

AGENDA
VALLEY CITY COUNCIL
April 12, 2022 7:00 PM

Anyone desiring to speak on any item on the Agenda is invited to do so, but will be limited to three minutes. After being recognized by the Mayor, please state your name and address for the record. Anyone desiring to speak for a longer period of time should make arrangements with the City Clerk prior to the meeting.

--A copy of the Open Meetings Act is located on the north wall of the Council Chamber--

The Mayor and Council reserve the right to adjourn into executive session on any agenda item per Nebraska Revised Statutes 84-1410.

One copy of all reproducible written material to be discussed at this meeting is available for examination or copying.

1. ROLL CALL
2. MEETING CALLED TO ORDER
3. PLEDGE OF ALLEGIANCE
4. PROOF OF PUBLICATION
5. VISITORS/CORRESPONDENCE
 - 5.A. Recognition of DC West Robotics Team making it to the World Championships
 - 5.B. Tree City USA Recognition
6. APPROVAL OF AGENDA
7. CONSENT AGENDA

All agenda items indicated by an asterisk will comprise the consent agenda and will be acted on in a single motion. Consent agenda items are being forwarded to the Council Members. Any individual item may be removed by a council member for special discussion and consideration.

 - 7.A. ACCEPT MINUTES
 - 7.B. ACCEPT TREASURER'S REPORT
 - 7.C. APPROVE MANUAL CHECKS

- 7.D. APPROVE BILLS & ADDITIONAL BILLS PRESENTED FOR PAYMENT
A Complete listing of claims processed through noon on Monday April 11, 2022 is on file in the office of the City Clerk.
- 7.E. MARCH PAYROLL \$81,937.02 / IRA \$2,118.97
- 7.F. MARCH KENO RECEIPTS - \$5,873.83
- 7.G. ACCEPT PEOPLESERVICE, INC., REPORT
- 7.H. ACCEPT April 4, 2022 Tree Board Minutes
- 7.I. ACCEPT March 17, 2022 Library Board Minutes
- 7.J. ACCEPT March 2022 Library Statistics
8. ARBOR DAY PROCLAMATION
9. CORNHUSKER STATE GAMES TRIATHLON UPDATE - LINSAY TOUSSANT
10. FINAL PLAT GAVIIDAE REPLAT 2
- Presentation
 - Open Public Hearing for comments
 - Close Public Hearing
 - Resolution 2022- 27 Gaviidae Replat 2 Final Plat
11. POOL MANAGEMENT AGREEMENT WITH YMCA
RESOLUTION 2022-24 -Pool Management Agreement
12. ORDINANCE NO 774 - AMENDMENT TO ARTICLE II SECTION 4-205
A request for amendment to the municipal code, section 4-205: Hours of Sale
13. RESOLUTION 2022-29 - AGREEMENT AUTHORIZATION WITH FIVE NINES
14. RESOLUTION 2022-30 - AGREEMENT AUTHORIZATION FOR CRRSAA
15. RESOLUTION 2022-31 - AGREEMENT AUTHORIZATION FOR A LEASE TO PURCHASE OF 2021 JOHN DEERE
16. CITY ENGINEER
- 16.A. Flatwater Improvements Phase 3 Rebid (Sanitary Sewer, Storm Sewer, & Water Main) Project
- 16.A.1. Approve Change Order No. 3 - Vrba Const. - \$194,277.18
- 16.A.2. Resolution No. 2022-28- Approve payment by developer to Vrba Const. - \$213,855.00

16.B. West Street Pumping Station Upgrades

16.B.1. Resolution 2022-25 - Payment by developer to Bert Gurney - \$61,700.00

16.C. OTHER/MISCELLANEOUS

- Water Treatment Plant Expansion
- Falcon Business Park-Paving-Update
- Country Aire Pumping Station Upgrades
- Lift Station Equipment Replacement

17. CITY ATTORNEY

18. MAYOR'S REPORT

19. UPCOMING ITEMS

- Valley Clean Up Day: April 16, 9 AM to 2 PM
- Valley Days Planning Meeting: April 19, 6 PM
- Planning Commission: April 19, 4:30 PM
- Special Council Meeting: April 26, 7 PM
- Arbor Day Celebration: April 29

Douglas County

Post-Gazette

P.O. Box 677

Elkhorn, NE 68022

402-289-2329

INVOICE - AFFIDAVIT OF PUBLICATION

INVOICE #	208601	DUE DATE	3/30/2023
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THE STATE OF NEBRASKA }
COUNTY OF DOUGLAS } SS Darren P. Ivy, being duly sworn,
says that he is the publisher of

DOUGLAS COUNTY POST-GAZETTE

News of Douglas County,

a legal newspaper which is published and is in general circulation in Douglas County, Nebraska, and is printed in the English Language weekly at its office in Elkhorn, Nebraska; that said newspaper has been so published for more than fifty-two successive weeks prior to the publication of the annexed notice, and has a bona fide circulation of more than three hundred copies each issue. That to affiant's personal knowledge, the annexed notice was published in said newspaper:

BILL TO
City of Valley P.O. Box 682 Valley, NE 68064

NOTICE OF MEETING CITY OF VALLEY, NEBRASKA

Notice is hereby given that a meeting of the City of Valley will be held on Tuesday, April 12, 2022 at 7:00 p.m. at Valley City Hall.

PUBLIC HEARING will be held on the following:

1. Final Plat - Gaviidae Replat 2 (Lots 1 through 3 and Outlots A through C (previously Lots 14, 15 & 16 Gaviidae), A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA.

An agenda kept continually current shall be available for public inspection at Valley City Hall.

Cheryl K. Eckerman
City Clerk

March 30 - 27 Ins
ZNEZ

1	Successive Week(s)
Beginning with the issue of:	3/30/2022
and ending with the issue of:	3/30/2022
Publisher's fee at Legal Rate is:	\$11.36

Darren P. Ivy

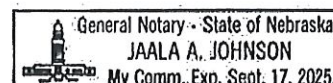
Darren P. Ivy, Publisher

Summary Information	Weekly Cost
Notice of April 12 Public Hearing - March 30	11.36

Subscribed and sworn before me, this 30th day
of

March, 20 22

Jaala Johnson
Notary Public





DC West Robotics is headed to the World
Championships!

Please join us for a reception celebrating the Robotics
team's success at State, and wish them well as they
travel to Dallas on May 3rd for the World
Championships.

When: Thursday, April 28th at 6:30 PM

Where: Valley Public Library, 232 N Spruce St

Coach Dan Maline and several team members will talk
about the program and do a robotics demonstration.

Hosted by the Friends of the Valley Public Library

MINUTES
REGULAR MEETING

March 8, 2022

1. & 2. Roll Call & Call to Order - Mayor Grove called the meeting to order at 7:00 p.m. Present were mayor Grove; council members, Lewis, Stanzel, TenEyck & Ueckert, city attorney Jeff Farnham, and city clerk Cheryl Eckerman.

Mayor Grove noted the location of the open meetings act, & stated one copy of all reproducible written material to be discussed at this meeting is available for examination or copying.

3. Pledge of Allegiance – Council member Lewis led The Pledge of Allegiance.

4. Proof of Publication was on the council desk.

5. Visitors and Correspondence –The Mayor invited anyone present who is not on the agenda to come forward, noting they will have three minutes to speak.

6. Agenda Approval – Council member Stanzel moved to approve the agenda. Lewis seconded. Stanzel, Lewis, TenEyck and Ueckert voted YES. NO; no one, motion carried.

7. Consent Agenda – Council member Lewis moved to approve the consent agenda. Ueckert seconded. Lewis, Ueckert, Stanzel and TenEyck voted YES. NO; no one, motion carried. Items on the consent agenda were to accept February 8 city council minutes; Treasurer's Report; February payroll \$26040.69, IRA \$971.27, Keno Receipts \$5764.88, PeopleService Report, Library Statistics, February Cemetery Board minutes, Resignation of Sharon Wilson from Cemetery Board, SDL's for American Legion Post 58; approve checks issued during the month and the following bills presented for payment: **Supplies/Services/Utilities/Capital Outlay Purchases/Projects:** All Flags 3907.50; Amazon 2052.93; Aspen Equip. 240.12; Black Hills Energy 2279.21; Cappel Auto 554.24; CNA Surety 40.00; Cox 1496.34; Datashield 45.00; Gazette 115.30; Do. Co. Env. 495.18; EMC Ins. 33.00; Eakes Office 992.83; Electronic Engineering 99.00; Evoqua Water Tech. 12874.24; Everett's 226.62; Jeffrey Farnham 2068.00; Fellsburg Holt 4000.00; Filament Services 3350.00; Fremont Utilities 29902.40; First Nebraska Bank 617.09; Host Coffee 122.48; J.D. Car Wash 93.50; J.D. Financial 49.42; Layne Christensen 10320.00; Lien Termite 92.00; Loves 2786.62; Lowes 167.26; M. Matzen 823.90; Menards 697.48; Midwest Alarm 1858.91; Midwest Fence 6500.00; NDEE 40.00; New Finish 2980.05; NE Notary Division 30.00; Olmsted & Perry 4487.73; OPPD 11701.51; Omaha Trans Video 22.00; Patton Equip. 1412.00; PeopleService 29243.00; Publication Printing 850.40; Waste Connections 85.67; Rob's Oil 1254.72; T. Schleisman CPA 10400.00; Trekk 1975.50; United Rental 151.87; UNL Marketplace 320.29; United Elec. Supply 4.63; Vrba Const. 3335.00 **Taxes:** Federal 17787.06; State 2870.68; Sales Tax 3819.49; **Bond Payments:** FNB/bond 5962.50; FNB/bond 5962.50; **Reimburse/Refund:** J. Deemer 460.20; R. Vandenboogaart 29.26; C. Cox, G. Lee Homes, C. Godden, Midwest Dwellings, Charles Thomas Homes 150.00 each, LIM Const. 300.00, Sierra Homes 1000.00; Malibu Homes 500.00; **Ins:** Aflac 886.74 Lincoln Financial 714.38; BCBS 9709.91; MWG 1229.34.

8. Pines Country Club – Request to adjust liquor sales on Sunday morning. –Greg Harr, 7614 N. 281st Ave., asked the council to review the code prohibiting the sale of liquor before noon on Sundays. Mayor Grove stated that after receiving this request it was discovered that a change made by resolution allowing the sale of alcoholic beverages being extended to 2 a.m. was not reflected in the code. Council member Stanzel directed staff to prepare an ordinance for the next meeting to reflect the 2 a.m. change and the change for Sunday sales from 6 a.m. to 2 a.m. Ueckert seconded. All in favor. Motion carried.

9. DC West Youth and American Legion Baseball/Softball Fundraiser – Joe Hansen, 609 Madison Street, asked permission to close East Front Street in front of the Legion Hall on April 2, 2022 4 p.m. to 10 p.m. for the Baseball/Softball Fundraiser. Council member Stanzel moved to approve the street closure request. Lewis seconded. All in favor. Motion carried.

10. Elkhorn Athletic Association Pre-Development Cost Agreement – Council member Ueckert, introduced, read and moved for passage of Resolution No. 2022-19 to authorize the Mayor to execute the pre-development cost agreement with EAA on behalf of the City. Stanzel seconded. Ueckert, Stanzel, Lewis and TenEyck voted YES. NO; no one, motion carried. A true, correct and complete copy of said resolution is on file at city hall.

11. Purchase Agreement with G & L Properties – Mayor Grove stated that this agreement is for a portion of the U-Fill-It property owned by G & L Properties. A portion of the bus barn which is on property owned by the city is on this property. With this purchase the entire bus barn will be on city owned property.

Council member Stanzel introduced, read and moved for passage of Resolution No. 2022-20 authorizing the Mayor to execute the purchase agreement on behalf of the City. Lewis seconded. Stanzel, Lewis, TenEyck and Ueckert voted YES. NO; no one, motion carried. A true, correct and complete copy of said resolution is on file at city hall.

12. Agreement with Xpress Bill Pay – Mayor Grove stated that Xpress Bill Pay will be used with the new software systems and will take the place of the current system being used for credit card payments.

Council member Lewis introduced, read and moved for passage of Resolution No. 2022-23 authorizing the Mayor to execute the agreement with Xpress Bill Pay on behalf of the City. Stanzel seconded. Lewis, Stanzel, TenEyck and Ueckert voted YES. NO; no one, motion carried. A true, correct and complete copy of said resolution is on file at city hall.

Mayor Grove stated that Agenda Item #13 would be moved to the end of the agenda.

14. CITY ENGINEER

14. A. Flatwater Improvements Phase 3 Rebid – Greg Perry stated that this project is close to completion and recommended approval of Pay Application No. 9 by developer to Vrba Construction in the amount of \$137,778.05.

14. A.1 - Council member TenEyck introduced, read and moved for passage of Resolution No. 2022-21 to approve payment by developer to Vrba Construction in the amount of \$137,778.05. Lewis seconded. TenEyck, Lewis, Stanzel and Ueckert voted YES. NO; no one, motion carried. A true, correct and complete copy of said resolution is on file at city hall.

14. B. Other/Miscellaneous

14. B.1- Water Treatment Plant Expansion – Jim Olmsted stated that they are continuing to work on the remaining documents needed for this project and the design phase.

14. B.2- Falcon Business Park Paving - Greg Perry stated this project is slated for an early spring start and a pre-construction meeting will be held next week.

14. B.3. – Country Aire Pumping Station – Greg Perry stated they are still waiting on equipment and parts for this project.

14. B.4 – West Street Pumping Station – Greg Perry stated that the control panel for this project will be shipping this week and recommended payment by developer to Bert Gurney & Associates in the amount of \$60,200.00 for equipment.

14. B.4 a - Council member Stanzel introduced, read and moved for passage of Resolution No. 2022-22 authorizing developer to disburse \$60,200.00 to Bert Gurney & Associates. TenEyck seconded. Stanzel, TenEyck, Lewis and Ueckert voted YES. NO; no one, motion carried. A true, correct and complete copy of said resolution is on file at city hall.

14. B.5 – EAA Development – Greg Perry stated that a pre-development meeting is scheduled for next week.

14. B.6 -Lift Station Equipment Replacement - Greg Perry stated he will be working with PeopleService on the maintenance and equipment replacement of several of the lift stations.

14. C – FHU Traffic Study – Greg Perry reviewed the results from the Traffic Study conducted by FHU at the intersection of 270th and Meigs Street. The findings did not warrant a traffic signal or roundabout. They did make some recommendations that public works could implement to re-mark the intersection.

15. City Attorney – Jeff Farnham reviewed ongoing issues relating to agreements, development, personnel and subdivisions.

16. Mayor's Report – The Mayor gave updates on police department, audit, dog park, security system, software implementation and NRD Trail/Reichmuth Road closing.

17. Upcoming Events – No Planning Commission meeting in March; Valley Days Planning Meeting April 15 and City Clean Up Day April 16.

13. IT Infrastructure Assessment – Joe Brown, 8801 S. 167th Street, Omaha, NE., stated that Five Nines had evaluated the IT infrastructure of the city's networks and computers including the police and library.

Council member Stanzel moved to go into executive session at 7:28 p.m. to review the findings relating to security and support issues of the infrastructure, networks and computers. TenEyck seconded the motion. All voted in favor. Motion carried.

Council member Stanzel moved to reconvene to regular session at 7:56 p.m. Lewis seconded. All voted in favor. Motion carried.

Council member Stanzel made a motion to move forward with Five Nines to further access and address the city's IT infrastructure system and implement recommended changes and procedures. Lewis seconded the motion. All voted in favor. Motion carried.

The meeting adjourned at 7:59 p.m.



Mayor Cindy Grove



City Clerk Cheryl K. Eckerman

City of Valley Pooled Cash Governmental Funds							
		Cash Balance 2/28/2022	Net Income or (Loss)	Fund 3 Withholdings	Interfund Transfers	Cash Balance 3/31/2022	Investments 3/31/2022
General - Fund 1	<u>Dept</u>						
		\$2,017,909.82	\$120,623.32			\$2,138,533.14	\$14,413.09
Pines Assessments		\$319,366.77	\$7,053.56			\$326,420.33	
Bond - Fund 2	021	\$1,008,407.27	\$21,284.78			\$1,029,692.05	
C D A	001	\$46,919.35	\$13.89			\$46,933.24	
		\$3,392,603.21	\$148,975.55			\$3,541,578.76	14,413.09
City of Valley Pooled Cash Proprietary Funds							
		Cash Balance 2/28/2022	Net Income or (Loss)	Fund 3 Withholdings	Interfund Transfers	Cash Balance 3/31/2022	Investments 3/31/2022
Funds 6 & 7							
Water - Fund 6	024	\$529,923.23	\$19,253.88			\$549,177.11	\$9,455.52
Cap. Facility Chg.	024	\$918,563.58	\$9,692.66			\$928,256.24	
Sewer - Fund 7	026	\$1,244,146.79	\$19,253.88			\$1,263,400.67	
Cap. Facility Chg.	026	\$667,100.11	\$11,476.59			\$678,576.70	
		\$3,359,733.71	\$59,677.01			\$3,419,410.72	\$9,455.52
	<u>Dept</u>	Cash Balance 2/28/2022	Net Income or (Loss)	Fund 3 Withholdings	Interfund Transfers	Cash Balance 3/31/2022	Investments 3/31/2022
Fund 4							
Nursing Home	050	\$584,644.54	\$10,358.69			\$595,003.23	
Fund 8							
Keno	056	\$101,618.61	\$5,796.27			\$107,414.88	
Fund 10							
Sales Tax	058	\$1,757,530.05	\$138,799.08			\$1,896,329.13	
ARPA		\$242,531.47	(\$4,926.88)			\$237,604.59	
		\$2,686,324.67	\$150,027.16			\$2,836,351.83	
Total All Funds		\$9,438,661.59	\$358,679.72			\$9,797,341.31	\$23,868.61

MANUAL CHECKS FOR March 2022		
	<u>CHECK #</u>	<u>AMOUNT</u>
AccuFund, Inc.	52710	3,118.72
OPPD	52711	232.21
Verizon	52712	383.10
Menard's Inc.	52713	6,584.25
Mallard Landing	52714	51,229.35
Bluewater Development	52715	94,783.96
NE Child Support Center	52716	106.15
NE Dept. of Revenue	52717	100.00
Menard's Fremont	52718	2,551.56
Postmaster	52719	580.73
NE Child Support Center	52644	106.15
TOTAL		159,776.18

Claims 4/13

<u>Due Date</u>	<u>Invoice</u>	<u>Lookup</u>	<u>Vendor</u>	<u>Description</u>	<u>Invoice Date</u>	<u>Balance</u>	<u>Amount</u>
4/14/2022	20220671	131	ACCUFUND	Upgrading to 6 Named Users	3/15/2022	242.90	242.90
4/3/2022	1683779	11115	Ace Hardware #339C	Paintbrush	3/4/2022	19.98	19.98
4/11/2022	633796	11130	AFLAC	March Premium	3/12/2022	886.74	886.74
4/9/2022	32022	132	Amazon	Towels/Library Supplies	3/10/2022	811.04	811.04
4/9/2022	1WNP-Q3GD-GG94	127	Amazon Business	Wall Clock	3/10/2022	78.10	78.10
4/27/2022	1Y67-9QDJ-PG1Q	127	Amazon Business	Laser Level	3/28/2022	765.39	765.39
5/4/2022	1FHK-HM16-3KM1	127	Amazon Business	Paper Towels/Trash Bags/Recycling Bin	4/4/2022	290.60	290.60
5/5/2022	1XP6-63JC-74R7	127	Amazon Business	Dog Park Trash Liner/Liter Pick up Bags	4/5/2022	195.80	195.80
4/15/2022	13MH-DVJ7-CT6D	127	Amazon Business	Police Body Camera	3/16/2022	633.04	633.04
5/8/2022	13578	11135	Andersen Plumbing Inc	Site Prep and Mobilization	4/8/2022	4,166.66	4,166.66
4/9/2022	36184	159	ARP'S	N Meigs & East Mayne- sidewalk replacement	3/10/2022	362.38	362.38
5/13/2022	Refund	30045	Art of a Craftman	Building Permit Deposit Refund- 28437 Laurel Circle	5/4/2021	1,000.00	1,000.00
4/1/2022	2036571540	212	Baker & Taylor	Books	3/2/2022	134.13	134.13
4/7/2022	2036583657	212	Baker & Taylor	Books	3/8/2022	276.97	276.97
4/17/2022	2036613362	212	Baker & Taylor	Books	3/18/2022	168.83	168.83
4/21/2022	2036620120	212	Baker & Taylor	Books	3/22/2022	247.79	247.79
4/28/2022	2036639130	212	Baker & Taylor	Books	3/29/2022	194.04	194.04
5/8/2022		107135	Bell Bank Equipment Finance	Contract #107135-001	4/8/2022	22,392.65	22,392.65
1/31/2022	775241	228	Big Tints & Accessories	Tinted Windows at Water Treatment Plant	1/1/2022	787.88	787.88
4/24/2022		11145	Black Hills Energy	March Natural Gas	3/25/2022	1,787.44	1,787.44
4/24/2022	716	214	Blizzard Boys, LLC	Snow plow for 2022 F550	3/25/2022	8,625.60	8,625.60
4/10/2022	16728802	242	Bomgaars	Safety Clips/Pins	3/10/2022	16.64	16.64
4/14/2022	16729880	242	Bomgaars	Pins	3/15/2022	9.58	9.58
4/30/2022	12724	202	BW Consulting Inc	Accufund Software Implementation	3/31/2022	13,425.01	13,425.01
4/3/2022	151095	308	Cappel Auto Supply- Valley	Deluxe 4 Door Cart	3/4/2022	399.99	399.99
4/28/2022	151531	308	Cappel Auto Supply- Valley	Toggle 20A Brass	3/29/2022	7.99	7.99
5/1/2022	IVC0104345	633	Coast to Coast Solutions	Valley PD Suckers	4/1/2022	335.07	335.07
4/20/2022	20794	999	Collaborative Summer Library Program	Summer Reading Incentives & Supplies	3/21/2022	312.99	312.99
4/7/2022	273656	344	Continental Fire Sprinkler Company	Annual Fire Inspection	3/8/2022	170.00	170.00
4/2/2022	Q042123	347	Core & Main	Wired MXU's & Meters	3/3/2022	1,165.70	1,165.70
4/9/2022	Q455603	347	Core & Main	Wired MXU's & Meters	3/10/2022	1,165.70	1,165.70
4/10/2022	Q489530	347	Core & Main	Wired MXU's & Meters	3/11/2022	1,406.51	1,406.51
5/1/2022		9852	Cox Business	4/1-4/30	4/1/2022	1,489.00	1,489.00
4/9/2022	94891	11175	Datashield Corporation	Routine Shred	3/10/2022	45.00	45.00
5/11/2022	Refund	30047	David Holmes	Building Permit Deposit- 25910 State St.	4/11/2022	1,000.00	1,000.00
4/13/2022		117003	Dick's Valley Market	Bleach Wipes/Paper Towels	3/30/2022	9.79	9.79
4/13/2022		117003	Dick's Valley Market	Jet Puff	3/14/2022	19.76	19.76
4/27/2022		117003	Dick's Valley Market	Towel	3/28/2022	4.49	4.49
3/31/2022	32022	464	Douglas County Environmental	March Electrical Permit Fees	3/1/2022	2,148.44	2,148.44
4/9/2022	46968	457	Douglas County Treasurer	Ginger Cove Bridge Inspection	3/9/2022	1,520.87	1,520.87
5/7/2022	8448248-0	11190	Eakes Office Solutions	Office Supplies	4/7/2022	52.28	52.28
4/6/2022	8448453-0	11190	Eakes Office Solutions	Office Supplies	3/7/2022	6.99	6.99
4/10/2022	8452181-0	11190	Eakes Office Solutions	Office Supplies	3/11/2022	5.37	5.37
4/15/2022		1022	Eckerman, Cheryl	Clerks Academy Reimbursement	3/16/2022	189.06	189.06
5/11/2022		500	EMC Insurance	Yearly Insurance Premiums	4/11/2022	102,882.00	102,882.00
4/28/2022	38522	11205	Everett's Auto Repair	2010 F250	3/29/2022	838.19	838.19
4/21/2022	NEFRE189606	609	Fastenal	Assorted Bolts, Washers & Nuts	3/22/2022	144.47	144.47
5/7/2022	1165	789	Fastest Labs of Omaha	DNA Comparison	4/7/2022	1,650.00	1,650.00
5/13/2022		618	First Nebraska Bank	NH Bond Payment #93	4/13/2022	5,962.50	5,962.50
4/30/2022	32022	618	First Nebraska Bank	March Statement	3/31/2022	2,249.79	2,249.79
5/13/2022		617	First State Bank Nebraska	NH Bond Payment #93	4/13/2022	5,962.50	5,962.50

4/20/2022	32022	635	Fremont Department of Utilities	2/28-3/28 Service	3/21/2022	24,372.30	24,372.30
5/13/2022	Refund	11277	G Lee Homes	Water Deposit Refund- 28413 Laurel Circle Lot 60 Flatwater	1/22/2021	150.00	150.00
5/13/2022	Refund	2015005	Godwin, John	Water Deposit Refund- 105 E Front St.	3/16/2021	150.00	150.00
5/13/2022	Refund	11275	Goodwin, Cameron & Kanisha	Water Deposit Refund- 314 W Waring St.	3/22/2021	150.00	150.00
4/1/2022	143494	745	Grafix Shoppe	K-9 Unit Lettering	3/2/2022	55.00	55.00
4/14/2022	Refund	11276	Hanson, Clayton & Courtney	Water Deposit Refund- 500 S Lakewood	2/19/2021	150.00	150.00
4/15/2022	4006488	11230	Host Coffee Service	Coffee Supplies	3/16/2022	95.80	95.80
4/30/2022	4016341	11230	Host Coffee Service	Water Cooler	3/31/2022	28.89	28.89
4/30/2022	32022	1002	J. D.'s Car Wash & Detailing	March	3/31/2022	91.80	91.80
4/7/2022	100031339	1005	Jensen Tire & Auto	Tires/Alignment Police	3/8/2022	725.69	725.69
4/30/2022	100031740	1005	Jensen Tire & Auto	Tires Police	3/31/2022	153.01	153.01
5/13/2022	Refund	112	Levenhagen, Tim	Water Deposit Refund- 212 W Meigs St	1/17/2020	150.00	150.00
4/10/2022	32022	1222	Lincoln National Life Insurance Company	April Premiums	3/11/2022	667.10	667.10
4/29/2022	8198401	68528	Lincoln Winwater Works Co	Curb Box/Meter Coupling/Staking Flags	3/30/2022	1,492.12	1,492.12
4/27/2022	6004087390	1234	Love's Travel Stops & Country Store	Gas	3/28/2022	501.81	501.81
4/27/2022	6004092159	1234	Love's Travel Stops & Country Store	Gas	3/28/2022	102.52	102.52
4/13/2022	6004037810	1234	Love's Travel Stops & Country Store	Gas	3/14/2022	257.40	257.40
4/13/2022	6004033301	1234	Love's Travel Stops & Country Store	Gas	3/14/2022	559.33	559.33
4/20/2022	6004063625	1234	Love's Travel Stops & Country Store	Gas	3/21/2022	182.54	182.54
4/20/2022	6004059861	1234	Love's Travel Stops & Country Store	Gas	3/21/2022	579.48	579.48
5/4/2022	6004117135	1234	Love's Travel Stops & Country Store	Gas	4/4/2022	553.66	553.66
5/4/2022	6004122354	1234	Love's Travel Stops & Country Store	Gas	4/4/2022	130.81	130.81
4/13/2022	901104-IOHASC	1240	Lowe's	Shop Supplies	3/18/2022	172.24	172.24
4/29/2022	74	713	M. S. Wiekhorst Arbor Company LLC	7517 N 286th St. Tree Work	3/30/2022	4,625.00	4,625.00
5/13/2022	Refund	2071505	McConnaughay, Tom & Morgan	Water Deposit Refund- 403 S East St.	3/25/2021	150.00	150.00
5/1/2022	42022	669	Medicine Man Pharmacy Valley	Gloves for Police Department	4/1/2022	32.73	32.73
4/15/2022	43862	1363	Menards- Elkhorn	Painting Supplies	3/16/2022	34.80	34.80
4/2/2022	43041	1363	Menards- Elkhorn	Paint Supplies/Nut/Bolt	3/3/2022	24.24	24.24
4/14/2022	43818	1363	Menards- Elkhorn	Striping Paint Yellow	3/15/2022	25.92	25.92
5/4/2022	45049	1363	Menards- Elkhorn	Lag Screw	4/4/2022	13.44	13.44
5/4/2022	45060	1363	Menards- Elkhorn	Iowa Hydrant	4/4/2022	144.98	144.98
4/9/2022	24621	1317	Menards- Fremont	Paint Supplies	3/10/2022	185.92	185.92
4/29/2022	25526	1317	Menards- Fremont	Drawer Pulls/Sink Hook Ups	3/30/2022	370.83	370.83
4/24/2022	25286	1317	Menards- Fremont	Shop Supplies	3/25/2022	21.33	21.33
4/1/2022	24223	1317	Menards- Fremont	Greentreated Wood	3/2/2022	356.66	356.66
4/8/2022	24557	1317	Menards- Fremont	Pail	3/9/2022	34.35	34.35
3/31/2022	3/2022	1313	Michael Matzen	March Cleaning	3/1/2022	823.90	823.90
4/30/2022	205048	668	Michael Todd & Company Inc	10' Sign Posts & Delivery	3/31/2022	397.75	397.75
4/30/2022	205047	668	Michael Todd & Company Inc	Signs/Posts	3/31/2022	917.25	917.25
4/22/2022	306015	999	Midwest Alarm Fire & Security Systems	Alarm Monitoring/Door Access & Phone App	4/4/2022	1,710.00	1,710.00
3/25/2022	302392	999	Midwest Alarm Fire & Security Systems	Security System parts, testing, programming, network, training, Phone AP, etc.	2/23/2022	4,543.69	4,543.69
4/13/2022	305299	999	Midwest Alarm Fire & Security Systems	Security Installation - City Office, Police, Library	3/14/2022	11,896.26	11,896.26
4/16/2022	305367	999	Midwest Alarm Fire & Security Systems	Proximity Key Ring Tag, 10 Pack	3/17/2022	103.54	103.54
4/13/2022	305298	999	Midwest Alarm Fire & Security Systems	Replace XR 150 City Office, Replace XT50 Police Storage Building, Relocate XT50 to Library from Police Storage	3/14/2022	5,845.17	5,845.17
5/13/2022	2201	1457	Nebraska Sweeping Inc	Spring Sweep/Residential ST's/Wife ST's	4/2/2022	3,317.47	3,317.47
5/1/2022		1480	NMVCA	2022 Membership Dues/Summer Workshop	4/1/2022	95.00	95.00
5/8/2022	02-22-03	8552	Olmstead & Perry Consulting Engineers Inc.	General Discussions, Meetings & Consultations	4/8/2022	12,176.70	12,176.70
5/8/2022	12-2020-069	8552	Olmstead & Perry Consulting Engineers Inc.	Water Treatment Plant Expansion	4/8/2022	7,658.50	7,658.50
4/7/2022	67746	1518	Omaha Trans Video	2 DVD Copies/Label Copies	3/8/2022	22.00	22.00
3/27/2022	67700	1518	Omaha Trans Video	2 DVD Copies	2/25/2022	19.00	19.00
4/29/2022		11265	OPPD	2-8 to 3-9 Bill	3/30/2022	10,816.97	10,816.97
5/11/2022	Refund	30046	Paradise Homes	Building Permit Deposit Refund- 28475 Laurel Circle Lot 48 Flatwater	4/11/2022	750.00	750.00
4/14/2022	39793	11270	PeopleService Inc	W/WW April Service	3/15/2022	29,243.00	29,243.00
5/13/2022	Refund	11274	Pleasant, Martha	Water Deposit Refund- 123 W Alexander St.	3/3/2021	150.00	150.00
4/24/2022	13340	667	ProTech	Dump Body/Tarp/Plate-Hitch	3/25/2022	8,934.00	8,934.00

4/17/2022	297	1814	Ramada	CK Training Stay	3/18/2022	185.90	185.90
5/13/2022	Refund	11279	Revels, Brady & Katie	Water Deposit Refund- 7608 N 281st Ave	3/15/2020	150.00	150.00
5/13/2022	Refund	11278	Sierra Homes	Water Deposit Refund- 6002 N 285th	3/10/2021	150.00	150.00
4/21/2022	0006315-IN	1953	Sunset Law Enforcement	Ammunition	3/22/2022	3,628.40	3,628.40
4/2/2022	S1734927.001	2117	United Electric Supply Co	Traffic Signal	3/3/2022	25.66	25.66
4/17/2022	S1739123.001	2117	United Electric Supply Co	32w Triple BIA bulbs	3/18/2022	35.93	35.93
4/21/2022	S1739584.001	2117	United Electric Supply Co	Ballast	3/22/2022	45.72	45.72
4/19/2022		2110	United States Postal Service Postmaster	Bulk Permit	3/20/2022	265.00	265.00
5/4/2022	9903370418	111	Verizon Wireless	3-5 thru 4-4 Bill	4/4/2022	382.99	382.99
4/15/2022	P1152502	2235	Vermeer High Plains	Jack & Switch	3/16/2022	427.90	427.90
2/21/2022	1037	2240	VRBA Construction	NW Street & Railroad Tracks- Mini Ex (labor/equip)	1/22/2022	1,440.00	1,440.00
4/13/2022	1051	2240	VRBA Construction	Concrete	3/31/2022	1,500.00	1,500.00
5/1/2022	6239346T054	1653	Waste Connections of Nebraska Inc	April Trash Service	4/1/2022	386.34	386.34
3/23/2022	1985	2342	Window Pro	Feb Window Cleaning	2/21/2022	20.00	20.00
5/13/2022	Refund	11273	Zarroug, Abdalla	Water Deposit Refund- 26513 Taylor St.	3/9/2021	150.00	150.00
						334,369.38	334,369.38

March 2022	Wage	IRA	Wage	IRA	Wage	IRA	Council	Wage
EMPLOYEE	03/11/22		03/25/22				Stanzel	\$750.00
Jim Kuester	\$3,114.05	\$93.42	\$3,114.05	\$93.42			Ueckert	\$750.00
Stacy Spinar	\$1,779.39	\$35.58	\$1,782.10	\$35.64			Grove	\$1,125.00
Cheryl Eckerman	\$2,497.31	\$74.92	\$2,528.90	75.87			Lewis	\$750.00
Beth Breisch	\$871.38	\$26.14	\$787.95	\$23.64			Teneyck	\$750.00
Ruen	\$2,273.75	\$68.21	\$2,310.88	\$69.33				
Tim Sheets	\$2,315.26	\$69.46	\$2,239.91	\$67.20				
Patrick Ratigan	\$1,527.58	\$45.83	\$1,527.58	\$45.83				
Shane Kreager	\$1,576.28	\$47.29	\$1,790.78	\$53.72				
Doug Eggen	\$2,510.78	\$75.32	\$2,510.78	\$75.32				
James Musson	\$1,857.18	\$55.72	\$1,845.77	\$55.37				
Wesley Harrah	\$480.89		\$140.87					
Kristin Jones	\$131.15		\$971.50					
Clark, Caleb	\$344.88	\$10.35						
Alexandra Drake			\$194.30					
Mahlon								
Adam Bates			\$140.87					
Deemer James	\$2,840.74	\$85.22	\$5,297.29	\$158.92				
Kurt Muhle	\$2,887.53	\$86.63	\$2,312.33	\$69.37				
Patrick McDowell	\$199.94							
Brett Smith	\$2,692.59	\$80.78	\$2,692.59	\$80.78				
Greg Scheer	\$278.71							
Andre Ramaeker	\$41.16							
Roy Napora								
Ken Dohrmann	\$320.60		\$291.45					
Tim, Hrbek			\$374.03					
David Dunham	\$2,612.52	\$78.38	\$2,019.53	\$60.59				
Robert Coffey	\$2,635.12	\$79.05	\$2,196.79	\$65.90				
Elizabeth Brown	\$686.25		\$682.50					
Wendy Anderson	\$98.59							
Samantha Stewart	\$1,255.01	\$37.65	\$1,270.63	\$38.12				
Sarah Emmi	\$480.00		\$480.00					
	\$38,308.64	\$1,049.95	\$39,503.38	\$1,069.02	\$0.00	\$0.00		\$4,125.00
Total Wages			\$77,812.02					
Total IRAs			\$2,118.97					
Council			\$4,125.00					
GRAND TOTAL			\$84,055.99					

Commission Summary

Date 3/3/2022



Paid to

City of Valley

2/16-2/28/2022

For Period	Amount
Description	2,972.78

Amount \$2,972.78

Commission Summary

Date 3/18/2022



Paid to

City of Valley

3/1-3/15/2022

For Period	Amount
Description	2,901.05

Amount \$2,901.05

March Keno Receipts
\$5,873.83



Date: April 11, 2022
To: City of Valley
From: Bob McLaughlin, Lead Operator
O & M Report: March 2022

Water Operation & Maintenance

- There was 9,505,000 gallons of water pumped this month.
- Water meters were read on the 28th of this month.
- There were 304 locates performed this month. (This is both water and wastewater.)
- While performing drawdowns on the north well I discovered the V.F.D. had tripped out. After resetting, the well ran until the V.F.D. overheated. I called Layne to investigate the problem. They found that the cooling fans weren't working. Currently I have a fan keeping the V.F.D. cool while they are looking into repairing it.
- After exercising the leaking main valve at West and Meigs St. the valve has stopped leaking.
- On The 29th the water main on Pine Street was shut down so Boyd Jones could cap an old water service. Flushing was done after the repair.

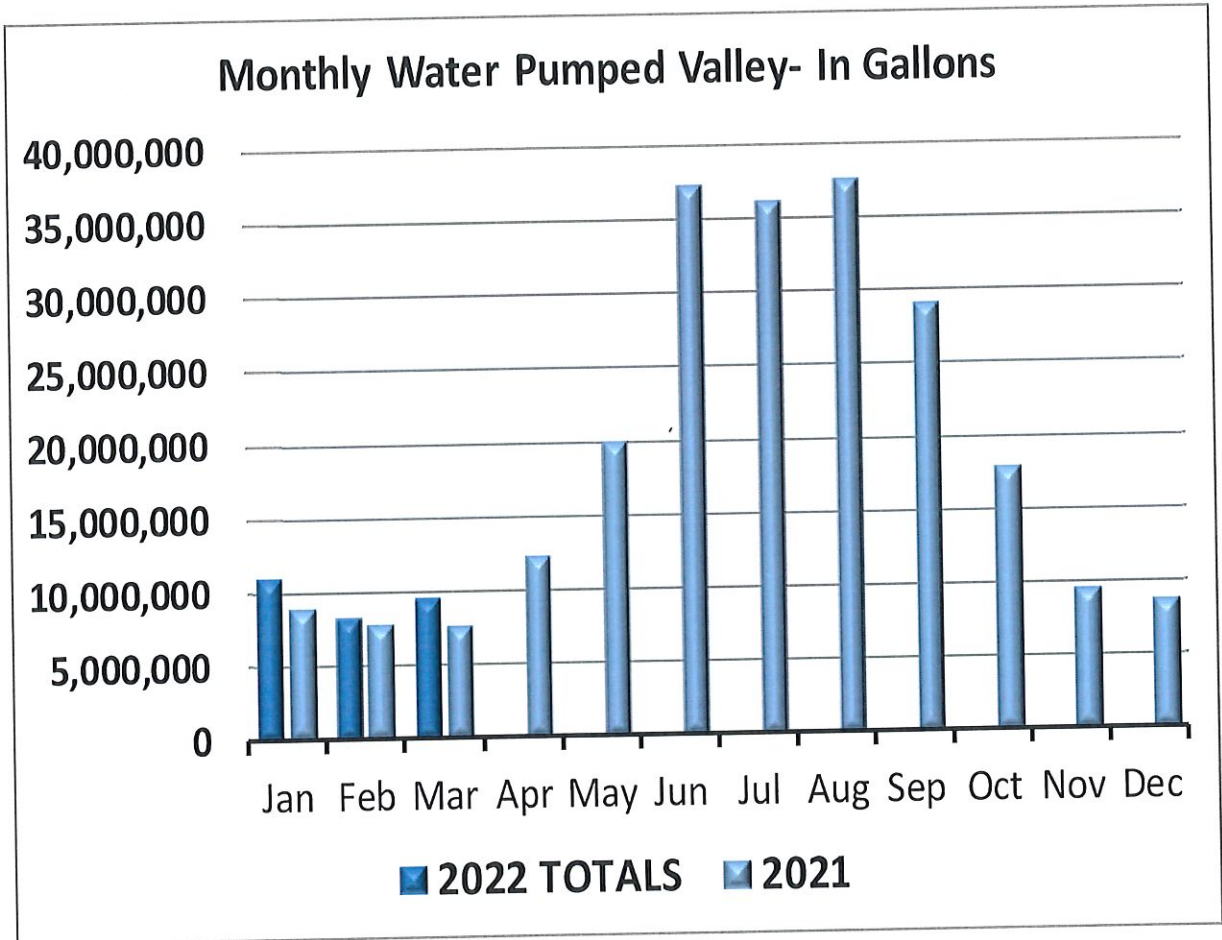
Wastewater Operation & Maintenance

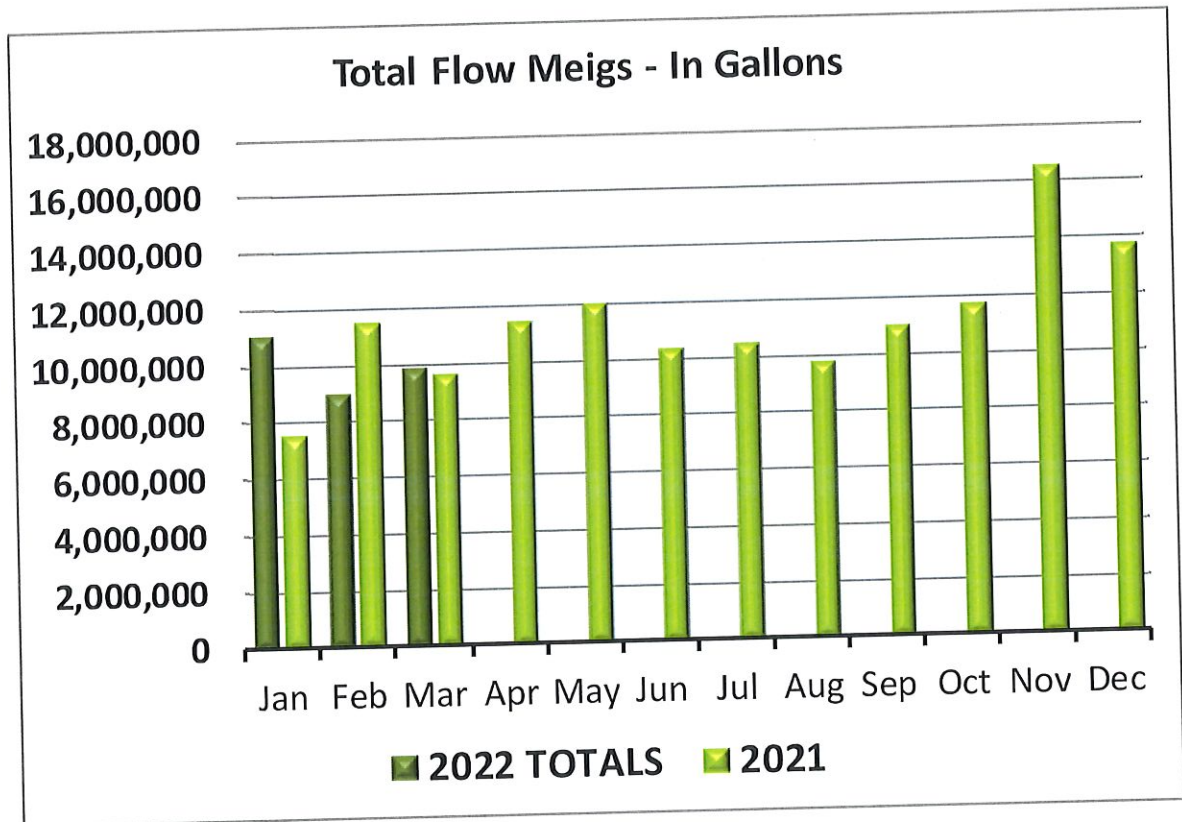
- During monthly work orders this month we performed inspections of all sewer lift stations. We found that three will need to be cleaned out soon because of grease buildup.
- We are continuing to monitor the flows between Byersville station and Fremont.
- We are still waiting for the control panel for Flat Water Phase 3. The development cannot use the sewer until this panel is installed. So, all permits are on hold for this area.
- We have all the components for Country Air Development except the control panel. We have been told it could be another month or two. Jetco told us they were using parts of this control panel to get Flat Water Phase 3 done first. As of right now we have a working lift station at Country Air Development.

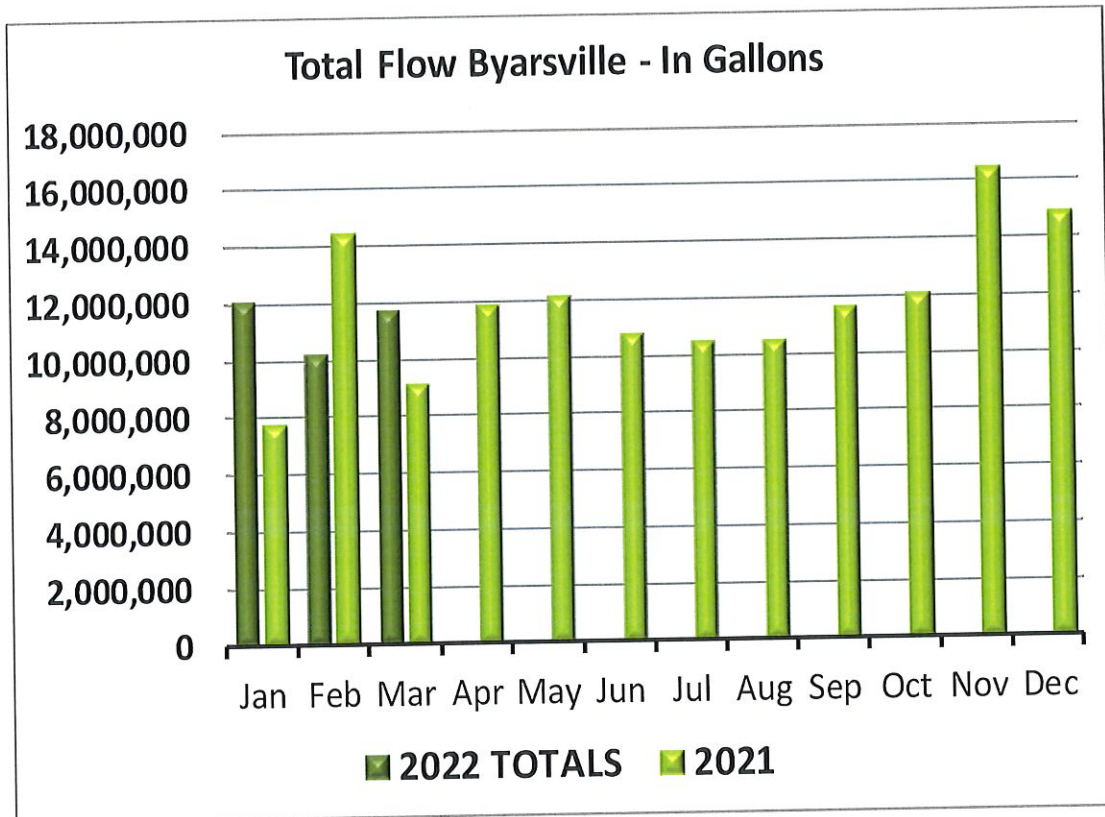
PeopleService INC.

Water & Wastewater Professionals

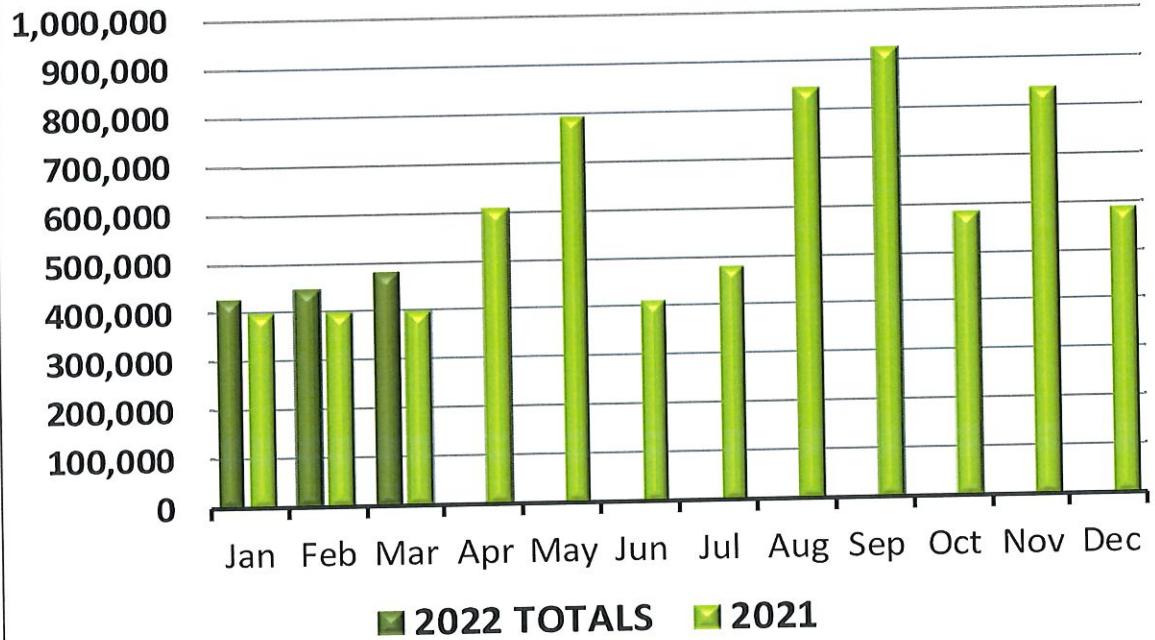
		March-22	February-22	March-21
Water				
Total Monthly Pumped Valley	gallons	9,505,000	8,206,000	7,714,000
Daily Average Pumped Valley	gallons	306,612	293,071	248,838
Average Fluoride Residual	mg/L	1.42	0.73	1.20
Fluoride used	lbs	183.80	93.60	132.80
Average Chlorine Residual	mg/L	0.58	0.32	0.14
Chlorine used	lbs	111.10	77.50	31.80
Potassium Permanganate	lbs	342.00	171.00	141.00
Wastewater				
Effluent Flow				
Total Flow Meigs Street	gallons	9,876,000	8,973,000	9,625,000
Avg Daily Flow Meigs Street	gallons	318,580	320,000	310,483
Total Flow Byarsville	gallons	11,751,000	10,239,000	9,134,000
Avg Daily Flow Byarsville	gallons	379,064	365,678	294,645
Total Flow Valmont	gallons	482,000	448,000	428,780
Avg Daily Flow Valmont	gallons	15,500	16,000	13,831
Lift Station Data				
Gardiner St Rainwater Total Runtime	hours	0.00	0.00	0.00
Valhaven (#1) Total Runtime	hours	0.00	0.00	10.40
Valhaven (#2) Total Runtime	hours	6.30	6.80	10.30
Country Aire (#1) Total Runtime	hours	33.90	24.40	32.00
Legacy Valley Total Runtime	hours	73.20	57.20	31.20
Legacy Valley Avg Daily Runtime	hours	2.36	1.84	1.00
Valley Shores (1) Pump 1 Total Run	hours	14.40	14.00	27.10
Valley Shores (1) Pump 2 Total Run	hours	14.00	13.50	24.00
Valley Shores (2) Pump 1 Total Run	hours	49.10	52.10	113.80
Valley Shores (2) Pump 2 Total Run	hours	0.10	0.00	119.20
Valley Shores (3) Pump 1 Total Run	hours	8.60	7.50	6.30
Valley Shores (3) Pump 2 Total Run	hours	8.70	7.50	6.10
Regional Pump #1 Total Runtime	hours	0.00	0.00	15.80
Regional Pump #2 Total Runtime	hours	0.00	0.00	15.50
Mallard (1) Pump 1 Total Runtime	hours	13.30	12.20	12.30
Mallard (1) Pump 2 Total Runtime	hours	13.20	12.00	16.00
Mallard (2) Pump 1 Total Runtime	hours	4.30	3.70	7.30
Mallard (2) Pump 2 Total Runtime	hours	4.60	3.90	6.10
Mallard (3) Pump 1 Total Runtime	hours	31.20	22.90	71.30
Mallard (3) Pump 2 Total Runtime	hours	16.10	5.30	0.00
Mallard (4) Pump 1 Total Runtime	hours	27.90	23.20	26.20
Mallard (4) Pump 2 Total Runtime	hours	32.40	28.00	25.80
Bluewater (1) Pump 1 Total Runtime	hours	9.00	9.80	9.70
Bluewater (1) Pump 2 Total Runtime	hours	15.40	18.80	8.40
Bluewater (2) Pump 1 Total Runtime	hours	16.40	13.50	9.90
Bluewater (2) Pump 2 Total Runtime	hours	29.00	13.30	5.70
Bluewater (3) Pump 1 Total Runtime	hours	26.70	23.70	77.40
Bluewater (3) Pump 2 Total Runtime	hours	16.10	17.20	236.40
Bluewater (4) Pump 1 Total Runtime	hours	7.40	9.70	3.90
Bluewater (4) Pump 2 Total Runtime	hours	9.20	10.70	6.80
Bluewater (5) Pump 1 Total Runtime	hours	0.00	0.00	39.40
Bluewater (5) Pump 2 Total Runtime	hours	41.30	32.70	13.10
Bluewater (6) Pump 1 Total Runtime	hours	10.30	10.50	9.10
Bluewater (6) Pump 2 Total Runtime	hours	120.60	79.60	9.70
Bluewater (7) Pump 1 Total Runtime	hours	4.90	4.90	0.00
Bluewater (7) Pump 2 Total Runtime	hours	4.80	4.70	27.70
Ginger Cove (1) Pump 1 Total Runtime	hours	0.00	0.00	37.41
Ginger Cove (1) Pump 2 Total Runtime	hours	76.00	63.70	32.61
Ginger Cove (2) Pump 1 Total Runtime	hours	0.00	0.00	27.90
Ginger Cove (2) Pump 2 Total Runtime	hours	16.00	14.70	68.10
Ginger Cove (3) Pump 1 Total Runtime	hours	56.10	62.40	51.40
Ginger Cove (3) Pump 2 Total Runtime	hours	0.00	0.00	29.80
Ginger Woods (1) Pump 1 Total Runtime	hours	4.10	3.50	2.50
Ginger Woods (1) Pump 2 Total Runtime	hours	3.90	3.50	2.50
Ginger Woods (2) Pump 1 Total Runtime	hours	20.00	17.80	11.19
Ginger Woods (2) Pump 2 Total Runtime	hours	0.00	0.00	11.19
Ginger Woods (3) Pump 1 Total Runtime	hours	46.40	38.50	48.00
Ginger Woods (3) Pump 2 Total Runtime	hours	44.20	36.20	48.00
Rainwater Pump 1 Total Runtime	hours	0.00	0.00	0.00
Rainwater Pump 2 Total Runtime	hours	0.00	0.00	0.00







Total Flow Valmont - In Gallons



Contract True-Ups - Current Contract Year				
Item	Budgeted Amount	Amount Spent	% of Budget	% of Time
Maintenance Budget	\$27,008.00	\$3,327.00	12%	50%
Total	\$27,008.00	\$3,327.00	12%	100%

MARCH WORK ORDERS COMPLETED

Date completed	Equipment	Location	Task
3/16/2022	BYERSVILLE LS EMERGENCY GENERATOR	5029 Valley, NE	LS Monthly PM
3/16/2022	BYERSVILLE LS EMERGENCY GENERATOR	5029 Valley, NE	Schedule Appointment
3/16/2022	COUNTRY AIRE LIFTSTATION	5029 Valley, NE	LS Monthly PM
3/16/2022	DAIRY QUEEN LIFTSTATION	5029 Valley, NE	LS Monthly PM
3/16/2022	MALLARD LANDING LIFT STATION 1	5029 Valley, NE	LS Monthly PM
3/16/2022	MALLARD LANDING LIFT STATION 2	5029 Valley, NE	LS Monthly PM
3/16/2022	MALLARD LANDING LIFT STATION 3	5029 Valley, NE	LS Monthly PM
3/16/2022	MALLARD LANDING LIFT STATION 4	5029 Valley, NE	LS Monthly PM
3/16/2022	MEIGS LS EMERGENCY GENERATOR	5029 Valley, NE	LS Monthly PM
3/16/2022	MEIGS LS EMERGENCY GENERATOR	5029 Valley, NE	Schedule Appointment
3/16/2022	REGIOINAL LS EMERGENCY GENERATOR	5029 Valley, NE	LS Monthly PM
3/16/2022	REGIOINAL LS EMERGENCY GENERATOR	5029 Valley, NE	Schedule Appointment
3/16/2022	VALHAVEN LIFTSTATION	5029 Valley, NE	LS Monthly PM
3/14/2022	BLUEWATER LIFTSTATION 1	5029 Valley, NE	LS Monthly PM
3/14/2022	BLUEWATER LIFTSTATION 2	5029 Valley, NE	LS Monthly PM
3/14/2022	BLUEWATER LIFTSTATION 3	5029 Valley, NE	LS Monthly PM
3/14/2022	BLUEWATER LIFTSTATION 4	5029 Valley, NE	LS Monthly PM
3/14/2022	BLUEWATER LIFTSTATION 5	5029 Valley, NE	LS Monthly PM
3/14/2022	BLUEWATER LIFTSTATION 6	5029 Valley, NE	LS Monthly PM
3/14/2022	BLUEWATER LIFTSTATION 7	5029 Valley, NE	LS Monthly PM
3/14/2022	GINGER COVE LIFT STATION #1	5029 Valley, NE	LS Monthly PM
3/14/2022	GINGER COVE LIFT STATION #2	5029 Valley, NE	LS Monthly PM
3/9/2022	GINGER COVE LIFT STATION #3	5029 Valley, NE	LS Monthly PM
3/9/2022	GINGER WOODS LIFT STATION #1	5029 Valley, NE	LS Monthly PM
3/9/2022	GINGER WOODS LIFT STATION #2	5029 Valley, NE	LS Monthly PM
3/8/2022	GINGER WOODS LIFT STATION #3	5029 Valley, NE	LS Monthly PM
3/8/2022	LIFT STATION #1-VALLEY,NE SYST	5029 Valley, NE	LS Monthly PM
3/8/2022	VALLEY SHORES LIFT STATION 1	5029 Valley, NE	LS Monthly PM
3/8/2022	VALLEY SHORES LIFT STATION 2	5029 Valley, NE	LS Monthly PM
3/8/2022	VALLEY SHORES LIFT STATION 3	5029 Valley, NE	LS Monthly PM
3/8/2022	VALMONT LIFT STATION	5029 Valley, NE	LS Monthly PM
3/7/2022	BLOWER #2	6029 Valley, NE	Service Equipment

PeopleService INC.
Water & Wastewater Professionals

3/7/2022	AIR COMPRESSOR	6029 Valley, NE	Inspection
3/7/2022	PORTABLE GAS MONITOR	6029 Valley, NE	Calibrate Equipment
3/7/2022	FIRE EXTINGUISHERS	6029 Valley, NE	Inspection

City of Valley
Tree Board Minutes
April 4, 2022
6:30 P.M.

Present: Mark Henderson, Troy Hardman, Sue Johnson, Judy Argintean, Mike Wiekhorst, Doug Eggen

Absent: None

The meeting was brought to order at 6:32 pm. Roll call was taken and is listed above.

Old Business:

Mike brought up again, the importance for the City to compile and maintain a tree inventory of trees within the city limits. The list would be helpful for identifying disease susceptible species as well as liability due to disease and storm damage. This would be a tree board function.

We discussed the Tree City USA designation that was regained this year. Doug showed the members the Tree City USA and population signs that will be going up around the city. The members were excited about the recognition.

The board discussed the Celebrate trees grant that was received in the amount of \$2,500. The plan was discussed with the planting of 10 new trees just east of the dog park fence. Trees need to be planted by the first of June so receipts can be submitted to the NRD for reimbursement. A new product, a tree diaper, was suggested for use with new plantings by the tree board. The product is supposed to absorb and hold water until it's needed by the tree. It's used like a Christmas tree skirt and is covered with mulch. The cost is around \$45 each and if we bought 5 the manufacturer would donate 5 to the tree board. Members seemed in agreement that we should give these a try. The plan for getting the trees purchased and planted will need to be handled via email since the tree board doesn't meet again until June 6th, 2022. Mike will call nurseries in the areas to obtain the species of trees that were proposed.

New Business:

Arbor Day was the main item of discussion for new business. April 29, 2022 is Arbor day and the following items were discussed:

1. Doug will see that the Arbor Day proclamation is included on the agenda for the April 12, 2022 City Council meeting.
2. Mike will meet with the DC West elementary principal to work out the elementary kid's participation in the program. Doug will send Mike a copy of a program from a past Arbor Day ceremony and Mike will see if the elementary principal can produce one for this year. He will also scope out the school grounds for a location to plant the Arbor Day tree. If a suitable location can't be found on the school grounds, the board decided they would find a place in the west side of the arboretum which is still a walkable distance from the school.

3. Mike will let Mark know what type of tree to obtain and Mark will take responsibility for securing the tree from Lanoha nursery. Mark needs to know what type of tree to secure within the next 10 days.
4. Mike will reach out to the Post Gazette for coverage of the Arbor Day program.
5. Once the location and time of the Arbor Day ceremony is determined Doug will utilize the City website, Facebook page and Nextdoor account to advertise the ceremony to the public.

Email communication will be vital so that everyone knows what's going on and what is expected of them to make this project a success.

A motion was made to adjourn at 7:18 pm.

Next meeting is Monday June 6th, 2022 at 6:30 pm at the City of Valley Council Chambers.

March 17, 2022 Valley Public Library Board of Trustees Minutes

Call to Order: Secretary Theresa Samson called the September 9, 2021 Board Meeting to order at 6:32 p.m.

Pledge of Allegiance: The pledge of allegiance was recited.

Roll Call: Trustees answering roll call: Theresa Samson, Kyle Held, and James Musson. Moria Winters and Teresa Mejstrik were absent. Library Director Sami Stewart was in attendance.

Proof of Posting / Open Meetings Act Poster: The meeting was held in accordance with the Nebraska Open Meetings Law. Continuously updated copies of the agenda were maintained on the library's bulletin board and the library's website.

Approval of Agenda: Motion to approve by K. Held, second by J. Musson. Yeas: Samson, Held, and Musson. Nays: None. Motion carried 3-0. There were no consent agenda items which required approval.

Recognition of Visitors/Correspondence: None.

Public Comment: T. Samson asked for public comment. None was given.

Approval of Prior Meeting's Minutes: Motion to approve the minutes as presented was made by K. Held, second by J. Musson. Yeas: Buffington, Held, and Musson. Nays: None. Motion carried 3-0.

REPORTS

Board President: None.

Library Director: S. Stewart handed out a written document of the Librarian's Report which she went over verbally and answered questions from the Board.

Friends of the Library: No official report.

Foundation: No official report.

Old Business

Election of Board President: Jim Musson nominated Kyle Held. Theresa Samson seconded the nomination. Yeas: Samson, Musson, and Held. Nays: None. Nomination carried 3-0.

Election of Board Secretary: Jim Musson nominated Theresa Samson. Kyle Held seconded the nomination. Yeas: Musson, Samson, and Held. Nays: None. Nomination carried 3-0.

Strategic Planning Committee: Tabled until the next meeting.

Policy Changes – Appeals Procedure: S. Stewart handed out a document and went over it verbally with the Board. The policy change provides for an appeals procedure to our newly adopted ban and bar

policy. Motion to approve the policy changes was made by K. Held, seconded by J. Musson. Yeas: Samson, Held, and Musson. Nays: None. Motion carried 3-0.

New Business

Short Takes for Trustees/Continuing Education: We need 15 more hours of continuing education by August. Sami will send out links for continuing ed videos to watch.

Comments and Announcements by Board Members:

Meeting Adjournment was announced by T. Samson at 7:12 p.m.

Respectfully submitted,

Sami Stewart, acting as Secretary

DAILY RECORDS March 2022

	This month	Last month	Last year
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LIBRARY VISITS:

	Adults	285	219	249
	Children	216	169	150
Computers	Adults	32	21	20
	Children	35	12	1
Fax/Copies		47	22	32

Reference transactions (indicate nature of question)

Locating Library Materials 17, Readers' Advisory 7, Account info and renewals 6, Technology Assistance 82, Local Info 27, General Info 56.

Total	195	161	118
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PROGRAM ATTENDANCE:

	Adults	34	31	0
3/5 Knitting – 6; 3/12 Knitting – 5; 3/17 Board Meeting – 4; 3/19 Knitting – 4; 3/21 Book Club – 6; 3/26 Knitting – 5; 3/23 Friends Meeting – 4;				
	Teens	45	7	7
Monthly Drop-In Gaming – 3; 3/1 Teen Hangout – 1; 3/10 Gaming Club – 6; 3/17 Gaming Club – 7; 3/18 DC West Middle School – 28;				
	Children	102	100	74
Monthly Craft – 20; 3/4 Lego Club – 10; 3/11 Lego Club – 6; 3/14 YMCA Afterschool – 35; 3/18 Lego Club – 8; 3/25 Lego Club – 17; 3/28 Craft Day – 5; 3/30 Board Game Party – 1;				
	Pre-K	0	0	0
	Total	181	138	81

New patrons (indicate Valley, other Douglas Co., non-DC)

Valley 7, other DC 1, Non DC 0

Total	8	6	9
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Volunteers/hours	0/0	0/0	0/0
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MATERIALS CHECKED OUT:

Adult	432	392	317
Children	633	582	249
Overdrive	185	209	226

PROCLAMATION

Whereas, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

Whereas, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

Whereas, Arbor Day is now observed throughout the nation and the world, and

Whereas, trees are important to our environment, and


Whereas, trees give us paper, wood for our homes, fuel for our fires, and

Whereas, trees in our city beautify our community, and

Whereas, trees, wherever they are planted, are a source of joy

Now, Therefore, I, Mayor Cindy Grove, do hereby proclaim April 29, 2022, as ***ARBOR DAY*** in the City of Valley, Nebraska, and I urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands.

Dated this 12th day of April, 2022



Mayor Cindy Grove

Cheryl Eckerman

From: Valley City Office
Sent: Wednesday, March 30, 2022 3:05 PM
To: Cindy Grove; Jim Kuester; Cheryl Eckerman
Subject: Council Agenda Request Lindsay Toussant

Name: Lindsay Toussant

Phone: 330-312-3119

Email Address: lindsay@omahasports.org

Address: Omaha Sports Commission 10855 West Dodge Road, Suite 270 Omaha, NE 68154

Agenda Item Description: Cornhusker State Games - Triathlon

Requested Action: Event Overview and Update on Planning process - Event background - Date - Timeframe - Route plan - Next Steps

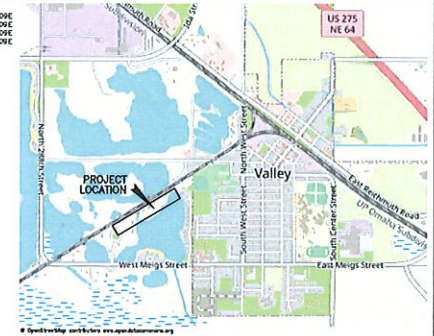
Does this require an expenditure of funds: No

[View in List](#)

GAVIDAE REPLAT 2

LOTS 1 THROUGH 3, INCLUSIVE AND OUTLOTS A THROUGH C, INCLUSIVE BEING A REPLATING OF LOTS 14, 15 AND 16, GAVIDAE, A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA

LOCATED RE
NE 1/4 SW 1/4 SEC. 38, T18N, R09E
SE 1/4 SW 1/4 SEC. 38, T18N, R09E
NW 1/4 SE 1/4 SEC. 38, T18N, R09E
SW 1/4 SE 1/4 SEC. 38, T18N, R09E

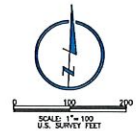
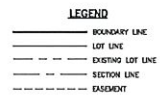


LAMP RYNEARSON

LAMP RYNEARSON, GOM
OMAHA, NEBRASKA
14719 W. DOUGLAS RD., STE. 100 (402) 546-2405
FORT COLLINS, COLORADO
4715 FORTIFICATION DR., STE. 100 (970) 228-8242
KANSAAS CITY, MISSOURI
1801 STATE LANE, STE. 200 (816) 661-6842

PARCEL AREA TABLE		OUTLOT AREA TABLE		CENTERLINE CURVE TABLE					
PARCEL #	AREA (SQ)	OUTLOT	AREA (SQ)	CURVE #	BACKS	ARC LENGTH	CHORD BEARING	CHORD LENGTH	DELTA ANGLE
1	4120.7	A	2128.9	C1	136.20'	124.23'	N01°31'31"E	130.81'	47°37'33"
2	4464.4	B	1906.9	C2	303.00'	198.54'	N65°58'24"E	183.32'	22°31'34"
3	3068.3	C	2424.4	C3	308.00'	118.84'	N01°32'44"E	118.24'	17°21'53"

- NOTES**
- ALL DISTANCES ARE SHOWN IN DECIMAL FEET.
 - ALL DISTANCES SHOWN ALONG CURVES ARE ARC DISTANCES NOT CHORD DISTANCES.
 - ALL ANGLES ARE 90° UNLESS NOTED.
 - ALL LOT LINES ON CURVED STREETS ARE PARALLEL UNLESS OTHERWISE NOTED WITH AN ANGLE ADJACENT TO THE CURVE, MEASURED TO THE CHORD AND SHOWN IN BRACKETS.
 - ALL CUR-DE-SAC RADI ARE 80 FEET UNLESS NOTED OTHERWISE.
 - ALL CUR-DE-SAC THROAT RADI ARE 25 FEET UNLESS NOTED OTHERWISE.
 - OUTLOTS WILL HAVE NO DIRECT VEHICULAR ACCESS TO UNION PACIFIC RAILROAD RIGHT OF WAY.
 - ALL EXISTING EASEMENTS ARE NOT BEING REDEDICATED AND ARE SHOWN FOR REFERENCE ONLY.
 - DISTANCES AND ANGLES SHOWN IN PARENTHESES REFER TO EASEMENTS.



APPROVAL OF VALLEY CITY PLANNING COMMISSION

APPROVAL OF THE PLANNING COMMISSION OF VALLEY, NEBRASKA
THIS FINAL PLAT OF GAVIDAE REPLAT 2, LOTS 1 THROUGH 3, INCLUSIVE, AND OUTLOTS A THROUGH C, INCLUSIVE, WAS APPROVED BY THE VALLEY PLANNING COMMISSION THIS _____ DAY OF _____ 2021

ACCEPTANCE BY VALLEY CITY ENGINEER

THIS FINAL PLAT OF GAVIDAE REPLAT 2, LOTS 1 THROUGH 3, INCLUSIVE, AND OUTLOTS A THROUGH C, INCLUSIVE, WAS REVIEWED AND APPROVED BY THE VALLEY CITY ENGINEER ON THIS _____ DAY OF _____ 2021

SECRETARY, VALLEY PLANNING COMMISSION

VALLEY CITY ENGINEER

ACCEPTANCE BY VALLEY CITY COUNCIL

ACCEPTANCE BY VALLEY CITY COUNCIL OF
THIS FINAL PLAT OF GAVIDAE REPLAT 2, LOTS 1 THROUGH 3, INCLUSIVE, AND OUTLOTS A THROUGH C, INCLUSIVE, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF VALLEY, NEBRASKA ON THIS _____ DAY OF _____ 2021

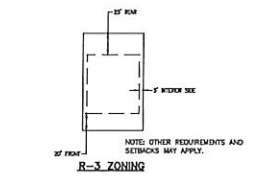
COUNTY TREASURER'S CERTIFICATE

THIS IS TO CERTIFY THAT I FIND NO REGULAR NOR SPECIAL TAXES DUE OR DELINQUENT AGAINST THE ESTATEMENTS DESCRIBED IN THE LAND SURVEYOR'S CERTIFICATE AND ENTERED IN THIS PLAT, AS SHOWN BY THE RECORDS OF THIS OFFICE, THIS _____ DAY OF _____ 2021

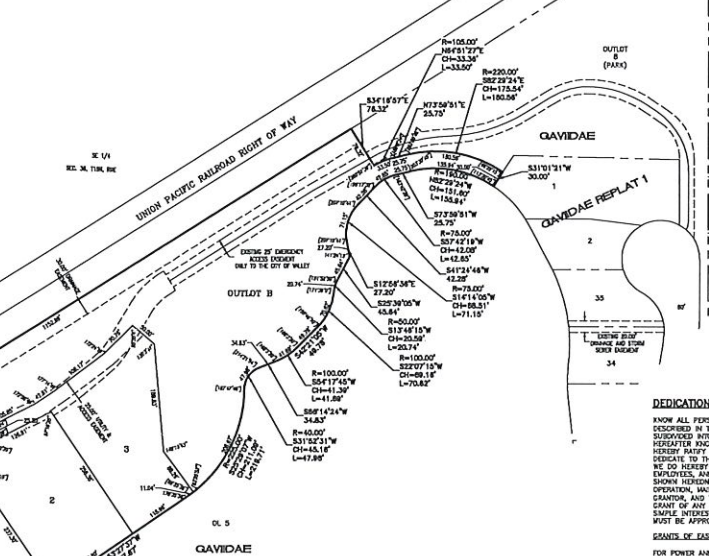
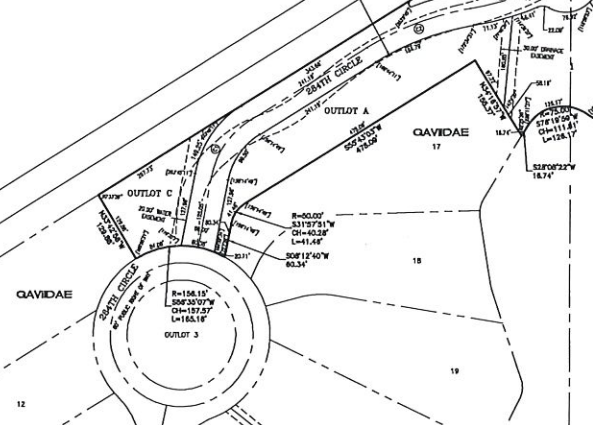
MAYOR (CITY OF VALLEY SEAL)

DOUGLAS COUNTY TREASURER

ARTIST CITY CLERK



NOTE: OTHER REQUIREMENTS AND SETBACKS MAY APPLY.
R-3 ZONING
SETBACK REQUIREMENTS NO SCALE



LAND SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE MADE A BOUNDARY SURVEY OF THE SUBDIVISION HEREIN AND THAT PERMANENT MONUMENTS HAVE BEEN PLACED AT ALL CORNERS, ANGLE POINTS AND ENDS OF CURVES ON THE BOUNDARY ON THE PLAT AND THAT PERMANENT MONUMENTS WILL BE PLACED AT ALL CORNERS, ANGLE POINTS AND ENDS OF CURVES ON ALL LOTS AND STREETS WITHIN THE SUBDIVISION TO BE SHOWN AS GAVIDAE REPLAT 2, LOTS 1 THROUGH 3, INCLUSIVE, AND OUTLOTS A THROUGH C, INCLUSIVE, BEING A REPLATING OF GAVIDAE, LOTS 14, 15 AND 16, A SUBDIVISION AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA.



WILLIAM E. KNIGHT, LS-566
DATE _____

DEDICATION

KNOW ALL PERSONS BY THESE PRESENTS, THAT WE, SANITARY IMPROVEMENT DISTRICT 547, OWNERS OF THE LAND DESCRIBED IN THE LAND SURVEYOR'S CERTIFICATE AND ENTERED WITH THIS PLAT, HAVE CAUSED SAID LAND TO BE SURVEYED INTO LOTS AND STREETS TO BE NUMBERED AND LINED AS SHOWN HEREIN, SAID SUBDIVISION TO BE HEREAFTER KNOWN AS GAVIDAE REPLAT 2, LOTS 1 THROUGH 3, INCLUSIVE, AND OUTLOTS A THROUGH C, INCLUSIVE, DO HEREBY RAISEY AND APPROVE OF THE DISPOSITION OF OUR PROPERTY AS SHOWN ON THIS PLAT; AND WE DO HEREBY DEDICATE TO THE PUBLIC THE STREETS AS SHOWN HEREIN AND DO HEREBY GRANT THE EASEMENTS AS SHOWN HEREIN. WE DO HEREBY GRANT TO THE GRANTEE, THEIR SUCCESSORS AND ASSIGNS AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, AND CONTRACTORS, THE PERMANENT RIGHT TO ENTER AND USE, FROM TIME TO TIME, THE EASEMENT AREAS SHOWN HEREIN FOR THE STATED PURPOSE, FOR THE INSTALLATION AND REPAIR OF FACILITIES PROVIDED, HOWEVER, THESE TO BE SUBJECT TO THE GRANTEE AND TO THE GRANTEE'S HEIRS, SUCCESSORS AND ASSIGNS, THE RIGHT TO USE THE EASEMENT AREA. THIS GRANT OF ANY EASEMENT SHOWN HEREIN SHALL NOT PASS, NOR BE CONSTRUED TO PASS, TO THE GRANTEE IN FEE SIMPLE INTEREST OR TITLE OF THE EASEMENT AREAS. ANY VARIANCE OR RELEASE TO THE RIGHTS GRANTED HEREIN MUST BE APPROVED BY THE GRANTEE IN WRITTEN FORM.

GRANTS OF EASEMENTS

FOR POWER AND COMMUNICATIONS
PERPETUAL EASEMENTS SHALL BE GRANTED TO THE OMAHA PUBLIC POWER DISTRICT AND ANY TELECOMMUNICATIONS ENTITY OR OTHER CORPORATION TRANSMITTING COMMUNICATION SIGNALS AUTHORIZED TO USE THE CITY STREETS, TO ERRECT, OPERATE, MAINTAIN, REPAIR AND REMOVE POLES, WIRES, CABLES, CONDUITS, AND OTHER RELATED FACILITIES, AND TO ERECT TOWER OR CABLES FOR THE CARRIAGE AND TRANSMISSION OF ELECTRIC CURRENT FOR LIGHT, HEAT AND POWER AND FOR THE TRANSMISSION OF SIGNALS AND SOUNDS OF ALL KINDS AND THE RECEIPTION OF DATA, THROUGH UNDER AND ACROSS A FIVE-FOOT-WIDE STRIP OF LAND ADJUTING ALL FRONT AND SIDE BOUNDARY LOT LINES, AND AN EIGHT-FOOT-WIDE STRIP OF LAND ADJUTING THE REAR BOUNDARY LINES OF ALL INTERIOR LOTS, NO PERMANENT BUILDINGS OR RETAINING WALLS SHALL BE PLACED IN THE SAID EASEMENT LINES, BUT THE SAME MAY BE USED FOR GARDENS, SHRUBS, LANDSCAPING AND OTHER PURPOSES THAT DO NOT THEM OR LATER INTERFERE WITH THE ADDRESSAD USES OR RIGHTS HEREIN GRANTED.

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA } SS
COUNTY OF _____)
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ 2021
BY (PRINTED NAME) (PRINTED TITLE) OF
SANITARY IMPROVEMENT DISTRICT 547, ON BEHALF OF SAID COMPANY.
SIGNATURE OF NOTARY PUBLIC _____

SANITARY IMPROVEMENT DISTRICT 547, OWNER
(PRINTED NAME) SIGNATURE _____
(TITLE)



Know what's below
Call before you dig.
REVISION

DESIGNER / DRAWN
DATE
PROJECT NUMBER
BOOK AND PAGE

*Planning Commission Minutes
from 10-19-21.*

Item 3-3. B Revisions to City of Valley Future Land Use Map

This item is also a follow-up for the August 17, 2021 Planning Board meeting and the changes were discussed at that time. This vote finalized the changes to the Future Land Use Map.

Motion by Bottger to approve revisions to the City of Valley Future Land Use Map. Second by Lathrop

Motion Carried

Item 4-3. D Final Plat Geis Subdivision located in the SE QTR of the NE QTR, SEC 31, TOWNSHIP 16 NORTH, RANGE 10 EAST OF THE 6TH P.M.

Jeff Farnam City of Valley Attorney spoke to the board and said that the Valley-Douglas County Subdivision agreement was in order. He also noted it was not buildable on the out-lot of this subdivision. Tim Geis also spoke and wanted to make sure that the subdivision agreement would allow City of Valley utilities hook-up. Both Jeff Farnam and Michael Burns assured him that it did.

Motion by Lathrop to accept the final plat of the Geis Subdivision. Second by Conrey

Motion Carried

Item 5-3. E Gaviidae Replat 2 (Lots 1 thru 3 and out lots A thru C)

John Coolidge, engineer of Gaviidae spoke to the board. This item was first brought to the board at the Aug. 17th 2021 planning board meeting. The replat would install a street with a cul-de-sac and decrease the length of the driveways to the 3 new lots, making them easier to develop and sell. All requirements from the City of Valley have been met.

Motion by Foutch to accept Gaviidae Replat 2. Second by Conrey

Motion Carried

Item 6-3. F Final Plat-Flatwater Estates (Lots 201 thru 306 inclusive and out lots A thru F inclusive) N 288th and Ida Street

RESOLUTION NO. 2022-27

WHEREAS, on October 19, 2021 the City of Valley Planning Commission met pursuant to Statutory Public Notice and considered the following plat:

Gaviidae Replat 2

Lots 1 through 3 and Outlots A through C – previously platted as Lots 14, 15 & 16 Gaviidae – A subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

WHEREAS, said Planning Board approved said plat, therefore;

BE IT HEREBY RESOLVED by the Governing Body of the City of Valley, Douglas County, Nebraska, that it hereby approves the final plat of

Gaviidae Replat 2

A copy of which plat and land surveyor's certificate, showing the plat, map and survey of the lot(s) involved in the said plat is attached hereto and made a part hereof by reference.

DATED this 12th day of April, 2022

CITY OF VALLEY, DOUGLAS COUNTY, NEBRASKA

Cindy Grove, Mayor

Mike Stanzel, Council President

Bryon Ueckert, Council Member

Linda Lewis, Council Member

Chris TenEyck, Council Member

ATTEST:

Cheryl K. Eckerman, City Clerk

**MANAGEMENT AGREEMENT
FOR
CITY OF VALLEY
“CITY POOL”**

THIS AGREEMENT is made and entered into this 12th day of April 2022 by and between City of Valley hereinafter referred to as COV and the YMCA of Greater Omaha, hereinafter referred to as the YMCA.

WHEREAS, COV owns a city swimming pool complex located in the park in Valley, Nebraska, such complex commonly referred to “City Pool”, and it is COV’s objective to provide high quality and safety to people utilizing City Pool and

WHEREAS, the YMCA has represented it has the experience, knowledge, capability, and willingness to operate the City Pool, and

WHEREAS, COV desires to make available to the residents of Valley and surrounding area who utilize the City Pool, the YMCA’s experience, knowledge and capability, in swimming pool operations, and

WHEREAS, the parties hereto desire to enter into an Agreement for the operation of the City Pool by the YMCA in accordance with the terms, provisions, and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, COV and the YMCA do hereby mutually undertake, promise, agree, and contract each for itself and its successors and assigns as follows:

Article 1 – Term of Agreement

Subject to the terms, covenants and conditions as set forth hereinafter below, the term of this Agreement shall be the 2022 City Pool season, commencing May 23, 2022 to August 15, 2022. The actual period in which City Pool will be available for swimming and associated activities by members and their guests is May 28, 2022 through August 14, 2022.

Article 2 – Right to Operate

COV hereby grants to the YMCA, the exclusive right and privilege to operate, manage, and maintain City Pool subject to and expressly conditioned upon the terms, provisions, covenants, and conditions as set forth in this Agreement and the timely performance by the YMCA in strict compliance therewith.

This Agreement constitutes neither a conveyance nor a lease, but is an agreement for the management, operation, and daily cleaning of City Pool for its residents and surrounding area, which shall consist of but not limited to, vacuuming the pool of debris, cleaning of the bath houses, etc. The YMCA shall have control over and responsibility for City Pool facilities during the term of this Agreement. Nothing in this Agreement shall be construed to provide the YMCA with any ownership, right or interest in City Pool.

No alterations, additions, improvements, or physical changes to City Pool shall be erected, installed or permitted by the YMCA or any person at its request without the prior express written consent and approval of COV.

COV and its duly authorized representatives shall have at any and all times the full and unrestricted right to enter City Pool for any purpose. COV shall further have the right to perform, or authorize the performance of, any maintenance or other action, which COV believes, in its sole judgment is necessary to protect the facilities and equipment from damage or to insure the safety of all members, staff, or others who may enter the premises.

COV will be responsible for filling the pool and all required painting. The COV shall be responsible for all electrical, water, and sewage charges applicable to the Pool during the term of this agreement including all utility charges incurred by the COV in the process of providing the pool start up and close down operations.

COV shall be responsible for all chemicals and supplies including housekeeping supplies required for the proper and lawful operation of the pool, bathhouse, and related functions.

COV shall insure the pool is in compliance with the Virginia Graeme Baker Pool & Spa Safety Act.

COV shall be responsible for all maintenance and repairs for all pool and bath house related items including, but not limited to, all mechanical systems and associated water and electrical supply lines between the pool and its meter and all improvements located within and including pool fence. Contact persons are Doug Eggen, phone number 402-669-7951 and Tim Sheets phone number, 402-720.4720.

COV shall be responsible for trash disposal. COV will provide adequate sanitary handling and disposal of all trash, garbage, and other refuse located within the pool area and within 100 yards of the pool's fence/bath house perimeter. YMCA pool staff will be responsible for picking up trash and placing it in the dumpster.

Article 3 – Management Fee

COV shall pay the YMCA a management fee of \$10,693.46 for the operation of City Pool during the 2022 season.

The total base management fee of \$10,693.46 shall be prorated and paid monthly over the term of this Agreement. The YMCA shall submit an itemized invoice to COV for monthly expenditures. This Agreement may not be terminated for any reason prior to the completion of the full term.

Pool memberships, daily passes and rental fees will be approved by the YMCA and the City of Valley City Council.

Article 4 – Activities and Uses

This agreement grants the exclusive privilege operating, managing and maintaining City Pool as a public swimming pool for and on behalf of COV. The YMCA covenants and agrees that the premises shall be used exclusively for the operation as a swimming pool for Valley residents and surrounding area and the provision of services and merchandise attendant to such an operation.

The YMCA agrees to comply with all applicable laws, ordinances, codes, rules, and regulations of the United States of America, the State of Nebraska, the Nebraska Department of Health, Douglas County, the Douglas County Department of Health and any and all other entities having authority and/or regulation of City Pool. The YMCA further agrees that it is their responsibility to insure compliance with such rules and regulations and hereby represents that the YMCA, its employees, agents and servants are knowledgeable of, and capable of complying with, such rules and regulations including the Nebraska Swimming Pool Handbook published by the Nebraska State Department of Health. The YMCA hereby indemnifies and holds harmless COV from any liability associated with the YMCA's failure to comply with such laws, ordinances, codes, rules and regulations.

Article 5 – Duties and Obligations

In addition to the operating duties and obligations contained elsewhere in this Agreement, the YMCA is responsible for the recruitment, hiring, training, supervision, and payment of the staff and management of City Pool. The YMCA shall comply with all laws, ordinances, rules and regulations regarding hiring, training, licensing and certification of pool staff, including lifeguards, managerial personnel, certified pool operator, snack bar and cleaning staff.

The YMCA shall have City Pool open and available to the public Monday through Saturday from 1:00 p.m. to 8:00 p.m. and Sunday from 1:00 p.m. to 6:00 p.m. from May 28th through August 14th 2022. The pool will be open during the

swimming season, weather permitting. Pool parties shall be scheduled during non-operating hours. It shall be the YMCA's responsibility as Operator of City Pool to determine if the weather is appropriate for the safe and enjoyable environment of the swimmers. COV shall be notified at least two weeks in advance of a pool party. Signage will be placed on door of City Pool and City Offices notifying all patrons of the party occurring at least two weeks in advance. The YMCA may offer any and all swim-related programs which can be provided safely and within regulatory requirements at City Pool.

YMCA shall be responsible for contacting the COV city hall as quickly as possible if a decision is made to close the pool. Contact information should include the reason why the pool was closed.

COV shall be responsible for all operational expenses of City Pool including the pool staff salaries of the YMCA employees. COV shall directly make payment to the appropriate vendors for all such operational expenses except payroll. COV shall reimburse YMCA for purchases it makes for the operation of the City Pool. All pool staff on site, including managerial, shall be employed by and paid by the YMCA. COV shall reimburse the YMCA for all such payroll expenses including the applicable other payroll associated expenses such as FICA, unemployment compensation, tax and Workers' Compensation Insurance and related benefits that are associated with each employee's compensation. It is the intent of this Agreement that the YMCA is operating City Pool on a direct expense paid basis, plus the compensation specified in Article 3.

The YMCA shall, at all times during the term of this Agreement and for a period of one year thereafter, keep or cause to be kept, true and complete books, records, and accounts of all fees and charges associated with this Agreement. The YMCA shall comply with Nebraska State Health Department and Douglas County Health Department rules, regulations and statutes pertaining to record keeping including, but not limited to, reporting of pool operations and accidents.

The YMCA shall provide to the COV a complete record of all fees, charges, concessions, and payroll expenses associated with this agreement. If the fees collected by the YMCA exceed pool expenses, the YMCA will pay the balance to COV at the end of said season. Operation of concessions shall be at the discretion of the YMCA.

Article 6 – Indemnification and Insurance

COV shall provide to the YMCA a certificate of insurance naming the YMCA as an additional insured. The YMCA shall provide to the COV a certificate of

insurance naming the COV as an additional insured and maintain it in effect during the term of this Agreement, with companies licensed to do business in the State of Nebraska, liability insurance with a minimum policy limit of \$1,000,000/\$5,000,000 for bodily injury or death and \$50,000 for property damage. Said policy shall expressly include COV and its officers and directors as additional named insureds. A certified copy of the policy or a certificate evidencing the existence thereof, shall be delivered to COV within ten (10) days after the execution of this Agreement. Each such copy shall contain valid provisions or endorsements that the policy may not be canceled, terminated, or materially changed or modified without giving thirty (30) days written notice thereof to COV.

The YMCA shall, upon request by COV, furnish COV satisfactory evidence that it carries Workers' Compensation insurance in accordance with the laws of the State of Nebraska.

Article 7 – General Provisions

It is understood and agreed by and between the parties that any and all acts the YMCA or its employees, agents or servants perform pursuant to the terms of this Agreement shall be undertaken as independent contractors and not as employees of COV.

The YMCA represents that it has carefully reviewed the terms and conditions of this Agreement and is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities, authorized and required by this instrument.

Parties to this Agreement shall conform with all existing and applicable ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law shall govern the terms and performance under this Agreement.

This Agreement shall not be merged into any other oral or written Agreement, lease or deed of any type. This is the complete and full agreement of the parties. This Agreement contains the entire agreement of the parties hereto. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of the respective parties.

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant,

condition or provision herein contained shall not affect the validity of the remainder of the covenants, conditions or provisions of this Agreement which shall in all respects remain a legally binding Agreement with the invalid portion being deleted; provided that the validity of any such covenant, condition, or provision does not materially prejudice either the YMCA or COV in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused these presents to be signed by their duly authorized officers.

Dated this 12th day of April, 2022.

YMCA of Greater Omaha

City of Valley

By: _____

By: _____

Title: President & CEO

Title: Mayor

EXHIBIT A

Valley Pool 2022

400 W. Vass St. 402-359-9668
Monday – Friday 1:00 to 8:00 p.m.
Saturday – Sunday 1:00 to 6:00 p.m.

Season Pass

Individual \$55
Family (up to 6) \$80
Family (up to 8) \$110
Family (up to 10) \$125

Babysitter addition to family pass is free

Child/Daycares \$1. Per child per visit*

*Accompanying Adults supervising the group are free

Business (1–20) \$175

Daily Admission

Adult (18+) \$5
Youth (4 – 17) \$4
3 and under \$3

Pool will be open May 28th through August 14th, 2022

RESOLUTION 2022-24

WHEREAS, The City of Valley, Douglas County, Nebraska, proposes to enter into an agreement with Twin Rivers YMCA to operate the outdoor pool, and

WHEREAS, The Valley City Council met in regular session on April 12, 2022 and reviewed and authorized said agreement; and

NOW, THEREFORE, BE IT RESOLVED THAT the Valley City Council consents to and approves said agreement and authorizes Mayor Grove to execute said agreement on behalf of the City of Valley, a copy of which is marked "Exhibit A" and attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 12th day of April, 2022

CITY OF VALLEY, DOUGLAS COUNTY, NEBRASKA

Cindy Grove, Mayor

Mike Stanzel, Council President

Bryon Ueckert, Council Member

Linda Lewis, Council Member

ATTEST:

Chris TenEyck, Council Member

Cheryl K. Eckerman, City Clerk

ORDINANCE NO. 774

AN ORDINANCE OF THE CITY OF VALLEY, DOUGLAS COUNTY, NEBRASKA AMENDING SECTIONS 4-205 OF THE VALLEY MUNICIPAL CODE TO PROVIDE THAT ALCOHOLIC BEVERAGES CAN BE SOLD OFF SALE AND ON SALE BETWEEN THE HOURS OF 6:00 A.M. AND 2:00 A.M. ON ALL DAYS OF THE WEEK, INCLUDING SUNDAY

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF VALLEY, DOUGLAS COUNTY, NEBRASKA:

WHEREAS, THE EXISTING SECTION 4-205 OF THE VALLEY MUNICIPAL CODE SHALL BE DELETED AND THE FOLLOWING SUBSTITUTED THEREFORE:

SECTION 4-205: HOURS OF SALE

1. For the purposes of this section, (A) "on sale" shall be defined as alcoholic beverages sold by the drink for consumption on the premises of the licensed establishment; (B) "off sale" shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.
2. It shall be unlawful for any licensed person or his/her agents to sell any alcoholic beverages within the City except during the hours provided herein:

Alcoholic Liquors (except Beer and Wine)	
Monday through Sunday	
Off Sale	6:00 A.M. to 2:00 A.M.
On Sale	6:00 A.M. to 2:00 A.M.
Beer and Wine	
Daily	
Off Sale	6:00 A.M. to 2:00 A.M.
On Sale	6:00 A.M. to 2:00 A.M.

3. No person(s) shall consume any alcoholic beverages on licensed premises for a period of time longer than 15 minutes after the time fixed herein for stopping the sale of alcoholic beverages on said premises.
4. Nothing in this section shall be construed to prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section.
(Ref. Neb. Rev. Stat. 53-179)

PASSED AND APPROVED this 12th day of April, 2022.

CITY OF VALLEY, DOUGLAS COUNTY, NEBRASKA

Cindy Grove, Mayor

ATTEST:

Cheryl Eckerman, Clerk

RESOLUTION NO. 2022-29

WHEREAS, the City of Valley, Douglas County, Nebraska, proposes to enter into a service agreement between the City of Valley and Five Nines and

WHEREAS, the Valley City Council in regular session on April 12th, 2022, authorized said amendment,

NOW, THEREFORE, BE IT RESOLVED THAT Valley City Council consents to and authorizes Mayor Grove to execute the agreement on behalf of the City of Valley, a copy of which is made a part hereof by reference.

DATED THIS 12th day of April, 2022.

CITY OF VALLEY, DOUGLAS
COUNTY, NEBRASKA

Cindy Grove, Mayor

Mike Stanzel, Council Member President

Bryon Ueckert, Council Member

Linda Lewis, Council Member

ATTEST:

Chris TenEyck, Council Member

Cheryl K. Eckerman, City Clerk

FIVE NINES
**PARTNERSHIP
PROPOSAL**

City of Valley

Prepared for:
Cindy Grove

Five Nines
5617 Thompson Creek Blvd
Lincoln, NE
(402) 817-2650
joe.brown@gonines.com



Support Details

Included in your Five Nines partnership is:

- 24/7 Support.
- Support Desk open from 6:30 a.m. - 10:00 CST p.m. every business day.
- After hours network monitoring and critical support.
- Dedicated support team.
- Anti-virus and anti-spam for all employees and endpoints.
- The Five Nines Support Application installed on all workstations.
- Managed imaged-based backups, which will run every hour unless otherwise stated.
- Managed Incident Response plan.
- Managed IT Budget and IT plan.
- Security Awareness Training.
- Hardware and Software Patching.
- Product Procurement and Deployment.

Five Nines will monitor and maintain all aspects of your IT environment. This includes servers, routers, switches, firewalls, wireless access points, workstations, laptops, tablets, printers, scanners, tablets, cell phones, and thin clients. Depending on the needs of the client and the urgency of the issues Five Nines will determine the appropriate way to interact on the issue.

Hardware

Servers – Five Nines will monitor and maintain all aspects of your physical and virtual server environments. Only operating system versions currently supported by Microsoft are covered. Linux and other similar operating systems are supported on a best-effort basis only if a support contract with the OS vendor is maintained. Hardware vendor support contracts for production-class servers must be maintained to ensure timely hardware service. Support contracts for virtualization platforms such as VMware must also be maintained where applicable.

Networking – Five Nines will monitor and maintain all your routers, switches, firewalls, wireless access points, and related devices. Vendor support contracts must be maintained to ensure timely hardware and software service.

Networked Printers and Scanners – Five Nines will provide basic support for the network aspects of your networked printers, scanners, and other multi-function devices. Our support ability does not extend past the basic networking of these devices, and support contracts with a third-party printing solution company are highly encouraged.

Endpoints – Five Nines will support workstations, laptops, tablets, cell phones, and thin clients for all Mac and Windows based Operating Systems devices. All workstation, laptops, and tablets that have a Windows based operating system must be Active Directory domain compatible, and have an operating system installed that is supported by Microsoft. “Home” editions, typically found on computers bought at retail stores, will need a paid upgrade to a professional version to work on the Windows domain. This agreement includes labor for replacing up to 4 devices per month.

Five Nines adheres to PCI compliance, implements HIPAA policies and procedures required by Business Associate agreements, and attests to sound operational policies and procedures through our SOC 2 report which is available upon request and under NDA.

Software

Security Patches and Software Updates – Software/firmware updates on servers, workstations, and networking equipment if vendor support is maintained where relevant. Excludes major version or release upgrades that require reconfiguration.

Third Party Software – Management and maintenance of other Operating Systems and third-party software, if vendor support contracts are maintained.

Antivirus/Antispam – Five Nines Email Antispam and Advanced Threat Protection will be provided for all servers, workstations, and laptops. Management of the antivirus software and updates to the software will be covered as part of this agreement.

Incident Response

In the event of an outage or cyber incident, the response and resolution of the incident may be invoiced separately from this agreement. In such an event the response will be recorded in Five Nines support ticket system at the rate of \$450/hr. for all work performed.

An outage takes place anytime a system is down that impacts multiple users. An outage is invoiced separately when we need to execute a disaster recovery plan (restoring a server from backup, Five Nines provided loaner equipment - if available - to replace or augment existing systems, etc.) or sudden, unexpected events that can't be controlled or predicted (fire, water, lightning damage, etc.).

A cyber incident is a violation of a system's security policy in order to affect its integrity, confidentiality, or availability. This includes unauthorized access or attempted access to a system.

In general, types of activity that are commonly recognized as being breaches of typical security policy are:

1. Attempts to gain unauthorized access to a system and/or to data.
2. The unauthorized use of systems for the processing or storing of data.
3. Changes to a systems firmware, software or hardware without the system owner's consent.
4. Malicious disruption and/or denial of service.

Monthly Agreement

Description	Recurring	Qty	Ext. Recurring
Managed Users (Full-Time)	\$150.00	17	\$2,550.00
Monthly Subtotal:			\$2,550.00

Partnership Pricing

Below are our prices for each year of the agreement:

Year 1	Year 2	Year 3	Year 4	Year 5
5/18/2022 - 5/17/2023	5/18/2023 - 5/17/2024	5/18/2024 - 5/17/2025	NA	NA
\$150 / user	\$158 / user	\$167 / user	NA	NA

Renewal Process

Unless Five Nines or customer executes termination of this agreement pursuant to section 2.1 of the Master Services Agreement (provide written notice of intent to allow the agreement to expire a minimum of 90 days prior to agreement expiration), this agreement will automatically renew using the following process:

- Approximately 45 days before the end-date of the term of this partnership agreement, Five Nines will provide a written notice through email with a renewed partnership agreement.
- Approximately 14 days later, Five Nines will send a second notice of renewal.
- Approximately 30 days later, Five Nines will auto-renew the partnership agreement and execute all changes associated with the new agreement (price per user, Master Services Agreement, etc.).

Monthly Expense Summary

Description	Amount
Monthly Agreement	\$2,550.00
Backup Solution	\$0.00
Monthly Subtotal:	\$2,550.00
Tax:	\$178.50
Monthly Total:	\$2,728.50

Standard Terms

- Agreement term will begin on May 18, 2022 and end on May 17, 2025 for a total of three (3) years.
- All after-hours support, including onsite work, is included in the monthly partnership total.
- Project professional services *are not* included in the monthly service total and are billed separately.
- Quoted monthly amount does not include Office 365 subscriptions, but will be included as a separate cost on the Five Nines invoice.
- Supported users and cloud services (Office 365 and Azure) will be reviewed monthly and adjusted accordingly.
- Vendor support contracts must be maintained to ensure timely hardware and software service.
- Termination of the managed services agreement with Five Nines will require customer to pay out the remainder of any agreements with third parties (including but not limited to Microsoft licensing, backup licensing, KnowBe4, Arctic Wolf).
 - Pricing adjustments for third-party services are at the discretion of the vendor.
- Managed services monthly fee will be based on the number of employees Five Nines is supporting. For any employee above 17, \$150 will be added to the support agreement in year 1, \$158 in year 2, and \$167 in year 3. The minimum number of billable users is 17.
- The partnership agreement amount will not decrease below the quoted total to cover tools and recurring expenses.

Five Nines Technology Group

Signature: _____

Name: _____

Date: _____

City of Valley

Signature: _____

Name: Cindy Grove

Date: _____



Master Services Agreement

THE TERMS AND CONDITIONS OF PRODUCT SALES AND SERVICE PROJECTS ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY YOU ("CLIENT") ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY ACCEPTING DELIVERY OF THE PRODUCTS OR BY ENGAGING FIVE NINES ON AN INVOICE, STATEMENT OF WORK OR OTHER FIVE NINES DOCUMENTATION TO PROVIDE PRODUCT OR PERFORM OR PROCURE ANY SERVICES, CLIENT AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS UNLESS CLIENT AND FIVE NINES HAVE SIGNED A SEPARATE AGREEMENT, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

Important Information About These Terms and Conditions

These Terms and Conditions constitute a binding contract between CLIENT ("Client") and Five Nines Technology Group, Inc., ("FIVE NINES") and are referred to herein as either "Terms and Conditions" or this "Agreement". Client accepts these Terms and Conditions by making a purchase from or placing an order with FIVE NINES or requesting products (the "Products") or engaging FIVE NINES to perform or procure any Services (as this and all capitalized terms are defined herein). These Terms and Conditions are subject to change without prior notice, except that the Terms and Conditions delivered at the time Client places an order or signs a Statement of Work will govern the order in question, unless otherwise agreed in writing by FIVE NINES and Client.

Client consents to receiving electronic records, which may be provided via a Web browser or email application connected to the Internet; individual consumers may withdraw consent to receiving electronic records or have the record provided in non-electronic form by contacting FIVE NINES. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents.

No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions or any purchase order or invoice, or any document in electronic or written form that is signed and delivered by each of the parties for the performance of Services other than Third Party Services. This Agreement contains the entire understanding of the parties with respect to the matters contained herein and supersedes and replaces in its entirety any and all prior communications and contemporaneous agreements and understandings, whether oral, written, electronic or implied, if any, between the parties with respect to the subject matter hereof.

1. Definitions.

- 11 **Applicable Laws.** Means collectively, all federal, state or other governmental statutes, codes, ordinances, laws, regulations, rules, guidance, written directives, orders and decrees applicable to the Services.
- 12 **Confidential Information.** All nonpublic information revealed by or through the disclosing party to the recipient, including: (a) information marked or disclosed as confidential; (b) any Client customer information furnished or disclosed, in whatever form or medium; (c) information traditionally recognized as proprietary trade secrets; (iii) all forms and types of financial, business, and economic information (including, without limitation, contract terms, financial information, ideas, discoveries, inventions, developments, records, product designs, source codes, product planning, material samples, business records and plans, technical and marketing data, trade information, customer lists and data, supplier information and marketing plans) in whatever form or medium; (iv) any information disclosed orally regarding the parties' business relationship; and (v) PHI, as applicable.
- 13 **Protected Health Information ("PHI").** Shall have the meaning set forth in any Business Associate Agreement attached hereto and incorporated herein by reference.
- 14 **Services.** Means such information technology related services necessary to operations of Client that FIVE NINES may provide to Client under a mutually agreed upon Statement of Work attached to this Agreement.

2. Term and Termination of Agreement

21 This Agreement is effective upon the date signed. This Agreement shall remain in force for the duration of the term unless either party gives the other prior written notice of its intent to terminate this Agreement. This Agreement may only be terminated by Client upon giving ninety (90) days written notice to FIVE NINES and paying an additional three (3) months of the remaining agreement amount or the agreement amount for the remaining term, whichever is less. This Agreement may be terminated by FIVE NINES upon ninety (90) days written notice to Client. If either party terminates this Agreement, FIVE NINES will assist Client in the orderly termination of services, including timely transfer of the services to another designated provider. Client agrees to pay FIVE NINES the actual costs of rendering such assistance.



THE TERM OF THIS AGREEMENT SHALL AUTOMATICALLY RENEW UNLESS EITHER PARTY PROVIDES THE OTHER WRITTEN NOTICE OF INTENT TO ALLOW THIS AGREEMENT TO EXPIRE NO LESS THAN 90 DAYS PRIOR TO THE DATE OF EXPIRATION. DURING ANY RENEWAL TERM, THE PROVISIONS OF THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT, EXCEPT, FIVE NINES MAY MODIFY THE TERMS OF THE AGREEMENT GOVERNING ANY RENEWAL TERM BY PROVIDING WRITTEN NOTICE OF SUCH MODIFICATION TO CLIENT NO LATER THAN 120 DAYS PRIOR TO EXPIRATION OF THE THEN CURRENT TERM. For purposes of this Agreement, written notice delivered via email shall constitute written notice.

22 **Services Transfer Assistance.** It is the intent of the parties that at the expiration or termination of this Agreement or a party's election to cancel the provision of Services, FIVE NINES will cooperate with Client to assist with the orderly transfer of the Services, functions, and operations provided by FIVE NINES hereunder to another system provider or services provider or Client itself ("Services Transfer Assistance"). Prior to expiration or termination of the Agreement, Client may request FIVE NINES to perform and, if so requested, FIVE NINES shall perform Services Transfer Assistance. Service Transfer Assistance shall be provided until the effective date of expiration or termination with respect to the Services and for up to one (1) additional month after the effective date of expiration or termination. If the Services Transfer Assistance requires FIVE NINES to incur expenses in addition to the expenses that FIVE NINES would otherwise incur in performance of this Agreement, then: (a) FIVE NINES shall notify Client of any additional expenses associated with the performance of any additional services pursuant to this Section prior to performing such services; (b) Upon Client's authorization, FIVE NINES shall perform the additional services and invoice Client for such services; and (c) Client shall pay FIVE NINES for such additional expenses within thirty (30) days of the receipt of the invoice.

23 **Actions Upon Termination.** Except for Service Transfer Assistance, upon termination of this Agreement, FIVE NINES shall immediately cease to have access to and use of Client's network, hardware, and software ("System").

24 **Return or Destruction of Confidential Information.** Upon expiration or termination of this Agreement, the party receiving Confidential Information will cease its use and upon request, within thirty (30) days, use commercially reasonable efforts to either (at the option of receiving party) return or destroy (and certify in a timely manner as to such destruction) all Confidential Information of the other party, including any copies thereof. Notwithstanding the foregoing, each party receiving Confidential Information will be entitled to retain copies of Confidential Information to the extent required by law or regulation; provided, that for so long as a party retains any Confidential Information, it shall employ reasonable security measures and shall exercise reasonable care in protecting the confidentiality of such information as it does in protecting its own information similarly recorded or saved and will continue to be bound by the obligations under this Agreement in regards to all such Confidential Information. The parties' obligations under this Section regarding Confidential Information shall survive the expiration or termination of this Agreement.

3. **Statements of Service; Fees and Payments; Taxes**

31 **Invoices.** Statements of Service shall describe in detail the services to be performed by FIVE NINES, and this Agreement hereby incorporates all attached and subsequent Statements of Service that refer specifically to this Agreement by name and date of execution, or the MSA Number. Statements of Service are invoiced and delivered via email at the beginning of the month, and overages are billed at month-end along with all other hourly work.

32 **Payment Terms.** Payment for monthly services is due within thirty (30) days of the invoice date, regardless of the date of receipt. Payment for product is required in advance for orders over \$1,000 unless other arrangements have been made, in which case, thirty (30) day terms and applicable late fees will apply. Product invoices are excluded from any early payment discounts. Project Labor: Payment of at least fifty percent (50%) of project labor is required before a project can begin.

33 **Availability of Service.** FIVE NINES agrees that the Services will be operable and available to materially perform the functions set forth in the Statements of Service twenty-four (24) hours per day, seven (7) days per week, subject to the terms further set forth in this Agreement. FIVE NINES shall provide ninety-nine point nine-nine percent (99.99%) uptime monthly, with the exception of Scheduled Downtime (as defined in the Statements of Service attached hereto and incorporated by reference). FIVE NINES shall provide Client with five (5) days' notice prior to any Scheduled Downtime, and represents that any interruption of Services for Scheduled Downtime shall not exceed the time reasonably necessary to complete such maintenance. In the event of an unplanned interruption, reduction in the quality, or the failure of a configuration item of the Services, FIVE NINES shall use its best efforts to restore Services and follow its IT Incident Management Policy. If FIVE NINES fails to provide ninety-nine point nine-nine percent (99.99%) in the course of any two consecutive months, or fails to achieve such uptime in three (3) months during any twelve (12) month period, FIVE NINES agrees to escalate such failure to its senior management and work in good faith to resolve such service level failures.

34 **Taxes.** It is understood that any applicable federal, state or local taxes shall be added to each invoice for services or materials rendered under this Agreement. Client shall pay all such taxes unless a valid exemption state certificate is furnished to FIVE NINES.

35 **Payment Methods.** FIVE NINES accepts payments made by Check, Visa, MasterCard and ACH. Recurring agreement ACH payments are processed on the 15th of the month. Once ACH authorization forms have been received, payment can be scheduled within two (2) business days.



36 **Fees.** A \$35.00 fee will be assessed on any checks not honored by our bank. A \$20.00 late fee will be assessed against invoices seven (7) days overdue, and finance charges (16% APR) will be imposed on balances thirty (30) days past due and each month thereafter until the past due balance is paid in full. After an invoice has gone over 30 days past due and no payment arrangements have been made, the account is subject to be placed on a credit hold, where Five Nines reserves the right to stop services until the account is brought current or other arrangements are made.

37 **Credits.** Credit memos will be communicated via email. Credits may be applied using one of the following methods:

1) Reduction of subsequent invoice payments until the full credit balance has been used. 2) Request for full reimbursement by check.

4. Coverage

All contracted services will be provided to Client by FIVE NINES between the hours of 6:30 am and 10:00 pm Monday through Friday, Central Standard Time, excluding holidays. FIVE NINES will make reasonable efforts to respond to emergency requests.

5. Nondisclosure

5.1 **Use of Confidential Information.** FIVE NINES and Client shall only use Confidential Information for the purpose of performing services under this Agreement, and shall make no use of the Confidential Information, in whole or in part, for any other purpose. Both parties agree to refrain from disclosing the Confidential Information to third parties, unless one of the parties has given its prior written authorization to the other. The parties further agree to keep the confidential and safeguard such Confidential Information against unauthorized disclosure to others with at least the same degree of care as it exercises with its own information of a similar nature, but in no event less than reasonable care. However, if the parties are required by subpoena or other court order to disclose any of the Confidential Information, the party shall provide immediate notice of such request to the other party and shall use reasonable efforts to resist disclosure. If, in the absence of a protective order or the receipt of a waiver under this Agreement, the parties are legally required to disclose any Confidential Information, then the parties may disclose such information without liability under this Agreement. In the event that Client provides written consent to FIVE NINES permitting disclosure of Client's Confidential Information to FIVE NINES' subcontractors performing services in connection with this Agreement, FIVE NINES' represents and warrants that (a) the extent of such disclosure is reasonably necessary for such subcontractor to perform such services, and (b) such subcontractors comply with confidentiality, security, and privacy obligations no less protective of Client's Confidential Information than set forth in this Agreement and required by Applicable Law.

5.2 **Remedies for Breach of Confidentiality.** The Confidential Information protected by this Agreement is of a special character, such that money damages, although available, would not be sufficient to award or compensate for any unauthorized use or disclosure of the Confidential Information. The parties agree that injunctive and other equitable relief would be appropriate to prevent any such actual or threatened unauthorized use or disclosure.

6. Ownership of Work Product

6.1 **General.** All intellectual property rights associated with any ideas, concepts, techniques, processes or other work product created by FIVE NINES during the course of performing the services shall belong exclusively to FIVE NINES, and Client shall have no right or interest therein.

6.2 **Managed Services Tools.** Notwithstanding anything to the contrary in this Agreement, FIVE NINES will retain all right, title and interest in and to all software development tools, know-how, methodologies, processes, technologies or algorithms used in providing the managed services which are based on trade secrets or proprietary information of FIVE NINES or are otherwise owned or licensed by FIVE NINES. Licenses will not be deemed to have been granted by either party to any of its patents, trade secrets, trademarks or copyrights except as otherwise expressly provided in this Agreement. Nothing in this Agreement will require FIVE NINES or Client to violate the proprietary rights of any third party in any software or otherwise.

7. Data Security

7.1 **Security.** Five Nines represents and warrants that its policies, business practices and methodologies are, to the extent required, or foreseeably required, in compliance with any and all relevant portions of Applicable Law. Five Nines will also comply with any additional procedures and processes respecting Client's Confidential Information that the Client believes to be reasonably necessary for the Client to comply with any of the Applicable Laws.

7.2 **Unauthorized Disclosure of Confidential Information.** Any actual loss, theft, unauthorized disclosure or other compromise to the confidentiality, security, or integrity of any Client Confidential Information, shall be deemed a "business interruption" as defined in FIVE NINES' Business Continuity Management Policy and triggers said policy. FIVE NINES shall notify Client of any actual loss, theft, unauthorized disclosure or other compromise to the confidentiality, security, or integrity of any Client Confidential Information, as soon as possible after FIVE NINES' discovery thereof with complete information regarding the incident and measures taken to control or reduce the harm occasioned thereby and, at FIVE NINES' cost and expense (except only to the extent the unauthorized disclosure results solely from a security breach on Client's internal data systems, in which case it shall be at Client's cost and expense) shall take such actions required under Applicable Law in response to such incident which may include notifying the Client, law enforcement officials, other regulatory authorities, or affected Client Customers or

FIVE NINES

other affected individuals or entities, submitting to forensic examinations, and issuing press releases.



73 **Information Security; Access Rights.** FIVE NINES' shall maintain reasonable and appropriate security policies, procedures, and systems to protect PHI or Confidential Information that FIVE NINES manages, processes, stores, or transmits (the "Security Program"). The Services will conform to the provisions of Applicable Law related to the privacy, security, and data protection and destruction of PHI and will include administrative, technical, and physical safeguards that are commensurate with the scope of FIVE NINES' activities and the sensitivity of Client's Confidential Information that FIVE NINES receives. FIVE NINES will ensure that the Services are designed to (i) protect the security, confidentiality and integrity of PHI and Client's Confidential Information, (ii) protect against any anticipated threats or hazards to the security and integrity of PHI and Client's Confidential Information, and (iii) protect against unauthorized access to such information or associated records which could result in substantial harm or inconvenience to any consumer. FIVE NINES shall regularly review all of the key controls, processes and procedures of the Security Program and update the Security Program to best protect against new threats and risks.

As a part of its Security Program, FIVE NINES shall provide for the following access controls: (i) access rights and privileges to information resources containing Confidential Information or PHI shall be granted only on a need-to-know basis and consistent with the level of access required, and (ii) immediately terminate access rights and privileges of FIVE NINES personnel when such personnel no longer provide services to Client, or otherwise do not require access rights and privileges.

74 **Security Practices; Audit.** FIVE NINES represents and warrants that it has up-to-date policies and procedures with respect to its internal controls, including proper controls to maintain in compliance with Applicable Laws and Industry Standards, and shall provide Client a copy of a summary of such policies and procedures as requested. To the extent such policies and procedures are materially amended thereafter, FIVE NINES will provide Client a copy of a summary of such amendment if such policy has, prior to the amendment, been requested by Client.

Annually during the term of this Agreement, FIVE NINES shall conduct a review of its internal controls related to the Security Program. The review shall assess compliance with the Security Program, where the findings and recommendations of which shall be set forth in a report (the "Report"). If requested, FIVE NINES shall deliver a copy of the Report to the Client promptly upon completion of each Report. If the Report contains any recommendations, FIVE NINES shall, at its sole cost and expense, promptly take all actions necessary to comply with such recommendations. If, at any time during the term of this Agreement, the Client has reasonable material concerns regarding FIVE NINES' operational controls and such concerns are not addressed in the Report or in FIVE NINES' response to any recommendations therein, to the Client's reasonable satisfaction, the Client shall so notify FIVE NINES and the parties shall promptly meet in an effort to resolve the stated concerns.

75 **Warranty.** FIVE NINES represents and warrants that it has policies and procedures with respect to its internal controls, including proper controls to maintain in compliance with Applicable Laws and Industry Standards, and shall provide Client a copy of a summary of such policies and procedures as requested. To the extent such policies and procedures are materially amended thereafter, FIVE NINES will provide Client a copy of a summary of such amendment if requested by Client.

76 **Cooperation.** FIVE NINES agrees to, within ten (10) days of Client's written request, make available all records, books, agreements, policies and procedures relating to Client's Confidential Information for the purpose of allowing Client or its agents or auditors to determine FIVE NINES' compliance with this Agreement. FIVE NINES further agrees to use its best efforts in any examination which may be requested by any governmental authority with audit and examination over Client, and provide any information that may be reasonably requested by any governmental authority in connection with their examination or review of Client.

8. Indemnity

8.1 **Indemnification of Client.** FIVE NINES agrees to indemnify, defend, and hold harmless Client and its Affiliates, directors, officers, employees, and agents against any and all judgments, settlements, penalties, costs and expenses (including reasonable attorney's fees) paid or incurred in connection with any third-party claim(s) relating to: (a) the Services as provided to Client or the use thereof as permitted in this Agreement infringing or misappropriating any valid third-party intellectual property rights; or (b) FIVE NINES improper or unauthorized use or disclosure of PHI or Confidential information. FIVE NINES shall have the right to modify the Services to make them non-infringing, provided that such modified Services provide substantially similar functionality and otherwise comply with the terms of this Agreement. Provided, however, FIVE NINES shall have no obligation with respect to any claims of infringement that arise from: (i) modifications to the Services (other than by or on behalf of FIVE NINES); (ii) combinations of the Services with other software or products not provided or authorized by FIVE NINES; (iii) any modifications to the Services made at Client's request if such claim would not have occurred but for the requested modification; (iv) any unauthorized use of the Services by Client or otherwise under Client's account; or (v) Client's breach of its representations and warranties under Section 8. To the extent a third-party claim of infringement arises from the activities set forth in the preceding sentence, Client agrees to indemnify, defend and hold harmless FIVE NINES and its Affiliates, directors, officers, employees and agents, against any and all judgments, settlements, penalties, costs and expenses (including reasonable attorney's fees) paid or incurred in connection therewith.

8.2 **Indemnification of FIVE NINES.** Client acknowledges that by entering into and performing its obligations under this Agreement, FIVE NINES will not assume and shall not be exposed to the business and operational risks associated with Client's business, and Client therefore agrees to indemnify, defend and hold FIVE NINES harmless from any and all claims, actions, damages, liabilities, costs and expenses (including attorneys' fees and expenses) arising out of or related to the conduct of Client's business except as a result of FIVE NINES' failure of its obligations hereunder.



83 **Procedures.** The indemnities in this Section 8 are contingent upon: (i) the indemnified party promptly notifying the indemnifying party in writing of any claim which may give rise to a claim for indemnification (provided, however, that failure to provide such prompt notice to the indemnifying party shall not affect indemnification obligations thereunder in the absence of actual prejudice to the indemnifying party); (ii) the indemnified party shall permit the indemnifying party to assume and control the defense of any action upon the indemnifying party's written acknowledgment of the obligation to indemnify (unless, in the opinion of counsel of the indemnified party, such assumption would result in a material conflict of interest); and (iii) the indemnifying party shall not enter into any settlement or compromise of any claim without the indemnified party's prior written consent, which shall not be unreasonably withheld. In addition, the indemnified party may, at its own expense, participate in its defense of any claim. In the event that the indemnifying party assumes the defense of any such claim, the indemnifying party is not liable for attorney's fees and costs incurred by the indemnified party.

9. Representation and Warranties

91 FIVE NINES represents and warrants that it (a) has the right, power and authority to enter into the Agreement and to fully perform all of the obligations hereunder, (b) will use commercially reasonable efforts to provide all services required of it under the Agreement in accordance with all Applicable Laws and prevailing industry standards (c) owns or has acquired the requisite rights from third parties to the FIVE NINES property; (d) shall not knowingly or negligently introduce undisclosed operational limiting routines, viruses, malicious code (a.k.a. "Trojans"), date bugs or copy protection devices, administrative interfaces (a.k.a. "Backdoors"), keystroke or data capture/transmission facilities (a.k.a. "Spyware") embedded in the Systems FIVE NINES uses to perform the Services and that it makes available to Client and its customers.

92 FIVE NINES does not manufacture hardware or commercial off-the-shelf (COTS) software covered under this Agreement. Any warranty provisions are passed through from the manufacturer and are subject to the manufacturer's limitations. Any labor supplied by FIVE NINES is not covered under the terms of the manufacturer's warranty.

93 FIVE NINES may provide equipment owned by FIVE NINES and housed at Client's premises. Such equipment may include, but is not limited to routers, desktops, servers, software, and remote backup devices. Such equipment shall be treated with the same care and security as similar equipment owned by Client. Client shall be held liable for any damage or loss not covered by the manufacturer's warranty. If such loss or damage occurs, Client will be invoiced the current replacement cost of the equipment plus shipping and handling and related installation charges.

94 FIVE NINES shall maintain and pay all premiums on the following insurance coverages. The insurance shall be written in accordance with the limits of liability specified as part of this Agreement and shall be written on an occurrence basis only. FIVE NINES shall ensure that all insurance policies required pursuant to this Agreement are issued by insurance companies with an A.M. Best's rating of no less than A-.

- Commercial General Liability: \$1,000,000.00
- Cyber Liability Insurance: \$2,000,000.00
- Crime Insurance: \$250,000.00
- Professional Liability/Errors and Omissions Insurance: \$2,000,000.00
- Umbrella or Excess Liability Insurance: \$5,000,000.00

10. Disclaimer of Warranties; Limitation of Damages

101 **THE EXPRESS, BUT LIMITED, WARRANTY ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING FIVE NINES SERVICES. FIVE NINES AND ITS AFFILIATES SPECIFICALLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE.**

102 **EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS IN SECTION 8, FIVE NINES AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOST DATA, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION ARISING FROM OR RELATING TO THIS AGREEMENT OR ARISING FROM OR RELATING TO THE USE OF THE SOFTWARE WHICH HAS BEEN MODIFIED BY ANYONE OTHER THAN FIVE NINES, LOSS OF PROGRAMS, AND THE LIKE, THAT RESULT FROM THE USE OR INABILITY TO USE THE SERVICES OR FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR DIRECTORIES, LOSS OF DATA, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE OR OTHER TORTS), TO THE EXTENT ALLOWED BY LAW, EVEN IF FIVE NINES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**



30. Client agrees that the total liability of FIVE NINES and its affiliates and the sole remedy of Client and any End User for any claims regarding FIVE NINES services is limited to the amounts paid under this Agreement, or the maximum allowed under FIVE NINES' insurance policy, whichever is greater. Notwithstanding the foregoing, FIVE NINES total liability for a breach of Section 8 (Indemnification) and Section 7 (Data Security) shall not exceed two million dollars (\$2,000,000.00).

10.4 Except as expressly provided in the Agreement, Client acknowledges that (a) FIVE NINES is in no manner responsible for any action or inaction of any third party not engaged by it or under its control; (b) FIVE NINES has not represented that the services shall be uninterrupted, error-free, or without delay; and (c) FIVE NINES does not and cannot control the flow of data through the Internet, and such flow depends in large part on the performance of third parties whose actions or inactions can, at times, produce situations in which connections to the Internet (or portions thereof) may be impaired or disrupted.

ACCORDINGLY, CLIENT ACKNOWLEDGES THAT FIVE NINES DISCLAIMS ALL LIABILITY RELATED TO EVENTS OUTSIDE OF ITS CONTROL AND/OR IN THE CONTROL OF THIRD PARTIES, AND CLIENT SHALL HAVE NO RIGHT TO RELY UPON ANY REPRESENTATION OR WARRANTY OF ANY THIRD PARTY IN RESPECT TO THE SERVICES. Further, Client acknowledges that, in providing the services, FIVE NINES shall necessarily rely upon information, instructions, and services from Client, its administrator, employees and agents, and other third parties providing computer and communications hardware, software, and Internet services. Except as expressly provided in the Agreement, Client fully assumes the risk associated with errors in such information, instructions, and services.

11. **Non Solicitation of Employees.** Client acknowledges that FIVE NINES has a substantial investment in its employees that provide services to Client under this Agreement and that such employees are subject to FIVE NINES's control and supervision. In consideration of this investment, Client agrees not to solicit, hire, employ, retain, or contract with any employee of FIVE NINES, without first receiving FIVE NINES's written consent. If any employee involved with the delivering of these services terminates his or her employment with FIVE NINES (regardless of the reason for termination), and is employed by Client (or any affiliate or subsidiary of Client) in any capacity either during the term of this agreement or within a 12 month period thereafter, Client shall immediately pay FIVE NINES an amount equal to 400% of the then current yearly salary or wage paid by FIVE NINES to such employee. This amount is intended by the parties to be a reasonable calculation of the projected costs FIVE NINES would incur to identify, recruit, hire and train suitable replacement personnel.

12. General Provisions

121 **Equipment & Facilities.** Client agrees that FIVE NINES may utilize certain items of Client's equipment and may gain access to Client facilities. Client retains title and ownership in all of Client's equipment owned by Client and utilized by FIVE NINES. Facility access may be denied for any reason at any time, however if access to facilities is denied, Client understands that FIVE NINES may be unable to perform their duties adequately and if such a situation should exist, FIVE NINES will be held harmless.

122 **Passwords.** Client acknowledges that FIVE NINES may need access to any and all systems and resources to perform their duties under this contract. As such, FIVE NINES must have access to any and all passwords necessary to perform duties under this agreement.

123 **Waiver.** The failure or forbearance of FIVE NINES or Client to enforce any right or claim against the other party shall not be deemed to be a waiver by FIVE NINES or Client of such right or claim or any other right or claim hereunder. The waiver by FIVE NINES or Client of a breach hereof shall not operate or be construed as a waiver of any subsequent breaches of the same or any other provision.

124 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject hereof and supersedes all prior proposals, agreements, negotiations, correspondence, demonstrations, and other communications, whether written or oral, between FIVE NINES and Client. No modification or waiver of any provision hereof shall be effective unless made in writing signed by both FIVE NINES and Client.

125 **Severability.** If any provision hereof is determined in any proceeding binding upon the parties hereto to be invalid or unenforceable, that provision shall be deemed severed from the remainder of the Agreement, and the remaining provisions of the Agreement shall continue in full force and effect.

126 **Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the obligation for the payment of money) on account of any cause that is beyond the reasonable control of such party.

127 **Applicable Law and Venue.** This Agreement shall be governed and construed in all respects in accordance with the laws of the State of Nebraska.

128 **Notices.** Except where provided otherwise, notices hereunder shall be in writing and shall be deemed to have been fully given and received when mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed to the offices of the respective parties as specified in the first paragraph of this Agreement, or at such address as the parties may later specify in writing for such purposes. The foregoing shall apply regardless of whether such mail is accepted or unclaimed.



129 **Assignment.** This Agreement shall inure to the benefit of, and be binding upon, any successor to or purchaser of FIVE NINES whether by contract, merger or operation of law. Except for this limited right of assignment, neither party shall assign this Agreement or any right or interest under this Agreement, nor delegate any work or obligation to be performed under this Agreement, without the other party's prior written consent. Any attempted assignment or delegation in contravention of this provision shall be void and ineffective.

1210 **Pricing Information; Availability Disclaimer.** FIVE NINES reserves the right to make adjustments to pricing, Products and Service offerings for reasons including, but not limited to, changing market conditions, Product discontinuation, Product unavailability, manufacturer price changes, supplier price changes and errors in advertisements.

FIVE NINES reserves the right to adjust charges should Client reduce, limit or eliminate Client technology support resources and/or employee positions existing at the time of execution of this Agreement. All orders are subject to Product availability and the availability of Personnel to perform the Services. Once an order is accepted, FIVE NINES must perform the Services in accord with the order. If Services are performed on a time and materials basis, any estimates provided by FIVE NINES are for planning purposes only, however, FIVE NINES shall receive prior written consent from Client prior to exceeding such estimate.

1211 **Dispute Resolution.** Except for the right of either party to apply to a court of competent jurisdiction for a Temporary Restraining Order, Preliminary Injunction, or other equitable relief to preserve the status quo or prevent irreparable harm FIVE NINES and Client understand and agree that the implementation of this Agreement will be enhanced by the timely and open resolution of any disputes or disagreements between such parties. Each party hereto agrees to use its best efforts to cause any disputes or disagreements between such parties to be considered, negotiated in good faith, and resolved as soon as possible.

In the event that any dispute or disagreement between the parties cannot be resolved to the satisfaction of FIVE NINES' Director of Service and the representative of the Client who signs this agreement within ten (10) days after either organization has notified the other in writing of the need to resolve the specific dispute or disagreement within such ten (10) day period, then the dispute or disagreement shall be immediately referred in writing to the President of FIVE NINES and the President of Client (or their respective successors) for consideration. In the event that such officers of FIVE NINES and Client cannot resolve such dispute or disagreement to their mutual satisfaction within ten (10) days after the latter person has received written notice of the need to resolve the specific dispute or disagreement within such ten (10) day period, then the dispute or disagreement shall be immediately referred to in writing to the CEO of Five Nines and the CEO of the Client (or their respective successors) for consideration.

No resolution or attempted resolution of any dispute or disagreement pursuant to this Section shall be deemed to be a waiver of any term or provision of this Agreement or consent to any breach or default unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

1212 **Arbitration.** Except for the right of either party to apply to a court of competent jurisdiction for a Temporary Restraining Order, Preliminary Injunction, or other equitable relief to preserve the status quo or prevent irreparable harm pending the selection and confirmation of the arbitrator, any and all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof which the parties are unable to resolve pursuant to the Dispute Resolution process contained in paragraph 12.11 of this Agreement shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association (AAA) then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties or in accordance with AAA rules. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Legal fees shall be awarded to the prevailing party in the arbitration.

13. **Title; Transfer of Ownership.** In performance of the Services FIVE NINES will purchase personal property including but not limited to hardware, software and software licenses from third parties and act as reseller providing identified personal property to client. Client agrees that ownership of this personal property will pass from FIVE NINES to Client upon receipt of goods and identification (set aside, marked and labeled) by FIVE NINES.

RESOLUTION NO. 2022-30

WHEREAS: NDOT has previous entered into an agreement with the Metropolitan Area Planning Agency (MAPA) to purchase federal Coronavirus Response and Relief Supplemental Appropriations Act (CRRSSA) funds that were made available to entities within MAPA.

WHEREAS: The State's total cash payment will be equal to 90% of the CRRSSA federal funds purchased by the State from MAPA.

NOW, THEREFORE, BE IT RESOLVED THAT by the City Council of the City of Valley that: The Mayor of the City of Valley is hereby authorized to sign the attached Project CRRSSA Fund Purchase Agreement between the City of Valley and the NDOT.

DATED THIS 12th day of April, 2022.

CITY OF VALLEY, DOUGLAS
COUNTY, NEBRASKA

Cindy Grove, Mayor

Mike Stanzel, Council Member President

Bryon Ueckert, Council Member

Linda Lewis, Council Member

ATTEST:

Chris TenEyck, Council Member

Cheryl K. Eckerman, City Clerk

**FEDERAL-AID TRANSPORTATION FUND
PURCHASE-SALE LETTER AGREEMENT
CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATION ACT
(CRRSAA)**

Nebraska Department of Transportation

City of Valley

THIS LETTER AGREEMENT made and entered into by and between the State of Nebraska, Department of Transportation, hereinafter referred to as the “State,” and City of Valley, Nebraska, hereinafter referred to as Local Public Agency, or “LPA.”

RECITALS

WHEREAS, the Metropolitan Area Planning Agency (MAPA) had the right to use certain Coronavirus Response and Relief Supplemental Appropriation Act (CRRSAA) funds for local federal-aid highway projects, and

WHEREAS, LPA, as an entity that is a part of MAPA, would have been entitled to use some of those CRRSAA funds, and

WHEREAS, MAPA has agreed to sell to State, in an Agreement dated July 28, 2021, attached hereto and made a part hereof, the right for State to purchase and use MAPA’s CRRSAA funds, for State federal-aid Highway projects, in exchange for a cash payment from State that will be allocated among and paid directly to each of the local governmental entities that are a part of MAPA (See attached Agreement for anticipated allocation), and

WHEREAS, the State’s total cash payment will be equal to 90% of the CRRSAA federal funds purchased by State from MAPA, and

WHEREAS, the Agreement between State and MAPA, (signed copy attached as Attachment A), contains limitations on the use that LPA can make of the cash payment received, and also includes a requirement for annual certifications from LPA to State concerning the LPA’s use of the cash payment, and

WHEREAS, the purpose of this Agreement is for LPA to agree to be bound by the terms of the State/MAPA Agreement in exchange for LPA receiving a share of the cash payment.

NOW, THEREFORE, in consideration of these facts, the State and the LPA agree as follows:

SECTION 1. Effective Date and Term of this Agreement. This Agreement will be effective only upon the execution of this Agreement by the State. The agreement will terminate when State has received final certification from LPA that all funds received from State's purchase of the CRRSAA funds have been expended by LPA consistent with the requirements of this Agreement.

SECTION 2. Obligations of LPA. In exchange for the receipt of LPA's share of the cash payment from State, for State's purchase of the CRRSAA funds from MAPA, LPA agrees to be fully bound by all of the obligations of MAPA under the attached agreement, including but not limited to, the Limitations on LPA's Use of the Cash Payment set out in Section 4, and the obligation of LPA to make annual certifications to State as required in Section 5 of the attached agreement.

SECTION 3. Obligations of State. State agrees to make direct payment to LPA for the share of the cash payment, expected to be in the amount shown in the attached agreement in the amount of \$75,000.00, and to meet any other obligations of the attached Agreement applicable to LPA.

IN WITNESS WHEREOF, the LPA and State hereto have caused this Agreement to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the LPA this ____ day of _____, 2022.

WITNESS:

CITY OF VALLEY

By

Title

EXECUTED by the State this ____ day of _____, 2022.

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION

By

Title

**FEDERAL-AID TRANSPORTATION FUND
PURCHASE-SALE AGREEMENT
CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATIONS
ACT (CRRSAA)**

**Nebraska Department of Transportation
Metropolitan Area Planning Agency**

THIS AGREEMENT made and entered into by and between the State of Nebraska, Department of Transportation, hereinafter referred to as the "State," and the Metropolitan Area Planning Agency, Nebraska, hereinafter referred to as Local Public Agency, or "LPA."

RECITALS

WHEREAS, the State and LPA have authority to enter into this Agreement and to expend funds pursuant to Neb. Rev. Stat. §§ 39-1307 and 66-4,100; and,

WHEREAS, under the Coronavirus Response and Relief Supplemental Appropriation Act (CRRSAA), the LPA was allocated \$6,377,523.00 apportionment from the Highway Infrastructure Program for LPA's use in response to the losses suffered by the LPA as the result of the Coronavirus pandemic, and

WHEREAS, the federal-aid funds made available to the LPA are of a type that would also be eligible for use by the State for federal-aid projects on certain State highway and bridge projects; and,

WHEREAS, LPA wishes to sell to State the right to use \$6,377,523.00 of LPA's CRRSAA funds for Title 23 transportation purposes in exchange for State making a cash payment to LPA.

WHEREAS, the cash payment to be made by the State to local governments within MAPA will be equal to ninety percent (90%) of the total dollar amount of federal-aid funds purchased by the State ($\$6,377,523.00 \times .90\% = \$5,739,770.70$).

WHEREAS, the cash payment will be made to the local governments within MAPA no later than the end of federal fiscal year 2022, depending on State's sole determination of cash flow.

WHEREAS, State will use all of the \$6,377,523.00 received from the LPA to pay a portion of the expected construction costs for the upcoming State project identified as CN

22611, I-680 Bridges, and State will meet all standard federal-aid requirements for the use of those funds, and

WHEREAS, LPA will pass through to local governments within MAPA the cash received from State and such funds will be used by the local governments within MAPA only for the purposes set out in this agreement, and

WHEREAS, the LPA is interested in selling these federal-aid funds to the State on the terms and conditions set out in this Agreement, including certain limitations on the use of the cash received by LPA.

NOW, THEREFORE, in consideration of these facts, the State and the LPA agree as follows:

SECTION 1. Effective Date and Term of this Agreement. This Agreement will be effective only upon the execution of this Agreement by the State. This Agreement will terminate when State has received the last certification from the local governments within MAPA when all funds have been used constant with the terms of this agreement. The State may terminate this Agreement for any reason at any time by giving LPA advance notice 60 days prior to the date of termination.

SECTION 2. Calculation of LPA's share of the Federal-Aid Funds Purchase. The LPA is entitled to \$6,377,523.00 of CRRSSA funds and will be purchased by the State for use on a transportation project.

SECTION 3. Cash Payment Calculation and Payment Date. The cash payment to be made by the State to the local governments within MAPA will be equal to ninety percent (90%) of the total dollar amount of federal-aid funds sold by LPA to State. The total dollar amount of federal-aid funds purchased by the State is \$6,377,523.00 with a payout to the local governments within MAPA in the amount of \$5,739,770.70. Instead of paying MAPA the cash payment, State will make payment directly to the local governments within MAPA at the funding level listed in the following table:

Local Government	Funding
Douglas County	\$1,034,772
Sarpy County	\$750,265
Bellevue	\$360,233
Bennington	\$75,000
Gretna	\$75,000
La Vista	\$108,115
Omaha	\$2,804,680
Papillion	\$146,706
Ralston	\$75,000
Springfield	\$75,000
Valley	\$75,000
Waterloo	\$75,000
Boys Town	\$75,000
Cass County	\$10,000

SECTION 4. Limitations on LPA's and local governments with MAPA Use of Cash Payment. The portion of the cash payment received by the local government within MAPA from the State for the purchase of the funds shall be used solely for the transportation purposed eligible under CRRSAA or for the cost of construction, reconstruction, maintenance, or repair of public highways, streets, roads, or bridges and facilities, appurtenances, and roadway structures deemed necessary in connection therewith. LPA shall assist state in obtaining letter agreements from the local governments within MAPA to bind the local governments to the requirements of this section.

The phrase "facilities, appurtenances, and roadway structures deemed necessary in connection therewith," as used in the first sentence of this section, includes medians; accessory lanes; steps; handrails; sidewalks, adjoining trails, paths and related structures; drainage facilities such as storm sewers, curb or grate inlets, culverts, ditches, and other drainage structures; guardrails; lighting facilities; driveways; retaining walls and

other similar facilities that are necessary or desirable and directly related to the proper design of streets, roads and highways.

The local governments within MAPA shall segregate the cash payment and shall separately account for the cash payment received from the State within its accounting system. The cash payment funds may be used for any phase of an allowable project. The phases of an allowable project include but are not limited to: 1) preliminary engineering, 2) right-of-way acquisition, 3) utility relocations, 4) construction, and 5) construction engineering.

All roads and bridges shall be designed and constructed to meet the minimum standards of the Nebraska Board of Public Roads Classifications and Standards.

SECTION 5. Annual Certification of Use of Cash Payment and Action Required for Improper Use of Funds. Until all such funds have been used by the local governments within MAPA, each local government shall submit to State an annual certification in accordance with this agreement. The annual certification shall be filed with the Local Assistance Division of the State and the form shall be submitted by local government within 90 days after the end of sub entities fiscal year. Further, each local government within MAPA must immediately report to State any use of the cash payment for a nonconforming use under this Agreement. Within 60 days of discovery of any improperly diverted funds, the applicable local government within MAPA must provide the State with a repayment plan for that local government to replace the improperly diverted funds by depositing an equivalent amount of other local funds into the cash payment account. If the local government within MAPA fails to repay the funds or fails to provide a repayment plan that is acceptable to the State, the State will withhold local government's future annual payments until the applicable local government, repays all improperly diverted funds. If the local government within MAPA fails to meet the requirement of the prior sentence, the State may terminate this Agreement and apply any future funds of the local government within MAPA toward the repayment of the improperly diverted funds.

SECTION 6. Fund Distribution. Prior to the distribution of funds under his Agreement, LPA agrees to facilitate State obtaining a separate "Letter" Agreement from each of the local governments receiving a cash payment, with each entity agreeing to be

bound to the terms of this Agreement, including but not limited to the use of the cash distribution and the annual certification requirements.

SECTION 7. Additional Terms and Conditions. The parties agree to the following additional terms and conditions:

- A. Federal Legislation. The LPA authorizes the State to take such steps as are deemed by the State to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Surface Transportation Act for this Agreement. The terms of this Agreement are subject to changes in federal legislation. The State reserves the right to (1) terminate this Agreement, in the event such changes in federal law significantly impacts, nullifies or renders impractical the continuing purchase of LPA's federal-aid funds.
- B. Application of Purchased Funds. The LPA understands that the State, at its sole discretion, intends to use the federal-aid funds purchased from LPA for the I-680 Bridges project identified in the recitals above.
- C. Audits. The LPA agrees to make its records and books available at any time to representatives or designees of the State for audit.
- D. Applicable Law. The LPA agrees to follow all applicable laws governing the transaction set out in this Agreement and the use of the State payment for local street, road, or bridge projects.
- E. Local Ordinances and Resolutions. The LPA agrees to adopt all necessary ordinances and/or resolutions and to take such legal steps as may be required to give full effect to the terms of this Agreement.
- F. Maintenance of and Commitments for Projects Constructed with Federal Funds. This Agreement does not relieve the LPA of maintaining, at its own expense, all transportation projects under its jurisdiction which have used, or will use federal funds in the future (see, 23 U.S.C. § 116). The LPA agrees to make provisions each year for the maintenance costs involved in properly maintaining all of its federal-aid routes and facilities. The LPA shall also be solely responsible for any required environmental commitments, including monitoring, and any other commitments made, after the

construction of projects on its federal-aid routes which have used, or will use federal funds in the future. In the event that the federal government withholds funds from the State related to LPA's failure to meet its obligations under this section, LPA agrees that the State, in addition to all other remedies, may withhold its future cash payments under this agreement until all funds are repaid.

- J. Right-of-Way. The LPA is advised to use or cause any sub entity to use the "Uniform Act" and keep good records when purchasing right-of-way for a project. The "Uniform Act" is the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. § 24, entitled "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs."
- K. No Third-Party Benefits. No third-party beneficiaries are intended to be created by this Agreement, nor do the parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- L. Fair Employment Practices Act. The LPA agrees to abide by Nebraska Fair Employment Practices Act, as provided by Neb. Rev. Stat. §§ 48-1101 through 48-1126, which is hereby made a part of and included in this Agreement by reference.

IN WITNESS WHEREOF, the LPA and State hereto have caused this Agreement to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the LPA this 22 day of July, 2021.

WITNESS:

Pamela A. Suehle

METROPOLITAN AREA PLANNING AGENCY

By Douglas D. Kendej

MAPA Board Chair
Title

EXECUTED by the State this 28th day of July, 2021.

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION

By Khalifa

Deputy Director - Engineering
Title

RESOLUTION NO. 2022-31

WHEREAS, the City of Valley, Douglas County, Nebraska, proposes to enter into a lease to purchase agreement between the City of Valley and Bell Bank Equipment Finance and

WHEREAS, the Valley City Council in regular session on April 12th, 2022, authorized said amendment,

NOW, THEREFORE, BE IT RESOLVED THAT Valley City Council consents to and authorizes Mayor Grove to execute the agreement on behalf of the City of Valley, a copy of which is made a part hereof by reference.

DATED THIS 12th day of April, 2022.

CITY OF VALLEY, DOUGLAS
COUNTY, NEBRASKA

Cindy Grove, Mayor

Mike Stanzel, Council Member President

Bryon Ueckert, Council Member

Linda Lewis, Council Member

ATTEST:

Chris TenEyck, Council Member

Cheryl K. Eckerman, City Clerk



Lease-Purchase Agreement

Lease Purchase Agreement Number: 107135-001

This Lease-Purchase Agreement dated the 11th day of April, 2022, (the "Lease"), by and between Bell Bank Equipment Finance, a division of Bell Bank, whose address is 15490 101st Ave N, Suite 200, Maple Grove, MN 55369, as agent for one or more persons (the "Lessor") and City of Valley, located in Douglas County, as Lessee (the "Lessee"), whose address is 203 N. Spruce St., Valley, NE 68064.

WITNESSETH:

WHEREAS, Lessee is authorized by State statutes to acquire one (1) 2021 John Deere 6110M Tractor with 22' Rear Cradle Diamond Boom Mower by entering into a lease-purchase agreement; and

WHEREAS, pursuant to a resolution duly adopted by the Lessee on see attached, the Lessee has determined that it is necessary to further the construction and maintenance purposes of the Lessee that it acquire one (1) 2021 John Deere 6110M Tractor with 22' Rear Cradle Diamond Boom Mower described herein as Equipment; and

WHEREAS, Lessor is willing to acquire the Equipment and to lease and sell it to Lessee pursuant to this Lease;

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.1 **Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

Authorized Representative: Shall mean (a) with respect to the Lessee, the officer of the Lessee or any other Person or Persons at any time designated by resolution of Lessee's governing body or written certificate conferring authority upon such person to act on behalf of the Lessee with respect to this Lease; and (b) with respect to the Lessor, any authorized signatory of the Lessor authorized by their bylaws to act or to execute documents on behalf of the Lessor.

Certificate of Acceptance: The Certificate of Acceptance of Lessee the form of which is attached hereto as Exhibit C.

Code: The Internal Revenue Code of 1986, as amended and any regulations promulgated thereunder by the United States Department of the Treasury.

Commencement Date: The date upon which Lessee's obligations to make Lease-Purchase Payments accrues as evidenced by the issuance to Lessor of the Certificate of Acceptance attached hereto as Exhibit C.

Contractor: Each of the manufacturers or vendors from whom Lessee (or Lessor at Lessee's request) has ordered or will order or with whom Lessee (or Lessor at Lessee's request) has contracted or will contract for the manufacture, delivery and/or installation of the Equipment.

Cost or Costs: The costs of acquisition and installation of the Equipment and all other costs incidental and related thereto, including the costs of preparation, marketing and sale of this Lease.

Equipment: The one (1) 2021 John Deere 6110M Tractor with 22' Rear Cradle Diamond Boom Mower described in the attached Exhibit A which is being leased and purchased by Lessee pursuant to this Lease.

Fiscal Year: Each twelve (12) month fiscal period of Lessee commencing on the [redacted] of [redacted] and ending on the [redacted] of [redacted] the following year.

Independent Counsel: An attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of Lessor or Lessee.

Interest: The portion of any Lease-Purchase Payment designated as and comprising interest as shown in the attached Exhibit B.

Lease: This Lease-Purchase Agreement dated as of 4/11/2022, whereby the Lessor has leased the Equipment to Lessee, as the same may from time to time be amended or modified.

Lease-Purchase Payment: The payment due from Lessee to Lessor on each Payment Date, as shown on Exhibit B.

Net Proceeds: Any insurance proceeds, paid with respect to the Equipment, remaining after payment therefrom of all expenses incurred in the collection thereof.

Payment Date: The date upon which any Lease-Purchase Payment is due and payable as provided in Exhibit B.

Permitted Encumbrances: As of any particular time: (i) liens for taxes and assessments not then delinquent, or which Lessee may, pursuant to the provisions of Section 7.3 hereof, permit to remain unpaid, (ii) this Lease and amendments hereto, (iii) Lessor's interest in the Equipment, and (iv) any mechanic's, laborers, material person's supplier's or vendor's lien or right not filed or perfected in the manner prescribed by law, other than any lien arising through a Contractor or which Lessee may, pursuant to Article VIII hereof, permit to remain unpaid.

Person or Persons: An individual, partnership, corporation, trust or unincorporated organization.

Prepayment Price: With respect to the Equipment, as of any Payment Date, the amount so designated and set forth opposite such date in the attached Exhibit B.

Principal: The portion of any Lease-Purchase Payment designated as principal in the attached Exhibit B.

Request for Disbursement of Funds: The Request for Disbursement of Funds of Lessee, the form of which is attached hereto as Exhibit C-1.

Specifications: The bid specifications and/or purchase order pursuant to which Lessee has ordered the Equipment from a Contractor.

State: The State of Nebraska.

State and Federal Law or Laws: The Constitution and any law of the State and any charter, ordinance, rule or regulation or any agency or political subdivision of the State, and any law of the United States, and any rule or regulation of any federal agency.

Term, Term of this Lease or Lease Term: The period commencing on the execution of this Lease and ending on the date the last Lease-Purchase Payment is due and payable, as shown on Exhibit B.

Section 1.2 **Exhibits.** The following Exhibits are attached to and by reference made part of this Lease:

Exhibit A: A description of the Equipment including the serial number thereof which shall be inserted when available.

Exhibit B: A schedule to be completed by Lessor as provided in Section 4.1, indicating the date upon which the Term of this Lease shall end, the date and amount of each Lease-Purchase Payment coming due under the Lease Term and the amount of Principal and Interest comprising each Lease-Purchase Payment.

Exhibits C and C-1: A Certificate of Acceptance of Lessee with a Request for Disbursement of Funds attached indicating that the Equipment has been or will be delivered and installed in accordance with the Specifications, and has been accepted by Lessee, the date on which Lease-Payments shown in Exhibit B shall commence, and that certain other requirements have been met by Lessee.

Exhibit D: An opinion of counsel to Lessee as to the organization, nature and powers of Lessee, the validity, execution and delivery of this Lease and various related documents; the absence of litigation; and related matters.

Exhibit E: A form of resolution of the governing body of Lessee, relating to this Lease and, if applicable, certain federal tax matters.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 **Representations, Covenants and Warranties of Lessee.** Lessee represents, covenants and warrants as follows:

- (a) Lessee is a political subdivision and municipal corporation, duly organized and existing under the Constitution and laws of the State.
- (b) Lessee is authorized under the Constitution and laws of the State to enter into this Lease and the transactions contemplated hereby, and to perform all of its obligations hereunder.
- (c) The officer of Lessee executing this Lease has been duly authorized to execute and deliver this Lease under the terms and provisions of a resolution of Lessee's governing body, or by other appropriate official action.
- (d) In authorizing and executing this Lease, Lessee has complied with all open meeting laws, public bidding and other State and

Federal laws applicable to this Lease and the acquisition of the Equipment by Lessee.

- (e) Lessee will not pledge, mortgage or assign this Lease, or its duties and obligations hereunder to any other Person, firm or corporation, except as provided under the terms of this Lease.
- (f) Lessee will use the Equipment during the Lease Term only to perform its essential governmental functions.
- (g) Lessee will take no action that would cause the interest portion of the Lease-Purchase Payments to become includable in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986 (the "Code") and Treasury Regulations promulgated thereunder (the "Regulations"), and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the interest portion of the Lease-Purchase Payments does not become includable in gross income of the recipient for federal income tax purposes under the Code and Regulations.
- (h) Upon execution of this Lease-Purchase Agreement, and upon each request for a disbursement of funds hereunder, Lessee will provide to Lessor a completed and executed copy of the Certificate of Acceptance attached hereto as Exhibit C.
- (i) Upon the execution of this Lease, Lessee will provide to Lessor an opinion of its legal counsel in the form attached hereto as Exhibit D.
- (j) Lessee will submit to the Internal Revenue Service an information reporting statement at the time and in the form required by the Code.
- (k) Lessee will cause a resolution substantially in the form attached hereto as Exhibit E to be adopted by its governing body.
- (l) Lessee does not reasonably anticipate that it will issue tax-exempt obligations (not including "private activity bonds" as defined in Section 141 of the Code) in an aggregate amount in excess of \$10,000,000 during the calendar year in which the Term commences, and this Lease is designated as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Code relating to deductibility of interest by financial institutions.

Section 2.2 **Representations, Covenants and Warranties of Lessor.** Lessor represents, covenants and warrants as follows:

- (a) Lessor has the power to enter into this Lease, is possessed of full power to own and hold real and personal property, and to lease and sell the same.
- (b) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or agreement or instrument to which Lessor is now a party or by which Lessor is bound; constitutes a default under any of the foregoing; or results in the creation or imposition any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor, or upon the Equipment, except Permitted Encumbrances.

ARTICLE III AGREEMENT TO LEASE

Section 3.1 **Lease.** Lessor hereby leases the Equipment to Lessee, and Lessee hereby leases the Equipment from Lessor, upon terms and conditions set forth in this Lease and subject to the option to purchase set forth in Section 4.3 hereof.

Section 3.2 **Possession and Enjoyment.** Lessor hereby covenants to provide Lessee during the Term with the quiet use and enjoyment of the Equipment, and Lessee intends to during the Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in the Lease. Lessor will, at the request of Lessee and at Lessee's cost, join any legal action in which Lessee asserts its right to such possession and enjoyment to the extent Lessor lawfully may do so. All warranties extended upon the Equipment by the Contractors shall inure to the benefit of the Lessee during the term of this Lease.

Section 3.3 **Lessor Access to Equipment.** Lessee agrees that Lessor shall have the right at all reasonable times to examine and inspect the Equipment. Lessee further agrees that Lessor shall have such rights of access to the Equipment as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by Lessee to perform its obligations hereunder.

Section 3.4 **Tax and Ownership and Lessee.** The Lessor warrants and represents that it shall not at any time during the term of the Lease claim depreciation, cost recovery deductions, or tax credit for federal income tax purposes with respect to the equipment, or portion thereof, and that it shall not take any position for federal income tax purposes that is inconsistent with the unequivocal title and ownership for any and all tax purposes of the Lessee.

ARTICLE IV

TERM OF LEASE

- Section 4.1 **Lease Term.** This Lease shall be in effect for a Term commencing upon the execution hereof and ending as provided in Section 4.2.
- Section 4.2 **Termination of Lease Term.** The Term of this Lease will terminate upon the occurrence of the first of the following events:
- (a) A default by Lessee and Lessor's election to terminate this Lease pursuant to Article XII without payment of all Lease-Purchase Payments; or
 - (b) The payment by Lessee of all Lease-Purchase Payments and all other amounts authorized or required to be paid by Lessee hereunder.
 - (c) Nonappropriation of funds by Lessee pursuant to Section 12.7 hereof.
- Section 4.3 **Option to Purchase.** Lessee has the option to purchase the Equipment by paying the applicable prepayment price in accordance with Section 10.1 hereof.

ARTICLE V LEASE-PURCHASE PAYMENTS

- Section 5.1 **Lease-Purchase Payments.** Lessee agrees to pay Lease-Purchase Payments during the Term of this Lease, in the amounts and on the dates specified in Exhibit B. All Lease-Purchase Payments shall be paid to Lessor at its offices at the address specified in Section 1.1 of this Lease, or to such other Person or entity to which Lessor has assigned such Lease-Purchase Payments as specified in Article XI, at such place as such assignee may from time to time designate in lawful money of the United States of America to Lessor or, in the event of assignment of the right to receive Lease-Purchase Payments by Lessor, to its assignee. Interest shall accrue from the date of the Certificate of Acceptance.
- Section 5.2 **Source of Payment.** All Lease-Purchase Payments required to be paid Lessor pursuant to this Lease shall be paid from moneys duly budgeted, appropriated, obligated and otherwise provided and made available therefor by Lessee.
- Section 5.3 **Interest Component.** A portion of each Lease-Purchase Payment is paid as and represents the payment of Interest. Exhibit B sets forth the Interest component of each Lease-Purchase Payment.
- Section 5.4 **Lease-Purchase Payments to be Unconditional.** The obligation of Lessee to make Lease-Purchase Payments or any other payments required hereunder shall be absolute and unconditional in all events, except as expressly provided under this Lease. Notwithstanding any dispute between Lessee and Lessor or any other Person, Lessee shall make all Lease-Purchase Payments and other payments required hereunder when due and shall not withhold any Lease-Purchase Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such Lease-Purchase Payments or other payments required under this Lease. Lessee's obligation to make Lease-Purchase Payments or other payments shall not be abated through accident or unforeseen circumstances. Except as provided in Section 12.7 hereof, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder, and if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damage therefor.
- Section 5.5 **Late Payments.** See Section 12.6.

ARTICLE VI INSURANCE AND NEGLIGENCE

- Section 6.1 **Liability Insurance.** Upon receipt of possession of the Equipment, Lessee shall take measures as may be necessary to ensure that any liability for injuries to or death of any Person or damage to or loss of property arising out of or in any way relating to the condition or operation of the Equipment or any part thereof, is covered by a blanket or other general liability insurance policy maintained by Lessee. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid.
- Section 6.2 **Property Insurance.** Upon receipt of possession of the Equipment, Lessee shall have and assume the risk of loss with respect thereto. Lessee shall procure and maintain continuously in effect during the Term of this Lease, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part thereof damaged or destroyed. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary deductible amounts. The Net Proceeds of insurance required by this Section shall be applied to the prompt repair, restoration or replacement of the Equipment, or to the purchase of the Equipment, as provided in Section 6.6. Any Net Proceeds not needed for those purposes shall be paid to Lessee.

- Section 6.3 **Worker's Compensation Insurance.** If required by State law, Lessee shall carry worker's compensation insurance covering all employees on, in, near or about the Equipment, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Term of this Lease.
- Section 6.4 **Requirements for all Insurance.** All insurance policies (or riders) required by this Article shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten (10) days before the cancellation or revision becomes effective. All insurance policies or riders required by Section 6.3 shall name Lessee as insured party. Lessee shall deposit with Lessor policies (or riders) evidencing any such insurance procedure by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any policy (or rider), Lessee shall furnish to Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is not obtainable in which event Lessee shall notify Lessor of this fact.
- Section 6.5 **Lessee's Negligence.** Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any Person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses and damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fee) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit, or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law.
- Section 6.6 **Damage to or Destruction of Equipment.** If after delivery of the Equipment to Lessee all or any part of the Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall as soon as practical after such event, replace the same at Lessee's sole cost and expense with equipment of equal or greater value to the Equipment immediately prior to the time of the loss occurrence, such replacement equipment to be subject to Lessor's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement, subject to the provisions of Section 12.7 hereof. Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. If Lessee fails or refuses to notify Lessor within the required period, Lessor may, at its option, exercise its remedies under Article XII hereof. The Net Proceeds of all insurance payable with respect to the Equipment shall be available to Lessee and shall be used to discharge Lessee's obligations under this Section.
- Section 6.7 **Cooperation of Lessor.** The Lessor shall cooperate fully with the Lessee at the sole expense of the Lessee, in filing any proof of loss with respect to any insurance policy covering the casualties described in this Section. To the extent it may lawfully do so, the Lessor will permit the Lessee to litigate in any proceeding resulting therefrom and the name of it and on behalf of the Lessor, provided that the Lessor has been indemnified from all costs and expenses therefor, including without limitation, reasonable counsel fees incurred by the Lessor in connection with any such litigation in its name. In no event will the Lessor voluntarily settle or consent to the settlement of any proceeding, arising out of any insurance claim with respect to the Equipment or any part thereof, without the written consent of the Lessee.

ARTICLE VII OTHER OBLIGATIONS OF LESSEE

- Section 7.1 **Use; Permits.** Lessee shall exercise due care in the installation, use, operation and maintenance of the Equipment, and shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any State or Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. Lessee shall obtain all permits and licenses necessary of the installation, operation, possession and use of the Equipment. Lessee shall comply with all State and Federal Laws applicable to the installation, operation, possession and use of the Equipment, and if compliance with any such State or Federal Law requires changes or additions to be made to the Equipment, such changes or additions shall be made by Lessee at its expense.
- Section 7.2 **Maintenance of Equipment by Lessee.** Lessee shall, at its own expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Equipment in such condition. Lessor shall have no responsibility for any of these repairs or replacements.
- Section 7.3 **Taxes, Other Governmental Charges and Utility Charges.** (a) Except as expressly limited by this Section, Lessee shall pay all taxes and other charges of any kind whatsoever which are at any time lawfully assessed or levied against or with respect to the Equipment, the Lease-Purchase Payments or any part thereof, or which become due during the Term of this Lease, whether assessed against Lessee or Lessor. Lessee shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien of the Equipment; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.

(b) Lessee may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contest to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss for forfeiture, in which event Lessee shall promptly pay such taxes, assessments, utility or other charges or provide Lessor with full security against any loss which may result from nonpayment, in the form satisfactory to Lessor.

Section 7.4 **Advances.** If Lessee shall fail to perform any of its obligations under this Article, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 18.0 % per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

Section 7.5 **Disbursements.** (a) As payments are required for the Equipment under this Lease, the Lessee as the agent for the Lessor shall prepare and submit a Certificate of Acceptance of Lessee with a Request for Disbursement of Funds to the Lessor. (b) The Lessor shall permit the withdrawal of funds requested in the Request for Disbursement of Funds, and such funds shall be applied to the payment of the Cost of the Equipment.

ARTICLE VIII TITLE

Section 8.1 **Title.** During the Term of this Lease, legal title to the Equipment and any all repairs, replacements, substitutions and modifications to it shall be in Lessee's name subject to Lessor's interest. Upon termination of this Lease for any of the reasons specified in Section 4.2 (b), Lessor's interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security or other interest in the Equipment.

Section 8.2 **Security Interest.** Lessor shall have and retain a security interest under the Uniform Commercial Code, Certificate of Title or other applicable State or Federal Law in the Equipment, the proceeds thereof and all repairs, replacements, substitutions and modifications thereto or thereof pursuant to Section 8.5, in order to secure Lessee's payment of all Lease-Purchase Payments due during the Term of this Lease and the performance of all other obligations herein to be performed by Lessee. Lessee will join with Lessor in executing such financing statements or other documents and will perform such acts as Lessor may request to establish and maintain a valid security interest in the Equipment. If requested by Lessor, Lessee shall conspicuously mark the Equipment with appropriate lettering, labels or tags, and maintain such markings during the Term of this Lease, so as clearly to disclose Lessor's security interest in the Equipment.

Section 8.3 **Liens.** During the Term of this Lease, Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, other than the respective rights of Lessor and Lessee as herein provided and Permitted Encumbrances. Except as expressly provided in Section 7.3 and this Article, Lessee shall promptly, at its own expense, take such action as may be necessary to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by Lessor in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 8.4 **Installation of Lessee's Equipment.** Lessee may at any time and from time to time, in its sole discretion and at its own expense, install other items of equipment in or upon the Equipment, which items shall be identified by tags or other symbols affixed thereto as property of Lessee. All such items so identified shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be modified or removed by Lessee at any time provided that Lessee shall repair and restore any and all damage to the Equipment resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent Lessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease-purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Equipment.

Section 8.5 **Modification of Equipment.** Lessee shall at its own expense, have the right to make repairs to the Equipment, and to make repairs, replacements, substitutions and modifications to all or any part of the parts thereof. All such work and any part or component used or installed to make a repair or as a replacement, substitution or modification, shall thereafter comprise part of the Equipment and be subject to the provisions of the Lease. Such work shall not in any way damage the Equipment or cause it to be used for purposes other than those authorized under the provisions of State or Federal Law or those contemplated by this Lease; and the Equipment, upon completion of any such work shall be of a value which is not less than the value of the Equipment immediately prior to the commencement of such work. Any property for which a replacement or substitution is made pursuant to this Section may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Equipment for labor or materials furnished in connection with any repair, replacement, substitution or modification made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss or forfeiture, in which event Lessee

shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessee will cooperate fully with Lessee in any such contest.

Section 8.6 **Personal Property.** The Equipment is and shall at all times be and remain personal property notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any building thereon or attached in any manner to what is permanently rested upon real property or any building thereon or attached in any manner to what is permanent by means of cement, plaster, nails, bolts, screws or otherwise.

ARTICLE IX WARRANTIES

Section 9.1 **Selection of Equipment.** The Equipment and the Contractor have been selected by Lessee, and Lessor shall have no responsibility in connection with the selection of the Equipment, its suitability for the use intended by Lessee, the acceptance by the Contractor or its sales representative of the order submitted, or any delay or failure by the Contractor or its sales representative to manufacture, deliver or install the Equipment for use by Lessee. Lessee authorized Lessor to add the serial number of the Equipment to Exhibit A when available.

Section 9.2 **Installation and Maintenance of Equipment.** Lessor shall have no obligation to install, erect, test, inspect, service or maintain the Equipment under any circumstances, but such actions shall be the obligation of Lessee or the Contractor.

Section 9.3 **Contractor's Warranties.** Lessor hereby assigns to Lessee for and during the Term of the Lease, all of its interest in all Contractor's warranties and guarantees, express or implied, issued on or applicable to the Equipment, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense.

Section 9.4 **Patent Infringement.** Lessor hereby assigns to Lessee for and during the Term of this Lease all of its interest in patent indemnity protection provided by any Contractor with respect to the Equipment. Such assignment of patent indemnity protection by Lessor to Lessee shall constitute the entire liability of Lessor for any patent infringement by Equipment furnished pursuant to this Lease.

Section 9.5 **Disclaimer of Warranties.** THE EQUIPMENT IS DELIVERED AS IS, AND LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.

ARTICLE X PREPAYMENT

Section 10.1 **When Available.** Lessee shall have the option to prepay its obligations under this Lease on any Payment Date at an amount equal to the applicable Prepayment Price.

Section 10.2 **Release of Lessor's Interest.** Upon the prepayment of Lessee's obligations under this Lease in accordance with Section 10.1 hereof, Lessee shall have no further obligations under this Lease and this Lease shall terminate in accordance with Section 4.2(b). Thereupon the Lessor shall relinquish title to the Equipment in accordance with Section 8.1.

ARTICLE XI ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 11.1 **Assignment by Lessor.** Except as otherwise provided herein, Lessor shall not assign its obligations under this Lease, and no purported assignment thereof shall be effective. All of Lessor's rights, title and/or interest in and to this Lease, the Lease-Purchase Payments or other amounts due hereunder and the Equipment may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time, without the consent of Lessee. No such assignment shall be effective as against Lessee unless and until the assignor shall have filed with Lessee a copy or written notice thereof identifying the assignee. Lessee shall pay all Lease-Purchase Payments due hereunder to or at the direction of Lessor or the assignee named in the most recent assignment or notice of assignment filed with Lessee. During the Lease Term, Lessee shall keep a complete and accurate record of all such assignments. In the event Lessor assigns participation in its right, title and/or interest in and to this Lease, the Lease-Purchase Payments and other amounts due hereunder and the Equipment, such participants shall be considered to be Lessor with respect to their participated shares thereof.

Section 11.2 **Assignment and Subleasing by Lessee.** Neither this Lease nor Lessee's interest in the Equipment may be assigned by Lessee without the written consent of Lessor. However, the Equipment may be subleased by Lessee, in whole or in part, without the consent of Lessor, subject, however, to each of the following conditions:

(a) This Lease and the obligation of Lessee to make Lease-Purchase Payments hereunder, shall remain obligations of Lessee.

(b) The sublease shall assume the obligation of Lessee hereunder to the extent of the interest subleased.

- (c) Lessee shall, within 30 days after the delivery thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease.
- (d) No sublease by Lessee shall cause the Equipment to be used for a purpose other than an essential governmental function authorized under the provisions of the Constitution and the laws of the State.
- (e) No sublease shall cause the Interest component of the Lease-Purchase Payments due with respect to the Equipment to become includable in gross income of the recipient for federal income tax purposes.

Section 11.3 **Restriction on Mortgage or Sale of Equipment by Lessee.** Except as provided in Section 11.2, Lessee will not mortgage, sell, assign, transfer or convey the Equipment or any portion thereof during the Term of this Lease, or remove the same from its boundaries, without the written consent of Lessor.

ARTICLE XII EVENTS OF DEFAULT AND REMEDIES

Section 12.1 **Events of Default Defined.** (a) The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, with respect to the Equipment, any one or more the following events:

- (i) Except as permitted by Section 12.7 hereof, failure by Lessee to pay any Lease-Purchase Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of three days after telephonic or telegraphic notice given by Lessor that the payment referred to in such notice has not been received, such telephonic or telegraphic notice to be subsequently confirmed in writing, or after written notice.
 - (ii) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clause (i) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.
 - (iii) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental or proprietary function or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar acts which may hereafter be enacted.
- (b) The provisions of this Section 12.1 and Section 12.2 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to carry out its obligation under this Lease with respect to the Equipment, other than its obligation to pay Lease-Purchase Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of god, strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections, riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee and not resulting from its negligence. Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing Lessee from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of Lessee and Lessee shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of Lessee unfavorable to Lessee.

Section 12.2 **Remedies of Default.** Whenever any event of default referred to in Section 12.1, clauses (i) to (iii) hereof shall have happened and be continuing with respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

- (i) With or without terminating this Lease, re-enter and take possession of such Equipment and exclude Lessee from using it; provided, however, that if this Lease has not been terminated, Lessor shall return possession of such Equipment to Lessee when the event of default is cured; and provided further that Lessee shall continue to be responsible for the Lease-Purchase Payments due with respect to such Equipment during the Fiscal Year then in effect; or
- (ii) With or without terminating this Lease, re-enter and take possession of such Equipment, and sell, lease or sublease such Equipment or any part of it, holding Lessee liable for the difference between (a) the sales price, rent and other amounts paid by the purchaser, lessee or sublessee pursuant to such sales agreement, lease or sublease and (b) the balance of the Lease-Purchase Payments and other amounts owed by Lessee with respect to such Lease; provided, however, that nothing contained herein shall

impose an obligation upon Lessor so to sell, lease or sublease such Equipment and provided that any excess proceeds from such disposition shall be retained by Lessor; or

- (iii) With or without terminating this Lease, declare all Lease-Purchase Payments during the Fiscal Year then in effect due or to become due with respect to such Lease in effect when the default occurs to be immediately due and payable by Lessee, whereupon such Lease-Purchase Payments shall be immediately due and payable; or
- (iv) Take whatever action at law or in equity may appear necessary or desirable to collect the Lease-Purchase Payments then due and thereafter to become due during the then current Fiscal Year of Lessee with respect to such Lease, or enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease.

Section 12.3 **Return of Equipment.** Upon termination of this Lease prior to the payment of all Lease-Purchase Payments, Lessee shall return the Equipment to Lessor in the condition, repair, appearance and working order required in Section 7.2, in the following manner as may be specified by Lessor: (a) by delivering the Equipment at Lessee's cost and expense to such place within the State as Lessor shall specify; or (b) by loading such portions of the Equipment as are considered movable at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the place specified by Lessor. If Lessee refuses to return the Equipment in the manner designated, Lessor may repossess the Equipment and charge to Lessee the costs of such repossession or pursue any remedy described in Section 12.2.

Section 12.4 **No Remedy Exclusive.** No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof by any such right and power. Each remedy may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

Section 12.5 **Agreement to Pay Attorney's Fees and Expenses.** In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys and/or incur other expenses for the collection of monies or for the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fee of such attorneys and/or such other reasonable expenses so incurred by the nondefaulting party. In the event that legal proceedings relating to this Lease are commenced in any court or before any other tribunal of competent jurisdiction, the reasonable legal fees and other reasonable costs and expenses of the prevailing party shall be paid by the nonprevailing party on demand of the prevailing party.

Section 12.6 **Late Charges.** Whenever any event of default referred to in Section 12.1, clause (i) hereof shall have happened and be continuing with respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to require a late payment charge equal five percent (5.0%) per month of the delinquent Rental Payment, and Lessee shall be obligated to pay the same immediately upon receipt of Lessor's written invoice therefor; provided, however, that this Section 12.6 shall not be applicable if or to the extent that the application thereof would affect the validity of this Lease.

Section 12.7 **Non-Appropriation of Funds.** (a) Notwithstanding any provision in the Lease to the contrary, in the event that no funds or insufficient funds are appropriated by Lessee's governing body for the next fiscal year for Lease-Purchase Payments due under this Lease, this Lease shall terminate the end of such fiscal year on the last day of the fiscal year for which appropriations were received and Lessee shall return the Equipment to Lessor (at Lessee's expense, to a destination Lessor directs, in good working condition less normal wear and tear), and cancel this Lease by notice to such effect served not less than thirty (30) days prior to the end of the Lessee's fiscal year. Lessee shall notify Lessor of nonappropriation within thirty (30) days of its occurrence.

- (b) Lessee and Lessor acknowledge and agree that the Lease-Purchase Payments hereunder shall constitute currently budgeting expenditures of Lessee from its capital expenditure fund or successor fund thereto. Lessee's obligations under this Lease shall be subject to Lessee's annual right to terminate this Lease, and shall not constitute a mandatory charge of requirement in any ensuing fiscal year beyond the then current fiscal year. No provision of this Lease shall be construed or interpreted as creating a general obligation or other indebtedness of Lessee within the meaning of any constitutional or statutory debt limitation. This Lease shall not directly or indirectly obligate Lessee to make any payments beyond those budgeted and appropriated from its general fund for Lessee's then current fiscal year. Lessee shall be under no obligation whatsoever to exercise its option to purchase the Equipment. No provision of this Lease shall be construed to pledge or create a lien on any class or source of Lessee monies.

ARTICLE XIII ADMINISTRATIVE PROVISIONS

Section 13.1 **Notices.** All notices, certificates, legal opinions or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified below; provided, that Lessor and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificate, legal opinion or other communication will be sent.

Lessor: Bell Bank Equipment Finance
15490 101st Ave N, Suite 200

Maple Grove, MN 55369

Lessee: City of Valley
P.O. Box 682
Valley, NE 68064

Section 13.2 **Financial Information.** During the Term of this Lease, Lessee annually will provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue to pay Lease-Purchase Payments required under this Lease as may be requested by Lessor or its assignee.

Section 13.3 **Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.4 **Severability.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.5 **Amendments, Changes and Modification.** This Lease may be amended or any of its terms modified only by written document duly authorized, executed, and delivered by Lessor and Lessee.

Section 13.6 **Captions.** The captions or headings in this Lease are for convenience only and in no way defend, limit or describe the scope or intent of any provisions, articles, sections or clauses of this Lease.

Section 13.7 **Further Assurances and Corrective Instruments.** Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be, for carrying out the expressed intention of this Lease.

Section 13.8 **Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.9 **Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State.

Section 13.10 **Anti-Discrimination.** Lessor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, sexual orientation or physical defect or disability with regard to but not limited to employment, upgrading, promotion or transfer, recruitment or recruitment advertising, layoffs or termination or selection for training.

Section 13.11 **Lessor and Lessee Representatives.** Whenever under the provisions of this Lease, the approval of the Lessor or the Lessee is required to take some action at the request of the other, such approval of such request shall be given by an Authorized Representative of the Lessor, for the Lessor, and by an Authorized Representative of the Lessee, for the Lessee. Any party hereto shall be authorized to rely on such approval of request.

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its corporate name by its duly authorized officers; and Lessee has caused this Lease to be executed in its name by duly authorized officers, as of the date first above written.

BELL BANK EQUIPMENT FINANCE, a division of Bell Bank, as Lessor

Print or type full name

By _____
Signature

Its _____

City of Valley as Lessee

Print or type full name

By _____
Signature

Its _____
Title

EXHIBIT A
DESCRIPTION OF EQUIPMENT

(1) 2021 John Deere 6110M Tractor - Serial Number: 6110MEMG131614, with 22' Rear Cradle Diamond Boom Mower - Serial Number: 167624

**EXHIBIT B
PAYMENT SCHEDULE**

Commencement Date: 4/11/2022

	<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Amount</u>	<u>Principal Amount</u>	<u>*Purchase Option Price</u>
Lease	04/11/2022				154,395.00
1	04/11/2022	22,392.65	0.00	22,392.65	132,002.35
2022 Totals		22,392.65	0.00	22,392.65	
2	04/11/2023	22,392.65	5,926.68	16,465.97	115,536.38
2023 Totals		22,392.65	5,926.68	16,465.97	
3	04/11/2024	22,392.65	5,187.38	17,205.27	98,331.11
2024 Totals		22,392.65	5,187.38	17,205.27	
4	04/11/2025	22,392.65	4,414.90	17,977.75	80,353.36
2025 Totals		22,392.65	4,414.90	17,977.75	
5	04/11/2026	22,392.65	3,607.73	18,784.92	61,568.44
2026 Totals		22,392.65	3,607.73	18,784.92	
6	04/11/2027	22,392.65	2,764.32	19,628.33	41,940.11
2027 Totals		22,392.65	2,764.32	19,628.33	
7	04/11/2028	22,392.65	1,883.04	20,509.61	21,430.50
2028 Totals		22,392.65	1,883.04	20,509.61	
8	04/11/2029	22,392.65	962.15	21,430.50	0.00
2029 Totals		22,392.65	962.15	21,430.50	
Grand Totals		179,141.20	24,746.20	154,395.00	

TOTAL: \$154,395.00
INTEREST RATE: 4.40%

*Amount due after payment of Lease-Purchase Payment due on the same day.
All amounts received by Lessor shall be applied first to late payment charges and expenses, then to accrued interest, and then to principal payments in inverse order, as determined by lessor, as permitted by law.

**EXHIBIT C
ACCEPTANCE CERTIFICATE**

The undersigned, being a duly appointed Lessee Representative, under the Lease Purchase Agreement dated as of 4/11/2022 (the ("Lease")), by and between Bell Bank Equipment Finance ("Lessor"), and the City of Valley, ("Lessee"), hereby certifies on behalf of Lessee with respect to the Equipment to be acquired under Lease Exhibit A, that the portion of the Equipment described on the attachment to this Acceptance Certificate has been delivered and installed pursuant to and in accordance with said Lease and has been accepted by Lessee.

Dated: _____.

As Lessee: _____ City of Valley _____

_____ **Print or type full name** _____

By _____ **Signature** _____

Its _____ **Title** _____

**EXHIBIT C-1
REQUEST FOR DISBURSEMENT OF FUNDS**

TO: **Bell Bank Equipment Finance ("Lessor")**
15490 101st Ave N, Suite 200
Maple Grove, MN 55369

FROM: City of Valley (**"Lessee"**)
203 N. Spruce St.
Valley, NE 68064

The Lessee hereby requests disbursement of funds pursuant to the Lease Purchase Agreement dated 4/11/2022 (the "Lease"), between the Lessor and Lessee, as follows:

1. Amount to be disbursed: \$154,395.00.
2. The payee(s) are Murphy Tractor & Equipment.
3. Purchase of the payment: Payment for property as described in the Lease and Exhibit C.
4. Bills, receipts, invoices or other documents evidencing the amount requested are attached hereto.
5. The Lessee hereby certifies that the amounts requested to be disbursed were properly incurred in connection with the acquisition of the Equipment as described in the Lease and were not subject of any previous request for disbursement.
6. This request is the final disbursement request.

Dated: _____

LESSEE: _____ City of Valley

Print or type full name

By _____
Signature

Its _____
Title

**EXHIBIT D
OPINION OF COUNSEL**

To: Bell Bank Equipment Finance ("Lessor")
15490 101st Ave N, Suite 200
Maple Grove, MN 55369

Re: Lease Purchase Agreement by and between Bell Bank Equipment Finance, a division of Bell Bank ("Lessor") and the City of Valley ("Lessee")
dated as of 4/11/2022.

Ladies and Gentlemen:

I have acted as counsel to Lessee with respect to the Lease Purchase Agreement described above (the "Lease") and various related matters, and in this capacity I have reviewed a duplicate original of the Lease and various other documents. Based upon the examination of these and such other documents as we deem relevant, it is our opinion that:

1. The Lessee is authorized and has power under State law to purchase, rent or otherwise provide for personal property and has power under state law to enter into the Lease and to carry out the obligations thereunder and the transactions contemplated thereby.
2. The Lease has been duly authorized, approved, executed and delivered by and on behalf of Lessee, and the Lease is a valid and binding contract of Lessee enforceable in accordance with its terms, except to the extent such enforceability is limited by State and Federal laws affecting remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.
3. The authorization, approval and execution of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting laws, public bidding laws and all other applicable laws, rules and regulations of the State.
4. The execution of the Lease and the appropriation of moneys to pay the Lease-Purchase Payments coming due thereunder, does not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.
5. There is no litigation, action, suit or proceeding threatened or pending before any court, administrative agency, arbitrator or governmental body, that challenges the organization or existence of Lessee; the authority of its officers; the proper authorization, approval and execution of the Lease and the other documents contemplated thereby; the appropriation of moneys to make Lease-Purchase Payments under the Lease for Lessee's current Fiscal Year; or the ability of Lessee otherwise to perform its obligations under the Lease and the transactions contemplated thereby.
6. The Lease is not a general obligation debt of Lessee.

Dated: _____

Very truly yours,



Lessee's Authorization Resolution

Whereas, City of Valley, (the "Governmental Entity"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of Nebraska (the "State"), is authorized by the laws of the State to purchase, acquire and lease personal property for the benefit of the Governmental Entity and its inhabitants and to enter into contracts with respect thereto; and

Whereas, in order to acquire such equipment, the Governmental Entity proposes to enter into a lease-purchase transaction pursuant to that certain governmental Equipment Lease-Purchase Agreement (the "Lease") with Bell Bank Equipment Finance, a division of Bell Bank, the form of which has been presented to the governing body of the Governmental Entity at this meeting;

Section 1. Approval of Documents. The form, terms and provisions of the Lease and all other schedules and exhibits attached thereto are hereby approved in substantially the form presented at this meeting, with such insertions, omissions and changes as shall be approved by counsel of the Governmental Entity or other members of the governing body of the Governmental Entity executing the same, the execution of such documents being conclusive evidence of such approval; and the persons holding the titles listed below or any other officer of the Governmental Entity who shall have the power to execute contracts on its behalf are hereby authorized and directed to execute, acknowledge, countersign and deliver the Lease and all exhibits attached thereto, and the Secretary/Clerk of the Governmental Entity is hereby authorized to attest to the foregoing and affix the seal of the Governmental Entity to such documents.

Section 2. Other Actions Authorized. The officers and employees of the Governmental Entity shall take all action necessary as reasonably required by the parties to the Lease to carry out, give effect to and consummate the transactions contemplated thereby and to take all action necessary to conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Lease.

Section 3. No General Liability. Nothing contained in this Resolution, the Lease, or any other instrument shall be construed with respect to the Governmental Entity as incurring a pecuniary liability or charge upon the general credit of the Governmental Entity or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Lease, or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Governmental Entity or any charge upon its general credit or against its taxing power, except to the extent that the payments payable under the Lease are special limited obligations of the Governmental Entity as provided in the Lease.

Section 4. Authorized Signatories. Following are the true names, correct titles and specimen signatures of the incumbent officers referred to in the foregoing resolution.

Name (Print or Type)	Title (Print or Type)	Signature

Section 5. Effective Date. This Resolution shall be effective immediately upon its approval and adoption. This Resolution was adapted and approved on _____.

Signature: _____
Secretary/Clerk

Name Printed: _____

Date: _____



INSURANCE REQUIREMENTS FORM

DATE: 4/6/2022

LEASE PURCHASE AGREEMENT NO. 107135-001

TO: _____ (Name of Insurance Agency/Broker)
 _____ (Address)
 _____ (Address)
 _____ (City, State, Zip)

ATTN: _____ (Agent's Name)
 TEL: _____ (Telephone Number)

Please issue a Certificate of Insurance in the name of City of Valley covering the Lease Purchase Agreement identified above (collectively, the "Lease") and mail within five (5) business days to:

ATTN:	BELL BANK EQUIPMENT FINANCE	Bell Bank Equipment Finance Representative: Sally Laing
	A division of Bell Bank	Telephone Number: (952) 905-5153
	15490 101 st Ave N, Suite #200	Fax Number: (833) 200-6043
	Maple Grove, MN 55369	Email Address: slaing@bell.bank

The insurance requirements below are in connection with the Lease and cover the equipment identified on the Lease Purchase Agreement identified above, which are incorporated herein by reference (collectively, the "Equipment").

Equipment description:
(1) 2021 John Deere 6110M Tractor - Serial Number: 6110MEMG131614, with 22' Rear Cradle Diamond Boom Mower - Serial Number: 167624

I. **PHYSICAL DAMAGE REQUIREMENTS:**

- A. All Risk coverage for not less than \$154,395.00. The amount of the deductible must be stated here and on the certificate of Insurance. Deductible amount: \$ _____.
- B. **Endorsement:** It is understood and agreed that Bell Bank and/or its assigns and/or its successors are included as Loss Payee.
- C. **Endorsement:** It is understood and agreed that this insurance is primary insurance insofar as it relates to any and all collateral financed from Bell Bank pursuant to the Lease.
- D. **Endorsement:** It is understood and agreed that this policy shall not be cancelled, nor any reduction or restriction of coverage be effected until at least thirty (30) days prior written notice has been given to at the above address by Certified Mail, Return Receipt Requested.
- E. **Endorsement:** It is understood and agreed that any loss shall be adjusted with the named insured above and proceeds made payable to Bell Bank and/or its assigns and/or its successors, as their interests may appear.

Per the Lease Purchase Agreement you are required to provide and maintain insurance coverage as summarized above. If you have questions, please reference the Lease or call Bell Bank Equipment Finance. **Satisfactory evidence of insurance must be provided before the lease purchase agreement can be completed.**

Lessee: City of Valley

By: _____

Signature

Title: _____

INVOICE



City of Valley
P.O. Box 682
Valley, NE 68064

Contract # 107135-001

Invoice Date: 4/6/2022

Amount Due: \$22,392.65

Payment Amount: \$22,392.65

Documentation Fee:

Sales Tax:

Total Amount Due: \$22,392.65

Please remit payment with signed documents.

Date of Issuance: April 4, 2022 Effective Date: April 12, 2022
 Owner: City of Valley, Nebraska Engineer: OLMSTED & PERRY
CONSULTING ENGINEERS INC.
 Contractor: Vrba Construction, Inc. Contractor's Project No.: 1
 Project: Flat Water Improvements - Phase 3 Rebid (Sanitary Sewer, Storm Sewer and Water Main)
 Contract Name: Flat Water Improvements - Phase 3 Rebid (Sanitary Sewer, Storm Sewer and Water Main), Valley, Nebraska
 Owner's Contract No.: 1 Engineer's Project No.: 19062-01

The Contract is modified as follows upon execution of this Change Order:

Description:

Adjust project quantities for surplus 14-inch pipe material, dewatering for railroad crossing, railroad track monitoring, railroad observation and flaggers, and lift station control panel electric service change
 Adjust pay quantities for as constructed conditions

Attachments: *[List documents supporting change]* ATTACHMENT NO. 1 TO CHANGE ORDER NO. 3

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: <u>\$1,255,876.25</u>	Original Contract Times: Substantial Completion: <u>October 1, 2020</u> Ready for Final Payment: <u>November 15, 2020</u> days or dates
Increase (Decrease) from previously approved Change Orders No. 1 to No. 2 : <u>\$122,385.57</u>	Increase (Decrease) from previously approved Change Orders No. 1 to No. 2 : Substantial Completion: <u>480</u> Ready for Final Payment: <u>478</u> days
Contract Price prior to this Change Order: <u>\$1,378,261.82</u>	Contract Times prior to this Change Order: Substantial Completion: <u>January 24, 2022</u> Ready for Final Payment: <u>March 8, 2022</u> days or dates
Increase (Decrease) of this Change Order: <u>\$194,277.18</u>	Increase (Decrease) of this Change Order: Substantial Completion: <u>90</u> Ready for Final Payment: <u>60</u> days or dates
Contract Price incorporating this Change Order: <u>\$1,572,539.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>April 24, 2022</u> Ready for Final Payment: <u>May 7, 2022</u> days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____ Engineer (if required)	By: _____ Owner (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Title: <u>Project Engineer</u>	Title: <u>Mayor</u>	Title: _____
Date: _____	Date: _____	Date: _____
Approved by Funding Agency (if applicable)		
By: _____	Date: _____	
Title: <u>Manager</u>		

EJCDC® C-941, Change Order.

Attachment No. 1 to Change Order No.: 3

Project: Flat Water Improvements - Phase 3 Rebid (Sanitary Sewer, Storm Sewer and V Dated: April 12, 2022

Project No.

19062-01

ITEM NO.	DESCRIPTION OF WORK	UNIT PRICE	UNITS	CONTRACT QUANTITY	ACTUAL CONSTRUCTED QUANTITY	QUANTITY CHANGE	CHANGE IN CONTRACT PRICE
2	CONSTRUCT 8"DIA. PVC SDR 35 SANITARY SEWER PIPE	\$31.50	LF	1547	1,545.5	-1.5	-\$47.25
3	CONSTRUCT 6"DIA. PVC SDR 26 SANITARY SEWER SERVICE	\$29.25	LF	2387	2,392.0	5.0	\$146.25
4	CLOSED-CIRCUIT TELEVISION (CCTV) INSPECTION	\$1.50	LF	1547	1,545.5	-1.5	-\$2.25
5	CONSTRUCT 8" x 6" TEE BRANCH	\$109.85	EA	38	37.0	-1.0	-\$109.85
8	CONSTRUCT 54" I.D. SANITARY SEWER MANHOLE INCL. LINER/COATING	\$710.00	VF	96.1	85.7	-10.4	-\$7,384.00
13	INSTALL 3"DIA. 45 DEG BEND & BLOCK	\$192.00	EA	1	3.0	2.0	\$384.00
15	DEWATERING - SANITARY SEWER	\$95.00	LF	1240	1,140.0	-100.0	-\$9,500.00
20	INSTALL 8"DIA. MJ 45 DEG BEND & BLOCK	\$423.75	EA	2	4.0	2.0	\$847.50
21	BORE & JACK 16"DIA. STEEL CASING FOR 8"DIA. FORCE MAIN	\$932.75	LF	130	146.5	16.5	\$15,390.38
22	CONSTRUCT 8"DIA. DIP CL 350 FORCE MAIN	\$48.75	LF	292	295.0	3.0	\$146.25
25	CONSTRUCT 15" R.C.P., CLASS III STORM SEWER	\$40.80	LF	205	341.0	136.0	\$5,548.80
26	CONSTRUCT 18" R.C.P., CLASS III STORM SEWER	\$41.65	LF	294	162.5	-131.5	-\$5,476.98
32	CONSTRUCT 6"DIA. D.I.P. CL 350 WATER MAIN	\$40.00	LF	107	106.0	-1.0	-\$40.00
33	CONSTRUCT 8"DIA. D.I.P. CL 350 WATER MAIN	\$44.00	LF	2215	2,216.0	1.0	\$44.00
34	CONSTRUCT 12"DIA. D.I.P. CL 350 WATER MAIN	\$56.00	LF	411	395.1	-15.9	-\$890.40
35	CONSTRUCT 14"DIA. DR11 HDPE WATER MAIN	\$48.00	LF	880	679.3	-200.7	-\$9,633.60
36	INSTALL TRACER WIRE	\$0.25	LF	2733	3,396.4	663.4	\$165.85
38	BORE AND JACK 24"DIA. STEEL CASING FOR WATER MAIN	\$705.25	LF	90	105.0	15.0	\$10,578.75
42	INSTALL 12"DIA. MJ 45 DEG BEND & BLOCK	\$620.00	EA	3	9.0	6.0	\$3,720.00
43	INSTALL 12"DIA. MJ 11 1/4 DEG BEND & BLOCK	\$525.00	EA	1	0.0	-1.0	-\$525.00
44	INSTALL 12"DIA. MJ 22 1/2 DEG BEND & BLOCK	\$558.00	EA	1	2.0	1.0	\$558.00

EJDC® C-941, Change Order.

Prepared and published 2013 by the Engineers Joint Contract Documents Committee.

Attachment No. 1 to Change Order No.: 3

Project: **Flat Water Improvements - Phase 3 Rebid (Sanitary Sewer, Storm Sewer and V** Dated: **April 12, 2022** Project No. **19062-01**

ITEM NO.	DESCRIPTION OF WORK	UNIT PRICE	UNITS	CONTRACT QUANTITY	ACTUAL CONSTRUCTED QUANTITY	QUANTITY CHANGE	CHANGE IN CONTRACT PRICE
46	INSTALL 12"DIA. MJ 90 DEG BEND & BLOCK	\$728.00	EA	2	4.0	2.0	\$1,456.00
47	INSTALL 8"DIA. MJ 22 1/2 DEG BEND & BLOCK	\$372.00	EA	5	3.0	-2.0	-\$744.00
48	INSTALL 6"DIA. MJ 45 DEG BEND & BLOCK	\$865.00	EA	1	0.0	-1.0	-\$865.00
52	INSTALL 8"DIA. R.S. MJ GATE VALVE W/ VALVE BOX	\$1,435.00	EA	5	4.0	-1.0	-\$1,435.00
61	CONSTRUCT 30" R.C.P., CLASS III STORM SEWER	\$88.65	LF	100	109.5	9.5	\$842.18
64	AGGREGATE PIPE BEDDING - 1-1/2"	\$22.50	TON	60.0	0.0	-60.0	-\$1,350.00
77	S: SURPLUS 14" HDPE PIPE MATERIAL	\$8,760.00	LS	0.0	1.0	1.0	\$8,760.00
78	T: DEWATERING - FORCE MAIN & UPRR CROSSING	\$55,170.50	LS	0.0	1.0	1.0	\$55,170.50
79	U: RAILROAD TRACK MONITORING (2 CROSSINGS)	\$14,818.65	LS	0.0	1.0	1.0	\$14,818.65
80	V: RAILROAD TRACK OBSERVATION AND FLAGGERS - RAILPROS (2 CROSSINGS)	\$105,956.40	LS	0.0	1.0	1.0	\$105,956.40
81	W: CONTROL PANEL ELECTRIC SERVICE CHANGE - JETCO	\$6,550.00	LS	0.0	1.0	1.0	\$6,550.00
82	INSTALL 8X6 REDUCER	\$396.50	EA	0.0	1.0	1.0	\$396.50
83	INSTALL 8"DIA. 90 DEG BEND & BLOCK	\$404.00	EA	0.0	1.0	1.0	\$404.00
84	INSTALL 12X8 REDUCER	\$396.50	EA	0.0	1.0	1.0	\$396.50
	TOTAL						\$194,277.18



ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

Contractor's Application for Payment No.

10

Application Period: 3/31/2022		Application Date: 4/5/2022	
To Owner: City of Valley, Nebraska	From Contractor: Vrba Construction, Inc.	Via (Engineer): OLMSTED & PERRY CONSULTING ENGINEERS INC.	
Project: Flat Water Improvements - Phase 3 Rebid (Sanitary Sewer, Storm Sewer and Water Main)		Contract: Flat Water Improvements - Phase 3 Rebid (Sanitary Sewer, Storm Sewer and Water Main), Valley, Nebraska	
Owner's Contract No.: 1	Contractor's Project No.: 1	Engineer's Project No.: 19062-01	

CHANGE ORDER SUMMARY		
Number	Additions	Deductions
1	\$56,668.37	
2	\$65,717.20	
3	\$194,277.18	
TOTALS	\$316,662.75	\$0.00
NET CHANGE BY CHANGE ORDERS	\$316,662.75	

1. ORIGINAL CONTRACT PRICE	\$ 1,255,876.25
2. Net change by Change Orders	\$ 316,662.75
3. Current Contract Price (Line 1 ± 2)	\$ 1,572,539.00
4. TOTAL COMPLETED AND STORED TO DATE (Column F total on Progress Estimates)	\$1,572,539.00
5. RETAINAGE:	
a. 5% X \$1,572,539.00 Work Completed	\$ 78,626.95
b. 5% X \$0.00 Stored Material	\$ -
c. Total Retainage (Line 5.a + Line 5.b)	\$ 78,626.95
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)	\$ 1,493,912.04
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)	\$ 1,280,057.04
8. AMOUNT DUE THIS APPLICATION	\$ 213,855.00
9. BALANCE TO FINISH, PLUS RETAINAGE (Column G total on Progress Estimates + Line 5.c above)	\$ 78,626.96

Contractor's Certification

The undersigned Contractor certifies, to the best of its knowledge, the following:

(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;

(2) Title to 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 Liens, security interest, or encumbrances); and

(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor Signature

By: Joe Vrba Date: 04/05/2022

Payment of: \$213,855.00

is recommended by:
(Engineer) James J. Olmsted, P.E. (Date)

is approved by:
(Owner) City of Valley (Date)

Approved by: _____
Funding or Financing Entity (if applicable) (Date)

Progress Estimate - Unit Price Work

Contractor's Application

For Flat Water Improvements - Phase 3 Rebid (Sanitary Sewer, Storm Sewer and Water Main), Valley, Nebraska (Contract):								Application Number: 10			
Application Period: 3/31/2022								Application Date: 4/5/2022			
A					B	C	D	E	F		G
Bid Item No.	Description	Item Quantity	Unit	Unit Price	Total Value of Item (\$)	Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)
1	SITE PREPARATION / MOBILIZATION	1.00	LS	\$5,000.00	\$5,000.00	1.00	\$5,000.00		\$5,000.00	100.0%	\$0.00
2	CONSTRUCT 8"DIA. PVC SDR 35 SANITARY SEWER PIPE	1,547.00	LF	\$31.50	\$48,730.50	1,545.50	\$48,683.25		\$48,683.25	99.9%	\$47.25
3	CONSTRUCT 6"DIA. PVC SDR 26 SANITARY SEWER SERVICE	2,387.00	LF	\$29.25	\$69,819.75	2,392.00	\$69,966.00		\$69,966.00	100.2%	-\$146.25
4	CLOSED-CIRCUIT TELEVISION (CCTV) INSPECTION	1,547.00	LF	\$1.50	\$2,320.50	1,545.50	\$2,318.25		\$2,318.25	99.9%	\$2.25
5	CONSTRUCT 8" x 6" TEE BRANCH	38.00	EA	\$109.85	\$4,174.30	37.00	\$4,064.45		\$4,064.45	97.4%	\$109.85
6	CONSTRUCT 6"DIA. 45 DEG FOR SERVICE	32.00	EA	\$71.75	\$2,296.00	32.00	\$2,296.00		\$2,296.00	100.0%	\$0.00
7	CONSTRUCT CLEANOUT	3.00	EA	\$401.75	\$1,205.25	3.00	\$1,205.25		\$1,205.25	100.0%	\$0.00
8	CONSTRUCT 54" I.D. SANITARY SEWER MANHOLE INCL. LINER/COATING	96.10	VF	\$710.00	\$68,231.00	85.70	\$60,847.00		\$60,847.00	89.2%	\$7,384.00
9	CONSTRUCT GRINDER PUMPING STATION, COMPLETE	1.00	LS	\$160,000.00	\$160,000.00	1.00	\$160,000.00		\$160,000.00	100.0%	\$0.00
10	CONSTRUCT TRANSFORMER PAD FOR SEWAGE PUMPING STATION	1.00	EA	\$2,000.00	\$2,000.00	1.00	\$2,000.00		\$2,000.00	100.0%	\$0.00
11	CONSTRUCT 3"DIA. HDPE FORCE MAIN	505.00	LF	\$17.25	\$8,711.25	505.00	\$8,711.25		\$8,711.25	100.0%	\$0.00
12	DIRECTIONAL BORING FOR 3"DIA. FORCE MAIN	340.00	LF	\$134.25	\$45,645.00	340.00	\$45,645.00		\$45,645.00	100.0%	\$0.00
13	INSTALL 3"DIA. 45 DEG BEND & BLOCK	1.00	EA	\$192.00	\$192.00	3.00	\$576.00		\$576.00	300.0%	-\$384.00
14	INSTALL TRACER WIRE	505.00	LF	\$0.25	\$126.25	505.00	\$126.25		\$126.25	100.0%	\$0.00
15	DEWATERING - SANITARY SEWER	1,240.00	LF	\$95.00	\$117,800.00	1,140.00	\$108,300.00		\$108,300.00	91.9%	\$9,500.00
16	DEWATERING - LIFT STATION	1.00	EA	\$30,000.00	\$30,000.00	1.00	\$30,000.00		\$30,000.00	100.0%	\$0.00

Progress Estimate - Unit Price Work

Contractor's Application

For Flat Water Improvements - Phase 3 Rebid (Sanitary Sewer, Storm Sewer and Water Main), Valley, Nebraska (Contract):								Application Number: 10			
Application Period: 3/31/2022								Application Date: 4/5/2022			
A					B	C	D	E	F		G
Bid Item No.	Description	Item Quantity	Unit	Unit Price	Total Value of Item (\$)	Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)
17	CONNECT TO EXG. FORCE MAIN	1.00	EA	\$462.00	\$462.00	1.00	\$462.00		\$462.00	100.0%	\$0.00
18	CONNECT TO EXG. 16"DIA. FORCE MAIN W/ 16x8" TAPPING SLEEVE & 8"DIA. VALVE	1.00	EA	\$4,630.00	\$4,630.00	1.00	\$4,630.00		\$4,630.00	100.0%	\$0.00
19	CONSTRUCT 8"DIA. CHECK VALVE AND 84"DIA. FLATTOP MANHOLE	1.00	EA	\$14,000.00	\$14,000.00	1.00	\$14,000.00		\$14,000.00	100.0%	\$0.00
20	INSTALL 8"DIA. MJ 45 DEG BEND & BLOCK	2.00	EA	\$423.75	\$847.50	4.00	\$1,695.00		\$1,695.00	200.0%	-\$847.50
21	BORE & JACK 16"DIA. STEEL CASING FOR 8"DIA. FORCE MAIN	130.00	LF	\$932.75	\$121,257.50	146.50	\$136,647.88		\$136,647.88	112.7%	-\$15,390.38
22	CONSTRUCT 8"DIA. DIP CL 350 FORCE MAIN	292.00	LF	\$48.75	\$14,235.00	295.00	\$14,381.25		\$14,381.25	101.0%	-\$146.25
23	CONNECT TO EXG. 8"DIA. FORCE MAIN W/ 8x8" TAPPING SLEEVE & 8"DIA. VALVE	1.00	EA	\$3,789.75	\$3,789.75	1.00	\$3,789.75		\$3,789.75	100.0%	\$0.00
24	CONSTRUCT 8"DIA. CHECK VALVE AND 72"DIA. FLATTOP MANHOLE	1.00	EA	\$13,937.25	\$13,937.25	1.00	\$13,937.25		\$13,937.25	100.0%	\$0.00
25	CONSTRUCT 15" R.C.P., CLASS III STORM SEWER	205.00	LF	\$40.80	\$8,364.00	341.00	\$13,912.80		\$13,912.80	166.3%	-\$5,548.80
26	CONSTRUCT 18" R.C.P., CLASS III STORM SEWER	294.00	LF	\$41.65	\$12,245.10	162.50	\$6,768.13		\$6,768.13	55.3%	\$5,476.98
27	CONSTRUCT 15" R.C. FLARED END SECTION	1.00	EA	\$581.25	\$581.25	1.00	\$581.25		\$581.25	100.0%	\$0.00
28	CONSTRUCT 18" R.C. FLARED END SECTION	2.00	EA	\$640.00	\$1,280.00	2.00	\$1,280.00		\$1,280.00	100.0%	\$0.00
29	STAKING ALLOWANCE	1.00	ALW	\$6,900.00	\$6,900.00	1.00	\$6,900.00		\$6,900.00	100.0%	\$0.00
30	TESTING ALLOWANCE	1.00	ALW	\$5,100.00	\$5,100.00	1.00	\$5,100.00		\$5,100.00	100.0%	\$0.00
31	SITE PREPARATION / MOBILIZATION	1.00	LS	\$7,500.00	\$7,500.00	1.00	\$7,500.00		\$7,500.00	100.0%	\$0.00
32	CONSTRUCT 6"DIA. D.I.P. CL 350 WATER MAIN	107.00	LF	\$40.00	\$4,280.00	106.00	\$4,240.00		\$4,240.00	99.1%	\$40.00

Progress Estimate - Unit Price Work

Contractor's Application

For Flat Water Improvements - Phase 3 Rebid (Sanitary Sewer, Storm Sewer and Water Main), Valley, Nebraska (Contract):								Application Number: 10			
Application Period: 3/31/2022								Application Date: 4/5/2022			
A					B	C	D	E	F		G
Bid Item No.	Description	Item Quantity	Unit	Unit Price	Total Value of Item (\$)	Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)
33	CONSTRUCT 8"DIA. D.I.P. CL 350 WATER MAIN	2,215.00	LF	\$44.00	\$97,460.00	2,216.00	\$97,504.00		\$97,504.00	100.0%	-\$44.00
34	CONSTRUCT 12"DIA. D.I.P. CL 350 WATER MAIN	411.00	LF	\$56.00	\$23,016.00	395.10	\$22,125.60		\$22,125.60	96.1%	\$890.40
35	CONSTRUCT 14"DIA. DR11 HDPE WATER MAIN	880.00	LF	\$48.00	\$42,240.00	679.30	\$32,606.40		\$32,606.40	77.2%	\$9,633.60
36	INSTALL TRACER WIRE	2,733.00	LF	\$0.25	\$683.25	3,396.40	\$849.10		\$849.10	124.3%	-\$165.85
37	DIRECTIONAL DRILLING FOR 14"DIA. WATER MAIN	630.00	LF	\$259.00	\$163,170.00	630.00	\$163,170.00		\$163,170.00	100.0%	\$0.00
38	BORE AND JACK 24"DIA. STEEL CASING FOR WATER MAIN	90.00	LF	\$705.25	\$63,472.50	105.00	\$74,051.25		\$74,051.25	116.7%	-\$10,578.75
39	INSTALL 6"DIA. MJ 45 DEG BEND & BLOCK	1.00	EA	\$865.00	\$865.00	1.00	\$865.00		\$865.00	100.0%	\$0.00
40	INSTALL 12x6" MJ REDUCER	1.00	EA	\$396.50	\$396.50	1.00	\$396.50		\$396.50	100.0%	\$0.00
41	INSTALL 12" MJ TEE & BLOCK	2.00	EA	\$866.00	\$1,732.00	2.00	\$1,732.00		\$1,732.00	100.0%	\$0.00
42	INSTALL 12"DIA. MJ 45 DEG BEND & BLOCK	3.00	EA	\$620.00	\$1,860.00	9.00	\$5,580.00		\$5,580.00	300.0%	-\$3,720.00
43	INSTALL 12"DIA. MJ 11 1/4 DEG BEND & BLOCK	1.00	EA	\$525.00	\$525.00	0.00	\$0.00		\$0.00		\$525.00
44	INSTALL 12"DIA. MJ 22 1/2 DEG BEND & BLOCK	1.00	EA	\$558.00	\$558.00	2.00	\$1,116.00		\$1,116.00	200.0%	-\$558.00
45	INSTALL 8"DIA. MJ 45 DEG BEND & BLOCK	4.00	EA	\$404.00	\$1,616.00	4.00	\$1,616.00		\$1,616.00	100.0%	\$0.00
46	INSTALL 12"DIA. MJ 90 DEG BEND & BLOCK	2.00	EA	\$728.00	\$1,456.00	4.00	\$2,912.00		\$2,912.00	200.0%	-\$1,456.00
47	INSTALL 8"DIA. MJ 22 1/2 DEG BEND & BLOCK	5.00	EA	\$372.00	\$1,860.00	3.00	\$1,116.00		\$1,116.00	60.0%	\$744.00
48	INSTALL 6"DIA. MJ 45 DEG BEND & BLOCK	1.00	EA	\$865.00	\$865.00	0.00	\$0.00		\$0.00		\$865.00

Progress Estimate - Unit Price Work

Contractor's Application

For Flat Water Improvements - Phase 3 Rebid (Sanitary Sewer, Storm Sewer and Water Main), Valley, Nebraska (Contract):								Application Number: 10			
Application Period: 3/31/2022								Application Date: 4/5/2022			
A					B	C	D	E	F		G
Bid Item No.	Description	Item Quantity	Unit	Unit Price	Total Value of Item (\$)	Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)
49	INSTALL FIRE HYDRANT ASSEMBLY	5.00	EA	\$5,400.00	\$27,000.00	5.00	\$27,000.00		\$27,000.00	100.0%	\$0.00
50	CONNECT TO EXG. 12"DIA. WATER MAIN	1.00	EA	\$825.00	\$825.00	1.00	\$825.00		\$825.00	100.0%	\$0.00
51	INSTALL 8x6" MJ SWIVEL TEE	3.00	EA	\$675.00	\$2,025.00	3.00	\$2,025.00		\$2,025.00	100.0%	\$0.00
52	INSTALL 8"DIA. R.S. MJ GATE VALVE W/ VALVE BOX	5.00	EA	\$1,435.00	\$7,175.00	4.00	\$5,740.00		\$5,740.00	80.0%	\$1,435.00
53	INSTALL 12"DIA. R.S. MJ GATE VALVE W/ VALVE BOX	2.00	EA	\$2,415.00	\$4,830.00	2.00	\$4,830.00		\$4,830.00	100.0%	\$0.00
54	CONSTRUCT 1"DIA. AIR RELEASE VALVE AND 60" I.D. MANHOLE	4.00	EA	\$12,000.00	\$48,000.00	4.00	\$48,000.00		\$48,000.00	100.0%	\$0.00
55	WATER SERVICE, TAP, CORP., & CURB STOP W/ BOX	1.00	EA	\$2,500.00	\$2,500.00	1.00	\$2,500.00		\$2,500.00	100.0%	\$0.00
56	STAKING ALLOWANCE	1.00	ALW	\$3,800.00	\$3,800.00	1.00	\$3,800.00		\$3,800.00	100.0%	\$0.00
57	TESTING ALLOWANCE	1.00	ALW	\$1,700.00	\$1,700.00	1.00	\$1,700.00		\$1,700.00	100.0%	\$0.00
58	CONNECT TO EXG. 8" DIA. WATER MAIN	1.00	EA	\$750.00	\$750.00	1.00	\$750.00		\$750.00	100.0%	\$0.00
59	BORING FOR 8" DIA. WATER MAIN	45.00	LF	\$150.00	\$6,750.00	45.00	\$6,750.00		\$6,750.00	100.0%	\$0.00
60	INSTALL 8" MJ TEE & BLOCK	2.00	EA	\$750.00	\$1,500.00	2.00	\$1,500.00		\$1,500.00	100.0%	\$0.00
61	CONSTRUCT 30" RCP, CLASS III STORM SEWER	100.00	LF	\$88.65	\$8,865.00	109.50	\$9,707.18		\$9,707.18	109.5%	-\$842.18
62	CONSTRUCT 30" RC FLARED END SECTION	2.00	EA	\$1,330.56	\$2,661.12	2.00	\$2,661.12		\$2,661.12	100.0%	\$0.00
63	INSTALL GEOGRID FABRIC	45.00	SY	\$2.50	\$112.50	45.00	\$112.50		\$112.50	100.0%	\$0.00
64	AGGREGATE PIPE BEDDING - 1 1/2"	60.00	TON	\$22.50	\$1,350.00	0.00	\$0.00		\$0.00		\$1,350.00

Progress Estimate - Unit Price Work

Contractor's Application

For Flat Water Improvements - Phase 3 Rebid (Sanitary Sewer, Storm Sewer and Water Main), Valley, Nebraska (Contract):								Application Number: 10			
Application Period: 3/31/2022								Application Date: 4/5/2022			
A					B	C	D	E	F		G
Bid Item No.	Description	Item Quantity	Unit	Unit Price	Total Value of Item (\$)	Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)
65	TRENCH STABILIZATION BEDDING - 3"	55.00	TON	\$95.72	\$5,264.60	55.00	\$5,264.60		\$5,264.60	100.0%	\$0.00
66	D: UNSUITABLE EXCAVATION DEBRIS (SANITARY SEWER NEAR MH4)	1.0	LS	\$2,621.54	\$2,621.54	1.00	\$2,621.54		\$2,621.54	100.0%	\$0.00
67	SANITARY SEWER EXTENSION TO LOT 1; FIRE HYDRANT REPAIR	1.0	LS	\$18,902.38	\$18,902.38	1.00	\$18,902.38		\$18,902.38	100.0%	\$0.00
68	G: INSTALL METER PIT AT PHASE 2 ENTRANCE FOR IRRIGATION	1.0	LS	\$2,222.34	\$2,222.34	1.00	\$2,222.34		\$2,222.34	100.0%	\$0.00
69	IRRIGATION SLEEVE AT PHASE 2 ENTRANCE MEDIAN	1.0	LS	\$10,624.05	\$10,624.05	1.00	\$10,624.05		\$10,624.05	100.0%	\$0.00
70	IRRIGATION SLEEVE AT PHASE 2 EAST CULDESAC	1.0	LS	\$10,478.98	\$10,478.98	1.00	\$10,478.98		\$10,478.98	100.0%	\$0.00
71	J: INSTALL 1"DIA. WATER IRRIGATION SERVICE FOR PHASE 2 CULDESAC	1.0	LS	\$3,593.36	\$3,593.36	1.00	\$3,593.36		\$3,593.36	100.0%	\$0.00
72	K: BORE CONDUIT FOR IRRIGATION SLEEVE ACROSS PHASE 2 ENTRANCE	1.0	LS	\$3,724.05	\$3,724.05	1.00	\$3,724.05		\$3,724.05	100.0%	\$0.00
73	IRRIGATION SLEEVE AND INSTALL WATER IRRIGATION SERVICE AT PHASE 3 EAST	1.0	LS	\$6,017.64	\$6,017.64	1.00	\$6,017.64		\$6,017.64	100.0%	\$0.00
74	EAST AND WATER SERVICE HIT BY UTILITY CONTRACTOR	1.0	LS	\$1,614.86	\$1,614.86	1.00	\$1,614.86		\$1,614.86	100.0%	\$0.00
75	Q; REPAIR HYDRANT DAMAGED BY DEVELOPER	1.0	LS	\$3,818.00	\$3,818.00	1.00	\$3,818.00		\$3,818.00	100.0%	\$0.00
76	R: UPRR SUPPLEMENTAL AGREEMENT - EXTENSION	1.0	LS	\$2,100.00	\$2,100.00	1.00	\$2,100.00		\$2,100.00	100.0%	\$0.00
77	S: SURPLUS 14" HDPE PIPE MATERIAL	1.00	LS	\$8,760.00	\$8,760.00	1.00	\$8,760.00		\$8,760.00	100.0%	\$0.00
78	T: DEWATERING - FORCE MAIN & UPRR CROSSING	1.00	LS	\$55,170.50	\$55,170.50	1.00	\$55,170.50		\$55,170.50	100.0%	\$0.00
79	U: RAILROAD TRACK MONITORING (2 CROSSINGS)	1.00	LS	\$14,818.65	\$14,818.65	1.00	\$14,818.65		\$14,818.65	100.0%	\$0.00
80	V: RAILROAD TRACK OBSERVATION AND FLAGGERS - RAILPROS (2 CROSSINGS)	1.00	LS	\$105,956.40	\$105,956.40	1.00	\$105,956.40		\$105,956.40	100.0%	\$0.00

Progress Estimate - Unit Price Work

Contractor's Application

For Flat Water Improvements - Phase 3 Rebid (Sanitary Sewer, Storm Sewer and Water Main), Valley, Nebraska (Contract):								Application Number: 10			
Application Period: 3/31/2022								Application Date: 4/5/2022			
A					B	C	D	E	F		G
Bid Item No.	Description	Item Quantity	Unit	Unit Price	Total Value of Item (\$)	Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)
81	W: CONTROL PANEL ELECTRIC SERVICE CHANGE - JETCO	1.00	LS	\$6,550.00	\$6,550.00	1.00	\$6,550.00		\$6,550.00	100.0%	\$0.00
82	INSTALL 8X6 REDUCER	1.00	EA	\$396.50	\$396.50	1.00	\$396.50		\$396.50	100.0%	\$0.00
83	INSTALL 8"DIA. 90 DEG BEND & BLOCK	1.00	EA	\$404.00	\$404.00	1.00	\$404.00		\$404.00	100.0%	\$0.00
84	INSTALL 12X8 REDUCER	1.00	EA	\$396.50	\$396.50	1.00	\$396.50		\$396.50	100.0%	\$0.00
85					\$0.00		\$0.00		\$0.00		\$0.00
Totals					\$1,570,714.37		\$1,572,539.00	\$0.00	\$1,572,539.00	100%	-\$1,824.63

Note: Total Schedule of Values Amount (B) should equal the current Contract Price.

RESOLUTION NO. 2022 – 28

WHEREAS, on or about April 14, 2020, **Flatwater Lake, L.L.C.**, a Nebraska limited liability company and the **City of Valley, Nebraska** entered into an Irrevocable Letter of Credit Agreement wherein Flatwater and the City agree certain funds for Flatwater Lake – Phase Two and Flatwater Lake – Phase Three be secured by a loan obtained by the sub divider for distribution in accordance with the terms of this Agreement.

WHEREAS, the Agreement provides Union Bank and Trust shall disburse the funds, or such portion thereof authorized by Resolution shall be disbursed as follows:

WHEREAS, the sum of Two hundred thirteen thousand Eight hundred fifty-five dollars & 00/100 (\$213,855.00), is due to Vrba Construction pursuant to Application for Payment No. 10, as submitted by Olmsted & Perry Consulting Engineers, Engineers for the City of Valley; and

WHEREAS the City Engineer and the City Clerk have submitted a request to the City Council to authorize distributions of the above-described amounts; said request is supported by invoices and backup documentation.

NOW, THEREFORE, be it resolved by the Mayor and City Council of the City of Valley, Nebraska:

2. Union Bank & Trust is hereby authorized and directed to disburse to Vrba Construction the sum of Two hundred thirteen thousand Eight hundred fifty-five dollars & 00/100 (\$213,855.00) as payment due pursuant to Application for Payment No. 10 dated April 5, 2022 for Flatwater Lake Phase 3 Rebid - Utility Extensions.

PASSED AND APPROVED THIS 12th DAY OF April, 2022

CITY OF VALLEY,
DOUGLAS COUNTY, NEBRASKA

Cindy Grove, Mayor

Mike Stanzel, Council President

Bryon Ueckert, Council Member

Linda Lewis, Council Member

Chris TenEyck, Council Member

ATTEST:

Cheryl Eckerman, City Clerk

RESOLUTION NO. 2022 – 25

WHEREAS, on or about June 22, 2021, **BKM Land Company, LLC.**, a Nebraska limited liability company and the **City of Valley, Nebraska** entered into an Irrevocable Letter of Credit Agreement wherein BKM Land Company, LLC and the City agree certain funds for Falcon Business Park be secured by an escrow account obtained by the subdivider for distribution in accordance with the terms of this Agreement.

WHEREAS, the Agreement provides Pinnacle Bank shall disburse the funds, or such portion thereof authorized by Resolution shall be disbursed as follows:

WHEREAS, the sum of Sixty-one thousand seven-hundred dollars & 00/100 (\$61,700.00) is due to Bert Gurney & Associates pursuant to Invoice Number 7610, as submitted by Olmsted & Perry Consulting Engineers, engineers for the City of Valley; and

WHEREAS the City Engineer and the City Clerk have submitted a request to the City Council to authorize distribution of the above-described amount; said request is supported by invoice and backup documentation.

NOW, THEREFORE, be it resolved by the Mayor and City Council of the City of Valley, Nebraska:

1. Pinnacle Bank is hereby authorized and directed to disburse to Bert Gurney and Associates the sum of Sixty-one thousand seven-hundred dollars & 00/100 (\$61,700.00) as payment due pursuant to Invoice Number 7610 dated March 21, 2022

PASSED AND APPROVED THIS 12th DAY OF April, 2022

CITY OF VALLEY,
DOUGLAS COUNTY, NEBRASKA

Cindy Grove, Mayor

Mike Stanzel, Council President

Bryon Ueckert, Council Member

Linda Lewis, Council Member

Chris TenEyck, Council Member

ATTEST:

Cheryl Eckerman, City Clerk



RELATIONSHIPS • TECHNOLOGY • SERVICE

BERT GURNEY & ASSOCIATES, INC.

4428 SOUTH 108TH STREET

OMAHA, NE 68137

PHONE#: 402-551-7995

FAX#: 402-553-5879

INVOICE

INVOICE NUMBER **7610**

INVOICE DATE 3/21/2022

BILL TO:
VALLEY, CITY OF PO BOX 682 VALLEY, NE 68064

SHIP TO:
VALLEY, NE WEST STREET PUMP STATION

CUSTOMER ID	CUSTOMER PO	CREDIT DEPT INQUIRES		
VAL	W ST PUMP STN	531-200-4140/DEBS@BGAGURNEY.COM		
SALES REP	SHIPPING METHOD	PAYMENT TERMS	SHIP DATE	DUE DATE
JCJ	BEST WAY	Net 30	3/21/2022	4/20/2022

QUANTITY	ITEM	DESCRIPTION	UNIT PRICE	AMOUNT
1	JET	CONTROL PANEL AS PER BGA PROPOSAL BGA 21-142-0	61,700.00	61,700.00

SUBTOTAL	\$61,700.00
SALES TAX (0.0%)	\$0.00
INVOICE TOTAL	\$61,700.00
PAYMENT/CREDITS APPLIED	\$0.00
BALANCE DUE	\$61,700.00

THANK YOU FOR USING GURNEY & ASSOCIATES, INC.
WE APPRECIATE YOUR BUSINESS