorize the Mayor to sign the professional agreement with JEO Consulting Group, Inc. to perform Final Design and Construction Oversight of the Kearney Hill Project.

E. Background:

- a. The attached agreements are nearly mirror images of the JEO City Engineer agreement that was produced earlier this year.
- b. The Staff have vetted the scope of services to the best of their ability. They reviewed NDOR agreements, prior experience, etc. and developed as comprehensive of a turnkey project from the engineer perspective as possible.
- c. For the Kearney Hill Project, unlike Nuckolls Square, the engineer will oversee construction on behalf of the City and its staff. This is the Resident Project Representative (RPR) in the documents. These services will mostly be paid per the hour, thus the estimated hourly expense in the Fiscal Note.
- d. At this point, the City can still back out of the Kearney Hill Project without a lot of financial consequences, but this has been a project the City and residents of Kearney Hill have closely tracked for nearly two years. It may also incur consequences of not being able to obtain future CDBG funding.

.....  
 Department Heads:      Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.

Nebraska City

March 30, 2016



ENGINEERING ARCHITECTURE SURVEYING PLANNING

City of Nebraska City  
c/o Grayson Path, Administrator  
1409 Central Avenue  
Nebraska City, NE 68410

RE: Nebraska City, Nebraska  
Kearney Hill Road Improvements  
Final Design & Construction Services  
JEO Project No. 140955.00

Dear Grayson:

Enclosed are three (3) originals of JEO's standard agreement for services on the above referenced project. Please review, and if acceptable, execute each copy and return two (2) original for our files.

The first part is the standard terms and conditions that are applicable to the entire agreement. Exhibit A and Attachment One to Exhibit A define the work that JEO expects to perform as part of basic services, and examples of the types of work that may be required as additional services. Exhibit B defines requirements of you under the agreement. Exhibit C defines JEO's fees for services. Exhibit D defines the services of an on-site resident project representative. Exhibit G defines the insurance coverages that JEO carries.

As noted in Exhibit C of the agreement, JEO's fees for services are as follows:

Lump sum fees for Basic Services, included in the Agreement, are:

Final Design Phase	\$18,800.00
Bidding and Negotiation Phase	\$ 3,800.00
Construction Phase	\$11,900.00
Subtotal	\$34,500.00

Estimated Hourly fees for Basic Services, included in the Agreement, are:

Resident Project Representative	\$ 11,000.00
SWPPP Administration & Monitoring	\$ 2,640.00
Migratory Bird Survey	\$ 1,200.00
Subtotal	\$14,480.00

Along with the other services defined under the construction phase of Exhibit C of the agreement, the construction administration phase includes four (4) site visits by the project engineer/manager. These visits are only intended to observe whether the project is being completed in general conformance with the plans and specifications. They are not to provide on-site representation during the construction phase of the project.

Nebraska City



City of Nebraska City  
March 30, 2016  
Page Two

ENGINEERING ARCHITECTURE SURVEYING PLANNING

Please note, the estimate for RPR services, which include 100 hours of time for on-site observation and representation, Migratory Bird Survey, which include 10 hours of time, and SWPPP Administration & Monitoring Services, which include 24 hours of time, are only for you to use in planning and budgeting. You will only be billed for hours worked on the project in providing these services, and those hours may differ materially from our estimate.

Evan Wickersham will be the Project Manager on this project. We ask that you also designate a representative for JEO to work with that has the authority to give direction and act on your behalf during the project.

This agreement will be open for acceptance until 5/31/16 unless changed by us in writing.

If you have any questions, please contact me. JEO is excited about the opportunity to work with you on this project.

Sincerely,

Evan B. Wickersham, PE  
Project Engineer

EBW:rb

Enclosures

Nebraska City

# [ Professional Agreement ]

## KEARNEY HILL ROAD IMPROVEMENTS Nebraska City, Nebraska



Agreement for Professional Services between  
Owner and J&E CONSULTING GROUP INC

**\*\*REMINDER\*\* ROBERTS RULES 1. PRESENTATION 2. MOTION 3. DEBATE 4. VOTE**

Nebraska City

**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

Prepared by  
**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

And

Issued and Published Jointly By

**PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE**  
a practice division of the  
**NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS**

---

**AMERICAN CONSULTING ENGINEERS COUNCIL**

---

**AMERICAN SOCIETY OF CIVIL ENGINEERS**

And

Amended By

**JEO CONSULTING GROUP, INC.**

Copyright ©1996 National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314

American Consulting Engineers Council  
1015 15<sup>th</sup> Street N.W., Washington, DC 20005

American Society of Civil Engineers  
345 East 47<sup>th</sup> Street, New York, NY 10017

Nebraska City

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Nebraska City

STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as March 25, 2016 ("Effective Date") between

City of Nebraska City ("OWNER") and

JEO Consulting Group, Inc. ("ENGINEER").

OWNER intends to see Attachment "1" to Exhibit A ("Project").

OWNER and ENGINEER in consideration of their mutual covenants as set forth herein agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

**1.01 Scope**

- A. ENGINEER shall provide the Basic and Additional Service set forth herein and in Exhibit A.
- B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A.
- C. If authorized by OWNER, ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitation of authority as set forth in Exhibit D.

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

**2.01 General**

- A. OWNER shall have the responsibilities set forth herein and in Exhibit B.

**ARTICLE 3 – TIMES FOR RENDERING SERVICES**

**3.01 General**

- A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
- B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or date are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.
- C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

**3.02 Suspension**

- A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.
- B. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time of performance under this Agreement has been revised.

**ARTICLE 4 – PAYMENTS TO ENGINEER**

**4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER**

- A. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A, Part 1, as set forth in Exhibit C.
  - 1. OWNER shall pay ENGINEER for Resident Project Representative(s) (RPR) Services defined in Exhibit D, as set forth in Exhibit C.
- B. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A, Part 2, as set forth in Exhibit C.



Nebraska City

- C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01A and 4.01.B, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth on Exhibit C.

**4.02 Other Provisions Concerning Payments**

- A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C.
- B. *Payments of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payments due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefore, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.
- C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.
- D. *Payments Upon Termination:*
  - 1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit C for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.
  - 2. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for these items identified in subparagraph 4.02.D.1, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.
- E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER at cost.
- F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services or other costs in connection with this Project or compensation therefore, such new taxes, fees, or costs shall be invoiced to and paid by OWNER as a Reimbursable Expenses to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

**ARTICLE 5 – OPINIONS OF COST**

**5.01 Opinions of Probable Construction Cost**

- A. ENGINEER's opinion of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary

## Nebraska City

from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in Exhibit B.

### 5.02 Designing to Construction Cost Limit

- A. If a Construction Cost Limit is established between OWNER and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to the Agreement.

### 5.03 Opinions of Total Project Costs

- A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

## **ARTICLE 6 – GENERAL CONSIDERATIONS**

### 6.01 Standards of Performance

- A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under the Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.
- B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER furnished information.
- C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance of furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.
- D. ENGINEER and OWNER shall comply with applicable Laws and Regulations and OWNER mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.
- E. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.
- F. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.
- G. Prior to the commencement of the Construction Phase, Owner shall notify ENGINEER of any variations from the language indicated in Exhibit E, "Recommendation of Acceptance," or of any other notice or certification that ENGINEER will be requested to provide to OWNER or third parties in connection with the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification, and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested.
- H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to

## Nebraska City

make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.

- I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- K. ENGINEER shall not be responsible for the acts or omission of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.
- L. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions as specifically referenced in Exhibit J.

### **6.02 Authorized Project Representatives**

- A. Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

### **6.03 Design without Construction Phase Services**

- A. Should OWNER provide Construction Phase services with either OWNER's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A.
- B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by OWNER, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

### **6.04 Use of Documents**

- A. All records of the Engineer shall be public records and shall belong to the City. City shall retain ownership and property interest therein.
- B. Copies of OWNER furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at user's sole risk.
- C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by

Nebraska City

ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

- D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 30 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 30 day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.
- E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.
- F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.
- G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- H. Any verification or adaptation of the Documents by ENGINEER for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

**6.05 Insurance**

- A. ENGINEER shall procure and maintain insurance as set forth in Exhibit G, "Insurance."
- B. OWNER shall procure and maintain insurance as set forth in Exhibit G, "Insurance." OWNER shall cause ENGINEER and ENGINEER's Consultants to be listed as additional insured on any general liability or property insurance policies carried by OWNER which are applicable to the Project.
- C. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insured with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. OWNER and ENGINEER shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.
- F. At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by OWNER, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by OWNER, and Exhibit G will be supplemented to incorporate these requirements.

Nebraska City

**6.06 Termination**

- A. The obligation to provide further services under this Agreement may be terminated:
  - 1. *For cause,*
    - a. By either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
    - b. By ENGINEER:
      - 1. upon seven (7) days written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or
      - 2. upon seven (7) days written notice if the ENGINEER's services for the Project are delayed or suspended for more than ninety (90) days for reasons beyond ENGINEER's control.
      - 3. ENGINEER shall have no liability to OWNER on account of such termination.
    - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its failure within no more than thirty (30) days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty (30) day period, and if such party has diligently attempted to cure the same, then the sure period provided for herein shall extend up to, but in no case more than, sixty (60) days after the date of receipt of the notice.
  - 2. *For convenience,*
    - a. By OWNER effective upon the receipt of notice by ENGINEER.
- B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to thirty (30) days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

**6.07 Controlling Law**

- A. This Agreement is to be governed by the law of the state in which the Project is located.

**6.08 Successors, Assigns, and Beneficiaries**

- A. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 6.08.B, the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, with respect to all covenants, agreements and obligations of this Agreement.
- B. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, monies that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's

## Nebraska City

subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the Contract Documents.

### 6.09 Dispute Resolution

- A. OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under the provisions of this Agreement, or under Law.

### 6.10 Hazardous Environmental Condition

- A. OWNER represents to ENGINEER that to the best of its knowledge a Hazardous Environmental Condition does not exist.
- B. OWNER has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.
- C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.
- D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER:
  1. retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and
  2. warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.
- F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

### 6.11 Allocation of Risks

- A. Indemnification
  1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.
  2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers,

## Nebraska City

architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

3. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any costs, losses, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.
4. In addition to the indemnity provided under paragraph 6.11.A.2 of this Agreement, and to the fullest extent permitted by Law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that:
  - a. any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and
  - b. nothing in this paragraph 6.11.A.4 shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
5. The Indemnification provision of paragraph 6.11.A.1 is subject to and limited by the provisions agreed to by OWNER and ENGINEER in Exhibit I, "Allocation of Risks," if any.

### 6.12 Notices

- A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier services. All notices shall be effective upon the date of receipt.

### 6.13 Survival

- A. All express representations, indemnifications, or limitation of liability included in this Agreement will survive its completion or termination for any reason.

### 6.14 Severability

- A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 6.15 Waiver

- A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

### 6.16 Headings

- A. The headings used in this Agreement are for general reference only and do not have special significance.

### 6.17 E-Verify

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- A. Engineer shall register with and use the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986, to determine the work eligibility status of new employees physically performing services within the state where the work will be performed. Engineer shall require the same of each subcontractor.

### **ARTICLE 7 – DEFINITIONS**

#### **7.01 Defined Terms**

- A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:
1. *Addenda* – Written or graphic instruments issued prior to the openings of Bids which clarify, correct, or change the Bidding Documents.
  2. *Additional Services* – The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2, of this Agreement.
  3. *Agreement* – The “Standard Form of Agreement between OWNER and ENGINEER for Professional Services,” including the Exhibits listed in Article 8 hereof.
  4. *Application for Payment* – The form acceptable to ENGINEER which is to be used by the Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  5. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  6. *Basic Services* – The services to be performed for or furnished to Owner by ENGINEER in accordance with Exhibit A, Part 1, of this Agreement.
  7. *Bid* – The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  8. *Bidding Documents* – The advertisement or invitation to Bid, instruction to bidders, the Bid form and attachments, the Bid Bond, if any, the proposed Contract Documents, and all Addenda, if any.
  9. *Change Order* – A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.
  10. *Construction Agreement* – The written instruction which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.
  11. *Construction Contract* – The entire and integrated written agreement between the OWNER and Contractor concerning the Work.
  12. *Construction Cost* – The cost to OWNER of those portions of the entire Project designated or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charge incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.



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13. *Contract Documents* – Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.
14. *Contract Price* – The monies payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.
15. *Contract Times* – The number of days or the dates stated in the Construction Agreement to:
  - a. achieve Substantial Completion, and
  - b. complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of acceptance.
16. *Contractor* – An individual or entity with whom OWNER enters into a Construction Agreement.
17. *Correction Period* – The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.
18. *Defective* – An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approved referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.
19. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.
20. *Drawings* – That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
21. *Effective Date of the Construction Agreement* – The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.
22. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
23. *ENGINEER's Consultants* – Individuals or entities having a contract with ENGINEER to furnish services with respect to this Project as ENGINEER's

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independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.

24. *Field Order* – A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
25. *General Conditions* – That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.
26. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
27. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
28. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
29. *PCB's* – Polychlorinated biphenyls.
30. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel, oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
31. *Radioactive Materials* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
32. *Record Drawings* – The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.
33. *Reimbursable Expenses* – The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C.
34. *Resident Project Representative* – The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit D.
35. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
36. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for the Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.
37. *Site* – Land or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements

for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

38. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
39. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
40. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements the General Conditions.
41. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, right-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement.
42. *Work* – The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.
43. *Work Change Directive* – A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiation by the parties as to its effect, if any, on the Contract Price or Contract Times.
44. *Written Amendment* – A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

**ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

**8.01 Exhibits Included**

- A. Exhibit A, "ENGINEER's Services," consisting of 9 page(s).
  - 1. Attachment "1" to Exhibit A, consisting of 3 page(s).
- B. Exhibit B, "OWNER's Responsibilities," consisting of 2 page(s).
- C. Exhibit C, "Payments to ENGINEER for Services and Reimbursable Expenses," consisting of 3 page(s).
  - 1. Attachment "1" to Exhibit C, "Hourly Rate Schedule," consisting of 1 page(s).
- D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of 1 page(s).
- E. Exhibit E, "Recommendation of Acceptance," consisting of 2 page(s).
- F. Exhibit G, "Insurance," consisting of 1 page(s).
- G. Exhibit J, "Special Provisions, consisting of 1 page(s).
  - 1. Attachment "1" to Exhibit J, consisting of 8 page(s).

**8.02 Total Agreement**

- A. This Agreement (consisting of pages 1 to 15 inclusive, together with the Exhibits Identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

ENGINEER:

CITY OF NEBRASKA CITY

JEQ CONSULTING GROUP, INC.

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

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

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

Title: Project Manager

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

1409 Central Avenue

PO Box 160

Nebraska City, NE 68410

Nebraska City, NE 68410

Designated Representative (paragraph 6.02.A):  
\_\_\_\_\_  
\_\_\_\_\_

Designated Representative (paragraph 6.02.A):  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

Title: Project Engineer

Phone Number: 402-873-5515

Phone Number: 402-873-6766

Facsimile Number: 402-873-5685

Facsimile Number: 402-873-4509

E-Mail Address: \_\_\_\_\_

E-Mail Address: ewickersham@jeo.com

Attest: \_\_\_\_\_

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

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

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This is **EXHIBIT A**, consisting of 9 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services**.

**ENGINEER's Services**

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. ENGINEER shall provide Basic and Additional Services as set forth below.

**PART 1 – BASIC SERVICES**

**A1.01 Study and Report Phase**

A. ~~ENGINEER shall:~~

- ~~1. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.~~
- ~~2. Advise OWNER as to the necessity of OWNER's providing data or services of the types described in Exhibit B which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.~~
- ~~3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, including but not limited to mitigating measures identified in the environmental assessment.~~
- ~~4. Identify and evaluate \_\_\_\_\_ alternate solutions available to OWNER and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's judgment meet OWNER's requirements for the Project.~~
- ~~5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project with each component including the following, which will be separately itemized: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by ENGINEER and, on the basis of information furnished by OWNER, allowances for other items and services included within the definition of Total Project Costs.~~
- ~~6. Perform or provide the following additional Study and Report Phase tasks or deliverables: See Attachment "1" to Exhibit A.~~
- ~~7. Furnish \_\_\_\_\_ review copies of the Report to OWNER within \_\_\_ days \_\_\_\_\_ of authorization to begin services and review it with OWNER.~~
- ~~8. Revise the Report in response to OWNER's and other parties' comments, as appropriate, and furnish \_\_\_\_\_ final copies of the revised Report to the OWNER within \_\_\_\_\_ days after completion of reviewing it with OWNER.~~

B. ~~ENGINEER's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to OWNER.~~

**A1.02 Preliminary Design Phase**

A. ~~Based upon OWNER's selection of a recommended solution and indication by OWNER of scope, extent, or design requirements, and upon authorization from OWNER, ENGINEER shall:~~

- ~~1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project desired by the OWNER.~~

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- ~~2. Advise OWNER if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist OWNER in obtaining such reports, data, information or services.~~
  - ~~3. Furnish the Preliminary Design Phase documents to and review them with OWNER.~~
  - ~~4. Provide Opinion of Probable Construction Cost.~~
  - ~~5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: See Attachment "1" to Exhibit A.~~
- ~~B. ENGINEER's services under the Preliminary Design Phase will be considered complete on the date when the Preliminary Design Phase documents have been reviewed with the OWNER.~~

### **A1.03 Final Design Phase**

- A. After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, but subject to any OWNER-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon authorization from OWNER, ENGINEER shall:
1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with the JEO standard format of Construction Specifications.
  2. Provide technical criteria, written descriptions, and design data for OWNER's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities.
  3. Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER.
  4. Perform or provide the following additional Final Design Phase tasks or deliverables: See Attachment "1" to Exhibit A.
  5. Prepare and furnish Bidding Documents for review and approval by OWNER, its legal counsel, and other advisors, as appropriate, and assist OWNER in the preparation of other documents.
- B. In the event that the Work designed or specified by the ENGINEER is to be performed or furnished under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- C. The number of prime contracts for Work designed or specified by ENGINEER upon which the ENGINEER's compensation has been established under this Agreement is 1.
- D. ENGINEER's services under the Final Design Phase will be considered complete on the date when the Final Plans and Specifications have been reviewed with the OWNER.

### **A1.04 Bidding or Negotiating Phase**

- A. After acceptance by OWNER of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon authorization by OWNER to proceed, ENGINEER shall:

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1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, and receive and process Contractor deposits or charges for the Bidding Documents.
  2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
  3. Consult with OWNER as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
  4. Perform or provide the following Bidding and Negotiating Phase tasks or deliverables: See Attachment "1" to Exhibit A.
  5. Attend the Bid opening, prepare Bid tabulation sheets, and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

### A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon authorization from OWNER, ENGINEER shall:
1. *General Administration of Construction Contract.* Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitation of the duties, responsibilities and authority of ENGINEER as assigned in said General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER, who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.
  2. *Resident Project Representative (RPR).* If included in Attachment "1" of Exhibit A provide the services of an RPR at the Site to assist the ENGINEER and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of RPR's services will not exceed ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement.
  3. *Selecting Independent Testing Laboratory.* Assist OWNER in the selection of an independent testing laboratory to perform the services identified in paragraph B2.01.0.
  4. *Visits to Site by Project Engineer/Manager and Observation of Construction by Project Engineer/Manager.* In connection with observations of Contractor's work in progress while it is in progress:
    - a. Make four (4) visits, not to exceed eight (8) hours, to the Site at intervals appropriate to the various stages of construction, as Project Engineer/Manager deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the work.

Such visits and observations by Project Engineer/Manager, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to Project Engineer/Manager in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Project



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Engineer/Manager's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, Project Engineer/Manager will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and Project Engineer/Manager shall keep OWNER informed of the progress of the work.

- b. The purpose of Project Engineer/Manager's visits to, and representation by the Resident Project Representative, in any, at the Site, will be to enable Project Engineer/Manager to better carry out the duties and responsibilities assigned to and undertaken By Project Engineer/Manager during the Construction Phase, and, in addition, by the exercise of Project Engineer's/Manager efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. Project Engineer/Manager shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Project Engineer/Manager have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Project Engineer/Manager neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
5. *Defective Work.* Recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
6. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
7. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and prepare Change Orders and Work Change Directives as required.
8. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.

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9. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute of "or equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.
10. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, test, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER'S review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.
11. *Disagreements between OWNER and Contractor.* Render formal written decisions on all claims of OWNER and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
12. *Applications for Payment.* Based on ENGINEER'S observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
  - a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER'S representation to OWNER, based on such observations and review, that, to the best of ENGINEER'S knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER'S responsibility to observe Contractor's work. In the case of unit price work, ENGINEER'S recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph A1.05.A.12.a are expressly subject to the limitations set forth in paragraph A1.05.A.12.b and other express or general limitations in this Agreement and elsewhere.
  - b. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER'S review of Contractor's work for the purposes of recommending payments nor ENGINEER'S recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance

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with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

13. *Contractor's Completion Documents.*
  - a. Receive and review maintenances and operating instructions, schedules, and guarantees.
  - b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, test and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A1.05.A.8 and the annotated record documents which are to be assembled by the Contractor in accordance with the Contract Documents to obtain final payment. The extent of such ENGINEER'S review will be limited as provided in paragraph A1.05.A.8.
  - c. ENGINEER shall transmit these documents to OWNER.
14. *Additional Tasks.* Perform or provide the following Construction Phase tasks or deliverables: See Attachment "1" to Exhibit A.
15. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a Recommendation of Acceptance that the Work is acceptable to the best of ENGINEER'S knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.

- B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractors. If the Project involves more than one prime contract as indicated in paragraph A1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts.
- C. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

~~A1.06 Post-Construction Phase~~

- ~~A. Upon authorization from OWNER, ENGINEER, during the Post-Construction Phase, shall, up to a maximum of \_\_\_\_\_ hours:
  1. In company with OWNER or OWNER'S representative, provide an inspection of the Project within two (2) months before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.
  2. Provide Engineering services necessary during the correction period.~~
- ~~B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Correction Period.~~

**Part 2—ADDITIONAL SERVICES**

**A2.01 Additional Services Requiring OWNER'S Authorization in ADVANCE**

- A. If not specifically included in Exhibit A Part 1 basic services and if authorized by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
  2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
  3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER'S schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER'S control.
  4. Services resulting from OWNER'S request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A1.01.A.4, if any.
  5. Services required as a result of OWNER'S providing incomplete or incorrect Project information with respect to Exhibit B.
  6. Providing renderings or models for OWNER'S use.
  7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.
  8. Furnishing services of ENGINEER'S Consultants for other than Basic Services.
  9. Services attributable to more prime construction contracts than specified in paragraph A1.03.C.
  10. Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER'S office.
  11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
  12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof.

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13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
15. Providing construction surveys and staking to enable Contractor to perform its work other than as defined in basic services and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
16. Providing Construction Phase services beyond the Contract Times set forth in the Project Specifications, including services not specifically listed or provided beyond the hours and dollars in Post-Construction Phase during correction period.
17. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
18. Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.
19. Preparation of operation and maintenance manuals.
20. Provide assistance in connection with the testing and adjusting of Project equipment or system.
21. Assist OWNER In training OWNER'S staff to operate and maintain Project, equipment, and systems.
22. Assist OWNER in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
23. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.
24. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 6.01.G of the Agreement.
25. Other services performed or furnish by ENGINEER not otherwise provided for in this Agreement.

### **A2.02 Required Additional Services**

- A. ENGINEER shall perform or furnish, without requesting or receiving specific advance authorization from OWNER, the Additional Services of the types listed below. ENGINEER shall advise OWNER in writing promptly after starting any such Additional Services.
  1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER so as to make the compensation commensurate with the extent of the Additional Services rendered.
  2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
  3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
  4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed

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work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, (6) default by Contractor or (7) weather.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.
6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

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This is **Attachment 1 to EXHIBIT A**, consisting of 3 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated March 25, 2016.

### **Scope of Services**

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**Project Description:** The City of Nebraska City is utilizing CDBG – CIS Phase 2 Implementation funds to improve Kearney Hill Road from the South Corporate Limits of Nebraska City to the existing Concrete pavement located near the intersection of 6<sup>th</sup> Rue and 6<sup>th</sup> Terrace. Improvements will consist of hard-surfacing the existing gravel street with 7-inch thick, 27-foot wide concrete pavement. Surface drainage (curb and gutter or open ditches) will be utilized to provide drainage for the project.

### **Final Design Phase**

- A. Attend conference with Owner to review the scope and requirements of the project, the goals and constraints of the Owner and project scheduling (1 Meeting).
- B. Conduct a site visit for field investigation and familiarity by key design personnel.
- C. Geotechnical Investigation: If desired, assist the Owner in hiring a geotechnical firm to perform a geotechnical report and pavement determination for the proposed improvements. Owner to hire geotechnical firm directly.
- D. Review geotechnical report and incorporate geotechnical recommendations into the project's design.
- E. Review and finalize design criteria.
- F. Finalize horizontal and vertical alignment design for the proposed street.
- G. Conduct a final field investigation to confirm appropriateness of designed plans.
- H. Furnish plans to utility companies that have identified facilities with the project limits to review the project for conflicts.
- I. Confirm Owner's bidding and procurement requirements for the project.
- J. Prepare forms for Contract Documents including proposals, advertisements for bids, construction contracts, and payment and performance bonds as required, all subject to the approval of Owner's legal counsel.
- K. Perform an internal quality assurance and quality control review of the plans and specifications.
- L. Finalize construction drawings and technical specifications, including regulatory signage requirements.
- M. Prepare a detour route and construction signage plan.
- N. Prepare Storm Water Pollution Prevention Plan and submit permit applications to NDEQ for NPDES permitting requirements.
- O. Prepare a list of final construction quantities and furnish an Engineer's Opinion of Cost if requested.
- P. Present completed final documents (Plans, Specifications, and Contract Documents) to Owner for review. (1 Meeting)

### **Bidding and Negotiation Phase**

- A. Prepare the "Invitation to Bid" for the project and provide invitation to City Clerk. City Clerk to submit the "invitation to Bid" to local paper for advertisement. Cost for advertisement to be paid by the City.
- B. Furnish copies of plans, specifications, and contract documents of the project to prospective bidders, material suppliers, and other interested parties upon their request and payment of the purchase cost established for the documents.
- C. Respond to inquiries from prospective bidders and prepare any addenda required.
- D. Conduct bid opening. (1 meeting)

## Nebraska City

- E. Tabulate and analyze construction bids and report on them to the Owner, together with advice and assistance to the Owner in award of construction contract.
- F. Prepare and submit necessary information to the Owner for project award approval.
- G. Prepare Contract Documents for execution by Contractor and the Owner, and approval by Owner and Owner's legal and insurance counsel.

### **Construction Phase**

- A. Schedule and conduct pre-construction conference, on site, for the proposed improvements.
- B. Review shop drawings and related materials as provided by contractor.
- C. Construction staking of project limits and horizontal & vertical alignment for street and storm sewer improvements.
- D. Provide interpretation of the plans and specifications, when necessary.
- E. Review Contractor's monthly payment estimates and provide to Owner and review.
- F. Prepare contract change orders and work directives and submit to the appropriate parties for consideration.
- G. Consult with and advise Owner during construction.
- H. Review Geotechnical soil and concrete testing results, as needed. Testing to be paid for by Owner.
- I. Conduct a final inspection of project with the Contractor and Owner, prepare a punch list and submit to both parties.
- J. Review project for completion of punch list items.
- K. Recommend to the Owner the acceptance of the projects, and complete the necessary certificates. These recommendations will be based on the Engineer's observation of construction utilizing professional judgment and accepted tests to determine that the Contractor has completed their contracts in substantial compliance with the plans, specifications and contract documents.
- L. Furnish closeout documentation to SENDD as requested.

### **Construction Observation- Resident Project Representation**

- A. JEO will furnish a Resident Project Representative (RPR) to observe construction progress and quality of the work.
- B. The duties and responsibilities of the RPR are described as follows:
  - a. Review of contractors work for general compliance with the plans and specifications.
  - b. Complete Construction Observation Reports when on site.
  - c. Coordinate pay quantities with Contractor and Engineer.
  - d. Assist in the review of shop drawings.
  - e. Review of materials delivered to the site for specification compliance.
  - f. Assist the Engineer in interpretation of the plans and specifications to the contractor.
  - g. Review and coordinate materials testing by assigned testing firm (soil and concrete testing).
  - h. Obtain as-built drawing from the Contractor and review for accuracy.

### **SWPPP Inspection Services**

- A. Provide Storm Water Pollution Prevention Plan inspections at the intervals as required by the permit issued to the Owner for the project (A Storm Water Pollution Prevention Plan is required by NDEQ for any construction project that disturbs more than 1 acre of soil.)

### **Migratory Bird Survey**

- A. As stated in the Environmental Review (completed by SENDD), migratory birds may be of concern on this project. JEO will complete a Migratory Bird survey prior to construction and identify the



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appropriate measures for mitigation.

***Additional Services Available Upon Request***

- A. Floodplain, Corps 404, Wetland Delineation, or other environmental permitting, not outlined in the scope of services.
- B. Meetings not outlined in the scope of services.
- C. Creation of Street Improvement District.
- D. Traffic study.
- E. Grant Administration.
- F. Payroll record review and labor interviews.
- G. Legal descriptions of land for acquisition or easements to construct project.
- H. Design of any utility relocations.
- I. Services resulting from changes in scope, extent or character of the project.

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This is **EXHIBIT B**, consisting of 2 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services**.

**OWNER's Responsibilities**

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Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

**B2.01 Unless specifically set forth in Part 1 of Exhibit A, and in addition to other responsibilities of OWNER as set forth in this Agreement, OWNER shall:**

- A. Provide ENGINEER with all criteria and full information as to OWNER'S requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will required to be included in the Drawings and Specifications; and furnish copies of OWNER'S standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.
- B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following ENGINEER'S assessment of initially-available Project information and data and upon ENGINEER'S request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretations thereof.
  - 5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
  - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of ENGINEER'S services, or any defect or nonconformance in ENIGNEER'S services or in the work of any Contractor.
- E. Authorize ENGINEER to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as OWNER deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

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- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
  - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
  - 2. Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or ENGINEER reasonably requests.
  - 3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the monies paid.
  - 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- K. Furnish to ENGINEER data as to OWNER'S anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER'S opinion of Total Project Costs.
- L. If OWNER designates a construction manager or an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER.
- M. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of ENGINEER as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- P. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as OWNER determines necessary to verify:
  - 1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.
  - 2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.
- Q. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs B2.01.O and P.
- R. Perform or provide the following additional services:

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This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services**.

**Payments to ENGINEER for Services and Reimbursable Expenses**

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

**ARTICLE 4 – PAYMENTS TO THE ENGINEER**

**C4.01 For Basic Services Having A Determined Scope—Lump Sum Method of Payment**

- A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A, except for services of ENGINEER'S Resident Project Representative Services and NPDES Storm Water Permit Administration and Monitoring, if any, as follows:
1. A Lump Sum amount of \$34,500.00 based on the following assumed distribution of compensation:

a. <del>Study and Report Phase</del>	\$
b. <del>Preliminary Design Phase</del>	\$
c. Final Design Phase	\$18,800.00
d. Bidding and Negotiating Phase	\$ 3,800.00
e. Construction Phase	\$11,900.00
f. <del>Post-Construction Phase</del>	\$
  2. The lump sum amount for Construction Phase as listed in C4.01A.1 includes up to a maximum of four (4) site visits and eight (8) hours, as listed in A1.05.
  3. ENGINEER may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the OWNER.
  4. The Lump Sum includes compensation for ENGINEER'S services and services of ENGINEER'S Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
  5. The portion of the Lump Sum amount billed for ENGINEER'S services will be based upon ENGINEER'S estimate of the proportion of the total services actually completed during the billing period to the Lump Sum. All fees for Post-Construction phase will be billed and paid at the end of Construction Phase.
  6. The Lump Sum is conditioned on Contract Times to complete the Work not exceeding 18 months. Should the Contract Times to complete the Work be extended beyond this period, the total compensation to ENGINEER shall be appropriately adjusted.
  7. If more prime contracts are awarded for Work designed or specified by ENGINEER for this Project that identified in Exhibit A, the ENGINEER shall be compensated an additional amount to be negotiated for all Basic Services for each prime.

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**C4.02 For Basic Services Having an Undetermined Scope—Standard Hourly Rates Method of Payment**

- A. OWNER shall pay ENGINEER for Basic Services having an undetermined scope as follows:
1. *Resident Project Representative Services.* For services of ENGINEER'S Resident Project Representative, if any, under paragraph A1.05A.2 of Exhibit A, an amount equal to the cumulative hours, estimated to be 100 hours, charged to the Project by each (of ENGINEER'S) employees times Standard Hourly Rates for each employee for all Resident Project Representative services performed on the Project, plus Reimbursable Expenses and ENGINEER'S Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$ 11,000.
  2. *NPDES Storm Water Permit Administration and Monitoring Services.* For services of ENGINEER and ENGINEER'S Representative, if any under paragraph A1.05 and A1.06 of Exhibit A, an amount equal to the cumulative hours, estimated to be 24 hours, charged to the Project by each (of ENGINEER'S) employees times Standard Hourly Rates for each employee for all NPDES Storm Water Permit Administration and Monitoring Services performed on the Project, plus Reimbursable Expenses and ENGINEER'S Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$ 2,640.
  3. *Environmental Sciences Services.* For services of ENGINEER'S, if any under paragraph A1.01 through A1.06 of Exhibit A, an amount equal to the cumulative hours, estimated to be 10 hours, charged to the Project by each (of ENGINEER'S) employee's times Standard Hourly Rates for each employee for all Environmental Sciences Services, including ~~but not limited to wetland studies, NEPA documentation, migratory bird surveys, and agency coordination,~~ performed on the Project, plus Reimbursable Expenses and ENGINEER'S Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$ 1,200.
  4. ~~*Permitting Services.* For services of ENGINEER'S, if any under paragraph A1.01 through A1.06 of Exhibit A, an amount equal to the cumulative hours, estimated to be \_\_\_\_\_ hours, charged to the Project by each (of ENGINEER'S) employee's times Standard Hourly Rates for each employee for all Permitting Services, including but not limited to NPDES Storm Water, Corps of Engineers 404, flood plain, railroad occupancy and undercrossing, and highway, street, road, occupancy and undercrossing, performed on the Project, plus Reimbursable Expenses and ENGINEER'S Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$ \_\_\_\_\_.~~

**C4.03 For Additional Services**

- A. OWNER shall pay ENGINEER for Additional Services as follows:
1. *General.* For services of ENGINEER'S employees engaged directly on the Project pursuant to paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under paragraph A2.01A.23, an amount equal to the cumulative hours charged to the Project by each of ENGINEER'S employees times Standard Hourly Rates for each employee for all Additional Services performed on the Project, plus Reimbursable Expenses and ENGINEER'S Consultant's charges, if any.
  2. *Serving as a Witness.* For services performed by ENGINEER'S employees as witnesses giving testimony in any litigation, arbitration, or other legal or administrative proceeding under paragraph A2.01.A.23, at the rate of \$(to be negotiated) per day or any portion thereof (but compensation for time spent in preparing to testify in any such litigation, arbitration, or proceeding will be on the

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basis provided in paragraph C4.03.A.1). Compensation for ENGINEER'S Consultants for such services will be on the basis provided in paragraph C4.06.

**C4.04 For Reimbursable Expenses**

- A. Reimbursable Expenses. ENGINEER typically includes most reimbursable expenses in hourly rates. To the extent not included, the OWNER will be notified and will be billed at cost times a factor of 1.1.

**C4.05 Standard Hourly Rates**

- A. Standard Hourly Rates are set forth in Attachment "1" to Exhibit C.
- B. The Standard Hourly Rates may change from time to time to reflect employee pay changes and associated overhead costs.

**C4.06 For ENGINEER'S Consultant Charges**

- A. Whenever compensation to ENGINEER herein is stated to include charges of ENGINEER'S Consultants, those charges shall be the amounts billed by ENGINEER'S Consultants to ENGINEER times a Factor of 1.1.

**C4.07 Factors**

- A. The ENGINEER'S Consultant's Factors include ENGINEER'S overhead and profit associated with ENGINEER'S responsibility for the administration of such services and costs.

**C4.08 Other Provisions Concerning Payment**

- A. *Progress Payments.* The portion of the amounts billed for ENGINEER'S services which are related to the services identified in paragraphs C4.02 and C4.03, will be during the billing period based on the cumulative hours charged to the Project by each of ENGINEER'S employees times the Standard Hourly Rate for each employee plus Reimbursable Expenses and ENGINEER'S Consultant's charges, if any.
- B. *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period identified in paragraph C4.01, payment for ENGINEER'S services shall be continued based on the Standard Hourly Rates Method of Payment, unless otherwise negotiated.
- C. *Estimated Compensation Amounts*
  - 1. ENGINEER'S estimate of the amounts that will become payable for Basic Services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to ENGINEER under the Agreement.
  - 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to ENGINEER that a compensation amount thus estimated will be exceeded, ENGINEER shall give OWNER written notice thereof. Promptly thereafter OWNER and ENGINEER shall review the matter of services remaining to be performed and compensation for such services. OWNER shall either agree to such compensation exceeding said estimated amount or OWNER and ENGINEER shall agree to a reduction in the remaining services to be rendered by ENGINEER, so that total compensation for such services will not exceed said estimated amount when such services are completed. If ENGINEER exceeds the estimated amount before OWNER and ENGINEER have agreed to an increase in the compensation due ENGINEER or a reduction in the remaining services, the ENGINEER shall be paid for all services rendered hereunder.

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**ATTACHMENT "1" TO EXHIBIT C**

**HOURLY RATE SCHEDULE**

**ACTUAL HOUR BASIS**

Project Managers:	\$130.00	-	\$175.00
Project Engineers:	\$118.00	-	\$169.00
Project Engineers (E.I.T.):	\$97.00	-	\$108.00
Engineering/Surveying/ Architectural/Planning Technicians:	\$80.00	-	\$135.00
Office/Administrative:	\$82.00	-	\$104.00
Principals:	\$175.00	-	\$214.00

This is **EXHIBIT D**, consisting of 1 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services**.

**Duties, Responsibilities, and Limitation of Authority of Resident Project Representative**

Paragraph 1.01C of the Agreement is amended and supplemented to include the following agreement of the parties:

**D6.02 Resident Project Representative**

- A. ENGINEER shall furnish a Resident Project Representative ("RPR"), to assist the ENGINEER in observing progress and quality of the Work. The RPR under this Exhibit D will provide part-time representation during the Construction Phase of this project.
- B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR, the ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, the ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in section A.1.05 of Exhibit A of the Agreement are applicable.
- C. The duties and responsibilities of the RPR are limited and described as follows:
  1. During the Construction Phase, the Engineer shall furnish a part-time Resident Project Representative whose duties shall include, but are not limited to:
    - a. See Attachment 1 to Exhibit A.



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**EXHIBIT E**  
**RECOMMENDATION OF ACCEPTANCE**

DATE OF ISSUANCE \_\_\_\_\_

OWNER \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

Contract: \_\_\_\_\_

Project: \_\_\_\_\_

OWNER's Contract No. \_\_\_\_\_ ENGINEER's Project No. \_\_\_\_\_

This Recommendation of Acceptance applies to all Work under the Contract Documents or to the following specified parts thereof:

To \_\_\_\_\_

OWNER

And To \_\_\_\_\_

CONTRACTOR

The Work to which this Recommendation of Acceptance applies has been inspected by authorized representatives of OWNER, CONTRACTOR and ENGINEER, and that Work is hereby declared to be complete in accordance with the Contract Documents on (date), expressly subject to the provisions of the related Agreement documents and the terms and conditions set forth herein.

**CONDITIONS OF RECOMMENDATION OF ACCEPTABILITY OF WORK**

The Recommendation of Acceptability of Work ("Recommendation") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Recommendation and rely thereon agree:

1. Said Recommendation is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Recommendation reflects and is an expression of the professional judgment of ENGINEER.
3. Said Recommendation is given as to the best of ENGINEER's knowledge, information, and belief as of the date hereof.
4. Said Recommendation is based entirely on and expressly limited by the scope of services ENGINEER has been employed by OWNER to perform or furnish during construction of the Project (including observation of the CONTRACTOR's work) under ENGINEER's Agreement with OWNER and under the Construction Contract referenced herein, and applies only to facts that are within ENGINEER's knowledge or could reasonably have been ascertained by ENGINEER as a result of carrying out the responsibilities specifically assigned to ENGINEER under ENGINEER's Agreement with OWNER and the Construction Contract referenced herein.
5. Said Recommendation is not a guarantee or warranty of CONTRACTOR's performance under the Construction Contract referenced herein nor an assumption of responsibility for any failure of CONTRACTOR to furnish and perform the Work thereunder in accordance with the Contract Documents.

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The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees shall be as follows:

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

The following documents are attached to and made a part of this Recommendation of Acceptance:  
Payment Application No. \_\_\_ and Final

This Recommendation of Acceptance does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

Executed by ENGINEER on \_\_\_\_\_  
Date

\_\_\_\_\_  
ENGINEER  
By: \_\_\_\_\_  
(Authorized Signature)

CONTRACTOR accepts this Recommendation of Acceptance on \_\_\_\_\_  
Date

\_\_\_\_\_  
CONTRACTOR  
By: \_\_\_\_\_  
(Authorized Signature)

OWNER accepts this Recommendation of Acceptance on \_\_\_\_\_  
Date

\_\_\_\_\_  
OWNER  
By: \_\_\_\_\_  
(Authorized Signature)

EJCDC No. 1910-8-D (1996 Edition)  
Prepared by the Engineers' Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

Nebraska City  
This is **EXHIBIT G**, consisting of 1 page, referred to in  
and part of the **Agreement between OWNER and  
ENGINEER for Professional Services.**

## **Insurance**

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Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

### **G6.05 Insurance**

A. The limits of liability for the insurance required by paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By ENGINEER:

a.	Workers' Compensation:	Statutory
b.	Employer's Liability --	
	1) Each Accident:	<u>\$500,000</u>
	2) Disease, Policy Limit:	<u>\$500,000</u>
	3) Disease, Each Employee:	<u>\$500,000</u>
c.	General Liability --	
	1) Each Occurrence (Bodily Injury and Property Damage):	<u>\$1,000,000</u>
	2) General Aggregate:	<u>\$2,000,000</u>
d.	Auto Liability--	
	1) Combined Single:	<u>\$1,000,000</u>
e.	Excess or Umbrella Liability --	
	1) Each Occurrence:	<u>\$1,000,000</u>
	2) General Aggregate:	<u>\$1,000,000</u>
f.	Other (specify):	<u>\$1,000,000</u> per occur.
	<u>Professional Liability</u>	<u>\$2,000,000</u> aggregate

2. By OWNER:

a. none

Nebraska City

This is **EXHIBIT J**, consisting of 1 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services**.

**Special Provisions**

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Paragraph(s) of the Agreement is/are amended to include the following agreement(s) of the parties:

Refer to:

- A. Attachment 1 to Exhibit J – CDBG Provisions, consisting of 8 pages.

**ATTACHMENT NO. 1  
TO EXHIBIT J  
CDBG PROVISIONS**

**THIS is an ATTACHMENT to the AGREEMENT** made and entered into by and between the City of **Nebraska City, Nebraska** (hereinafter referred to as the City) and **JEO Consulting Group, Inc.**, (hereinafter referred to as the Consultant).

**WITNESSES THAT:**

**WHEREAS**, the City and the Consultant are desirous of entering into a contract to formalize their relationship, and

**WHEREAS**, pursuant to Title I of the Housing and Community Development Act of 1974, as amended through 1981 and 24 CFR 570, the State of Nebraska Department of Economic Development (the Department) is authorized by the federal Department of Housing and Urban Development (HUD) to provide Community Development Block Grant Program funds (hereinafter referred to as CDBG funds) to units of local government selected to undertake and carry out certain programs and projects under the Nebraska State Community Development Block Grant Program in compliance with all applicable local, state and federal laws, regulations and policies, and

**WHEREAS**, the City, as part of its 2014 CDBG grant agreement with the Department, under contract number , has been awarded CDBG funds for the purposes set forth herein, and

**WHEREAS**, the Scope of Work included in this contract is authorized as part of the City approved CDBG program, and

**WHEREAS**, it would be beneficial to the City to utilize the Consultant as an independent entity to accomplish the Scope of Work set forth herein and such endeavor would tend to best accomplish the objectives of the local CDBG program.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and provisions contained herein and the mutual benefits to be derived therefrom, the parties hereto agree as follows:

**1. Services to be Provided by the Parties**

- a. The Consultant shall complete, in a satisfactory and proper manner as determined by the City, the work activities described in the Scope of Work (**Attachment #1**).
- b. The City will provide such assistance and guidance as may be required to support the objectives set forth in the Scope of Work and will provide compensation for services as set forth in Section 3 below.

**2. Time of Performance**

The effective date of this contract shall be the date the parties sign and complete execution of the contract.

The termination date of the contract shall be See Article 1 of the Attached EJCDC Agreement .

### 3. Consideration

The City shall reimburse the Consultant in accordance with the Payment Schedule described in **Attachment #2** for all allowable expenses agreed upon by the parties to complete the Scope of Work. In no event shall the total amount reimbursed by the City exceed the sum of **See Article 4 of the Attached EJCDC Agreement**. Reimbursement under this contract shall be based on billings that are supported by appropriate documentation of costs actually incurred. It is expressly understood that claims for reimbursement shall not be submitted in excess of actual, immediate cash requirements necessary to carry out the purposes of this agreement. It is also understood that this contract is funded in whole or in part with funds through the State of Nebraska Community Development Block Grant Program as administered by the Department and is subject to those regulations and restrictions normally associated with federally funded programs and any other requirements that the state may prescribe.

### 4. Records

The Consultant agrees to maintain such records and follow such procedures as may be required under 24 CFR 85.42(b)(c) and any such procedures that the City or the Department may prescribe. In general such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to this contract and work undertaken under this contract shall be retained by the Consultant for a period of ten years after the final audit of the City's CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the City shall request a longer period for record retention. The City, the Department, and duly authorized officials of the state and federal government shall have full access and the right to examine any pertinent documents, papers, records and books of the Consultant involving transactions to this local program and contract.

### 5. Relationship

The relationship of the Consultant to the City shall be that of an independent Consultant rendering professional services. The Consultant shall have no authority to execute contracts or to make commitments on behalf of the City and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the City and the Consultant.

### 6. Suspension, Termination and Close Out

If the Consultant fails to comply with the terms and conditions of this contract the City may pursue such remedies as are legally available including, but not limited to the suspension or termination of this contract in the manner specified herein:

- a. **Suspension:** If the Consultant fails to comply with the terms and conditions of this contract, or whenever the Consultant is unable to substantiate full compliance with the provisions of this contract, the City may suspend the contract pending corrective actions or investigation, effective not less than 7 days following written notification to the Consultant or its authorized representative. The suspension will remain in full force and effect until the Consultant has taken corrective action to the satisfaction of the City and is able to substantiate its full compliance with the terms and conditions of this contract. No obligations incurred by the Consultant or its authorized representatives during the period of suspension will be allowable under the contract except:
  - (1) Reasonable, proper and otherwise allowable costs which the Consultant could not avoid during the period of suspension.
  - (2) If upon investigation, the Consultant is able to substantiate complete compliance with the terms and conditions of this contract, otherwise allowable costs incurred during the period of suspension will be allowed.

## Nebraska City

- (3) In the event all or any portion of the work prepared or partially prepared by the Consultant be suspended, abandoned, or otherwise terminated the City shall pay the Consultant for work performed to the satisfaction of the City, in accordance with the percentage of the work completed.
- b. **Termination for Cause:** The City may terminate its contract with the Consultant if the Consultant fails to comply with the terms and conditions of this contract and any of the following conditions exist.
- (1) The lack of compliance with the provisions of this contract are of such scope and nature that the City deems continuation of the contract to be substantially detrimental to the interests of the City;
  - (2) The Consultant has failed to take satisfactory action as directed by the City or its authorized representative within the time specified by same;
  - (3) The Consultant has failed within the time specified by the City or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this contract; then, the City may terminate this contract in whole or in part, and thereupon shall notify the Consultant of the termination, the reasons therefore, and the effective date provided such effective date shall not be prior to notification of the Consultant. After this effective date, no charges incurred under any terminated portions are allowable.
- c. **Termination for Other Grounds:** This contract may also be terminated in whole or in part:
- (1) By the City, with the consent of the Consultant, or by the Consultant with the consent of the City, in which case the two parties shall devise by mutual agreement, the conditions of termination including effective date and in case of termination in part, that portion to be terminated.
  - (2) If the funds allocated by the City via this contract are from anticipated sources of revenue, and if the anticipated sources of revenue do not become available for use in purchasing said services.
  - (3) In the event the City fails to pay the Consultant promptly or within 60 days after invoices are rendered, the City agrees that the Consultant shall have the right to consider said default a breach of this agreement and the duties of the Consultant under this agreement terminated. In such an event, the City shall then promptly pay the Consultant for all services performed and all allowable expenses incurred.
  - (4) The City may terminate this contract at any time giving at least 10 days notice in writing to the Consultant. If the contract is terminated for convenience of the City as provided herein, the Consultant will be paid for time provided and expenses incurred up to the termination date.

### 7. Changes, Amendments, Modifications

The City may, from time to time, require changes or modifications in the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of compensation therefore, which are mutually agreed upon by the City and the Consultant shall be incorporated in written amendments to this contract.

### 8. Personnel

The Consultant represents that he/she has, or will secure at his/her own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees or have any contractual relationship to the City.

## Nebraska City

All services required hereunder will be performed by the Consultant or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state or local law to perform such services.

None of the work or services covered by this contract shall be subcontracted without prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this contract.

### **9. Assignability**

The Consultant shall not assign any interest on this contract, and shall not transfer any interest on this contract (whether by assignment or notation), without prior written consent of the City thereto: Provided, however, that claims for money by the Consultant from the City under this contract may be assigned to a bank, trust company, or other financial institutions without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

### **10. Reports and Information**

The Consultant, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

### **11. Findings Confidential**

All of the reports, information, data, etc., prepared or assembled by the Consultant under this contract are confidential and the Consultant agrees that they shall not be made available to any individual or organization without prior written approval of the City.

### **12. Copyright**

No reports, maps, or other documents produced in whole or in part under this contract shall be subject of an application for copyright by or on behalf of the Consultant.

### **13. Compliance With Local Laws**

The Consultant shall comply with all applicable laws, ordinances and codes of the state and local governments and the Consultant shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this contract.

### **14. Title VI of the Civil Rights Act of 1964**

No person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

### **15. Section 109 of the Housing and Community Development Act of 1974**

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied benefits of or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

### **16. Section 3 Compliance in the Provision of Training, Employment and Business Opportunities**

- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

*November 2010*



## Nebraska City

- b. The parties to this contract will comply with the provisions of said Section 3. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these provisions.
- c. The consultant will send to each labor organization or representative or workers with which he/she has collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The Consultant will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or receipt of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Consultant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its consultants and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

### **17. Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101, et seq.)**

No person will be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance.

### **18. Section 504 of the Rehabilitation Act of 1973, As Amended (29 U.S.C. 794)**

No otherwise qualified individual will, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal assistance funds.

### **19. Executive Order 11246, As Amended.**

This Order applies to all federally assisted construction contracts and subcontracts. The Grantee and subcontractors, if any, will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Grantee and subcontractors, if any, will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin.

### **20. Conflict of Interest (24 CFR 85.36(b)(3))**

No officer, employee or agent of the Grantee who will participate in the selection, the award, or the administration of this grant may obtain a personal or financial interest or benefit from the activity or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. It is further required that this stipulation be included in all subcontracts to this contract. Upon written request, exceptions may be granted upon a case by case basis when it is determined that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. These exceptions are granted by the Department.

**21. Audits and Inspections**

The City, the Department, the State Auditor and HUD or their delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as part of the CDBG project and this contract, by whatever legal and reasonable means are deemed expedient by the City, DED, the State Auditor and HUD.

**22. Hold Harmless**

The Consultant agrees to indemnify and hold harmless the City, its appointed and elected officers and employees, from and against all loss and expense, including attorney's fees and costs by reason of any and all claims and demands upon the City, its elected or appointed officers and employees from damages sustained by any person or persons, arising out of or in consequence of the Consultant's and its agents' negligent performance of work associated with this agreement. The Consultant shall not be liable for property and bodily injury as may result from the negligence of any construction contractor or construction subcontractor.

**23. Governing Law**

This Agreement will be governed by the laws of the State of Nebraska, without regard to that body of law controlling conflicts of law. Any legal proceeding arising out of, or relating to this Agreement shall be instituted in any court of general jurisdiction in the State of Nebraska. This agreement contains all terms and conditions agreed to by the City and the Consultant. The attachments to this agreement are identified as follows:

**24. Compliance with E-Verify Program**

The Consultant shall register with and use the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1996, to determine the work eligibility status of new employees physically performing services within the State of Nebraska. The Consultant shall require the same of each subcontractor.

Nebraska City

**ATTACHMENT #1**

**SCOPE OF WORK and FEES** for NEBRASKA CITY, NEBRASKA for Kearney Hill Road Improvements. See Exhibit "A" and Exhibit "C" of the EJCDC Agreement.

**ATTACHMENT #2**

**PAYMENT SCHEDULE** for NEBRASKA CITY, NEBRASKA for Kearney Hill Road Improvements. See Exhibit "C" of the EJCDC Agreement.

**WITNESS WHEREOF**, the City and the Consultant have executed this contract agreement as of the date and year last written below.

**CITY (NEBRASKA CITY, NEBRASKA)**

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

Title: Mayor

Date: \_\_\_\_\_

**CONSULTANT (JEO CONSULTING GROUP, INC.)**

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

Title: Project Manager

Date: \_\_\_\_\_

**APPROVED as to legal form:**

City Attorney

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

Date: \_\_\_\_\_

## References

- OMB Circular A102  
<http://www.whitehouse.gov/omb/circulars/index.html>
- 24 CFR 85.42  
<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>
- Title VI, Civil Rights Act of 1964  
Full Text: [http://www.usdoj.gov/crt/grants\\_statutes/titlevi.txt](http://www.usdoj.gov/crt/grants_statutes/titlevi.txt)  
Overview: <http://www.hud.gov/progdesc/titl-vi.cfm>
- Section 109 of the Housing and Community Development Act of 1974  
Full Text: <http://www.hud.gov/offices/ftheo/FHLaws/109.cfm>  
Overview: <http://www.hud.gov/progdesc/sec-109.cfm>
- Section 3 of the Housing and Urban Development Act of 1968  
Overview: <http://www.hud.gov/offices/ftheo/progdesc/emp-lowr.cfm>  
Guide: <http://www.hud.gov/offices/ftheo/section3/Section3.pdf>
- 24 CFR 135  
<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>
- Age Discrimination Act of 1975  
Full Text: [http://www.dol.gov/oasam/regs/statutes/age\\_act.htm](http://www.dol.gov/oasam/regs/statutes/age_act.htm)  
Overview: <http://www.dol.gov/dol/topic/discrimination/agedisc.htm>
- Section 504 of the Rehab Act of 1973  
Overview: <http://www.hud.gov/offices/ftheo/disabilities/sect504.cfm>
- Executive Order 11246  
Full Text: <http://www.eeoc.gov/abouteeoc/35th/thelaw/eo-11246.html>  
Overview: <http://www.hud.gov/offices/ftheo/FHLaws/EXO11246.cfm>  
For additional information regarding Fair Housing Laws, please visit:  
<http://www.hud.gov/offices/ftheo/FHLaws/index.cfm>