

# MCCOOK CITY COUNCIL

## REGULAR MEETING

**Monday, May 5, 2025  
5:30 PM - City Council Chambers**

Roll Call.

Excuse Absences.

Open Meetings Act Announcement.

Invocation - McCook Ministerial Association - Barry Johnson, Assembly of God Church.

Pledge of Allegiance.

Call to Order.

Items.

1. Announcements & Recognitions.
2. Proclamations.
  - A. Approve the proclamation designating May 11, 2025 through May 17, 2025 as "National Police Officers Week" and May 15, 2025 as "Police Officer Memorial Day" and authorize the Mayor to sign.
3. Public Hearings.
  - A. Public Hearing - A report from the Economic Development Plan Citizen's Advisory Review Committee regarding meeting held April 28, 2025.
    1. Adjourn the Public Hearing.
  - B. Accept the minutes of the February 10, 2025 Economic Development Plan Citizen's Advisory Review Committee meeting.
4. Consent Agenda.

*\*The Consent Agenda is approved on one motion. Any item listed on the Consent Agenda may, by the request of any single Council member or public in attendance, be considered as a separate item under the Regular Agenda.*

  - A. Approve the minutes of the April 21, 2025 regular Council meeting and the April 30, 2025 special Council meeting.
  - B. Approve and authorize the Mayor to sign the contract between the City of McCook and THERAP Services, LLC pursuant to one or more State Agreements, for the purpose of providing Waiver meals and transportation.
  - C. Approve and authorize the Mayor to sign Change Order No. 1, the Certificate of Substantial Completion and Pay Application 6 (FINAL) for Water System Improvements on South Street and Ravenswood Road from the City Shop to South 9th Street, BSB Construction, Inc. contractor.

- D. Accept the City of McCook-Tax Increment Financing Annual Report - dated April 2025.
  - E. Approve an application from Telecom Construction to occupy City right-of-way for the purpose of replacing telephone cable for 334 North Cherokee Road.
  - F. Approve an application from Great Plains Communications to occupy city right-of-way for the purpose of installing underground fiber optic conduit and cable on Airport property.
  - G. Forward to the City's insurance carrier for review and appropriate action a property damage claim from Cindy Dugger, St. Patrick's Little Knights Preschool.
  - H. Approve Van Kirk Brothers Contracting request for street closure during a water infrastructure improvement project on West 5th Street from West "J" Street to West "L" Street starting May 19, 2025 for approximately three weeks.
  - I. Approve and authorize the Mayor to sign a land lease with the Federal Aviation Administration for navigational equipment known as a fan marker.
5. Regular Agenda.
- A. Update regarding the sports complex project.
  - B. Council Comments.

Adjournment.

**CITY MANAGER'S REPORT  
MAY 5, 2023 CITY COUNCIL MEETING**

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**ITEM:**            2.A.

RECOMMENDATION – Proclaim May 11, 2025, through May 17, 2025, as National Police Week. Proclaim May 15, 2025, as Police Officer Memorial Day and authorize the Mayor to sign.

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**BACKGROUND:**

National Police Week is dedicated to those men and women of law enforcement who have gave their lives in the line of duty. This week honors those individuals with a day of remembrance on May 15, 2025, as Police Officer Memorial Day. This week is also dedicated to those in law enforcement who serve and protect their communities. McCook police officers serve this community 24 hours a day seven days a week 365 days a year and we acknowledge their service by proclaiming May 11, 2025, through May 17, 2025, as National Police Week.

**FISCAL  
IMPACT:**        None.

**APPROVALS:**

  
\_\_\_\_\_  
Kevin Hodgson, Police Chief

April 23, 2025

  
\_\_\_\_\_  
Nathan A. Schneider, City Manager

April 23, 2025

*Office of the Mayor  
McCook, Nebraska*

## *Proclamation*

### “NATIONAL POLICE OFFICERS WEEK”

To recognize National Police Week 2025 and to honor the service and sacrifice of those law enforcement officers killed in the line of duty while protecting our communities and safeguarding our democracy.

**Whereas**, there are more than 800,000 law enforcement officers serving in communities across the United States, including the dedicated members of the McCook Police Department;

**Whereas**, since the first recorded death in 1786, there are currently more than 24,000 law enforcement officers in the United States that have made the ultimate sacrifice and been killed in the line of duty;

**Whereas**, the names of these dedicated public servants are engraved on the walls of the National Law Enforcement Officers Memorial in Washington, DC;

**Whereas**, new names of fallen heroes are being added to the National Law Enforcement Officers Memorial this spring, including 147 officers killed in 2024;

**Whereas**, the service and sacrifice of all officers killed in the line of duty will be honored during the National Law Enforcement Officers Memorial Fund's 37th Candlelight Vigil, on the evening of May 13, 2025;

**Whereas**, the Candlelight Vigil is part of National Police Week, which will be observed this year May 11th-17th;

**Whereas**, May 15 is designated as Peace Officers Memorial Day, in honor of all fallen officers and their families and U.S. flags should be flown at half-staff;

**THEREFORE, BE IT RESOLVED** that the Mayor and Council Members of McCook, Nebraska formally designate May 11-17, 2025, as National Police Week, and publicly salutes the service of law enforcement officers in our community and in communities across the nation.

Dated this 1<sup>st</sup> day of May, 2023.

*In witness whereof, I have hereunto set by  
hand and caused this seal to be affixed.*

\_\_\_\_\_  
Linda Taylor, Mayor

ATTEST:

\_\_\_\_\_  
Lea Ann Doak, City Clerk

**CITY MANAGER'S REPORT  
MAY 5, 2025 CITY COUNCIL MEETING**

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ITEM: **3.A.** Public Hearing - A report from the Economic Development Plan Citizen's Advisory Review committee regarding meeting held April 28, 2025.

ITEM: **3.B.** Accept the minutes of the February 10, 2025 Economic Development Plan Citizen's Advisory Review Committee meeting.

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**BACKGROUND:**

Quarter Economic Development Plan Citizen's Advisory Review Committee meetings were held on April 28, 2025 and February 10, 2025. Per the City's Plan, a public hearing will be held to discuss the contents of the meetings.

**FISCAL  
IMPACT:** None.


**APPROVALS:**

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

April 29, 2025

  
\_\_\_\_\_  
Tera Koetter, Assistant City Manager

April 29, 2025

  
\_\_\_\_\_  
Nathan A. Schneider, City Manager

April 29, 2025

**EXHIBIT - #1**

**PAGE(S) - 1**

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Mayor and City Council of McCook, Nebraska will hold a public hearing on May 5, 2025 at 5:30 p.m. in the City Council Chambers of the McCook Municipal Center concerning the findings and suggestions of the LB840 Citizens Advisory Committee regarding the functions and progress of the economic development program for the City of McCook. Individuals requiring physical or sensory accommodations including interpreter services, braille, large print, or recorded materials, please contact the City Clerk at 308-345-2022.

-s- Lea Ann Doak,  
City Clerk-Treasurer

Publish: May 1, 2025

**EXHIBIT - #2**

**PAGE(S) - 1**

**AGENDA**

**ECONOMIC DEVELOPMENT PLAN  
CITIZEN'S ADVISORY REVIEW COMMITTEE**

**QUARTERLY MEETING**

**MONDAY, APRIL 28, 2025**

**12:00 P.M.**

**HERITAGE SENIOR CENTER CONFERENCE ROOM**

**CALL TO ORDER**

\*A Copy of the Open Meetings Act is posted and available for public review in the meeting room at the Heritage Senior Center.

- ITEM NO. 1**            Review and approve minutes of the February 10, 2025 meeting.
- ITEM NO. 2**            Review McCook LB840 Economic Development Program Quarterly Reports.
- ITEM NO. 3**            Update of LB840 Program Balances.
- ITEM NO. 4**            MEDC Director's Report
- ITEM NO. 5**            Open Discussion
- ITEM NO. 6**            Next meeting date: July 28, 2025
- ITEM NO. 7**            Adjournment

**EXHIBIT - #3**

**PAGE(S) - 6**

McCook Growth Fund (LB840) PROGRAM BALANCES (MEDC format)

Program Year 10/01/24 - 9/30/25

Q2 - 03/31/2025

	Beginning Cash on Hand	YTD Receipts	YTD Expenditures	Ending Balance	Program Total
<b>Loan &amp; Grant Program</b>	\$ 1,030,292.54	\$ 159,699.16	\$ (315,030.78)	\$ 914,184.00	
Loan Repayments		\$ 35,412.10		\$ 52,871.04	
Legal			\$ (1,461.50)	\$ (1,461.50)	
Publishing			\$ -	\$ -	
Miscellaneous				\$ -	
Interest		\$ 5,272.48		\$ 6,478.48	
TOTAL				\$ 972,072.02	\$ 972,072.02

**Ending Balance** \$ 972,072.02

MEDC Administration \$ - \$ 76,098.00 \$ 76,098.00 \$ -

**McCook Growth Fund (LB840) AVAILABLE FUNDS**

Program Year-10/01/24-09/30/2025

**Q2 - Balances as 03/31/2025**

	Program Balance	Reserved Funds	Available
<b>Loan, Grants and Projects</b>			
North Pointe Term Loan Interest (estimate)	\$ 972,072.02		
Business Park Phase II loan (2025 interest due and engineering fees) (estimate)		\$25,500.00	
			\$70,000.00
 Early Childhood Education			
New Provider Scholarship/Startup Funds/Infant Incentives		\$28,756.00	
*Early Childhood Donation YMCA		\$80,000.00	
Total Reserved and Committed		<u>\$204,256.00</u>	
<b>Total Funds Available</b>			<u><u>\$ 767,816.02</u></u>

\*This will be paid over 5 year @ \$20,000 per year  
\$20,000 - 2025

Current Loans	Loan Amount (a)	Late Payment Fees (b)	Interest Rate	Loan Term (Years)	Date Loan Made	Interest Earned (c)	Payments Made (d)	Loan Balance Remaining (a+b+c-d)	Loan Status
City of McCook (Walter's Land Purchase)	\$ 250,000.00		0%		10/11/2024	\$ -	\$ -	\$ 250,000.00	Current
MEDC North Pointe Phase II	\$ 240,341.37		0%		7/23/2024	\$ -	\$ -	\$ 240,341.37	Current
HOKVL, LLC (Purchased Bee Little)	\$ 100,000.00		4%	5	4/1/2024	\$ 4,008.25	\$ 12,168.00	\$ 91,840.25	Current
Hot Tub Brokers	\$ 100,000.00		2%	10	12/13/2021	\$ 5,840.23	\$ 35,862.84	\$ 69,621.27	Current
Early Morning Cackle, LLC	\$ 55,700.00	\$ 240.00	3%	10	3/19/2020	\$ 6,500.74	\$ 32,107.07	\$ 30,333.67	Current
Straight Align, LLC	\$ 50,000.00		3%	10	10/1/2019	\$ 6,099.87	\$ 30,899.20	\$ 25,200.67	Current
American Agricultural Laboratory	\$ 75,000.00		2%	10	2/5/2017	\$ 7,499.02	\$ 66,939.78	\$ 15,559.24	Current
MEDC North Pointe Phase I TIF Bond	\$ 208,000.00		0%	22	4/2/2015	\$ 0.00	\$ 207,264.78	\$ 735.22	Current
Clary Village Equity (Non-Recourse Loan)	\$ 120,000.00		4%	15	3/16/2015	\$ 48,686.50	\$ 47,304.65	\$ 121,381.85	Current*
MEDC Clary Village TIF	\$ 178,622.92		0%	17	3/16/2015	\$ 0.00	\$ 108,444.46	\$ 70,178.46	Current
East Ward Village (Non-Recourse Loan)	\$ 105,000.00		2%	15	7/11/2012	\$ 16,599.02	\$ 98,286.58	\$ 15,754.59	Current
Totals	\$ 1,482,654.29	\$ 240.00				\$ 95,223.63	\$ 639,277.36	\$ 930,945.59	

\*This Non-Recourse Developer Loan/Agreement structure requires loan payments from available Net Cash Flow as outlined in the Operating Agreement over the agreed term. At the Maturity Date, the borrower is responsible for the unpaid principal balance and accrued interest. Given its non-recourse nature, any remaining balance after the Maturity Date may prompt MEDC to seek final payment from the borrower or explore grant options. Ultimately, at the term's end, MEDC would acquire all land, property, and project equity, typically of significantly higher value.

**McCook Growth Fund (LB840) Economic Development Program  
Second Quarter Report  
October 1, 2024 - September 30, 2025**

**Approved, but not yet completed or paid:**

**North Pointe Housing Development** **2024/2025**    **\$25,500.00**

As the housing development progresses, we are actively enhancing infrastructure within the North Pointe Addition project area. Our strategy integrates Tax Increment Financing (TIF) and other funding sources to support these improvements. Street paving, along with the installation of water, sewer, and electrical services, has been successfully completed. To manage initial costs, the MEDC is accruing interest in the project funds, which will be offset by proceeds from lot and house sales over time. This approach ensures sustainable financing through TIF revenues throughout the project's duration.

**McCook Business/Industrial Park Expansion** **2024/2025**    **\$70,000.00**

The McCook Business Park - Phase II project has made remarkable strides over the past year and is now nearing the completion of this important expansion. A key milestone is the industry track and spur, which recently underwent an inspection by BNSF. We are awaiting their feedback to make the track fully operational, which will be a critical asset for future tenants and operations at the park.

In addition, Performance Plus is making significant progress with their new facility. They are nearing completion of construction, have hired three full-time employees, and have started producing small batches of feed. As they refine their production processes, they plan to gradually scale up feed volume and increase their workforce, bringing additional economic benefits to the community.

**Early Childhood / MEDC Infant Incentive Program** **2024/2025**    **\$28,756.00 - YTD**

The MEDC Board of Directors remains committed to supporting early childcare and education in our community. Our funding continues to provide resources for the Infant Program as well as Startup and Expansion initiatives, with the goal of sustaining and enhancing the efforts of local early childcare providers and centers.

**Early Childhood/Youth Development Center Donation to YMCA Proj.** **2025-2029**    **\$80,000.00**

The MEDC demonstrates its commitment to early childcare in McCook through initiatives that support our community providers. These programs are essential in aiding families and fostering workforce development, ensuring our youngest residents receive exceptional care and education. The board has furthered its support by committing \$100,000 over 5 years (\$20,000 annually) to the YMCA's renovation and expansion project. This funding will specifically benefit the Early Childhood/Youth Development Center, enhancing programming, activities, child watch services, and more. The first payment was made in 2025.



**ECONOMIC DEVELOPMENT PLAN  
CITIZEN'S ADVISORY REVIEW COMMITTEE  
MEETING MINUTES**

Monday – February 10, 2025  
12:00 P.M. at the Heritage Senior Center Conference Room

The Economic Development Plan Citizen's Advisory Review Committee of the City of McCook was called to order by Sean Wolfe and began at 12:15 P.M.

A copy of the Open Meetings Act is posted on the in the Heritage Senior Center Conference room and is available for public review.

**Present:** Members: Jeanette Peters, Sean Wolfe, Alexis Davidson and Rick Sinner; Nate Schneider, City Manager, Charlie McPherson, MEDC Director.

**Absent:** Members: Warren Jones, Sarah Renner and Jordan Johnson.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on February 6, 2025, the designated method of giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to all members of the Economic Development Plan Citizen's Advisory Review Committee. Availability of the agenda was communicated in advance notice. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

(1) REVIEW AND APPROVE MINUTES OF October 28, 2024, MEETING.

Davidson introduced a motion to approve October 28, 2024, minutes; Peters seconded the motion. All members present voted in the affirmative. Motion passed. 4 VOTES YEA, 0 NAY, 3 ABSENT.

(2) REVIEW LB840 ECONOMIC DEVELOPMENT PROGRAM QUARTERLY REPORTS.

MEDC Director McPherson reviewed the McCook Growth Fund Program Balances and McCook Growth Fund Available Funds reports prepared by MEDC for the 10/01/24 – 09/30/25 program year with the committee.

As of 12/31/2024 the LB840 Program balance is \$867427.09. Funds are currently allocated in the amount of \$406,656.00. This leaves an available balance of \$460,771.09.

(3) UPDATE OF REVENUES COLLECTED The McCook Growth Fund Loan Status Report shows all loans are current. The LB840 Program Balances report, receipt register and check register were provided.

(4) ECONOMIC DEVELOPMENT DIRECTOR REPORT

**EXHIBIT - #4**

**PAGE(S) - 4**

**Approved, but not yet completed or paid:**

**The Retail Coach Consulting Firm**

“Over the past year, our partnership with The Retail Coach has yielded significant progress in introducing McCook to national retailers and cultivating connections with key decision-makers in the industry. These efforts have generated strong interest in the McCook market, showcasing its potential as a viable location for new retail opportunities.

One of the key challenges we’ve faced, however, is the availability of highly visible, high-traffic areas for retailers to establish their presence. With the development of the North McCook property, we are addressing this obstacle and creating new opportunities for growth. As this project unfolds, we are optimistic about positioning McCook as an attractive destination for retail investment, paving the way for continued economic development in our community.”

**North Pointe Housing Development**

“As the housing development progresses, we are actively enhancing infrastructure within the North Pointe Addition project area. Our strategy integrates Tax Increment Financing (TIF) and other funding sources to support these improvements. Street paving, along with the installation of water, sewer, and electrical services, has been successfully completed. To manage initial costs, the MEDC is accruing interest in the project funds, which will be offset by proceeds from lot and house sales over time. This approach ensures sustainable financing through TIF revenues throughout the project’s duration.

As part of the subdivision development at North Pointe, a Homeowner’s Association (HOA) will be established to uphold uniform standards and requirements outlined in the covenants for all home and lot owners, including maintenance of the subdivision’s drainage out lot. The HOA ensures the construction of quality homes, prevents lot hoarding or exclusive garage/shop usage, helps maintain property values, and ensures proper care and maintenance of subdivision drainage for the North Pointe Addition so as not to impact surrounding properties negatively.”

**McCook Business/Industrial Park Expansion**

“The McCook Business Park-Phase II project has made remarkable strides over the past year and is now nearing the completion of this important expansion. A key milestone is the industry track and spur, which recently underwent an inspection by BNSF. We are awaiting their feedback to make the track fully operational, which will be a critical asset for future tenants and operations at the park.

In addition, Performance Plus is making significant progress with their new facility. They are nearing completion of construction, have hired three full-time employees, and have started producing small batches of feed. As they refine their production processes, they plan to

gradually scale up feed volume and increase their workforce, bringing additional economic benefits to the community.”

### **2024 Rural Workforce Housing Grant Match**

“The Nebraska Department of Economic Development (DED) provided another funding cycle for the 2024 Rural Workforce Housing (RWFH) grant program where they were offering a 0.25:1 match for communities to utilize towards housing projects. The MEDC has plans to continue to apply for these housing funds for additional housing projects in the community. If awarded the grant, the DED would provide \$600,000 in housing funds to total \$750,000 to the community.”

### **Early Childhood/MEDC Infant Incentive Program**

“The MEDC Board of Directors remains committed to supporting early childcare and education in our community. Our funding continues to provide resources for the Infant Program as well as Startup and Expansion initiatives, with the goal of sustaining and enhancing the efforts of local early childcare providers and centers.”

### **Early Childhood/Youth Development Center Donation to YMCA project**

“The MEDC demonstrates its commitment to early childcare in McCook through initiatives that support our community providers. These programs are essential in aiding families and fostering workforce development, ensuring our youngest residents receive exceptional care and education. The board has furthered its support by committing \$100,000 over 5 years (\$20,000 annually) to the YMCA’s renovation and expansion project. This funding will specifically benefit the Early Childhood/Youth Development Center, enhancing programming, activities, child watch services, and more.”

### **LB840 Expenses in the 1st Quarter**

#### **Loan, Grant, and Program Fund**

##### **Loan to the City of McCook**

“The McCook Economic Development Corporation (MEDC) Board of Directors approved a LB840 loan of \$250,000 to the City of McCook. This was to assist with the purchase and acquisition of approximately 130 acres north of “Q” Street. This acquisition is pivotal for McCook’s future growth and expansion, offering diverse benefits to residents. The property will feature a new recreational complex and provide opportunities for housing, retail/commercial development, as well as walking, biking, and hiking trails. It will also include additional green space for community enjoyment.”

##### **North Pointe Redevelopment-Attorney Fees**

The North Pointe housing development is making exciting progress, with the initial five spec homes nearing the final stages of construction. One home is already sold, highlighting the strong interest in this new neighborhood. As the weather warms up, plans are in place to ramp up promotion and marketing efforts to attract more buyers to these high-quality homes and available lots. Interest in the development remains strong, with ongoing inquiries from individuals eager to learn more about the homes and lots for sale. This project is a key step forward in addressing housing needs and fostering growth in our community.”

### **MILCO-Environmental Studies-Business Park Ph. II**

“This past summer, comprehensive environmental studies were completed as part of the Phase II redevelopment and expansion of the McCook Business Park. These studies were conducted as part of our due diligence process to ensure the site is ready for future development. The reports generated from these studies provide valuable information for interested companies considering locating at the park. By proactively completing these assessments, we are streamlining the decision-making process for potential tenants and demonstrating our commitment to creating a development-ready environment.”

(5) OPEN DISCUSSION

(6) NEXT MEETING DATE

Next meeting date will be April 28, 2025, at 12:00 PM at the Heritage Senior Center conference room.

(7) ADJOURNMENT

The meeting was adjourned at 1:00 PM.



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Nate Schneider, City Manager

**CITY MANAGER'S REPORT  
MAY 5, 2025 CITY COUNCIL MEETING**

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**ITEM:**        **4.A.**

Approve the minutes of the April 21, 2025 regular Council meeting and the April 30, 2025 special Council meeting.

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**BACKGROUND:**

Receive and approve the minutes.

**FISCAL  
IMPACT:**     None.

**APPROVALS:**

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

May 1, 2025

McCook City Council  
April 21, 2025  
5:30 P.M.

A MEETING OF THE MAYOR AND COUNCIL OF THE CITY OF MCCOOK, NEBRASKA convened in open, regular, and public session at 5:30 o'clock P.M. in the City Council Chambers.

Present: Mayor Linda Taylor, Councilmembers Jerry Calvin, Gene Weedin, Jared Muehlenkamp, Darcy Rambali.

Absent: None.

City Officials present: City Manager Nate Schneider, City Attorney Nate Mustion, City Clerk Lea Ann Doak, Assistant City Manager Tera Koetter, Utilities Director Pat Fawver, Fire Chief Marc Harpham, Police Chief Kevin Hodgson, and Public Works Director Kyle Potthoff.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on April 17, 2025, the designated method of giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the Mayor and members of the City Council and a copy of the Acknowledgement of Receipt of such notice is attached to these minutes. Availability of the agenda was communicated in the advance notice to the Mayor and Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

Mayor Taylor announced that a copy of the Open Meetings Act was posted by the entrance to the Council Chambers and available for public review. Invocation was provided by Jamie Mockry. Following the Pledge of Allegiance to the flag of the United States of America, Mayor Taylor called the meeting to order.

## **1. Announcements & Recognitions.**

City Manager Schneider announced that an Airport Advisory Commission meeting is scheduled for Thursday, April 24, 2025 at noon in the city council chambers.

## **2. Public Hearings.**

- 2.A. Conduct a public hearing on the application of Fresh Foods Central, Inc.; dba "Fresh Foods", for a Class "C" - (Beer, Wine, Distilled Spirits, On and Off Sale) license under the Nebraska Liquor Control Commission, to be located at 212 Westview Plaza, McCook, Nebraska.

Motion to recess as a City Council and convene a public hearing for the purpose of receiving public comment on the application of Fresh Foods Central, Inc.; dba "Fresh Foods", for a Class "C" - (Beer, Wine, Distilled Spirits, On and Off Sale) license under the Nebraska Liquor Control Commission, to be located at 212 Westview Plaza, McCook, Nebraska, with the City Attorney to act as hearing

officer. This motion, made by Calvin and seconded by Weedin, passed.

Taylor: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA

YEA: 5, NAY: 0

The City Attorney offered and received into evidence Exhibit #1 - the City Manager's Report dated April 21, 2025 (1 page); Exhibit #2 - Notice of Hearing published (1 page); Exhibit #3 - Redacted application and all attachments (44 pages); and Exhibit #4 - Police Department Liquor Application Report (7 pages).

City Manager Schneider and Police Chief Hodgson stated that nothing was found during the review of the application and recommended approval of the requested license.

Erin and Troy Werkmeister, local representatives of the store, were present to address questions from the Council.

With no one else present to comment, motion to adjourn the public hearing and to reconvene as a City Council. This motion, made by Weedin and seconded by Gene, passed.

Taylor: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA

YEA: 5, NAY: 0

- 2.B. Recommend approval to the Nebraska Liquor Control Commission the application of Fresh Foods Central, Inc.; dba "Fresh Foods", for a Class "C" - (Beer, Wine, Distilled Spirits, On and Off Sale) license under the Nebraska Liquor Control Commission, to be located at 212 Westview Plaza, McCook, Nebraska.

Motion to recommend approval to the Nebraska Liquor Control Commission the application of Fresh Foods Central, Inc.; dba "Fresh Foods", for a Class "C" - (Beer, Wine, Distilled Spirits, On and Off Sale) license under the Nebraska Liquor Control Commission, to be located at 212 Westview Plaza, McCook, Nebraska. This motion, made by Muehlenkamp and seconded by Taylor, passed.

Taylor: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA

YEA: 5, NAY: 0

- 2.C. Public Hearing - Regarding a request from the City of McCook to approve the final plat which serves as a permanent step in the creation of Walters First Addition, an Addition to the City of McCook, Red Willow County, Nebraska.

Motion to recess as a City Council and convene a public hearing for the purpose of receiving public comment with respect to the request from the City of McCook to approve the final plat which serves as a permanent step in the creation of Walters First Addition, an Addition to the City of McCook, Red Willow County, Nebraska, with the City Attorney to act as hearing officer. This motion, made by Rambali and seconded by Weedin, passed.

Taylor: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA

YEA: 5, NAY: 0

The City Attorney received into evidence Exhibit #1 - City Manager's Report prepared for the

April 21, 2025, City Council meeting (1 page); Exhibit #2 - Notice of Public Hearing mailed and posted (1 page); Exhibit #3 - listing of property owners notified (3 pages); Exhibit #4 - Notice of Public Hearing published (1 page); Exhibit #5 - Walters First Addition Final Plat (3 pages); Exhibit #6 - Walters First Addition Preliminary Plat (1 page); Exhibit #7 - Walters First Addition Proposed Infrastructure Development (1 page); Exhibit #8 - Phase I Walters First Addition Infrastructure Feasibility Plan (1 page); Exhibit #9 - Land Use Application and attachments (5 pages); Exhibit #10 - Minutes of the April 14, 2025 Planning Commission meeting (3 pages); and Exhibit #11 - Proposed Resolution No. 2025-08 (1 page).

City Manager Schneider reviewed the information presented in Exhibit #1.

Craig Bennett of Miller and Associates reviewed the information presented in Exhibit #5, #6, #7, and #8.

With no one else present to comment, motion to adjourn the public hearing and to reconvene as a City Council. This motion, made by Calvin and seconded by Muehlenkamp, passed.

Taylor: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA  
YEA: 5, NAY: 0

2.D. Adopt Resolution No. 2025-08 providing for the approval of the final plat for the establishment of Walters First Addition, an Addition to the City of McCook, Red Willow County, Nebraska.

Motion to adopt Resolution No. 2025-08 providing for the approval of the final plat for the establishment of Walters First Addition, an Addition to the City of McCook, Red Willow County, Nebraska. This motion, made by Muehlenkamp and seconded by Rambali, passed.

Taylor: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA  
YEA: 5, NAY: 0

2.E. Update and discussion regarding the City of McCook's progress on a new Comprehensive Plan, Zoning Regulations, and Subdivision Regulations.

A review of the process to date was given by City Manager Schneider and Craig Bennett of Miller and Associates.

They noted that the Planning Commission has set a goal of having the zoning ordinance reviewed by the end of the year. They will be reviewing Chapters 1 - 3 at their May meeting.

### **3. Proclamations.**

3.A. Approve the proclamation designating April 25, 2025 as "Arbor Day" in the City of McCook and authorize the Mayor to sign.

Motion to approve the proclamation designating April 25, 2025 as "Arbor Day" in the City of McCook and authorize the Mayor to sign. This motion, made by Muehlenkamp and seconded by

Rambali, passed.

Taylor: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA

YEA: 5, NAY: 0

#### **4. Consent Agenda.**

Councilmember Calvin requested that Item E be removed from the Consent Agenda and placed on the Regular Agenda.

Motion to approve the remaining consent agenda. This motion, made by Weedin and seconded by Muehlenkamp, passed.

Taylor: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA

YEA: 5, NAY: 0

- 4.A. Approve the minutes of the April 7, 2025 regular City Council meeting.
- 4.B. Approve the request from the McCook Creative District to close Norris Avenue from the north side of "D" Street to the south side of "E" Street on May 15, June 19, July 17, August 21, September 18, and October 16, from 4:00 P.M. to 10:00 P.M., for their Third Thursday Events.
- 4.C. Accept the minutes of the January 21, 2025 Senior Center Advisory Board and the April 14, 2025 Planning Commission meeting.
- 4.D. Receive and file the claims for the month of March 2025, published April 15, 2025.
- 4.F. Approve Resolution No. 2025-09 approving the Sourcewell Cooperative Purchasing Program Participation Agreement.

#### **5. Regular Agenda.**

- 4.E. Approve a First Addendum to the lease between the City of McCook and Southwest Nebraska Family Resource Center for additional portions of the old public safety center located at 526 West "B" Street.

Motion to table. This motion, made by Calvin and seconded by Taylor, passed.

Taylor: YEA, Calvin: YEA, Weedin: NAY, Muehlenkamp: NAY, Rambali: YEA

YEA: 3, NAY: 2

Weedin: NAY, Muehlenkamp: NAY

- 5.A. Approve an agreement between the City of McCook and Mammoth Sports Construction, LLC for the construction of the Gerald L. Walters Youth Sports Complex.

Members of the Mammoth Sports Construction team were present to review their proposed agreement and addressed the potential saving advantages of utilizing a design build approach. The

complex design is still being finalized; they indicated that excavation of the site would begin as soon as the end of April, with field work starting in late summer.

Motion to approve an agreement between the City of McCook and Mammoth Sports Construction, LLC for the construction of the Gerald L. Walters Youth Sports Complex. This motion, made by Calvin and seconded by Weedin, passed.

Taylor: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA  
YEA: 5, NAY: 0

- 5.B. Consider Ordinance No. 2025-3100 amending the City of McCook Code of Ordinances Chapter 34, entitled "Purchasing Regulations", Subchapter "Purchasing Procedure" in Title III, "Administration", by amending the purchasing limit to \$50,000 to harmonize with state law.

Mayor Taylor introduced Ordinance No. 2025-3100 and asked the Clerk to read it by title. The Clerk read the title:

AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA AMENDING THE CITY OF MCCOOK CODE OF ORDINANCES CHAPTER 34, ENTITLED "PURCHASING REGULATIONS", SUBCHAPTER "PURCHASING PROCEDURE", IN TITLE III, "ADMINISTRATION", BY AMENDING THE PURCHASING LIMIT TO \$50,000 TO HARMONIZE WITH STATE LAW; TO PROVIDE THAT THIS ORDINANCE SHALL BE MADE A PART OF THE CITY OF MCCOOK CODE OF ORDINANCES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; AND PROVIDING FOR THE EFFECTIVE DATE AND PUBLICATION THEREOF.

Ordinance No. 2025-3100 has been read by title and I move to approve upon its third and final reading. This motion, made by Muehlenkamp and seconded by Rambali, passed.

Taylor: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA  
YEA: 5, NAY: 0

Mayor Taylor stated for the record that Ordinance No. 2025-3100 is declared lawfully passed and adopted upon publication as required by law.

- 5.C. Council Comments.

Councilmember Weedin reminded all that the Choice Gas selection period ends this Wednesday.

### **Adjournment.**

There being no further business to come before the Council, Mayor Taylor declared the meeting adjourned at 6:29 P.M.

---

Linda Taylor, Ex-officio Mayor  
and Council President

ATTEST:

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Lea Ann Doak, City Clerk-Treasurer

McCook City Council  
April 30, 2025  
12:00 P.M.

A MEETING OF THE MAYOR AND COUNCIL OF THE CITY OF MCCOOK, NEBRASKA convened in open, special, and public session at 12:00 o'clock P.M. in the City Council Chambers.

Present: Mayor Linda Taylor, Councilmembers Jerry Calvin, Gene Weedin, Darcy Rambali.

Absent: Councilmember Jared Muehlenkamp (excused), City Manager Nate Schneider, City Attorney Nate Mustion, Assistant City Manager Tera Koetter, City Clerk Lea Ann Doak.

City Officials present: Public Works Director Kyle Potthoff.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on April 29, 2025, the designated method of giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the Mayor and members of the City Council and a copy of the Acknowledgement of Receipt of such notice is attached to these minutes. Availability of the agenda was communicated in the advance notice to the Mayor and Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

Mayor Taylor announced that a copy of the Open Meetings Act was posted by the entrance to the Council Chambers and called the meeting to order.

1. Approve Plans and Specifications for a New Self Service Fuel Facility at the McCook Ben Nelson Regional Airport and set the time and date to receive bids as 2:30 P.M. on May 20, 2025.

Greg Wolford, W Design Associates, gave the background of the project and addressed the FAA safety concerns with the originally proposed plans and specifications.

Motion to approve Plans and Specifications for a New Self Service Fuel Facility at the McCook Ben Nelson Regional airport and set the time and date to receive bids as 2:30 P.M. on May 20, 2025. This motion, made by Calvin and seconded by Weedin, passed.

Muehlenkamp: ABSENT, Taylor: YEA, Calvin: YEA, Weedin: YEA, Rambali: YEA  
YEA: 4, NAY: 0, ABSENT: 1

Adjournment.

There being no further business to come before the Council, Mayor Taylor declared the meeting adjourned at 12:08 P.M.

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Linda Taylor, Ex-officio Mayor  
and Council President

ATTEST:

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Kyle Potthoff, appointed Recording Secretary  
Director of Public Works

**CITY MANAGER'S REPORT**  
**May 5, 2025 CITY COUNCIL MEETING**

**ITEM:**        **4.B.**

**RECOMMENDATION:**

Approve and authorize the mayor to sign the contract between the City of McCook and THERAP Services ,LLC pursuant to one or more State Agreements, for the purpose of providing Wavier meals and transportation.

---

**BACKGROUND:**

The contract between the City of McCook and THERAP is an agreement that THREAP a contractor with the state of Nebraska will provide on line services for payments for Waiver meals and transportation, up until now this has been done by paper.

**FISCAL**  
**IMPACT:**     None

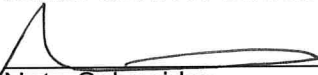
**RECOMMENDATION:**

Approve and authorize the mayor to sign the contract between the City of McCook the THERAP Services, LLC a contracted provider with the State of Nebraska.

**APPROVALS:**

  
\_\_\_\_\_  
Beth Siegfried  
Senior Services Director

April 30, 2025

  
\_\_\_\_\_  
Nate Schneider  
City Manager

April 30, 2025

# End User Legal Agreement

(State Provider Form TS 1-2-29-24)

This Agreement is intended to be executed by "Providers" in the state of Nebraska (hereinafter the "State") pursuant to one or more agreements (hereinafter the "State Agreements") between one or more agencies of the State (hereinafter each such agency is referred to as an "Agency" or a "Primary User") and **THERAP SERVICES, LLC**. Pursuant to one or more State Agreements, the undersigned Provider will have access to one or more services provided by Therap Services, LLC (hereinafter the "Service"). Each Provider is an End User which is given free access to the Service by one or more Agencies because the End User is providing residential, day care, medical care or other support services to individuals who receive services and/or support from one or more Agencies and such Agency (Agencies) want(s) the End User to be able to utilize the Service. If you are an End User, you should enter the information requested below and then execute this Agreement. (Be advised that, except when the context clearly indicates a different intent, whenever the word "User" appears herein without being preceded by the word "Primary," "End," "Additional" or "Authorized", it refers to the End User or an Additional User, as the case may be).

Carefully read the following Agreement before executing it.

## HIPAA COMPLIANCE AGREEMENT FOR THE END USER

BY AGREEING TO THE TERMS OF THIS AGREEMENT YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU ARE AUTHORIZED TO AGREE TO THE TERMS OF THIS AGREEMENT ON BEHALF OF THE END USER, THAT YOU UNDERSTAND THE TERMS OF THIS AGREEMENT AND THAT, IF YOU ACCEPT THE TERMS OF THIS AGREEMENT, THE PARTY THAT YOU ARE ACTING ON BEHALF OF WILL BE BOUND BY THIS AGREEMENT.

### Please enter the following information about the End User:

Company Name: City of McCook

Type of entity: city

State of incorporation or formation: **NE**

Business Address (No. and Street): 1312 west 5th st

City: McCook

State/Province: **NE**

Zip: 69001

Country: united states

Website address: <https://cityofmccook.com>

Telephone number: 3083451760

Emergency Contact 1  
Name: Beth Siegfried  
Phone: 308-340-2394

Emergency Contact 2  
Name: Nate Schneider  
Phone: 308-345-2022

**Please enter the following information about yourself:**

Your Name: Beth Siegfried

Your Business Address: (No. and Street): 1312 west 5th st

City: MCCook

State/Province: **NE**

Zip: 69001

Country: united states

E-mail address: [bsiegfried@cityofmccook.com](mailto:bsiegfried@cityofmccook.com)

Telephone number: 3083451760

What is your position/title with the End User? Senior Services Director

Has the End User specifically authorized you to enter into this Agreement on its behalf  
(Yes/No)? Yes

[If the answer is "No", a properly authorized individual must accept the terms of this Agreement  
on behalf of the End User]

**THIS AGREEMENT** has been entered into between **THERAP SERVICES, LLC**, a limited liability company organized under the laws of the State of Delaware and having its principal office located at 333 Kennedy Drive, Suite R101, Torrington, Connecticut 06790-3060 ("Therap Services"), and the End User identified above, as of the date of the End User's acceptance of the terms hereof.

**WHEREAS**, the End User currently provides services or support to certain individuals ("Care Recipients"); and

**WHEREAS**, Therap Services owns, maintains, manages and operates a software as a service suite of applications under the domain names [therapservices.net](http://therapservices.net) and [therapevv.net](http://therapevv.net) (the "Service"); and

**WHEREAS**, the Service can be accessed at [secure.therapservices.net](http://secure.therapservices.net) and/or [secure.therapevv.net](http://secure.therapevv.net); and

**WHEREAS**, Therap Services operates websites at [www.therapservices.net](http://www.therapservices.net) and [www.therapevv.net](http://www.therapevv.net) (each of which is hereinafter a "Website" and, collectively, the "Websites"); and

**WHEREAS**, in addition to the Service, Therap Services provides certain libraries, bulletin boards, webcasts, training and support services (whether in person, on the telephone, through the internet or otherwise), conferences, seminars and other aids designed for the common benefit of its customers (any application, library, bulletin board, support service, webcast, training or other aid which is only accessible to "Authorized Users" (as hereinafter defined) of the Service, will be considered, for purposes of this Agreement, to be part of the Service, and any such items which are accessible by the public will be considered "Ancillary Services"); and

**WHEREAS**, the End User desires, along with the other entities and/or individuals authorized by the End User (as set forth below), to access the Service and/or to post thereon protected health information ("PHI") of Care Recipients;

**NOW, THEREFORE**, in consideration of the premises and of the covenants contained herein, the parties hereto agree as follows:

**1. Authorization to Use the Service.** The End User is responsible for providing all of the hardware, as well as the internet connectivity, necessary in order to access the Service. Therap Services hereby authorizes the End User, and its authorized employees and agents, as more particularly set forth in Section 3, to access and use the Service for legitimate and lawful purposes and in accordance with the terms and conditions of this Agreement, the user agreement posted on [www.therapservices.net](http://www.therapservices.net) and applicable to all users of the Service (the "Service User Agreement") and the Therap Services' Privacy Policy, both of which are made part of this Agreement. The Privacy Policy may be accessed at <http://www.therapservices.net/privacy-policy/>. More specifically, the End User provides services and/or support to individuals identified on the Service by the End User as its Care Recipients (the individuals so identified by the End User, as such list may be amended from time to time, are hereinafter referred to as the "Designated Care

Recipients"). The Care Recipients to whom the End User provides services and/or support will change from time to time, and the End User will act promptly to update the Service whenever a change takes place, in accordance with the terms of Section 20 hereof. The End User may also authorize other entities and/or individuals who are not its own employees or agents but are employees and/or agents of another entity (e.g., any entity which provides residential, day care, vocational, counseling, and/or other health care or support services to some or all of the Designated Care Recipients) to access the Service. Such other entity which has any employee(s) or agent(s) authorized to access the Service is hereinafter referred to as an "Additional User". Furthermore, if the End User authorizes an individual (as opposed to an entity) who is not one of its employees and/or agents to access the Service (e.g., a parent or guardian of one of its Designated Care Recipients), that individual will also be considered an "Additional User". Whenever the End User authorizes anyone to access the PHI of some or all of the Designated Care Recipients, such authorization must be in accordance with the requirements and limitations of the Health Insurance Portability and Accountability Act of 1996, and the rules and regulations promulgated thereunder, as the same have been, and from time to time hereafter may be, amended ("HIPAA"), and subject to all other applicable federal and state laws, rules and regulations. The End User shall have the responsibility to determine which of its employees and/or agents, and which employees and agents of each Additional User, are lawfully entitled to and shall have access to the Service with respect to any Designated Care Recipient of the End User. However, an Additional User shall have no right to grant any person or entity access to the Service with respect to any Designated Care Recipient. Each End User shall be responsible for entering into Therap Services' additional user legal agreement (State Provider Version) (which is available upon request directed to [notices@therapservices.net](mailto:notices@therapservices.net)) (hereinafter an "Additional User Legal Agreement") as well as, when required by law, a Business Associate Agreement (State Provider Version) (which is available upon request directed to [notices@therapservices.net](mailto:notices@therapservices.net)) with each Additional User to ensure compliance by such Additional User with, among other things, applicable federal and state laws, rules and regulations regarding the confidentiality of, access to and the dissemination of PHI of the Designated Care Recipients. Notwithstanding anything to the contrary contained herein, the End User will be liable for the acts and omissions of each employee, agent or other person which the End User authorizes or empowers to use the Service. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IF THE END USER GIVES ACCESS TO THE SERVICE TO ANY PERSON OR ENTITY WHICH IS NEITHER AN EMPLOYEE NOR AGENT OF THE END USER WITHOUT REQUIRING SUCH PERSON OR ENTITY TO ENTER INTO AN ADDITIONAL USER LEGAL AGREEMENT (HEREINAFTER "AN UNREGISTERED USER") IT: (i) WILL BE LIABLE TO THERAP SERVICES AND TO ALL OTHERS TO THE SAME EXTENT AS THE UNREGISTERED USER WOULD BE HAD IT ENTERED INTO SUCH AN ADDITIONAL USER LEGAL AGREEMENT, AS REQUIRED HEREUNDER; AND (ii) WILL INDEMNIFY AND HOLD THERAP SERVICES HARMLESS AGAINST ANY LIABILITY, DAMAGE AND/OR EXPENSE WHICH THERAP SERVICES INCURS BECAUSE THE UNREGISTERED USER DID NOT ENTER INTO AN ADDITIONAL USER LEGAL AGREEMENT. Whenever the End User is obligated under this Agreement to indemnify and hold Therap Services harmless, the End User shall also indemnify Therap Services' affiliated companies and the respective officers, directors, shareholders, managers, members, consultants, employees and/or agents of Therap Services and/or of such affiliated companies (hereinafter such individuals and affiliated companies are collectively referred to as the "Affiliates"), and such indemnification will extend to all liability, claims, third

party claims, demands and damages (whether actual, consequential or other), of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such matter, together with all penalties, fees (including attorneys' fees) and expenses which are incurred by Therap Services and/or its Affiliates as a result of the act or omission for which the End User has the indemnification obligation.

**2. Business Associate Agreement.** As noted above, the End User must enter into an appropriate Business Associate Agreement with Therap Services. The End User acknowledges that, in the normal operation of the Service, Therap Services, its officers, employees and agents, do not access or review any PHI of any Care Recipients, except at the request of the End User, (usually in the course of providing support or to resolve any problems that may arise), or as otherwise expressly authorized herein or, incidentally, in order to maintain and provide the Service and/or to determine how to improve, expand and enhance the Service. Nonetheless, to the extent that such access or review may occur, thereby making it appropriate for the End User to enter into a Business Associate Agreement with Therap Services, the standard terms of the Business Associate Agreement attached hereto as Exhibit "A" will be deemed to be incorporated herein and made a part hereof, as fully for all intents and purposes as if it had been separately executed by the parties hereto. In the event of any inconsistency between the other provisions hereof and the terms of the Business Associate Agreement, the terms of the Business Associate Agreement shall prevail.

**3. Limitations on Access to Service.**

- (a) The End User hereby consents to each Agency (i.e., each Primary User) being able to view all data entered on the Service by or on behalf of the End User under the Provider Code assigned to the End User relating to this Agreement, and to utilize the Service.
- (b) Only the following may access the Service and enter PHI or review PHI of any Designated Care Recipient.
  - (i) employees and agents of any Primary User who are authorized by such Primary User;
  - (ii) employees and agents of the End User who are authorized by the End User;
  - (iii) employees and agents of any Additional User who are authorized by the End User and the Additional User;
  - (iv) employees and agents of local, State or Federal government who are authorized by law or by any Primary User or the End User; and
  - (v) legal guardians of a Designated Care Recipient who are authorized by any Primary User or the End User.

The End User has sole and complete control over whom it authorizes to access, enter and/or retrieve information that it or any of its Authorized Users enters or inputs on the Service (and the extent of the access of each Authorized User). Each person who is directly or

indirectly authorized by the End User to access the Service is an "Authorized User" of the End User. The End User shall: provide the information necessary to access the Service to each of its Authorized Users; identify its Designated Care Recipients on the Service; determine the level of access for each of its Authorized Users with respect to each of its Designated Care Recipients; and terminate the access to the Service of any Authorized User in the event of a change in the employment or other status of an Authorized User. It will be the End User's responsibility to safeguard the information necessary to access the Service and to see to it that each of its Authorized Users receives only the access information intended for him or her.

- (c) Each use of the Service constitutes a representation and warranty by the End User that each of its Authorized Users (whether or not he or she is an employee or agent of the End User) is entitled, under the provisions of this Agreement and the requirements of applicable law, to have the respective levels of access as to the information of each Designated Care Recipient that such Authorized User has been granted. In the event, for any reason, an Authorized User inadvertently obtains access to PHI or other information of an individual (i) who is not a Designated Care Recipient or (ii) who is no longer being cared for by the End User or such Authorized User, as the case may be, or (iii) whose PHI or such other information accessed may not otherwise lawfully be accessed by such Authorized User or (iv) whose PHI or such other information accessed is outside the authorization of such Authorized User, the Authorized User shall immediately terminate such access, destroy or delete all such PHI and/or such other information of such individual located on any server(s) that can be accessed by anyone who is not legally authorized to access such PHI or such other information (not including servers owned or controlled by Therap Services) or on any work station under the control of the Authorized User or otherwise reproduced by the Authorized User, whether such information is stored in written, magnetic, electrical, optical, or other form, and shall immediately notify Therap Services of such access. NOTWITHSTANDING THE FOREGOING, THE END USER AND EACH ADDITIONAL USER MAY RETAIN PHI AND OTHER INFORMATION CONCERNING EACH DESIGNATED CARE RECIPIENT (AND MAY RETAIN ACCESS ON THE SERVICE TO SUCH INFORMATION SO LONG AS THERE IS AN AGREEMENT IN EFFECT WITH THERAP SERVICES TO CONTINUE SUCH ACCESS), EVEN AFTER SUCH CARE RECIPIENT CEASES TO BE IN ITS CARE, TO THE EXTENT THAT SUCH INFORMATION CONSTITUTES RECORDS WHICH MAY LAWFULLY BE RETAINED BY SUCH USER. THE INFORMATION WHICH MAY BE LAWFULLY RETAINED IS HEREINAFTER REFERRED TO AS "RETAINABLE RECORDS". In the absence of any contrary indication from any User, the Retainable Records of the End User and each Additional User, respectively, shall include all information which was entered or which could have been accessed by Authorized Users who were employees or agents of such End User or such Additional User, as the case may be.

The End User and Therap Services agree (subject to the provisions of Section 6 hereof) to comply with all Federal and State laws, rules and regulations regarding the dissemination of PHI and the maintenance of the confidentiality of PHI and other information stored on the Service, including, without limitation, HIPAA. In the event of the termination of the

employment or agency of any Authorized User, or a change in or termination of the authority of any Authorized User, the End User shall take all steps necessary to prevent each individual who is no longer entitled to be an Authorized User hereunder with respect to any information of any current or former Designated Care Recipient from accessing or using the Service with respect to any such information of any current or former Designated Care Recipient (unless and until the individual again satisfies the requirements to be an Authorized User with respect to such information). If a Designated Care Recipient ceases to be under the supervision or care of the End User, the End User will promptly terminate the access of all its Authorized Users to information concerning such former Designated Care Recipient, except to the extent that the End User is lawfully entitled to and wishes to allow one or more Authorized Users to continue to have access to such former Designated Care Recipient's Retainable Records. Furthermore, as noted above, the End User acknowledges that each Additional User may be independently entitled to continue to have access to the PHI and other information of former Designated Care Recipients to the extent that such information constitutes Retainable Records for such Additional User. FAILURE TO ADHERE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT MAY, UNDER CERTAIN CIRCUMSTANCES, CONSTITUTE A VIOLATION OF FEDERAL AND/OR STATE LAW AND MAY SUBJECT THE USER TO CIVIL AND/OR CRIMINAL LIABILITY.

**4. Medical and Care Information Not Provided by Therap Services; End Users' Responsibility for Accuracy of Information Placed on the Service.**

- (a) The End User hereby acknowledges and agrees that all data entered on the Service is the responsibility of the End User and its Authorized Users. The End User hereby further acknowledges and agrees that:
  - (i) The Service does not make healthcare or other decisions and is not a substitute for competent, properly trained and knowledgeable staff who bring professional judgment and analysis to the information presented by the Service and/or by the Ancillary Services.
  - (ii) The End User is responsible for verifying the accuracy of any information on the Service and/or on the Ancillary Services and determining the data necessary for the End User and its Authorized Users to make proper care decisions, as well as for complying with all laws, regulations and licensing requirements, relating to its Designated Care Recipients.
  - (iii) The End User is responsible for establishing and maintaining reasonable quality control procedures to ensure the accuracy of data input on the Service.
  - (iv) The End User and its staff will consider all relevant information, including information presented to the End User and its Authorized Users by the Service and/or the Ancillary Services, and may give whatever weight the End User and its Authorized Users deem appropriate to the information produced by the Service

and/or available from the Ancillary Services in the performance of the End User's functions.

- (v) Any and all financial and management information produced by the Service and/or the Ancillary Services must be tested for reasonableness and accuracy before any actions are taken or reliance placed upon it.
  - (vi) The End User has reviewed and will communicate to its Authorized Users who use and access the Service and/or the Ancillary Services any information relating to the Service and/or the Ancillary Services which may be provided by Therap Services from time to time.
  - (vii) The End User is solely responsible for the proper, complete and accurate submission of its claims, including, without limitation, the determination of proper billing, diagnosis and procedure codes and the maintenance of each Designated Care Recipient's medical records containing appropriate documentation of the services billed.
  - (viii) When selecting a narrative condition or coded diagnosis or procedure, the End User must make an independent and informed judgment based upon the Designated Care Recipient's condition and symptoms and/or a professional's submitted diagnosis, to select a code appropriate for that Designated Care Recipient. Therap Services does not make any representation or warranty regarding the appropriateness of any of the narrative or codes displayed for any or all Designated Care Recipients.
- (b) The Service is a recipient and a compilation of information provided by various sources, and the information has not been developed, supplied, reviewed, authenticated, analyzed or evaluated by Therap Services. All questions about any information obtained from the Service should be directed to the individual or entity that has posted the information. Nothing contained on the Service is intended to constitute a medical diagnosis or treatment. Nothing on the Service is intended as a validation of the accuracy or completeness of the information posted, entered or stored therein.

**5. No Remedy Except Termination.** All information is transmitted over electronic media including, but not limited to, the internet and various types of voice and other telecommunications facilities. Such media are beyond the control and jurisdiction of the Service. Accordingly, Therap Services has no responsibility for, or arising out of, delay, failure, interruption in the availability of the Service, loss or corruption of any data or other information transmitted in connection with the use of the Service or other sites accessed through the Service. The End User's sole and exclusive remedy for dissatisfaction with the Service is to stop using the Service (except to the extent that the End User may be required to utilize certain features of the Service). Notwithstanding anything to the contrary contained herein, Therap Services' sole obligation to the End User or to any other person or entity in connection with any service it renders relating to any electronic visit verification activities shall be to reprocess and/or resubmit, when appropriate, any data on behalf of the End User.

## 6. Amendment and Compliance with Changes in Law.

- (a) This Agreement may not be amended except pursuant to a written agreement executed by the parties. Notwithstanding the foregoing, Therap Services shall have the sole right, from time to time and at any time, to make changes in its Privacy Policy and to the Service User Agreement posted on the Therap Services Website and applicable to all users. Changes in the Privacy Policy shall become effective thirty (30) days after they are initially posted on the said Website, and changes to the said Service User Agreement shall become effective as to the End User on the earlier of: acceptance by the End User, or thirty (30) days after they are initially posted on the said Website. The End User shall review the Therap Services Website periodically to be aware of any such changes in the Privacy Policy and the said Service User Agreement, and the End User's access or use of the Service shall be deemed acceptance by the End User of any modified Privacy Policy and/or Service User Agreement.
- (b) Therap Services abides by all applicable federal and/or state laws, rules or regulations which deal with the maintenance of electronic health records for individuals, including HIPAA (hereinafter referred to as the "Applicable Laws"). Notwithstanding anything to the contrary contained herein, in the event of a change in any Applicable Laws, (except to the extent that the State Agreements prohibit Therap Services from increasing its fees, terminating any or all State Agreements, and/or refusing to comply with a change in Applicable Laws), Therap Services will be given sixty (60) days following its discovery thereof to exercise one of the following three options: (i) decide to comply therewith without seeking any increase in the fees due from any or all of the Agencies in connection with the services provided to the End User hereunder; (ii) seek an increase in such fees payable by any or all of the Agencies in consideration of its increased costs of compliance; or (iii) decide not to comply therewith if it determines that compliance would be unduly burdensome. If Therap Services exercises option (ii) or option (iii), any or all of the Primary Users may, within thirty (30) days' of receiving notice thereof, terminate its affected State Agreement(s) by notice to Therap Services (and receive a refund of fees paid thereunder, if any, allocable to the period remaining after the effective date of termination; such termination will be effective on the date specified by such Primary User, in its notice of termination, which date shall be on or after the date such notice is given). Any notice required under this Section will be deemed given on the date notice is sent in accordance with the provisions of Section 22 hereof. Any termination by Therap Services and/or any or all Primary Users as described in this paragraph will be without liability on the part of Therap Services for breach, as a result of such non-compliance with any Applicable Laws. If any or all affected Primary Users decide not to terminate any affected State Agreement, notwithstanding Therap Services' exercise of option (ii), each such affected State Agreement will continue in effect with respect to each non-terminating Primary User in accordance with all of the provisions thereof, and the fees due from each non-terminating Primary User will increase in the amount and at the time specified in the notice given by Therap Services exercising option (ii). If any or all of the affected Primary Users decide not to terminate any affected State Agreement, notwithstanding Therap Services' exercise of option (iii), each such affected State Agreement will continue in effect with respect to each non-terminating Primary User in accordance with all of the provisions thereof, except

that Therap Services will not be considered in breach thereof for non-compliance with such change in the Applicable Laws. Any affected Primary User which decides not to terminate an affected State Agreement, notwithstanding Therap Services' exercise of option (iii), will be deemed to have determined that compliance is not material to Therap Services' performance and further shall be deemed to have elected to waive such compliance. If any or all affected Primary Users refuse to consent to Therap Services exercise of either option (ii) or option (iii), as the case may be, with respect to any affected State Agreement, except as otherwise prohibited by any such affected State Agreement, Therap Services may terminate each such affected State Agreement with each non-consenting Primary User on thirty (30) days' notice to such Primary User(s), and Therap Services will not be considered in breach thereof for non-compliance with such change in the Applicable Laws and/or for such termination. As noted above, all of Therap Services' rights under this paragraph with respect to any affected State Agreement will be null and void to the extent that such rights are inconsistent with the provisions of any such State Agreement.

- (c) Notwithstanding anything to the contrary contained herein (and notwithstanding anything contained in Section 6(b)), Therap Services abides by the Information Blocking Rule (45 CFR Part 171). As a consequence, wherever and whenever a provision of this Agreement (and/or of any related agreement) would permit Therap Services to suspend and/or terminate the End User's and/or any Authorized User's access to the Service, if such suspension or termination would prevent the End User and/or any such Authorized User from being able to access its PHI, and if, under the circumstances, such prevention of access would violate the Information Blocking Rule, then Therap Services will allow the End User and/or any such Authorized User to have access to any PHI entered on the Service by the End User and/or such Authorized User until the PHI of the End User has been migrated to a different location accessible by such End User and/or such Authorized User and/or until, for any reason, such suspension or termination of access to PHI will not violate the Information Blocking Rule. Nothing contained herein will require Therap Services to allow the End User and/or any Authorized User to enter PHI or otherwise utilize the Service where such actions are not mandated by the Information Blocking Rule or any other provision of the Applicable Laws.

**7. Reservation of Rights.** In addition to Therap Services accessing and using PHI and other information posted on the Service in connection with providing services for or on behalf of the End User, Therap Services reserves the right, but is not obligated under any circumstances, to do any or all of the following:

- (a) Data Rights. To the extent permitted by HIPAA and other applicable federal and/or state laws:
- (i) Therap Services may access, collect, maintain, analyze, prepare derivatives from and otherwise use information on the Service and/or the Websites that is not PHI, including, but not limited to, machine, technical, systems, usage and related information ("Source Data") to facilitate the provision of products and/or services to the End User and for research, benchmarking purposes, development and

continuous improvement of Therap Services' products and services. Therap Services will own all discoveries, ideas, improvements, products, services, software, data, intellectual property and other rights arising from and/or related to its use, analysis, research and/or development of the Source Data.

- (ii) Therap Services may access and use PHI and other information posted on the Service for the purpose of identifying and/or resolving problems and/or responding to problems with the Service.
  - (iii) Therap Services may access and use information posted on the Service and organize and publish PHI and other information provided by users for statistical and other lawful purposes; provided, however, all such information shall be de-identified in accordance with 45 C.F.R. Section 164.514, and no such information will disclose the names of Designated Care Recipients or the facilities where they reside or which otherwise provide services to the Designated Care Recipients.
  - (iv) Therap Services may disclose any Designated Care Recipient's PHI or other information of any kind to the extent required by law.
- (b) Investigate any allegation that information posted on the Service is inaccurate, defamatory, or has been posted in violation of applicable federal, state or other laws, rules and/or regulations.
- (c) Remove or modify any information referred to in Subsection 7(b).
- (d) Suspend and/or terminate the End User's and/or any Authorized User's access to the Service upon: (i) any breach of the terms and conditions of this Agreement; or (ii) in the event Therap Services believes that the End User's or Authorized User's actions may cause financial loss or legal liability for such User, any other Authorized User, other users or Therap Services, or may interfere with the proper operation of the Service (each of the matters mentioned in this subsection 7(d)(ii) is hereinafter a "Prohibited Behavior").
- (e) Change, suspend, or discontinue any aspect of the Service at any time, or any feature, without notice or liability.

In no event will Therap Services sell, assign, lease, or dispose of any End User Information (as defined in Section 9(a)), except as permitted or required hereunder or under the Business Associate Agreement.

**8. Release.** Because Therap Services is a passive recipient of information, not an information provider, in the event that the End User has a dispute with one or more Additional Users, Authorized Users or any other third party or parties, the End User shall release Therap Services and its Affiliates from all liability, claims, third party claims, demands and damages (whether actual, consequential or other) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such dispute.

## 9. End User information.

- (a) "End User Information" is defined as any information the End User or any of its respective Authorized Users, employees or agents posts, enters or inputs on the Service or otherwise provides to Therap Services, and it includes information that any other third parties post, enter or input on the Service or otherwise provide to Therap Services for the benefit of the End User. The End User is solely responsible for its End User Information, and Therap Services acts as a passive conduit for the End User's online entry, receipt, distribution, storage and/or publication of its End User Information.
- (b) The End User's Information and its activities on the Service shall not:
- (i) be false, inaccurate or misleading;
  - (ii) be in violation of any federal, state or other law, rule or regulation relating to rights of privacy or otherwise;
  - (iii) be defamatory;
  - (iv) contain any viruses, Trojan horses, worms, program routine, device, code or instructions or other undisclosed feature, including, without limitation, a time bomb, cancel bot, Easter egg, software lock, remote off-switch, bug, error, defect or trap door that is designed to access, modify, delete, damage, disable, deactivate, interfere with, surreptitiously intercept, expropriate or otherwise harm any software, any hardware, computers, networks, data or other electronically stored information, or computer programs or systems;
  - (v) otherwise adversely affect access to or use of the Service or any Ancillary Service;  
or
  - (vi) create liability for Therap Services or cause Therap Services to lose (in whole or in part) the services of its internet service providers or other suppliers.

**10. Interference; Misappropriation of Proprietary Information.** The Service contains robot exclusion headers. Much of the information on the Service is updated on a real time basis. The End User agrees that it will not permit any Authorized User to utilize any robot, spider, scraper or other automated means to access the Service for any purpose other than to enter, review, post, store and/or modify information on the Service, as to Designated Care Recipients, in each case within the respective authority of each Authorized User. Furthermore, the End User will not permit any Authorized User to transfer his login information or password to any other person or to utilize any other person's password or login information. In addition, the End User will not (and will not permit any Authorized User to):

- (i) take any action that imposes, or may impose, in Therap Services' sole discretion, an unreasonable or disproportionately large load on Therap Services' infrastructure;

- (ii) interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service;
- (iii) bypass Therap Services' robot exclusion headers or other measures it may use to prevent or restrict unauthorized access to the Service;
- (iv) allow access to the Service by any person or entity for the purpose of creating, designing or programing an alternative or replacement for all or any part of the Service;
- (v) use the Service to provide record keeping or processing services to third parties on a commercial timesharing, rental or other sharing arrangement, or on a "service bureau" basis, or otherwise use or allow others to use the Service for the benefit of any third party;
- (vi) sell, lease, license or sublicense the Service, or any part thereof; or
- (vii) modify, adapt, publish, translate, reverse engineer, reverse compile, disassemble, decompile, or create derivative or collective works of the source or object code for the Service or any component thereof.

In addition, the End User agrees that this Agreement, any information provided by Therap Services regarding use of the Service, Therap Services' Privacy Policy, and all other documents which may be provided to the End User by Therap Services are the confidential and proprietary property of Therap Services, and the End User shall not distribute, display or otherwise make such materials available to any third party, except as may be required by law or as otherwise expressly permitted by this Agreement.

**11. Privacy.** Therap Services will not sell or rent the End User Information to third parties for their marketing purposes without the End User's written consent, and Therap Services will only use the End User Information as described in the Privacy Policy or in Section 7 hereof. Therap Services stores and processes information on computers located in the United States that are protected by physical as well as technological security devices and uses third parties to verify and certify its privacy principles. Therap Services' current Privacy Policy is available at <http://www.therapservices.net/privacy-policy/>. The End User hereby expressly consents to Therap Services' Privacy Policy and the provisions of this Section.

**12. NO WARRANTY.** THERAP SERVICES AND ITS AFFILIATES PROVIDE THE SERVICE "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICE OR ANY INFORMATION POSTED OR STORED THEREON. THERAP SERVICES AND ITS AFFILIATES SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

**13. LIMITATION ON LIABILITY.** The End User acknowledges and understands that: (i) Therap Services does not input any information about Designated Care Recipients on the Service;

and (ii) disruption of utility service, the need for periodic maintenance and installation of upgrades, internet-based assaults upon the Service (e.g., worms, viruses, etc.) and external causes beyond the control of Therap Services may result in the Service not being available 24 hours a day, 7 days a week. In light of the foregoing, the End User acknowledges and agrees that neither Therap Services nor any of its Affiliates will have, and the End User hereby releases Therap Services and its Affiliates from, any liability for negligence or other tort or for breach of contract as a result of any failure or inability to access the Service, retrieve information from the Service, or any other claim or liability relating to or arising out of use or attempted use of the Service, the performance of the Service and/or any act or omission of Therap Services in connection with its activities relating to this Agreement or the Service.

The End User specifically understands that the foregoing waiver and release is of the essence of this Agreement and that Therap Services would not enter into this Agreement, and that the End User and its Authorized Users would not be given access to the Service, without consenting to such a waiver and release.

**14. Indemnity.** The End User agrees to indemnify and hold Therap Services and its Affiliates harmless from and against any and all claims, suits, demands, judgments, liability, damage, loss, cost and expense (including, without limitation, attorneys' fees and costs of suit) arising out of or relating to the End User's (or any of its Additional User's or any Authorized User's) act or omission, or use or attempted use of the Service or any Ancillary Service or a breach by the End User (or by any Additional User or by any Authorized User) of this Agreement or the documents it incorporates by reference, or the End User's (or any Additional User's or any Authorized User's) violation of any law or the rights of any Designated Care Recipient or of any other third party.

**15. No Agency.** The End User and Therap Services are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

**16. Resolution of Disputes.** In the event of a dispute between the parties, the dispute shall be resolved in accordance with the Dispute Resolution Procedures annexed to this Agreement as Exhibit "B" and incorporated herein.

**17. Fees.** The End User shall not pay any fees to Therap Services for the services rendered or made available to the End User pursuant to this Agreement.

**18. Applicability to Future State Agreements.** Notwithstanding anything to the contrary contained herein, this Agreement (and the Business Associate Agreement referred to in Section 2 hereof) will apply to any future State Agreement entered into between Therap Services and any Agency of the State, pursuant to which Therap Services will provide any service for the End User without charge to the End User, as fully for all intents and purposes as if such future State Agreement specifically provides for this Agreement to apply between the End User and Therap Services. Furthermore, any service to be provided by Therap Services for the End User pursuant to any such future State Agreement, without charge to the End User, will be deemed to be part of the Service hereunder. Notwithstanding the foregoing, this Section (and this Agreement) will not apply to any future State Agreement if it is clear, either from the express terms of such future State

Agreement or otherwise, that this Agreement is not intended to apply to such future State Agreement.

## **19. Term and Termination.**

- (a) In the event of termination of any State Agreement between a Primary User and Therap Services, for any reason, this Agreement will automatically terminate with respect to the rights granted to the End User pursuant to such terminated State Agreement and Therap Services (subject to the provisions of Section 6(c)) may immediately and permanently suspend the End User's and its Authorized Users' access to the Service (to the extent that such access was granted by the terminated State Agreement with such Primary User), without liability to the End User, any Additional User, any Authorized User or any third party, and neither the End User nor any of its Additional or Authorized Users shall have any further right to access the Service for any reason (relating to the terminated State Agreement with such Primary User), except that for a period of sixty (60) days the End User may access the Service for purposes of downloading information about Designated Care Recipients which it is authorized to access. Notwithstanding the foregoing, the End User may continue to access its Retainable Records, as noted in Section 3(c), so long as the End User has an Agreement in place with Therap Services that permits such continued access and so long as the End User performs its past and current obligations to Therap Services.
- (b) If this Agreement is terminated for any reason, except as otherwise expressly provided herein or in the Business Associate Agreement, and except as may be provided by the Information Blocking Rule, Therap Services shall not have any obligation to retain any information about any Designated Care Recipient, on its Service or elsewhere, in any form, or to transfer any such information to the End User or to any Authorized User (except as provided in any agreed upon separate agreement). In the absence of an agreement allowing continued access to Retainable Records, except as otherwise expressly provided herein or in the Business Associate Agreement, and except as may be provided by the Information Blocking Rule, Therap Services shall be entitled to delete all such information from the Service, and shall have no obligation to maintain any such information in any form, from and after six (6) months following the date of such termination.
- (c) Sections 1 (Authorization to Use the Service), 5 (No Remedy Except Termination), 7 (Reservation of Rights), 8 (Release), 10 (Interference; Misappropriation of Proprietary Information), 11 (Privacy), 12 (No Warranty), 13 (Limitation on Liability), 14 (Indemnity), 15 (No Agency), 16 (Resolution of Disputes), 18. (Applicability to Future State Agreements), 21 (Construction), 23 (General), 24 (Disclosure of Agreement) and 25 (Applicable Requirements Under License Agreements) shall survive any termination or expiration of this Agreement.

**20. Changes in Authority.** It will be the responsibility of the End User to see to it that the appropriate entries are promptly input into the Service to reflect each of the following events,

which will have the effect of changing one or more Authorized Users' access to the PHI of various Designated Care Recipients:

- (i) If any Authorized User ceases to be an Authorized User as to any Designated Care Recipient(s) for any reason, such as a termination of employment or agency, change in job responsibility, transfer, etc.
- (ii) If there is a change in the information which may be accessed by any Authorized User relating to one or more Designated Care Recipients.
- (iii) If any Designated Care Recipient ceases to be receiving services or support from the User.

**21. Construction.** As used in this Agreement, the masculine gender shall include the feminine and/or neuter gender and the neuter gender shall include the masculine and/or feminine gender, the singular shall include the plural and the plural shall include the singular, wherever appropriate to the context.

**22. Notices.** Except as otherwise expressly provided herein, all notices delivered to the End User or Therap Services under this Agreement shall be in writing and shall be delivered by: (i) messenger; (ii) United States Postal Service, certified or registered mail, postage prepaid, return receipt requested; or (iii) reputable national overnight delivery service, and shall be addressed as follows:

**If to End User:** To the address filled in above as the End User's Business address

**If to Therap:**

Therap Services, LLC  
333 Kennedy Drive  
Suite R101  
Torrington, Connecticut 06790-3060  
Attn: Justin Brockie, COO

Notices shall be deemed properly given and received upon the earlier of receipt or refusal of delivery. Notwithstanding the foregoing, whenever Therap Services has to give a notice to the End User and other end users which entered into other agreements with Therap Services pursuant to the State Agreement, it can give each such notice by an e-mail to any e-mail address associated with any such user.

Any notice to any Primary User will be given in accordance with the provisions of the State Agreement between such Primary User and Therap Services.

**23. General.** This Agreement shall be governed in all respects by the laws of the State, as such laws are applied to agreements entered into and to be performed entirely within the State between residents of the State. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. The End User agrees

that this Agreement, and all incorporated agreements and exhibits, may be assigned by Therap Services by providing notice in accordance with Section 22 "Notices". This Agreement may not be assigned by the End User without the prior written consent of Therap Services, which consent may be withheld for any reason. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of any section. Therap Services' failure to act with respect to a breach by the End User or others does not constitute a waiver of Therap Services' right to act with respect to any subsequent or similar breach. This Agreement sets forth the entire understanding and agreement between the parties with respect to the subject matter hereof.

**24. Disclosure of Agreement.** The End User shall not disclose any of the terms or conditions of this Agreement, or of any Supplemental Schedule, to any third parties (except the End User's auditors, legal counsel or third parties whose review is mandated by law) without the prior written authorization of Therap Services.

**25. Applicable Requirements Under License Agreements.** In an effort to enhance the functionalities available from the Service, Therap Services may enter into license agreements with third parties (each is hereinafter a "Third Party License") which may impose restrictions or obligations on the End User and its Authorized Users (hereinafter the "Third Party License Terms and Conditions"). Before offering any functionality to the End User available under a Third-Party License, the End User will be advised of the applicable Third-Party License Terms and Conditions. The End User must agree, in writing, to abide by such Third-Party License Terms and Conditions in order to obtain the functionality available under such Third-Party License. If the End User or any of its Authorized Users violates any of such Third Party License Terms and Conditions, the End User will be: (i) obligated under this Agreement to indemnify and hold Therap Services harmless from the consequences of such violation; and (ii) at Therap Services' option, such violation will be deemed to constitute a material breach of this Agreement.

THE INDIVIDUAL SIGNING THIS AGREEMENT ON BEHALF OF THE END USER ACKNOWLEDGES THAT SUCH INDIVIDUAL HAS READ THIS AGREEMENT (INCLUDING THE FOLLOWING EXHIBITS WHICH ARE ATTACHMENTS TO AND A PART OF THIS AGREEMENT), THAT SUCH INDIVIDUAL IS AUTHORIZED TO AGREE TO THE TERMS OF THIS AGREEMENT ON BEHALF OF THE END USER, THAT SUCH INDIVIDUAL UNDERSTANDS THE TERMS OF THIS AGREEMENT AND THAT THE END USER WILL BE BOUND BY THIS AGREEMENT.

The individual who is acting on behalf of the End User will confirm his acceptance of the terms hereof on behalf of the End User by signing below. The date on which the second party hereto executes this Agreement, as between Therap Services, LLC and the End User, will be the "Effective Date" of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) set forth below.

THERAP SERVICES, LLC

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

Printed Name:

Title:

Date:

City of McCook

\_\_\_\_\_  
Name of End User

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

Printed Name:

Title:

Date:

End User's

Provider 7HSCM-NE

Code: \_\_\_\_\_

**EXHIBIT A**  
**BUSINESS ASSOCIATE AGREEMENT**

## BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT is made and entered into as of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between THERAP SERVICES, LLC, a limited liability company with offices located at 333 Kennedy Drive, Suite R101, Torrington, Connecticut 06790-3060 (hereinafter referred to as the "Business Associate"), and \_\_\_\_\_ with offices located at \_\_\_\_\_ (hereinafter referred to as the "Covered Entity").

### RECITALS:

WHEREAS, the Covered Entity and the Business Associate have entered into an End User Legal Agreement which gives the Covered Entity access to some or all of the software as a service suite of applications which the Business Associate operates under the domain names therapservices.net and/or therapevv.net (the said End User Legal Agreement, as it may be hereafter amended, is hereinafter referred to as the "End User Legal Agreement"); and

WHEREAS, the Covered Entity and the Business Associate may have entered into one or more other agreements, (the End User Legal Agreement, together with all other agreements, if any, entered into between the Covered Entity and the Business Associate (other than this Business Associate Agreement) are hereinafter collectively referred to as the "Services Agreement"); and

WHEREAS, pursuant to the Services Agreement, and the existing and future State Agreements (defined in the End User Legal Agreement), the Business Associate will be providing the Covered Entity with access to one or both of its websites (i.e., [www.therapservices.net](http://www.therapservices.net) and [www.therapevv.net](http://www.therapevv.net)), the Business Associate may also be performing other functions, activities or services for, or on behalf of, the Covered Entity, and the Business Associate may have access to Protected Health Information (as defined below); and

WHEREAS, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (hereinafter "HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (hereinafter the "HITECH Act"), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations"), and other applicable laws, require the Covered Entity and each of its business associates to protect the privacy and provide for the security of Protected Health Information; and

WHEREAS, the Business Associate may be considered a "business associate" of the Covered Entity as defined in the HIPAA Regulations; and

WHEREAS, the Covered Entity and the Business Associate acknowledge their obligation to comply with the HIPAA Regulations, including requirements applicable to the relationship between a covered entity and its business associates, and agree to comply with them; and

WHEREAS, as part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require the Covered Entity to enter into an agreement containing specific requirements with every business associate prior to the disclosure of Protected Health Information, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and as provided in this Agreement;

NOW, THEREFORE, in consideration of the parties' continuing obligations under the Services Agreement, compliance with the HIPAA Regulations, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the provisions of this Agreement.

1. **Definitions**

- a) "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of Protected Health Information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. Notwithstanding the foregoing, the term "Breach" does not include: (i) any unintentional acquisition, access, or use of Protected Health Information by an employee or individual acting under the authority of a covered entity or business associate if (I) such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate and (II) such information is not further acquired, accessed, used, or disclosed by any person; or (ii) any inadvertent disclosure from an individual who is otherwise authorized to access Protected Health Information at a facility operated by a covered entity or business associate to another similarly situated individual at the same facility; and (iii) any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person. See 42 U.S.C. Section 17921.
- b) "Designated Record Set" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- c) "Electronic Health Record" shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- d) "Electronic Protected Health Information" means Protected Health Information that is maintained in or transmitted by electronic media.
- e) "Privacy Rule" shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- f) "Protected Health Information" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or

the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103. Protected Health Information includes Electronic Protected Health Information. For purposes of this Agreement, Protected Health Information is limited to the information created, received, maintained or transmitted by Business Associate on behalf of Covered Entity.

- g) “Protected Information” shall mean Protected Health Information provided by Covered Entity to Business Associate or created, received, maintained, or transmitted by Business Associate on Covered Entity's behalf.
- h) “Security Rule” shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- i) “Unsecured Protected Health Information” shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

All other terms used in this Agreement shall have the definitions set forth in the HIPAA Regulations. In the event of an inconsistency between the provisions of this Agreement and the mandatory provisions of the HIPAA Regulations, as amended, the HIPAA Regulations shall control.

Business Associate acknowledges and agrees that all Protected Health Information that is created, received, maintained or transmitted by or on behalf of Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display or transmission by Covered Entity or its operating units to Business Associate, including, but not limited to, Protected Health Information which is created or received by Business Associate on Covered Entity's behalf, shall be subject to this Agreement. Any use or disclosure of Protected Health Information shall be deemed to be permitted by this Business Associate Agreement if it is permitted or required by this Agreement or required by law.

## **2. Obligations and Activities of Business Associate**

- a) Permitted Uses. Business Associate shall not use or disclose Protected Health Information other than as permitted or required by this Business Associate Agreement or by the Services Agreement or as required by law.
- b) Appropriate Safeguards. Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity, in accordance with 45 C.F.R. Sections 164.308, 164.310, 164.312 and

164.504(e)(2)(ii)(B). These safeguards must be documented and kept current, and must include, at a minimum, those requirements outlined in the HIPAA Regulations. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. (See 42 U.S.C. Section 17931).

- c) Reporting of Improper Access, Use or Disclosure. Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Health Information not permitted by this Business Associate Agreement, or any security incident resulting in an unauthorized access or acquisition of Protected Health Information of which it becomes aware, without unreasonable delay and in no case later than 30 calendar days (or such shorter period as may be set forth in any other agreement relating thereto) after discovery (see 42 U.S.C. Section 17921, 45 C.F.R. Section 164.410 and 45 C.F.R. Section 164.504(e)(2)(ii)(C)). Business Associate shall take any action necessary or requested by the Covered Entity to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information attributable to a breach of Business Associate's obligations under the requirements of this Business Associate Agreement; provided, however, that if the action requested by the Covered Entity is unduly burdensome to the Business Associate, the parties will negotiate a mutually satisfactory mode of mitigation.
- d) Business Associate's Agents. Business Associate must in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors, agents or affiliates of the Business Associate, that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate, agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information. Business Associate must obtain satisfactory assurances in the form of a written agreement or memorandum of understanding directly from subcontractors stipulating that the subcontractor agrees to comply with the terms and conditions of the Business Associate Agreement.
- e) Access to Protected Information. Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets, if any, available to Covered Entity for inspection and copying by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 (see 45 C.F.R. Section 164.504(e)(2)(ii)(E)). If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- f) Amendment of Protected Health Information. If Business Associate maintains a Designated Record Set on behalf of the Covered Entity, within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set,

Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. Covered Entity understands and acknowledges that, in order to maintain the integrity of the information maintained on the Therap Services Database, generally, once information is entered and saved on the Therap Services Database, it cannot be deleted or erased. Consequently, any amendment of data previously entered and saved on the Therap Services Database will consist of identifying the records in the Designated Record Set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.

- g) Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Business Associate's compliance with the Privacy Rule (see 45 C.F.R. Section 164.504(e)(2)(ii)(H)).
- h) Accounting Rights. Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of Protected Information, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17935(c), as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of all disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Business Associate maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the individual (who is the subject of the information) of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Section 3(b) of this Agreement (see 45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 164.528). The provisions of this subparagraph h shall survive the termination of this Business Associate Agreement.

- i) Minimum Necessary. Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. (See 42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)). Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- j) Notification of Breach. During the term of this Business Associate Agreement, Business Associate shall notify Covered Entity within the time provided by law of any Breach of which Business Associate becomes aware.
- k) Breach Pattern or Practice by Covered Entity. Pursuant to 42 U.S.C. Section 17934(b), if Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under this Business Associate Agreement or any Services Agreement or other arrangement, Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, Business Associate must terminate this Business Associate Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary.
- l) Prohibited Uses and Disclosures. Business Associate shall not use or disclose Protected Information for fund-raising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction and has paid out of pocket in full for the health care item or service to which the Protected Health Information solely relates. (See 42 U.S.C. Section 17935(a)). Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to any Services Agreement or this Business Associate Agreement.

**3. Permitted Uses and Disclosures by Business Associate**

- a) Permitted Uses. Except as otherwise limited in this Business Associate Agreement, Business Associate may use Protected Health Information: (i) to perform functions, activities, or services for, or on behalf of, Covered Entity; (ii) as authorized in any Services Agreement; and (iii) as permitted under this Agreement. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, or (ii) to carry out the legal responsibilities of Business Associate (See 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)).

- b) Permitted Disclosures. Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under any Services Agreement and as permitted under this Business Associate Agreement. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; or (iii) as required by law. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any Breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such Breach (42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)).
- c) Data Aggregation Services. Except as otherwise limited in this Business Associate Agreement, Business Associate may use Protected Health Information to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B).

**4. Obligations of Covered Entity**

- a) Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. Section 164.520, as well as any changes to such Notice.
- b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by any Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. Section 164.522.
- d) Covered Entity shall not request or cause Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Regulations if done by Covered Entity, provided, however, that Business Associate may use or disclose Protected Health Information for Data Aggregation or management and administrative activities of Business Associate as set forth in this Agreement or the Service Agreement, if applicable.

- e) Covered Entity shall not use or permit or cause Therap Services' Database to be used in any manner that would not be permissible under the HIPAA Requirements if done directly by the Covered Entity.
- f) If required by law, prior to the Covered Entity disclosing any Protected Health Information to Business Associate, Covered Entity shall have obtained from the individual who is the subject of such information (or his authorized guardian or custodian) an appropriate authorization permitting Covered Entity and Business Associate to receive, use and disclose Protected Health Information to and from each other for the purposes contemplated by any Services Agreement and this Agreement. The Authorization shall be maintained in Covered Entity's files and shall be provided to Business Associate immediately upon request.

**5. Term and Termination**

- a) Term. The Term of this Agreement shall be effective as of the date first set forth above, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is returned to Covered Entity, or, if it is infeasible to return all Protected Health Information, protections shall be extended to such information, in accordance with the termination provisions in this Section.
- b) Termination for Cause.
  - (1) A breach by Business Associate of any provision of this Agreement, as determined by Covered Entity, shall constitute a material breach of this Business Associate Agreement and shall provide grounds for immediate termination of each Services Agreement and this Business Associate Agreement, any provision in any Services Agreement or the Business Associate Agreement to the contrary notwithstanding. (See 45 C.F.R. Section 164.504(e)(2)(iii)).
  - (2) The Covered Entity's failure to meet its obligations under the HIPAA Regulations and the HITECH Act shall constitute a material breach of this Business Associate Agreement, and shall provide grounds for immediate termination of each Services Agreement and this Business Associate Agreement, any provision in any Services Agreement or the Business Associate Agreement to the contrary notwithstanding.
- c) Effect of Termination.
  - (1) Except as provided in subparagraph (2) of this subsection (c), upon termination of the Services Agreement or this Business Associate Agreement, for any reason, Business Associate shall return all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply

to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

- (2) In the event that Business Associate determines that returning the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return infeasible. In such event, Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return infeasible, for so long as Business Associate maintains such Protected Health Information.

6. **Miscellaneous**

- a) **Survival.** The rights and obligations of Business Associate under this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Services Agreement and/or the business relationship of the parties, and shall continue to inure to the benefit of and bind Business Associate, its agents, employees, contractors, successors, and assigns, as set forth herein.
- b) **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Regulations.
- c) **Chain of Trust.** This Agreement is intended to create a chain of trust partner agreement within the meaning of the Security Rule with respect to electronically exchanged data whereby all parties to this Business Associate Agreement agree to protect the integrity and confidentiality of all Protected Health Information exchanged. The sender and receiver depend upon each other to maintain the integrity and confidentiality of the transmitted information.
- d) **No Private Cause of Action.** This Business Associate Agreement is not intended to and does not create a private cause of action by any individual, other than the parties to this Business Associate Agreement, as a result of any claim arising out of the breach of this Business Associate Agreement, the HIPAA Regulations or other state or federal law or regulation relating to privacy or confidentiality.
- e) **Amendment.** In the event that any law or regulation is enacted or promulgated regarding the protection of health information that is in any way inconsistent with the terms of this Agreement or that interferes with Covered Entity's obligations with respect to the protection of health information so as to warrant a modification to this Agreement, or in the event any HIPAA Regulation is amended or modified, Covered Entity shall have the right to amend this Business Associate Agreement to the extent necessary to comply with such change by giving notice to Business Associate of such change and its suggested amendment hereto necessitated by such change. The Covered Entity's suggested amendment will be effective seven (7) business days after Business Associate receives written notice thereof, unless

Business Associate objects to such amendment within such seven (7) day period by sending written notice of its objections to the Covered Entity. Business Associate will not unreasonably object to any such amendment. Except as set forth in this subsection, this Business Associate Agreement shall only be amended or modified upon the written consent of both parties.

- f) Application of State Law. Where any applicable provision of State law relates to the privacy of health information and is not preempted by HIPAA, as determined by application of the HIPAA Regulations, the parties shall comply with the applicable provisions of State law.
- g) Severability. If any provision of this Agreement shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of this Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein, and such invalid, unenforceable or illegal provision shall be valid, enforceable and legal to the maximum extent permitted by law.
- h) Governing Law. This Business Associate Agreement shall be interpreted, construed and governed according to the laws of the jurisdiction defined as the “State” in the End User Legal Agreement (hereinafter the “State”), without regard to its conflict of laws principles. The parties agree that, as to any and all disputes arising from this Business Associate Agreement, venue shall lie exclusively in Federal and State courts in the State.
- i) Notices. Any notice or other communication given pursuant to this Business Associate Agreement must be in writing and (a) delivered personally, (b) delivered by a nationally recognized overnight courier service, or (c) sent by registered or certified mail, return receipt requested, postage prepaid, to the address set forth above. A notice shall be deemed given on the earlier of its receipt or the date when the receiving party refuses to accept delivery.
- j) Assignment. Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.
- k) Relationship between Parties. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the parties evidencing their business relationship.
- l) No Waiver. No waiver of one or more of the provisions of this Business Associate Agreement or the failure to enforce any provision of this Business Associate Agreement by either party shall be construed as a waiver of any subsequent breach of this Business Associate Agreement, nor a waiver of the right at any time thereafter to require strict compliance with all of its terms.

- m) Entire Agreement. This Business Associate Agreement (together with the Services Agreement) sets forth the entire agreement and understanding between the parties as to the matters contained in it, and supersedes all prior discussions, agreements, and understandings of every kind and nature between the parties.
- n) Headings. The headings placed before the various sections and subsections of this Business Associate Agreement are inserted for ease of reference only, do not constitute a part of this Business Associate Agreement, and shall not be used in any way whatsoever in the construction or interpretation of this Business Associate Agreement.
- o) Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of Protected Health Information.
- p) Construction. As used in this Agreement, the masculine gender shall include the feminine and/or neuter gender and the neuter gender shall include the masculine and/or feminine gender, the singular shall include the plural and the plural shall include the singular, wherever appropriate to the context.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

THERAP SERVICES, LLC

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

[COVERED ENTITY]

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

## EXHIBIT B

### DISPUTE RESOLUTION PROCEDURES

#### 1. Mediation

(a) Except in the case of a party seeking injunctive relief, this Exhibit "B" governs any dispute, disagreement, claim, or controversy between the parties arising out of or relating to any Services Agreement and/or the Business Associate Agreement (the "Agreement") to which this Exhibit "B" pertains (the "Disputed Matter"). All Disputed Matters shall be submitted to the following dispute resolution process:

(i) Internal Mediation. Each party which is an entity shall designate a dispute resolution officer (the "Dispute Resolution Officer") who shall have principal responsibility and authority to resolve disputes between such party and the other party. Any individual who is party to a Disputed Matter shall appear on his or her own behalf. In the event a dispute arises between parties under the Agreement, the Dispute Resolution Officers, and/or such individuals, as the case may be, shall use their best efforts to resolve the Disputed Matter within five (5) business days after the matter has been submitted for resolution. If such persons do not agree upon a decision within five (5) days after referral of the matter to them, the parties shall proceed to the next stage of the dispute resolution procedure.

(ii) Outside Mediation. Either party may, upon notice to the other and within five (5) days after the conclusion of internal mediation, elect outside mediation. In outside mediation, each party which is an entity shall designate a person (with authority to settle the dispute) who will sit on a panel, along with each party that is an individual and a mutually acceptable neutral adviser. Each party will present its case to the panel at a hearing which will occur no more than ten (10) days after a party serves notice electing outside mediation. Each party may be represented at the hearing by attorneys. If the matter cannot be resolved at such hearing by the parties, the neutral adviser may be asked to assist the parties in evaluating the strengths and weaknesses of each party's position on the merits of the Disputed Matter. Thereafter, the parties shall meet and try again to resolve the matter. If the matter cannot be resolved at such meeting, the parties' only recourse is litigation in State or Federal Court in the State. The mediation proceedings will have been without prejudice to the legal position of either party. No litigation may commence concerning the Disputed Matter until fifteen (15) days have elapsed from the last day of the final hearing. The parties shall each bear their respective costs incurred in connection with this procedure, except that they shall share equally the fees and expenses of the neutral adviser and the costs of the facility for the hearing. Therap Services and the other party to the dispute agree to use their best efforts to mutually agree on the use of a facility for which no charge will be made.

(b) Except in connection with seeking an injunction not involving the obtaining of money damages, neither party will institute any action nor proceeding against the other party in any court concerning any Disputed Matter until the mediation procedures have been completed.

2. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of any Agreement, including these Dispute Resolution Procedures (the "DRP"), shall be governed by the internal law of the State, without giving effect to any choice of law or conflict of law provision or rule (whether of the State or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the laws of the State. Jurisdiction for any litigation shall be in the appropriate federal and state courts within the State, and each party waives any claim of improper venue or inconvenience of the forum and agrees to service of process by certified mail, return receipt requested.

3. Waiver of Jury Trial. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

CITY MANAGER'S REPORT  
MAY 5, 2025 CITY COUNCIL MEETING

ITEM: **4.C.**

**RECOMMENDATION:**

APPROVE AND AUTHORIZE THE MAYOR TO SIGN CHANGE ORDER NO. 1, THE CERTIFICATE OF SUBSTANTIAL COMPLETION AND PAY APPLICATION 6 (FINAL) FOR WATER SYSTEM IMPROVEMENTS ON SOUTH STREET AND RAVENSWOOD ROAD FROM THE CITY SHOP TO SOUTH 9<sup>TH</sup> STREET.

**BACKGROUND:**

This project was the continuation of water main replacement on South Street and Ravenswood Road and involved horizontal directional drilling (HDD) approximately 3,200 lineal feet of 8-inch water main. The new main connects to an existing 12-inch main at the southeast corner of the City Maintenance shop and will continue east to a point of connection on South 9<sup>th</sup> Street.

New water main was also extended south into Barnett Park to the existing sewer lift station and also north on Karrer Street to provide a water main loop to the water main supplying Parker Hannifin Corp. The project will required a cased bore at the Highway 83 crossing. Work proposed on the 16" & 18" water main northeast of the City Shop was removed from the project and added to the recently bid Revised Project #2.

The original contract amount was for \$981,927.00 Change Order No. 1 decreased the contract amount by \$106,925.10 reducing the contract amount to \$875,001.90 and extended the completion time to March 31, 2025. This adjusting Change Order No: 1 also balances, the bid quantities with the actual quantities.

**FISCAL IMPACT:**

Funding for this project is being provided by the Drinking Water State Revolving Fund (DWSRF) This project included three parts. The West 5<sup>th</sup> 16-inch dedicated main was completed in 2021. The South Street project and a third project that was recently bid as Revised Project #2.


**APPROVALS:**

  
\_\_\_\_\_  
David K. Blau, Project Engineer

Date: 4/29/2025

  
\_\_\_\_\_  
Pat Fawyer, Utility Director

Date: 4/29/25

  
\_\_\_\_\_  
Nate Schneider, City Manager

Date: 4-29-25

Order No. 1 - Final  
 Effective Date: 4/8/2025  
 Agreement Date: 10/2/2023  
 Project No. 200-C1-021

NAME OF PROJECT: MCCOOK - SOUTH STREET WATER MAIN

OWNER: CITY OF MCCOOK

CONTRACTOR: BSB CONSTRUCTION, INC

The following changes are hereby made to the CONTRACT DOCUMENTS:

CHANGE ORDER NO. 1 - FINAL

ITEM NO	DESCRIPTION	BID QTY	INSTALLED QTY	UNIT	DIFFERENCE	UNIT PRICE	ADD/ DEDUCT
2	Remove & Salvage						
	a. Valve	5	9	Each	4	\$785.00	\$3,140.00
3	Abandon Valve In Place	8	6	Each	-2	\$640.00	-\$1,280.00
5	Furnish & Install Water Main, including Tracer Wire, per Specifications, complete in place						
	b. 4" C900 DR18	300	311	L.F.	11	\$34.00	\$374.00
	c. 6" C900 DR18	40	39	L.F.	-1	\$42.50	-\$42.50
	d. 8" C900 DR18	280	116	L.F.	-164	\$52.40	-\$8,593.60
	e. 12" C900 DR18	40	35	L.F.	-5	\$82.00	-\$410.00
6	Furnish & Install Horizontal Directional Drill Water Main w/Tracer Wire, etc., per Specifications, complete in place						
	a. 8" R.J. C900 DR18	3200	3046	L.F.	-154	\$69.00	-\$10,626.00
7	Furnish & Install Fire Hydrant, complete in place						
	b. 0.5 Ft. Extension	1	0	Each	-1	\$1,635.00	-\$1,635.00
8	Furnish & Install Ductile Iron Pipe Fittings, complete in place						
	a. 4" M.J. Plug	2	1	Each	-1	\$905.00	-\$905.00
	b. 4" x 4" Tee	2	1	Each	-1	\$1,095.00	-\$1,095.00
	f. 6" M.J. Plug	1	0	Each	-1	\$940.00	-\$940.00
	g. 6" x 6" Tee	1	0	Each	-1	\$1,220.00	-\$1,220.00
	j. 8" 45 Degree Bend	5	9	Each	4	\$1,150.00	\$4,600.00
	m. 8" x 6" Reducer	1	0	Each	-1	\$1,050.00	-\$1,050.00
	n. 8" x 4" Reducer	1	0	Each	-1	\$1,035.00	-\$1,035.00
	o. 8" M.J. Plug	2	1	Each	-1	\$1,985.00	-\$1,985.00
	p. 8" 90 Degree Bend	1	0	Each	-1	\$1,200.00	-\$1,200.00
	q. 8" 11 1/4 Degree Bend	1	0	Each	-1	\$1,115.00	-\$1,115.00
	r. 8" 22 1/2 Degree Bend	2	0	Each	-2	\$1,135.00	-\$2,270.00
9	Furnish & Install Valves and Boxes, complete in place						
	a. 4" Valve	3	2	Each	-1	\$2,465.00	-\$2,465.00
	c. 8" Valve	12	10	Each	-2	\$3,400.00	-\$6,800.00
	d. 16" Valve	1	0	Each	-1	\$11,100.00	-\$11,100.00
	e. 18" Valve	1	0	Each	-1	\$12,570.00	-\$12,570.00
	d. 16" Valve Material Only	0	1	Each	1	\$6,150.00	\$6,150.00
	e. 18" Valve Material Only	0	1	Each	1	\$7,000.00	\$7,000.00
10	Furnish & Install Line Stop, complete in place						
	a. 4" Diameter	1	0	Each	-1	\$10,650.00	-\$10,650.00
	c. 8" Diameter	1	0	Each	-1	\$10,650.00	-\$10,650.00
	d. 16" Diameter	1	0	Each	-1	\$20,785.00	-\$20,785.00
	e. 18" Diameter	1	0	Each	-1	\$20,785.00	-\$20,785.00

ITEM NO	DESCRIPTION	BID QTY	INSTALLED QTY	UNIT	DIFFERENCE	UNIT PRICE	ADD/ DEDUCT
13	Furnish & Install Connections, complete in place						
	a. 2" Connection	1	0	Each	-1	\$1,210.00	-\$1,210.00
	b. 4" Connection	1	2	Each	1	\$1,340.00	\$1,340.00
	c. 6" Connection	2	1	Each	-1	\$1,225.00	-\$1,225.00
	e. 12" Connection	1	2	Each	1	\$1,535.00	\$1,535.00
14	Service Reconnection Including New Service Line and Meter Pit						
	a. 1" Diameter	19	14	Each	-5	\$4,730.00	-\$23,650.00
16	Service Reconnection Including New Service Line without Meter Pit						
	a. 1" Diameter	1	4	Each	3	\$2,905.00	\$8,715.00
17	Furnish & Install Temporary Sampling Tap, complete in place	3	2	Each	-1	\$1,275.00	-\$1,275.00
21	Remove & Replace						
	a. 4" Thick Concrete Sidewalk	40	451	S.F.	411	\$53.00	\$21,783.00
	b. 6" Concrete Pavement	300	0	S.Y.	-300	\$112.00	-\$33,600.00
	c. 8" Concrete Pavement	240	573	S.Y.	333	\$120.00	\$39,960.00
25	Traffic Control for Hwy 83 Undercrossing	1	0.2204	L.S.	-0.7796	\$12,000.00	-\$9,355.00
<b>TOTAL ADJUSTED CHANGE ORDER PRICE</b>							<b>-\$106,925.10</b>

JUSTIFICATION: To adjust contract quantities to actual quantities installed.

Change to CONTRACT PRICE:

ORIGINAL CONTRACT PRICE: \$981,927.00  
 Net decrease resulting from this CHANGE ORDER: -\$106,925.10  
 The new CONTRACT PRICE including this CHANGE ORDER will be: \$875,001.90

Change to CONTRACT TIME:

The CONTRACT TIME will be increased to reflect a substantial completion date of 3/31/2025.

Approvals Required: To be effective, this order must be approved as required by the General Conditions.

Approved by: , BSB CONSTRUCTION, INC.

Approved by: \_\_\_\_\_, CITY OF MCCOOK

Approved by: , MILLER & ASSOCIATES

## CERTIFICATE OF SUBSTANTIAL COMPLETION

ENGINEER'S PROJECT NO.: 200-C1-021

PROJECT NAME: MCCOOK SOUTH STREET WATER MAIN REPLACEMENT

CONTRACTOR: BSB CONSTRUCTION, INC.

CONTRACT FOR: \$981,927.00

AGREEMENT DATE:

10/2/2023

This Certificate of Substantial Completion applies to all work under the Contract Documents or to the following specified parts thereof:

<i>Item No.</i>		<i>Quantity</i>	<i>Unit</i>	<i>Unit Price</i>	<i>Total Amount</i>
1	Mobilization	1	L.S.	\$52,815.00	\$52,815.00
2	Remove & Salvage				
	a. Valve	9	Each	\$785.00	\$7,065.00
	b. Fitting	3	Each	\$785.00	\$2,355.00
	c. Fire Hydrant	3	Each	\$1,565.00	\$4,695.00
3	Abandon Valve In Place	6	Each	\$640.00	\$3,840.00
4	Abandon Valve MH/Vault on South Street	1	Each	\$2,715.00	\$2,715.00
5	Furnish & Install Water Main, including Tracer Wire, per Specifications, complete in place				
	a. 2" HDPE Service Line	80	L.F.	\$41.00	\$3,280.00
	b. 4" C900 DR18	311	L.F.	\$34.00	\$10,574.00
	c. 6" C900 DR18	39	L.F.	\$42.50	\$1,657.50
	d. 8" C900 DR18	116	L.F.	\$52.40	\$6,078.40
	e. 12" C900 DR18	35	L.F.	\$82.00	\$2,870.00
6	Furnish & Install Horizontal Directional Drill Water Main w/Tracer Wire, etc., per Specifications, complete in place				
	a. 8" R.J. C900 DR18	3046	L.F.	\$69.00	\$210,174.00
7	Furnish & Install Fire Hydrant, complete in place				
	a. 5.5' Bury 3-Way	3	Each	\$4,880.00	\$14,640.00
	b. 0.5 Ft. Extension	0	Each	\$1,635.00	\$0.00
	c. 1.0 Ft. Extension	1	Each	\$1,885.00	\$1,885.00
8	Furnish & Install Ductile Iron Pipe Fittings, complete in place				
	a. 4" M.J. Plug	1	Each	\$905.00	\$905.00
	b. 4" x 4" Tee	1	Each	\$1,095.00	\$1,095.00
	c. 4" 45 Degree Bend	2	Each	\$995.00	\$1,990.00
	d. 6" x 4" Reducer	1	Each	\$1,015.00	\$1,015.00
	e. 6" 45 Degree Bend	4	Each	\$1,060.00	\$4,240.00
	f. 6" M.J. Plug	0	Each	\$940.00	\$0.00
	g. 6" x 6" Tee	0	Each	\$1,220.00	\$0.00
	h. 8" x 4" Tee	1	Each	\$1,275.00	\$1,275.00

<i>Item No.</i>		<i>Quantity</i>	<i>Unit</i>	<i>Unit Price</i>	<i>Total Amount</i>
	i. 8"x6" Tee	4	Each	\$1,300.00	\$5,200.00
	j. 8" 45 Degree Bend	9	Each	\$1,150.00	\$10,350.00
	k. 8" x 8" Tee	2	Each	\$1,365.00	\$2,730.00
	l. 8" x 8" Cross	1	Each	\$1,800.00	\$1,800.00
	m. 8" x 6" Reducer	0	Each	\$1,050.00	\$0.00
	n. 8" x 4" Reducer	0	Each	\$1,035.00	\$0.00
	o. 8" M.J. Plug	1	Each	\$1,985.00	\$1,985.00
	p. 8" 90 Degree Bend	0	Each	\$1,200.00	\$0.00
	q. 8" 11 1/4 Degree Bend	0	Each	\$1,115.00	\$0.00
	r. 8" 22 1/2 Degree Bend	0	Each	\$1,135.00	\$0.00
	s. 12" M.J. Plug	3	Each	\$1,165.00	\$3,495.00
	t. 12" x 8" Tee	1	Each	\$1,865.00	\$1,865.00
	u. 12" x 8" Reducer	1	Each	\$1,475.00	\$1,475.00
	v. 12" x 4" Tee	1	Each	\$1,760.00	\$1,760.00
9	Furnish & Install Valves and Boxes, complete in place				
	a. 4" Valve	2	Each	\$2,465.00	\$4,930.00
	b. 6" Valve	5	Each	\$2,725.00	\$13,625.00
	c. 8" Valve	10	Each	\$3,400.00	\$34,000.00
	d. 16" Valve	0	Each	\$11,100.00	\$0.00
	e. 18" Valve	0	Each	\$12,570.00	\$0.00
	d. 16" Valve Material Only	1	Each	\$6,150.00	\$6,150.00
	e. 18" Valve Material Only	1	Each	\$7,000.00	\$7,000.00
10	Furnish & Install Line Stop, complete in place				
	a. 4" Diameter	0	Each	\$10,650.00	\$0.00
	b. 6" Diameter	1	Each	\$10,650.00	\$10,650.00
	c. 8" Diameter	0	Each	\$10,650.00	\$0.00
	d. 16" Diameter	0	Each	\$20,785.00	\$0.00
	e. 18" Diameter	0	Each	\$20,785.00	\$0.00
11	Furnish & Install 10" x 8" Tapping Tee with 8" Valve, complete in place	1	Each	\$8,840.00	\$8,840.00
12	Furnish & Install Inserta Valve, complete in place				
	a. 12" Diameter	3	Each	\$41,570.00	\$124,710.00
13	Furnish & Install Connections, complete in place				
	a. 2" Connection	0	Each	\$1,210.00	\$0.00
	b. 4" Connection	2	Each	\$1,340.00	\$2,680.00
	c. 6" Connection	1	Each	\$1,225.00	\$1,225.00
	d. 8" Connection	1	Each	\$1,285.00	\$1,285.00
	e. 12" Connection	2	Each	\$1,535.00	\$3,070.00
14	Service Reconnection Including New Service Line and Meter Pit				
	a. 1" Diameter	14	Each	\$4,730.00	\$66,220.00

<i>Item No.</i>		<i>Quantity</i>	<i>Unit</i>	<i>Unit Price</i>	<i>Total Amount</i>
15	Service Reconnection Including New Service Line without Meter Pit a. 1" Diameter	4	Each	\$2,905.00	\$11,620.00
16	Furnish & Install Temporary Flushing Assembly & Sampling Tap, complete in place a. 4" x 4" Tee and 4" Diameter	1	Each	\$2,400.00	\$2,400.00
	b. 12" x 8" Tee and 8" Diameter	1	Each	\$3,295.00	\$3,295.00
17	Furnish & Install Temporary Sampling Tap, complete in place	2	Each	\$1,275.00	\$2,550.00
18	Furnish & Install 8" x 2" Saddle	1	Each	\$500.00	\$500.00
19	Furnish & Install 2" Curb Stop & Box	1	Each	\$1,885.00	\$1,885.00
20	Furnish & Install 2" Corporation Stop	1	Each	\$2,095.00	\$2,095.00
21	Remove & Replace a. 4" Thick Concrete Sidewalk	451	S.F.	\$53.00	\$23,903.00
	b. 6" Concrete Pavement	0	S.Y.	\$112.00	\$0.00
	c. 8" Concrete Pavement	573	S.Y.	\$120.00	\$68,760.00
22	Furnish & Apply Gravel Surfacing	10	Tons	\$30.00	\$300.00
23	Furnish & Apply Seeding, Mulch, and Fertilizer, complete in place [Type B]	0.25	Acres	\$6,960.00	\$1,740.00
24	Hwy 83 Undercrossing Sta 20+15 to Sta 21+35 - Jack & Bore 120 L.F. of 18" Diameter, 0.5" Thick Steel Casing & R.J. Encasement Pipe, complete in place	1	L.S.	\$103,100.00	\$103,100.00
25	Traffic Control for Hwy 83 Undercrossing	0.2204	L.S.	\$12,000.00	\$2,645.00
<b>TOTAL CONSTRUCTION COST</b>					<b>\$875,001.90</b>

TO: BSB CONSTRUCTION, INC.

AND TO: CITY OF MCCOOK

The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR, and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on:

Date of Completion: 3/31/2025

The following documents are attached to and made a part of this Certificate:

FINAL PAY ESTIMATE  
CHANGE ORDER 1 - FINAL

This certificate 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 this 18<sup>TH</sup> day of April, in the year 2025.

MILLER & ASSOCIATES  
CONSULTING ENGINEERS, P.C.

By David K. Blau

The CONTRACTOR accepts this Certificate of Substantial Completion on the 17 day of April, in the year 2025.

BSB CONSTRUCTION, INC.

By Tim Egan

The OWNER accepts this Certificate of Substantial Completion on the \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_.

CITY OF MCCOOK

By \_\_\_\_\_

# APPLICATION FOR PAYMENT

PROJECT: SOUTH STREET WATER MAIN REPLACEMENT

ENGINEER: MILLER & ASSOCIATES, CONSULTING ENGINEERS, P.C.

ENGINEER'S PROJECT NO. 200-C1-021

TO: (OWNER) CITY OF MCCOOK

CONTRACTOR: BSB CONSTRUCTION, INC.

P.O. BOX 1059

CONTRACT FOR: \$981,927.00

MCCOOK, NE 69025

APPLICATION DATE: 04/08/25 APPLICATION NO.: 6-FINAL

LEA ANN DOAK, CITY CLERK

FOR WORK ACCOMPLISHED THROUGH THE DATE OF: 3/31/2025

## CHANGE ORDER SUMMARY:

Continuation sheets are attached.

Change orders approved in previous month by Owner.

Application is made for payment, as shown below in connection with the Contract.

The present status of the account is as follows:

ORIGINAL CONTRACT PRICE.....	\$981,927.00
Net Change by Change Orders & Written Amendments	-\$106,925.10
CURRENT CONTRACT PRICE.....	\$875,001.90
TOTAL COMPLETED & STORED TO DATE.....	\$875,001.90
LESS RETAINAGE : .....	\$0.00
TOTAL COMPLETED & STORED TO DATE LESS RETAINAGE	\$875,001.90
LESS PREVIOUS APPLICATION FOR PAYMENT.....	\$802,617.28
AMOUNT DUE THIS APPLICATION.....	\$72,384.62

CO #	DATE	ADDITIONS	DEDUCTIONS
1	4/8/25		\$106,925.10
2			
3			
4			
5			
TOTAL			106,925.10
NET CHANGE		(106,925.10)	

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from Owner on account of Work done under the Contract referred to above have been applied to discharge CONTRACTOR'S legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered 1-5 inclusive; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to OWNER indemnifying OWNER against any such Lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and not defective.

The undersigned certifies that the work has been carefully inspected and to the best of their knowledge and belief, the quantities shown in this estimate are correct and the work has been performed in accordance with the contract.

<input type="checkbox"/>	Owner
<input type="checkbox"/>	Contractor
<input type="checkbox"/>	Engineer
<input type="checkbox"/>	SRF

ENGINEER: MILLER & ASSOCIATES

By: David K. Bley

OWNER: CITY OF MCCOOK

CONTRACTOR: BSB CONSTRUCTION, INC.

By: 

Date: 4/17/2025

BY: \_\_\_\_\_

**APPLICATION AND CERTIFICATE FOR PAYMENT-CONTINUATION SHEET**

APPLICATION NUMBER: 6-Final

APPLICATION DATE: 4/8/25

FOR WORK ACCOMPLISHED THROUGH : 3/31/25

ENGINEER'S PROJECT #: 200-C1-021

ITEM NO.	DESCRIPTION OF WORK	ESTIMATED QUANTITY	UNIT	UNIT PRICE	QUANTITY COMPLETED TO DATE	TOTAL COMPLETED	STORED TO DATE	TOTAL COMPLETED AND STORED TO DATE
1	Mobilization	1	L.S.	\$52,815.00	1	\$52,815.00		\$52,815.00
2	Remove & Salvage							
	a. Valve	5	Each	\$785.00	9	\$7,065.00		\$7,065.00
	b. Fitting	3	Each	\$785.00	3	\$2,355.00		\$2,355.00
	c. Fire Hydrant	3	Each	\$1,565.00	3	\$4,695.00		\$4,695.00
3	Abandon Valve In Place	8	Each	\$640.00	6	\$3,840.00		\$3,840.00
4	Abandon Valve MH/Vault on South Street	1	Each	\$2,715.00	1	\$2,715.00		\$2,715.00
5	Furnish & Install Water Main, including Tracer Wire, per Specifications, complete in place							
	a. 2" HDPE Service Line	80	L.F.	\$41.00	80	\$3,280.00		\$3,280.00
	b. 4" C900 DR18	300	L.F.	\$34.00	311	\$10,574.00		\$10,574.00
	c. 6" C900 DR18	40	L.F.	\$42.50	39	\$1,657.50		\$1,657.50
	d. 8" C900 DR18	280	L.F.	\$52.40	116	\$6,078.40		\$6,078.40
	e. 12" C900 DR18	40	L.F.	\$82.00	35	\$2,870.00		\$2,870.00
6	Furnish & Install Horizontal Directional Drill Water Main w/Tracer Wire, etc., per Specifications, complete in place							
	a. 8" R.J. C900 DR18	3200	L.F.	\$69.00	3046	\$210,174.00		\$210,174.00
7	Furnish & Install Fire Hydrant, complete in place							
	a. 5.5' Bury 3-Way	3	Each	\$4,880.00	3	\$14,640.00		\$14,640.00
	b. 0.5 Ft. Extension	1	Each	\$1,635.00	0	\$0.00		\$0.00
	c. 1.0 Ft. Extension	1	Each	\$1,885.00	1	\$1,885.00		\$1,885.00
8	Furnish & Install Ductile Iron Pipe Fittings, complete in place							
	a. 4" M.J. Plug	2	Each	\$905.00	1	\$905.00		\$905.00
	b. 4" x 4" Tee	2	Each	\$1,095.00	1	\$1,095.00		\$1,095.00
	c. 4" 45 Degree Bend	2	Each	\$995.00	2	\$1,990.00		\$1,990.00
	d. 6" x 4" Reducer	1	Each	\$1,015.00	1	\$1,015.00		\$1,015.00
	e. 6" 45 Degree Bend	4	Each	\$1,060.00	4	\$4,240.00		\$4,240.00
	f. 6" M.J. Plug	1	Each	\$940.00	0	\$0.00		\$0.00
	g. 6" x 6" Tee	1	Each	\$1,220.00	0	\$0.00		\$0.00
	h. 8" x 4" Tee	1	Each	\$1,275.00	1	\$1,275.00		\$1,275.00



**APPLICATION AND CERTIFICATE FOR PAYMENT-CONTINUATION SHEET**

APPLICATION NUMBER: 6-Final

APPLICATION DATE: 4/8/25

FOR WORK ACCOMPLISHED THROUGH : 3/31/25

ENGINEER'S PROJECT #: 200-C1-021

ITEM NO.	DESCRIPTION OF WORK	ESTIMATED QUANTITY	UNIT	UNIT PRICE	QUANTITY COMPLETED TO DATE	TOTAL COMPLETED	STORED TO DATE	TOTAL COMPLETED AND STORED TO DATE
13	a. 12" Diameter	3	Each	\$41,570.00	3	\$124,710.00		\$124,710.00
	Furnish & Install Connections, complete in place							
	a. 2" Connection	1	Each	\$1,210.00	0	\$0.00		\$0.00
	b. 4" Connection	1	Each	\$1,340.00	2	\$2,680.00		\$2,680.00
	c. 6" Connection	2	Each	\$1,225.00	1	\$1,225.00		\$1,225.00
	d. 8" Connection	1	Each	\$1,285.00	1	\$1,285.00		\$1,285.00
	e. 12" Connection	1	Each	\$1,535.00	2	\$3,070.00		\$3,070.00
14	Service Reconnection Including New Service Line and Meter Pit							
	a. 1" Diameter	19	Each	\$4,730.00	14	\$66,220.00		\$66,220.00
15	Service Reconnection Including New Service Line without Meter Pit							
	a. 1" Diameter	1	Each	\$2,905.00	4	\$11,620.00		\$0.00
16	Furnish & Install Temporary Flushing Assembly & Sampling Tap, complete in place							
	a. 4" x 4" Tee and 4" Diameter Assembly	1	Each	\$2,400.00	1	\$2,400.00		\$2,400.00
	b. 12" x 8" Tee and 8" Diameter Assembly complete in place	1	Each	\$3,295.00	1	\$3,295.00		\$3,295.00
17	Furnish & Install Temporary Sampling Tap,							
	complete in place	3	Each	\$1,275.00	2	\$2,550.00		\$2,550.00
18	Furnish & Install 8" x 2" Saddle	1	Each	\$500.00	1	\$500.00		\$500.00
19	Furnish & Install 2" Curb Stop & Box	1	Each	\$1,885.00	1	\$1,885.00		\$1,885.00
20	Furnish & Install 2" Corporation Stop	1	Each	\$2,095.00	1	\$2,095.00		\$2,095.00
21	Remove & Replace							\$0.00
	a. 4" Thick Concrete Sidewalk	40	S.F.	\$53.00	451	\$23,903.00		\$23,903.00
	b. 6" Concrete Pavement	300	S.Y.	\$112.00	0	\$0.00		\$0.00
	c. 8" Concrete Pavement	240	S.Y.	\$120.00	573	\$68,760.00		\$68,760.00
22	Furnish & Apply Gravel Surfacing	10	Tons	\$30.00	10	\$300.00		\$300.00
23	Furnish & Apply Seeding, Mulch, and Fertilizer, complete in place [Type B]	0.25	Acres	\$6,960.00	0.25	\$1,740.00		\$1,740.00

**APPLICATION AND CERTIFICATE FOR PAYMENT-CONTINUATION SHEET**

APPLICATION NUMBER: 6-Final

APPLICATION DATE: 4/8/25

FOR WORK ACCOMPLISHED THROUGH : 3/31/25

ENGINEER'S PROJECT #: 200-C1-021

ITEM NO.	DESCRIPTION OF WORK	ESTIMATED QUANTITY	UNIT	UNIT PRICE	QUANTITY COMPLETED TO DATE	TOTAL COMPLETED	STORED TO DATE	TOTAL COMPLETED AND STORED TO DATE
24	Hwy 83 Undercrossing Sta 20+15 to Sta 21+35 - Jack & Bore 120 L.F. of 18" Diameter, 0.5" Thick Steel Casing & R.J. Encasement Pipe, complete in place	1	L.S.	\$103,100.00	1	\$103,100.00		\$103,100.00
25	Traffic Control for Hwy 83 Undercrossing	1	L.S.	\$12,000.00	0.2204	\$2,645.00		\$2,645.00
<b>TOTAL CONSTRUCTION COST</b>						<b>\$875,001.90</b>		<b>\$875,001.90</b>

**CITY MANAGER'S REPORT  
MAY 5, 2025 CITY COUNCIL MEETING**

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**ITEM:**        4.D.

Accept the City of McCook - Tax Increment Financing Annual Report - dated April 2025.

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**BACKGROUND:**

On or before May 1 of each year, the City of McCook Community Development Agency (CDA) is required to compile information on the progress of redevelopment projects that are financed in whole or in part through Tax Increment Financing (TIF). The attached report is for calendar year 2024. The CDA must report this information to the City Council and other taxing entities affected by the division of taxes.

**FISCAL  
IMPACT:**    None.


**APPROVALS:**

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

April 30, 2025

  
\_\_\_\_\_  
Tera Koetter, Assistant City Manager

April 30, 2025

  
\_\_\_\_\_  
Nathan A. Schneider, City Manager

April 30, 2025

**CITY OF MCCOOK  
TAX INCREMENT FINANCING ANNUAL REPORT  
APRIL 2025**

On or before May 1 of each year, the City of McCook Community Development Agency (CDA) is required to compile information on the progress of redevelopment projects that are financed in whole or in part through Tax Increment Financing (TIF). The CDA reports this information to the McCook City Council and other taxing entities affected by the division of taxes.

Redevelopment project plans are evaluated based on zoning regulations, land utilization, compliance with the City's Comprehensive Plan, TIF criteria set forth by the City and the Nebraska Community Development Law. The City of McCook has six Redevelopment Areas as outlined in attached Exhibit #1.

The City of McCook has fifteen active redevelopment projects that have been financed in whole or in part through TIF. The total estimated costs for these redevelopment projects total \$57,910,250.00.

There was one project approved during 2024.

- (1) R Perry Redevelopment Project was approved April 15, 2024. This project is in Redevelopment Area #3 and will consist of the construction of three single family dwellings. Utilizing Workforce Housing TIF to help pay for the site acquisition and building costs, the Redeveloper agreed to sell the homes at a discounted price equal to the Redeveloper's approximate cost to build each home. The project will facilitate the redevelopment of a blighted and substandard area of the City without the incurrance of significant public cost. Additionally, the Project will increase property tax revenue in the long-term and help bring some much needed workforce housing to the City.

One project agreements were amended during 2024.

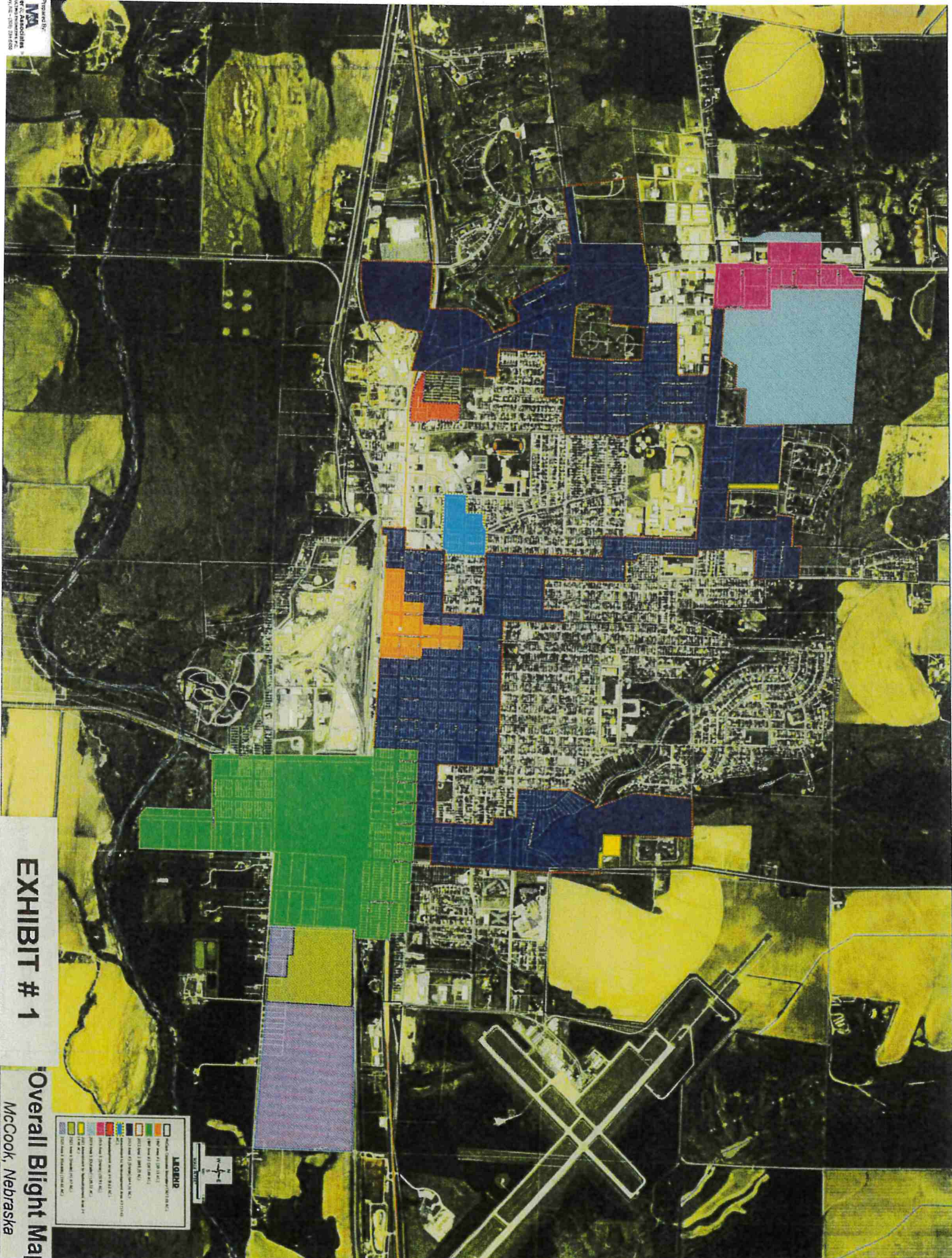
- (1) The Elevate Wellness Redevelopment Agreement was amended to adjust the Project Completion Date from December 31, 2024 to June 30, 2025. The effective date will remain January 1, 2025. However, this Amendment gives the Redeveloper the choice of deferring the Effective date to January 1, 2026 depending on the amount of work completed and the corresponding change in valuation. The Redeveloper must notify the Community Development Agency by July 1, 2025 if the developer wants to defer the effective date to January 1, 2026. The amendment request was due to the delays in construction of the Project.

Included with this report is a table which summarizes the City of McCook's Tax Increment Projects through December 31, 2024. The table provides a comparison between the initial project valuation of property included in each redevelopment project (as described in the individual redevelopment contracts) and the assessed value of the property included in each redevelopment project. Also, included on the table is the estimated amount of outstanding indebtedness related to each

redevelopment project and an estimated date by which such indebtedness is expected to be paid in full. The table is attached hereto, marked as Exhibit #2, and is incorporated into this document by reference.

During 2024, there were no TIF project bonds paid in full or that reached the 15-year term.

The percent of land within the corporate limits of the City of McCook designated as blighted as of 12/31/2024 was 29.1%



**EXHIBIT # 1**

**Overall Blight Map  
 McCook, Nebraska**

**LEGEND**

[Blue Box]	Blighted - Commercial - Ordinance Number 77-001 (R 10.1)
[Green Box]	Blighted - Residential - Ordinance Number 77-001 (R 10.1)
[Purple Box]	Blighted - Industrial - Ordinance Number 77-001 (R 10.1)
[Orange Box]	Blighted - Vacant - Ordinance Number 77-001 (R 10.1)
[Pink Box]	Blighted - Other - Ordinance Number 77-001 (R 10.1)
[Light Blue Box]	Blighted - Other - Ordinance Number 77-001 (R 10.1)
[Dark Blue Box]	Blighted - Other - Ordinance Number 77-001 (R 10.1)
[Yellow Box]	Blighted - Other - Ordinance Number 77-001 (R 10.1)
[Red Box]	Blighted - Other - Ordinance Number 77-001 (R 10.1)
[White Box]	Blighted - Other - Ordinance Number 77-001 (R 10.1)



CITY OF MCCOOK  
TAX INCREMENT PROJECTS YEAR ENDING 12/31/2024

PROJECT NAME	AREA	TYPE	CONTRACT DATE	TIF BOND	ESTIMATED PROJECT COST	INITIAL PROJECTED VALUATION	BASE VALUE	BASE VALUE DATE	TIF EXCESS VALUE TAX YEAR 2023	ESTIMATED OUTSTANDING INDEBTEDNESS	ESTIMATED DATE TO BE PAID IN FULL
Keystone Hotel Rehabilitation Amended Area - removed undeveloped Lots 8 & 9 Amendment	1	Commercial	05/18/09 11/20/17	\$ 320,000.00	\$ 3,931,264.00	\$ 2,000,000.00	\$ 120,000.00 \$ 109,500.00	08/03/09 12/18/17	\$ 1,680,592.00	\$ 90,712.00	06/01/25
North Pointe Properties, LLC (31 lots in three phases) Phase I - 6 lots	3	Housing	07/07/14	\$ 208,000.00	\$ 208,000.00 + Developer Costs	\$ 5,000,000.00	\$ 89,079.00				
Phase I-Amend No. 1 (Lots 1 & 3)			05/16/16			\$ 1,750,000.00 **	\$ 27,268.00	04/20/15	\$ 728,253.00		
Phase I-Amend No. 2 (Lots 2 & 4)			05/15/17				\$ 38,420.00	07/14/17	\$ 769,707.00	\$ 735.00	6/15/2025
Phase I-Amend No. 3 (Lots 5 & 6)			05/07/18				\$ 45,695.00	05/17/18	\$ 654,697.00		
Substantial Amendment			07/17/23	\$ 280,500.00							
North Pointe Properties - Phase 2	3		05/23/23	\$ 955,500.00	\$ 1,268,908.00	\$ 5,440,000.00				\$ 299,506.00	12/15/2040
Phase 2 - 17 lots											
Clary Village Amended Plan Area Amendment	3	Housing	03/16/15 11/20/17 12/18/23	\$ 180,000.00	\$ 2,657,520.00	\$ 716,000.00 ***	\$ 12,778.00 \$ 8,092.00	03/10/16 12/18/17	\$ 421,346.00	\$ 64,779.00	12/3/2031
McCook Hotel Group, LLC (Cobblestone) 1st Amendment	3	Commercial	05/04/15	\$ 628,875.00	\$ 4,628,000.00	\$ 3,580,000.00	\$ 211,563.00	03/11/16	\$ 2,840,226.00	\$ 381,440.00	12/31/2031
Quillan Courts 1st Amendment	3	Housing	06/06/16 10/18/21 12/18/23	\$ 110,000.00	\$ 3,566,160.00	\$ 557,000.00 ***	\$ 85,074.00 \$ 74,097.00	07/14/17 03/15/22	\$ 427,166.00	\$ 60,000.00	12/31/2032
Next Generation, Inc., Facility Amended Plan	2	Industrial	02/20/17 09/04/18	\$ 720,000.00 \$ 1,024,000.00	\$ 9,061,907.00 \$ 6,529,616.00	\$ 4,500,000.00 \$10,485,856.00	\$ 51,475.00	11/02/17	\$ 13,480,206.00	\$ 1,280,789.00	12/31/2033
McCook Lodging, LLC (Holiday Inn & Suites) 1st Amendment	3	Commercial	03/21/16	\$ 1,400,000.00	\$ 8,892,000.00	\$ 6,750,000.00 ***	\$ 202,995.00	08/01/18	\$ 4,967,146.00	\$ 833,960.00	12/31/2034
2nd Amendment			08/29/16								
3rd Amendment			07/16/18 10/15/18								
Blackwood Enterprises 1st Amendment	3	Commercial	04/06/20 07/06/21	\$ 200,000.00	\$ 647,875.00	\$ 1,139,857.00	\$ 135,000.00 \$ 135,000.00	07/29/20 08/03/21	\$ 610,147.00	\$ 176,054.65	12/31/2037
N-Start Convenience 1st Amendment	4	Commercial	04/20/20 03/01/21	\$ 196,500.00	\$ 1,110,000.00	\$ 1,107,724.00	\$ 71,874.00 \$ 71,874.00	07/29/20 08/03/21	\$ 264,672.00	\$ 57,759.00	12/31/2036
MMEDC Infill Housing 1st Amendment	3	Housing	10/18/21 04/04/22	\$ 45,225.00	\$ 266,000.00	\$ 236,172.00	\$ 11,762.00	05/31/22	\$ 259,046.00	\$ 39,565.00	12/31/2038
Engineering International (Restored Homes, LLC)	3	Commercial	11/21/22	\$ 104,000.00	\$ 800,000.00	\$ 625,000.00	\$ 109,600.00	07/29/24		\$ 104,000.00	12/15/2038

Elevate Wellness 1st Amendment	3	Commercial	09/18/23 08/19/24	\$ 239,000.00	\$ 1,443,000.00	\$ 1,367,506.00			\$ 239,000.00	12/31/2040
Business Park Phase II	6	Industrial	07/17/23	\$ 1,707,800.00	\$ 12,000,000.00	\$ 9,600,000.00			\$ 1,707,800.00	12/31/2040
R. Perry Redevelopment Project	3	Housing	04/15/24	\$ 253,300.00	\$ 900,000.00	\$ 1,005,000.00			\$ 253,300.00	12/15/2040

**TOTAL ESTIMATED PROJECT COSTS**

**\$ 57,910,250.00**

**EXHIBIT #2**

\*\*Estimated Fair Market Value

\*\*\*Estimated valuation increase

COPIES OF ANNUAL REPORT TO:

McCook Community College  
President  
1205 East 3rd  
McCook, NE 69001

Chairman of the Board  
Educational Service Unit No 15  
344 Main  
PO Box 398  
Trenton, NE 69044

Chairman of the Board  
Middle Republican NRD  
208 Center Ave  
PO Box 81  
Curtis, NE 69025

Commission Chairman  
Red Willow County Commissioners  
502 Norris Avenue  
McCook, NE 69001

Board President  
McCook School District  
600 West 7th  
McCook, NE 69001





P.O. BOX 1059 • 505 WEST C • McCook, NE 69001-1059 • PHONE (308) 345-2022 • FAX (308) 345-1461

Job: 25042024

### APPLICATION TO OCCUPY RIGHT-OF-WAY

APPLICANT NAME: Telcom Construction for Lumen / Century Link      DATE: 4/11/25  
ADDRESS: PO Box 189, Clearwater, MN 55320      PHONE: (320) 365 - 0086  
FAX: \_\_\_\_\_ START DATE: 4/16/25      FINISH DATE: 9/1/2025

#### A CASH BOND IS REQUIRED FOR ALL RIGHT-OF-WAY ENCROACHMENTS

<b>Type: (circle)</b> Over-Cross <input checked="" type="radio"/> Under-Cross Occupy Miscellaneous	<b>With a: (circle)</b> Water Line Sewer Line Gas Line <input checked="" type="radio"/> Telephone Line <input checked="" type="radio"/> (Underground) Aerial	Tree Trimming/Removal Grading Other Electric Line (Underground Aerial)
--	---	--

**Location:** Beginning 200 feet (East West North South) of Intersection Willow Grove / alley  
and ending (East West North South) \_\_\_\_\_ feet of Intersection

Customer's address: 334 N CHEROKEE RD

**Requirements:** The applicant agrees to complete this work in accordance with the terms and conditions of the City of McCook. Any permit issued **will be cancelled** if the work specified is **not completed within the term listed on the permit** or within any **additional length of time granted**. Request for an extension of time to complete the work must be made in writing. Any extension granted will be acknowledged in writing by the City of McCook. **The Applicant may cancel the permit with written notification** at any time prior to beginning work on right-of-way.

**Performance Guarantee: (Make Payable to City of McCook)**

Amount: \$ \_\_\_\_\_ Check No. \_\_\_\_\_ Soc. Sec. No. Or FID No. \_\_\_\_\_

This guarantee is for the faithful compliance by the Applicant to the terms of the permit. It is understood that should the Applicant fail to perform the work as set forth in the permit, the City of McCook will have the right to keep the performance guarantee as liquidated damages for its necessary supervisory and inspection expenses and to initiate such legal proceedings as are necessary to secure either performance of the work in compliance with the terms of the permit or the restoration of the right-of-way to its previous condition prior to the activities of the Applicant.

**NOTE:** Please provide a location plan for over-cross or under-cross of location to occupy City of McCook right-of-way. When your project requires engineering plans, please submit four sets of plans, no larger than 18"x24". The engineering plans shall show the general features of the work to be completed and all information such as sizes, distances, dimensions, sleeves, cuts and fills, erosion control measures, etc., when applicable. City of McCook Municipal Code §94.34.

Jane Brown  
Applicant's Signature

\_\_\_\_\_  
Utilities Director Approval

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

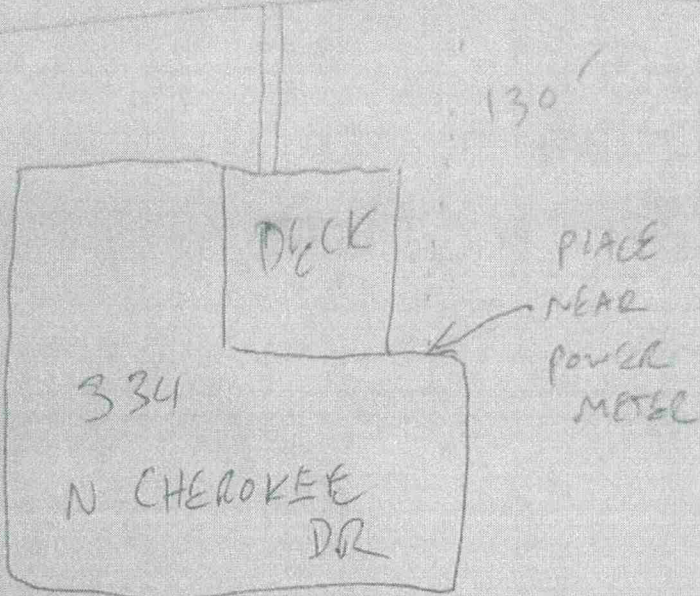
\_\_\_\_\_  
Director of Public Works Approval

CMS#25042024-HELD  
334 N Cherokee Rd  
McCook, NE

□ PED

CONCRETE ALLEY

130'







CHEROKEE DR

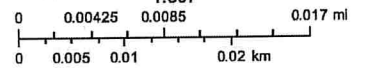


April 14, 2025  
16:48 PM

DISCLAIMER: This map is not intended for conveyances, nor is it a legal survey. The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments.

1:507

-  Municipalities
-  Townships
-  Parcels
-  Sections



**CITY MANAGER'S REPORT  
May 5, 2025 CITY COUNCIL MEETING**

**ITEM:**                **4.F.**    

**RECOMMENDATION:**

**Approve an application from Great Plains Communications to occupy city right-of-way for the purpose of installing underground fiber optic conduit & cable on Airport property**

**BACKGROUND:**


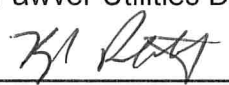
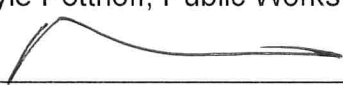
Great Plains Communications (GPC) of Blair, NE is seeking permission to occupy City property for the installation of fiber optic conduit and cable to an existing communications structure on the property of the Airport.

Beginning location 1,015 feet West of the centerline of Lockheed Dr. and 160 feet North of the centerline of us Hwy 6 & 34, from this location bore North-Northeast 615 feet while undercrossing chain link fence with conduit and cable.

This permit is only for City owned ROW. Great Plains will also be responsible for obtaining permits or permissions from all other property owners that may be utilized for this project.

**FISCAL IMPACT:**(None)

**APPROVALS:**

 _____ Pat Fawver Utilities Dir.	May 5, 2025
 _____ Kyle Potthoff, Public Works Dir.	May 5, 2025
 _____ Nate Schneider, City Manager	May 5, 2025



P.O. BOX 1059 • 505 WEST C • McCook, NE 69001-1059 • PHONE (308) 345-2022 • FAX (308) 345-1481

### APPLICATION TO OCCUPY RIGHT-OF-WAY

APPLICANT NAME: Great Plains Communications DATE: 4/21/25  
ADDRESS: 1009 West B st PHONE: 402 533 4044  
FAX: 308 364 9060 START DATE: April 2025 FINISH DATE: June 2025

#### A CASH BOND IS REQUIRED FOR ALL RIGHT-OF-WAY ENCROACHMENTS

<b>Type: (circle)</b> Over-Cross Under-Cross <u>Occupy</u> Miscellaneous	<b>With a: (circle)</b> Water Line Sewer Line Gas Line Telephone Line (Underground Aerial)	<u>Fiber</u> <u>(Underground) Aerial</u> Tree Trimming/Removal Grading Other Electric Line (Underground Aerial)
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**Location:**

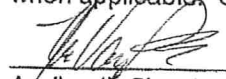
Beginning location, 1,015 feet West of the centerline of Lockheed drive and 160 feet North of the centerline of US Hwy 6734, from this location bore North-Northeast 615 feet while undercrossing chainlink fence with HDPE pipe 1.25" to Airport communications building.

**Requirements:** The applicant agrees to complete this work in accordance with the terms and conditions of the City of McCook. Any permit issued **will be cancelled** if the work specified is **not completed within the term listed on the permit** or within any **additional length of time granted**. Request for an extension of time to complete the work must be made in writing. Any extension granted will be acknowledged in writing by the City of McCook. **The Applicant may cancel the permit with written notification** at any time prior to beginning work on right-of-way.

**Performance Guarantee: (Make Payable to City of McCook)**

Amount: \$2,500.00 Check No. \_\_\_\_\_ Or FID No. \_\_\_\_\_  
This guarantee is for the faithful compliance by the Applicant to the terms of the permit. It is understood that should the Applicant fail to perform the work as set forth in the permit, the City of McCook will have the right to keep the performance guarantee as liquidated damages for its necessary supervisory and inspection expenses and to initiate such legal proceedings as are necessary to secure either performance of the work in compliance with the terms of the permit or the restoration of the right-of-way to its previous condition prior to the activities of the Applicant.

**NOTE:** Please provide a location plan for over-cross or under-cross of location to occupy City of McCook right-of-way. When your project requires engineering plans, please submit four sets of plans, no larger than 18"x24". The engineering plans shall show the general features of the work to be completed and all information such as sizes, distances, dimensions, sleeves, cuts and fills, erosion control measures, etc., when applicable, City of McCook Municipal Code §94.34.

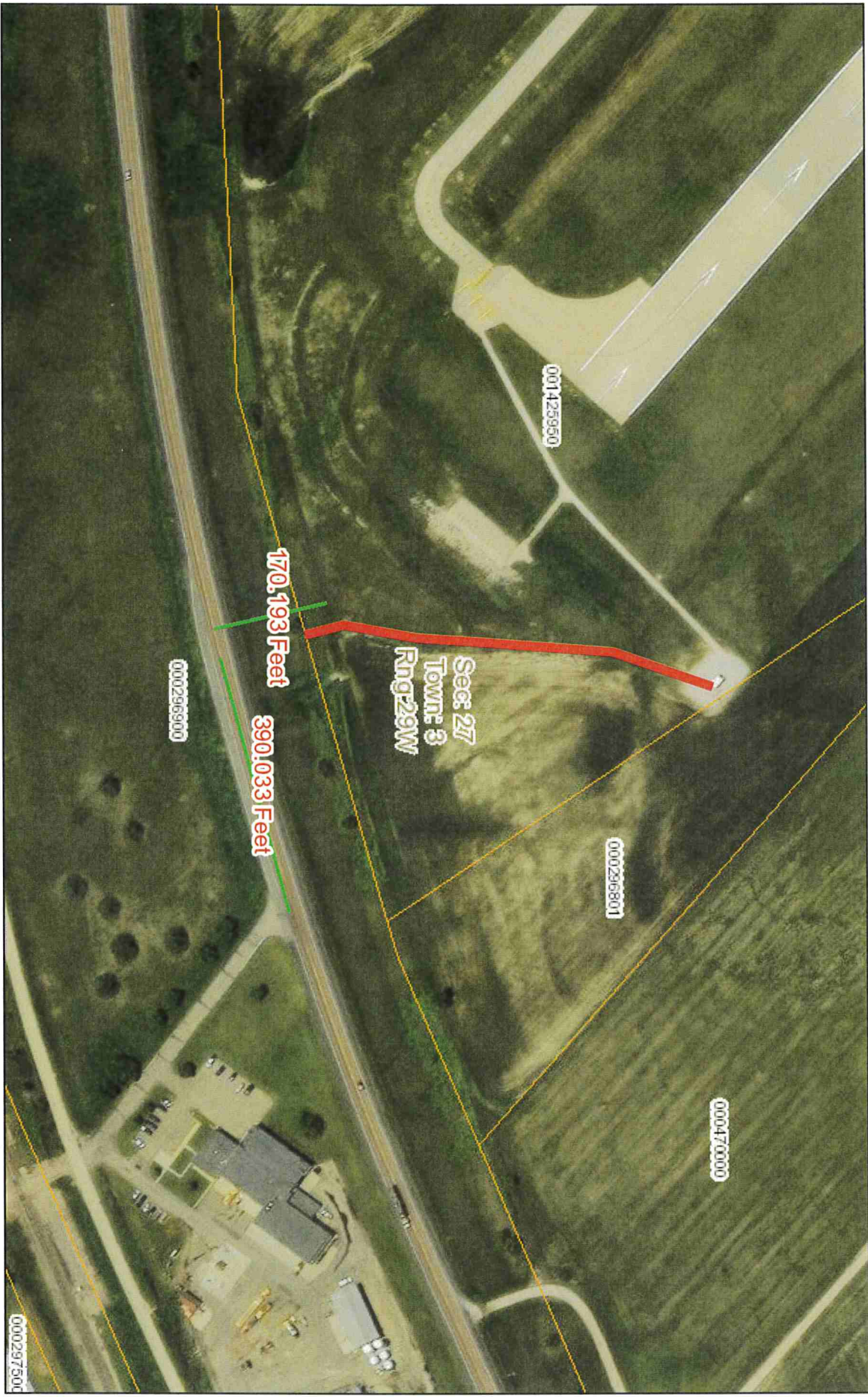
  
\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Director of Utilities Approval

\_\_\_\_\_  
Recommended By Mayor



\_\_\_\_\_  
Date

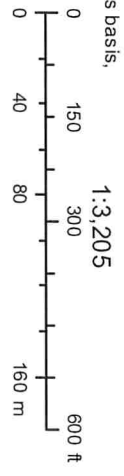
\_\_\_\_\_  
Director of Public Works Approval



April 21, 2025  
13:52 PM

DISCLAIMER: This map is not intended for conveyances, nor is it a legal survey. The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments.

-  Parcels
-  Sections



**CITY MANAGER'S REPORT  
MAY 5, 2025 CITY COUNCIL MEETING**

---

**ITEM: 4.G.**

Forward to the City's insurance carrier for review and appropriate action a property damage claim from Cindy Dugger, St. Patrick's Little Knights Preschool.

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**BACKGROUND:**

Staff received the property damage claim from Ms. Dugger. The governing body is required to forward the claim to the City's insurance carrier for review and appropriate action.

**FISCAL  
IMPACT:** None.

**APPROVALS:**

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

April 30, 2025

  
\_\_\_\_\_  
Tera Koetter, Assistant City Manager

April 30, 2025

  
\_\_\_\_\_  
Nathan A. Schneider, City Manager

April 30, 2025

**CITY MANAGER'S REPORT**  
**May 5, 2025 CITY COUNCIL MEETING**

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**ITEM:**        4.H.

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**RECOMMENDATION:**

Van Kirk Brothers Contracting is requesting a street closure for a water infrastructure improvement project on West 5<sup>th</sup> Street from west J Street to West L Street.

**BACKGROUND:**

Van Kirk Brothers Contracting is requesting the closure of West 5<sup>th</sup> Street from West J Street to West L Street for a water infrastructure improvement project. The project timeline is around 3 weeks and will start on May 19<sup>th</sup>.

**FISCAL  
IMPACT:**

**APPROVALS:**

  
\_\_\_\_\_  
Pat Fawver, Utilities Director

May 5, 2025

  
\_\_\_\_\_  
Nate Schneider, City Manager

May 5, 2025

  
\_\_\_\_\_  
Kyle Potthoff, Public Works Director

May 5, 2025



**OFF AIRPORT LAND LEASE**  
**Between**  
**THE UNITED STATES OF AMERICA**  
**DEPARTMENT OF TRANSPORTATION**  
**FEDERAL AVIATION ADMINISTRATION**  
**And**  
**CITY OF MCCOOK, NEBRASKA**

**FAA CONTRACT NO: 697DCM-25-L-00136**  
**ATID/FACILITY TYPE: MCK/ FM**  
**LOCATION: McCook, NE**

1. **Preamble (09/2021) 6.1.1** This Lease for real property is hereby entered into by and between City of McCook, Nebraska, hereinafter referred to as the Lessor and the United States of America, acting by and through the Federal Aviation Administration, hereinafter referred to as the FAA.

2. **Definitions (09/2021) 6.1.1-1** For purposes of this document, the following definitions apply;

Contract- refers to this legal instrument used to acquire an interest in real property for the direct benefit or use by the FAA. As used herein, contract denotes the document (for example- lease, easement, memorandum of agreement, or other legally binding agreement) used to implement an agreement between a customer (buyer) and a seller (supplier).

Contractor- refers to the party(ies) receiving a direct procurement contract from the FAA and who is(are) responsible for performance of contract requirements. For purposes of this document, the contractor may also be called the Lessor, Permitter, Licensor, Grantor, Airport, or Offeror depending on the type of contract or the provision within the contract.

Government- refers to the United States of America acting by and through the Federal Aviation Administration (FAA). For purposes of this document, Government and FAA are interchangeable.

Real Estate Contracting Officer (RECO) - is a trained and warranted official who contracts for real property on behalf of the FAA. For purposes of this agreement, RECO is interchangeable with Contracting Officer (CO).

3. **Succeeding Contract (09/2021) 6.1.2** This contract succeeds Contract No. DTFACE-06-L-00044 and all other previous agreements between the parties for the property described in this document.

4. **Lease Witnesseth (09/2021) 6.1.3** Witnesseth: The parties hereto, for the consideration hereinafter mentioned, covenant and agree as follows:

5. **Description of Premises (09/2021) 6.1.4-3** This contract covers the following described property, hereinafter referred to as the premises and hereby consisting of:

**FAN MARKER (FM) FACILITY SITE**

A tract of land located in the SE 1/4 of the SW 1/4 and the NE 1/4 of the SW 1/4 of Section 36, Township 3 North, Range 29 West of the 6th Principal Meridian in Red Willow County, Nebraska,

described as follows: Beginning at a point 1,287.4 feet North and 33.0 feet West of the Southeast corner of the SW 1/4 of said Section 36, said point also being on a road right-of-way line; thence North 50.0 feet long said right-of-way line to a point; thence West at right angles 50.0 feet to a point; thence at right angles 50.0 feet to a point; thence East at right angles 50.0 feet to the point of beginning. Said tract of land containing 0.06 acres more or less.

A. Together with a right-of-way for ingress to and egress from the premises (for Government employees, their agents and assigns); a right-of-way for establishing and maintaining electric power and/or telecommunication lines to the premises; and a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over said lands and adjoining lands of the contractor, and unless herein described otherwise, shall be reasonably determined by the Government as the most convenient route.

B. This contract includes the right of grading, conditioning, installing drainage facilities, seeding the soil of the premises, and the removal of all obstructions from the premises that may constitute a hindrance to the establishment and maintenance of Government facilities.

C. The Government shall also have the right to make alterations, attach fixtures, erect additions, structures, or signs, in or upon the premises hereby leased. All alterations and additions are and will remain the property of the Government.

6. **Purpose (09/2021) 6.1.5** It is understood and agreed that the use of the herein described premises shall be related to FAA's activities in support of the National Airspace System (NAS).
7. **Legal Authority (09/2021) 6.2.1** This contract is entered into under the authority of 49 U.S.C. 106(l)(6) and (n), which authorizes the Administrator of the FAA to enter into contracts, acquisitions of interests in real property, agreements, and other transactions on such terms and conditions as the Administrator determines necessary.
8. **Term (09/2021) 6.2.3** To have and to hold, for the term commencing on October 1, 2025 and continuing through September 30, 2045 inclusive, provided that adequate appropriations are available from year to year for the consideration herein.
9. **Consideration (No Cost) (09/2021) 6.2.4-4** The Government shall pay the contractor no monetary consideration. It is mutually agreed that the rights extended to the Government herein are in consideration of the obligations assumed by the Government in its establishment, operation and maintenance of facilities upon the premises.
10. **Termination (01/2023) 6.2.5** The Government may terminate this contract at any time, in whole or in part, if the Real Estate Contracting Officer (RECO) determines that a termination is in the best interest of the Government. The RECO shall terminate this contract by delivering a written notice specifying the effective date of the termination. The termination notice shall be delivered at least 30 days before the effective termination date. No costs shall accrue as of the effective date of termination.
11. **Excuse (09/2021) 6.2.5-3**
  - A. The Lessor will not be in default because of any failure to perform the requirements of this Lease under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Lessor.

B. Permissible causes for excuse are:

- i. acts of God (e.g., fires, floods, pandemics, epidemics, unusually severe weather, etc.),
- ii. acts of the public enemy,
- iii. acts of the Government in either its sovereign or contractual capacity,
- iv. pandemic, epidemic, or quarantine restrictions,
- v. strikes, and
- vi. freight embargoes. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Lessor.

C. Excuse will not be granted when:

- i. the Lessor had actual or constructive knowledge prior to the Lease Award Date that he/she could not perform in accordance with the requirements of the Lease contract;
- ii. the conditions of the property prevent performance;
- iii. the Lessor, its employees, agents or contractors, by error or omission, fails to perform; or
- iv. the Lessor is unable to obtain sufficient financial resources to perform its obligations.

D. The RECO will ascertain the facts and extent of the failure. If the RECO determines that any failure to perform is excusable, the RECO will revise the delivery schedule subject to the rights of the Government under the default and termination clauses of this contract.

12. **Binding Effect (09/2021) 6.2.6** The provisions of this contract and the conditions herein shall be binding upon, and for the benefit of, the parties and their successors and assigns. In the event of any sale or transfer of ownership of the property or any portion thereof, the Government will be deemed to have attorned to any purchaser, successor, assign, or transferee. The succeeding owner will be deemed to have assumed all rights and obligations of the contractor under this contract establishing direct privity of estate and contract between the Government and said succeeding owner, with the same force, effect, and relative priority in time and right as if the contract had initially been entered into between such succeeding owner and the Government.
13. **Holdover (07/2023) 6.2.12** If after the expiration of the Lease, the Government shall retain possession of the premises, the Lease shall continue in full force and effect on a month-to-month basis. Payment shall be made in accordance with the Consideration clause of the Lease at the rate paid during the Lease term. This period shall continue until the Government shall have signed a new lease with the Lessor, acquired the property in fee, or vacated the premises.
14. **RE Clauses Incorporated by Reference (09/2021) 6.3.0** This solicitation or contract, as applicable, incorporates by reference the provisions or clauses listed below with the same force and effect as if they were given in full text. Upon request, the RECO will make the full text available, or the full text may be obtained via internet at [https://fast.faa.gov/RPF\\_Real\\_Property\\_Clauses.cfm](https://fast.faa.gov/RPF_Real_Property_Clauses.cfm).
  - A. **Officials Not To Benefit (09/2021) 6.3.0-2**
  - B. **Assignment of Claims (09/2021) 6.3.0-3**
  - C. **Contracting Officer's Representative (09/2021) 6.3.0-4**
  - D. **Contingent Fees (09/2021) 6.3.0-5**
15. **Title to Improvements (09/2021) 6.3.5** Title to the improvements constructed for use by the Government during the life of this Agreement shall be in the name of the Government.

16. **Funding Responsibility for FAA Facilities (09/2021) 6.3.6** The Contractor agrees that all Contractor requested relocation(s), replacement(s), or modification(s) of any existing or future FAA navigational aid or communication system(s) necessitated by Contractor improvements or changes will be at the expense of the Contractor. In the event that the Contractor requested changes or improvements interferes with the technical and/or operational characteristics of the FAA's facility, the Contractor will immediately correct the interference issues at the Contractor's expense. Any FAA requested relocation, replacement, or modifications shall be at the FAA's expense. In the event such relocations, replacements, or modifications are necessary due to causes not attributable to either the Contractor or the FAA, funding responsibility shall be determined by mutual agreement between the parties, and memorialized in a Supplemental Agreement.
17. **Changes (07/2023) 6.3.8**
- A. The RECO may at any time, by written order via Supplemental Agreement, make changes within the general scope of this Lease in any one or more of the following:
- i. Work or services;
  - ii. Facilities or space layout;
  - iii. Amount of space/land;
  - iv. Any other change made within the scope of this lease.
- B. If any such change causes an increase or decrease in the Lessor's cost or time required for performance under this lease, the RECO will modify this Lease to provide one or more of the following:
- i. An equitable adjustment in the rental rate;
  - ii. A lump sum equitable adjustment;
  - iii. An equitable adjustment of the annual operating costs per rentable square foot; or
  - iv. An adjustment to the delivery date.
- C. The Lessor must assert its right to an adjustment by written proposal under this clause within thirty (30) days from the date of receipt of the change order. Lessor's request must include all documentation necessary to validate his/her right to an adjustment.
- D. Nothing in this clause excuses the Lessor from proceeding with the change as directed.
- E. Absent written supplemental agreement the Government is not liable to the Lessor under this clause.
18. **No Waiver (09/2021) 6.3.17** No failure by the Government to insist upon strict performance of any provision of this Contract or failure to exercise any right, or remedy consequent to a breach thereof, will constitute a waiver of any such breach in the future.
19. **Non-Restoration (09/2021) 6.3.18** It is hereby agreed between the parties that, upon termination of its occupancy, including any holdover period, the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property that is the subject of this contract. It is further agreed that the Government may abandon in place any or all of the structures and equipment installed in or located upon said property by the Government during its tenure. Such abandoned equipment shall become the property of the contractor.
20. **Quiet Enjoyment (09/2021) 6.3.25** The Contractor warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.

21. **Damage by Fire or Other Casualty or Environmental Hazards (09/2021) 6.3.26** If the premises is partially or totally destroyed or damaged by fire or other casualty or if environmentally hazardous conditions are found to exist so that the premises is untenable as determined by the Government, the Government may agree to allow restoration/reconstruction, or may elect to terminate the contract, in whole or in part, immediately by giving written notice to the contractor and no further rental will be due. The Government shall have no duty to pay rent while the premises are unoccupied.
22. **Interference (09/2021) 6.3.28** In the event that FAA operations interfere with the Contractor's facility, the Contractor must immediately notify the RECO. The FAA will begin assessment of interference immediately upon notification.  
If the Contractor or its facility interferes with the FAA's equipment and the Contractor either knows of, or is notified by the FAA, of the interference, the Contractor will immediately remediate the interference at its own cost.  
Notification under this clause must include the following information, if known:  
A. type of interference,  
B. the commencement date of the interference, and  
C. the root cause of the interference.
23. **Hold Harmless (01/2024) 6.3.30** In accordance with and subject to the conditions, limitations and exceptions set forth in the Federal Tort Claims Act, 28 U.S.C. Ch. 171, the Government will be liable to persons damaged by any personal injury, death or injury to or loss of property, which is caused by a negligent or wrongful act or omission of an employee of the Government while acting within the scope of his office or employment under circumstances where a private person would be liable in accordance with the law of the place where the act or omission occurred. The foregoing shall not be deemed to extend the Government's liability beyond that existing under the Act at the time of such act or omission or to preclude the Government from using any defense available in law or equity.
24. **Compliance with Applicable Laws (01/2023) 6.3.31-1** This Contract shall be governed by federal law. The Contractor shall comply with all applicable federal, state, and local laws. The Government will comply with all federal, state, and local laws applicable to and enforceable against it, provided that nothing in this lease shall be construed as a waiver of the sovereign immunity of the Government.
25. **Notification of Change in Ownership or Control of Land (10/2022) 6.3.34** If the Contractor sells, dies or becomes incapacitated, or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting the premises, the Government shall be notified in writing, of any such transfer or conveyance within 30 calendar days after completion of the change in property rights. Concurrent with the written notification, the Contractor or Contractor's heirs, representatives, assignees, or trustees shall provide the Government copies of the associated legal document(s) (acceptable to local authorities) for transferring and/or conveying the property rights.
26. **Integrated Agreement (09/2021) 6.3.36** This Contract, upon execution, contains the entire agreement of the parties, and no prior written or oral agreement, express or implied shall be admissible to contradict the provisions of this Contract.

27. **Unauthorized Negotiating (09/2021) 6.3.37** In no event shall the Contractor enter into negotiations concerning the premises with anyone other than the RECO or his/her designee.

28. **Contract Disputes (09/2021) 6.3.39**

A. All contract disputes arising under or related to this contract shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A contractor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

B. The filing of a contract dispute with the ODRA may be accomplished by mail, overnight delivery, hand delivery, or by facsimile, or if permitted by Order of the ODRA, by electronic filing. A contract dispute is considered to be filed on the date it is received by the ODRA during normal business hours. The ODRA's normal business hours are from 8:30 am to 5:00 pm Eastern Time.

C. Contract disputes are to be in writing and shall contain:

- i. The contractor's name, address, telephone and fax numbers and the name, address, telephone and fax numbers of the contractor's legal representative(s) (if any) for the contract dispute;
- ii. The contract number and the name of the Contracting Officer;
- iii. A detailed chronological statement of the facts and of the legal grounds for the contractor's positions regarding each element or count of the contract dispute (i.e., broken down by individual claim item), citing to relevant contract provisions and documents and attaching copies of those provisions and documents;
- iv. All information establishing that the contract dispute was timely filed;
- v. A request for a specific remedy, and if a monetary remedy is requested, a sum certain must be specified and pertinent cost information and documentation (e.g., invoices and terminated checks) attached, broken down by individual claim item and summarized; and
- vi. The signature of a duly authorized representative of the initiating party

D. Contract disputes shall be filed at the following address:

- i. For filing by hand delivery, courier or other form of in-person delivery:

Office of Dispute Resolution for Acquisition  
Federal Aviation Administration  
600 Independence Avenue SW., Room 2W100  
Washington, DC 20591; or

For filing by U.S. Mail:

Office of Dispute Resolution for Acquisition  
Federal Aviation Administration  
800 Independence Avenue SW  
Washington, DC 20591  
[Attention: AGC-70, Wilbur Wright Bldg. Room 2W100]; or

Telephone: (202) 267-3290

Facsimile: (202) 267-3720

Alternate Facsimile: (202) 267-1293; or

ii. Other address as specified in 14 CFR Part 17.

E. A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the contract claim involved. A contract dispute by the FAA against a contractor (excluding contract disputes alleging warranty issues, fraud or latent defects) likewise shall be filed within two (2) years after the accrual of the contract claim. If an underlying contract entered into prior to the effective date of this part provides for time limitations for filing of contract disputes with the ODRA which differ from the aforesaid two (2) year period, the limitation periods in the contract shall control over the limitation period of this section. In no event will either party be permitted to file with the ODRA a contract dispute seeking an equitable adjustment or other damages after the contractor has accepted final contract payment, with the exception of FAA claims related to warranty issues, gross mistakes amounting to fraud or latent defects. FAA claims against the contractor based on warranty issues must be filed within the time specified under applicable contract warranty provisions. Any FAA claims against the contractor based on gross mistakes amounting to fraud or latent defects shall be filed with the ODRA within two (2) years of the date on which the FAA knew or should have known of the presence of the fraud or latent defect.

F. A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is to be received by the ODRA.

G. After filing the contract dispute, the contractor should seek informal resolution with the Contracting Officer.

H. The FAA requires continued performance with respect to contract disputes arising under this contract, in accordance with the provisions of the contract, pending a final FAA decision.

I. The FAA will pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the contract dispute, or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on contract disputes shall be paid at the rate fixed by the Secretary of the Treasury that is applicable on the date the Contracting Officer receives the contract dispute and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary until payment is made. Interest will not accrue for more than one year.

J. Additional information and guidance about the ODRA dispute resolution process for contract disputes can be found on the ODRA website at <http://www.faa.gov>.

## 29. **Clearing/Disposing of Debris (09/2021) 6.3.41**

A. The Government shall notify the Contractor in writing ten (10) days prior to the start of any clearing of trees and/or brush and tree cuttings.

B. The Contractor grants the Government the right and privilege to enter upon the Contractor's land in order to cut, trim, tip, shape and maintain any trees situated within the premises and said cutting privilege granted to the Government shall include native grasses, scrub brush, and scrub to trees. Only those trees that are determined by the Government to interfere with the operation and proper function of the Government's facility will be subject to the Government's granted privilege. Coordination with the Contractor will be made prior to any cutting of any selected trees.

C. The Government agrees to dispose of all grass, brush, and tree cuttings by the Government's contractor. All tree logs, limbs, or branches 2 or more inches in diameter and 5 feet in length, shall be stacked in an area selected by the Lessor. The Government's disposal of debris, grass, branches, etc., shall comply with regulatory requirements.

**30. Organizational Conflict of Interest (01/2023) 6.3.47**

- A. The offeror or Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest (OCI), as defined in the FAA Acquisition Management System, "Organizational Conflicts of Interest (T3.1.7)", or that the Contractor has disclosed all such relevant information
- B. The offeror or Contractor agrees that if an actual or potential OCI is discovered after award, the Contractor must make a full disclosure in writing to the Contracting Officer. The disclosure must include a mitigation plan describing actions the Contractor has taken or proposes to take to avoid, mitigate, or neutralize the actual or potential conflict. Changes in the Contractor's relationships due to mergers, consolidations or any unanticipated circumstances may create an unacceptable organizational conflict of interest which may necessitate disclosure
- C. The FAA reserves the right to review and audit OCI mitigation plans as needed after award, and to reject mitigation plans if the OCI, in the opinion of the Contracting Officer, cannot be avoided, or mitigated.
- D. The Contracting Officer may terminate this contract for convenience in whole or in part, if it deems such termination necessary to avoid an OCI. If the Contractor was aware of a potential OCI prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate this contract for default, debar the Contractor from government contracting, or pursue such other remedies as may be permitted by law or this contract.
- E. The Contractor further agrees to insert provisions which must conform substantially to the language of this clause including this paragraph (d) in any subcontract or consultant agreement hereunder.

- 31. Hazardous Substance Contamination (09/2021) 6.8.1** The FAA agrees to remediate, at its sole cost, all hazardous substance contamination on the FAA facility premises that is found to have occurred as a direct result of the installation, operation, relocation and/or maintenance of the FAA's facilities covered by this contract. The Contractor agrees to remediate at its sole cost, all other hazardous substance contamination found on the FAA facility premises. The Contractor also agrees to hold the FAA harmless for all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the FAA facility premises that are not directly attributable to the installation, operation and/or maintenance of the facilities.

**32. Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (07/2023) 6.9.5**

(a) Definitions. As used in this clause--

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—
  - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
  - (ii) For reasons relating to regional stability or surreptitious listening.
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.8.9C.1.c(5).

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.8.9C.1.c(5). This prohibition applies to an entity that uses covered telecommunications equipment or services, including use not in support of the Government.

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor must report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information. For indefinite delivery contracts, the Contractor must report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.

(2) The Contractor must report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor must describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor must insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

**33. Covered Telecommunications Equipment or Services- Representations (09/2021) 6.9.5-1**

(a) Definitions. As used in this provision, "covered telecommunications equipment or services" has the meaning per the "Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment" clause in this contract.

(b) Procedures. The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for covered telecommunications equipment or services.

(c) Representations.

(1) The offeror represents that it \_\_\_\_\_ does, \_\_\_\_\_ does not provide covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(2) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it \_\_\_\_\_ does, \_\_\_\_\_ does not use covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services.

**34. Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (09/2021) 6.9.5-2**

NOTE: The offeror must not complete the representation at paragraph (d)(1) in this provision if the offeror has represented that it does not provide covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument in the provision "Covered Telecommunications Equipment or Services – Representation" (c)(1). Additionally, The offeror must not complete the representation at paragraph (d)(2) in this provision if the offeror has represented that it does not use covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services in the provision "Covered Telecommunications Equipment or Services – Representation" (c)(2).

PROVISION/CLAUSE:

(a) Definitions. As used in this provision--

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause AMS clause 6.9.5, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibitions.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Nothing in this prohibition will be construed to—

(i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential part of any system or as critical technology as part of any system. This prohibition applies to any entity that uses covered telecommunications equipment or services, including uses not in support of the Government.

Nothing in this prohibition will be construed to-

(i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures: The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from Federal awards for covered telecommunications equipment or services.

(d) Representations.

(1) The Offeror represents that it [ ] will, [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(2) After conducting a reasonable inquiry for purposes of this representation, the Offeror represents that it does [ ] does not [ ] USE covered telecommunications equipment or services, or use any

equipment, system, or service that uses covered telecommunications equipment or services. The Offeror must provide the additional disclosure information required at paragraph (e) if the Offeror indicates “does”.

(e) Disclosures. Disclosure for the representation in paragraph (d) (1) of this provision-  
If the Offeror has responded “will” in the representation in paragraph (d) (1) of this provision, the Offeror must provide the following information as part of the offer—

(1) For covered equipment

(i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known;

(ii) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(iii) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (1) of this provision;

(2) For covered services-

(i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable; or

(ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

Disclosure for representation in paragraph (d) (2) of this provision. If the Offeror has responded “does” to paragraph (d)(2) of this provision, the offeror must provide the following information as part of the offer—

(3) For covered equipment

(i)The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known;

(ii) A description of all covered telecommunications equipment offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(iii) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (2) of this provision.

(4) For covered services-

(i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any

factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

35. **Notices (09/2021) 6.10.1** All notices/correspondence must be in writing, reference the Contract number, and be addressed as follows:

TO THE CONTRACTOR:  
City of McCook, NE  
505 West C Street  
P.O. Box 1059  
McCook, NE 69001

TO THE GOVERNMENT:  
Federal Aviation Administration  
Real Estate Branch, AAQ-920  
10101 Hillwood Parkway  
Fort Worth, TX 76177

36. **Signature Block (09/2021) 6.10.3** This Contract shall become binding when it is fully executed by both parties. In witness whereof, the parties hereto have subscribed their names as of the date shown below.

CITY OF McCOOK, NEBRASKA

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

By: \_\_\_\_\_  
Linda Taylor  
Mayor

By: \_\_\_\_\_  
Jana C. Blanco  
Real Estate Contracting Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2025 before me, \_\_\_\_\_, the undersigned Notary Public, personally appeared, **Linda Taylor**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledge that he/she executed the same for the purposes therein contained.

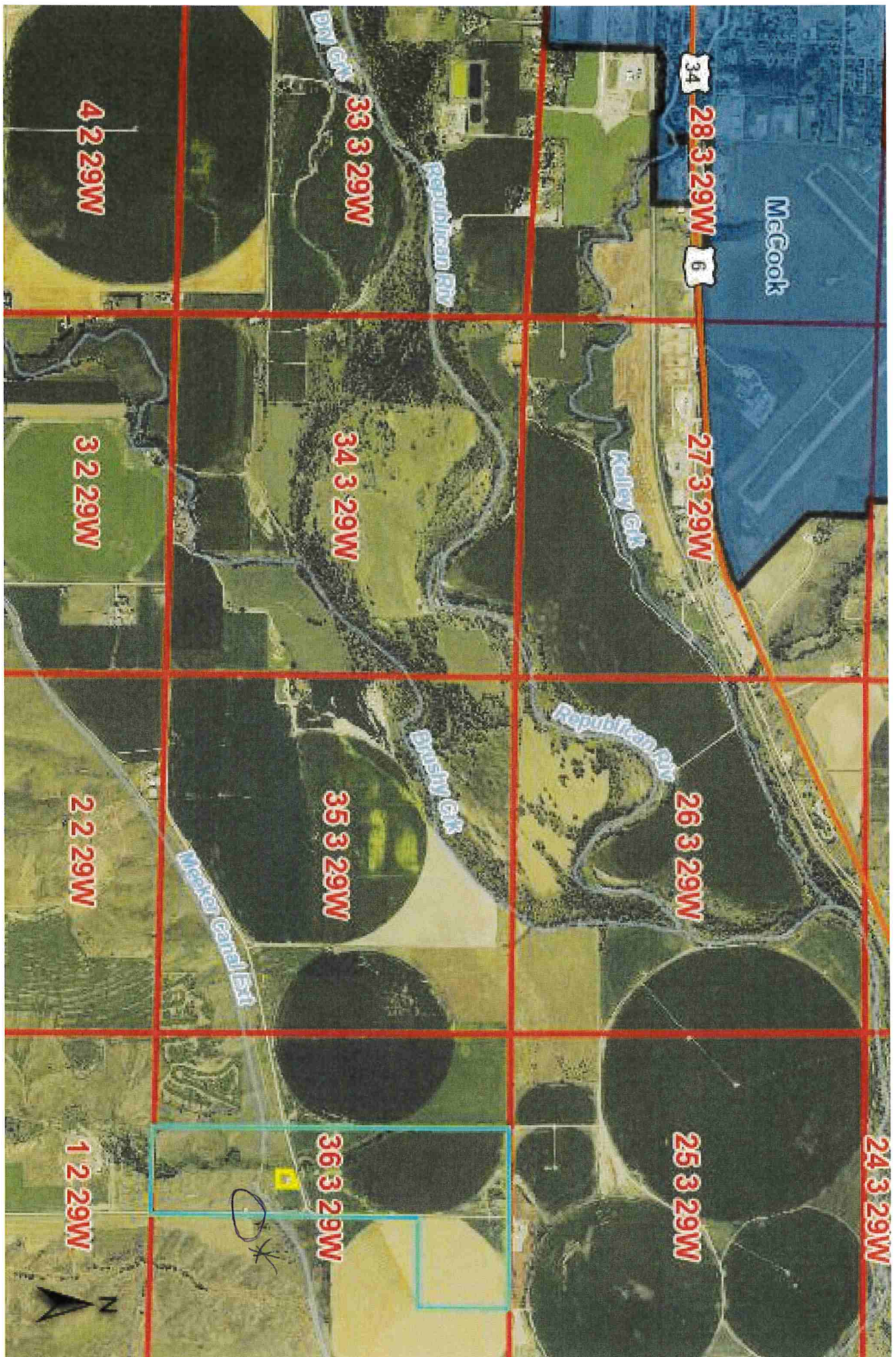
\_\_\_\_\_  
Notary Public

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF TEXAS  
COUNTY OF TARRANT

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2025 before me, \_\_\_\_\_, the undersigned Notary Public, personally appeared, **Jana C. Blanco**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledge that he/she executed the same for the purposes therein contained.

\_\_\_\_\_  
Notary Public



**CITY MANAGER'S REPORT  
MAY 5, 2025 MCCOOK CITY COUNCIL MEETING**


**5.A.**  
ITEM NO. \_\_\_ Update regarding the sports complex project.

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**BACKGROUND:**

Staff would like to keep this item as a place keeper on the McCook City Council agendas while we work through the planning and construction process for the sports complex. Council Member Muhlenkamp has been approached by members of our community regarding the use of the complex for both games and practices. The City Council, staff, and interested citizens are welcome to partake in this conversation.

**APPROVALS:**

  
\_\_\_\_\_  
Nathan A. Schneider, City Manager

April 30, 2025

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

April 30, 2025

  
\_\_\_\_\_  
Tera Koetter, Assistant City Manager

April 30, 2025

  
\_\_\_\_\_  
Kyle Potthoff, Public Works Director

April 30, 2025